

1 **HB4237 (Chapter 255 of 2014) - House Ways and Means - An Act relative to real**
2 **lives**

Last Action: 8/6/14 - Signed by the Governor

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

5
6 SECTION 1. Chapter 19B of the General Laws is hereby amended by adding the
7 following section:-

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

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

13 Commissioner, the commissioner of developmental services.

14 Department, the department of developmental services.

15 Financial management service, a service or function provided by an entity to assist a
16 participant in disbursing allocated funds in accordance with the participants individual
17 budget and person-centered plan; provided, that financial management services may
18 include facilitating the employment of service and support workers by aiding the
19 participant with payments, fiscal accounting, tax withholding, compliance with relevant
20 state and federal employment laws, verification of provider qualifications, criminal
21 background checks and expenditure reports; provided, further, that the financial
22 management service entity shall owe the participant a fiduciary duty and shall meet
23 minimum qualifications as established by the department through regulation.

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

34 Individual budget, an allocation of federal and state funds based upon the
35 participants assessed needs, as determined by the department in consultation with the
36 participant, the participants individual support plan team and chosen planning team,
37 used to facilitate self-determination and to purchase services, supports or goods
38 identified or referenced in the person-centered plan.

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

40 Participant, an individual with disabilities receiving department services and, when
41 appropriate, an individuals parents, legal guardian, conservator or other authorized
42 representative, who has voluntarily agreed to take part in, and has been deemed
43 eligible for, the self-determination option.

44 Person-centered plan, a plan of service for a participant who elects to participate in
45 self-determination; provided, that, the person-centered plan shall be incorporated into
46 the participants individual support plan.

47 Self-determination, an approach to service delivery in which the participant is given
48 control over the decision-making process for the participants supports or services and
49 budget and the participant may tailor the support to meet the participants needs.

50 (b) The department shall offer self-determination as an option to all individuals
51 eligible for services through the department. Self-determination shall be based on the
52 participants judgment and preferences as set forth in the participants person-centered
53 plan. An individual who is not MassHealth eligible but is otherwise eligible for
54 department services may participate in self-determination.

55 (c) The department shall establish a statewide self-determination advisory board to
56 advise the department on efforts to implement, publicize, evaluate, improve and develop
57 information regarding self-determination. The advisory board shall consist of: the
58 longest serving member of the disabled persons protection commission, or a designee,
59 who shall serve as chair; 19 individuals appointed by the commissioner, 1 of whom shall
60 be a member of the department, 1 of whom shall be a member of an advocacy
61 organization, 1 of whom shall represent taxpayers, 1 of whom shall have experience
62 with consumer protection, 1 of whom shall have experience with self-determination
63 models, 1 of whom shall have experience with nonprofit and for-profit services markets
64 and competition and services for persons with disabilities, 1 of whom shall have
65 experience with financial management services, 1 of whom shall be an independent
66 facilitator; 1 of whom shall be a provider of direct services, supports or goods and 10 of
67 whom shall be a participant or a family member, legal representative or guardian of a
68 participant; 1 individual appointed by the disabled persons protection commission; 1
69 individual appointed by the office of the inspector general; and 1 individual appointed by
70 the office of the state auditor. Members shall serve for a term of 3 years. Upon the
71 expiration of the term of any member, a successor shall be appointed in like manner.
72 The appointing entity shall in like manner fill any vacancy for the remainder of the
73 unexpired term.

74 The self-determination advisory board shall also compile, and continually update, a
75 list of participants or participants chosen planning teams who are willing to volunteer to
76 discuss their experiences in self-determination with individuals considering
77 implementing the self-determination option in their individual support plans and shall
78 provide said list to the department.

79 (d) The department and the statewide self-determination advisory board shall
80 develop informational materials and training for department staff regarding self-
81 determination. Training shall include how to explain the concept and practice of self-
82 determination and shall inform department staff about the mechanics of self-
83 determination, including but not limited to: the development of individual budgets; the
84 selection, purchase and use of services, supports and goods by participants;
85 information about the types of providers and services that may be utilized; information
86 about the selection and supervision of vendors; the respective roles of independent
87 facilitators, financial management services and the department; and the methods of
88 identifying and reporting instances of suspected waste, fraud and abuse. The
89 department shall educate all department staff, except for department staff classified as

90 janitorial, maintenance or secretarial, on all service options including, but not limited to,
91 self-direction annually.

