

HOUSE No. 3835**The Commonwealth of Massachusetts**

PRESENTED BY:

Denise C. Garlick and Barry R. Finegold

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 meeting the human service workforce demand.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>	<i>1/15/2019</i>
<i>Barry R. Finegold</i>	<i>Second Essex and Middlesex</i>	<i>1/18/2019</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>	<i>2/1/2019</i>
<i>Bruce J. Ayers</i>	<i>1st Norfolk</i>	<i>2/1/2019</i>
<i>Ruth B. Balser</i>	<i>12th Middlesex</i>	<i>1/29/2019</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>	<i>1/29/2019</i>
<i>David Biele</i>	<i>4th Suffolk</i>	<i>2/1/2019</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>2/1/2019</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>	<i>1/31/2019</i>
<i>Linda Dean Campbell</i>	<i>15th Essex</i>	<i>2/1/2019</i>
<i>Gerard J. Cassidy</i>	<i>9th Plymouth</i>	<i>5/15/2019</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/31/2019</i>
<i>Edward F. Copping</i>	<i>10th Suffolk</i>	<i>1/30/2019</i>
<i>Michael S. Day</i>	<i>31st Middlesex</i>	<i>1/30/2019</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>1/31/2019</i>
<i>Peter J. Durant</i>	<i>6th Worcester</i>	<i>2/1/2019</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/1/2019</i>
<i>Nika C. Elugardo</i>	<i>15th Suffolk</i>	<i>1/31/2019</i>

<i>Paul R. Feeney</i>	<i>Bristol and Norfolk</i>	<i>1/31/2019</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>	<i>1/28/2019</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>2/1/2019</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>	<i>1/30/2019</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>	<i>1/24/2019</i>
<i>Carlos González</i>	<i>10th Hampden</i>	<i>1/31/2019</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>1/25/2019</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>1/30/2019</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>	<i>1/30/2019</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>	<i>1/30/2019</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>	<i>1/31/2019</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>1/31/2019</i>
<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>	<i>2/1/2019</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/29/2019</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>2/1/2019</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/23/2019</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	<i>1/31/2019</i>
<i>John J. Mahoney</i>	<i>13th Worcester</i>	<i>2/1/2019</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>1/30/2019</i>
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>	<i>1/29/2019</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>	<i>1/30/2019</i>
<i>Christina A. Minicucci</i>	<i>14th Essex</i>	<i>1/31/2019</i>
<i>Liz Miranda</i>	<i>5th Suffolk</i>	<i>1/31/2019</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>	<i>2/1/2019</i>
<i>James M. Murphy</i>	<i>4th Norfolk</i>	<i>1/31/2019</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>	<i>2/1/2019</i>
<i>Shaunna L. O'Connell</i>	<i>3rd Bristol</i>	<i>1/23/2019</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>1/31/2019</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>1/30/2019</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/31/2019</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	<i>1/24/2019</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>1/31/2019</i>
<i>Maria Duaime Robinson</i>	<i>6th Middlesex</i>	<i>1/29/2019</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>1/29/2019</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>	<i>1/31/2019</i>
<i>Michael F. Rush</i>	<i>Norfolk and Suffolk</i>	<i>2/1/2019</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>	<i>1/31/2019</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>	<i>1/31/2019</i>

<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>1/31/2019</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>	<i>1/25/2019</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	<i>1/28/2019</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>	<i>1/31/2019</i>
<i>John C. Velis</i>	<i>4th Hampden</i>	<i>1/31/2019</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>5/16/2019</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>5/16/2019</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>	<i>5/16/2019</i>
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>	<i>5/16/2019</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>	<i>5/17/2019</i>
<i>Joseph D. McKenna</i>	<i>18th Worcester</i>	<i>5/17/2019</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>	<i>5/20/2019</i>
<i>William L. Crocker, Jr.</i>	<i>2nd Barnstable</i>	<i>5/20/2019</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>	<i>5/20/2019</i>
<i>Paul K. Frost</i>	<i>7th Worcester</i>	<i>5/20/2019</i>
<i>Paul F. Tucker</i>	<i>7th Essex</i>	<i>5/20/2019</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>5/20/2019</i>
<i>William C. Galvin</i>	<i>6th Norfolk</i>	<i>5/20/2019</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>	<i>5/20/2019</i>
<i>Richard M. Haggerty</i>	<i>30th Middlesex</i>	<i>5/20/2019</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>5/20/2019</i>
<i>Cynthia Stone Creem</i>	<i>First Middlesex and Norfolk</i>	<i>5/20/2019</i>
<i>Ryan C. Fattman</i>	<i>Worcester and Norfolk</i>	<i>5/20/2019</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>	<i>5/20/2019</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>	<i>5/20/2019</i>

