

HOUSE . . . . . No. 4758

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The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, March 16, 2006.

The committee on Health Care Financing, to whom was referred the Bill to establish a personal care attendant quality home care workforce council (House, No. 4246), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4758). [Cost: \$20,000,000.00].

For the committee,

PATRICIA A. WALRATH.

**The Commonwealth of Massachusetts**

**In the Year Two Thousand and Six.**

**AN ACT TO ESTABLISH A PERSONAL CARE ATTENDANT QUALITY HOME CARE WORKFORCE COUNCIL.**

*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. Whereas the deferred operation of this act would  
2 tend to defeat its purpose, which is to forthwith establish a per-  
3 sonal care attendant workforce council, therefore it is hereby  
4 declared to be an emergency law necessary for the immediate  
5 preservation of the public convenience.

1 SECTION 2. Chapter 118G of the General Laws is hereby  
2 amended by adding the following 8 sections:—

3 Section 28. In sections 28 - 35 unless the context requires oth-  
4 erwise the following terms shall have the following meanings:—

5 “PCA Quality Home Care Workforce Council”, “workforce  
6 council” or “the council,” the PCA Quality Home Care Workforce  
7 Council as established under section 29.

8 “Board,” the board created under section 29.

9 “Consumer,” a person to whom a personal care attendant pro-  
10 vides any personal care services.

11 “Personal care attendant,” a person, including a personal aide,  
12 who has been selected by a consumer or the consumer’s surrogate  
13 to provide personal care services to persons with disabilities or  
14 seniors under the MassHealth personal care attendant program (or  
15 any successor program).

16 “Surrogate” means the consumer’s legal guardian, or other  
17 person identified in a written agreement with the consumer, as  
18 responsible for hiring, directing and firing, on behalf of the con-  
19 sumer.

20 Section 29. a. The PCA Quality Home Care Workforce Council  
21 is established in the executive office of health and human services  
22 but shall not be subject to the control thereof to ensure the quality

23 of long-term, in-home, personal care by recruiting, training, and  
24 stabilizing the work force of personal care attendants.

25 b. The PCA Quality Home Care Workforce Council shall con-  
26 sist of 9 members appointed in accordance with this section. At  
27 all times, a majority of the members of the board shall be con-  
28 sumers or consumer surrogates as defined in this Act. In making  
29 appointments to the board, the governor shall appoint the secre-  
30 tary of health and human services, or his or her designee, as chair-  
31 person, the secretary of labor and workforce development, or his  
32 or her designee, and one member from a slate of three consumers  
33 recommended by the Governor's Special Advisory Commission  
34 on Disability Policy. The auditor shall appoint one member from  
35 a slate of three consumers recommended by the Developmental  
36 Disabilities Council, one member from a slate of three consumers  
37 recommended by the Massachusetts Office on Disability, and one  
38 member from a slate of three consumers recommended by the  
39 Statewide Independent Living Council. The attorney general shall  
40 appoint one member from a slate of three consumers or consumer  
41 surrogates recommended by the Massachusetts Home Care Asso-  
42 ciation, one member from a slate of three consumers or consumer  
43 surrogates recommended by the Massachusetts Council on Aging,  
44 and one member chosen at his discretion. Three members of the  
45 board first appointed shall serve a one-year term, three shall serve  
46 a two-year term, and three shall serve a three-year term, the term  
47 of each member to be designated by the governor. All subsequent  
48 appointees to the board shall serve three-year terms. If a vacancy  
49 occurs, the executive officer who made the original appointment  
50 shall appoint a new board member to serve the remainder of the  
51 unexpired term, or in the event that the vacancy occurs as the  
52 result of the completion of a term, to serve a full term, and such  
53 appointment shall become immediately effective upon the member  
54 taking the appropriate oath. If the departing board member was  
55 appointed pursuant to a recommendation made in accordance with  
56 this paragraph, the executive officer shall make the new appoint-  
57 ment from a slate of 3 recommendations put forth by the entity  
58 that originally recommended the departing board member. Mem-  
59 bers of the board may serve for successive terms of office. Seven  
60 members of the board shall constitute a quorum for the transaction  
61 of any business. Members of the board shall not receive compen-

62 sation for their board service but members shall be reimbursed for  
63 their actual expenses necessarily incurred in the performance of  
64 their duties.

65 Section 30. a. The workforce council shall carry out the  
66 following duties:

67 Undertake recruiting efforts to identify and recruit prospective  
68 personal care attendants,

69 Provide training opportunities, either directly or through con-  
70 tract, for personal care attendants and consumers,

71 Provide assistance to consumers and consumer surrogates in  
72 finding personal care attendants through the establishment of a  
73 referral directory of personal care attendants. Before placing a  
74 personal care attendant on the referral directory, the workforce  
75 council shall determine that the personal care attendant has met  
76 the requirements as established by the executive office by the  
77 applicable regulations and has not stated in writing a desire to be  
78 excluded from the directory,

79 Provide routine, emergency, and respite referrals of personal  
80 care attendants to consumers and consumer surrogates who are  
81 authorized to receive long-term in-home personal care services  
82 through a personal care attendant,

83 Give preference in the recruiting, training, referral, and  
84 employment of personal care attendants to recipients of public  
85 assistance or other low-income persons who would qualify for  
86 public assistance in the absence of such employment,

87 Cooperate with state and local agencies on health and aging,  
88 and other federal, state, and local agencies to provide the services  
89 described and set forth in this section. If, in the course of carrying  
90 out its duties, the PCA quality home care workforce council iden-  
91 tifies concerns regarding the services being provided by a per-  
92 sonal care attendant, the workforce council must notify the  
93 relevant office.