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

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

96 (2) collect and disclose information to participants about providers and vendors
97 who provide goods and services to participants; provided, that said information shall be
98 in a format that employs standard categories of services, supports and goods and
99 enables a participant or a participants chosen planning team to compare various
100 combinations of possible budget expenditures; provided, further that said information
101 shall include the costs of goods, on a per unit basis, and rates for supports and
102 services, known to the department, which are likely to be charged against a participants
103 individual budget if the participant utilizes said service, support or good; provided,
104 further, that said information shall include information about the costs likely to be
105 charged against a participants budget by a specific provider or vendor of financial
106 management services or independent facilitation services; provided further, that where
107 specific information is not available to the department, the department shall provide
108 average rates for such services; and provided further, that the department shall not
109 disclose any information that violates privacy protections under [section 7 of chapter 4](#),
110 [section 2 of chapter 66A](#), [section 17 of chapter 123B](#) or any other state or federal
111 privacy law;

112 (3) set minimum qualifications and guidelines for financial management service
113 providers and independent facilitators; provided that, independent facilitators and
114 financial management service providers shall owe participants a fiduciary duty; and
115 provided, further, that the department shall provide a list to each participant of the
116 persons or organizations qualified to act as a financial management service provider or
117 independent facilitator;

118 (4) in accordance with subsection (i), set individual budgets annually in a fair,
119 equitable and transparent manner in consultation with the participant and the
120 participants individual support plan; provided, that each individual budget shall be
121 provided in a standard format that provides a breakdown of the individual budget into
122 standard categories determined by the department including, but not limited to,
123 services, supports and goods; and provided, further, that the individual budget shall
124 specify whether a service, support or good has a rate that was negotiated by the
125 department;

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

129 (6) ensure that the value of a participants individual budget is equivalent to the
130 amount the department would have spent providing services, supports or goods to the
131 participant if the participant had chosen to receive services, supports and goods through
132 a traditional service model supported by the department; provided, that the department
133 shall establish an appeals process for decisions regarding the individual budget;

134 (7) establish a process for providing funds under an individual budget to the
135 participant in a timely manner ensuring that a participant is able purchase services,

136 supports or goods without experiencing an interruption in services;
137 (8) promulgate standard forms on which the financial management service
138 provider for each participant shall annually report the participants total expenditures for
139 the year to the department; provided, that said report shall facilitate the collection of
140 information under clause (2);

141 (9) approve a qualified financial management service provider, which may
142 provide services to participants; provided, that the department shall negotiate with the
143 financial management service provider uniform rates for each given unit of service, to
144 be paid by each participant from the participants individual budget; provided, that the
145 department may approve additional qualified financial management providers upon a
146 determination by the department that providing additional service options will not
147 materially increase participants costs or have a material adverse effect on the
148 departments oversight of individual budgets; provided further, that the department may
149 reduce the number of qualified financial management service providers in order to
150 control costs or enhance oversight of individual budgets; and provided further, that the
151 department may opt to not require a participant to use a designated financial
152 management service if the participant is using the agency with choice model, under
153 section 1915(c) of the Social Security Act, codified at 42 U.S.C. 1396n et seq.;

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

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

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

160 (13) provide information on the departments website about all service options
161 including, but not limited to, self-determination and options for residential placements;
162 provided, that said website shall inform individuals, at minimum, that with self-
163 determination (i) the participant has control over the annual budget, (ii) the participant is
164 central to and directs the decision-making process and determines what supports are
165 utilized and (iii) the service system is flexible, so the participant may tailor the
166 participants supports to meet the participants needs; and provided, further that said
167 website shall provide other information as determined by the department in consultation
168 with the statewide self-determination advisory board;

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

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

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

181 (17) ensure that the participant and the participants chosen planning team

182 comprehend and commit to appropriate means of identifying, monitoring, preventing
183 and reporting to the disabled persons protection commission suspected instances of
184 abuse or neglect of participants, including financial abuse;

185 (18) provide, in consultation with the advisory board established in subsection (c),
186 an annual report to the chairs of the house and senate committees on ways and means
187 and to the house and senate chairs of the joint committee on children, families and
188 persons with disabilities, not later than September 1; provided that said report shall (i)
189 set forth any modifications or improvements made by the department to the
190 administration of self-determination, (ii) specify any recommended legislation, (iii)
191 provide an assessment of the performance of providers, vendors and persons who have
192 received funds for the provision of services, supports and goods under this section, (iv)
193 specify the number of participants utilizing self-determination during the previous fiscal
194 year, (v) specify the number of participants per region in the commonwealth, (vi) specify
195 types and amounts of services, supports or goods purchased under self-determination,
196 in a manner that facilitates analyses and year to year comparisons, (vii) provide ranges
197 and averages for expenditures from all individual budgets, inclusive of any adjustments
198 to individual budgets made pursuant to subsection (i), and (viii) the number of
199 participants who withdrew voluntarily from the option; and

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

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

209 (1) the participant and participants chosen planning team shall be responsible for
210 implementation of the person-centered plan and the individual support plan, including
211 the hiring or purchasing of necessary services, supports or goods;

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

214 (3) the participant, the participants chosen planning team and the participants
215 individual support plan team members shall attend an orientation prior to enrollment, the
216 subject matter of which shall include, but not be limited to, the concept and practice of
217 self-determination, related issues of budgeting, planning, services and provider
218 selection, staff and employee management and the respective roles of independent
219 facilitators, financial management services and the department; provided, that no
220 person shall be required to attend more than 1 orientation per year if working with
221 multiple participants.

