

HOUSE No. 3421

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to improve the personal care attendant program..

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. Section 9 of Chapter 118E of the General Laws, as appearing in the 2006
2 official edition, is hereby amended by inserting in line 34 after the word “options.” the
3 following:

4 In conducting an assessment of community-based service options, determination of
5 eligibility and approval for services shall include an assessment of the estimated costs and
6 benefits of providing specific community-based services and shall ensure the maximum possible
7 consumer control over personal care and homecare services. Community-based service options
8 that provide consumer direction shall be fully considered prior to providing approval of private
9 home care agency services. Eligibility for services must be based on actual need and cost and
10 should not reflect biases about age, disability or households.

11 SECTION 2. Section 32(c) of Chapter 118G of the General Laws, as appearing in the
12 2006 official edition, is hereby amended by inserting at the end the following:

13 The council, in cooperation with the Executive Office of Health and Human Services, the
14 Department of Elder Affairs and the Division of Medical Assistance, shall issue regulations to
15 establish and implement a paid PCA surrogate program. Subject to appropriation, these
16 regulations shall create a system to reimburse for PCA surrogate services provided by any
17 employee or contractor of the member's personal care agency not to include the member's legal
18 guardian, family member or fiscal intermediary. The paid surrogate program shall reimburse
19 these surrogates for performing certain PCA management tasks that the member is unable to
20 perform including but not limited to signing and submitting activity forms, hiring, firing,
21 supervising and otherwise directing the PCA as specified in the member's service agreement.
22 Nothing in this section or regulations promulgated under this section shall be construed to impact
23 the unpaid PCA surrogate program currently described in 130 CMR 422.402 and 130 CMR
24 422.422(B).

25 SECTION 3. Section 28 of Chapter 118G of the General Laws, as appearing in the 2006
26 official edition, is hereby amended by inserting in line 12 after the word "program." the
27 following:

28 Whenever the state has established or implements a consumer-directed home care
29 program, including a "cash and counseling" or any similar program, each worker employed by a
30 consumer and providing "personal care attendant services" (as defined at 130 CMR 422.402)
31 shall be considered a personal care attendant and given the rights of collective bargaining as
32 employees of the workforce council.

33 SECTION 4. Section 172C of Chapter 6 of the General Laws, as appearing in the 2006
34 official edition, is hereby deleted in its entirety, and replaced with the following new section:

Chapter 6: Section 172C. Dissemination of criminal offender record information to agencies, elderly persons, or individuals with a disability employing or referring individuals to provide services to said elderly or individuals with a disability.

Section 172C. For purposes of this section, the following words shall, unless the context requires otherwise, have the following meanings:--

“Elderly person”, an individual who is sixty years of age or over.

“Individual with a disability”, an individual who, because of his or her disability, needs physical assistance with activities of daily living, such as taking medications, bathing or grooming, dressing, walking, eating, toileting, and transferring.

“Surrogate or agent”, a person or agency designated by an elderly person or an individual with a disability to act in his or her behalf with regards to home or community based services.

Notwithstanding the provisions of Section 172, criminal offender record information may be made available, upon application to the Criminal History Systems Board, to any of the following agencies, elderly persons, or individuals with a disability who employ, accept as a volunteer or refer for employment to a client any individual who will provide care, treatment, education, training, transportation, delivery of meals, instruction, counseling, supervision, recreation or other services in a home or in a community based setting for any elderly person or individual with a disability or who will have any direct, indirect, or unmonitored contact with such elderly person or individual with a disability or access to such persons' files:

(1) any agency which provides homemaker, home health aide, companion or other community based services to elderly persons or individuals with a disability in home or

community based settings, including, but not limited to home health agencies certified under Title XVIII of the Social Security Act;

(2) a home care corporation established pursuant to the provisions of chapter nineteen A;

(3) a municipality; or

(4) any agency, organization, elderly person or individual with a disability, that, employs or refers personal care attendants; or

(5) any other entity receiving federal, state or local funds.

Such agency, elderly person or individual with a disability, may obtain criminal offender record information, as made available by both the state and federal government, including the criminal offender record information collected under section 168 of this chapter, and information contained in the sex offender registry created by section 178D of this chapter, concerning any such individual prior to employing such individual, accepting such individual as a volunteer or referring such individual for employment to an elderly or disabled persons. If any elderly person or individual with a disability employing a personal care attendant is unable to initiate the criminal background check called for under this section, said background check may be initiated by a surrogate or agent on behalf of the elderly person or individual with a disability.

Any agency, elderly person or individual with a disability who is the recipient of services from any individual who provides care, treatment, education, training, transportation, delivery of meals, instruction, counseling, supervision, recreation or other services in a home, shall be given the option to commence said services while a criminal background check is being conducted. An

77 agency, elderly person or individual with a disability may employ an individual for a position
78 that involves the provision of direct personal care or treatment on a conditional basis prior to
79 receiving the results of such individual's criminal offender check as provided for by this section.

80 No agency, elderly person or individual with a disability shall be liable for civil damages to any
81 individual so conditionally employed and subsequently discharged by reason of information
82 received as a result of a criminal offender record check completed pursuant to this section.

83 Any agency, elderly person, or individual with a disability obtaining information under
84 this section shall not disseminate such information for any purpose other than to further the
85 protection of the elderly person or individual with a disability, provided that the results of a
86 criminal background check may be shared by such agencies with the elderly person or individual
87 with a disability who is the recipient of services as defined in this section, where the elderly
88 person or individual with a disability is the employer of said person who was the subject of a
89 criminal history background check.

90 Notwithstanding the provisions of this section, an elderly person or individual with a
91 disability who employs a personal care attendant shall be informed of his or her option to have a
92 criminal background check performed on any individual who is otherwise qualified and is in the
93 final stages of consideration to become his or her personal care attendant. Said elderly person or
94 individual with a disability shall be required to consent in writing to the provision of a criminal
95 background check as provided for under this section, and shall be permitted to hire any
96 individual of his or her choice.

97 The criminal history systems board shall waive the fee assessable pursuant to section
98 172A for criminal offender record information made available pursuant to this section.

99 Notwithstanding the provisions of any general or special law to the contrary, the division
100 of medical assistance shall, subject to appropriation, reimburse any agency, elderly person or
101 individual with a disability obtaining information under this section for the portion of the costs
102 associated with obtaining criminal offender record information on employees or potential
103 employees providing services to individuals on MassHealth pursuant to this section.

104 A violation of this section shall constitute a violation of section 2 of chapter 93A.

105 The Criminal History Systems Board shall promulgate any regulations necessary to
106 implement the provisions of this section.