

SENATE No. 83

The Commonwealth of Massachusetts

PRESENTED BY:

Susan C. Tucker, (BY REQUEST)

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 relative to home care accountability..

PETITION OF:

NAME:

DISTRICT/ADDRESS:

SENATE No. 83

[Pin Slip]

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to home care accountability..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Preamble

2 This proposed Bill is a companion piece of legislation for Chapter 268 of the
3 Acts of 2006, {Chapter 286 (2006)}, in which established the Personal Care Attendant
4 Quality Home Care Workforce Council under the auspices of the Executive Office of Health and
5 Human Services, through providing amendments to Chapter 118G. This legislation adds
6 amendments to the Personal Care Attendant Quality Home Care Workforce Council Law,
7 Chapter 268 (2006) and adds three sections to Chapter 118G.

8 2. The Home Care Accountability and Supplemental Act (H-CASA) gives more
9 guidance to the Personal Care Attendant Home Care Workforce Council as to how to provide
10 administrative oversight for the Massachusetts personal care attendant program. It also gives the
11 state mechanisms to supervise the activities of the council. This legislation provides mandates
12 for the adoption of ethical codes, disciplinary procedures, and training opportunities for all
13 involved in the personal care attendant program, regardless of one’s position. The Bill also

14 introduces ethical and legal procedures on how to avoid and respond to any corruption involving
15 the council throughout several sections. A new anti-discrimination clause is offered here, as well
16 as new directives for public negotiation. It also covers privacy issues and gives guidance as to
17 how the council shall protect personal information. Since some consumers are more capable
18 than others in management of the their own program, a redefinition is offered to delineate who
19 can be held legally responsible as far as people with disabilities and who are elderly. All this has
20 been done to raise quality control and program efficiency.

21 3. In this act, the amendments proposed for Chapter 268 (2006) is spread out
22 through this document. Section 1 of Chapter 268 is covered by sections two through seven of
23 this act while the amendments proposed for Sections 2 through 3 is found in section eight of this
24 act. Beginning with Sections 5 through 8, this act proposes 3 additional sections to chapter
25 118G. Section 1, of this document offers the findings upon, which this Bill is based. Section 2
26 defines terms. Section 3 provides amendments to sections 29-32 of Chapter 118G while
27 specifying the basic regulations for this act. Section 33 of Chapter 118G found in Section 4 in
28 this act, discusses administrative audits, while section five covers ethics. Section 6 states rules
29 for screening and training. Section seven discusses disciplinary procedures. Section 8 produces
30 section 39 reclassifying sections 34 and 35 of Chapter 118G and attaches all amendments to
31 Chapter 268 (2006) and mandates them applicable to Chapter 118G and explains other
32 requirements for this act.

33 Section 1. Findings

34 1. The Personal Care Attendant Quality Home Care Workforce Council Law,

35 Chapter 268 (2006) was progress toward improving the personal care attendant program
36 in Massachusetts for people with disabilities and seniors who utilize that service.

37 2. The establishment of the workforce council addressed the issue of personal
38 care attendant's right, through union representation, to bargain for better wages and benefits.

39 3. At present, there is no delineation in the law between consumers who can
40 administer their own program and ones who rely on surrogacy.

41 4. Personal care attendants ought to be placed on public directories based on
42 temperament and observable skills, or willingness to learn, not on income level.

43 5. No law governing the personal care attendant program should discriminate
44 among socioeconomic groups.

45 6. Everyone obtaining personal care attendant services who are responsible for
46 their own home programs, working as surrogates, attendants, state administrators, or legislators,
47 or investigators, ought to be held accountable to each other and to the larger society

48 7. There are no disciplinary procedures or ethical guidelines within the system to
49 respond to, or deter inappropriate behavior.

50 There are few mechanisms currently to oversee the activities of the Personal
51 Care Attendant Quality Home Care Workforce Council.

52 9. More continuing education and training ought to be made available to all
53 involved, whether it be the recipients of services, personal care attendants, contractors, or
54 surrogates, in order to maximize quality of care.

55 10. There are few security measures in the state to protect consumers of this
56 program.

57 Section 2. Definitions

58 Amendments to Section 1 of Chapter 268 (2006) and Section 28-33 of Chapter
59 118G

60

61 1. “Consumer” shall be redefined from Chapter 268 of the Acts of 2006 as a
62 person under the age of 18 or with mental defect, requiring a legal surrogate to manage the daily
63 personal care attendant program.

64 2. “Administrative consumer“ shall be defined as a person for whom a
65 personal care attendant provides personal care services and such a recipient can oversee
66 his or her own personal care program, as provided by section 31.a found in Chapter 268 (2006).

67 3. “Surrogate” is someone who has the legal responsibility and authority to
68 substitute his or her judgment on the behalf of a consumer, for the purpose of administering the
69 consumer’s personal care attendant program.

70 4. “Personal care attendant” or “attendant” or “attendants” is any person(s) who
71 assists people with disabilities, or seniors or both, complete the tasks of daily living in a private
72 residence.

73 5. “Personal Care Attendant Quality Home Care Workforce Council” or
74 “workforce council” or “council” is the sub-agency, under the Executive Office of Health and
75 Human Services, designated in Chapter 268 (2006) to oversee the statewide personal care
76 attendant program in Massachusetts.

77 6. “Employee of the council” or “council employee” is anyone who is paid to
78 conduct council business.

79 7. “Contractor” or “provider” or “service provider” or “human service agency” is
80 any individual organization or other entity, which offers auxiliary assistance on behalf of the
81 council, has contracts with the council, or otherwise manages community direct support services
82 to people with disabilities or seniors in Massachusetts.

83 8. “Complaint” means the filing of a written grievance with the workforce
84 council against a personal care attendant, administrative consumer, a surrogate, or a contractor.

85 9. “Complaint process” is the series of steps taken to resolve a grievance in the
86 personal care attendant program.

87 10. “Complaint procedures” are the rules and regulations, which govern the
88 complaint process set by the workforce council.

89 11. “Disciplinary committee” is the technical advisory committee under the
90 workforce council that initially investigates, hears, and passes judgment on a complaint.

91 12. “Administrative appeal” or “review” is a hearing in which an appeal is heard
92 regarding the decision made by the disciplinary committee.

93 13. “Appellate panel” is a group of individuals comprising administrative

94 consumers, surrogates, and other individuals in the community, independent of the
95 workforce council, appointed for a term of no more than two years, by the appointing officials
96 stated in this act equaling a total of seven members. The appellate panel will standby to hear
97 disciplinary cases a second time and pass judgment on it and possibly overturns the decision by
98 the disciplinary committee.

99 14. “Administrative audit” is an evaluation of the workforce council, to
100 ensure quality control and integrity of the sub-agency.

101 15. “Audit committee“ is a seven-member group appointed by the state auditor
102 for the purpose of carrying out an administrative audit on the home care workforce council.

103 16. “Ethics committee” is an advisory board created by the workforce council, which
104 with its approval, shall design, implement and revise standards of conduct applied to each
105 individual involved in the personal care attendant program, council members, employees and
106 contractors.

107 17. “Code of conduct” or “codes of conduct” or “ethics code” or “ethical code”
108 or “code” refers to the document, which is written by the workforce council’s ethics
109 committee, and approved by the nine member board of council, prescribing standards or
110 guidelines for acceptable behavior and best practices for each individual involved in the personal
111 care attendant program. The disciplinary committee or the appellate panel will adjudicate a
112 complaint shall use this document.

113 18. “Ethical standards” or “standards” or “ethical guidelines” or “guidelines” are
114 the rules, which governs human behavior in the state personal care attendant program and all
115 workforce council activities, prescribed in the ethics code.

116 19. “Ombudsman” is a person who works with consumers, administrative
117 consumers, family members, surrogates attendants, union representatives and advocates in the
118 community, employed by the council, to mediate any conflicts between individual
119 administrative consumers, consumers, personal care attendants, a family, contractors, or
120 surrogates and shall determine if a complaint should be referred for a council disciplinary
121 investigation and hearing.

122 20. “Affiliated member” is any individual who works on a disability related
123 committee, board, or organization, serving in administrative capacity, and that person interfaces
124 with the state, or federal government entities, and the organizational body to which a person
125 belongs, receives state or federal funds or both.

126 21. “Non-affiliated member” is a person that does not serve in administrative
127 capacity, on behalf of a disability related committee, board, or organization that receives
128 state and/or federal funds, and the person does not interface with state or federal governmental
129 entities

130 22. “Personal care attendant directory” or “directory” is a statewide list of
131 personal care attendants in order to provide better access to personal care attendants for
132 administrative consumers and surrogates, as provided by the Personal Care Attendant Quality
133 Home Care Workforce Council Law, Chapter 268 of the Acts of 2006.

134 23. “Continuing education and screening committee” is an advisory board of the
135 council charged with the responsibility of developing, implementing and maintaining a statewide
136 personal care curriculum and overseeing screening clinics to qualify individuals for the personal
137 care attendant directory.

138 24. “Screening clinic” is an event sponsored by the workforce council, which
139 allows administrative consumers and surrogates to interview prospective individuals who wish to
140 be on the personal care attendant directory.

141 25. “Counsel member” or “members” or “member” refers to anyone who serves
142 on the workforce council or its advisory committees for a specified period of time.

143 26. “Appointing officials” or “officials” are individuals of authority in state
144 government who appoint people in the community who are representative of the population with
145 disabilities and elderly, as members of the main board and certain subcommittees of the Personal
146 Care Attendant Quality Home Care Workforce Council.

147 27. “Nominating agencies” are governmental or related organizations, which are
148 charged with the responsibility of selecting potential members to the council and submitting the
149 names to the appointing officials.

150 “Personal relationships” or “personal relationship” is any social, business or
151 other type of interaction with two or more individual(s).

152 “Conflict of interest” is any personal relationship or interest outside the

153 confines of the council, which may unduly influence a member’s judgment regarding any
154 or all issues before the council or its advisory committees or the relationship confuses social or
155 professional boundaries.

156 “Corruption” is any conflict of interest, fraud, deception, or other unlawful
157 act committed by members of the council, public officials, or other persons or entities,
158 which adversely interferes with the functioning of the council or the state administration of the
159 personal care attendant program.

160 “Appointment cycle” is a single instance of an official assigning an
161 individual for a specified term on the council or an associated advisory committee.

162 “Independent disciplinary committee” is a board of seven individuals from
163 the community representing the population needing services, which take the place of the
164 regular disciplinary committee because of conflict of interest.

165 “Alternate members” or “alternative replacements” are the individuals
166 representing the population being served, who can act as substitutes for appointed
167 members on the general board, disciplinary committees, or appellate panels.

168 “Compelling evidence” is any verifiable statement, material, or other types of
169 direct information, which can be cooperated during disciplinary proceedings.

170 35. ”Personal care attendant union” is an organization of personal care

171 attendants in Massachusetts, which exists to collectively bargain with the council for
172 higher wages and other benefits.

173 36. “Union member ” or “union members” are people who have joined the
174 personal care union in order to bargain for increased wages and benefits.

175 38. “Union representative” is any member of the personal care attendant union
176 or other staff member of the Service Employees International Union, Local 1199.

177 39. “Union operations” refers to the practices associated with the administration
178 of the personal care attendant union under the auspices of the Service Employees
179 International Union, Local 1199, and includes such functions as union sponsored events,
180 mailings or written communication of any type, phone calls, word of mouth communication,
181 fundraising or due collection, staff meetings, board meetings, or any negotiations with the
182 workforce council.

