

**SENATE . . . . . No. 2331**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Fourteen**  
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SENATE, Wednesday, July 30, 2014

The committee on Ways and Means, to whom was referred the House Bill relative to real lives (House, No. 4237); reports, recommending that the same ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2331.

For the committee,  
Stephen M. Brewer

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Fourteen

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1 SECTION 1. Chapter 19B of the General Laws is hereby amended by adding the  
2 following section:-

3 Section 19. (a) As used in this section, the following words shall have the following  
4 meanings, unless the context clearly requires otherwise:

5 “Chosen planning team”, an individual or group of individuals chosen by the participant  
6 to assist in the development of a person-centered plan or other aspect of self-determination.

7 “Commissioner”, the commissioner of developmental services.

8 “Department”, the department of developmental services.

9 “Financial management service”, a service or function provided by an entity to assist a  
10 participant in disbursing allocated funds in accordance with the participant’s individual budget  
11 and person-centered plan; provided, that financial management services may include facilitating  
12 the employment of service and support workers by aiding the participant with payments, fiscal  
13 accounting, tax withholding, compliance with relevant state and federal employment laws,  
14 verification of provider qualifications, criminal background checks and expenditure reports;  
15 provided, further, that the financial management service entity shall owe the participant a

16 fiduciary duty and shall meet minimum qualifications as established by the department through  
17 regulation.

18 “Independent facilitator”, a person selected and directed by the participant to assist in the  
19 development and execution of a person-centered plan and to assist the participant in making  
20 informed decisions about the participant’s choices regarding self-determination including, but  
21 not limited to, the short and long term planning goals for self-determination and the transition to  
22 self-determination; provided, that an independent facilitator shall meet minimum qualifications  
23 established by the department through regulation prior to assisting a participant; and provided  
24 further, that an independent facilitator shall not provide any services, supports or goods to the  
25 participant under the participant's individual support plan and shall not be employed by a person  
26 providing services, supports or goods to the participant.

27 “Individual budget”, an allocation of federal and state funds based upon the participant’s  
28 assessed needs, as determined by the department in consultation with the participant, the  
29 participant’s individual support plan team and chosen planning team, used to facilitate self-  
30 determination and to purchase services, supports or goods identified or referenced in the person-  
31 centered plan.

32 “Individual support plan”, shall have the same meaning as described in 115 CMR 6.20.

33 “Participant”, an individual with disabilities receiving department services and, when  
34 appropriate, an individual’s parents, legal guardian, conservator or other authorized  
35 representative, who has voluntarily agreed to take part in, and has been deemed eligible for, the  
36 self-determination program.

37 “Self-determination”, an approach to service delivery in which the participant is given  
38 control over the decision-making process for the participant’s supports or services and budget  
39 and the participant may tailor the support to meet the participant’s needs.

40 (b) The department shall offer self-determination as an option to all individuals eligible  
41 for services through the department. Self-determination shall be based on the participant’s  
42 judgment and preferences as set forth in the participant’s person-centered plan. An individual  
43 who is not MassHealth eligible but is otherwise eligible for department services may participate  
44 in self-determination.

45 (c) The department shall establish a statewide self-determination advisory board to advise  
46 the department on efforts to implement, publicize, evaluate, improve and develop information  
47 regarding self-determination. The advisory board shall consist of: the longest serving member of  
48 the disabled persons protection commission, or a designee, who shall serve as chair; 19  
49 individuals appointed by the commissioner, 1 of whom shall be a member of the department, 1 of  
50 whom shall be a member of an advocacy organization, 1 of whom shall represent taxpayers, 1 of  
51 whom shall have experience with consumer protection, 1 of whom shall have experience with  
52 self-determination models, 1 of whom shall have experience with nonprofit and for-profit  
53 services markets and competition and services for persons with disabilities, 1 of whom shall have  
54 experience with financial management services, 1 of whom shall be an independent facilitator; 1  
55 of whom shall be a provider of direct services, supports or goods and 10 of whom shall be a  
56 participant or a family member, legal representative or guardian of a participant; 1 individual  
57 appointed by the disabled persons protection commission; 1 individual appointed by the office of  
58 the inspector general; and 1 individual appointed by the office of the state auditor. Members shall  
59 serve for a term of 3 years. Upon the expiration of the term of any member, a successor shall be

60 appointed in like manner. The appointing entity shall in like manner fill any vacancy for the  
61 remainder of the unexpired term.

