

HOUSE No. 611

The Commonwealth of Massachusetts

PRESENTED BY:

Danielle W. Gregoire

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 ensure regulatory oversight of home care services.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>	<i>1/9/2019</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>1/22/2019</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>	<i>1/28/2019</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>	<i>1/28/2019</i>
<i>Mathew J. Muratore</i>	<i>1st Plymouth</i>	<i>1/29/2019</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>	<i>1/29/2019</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	<i>1/29/2019</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>	<i>1/29/2019</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/30/2019</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>1/30/2019</i>
<i>RoseLee Vincent</i>	<i>16th Suffolk</i>	<i>1/30/2019</i>
<i>Stephan Hay</i>	<i>3rd Worcester</i>	<i>1/30/2019</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>1/31/2019</i>
<i>Harold P. Naughton, Jr.</i>	<i>12th Worcester</i>	<i>1/31/2019</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>	<i>2/1/2019</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>	<i>2/1/2019</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>2/1/2019</i>

<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>2/1/2019</i>
<i>Tackey Chan</i>	<i>2nd Norfolk</i>	<i>2/1/2019</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>2/1/2019</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>	<i>2/1/2019</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>	<i>2/2/2019</i>

HOUSE No. 611

By Miss Gregoire of Marlborough, a petition (accompanied by bill, House, No. 611) of Danielle W. Gregoire and others relative to regulatory oversight of home care services. Elder Affairs.

The Commonwealth of Massachusetts

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

An Act to ensure regulatory oversight of home care services.

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 19A of the General Laws, as appearing in the 2018 Official
2 Edition, is hereby amended by inserting after section 41 the following section:-

3 Section 42. Home care agencies

4 (a) For the purposes of this section, the following words shall have the following
5 meanings unless the context clearly requires otherwise:

6 “Home care agency”, an entity or organization that provides home care services in
7 residential settings for compensation; provided, however, that "home care agency" shall not
8 include an entity operated by either the federal government or the commonwealth providing
9 home care services, an entity that limits its business to the provision of house cleaning services, a
10 hospice program licensed under section 57D of chapter 111 or a home health agency as defined
11 in section 51K of chapter 111.

12 “Home care services”, supportive services provided to an individual in his or her
13 residence in order to enable that individual to remain in his or her residence safely and
14 comfortably, including, but not limited to, assistance with eating, toileting, dressing, bathing,
15 transferring, ambulation and other activities of daily living, housekeeping, personal laundry, and
16 companionship. Home care services shall not include hospice services provided by an entity
17 subject to licensure under section 57D of chapter 111 or home health services provided by an
18 entity subject to licensure under section 51K of chapter 111.

19 “Home care worker”, means an individual employed by a home care agency who
20 provides home care services to a consumer in the consumer’s residence.

21 (b) Unless otherwise expressly authorized by the department, no person shall
22 establish, maintain, operate or hold oneself out as a home care agency without a home care
23 agency license issued by the department and no organization or entity shall provide home care
24 services, use the words "home care" to describe its services or establish, maintain, operate or
25 hold itself out as a home care agency without a home care agency license issued by the
26 department.

27 (c) The department shall issue for a term of 3 years, and may renew for like terms, a
28 home care agency license to any person or entity of any kind, other than a department, agency or
29 institution of the federal government, the commonwealth or any political subdivision thereof,
30 that it deems responsible and suitable to establish or maintain a home care agency and which
31 meets the requirements of the department established in accordance with its rules and
32 regulations. A home care agency license shall be non-transferable, and shall be subject to
33 suspension, revocation or refusal to renew for cause. Application and renewal fees shall be

34 established pursuant to section 3B of chapter 7. The department may issue a provisional license
35 for a term not to exceed 120 days to an applicant that has not previously operated, or to a home
36 care agency that is operating but is temporarily unable to meet applicable standards and
37 requirements. If a provisional licensee has made significant progress towards meeting such
38 requirements, the department may renew the provisional license once for a period not to exceed
39 120 days from the expiration of the initial provisional license.

40 (d) The department may impose a fine of up to \$1,000 on a person or entity that
41 advertises, announces, establishes, maintains or is concerned in establishing or maintaining a
42 home care agency without a license granted by the department. The department may impose a
43 fine of not more than \$1,000 on a licensed home care agency that violates this section or any rule
44 or regulation promulgated hereunder. Each day during which a violation continues shall
45 constitute a separate offense. The department may conduct surveys and investigations to enforce
46 compliance with this section.