94 b. In determining how best to carry out its duties, the PCA  
95 Quality Home Care Workforce Council must identify existing per-  
96 sonal care attendant recruitment, training, and referral resources  
97 made available to consumers or the consumer's surrogate by other  
98 state and local public, private, and nonprofit agencies. The  
99 council may coordinate with the agencies to provide a local pres-  
100 ence for the council and to provide consumers or the consumer's

101 surrogate greater access to personal care attendant recruitment,  
102 training, and referral resources in a cost-effective manner. Using  
103 requests for proposals or similar processes, the council may con-  
104 tract with the agencies to provide recruitment, training, and  
105 referral. The council must provide an opportunity for consumer  
106 participation in coordination efforts.

107 c. The commonwealth shall provide to the council a list of all  
108 personal care attendants who have been paid through the  
109 MassHealth personal care attendant program and shall update the  
110 list on a regular basis to ensure that the council has a complete  
111 and accurate list at all times:

112 Section 31. a. Consumers or the consumer's surrogate retain the  
113 right to select, hire, schedule, train, direct, supervise the work of,  
114 and terminate any personal care attendant providing services to  
115 them. Consumers or the consumer's surrogate may elect to  
116 receive long-term in-home personal care services from personal  
117 care attendants who are not referred to them by the council.

118 b. Personal care attendants shall be considered public  
119 employees as defined by and solely for the purposes of  
120 Chapter 150E and Chapter 180 section 17J. All sections of  
121 Chapter 150E shall apply to personal care attendants except to the  
122 extent Chapter 150E is inconsistent with this section, in which  
123 case this section shall control. In addition, personal care atten-  
124 dants shall be treated as state employees solely for the purposes of  
125 Chapter 180 section 17A. Personal care attendants shall not be  
126 considered public employees or state employees for any purpose  
127 other than those set forth in this paragraph. The PCA Quality  
128 Home Care Workforce Council is the employer as defined by and  
129 solely for the purposes of Chapter 150E and Chapter 180  
130 sections 17A and 17J and deductions under Chapter 180  
131 sections 17A and 17J may be made by any entity authorized by  
132 the Commonwealth to compensate personal care attendants  
133 through the MassHealth personal care attendant program.

134 c. Personal care attendants who are employees of the council  
135 under this section are not, for that reason, public employees (or  
136 employees of the council) for any other purpose. Nothing in this  
137 act, however, alters the obligations of the commonwealth and/or  
138 the consumer to provide their share of social security, federal and  
139 state unemployment taxes, Medicare, and worker's compensation

140 insurance under the Federal Insurance Contributions Act (FICA),  
141 federal and state unemployment law, or the Massachusetts  
142 Workers' Compensation Act.

143 d. Consistent with the provisions of Chapter 150E section 9A,  
144 no personal care attendant shall engage in a strike and no personal  
145 care attendant shall induce, encourage or condone any strike, work  
146 stoppage, slowdown or withholding of services by any personal  
147 care attendant.

148 e. The only bargaining unit appropriate for the purpose of col-  
149 lective bargaining is a statewide unit of all personal care atten-  
150 dants.

151 f. The showing of interest required to request an election is 10  
152 percent of the bargaining unit, and any intervener seeking to  
153 appear on the ballot must make the same showing of interest.

154 g. The council or its contractors, may not be held vicariously  
155 liable for the action or inaction of any personal-care attendant,  
156 whether or not that personal care attendant was included on the  
157 council's referral directory or referred to a consumer or the con-  
158 sumer's surrogate.

159 h. The members of the board are immune from any liability  
160 resulting from implementation of sections 28 to 35, inclusive.

161 Section 32. a. The PCA Quality Home Care Workforce Council  
162 may make and execute contracts and all other instruments neces-  
163 sary or convenient for the performance of its duties or exercise of  
164 its powers, including contracts with public and private agencies,  
165 organizations, corporations, and individuals to pay them for serv-  
166 ices rendered or furnished.

167 b. The council may offer and provide recruitment, training and  
168 referral services to personal care attendants of long-term in-home  
169 personal care services other than statutorily defined personal care  
170 attendants, for a fee to be determined by the council.

171 c. The council may issue rules or regulations as necessary for  
172 the purpose and policies of this section.

173 d. The council may establish offices, employ and discharge  
174 employees, agents, and contractors as necessary, and prescribe  
175 their duties and powers and fix their compensation, incur  
176 expenses, and create such liabilities as are reasonable and proper  
177 for the administration of this section.

178 e. The council may solicit and accept for use any grant of  
179 money, services, or property from the federal government, the  
180 state, or any political subdivision or agency thereof, including fed-  
181 eral matching funds under Title XIX of the federal social security  
182 act, and do all things necessary to cooperate with the federal gov-  
183 ernment, the state, or any political subdivision or agency thereof  
184 in making an application for any grant.

185 f. The council may coordinate its activities and cooperate with  
186 similar agencies in other states.

187 g. The council may establish technical advisory committees to  
188 assist the board.

189 h. The council may keep records and engage in research and the  
190 gathering of relevant statistics.

191 i. The council may acquire, hold, or dispose of real or personal  
192 property or any interest therein, and construct, lease, or otherwise  
193 provide facilities for the activities conducted under this section,  
194 provided that the workforce council may not exercise any power  
195 of eminent domain.

196 j. The council may delegate to the appropriate persons the  
197 power to execute contracts and other instruments on its behalf and  
198 delegate any of its powers and duties if consistent with the pur-  
199 poses of this section.

200 k. The council may perform other acts necessary or convenient  
201 to execute the powers expressly granted to it.

202 Section 33. a. The council shall conduct a performance review  
203 every two years, submit the review to the legislature and the gov-  
204 ernor and make the report available to the public upon submission  
205 to the governor and the legislature. The first review will be sub-  
206 mitted before December 1, 2008.

207 b. The performance review will include an evaluation of the  
208 health, welfare, and satisfaction with services provided of the con-  
209 sumers receiving long-term in-home personal care services from  
210 personal care attendants under, including the degree to which all  
211 required services have been delivered, the degree to which con-  
212 sumers receiving services from personal care attendants have ulti-  
213 mately required additional or more intensive services, such as  
214 home health care, or have been placed in other residential settings  
215 or nursing homes, the promptness of response to consumer com-  
216 plaints, and any other issue deemed relevant.

