

HOUSE No. 4623

The Commonwealth of Massachusetts

INITIATIVE PETITION OF LIDA E. HARKINS
AND OTHERS.

OFFICE OF THE SECRETARY.
BOSTON, JANUARY 6, 2006.

Steven T. James
Clerk of the House of Representatives
State House
Boston, Massachusetts 02133

Sir: — I herewith transmit to you, in accordance with the requirements of Article XLVIII of the Amendments to the Constitution, an Initiative Petition for a Law Relative to the Establishment of a Personal Care Attendant Quality Home Care Workforce Council, signed by ten qualified voters and filed with this department on or before December 7, 2005, together with additional signatures of qualified voters in the number of 77,609, being a sufficient number to comply with the Provisions of said Article.

Sincerely,

WILLIAM FRANCIS GALVIN,
Secretary of the Commonwealth.

AN INITIATIVE PETITION.

Pursuant to Article XLVIII of the Amendments to the Constitution of the Commonwealth, as amended, the undersigned qualified voters of the Commonwealth, ten in number at least, hereby petition for the enactment into law of the following measure:

The Commonwealth of Massachusetts

In the Year Two Thousand and Six.

AN ACT RELATIVE TO THE ESTABLISHMENT OF A PERSONAL CARE ATTENDANT QUALITY HOME CARE WORKFORCE COUNCIL.

Be it enacted by the People, and by their authority, as follows:

1 The General Laws shall be amended by adding the following
2 text as Chapter 118H:

3 Section 1. Definitions.

4 1. The definitions in this section apply throughout this chapter
5 unless the context clearly requires otherwise;

6 2. “PCA Quality Home Care Workforce Council”, “Workforce
7 Council” or “the Council” means the PCA Quality Home Care
8 Workforce Council as established under section 2;

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

11 4. “Consumer” means a person to whom a personal care atten-
12 dant provides any personal care services;

13 5. “Personal care attendant” means a person, including a per-
14 sonal aide, who has been selected by a consumer or the con-
15 sumer’s surrogate to provide personal care services to persons
16 with disabilities or seniors under the MassHealth personal care
17 attendant program (or any successor program);

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

22 Section 2. Workforce Council Created.

23 1. The PCA Quality Home Care Workforce Council is estab-
24 lished in the executive office of health and human services but
25 shall not be subject to the control thereof to insure the quality of
26 long-term, in-home, personal care by recruiting, training, and sta-
27 bilizing the workforce of personal care attendants.

28 2. Funding for the activities and purposes of the PCA Quality
29 Home Care Workforce Council shall be subject to appropriation.

30 3. The PCA Quality Home Care Workforce Council shall con-
31 sist of a Board of nine members. At all times, a majority of the
32 members of the Board shall be consumers as defined in this Act.
33 Three members of the Board shall be appointed by the Governor
34 (at least two of which shall be consumers as defined in this Act),
35 three shall be appointed by the Auditor (all of which shall be
36 consumers or consumer surrogates as defined in this Act), and
37 three shall be appointed by the Attorney General (at least two of
38 which shall be consumers or consumer surrogates as defined in
39 this Act). In making appointments to the Board, the Governor
40 shall appoint one member from a slate of three consumers rec-
41 ommended by the Statewide Independent Living Council, and
42 one member from a slate of three consumers recommended by
43 the Governor's Council on Disabilities. The Auditor shall
44 appoint one member from a slate of three consumers recom-
45 mended by the Developmental Disabilities Council, one member
46 from a slate of three consumers recommended by the Massachu-
47 setts Office on Disability, and one member from a slate of three
48 consumers or consumer's surrogates recommended by the
49 Massachusetts Council on Aging. The Attorney General shall
50 appoint one member from a slate of three consumers or con-
51 sumer surrogates recommended by the Massachusetts Home
52 Care Association; and one member from a slate of three con-
53 sumers recommended by the Statewide Independent Living
54 Council. Three members of the Board first appointed shall serve
55 a one-year term, three shall serve a two-year term, and three
56 shall serve a three-year term, the term of each member to be des-
57 ignated by the Governor. All subsequent appointees to the Board
58 shall serve three-year terms. If a vacancy occurs, the Executive
59 Officer who made the original appointment shall appoint a new
60 Board member to serve the remainder of the unexpired term, or
61 in the event that the vacancy occurs as the result of the comple-
62 tion of a term, to serve a full term and such appointment shall
63 become immediately effective upon the member taking the
64 appropriate oath. If the departing Board member was appointed
65 pursuant to a recommendation made in accordance with this
66 paragraph, the Executive Officer shall make the new appoint-
67 ment from a slate of three recommendations put forth by the

68 entity that originally recommended the departing Board member.
69 Members of the Board may serve for successive terms of office.
70 Six members of the Board shall constitute a quorum for the trans-
71 action of any business. Members of the Board shall not receive
72 compensation for their Board service but members shall be reim-
73 bursed for their actual expenses necessarily incurred in the perfor-
74 mance of their duties.

