

HOUSE No. 344**The Commonwealth of Massachusetts**

PRESENTED BY:

Mathew Muratore*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 consumer protection and home care services agencies.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Mathew Muratore</i>	<i>1st Plymouth</i>	<i>1/18/2017</i>
<i>Susan Williams Gifford</i>	<i>2nd Plymouth</i>	
<i>John H. Rogers</i>	<i>12th Norfolk</i>	
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	
<i>Ruth B. Balser</i>	<i>12th Middlesex</i>	
<i>Todd M. Smola</i>	<i>1st Hampden</i>	
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>	
<i>Joseph D. McKenna</i>	<i>18th Worcester</i>	
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>	
<i>Sheila C. Harrington</i>	<i>1st Middlesex</i>	
<i>Shaunna L. O'Connell</i>	<i>3rd Bristol</i>	
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>	
<i>Keiko M. Orrall</i>	<i>12th Bristol</i>	
<i>Donald R. Berthiaume, Jr.</i>	<i>5th Worcester</i>	
<i>Steven S. Howitt</i>	<i>4th Bristol</i>	
<i>William L. Crocker, Jr.</i>	<i>2nd Barnstable</i>	

HOUSE No. 344

By Mr. Muratore of Plymouth, a petition (accompanied by bill, House, No. 344) of Mathew Muratore and others relative to consumer protection and home care services agencies. Elder Affairs.

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act relative to consumer protection and home care services agencies.

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.

2 Chapter 19A is hereby amended by inserting after section 41 the following sections:

3 “Section 42. Home care services agencies, Definitions:

4 As used in sections 42 through 51 of this chapter, unless otherwise specified in the text,
5 terms shall have the following meanings:

6 “Activities of Daily Living,” fundamental personal-care tasks that are performed as part
7 of an individual’s routine of self-care. ADLs include, but are not limited to, eating, toileting,
8 dressing, bathing, transferring, and ambulation

9 “Care plan,” a document to be provided to the consumer in conjunction with the service
10 plan that lists services to be provided by the agency based on an assessment, and includes patient
11 preferences and the goals and expectations for those services to be provided.

“Change in Ownership,” a change in ownership shall include without limitation the transfers of interests relative to (1) in the case of a for-profit entity, a change in the identity of the majority of the owners of a home care services agency, or of majority share ownership in the case of a corporation; or (2) in the case of a non-profit entity, such changes in the corporate membership and/or trustees as the executive office determines will constitute a shift in control of a home care services agency.

A transfer of ownership shall also be deemed to have occurred when foreclosure proceedings have been instituted by a mortgagee in possession.

“Clinical service,” a service provided to a consumer by a home care services agency that requires the professional skills of a nurse or therapist to provide or assess, including, but not limited to, any of the following: medication administration, specialized behavioral health services, advanced Alzheimer’s/dementia care.

“Clinical Supervision,” care plan oversight provided by a nurse or therapist licensed in the Commonwealth. Clinical supervision is required only when the care plan includes clinical services.

“Consumer,” an individual in need of home care services that has been accepted to receive such services from a home care services agency.

“Consumer Representative,” a person who has the authority to act on behalf of a consumer with regard to a specific action or who is duly appointed as a guardian or conservator pursuant to chapter 201, a health care proxy pursuant to chapter 201D, or an attorney-in-fact under power of attorney pursuant to chapter 201B.

“Executive office,” the executive office of elder affairs within the commonwealth’s executive office of health and human services.

“Home care services,” supportive services, including, without limitation, assistance with activities of daily living, housekeeping, personal laundry, and companionship provided to an individual in his or her residence, or health care services, including without limitation nursing or therapy services, whether temporary or permanent, with the goal of enabling that individual to remain in his or her residence safely and comfortably. Home care services do not include services provided by a personal care attendant in the Commonwealth’s Personal Care Attendant (PCA) Program as defined by 130 CMR 422 or services provided under the MassHealth Adult Foster Care Program as defined in 101 CMR 351.00

“Home care services agency,” an entity licensed under section 43 that provides or offers to provide home care services in a consumer’s place of residence, for compensation, either through the agency’s own employees or by subcontracting with another home care services agency. A home care services agency does not include an agency that limits its business to the provision of house cleaning services or is certified as a participating Medicare home health agency pursuant to Section 1891 of the Social Security Act, 42 U.S.C.A. § 1395bbb. The definition applies to any entity, city, town, county, or department, board, commission, or division of state government or any subdivision of the foregoing.

“Home care services worker” or “home care worker,” means an individual employed by a home care services agency with appropriate training pursuant to Section 42(8) of this act, and competency for the tasks assigned, who provides home care services to a consumer in the

consumer's residence. Home Care Services Workers shall not be classified as domestic workers pursuant to 454 CMR 24.02.

"Secretary," the secretary of the executive office of elder affairs.

