

SENATE No. 269

The Commonwealth of Massachusetts

PRESENTED BY:

Sal N. DiDomenico

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 rates of payment for early childhood education and care programs.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>1/31/2019</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>1/31/2019</i>

SENATE No. 269

By Mr. DiDomenico, a petition (accompanied by bill, Senate, No. 269) of Sal N. DiDomenico, Michael O. Moore and James B. Eldridge for legislation relative to rates of payment for early childhood education and care programs. Education.

The Commonwealth of Massachusetts

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

An Act relative to rates of payment for early childhood education and care programs.

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 1A of chapter 15D, as appearing in the 2016 Official Edition, is
2 hereby amended by inserting after the definition of “family foster care” the following
3 definitions:-

4 “Governmental mandate” shall mean a state or federal statutory requirement,
5 administrative rule, regulation, assessment, executive order, judicial order or other governmental
6 requirements that directly or indirectly imposes an obligation and associated compliance cost
7 upon a subsidized child care provider to take any action or to refrain from taking any action in
8 order to fulfill the subsidized child care provider’s contractual duty to a procuring governmental
9 unit.

10 "Governmental unit" shall mean the commonwealth, any department, agency board,
11 commission or political subdivision of the commonwealth.

12 SECTION 2. Section 1A of chapter 15D, as so appearing, shall be amended by inserting
13 after the definition of “services” the following definition:

14 “Subsidized Child Care Provider” shall mean a licensed or exempt child care center, or a
15 licensed, family-child care home located within the Commonwealth of Massachusetts that
16 provides subsidized early education and care programs and services to low-income and other at-
17 risk children.

18 SECTION 3. Chapter 15D, as appearing in the 2016 Official Edition, is hereby amended
19 by inserting after Section 18, the following new sections:-

20 Section 19. Notwithstanding the provisions of any general or special law or regulation to
21 the contrary, the board in fulfilling its responsibility in section 2(e) of chapter 15D to establish
22 and develop a schedule for revising a rate structure for voucher and contracted payments to
23 subsidized child care providers shall have the sole responsibility for establishing rates and
24 methods of payment for subsidized child care providers which are reasonable and adequate to
25 meet the actual costs which are incurred by subsidized child care providers in providing early
26 education and care programs to low income and other at risk children in conformity with federal
27 and state law, regulations, and quality and safety standards. In establishing rates and methods of
28 payment for early education and care programs that provide care and services to low income and
29 other at-risk children, the board shall adjust rates to take into account factors, including, but not
30 limited to: (i) the cost to subsidized child care provider of any existing or new governmental
31 mandate that has been enacted, promulgated or imposed by any governmental unit or federal
32 governmental authority since rates were last established by the board; (ii) inflation costs of
33 subsidized child care providers; and (iii) other available cost and market data relating to

34 subsidized child care providers including, but not limited to, workforce credentialing and
35 professional development requirements under state and federal laws and the market cost
36 associated with unsubsidized early education and child care programs including, but not limited
37 to, salaries and benefits. The board shall not consider the resources specified in section 13G of
38 chapter one hundred and eighteen E in establishing, reviewing or approving rates of payment for
39 early education and care programs that provide care and services to low income and other at-risk
40 children.

41 The board shall: (i) determine, after public hearing, at least annually, the rates to be paid
42 by each governmental unit to subsidized child care providers. In advance of the public hearing,
43 the board shall hold a series of meetings with subsidized child care providers to discuss the
44 establishment of rates pursuant to the methodology set forth herein. After conducting a hearing,
45 the Board shall establish fair and reasonable rates to be paid for early education services,
46 provided that said rates shall not be less than the previous year and inclusive of an inflation
47 adjustment consistent with the annual Massachusetts consumer price index as determined by the
48 federal bureau of statistics. Said rates are to be filed with the state secretary and shall be deemed
49 certified.

50 Section 20. Any subsidized child care provider aggrieved by an interim rate or a final rate
51 established by the board, or by failure of the board to set a rate or to take other action required by
52 law and desiring a review thereof shall, within 30 days after said rate is filed with the state
53 secretary or may, at any time, if there is a failure to determine a rate or take any action required
54 by law, file an appeal with the division of administrative law appeals established by section 4H
55 of chapter 7. Any appeal filed under this section shall be accompanied by a certified statement
56 that said appeal is not interposed for delay. On appeal, the rate determined for any subsidized

57 child care provider shall be adequate, fair and reasonable for such provider, based upon, the costs
58 of such provider, but not limited thereto.

59 On an appeal from an interim rate or a final rate the division of administrative law
60 appeals shall conduct an adjudicatory proceeding under chapter 30A, and said division shall file
61 its decision with the board and the state secretary within 30 days after the conclusion of the
62 hearing.

63 Said decision shall contain a statement of the reasons for such decision, including a
64 determination of each issue of fact or law upon which such decision was based. If such decision
65 results in a recommendation for a rate different from that certified, the board shall establish a
66 new rate based upon such statement of reasons. If the board determines that the statement of
67 reasons is inadequate to determine a fair, reasonable and adequate rate, it may remand the appeal
68 to the hearing officer for further investigation. Any party aggrieved by a decision of the division
69 may, within 30 days of the receipt of such decision, file a petition for review in superior court for
70 the county of Suffolk, which shall have exclusive jurisdiction of such review.

71 A subsidized child care provider may appeal as an aggrieved party under the preceding
72 sentence, in the event that a remand by the board to a hearing officer does not result in a final
73 decision by the board within 21 days of the date of remand.

74 The petition shall set forth the grounds upon which the decision of the division should be
75 set aside. The aggrieved party shall, within 7 days after the petition for review is filed, notify the
76 board and all the parties to the appeal before said division that a petition for review has been
77 filed by sending each a copy thereof. Within 40 days after the petition for review is filed, or
78 within such further time as the court may allow, the division of administrative law appeals shall

79 file in court the original or a certified copy of the record under review. The court may affirm,
80 modify or set aside the decision of the board in whole or in part, remand the decision to the board
81 for further proceedings or enter such other order as justice may require. Nothing in this section
82 shall be construed to prevent the division from granting temporary relief if, in its discretion, such
83 relief is justified nor, from informally adjusting or settling controversies with the consent of all
84 parties.

85 Judicial review shall be governed by section 14 of chapter 30A to the extent not
86 inconsistent with this section.

87 SECTION 4. This act shall take effect July 1, 2019.