

**HOUSE . . . . . No. 47**

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The Commonwealth of Massachusetts

PRESENTED BY:

*Jennifer E. Benson and Tom Sannicandro*

*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 improve the personal care attendant program..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>William N. Brownsberger</i>	
<i>Jennifer L. Flanagan</i>	
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>

**HOUSE . . . . . No. 47**

By Representatives Benson of Lunenburg and Sannicandro of Ashland, a petition (accompanied by bill, House, No. 47) of Jennifer E. Benson, Tom Sannicandro and others for legislation to improve the personal care attendant program. Children, Families and Persons with Disabilities.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 3421 OF 2009-2010.]

**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Eleven**  
\_\_\_\_\_

An Act to improve the personal care attendant program..

*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 9 of Chapter 118E of the General Laws, as appearing in the 2006  
2 official edition, is hereby amended by inserting in line 34 after the word “options.” the  
3 following:  
  
4 In conducting an assessment of community-based service options, determination of  
5 eligibility and approval for services shall include an assessment of the estimated costs and  
6 benefits of providing specific community-based services and shall ensure the maximum possible  
7 consumer control over personal care and homecare services. Community-based service options  
8 that provide consumer direction shall be fully considered prior to providing approval of private  
9 home care agency services. Eligibility for services must be based on actual need and cost and  
10 should not reflect biases about age, disability or households.

11 SECTION 2. Section 32(c) of Chapter 118G of the General Laws, as appearing in the  
12 2006 official edition, is hereby amended by inserting at the end the following:

13 The council, in cooperation with the Executive Office of Health and Human Services, the  
14 Department of Elder Affairs and the Division of Medical Assistance, shall issue regulations to  
15 establish and implement a paid PCA surrogate program. Subject to appropriation, these  
16 regulations shall create a system to reimburse for PCA surrogate services provided by any  
17 employee or contractor of the member’s personal care agency not to include the member’s legal  
18 guardian, family member or fiscal intermediary. The paid surrogate program shall reimburse  
19 these surrogates for performing certain PCA management tasks that the member is unable to  
20 perform including but not limited to signing and submitting activity forms, hiring, firing,  
21 supervising and otherwise directing the PCA as specified in the member’s service agreement.  
22 Nothing in this section or regulations promulgated under this section shall be construed to impact  
23 the unpaid PCA surrogate program currently described in 130 CMR 422.402 and 130 CMR  
24 422.422(B).

25 SECTION 3. Section 28 of Chapter 118G of the General Laws, as appearing in the 2006  
26 official edition, is hereby amended by inserting in line 12 after the word “program.” the  
27 following:

28 Whenever the state has established or implements a consumer-directed home care  
29 program, including a “cash and counseling” or any similar program, each worker employed by a  
30 consumer and providing “personal care attendant services” (as defined at 130 CMR 422.402)  
31 shall be considered a personal care attendant and given the rights of collective bargaining as  
32 employees of the workforce council.

33 SECTION 4. Section 172C of Chapter 6 of the General Laws, as appearing in the 2006  
34 official edition, is hereby deleted in its entirety, and replaced with the following new section:

35 Chapter 6: Section 172C. Dissemination of criminal offender record information to  
36 agencies, elderly persons, or individuals with a disability employing or referring individuals to  
37 provide services to said elderly or individuals with a disability.

38 Section 172C. For purposes of this section, the following words shall, unless the context  
39 requires otherwise, have the following meanings:--

40 “Elderly person”, an individual who is sixty years of age or over.

41 “Individual with a disability”, an individual who, because of his or her disability, needs  
42 physical assistance with activities of daily living, such as taking medications, bathing or  
43 grooming, dressing, walking, eating, toileting, and transferring.

44 “Surrogate or agent”, a person or agency designated by an elderly person or an individual  
45 with a disability to act in his or her behalf with regards to home or community based services.