183 40. “Union abuse” or “union harassment“ or “harassment” is any act committed
184 by any leader, representative, or member of the personal care attendant union, designed to
185 coerce, pressure, deceive or intimidate members of the public to join their union, collect dues,
186 support the union, or use manipulative tactics with the council during contract negotiations, or
187 using personal information of attendants, administrative consumers, consumers, or surrogates,
188 either with or without assistance from other people or entities, to gain some advantage over the
189 system or the public.

190 41. “Contact” or “approach” is when a union representative or member attempts

191 to interact with another member or potential member for recruiting or other business
192 purposes, or other entities providing the union with confidential information unlawfully.

193 42. “Responsibility” is the act of following laws and ethical guidelines,
194 regarding the personal care attendant program in Massachusetts and demonstrating a
195 good faith effort to improve the quality of care, or taking on an obligation to complete certain
196 tasks.

197 43. “Theft” is one or more instance(s) of stealing of money or personal property
198 equaling any monetary value.

199 44. “Removal” is a temporary suspension from workforce council duties for
200 members of the main board, subcommittee members, or employees of the workforce council,
201 who are under disciplinary investigation.

202 45. “Termination” is permanent suspension from workforce council duties for
203 members of the main board, subcommittees, or employees who receive a finding of a violation of
204 council rules and ethical guidelines, from the disciplinary committee and is not over turned over
205 on appeal, or is the procedure used by administrative consumers or surrogates to relieve someone
206 of their personal care attendant responsibilities.

207 46. “Abandonment” is a criminal act of neglect committed by a
208 personal care attendant, when he or she fails to report for duty without notifying the
209 administrative consumer, or surrogate in a timely maner with a reasonable explanation, or not
210 returning to work without notice, or leaving work spontaneously without completing the shift.

211 47. “Physical abuse” is any criminal act, which is purposeful in nature, meant to

212 cause bodily harm to someone else through assault and battery, food poisoning or
213 poisoning with other substances, such as drugs, alcohol, or other items.

214 48. “Psychological abuse” is any criminal event or aggressive language meant to
215 adversely affect a persons mental state through making the victim have the perception of
216 being fearful, unsafe physically or psychologically or both, or depressed or unworthy, or some
217 adverse behavioral change occurs secondary to the perpetrator’s actions.

218 49. “Threat” is a form of psychological abuse, in which a statement is made,
219 through any form of communication, describing a future event of danger to a victim, and
220 there is likelihood that the one making such a comment has the ability to carry out the said act.

221 50. “Sexual abuse” is a criminal act of touching to sexual parts of the body, the
222 touching is inappropriate to the situation, is not consented to and is not apart of routine
223 personal care, or is an instance of non-consensual intercourse.

224 51. “Neglect” or “negligence” is an criminal act of omission, by not giving care
225 or support, or failure to follow through on one’s obligations, and, in all cases causes
226 actual or potential harm to another person, either physically or psychologically or both.

227 52. “Direct abuse” or “primary abuse” is any criminal abusive or neglectful act
228 defined in this section, in which, the abusive behavior is committed onto a victim by the
229 perpetrator.

230 53. “Indirect abuse” or “secondary abuse” is any criminal abusive or neglectful

231 act defined in this section, in which, the person perpetrating the abuse does so through
232 other people, or places the victim in situations, where it is foreseeable that the victim may be
233 harmed.

234 54. “Sexual harassment” is any criminal abusive act, through sexually explicit
235 language or inappropriate touching, or other innuendo, which produces uncomfortable situations
236 or hostile work or living environment for the intended victim.

237 55. “Criminal act” is any inappropriate behavior, which warrants arrest, criminal
238 court proceedings, such as indictments, pretrial hearings and jury or bench trials in a criminal
239 court of law, with imprisonment or financial fines, or both being possible.

240 56. “Family member of people with disabilities,” or “family members of those
241 with disabilities,” is any relative of a person with physical or mental impairment, or both.

242 57. “Sanctions” or “penalties” are consequences, which are decided by the
243 council disciplinary committee or a court when a person has been found in violation of the
244 council code of conduct or the law or both.

245 58. “Independent living centers” are agencies, which assists people with
246 disabilities live to independently in the community.

247 59. “Fiscal intermediaries” are agencies, which provide assistance with the
248 personal care attendant payroll responsibilities.

249 60. “Personal information” is data, which identifies an individual or their
250 characteristics, such as identification numbers, contact information, work hours, direct
251 experience, or any other information, which are features of an individual.

252 61. “People with disabilities“ or “elderly” are individuals with physical or
253 mental impairment, or both, which limits daily functioning in some manner, requiring
254 personal care attendants or the person with such conditions and care requirements are at the age
255 of 65 years or older.

256 “Confidentiality” or “confidential” is the act of keeping information private
257 and not allowing any disclosures to other people.

258 63. “Entity“ or “entities” refers to one or more organizations, which are
259 involved in the personal care attendant program in Massachusetts.

260 64. “Fraud” is any instance of financial corruption by an organization including
261 manipulation, efforts to conceal earnings, over charging union member dues or inflating others
262 income, or any other type of financial misconduct intended to unlawfully profit from such acts.

263 65. “Substance abuse” is the act of taking any type of chemical into the body,
264 through various means, which leads to physical or mental impairment.

265 66. “Recovery” is when somebody remains substance abuse free for at least two
266 years and who is under the continuing care of a mental health professional or support group.

267 67. “Illegal alien” or “illegal aliens” are people who come from another country
268 and crossed United States borders without going through the federal legal process and does not
269 carry any official documentation to allow him or her to remain in the United States.

270 68. “Counsel director” or “director” is the leader of the Personal Care Attendant
271 Quality Home Care Workforce Council.

272 Section 3: Basic Regulations

273 1. Section 29.b – 27-37 The nine member board of the workforce council shall be
274 chosen by the Governor, the Secretary of the Department of Elder Affairs, and the Director of the
275 Massachusetts Office on Disability. This shall be done from a pool of applicants who have
276 applied through various nominating agencies, which will choose possible candidates to be
277 selected for service on the council by the designated public officials. A recommendation form
278 shall be filled out by the nominating agency in support of those individuals, should accompany
279 an application. The council and the Executive Office of Health and Human Services (EOHHS)
280 shall create the form. The application and recommendation form shall be turned over to the
281 official no later than 90 days before the selection is to be made. These officials shall appoint
282 individuals to two and three-year terms.

283 2. c. The Governor shall choose three individuals – one person from the
284 Governor’s Council on Disability, and one affiliated member and one non-affiliated member
285 from the Disability Policy Consortium. The Director of the Office on Disability shall appoint
286 one non-affiliated member who is a surrogate, family member, or administrative consumer from
287 the Massachusetts Home Care Association, and two affiliated from the Statewide Independent
288 Living Council, which will nominate people from independent living centers across the
289 commonwealth. The Secretary of the Department of Elder Affairs shall choose two from the
290 Massachusetts Council of Aging, one of which has to be a non-affiliated member in the
291 community and one affiliated member from the council or another government sponsored agency

292 in Massachusetts dealing with seniors, and one person from the Developmental Disabilities
293 Council, which could be either an affiliated or non-affiliated member, perhaps a surrogate and/or
294 a family member of someone needing personal care attendants.

295 3. d. The person from the Governor’s Council on Disability shall serve a term of
296 two years while one person from the Disability Policy Consortium shall serve two years and the
297 other person in the same organization shall serve three years. The Massachusetts Home Care
298 Association shall nominate one individual to a term of three years. The nominees from the
299 Statewide Independent Living Council shall nominate one person to serve two years while one
300 individual shall serve three years. The Massachusetts Council on Aging shall nominate one
301 person to serve two years while the other individual serves three years. The Developmental
302 Disabilities Council shall nominate one person for a three-year term. The council and the
303 agencies listed shall make the public aware of council vacancies six months in advance through
304 the statewide press and disability publications and shall include information on how to apply for
305 such a post. If a vacancy appears before a term is up, the agency or organization, which
306 nominated the first person must nominate a second person to the official who made the original
307 appointment. The official shall make the appointment within 60 days of the vacancy and re-
308 appointments to the council, in that case, are possible under the discretion of the official.

309 e. Each official, under his or her discretion, may appoint one candidate, not
310 nominated by the other nominating agencies, in each appointment cycle. Such candidates
311 shall fill out the standard application form and be recommended by another Massachusetts
312 citizen with anti-corruption rules, cited below, being applicable. Applicants for positions on the
313 council shall not have personal relationships with their appointers, their nominators, the personal

314 care attendant union, or any other type of relationship, which would create a conflict of interest.
315 Any appointing officials, council members, council employees, common citizens who may have
316 outside knowledge of such conduct, can make reports of based on paragraph five e in this
317 section, or investigations of such discoveries of such behavior, from media reports, shall be
318 initiated by Attorney General. If the discovery of corruption is made on the council level,
319 procedures found below shall be followed. When new members are appointed to the council,
320 individuals or contractors are hired by the council, or those who wish to have other types of
321 association with the council, every named entity shall sign an agreement, upon pains of perjury
322 to follow council's ethics guidelines and such a process shall be repeated with every release of a
323 revised version of a code within 90 days of a new version of it being adopted by the council.
324 Issues of conflicts of interest or corruption shall be covered in the ethics code and ethics training
325 for all workforce council members and employees shall occur once a year, conducted by an
326 ethics instructor. The statutory requirements for nominating all candidates shall be that such
327 individuals have to have normal intellect, have to be of the age of majority of 18 years or older,
328 shall not be a personal care attendant, shall have a disability or shall be related to someone with
329 disability, shall be a surrogate, or represent the community with disabilities in some other manor.
330 Appointing officials shall make appointments known through the statewide press and disability
331 publications. Upon enactment of this act, this new arrangement shall be in effect for the next
332 series of appointments and shall run concurrently thereafter.

333 5. f. If there are instances of corruption such as conflicts of interest, or
334 violations of confidentiality on the council, the member(s) involved shall be removed pursuant to
335 Section 7, paragraph 13m, of this act, at least during investigations. Any Massachusetts citizen
336 with knowledge of such occurrences must report it to the counsel director. From there, the

337 director will discuss the matter with the council’s attorney and the Assistant Secretary for
338 Disability Affairs at the EOHHS. If this group finds that state laws may have been violated, the
339 suspected member shall be suspended and the Attorney General shall be called in for further
340 review and such a process has to occur within 90 days. In such a case, the Attorney General
341 shall appoint the Commissioner of the Massachusetts Rehabilitation Commissioner to select an
342 alternate replacement for the council, for the time being, from nominating agency of his choosing
343 other than those described. If the Attorney General finds there was corruption, the accused
344 member will be terminated from the council and prosecuted. The permanent replacement shall
345 be appointed as usual in the next appointment cycle. The Commissioner of the Massachusetts
346 Rehabilitation Commission shall name a maximum of to three replacements, in case of multiple
347 people involved with corruption at the same time. In case more than three members and their
348 respective nominating agencies and officials being involved in conflicts of interest situations, the
349 Attorney General shall choose the Secretary of the Department of Veterans Affairs to appoint a
350 maximum of three alternate replacements and the Commissioner of the Department of Public
351 Health to appoint a maximum of three alternate replacements. Active alternate members cannot
352 be chosen in the council regular appointment cycle. Whatever is required to stabilize the
353 integrity of the council is under the discretion of the council attorney and the council director
354 while the matter is being investigated, except when it comes to having the authority to removing
355 or replacing the later person because of possible wrongdoing. Once the investigation is over, the
356 authority to appoint members to the council will return to the standard officials and nominating
357 agencies or organizations, unless there is legislative intervention to create other arrangements. If
358 the member is cleared of wrongdoing, by all investigative entities, the member can continue
359 serving, if there is still time in the term, and the substitute will relinquish the post in such a case,

360 or the substitute will finish the term. As for the director, the Assistant Secretary for Disability
361 Affairs at the Executive Office of Health and Human Services and the council attorney will
362 decide if the matter should be reported to the Attorney General. If so the Assistant Secretary and
363 EOHHS, Disability Division, under such circumstances, shall suspend the director, pending an
364 investigation and become the acting director of the council until the corruption issues are
365 resolved. If there was corruption committed by the council director, a replacement shall be
366 named within 90 days after that point. The original director can also be reinstated immediately,
367 after being exonerated of all wrongdoing, if he or she desires.