217 c. The performance review will provide an explanation of the  
218 full cost of personal care services, including the administrative  
219 costs of the council, unemployment compensation, Social Security  
220 and Medicare payroll taxes paid, and any oversight costs.

221 d. The performance review will make recommendations to the  
222 legislature and the governor for any amendments to this section  
223 that will further ensure the well-being of consumers, and the most  
224 efficient means of delivering required services. In addition, the  
225 first performance review will include findings and recommenda-  
226 tions regarding the appropriateness of the council's assumption of  
227 responsibility for verification of hours worked by personal care  
228 attendants, payment of personal care attendants, and other duties.

229 Section 34. If any part of this act is found to be in conflict with  
230 federal requirements that are a prescribed condition to the alloca-  
231 tion of federal funds to the state, the conflicting part of this act is  
232 inoperative solely to the extent of the conflict and with respect to  
233 the agencies directly affected, and this finding does not affect the  
234 operation of the remainder of this act in its application to the  
235 agencies concerned. The rules under this act shall meet federal  
236 requirements that are a necessary condition to the receipt of fed-  
237 eral funds by the state.

238 Section 35. If any provision of this act or its application to any  
239 person or circumstance is held invalid, the remainder of the act or  
240 the application of the provision to other persons or circumstances  
241 is not affected.



HOUSE . . . . . No. 4246

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The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, July 6, 2005.

The committee on Children and Families, to whom was referred the petition (accompanied by bill, Senate, No. 139) of Steven A. Tolman, Marc R. Pacheco, Joan M. Menard, Michael A. Costello and other members of the General Court for legislation relative to PCA workforce council, and the petition (accompanied by bill, House, No. 4055) of Lida E. Harkins and others relative to home care for certain elderly and disabled persons, reports recommending that the accompanying bill (House, No. 4246) ought to pass.

For the committee,

SHRILEY OWENS-HICKS.

**The Commonwealth of Massachusetts**

**In the Year Two Thousand and Five.**

**AN ACT TO ESTABLISH A PERSONAL CARE ATTENDANT QUALITY HOME CARE WORK FORCE COUNCIL.**

*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. Findings.**

2     1. Thousands of Massachusetts seniors and persons with dis-  
3 abilities choose to live independently in their own homes, rather  
4 than in more costly institutions such as nursing homes or assisted  
5 living facilities. This cost saving alternative allows seniors and  
6 persons with disabilities, and their families, to determine for  
7 themselves the care that best meets their needs.

8     2. Thousands of Massachusetts seniors and persons with dis-  
9 abilities currently receive long-term, personal care services in  
10 their own homes from personal care attendants hired directly by  
11 them under provisions of the MassHealth program.

12    3. Quality, long-term personal care services allow Massachu-  
13 setts seniors and persons with disabilities, and their families, the  
14 choice of remaining in their homes, rather than forcing them into  
15 institutions such as nursing homes or assisted living facilities.

16    4. Long-term personal care services are less costly than nursing  
17 home or assisted living facility care costs, saving Massachusetts  
18 taxpayers significant amounts through lower reimbursement rates.

19    5. The quality of long-term, in-home, personal care services in  
20 persons' homes would benefit greatly from improved statewide  
21 coordination and increased access to personal care services through  
22 a directory of personal care attendants that can match seniors and  
23 persons with disabilities with available personal care attendants.

24    6. Massachusetts seniors and persons with disabilities would  
25 benefit from the establishment of a PCA quality home care work-  
26 force council with the power and duty to stabilize the workforce  
27 and to improve the quality of long-term personal care services in  
28 the home.

29 7. The PCA Quality Home Care Workforce Council should  
30 ensure that the quality of long-term personal care services by indi-  
31 vidual personal care attendants is improved through a stable work-  
32 force and the enhanced ability to obtain services without altering  
33 the current system of client intake, approval of hours, plans of  
34 care, fiscal intermediary services, or the work of agencies. The  
35 PCA quality home care workforce council should also encourage  
36 stability through collective bargaining and by providing training  
37 opportunities, while maintaining the right of consumers and their  
38 family members who receive personal care attendant services to  
39 select and train a personal care attendant to meet their needs.

1 SECTION 2. Definitions.

2 1. The definitions in this section apply throughout this chapter  
3 unless the context clearly requires otherwise.

4 2. "PCA Quality Home Care Workforce Council", "workforce  
5 council" or "the Council" means the PCA Quality Home Care  
6 Workforce Council.

7 3. "Board" means the nine-member board created under section 3.

8 4. "Consumer" means a person to whom a personal care atten-  
9 dant provides any personal care services.

10 5. "Personal care attendant" means a person, including a per-  
11 sonal aide, who has been selected by a consumer to provide per-  
12 sonal care services to persons with disabilities or seniors under the  
13 MassHealth personal care attendant program.

1 SECTION 3. Workforce council created.

2 1. The PCA Quality Home Care Workforce Council is estab-  
3 lished to insure the quality of long-term, in-home, personal care  
4 by recruiting, training, and stabilizing the work force of personal  
5 care attendants.

6 2. The PCA Quality Home Care Workforce Council shall con-  
7 sist of a board of nine members, three of whom shall be appointed  
8 by the Senate, three by the House, and three by the Governor. In  
9 making appointments to the Board, each appointing body shall  
10 take into consideration appointing seniors who currently represent  
11 an organization existing to support seniors; persons with disabilities  
12 who currently represent an organization existing to support persons  
13 with disabilities; family members of consumers who currently

14 represent organizations existing to support family members of  
15 consumers; and persons who currently represent advocacy organi-  
16 zations or academic institutions with expertise in the PCA home  
17 care system. Each board member shall serve a term of three years.  
18 If a vacancy occurs, the body (House, Senate or Governor) that  
19 made the initial appointment shall make a new appointment to  
20 become immediately effective to serve the unexpired term.

