

SENATE No. 2330

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

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 2008
2 official edition, is hereby amended by adding in the second sentence of the second paragraph,
3 after the words “requirements for Title XIX” the following new language:-

4 Any program of home and community based services funded pursuant to the provisions
5 of this chapter or pursuant to the provisions chapter one hundred and eighteen G, in which family
6 members are permitted to serve as paid caregivers, shall include spouses within the definition of
7 family member.

8 SECTION 2. Section 9 of Chapter 118E of the General Laws, as appearing in the 2008
9 official edition, is hereby amended by inserting in line 34 after the word “options.” the
10 following:

11 In conducting an assessment of community-based service options, determination of
12 eligibility and approval for services shall include an offer of the estimated costs and benefits of
13 providing specific community-based services and shall ensure the maximum possible consumer

14 control over personal care and homecare services. Community-based service options that
15 provide consumer direction shall be fully considered prior to providing approval of private home
16 care agency services. Eligibility for services must be based on actual need and cost and should
17 not reflect biases about age, disability or households.

18 SECTION 3. Section 32(c) of Chapter 118G of the General Laws, as appearing in the
19 2008 official edition, is hereby amended by inserting at the end the following:-

20 The council, in cooperation with the Executive Office of Health and Human Services, the
21 Department of Elder Affairs and the Division of Medical Assistance, shall issue regulations to
22 establish and implement a paid PCA surrogate program. Subject to appropriation, these
23 regulations shall create a system to reimburse for PCA surrogate services provided by any
24 employee or contractor of the member's personal care agency not to include the member's legal
25 guardian, family member or fiscal intermediary. The paid surrogate program shall reimburse
26 these surrogates for performing certain PCA management tasks that the member is unable to
27 perform including but not limited to signing and submitting activity forms, hiring, firing,
28 supervising and otherwise directing the PCA as specified in the member's service agreement.
29 Nothing in this section or regulations promulgated under this section shall be construed to impact
30 the unpaid PCA surrogate program currently described in 130 CMR 422.402 and 130 CMR
31 422.422(B).

32 SECTION 4. Section 28 of Chapter 118G of the General Laws, as appearing in the 2008
33 official edition, is hereby amended by inserting in line 12 after the word "program." the
34 following:-

35 Whenever the state has established or implements a consumer-directed home care
36 program, each worker employed by a consumer and providing “personal care attendant services,”
37 as defined at 130 CMR 422.402 shall be considered a personal care attendant and given the
38 rights of collective bargaining as employees of the workforce council.

39 Family members eligible for employment as paid consumer-directed caregivers, and
40 individuals employed as consumer-directed caregivers for less than 15 hours per week, shall be
41 exempt from the provisions of this section.

42 SECTION 5. Section 172C of Chapter 6 of the General Laws, as appearing in the 2008
43 official edition, is hereby deleted in its entirety, and replaced with the following new section:

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

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

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

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

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

55 Notwithstanding the provisions of Section 172 of Chapter 6, criminal offender record
56 information shall be made available, upon application to the Criminal History Systems Board, to
57 any of the following:- agencies, elderly persons, or individuals with a disability who employ or
58 accept as a volunteer any individual who will provide care, treatment, education, training,
59 transportation, delivery of meals, instruction, counseling, supervision, recreation or other
60 services in a home or in a community based setting for any elderly person or individual with a
61 disability or who will have any direct, indirect, or unmonitored contact with such elderly person
62 or individual with a disability or access to such person's files.

63 Any other entity receiving federal, state or local funds, a home care corporation
64 established pursuant to the provisions of chapter 19A, any agency which provides homemaker,
65 home health aide, companion or other community-based services to elderly persons or
66 individuals with a disability in a home or community-based settings, including, but not limited to
67 home health agencies certified under Title XVIII of the Social Security Act.

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

77 Any agency, elderly person or individual with a disability who is the recipient of services
78 from any individual who provides care, treatment, education, training, transportation, delivery of
79 meals, instruction, counseling, supervision, recreation or other services in a home, shall be given
80 the option to commence said services while a criminal background check is being conducted. An
81 agency, elderly person or individual with a disability may employ an individual for a position
82 that involves the provision of direct personal care or treatment on a conditional basis prior to
83 receiving the results of such individual's criminal offender check as provided for by this section.
84 No agency, elderly person or individual with a disability shall be liable for civil damages to any
85 individual so conditionally employed and subsequently discharged by reason of information
86 received as a result of a criminal offender record check completed pursuant to this section.

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

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

99 background check as provided for under this section, and shall be permitted to hire any
100 individual of his or her choice.

101 The criminal history systems board shall waive the fee assessable pursuant to section
102 172A for criminal offender record information made available pursuant to this section.

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

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

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

111 SECTION 6. Notwithstanding the provisions of 130 CMR 422.000 or any other
112 regulation, general or special law to the contrary, the division of medical assistance shall provide
113 supportive living services, including personal care attendant services, to MassHealth members
114 with brain injuries in the "Transitional Living Program", so-called, residing in a community-
115 based residential program funded by the federal Housing and Urban Development section 811
116 grant, so-called;

117 provided further, that services shall be provided without regard to the ability of
118 individuals to move to more independent living settings and shall continue to be provided for the
119 duration of residency within such community-based residential programs;

120 SECTION 6. Section 12 of Chapter 118E as so appearing, is hereby amended in the first
121 paragraph by inserting at the end thereof the following new sentence:-

122 Notwithstanding the provisions of any general or special law to the contrary, the division
123 shall develop or amend any standards and regulations applicable to the personal care attendant
124 program to include as eligible members those individuals who are otherwise eligible for said
125 program, but who require supervision and cueing in order to perform two or more activities of
126 daily living.