368 g. The oversight for the council shall come from three sources: One, the
369 Auditor shall conduct a biannual administrative audit, which is established in Section 4.
370 Two, the Joint Committee of Health and Human Services shall officially assume oversight
371 responsibilities for the council activities in the Massachusetts legislature and may perform
372 independent regular or emergency investigations. Three, the Joint Committee of Health Care
373 and Finance shall perform regular three-year reviews of the council budget and any emergency
374 budgetary requests regarding workforce council funding. To assist with that function, the
375 director of the workforce council shall write brief progress reports to members of those two
376 committees and answer any questions from those legislators. The rest of the oversight
377 regulations are explained in section four of this act.

378 7. Section 30.a – 72-75: The workforce council will not discriminate on the
379 basis of gender, ethnicity, minority status, or income level, when recruiting for the
380 personal care attendant directory.

381 8. Section 30.c – 92-95: For the purposes of this act, the council must not place
382 any personal care attendant in the personal care attendant directory without their knowledge,
383 understanding, and written authorization, prior to listing. The workforce council or its contractor
384 responsible for the directory must explain in writing the required standards for inclusion to be in
385 the directory and have a person assigned to answer questions if needed. There must be a
386 procedure to remove a person’s name from the directory and this process must be explained at
387 the time of consent. Even though the Commonwealth of Massachusetts has the right to furnish
388 the names of all personal care attendants in the state to the council, the council shall not place
389 those names on the personal care attendant directory without permission from the individuals.
390 The council has 18 to 24 months, upon enactment of this act, to secure permission from the
391 present members on the directory already and for those that refuse to give permission or do not
392 respond to the request, shall be removed from the directory. After this 18 to 24 month period,
393 whenever the procedures are in place, the rule for permission will operate concurrently. The
394 council shall not share any identities of personal care attendants directly with the union. Since
395 the directory is a public document and there are indirect ways, in which the union can discover
396 those identities, the council and the personal care attendant union shall adopt the following
397 policy: All attendants who wish to sign up to be on the directory have to do so through the
398 directory contractor. If the attendants become union members first, the union is allowed to
399 instruct the new members how to place their name on the directory, but the union shall not do it
400 for them and the directory contractor shall follow-up with regular consent procedures.
401 Moreover, unless a perspective union member initiates contact with the union first, in basic
402 terms, the union cannot approach attendants to become members without the attendant’s
403 permission.

404 9. Add Section 30.d: If the union would like to approach an attendant, the union
405 must send information about the organization through the mail first. With this information
406 packet, the union must provide a permission slip asking if the person would like more
407 information, or would like to join. If the person gives permission to receive further information,
408 the union can contact the individual by mail, phone, email, facsimile, or in person. The union
409 must give the person their preference on how they wish to be contacted and union must honor the
410 request and shall not do anything else unless the individual requests a different type of contact.
411 At that point, the union is prohibited from contacting the person again unless that individual
412 approaches the union at another time. There is a three-month period, in which the union can
413 send two initial mailings to recruit a prospective member. During this period, the union cannot
414 utilize any other form of contact. If the perspective member does not respond or denies further
415 contact, the union must delete that person's contact information and not contact that person again
416 unless contact comes from that person.

417 10. e. The union may send out notices to other groups such as administrative
418 consumers, surrogates, the population of people who are elders or family members who are
419 related to people who are disabled, unless otherwise notified. No other contact shall be used
420 with those groups, unless initiated by those people. Every individual has the right to engage with
421 the union, as much or as long, as they want and to discontinue any association with the union,
422 when and if they desire.

423 11. f. In carrying out the duties and responsibilities of section
424 30.a-c, the council will observe confidentiality practices. The council will adopt policies
425 for obeying the federal Health Insurance Portability and Accountability Act (HIPAA, 1996) and

426 other state statutes regarding the personal privacy of all individuals in the commonwealth. The
427 stated privacy rule in this section also applies to the consumers and administrative consumers in
428 that all attendants must keep all information regarding those individuals confidential. All
429 attendants must have permission from administrative consumers or surrogates regarding who the
430 attendant can communicate with under the behalf of consumers and administrative consumers
431 and under what circumstances, such as in cases of emergency.

432 12. g. In addition to the requirements in paragraph eight to 11 of this section,
433 the council must issue a consent form to every administrative consumer, personal care attendant,
434 and surrogate, for the purpose of seeking permission to use their personal information to perform
435 research, data gathering, sharing with other agencies, or for other administrative operations. If
436 permission is not granted, the council cannot use that information publicly, but the council can
437 keep that information in a secure and confidential file. Copies of a non-authorization shall be
438 forwarded to all agencies involved with that administrative consumer, or the consumer based
439 upon the surrogate's wishes, those entities shall not share anymore information with the council.
440 The workforce council shall only use the minimum amount of personal information to
441 accomplish administrative tasks. If a person's information was used in administrative operations
442 before enactment of this amendment, the council shall notify the person in question and
443 disclosing what the information was used for and proper authorization to continue shall be
444 sought. In such a case, the administrative consumer, or surrogate in question does not have
445 ethical or legal recourse against the council, even if they object to prior unauthorized disclosures.

446 13. h. Legislators and the union can work together on irregularities on the
447 council or other related issues under certain circumstances. For purposes of this act, the council,
448 for the most part, is an independent body in state government, which can make its own

449 judgments unfettered by outside influences. If the union would like the legislature to be involved
450 with certain issues on the council, the issue must be raised first with that council. If the union
451 contacts some legislators, the union must not offer money or other political favors. By the same
452 reasoning, legislators cannot offer the union assistance in return for union support. Other
453 regulations on union abuse in section seven should be followed as well.

454 14. Section 31.a – 97-101 Administrative consumers or the consumer’s
455 surrogate retain the right to select, hire, schedule, train, direct supervise the work of, and
456 terminate any personal care attendant providing services. Administrative consumer or the
457 consumer’s surrogate may elect to receive long-term, in-home personal care services from
458 personal care attendants who are not referred to them by the council or directory contractor. No
459 outside entity or other regulations shall interfere with these rights.

460 15. b. Regarding acts of abandonment, the attendant must be absent from work
461 without some type of communication with their administrative consumer or a surrogate for the
462 next 24 hours, from the time the missed shift began. If communication is not established, after
463 three attempts from the administrative consumer, human service agencies or surrogate to reach
464 the attendant, abandonment has occurred. In the case communication is established, the reason
465 for the absence without providing prior notice within a minimum of 24 hours, must be a medical
466 emergency, or related event involving the authorities, accompanied by a doctors note or police
467 report, in the case of a automobile accident, or other related events. Other reasons for the
468 unexcused absence and whether to accept such reasoning is solely between the attendant and the
469 administrative consumer, provider, or surrogate. The documentation must be provided within
470 seven days of a single absence. If the absences continue concurrently or sporadically, without

471 prior notice, abandonment may have occurred, without further corroborating documentation from
472 qualified professionals or authorities. In the case of the attendant wanting to resign, unless
473 otherwise agreed upon between the attendant and the administrative consumer, provider or
474 surrogate, two to four weeks notice shall be given before the attendant leaves his or her position.
475 Unless other arrangements are made between the administrative consumer, provider or surrogate
476 and the attendant, the said employee leaves his or her position less than 14 days, abandonment
477 has legally occurred. Abandonment has also occurred if the attendant has left a shift without just
478 cause, such as a medical emergency. Being late for work, however, does not qualify as
479 abandonment.

480 16. c. Any other type of neglect, or physical, psychological, or sexual abuse,
481 theft or secondary theft, shall elicit a response from the state. This also includes milder, but
482 serious acts of misconduct. Regarding personal care attendants, any type of substance abuse,
483 whether alcohol or other drugs, on or off duty, is strictly prohibited. For these purposes, the
484 council shall establish a code of conduct and disciplinary procedures under sections five and
485 seven respectively. There is also a prohibition against illegal aliens working as attendants in
486 Massachusetts based on federal law and will be detailed in sections five and seven. Political or
487 administrative corruption having to do with the workforce council or union abuse is considered
488 to be illegal behavior under this act, and the consequences for such acts shall also be stated in the
489 present section and section seven. This clause, therefore, has authority over the behavior of
490 administrative consumers, surrogates, contractors, members on the council, subcommittee
491 members associated with the council, workforce council employees, appointing officials and
492 elected political leaders in state government. To prevent criminal acts and improve the quality

493 of services, the council, pursuant to section six in this act, shall prescribe training and screening
494 procedures.

495 17. d. Any contractors assisting the workforce council in recruiting of personal
496 care attendants, or other human service organizations providing community services to
497 the targeted population, must pay attention to the guidelines set by the council. If an attendant
498 harms a consumer or an administrative consumer, any secondary entity who assisted with the
499 recruitment or hiring of the accused can be held in violation of this act and other criminal laws.
500 This type of behavior shall be considered indirect abuse and shall be handled as a crime under
501 section seven, paragraph 12l under this act. Individuals making recommendations to the council,
502 the directory contractor or to individuals are responsible as far as what they know about the
503 person from prior experience. If it can be proven that a contractor or individual who assisted the
504 person being listed on the directory or being hired independently, knew that the individual
505 demonstrated character flaws, which posed a foreseeable risk or did not follow recruitment
506 procedures correctly, can held to account. In terms of giving references, if the person being
507 asked is aware of potential difficulty, which may arise, the person being asked can either refuse
508 to give the reference, or explain that they would not recommend that person, but the reference
509 may not disclose the reasons. The principle for this rule is a person cannot deceive an individual
510 asking for a reference on behalf of an applicant, who the reference knows or suspects would
511 commit a crime in the personal care attendant position. If the reference portrays the applicant as
512 somebody other than what they know of that person, this regulation would be violated. If a
513 member or employee of the council was involved, termination or removal is possible. If the
514 applicant is hired anyway, however, despite a reference's warning or gives the applicant no

515 support, and a criminal act occurred with the attendant, the reference in question cannot be held
516 in violation of this regulation.

517 18. Add to Section 31.e: All negotiations must be carried out in public
518 session. Members of the public however, must refrain from interfering in the
519 proceedings. The council and the personal care attendant union shall make rules regarding
520 public observations. An attorney representing the workforce council shall be present in such
521 negotiations. The union may have legal representation, as well, in such proceedings. The
522 attorneys shall not speak during negotiating sessions, except when legal issues arise, and if
523 necessary, if expeditious legal input cannot resolve the matter within the session, the lawyers can
524 request the parties' recess or break for legal advising. Legal counsel can speak to their
525 respective clients before negotiations begin, in between bargaining sessions and recesses within
526 negotiating sessions, but the attorneys can only comment on legal matters, not on the specific
527 issues pertaining to the negotiation.