1 SECTION 4. Workforce Council Duties.

2 1. The workforce council shall carry out the following duties:

- 3 a) Undertake recruiting efforts to identify and recruit prospec-  
4 tive personal care attendants.  
5 b) Provide training opportunities, either directly or through  
6 contract, for personal care attendants and consumers.  
7 c) Provide assistance to consumers in finding personal care  
8 attendants through the establishment of a referral directory of per-  
9 sonal care attendants. Before placing a personal care attendant on  
10 the referral directory, the workforce council shall determine that  
11 the personal care attendant has met the current requirements as  
12 provided by 130 CMR 422.404.  
13 d) The personal care attendant, or the consumer to which the  
14 personal care attendant is providing services, may request a fair  
15 hearing to contest any finding that a personal care attendant is  
16 ineligible to provide services, as provided by law.  
17 e) Provide routine, emergency, and respite referrals of personal  
18 care attendants to consumers who are authorized to receive long-term  
19 in-home personal care services through a personal care attendant;  
20 f) Give preference in the recruiting, training, referral, and  
21 employment of personal care attendants to recipients of public  
22 assistance or other low-income persons who would qualify for  
23 public assistance in the absence of such employment; and  
24 g) Cooperate with state and local agencies on health and aging,  
25 and other federal, state, and local agencies to provide the services  
26 described and set forth in this section. If, in the course of carrying  
27 out its duties, the PCA quality home care workforce council iden-  
28 tifies concerns regarding the services being provided by a per-  
29 sonal care attendant, the workforce council must notify the  
30 relevant area agency or agencies regarding such concerns.

31 2. In determining how best to carry out its duties, the PCA  
32 Quality Home Care Workforce Council must identify existing per-  
33 sonal care attendant recruitment, training, and referral resources  
34 made available to consumers by other state and local public, pri-  
35 vate, and nonprofit agencies. The Council may coordinate with the  
36 agencies to provide a local presence for the Council and to pro-  
37 vide consumers greater access to personal care attendant recruit-  
38 ment, training, and referral resources in a cost-effective manner.  
39 Using requests for proposals or similar processes, the Council  
40 may contract with the agencies to provide recruitment, training,  
41 and referral. The council must provide an opportunity for con-  
42 sumer participation in coordination efforts.

1 SECTION 5. Employment Relationship.

2 1. Consumers retain the right to select, hire, supervise the work  
3 of, and terminate any personal care attendant providing services to  
4 them. Consumers may elect to receive long-term in-home personal  
5 care services from personal care attendants who are not referred to  
6 them by the council.

7 2. Personal care attendants are public employees as defined by  
8 and solely for the purposes of Chapter 150E, § 1 et. seq. (2004).  
9 As such, the PCA Quality Home Care Workforce Council is the  
10 employer solely for the purposes of this statute.

11 3. Personal care attendants who are employees of the Council  
12 under this section of this section are not, for that reason,  
13 employees of the state for any other purpose.

14 4. The only bargaining unit appropriate for the purpose of col-  
15 lective bargaining is a statewide unit of all personal care atten-  
16 dants;

17 5. The showing of interest required to request an election is ten  
18 percent of the bargaining unit, and any intervener seeking to  
19 appear on the ballot must make the same showing of interest;

20 6. The council or its contractors, may not be held vicariously  
21 liable for the action or inaction of any personal care attendant,  
22 whether or not that personal care attendant was included on the  
23 council's referral directory or referred to a consumer.

24 7. The members of the board are immune from any liability  
25 resulting from implementation of this chapter.

1 SECTION 6. Powers.

2 1. The PCA Quality Home Care Workforce Council may make  
3 and execute contracts and all other instruments necessary or con-  
4 venient for the performance of its duties or exercise of its powers,  
5 including contracts with public and private agencies, organiza-  
6 tions, corporations, and individuals to pay them for services ren-  
7 dered or furnished;

8 2. The Council may offer and provide recruitment, training, and  
9 referral services to personal care attendants of long-term in-home  
10 personal care services other than statutorily defined personal care  
11 attendants, for a fee to be determined by the council;

12 3. The Council may issue rules or regulations as necessary for  
13 the purpose and policies of this chapter;

14 4. The Council may establish offices, employ and discharge  
15 employees, agents, and contractors as necessary, and prescribe  
16 their duties and powers and fix their compensation, incur  
17 expenses, and create such liabilities as are reasonable and proper  
18 for the administration of this chapter;

19 5. The Council may solicit and accept for use any grant of  
20 money, services, or property from the federal government, the  
21 state, or any political subdivision or agency thereof, including fed-  
22 eral matching funds under Title XIX of the federal social security  
23 act, and do all things necessary to cooperate with the federal gov-  
24 ernment, the state, or any political subdivision or agency thereof  
25 in making an application for any grant;

26 6. The Council may coordinate its activities and cooperate with  
27 similar agencies in other states;

28 7. The Council may establish technical advisory committees to  
29 assist the board;

30 8. The Council may keep records and engage in research and  
31 the gathering of relevant statistics;

32 9. The Council may acquire, hold, or dispose of real or personal  
33 property or any interest therein, and construct, lease, or otherwise  
34 provide facilities for the activities conducted under this chapter,  
35 provided that the workforce council may not exercise any power  
36 of eminent domain;

37 10. The Council may sue and be sued in its own name;

38 11. The Council may delegate to the appropriate persons the  
39 power to execute contracts and other instruments on its behalf and

40 delegate any of its powers and duties if consistent with the pur-  
41 poses of this chapter; and

42 12. The Council may do other acts necessary or convenient to  
43 execute the powers expressly granted to it.

1 SECTION 7. Performance Review.

2 1. The Council shall conduct a performance review every two  
3 years and submit the review to the legislature and the governor.  
4 The first review will be submitted before December 1, 2008.