62 The self-determination advisory board shall also compile, and continually update, a list of  
63 participants or participants' chosen planning teams who are willing to volunteer to discuss their  
64 experiences in self-determination with individuals considering implementing the self-  
65 determination option in their individual support plans and shall provide said list to the  
66 department.

67 (d) The department and the statewide self-determination advisory board shall develop  
68 informational materials and training for departmentt staff regarding self-determination. Training  
69 shall include how to explain the concept and practice of self-determination and shall inform  
70 department staff about the mechanics of self-determination, including but not limited to: the  
71 development of individual budgets; the selection, purchase and use of services, supports and  
72 goods by participants; information about the types of providers and services that may be utilized;  
73 information about the selection and supervision of vendors; the respective roles of independent  
74 facilitators, financial management services and the department; and the methods of identifying  
75 and reporting instances of suspected waste, fraud and abuse. The department shall educate all  
76 department staff, except for department staff classified as janitorial, maintenance or secretarial,  
77 on self-direction annually.

78 (e) The department, in administering self-determination, shall:

79 (1) facilitate and assist in the preparation of a person-centered plan, individual  
80 support plan and individual budget for each participant and, if applicable, the selection of a  
81 financial management service or independent facilitator;

82                   (2) collect and disclose information to participants about providers and vendors  
83 who provide goods and services to participants; provided, that said information shall be in a  
84 format that employs standard categories of services, supports and goods and enables a participant  
85 or a participant's chosen planning team to compare various combinations of possible budget  
86 expenditures; provided, further that said information shall include the costs of goods, on a per  
87 unit basis, and rates for supports and services, known to the department, which are likely to be  
88 charged against a participant's individual budget if the participant utilizes said service, support or  
89 good; provided, further, that said information shall include information about the costs likely to  
90 be charged against a participant's budget by a specific provider or vendor of financial  
91 management services or independent facilitation services; provided further, that where specific  
92 information is not available to the department, the department shall provide average rates for  
93 such services; and provided further, that the department shall not disclose any information that  
94 violates privacy protections under section 7 of chapter 4, section 2 of chapter 66A, section 17 of  
95 chapter 123B or any other state or federal privacy law;

96                   (3) set minimum qualifications and guidelines for financial management service  
97 providers and independent facilitators; provided that, independent facilitators and financial  
98 management service providers shall owe participants a fiduciary duty; and provided, further, that  
99 the department shall provide a list to each participant of the persons or organizations qualified to  
100 act as a financial management service provider or independent facilitator;

101                   (4) in accordance with subsection (i), set individual budgets annually in a fair,  
102 equitable and transparent manner in consultation with the participant and the participant's  
103 individual support plan; provided, that each individual budget shall be provided in a standard  
104 format that provides a breakdown of the individual budget into standard categories determined

105 by the department including, but not limited to, services, supports and goods; and provided,  
106 further, that the individual budget shall specify whether a service, support or good has a rate that  
107 was negotiated by the department;

108 (5) in consultation with the self-determination advisory board, review existing  
109 methodologies and develop alternative methodologies for computing and adjusting individual  
110 budgets as needed;

111 (6) ensure that the value of a participant's individual budget is equivalent to the  
112 amount the department would have spent providing services, supports or goods to the participant  
113 if the participant had chosen to receive services, supports and goods through a traditional service  
114 model supported by the department; provided, that the department shall establish an appeals  
115 process for decisions regarding the individual budget;

116 (7) establish a process for providing funds under an individual budget to the  
117 participant in a timely manner ensuring that a participant is able purchase services, supports or  
118 goods without experiencing an interruption in services;

119 (8) promulgate standard forms on which the financial management service  
120 provider for each participant shall annually report the participant's total expenditures for the year  
121 to the department; provided, that said report shall facilitate the collection of information under  
122 clause (2);