528 19. g. The personal care attendant union shall negotiate with the
529 council in an appropriate manner in that this organization cannot use threats or
530 intimidation as leverage in the process. Peaceful protest is allowed, under certain conditions,
531 discussed in paragraph 21h of this section. This organization must obey section 30d of Chapter
532 of 268 (2006), in that no striking, work stoppage, slowdown, or the encouragement there of, shall
533 occur for any reason. Any type of fraud, from the union, such as manipulation of financial
534 records, overcharging the membership in dues, or other criminal acts constitutes fraud under
535 state or federal law, is strictly prohibited

536 20. h. The union is allowed to picket during contract negotiations or when

537 important legislation to the union is being considered. Such protest may occur outside
538 the State House or outside legislator's offices as long as no disruptive behavior occurs within the
539 State House. Other protests can occur outside of buildings where negotiations are occurring
540 observing the same rules and shall not be disruptive to anyone coming out or in of those
541 buildings or the State House. The union members shall not approach anyone in the vicinity for
542 recruiting purposes during those times. All city ordinances shall be obeyed with regard to the
543 approximate distance between a building and the picket line. The union is forbidden from
544 picketing outside provider office's, consumer's, administrative consumer's or surrogate's
545 residences, or committing other acts, which disrupt community life. Such protests shall not be
546 violent in accordance with this act and other laws of the commonwealth. The participation of
547 any member shall not interfere with his or her work schedules with their consumers or
548 administrative consumers.

549 21. i. If the union would like consumers, administrative consumers, surrogates,
550 or family members of people with disabilities to attend their events, the union has to
551 invite such individuals, and not leave it to the members to elicit the ones they work with to attend
552 such functions. It must be left to the discretion of those individuals outside of the union whether
553 they attend. No attendant shall coerce, pressure, or intimidate consumers, administrative
554 consumers, surrogates, or family members of people with disabilities, in supporting any union
555 initiatives by threatening to resign, refusing to do certain tasks, changing one's temperament, or
556 other tactics designed to elicit support for the union. Union members acting as personal care
557 attendants shall not counsel the consumers, administrative consumers, surrogates, or family
558 members of those with disabilities, even if asked, and must direct them to other union
559 representatives or other people for advice on such matters, because of the conflict of interest.

560 The union must mail information to administrative consumers, surrogates, or family members of
561 those with disabilities, if they would like to support an initiative. For these purposes, privacy
562 rules for attendants, cited in section three, paragraphs eight d and nine e, shall apply to
563 consumers administrative consumers, surrogates and family members of those with disabilities.
564 Union representatives shall not visit homes or apartments of consumers or administrative
565 consumers to discuss union business with an attendant on duty for any reason.

566 22. j. The union has no right to collect any information from fiscal
567 intermediaries, human service agencies or independent living centers, regarding personal
568 information of personal care attendants, consumers, administrative consumers, or surrogates.
569 The reverse is also true, in that, such entities cannot approach the union with that type of
570 information. Administrative consumers or consumers shall not be coerced or manipulated into
571 sharing information of attendant hours or any other personal information regarding personal care
572 attendants with union representatives. If administrative consumers, surrogates, or any other
573 person who has such information, makes disclosures to a union representative, willingly or
574 inadvertently, such conversations have to be kept confidential and ought not be used for union
575 operations, either publicly or privately, unless it is consented to in writing by the informant. The
576 informant must only speak about his or her own experience to be useful for union operations.
577 Any reference from one person to a union representative, regarding another person must be
578 ignored by the individual associated with the union, in that he or she cannot pass it along within
579 the organization, in order to be utilized for union business. The union representative cannot
580 confirm such heresy information from the person cited in a conversation, unless he or she comes
581 to the union representative, confirms what was said, and consents in to it writing, being used for
582 union operations. In all cases, the union must eliminate all personal information, except the main

583 facts the organization requires for union operations. If the union acquires information regarding
584 a consumer, it must always come from, and shall be authorized by his or her surrogate. In all
585 cases, the personal care attendant union, through the Service Employees International Union,
586 Local 1199, shall keep all consent forms, for any personal information, on file for a maximum of
587 the 10 years, for administrative audit purposes.

588 23. k. The union does not have the authority to influence the administrative
589 consumers or surrogates in the way they work with personal care attendants. The union cannot
590 speak to administrative consumers, or surrogate, or hold them or the state civilly liable in court,
591 on behalf of an attendant, who had some difficulty those particular individuals in accordance
592 with section seven, paragraph 40mm.

593 24. 1. The union must do their part in making sure the people they recruit are
594 appropriate to do personal care work. The union may work with the council and other
595 administrative consumers, providers, surrogates and family members of those with disabilities on
596 how the union can assist in increasing and maintaining the quality of care.

597 25. m. The personal care attendant union may endorse and contribute to
598 political candidates, if they desire. The union shall not, however, promise money to
599 candidates for their support of a particular union position although the union may contribute
600 money to a candidate without announcing the reason, except in general terms, for doing so
601 before an election. The union also shall not threaten a politician or the opponent with taking
602 votes away if they do not support their initiatives regarding the personal care attendant program.
603 Language of dissatisfaction to a politician can be expressed without mention of financial or vote
604 gain or loss. When the union has a legitimate concern over procedural rules on the council in

605 which case, the union should publicly state their complaint before the Joint Committee on Health
606 and Human Services. No other outside interference should influence the council, but elected
607 officials may assist the union, provided the parties follow section three, paragraph 13h.

608 26. n. The disciplinary procedures and penalties for any violations of this
609 section shall follow section seven, paragraph 37jj.

610 27. The current content in sections 31.f-g – 134-137 of Chapter 268 (2006),
611 regarding legal liability is deleted and new language on the subject is introduced in section five
612 of this act.

613 28. o. Section 32.g – 161-162: Pursuant to section one of Chapter 268 (2006),
614 the council may establish technical advisory committees to assist with the function of the
615 council. This act establishes that the performance of the council shall be evaluated every three
616 years through an independent team, under the direction of the Auditor, outlined in section four of
617 this act. There shall be an ethics committee associated with the council to develop and maintain
618 a code of conduct for members of the council, administrative consumers, surrogates and
619 contractors, in accordance with section five in this act with some basic procedures being
620 specified in paragraphs four d and five e in this section. Skills training of personal care
621 attendants, administrative consumers, surrogates and contractors, based on a statewide
622 curriculum, shall be developed, implementation and maintained by a continuing education and
623 screening committee, pursuant to section six. The council shall establish disciplinary procedures
624 and avenues for appeal regarding inappropriate behavior in the personal care attendant program
625 or its administration thereof, in accordance with section seven. Moreover, except for the audit
626 team, which is under the control of the Auditor, this act requires the Personal Care Attendant

627 Quality Home Care Attendant Workforce Council integrate such committees to collaborate on
628 joint tasks as needed. Procedures for performing such collaborative work and under what
629 circumstances are to be determined by the council. Moreover, each of these three committees
630 shall meet once a year to review their own guidelines and render recommendations to the main
631 board of the council regarding policy and procedures for their own operations or other issues for
632 those advisory boards. Once policies are passed or amended by the main board, the committees
633 are free to use such policies for their own purposes.

634 29. p. Section 32.h –163-164: The council may keep records and engage in
635 research and the gathering of relevant statistics. In completing these tasks, the council
636 shall hire expert consultants in statistics and relevant methods of research. Any reports from the
637 workforce council, which contain any research or statistics, has to give full credit to those
638 consultants, listing their name(s), area of expertise, affiliation and contact information. The
639 Personal Care Quality Home Care Workforce Council shall encourage independent research on
640 the personal care services in Massachusetts by applying for state of federal grants and inviting
641 scientific researchers to take part in research projects.

642 30. i. The public has a right to inspect any council records or raw data upon
643 request, for which a report is based. The council must comply unless the release of the
644 information could jeopardize confidentiality. In such a case, the council shall make every
645 attempt to eliminate any potential risk or provide a clear and reasonable explanation in writing to
646 the petitioner within 30 days as to why their request has to be denied.

647 31. r. In a hiring situation, the information the council or contractor
648 administering the directory gathers on a particular individual can be shared with administrative
649 consumer or surrogates, in the interest of the safety and
650 well-being of those being served. It is permissible, upon request, for the council or its
651 provider responsible for the directory to disseminate whether the council has disciplined a certain
652 attendant, who has been or is currently on the directory, within 10 years, but the details, of
653 which, cannot be revealed. Moreover, the privacy rules stated in this section do not apply under
654 the conditions of section seven, and, for the purposes of paragraph four d therein.

655 Section 4: Oversight Regulations

656 1. Add section 33.e. According to paragraph 28o, section three there shall be
657 oversight of the council through various state mechanisms. Every third year there will be an
658 administrative audit of the workforce council through the Office of the State Auditor. The
659 Auditor will appoint seven people from the community who are either administrative consumers,
660 the elderly, personal care attendants, family members of those with disabilities, or surrogates
661 with one or two legal and accounting consultants, who can submit their names to the Auditor
662 directly for consideration or are appointed staff from the Auditor's office. One personal care
663 attendant shall be chosen for this duty, while the others will be a mixture of the people
664 mentioned. The Auditor shall follow regulations for assignment of alternate members found in
665 section three, paragraph 2c. Council members and the other individuals involved will only know
666 the identity of the members of audit team at the time of the evaluation. The group shall access
667 financial and research consultants to assist the team with their task. The objective of such a
668 review is threefold: (a). To ensure the performance reviews of the council are accurate. (b).

669 To ensure that the council itself is fiscally sound and is operating in an efficient manor. (c). To
670 ensure the council is serving public interest in an ethical and legally responsible manor. The
671 administrative audit shall be done through the use of compelling evidence.

672 2. f. All workforce council members, their employees, contractors and any
673 other entities associated with the council must cooperate with the investigation. The
674 council must make all records available for inspection. Anyone individual or entities involved in
675 council administration and services must submit to interviews with members of the audit
676 committee. Any service provider, including contractors, the union and any other entities that
677 have contracts with the council shall also make their records available regarding that business
678 relationship. The audit committee has the latitude to decide what documents should be inspected
679 and from where. The immediate focus of the audit committee shall be on the past three years,
680 but the audit committee has the ability to review other administrative audits and take the
681 investigation back as much as nine years, if the audit committee finds the some of the problems
682 stem back at least two audit cycles. Within the nine-year time frame, the audit committee has
683 discretion as to how many additional years they want to go back. This process may include
684 reviews of previous documentation or interviewing past council members, employees, or other
685 outside individuals who had dealings with the council in the targeted time frame.

686 3. g. The audit committee must report any fraud, ethical or legal violations, or
687 negligence committed by the council board members, employees, or contractors.

688 4. h. Members of the audit committee must not have been a part of the council
689 or its activities for the past 12 years or had relationships with members of the council. If there is

690 a conflict of interest, the person assisting with the investigation must report it to the auditor and
691 excuse themselves for part of or all of the investigation

692 5. i. The Auditor can conduct surprise, emergency, and small reviews before the
693 third year at his or her discretion to deter any problems. These mini “spot checks” will focus on
694 one narrow aspect of the operation and shall follow the same composition and rules as stated
695 above in this section. The council and any associates will receive no prior notice to such
696 inspections.

697 j. The report shall be primarily sent to the three appointing officials, the
698 nominating agencies, the Attorney General, the council and will be made available to
699 administrative consumers, surrogates, family members of people with disabilities, personal care
700 attendants and their union. The rest of the public may have access to the report in a manner to be
701 determined by the Auditor.

