SENATE DOCKET, NO. 777 FILED ON: 1/17/2013

SENATE . . . . . No. 908

The Commonwealth of Massachusetts

PRESENTED BY:

Jennifer L. Flanagan

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 to permit the Department of Developmental Services to provide services to adults with developmental disabilities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Jennifer L. Flanagan	*Worcester and Middlesex*
William N. Brownsberger	*Second Suffolk and Middlesex*
Michael J. Rodrigues	*First Bristol and Plymouth*
Richard J. Ross	*Norfolk, Bristol and Middlesex*
Kenneth J. Donnelly	*Fourth Middlesex*
John F. Keenan	*Norfolk and Plymouth*
Michael Barrett	*Third Middlesex*
Angelo J. Puppolo, Jr.	*12th Hampden*
Angelo L. D'Emilia	*8th Plymouth*
Thomas M. McGee	*Third Essex*
Katherine M. Clark	*Fifth Middlesex*
Kay Khan	*11th Middlesex*
Kimberly N. Ferguson	*1st Worcester*
Todd M. Smola	*1st Hampden*
Thomas M. Stanley	*9th Middlesex*
James B. Eldridge	*Middlesex and Worcester*
Karen E. Spilka	*Second Middlesex and Norfolk*

Benjamin B. Downing	*Berkshire, Hampshire, Franklin and Hampden*
Mary S. Keefe	*15th Worcester*
Michael R. Knapik	*Second Hampden and Hampshire*
James M. Murphy	*4th Norfolk*
Matthew A. Beaton	*11th Worcester*
Thomas J. Calter	*12th Plymouth*
John D. Keenan	*7th Essex*
Kevin J. Murphy	*18th Middlesex*
Michael O. Moore	*Second Worcester*
Bruce E. Tarr	*First Essex and Middlesex*
James E. Timilty	*Bristol and Norfolk*
Patricia D. Jehlen	*Second Middlesex*
Bruce J. Ayers	*1st Norfolk*
Anthony W. Petruccelli	*First Suffolk and Middlesex*
Denise Andrews	*2nd Franklin*
Kathleen O'Connor Ives	*First Essex*

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By Ms. Flanagan, a petition (accompanied by bill, Senate, No. 908) of Jennifer L. Flanagan, William N. Brownsberger, Michael J. Rodrigues, Richard J. Ross and other members of the General Court for legislation to provide services to adults with developmental disabilities. Mental Health and Substance Abuse.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act to permit the Department of Developmental Services to provide services to adults with developmental disabilities.

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

SECTION 1:

Section 1 of chapter 123B as appearing in the 2010 Official Edition, is hereby amended by inserting the following definition, following line 17:

"Person with a developmental disability", a person with a severe, chronic disability of an individual 5 years of age or older that:

(1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(2) Is manifested before the individual attains age 22;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in three or more of the following areas of major life activity;

(i) Self-care;

(ii) Receptive and expressive language;

(iii) Learning;

15 (iv) Mobility;

16 (v) Self-direction;

17 (vi) Capacity for independent living; and

18 (vii) Economic self-sufficiency.

19 (5) Reflects the individual's need for a combination and sequence of special,
20 interdisciplinary, or generic services, supports, or other assistance that is of lifelong or extended
21 duration and is individually planned and coordinated, except that such term, when applied to
22 infants and young children means individuals from birth to age 5, inclusive, who have
23 substantial developmental delay or specific congenital or acquired conditions with a high
24 probability of resulting in developmental disabilities if services are not provided.

25 A person who has a developmental disability may be considered to be mentally ill;
26 provided, however, that no person with a developmental disability shall be considered to be
27 mentally ill solely by reason of the person's developmental disability.

28 SECTION 2:

29 Section 2 of chapter 123B as appearing in the 2010 Official Edition is hereby amended
30 by adding the following paragraph, following line 13:

31 The department shall, in accordance with section two of chapter thirty A and subject to
32 appropriation, adopt regulations consistent with this chapter which establish procedures and the
33 highest practicable professional standards for community services for persons with
34 developmental disabilities.

35 SECTION 3:

36 Section 1 of chapter 19B as appearing in the 2010 Official Edition is hereby amended by
37 inserting, on line 7, following "persons with an intellectual disability" the words -

38 or persons with a developmental disability.

39 Said Section 1 of chapter 19B as appearing in the 2010 Official Edition is hereby further
40 amended by striking "mental retardation services" on line 23 and inserting in place thereof the
41 words–

42 services for persons with an intellectual disability

43 Said Section 1 of chapter 19B as appearing in the 2010 Official Edition is hereby further
44 amended by striking "intellectual disabilities services" on lines 27 and 28, and inserting in place
45 thereof the words–

46 services for persons with an intellectual disability or a developmental disability.

47 Section 2 of chapter 19B as appearing in the 2010 Official Edition is hereby amended by
48 striking “mental retardation” on line 2, and inserting in place thereof the words-

49 of the department of developmental services

50 Said Section 2 of chapter 19B as appearing in the 2010 Official Edition is hereby further
51 amended by striking “mental retardation” on line 18.

52 Section 2 of chapter 19B as appearing in the 2010 Official Edition is hereby amended by
53 striking “for mental retardation in the commonwealth” on line 31 and inserting in place thereof
54 the words-

55 for persons with intellectual disabilities and services served for people with
56 developmental disabilities in the commonwealth.