5 2. The performance review will include an evaluation of the  
6 health, welfare, and satisfaction with services provided of the con-  
7 sumers receiving long-term in-home personal care services from  
8 personal care attendants under, including the degree to which all  
9 required services have been delivered, the degree to which con-  
10 sumers receiving services from personal care attendants have ulti-  
11 mately required additional or more intensive services, such as  
12 home health care, or have been placed in other residential settings  
13 or nursing homes, the promptness of response to consumer com-  
14 plaints, and any other issue deemed relevant.

15 3. The performance review will provide an explanation of the  
16 full cost of personal care services, including the administrative  
17 costs of the council, unemployment compensation, Social Security  
18 and Medicare payroll taxes paid, and any oversight costs.

19 4. The performance review will make recommendations to the  
20 legislature and the governor for any amendments to this chapter  
21 that will further ensure the well-being of consumers, and the most  
22 efficient means of delivering required services. In addition, the  
23 first performance review will include findings and recommenda-  
24 tions regarding the appropriateness of the council's assumption of  
25 responsibility for verification of hours worked by personal care  
26 attendants, payment of personal care attendants, and other duties.

1 SECTION 8. Conflict with Federal Law.

2 1. If any part of this act is found to be in conflict with federal  
3 requirements that are a prescribed condition to the allocation of  
4 federal funds to the state, the conflicting part of this act is inoper-  
5 ative solely to the extent of the conflict and with respect to the  
6 agencies directly affected, and this finding does not affect the  
7 operation of the remainder of this act in its application to the

8 agencies concerned. The rules under this act shall meet federal  
9 requirements that are a necessary condition to the receipt of fed-  
10 eral funds by the state.

1 SECTION 9. Severability.

2 1. If any provision of this act or its application to any person or  
3 circumstance is held invalid, the remainder of the act or the appli-  
4 cation of the provision to other persons or circumstances is not  
5 affected.

1 SECTION 10. Effective Date.

2 1. This act is necessary for the immediate preservation of  
3 the public peace, health, or safety, or support of the state govern-  
4 ment and its existing public institutions, and shall take effect  
5 immediately.



# SENATE, No. 139

By Mr. Tolman, a petition (accompanied by bill, Senate, No. 139) of Steven A. Tolman, Marc R. Pacheco, Joan M. Menard, Michael A. Costello and other members of the General Court for legislation relative to pca workforce council. Children and Families

## The Commonwealth of Massachusetts



In the Year Two Thousand and Five.

### AN ACT RELATIVE TO PCA WORKFORCE COUNCIL

*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.

#### CHAPTER \_\_\_\_

#### The PCA Quality Home Care Workforce Council

##### Section 1: Preamble

Whereas thousands of Massachusetts seniors and persons with disabilities choose to live independently in their own homes, rather than in more costly institutions such as nursing homes or assisted living facilities. This cost saving alternative allows seniors and persons with disabilities, and their families, to determine for themselves the care that best meets their needs.

Whereas thousands of Massachusetts seniors and persons with disabilities currently receive long-term, personal care services in their own homes from personal care attendants hired directly by them under

provisions of the MassHealth program.

Whereas quality, long-term personal care services allow Massachusetts seniors and persons with disabilities, and their families, the choice of remaining in their homes, rather than forcing them into institutions such as nursing homes or assisted living facilities.

Whereas long-term personal care services are less costly than nursing home or assisted living facility care costs, saving Massachusetts taxpayers significant amounts through lower reimbursement rates.

Whereas the quality of long-term, in-home, personal care services in persons' homes would benefit greatly from improved statewide coordination and increased access to personal care services through a directory of personal care attendants that can match seniors and persons with disabilities with available personal care attendants.

Whereas Massachusetts seniors and persons with disabilities would benefit from the establishment of a PCA quality home care workforce council with the power and duty to stabilize the workforce and to improve the quality of long-term personal care services in the home.

Whereas The PCA Quality Home Care Workforce Council should ensure that the quality of long-term personal care services by individual personal care attendants is improved through a stable workforce and the enhanced ability to obtain services without altering the current system of client intake, approval of hours, plans of care, fiscal intermediary services, or the work of agencies. The PCA quality home care workforce council should also encourage stability through collective bargaining and by providing training opportunities, while maintaining the right of consumers and their family members who receive personal care attendant services to select and train a personal care attendant to meet their needs.

## Section 2: Definitions

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

“PCA Quality Home Care Workforce Council”, “workforce council” or “the Council” means the PCA

### Quality Home Care Workforce Council.

“Board” means the nine-member board created under section 3.

“Consumer” means a person to whom a personal care attendant provides any personal care services.

“Personal care attendant” means a person, including a personal aide, who has been selected by a consumer to provide personal care services to persons with disabilities or seniors under the MassHealth personal care attendant program.

### Section 3: Workforce council created

The PCA Quality Home Care Workforce Council is established to insure the quality of long-term, in-home, personal care by recruiting, training, and stabilizing the work force of personal care attendants.

The PCA Quality Home Care Workforce Council shall consist of a board of nine members, three of whom shall be appointed by the Senate, three by the House, and three by the Governor. In making appointments to the Board, each appointing body shall take into consideration appointing seniors who currently represent an organization existing to support seniors; persons with disabilities who currently represent an organization existing to support persons with disabilities; family members of consumers who currently represent organizations existing to support family members of consumers; and persons who currently represent advocacy organizations or academic institutions with expertise in the PCA home care system. Each board member shall serve a term of three years. If a vacancy occurs, the body (House, Senate or Governor) that made the initial appointment, shall make a new appointment to become immediately effective to serve the unexpired term.