702 7. k. This report shall also be sent to the legislative Joint Committee of Health
703 and Human Services and the Joint Committee on Health Care and Finance every third year.
704 Pursuant to section three, paragraph six, the former committee may perform investigations of its
705 own, in cases of corruption, and might recommend additional legislative action to remedy any
706 corrupt situation. The Joint Committee of Health and Human Services Committee has subpoena
707 power and can refer any matter regarding the council to other investigative agencies and perform
708 its own regular reviews and public hearings on council performance. Legislators on the two
709 cited committees cited in this paragraph may attend council meetings periodically to provide
710 additional oversight and support. Again, pursuant to section three, paragraph six, the council
711 shall provide quarterly reports to the committees through the director.

712 8. 1. Administrative audits shall take 90 days to complete, but the Auditor can
713 take an extra 20 days to finish the process if there are complications, such as illness or corruption
714 of members. The first administrative audit shall take place within 18 to 24 months following the
715 passage of this act.

716 Section 5: Ethics

717 Additional amendments to section 1 of Chapter 268 (2006)

718 1. Add section 34.a. In accordance with section three, paragraph 28o, the
719 workforce council shall establish an ethics committee in order to establish a code of conduct for
720 administrative consumers, surrogates, attendants and contractors. Within six months of this act
721 being established, the council will appoint seven-member ethics committee. Two members will
722 be from the council and five will not be involved with this sub-agency. Two members must be
723 personal care attendants and five shall comprise some combination of people with disabilities
724 and family members of people with disabilities, the elderly, or surrogates. The director will
725 appoint all ethics committee members for a three-year term. Such a committee will establish a
726 code of conduct, which will have information on how to conduct council business and activities,
727 administrative consumer, surrogate and personal care attendant behavior and outside contractor
728 and agency protocol when working within the personal care system and with regard to relating to
729 the workforce council. The workforce council shall hire an expert on ethics and appoint the
730 attorney from the council to be technical advisors to work with the council ethics committee with
731 the development, implementation and maintenance of the code. These guidelines shall be
732 revised every seven to ten years at the discretion of the workforce council. Before adopting any
733 version of the ethics code, the council will make it available to the segment of the public affected

734 by these guidelines and have a three-month comment period prior to final adoption by the
735 council. Any new versions of the code shall go into effect 90 days after council adoption, while
736 the public is notified. The ethics committee will serve to gather research on ethical issues in
737 personal care and public policy. The guidelines should be clear about what is acceptable, but
738 should not reduce administrative consumer control or interfere with the relationship between
739 service providers, people with disabilities, surrogates and their personal care attendants. Hence,
740 there shall be few activities listed in the code as violations, which personal care attendants,
741 providers, consumers or administrative consumers and surrogates cannot partake in, as long as
742 those tasks increase function and quality of life for those with disabilities.

743 2. b. The ethics committee and the council may elect to adopt already
744 established standards from other organizations, in part or whole, as long as those guidelines are
745 relevant to, or can be revised for personal care issues, and the council obtains permission from
746 that organization to use the material.

747 3. c. Any personal care attendant or surrogate who lives in a surrounding state is
748 not excused from following the code of conduct if their administrative consumer or
749 consumer resides in Massachusetts.

750 4. d. The council shall mail out copies of the code, once it has been approved to
751 all administrative consumers, surrogates, human service agencies and attendants in
752 Massachusetts.

753 e. Upon enactment of this act, the council shall have six months to establish

754 the ethics subcommittee, and, from that point, the committee shall have 18 to 24 months
755 to develop the first ethics code and with public comment, the code shall be approved three
756 months later. If public comment is overwhelmingly negative to a new version of the ethics code,
757 at the discretion of the council, the ethics committee may re-draft the code, in part or whole,
758 within a certain time frame specified by the council and the process shall continue until public
759 reaction is mostly positive, for which, the council shall decide on a criteria. The public may also
760 comment throughout the development of any version of the ethics code. This adoption and
761 public comment process shall be initiated whenever the ethics code is being revised and its
762 adoption is being sought. The drafting and development of any version of the code, therefore,
763 shall be made public knowledge by methods to be determined by the council.

764 Section 6: Screening and Training

765 1. Add section 35.a. Based on paragraph 28o of section three in this act, the
766 council shall provide training for all council members, employees, administrative consumers,
767 surrogates, and contractors in different content areas. The council shall establish a continuing
768 education and screening committee comprised of volunteers, which will assist the council devise
769 standards for continuing education, establish content areas of knowledge, adjust curriculums,
770 monitor educational outcomes and maintain or adjust screening criteria for the directory. This
771 committee shall develop and implement strategies to educate administrative consumers,
772 surrogates, the elderly, family members of people with disabilities and the general public in
773 Massachusetts regarding the disciplinary guidelines outlined in section seven of this act. These
774 committee members shall serve three-year terms appointed by the director of the council and
775 interested individuals within the disability population or family members of a person with a
776 disability, personal care attendants, or persons who are elderly, shall apply to the EOHHS in a

777 manner consistent with section three, paragraph 2c of this act. Two members shall come from
778 the council, two shall be personal care attendants, and three shall be some combination thereof.
779 Educational consultants shall be provided as advisors to assist with the development,
780 implementation and the maintenance of the curriculum.

781 2. b. Each individual who wants to be part of the directory must comply with the
782 following requirements:

783 3. c. Each candidate has to fill out a basic job application, which will be
784 kept on file with the council or contractor administrating the directory

785 4. d. Every candidate must have a Criminal Offence Record Investigation,
786 Sexual Offender Record Investigation and a cross-reference with Homeland Security terrorist
787 watch lists, completed by the contractor developing and maintaining the directory. The
788 associated contractor given responsibility for the directory must follow title 8, section 1325 of
789 the United States code and refrain from recruiting illegal immigrants. In doing so, the contractor
790 must cross-reference each interested individual with the United States Customs and Border
791 Protection agency and the United States Immigration and Customs agency. When this legislation
792 is enacted, the directory contractor shall be required to complete all background checks herein on
793 all personal care attendants already on the directory within six months. Any attendants who do
794 not pass these background checks shall not be placed the directory. If there is a directory all
795 ready in place by the time this act is passed and implemented, those on the directory have to be
796 screened for citizenship status and terrorist ties. If there are irregularities found on attendants,
797 such persons must be unlisted within 30 days of the finding. The contractor with the directory
798 responsibility and the council is obligated to inform law enforcement and cooperate with those

799 agencies if there are people who pose a threat to the safety of the community or is a national
800 security threat. The contractor shall follow these procedures every time it finds there is a person
801 who made it on the directory who should not be there because of questionable backgrounds and
802 an oversight occurred when he or she was placed on the directory by mistake. Since paper
803 copies of this of the directories may become out of date because of unlisting requirements in
804 some cases, phone numbers and e-mail contact information shall be provided for administrative
805 consumers and surrogates who want to know if certain attendants are properly listed. In case a
806 web-listing is developed, that version must be kept up to date each week. The council shall
807 supervise all of these activities along with the other reviews discussed. It is because this clause
808 concerns the public safety and wellbeing of those being served, the background checks,
809 presented herein supercedes any right to privacy, cited in section three.

810 e. To enforce the prohibition of substance abuse regarding PCAs, the state,
811 through the council, is required to devise a random substance abuse screening program
812 for all personal care attendants in Massachusetts, on and off the directory within 18 to 24
813 months of enacting this act. The individuals or organization the attendant works for have a right
814 to automatically receive a report of the results each time a test is done to one of their attendants.
815 The privacy rule found in section three, 32s does not apply here because this is an employment
816 situation, not a hiring situation and the safety of the administrative consumer or consumer has to
817 take precedence. The workforce council and the attendant shall receive the other copies of the
818 results.

819 6. f. Administrative consumers and surrogates in the community shall interview
820 applicants at a screening clinic, in each region of the state, on a semi-regular basis to be set by

821 the workforce council's continuing education and screening committee for the purposes of
822 qualifying prospective attendants for the personal care attendant directory. The interviewers
823 must fill out an evaluation form, which will be attached to the application. The interviewers will
824 be volunteers for this duty with travel reimbursement being offered or transportation being
825 arranged by the council, if necessary. In addition to this clinic, all administrative consumers,
826 surrogates and prospective attendants shall be made aware by the council, that other individuals
827 in need may wish to conduct their own interviews with personal care attendants on the directory,
828 in their area, for regular duty, or for emergencies.

829 7. g. These candidates will, if pre-approved by the screeners, will then obtain
830 training for a specified number of hours to be determined by the council. This act requires these
831 following basic courses be mandatory: CPR/First Aide for all personal care attendants, Ethics of
832 Personal Care and abuse training for consumers, administrative consumers, personal care
833 attendants, and surrogates. The surrogates may take life saving courses under the council as
834 electives. Other content areas shall be developed such as interviewing skills, interpersonal
835 communication and relationships and self-care, but such training is optional. The council must
836 inquire periodically with administrative consumers, personal care attendants and surrogates what
837 electives would be helpful within an assigned time period designated by the council. Non-
838 surrogates shall be allowed to take these courses if they can be identified as having a family
839 relationship to an administrative consumer or consumer.

840 8. h. Every attendant involved in the Massachusetts personal care attendant
841 program, or are direct care staff working for human service agencies, must receive, at least, one
842 training on personal care ethics during the duration of a current version of the ethics code, in
843 addition to administrative consumers, and surrogates. The first training shall be taken within the

844 first 18 months from the time, of which, a new version of the ethics code is released. The
845 CPR/First Aide re-certification period shall follow standard state regulations. Any other
846 requirements are to be determined by the council.

847 9. i. The council must make these required classes available to those
848 who do not wish to be part the personal care attendant directory as well. Every individual
849 who serves as a personal care attendant in the Commonwealth of Massachusetts must take the
850 minimum training, even for those who are already working as personal care attendants. The
851 exception would be health care professionals with an active license or certificates in
852 Massachusetts will be excused from most of those basic workshops, but they will be expected to
853 take the statutorily required training in CPR/First Aide and ethics, if their last course in those
854 areas is over the time required by the council or the state, or both. When a person has taken a
855 course to fulfill the curriculum of the workforce council, it is the responsibility of the individual
856 to report attendance with the appropriate documentation, unless the council has a direct way to
857 verify if someone took a proticular training, which shall be made clear at the time of registration.
858 All such records shall be reviewed every three-months by the council, however it wants to
859 execute such tasks.

860 10. j. Educational accommodations shall be allowed to make training more
861 accessible and easy to obtain. If one takes a college course that is related to the content
862 areas set by the council, it could be applied if the student can offer proof to the council that
863 course was completed with a passing grade. Other formats such as video or internet courses with
864 certain proof of required completion, is to be specified by the educational regulations set by

865 council. Other learning disability accommodations shall made available by the council, on an
866 individual basis and if needed, according to the federal Americans with Disabilities Act (1990).

867 11. k. The council shall provide trainings through independent living
868 centers, colleges, and direct workshops/conferences sponsored the council or through
869 other entities and practices. The council shall ensure that all instructors are qualified to speak on
870 their subject matter. Administrative consumers and surrogates, or family members, can teach
871 some seminars. Medical, mental health, rehabilitation, business, legal or ethics professionals
872 may teach other workshops.

873 12. 1. The council may charge a minimal fee for education events it directly
874 sponsors up to \$100 per person. The council may assist with financial aid, whether the
875 event is directly sponsored or not, for those who qualify under council guidelines, accept third
876 party payment on behalf of the student, or provide certain training at a lower cost or for free.

877 m. Once this act is passed, the council has six months to establish a
878 continuing education committee and 18 to 24 months to organize a training curriculum
879 with its logistics developed.