123 (9) approve a qualified financial management service provider, which may  
124 provide services to participants; provided, that the department shall negotiate with the financial  
125 management service provider uniform rates for each given unit of service, to be paid by each  
126 participant from the participant's individual budget; provided, that the department may approve

127 additional qualified financial management providers upon a determination by the department that  
128 providing additional service options will not materially increase participants' costs or have a  
129 material adverse effect on the department's oversight of individual budgets; provided further,  
130 that the department may reduce the number of qualified financial management service providers  
131 in order to control costs or enhance oversight of individual budgets; and provided further, that  
132 the department may opt to not require a participant to use a designated financial management  
133 service if the participant is using the agency with choice model, under section 1915(c) of the  
134 Social Security Act, codified at 42 U.S.C. 1396n et seq.;

135 (10) monitor the expenditure of funds from individual budgets;

136 (11) make efforts to ensure that participants are reasonably representative of the  
137 diversity of individuals eligible for services from the department;

138 (12) facilitate individual and family understanding of self-determination and  
139 related issues of budgeting, planning, service and provider selection and staff and employee  
140 management;

141 (13) provide information on the department's website about all service options  
142 including, but not limited to, self-determination and options for residential placements;  
143 provided, that said website shall inform individuals, at minimum, that with self-determination (i)  
144 the participant has control over the annual budget, (ii) the participant is central to and directs the  
145 decision-making process and determines what supports are utilized and (iii) the service system is  
146 flexible, so the participant may tailor the participant's supports to meet the participant's needs;  
147 and provided, further that said website shall provide other information as determined by the  
148 department in consultation with the statewide self-determination advisory board;



149 (14) provide the information described in subclauses (i) to (iii), inclusive, of  
150 clause (13) to individuals upon: (A) notification to an individual of priority for services; (B)  
151 commencement of the development of an individual support plan; (C) commencement of the  
152 renewal of an individual support plan; (D) annual notification to persons who have declined an  
153 individual support plan of their option to participate in the individual support plan; and (E) the  
154 person's entry into the department's turning 22 program;

155 (15) provide information on providers of self-determination supports, services or  
156 goods through its website or another means as determined by the department;

157 (16) hold meetings, briefings and orientations, as necessary, with providers,  
158 organizations and businesses to offer introductory and on-going information on self-  
159 determination and discuss ways the department can work with parties to establish and improve  
160 services, supports or goods that facilitate self-determination;

161 (17) ensure that the participant and the participant's chosen planning team  
162 comprehend and commit to appropriate means of identifying, monitoring, preventing and  
163 reporting to the disabled persons protection commission suspected instances of abuse or neglect  
164 of participants, including financial abuse;

165 (18) provide, in consultation with the advisory board established in subsection  
166 (c), an annual report to the chairs of the house and senate committees on ways and means and to  
167 the house and senate chairs of the joint committee on children, families and persons with  
168 disabilities, not later than September 1; provided that said report shall (i) set forth any  
169 modifications or improvements made by the department to the administration of self-  
170 determination, (ii) specify any recommended legislation, (iii) provide an assessment of the

171 performance of providers, vendors and persons who have received funds for the provision of  
172 services, supports and goods under this section, (iv) specify the number of participants utilizing  
173 self-determination during the previous fiscal year, (v) specify the number of participants per  
174 region in the commonwealth, (vi) specify types and amounts of services, supports or goods  
175 purchased under self-determination, in a manner that facilitates analyses and year to year  
176 comparisons, (vii) provide ranges and averages for expenditures from all individual budgets,  
177 inclusive of any adjustments to individual budgets made pursuant to subsection (i), and (viii) the  
178 number of participants who withdrew voluntarily from the option; and

179 (19) provide, except as is necessary to comply with privacy laws, any information  
180 requested by the attorney general, state auditor, inspector general, senate or house committees on  
181 post audit and oversight, disabled persons protection commission or any other department,  
182 agency or law enforcement body investigating suspected neglect or physical, emotional or  
183 financial abuse. The superior court shall have jurisdiction over disputed requests for  
184 information.

