SENATE DOCKET, NO. 831 FILED ON: 1/15/2015

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

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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:

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

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

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

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

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

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

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

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

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

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

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

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

Section 25E

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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