880 Section 7: Disciplinary Procedures

881 1. Add Section 36.a. Pursuant to section three, paragraph 28o of this act, the
882 council shall devise disciplinary procedures and a committee to adjudicate cases before it. There
883 are four groups of people or entities that can be brought before a disciplinary committee for
884 administrative review of a complaint. These groups are as follows: personal care attendants,
885 administrative consumers, surrogates, people directly involved in the workforce council and

886 contractors, or other individuals, which provide assistance in recruiting for the personal care
887 attendant directory. The committee can hear cases where the offence took place at maximum
888 three years prior to the complaint being filed and can include current and previous working
889 relationships. The investigation and appellate process is the same for all groups. Only the
890 definition of compelling evidence shall be used as a guideline during a disciplinary investigation
891 or hearing to judge any information presented. No hearsay evidence or information that cannot
892 be substantiated shall be admissible at any level of the council disciplinary process. The
893 personal care attendant union under the Service Employees International Union, Local 1199, and
894 other individuals or entities of the community that may have influenced illegal or unethical acts
895 in the personal care attendant system, shall not appear before the disciplinary committee of the
896 council, but can be prosecuted by a local District Attorney in state court and the council, through
897 its attorney, shall refer such cases for independent investigation when the council becomes aware
898 of such situations. In all cases, which is before the workforce council's disciplinary committee,
899 or appeared panel, the committee has the right to seek court intervention, through their legal
900 representative, when and if necessary, to enforce its disciplinary decision. It is the code of
901 conduct that will serve to be the standard of any council disciplinary decision, investigation or
902 procedure

903 2. b. The disciplinary committee comprises one member of the main board,
904 the legal representative of the council, three personal care attendants and two non-
905 affiliate members from the public representing people with disabilities, the elderly, or family
906 members or surrogates who are related to an individual who is handicapped. The point of the
907 attorney is to be a legal observer of the proceedings and is to advise on all legal matters. The
908 attorney will be present for all disciplinary committee hearings, but he or she, will only speak

909 when legal issues arise. One person from the council has to be on the ethics committee. The
910 workforce council director will appoint the members to the disciplinary committee for a term no
911 more than two years. The professional ethicist who advises the ethics committee may also
912 advise the disciplinary committee. Names of non-affiliate members shall be derived through a
913 lottery process and the names can be submitted to the EOHHS, which shall be kept on file for no
914 more than two years. Such individuals wanting to serve shall provide verification of having a
915 disability, being in a family member, who is related to someone who is disabled or has to submit
916 proof that the person is currently working as an attendant for somebody residing in
917 Massachusetts. Standards for verification are at the discretion of the council. If a member of the
918 disciplinary committee has prior personal knowledge of the accused, the complainant, or anyone
919 else appearing before the committee, or a previous or current personal relationship, whether
920 direct or indirect, the member must excuse himself or herself, because of conflict of interest.
921 The counsel director shall choose alternate members from the lottery, cited in this paragraph or
922 by council re-assignment, if one or more primary members cannot serve on the regular
923 disciplinary committee in this paragraph, or appellate panel, cited in paragraph 24x. If three or
924 more disciplinary or appellate members cannot serve because of conflict of interest, the director
925 has to provide the list of alternates to the Attorney General so he can impanel an independent
926 committee to investigate and hear a complaint, pursuant to paragraph 17q of this section. The
927 alternate members shall be present during the investigations or hearings, but cannot express their
928 opinion, or participate in anyway. The Attorney General shall appoint an alternate attorney or
929 ethicist or both, within 10 days of being notified by the council director if said advisors have
930 conflicts of interests regarding a cases before the disciplinary committee. Such contingencies
931 shall also be used with independent disciplinary committees cited in paragraph 17q. It is

932 permissible to have postponements for illness or questions of corruption for up to 30 days. If this
933 involves a committee member, an alternate member shall replace the primary member for the
934 duration of the case, then, if there is a following case, the individuals reverse roles, or the
935 alternate member may retain the primary position for the remainder of the term if the original
936 member cannot continue.

937 3. c. If an administrative consumer or consumer is harmed, or is in a potential
938 state of danger, caused by the behavior of a personal care attendant; such as physical,
939 psychological, or sexual abuse, sexual harassment, neglect, abandonment, malicious damage to
940 property, theft, an immediate state investigation by the council's disciplinary committee will be
941 initiated, after receiving a complaint from an administrative consumer or his or her surrogate,
942 other acquaintance of the individual or other mandated reporters. The committee has the right to
943 investigate and punish off duty crimes or offenses by any attendant working in Massachusetts, if
944 it presents a clear and present threat to the consumer or administrative consumer, such as going
945 to work intoxicated or becoming arrested after a criminal act; thereby causing abandonment. In
946 all cases, the council shall initiate all investigations promptly and professionally.

947 4. d. Within 60 days, informal interviews or a hearing or both shall
948 be completed, in which testimony on either side can be offered. The disciplinary
949 committees, regardless of the type, have the right to make the rules as to how hearings are to be
950 conducted and inform all parties in writing at five business days from the date the complaint is
951 received with any other information the council and the disciplinary committee wants to impart.
952 The regular review process with the main board will set such standards approving of such rules
953 on how hearings should be conducted, pursuant to section 3, paragraph 28o in this act. The

954 disciplinary committee has limited subpoena power in that it can order any documentation or
955 other pieces of evidence concerning the alleged incident and to compel testimony. The final
956 report shall be rendered with the council's decision within 90 days following the complaint being
957 filed. The purpose of this process is to determine if the attendant in question violated any
958 council ethical guidelines and if any administrative recourse is required such as levying financial
959 penalties or taking the accused attendant's name off the directory. A finding of wrongdoing,
960 however, does not equal a legal verdict of guilty in a court of law. Once a decision is rendered,
961 records will be kept under file with the council. The only people or entities, which can have
962 access to sealed information are courts, legal counsel, or legislative committee, by subpoena. No
963 committee or council member shall discuss or profit from the cases they investigate. This
964 applies to people on audit teams or members of the council in that these members cannot speak
965 on the audit or disciplinary cases, or profit from them. If said individuals do commit such acts,
966 the council can terminate current members off their committees or the council or both. The
967 Attorney General may be called in by the attorney for the workforce council and the he or she
968 has the right to sue in state court for any total profits they might have gained and perhaps seek
969 criminal penalties as well under other statutes. The Auditor shall dismiss any current member(s)
970 from the audit team. The Attorney General may sue past members of audit teams, disciplinary
971 committees, independent disciplinary committees, or appellate panels, if they violate
972 confidentiality or profit from the work.

973 5. e. If a possible criminal act has been found such as abuse or neglect by an
974 attendant, and is reported to the workforce council initially, the council is required within six to
975 12 hours to refer the matter local District Attorney, the indicated state protective agencies, and
976 the police departments where the alleged crime occurred for further investigation and

977 prosecution with reports being made available to the Attorney General and other appropriate
978 state agencies. The disciplinary committee is entitled to investigate such acts. If the accused is
979 incarcerated at the time of the hearing, he or she can appear by video camera. All court dates
980 have to supersede dates for council disciplinary hearings, in which case, the disciplinary
981 committee shall reschedule.

982 6. f. If an attendant is found in violation of complaint filed, the council can levy
983 penalties against that individual, but the imposition of such action will be delayed if the
984 decision is to be appealed, which has to be filed within 10 days of the original decision. The
985 exception to this is if the workforce council refers the matter to the criminal justice system for
986 investigation and prosecution, the legal process has to go forward while the administrative appeal
987 progresses. Even if the administrative appeal exonerates the attendant, the finding does not
988 override any court or criminal investigative process. Reports from the council investigation shall
989 be made available upon subpoena from attorneys from either side for use at trial.

990 7. g. There are various penalties open to the council. The disciplinary
991 committee can give the offender a warning in writing. Fines between \$100 and \$10,000 can be
992 levied. In the all instances, unless an appeal has been filed, payment is expected by 30 days and
993 30 days after a failed appeal. The council can take the attendant's name off the directory either
994 temporarily or permanently. The council can order the attendant attend counseling or psychiatric
995 treatment if the individual is to keep serving people with disabilities. The council can also order
996 further ethics or abuse training. A combination of sanctions is possible. If the attendant is a
997 repeat offender who presents in front of the council's disciplinary committee, the penalties
998 become more serious, until the third offence when the said committee must impose permanent

999 expulsion from the directory and \$10,000 fine, and, depending on the circumstances, a report
1000 may be filed with the criminal justice system if such sanctions have not already occurred. The
1001 committee can repeat or increase severity of sanctions with repeat offenders as the disciplinary
1002 committee sees fit until the third time where the maximum penalties must be applied.

1003 8. h. The council shall fine the attendant who is abusing substances while placing
1004 consumers or administrative consumers in potential or actual harm, for the first two offences, no
1005 less than \$100 and at a maximum of 10,000, and suspend him or her from the directory for a
1006 period decided by the disciplinary committee. The disciplinary committee has the choice of
1007 suspending an attendant from the directory for a period of one to two years, or indefinitely,
1008 depending on the extent of the harm done to a consumer or administrative consumer and the
1009 severity of any legal penalties attached to the alleged incident. A third offence accompanied by
1010 actual or potential harmful circumstances to consumers or administrative consumers will result in
1011 a fine of no more than \$10,000 and indefinite suspension from the directory. If the attendant
1012 only fails a drug test, but does not endanger a consumer or administrative consumer, the council
1013 can only monitor that attendant through the ombudsman, cited paragraph 35hh of this section or
1014 in some other manner agreed to by the council. If the attendant passes drug tests for two years,
1015 the monitoring shall stop unless failure happens in the future. In order to become re-registered
1016 onto the directory after suspension, the personal care attendant has to submit documentation to
1017 the council and referred to the disciplinary committee for review and must provide evidence of
1018 recovery, such as going through a treatment program, having regular contact with a sponsor and
1019 any other supporting information that the disciplinary committee may consider helpful.
1020 Additionally, attendant must prove they did not harm a person with a disability, an elder, or a
1021 member of the public while under the influence of a substance, or during the commission of

1022 some other crime within the suspended time frame. The disciplinary committee may question
1023 involved individuals, choose to conduct a hearing, or decide the petition based on the written
1024 documentation provided. There can be opposing testimony allowed at that time. The
1025 disciplinary committee must decide on re-registration between 30 and 60 days of the petition. If
1026 the attendant did harm someone else while under the influence, the person is to be banned
1027 indefinitely from the directory. Whether someone keeps their job due to a failed drug test is
1028 between the employing individual or organization and the attendant.

1029 9. i. Regarding illegal aliens, such individuals must be reported to the federal
1030 authorities whenever they are found in the system. Administrative consumers, surrogates and
1031 agencies will be held to this reporting requirement. If a complaint is filed with the workforce
1032 council against any individual or human service agency claiming said entities knew that they had
1033 illegal aliens as personal care attendants, the disciplinary committee has the right to investigate.
1034 State penalties for illegal aliens working in the personal care attendant program is no less than
1035 \$10,000 and automatic suspension from the personal care attendant directory. The council must
1036 report such offenders to the federal authorities. Penalties for not reporting illegal aliens, is no
1037 less than \$10,000 and individuals and organizations may face other penalties based on federal
1038 statutes.

