

SENATE No. 1952

The Commonwealth of Massachusetts

PRESENTED BY:

Bruce E. Tarr

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to improve long-term care staffing and dignity for caregivers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>3/6/2023</i>

SENATE No. 1952

By Mr. Tarr, a petition (accompanied by bill, Senate, No. 1952) of Bruce E. Tarr and James B. Eldridge for legislation to improve long-term care staffing and dignity for caregivers through training, tuition reimbursements, tax credits and other programs. Revenue.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act to improve long-term care staffing and dignity for caregivers.

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. Chapter 23 of the General Laws, as appearing in the 2020 Official Edition,
2 is hereby amended by inserting after section 9U the following 2 sections:-

3 Section 9V. The executive office of labor and workforce development, through the
4 Commonwealth Corporation, shall establish a grant program for nursing facility supervisory and
5 leadership training. The program shall include, but not be limited to, covering the cost of nursing
6 facility worker participation in evidence-based supervisory training for the express purpose of
7 improving staff satisfaction, retaining staff and reducing turnover.

8 Section 9W. The Commonwealth Corporation shall, subject to appropriation, establish an
9 extended care career ladder grant program, consistent with section 410 of chapter 159 of the acts
10 of 2000. The Commonwealth Corporation shall make grants available for certified nurses' aides,
11 home health aides, homemakers, personal care attendants, and other entry-level workers in long-
12 term care. The grants may include English language training, training in other languages and

13 adult basic education programs to improve quality of care and improve direct care worker access
14 to and participation in career ladder training. The length of such grants shall not exceed a period
15 of 3 years. The Commonwealth Corporation shall submit quarterly reports to the house and
16 senate committees on ways and means on said grant program including, but not limited to, the
17 number of grants awarded, the amount of each grant, a description of the career ladder programs,
18 changes in care-giving and workplace practices that have occurred and their impact on quality of
19 care and worker retention and the certificates, degrees or professional status attained by each
20 participating employee. The administrative and program-management costs for the
21 implementation of said grant program shall not exceed 4 per cent of the amount of the grant
22 program, including funding for technical assistance and evaluation.

23 SECTION 2. Chapter 111 of the General Laws, as so appearing, is hereby amended by
24 inserting after section 4O the following section:-

25 Section 4P. The department shall, subject to appropriation, establish a tuition
26 reimbursement program for certified nursing assistant training. The department shall reimburse
27 for the costs of certified nursing assistant training or competency, provided that: (i) the costs
28 have been incurred for an approved certified nursing assistant training program; (ii) the costs
29 have been actually paid by the certified nursing assistant from their own personal funds; and (iii)
30 individuals have begun employment as a certified nursing assistant in a licensed nursing facility
31 within 12 months of completing the training program, including passing the competency testing.

32 SECTION 3.. Section 6 of Chapter 62 of the General Laws, as appearing in the 2020
33 Official Edition, is hereby amended by inserting after subsection (t) the following new

34 subsection:- (u)(1) As used in this subsection, the following words shall have the following
35 meanings unless the context clearly requires otherwise:

36 "Activities of daily living", everyday functions and activities, which individuals usually
37 do without help, including, but not limited to, bathing, continence, dressing, eating, toileting and
38 transferring.

39 "Eligible family member", an individual who (1) is at least 18 years of age during a
40 taxable year, (2) requires assistance with at least one activity of daily living and (3) qualifies as a
41 dependent, spouse, parent or other relation by blood or marriage, including an in-law,
42 grandparent, grandchild, stepparent, aunt, uncle, niece or nephew of the family caregiver.

43 "Evaluation year", the year in which an evaluation of the tax credit is to be complete. The
44 evaluation year shall be every 5 years after the effective date of this subsection.

45 "Family caregiver", an individual who is a resident taxpayer for the taxable year and had
46 eligible expenditures, as described in paragraph (3) of this subsection, with respect to 1 or more
47 eligible family members during the taxable year. In the case of a joint return, the term includes
48 the individual and the individual's spouse. The family caregiver claiming the credit must have a
49 Massachusetts adjusted gross income of less than \$75,000 for an individual and \$150,000 for a
50 couple and incur uncompensated expenses directly related to the care of an eligible family
51 member who is an adult.

52 (2) A taxpayer who is a family caregiver is eligible to receive for a taxable year is equal
53 to a refundable credit against the taxes imposed by this chapter. The credit shall be equal to 100
54 per cent of the eligible expenditures incurred by the taxpayer during the taxable year, with a
55 maximum allowable credit of \$1,500.