75 Section 3. Workforce Council Duties.

76 1. The Workforce Council shall carry out the following duties:

77 a) Undertake recruiting efforts to identify and recruit prospec-
78 tive personal care attendants;

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

81 c) Provide assistance to consumers and consumer's surrogates
82 in finding personal care attendants through the establishment of a
83 referral directory of personal care attendants. Before placing a
84 personal care attendant on the referral directory, the Workforce
85 Council shall determine that the personal care attendant has met
86 the requirements then in place as provided by the applicable regu-
87 lations and has not stated in writing a desire to be excluded from
88 the directory;

89 d) Provide routine, emergency, and respite referrals of personal
90 care attendants to consumers, and consumer surrogates, who are
91 authorized to receive long-term in-home personal care services
92 through a personal care attendant;

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

97 f) Cooperate with state and local agencies on health and aging,
98 and other federal, state, and local agencies to provide the services
99 described and set forth in this section. If, in the course of carrying
100 out its duties, the PCA quality home care workforce council iden-
101 tifies concerns regarding the services being provided by a per-
102 sonal care attendant, the Workforce Council must notify the
103 relevant area agency or agencies regarding such concerns;

104 2. In determining how best to carry out its duties, the PCA
105 Quality Home Care Workforce Council must identify existing per-

106 sonal care attendant recruitment, training, and referral resources
107 made available to consumers or the consumer's surrogate by other
108 state and local public, private, and nonprofit agencies. The
109 Council may coordinate with the agencies to provide a local pres-
110 ence for the Council and to provide consumers or the consumer's
111 surrogate greater access to personal care attendant recruitment,
112 training, and referral resources in a cost-effective manner. Using
113 requests for proposals or similar processes, the Council may con-
114 tract with the agencies to provide recruitment, training, and
115 referral. The Council must provide an opportunity for consumer
116 participation in coordination efforts;

117 3. The Commonwealth shall provide to the Council a list of all
118 personal care attendants who have been paid through the
119 MassHealth personal care attendant program and shall update the
120 list on a regular basis to ensure that the Council has a complete
121 and accurate list at all times.

122 Section 4. Employment Relationship.

123 1. Consumers or the consumer's surrogate retain the right to
124 select, hire, schedule, train, direct, supervise the work of, and ter-
125 minate any personal care attendant providing services to them.
126 Consumers or the consumer's surrogate may elect to receive long-
127 term in-home personal care services from personal care attendants
128 who are not referred to them by the Council;

129 2. Personal care attendants shall be considered public
130 employees as defined by and solely for the purposes of Chapter
131 150E and Chapter 180 section 17J. All sections of Chapter 150E
132 shall apply to personal care attendants except to the extent
133 Chapter 150E is inconsistent with this chapter, in which case this
134 chapter shall control. In addition, personal care attendants shall be
135 treated as state employees solely for the purposes of Chapter 180
136 section 17A. Personal care attendants shall not be considered
137 public employees or state employees for any purpose other than
138 those set forth in this paragraph. The PCA Quality Home Care
139 Workforce Council is the employer as defined by and solely for
140 the purposes of Chapter 150E and Chapter 180 sections 17A and
141 17J and deductions under Chapter 180 sections 17A and 17J may
142 be made by any entity authorized by the Commonwealth to com-
143 pensate personal care attendants through the MassHealth personal
144 care attendant program;

145 3. Personal care attendants who are employees of the Council
146 under this section of this section are not, for that reason, public
147 employees (or employees of the Council) for any other purpose.
148 Nothing in this Act, however, alters the obligations of the Com-
149 monwealth and/or the consumer to provide their share of social
150 security, federal and state unemployment taxes, Medicare, and
151 worker's compensation insurance;

152 4. Consistent with the provisions of Chapter 150E section 9A,
153 no personal care attendant shall engage in a strike and no personal
154 care attendant shall induce, encourage or condone any strike, work
155 stoppage, slowdown or withholding of services by any personal
156 care attendant;

157 5. The only bargaining unit appropriate for the purpose of col-
158 lective bargaining is a statewide unit of all personal care atten-
159 dants;

