HOUSE DOCKET, NO. 2980 FILED ON: 1/18/2013

HOUSE . . . . . No. 1499

The Commonwealth of Massachusetts

PRESENTED BY:

Paul W. Mark

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:

An Act relative to establishing an appeals process for private sector human service workers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Paul W. Mark	*2nd Berkshire*

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HOUSE . . . . . No. 1499

By Mr. Mark of Peru, a petition (accompanied by bill, House, No. 1499) of Paul W. Mark relative to establishing an appeals process for private sector human service workers. The Judiciary.

The Commonwealth of Massachusetts

An Act relative to establishing an appeals process for private sector human service workers.

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

Section 1. G.L. c. 6A, s. 16 shall be amended by adding paragraphs ten through thirteen as follows:

The secretary shall establish an office, hereafter referred to as the office of fair hearings, for the purpose of reviewing an appeal by any employee employed within, subject to the control of or whose position is funded in whole or in part by the department of mental health, the department of developmental services and the disabled persons protection commission aggrieved by a substantiated finding of such agency that such employee has engaged in abuse, neglect or other mistreatment of a person. An appeal pursuant to this section shall not preclude an employee from challenging agency action under a collective bargaining agreement or civil service law.

The office of fair hearings shall be staffed by one or more trained hearing officers who shall conduct a hearing and render an impartial written decision determining based upon substantial evidence presented at the hearing and in accordance with law whether to affirm, vacate or modify the finding issued by the agency. Said hearing officers shall be knowedgable in the principles of protection and advocacy for person's with disabilities. Any such hearing shall include an opportunity for the appellant to attend and to be represented by counsel or other person, to present evidence, to call, examine and cross-examine witnesses and make arguments, either orally or in writing, as to the proper disposition of the matter.

The hearing officer shall have the following specific duties:

(1) place witnesses under oath or affirmation and to sequester witnesses;

(2) assist all the witnesses in making a full and free statement of the facts in order to bring out all the information necessary to decide the issues involved;

23 (3) ensure that all parties have a full opportunity to present their claims;

24 (4) receive, rule on, exclude, or limit evidence (which shall include the right to
25 request that any party produce additional evidence such as witnesses, documents, etc. but shall
26 not include the right to require any party to do so);

27 (5) permit introduction into the record of any regulations, statutes, memoranda, or
28 other materials offered by any party which the Hearing Officer believes relevant:

29 (6) define the issues;

30 (7) regulate the presentation of the evidence and the participation of the parties to
31 ensure an adequate and comprehensible record of the proceedings;

32 (8) issue subpoenas upon request of a party; and

33 (9) examine witnesses.

34 The secretary shall promulgate further rules and regulations necessary for the purpose of
35 carrying out this section. Any decision issued in accordance with this section shall be subject to
36 review in accordance with chapter 30A of the general laws.

37 Section 2. The rights provided under this act shall supersede any conflicting regulations
38 issued by the department of mental health, department of developmental services and disabled
39 persons protection commission. Each such agency shall within ninety days of the effective date
40 of this act develop rules and regulations providing for notification to an employee against whom
41 a substantiated claim of abuse, neglect or mistreatment of a person has issued of his or her right
42 to appeal the finding to the office of fair hearing within executive office of health and human
43 services.

44 Section 3. Any employee who is the subject of an investigation concerning alleged
45 abuse, neglect or mistreatment of a person conducted by or under the auspices of the department
46 of mental health, department of developmental services, the Massachusetts rehabilitation
47 commission, the department of youth services, the department of early education and care and
48 the disabled persons protection commission shall have the right to be represented at such
49 investigations by counsel or other representative who may assist the employee in the presentation
50 of information relevant to the investigation.

51 Section 4. This act shall take effect upon its passage.