57 Section 12 of chapter 19B as appearing in the 2010 Official Edition is hereby amended
58 by striking “mental retardation programs” on line 4 and inserting in place thereof the words-

59 programs for persons with an intellectual disability

60 SECTION 3:

61 Chapter 19B as appearing in the 2010 Official Edition is hereby amended by inserting
62 after Section 12 the following section:

63 Section 12A. The department, subject to appropriation, shall establish a comprehensive
64 program of community developmental disability services, and shall establish standards for
65 the development of programs at appropriate geographic areas to ensure access to needed
66 services. The commissioner shall ensure citizen, consumer and family participation in the
67 oversight of community developmental disability services at all such levels, including the local
68 level.

69 Section 13 of chapter 19B as appearing in the 2010 Official Edition is hereby amended
70 by inserting, on lines 2 and 3, following “community intellectual disability services” the words—

71 and community developmental disability services

72 Section 13 of chapter 19B as appearing in the 2010 Official Edition is hereby amended
73 by inserting on lines 8 and 9, following “intellectual disability”, the words—

74 and developmental disability services

75 Section 13 of chapter 19B as appearing in the 2010 Official Edition is hereby amended
76 by inserting, on line 13 following “Intellectual disability services” the words—

77 and developmental disability services

78 SECTION 4:

79 Chapter 19B as appearing in the 2010 Official Edition is hereby amended by the inserting
80 after Section 15 the following section:

81 Section 15A. (a) The department shall issue for a term of two years, and may renew for
82 like terms, a license, subject to revocation by it for cause, to any program which offers
83 to the public residential or day care services and is represented as providing treatment of
84 persons with a developmental disability, and which is deemed by it to be responsible and
85 suitable to meet applicable licensure standards and requirements, except that: (1) the department
86 may license those programs providing care but not treatment of persons with an intellectual
87 disability; and (2) licensing by the department is not required where such residential or day care
88 treatment is provided within an institution or facility licensed by the department of public health
89 under the provisions of chapter one hundred and eleven. Whether or not a license is issued under
90 clause (1), the department shall make regulations for the operation of such programs. The
91 department may grant the type of license which it deems suitable for the program. The
92 department shall fix reasonable fees for licenses and renewal thereof.

93 (b) Each program licensed under the provisions of this section shall maintain and make
94 available to the department such statistical and diagnostic data as may be required by the
95 department.

96 (c) Each such program licensed by the department shall be subject to the supervision,
97 visitation and inspection of the department, and the department may make regulations for
98 the proper operation of such programs.

99 (d) The department may refuse to grant, suspend, revoke, limit or restrict the
100 applicability of or refuse to renew a license granted under this section, subject to the
101 procedural requirements of section thirteen of chapter thirty A for any violation of its
102 regulations or standards concerning such program. The department may temporarily
103 suspend a license prior to a hearing in cases of emergency if it deems that such suspension
104 would be in the public interest; provided, however, that upon request of an aggrieved party, a
105 hearing pursuant to section thirteen of chapter thirty A, shall be held after the license is
106 suspended. Any party aggrieved by a decision of the department under this section may
107 appeal in accordance with the provisions of section fourteen of chapter thirty A.

108 (e) No program for which a license is required under paragraph (a), shall provide
109 residential or day care services for the treatment or care of persons with a developmental
110 disability unless it has obtained a license under the provisions of this section. The superior
111 court sitting in equity shall have jurisdiction, upon petition of the department, to restrain any
112 violation of the provisions of this section or to take such other action as equity and justice

113 may require. Whoever violates the provisions of this section shall be punished for the first
114 offense by a fine of not more than one thousand dollars or by imprisonment for not more than
115 two years.

116 (f) Each person served by such a program, shall be granted protection from
117 commercial and private exploitation of any kind. No person shall be video taped, audio
118 taped, photographed, interviewed or exposed to the public without either the person's express
119 written consent, or that of the person's legal guardian. Whoever violates the provision of
120 this paragraph shall be punished by a fine of not more than two thousand dollars or by
121 imprisonment for not more than two and one-half years in a house of correction or by
122 imprisonment for not more than five years in the state prison.

123 (g) Notwithstanding the provisions of paragraphs (a) to (f), inclusive, any child care
124 center, family child care home, family child care system, family foster care or group care
125 facility as defined in section 1A of chapter 15D, shall not be subject to the provisions of
126 this section.

127 SECTION 5:

128 Section 17 of chapter 19B as appearing in the 2010 Official Edition is hereby amended
129 by striking "mentally retarded persons" on lines 1 and 2 and inserting in place thereof the words-

130 persons with an intellectual disability or a developmental disability

131 Section 17 of chapter 19B as appearing in the 2010 Official Edition is hereby amended
132 by striking "mentally regarded person" on line 11 and inserting in place thereof the words-

133 person with an intellectual disability or a developmental disability

134 SECTION 6:

135 Section 18 of chapter 19B as appearing in the 2010 Official Edition is hereby amended
136 by striking "mentally ill and persons with an intellectual disability" on line 10 and inserting in
137 place thereof the words-

138 persons with mental illness and intellectual or developmental disabilities

139 Section 18 of chapter 19B as appearing in the 2010 Official Edition is hereby amended
140 by striking "mentally ill and mentally retarded individuals" on lines 14 and 15 and inserting in
141 place thereof the words-

142 persons with mental illness and intellectual or developmental disabilities

143 Section 18 of chapter 19B as appearing in the 2010 Official Edition is hereby amended

144 by striking “a person with an intellectual disability and mentally ill” on lines 16 and 17
145 and inserting in place thereof the words-

146 a person with an intellectual or developmental disability and a mental illness

147 Section 18 of chapter 19B as appearing in the 2010 Official Edition is hereby amended

148 by inserting, on line 29-30 following “intellectual disability”, the words-

149 or a developmental disability,