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

163 7. The council or its contractors, may not be held vicariously
164 liable for the action or inaction of any personal care attendant,
165 whether or not that personal care attendant was included on the
166 council's referral directory or referred to a consumer or the con-
167 sumer's surrogate;

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

170 Section 5. Powers.

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

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

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

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

188 5. The Council may solicit and accept for use any grant of
189 money, services, or property from the federal government, the
190 state, or any political subdivision or agency thereof, and do all
191 things necessary to cooperate with the federal government, the
192 state, or any political subdivision or agency thereof in making an
193 application for any grant;

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

196 7. The Council may establish technical advisory committees to
197 assist the board;

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

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

205 10. The Council may delegate to the appropriate persons the
206 power to execute contracts and other instruments on its behalf and
207 delegate any of its powers and duties if consistent with the pur-
208 poses of this chapter;

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

211 Section 6. Performance Review.

212 1. The Council shall conduct a performance review every two
213 years and submit the review to the legislature and the governor
214 and make the report available to the public upon submission to the
215 governor and the legislature. The first review will be submitted
216 before December 1, 2008;

217 2. The performance review will include an evaluation of the
218 health, welfare, and satisfaction with services provided of the con-
219 sumers receiving long-term in-home personal care services from
220 personal care attendants, including the degree to which all
221 required services have been delivered, the degree to which con-

222 sumers receiving services from personal care attendants have ulti-
223 mately required additional or more intensive services, such as
224 home health care, or have been placed in other residential settings
225 or nursing homes, the promptness of response to consumer com-
226 plaints, and any other issue deemed relevant;

227 3. The performance review will provide an explanation of the
228 full cost of personal care services, including the administrative
229 costs of the council, unemployment compensation, Social Security
230 and Medicare payroll taxes paid, and any oversight costs;

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

239 Section 7. Conflict with Federal Law.

240 1. If any part of this act is found to be in conflict with federal
241 requirements that are a prescribed condition to the allocation of
242 federal funds to the state, the conflicting part of this act is inoper-
243 ative solely to the extent of the conflict and with respect to the
244 agencies directly affected, and this finding does not affect the
245 operation of the remainder of this act in its application to the
246 agencies concerned. The rules under this act shall meet federal
247 requirements that are a necessary condition to the receipt of fed-
248 eral funds by the state.

249 Section 8. Impact on Existing Contracts.

250 This chapter shall not affect the validity or enforceability of
251 any contract for personal care attendant services in existence upon
252 enactment. Any and all renewals, extensions or modifications to
253 any such contract made after the enactment of this chapter shall be
254 subject to its provisions to the maximum extent permitted by law.

255 Section 9. Severability.

256 1. If any provision of this act or its application to any person or
257 circumstance is held invalid, the remainder of the act or the appli-
258 cation of the provision to other persons or circumstances is not
259 affected.

FIRST TEN SIGNERS

<u>NAME</u>	<u>RESIDENCE</u>	<u>CITY OR TOWN</u>
Lida E. Harkins	14 Hancock Road	Needham
Steven A. Tolman	17 Madeline Street	Boston
Elizabeth M. Casey	14 Mendum Street	Boston
John Carlucci	630 Salem Street, #118	Malden
Jean G. Atkinson	7 Knowles Road	Worcester
Monica Halas	36 South Russell Street, #4	Boston
Paul W. Spooner	68 Leahy Drive	Taunton
Paul Lee Smith	11 Mary Moore Beatty Circle, #1C	Boston
Geneva Evans	425 Massachusetts Avenue, #1	Boston
James Kruidenier	15 Moss Lane	Amherst

CERTIFICATE OF THE ATTORNEY GENERAL.

September 7, 2005.

Honorable William Francis Galvin
Secretary of the Commonwealth
One Ashburton Place, Room 1705
Boston, Massachusetts 02108

RE: Initiative Petition No. 05-15: A Law Relative to the
Establishment of a Personal Care Attendant Quality Home
Care Workforce Council.

Dear Secretary Galvin:

In accordance with the provisions of Article 48 of the Amendments to the Massachusetts Constitution, I have reviewed the above-referenced initiative petition, which was submitted to me on or before the first Wednesday of August of this year.

I hereby certify that this measure is in proper form for submission to the people; that the measure is not, either affirmatively or negatively, substantially the same as any measure which has been qualified for submission or submitted to the people at either of the two preceding biennial state elections; and that it contains only subjects that are related or are mutually dependent and which are not excluded from the initiative process pursuant to Article 48, the Initiative, Part 2, Section 2.

In accordance with Article 48, I enclose a fair, concise summary of the measure.

Sincerely,

THOMAS F. REILLY,
Attorney General.

