

SENATE No. 380

The Commonwealth of Massachusetts

PRESENTED BY:

Patricia D. Jehlen

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 Massachusetts home care.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>1/20/2023</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>1/26/2023</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/30/2023</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>2/2/2023</i>
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>	<i>2/2/2023</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>2/7/2023</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>2/8/2023</i>
<i>Anne M. Gobi</i>	<i>Worcester and Hampshire</i>	<i>2/9/2023</i>
<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>	<i>2/14/2023</i>
<i>Mathew J. Muratore</i>	<i>1st Plymouth</i>	<i>2/14/2023</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Norfolk</i>	<i>2/23/2023</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/23/2023</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>3/9/2023</i>

SENATE No. 380

By Ms. Jehlen, a petition (accompanied by bill, Senate, No. 380) of Patricia D. Jehlen, Thomas M. Stanley, Joanne M. Comerford, Jack Patrick Lewis and other members of the General Court for legislation to improve Massachusetts home care. Elder Affairs.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 4471 OF 2021-2022.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act to improve Massachusetts home care.

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 111 of the General Laws, as appearing in the 2020 Official Edition,
2 is hereby amended by inserting after section 51K the following 3 sections:-

3 Section 51L. (a)For the purposes of this section and sections 51M and 51N, the following
4 words shall, unless the context clearly requires otherwise, have the following meanings,:-

5 “Home care agency”, a business, nonprofit organization or other entity engaged in
6 providing home care services to consumers in the consumers’ residence for compensation or any
7 entity or individual that represents itself as a home care agency by name, advertising or
8 presentments to the public or uses the terms “home care agency” or “home care” in the entity or
9 individual’s name; provided however, that "home care agency" shall not include any of the

10 following: (i) an entity operated by either the federal government or the commonwealth
11 providing home care services, (ii) an entity that limits its business to the provision of house
12 cleaning services, (iii) an Aging Service Access Points entity as defined in section 4B of chapter
13 19A, (v) a hospice program licensed under section 57D or (vi) a home health agency as defined
14 in section 51K.

15 “Home care consumers”, an individual receiving home care services or any legal
16 representative of such individual.

17 “Home care services”, supportive services provided to an individual in their residence to
18 enable that individual to remain in their residence safely and comfortably, including, but not
19 limited to, assistance with eating, toileting, dressing, bathing, transferring, ambulation and other
20 activities of daily living, housekeeping, personal laundry and companionship. Home care
21 services shall not include hospice services provided by an entity subject to licensure under
22 section 57D or home health services provided by an entity subject to licensure under section
23 51K, services provided by a personal care attendant in the commonwealth’s personal care
24 attendant program as defined in 130 CMR 422.000 or services provided under the MassHealth
25 adult foster care program as defined in 101 CMR 351.00.

26 “Home care worker”, an individual employed by a home care agency who provides home
27 care services to a consumer in the consumer’s residence.

28 “Personal care attendant”, an individual who provides consumer-directed personal care
29 services to a consumer in the consumer’s residence, including, but not limited to, a person
30 providing such services as defined under section 70 of chapter 118E.

31 “Secretary”, the secretary of health and human services.

32 (b) Unless otherwise expressly authorized by the secretary, no person shall establish,
33 maintain, operate or hold oneself out as a home care agency without a home care agency license
34 issued by the secretary and no organization or entity shall provide home care services, use the
35 words "home care" to describe its services or establish, maintain, operate or hold itself out as a
36 home care agency without a home care agency license issued by the secretary; provided, that
37 licensure shall be required for home care agencies that directly employ home care workers or
38 directly contract with a company who employs home care workers.

39 (c) The secretary shall issue for a term to be determined, and may renew for like
40 terms, a home care agency license to any person or entity of any kind, other than a department,
41 agency or institution of the federal government, the commonwealth or any political subdivision
42 thereof, that: (i) the secretary deems responsible and suitable to establish or operate a home care
43 agency, and (ii) meets the requirements of the executive office of health and human services
44 established in accordance with the office's rules and regulations developed in consultation with
45 the executive office of elder affairs and the department of public health as provided in subsection
46 (e).

47 A home care agency license shall be subject to suspension, revocation or refusal to renew
48 for cause. License application and renewal fees shall be established pursuant to section 3B of
49 chapter 7.

50 The secretary may issue a provisional license for a term not to exceed 120 days to an
51 applicant that has not previously operated home care services, or to a home care agency that is
52 operating but is temporarily unable to meet applicable standards and requirements. If a
53 provisional licensee has made significant progress towards meeting such requirements, the

54 secretary may renew the provisional license once for a period not to exceed 120 days from the
55 expiration of the initial provisional license.