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

227 (h) If a participant voluntarily terminates self-determination or ceases participation in

228 self-determination due to a medical event or other change in condition, the department
229 shall provide for the participants transition to other eligible services or supports. The
230 transition shall include the development of a new individual support plan, which reflects
231 the services, supports and goods necessary to meet the individuals needs and
232 objectives. The department shall ensure that there is no gap in services, supports or
233 goods during the transition period.

234 (i) The department, in consultation with the participant and the participants chosen
235 planning team, shall determine the initial and any revised individual budget for the
236 participant.

237 The amount of the individual budget shall be available to the participant each year
238 for the purchase of self-determination services, supports or goods. An individual budget
239 may be recalculated by the department based on the needs of the participant. An
240 individual budget shall not be increased to cover the cost of an independent facilitator;
241 except as provided by the department through regulation.

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

245 Funds not spent by the annual individual budget shall revert back to the department.

246 The department shall consider adjusting a participants individual budget when a
247 participant does not utilize all funds in the participants individual budget within the
248 designated year.

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

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

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

258 (l) The department, in consultation with the advisory board established in subsection
259 (c), shall determine which persons shall be subject to criminal background checks as a
260 condition of providing services, supports or goods to participants and shall promulgate
261 or amend its regulations as necessary to require and implement said criminal
262 background checks; provided, that participants shall not be required to pay the cost of a
263 criminal background check required under this subsection.

264 (m)(1) Any member of a participants chosen planning team, any member of the
265 advisory board established in subsection (c), any mandated reporter of the disabled
266 persons protection commission, as defined in section 1 of chapter 19C, and any other
267 person involved in the preparation or implementation of the self-determination plan who
268 suspects financial abuse, including, but not limited, to mismanagement,
269 misappropriation or waste of a participants self-determination funds or individual budget
270 shall immediately report such suspicious actions or inactions to the disabled persons
271 protection commission. The disabled persons protection commission shall evaluate and
272 forward the report to the appropriate law enforcement or state agency and shall forward
273 all reports of suspected financial abuse to the state auditor. The disabled persons

274 protection commission shall provide an annual itemization to the house and senate
275 chairs of the joint committee on children, families and persons with disabilities detailing
276 the number, types and geographic locations of specific reports and the agency or
277 agencies to which the complaint was referred.

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

280 (o) The state auditor, pursuant to [section 12 of chapter 11](#), shall audit the self-
281 determination option as the state auditor determines necessary and shall make
282 recommendations to the department, the senate and house committees on ways and
283 means and the joint committee on children, family and persons with disabilities about
284 changes in law or regulation that may improve the efficiency of the self-determination
285 option, decrease costs, improve services or prevent waste, fraud or abuse.

286 (p) The attorney general or the department may independently investigate any
287 allegations of mistreatment, waste, abuse, fraud or breach of any explicit or implied
288 duties under this section. The attorney general or the department, on behalf of a
289 participant, may seek to recover any monies lost because of mistreatment, waste,
290 abuse, fraud or breach of any explicit or implied duties under this section in the superior
291 court.

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

304 (i) organizational structure, history and performance, including but not limited to, the
305 (A) complete legal name of the provider, vendor or supplier and, where different, the
306 popular or public name of the provider, vendor or supplier, (B) legal structure and
307 organizational type, (C) accreditation and licensure status, (D) web address location of
308 recent formal audits, reports and investigations and (E) contact information and website
309 information;

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

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

319 (iv) medical and non-medical professional staff at each geographic location

320 including, but not limited to, (A) number of staff in each staff category, (B) educational
321 and professional attainments of staff, (C) ratio of staff to client for each shift and (D)
322 average tenure, in years and months, of staff who work at least 16 hours a week; and
323 (v) characteristics of individuals receiving services, supports and goods at each
324 geographic location including, but not limited to, number of clients, age range of clients
325 and gender distribution of clients.

326 If the department finds that a form or an alternative form of the searchable online
327 repository is not cost prohibitive, the department shall develop and implement the
328 repository within 18 months after the effective date of this act.

329 SECTION 3. Subject to appropriation, the department of developmental services
330 shall contract with an independent research organization or academic institution not
331 later than August 1, 2019 to evaluate self-determination authorized in [section 19 of](#)
332 [chapter 19B](#) of the General Laws and recommend improvements to the self-
333 determination option.

334 SECTION 4. Notwithstanding any general or special law to the contrary, the
335 department of developmental services shall only approve 1 qualified financial
336 management service provider under clause (9) of subsection (e) of [section 19 of](#)
337 [chapter 19B](#).

338 The department of developmental services shall hold a meeting, briefing or
339 orientation at least once annually under clause (16) of subsection (e) of [section 19 of](#)
340 [chapter 19B](#).

341 SECTION 5. Section 4 is hereby repealed.

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

345 SECTION 7. The state auditor, pursuant to [section 12 of chapter 11](#), shall audit the
346 self-determination option, established under [section 19 of chapter 19B](#) of the General
347 Laws, at least once during the first 4 years of its operation.

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

349 Approved, August 6, 2014

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