56 (3) Expenditures eligible to be claimed for the tax credit include the costs associated
57 with: (i) the improvement or alteration to the family caregiver's primary residence to permit the
58 eligible family member to remain mobile, safe, and independent; (ii) the purchase or lease of
59 equipment that is necessary to assist an eligible family member in 2 carrying out one or more
60 activities of daily living; and (iii) other goods, services or supports that assist the family
61 caregiver in providing care to an eligible family member, such as expenditures related to hiring a
62 home care aide or personal care attendant, respite care, adult day health, transportation, legal and
63 financial services and assistive technology.

64 (4) No taxpayer shall be entitled to claim a tax credit under this subsection for the same
65 eligible expenditures claimed by another taxpayer. The total amount of tax credits claimed by
66 family caregivers shall not exceed \$1,500 for the same eligible family member. If two or more
67 family caregivers claim tax credits for the same eligible family member, the total of which
68 exceeds \$1,500, the total amount of the credit allowed shall be allocated in amounts
69 proportionate to each eligible taxpayer's share of the total amount of the eligible expenditures for
70 the eligible family member.

71 (5) A taxpayer may not claim a tax credit under this section for expenses incurred in
72 carrying out general household maintenance activities, including painting, plumbing, electrical
73 repairs or exterior maintenance, provided, however, that home modifications to accommodate
74 that person receiving care and such expenses must be directly related to assisting the family
75 caregiver in providing care to an eligible family member are allowable.

76 (6) The commissioner of the department of revenue shall promulgate rules and
77 regulations relative to the administration and enforcement of this subsection.

78 (7) The commissioner shall annually, not later than September 1, file a report with the
79 house and senate committees on ways and means, the chairs of the joint committee on revenue
80 and the chairs of the joint committee on elder affairs identifying, by community, the total amount
81 of tax credits claimed and the total number of tax filers who received the tax credit for the
82 preceding fiscal year.

83 (8) On or before May 31 of the year before the evaluation year, there shall be established
84 a committee entitled the Caregiver Tax Credit Evaluation Committee to conduct a review of the
85 tax credit. The committee shall be comprised of 7 members: 2 of whom shall be appointed by the
86 secretary of the executive office of health and human services; 2 of whom shall be appointed by
87 the secretary of the executive office of elder affairs; 1 of whom shall be appointed by the
88 secretary of the executive office for administration and finance; 1 of whom shall be appointed by
89 the president of the senate; and 1 of whom shall be appointed by the speaker of the house of
90 representatives.

91 The committee shall::

92 (1) examine the purpose for which the tax credit was established;

93 (2) determine whether the original intent of the tax credit is still appropriate;

94 (3) examine whether the tax credit is meeting its objectives;

95 (4) examine whether the purposes of the tax credit could be more efficiently and
96 effectively carried out through alternative methods; and

97 (5) calculate the costs of providing the tax credit, including the administrative cost and
98 lost revenues to the commonwealth as well as any estimated saving to the Commonwealth by

99 helping the person to avoid nursing home care. The committee shall file a report of its findings
100 with the senate and house clerks and with the governor, which shall include a recommendation as
101 to whether the tax credit should be continued, with or without changes, or be terminated. The
102 report shall be accompanied by any legislation that is needed to accomplish the
103 recommendations of the report. The report shall be filed no later than 3 December 31 of the
104 evaluation year.

105 SECTION 4. Section 9 of chapter 118E of the General Laws, as appearing in the 2018
106 Official Edition, is hereby amended by inserting in line 16, after the words "requirements of Title
107 XIX;", the following words:- provided further, that spouses shall be permitted to serve as
108 caregivers in the adult foster care and personal care attendant programs.

109 SECTION 5. Notwithstanding any general or special law to the contrary, the executive
110 office of health and human services, in consultation with the department of elder affairs and the
111 office of Medicaid, shall develop metrics, standards, and procedures that trigger emergency long-
112 term care provider rates of payment that include hazard pay wage add-ons for employees of
113 home health agencies, personal care agencies, and home care agencies that shall be implemented
114 in response to any COVID19 resurgence, statewide public health emergency, severe statewide
115 weather emergency, or other statewide emergency incident. The executive office of health and
116 human services shall also develop standard, comprehensive, timely and publicly accessible
117 processes for provider reporting and state audits of the use of emergency rate increases for wage
118 increases.