### Section 4 Workforce Council Duties

The workforce council shall carry out the following duties:

- a) Undertake recruiting efforts to identify and recruit prospective personal care attendants.

b) Provide training opportunities, either directly or through contract, for personal care attendants and consumers.

c) Provide assistance to consumers in finding personal care attendants through the establishment of a referral directory of personal care attendants. Before placing a personal care attendant on the referral directory, the workforce council shall determine that the personal care attendant has met the current requirements as provided by 130 CMR 422.404.

d) The personal care attendant, or the consumer to which the personal care attendant is providing services, may request a fair hearing to contest any finding that a personal care attendant is ineligible to provide services, as provided by law.

e) Provide routine, emergency, and respite referrals of personal care attendants to consumers who are authorized to receive long-term in-home personal care services through a personal care attendant;

f) Give preference in the recruiting, training, referral, and employment of personal care attendants to recipients of public assistance or other low-income persons who would qualify for public assistance in the absence of such employment; and

g) Cooperate with state and local agencies on health and aging, and other federal, state, and local agencies to provide the services described and set forth in this section. If, in the course of carrying out its duties, the PCA quality home care workforce council identifies concerns regarding the services being provided by a personal care attendant, the workforce council must notify the relevant area agency or agencies regarding such concerns.

In determining how best to carry out its duties, the PCA Quality Home Care Workforce Council must identify existing personal care attendant recruitment, training, and referral resources made available to consumers by other state and local public, private, and nonprofit agencies. The Council may coordinate with the agencies to provide a local presence for the Council and to provide consumers greater access to personal care attendant recruitment, training, and referral resources in a cost-effective manner. Using requests for proposals or similar processes, the Council may contract with the agencies to provide

recruitment, training, and referral. The council must provide an opportunity for consumer participation in coordination efforts.

#### Section 5: Employment Relationship

Consumers retain the right to select, hire, supervise the work of, and terminate any personal care attendant providing services to them. Consumers may elect to receive long-term in-home personal care services from personal care attendants who are not referred to them by the council.

Personal care attendants are public employees as defined by and solely for the purposes of Chapter 150E, § 1 *et. seq.* (2004). As such, the PCA Quality Home Care Workforce Council is the employer solely for the purposes of this statute.

Personal care attendants who are employees of the Council under this section of this section are not, for that reason, employees of the state for any other purpose.

The only bargaining unit appropriate for the purpose of collective bargaining is a statewide unit of all personal care attendants;

The showing of interest required to request an election is ten percent of the bargaining unit, and any intervener seeking to appear on the ballot must make the same showing of interest;

The council or its contractors, may not be held vicariously liable for the action or inaction of any personal care attendant, whether or not that personal care attendant was included on the council's referral directory or referred to a consumer.

The members of the board are immune from any liability resulting from implementation of this chapter.

#### Section 6: Powers

The PCA Quality Home Care Workforce Council may make and execute contracts and all other instruments necessary or convenient for the performance of its duties or exercise of its powers, including contracts with public and private agencies, organizations, corporations, and individuals to pay them for services rendered or furnished;

The Council may offer and provide recruitment, training, and referral services to personal care attendants of long-term in-home personal care services other than statutorily defined personal care attendants, for a fee to be determined by the council;

The Council may issue rules or regulations as necessary for the purpose and policies of this chapter;

The Council may establish offices, employ and discharge employees, agents, and contractors as necessary, and prescribe their duties and powers and fix their compensation, incur expenses, and create such liabilities as are reasonable and proper for the administration of this chapter;

The Council may solicit and accept for use any grant of money, services, or property from the federal government, the state, or any political subdivision or agency thereof, including federal matching funds under Title XIX of the federal social security act, and do all things necessary to cooperate with the federal government, the state, or any political subdivision or agency thereof in making an application for any grant;

The Council may coordinate its activities and cooperate with similar agencies in other states;

The Council may establish technical advisory committees to assist the board;

The Council may keep records and engage in research and the gathering of relevant statistics;

The Council may acquire, hold, or dispose of real or personal property or any interest therein, and construct, lease, or otherwise provide facilities for the activities conducted under this chapter, provided that the workforce council may not exercise any power of eminent domain;

The Council may sue and be sued in its own name;

The Council may delegate to the appropriate persons the power to execute contracts and other instruments on its behalf and delegate any of its powers and duties if consistent with the purposes of this chapter; and

The Council may do other acts necessary or convenient to execute the powers expressly granted to it.

#### Section 7: Performance Review

The Council shall conduct a performance review every two years and submit the review to the legislature and the governor. The first review will be submitted before December 1, 2008.

The performance review will include an evaluation of the health, welfare, and satisfaction with services provided of the consumers receiving long-term in-home personal care services from personal care attendants under, including the degree to which all required services have been delivered, the degree to which consumers receiving services from personal care attendants have ultimately required additional or more intensive services, such as home health care, or have been placed in other residential settings or nursing homes, the promptness of response to consumer complaints, and any other issue deemed relevant.

The performance review will provide an explanation of the full cost of personal care services, including the administrative costs of the council, unemployment compensation, social security and Medicare payroll taxes paid, and any oversight costs.

The performance review will make recommendations to the legislature and the governor for any amendments to this chapter that will further ensure the well-being of consumers, and the most efficient means of delivering required services. In addition, the first performance review will include findings and recommendations regarding the appropriateness of the council's assumption of responsibility for verification of hours worked by personal care attendants, payment of personal care attendants, and other duties.

#### Section 8: Conflict with Federal Law

If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

#### Section 9: Severability

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Section 10: Effective Date

This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.



**HOUSE . . . . . No. 4055**

By Mrs. Harkins of Needham, petition of Lida E. Harkins and others relative to home care for certain elderly and disabled persons. Children and Families.

**The Commonwealth of Massachusetts**

**PETITION OF:**

Lida E. Harkins	Kathleen M. Teahan
Anthony Petruccelli	William Smitty Pignatelli
Patricia A. Haddad	Marie P. St. Fleur
Barbara A. L'Italien	William C. Galvin
Michael E. Festa	Anne M. Paulsen
James E. Vallee	Christine E. Canavan
Rachel Kaprielian	Ellen Story
Bruce J. Ayers	Gale D. Candaras
Paul Kujawski	Kay Khan
Robert F. Fennell	Daniel F. Keenan
Viriato Manuel deMacedo	Thomas P. Kennedy
Michael A. Costello	Martin J. Walsh
Thomas A. Golden, Jr.	Theodore C. Speliotis
Steven M. Walsh	Peter J. Koutoujian

**In the Year Two Thousand and Five.**

**AN ACT TO ESTABLISH A PERSONAL CARE ATTENDANT QUALITY HOME CARE WORK FORCE COUNCIL.**

*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. Findings.**

2 1. Thousands of Massachusetts seniors and persons with dis-  
3 abilities choose to live independently in their own homes, rather  
4 than in more costly institutions such as nursing homes or assisted  
5 living facilities. This cost saving alternative allows seniors and  
6 persons with disabilities, and their families, to determine for  
7 themselves the care that best meets their needs.