"Service plan" a written description of the types, costs, and schedule of services to be provided to a consumer prepared by the home care services agency in consultation with the consumer and/or the consumer representative and subject to the consumer's right to suspend, terminate, add, or delete the provision of any such service.

Section 43. Licensure required.

(a) No later than six months after the ensuing regulations go into effect, no entity shall offer or provide home care services to consumers, or advertise as a home care services agency, without a license issued by the secretary in accordance with regulations adopted by the executive office. These regulations shall be adopted within 12 months after the law goes into effect and the Commonwealth shall only recognize organizations that meet the following standards:

(1) The agency shall conduct background screening checks upon hire for all home service workers, including:

A. Massachusetts criminal background checks in accordance with 803 CMR 3.

B. State or county criminal history screenings for each location outside of the Commonwealth in which the applicant is known to have lived or worked during at least the last five years.

C. Office of the Inspector General (OIG) Exclusion List.

D. Nurse Aide Registry or Professional Licensing Board for each state in which the applicant is known to have worked within the last five years.

E. Verification of eligibility to work in the US.

F. For all employees who transport consumers, verification of auto insurance and driving license, and driving record for a minimum of the last five years.

(2) The agency shall establish a service plan for each consumer, which shall require a signature of the consumer or consumer representative.

(3) The agency shall establish a care plan that shall be formulated after an assessment of the consumer and considers a consumer's needs and preferences for assistance and services. The consumer or consumer representative shall receive a written copy of the care plan, which shall be updated at least every six months or more frequently depending on the consumer's condition. Any care plan that includes clinical services must be based on an assessment by a licensed clinician and shall be subject to clinical supervision at least once every six weeks. Clinical supervision shall be ongoing and the consumer or consumer representative shall approve and receive a copy of any changes to the care plan based on the consumer's condition.

(4) The agency shall establish and utilize a procedure to accept, investigate, and respond to consumer complaints. Written information about this procedure, including information about how the consumer may file a complaint with the Executive office of Elder Affairs, is provided to consumers upon initiation of services. The agency shall not retaliate against or penalize a consumer who files a complaint.

(5) The agency shall train all consumer service staff in identifying and reporting suspected abuse, and shall follow a written procedure to respond swiftly and compassionately whenever consumer abuse, neglect, or theft is suspected or alleged, in accordance with 105 CMR 155. The agency owner, administrator, or manager shall be considered a Mandatory Reporting Individual pursuant to 105 CMS 155.

(6) The agency shall directly employ its home care service staff, or contract with other agencies that directly employ all home care services staff and maintain workers' compensation insurance coverage for all employees. If the agency uses any independent contractors for the provision of direct care for infrequently needed professional services, it shall ensure that the independent contractors carry their own liability and workers' compensation insurance.

(7) The agency shall maintain a payroll process which includes reporting of employment wages to the appropriate governmental agency, collecting state and federal withholding payroll taxes, and payment of these taxes and all other state and federal payroll taxes to the appropriate governmental agencies.

(8) The agency shall ensure that, prior to assignment, any home care service worker has received training and demonstrates competency in each task to be performed for the consumer, including any specialized care such as dementia care or behavioral health care. In addition, home care service workers will receive training and orientation in the following areas:

A. Confidentiality/privacy and consumer's rights

B. Infection control and communicable diseases

115 C. Handling of emergencies, including safety and falls prevention

116 D. Observation, reporting and documenting changes in consumer needs and
117 environment.

118 (9) The agency shall ensure that all workers whose duties include assistance with
119 Activities of Daily Living and other services inclusive of personal care, have met one of the
120 following training requirements:

121 A. A valid nursing, physical therapy, physical therapy assistant, occupational
122 therapy, or certified occupational therapy assistant license issued by the Commonwealth of
123 Massachusetts; or

124 B. Successful completion of a home health aide training program that meets the
125 requirements of the federal Medicare Conditions of Participation for Home Health Agencies at
126 42 CFR Part 484.36; or

127 C. Successful completion of a certified nursing assistant training pursuant to 42 CFR
128 Part 483.75 (e); or

129 D. Successful completion of a training program equivalent to the
130 Homemaker/Personal Care standards issued by the MA Executive office of Elder Affairs; or

131 E. Successful completion of at least 10 hours of home care services training overseen
132 by a licensed nurse, or licensed therapist; or

133 F. One year or more experience providing personal care services in a supervised
134 (agency or facility) setting; or

135 G. Two years or more experience in providing private personal care services; or

136 H. Successful completion of a standardized competency exam determined by the
137 executive office and administered by the agency.

138 (10) The agency shall ensure that supervisors are accessible by telephone during any
139 hours that home care service workers are providing services, and that both workers and clients
140 know how to contact them in case of emergency.