119 SECTION 6. Notwithstanding any general or special law to the contrary, the executive
120 office of health and human services, in consultation with all appropriate state agencies and all

121 relevant public stakeholders, shall develop and implement a mandatory infection control and
122 public health training program that all new and incumbent direct care employees of home health
123 agencies and home care agencies shall complete as a condition of employment. The executive
124 office shall establish contracts with labor-management training funds, community colleges, and
125 other entities capable of conducting the training program and shall ensure the training program is
126 implemented in a manner that is coordinated with the work of other state agencies and public and
127 private entities involved in health care workforce training, recruitment, and retention.

128 SECTION 7. Notwithstanding any general or special law to the contrary, the executive
129 office of health and human services shall establish an online personal protective equipment
130 exchange for the purpose of identifying, aggregating, and making available for private purchase
131 and procurement necessary personal protective equipment to be utilized by long-term care
132 workers, including, but not limited to, personal care attendants and all employees of nursing
133 facilities, resident care facilities, assisted living residences, adult day programs, home health
134 agencies, and home care agencies in the Commonwealth. The executive office shall: (i) identify
135 and offer qualified private wholesalers, manufacturers, and suppliers the opportunity to
136 participate on the exchange; (ii) ensure that the personal protective equipment offered on the
137 exchange complies with all federal and state requirements and specifications; and (iii) establish
138 and implement a 2 comprehensive process to receive, negotiate, and finalize competitive pricing
139 to be offered for the personal protective equipment placed on the exchange. 2 All sales of the
140 personal protective equipment from the exchange shall be private transactions by and between
141 the private purchaser and private seller. The executive office shall operate the exchange and
142 therefore facilitate such transactions but shall have no legal responsibility to offer payment for or
143 the delivery of the personal protective equipment. The executive office may establish processes

144 to subsidize or to discount the cost of personal protective equipment that is purchased through
145 the exchange for certain purchasers. In developing the exchange, the executive office shall
146 establish a stakeholder group, which shall be comprised of representatives from 1199SEIU, the
147 Massachusetts Senior Care Association, the Massachusetts Assisted Living Association, Leading
148 Age of Massachusetts, the Hospice Federation of Massachusetts, the Home Care Alliance of
149 Massachusetts, manufacturers and suppliers of personal protective equipment, and other
150 stakeholders that the executive office deem necessary to organize and establish the exchange.

151 SECTION 8. Notwithstanding any general or special law to the contrary, the executive
152 office of health and human services, in consultation with the department of elder affairs and the
153 office of Medicaid, shall develop and implement new standards and practices that use the worker
154 contact information included in the Massachusetts Home Care Worker Registry established in
155 Chapter 139 of the Acts of 2017 to ensure robust communication with the home care agency
156 workforce during a state public health emergency or other state emergencies. Such
157 communication shall include, but not be limited to, informing the home care agency workforce
158 about any new provider rates designated for hazard pay, the availability of and standards for
159 mandatory infection control trainings, and procedures for accessing personal protective
160 equipment from any state-run online exchange.

161 SECTION 9. The personal protective equipment exchange established in Section 3 shall
162 be implemented not later than 90 days after the effective date of this act

163 SECTION 10... Chapter 111 of the Massachusetts General Laws, as so appearing, is
164 hereby amended by adding the following new section:- For the purposes of this section the

165 following words shall, unless the context clearly requires otherwise, have the following
166 meanings:

167 "Health Care Workforce", personnel employed by or contracted to work at a skilled
168 nursing facility that influence the delivery of quality care to residents, including but not limited
169 to registered nurses, licensed practical nurses, certified nursing assistants, unlicensed assistive
170 personnel, service, maintenance, clerical, and all other health care workers.

171 "Skilled Nursing Facility" shall mean a Level 1, Level 2, or Level 3 long term care
172 facility as defined in Massachusetts standard operations of long-term care facility regulations
173 (105 CMR 150). (a) Notwithstanding any special or general law to the contrary, each skilled
174 nursing facility shall establish and develop a health care workforce care planning committee
175 within 90 days of the effective date of this act. The membership of the planning committee shall
176 include at least one nurse, one certified nurse assistant, and one representative for each labor
177 organization representing bargaining units at the facility. The membership of the planning
178 committee shall include no more than the same number of management representatives relative
179 to the number of appointed members of the health care workforce. (b) The committee shall
180 participate in at least one meeting of labor management committee training. Such training shall
181 be provided by an outside training vendor with demonstrated experience in labor management
182 training. The training vendor shall be selected by majority vote of the planning committee and
183 the facility shall pay for costs of this training. 2 (c) Each facility's health care workforce
184 planning committee shall develop, implement, monitor and regularly adjust a comprehensive
185 care team plan that accounts for each unit or other skilled nursing facility division in which direct
186 patient care is provided. The care team plan shall be developed to ensure that the assigned health
187 care workforce members are sufficient to ensure a safe working environment and to provide

