

HOUSE No. 3404

The Commonwealth of Massachusetts

PRESENTED BY:

Daniel Cullinane

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 strengthen the Massachusetts Home Care Program.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Daniel Cullinane</i>	<i>12th Suffolk</i>
<i>Jose F. Tosado</i>	<i>9th Hampden</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Tackey Chan</i>	<i>2nd Norfolk</i>
<i>Michael F. Rush</i>	<i>Norfolk and Suffolk</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Michael J. Finn</i>	<i>6th Hampden</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>

<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>John C. Velis</i>	<i>4th Hampden</i>
<i>Brian R. Mannal</i>	<i>2nd Barnstable</i>
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>
<i>Michael D. Brady</i>	<i>9th Plymouth</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>Alan Silvia</i>	<i>7th Bristol</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Gloria L. Fox</i>	<i>7th Suffolk</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>
<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>
<i>Evandro C. Carvalho</i>	<i>5th Suffolk</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>
<i>Michael S. Day</i>	<i>31st Middlesex</i>
<i>Brendan P. Crighton</i>	<i>11th Essex</i>
<i>Bruce J. Ayers</i>	<i>1st Norfolk</i>
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>
<i>Carlos Gonzalez</i>	<i>10th Hampden</i>
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>
<i>James M. Murphy</i>	<i>4th Norfolk</i>
<i>John J. Mahoney</i>	<i>13th Worcester</i>
<i>Claire D. Cronin</i>	<i>11th Plymouth</i>

<i>Carole A. Fiola</i>	<i>6th Bristol</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>

HOUSE No. 3404

By Mr. Cullinane of Boston, a petition (accompanied by bill, House, No. 3404) of Daniel Cullinane and others for legislation to establish a registry for home care workers. Elder Affairs.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act to strengthen the Massachusetts Home Care 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. Chapter 19 of the General Laws, as appearing in the 2012 Official Edition,
2 is hereby amended by inserting after section 3 the following section:-

3 Section 3A. As used in this section, the following terms shall have the following
4 meanings:

5 "Home Care Worker" means any person employed by a home care agency to provide
6 home health, homemaker, personal care, companion and chore services.

7 "Home Care Agency" means an entity providing designated and approved home care
8 program services under contract with an Aging Services Access Point as defined in section 4B.

9 "Home Care Worker Registry" means the registry established under this subsection.

10 The department, subject to appropriation, shall establish a home care worker registry of
11 all individuals currently employed by a home care agency. The home care worker registry shall

12 include, but not be limited to, the following information concerning each home care worker: (1)
13 full legal name; (2) current home address; (3) gender; (4) date of birth; (5) employer's full legal
14 name; (6) job title; and (7) an updated list of home care trainings or certifications completed by
15 the home care worker.

16 The department shall require the registry information for each employed home care
17 worker to be submitted and regularly updated by each home care agency subject to the
18 provisions of this subsection. A home care agency shall collect and maintain the required
19 information for each employed home care worker and shall promptly submit updated information
20 whenever such information changes. No charges shall be imposed on any person or entity for
21 any costs related to the registry.

22 Persons employed as a home care worker by a home care agency on the effective date of
23 this section shall be registered as soon as practicable, but not later than six months after the
24 effective date of this statute. The registry shall be updated at least quarterly.

25 Upon request, information in the home care worker registry shall be made available to the
26 public, including but not limited to home care workers and home care agencies. The department
27 shall include security mechanisms in the registry to implement and maintain a record of
28 accessing or obtaining information from the registry.

29 The department shall make any such additional rules and regulations as are reasonably
30 necessary to implement the provisions of this section.

31 SECTION 2. Chapter 19A of the General Laws, as appearing in the 2012 Official
32 Edition, is hereby amended by adding the following 2 sections:-

33 Section 42. The department, under authority granted in section 4, shall promulgate and
34 amend the Massachusetts home care regulations (651 CMR 3.00). The amendment shall:

35 (a) Require that home care agencies contracting with Aging Service Access Points to
36 provide homemaker and personal care services through the Massachusetts Home Care program
37 submit comprehensive annual cost reports, that include a full accounting of annual costs for
38 supplies, labor, administrative, and other categories as deemed appropriate by the department;

39 (b) Establish additional policies and procedures, including verification through
40 random and unannounced inspections, as necessary to facilitate the receipt, investigation and
41 resolution of consumer and worker complaints against such home care agencies. Such policies
42 and procedures shall include procedures for notices, fines and penalties, correction plans, appeals
43 and hearings; and

44 (c) Require such home care agencies to maintain and abide by a surety bond, or other
45 insurance establishing third-party liability, to cover potential wage theft claims, litigation
46 expenses and other potential liabilities that may be incurred by home care agencies.