1039 10. j. Administrative consumers are equally responsible for their conduct with
1040 the personal care attendant and can be brought before the disciplinary committee. A
1041 complaint by an attendant or someone that has legitimate concerns about sexual harassment,
1042 utilizing an attendant to perform an unlawful act or something that would harm the
1043 administrative consumer, or attendant. The penalties in this case are, written warnings, fines

1044 between \$100 and \$10,000 can be levied, mandatory skills training or mentoring, psychological
1045 therapy or psychiatric treatment, further ethics training, filing in probate court for a competency
1046 hearing to determine whether a surrogate should be involved or a recommendation to the legal
1047 authorities for further criminal investigation and possible prosecution. In the case of an
1048 administrative consumer perpetrating the abuse, it has to be proven that the act was not due to the
1049 person's disability, or any medical treatment he or she might have received for the individual to
1050 be responsible and in violation of the ethical code, which would require the application of
1051 sanctions

1052 11. k. Surrogates are held to account and the sanctions for a personal care
1053 attendant applies to surrogates with the additional possibility of replacing offending surrogate in
1054 probate court with another individual to take over the surrogacy of the particular consumers who
1055 experienced maltreatment, such as negligence, or any other form of direct, or indirect abuse or
1056 criminal act committed by the prior surrogate such as utilizing an attendant to perform an
1057 unlawful act or something that would harm the administrative consumer, or attendant.

1058 12. 1. The disciplinary committee may issue a fine between \$100 to \$10,000 for
1059 any contractors who violate ethics standards can be levied, contracts with the council may be
1060 severed, the state can sue those corporate entities for negligence, the disciplinary committee may
1061 recommend the agency found in violation and lose state funding, or that the state revoke their
1062 business license or a combination of these penalties can be applied. In which case, a hearing by
1063 the Governor's Council on Disability shall be conducted to perform a review of the allegations
1064 and give recommendations to the Governor, the Secretary of Elder Affairs, the Director of the
1065 Massachusetts Office on Disability and any other state agency necessary to carry out the
1066 sanctions.

1067 13. m. Because any type of abuse or neglect shall be taken seriously, the
1068 disciplinary committee can levy a \$10,000 fine per incident to administrative consumers,
1069 personal care attendants, surrogates and contractors who hire attendants. Consumers or
1070 administrative consumers have to experience some type of primary or secondary abuse for such
1071 penalties to apply. If other abuses occur between contractor employees, attendants harming
1072 family members or surrogates of people with disabilities, or some other combination thereof, the
1073 council shall not investigate, therefore, making such issues matters for law enforcement. The
1074 perpetrator must abuse consumers or administrative consumers in one of the stated categories in
1075 order for the alleged offense to be investigated and heard by the disciplinary committee and
1076 associate penalties to be applied.

1077 14. n. If a person being an employment reference on behalf of a prospective
1078 attendant and knew the person they were referring had character flaws or had background
1079 difficulty, and that attendant may have committed an illegal or unethical act against a consumer
1080 or administrative consumer, or some individual, or entity in the community, the person who is
1081 giving the reference may be accountable by the District Attorney where the administrative
1082 consumer or consumer resides. This rule applies also to union representatives of the personal
1083 care attendant union who may be recruiting attendants. In all cases, the council can refer the
1084 matter to the Attorney General for criminal investigation. The penalty for such an act is a \$5,000
1085 fine and not more than one-year imprisonment, or another sentence, which is consistent with
1086 other laws under the discretion of a criminal court. Anyone who employs or uses personal care
1087 attendants may keep lists of references for each attendant so that if there is a investigation,
1088 authorities can question those original supportive individuals. If it is found that such individuals
1089 were misleading in their references, the authorities have the right to apply the legal penalties

1090 described in this clause. The disciplinary committee of the council shall not be involved in such
1091 situation.

1092 15. o. Any suspected ethical or unlawful act on, or related to the council, shall
1093 initiate an investigation from the attorney for the council, director, the Assistant Secretary
1094 of the EOHHS, Disability Division and the Attorney General. Such complaints shall be filed
1095 with the director who shall notify the Assistant Secretary of EOHHS, Disability Division and the
1096 council attorney, who will intern, notify the Attorney General. Formation of the committee has
1097 to occur within 72 hours of the complaint being filed and the investigation shall occur
1098 immediately with the Attorney General or his or her staff being included in the discussions. If
1099 one member, or more, commits corruption on the council, such persons shall be removed, at least
1100 temporarily, while investigations are conducted and completed. Council members and
1101 employees shall notify the director of their knowledge of a potential corruption by another
1102 member, or other individuals involved in the council, or they shall be subject to investigation and
1103 possibly be held legally liable. The council director shall remove the member by phone
1104 immediately followed by a letter to the accused within five days. While an internal investigation
1105 needs to occur within 30 days, the Attorney General may choose to initiate a criminal
1106 investigation simultaneously or wait until the internal investigation is completed, under his sole
1107 discretion. If the corruption resides with an employee of the council, and if it is discovered, that
1108 employee shall face either suspension or termination, or both, under the discretion of the
1109 director. The same procedures for reporting members to the Attorney General, will apply to any
1110 employees who have conflicts of interests or who have committed other wrongful acts against
1111 the council. The proceedings can go forward as long as it is within the statutes of limitations for
1112 the type of the suspected corrupt acts. The Attorney General shall conduct the investigation

1113 within 90 days to decide if the conflict of interest violated any state or federal law. Other types
1114 of corruption shall be investigated and prosecuted in a similar manner. Such acts shall not
1115 appear before the disciplinary committee of the council.

1116 16. p. When the director discovers any type of corruption, however this occurs,
1117 he or she shall follow these procedures. If the council director does not follow these procedures,
1118 or is involved in a conflict of interest or other corruption, reported by any person or entity, the
1119 same rules in paragraph 15o apply, except any initial report of suspected criminal or unethical
1120 behavior on the part of the director has to be reported to the Assistant Secretary of the EOHHS,
1121 Disability Division, where this official shall take control of the council until the director is either
1122 cleared and reinstated or a new replacement is found due to termination of the director. Under
1123 section four of this act, the Auditor has the right to also conduct an emergency administrative
1124 audit if such circumstances emerge. If the official who made the appointment or the nominating
1125 agency or organization is suspected of being involved in the corruption or not thoroughly vetting
1126 the candidate, these entities shall be investigated as well with possible civil or criminal penalties
1127 being assessed. The member or employee who had the conflict of interest or committed some
1128 other type corruption during an investigation, shall be reported to the council director and
1129 attorney for investigation. If a member of the council finds himself or herself in a conflict and
1130 resigns because he or she cannot resolve it, the possible consequences may not occur.

1131 17. q. In the case of corruption within the standing disciplinary committee
1132 involving a particular case, or the case being investigated presents a conflict of interest for most
1133 members of the committee, the council director shall ask the Attorney General to appoint an
1134 independent disciplinary committee based on applications from the file at the EOHHS of seven
1135 people from the community, based on paragraph two b who are disabled, personal care

1136 attendants, or who are family members who are disabled, to investigate the ethical violations.
1137 The Attorney General may also choose people of his own, provided such people represent the
1138 population with disabilities or personal care attendants in some way and has no current
1139 association with the council. The attorney for the council shall be present throughout the
1140 investigation, to give legal advice to the panel, applying the general rules according to this act
1141 and other laws of the commonwealth. The independent disciplinary committee can also have
1142 ethical advice from the expert working with the ethics committee according to regulations found
1143 in paragraph two b of this section. The independent disciplinary committee shall operate within
1144 the rules of this section for the regular disciplinary committee, based on paragraph two b and
1145 shall render a decision within 90 days, cited in paragraph of four d. This independent
1146 disciplinary committee can apply the penalties outlined in paragraphs seven g – 14n and 18r.
1147 The independent disciplinary committee shall be disbanded once the investigation is over. Any
1148 member of the council, its employees, or members of subcommittees of the council can be
1149 disciplined in this manner for suspected corruption. Any appointing political official or
1150 nominating agency or organization, which may have committed corruption, shall not be
1151 investigated by the council’s disciplinary committee, but the Attorney General may investigate
1152 and prosecute such individuals and entities, under state and federal laws that pertain to such
1153 unlawful acts.

1154 18. r. If one or more members of the council or its employees are found guilty
1155 of in court of breaking state or federal law, through some type of corruption that has taken place
1156 on the council, the Attorney General may ask for those penalties under those statutes. In this
1157 case, the guilty parties shall be dismissed from the council in the same manner as the removal
1158 outlined in paragraph 13m of this section.

1159 19. s. In the case of any violations on an administrative audit, the audit team or
1160 the Auditor can refer the matter to the Attorney General for criminal investigation. A hearing by
1161 the Governor’s Council on Disability shall be conducted to perform a review of the allegations
1162 and give recommendations to the appointing officials, cited in section three, paragraph one.

1163 20. t. There are two situations in which an ethics investigation, regarding
1164 corruption, conducted by the disciplinary committee, can run concurrently with a legal
1165 investigation: One, the alleged corruption might have violated both the law and council ethical
1166 guidelines. Two, the offence did not rise to the level of legal action or the person was legally
1167 cleared, but nevertheless, the alleged offence may have violated council ethical standards. If the
1168 disciplinary committee finds the person violated the code, penalties are a letter of senture, fines
1169 up to \$10,000, termination from the council, or a combination of sanctions can be pursued.
1170 Senture shall be sent to the accused, the council, the appointing official who appointed the
1171 accused member, the nominating agency or organization and the Governor. The fine shall be
1172 paid to the council with 30 days of notification, unless other arrangements are made, the fee shall
1173 be increased by 10% per month until payment is received.

1174 21. u. If the council discovers through administrative audit, or other sources,
1175 that a prior member committed some type of corruption while on, or employed by the council,
1176 the council and the Attorney General shall initiate legal and ethical investigations with their
1177 potential consequences involved for the retired individual, outlined in paragraphs 16p, 17q and
1178 18r, of this section.

1179 22. v. Moreover, if members of the council, employees, or other

1180 entities involved in council business, fail to sign the ethics agreement of the Personal
1181 Care Attendant Quality Home Care Workforce Council, those individuals or entities shall not be
1182 allowed to serve and will be dismissed by the director if ethics agreements are not signed within
1183 30 days of being given to the recipient. The notification outlined 13m shall be followed for
1184 these purposes.

1185 23. w. In the case of an individual who is fined more than \$100, that individual
1186 is entitled to a payment plan provided by the Personal Care Attendant Quality Home Care
1187 Workforce Council, if they come under income guidelines set forth by the council, so that person
1188 can make payments toward the total amount. Corporate entities, serving as contractors, however,
1189 shall not take advantage of the same benefit. Whoever is being fined, or how the fee schedule is
1190 arranged, violators are to make payment within 30 days of a written decision. For every month
1191 of a missed payment, an additional fee of \$75, for individuals, and \$300 for agencies or
1192 corporate entities will be assessed. If payment is still not made within the agreed upon time
1193 frame, or the accused refuses to pay, the council can seek intervention, through its legal counsel
1194 and the Attorney General, and ask a court to garnish some percentage of the person's income
1195 until the fine is paid including interest. In cases where the person is incarcerated, the court may
1196 order a payment delay until release and the person is gainfully employed or the court can freeze
1197 assets reaching the amount owed, or as close to it as possible.

1198 24. x. The personal care attendants, administrative consumers and surrogates
1199 shall maintain mandatory trainings. Attendants shall offer proof of life saving skills if possible.
1200 If on the directory, any such attendant who has not kept current shall be removed from the
1201 directory. For attendants that do not keep current, the council may fine that person for one time
1202 \$150 after a time period designated by the council. An ombudsman, cited in paragraph 33ff in

1203 this section, may encourage such training be completed. The attendant may submit their name
1204 for the directory again once their training is upgraded. For administrative consumers and
1205 surrogates must maintain current on ethics. Failure to do so within a 12 to 18 months of a new
1206 version of a code of conduct being released, a one time \$150 fine will be assessed by the council
1207 and urging by an ombudsman to complete such training shall be initiated. Such fines should not
1208 involve the disciplinary committee, but the individual assigned to handle fines, cited in
1209 paragraph 38kk in this section shall be the one to submit the fines for missing mandatory
1210 trainings. The council shall decide any other procedures needed to fulfill these requirements for
1211 22v.