46 Notwithstanding the provisions of Section 172, criminal offender record information may  
47 be made available, upon application to the Criminal History Systems Board, to any of the  
48 following agencies, elderly persons, or individuals with a disability who employ, accept as a  
49 volunteer or refer for employment to a client any individual who will provide care, treatment,  
50 education, training, transportation, delivery of meals, instruction, counseling, supervision,  
51 recreation or other services in a home or in a community based setting for any elderly person or  
52 individual with a disability or who will have any direct, indirect, or unmonitored contact with  
53 such elderly person or individual with a disability or access to such persons' files:

54 (1) any agency which provides homemaker, home health aide, companion or other  
55 community based services to elderly persons or individuals with a disability in home or  
56 community based settings, including, but not limited to home health agencies certified under  
57 Title XVIII of the Social Security Act;

58 (2) a home care corporation established pursuant to the provisions of chapter nineteen  
59 A;

60 (3) a municipality; or

61 (4) any agency, organization, elderly person or individual with a disability, that,  
62 employs or refers personal care attendants; or

63 (5) any other entity receiving federal, state or local funds.

64 Such agency, elderly person or individual with a disability, may obtain criminal offender  
65 record information, as made available by both the state and federal government, including the  
66 criminal offender record information collected under section 168 of this chapter, and information  
67 contained in the sex offender registry created by section 178D of this chapter, concerning any  
68 such individual prior to employing such individual, accepting such individual as a volunteer or  
69 referring such individual for employment to an elderly or disabled persons. If any elderly person  
70 or individual with a disability employing a personal care attendant is unable to initiate the  
71 criminal background check called for under this section, said background check may be initiated  
72 by a surrogate or agent on behalf of the elderly person or individual with a disability.

73 Any agency, elderly person or individual with a disability who is the recipient of services  
74 from any individual who provides care, treatment, education, training, transportation, delivery of

75 meals, instruction, counseling, supervision, recreation or other services in a home, shall be given  
76 the option to commence said services while a criminal background check is being conducted. An  
77 agency, elderly person or individual with a disability may employ an individual for a position  
78 that involves the provision of direct personal care or treatment on a conditional basis prior to  
79 receiving the results of such individual's criminal offender check as provided for by this section.  
80 No agency, elderly person or individual with a disability shall be liable for civil damages to any  
81 individual so conditionally employed and subsequently discharged by reason of information  
82 received as a result of a criminal offender record check completed pursuant to this section.

83           Any agency, elderly person, or individual with a disability obtaining information under  
84 this section shall not disseminate such information for any purpose other than to further the  
85 protection of the elderly person or individual with a disability, provided that the results of a  
86 criminal background check may be shared by such agencies with the elderly person or individual  
87 with a disability who is the recipient of services as defined in this section, where the elderly  
88 person or individual with a disability is the employer of said person who was the subject of a  
89 criminal history background check.

90           Notwithstanding the provisions of this section, an elderly person or individual with a  
91 disability who employs a personal care attendant shall be informed of his or her option to have a  
92 criminal background check performed on any individual who is otherwise qualified and is in the  
93 final stages of consideration to become his or her personal care attendant. Said elderly person or  
94 individual with a disability shall be required to consent in writing to the provision of a criminal  
95 background check as provided for under this section, and shall be permitted to hire any  
96 individual of his or her choice.

97           The criminal history systems board shall waive the fee assessable pursuant to section  
98 172A for criminal offender record information made available pursuant to this section.

99           Notwithstanding the provisions of any general or special law to the contrary, the division  
100 of medical assistance shall, subject to appropriation, reimburse any agency, elderly person or  
101 individual with a disability obtaining information under this section for the portion of the costs  
102 associated with obtaining criminal offender record information on employees or potential  
103 employees providing services to individuals on MassHealth pursuant to this section.

104           A violation of this section shall constitute a violation of section 2 of chapter 93A.

105           The Criminal History Systems Board shall promulgate any regulations necessary to  
106 implement the provisions of this section.