47 The office of the attorney general, under authority granted under in section 11N of
48 chapter 12, may investigate any home care agency contracting with Aging Service Access Points
49 to provide homemaker and personal care services through the Massachusetts Home Care
50 program. Further the attorney general may require that any such agency produce documents
51 answer interrogatories and provide testimony under oath. Nothing in this section shall limit the
52 authority of the attorney general to regulate home care providers or protect home care consumers
53 under any other law.

54 Section 43. The department, under authority granted in section 4, shall through new or
55 amended regulation, direct amendment of the Homemaker Notification of Intent to Contract
56 procurement process or otherwise establish Home Care Program standards that:

57 (a) Update the Home Care Program Notice of Intent to Contract filing requirements
58 to ensure that a minimum Base Wages component of the Average (Hourly) Employee
59 Compensation requirement is established and increased in equal annual increments to a total of
60 no less than \$15.00 per hour within no more than three fiscal years following enactment of this
61 section; and

62 (b) Require that both new and existing home care agencies apply annually under the
63 Notice of Intent (“NOI”) to Contract procurement process; and

64 (c) Require that that each such home care agency applicant annually re-file an update
65 to the Contractor Status and Unit Rate Calculation section of the NOI; and

66 (d) Establish the processes and standards that the EOEA deems necessary to ensure
67 that the average Base Wage of direct care workers at a Massachusetts home care agency is no
68 less than \$15.00 per hour within three fiscal years following passage of this Act.

69 SECTION 3. Chapter 111 of the General Laws, as appearing in the 2012 Official Edition,
70 is hereby amended by inserting after Section 25D , the following section:-

71 Section 25E. (A) Any entity seeking to contract to provide homemaker, personal care
72 homemaker, or home health services, whether or not such entity is currently providing such
73 services, must submit to a Certificate of Need (CON) review established by the Massachusetts
74 Department of Public Health and assessed by an independent board. Such independent board,

75 with duties and powers established by this chapter, shall consist of 9 members; 1 of whom shall
76 be the Commissioner of the Department of Public Health or their designee and whom shall serve
77 as chairperson; 1 of whom shall be the Secretary for the Executive Office of Health and Human
78 Services or their designee; 1 of whom shall be the Secretary for the Executive Office of Elder
79 Affairs or their designee; 1 of whom shall be a representative for the Home Care Alliance of
80 Massachusetts; 1 of whom shall be a representative for a labor organization representing
81 Massachusetts home care workers; 2 of whom shall be shall be appointed by the Governor; and
82 2 of whom shall be appointed by the Attorney General. All appointments after the initial term
83 of appointment shall serve a term of 3 years, but a person appointed to fill a vacancy shall serve
84 only for the unexpired term. An appointed member of the board shall be eligible for
85 reappointment. No appointed member shall hold full or part-time employment in the executive
86 branch of state government and each member of the board shall be a resident of the
87 commonwealth.

88 (B) To obtain a CON, an application must be filed with said independent board in which
89 the applicant demonstrates the need for the home care agency. The applicant must present to the
90 department and board both evidence of unmet need and how the home care agency fits into the
91 comprehensive health care delivery system of the service area. Any applicant shall also specify
92 the following:

93 (1) service area, including municipality and county names;

94 (2) an ongoing quality assurance program that includes compliance with all applicable
95 federal and state quality of care standards, and provide a copy of its program protocols when it
96 requests first-time approval;

97 (3) written assurance that its administrative costs are not excessive in relation to those of
98 other agencies that operate in the same and nearby service areas;

99 (4) written assurance that it will fully comply with all cost reporting and minimum
100 average employee compensation standards established by state law; and

101 (5) other requirements as determined by the department and the board.

102 (C) An appropriate fee structure as necessary to administer this CON program shall be
103 determined by the department and the board.