HOUSE No. 3835

By Representative Garlick of Needham and Senator Finegold, a joint petition (accompanied by bill, House, No. 3835) of Denise C. Garlick, Barry R. Finegold and others relative to the employment of human service workers. Labor and Workforce Development.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act relative to meeting the human service workforce demand.

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. Chapter 149 of the General Laws is hereby amended by adding the
2 following 3 sections:-

3 Section 204. (a) As used in sections 204 to 206, inclusive, the following words shall,
4 unless the context clearly requires otherwise, have the following meanings:

5 “Entry level direct care”, a human services worker who is classified by the commissioner,
6 secretary, or assistant secretary as performing a list of jobs usually performed by in the human
7 services industry for entry level direct care.

8 “Human services program”, all human services funded by the commonwealth, inclusive
9 of state purchase of services and MassHealth state plan supports and services.

10 “Human services provider”, a community-based human services organization with a
11 human services program funded by a state agency as defined in section 1 of chapter 29.

“Human services worker”, an employee of a human services provider or a state agency who provides treatment, support, or services to clients or their families.

“Support staff”, a human services worker who is classified by the commissioner, secretary, or assistant secretary as performing a list of jobs usually performed by support staff in human services.

“Wage rate”, the hourly wage paid by a human services provider or a state agency to a human services worker.

(b) The rate per hour of the wages paid to human services workers by human services providers shall not be less than the wage rate to be determined by the commissioner or secretary as provided in this section: provided however, that the wage rate of wages paid to entry level direct care or support staff by a human services provider shall not be less than the rate of \$17.00 per hour. The commissioner shall review this wage rate every 2 years for marketplace adjustments with a goal of achieving a wage rate of \$24.00 per hour by 2025.

(c) The commissioner shall determine wage rate calculations for all human services workers except those in positions of chief executive officer, chief financial officer, comptroller, chief operating officer, and related executive staff by using current marketplace costs including, but not limited to, data collected by the Bureau of Labor Statistics benchmarking health care and education sector salaries.

Section 205. (a) Prior to awarding a contract for a human services program, a state agency shall submit to the commissioner, secretary, or assistant secretary a list of the jobs upon which human services workers are to be employed, and shall request the commissioner to

determine the wage rate to be paid by the human services provider subject to section 204 and this section.

(b) Two years after the awarding of the human services program contract and every two years thereafter, the state agency shall submit to the commissioner a list of the jobs upon which human services workers are to be employed and shall request that the commissioner update the determination of the rate of wages to be paid on each job. The human services provider shall annually obtain updated rates from the state agency and shall not pay less than the wage rate so established. The commissioner, secretary, or assistant secretary, shall proceed forthwith to determine the same, and shall furnish the state agency with a schedule of such rate or rates of wages as soon as said determination shall have been made. In advertising or calling for bids for a human services program, the state shall incorporate the commissioner's wage rates in the advertisement or call for bids by an appropriate reference thereto, and shall furnish a copy of the wage rates, without cost, to any person requesting the same. Said wage rates shall be made a part of the contract for the human services program and shall continue to be the minimum wage rate for human services workers during the life of the contract. A human services provider engaged in a human services program shall cause a legible copy of said schedule and subsequent updates to be kept posted in a conspicuous place at the site of said works during the life of the human services program.

