

**HOUSE . . . . . No.**

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**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 bill:  
An Act establishing an independent office of quality assurance for mentally retarded persons.

PETITION OF:

NAME: \_\_\_\_\_ DISTRICT/ADDRESS: \_\_\_\_\_  
Angelo M. Scaccia 14<sup>th</sup> Suffolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 136 OF 2007-2008.]

**The Commonwealth of Massachusetts**

—————  
**In the Year Two Thousand and Nine**  
—————

**AN ACT ESTABLISHING AN INDEPENDENT OFFICE OF QUALITY ASSURANCE FOR  
MENTALLY RETARDED PERSONS.**

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

1 SECTION 1.

2 Preamble—

3 *WHEREAS*, A stronger system of monitoring and quality assurance is required on the state level for  
4 individuals with mental retardation.

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

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

8 1. **Chapter 19E.**

9 **Office of Quality Assurance for Mentally Retarded Persons.**

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

12 "Office", the independent office of quality assurance for persons with mental retardation.

13 "Department" the department of mental retardation.

14 "Commissioner", the commissioner of the department of mental retardation.

15 "Director", the director of the independent office of quality assurance for persons with mental  
16 retardation.

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

24 "Board of Directors", the directors of the office of quality assurance for mental retardation.

25 Section 2. Establishment of an Independent Office of Quality Assurance for Mentally Retarded Persons.

26 In order to protect the rights of mentally retarded persons and to assure accountability of all service  
27 providers, there shall be established an Independent Office of Quality Assurance, hereinafter referred to  
28 as the office.

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

31 The person selected shall have experience in the delivery of services to the mentally retarded, be  
32 conversant with policies, statutes, rules and regulations related to mental retardation currently in force  
33 and possess a background in civil and administrative law. The Director shall be assisted by adequate staff

34 and a board of directors.

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

37 Assistants and staff for the Independent Office of Quality Assurance shall be established via the transfer  
38 of all currently authorized positions and budget in the Department of Mental Retardation engaged in  
39 "internal" self-evaluation, monitoring, quality assurance and human rights functions. The current budget  
40 and staff of the Governor's Commission of Mental Retardation will also be transferred to the office. Not  
41 less than 80 full time equivalent positions shall comprise the office.

#### 42 Section 3. Functions

43 Said office shall be independent of all agencies within the executive office of health and human services.

44 Said office shall be responsible for monitoring all elements of service provision for the mentally retarded  
45 described by statutes, rules and regulations, plus all federal entitlements in which the commonwealth  
46 participates.

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

49 The director may require by summons, the production of all records, reports, audits, reviews, papers,  
50 books, documents, recommendations, correspondence and any other data and material relevant to any  
51 matter under audit or investigation regarding service provision to a mentally retarded person. All  
52 records of the department, disabled persons protection commission and the department of public  
53 health division of healthcare quality shall be accessible to the office.

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

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

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

65 The director may appoint such assistants and staff deemed necessary to perform adequate monitoring  
66 of agency and contractor groups serving retarded persons with special emphasis on the development of  
67 individual service plans and effective implementation of these plans to each service recipient.

68 The director, the office and any person they may designate shall have access at any and all reasonable  
69 times to any mental retardation facility, residence, program, or part thereof, and to all relevant records,  
70 reports, materials, and employees, in order to allow them to monitor the quality with which such needs  
71 are being met. Such authority can be used to establish a program of citizen monitors.

72 Section 4. Responsibilities.

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

76 In order to carry out its mission of assuring a continued high level of care and to execute its  
77 responsibility as set forth, the office shall establish its own procedures and mechanisms for monitoring  
78 and evaluating the care of mentally retarded persons, and shall undertake the following: receive  
79 information, reports and complaints from employees, mentally retarded persons, their families or  
80 representatives and others regarding effectiveness and adequacy of quality assurance mechanisms;  
81 report all cases of abuse, mistreatment and neglect coming to the attention of the office in the normal

