

HOUSE No. 5157

The Commonwealth of Massachusetts



MITT ROMNEY
GOVERNOR
KERRY HEALEY
LIEUTENANT GOVERNOR

EXECUTIVE DEPARTMENT
STATE HOUSE • BOSTON 02133
(617) 725-4000

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To the Honorable Senate and House of Representatives:

Pursuant to Article LVI of the Constitution of the Commonwealth, as amended by Article XC, Section 3 of the Amendments to the Constitution of the Commonwealth, I am returning to you for amendment House Bill No. 4758, "An Act Establishing a Personal Care Attendant Quality Home Care Workforce Council."

There are several provisions of this legislation that are troubling and I believe that we should exercise caution before enacting this legislation into law.

House Bill No. 4758 potentially jeopardizes a program that currently provides essential services to more than 13,000 disabled residents of the Commonwealth. The MassHealth Personal Care Attendant (PCA) program helps individuals with disabilities obtain the assistance they need to live independently in their community. The personal care attendants employed by individuals with disabilities perform valuable work for which they are to be commended.

The Massachusetts PCA program enjoys a national reputation as one of the first programs of its kind to recognize consumer choice by allowing individuals with disabilities to make employment decisions.

House Bill No. 4758 would interfere with this relationship between individuals with disabilities and their employees. The legislation would confer public employee status on personal care attendants for collective bargaining

purposes. It is estimated that enactment of this legislation could make an additional 15,000 to 20,000 individuals public employees subject to Chapter 150E. This would have a significant impact on MassHealth costs, as well as private companies and not-for-profit organizations.

The legislation also creates a nine person Personal Care Attendant Quality Home Care Workforce Council to recruit and train personal care attendants. This bureaucracy further interferes in the relationship between individuals with disabilities and their employees. The legislation contains no funding to support the administration of the Council or the recruitment, training, and other activities with which the Council is charged. The governor, attorney general and auditor would appoint three members each to the Council. I object to delegating appointment power to the offices of attorney general and the auditor, considering that the two constitutional officers may at some point have to audit or investigate the Council or its employees.

Unlike most collective bargaining negotiations that are governed by Chapter 150E and are negotiated by the Executive Office for Administration and Finance, the proposed legislation appoints the Council as the entity that is responsible for negotiating the terms of collective bargaining agreements. Given the potential composition of the Council, I am concerned that this change in collective bargaining policy will result in unrealistic and unsustainable collective bargaining agreements. House Bill No. 4758 contains no funding to support collective bargaining agreements that may result from the Council's negotiations.

Given the aforementioned concerns and the possible significant fiscal impact, I am proposing an amendment that will establish a commission to study personal care and the personal care workforce and make recommendations to the Legislature and the Governor.

I therefore propose the following amendment:

By striking out all after the enacting clause and inserting in place thereof the following:—

SECTION 1. For the purposes of this act, the following terms shall have the following meanings:—

“PCA quality home care workforce commission”, or “commission,” the Personal Care Attendant quality home care workforce commission established under this act.

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

“Personal care attendant,” a person, including a personal aide, who has been selected by a consumer or the consumer’s surrogate to provide personal care services to persons with disabilities or seniors.

“Surrogate,” the consumer’s legal guardian, or other person identified in a written agreement with the consumer, as responsible for hiring, directing and firing, on behalf of the consumer.

SECTION 2. There is hereby established a PCA quality home care workforce commission to study the quality of long-term, in-home, personal care and the recruitment, training, and stabilization of the work force of personal care attendants. Said commission shall consist of 9 members appointed in accordance with this section. At all times, a majority of the members of the commission shall be consumers as defined in this act. The secretary of health and human services, ex officio, and the director of workforce development, ex officio, or their designees, shall serve as members of the commission. The secretary of health and human services shall serve as chairperson of the commission. The governor shall appoint four consumers, two consumer surrogates and one member chosen at his discretion. A majority of the commission shall constitute a quorum for the transaction of any business. Members of the commission shall not receive compensation for their commission service but members shall be reimbursed for their actual expenses necessarily incurred in the performance of their duties.

SECTION 3. The commission shall submit a report to the legislature and the governor and make the report available to the public upon submission to the governor and the legislature. The report will be submitted by December 1, 2007. The study shall include, but not be limited to, the following:

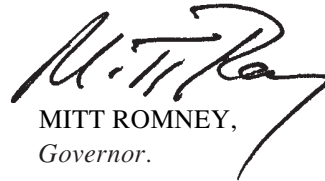
(a) an evaluation of the health, welfare, and satisfaction with services provided of the consumers receiving long-term in-home personal care services from personal care attendants;

(b) the degree to which all required services are delivered;

(c) 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;

- (d) an explanation of the full cost of personal care services;
- (e) an analysis of current efforts to identify and recruit prospective personal care attendants;
- (f) an analysis of available training opportunities for personal care attendants and consumers;
- (g) an analysis of available assistance to consumers and consumer surrogates in finding personal care attendants through an already existing referral directory of personal care attendants; and,
- (h) recommendations to the legislature and the governor for any legislation that will further ensure the well-being of consumers, and the most efficient means of delivering required services.

Respectfully submitted,



MITT ROMNEY,
Governor.