

# 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.