82 course of its duties to the disabled persons protection commission; identify areas where agencies are  
83 failing to comply with and enforce applicable federal and state laws, regulations, standards and policies  
84 and require that those agencies take action to correct inadequacies; investigations and reviews in order  
85 to draw independent conclusions relative to the adequacy of care, the protection of individuals' rights,  
86 the functioning of human rights committees, and the effectiveness of quality assurance mechanisms,  
87 with specific attention to issues of the safety and security of mentally retarded persons; and  
88 subsequently require correction or resolution of problems. A report of the findings of any such activity  
89 shall be provided to the head of the appropriate agency, as well as his or her designated manager  
90 responsible for such service, and if problems are identified, such designated manager shall make a  
91 written report within a suitable time frame as requested by the director, but not more than ten working  
92 days, of actions taken to correct each problem; identify and report on areas where agencies and service  
93 providers are demonstrating superior efforts in the provision of services to mentally retarded persons.  
94 In addition, the office may: receive information and complaints from mentally retarded persons, their  
95 families or representatives and others regarding the adequacy of care and services to these citizens;  
96 determine whether those individuals have made full use of existing procedures for obtaining services, or  
97 otherwise addressing their concerns; and if they have not, fully inform them of the appropriate  
98 mechanisms within the agency for doing so, and if they have sought but not obtained relief from those  
99 mechanisms, or if existing mechanisms are inadequate to resolve the problem, recommend or, if  
100 determined necessary by the director, mandate means of resolution; shall receive, upon request from  
101 any agency of the state and any private service provider assistance, information and data that will  
102 enable the office to fulfill its functions, powers and duties.

103 The director shall report in writing, at least annually, and as deemed necessary to secure corrective  
104 action, to the three appointment authorities. The report shall include: narrative and statistical degree of  
105 compliance to ISP driven needs or mentally retarded persons; identification of agencies and/or

106 contractor service providers deemed chronically deficient or poorly administered; recommendations  
107 that would improve efficiency and cost effectiveness in the service delivery system.

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

110 The director office staff and the board shall have ready access for purposes of scheduled auditing,  
111 random sampling, and when responding to specific complaints, to any and all public and private facilities  
112 and programs contracting to serve mentally retarded persons, whether licensed or unlicensed.

113 The office shall conduct ongoing monitoring of compliance with regulations governing the care of  
114 mentally retarded persons; requesting and receiving status reports on the progress toward completion  
115 of outstanding corrective action plans; death reports, class member identification lists, reports of facility  
116 admissions, transfers and outplacements shall be provided to the office by the department; maintaining  
117 contact with federal oversight agencies to identify areas of concern where the Commonwealth has not  
118 complied with federal standards and to ensure that the appropriate state agencies devise means for  
119 implementing compliance, to assure continued entitlement; receive copies of compliance reviews  
120 conducted by the Health Care Financing Administration.

121 Section 5. Resources.

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

126 The salary of the director shall not exceed the salary grade of the Commissioner mental retardation.

127 Section 6. Board of Directors.

128 There shall be established a board of directors to the office. Said board shall advise and assist the office  
129 in seeking accountability from the providers of service and care to mentally retarded persons.

130 The board of directors shall consist of fifteen members and shall be constituted as follows: one  
131 representative from the Coalition of Families and Advocates for the Retarded, Inc. (COFAR); one  
132 representative from Arc Massachusetts, Inc.; one representative from the Advocacy Network; one  
133 representative of each of the five DMR Regional Citizen Advisory Boards; 5 citizen representatives  
134 selected from among professional associations in the fields of medicine, nursing, psychology, social work  
135 and special education; the secretary of the executive office of health and human services or his/her  
136 designee; the executive director of the disabled person protection commission.

137 The board of directors shall meet at least monthly with the director, and at other times as the director  
138 deems necessary and shall assist the director in planning and reviewing the activities of the office;  
139 recommend to the director for his/her consideration, issues that need to be pursued; at the director's  
140 request, review such additional reports and materials that would enable the office to more effectively  
141 evaluate the care of mentally retarded persons; bring issues to the attention of the office that either aid  
142 in its evaluation of the quality of care to mentally retarded persons or warrant its intervention, as the  
143 director deems necessary and appropriate, accompany office staff on visits to selected program  
144 locations; and serve as a vehicle for communication between the Commonwealth's citizenry and the  
145 office.

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

149 Section 7. Evaluation.

150 Four years after the establishment of the office, an independent evaluation, under contract with the  
151 State Auditor's Office, shall be conducted to determine the effectiveness of the office and recommend  
152 appropriate actions such as continuance or other options as may be warranted to include but not be



153 limited to a merging of the office with the disabled persons protection commission and/or a broadening  
154 of scope to include mentally ill persons and/or other disabled populations.

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