188 quality care to the facility’s residents. Further, the care team plan shall account for all anticipated
189 variables that can influence a facility’s delivery of quality patient care. The care team plan shall
190 include account for (i) the numbers and skill mix of needed health care workforce members to be
191 assigned to residents, (ii) anticipated resident census, (iii) the time needed 2 to complete
192 expected care tasks, (iv) the need for specialized equipment and technology, (v) the physical
193 environment of the facility; and (vi) the necessity of ensuring a safe working environment. (d) As
194 a condition of licensure, each skilled nursing facility shall submit the care team plan developed
195 under subsection (b) and (c) to the department of public health on at least an annual basis. Such
196 submission shall include a certification from each member of the health care workforce planning
197 committee that the care team plan submitted accurately represents the consensus decisions of the
198 facility’s planning committee. (e) The department of public health shall develop rules and
199 regulations as needed to implement this section.

200 SECTION 11.: Notwithstanding any general or special law, rule or regulation to the
201 contrary, the Department of Public Health shall amend the regulations governing “Nursing
202 Services” and the standard operations of long-term care facilities (105 CMR 150.007). Such
203 amendments shall establish enhanced operational standards for Level 1, 2, and 3 facilities
204 mandating that, on and after October 1, 2022, compliance with sufficient staffing standards must
205 include the provision of a minimum number of hours of care per resident per day (PPD) of 4.0
206 hours, of which at least 3.5 hours must be care provided to the resident by a certified nursing
207 assistant.

208 SECTION 12. SECTION 1. (a) The following terms, as used in this section, shall, unless
209 the context requires otherwise, have the following meanings:-

210 “Consumer”, means a person receiving home care services from a home care worker
211 employed by a home care agency or from a personal care attendant.

212 “Home care agency”, an entity or organization, however organized and whether
213 conducted for profit or not for profit, that is owned, operated, maintained or advertised for the
214 purpose of providing home care services in residential settings for compensation, provided,
215 however, that home care agency shall not include an entity operated by either the federal
216 government or the commonwealth providing home care services; an entity that limits its business
217 exclusively to the provision of house cleaning services; an aging service access points or ASAP
218 entity as defined in section 4B of chapter 19A; a hospice program licensed under section 57D of
219 chapter 111; or an adult foster care program regulated under 130 CMR 408.

220 “Home care services”, supportive services provided to an individual in his or her
221 residence to enable that individual to remain in his or her residence safely and comfortably,
222 including, but not limited to, assistance with activities of daily living, homemaker services,
223 housekeeping, personal laundry, personal care and companionship, provided, however, that
224 home care services shall not include hospice services provided by an entity subject to licensure
225 under section 57D of chapter 111, the home health services provided by an entity subject to
226 licensure under section 51K of chapter 111, services provided by a personal care attendant in the
227 commonwealth’s personal care attendant program as defined in 130 CMR 422.000, or services
228 provided under the MassHealth adult foster care program as defined in 101 CMR 351.00.

229 “Home care worker”, means an individual employed by a home care agency who
230 provides home care services to a consumer in the consumer’s residence.

231 “Personal Care Attendant”, means an individual who provides consumer-directed
232 personal care services to a consumer in the consumer’s residence, including, but not limited to, a
233 person providing such services as defined under section 70 of chapter 118E.

234 (b) The executive office of health and human services, in consultation with the home care
235 worker and consumer abuse stakeholder advisory committee, mass health, the department of
236 elder affairs, the department of public health, and the personal care attendant workforce council,
237 shall adopt minimum standards and procedures for addressing abusive treatment and bullying of
238 Massachusetts home care workers, personal care attendants and consumers. Such standards and
239 procedures shall address physical, verbal and mental abuse either of or from individual clients or
240 consumers as well as any abusive treatment or bullying from consumer surrogates, family
241 members, other caregivers and any others present in the consumers’ household when the home
242 care worker is providing care services. Such standards and procedures shall promote appropriate
243 worker and consumer training and supports, and a safe and healthy work environment for home
244 care workers, while recognizing the privacy rights of home care clients and consumers, the role
245 of PCA consumer employers and that home care consumers/clients may have a disruptive
246 behavioral disorder underlying abuse behavior.