8 2. Thousands of Massachusetts seniors and persons with dis-  
9 abilities currently receive long-term, personal care services in  
10 their own homes from personal care attendants hired directly by  
11 them under provisions of the MassHealth program.

12 3. Quality, long-term personal care services allow Massachu-  
13 setts seniors and persons with disabilities, and their families, the  
14 choice of remaining in their homes, rather than forcing them into  
15 institutions such as nursing homes or assisted living facilities.

16 4. Long-term personal care services are less costly than nursing  
17 home or assisted living facility care costs, saving Massachusetts  
18 taxpayers significant amounts through lower reimbursement rates.

19 5. The quality of long-term, in-home, personal care services in  
20 persons' homes would benefit greatly from improved statewide  
21 coordination and increased access to personal care services  
22 through a directory of personal care attendants that can match  
23 seniors and persons with disabilities with available personal care  
24 attendants.

25 6. Massachusetts seniors and persons with disabilities would  
26 benefit from the establishment of a PCA quality home care work-  
27 force council with the power and duty to stabilize the workforce  
28 and to improve the quality of long-term personal care services in  
29 the home.

30 7. The PCA Quality Home Care Workforce Council should  
31 ensure that the quality of long-term personal care services by indi-  
32 vidual personal care attendants is improved through a stable work-  
33 force and the enhanced ability to obtain services without altering  
34 the current system of client intake, approval of hours, plans of  
35 care, fiscal intermediary services, or the work of agencies. The  
36 PCA quality home care workforce council should also encourage  
37 stability through collective bargaining and by providing training  
38 opportunities, while maintaining the right of consumers and their  
39 family members who receive personal care attendant services to  
40 select and train a personal care attendant to meet their needs.

1 SECTION 2. Definitions.

2 1. The definitions in this section apply throughout this chapter  
3 unless the context clearly requires otherwise.

4 2. "PCA Quality Home Care Workforce Council", "workforce  
5 council" or "the Council" means the PCA Quality Home Care  
6 Workforce Council.

7 3. "Board" means the nine member board created under  
8 section 3.

9 4. "Consumer" means a person to whom a personal care atten-  
10 dant provides any personal care services.

11 5. "Personal care attendant" means a person, including a per-  
12 sonal aide, who has been selected by a consumer to provide per-  
13 sonal care services to persons with disabilities or seniors under the  
14 MassHealth personal care attendant program.

1 SECTION 3. Workforce council created.

2 1. The PCA Quality Home Care Workforce Council is estab-  
3 lished to insure the quality of long-term, in-home, personal care  
4 by recruiting, training, and stabilizing the work force of personal  
5 care attendants.

6 2. The PCA Quality Home Care Workforce Council shall con-  
7 sist of a board of nine members, three of whom shall be appointed  
8 by the Senate, three by the House, and three by the Governor. In  
9 making appointments to the Board, each appointing body shall  
10 take into consideration appointing seniors who currently represent  
11 an organization existing to support seniors; persons with disabili-  
12 ties who currently represent an organization existing to support  
13 persons with disabilities; family members of consumers who cur-  
14 rently represent organizations existing to support family members  
15 of consumers; and persons who currently represent advocacy  
16 organizations or academic institutions with expertise in the PCA  
17 home care system. Each board member shall serve a term of three  
18 years. If a vacancy occurs, the body (House, Senate or Governor)  
19 that made the initial appointment shall make a new appointment to  
20 become immediately effective to serve the unexpired term.

1 SECTION 4. Workforce Council Duties.

2 1. The workforce council shall carry out the following duties:

3 a) Undertake recruiting efforts to identify and recruit prospec-  
4 tive personal care attendants.

5 b) Provide training opportunities, either directly or through  
6 contract, for personal care attendants and consumers.

7 c) Provide assistance to consumers in finding personal care  
8 attendants through the establishment of a referral directory of per-  
9 sonal care attendants. Before placing a personal care attendant on

10 the referral directory, the workforce council shall determine that  
11 the personal care attendant has met the current requirements as  
12 provided by 130 CMR 422.404.

13 d) The personal care attendant, or the consumer to which the  
14 personal care attendant is providing services, may request a fair  
15 hearing to contest any finding that a personal care attendant is  
16 ineligible to provide services, as provided by law.

17 e) Provide routine, emergency, and respite referrals of personal  
18 care attendants to consumers who are authorized to receive long-  
19 term in-home personal care services through a personal care atten-  
20 dant;

21 f) Give preference in the recruiting, training, referral, and  
22 employment of personal care attendants to recipients of public  
23 assistance or other low-income persons who would qualify for  
24 public assistance in the absence of such employment; and

25 g) Cooperate with state and local agencies on health and aging,  
26 and other federal, state, and local agencies to provide the services  
27 described and set forth in this section. If, in the course of carrying  
28 out its duties, the PCA quality home care workforce council iden-  
29 tifies concerns regarding the services being provided by a per-  
30 sonal care attendant, the workforce council must notify the  
31 relevant area agency or agencies regarding such concerns.

32 2. In determining how best to carry out its duties, the PCA  
33 Quality Home Care Workforce Council must identify existing per-  
34 sonal care attendant recruitment, training, and referral resources  
35 made available to consumers by other state and local public, pri-  
36 vate, and nonprofit agencies. The Council may coordinate with the  
37 agencies to provide a local presence for the Council and to pro-  
38 vide consumers greater access to personal care attendant recruit-  
39 ment, training, and referral resources in a cost-effective manner.  
40 Using requests for proposals or similar processes, the Council  
41 may contract with the agencies to provide recruitment, training,  
42 and referral. The council must provide an opportunity for con-  
43 sumer participation in coordination efforts.