56 (d) The secretary may impose a fine on a person or entity that advertises, announces,
57 establishes, or operates a home care agency without a license granted by the secretary. The
58 secretary may impose a fine on a licensed home care agency that violates this section, or any rule
59 or regulation promulgated hereunder. Each day during which a violation continues shall
60 constitute a separate offense.

61 The secretary, in collaboration with the executive office of elder affairs and the
62 department of public health, may conduct surveys and investigations to enforce compliance with
63 this section.

64 (e) The secretary shall, in consultation with the executive office of elder affairs and
65 the department of public health, promulgate rules and regulations for the licensing and conduct
66 of a home care agency. In developing these rules and regulations, the secretary shall review all
67 existing licensure, reporting and oversight requirements across the long-term care services and
68 support system and other relevant state agencies, including the provider monitoring conducted by
69 the Aging Services Access Points, to avoid duplication or conflicting requirements and to ensure
70 that home care agency licensure processes align with the current licensure for home health
71 agencies and with state oversight process already in place through the Aging Services Access
72 Points and the nurse aide registry.

73 The regulations shall include, but shall not be limited to:

74 (i) background screening check requirements for all home care workers which may
75 include: (1) Massachusetts criminal background checks, (2) state or county criminal history

76 screenings for each location outside of the commonwealth in which the home care professional is
77 known to have lived or worked during the previous 5 years, (3) review of the federal Office of
78 Inspector General List of Excluded Individuals/Entities, (4) review of the nurse aide registry, (5)
79 applicable professional licensing board check and (6) for all home care professionals who will
80 transport consumers, verification of auto insurance and driving records for a minimum of the
81 previous 5 years;

82 (ii) minimum standards for consumer-specific service plans and contracts; provided,
83 that the plans shall include: (1) a detailed description of services, including services the primary
84 agency is subcontracting to another agency or provider, (2) a written unit rate and total cost of
85 services, inclusive of any additional fees or deposits, and (3) contact information for consumer
86 questions;

87 (iii) minimum coverage requirements for workers' compensation insurance and
88 liability insurance;

89 (iv) maintenance of a payroll process that follows all state and federal labor and wage
90 laws;

91 (v) annual and ongoing training and competency requirements for home care agency
92 staff that are in direct contact with home care consumers; provided, that minimum training
93 requirements shall include (1) confidentiality and privacy of home care consumer's rights, (2)
94 infection control and communicable diseases, (3) handling of emergencies, including safety and
95 falls prevention, (4) observation, reporting and documenting changes in consumer needs and
96 environment, (5) identifying and reporting suspected abuse, neglect or theft, and (6) wage theft.

97 The trainings shall be culturally and linguistically competent for the trainee;

98 (vi) policies and procedures to ensure home care workers have safe working
99 conditions, adequate training and a process for submitting complaints;

100 (vii) maintenance of an emergency preparedness plan;

101 (viii) meeting of quality metrics and standards to be set forth in the licensing
102 regulations;

103 (ix) requirements and written processes for the timely reporting of home care
104 consumer complaints;

105 (x) a suitability determination process; provided, that the process shall include, but
106 not be limited to, requiring all applicants to attest to having sufficient financial capacity to
107 provide ongoing care and services in compliance with state law and regulation; and

108 (xi) providing adequate equipment and supplies for home care workers.

109 (f) The secretary shall be responsible for licensing home care agencies. To
110 accomplish the objectives set forth in this section, the secretary may coordinate and consult with
111 the offices and agencies that are interested in matters pertaining to the delivery of home care
112 services, including but not limited to: (1) the department of public health, (2) the executive office
113 of elder affairs, (3) the department of consumer affairs and business regulation and (4) the
114 department of public health. The responsibilities of the regulating agency shall include:

115 (i) reviewing and processing licensure applications, including a suitability review
116 that ensures the applicant can meet the obligations and conditions of licensure, including:

117 (A) a review of the state disbarment list and federal Office of Inspector General List of
118 Excluded Individuals/Entities; and

119 (B) a competency review where all individuals with at least a 5 per cent ownership stake
120 in the home care agency shall submit the individuals' names, contact information, companies
121 where they have at least a 5 per cent ownership, any civil or criminal findings against said
122 individual, and a completed background check;

123 (ii) establishing a process for a change of ownership that includes advanced notice to
124 home care consumers and home care workers and a review by the regulating state agency to
125 determine if the new licensee can meet the obligations and conditions of licensure, including a
126 suitability review; provided, that home care agency licenses shall not be transferable;

127 (iii) working with other regulators to investigate and resolve complaints;

128 (iv) imposing fines on the licensee when determined to be appropriate;

129 (v) suspending or revoking licenses when determined to be appropriate;

130 (vi) posting a listing of licensed home care agencies on a publicly available webpage;

131 (vii) allowing for "deemed status" for licensure of home care agencies if an Aging
132 Service Access Points or MassHealth provider contract is in place;

133 (viii) establishing of quality metrics and standards for monitoring the licensed home
134 care agency performance, including reporting mechanisms for tracking performance; and

135 (ix) annual reporting by home care agencies, which may include reporting on quality
136 metrics and significant changes related to home care agency finances.