185 (f) Participation in self-determination shall be available to any individual who receives  
186 services from the department and who agrees to the following terms and conditions:

187 (1) the participant and participant's chosen planning team shall be responsible for  
188 implementation of the person-centered plan and the individual support plan, including the hiring  
189 or purchasing of necessary services, supports or goods;

190 (2) the participant shall utilize the services of a financial management service,  
191 unless an exception applies; and

192 (3) the participant, the participant's chosen planning team and the participant's  
193 individual support plan team members shall attend an orientation prior to enrollment, the subject  
194 matter of which shall include, but not be limited to, the concept and practice of self-  
195 determination, related issues of budgeting, planning, services and provider selection, staff and  
196 employee management and the respective roles of independent facilitators, financial  
197 management services and the department; provided, that no person shall be required to attend  
198 more than 1 orientation per year if working with multiple participants.

199 (g) Participation in self-determination shall be voluntary. An individual may choose to  
200 take part in or seek other department services at any time; provided, that the individual budget  
201 shall follow a participant who seeks other department services. The department shall not require  
202 or prohibit participation in self-determination as a condition of eligibility for, or delivery of,  
203 services, supports or goods otherwise available.

204 (h) If a participant voluntarily terminates self-determination or ceases participation in  
205 self-determination due to a medical event or other change in condition, the department shall  
206 provide for the participant's transition to other eligible services or supports. The transition shall  
207 include the development of a new individual support plan, which reflects the services, supports  
208 and goods necessary to meet the individual's needs and objectives. The department shall ensure  
209 that there is no gap in services, supports or goods during the transition period.

210 (i) The department, in consultation with the participant and the participant's chosen  
211 planning team, shall determine the initial and any revised individual budget for the participant.

212 The amount of the individual budget shall be available to the participant each year for the  
213 purchase of self-determination services, supports or goods. An individual budget may be

214 recalculated by the department based on the needs of the participant. An individual budget shall  
215 not be increased to cover the cost of an independent facilitator; except as provided by the  
216 department through regulation.

217 Employees of entities providing services, supports and goods to participants shall be  
218 eligible for a proportional amount of any additional appropriation designated for the increase of  
219 salary for workers employed by the department or its providers.

220 Funds not spent by the annual individual budget shall revert back to the department. The  
221 department shall consider adjusting a participant's individual budget when a participant does not  
222 utilize all funds in the participant's individual budget within the designated year.

223 (j) The self-determination option established under this section shall be contingent upon  
224 federal financial participation. The department shall seek reimbursement through federal  
225 Medicaid funding, the Home and Community Based Waiver or other federal reimbursement  
226 mechanisms of the department.

227 In adopting or modifying regulations, the department shall seek to maximize federal  
228 financial participation in, or funding or reimbursement for, self-determination.

229 (k) The provider of financial management services shall provide the participant and the  
230 department with a monthly individual budget statement in a format specified by the department  
231 through regulation.

232 (l) The department, in consultation with the advisory board established in subsection (c),  
233 shall determine which persons shall be subject to criminal background checks as a condition of  
234 providing services, supports or goods to participants and shall promulgate or amend its

235 regulations as necessary to require and implement said criminal background checks; provided,  
236 that participants shall not be required to pay the cost of a criminal background check required  
237 under this subsection.

238 (m)(1) Any member of a participant's chosen planning team, any member of the advisory  
239 board established in subsection (c), any mandated reporter of the disabled persons protection  
240 commission, as defined in section 1 of chapter 19C, and any other person involved in the  
241 preparation or implementation of the self-determination plan who suspects financial abuse,  
242 including, but not limited, to mismanagement, misappropriation or waste of a participant's self-  
243 determination funds or individual budget shall immediately report such suspicious actions or  
244 inactions to the disabled persons protection commission. The disabled persons protection  
245 commission shall evaluate and forward the report to the appropriate law enforcement or state  
246 agency and shall forward all reports of suspected financial abuse to the state auditor. The  
247 disabled persons protection commission shall provide an annual itemization to the house and  
248 senate chairs of the joint committee on children, families and persons with disabilities detailing  
249 the number, types and geographic locations of specific reports and the agency or agencies to  
250 which the complaint was referred.

251 (n) The department shall adopt and may modify regulations to implement this section.