#### 1 SECTION 5. Employment Relationship.

2 1. Consumers retain the right to select, hire, supervise the work  
3 of, and terminate any personal care attendant providing services to  
4 them. Consumers may elect to receive long-term in-home per-

5 sonal care services from personal care attendants who are not  
6 referred to them by the council.

7 2. Personal care attendants are public employees as defined by  
8 and solely for the purposes of Chapter 150E, § 1 et. seq. (2004).  
9 As such, the PCA Quality Home Care Workforce Council is the  
10 employer solely for the purposes of this statute.

11 3. Personal care attendants who are employees of the Council  
12 under this section of this section are not, for that reason,  
13 employees of the state for any other purpose.

14 4. The only bargaining unit appropriate for the purpose of col-  
15 lective bargaining is a statewide unit of all personal care atten-  
16 dants;

17 5. The showing of interest required to request an election is ten  
18 percent of the bargaining unit, and any intervener seeking to  
19 appear on the ballot must make the same showing of interest;

20 6. The council or its contractors, may not be held vicariously  
21 liable for the action or inaction of any personal care attendant,  
22 whether or not that personal care attendant was included on the  
23 council's referral directory or referred to a consumer.

24 7. The members of the board are immune from any liability  
25 resulting from implementation of this chapter.

#### 1 SECTION 6. Powers.

2 1. The PCA Quality Home Care Workforce Council may make  
3 and execute contracts and all other instruments necessary or con-  
4 venient for the performance of its duties or exercise of its powers,  
5 including contracts with public and private agencies, organiza-  
6 tions, corporations, and individuals to pay them for services ren-  
7 dered or furnished;

8 2. The Council may offer and provide recruitment, training,  
9 and referral services to personal care attendants of long-term in-  
10 home personal care services other than statutorily defined per-  
11 sonal care attendants, for a fee to be determined by the council;

12 3. The Council may issue rules or regulations as necessary for  
13 the purpose and policies of this chapter;

14 4. The Council may establish offices, employ and discharge  
15 employees, agents, and contractors as necessary, and prescribe  
16 their duties and powers and fix their compensation, incur

17 expenses, and create such liabilities as are reasonable and proper  
18 for the administration of this chapter;

19 5. The Council may solicit and accept for use any grant of  
20 money, services, or property from the federal government, the  
21 state, or any political subdivision or agency thereof, including fed-  
22 eral matching funds under Title XIX of the federal social security  
23 act, and do all things necessary to cooperate with the federal gov-  
24 ernment, the state, or any political subdivision or agency thereof  
25 in making an application for any grant;

26 6. The Council may coordinate its activities and cooperate with  
27 similar agencies in other states;

28 7. The Council may establish technical advisory committees to  
29 assist the board;

30 8. The Council may keep records and engage in research and  
31 the gathering of relevant statistics;

32 9. The Council may acquire, hold, or dispose of real or per-  
33 sonal property or any interest therein, and construct, lease, or oth-  
34 erwise provide facilities for the activities conducted under this  
35 chapter, provided that the workforce council may not exercise any  
36 power of eminent domain;

37 10. The Council may sue and be sued in its own name;

38 11. The Council may delegate to the appropriate persons the  
39 power to execute contracts and other instruments on its behalf and  
40 delegate any of its powers and duties if consistent with the pur-  
41 poses of this chapter; and

42 12. The Council may do other acts necessary or convenient to  
43 execute the powers expressly granted to it.

#### 1 SECTION 7. Performance Review.

2 1. The Council shall conduct a performance review every two  
3 years and submit the review to the legislature and the governor.  
4 The first review will be submitted before December 1, 2008.

5 2. The performance review will include an evaluation of the  
6 health, welfare, and satisfaction with services provided of the con-  
7 sumers receiving long-term in-home personal care services from  
8 personal care attendants under, including the degree to which all  
9 required services have been delivered, the degree to which con-  
10 sumers receiving services from personal care attendants have ulti-  
11 mately required additional or more intensive services, such as

12 home health care, or have been placed in other residential settings  
13 or nursing homes, the promptness of response to consumer com-  
14 plaints, and any other issue deemed relevant.

15 3. The performance review will provide an explanation of the  
16 full cost of personal care services, including the administrative  
17 costs of the council, unemployment compensation, Social Security  
18 and Medicare payroll taxes paid, and any oversight costs.

19 4. The performance review will make recommendations to the  
20 legislature and the governor for any amendments to this chapter  
21 that will further ensure the well-being of consumers, and the most  
22 efficient means of delivering required services. In addition, the  
23 first performance review will include findings and recommenda-  
24 tions regarding the appropriateness of the council's assumption of  
25 responsibility for verification of hours worked by personal care  
26 attendants, payment of personal care attendants, and other duties.

1 SECTION 8. Conflict with Federal Law.

2 1. If any part of this act is found to be in conflict with federal  
3 requirements that are a prescribed condition to the allocation of  
4 federal funds to the state, the conflicting part of this act is inoper-  
5 ative solely to the extent of the conflict and with respect to the  
6 agencies directly affected, and this finding does not affect the  
7 operation of the remainder of this act in its application to the  
8 agencies concerned. The rules under this act shall meet federal  
9 requirements that are a necessary condition to the receipt of fed-  
10 eral funds by the state.

1 SECTION 9. Severability.

2 1. If any provision of this act or its application to any person or  
3 circumstance is held invalid, the remainder of the act or the appli-  
4 cation of the provision to other persons or circumstances is not  
5 affected.

1 SECTION 10. Effective Date.

2 1. This act is necessary for the immediate preservation of the  
3 public peace, health, or safety, or support of the state government  
4 and its existing public institutions, and shall take effect immedi-  
5 ately.