

SENATE No. 238

The Commonwealth of Massachusetts

PRESENTED BY:

Sal N. DiDomenico

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 rates of payment for early childhood education and care programs.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | |
|-------------------------------|--|-----------------|
| <i>Sal N. DiDomenico</i> | <i>Middlesex and Suffolk</i> | |
| <i>Kay Khan</i> | <i>11th Middlesex</i> | <i>2/1/2017</i> |
| <i>Marjorie C. Decker</i> | <i>25th Middlesex</i> | <i>2/1/2017</i> |
| <i>Barbara A. L'Italien</i> | <i>Second Essex and Middlesex</i> | <i>2/1/2017</i> |
| <i>Jack Lewis</i> | <i>7th Middlesex</i> | <i>2/2/2017</i> |
| <i>Denise Provost</i> | <i>27th Middlesex</i> | <i>2/2/2017</i> |
| <i>Angelo J. Puppolo, Jr.</i> | <i>12th Hampden</i> | <i>2/2/2017</i> |
| <i>Jason M. Lewis</i> | <i>Fifth Middlesex</i> | <i>2/2/2017</i> |
| <i>José F. Tosado</i> | <i>9th Hampden</i> | <i>2/2/2017</i> |
| <i>James T. Welch</i> | <i>Hampden</i> | <i>2/2/2017</i> |
| <i>Thomas M. McGee</i> | <i>Third Essex</i> | <i>2/2/2017</i> |
| <i>Jay R. Kaufman</i> | <i>15th Middlesex</i> | <i>2/2/2017</i> |
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> | <i>2/2/2017</i> |
| <i>Patrick M. O'Connor</i> | <i>Plymouth and Norfolk</i> | <i>2/2/2017</i> |
| <i>Joan B. Lovely</i> | <i>Second Essex</i> | <i>2/3/2017</i> |
| <i>John J. Lawn, Jr.</i> | <i>10th Middlesex</i> | <i>2/3/2017</i> |
| <i>Walter F. Timilty</i> | <i>Norfolk, Bristol and Plymouth</i> | <i>2/3/2017</i> |
| <i>Anne M. Gobi</i> | <i>Worcester, Hampden, Hampshire and</i> | <i>2/3/2017</i> |

Middlesex

SENATE No. 238

By Mr. DiDomenico, a petition (accompanied by bill, Senate, No. 238) of Sal N. DiDomenico, Kay Khan, Marjorie C. Decker, Barbara A. L'Italien and other members of the General Court for legislation relative to rates of payment for early childhood education and care programs. Education.

The Commonwealth of Massachusetts

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

An Act relative to rates of payment for early childhood education and care programs.

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

1 SECTION 1. Section 1A of Chapter 15D, as appearing in the 2014 Official Edition, is
2 hereby amended by inserting after the definition of “family foster care” the following definitions:

3 “Governmental mandate” shall mean a state or federal statutory requirement,
4 administrative rule, regulation, assessment, executive order, judicial order or other governmental
5 requirements that directly or indirectly imposes an obligation and associated compliance cost
6 upon a subsidized child care provider to take any action or to refrain from taking any action in
7 order to fulfill the subsidized child care provider’s contractual duty to a procuring governmental
8 unit.

9 "Governmental unit", the commonwealth, any department, agency board, commission or
10 political subdivision of the commonwealth.

11 SECTION 2. Section 1A of Chapter 15D, as so appearing, shall be amended by
12 inserting after the definition of “services” the following definition:

13 “Subsidized Child Care Provider” shall mean a licensed or exempt child care center, or a
14 licensed, family-child care home located within the Commonwealth of Massachusetts that
15 provides subsidized early education and care programs and services to low-income and other at-
16 risk children.

