HOUSE DOCKET, NO. 3269 FILED ON: 1/21/2011

HOUSE . . . . . No. 2683

The Commonwealth of Massachusetts

PRESENTED BY:

Angelo M. Scaccia

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act establishing an independent office of quality assurance for developmentally disabled persons.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Angelo M. Scaccia	*14th Suffolk*

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HOUSE . . . . . No. 2683

By Mr. Scaccia of Boston, a petition (accompanied by bill, House, No. 2683) of Angelo M. Scaccia for legislation to establish an independent office of quality assurance for mentally retarded persons. Children, Families and Persons with Disabilities.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *179* OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act establishing an independent office of quality assurance for developmentally disabled persons.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Preamble—

WHEREAS, A stronger system of monitoring and quality assurance is required on the state level for individuals with developmental disabilities.

WHEREAS, The function of oversight, monitoring and quality assurance should be independent of the agency providing the services,

SECTION 1. The Mass. General Laws are hereby amended by adding after chapter 19C, the following chapter:—

1. Chapter 19E.

Office of Quality Assurance for Developmentally Disabled Persons.

Section 1. The following words as used in this chapter shall, unless the context otherwise requires, have the following meanings:

"Office", the independent office of quality assurance for persons with developmental disabilities.

14 “Department” the department of developmental disabilities.

15 “Commissioner”, the commissioner of the department of developmental disabilities.

16 “Director”, the director of the independent office of quality assurance for persons with
17 developmental disabilities.

18 “Person with developmental disabilities”, a person who, as a result of inadequately
19 developed or impaired intelligence, as determined by clinical authorities as described in the
20 regulations of the department of developmental disabilities is substantially limited in his ability
21 to learn or adapt, as judged by established standards available for the evaluation of a person’s
22 ability to function in the community; or a person who is otherwise eligible for department of
23 developmental disabilities services. A person with developmental disabilities may be considered
24 mentally ill provided that no person with developmental disabilities shall be considered mentally
25 ill solely by virtue of developmental disabilities

26 “Board of Directors”, the directors of the office of quality assurance for developmental
27 disabilities.

28 Section 2. Establishment of an Independent Office of Quality Assurance for
29 Developmentally Disabled Persons.

30 In order to protect the rights of developmentally disabled persons and to assure
31 accountability of all service providers, there shall be established an Independent Office of
32 Quality Assurance, hereinafter referred to as the office.

33 There shall be a Director to act as administrative head of the office. S/he shall be
34 appointed by majority vote of the state auditor, the governor, and the attorney general.

35 The person selected shall have experience in the delivery of services to the
36 developmentally disabled, be conversant with policies, statutes, rules and regulations related to
37 developmental disabilities currently in force and possess a background in civil and administrative
38 law. The Director shall be assisted by adequate staff and a board of directors.

39 The Director, pursuant to the provisions of chapter 30A shall make and, from time to
40 time, revise such regulations as may be necessary to carry out the functions set forth in this
41 chapter.

42 Assistants and staff for the Independent Office of Quality Assurance shall be established
43 via the transfer of all currently authorized positions and budget in the Department of
44 Developmental Disabilities engaged in “internal” self-evaluation, monitoring, quality assurance
45 and human rights functions. The current budget and staff of the Governor’s Commission of
46 Developmental Disabilities will also be transferred to the office. Not less than 80 full time
47 equivalent positions shall comprise the office.

48 Section 3. Functions

49 Said office shall be independent of all agencies within the executive office of health and
50 human services. Said office shall be responsible for monitoring all elements of service provision
51 for the developmentally disabled described by statutes, rules and regulations, plus all federal
52 entitlements in which the commonwealth participates.

53 Subject to approval by the board of directors, the director of the office may lease,
54 purchase, hold and dispose of personal and real property facilitating execution of his duties.

55 The director may require by summons, the production of all records, reports, audits,
56 reviews, papers, books, documents, recommendations, correspondence and any other data and
57 material relevant to any matter under audit or investigation regarding service provision to a
58 developmentally disabled person. All records of the department, disabled persons protection
59 commission and the department of public health division of healthcare quality shall be accessible
60 to the office.

61 Subject to the approval of said board, the director may apply for and accept, on behalf of
62 the Commonwealth any federal, local or private grants, bequests, gifts or contributions to aid in
63 the financing of any of the programs or policies of the office, provided such acceptance does not
64 conflict with the independence of the office.

65 Such funds shall be received by the state treasurer on behalf of the Commonwealth and
66 deposited in a separate account and shall be expended under the direction of the director to
67 accomplish the mandates of the office. Federal funds paid as reimbursement shall be deposited in
68 the General Fund.

69 The office may make agreements with other departments and agencies of the
70 Commonwealth and may contract with other persons, including private agencies, to carry out any
71 of the functions and purposes under this chapter. The director shall establish standards and
72 procedures governing such agreements and contracts subject to the approval of the state auditor,
73 the governor and the attorney general.

74 The director may appoint such assistants and staff deemed necessary to perform adequate
75 monitoring of agency and contractor groups serving developmentally disabled persons with
76 special emphasis on the development of individual service plans and effective implementation of
77 these plans to each service recipient.

78 The director, the office and any person they may designate shall have access at any and
79 all reasonable times to any facility, residence, program, or part thereof for the developmentally
80 disabled, and to all relevant records, reports, materials, and employees, in order to allow them to
81 monitor the quality with which such needs are being met. Such authority can be used to establish
82 a program of citizen monitors.

83 Section 4. Responsibilities.

84 The office shall be responsible for the development of a fixed schedule and random
85 method of monitoring the effectiveness and quality of all service providers including facility and
86 community programs.

