

SENATE No. 370

The Commonwealth of Massachusetts

PRESENTED BY:

James T. Welch

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

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

An Act to strengthen the Massachusetts home care program.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>James T. Welch</i>	<i>Hampden</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>Daniel A. Wolf</i>	<i>Cape and Islands</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Kathleen O'Connor Ives</i>	<i>First Essex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>
<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>

SENATE No. 370

By Mr. Welch, a petition (accompanied by bill, Senate, No. 370) of James T. Welch, Mary S. Keefe, Angelo J. Puppolo, Jr., Daniel A. Wolf and other members of the General Court for legislation to strengthen the Massachusetts home care program. Elder Affairs.

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act to strengthen the Massachusetts home care program.

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

1 SECTION 1. The Executive Office of Elder Affairs, under authority granted in Section 4
2 of MGL Chapter 19A, shall amend the Massachusetts Home Care regulations (651 CMR 3.00).
3 Such amendment shall:

4 (a) Require that home care agencies contracting with Aging Service Access Points to
5 provide homemaker and personal care services through the Massachusetts Home Care program
6 submit comprehensive annual cost reports, that include a full accounting of annual costs for
7 supplies, labor, administrative, and other categories as deemed appropriate by the Executive
8 Office of Elder Affairs; and

9 (b) Establish additional policies and procedures, including verification through random
10 and unannounced inspections, as necessary to facilitate the receipt, investigation and resolution
11 of consumer and worker complaints against such home care agencies. Such policies and

12 procedures shall include procedures for notices, fines and penalties, correction plans, appeals and
13 hearings; and

14 (c) Require such home care agencies to maintain and abide by a surety bond, or other
15 insurance establishing third-party liability, to cover potential wage theft claims, litigation
16 expenses and other potential liabilities that may be incurred by home care agencies.

17 SECTION 2. The Office of the Attorney General, under authority granted under in
18 Section 11N of Chapter 12 of the General Laws to monitor trends in the health care market, may
19 investigate any home care agency contracting with Aging Service Access Points to provide
20 homemaker and personal care services through the Massachusetts Home Care program. Further,
21 the attorney general may require that any such agency produce documents answer interrogatories
22 and provide testimony under oath. Nothing in this section shall limit the authority of the attorney
23 general to regulate home care providers or protect home care consumers under any other law.

24 SECTION 3. The Executive Office of Elder Affairs, under authority granted in Section 4
25 of MGL Chapter 19A, shall through new or amended regulation, direct amendment of the
26 Homemaker Notification of Intent to Contract procurement process or otherwise establish Home
27 Care Program standards that:

28 (a) Update the Home Care Program Notice of Intent to Contract filing requirements to
29 ensure that a minimum Base Wages component of the Average (Hourly) Employee
30 Compensation requirement is established and increased in equal annual increments to a total of
31 no less than \$15.00 per hour within no more than three fiscal years following passage of this Act;
32 and

33 (b) Require that both new and existing home care agencies apply annually under the
34 Notice of Intent (“NOI”) to Contract procurement process; and

35 (c) Require that that each such home care agency applicant annually re-file an update to
36 the Contractor Status and Unit Rate Calculation section of the NOI; and

37 (d) Establish the processes and standards that the EOEA deems necessary to ensure that
38 the average Base Wage of direct care workers at a Massachusetts home care agency is no less
39 than \$15.00 per hour within three fiscal years following passage of this Act.

40 SECTION 4. Chapter 111 of the General Laws is hereby amended by inserting after
41 Section 25D , the following new section:

42 Section 25E

43 (A) Any entity seeking to contract to provide homemaker, personal care homemaker, or
44 home health services, whether or not such entity is currently providing such services, must
45 submit to a Certificate of Need (CON) review established by the Massachusetts Department of
46 Public Health and assessed by an independent board. Such independent board, with duties and
47 powers established by this chapter, shall consist of 9 members; 1 of whom shall be the
48 Commissioner of the Department of Public Health or their designee and whom shall serve as
49 chairperson; 1 of whom shall be the Secretary for the Executive Office of Health and Human
50 Services or their designee; 1 of whom shall be the Secretary for the Executive Office of Elder
51 Affairs or their designee; ;1 of whom shall be a representative for the Home Care Alliance of
52 Massachusetts; 1 of whom shall be a representative for a labor organization representing
53 Massachusetts home care workers; 2 of whom shall be shall be appointed by the Governor; and
54 2 of whom shall be appointed by the Attorney General. All appointments after the initial term

55 of appointment shall serve a term of 3 years, but a person appointed to fill a vacancy shall serve
56 only for the unexpired term. An appointed member of the board shall be eligible for
57 reappointment. No appointed member shall hold full or part-time employment in the executive
58 branch of state government and each member of the board shall be a resident of the
59 commonwealth.

60 (B) To obtain a CON, an application must be filed with said independent board in which
61 the applicant demonstrates the need for the home care agency. The applicant must present to the
62 department and board both evidence of unmet need and how the home care agency fits into the
63 comprehensive health care delivery system of the service area. Any applicant shall also specify
64 the following:

65 1) service area, including municipality and county names; and

66 2) an ongoing quality assurance program that includes compliance with all applicable
67 federal and state quality of care standards, and provide a copy of its program protocols when it
68 requests first-time approval; and

69 3) written assurance that its administrative costs are not excessive in relation to those of
70 other agencies that operate in the same and nearby service areas; and

71 4) written assurance that it will fully comply with all cost reporting and minimum
72 average employee compensation standards established by state law; and

73 5) other requirements as determined by the department and the Board.

74 (C) An appropriate fee structure as necessary to administer this CON program shall be
75 determined by the department and the Board.

76 SECTION 5. Subsection (d) of section 4 of chapter 19 of the General Laws is hereby
77 amended by inserting after the words “to provide and act as a clearinghouse for information,
78 data, and other materials relative to elderly persons” the following:

79 As used in this subsection, the following terms shall have the following meanings:

80 "Home Care Worker" means any person employed by a home care agency to provide
81 home health, homemaker, personal care, companion and chore services.

82 "Home Care Agency" means an entity providing designated and approved home care
83 program services under contract with an Aging Services Access Point as defined in M.G.L. c.
84 19A § 4B.

85 "Home Care Worker Registry" means the registry established under this subsection.

86 The department, subject to appropriation, shall establish a home care worker registry of
87 all individuals currently employed by a home care agency. The home care worker registry shall
88 include, but not be limited to, the following information concerning each home care worker: (1)
89 Full legal name; (2) Current home address; (3) Gender; (4) Date of birth; (5) Employer’s full
90 legal name; (6) Job Title and (7) An updated list of home care trainings and/or certifications
91 completed by the home care worker.

92 The department shall require the registry information for each employed home care
93 worker to be submitted and regularly updated by each home care agency subject to the
94 provisions of this subsection. A home care agency shall collect and maintain the required
95 information for each employed home care worker and shall promptly submit updated information

96 whenever such information changes. No charges shall be imposed on any person or entity for
97 any costs related to the registry.

98 Persons employed as a home care worker by a home care agency on the effective date of
99 this section shall be registered as soon as practicable, but not later than six months after the
100 effective date of this statute. The registry shall be updated at least quarterly.

101 Upon request, information in the home care worker registry shall be made available to the
102 public, including but not limited to home care workers and home care agencies. The department
103 shall include security mechanisms in the registry to implement and maintain a record of
104 accessing or obtaining information from the registry.

105 The department shall make any such additional rules and regulations as are reasonably
106 necessary to implement the provisions of this subsection.