(c) The wage rate in the schedule of wage rates shall include human services providers fringe rate calculations, which shall include fringe benefits, payrolls taxes and any present or future government promulgated employer mandates, which include but are not limited to health care premiums, FMLA costs, payroll taxes, Employer Medical Assistance Contribution, employee fingerprinting, and other required costs. The commissioner shall reflect the most

current cost data available and transparently document such rate calculations for these other costs. All other non-personnel rate calculations for costs in purchase of service programs and state plan programs shall be subject to the most current Consumer Price Index data.

(d) Whoever shall pay less than the wage rate, including payments in subsection (c), to any person performing work within classifications as determined by the commissioner, and whoever, for himself or herself, or as representative, agent or officer of another, shall take or receive for his or her own use or the use of any other person, as a rebate, refund or gratuity, or in any other guise, any part or portion of the wages, including payments provided for in subsection (c), paid to any such person for work done or service rendered for a human services program, shall have violated this section and shall be punished or shall be subject to a civil citation or order as provided in section 206. The president and treasurer of a corporation and any officers or agents having the management of such corporation shall also be deemed to be employers of the employees of any corporation within the meaning of sections 204 to 206, inclusive.

Section 206. (a)(1) Any human services provider who willfully violates any provision of sections 204 or 205, shall be punished by a fine of not more than \$25,000 or by imprisonment for not more than 1 year for a first offense, or by both such fine and imprisonment and for a subsequent willful offense a fine of not more than \$50,000, or by imprisonment for not more than 2 years, or by both such fine and such imprisonment.

(2) Any human services provider who without a willful intent to do so, violates any provision of section 204 or 205, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than 6 months for a first offense, and for a subsequent offense by a fine of not more than \$25,000 or by imprisonment for not more than 1 year, or by both such fine

and such imprisonment. A complaint or indictment hereunder or under the provisions of the first paragraph may be sought either in the county where the work was performed or in the county where the human services provider has a principal place of business. In the case of a human services provider who has as its principal place of business outside the commonwealth, a complaint or indictment may be sought either in the county where the work was performed or in Suffolk county.

(3) Any human services provider convicted of willfully violating any provision of sections 204 or 205 shall, in addition to any criminal penalty imposed, be prohibited from contracting, directly or indirectly, with the commonwealth or any of its agencies or political subdivisions for a human services program, or from performing any work on the same as a contractor or subcontractor, for a period of 5 years from the date of such conviction. After final conviction and disposition of a violation pursuant to this section in any court, the clerk of said court shall send a notice of such conviction to the attorney general, who shall publish written notice to all departments and agencies of the commonwealth which contract for human services programs that such person or entity is prohibited from contracting, directly or indirectly, with the commonwealth or any of its authorities or political subdivisions for the period of time required under this section. The attorney general may take such action as may be necessary to enforce the provisions of this section, and the superior court shall have jurisdiction to enjoin or invalidate any contract award made in violation of this section.

(b)(1) As an alternative to initiating criminal proceedings pursuant to subsection (a), the attorney general may issue a written warning or a civil citation. For each violation, a separate citation may be issued requiring any or all of the following: that the infraction be rectified, that restitution be made to the aggrieved party, or that a civil penalty of not more than \$25,000 for

each violation be paid to the commonwealth, within 21 days of the date of issuance of such citation. For the purposes of this paragraph, each failure to pay an employee the wage rate for any pay period may be deemed a separate violation.

(2) Notwithstanding the foregoing, the maximum civil penalty that may be imposed upon any human services provider, who has not previously been either criminally convicted of a violation of the provisions of this chapter or chapter 151 or issued a citation hereunder, shall be no more than \$15,000, except that in instances in which the attorney general determines that the human services provider lacked specific intent to violate the provisions of this chapter or said chapter 151, the maximum civil penalty for such a human services provider who has not previously been either criminally convicted of a violation of the provisions of this chapter or said chapter 151 or issued a citation hereunder shall be not more than \$7,500. In determining the amount of any civil penalty to be assessed hereunder, said attorney general shall take into consideration previous violations of this chapter or said chapter 151 by the human services provider, the intent by such human services provider to violate the provisions of this chapter or said chapter 151, the number of human services workers affected by the present violation or violations, the monetary extent of the alleged violations, and the total monetary amount of the public contract or payroll involved.