137 Section 51M. (a) The secretary, in consultation with the home care worker and consumer
138 abuse stakeholder advisory committee establishing in subsection (b), MassHealth, the department

139 of elder affairs, the department of public health and the PCA quality home care workforce
140 council established pursuant to section 71 of chapter 118E, shall adopt minimum standards and
141 procedures for addressing abusive treatment and bullying of Massachusetts home care workers,
142 personal care attendants and home care consumers. The standards and procedures shall address
143 physical, verbal and mental abuse either of or from individual home care consumers as well as
144 any abusive treatment or bullying from home care consumer surrogates, family members, other
145 caregivers and any others present in the home care consumers' household when the home care
146 worker is providing home care services. The standards and procedures shall promote appropriate
147 home care worker and home care consumer training and support and a safe and healthy work
148 environment for home care workers, while recognizing the privacy rights of home care
149 consumers, the role of personal care attendant consumer employers and that home care
150 consumers may have a disruptive behavioral disorder underlying abuse behavior.

151 (b) There shall be a home care worker and consumer abuse stakeholder advisory
152 committee that shall meet, study and make recommendations to the secretary relative to
153 standards and procedures for addressing abusive treatment and bullying of home care workers,
154 personal care attendants and home care consumers.

155 The advisory committee shall consist of the following 16 members: the secretary or a
156 designee, who shall serve as chair; the assistant secretary for MassHealth or a designee; the
157 secretary of elder affairs or a designee; the commissioner of public health or a designee; the
158 chairs of the joint committee on elder affairs or their designees; and 10 persons to be appointed
159 by the governor, 1 of whom shall be a personal care attendant, 1 of whom shall be a home care
160 agency direct care worker, 1 of whom shall be a consumer of personal care attendant services
161 who shall be a member of the PCA workforce council, 1 of whom shall be a consumer of home

162 care agency services, 1 of whom shall be a representative of the statewide independent living
163 council, 1 of whom shall be a representative of the Disability Law Center, Inc., 1 of whom shall
164 be a representative of the Massachusetts Home Care, Inc., 1 of whom shall be a representative of
165 the Home Care Aide Council, 1 of whom shall be a representative of the Home Care Alliance of
166 Massachusetts, Inc., and 1 of whom shall be a representative of the Massachusetts division of
167 1199SEIU. The members of the advisory committee shall serve without compensation.

168 The advisory committee shall submit a report containing initial findings and
169 recommendations, including drafts of proposed legislation or regulatory changes to carry out its
170 recommendations, by filing the same with the clerks of the senate and house of representatives,
171 the joint committee on elder affairs and the joint committee on public health. The advisory
172 committee shall continue to meet quarterly following submission of the report and until the
173 advisory committee votes to dissolve itself.

174 (c) The home care worker and consumer abuse stakeholder advisory committee shall
175 study and make findings and recommendations relative to the development and implementation
176 of minimum standards and procedures for addressing abusive treatment and bullying of
177 Massachusetts home care workers, personal care attendants and home care consumers. The
178 advisory committee's study, findings and recommendations shall include, but not be limited to:

179 (1) Reporting and debriefing, including best practices for standards and procedures for
180 home care workers and their home care consumers experiencing abusive treatment, bullying or
181 neglect to report abuse to the home care workers' employers or appropriate state entities,
182 including the PCA workforce council or MassHealth for personal care assistants, without
183 retaliation and while retaining the right to report any criminal activity to law enforcement. The

184 standards shall include, but not be limited to, best practices for a debriefing process for affected
185 home care workers and home care consumers following violent acts.

186 (2) Tracking and record retention, including best practices for standards and procedures
187 for the secretary to track and monitor reports of both home care worker abuse and reports of
188 home care consumer abuse or neglect.

