

HOUSE No. 4758

The Commonwealth of Massachusetts

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.