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108-1598

September 8, 2005.

Honorable William Francis Galvin
Secretary of the Commonwealth
One Ashburton Place, Room 1705
Boston, Massachusetts 02108

Att: Michelle Tassinari, Legal Counsel, Elections Division

RE: Initiative Petition No. 05-15: A Law Relative to the Establishment of a
Personal Care Attendant Quality Home Care Workforce Council.

Dear Secretary Galvin:

The Attorney General has authorized me to furnish the attached revised summary of the above-referenced petition, which was certified yesterday and which we understand has been filed with your office. The revision corrects an error which has been called to our attention by the proponents of the petition. The change is on page 2.

The pertinent sentence of the original version read: "Of the 9 members, 2 would have to be consumers, and 5 more would have to be consumers or persons who act on their behalf in the hiring, firing and supervising of PCAs." The revised version merely transposes the "2" and the "5" so that the sentence now reads: "Of the 9 members, 5 would have to be consumers, and 2 more would have to be consumers or persons who act on their behalf in the hiring, firing and supervising of PCAs." This more accurately reflects the language of the proposed law.

Thank you for your attention to this matter, and please feel free to contact me if you have any questions.

Very truly yours,

Peter Sacks
Deputy Chief, Government Bureau
(617) 727-2200, ext. 2064

SUMMARY OF INITIATIVE PETITION.

This proposed law would allow personal care attendants (PCAs) who provide in-home care to persons with disabilities or seniors under the state's MassHealth (Medicaid) program to engage in a form of collective bargaining with the state; create a new PCA Workforce Council, made up mostly of persons served by PCAs or such persons' representatives, to take steps to insure the availability and quality of long-term PCA services; and require the Council, every 2 years, to review the quality of and possible improvements to the system for delivering PCA services.

The proposed law would require these PCAs to be considered public employees under the state's public employee labor relations law. PCAs would form a statewide collective bargaining unit and could, if 10% of PCAs requested an election, elect an exclusive representative to bargain with the new PCA Workforce Council. The proposed law would create the Council as an independent agency within state government. The Council would act as the PCAs' employer to negotiate the terms and conditions of employment. The persons to whom PCAs provide care, called "consumers" in the proposed law, would retain the right to select, hire, schedule, train, direct, supervise, and terminate any PCA providing services to them. The proposed law would prohibit PCAs from striking or participating in other types of work slowdowns or stoppages. The PCAs' exclusive representative, could collect a fee from PCAs for the costs of representing them.

The Council would be responsible for insuring the quality of long-term in-home personal care by recruiting, training, and stabilizing the work force of PCAs. The state would be required to provide a list of all PCAs paid through MassHealth to the Council and regularly update the list. The Council would cooperate with federal, state, and local agencies to: recruit and provide training for PCAs; create a referral directory of PCAs who meet state requirements and provide regular and emergency referrals to consumers; and give preference, in recruiting, training, referral, and employment of PCAs to recipients of public assistance or other low-income persons. The Council could coordinate or contract with other agencies to provide these services and would have to allow consumer involvement in coordination efforts. The Council could issue regulations to carry out the proposed

law. Any money required for the Council's activities would be subject to appropriation by the state Legislature.

The Council would consist of a 9-member board, which could also hire employees to carry out the proposed law. The Governor, the state Auditor, and the state Attorney General would each appoint 3 board members. Of the 9 members, 5 would have to be consumers, and 2 more would have to be consumers or persons who act on their behalf in the hiring, firing and supervising of PCAs. Most members would be appointed from among persons nominated by specified organizations serving persons with disabilities or seniors. Members would usually serve 3-year terms and would not be paid but could be reimbursed for expenses incurred in performing their duties. Members would be immune from any liability resulting from implementing the proposed law, and the Council and its contractors could not be held liable for any action or failure to act by a PCA, whether or not the PCA was included on the Council's referral directory.

The Council would have to conduct a performance review every 2 years, to evaluate the health and satisfaction of consumers receiving long-term services from PCAs, explain the full cost of PCA services including the Council's administrative costs, and make recommendations to the state Legislature and Governor about how to improve the proposed law and deliver PCA services more efficiently. The first review would also make recommendations about whether the Council should take responsibility for paying PCAs and verifying their work hours.

The proposed law states that if any part of it or any rule issued under it conflicted with federal requirements for the state to obtain federal funding, that part or rule would be inoperative to the extent necessary to preserve federal funding. The proposed law would not affect any contracts in place at the time it took effect, but it would apply to all renewals, extensions or modifications after that time.

The proposed law states that if any of its parts were declared invalid, the other parts would stay in effect.