SENATE DOCKET, NO. 863 FILED ON: 1/15/2025

SENATE . . . . . No. 1601

The Commonwealth of Massachusetts

PRESENTED BY:

Patrick M. O'Connor

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 the reform of the personal care attendant system.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Patrick M. O'Connor	*First Plymouth and Norfolk*

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SENATE . . . . . No. 1601

By Mr. O'Connor, a petition (accompanied by bill, Senate, No. 1601) of Patrick M. O'Connor for legislation relative to the reform of the personal care attendant system. Public Health.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *1444* OF 2023-2024.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Fourth General Court
(2025-2026)

An Act relative to the reform of the personal care attendant system.

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. Section 71 of Chapter 118E of the General Laws, as so appearing, is hereby amended by inserting at the end the following:-

"The members of the council shall meet with a quorum of seven members no less than three times per year to review any developments and field any questions, concerns, or other correspondence received, as well as strive to resolve any issues that may rise under their purview. The council shall submit a minutes report to the secretary of the executive office of health and human services for publication on the state website."

SECTION 2. Section 72 of Chapter 118E of the General Laws, as so appearing, is hereby amended by striking subsections (3) and (4) and inserting thereof the following:-

"(3) Provide direct and immediate assistance to consumers and consumer surrogates in finding personal care attendants by establishing a referral directory of personal care attendants and bringing consumers in direct contact with a personal care attendant or attendants; provided that before placing a personal care attendant on the referral directory, the workforce council shall determine that the personal care attendant has met the requirements established by the executive office in its applicable regulations and has not stated in writing a desire to be excluded from the directory; and provided further, that the referral directory shall be maintained and updated every six months to account for new or departing personal care attendants and changes in contact information;

(4) Provide prompt, routine, emergency and respite referrals of personal care attendants to consumers and consumer surrogates who are authorized to receive long-term, in-home personal care services through a personal care attendant;"

SECTION 3. Section 73 of Chapter 118E of the General Laws, as so appearing, is hereby amended by striking the section in its entirety and replacing it with the following:-

Section 73. (a) The PCA quality home care workforce council shall be responsible for the training, directing, and supervising of personal care attendants. Consumers or the consumer's surrogate may retain the right to select, hire, and terminate any personal care attendant providing services to the consumer or consumer's surrogate; provided that the consumer or consumer's surrogate may elect to transfer this right to the council. Consumers or the consumer's surrogate may elect to receive long-term, in-home personal care services from personal care attendants who are not referred to the consumer or consumer's surrogate by the council. Consumers or the consumer's surrogate may register with the council a primary personal care attendant. For the

purposes of this section, “primary personal care attendant” shall mean a personal care attendant who has agreed with the consumer to be the consumer’s primary source of care and service. Registered primary personal care attendants may work up to any number of hours per week for the consumer.

(b) The council shall develop and maintain a personal care attendant pool. For the purposes of this section, a “personal care attendant pool” shall be defined as an online registry of personal care attendants that shall serve the purpose of replacing a primary or regular personal care assistant in the case of their temporary absence or inability to work for a consumer at a scheduled time. The personal care attendant pool shall contain contact information and may contain hours of availability of each personal care attendant employed by the council, pursuant to the provisions of subsection (c) of this section. The council shall require all personal care attendants to notify the council at least 24 hours prior to an anticipated absence or inability to work at the time agreed upon by the consumer and personal care attendant. Upon such notification, the council shall utilize the personal care attendant pool to contact and assign an available personal care attendant to replace the original personal care attendant for the timeframe specified. The council shall work to retain a reasonable amount of available personal care attendants in the personal care attendant pool so as to ensure constant coverage of consumers in the case of an absence or inability to work. The council may, subject to appropriation, establish offices and employ employees, agents and contractors as necessary to carry out the provisions of this section.

(c) Personal care attendants shall be considered public employees, as defined by and solely for the purposes of, chapter 150E and section 17J of chapter 180. Said chapter 150E shall apply to personal care attendants except to the extent that chapter 150E is inconsistent with this

section, in which case this section shall control. In addition, personal care attendants shall be treated as state employees solely for the purposes of sections 17A and 17G of chapter 180. Personal care attendants shall not be considered public employees or state employees for any purpose other than those set forth in this paragraph. The PCA quality home care workforce council shall be the employer, as defined by and solely for the purposes of said chapter 150E and said sections 17A, 17G and 17J of said chapter 180 and deductions under said sections 17A, 17G and 17J may be made by any entity authorized by the commonwealth to compensate personal care attendants through the MassHealth personal care attendant program or under any program operated by an entity under contract, in whole or in part, with MassHealth. Personal care attendants shall not be eligible for benefits through the group insurance commission, the state board of retirement or the state employee workers' compensation program.

(d) Personal care attendants who are employees of the council under this section shall not be considered, for that reason, public employees or employees of the council for any other purpose. Nothing in this chapter shall alter the obligations of the commonwealth or the consumer to provide their share of social security, federal and state unemployment taxes, Medicare and worker's compensation insurance under the Federal Insurance Contributions Act, federal and state unemployment law or the Massachusetts Workers' Compensation Act.

(e) Consistent with section 9A of chapter 150E, no personal care attendant shall engage in a strike and no personal care attendant shall induce, encourage or condone any strike, work stoppage, slowdown or withholding of services by any personal care attendant.

(f) The only bargaining unit appropriate for the purpose of collective bargaining shall be a statewide unit of all personal care attendants. The showing of interest required to request an

election is 10 per cent of the bargaining unit. An intervener seeking to appear on the ballot must make the same showing of interest.

(g) The council or its contractors, may not be held vicariously liable for the action or inaction of any personal care attendant, whether or not that personal care attendant was included on the council's referral directory or referred to a consumer or the consumer's surrogate.

(h) The members of the council shall be immune from any liability resulting from implementation of sections 70 to 75, inclusive.

SECTION 4. Section 74 of Chapter 118E of the General Laws, as so appearing, is hereby amended by striking the word “may” in line 7 and replacing it with the word “shall” and by striking the word “may” in line 12 and replacing it with the word “shall”.

SECTION 5. Section 75 of Chapter 118E of the General Laws, as so appearing, is hereby amended by striking the figure “(d)” in line 19 and replacing it with the figure “(e)”, and by inserting, after subsection (c), the following new subsection:-

“(d) The performance review shall provide a description of the effectiveness of the personal care attendant pool and any instances where a consumer was unable to have a personal care attendant replaced, following the absence of the originally scheduled personal care attendant, in a timely manner.”

SECTION 6. Chapter 118G of the General Laws, as so appearing, is hereby amended by adding the following new section:-

“Section 72A. The council, in cooperation with the Executive Office of Health and Human Services, the Department of Elder Affairs and the Division of Medical Assistance, shall

issue regulations to establish and implement a paid PCA surrogate program. Subject to appropriation, these regulations shall create a system to reimburse for PCA surrogate services provided by any employee or contractor of the member's personal care agency not to include the member's legal guardian, family member or fiscal intermediary. The paid surrogate program shall reimburse these surrogates for performing certain PCA management tasks that the member is unable to perform including but not limited to signing and submitting activity forms, hiring, firing, supervising and otherwise directing the PCA as specified in the member's service agreement. Nothing in this section or regulations promulgated under this section shall be construed to impact the unpaid PCA surrogate program currently described in 130 CMR 422.402 and 130 CMR 422.422(B)."