1212 25. y. Consumers under the age of 18 or individuals with intellectual
1213 handicaps are exempt from complaints against them because of behavior difficulties or
1214 being under the age of majority.

1215 26. z. The loosing side in the initial disciplinary case can request an
1216 independent administrative appeal or review conducted by an appellate panel comprised of
1217 people with disabilities, personal care attendants, law enforcement and other non-related
1218 members drawn from a random pool of individuals who have volunteered to serve if called for a
1219 period of two years. The Governor and the Secretary of the Department of Elder Affairs shall
1220 appoint two individuals each while the Director of the Office on Disability shall appoint three
1221 with a magistrate presiding to be appointed by the judiciary when the proper documentation is
1222 filed in the appropriate court of law by the council's attorney. Identification of these members
1223 shall be kept confidential to protect any undue influences. The members of the appellate panel
1224 shall appointed at the same two year interval as the regular members are being appointed.

1225 Members of the appellate panel shall report any conflict of interest with the council, or the
1226 parties involved and excuse themselves immediately so the original appointing official who
1227 chose that member can select another member, following rules from paragraph two b in this
1228 section. In case of any corruption on the part of one or more officials, section three, paragraph
1229 five f shall apply, in that the Commissioner of the Massachusetts Rehabilitation Commission
1230 shall appoint three appellate members while the other two alternate officials, if needed, shall
1231 appoint two members each. The director shall notify the appropriate official(s) of need for
1232 alternate members at the proper time. The magistrate in charge of the proceedings has to sign
1233 off on the decision before the final report is issued. If the decision is unjust or unlawful, the
1234 magistrate may use his or her substitute judgment in the decision.

1235 27. aa. The goal of the panel is twofold: To review the rules and procedures of
1236 the council and to ensure all members of the council, associated employees or contractors
1237 correctly followed the rules and procedures.

1238 28. bb. The appeal will be filed with the council director, who will activate the
1239 panel within 10 days of the appeal being filed. The appellate panel will then hold their first
1240 meeting within 45 working days of that notification. The panel will then hold a hearing
1241 involving the administrative consumer(s) affected, their surrogates, if applicable, the council's
1242 governing members, employees and contractors or other agents of the council, or independent
1243 entities, or individuals, who were involved in the original complaint. There can be character or
1244 eyewitness testimony offered in front of the panel and a review of the case records will be
1245 undertaken. No new evidence, however, can be introduced that was not included in the first
1246 investigation.

1247 29. cc. The appellate panel has 90 days to complete its investigation and write a
1248 report with copies going to the administrative consumer and the attendant involved. The
1249 report will also be available to the council, the Governor, the Secretary of the Massachusetts
1250 Department of Elder Affairs and the Director of the Massachusetts Office on Disability. The
1251 judgment of the appealet panel either can uphold the prior ruling or override it. If rules or
1252 procedures need to be changed, the appealet panel may note it in their recommendations. If the
1253 accused is still found in violation, the appeals panel will not adjust the prior recommended
1254 sanctions. Once the ruling is made, there can be no other appeals in court or to other entities.

1255 dd. All sides may have legal representation in such disciplinary proceedings
1256 and attorneys are allowed to represent their clients in any outside interviews. In hearings,
1257 the members of the disciplinary committee, appellate panels, and independent disciplinary
1258 committee do most of the questioning although attorneys for the opposing sides are allowed to
1259 perform direct and cross-examination of witnesses or make oral arguments on behalf of their
1260 clients. Legal counsel will be provided, depending on income level, to be determined by the
1261 council.

1262 32. ee. If someone on the appellate panel or audit committee does not report a
1263 conflict of interest and remove themselves from the investigation, or identity of such
1264 members is unlawfully revealed, the person or entity who committed such acts, shall be charged
1265 a \$10,00 fine and must not be chosen for council or related duty again. Such a penalty shall be
1266 executed by the Attorney General's office in a court of law. Further more, any person who
1267 attempts to influence the outcome of any disciplinary procedures set forth in this section, and in
1268 section four, by having unlawful contact with members disciplinary committees, audit teams, or

1269 appellate panels, or through falsification of evidence, shall be referred to the Attorney General
1270 for possible criminal investigation and prosecution, under criminal statutes chosen by his or her
1271 office. Members of these committees must not engage in such behavior, either alone or with
1272 others, to influence the outcomes of cases outside of normal committee procedures, and must
1273 report anyone who approaches them to attempt to influence their opinion, or use them in anyway
1274 to influence the outcome of the investigation. Failure to report, and, if discovered may result in
1275 the same investigation by the Attorney General and related penalties.

1276 33. ff. Penalties from other state and federal laws may be applied, if those
1277 statutes were violated as well and if the determination is made by the correct authorities.
1278 The Personal Care Attendant Quality Home Care Workforce Council or associated investigators
1279 shall make the appropriate referrals and recommendations to those law enforcement agencies for
1280 a further processing

1281 34. gg. If the Auditor's office is corrupt, affecting reviews of the council, the
1282 Attorney General shall investigate and apply the appropriate legal penalties, if the courts
1283 agree. The Attorney General shall do the same with the three appointing officials, if their offices
1284 are corrupt and affect the council adversely. In terms of the Attorney General's office being
1285 corrupt affecting council performance, the Governor, the Joint Committee of the Judiciary and
1286 the Joint Committee of Health and Human Services shall investigate and exercise their rights
1287 under the Massachusetts State Constitution, in dealing with such circumstances.

1288 35. hh. The council shall hire ombudsmen to serve in different parts of the state
1289 to work with individuals in the community namely people with disabilities, surrogates, family
1290 members of the person needing care and personal care attendants. The ombudsman will work

1291 with anyone having minor day-to-day problems with attendants, providers, consumers,
1292 administrative consumers, family members, or surrogates. The ombudsman will receive
1293 complaints and he or she can make a determination within seven to 14 days of receiving such
1294 reports whether the incident(s) alleged warrant a full disciplinary investigation. The ombudsmen
1295 are mandated reporters pursuant to M.G.L. Chapter 19c, sections 5, 10 of the state code and must
1296 report all suspected cases of abuse to law enforcement and any other appropriate state
1297 investigative agencies. In the case of emergency calls to the ombudsman must visit the victim
1298 within five hours and must notify authorities where the victim resides immediately. Whenever
1299 possible, however, the ombudsman will attempt mediation to solve smaller disputes with the
1300 people involved and whoever else is needed to be present. The personal care attendant can have
1301 some kind of representation at such meetings if they so desire. Moreover, if the attendant has the
1302 problem, he or she can initiate the same type of meeting with their administrative consumer or
1303 the surrogate with the ombudsman and a representative or other advocates being present. If
1304 however, an investigation is warranted, the ombudsman will refer the matter to the workforce
1305 director who will then form a disciplinary committee. The disciplinary process should only be
1306 done when there are serious allegations, not for disputes, which could be solved in other ways.

1307 36. ii. If other entities such as law enforcement or social service
1308 agencies receive complaints regarding the personal care attendant program, such agencies
1309 shall share that information within two days of obtaining the complaint so the council can begin
1310 its own investigation.

1311 37. jj. The council shall make information available to every

1312 administrative consumer, surrogate and personal care attendant registered in the personal
1313 care program regarding complaints procedures. The workforce council shall write a summary of
1314 all disciplinary proceedings and their outcomes for the previous two-year period, omitting any
1315 identifying information, in biannual performance review reports. Information that is described in
1316 this chapter will disclosed and summarized for this purpose.

1317 kk. The council shall provide transportation for people with disabilities,
1318 who require it, to and from disciplinary committee and appellate panel meetings. The
1319 members of such committees can consider holding hearings at a location closer to the opposing
1320 parties. A third option is to arrange teleconferences or videoconferences with the participants.
1321 Moreover, the council shall provide any special accommodations, which a person with a
1322 disability requires to participate fully and function during the disciplinary hearing, complying
1323 with purposes of this act

1324 39. ll. Any Massachusetts citizen can report any union abuse. Investigations of
1325 this type are beyond the scope of the disciplinary procedures of the council and must be handled
1326 by the Attorney General. If the union is found in violation of section three, in any manner, the
1327 basic penalty shall be a fine of \$10,000 per offence to the union and any individual union
1328 members or staff involved, plus any other fines from other laws that might have been violated. If
1329 the entities mentioned in paragraph 23j in section three violate the stated privacy rules, the
1330 disciplinary committee cannot hear such a case, but a state court can apply the \$10,000 per
1331 violation to such entities and individuals employed by such organizations who were involved in
1332 disclosing confidential information. Additional fines of other state or federal privacy laws could
1333 also be applied to such defendants as well. The same penalties, in the same manner, shall be

1334 applied to any other persons not mentioned in paragraph 23j in section three. Depending on the
1335 circumstances, the Attorney General may file criminal charges against union leaders and other
1336 members if he or she thinks it is necessary. Any unsolicited visits from union representatives to
1337 private residences shall be treated as trespassing under the law, if reported. Citizens who are
1338 harassed by the union, may apply for restraining orders in a court of law with specified penalties
1339 at the discretion of the court. Any inappropriate interaction between politicians and the union,
1340 cited in section three, paragraph 13h, if discovered, shall be investigated and prosecuted by the
1341 Attorney General under laws deemed appropriate. The Legislative Joint Committees on Ethics,
1342 and, Health and Human Services, shall also investigate and determine appropriate penalties or
1343 other actions.

1344 40. mm. There are civil liability prohibitions in this act under certain conditions.
1345 An attendant cannot sue any administrative consumer or surrogate independently. The union
1346 cannot hold said parties responsible in a court of law on the behalf of an attendant for any reason.
1347 There is no civil liability for the council, its members, subcommittees, or advisors. The personal
1348 care attendant union and any other entity that has contractual obligations to the council cannot be
1349 held liable civilly other than what is prescribed in this act, unless other laws supercede according
1350 to a court of law. Whereas, only the penalties provided in this act shall be applied to all parties
1351 mentioned except under certain conditions. Attendants, surrogates and human service agencies
1352 can be held civilly liable beyond the consequences mentioned in this act in accordance with
1353 Massachusetts state law. This can only apply in cases of serious injury, such as brain damage,
1354 sensory disability, bodily mutilation, psychological trauma, disease process, or wrongful death
1355 caused by a personal care attendant or some decision or omission that placed the consumer or
1356 administrative consumer in jeopardy. Other than those instances where the quality of life for

1357 consumers or administrative consumers is permanently altered and degraded will lawsuits
1358 independent of council discipline will be allowed to go forward in a court of law, unless a court
1359 decides other laws supercede this act. A complaint with the council's disciplinary committee
1360 and other investigative agencies must be filed first and investigative processes must be
1361 completed before any independent civil suits can be filed in a court of law.

1362 41. nn. Upon enactment of this act, the council has 18 to 24 months to develop
1363 the policies, procedures and logistics, necessary to implement the directives set forth in this
1364 section.

1365 Section 8: Amendment Requirements

1366 Amendments to section 2 of Chapter 268 (2006)

1367 1. Add section 36.a. Sections 2-8 of this act state amendments to Chapter 268
1368 (2006) only for the targeted clauses mentioned, leaving the rest of the law intact. Thus, these
1369 amendments shall apply to Chapter 118G, through the Personal Care Attendant Quality Home
1370 Care Workforce Council Law (2006).

1371 2. b. This act will go into effect immediately upon enactment although it will
1372 take maximum of 18 to 24 months after enactment to fully implement the regulations in
1373 certain sections.