141 (11) The agency shall conduct quality assurance/supervision reviews for all home care
142 workers no less frequently than every six months.

143 (12) The agency shall maintain liability insurance that meets or exceeds minimum
144 standards established by the secretary.

145 (13) The agency shall provide to the consumer a notice with the Service plan
146 informing the consumer they have certain rights, as developed by the executive office at or
147 before the start of services. These rights shall include, but are not limited to the following:

148 a) The consumer's right to be free from verbal, physical, and psychological abuse and to
149 be treated with dignity;

150 b) The consumer's right to suspend, terminate, or add the provision of any services stated
151 in the service plan as approved by the agency and the consumer;

152 c) The consumer's right to have their property treated with respect;

d) The consumer's right to voice grievances regarding home care services or the lack of respect for property by anyone furnishing services on behalf of the home care services agency and to be free from discrimination or reprisal for doing so;

e) The charges for services provided by the home care services agency;

f) The hours of operation of the home care services agency and the procedures for contacting the agency's manager, or his or her designee, while the agency office is open for business, and while it is closed;

g) The procedure and contact information to call to file a complaint with the home care services agency;

h) The procedure and contact information to call to file a complaint with the executive office regarding the home care services agency;

(14) The agencies shall submit payment to the Commonwealth of Massachusetts of a non-refundable fee of \$1,000 for agency licensure, as well as any penalties levied because of a finding of non-compliance.

(a) A license is required for any home care services entity providing services in this commonwealth, including any entity whose parent company is located in another state. The agency must be authorized by the Massachusetts Secretary of State to conduct business in the commonwealth and have an office physically located within the commonwealth.

(b) Each home care services agency owner or franchisee may obtain one license to include all offices under their ownership.

(c) The executive office shall promulgate any regulations required by sections 43 through 51 of this chapter pursuant to section 2 of chapter 30A

Section 44. Licenses.

(a) Each license shall be issued only for the home care services agency named in the application and shall not be transferred or assigned. Upon sale, assignment lease or other transfer, voluntary or involuntary, including those transfers that qualify as a change in ownership, the new owner of the agency shall obtain a provisional or full license from the secretary prior to maintaining, operating, or conducting a home care services agency.

(b) The secretary shall issue or renew a full license for a term of 3 years to any home care services agency providing home care services to any consumer residing in the commonwealth, upon receipt of an application and payment of the required licensure fee and upon satisfaction of the other requirements of section 42 of this chapter and the regulations promulgated pursuant to this act.

(c) If an applicant for licensure has not been previously licensed, and the home care services agency is not in operation at the time the application is made, the secretary may issue a provisional license. A provisional license shall be valid for a period of 120 days unless sooner terminated, suspended, or revoked pursuant to this section. Within 30 days prior to the termination of a provisional license, the executive office shall inspect the agency and, if the applicant substantially meets the requirements for licensure, it shall issue a full license under this section. If the executive office finds that the holder of the provisional license does not substantially meet the requirements for licensure, but has made significant progress towards

meeting those requirements, the secretary may renew the provisional license once for a period not to exceed 120 days from the expiration of the initial provisional license.

(d) (1) When the secretary denies an application for a full license or renewal of a full license, the secretary may in his or her discretion issue a provisional license to any licensed home care services agency that does not substantially comply with the provisions of section 43 of this chapter and the regulations promulgated pursuant to this act, provided that the secretary finds the health, safety, and well-being of consumers of the agency will be protected during the period for which such a provisional license is issued. The term of the provisional license shall not exceed 120 days. In the event the secretary determines at any time during the term of a provisional license that the health, safety, and well-being of the consumer is not protected, the secretary in his discretion may suspend or revoke such license.

(2) The secretary shall advise in writing the home care services agency of the conditions under which a provisional license is issued, including the manner in which the home care services agency fails to comply with the provisions of section 43 of this chapter or the regulations issued pursuant to this act, and the time within which the corrections necessary for the agency to substantially comply shall be completed.

Section 45. License denial.

An application for a license or a renewal of a license may be denied for any of the following reasons:

a) failure to meet the minimum standards set forth in the regulations adopted by the executive office pursuant to section 43 of this chapter; or

b) satisfactory evidence that the moral character of the applicant or supervisor of the agency is not reputable; or

c) Insufficient financial or other resources to operate and conduct a home care services agency in accordance with the requirements of this Act and the rules and regulations promulgated thereunder; or

d) Failure to obtain or maintain a license to operate a home care services agency, as prescribed by the executive office.

Section 46. Complaint Process.

A home care services agency shall investigate complaints made by a consumer, a consumer representative, or a member of a consumer's family regarding services provided, or failed to be provided, by a home care services agency or the lack of respect for consumer's property by anyone furnishing services on behalf of the home care services agency, and shall document the existence of the complaint and the resolution of the complaint in accordance with regulations adopted by the executive office.

