

**HOUSE . . . . . No. 3421**

**The Commonwealth of Massachusetts**

PRESENTED BY:

**Barbara A. L'Italien**

*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 passage of the accompanying bill:

An Act to improve the personal care attendant program.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Barbara A. L'Italien	18th Essex
Steven A. Tolman	
Mary E. Grant	6th Essex
Theodore C. Speliotis	13th Essex
Robert L. Rice, Jr.	2nd Worcester
Louis L. Kafka	8th Norfolk
William N. Brownsberger	24th Middlesex
Todd M. Smola	1st Hampden
Christine E. Canavan	10th Plymouth
Richard T. Moore	Worcester and Norfolk
Frank I. Smizik	15th Norfolk
Marian Walsh	Suffolk and Norfolk
Patricia D. Jehlen	Second Middlesex
James Dwyer	30th Middlesex
Sarah K. Peake	4th Barnstable
Michael Brady	9th Plymouth
Susan C. Tucker	Second Essex and Middlesex
Angelo J. Puppolo, Jr.	12th Hampden
Cheryl A. Coakley-Rivera	10th Hampden

Stephen L. DiNatale	3rd Worcester
Anthony D. Galluccio	Middlesex, Suffolk and Essex
Antonio F.D. Cabral	13th Bristol
James B. Eldridge	Middlesex and Worcester
Thomas M. Stanley	9th Middlesex
James J. O'Day	14th Worcester District
Alice K. Wolf	25th Middlesex
Cleon H. Turner	1st Barnstable
Robert S. Hargraves	1st Middlesex
Geraldo Alicea	6th Worcester
Joyce A. Spiliotis	12th Essex
Colleen M. Garry	36th Middlesex
Thomas P. Kennedy	Second Plymouth and Bristol
Linda Dorcena Forry	12th Suffolk
Denise Provost	27th Middlesex
Kay Khan	11th Middlesex
Michael F. Rush	10th Suffolk
Linda Dean Campbell	15th Essex
Anthony W. Petrucci	First Suffolk and Middlesex
Steven J. D'Amico	4th Bristol
Bruce E. Tarr	First Essex and Middlesex
Paul McMurtry	11th Norfolk
Matthew C. Patrick	3rd Barnstable
Willie Mae Allen	6th Suffolk
Marc R. Pacheco	First Plymouth and Bristol
Alice Hanlon Peisch	14th Norfolk
Sean Garballey	23rd Middlesex
David B. Sullivan	6th Bristol

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## 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 official  
2 edition, is hereby amended by inserting in line 34 after the word “options.” the following:

3 In conducting an assessment of community-based service options, determination of eligibility  
4 and approval for services shall include an assessment of the estimated costs and benefits of  
5 providing specific community-based services and shall ensure the maximum possible consumer  
6 control over personal care and homecare services. Community-based service options that  
7 provide consumer direction shall be fully considered prior to providing approval of private home  
8 care agency services. Eligibility for services must be based on actual need and cost and should  
9 not reflect biases about age, disability or households.

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

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

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

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

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

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

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

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

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

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

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

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

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

57 (3) a municipality; or

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

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

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

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

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

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

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

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

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

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