189 (3) Informing workers, including best practices for standards and procedures that would
190 require employers of home care workers or other appropriate state entities, including the PCA
191 workforce council or MassHealth for personal care assistants, to regularly inform home care
192 workers of patterns of consumer or worker abuse or bullying that indicates a potentially unsafe
193 working environment. The standards and procedures shall respect home care consumer privacy
194 while prioritizing home care worker safety and while ensuring continuity of care.

195 (4) Training and employer policies, including best practices for standards and procedures
196 for the secretary, in consultation with home care employers and other stakeholders, to develop
197 and implement home care worker and home care consumer orientations and other trainings on:
198 (i) worker abuse and bullying, (ii) escalation cycles and effective de-escalation techniques and
199 (iii) culturally competent and peer-to-peer trainings and strategies to prevent physical harm with
200 hands-on practice or role play. The training and employer policies shall also include best
201 practices for home care employers to implement additional internal plans and procedures to: (A)
202 reduce workplace violence and abuse, (B) offer resources to employees for coping with the
203 effects of violence and (C) develop labor-management workplace safety committees. The
204 training and employer policies shall consider and avoid duplication of existing requirements and
205 trainings in place through Aging Service Access Points.

206 Section 51N. (a) There is hereby established a home care oversight advisory council
207 within the executive office of health and human services.

208 The advisory council shall advise the secretary relating to the regulations described in
209 subsection (e) of section 51L. The executive office of health and human services shall consult
210 with the advisory council on implementation of the home care agency licensure process outlined
211 in section 51L. The advisory council may also conduct a review concurrently with the
212 development of the home care agency licensure process to include, but not be limited to:

213 (i) the process of implementing the new home care agency licensure process in the
214 commonwealth, including the creation of a provisional license to address identified gaps in home
215 care services;

216 (ii) existing licensure, reporting and oversight requirements across the long-term care
217 services and support systems and other relevant state agencies, including the provider monitoring
218 conducted by the Aging Services Access Points, to avoid duplication and conflicting
219 requirements;

220 (iii) home care agency licensure requirements in other states;

221 (iv) processes to ensure that the home care agency licensure process will align with
222 licensure for home health agencies and with state oversight process already in place through the
223 Aging Services Access Points, the home care worker registry established in section 4D of
224 chapter 19A and the nurse aide registry established in section 72J;

225 (v) the development of a process for state government to conduct a statewide home care
226 market analysis and report on current available home care services in all regions that may inform
227 the regulating agency and the issuance of new home care agency licenses; and

228 (vi) any additional subjects that the home care oversight advisory council and the
229 secretary deem necessary and appropriate.

230 (b) The advisory council shall be composed of the secretary or their designee, who shall
231 serve as chair; the chairs of the joint committee on elder affairs or their designees; the secretary
232 of elder affairs or their designee; the commissioner of public health or their designee; the
233 assistant secretary for MassHealth or their designee; 1 person to be appointed by the minority
234 leader of the house of representatives; 1 person to be appointed by the minority leader of the
235 senate; and 4 persons to be appointed by the governor, 1 of whom shall be a representative of the
236 Home Care Aide Council, 1 of whom shall be a representative of the Home Care Alliance of
237 Massachusetts, Inc., 1 of whom shall be a representative of Massachusetts Home Care, Inc. and 1
238 of whom shall be a representative of the Massachusetts division of 1199SEIU.

239 (c) The council shall meet quarterly. Upon the promulgation of regulations for home care
240 agency licensure pursuant to subsection (e) of section 51L, the council may introduce a motion to
241 dissolve by a majority vote of its members.

242 SECTION 2. Section 1 of chapter 151B of the General Laws, as so appearing, is hereby
243 amended by inserting after the word “thereof”, in line 21, the following words:- and an employer
244 of a personal care attendant as defined in section 70 of chapter 118E, including individual
245 consumers of a personal care attendant.

246 SECTION 3. The secretary of health and human services shall, in consultation with the
247 executive office of elder affairs and the department of public health, promulgate rules and
248 regulations for the licensing and conduct of a home care agency, as provided in subsection (e) of
249 section 51L of chapter 111 of the General Laws, within 1 year of the effective date of this act.

250 SECTION 4. The home care worker and consumer abuse stakeholder advisory committee
251 established in subsection (b) of section 51M of said chapter 111 shall meet at least monthly in
252 the first 6 months after the effective date of this act to develop initial findings and
253 recommendations. The advisory committee shall submit the report described in said subsection
254 (b) of said section 51M of said chapter 111 not later than 6 months after the effective date of this
255 act.

256 SECTION 5. Members of the home care oversight advisory council established in section
257 51N of said chapter 111 shall be named and the council shall commence its work within 60 days
258 of the effective date of this act.