

**HOUSE . . . . . No. 179**

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By Mr. Scaccia of Boston, a petition (accompanied by bill, House, No. 179) of Angelo M. Scaccia for legislation to establish an independent office of quality assurance for mentally retarded persons. Children, Families and Persons with Disabilities.

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Angelo M. Scaccia**

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*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:

Angelo M. Scaccia

DISTRICT/ADDRESS:

14<sup>th</sup> Suffolk

**The Commonwealth of Massachusetts**

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

Preamble—

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

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

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

3 1. **Chapter 19E.**

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

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

7 “Office”, the independent office of quality assurance for persons with mental retardation.

8 “Department” the department of mental retardation.

9 "Commissioner", the commissioner of the department of mental retardation.  
10 "Director", the director of the independent office of quality assurance for persons with mental retardation.  
11 "Person with mental retardation", a person who, as a result of inadequately developed or impaired  
12 intelligence, as determined by clinical authorities as described in the regulations of the department of  
13 mental retardation is substantially limited in his ability to learn or adapt, as judged by established  
14 standards available for the evaluation of a person's ability to function in the community; or a person who  
15 is otherwise eligible for department of mental retardation services. A person with mental retardation may  
16 be considered mentally ill provided that no person with mental retardation shall be considered mentally ill  
17 solely by virtue of mental retardation  
18 "Board of Directors", the directors of the office of quality assurance for mental retardation.

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

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

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

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

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

31 Assistants and staff for the Independent Office of Quality Assurance shall be established via the transfer  
32 of all currently authorized positions and budget in the Department of Mental Retardation engaged in  
33 "internal" self-evaluation, monitoring, quality assurance and human rights functions. The current budget  
34 and staff of the Governor's Commission of Mental Retardation will also be transferred to the office. Not

35 less than 80 full time equivalent positions shall comprise the office.

36 Section 3. Functions

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

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

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

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

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

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

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

59 The director may appoint such assistants and staff deemed necessary to perform adequate monitoring of  
60 agency and contractor groups serving retarded persons with special emphasis on the development of

61 individual service plans and effective implementation of these plans to each service recipient.  
62 The director, the office and any person they may designate shall have access at any and all reasonable  
63 times to any mental retardation facility, residence, program, or part thereof, and to all relevant records,  
64 reports, materials, and employees, in order to allow them to monitor the quality with which such needs are  
65 being met. Such authority can be used to establish a program of citizen monitors.

#### 66 Section 4. Responsibilities.

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

69 In order to carry out its mission of assuring a continued high level of care and to execute its responsibility  
70 as set forth, the office shall establish its own procedures and mechanisms for monitoring and evaluating  
71 the care of mentally retarded persons, and shall undertake the following: receive information, reports and  
72 complaints from employees, mentally retarded persons, their families or representatives and others  
73 regarding effectiveness and adequacy of quality assurance mechanisms; report all cases of abuse,  
74 mistreatment and neglect coming to the attention of the office in the normal course of its duties to the  
75 disabled persons protection commission; identify areas where agencies are failing to comply with and  
76 enforce applicable federal and state laws, regulations, standards and policies and require that those  
77 agencies take action to correct inadequacies; investigations and reviews in order to draw independent  
78 conclusions relative to the adequacy of care, the protection of individuals' rights, the functioning of  
79 human rights committees, and the effectiveness of quality assurance mechanisms, with specific attention  
80 to issues of the safety and security of mentally retarded persons; and subsequently require correction or  
81 resolution of problems. A report of the findings of any such activity shall be provided to the head of the  
82 appropriate agency, as well as his or her designated manager responsible for such service, and if problems  
83 are identified, such designated manager shall make a written report within a suitable time frame as  
84 requested by the director, but not more than ten working days, of actions taken to correct each problem;  
85 identify and report on areas where agencies and service providers are demonstrating superior efforts in the  
86 provision of services to mentally retarded persons.

87 In addition, the office may: receive information and complaints from mentally retarded persons, their  
88 families or representatives and others regarding the adequacy of care and services to these citizens;  
89 determine whether those individuals have made full use of existing procedures for obtaining services, or  
90 otherwise addressing their concerns; and if they have not, fully inform them of the appropriate  
91 mechanisms within the agency for doing so, and if they have sought but not obtained relief from those  
92 mechanisms, or if existing mechanisms are inadequate to resolve the problem, recommend or, if  
93 determined necessary by the director, mandate means of resolution; shall receive, upon request from any  
94 agency of the state and any private service provider assistance, information and data that will enable the  
95 office to fulfill its functions, powers and duties.

96 The director shall report in writing, at least annually, and as deemed necessary to secure corrective action,  
97 to the three appointment authorities. The report shall include: narrative and statistical degree of  
98 compliance to ISP driven needs of mentally retarded persons; identification of agencies and/or contractor  
99 service providers deemed chronically deficient or poorly administered; recommendations that would  
100 improve efficiency and cost effectiveness in the service delivery system.

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

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

106 The office shall conduct ongoing monitoring of compliance with regulations governing the care of  
107 mentally retarded persons; requesting and receiving status reports on the progress toward completion of  
108 outstanding corrective action plans; death reports, class member identification lists, reports of facility  
109 admissions, transfers and outplacements shall be provided to the office by the department; maintaining  
110 contact with federal oversight agencies to identify areas of concern where the Commonwealth has not  
111 complied with federal standards and to ensure that the appropriate state agencies devise means for  
112 implementing compliance, to assure continued entitlement; receive copies of compliance reviews

113 conducted by the Health Care Financing Administration.

114 Section 5. Resources.

115 Adequate resources will be made available to fund the office in accordance with the staffing  
116 recommendations included herein. The director shall, in accordance with state regulations, select the staff  
117 of the office, define staff responsibilities and establish appropriate compensation levels for all employees.  
118 The salary of the director shall not exceed the salary grade of the Commissioner mental retardation.

119 Section 6. Board of Directors.

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

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

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

137 The director shall, in accordance with the office's budget, make available to the board of directors  
138 secretarial support and supplies, and reimbursement at reasonable expense, to enable the board of

139 directors to carry out its functions and duties.

140 Section 7. Evaluation.

141 Four years after the establishment of the office, an independent evaluation, under contract with the State

142 Auditor's Office, shall be conducted to determine the effectiveness of the office and recommend

143 appropriate actions such as continuance or other options as may be warranted to include but not be limited

144 to a merging of the office with the disabled persons protection commission and/or a broadening of scope

145 to include mentally ill persons and/or other disabled populations.