47 (e) The department shall promulgate regulations for the licensure and operation of
48 home care agencies in the commonwealth. Said regulations shall include, but shall not be limited
49 to (i) background screening check requirements for all home care workers; (ii) Minimum
50 standards for consumer-specific service plans; (iii) training and competency requirements for
51 home care agency staff; (iv) minimum coverage requirements for workers' compensation
52 insurance and liability insurance; and (v) requirements and processes for the reporting of
53 consumer complaints.

54 SECTION 2. Section 72F of Chapter 111 is hereby amended by striking out the
55 definitions of “home health agency” and “homemaker” and inserting in place thereof the
56 following new definitions:-

57 “Home care agency”, an entity or organization required to be licensed under section 42 of
58 chapter 19A.

59 “Home care services”, supportive services provided to an individual in his or her
60 residence in order to enable that individual to remain in his or her residence safely and
61 comfortably, including, but not limited to, assistance with eating, toileting, dressing, bathing,
62 transferring, ambulation and other activities of daily living, housekeeping, personal laundry, and
63 companionship.

64 “Home care worker,” means an individual employed by a home health agency, a hospice
65 program, or a home care agency who provides home care services to an individual in his or her
66 residence.

67 "Home health agency", an entity or organization required to be licensed under section
68 51K.

69 SECTION 3. Said section 72F of said Chapter 111 is hereby further amended by striking
70 out the definition of “patient” in its entirety and inserting in place thereof the following
71 definition:-

72 "Patient" or “resident”, any individual who receives health services, hospice services, or
73 home care services in his or her residence from an individual employed by a home health

74 agency, a hospice program, or a home care agency, and any individual who resides in a long term
75 care facility licensed under section 71.

76 SECTION 4. Said section 72F of said Chapter 111 is hereby further amended by striking
77 out the definition of “resident” in its entirety.

78 SECTION 5. Section 72G of said Chapter 111 is hereby amended by striking out the
79 word “homemaker” and inserting in place thereof the following words:- home care worker

80 SECTION 6. Said section 72G of said Chapter 111 is hereby further amended by striking
81 out the words “home health agency or hospice program” each time they appear, and inserting in
82 place thereof, in each instance, the following words:- home health agency, home care agency or
83 hospice program

84 SECTION 7. Section 72H of said Chapter 111 is hereby amended by striking out the
85 words “home health agency” and inserting in place thereof the following words:- home health
86 agency, home care agency,

87 SECTION 8. Section 72J of said Chapter 111 is hereby amended by striking out the
88 second and third paragraphs and inserting in place thereof the following:-

89 The registry shall also contain specific documented findings, made in accordance with
90 the provisions of this section, by the department of patient or resident abuse, mistreatment or
91 neglect or misappropriation of patient or resident property involving: (1) an individual listed on
92 the registry, (2) a home health aide, and (3) a home care worker and a brief statement by the
93 individual disputing such findings. In the case of inquiries to the registry concerning a nurse
94 aide, a home health aide or a home care worker, any information disclosed concerning such a

95 finding shall also include disclosure of any statement in the registry relating to the finding or a
96 clear and accurate summary of any such statement. All facilities, home health agencies and home
97 care agencies shall contact the registry prior to hiring an employee to ascertain if there is any
98 finding of patient or resident abuse, mistreatment, neglect or misappropriation of patient or
99 resident property against a nurse aide, home health aide or home care worker. No facility, home
100 health agency or home care agency shall hire an individual whose name appears in the registry
101 with an adjudicated finding of patient or resident abuse, mistreatment, neglect or
102 misappropriation of patient or resident property if such individual is under a suspension imposed
103 by the department under the terms of this section.

104 The department shall, after notice to the nurse aide, home health aide or home care
105 worker involved in an allegation of patient or resident abuse, mistreatment or neglect or
106 misappropriation of patient or resident property and a reasonable opportunity for a hearing for
107 the individual to rebut such allegations, make a finding as to the accuracy of the allegations. If
108 the department finds that a nurse aide, home health aide or home care worker has abused,
109 mistreated or neglected a patient or resident or misappropriated patient or resident property, said
110 department shall notify the nurse aide, home health aide or home care worker and the employer
111 thereof and the registry of such finding. The department shall not make a finding that an
112 individual has neglected a patient or resident if the individual demonstrates that such neglect was
113 caused by factors beyond the control of the individual. Upon making such finding, the
114 department may suspend the right of such individual to work as a nurse aide, home health aide or
115 home care worker. The department shall include the terms of any such suspension in the registry
116 and no facility, home health agency or home care agency shall hire said individual until such
117 suspension has been served to its completion.

SECTION 9. This act shall take effect one year after enactment .