247 (c) There shall be a Home Care Worker and Consumer Abuse Stakeholder Advisory
248 Committee that shall meet, study, and make recommendations to the Executive Office of Health
249 and Human Services relative to standards and procedures for addressing abusive treatment and
250 bullying of home care workers, personal care attendants and consumers.

251 The advisory committee shall consist of the following 15 members: the secretary of
252 health and human services or a designee who shall serve as chair; the assistant secretary for

253 MassHealth or a designee; the secretary of elder affairs or a designee; the commissioner of
254 public health or a designee; the chairs of the joint committee on elder affairs or their designees;
255 the chairs of the joint committee on children, families, and disabilities, and 9 persons to be
256 appointed by the governor, 1 of whom shall be a personal care attendant, 1 of whom shall be a
257 home care agency direct care worker, 1 of whom shall be a consumer of pca services who shall
258 be a member of the pca workforce council, 1 of whom shall be a consumer of home care agency
259 services, 1 of whom shall be a representative of the Massachusetts statewide independent living
260 council, 1 of whom shall be a representative of the disability Law center, 1 of whom shall be a
261 representative of the Massachusetts home care, 1 of whom shall be a representative of the
262 Massachusetts home care aide council and 1 of whom shall be a representative of the
263 Massachusetts division of 1199SEIU-UHE. The members of the advisory committee shall serve
264 without compensation.

265 The advisory committee shall meet at least monthly in the first six months after passage
266 of this Act to develop initial findings and recommendations. The advisory committee shall
267 submit a report containing initial findings and recommendations, including drafts of proposed
268 legislation or regulatory changes to carry out its recommendations, by filing the same with the
269 clerks of the senate and house of representatives, the joint committee on elder affairs and the
270 joint committee on public health not later than six months following the passage of this Act. The
271 advisory committee shall continue to meet quarterly thereafter and until the advisory committee
272 votes to dissolve itself.

273 (d) The home care worker and consumer abuse stakeholder advisory committee shall
274 study and make findings and recommendations relative to the development and implementation
275 of minimum standards and procedures for addressing abusive treatment and bullying of

276 Massachusetts home care workers, personal care attendants and consumers. The advisory
277 committee’s study, findings and recommendations shall include, but not be limited to, each of
278 the following matters:

279 1) Reporting and debriefing: best practices for standards and procedures for home care
280 workers and their consumers/clients experiencing abusive treatment, bullying or neglect to report
281 such abuse to their employers and/or appropriate state entities, including the Personal Care
282 Attendant Workforce Council and/or MassHealth for PCAs, without retaliation and while
283 retaining the right to report any criminal activity to law enforcement. Such standards shall
284 include, but not be limited to, best practices for a debriefing process for affected workers and
285 consumers following violent acts.

286 2) Tracking and record retention: Best practices for standards and procedures for the
287 Executive Office of Health and Human Services to track and monitor reports of both worker
288 abuse and reports of consumer abuse or neglect.

289 3) Informing workers: Best practices for standards and procedures that would require
290 employers of home care workers or other appropriate state entities, including the Personal Care
291 Attendant Workforce Council and/or MassHealth for PCAs, to regularly inform home care
292 workers of patterns of consumer/client worker abuse or bullying that indicates a potentially
293 unsafe working environment. Such standards and procedures shall respect home care
294 client/consumer privacy while prioritizing worker safety and while ensuring continuity of care.

295 4) Training and employer policies: Best practices for standards and procedures for the
296 Executive Office of Health and Human Services, in consultation with home care employers and
297 other stakeholders, to develop and implement home care worker and consumer orientations and

298 other trainings on worker abuse and bullying, escalation cycles and effective de-escalation
299 techniques, culturally competent and peer-to-peer trainings and strategies to prevent physical
300 harm with hands-on practice or role play. Best practices for home care employers to implement
301 additional internal plans and procedures to reduce workplace violence and abuse, offer resources
302 to employees for coping with the effects of violence and develop labor-management workplace
303 safety committees.

304 SECTION 13. Section 1 of chapter 151B of the General Laws is hereby amended in line
305 21 by inserting after the word “thereof” the following words:-

306 and shall also include an employer of a personal care attendant as defined under section
307 70 of chapter 118e of the General Laws including individual consumers of a personal care
308 attendant

309 SECTION 14. Section 3 of this act shall apply to taxable years beginning on or after
310 January 1 next following the date of enactment.