17 SECTION 3. Chapter 15D, as appearing in the 2014 Official Edition, is hereby amended
18 by inserting after Section 18, the following new sections:

19 Section 19. “Notwithstanding the provisions of any general or special law or regulation to
20 the contrary, the board in fulfilling its responsibility in section 2(e) of chapter 15D to establish
21 and develop a schedule for revising a rate structure for voucher and contracted payments to
22 subsidized child care providers shall have the sole responsibility for establishing rates of
23 payment for subsidized child care providers which are reasonable and adequate to meet the costs
24 which are incurred by subsidized child care providers in providing early education and care
25 programs to low income and other at risk children in conformity with federal and state law,
26 regulations, and quality and safety standards. In establishing rates of payment for early
27 education and care programs that provide care and services to low income and other at-risk
28 children, the board shall adjust rates to take into account factors, including, but not limited to: (i)
29 the cost to subsidized child care provider of any existing or new governmental mandate that has
30 been enacted, promulgated or imposed by any governmental unit or federal governmental
31 authority since rates were last established by the board; (ii) inflation costs of subsidized child
32 care providers; and (iii) other available cost and market data relating to subsidized child care

33 providers including, but not limited to, workforce credentialing requirements under state and
34 federal laws and the market cost associated with unsubsidized early education and child care
35 programs including, but not limited to, salaries and benefits. The board shall not consider the
36 resources specified in section 13G of chapter one hundred and eighteen E in establishing,
37 reviewing or approving rates of payment for early education and care programs that provide care
38 and services to low income and other at-risk children.

39 The board shall: (i) determine, after public hearing, at least annually, the rates to be paid
40 by each governmental unit to subsidized child care providers, provided, that no less than two
41 years from July 1, 2017, no subsidized child care provider shall receive an amount that is less
42 than the amount paid to such provider in fiscal year 2017 by the department, including all rate
43 reserve payments under chapter 133 of the acts of 2016 and all year-end budget allocations or
44 payments made by such governmental units to providers in fiscal year 2017 subject to an
45 inflation adjustment consistent with the annual Massachusetts consumer price index as
46 determined by the federal bureau of statistics. In advance of the public hearing, the board shall
47 hold a series of meetings with subsidized child care providers to discuss the establishment of
48 rates pursuant to the methodology set forth herein. Said rates are to be filed with the state
49 secretary and shall be deemed certified.

50 Section 20. “Any subsidized child care provider aggrieved by an interim rate or a final
51 rate established by the board, or by failure of the board to set a rate or to take other action
52 required by law and desiring a review thereof shall, within 30 days after said rate is filed with the
53 state secretary or may, at any time, if there is a failure to determine a rate or take any action
54 required by law, file an appeal with the division of administrative law appeals established by
55 section 4H of chapter 7. Any appeal filed under this section shall be accompanied by a certified

56 statement that said appeal is not interposed for delay. On appeal, the rate determined for any
57 subsidized child care provider shall be adequate, fair and reasonable for such provider, based
58 upon, the costs of such provider, but not limited thereto.

59 On an appeal from an interim rate or a final rate the division of administrative law
60 appeals shall conduct an adjudicatory proceeding under chapter 30A, and said division shall file
61 its decision with the board and the state secretary within 30 days after the conclusion of the
62 hearing.

63 Said decision shall contain a statement of the reasons for such decision, including a
64 determination of each issue of fact or law upon which such decision was based. If such decision
65 results in a recommendation for a rate different from that certified, the board shall establish a
66 new rate based upon such statement of reasons. If the board determines that the statement of
67 reasons is inadequate to determine a fair, reasonable and adequate rate, it may remand the appeal
68 to the hearing officer for further investigation. Any party aggrieved by a decision of the division
69 may, within 30 days of the receipt of such decision, file a petition for review in superior court for
70 the county of Suffolk, which shall have exclusive jurisdiction of such review.

71 A subsidized child care provider may appeal as an aggrieved party under the preceding
72 sentence, in the event that a remand by the board to a hearing officer does not result in a final
73 decision by the board within 21 days of the date of remand.

74 The petition shall set forth the grounds upon which the decision of the division should be
75 set aside. The aggrieved party shall, within 7 days after the petition for review is filed, notify the
76 board and all the parties to the appeal before said division that a petition for review has been
77 filed by sending each a copy thereof. Within 40 days after the petition for review is filed, or

78 within such further time as the court may allow, the division of administrative law appeals shall
79 file in court the original or a certified copy of the record under review. The court may affirm,
80 modify or set aside the decision of the board in whole or in part, remand the decision to the board
81 for further proceedings or enter such other order as justice may require. Nothing in this section
82 shall be construed to prevent the division from granting temporary relief if, in its discretion, such
83 relief is justified nor, from informally adjusting or settling controversies with the consent of all
84 parties.

85 Judicial review shall be governed by section 14 of chapter 30A to the extent not
86 inconsistent with this section.”

87 SECTION 4. This act shall take effect July 1 2017.