252 (o) The state auditor, pursuant to section 12 of chapter 11, shall audit the self-  
253 determination option as the state auditor determines necessary and shall make recommendations  
254 to the department, the senate and house committees on ways and means and the joint committee  
255 on children, family and persons with disabilities about changes in law or regulation that may

256 improve the efficiency of the self-determination option, decrease costs, improve services or  
257 prevent waste, fraud or abuse.

258 (p) The attorney general or the department may independently investigate any allegations  
259 of mistreatment, waste, abuse, fraud or breach of any explicit or implied duties under this  
260 section. The attorney general or the department, on behalf of a participant, may seek to recover  
261 any monies lost because of mistreatment, waste, abuse, fraud or breach of any explicit or implied  
262 duties under this section in the superior court.

263 SECTION 2. The department shall submit a report to the chairs of the house and senate  
264 committees on ways and means and the house and senate chairs of the joint committee on  
265 children, families and persons with disabilities on the feasibility and cost of facilitating  
266 participant access to comparative information by making available a searchable online repository  
267 of providers of self-determination supports, services or goods, not later than 6 months from the  
268 effective date of this act. Said repository may be limited to providers serving multiple  
269 participants, who receive \$75,000 or more of self-determination funds per year, within the 2  
270 years preceding the year in which the department requires said information, or any other provider  
271 that voluntarily submits information to the department. Said report shall also include a proposed  
272 method to establish standardized units and descriptive categories for the searchable website.  
273 Such standardized units and descriptive categories may include:

274 (i) organizational structure, history and performance, including but not limited to, the (A)  
275 complete legal name of the provider, vendor or supplier and, where different, the popular or  
276 public name of the provider, vendor or supplier, (B) legal structure and organizational type, (C)

277 accreditation and licensure status, (D) web address location of recent formal audits, reports and  
278 investigations and (E) contact information and website information;

279 (ii) services, supports or goods offered at each geographic location by said provider  
280 including, but not limited to, (A) hours and schedules of availability of each service, support or  
281 good, (B) populations served, (C) provisions regarding the supervision, storage and dispensation  
282 of prescription medications and (D) any special or non-standard eligibility requirements or  
283 restrictions;

284 (iii) facilities available and in good operating order at each geographic location including,  
285 but not limited to, (A) precise street address of each geographic location (B) availability of or  
286 proximity to public transportation (C) hours of operation and (D) accessibility by mobility-  
287 impaired individuals;

288 (iv) medical and non-medical professional staff at each geographic location including, but  
289 not limited to, (A) number of staff in each staff category, (B) educational and professional  
290 attainments of staff, (C) ratio of staff to client for each shift and (D) average tenure, in years and  
291 months, of staff who work at least 16 hours a week; and

292 (v) characteristics of individuals receiving services, supports and goods at each  
293 geographic location including, but not limited to, number of clients, age range of clients and  
294 gender distribution of clients.

295 If the department finds that the searchable online repository is not cost prohibitive, the  
296 department shall develop and implement the repository within 18 months after the effective date  
297 of this act.

298           SECTION 3. Subject to appropriation, the department of developmental services shall  
299 contract with an independent research organization or academic institution not later than August  
300 1, 2019 to evaluate self-determination authorized in section 19 of chapter 19B of the General  
301 Laws and recommend improvements to the self-determination option.

302           SECTION 4. Notwithstanding any general or special law to the contrary, the department  
303 of developmental services shall only approve 1 qualified financial management service provider  
304 under clause (9) of subsection (e) of section 19 of chapter 19B.

305           The department of developmental services shall hold a meeting, briefing or orientation at  
306 least once annually under clause (16) of subsection (e) of section 19 of chapter 19B.

307           SECTION 5. Section 4 is hereby repealed.

308           SECTION 6. The department of developmental services shall advertise on its website that  
309 self-determination is a new service option available for individuals receiving services from the  
310 department for 2 years from the effective date of this act.

311           SECTION 7. The state auditor, pursuant to section 12 of chapter 11, shall audit the self-  
312 determination option, established under section 19 of chapter 19B of the General Laws, at least  
313 once during the first 4 years of its operation.

314           SECTION 8. Section 5 shall take effect 3 years from the effective date of this act.