Section 47. Violations.

a) When the executive office determines that a home care services agency is not in compliance with sections 43 - 46 of this chapter or any regulations promulgated pursuant to this act, the executive office may serve the home care services agency in person or by registered mail with an initial determination of non-compliance and the statutory provisions or regulations alleged to have been violated. The initial determination shall identify any action the executive office may take under this section, including the requirement of adopting a plan of correction, an

assessment of a penalty, or a suspension, non-renewal or revocation of a license, and the agency's right to a hearing under this section.

b) Any home care services agency served with an initial determination of non-compliance shall file with the executive office a written plan of correction within 30 days of receipt of the determination. The plan of correction shall be subject to approval of the executive office and shall state with particularity the method by which the agency intends to correct any violation of sections 43 through 46 of this chapter or any regulations promulgated pursuant to this act and shall contain a date by which each violation shall be corrected. Upon submission of a written plan of correction, any fines levied that may be accruing will provisionally stop accruing, subject to approval of the plan by the executive office.

c) If the executive office rejects a plan of correction, it shall serve in person or by registered mail a final determination of non-compliance, including the reasons for the rejection, to the home care service agency. The home care service agency shall have 20 days from receipt of the final determination in which to submit a modified plan. If the modified plan is not submitted in a timely fashion, or if the modified plan is rejected by the executive office and the home care service agency fails to appeal the final determination under section 48(d), the home care services agency shall follow a plan of correction imposed by the executive office.

d) Any home care services agency that is aggrieved by a final determination of the executive office may file with the secretary a written appeal thereof within 15 days of receipt of the final determination and a request for a hearing as provided under section 49 of this chapter.

e) An approval by the executive office of the agency's written plan of correction shall not be construed to mean a license renewal before the full three-year term.

Section 48. Penalties; Enforcement.

a) A home care service agency operating in violation of section 43 through 46 of this chapter or any regulation adopted pursuant to this act may be subject to the penalties levied by the secretary as specified in this section.

b) When the secretary determines that an agency has failed to comply with any section of this chapter or any regulation adopted pursuant to this act, the executive office shall issue a notice of penalty assessment which shall specify the violations for which the penalty is levied. The secretary shall impose a per-day penalty of \$100 or .05% of the agency's previous month's revenue, whichever is greater, commencing on the date the agency was notified of the violation and ending on the date the violation is corrected or appealed, or action is taken to suspend, revoke, or deny renewal of the license, whichever comes first.

c) In determining whether a penalty is to be imposed, the secretary shall consider the following factors:

(1) The gravity of the violation, including the probability that death or serious physical or mental harm to a consumer will result or has resulted, the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(2) The reasonable diligence exercised by the home care service agency and its efforts to correct violations;

and

(3) The financial benefit to the home care service agency of committing or continuing the violation.

d) Any penalty imposed by the secretary shall be paid within 30 days of receipt of a notice of assessment, unless the home care service agency files a written appeal with the secretary pursuant to section 49 of this chapter. If the home care service agency against which the penalty has been assessed does not file an appeal and fails to comply with a written demand for payment within 60 days of receipt, the secretary may refer the matter for enforcement to the attorney general of the commonwealth.

e) The attorney general of the commonwealth may bring an action for an injunction to restrain any violation of sections 43 through 46 or to enjoin the operation or maintenance of a home care service agency in violation of any provision of sections 43 through 46 of this chapter and may enforce any final assessment or determination of the secretary, including without limitation a denial, revocation, non-renewal or suspension of a license, under sections 44 through 49 of this chapter.

Section 49. Administrative Review.

Whenever the secretary issues a final determination of non-compliance, assesses a penalty, or issues a determination of denial, revocation, or suspension of a license to open, conduct, operate or maintain an agency, the applicant or home service agency may, within 30 days of receipt of such determination or assessment, request an adjudicatory proceeding under section 10 of chapter 30A to review the determination or assessment. The secretary shall appoint an impartial and independent hearing officer to conduct the adjudicatory proceeding. The hearing officer shall make a recommendation to the secretary upholding or rejecting the determination or assessment. The secretary shall adopt or reject such recommendation within 30 days of receipt. If

301 the determination or assessment is rejected, any aggrieved party may seek judicial review in a
302 proceeding brought pursuant to chapter 30A.

303 SECTION 2. Section 46A of chapter 140 is hereby amended by deleting the period at the
304 conclusion of the definition of “employment agency” and inserting a comma in its place and the
305 following:

306 “nor shall such definition apply to any home care services agency licensed pursuant to
307 section 44 of chapter 19A.”

308 SECTION 3. 105 CMR 155.003 is hereby amended by inserting “home care services
309 agency, “ after “home health agency” in the definition of “Mandatory Reporting Individual.”

310 SECTION 4. Effective Date.

311 This act shall take effect one year after its enactment.