

HOUSE No. 125

The Commonwealth of Massachusetts

PRESENTED BY:

Danielle W. Gregoire

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 adoption of the accompanying bill:

An Act establishing an independent office of quality assurance.

PETITION OF:

NAME:

Danielle W. Gregoire

DISTRICT/ADDRESS:

4th Middlesex

HOUSE No. 125

By Miss Gregoire of Marlborough, a petition (accompanied by bill, House, No. 125) of Danielle W. Gregoire relative to establishing an independent office of quality assurance for persons with developmental disabilities. Children, Families and Persons with Disabilities.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act establishing an independent office of quality assurance.

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

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

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

5 SECTION 1. The General Laws are hereby amended by adding after chapter 19D, the
6 following chapter:—

7 Chapter 19E.

8 Office of Quality Assurance for Developmentally Disabled Persons.

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

11 “Office”, the independent office of quality assurance for persons with developmental
12 disabilities.

13 “Department” the department of developmental services.

14 “Commissioner”, the commissioner of the department of developmental services.

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

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

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

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

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

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

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

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

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

47 Section 3. Functions

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

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

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

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

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

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

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

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

82 Section 4. Responsibilities.

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

86 In order to carry out its mission of assuring a continued high level of care and to execute
87 its responsibility as set forth, the office shall establish its own procedures and mechanisms for
88 monitoring and evaluating the care of developmentally disabled persons, and shall undertake the
89 following: receive information, reports and complaints from employees, developmentally
90 disabled persons, their families or representatives and others regarding effectiveness and
91 adequacy of quality assurance mechanisms; report all cases of abuse, mistreatment and neglect
92 coming to the attention of the office in the normal course of its duties to the disabled persons
93 protection commission; identify areas where agencies are failing to comply with and enforce
94 applicable federal and state laws, regulations, standards and policies and require that those

95 agencies take action to correct inadequacies; investigations and reviews in order to draw
96 independent conclusions relative to the adequacy of care, the protection of individuals' rights,
97 the functioning of human rights committees, and the effectiveness of quality assurance
98 mechanisms, with specific attention to issues of the safety and security of developmentally
99 disabled persons; and subsequently require correction or resolution of problems. A report of the
100 findings of any such activity shall be provided to the head of the appropriate agency, as well as
101 his or her designated manager responsible for such service, and if problems are identified, such
102 designated manager shall make a written report within a suitable time frame as requested by the
103 director, but not more than ten working days, of actions taken to correct each problem; identify
104 and report on areas where agencies and service providers are demonstrating superior efforts in
105 the provision of services to developmentally disabled persons.

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

116 The director shall report in writing, at least annually, and as deemed necessary to secure
117 corrective action, to the three appointment authorities. The report shall include: narrative and

118 statistical degree of compliance to ISP driven needs or developmentally disabled persons;
119 identification of agencies and/or contractor service providers deemed chronically deficient or
120 poorly administered; recommendations that would improve efficiency and cost effectiveness in
121 the service delivery system.

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

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

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

137 Section 5. Resources.

138 Adequate resources will be made available to fund the office in accordance with the
139 staffing recommendations included herein. The director shall, in accordance with state

140 regulations, select the staff of the office, define staff responsibilities and establish appropriate
141 compensation levels for all employees.

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

144 Section 6. Board of Directors.

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

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

156 The board of directors shall meet at least monthly with the director, and at other times as
157 the director deems necessary and shall assist the director in planning and reviewing the activities
158 of the office; recommend to the director for his/her consideration, issues that need to be pursued;
159 at the director's request, review such additional reports and materials that would enable the
160 office to more effectively evaluate the care of developmentally disabled persons; bring issues to
161 the attention of the office that either aid in its evaluation of the quality of care to

162 developmentally disabled persons or warrant its intervention, as the director deems necessary
163 and appropriate, accompany office staff on visits to selected program locations; and serve as a
164 vehicle for communication between the Commonwealth's citizenry and the office.

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

168 Section 7. Evaluation.

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