87 In order to carry out its mission of assuring a continued high level of care and to execute
88 its responsibility as set forth, the office shall establish its own procedures and mechanisms for
89 monitoring and evaluating the care of developmentally disabled persons, and shall undertake the
90 following: receive information, reports and complaints from employees, developmentally
91 disabled persons, their families or representatives and others regarding effectiveness and
92 adequacy of quality assurance mechanisms; report all cases of abuse, mistreatment and neglect
93 coming to the attention of the office in the normal course of its duties to the disabled persons
94 protection commission; identify areas where agencies are failing to comply with and enforce
95 applicable federal and state laws, regulations, standards and policies and require that those
96 agencies take action to correct inadequacies; investigations and reviews in order to draw
97 independent conclusions relative to the adequacy of care, the protection of individuals' rights,
98 the functioning of human rights committees, and the effectiveness of quality assurance
99 mechanisms, with specific attention to issues of the safety and security of developmentally
100 disabled persons; and subsequently require correction or resolution of problems. A report of the
101 findings of any such activity shall be provided to the head of the appropriate agency, as well as
102 his or her designated manager responsible for such service, and if problems are identified, such
103 designated manager shall make a written report within a suitable time frame as requested by the
104 director, but not more than ten working days, of actions taken to correct each problem; identify
105 and report on areas where agencies and service providers are demonstrating superior efforts in
106 the provision of services to developmentally disabled persons.

107 In addition, the office may: receive information and complaints from developmentally
108 disabled persons, their families or representatives and others regarding the adequacy of care and
109 services to these citizens; determine whether those individuals have made full use of existing
110 procedures for obtaining services, or otherwise addressing their concerns; and if they have not,
111 fully inform them of the appropriate mechanisms within the agency for doing so, and if they
112 have sought but not obtained relief from those mechanisms, or if existing mechanisms are
113 inadequate to resolve the problem, recommend or, if determined necessary by the director,
114 mandate means of resolution; shall receive, upon request from any agency of the state and any
115 private service provider assistance, information and data that will enable the office to fulfill its
116 functions, powers and duties.

117 The director shall report in writing, at least annually, and as deemed necessary to secure
118 corrective action, to the three appointment authorities. The report shall include: narrative and
119 statistical degree of compliance to ISP driven needs or developmentally disabled persons;
120 identification of agencies and/or contractor service providers deemed chronically deficient or

121 poorly administered; recommendations that would improve efficiency and cost effectiveness in
122 the service delivery system.

123 The director shall issue special reports as needed on issues or conditions in the course of
124 the office's oversight function.

125 The director office staff and the board shall have ready access for purposes of scheduled
126 auditing, random sampling, and when responding to specific complaints, to any and all public
127 and private facilities and programs contracting to serve developmentally disabled persons,
128 whether licensed or unlicensed.

129 The office shall conduct ongoing monitoring of compliance with regulations governing
130 the care of developmentally disabled persons; requesting and receiving status reports on the
131 progress toward completion of outstanding corrective action plans; death reports, class member
132 identification lists, reports of facility admissions, transfers and outplacements shall be provided
133 to the office by the department; maintaining contact with federal oversight agencies to identify
134 areas of concern where the Commonwealth has not complied with federal standards and to
135 ensure that the appropriate state agencies devise means for implementing compliance, to assure
136 continued entitlement; receive copies of compliance reviews conducted by the Health Care
137 Financing Administration.

138 Section 5. Resources.

139 Adequate resources will be made available to fund the office in accordance with the
140 staffing recommendations included herein. The director shall, in accordance with state
141 regulations, select the staff of the office, define staff responsibilities and establish appropriate
142 compensation levels for all employees.

143 The salary of the director shall not exceed the salary grade of the Commissioner
144 developmental disabilities.

145 Section 6. Board of Directors.

146 There shall be established a board of directors to the office. Said board shall advise and
147 assist the office in seeking accountability from the providers of service and care to
148 developmentally disabled persons.

149 The board of directors shall consist of fifteen members and shall be constituted as
150 follows: one representative from the Coalition of Families and Advocates for the Retarded, Inc.
151 (COFAR); one representative from Arc Massachusetts, Inc.; one representative from the
152 Advocacy Network; one representative of each of the five DDS Regional Citizen Advisory
153 Boards; 5 citizen representatives selected from among professional associations in the fields of
154 medicine, nursing, psychology, social work and special education; the secretary of the executive

155 office of health and human services or his/her designee; the executive director of the disabled
156 person protection commission.

157 The board of directors shall meet at least monthly with the director, and at other times as
158 the director deems necessary and shall assist the director in planning and reviewing the activities
159 of the office; recommend to the director for his/her consideration, issues that need to be pursued;
160 at the director's request, review such additional reports and materials that would enable the
161 office to more effectively evaluate the care of developmentally disabled persons; bring issues to
162 the attention of the office that either aid in its evaluation of the quality of care to
163 developmentally disabled persons or warrant its intervention, as the director deems necessary
164 and appropriate, accompany office staff on visits to selected program locations; and serve as a
165 vehicle for communication between the Commonwealth's citizenry and the office.

166 The director shall, in accordance with the office's budget, make available to the board of
167 directors secretarial support and supplies, and reimbursement at reasonable expense, to enable
168 the board of directors to carry out its functions and duties.

169 Section 7. Evaluation.

170 Four years after the establishment of the office, an independent evaluation, under contract
171 with the State Auditor's Office, shall be conducted to determine the effectiveness of the office
172 and recommend appropriate actions such as continuance or other options as may be warranted to
173 include but not be limited to a merging of the office with the disabled persons protection
174 commission and/or a broadening of scope to include mentally ill persons and/or other disabled
175 populations.