(3) In the case of a citation for violating any provision of sections 204 or 205, the attorney general may also order that a bond in an amount necessary to rectify the infraction and to ensure compliance with said sections 204 or 205, inclusive, and with other provisions of law, be filed with said attorney general, conditioned upon payment of said rate or rates of wages, including fringe benefits, payrolls taxes and any present or future government promulgated employer mandates, on said human services programs to any humans services worker, as

determined by the commissioner or secretary. Upon any failure to comply with the requirements set forth in a citation, said attorney general may order the cessation of all or the relevant portion of the work on the human services program. In addition, any human services provider failing to comply with the requirements set forth in a citation or order, shall be prohibited from contracting, directly or indirectly, with the commonwealth or any of its agencies or political subdivisions for a human services program, or from performing any work on the same as a contractor or subcontractor, for a period of 1 year from the date of issuance of such citation or order. Any human services provider who receives 3 citations or orders occurring on 3 different occasions, each of which includes a finding of intent, within a 3 year period shall automatically be debarred for a period of two years from the date of issuance of the third such citation or order or a final court order, whichever is later. Any debarment hereunder shall also apply to all affiliates of the human services provider, as well as any successor company or corporation that said attorney general, upon investigation, determines to not have a true independent existence apart from that of the violating human services provider.

(4) Any person aggrieved by any citation or order issued pursuant to this subsection may appeal the citation or order by filing a notice of appeal with the attorney general and the division of administrative law appeals within 10 days of the receipt of the citation or order. Any such appellant shall be granted a hearing before the division of administrative law appeals in accordance with chapter 30A. The hearing officer may affirm or if the aggrieved person demonstrates by a preponderance of evidence that the citation or order was erroneously issued, vacate, or modify the citation or order. Any person aggrieved by a decision of the hearing officer may file an appeal in the superior court pursuant to the provisions of said chapter 30A.

(5) In cases when the decision of the hearing officer of the division of administrative law appeals is to debar or suspend the human services provider, said suspension or debarment shall not take effect until 30 days after the issuance of such order; provided, however, that the human services provider shall not bid on a human services program during the aforementioned 30 day period unless the superior court temporarily enjoins the order of debarment or suspension.

(6) If any person shall fail to comply with the requirements set forth in any order or citation issued by the attorney general hereunder, or shall fail to pay any civil penalty or restitution imposed thereby within 21 days of the date of issuance of such citation or order or within 30 days following the decision of the hearing officer if such citation or order has been appealed, excluding any time during which judicial review of the hearing officer's decision remains pending, said attorney general may apply for a criminal complaint or seek indictment for the violation of the appropriate section of this chapter.

(7) Notwithstanding the provisions of paragraph (6), if any civil penalty imposed by a citation or order issued by the attorney general remains unpaid beyond the time period specified for payment in said paragraph (6), such penalty amount and any restitution order, together with interest thereon at the rate of 18 per cent per annum, shall be a lien upon the real estate and personal property of the person who has failed to pay such penalty. Such lien shall take effect by operation of law on the day immediately following the due date for payment of such fine, and, unless dissolved by payment, shall as of said date be considered a tax due and owing to the commonwealth, which may be collected through the procedures provided for by chapter 62C. In addition to the foregoing, no officer of any corporation which has failed to pay any such penalty may incorporate or serve as an officer in any corporation which did not have a legal existence as of the date said fine became due and owing to the commonwealth.

169 (c) Civil and criminal penalties pursuant to this section shall apply to human services
170 providers solely with respect to their wage and benefit obligations to their own human services
171 workers.

172 SECTION 2. Section 204 of chapter 149 shall take effect 180 days after enactment.

173 SECTION 3. Effective July 1, 2019, the executive office of health and human services
174 shall begin an 8-month planning process to implement a long-term plan to address the human
175 services workforce crisis.