

SENATE No. 59

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to assist families care for elders..

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 28 of Chapter 118E of the Massachusetts General Laws shall be
2 amended by adding at the end of said section the following:-

3 Payment for services pursuant to a contract between family members to provide personal
4 care or managerial services shall be considered a legally and reasonably enforceable fair market
5 value transaction if the contract meets the following criteria:

6 (1) The agreement indicates the type, frequency and duration of the services being
7 provided to the applicant or member and the amount of consideration being paid to the caregiver;

8 (2) The personal care services must enable the applicant or member to avoid or delay
9 placement in a nursing facility or facilitate the return of an applicant or member from a nursing
10 home to the community, as determined by a licensed medical professional or a licensed social
11 worker;

12 (3) Payment for services is commensurate with a reasonable wage scale, based on the
13 fair market value of the actual job performed and the qualifications of the caregiver;

14 (4) A lump sum payment by the applicant or member for services to be provided in the
15 future, which is calculated based upon the applicant's or member's life expectancy, shall be
16 considered an ascertainable fair market value transaction, provided that the contract requires the
17 return of any prepaid monies to the applicant or member or his estate if the caregiver becomes
18 unable to fulfill his/her duties under the contract or if the applicant or member dies before his/her
19 calculated life expectancy.

20 The department shall promulgate regulations governing the implementation of this
21 section.

22 “Applicant” or “member” shall include the legal representative of the applicant or
23 member.

24 “Managerial services” shall include the acquisition, coordination and monitoring of
25 medical, financial, accounting, home maintenance and legal services to benefit the applicant or
26 member.