

**SENATE . . . . . No. 83**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Susan C. Tucker (BY REQUEST)**

*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 relative to home care accountability .

PETITION OF:

NAME:

Kevin Wreghitt

DISTRICT/ADDRESS:

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# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT RELATIVE TO HOME CARE ACCOUNTABILITY .

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 Preamble

2           1. This proposed Bill is a companion piece of legislation for Chapter 268 of the  
3 Acts of 2006, {Chapter 286 (2006)}, in which established the Personal Care Attendant Quality  
4 Home Care Workforce Council under the auspices of the Executive Office of Health and Human  
5 Services, through providing amendments to Chapter 118G. This legislation adds amendments to  
6 the Personal Care Attendant Quality Home Care Workforce Council Law, Chapter 268 (2006)  
7 and adds three sections to Chapter 118G.

8           2. The Home Care Accountability and Supplemental Act (H-CASA) gives more  
9 guidance to the Personal Care Attendant Home Care Workforce Council as to how to provide  
10 administrative oversight for the Massachusetts personal care attendant program. It also gives the  
11 state mechanisms to supervise the activities of the council. This legislation provides mandates  
12 for the adoption of ethical codes, disciplinary procedures, and training opportunities for all  
13 involved in the personal care attendant program, regardless of one's position. The Bill also  
14 introduces ethical and legal procedures on how to avoid and respond to any corruption involving  
15 the council throughout several sections. A new anti-discrimination clause is offered here, as well

16 as new directives for public negotiation. It also covers privacy issues and gives guidance as to  
17 how the council shall protect personal information. Since some consumers are more capable  
18 than others in management of the their own program, a redefinition is offered to delineate who  
19 can be held legally responsible as far as people with disabilities and who are elderly. All this has  
20 been done to raise quality control and program efficiency.

21           3. In this act, the amendments proposed for Chapter 268 (2006) is spread out through  
22 this document. Section 1 of Chapter 268 is covered by sections two through seven of this act  
23 while the amendments proposed for Sections 2 through 3 is found in section eight of this act.  
24 Beginning with Sections 5 through 8, this act proposes 3 additional sections to chapter 118G.  
25 Section 1, of this document offers the findings upon, which this Bill is based. Section 2 defines  
26 terms. Section 3 provides amendments to sections 29-32 of Chapter 118G while specifying the  
27 basic regulations for this act. Section 33 of Chapter 118G found in Section 4 in this act,  
28 discusses administrative audits, while section five covers ethics. Section 6 states rules for  
29 screening and training. Section seven discusses disciplinary procedures. Section 8 produces  
30 section 39 reclassifying sections 34 and 35 of Chapter 118G and attaches all amendments to  
31 Chapter 268 (2006) and mandates them applicable to Chapter 118G and explains other  
32 requirements for this act.

### 33           Section 1. Findings

34           1. The Personal Care Attendant Quality Home Care Workforce Council Law,  
35 Chapter 268 (2006) was progress toward improving the personal care attendant program in  
36 Massachusetts for people with disabilities and seniors who utilize that service.

37           2. The establishment of the workforce council addressed the issue of personal care  
38 attendant's right, through union representation, to bargain for better wages and benefits.

39           3. At present, there is no delineation in the law between consumers who can administer  
40 their own program and ones who rely on surrogacy.

41           4. Personal care attendants ought to be placed on public directories based on  
42 temperament and observable skills, or willingness to learn, not on income level.

43           5. No law governing the personal care attendant program should discriminate among  
44 socioeconomic groups.

45           6. Everyone obtaining personal care attendant services who are responsible for their own  
46 home programs, working as surrogates, attendants, state administrators, or legislators, or  
47 investigators, ought to be held accountable to each other and to the larger society

48           7. There are no disciplinary procedures or ethical guidelines within the system to  
49 respond to, or deter inappropriate behavior.

50           8. There are few mechanisms currently to oversee the activities of the Personal  
51 Care Attendant Quality Home Care Workforce Council.

52           9. More continuing education and training ought to be made available to all  
53 involved, whether it be the recipients of services, personal care attendants, contractors, or  
54 surrogates, in order to maximize quality of care.

55           10. There are few security measures in the state to protect consumers of this  
56 program.

57           Section 2. Definitions

58           Amendments to Section 1 of Chapter 268 (2006) and Section 28-33 of Chapter

59           118G

60

61           1. “Consumer” shall be redefined from Chapter 268 of the Acts of 2006 as a person  
62 under the age of 18 or with mental defect, requiring a legal surrogate to manage the daily  
63 personal care attendant program.

64           2. “Administrative consumer“ shall be defined as a person for whom a  
65 personal care attendant provides personal care services and such a recipient can oversee his or  
66 her own personal care program, as provided by section 31.a found in Chapter 268 (2006).

67           3. “Surrogate” is someone who has the legal responsibility and authority to substitute his  
68 or her judgment on the behalf of a consumer, for the purpose of administering the consumer’s  
69 personal care attendant program.

70           4. “Personal care attendant” or “attendant” or “attendants” is any person(s) who assists  
71 people with disabilities, or seniors or both, complete the tasks of daily living in a private  
72 residence.

73           5. “Personal Care Attendant Quality Home Care Workforce Council” or “workforce  
74 council” or “council” is the sub-agency, under the Executive Office of Health and Human  
75 Services, designated in Chapter 268 (2006) to oversee the statewide personal care attendant  
76 program in Massachusetts.

77           6. “Employee of the council” or “council employee” is anyone who is paid to conduct  
78 council business.

79           7. “Contractor” or “provider” or “service provider” or “human service agency” is any  
80 individual organization or other entity, which offers auxiliary assistance on behalf of the council,  
81 has contracts with the council, or otherwise manages community direct support services to  
82 people with disabilities or seniors in Massachusetts.

83           8. “Complaint” means the filing of a written grievance with the workforce council  
84 against a personal care attendant, administrative consumer, a surrogate, or a contractor.

85           9. “Complaint process” is the series of steps taken to resolve a grievance in the personal  
86 care attendant program.

87           10. “Complaint procedures” are the rules and regulations, which govern the complaint  
88 process set by the workforce council.

89           11. “Disciplinary committee” is the technical advisory committee under the workforce  
90 council that initially investigates, hears, and passes judgment on a complaint.

91           12. “Administrative appeal” or “review” is a hearing in which an appeal is heard  
92 regarding the decision made by the disciplinary committee.

93           13. “Appellate panel” is a group of individuals comprising administrative  
94 consumers, surrogates, and other individuals in the community, independent of the workforce  
95 council, appointed for a term of no more than two years, by the appointing officials stated in this  
96 act equaling a total of seven members. The appellate panel will standby to hear disciplinary  
97 cases a second time and pass judgment on it and possibly overturns the decision by the  
98 disciplinary committee.

99           14. “Administrative audit” is an evaluation of the workforce council, to  
100 ensure quality control and integrity of the sub-agency.

101           15. “Audit committee“ is a seven-member group appointed by the state auditor for the  
102 purpose of carrying out an administrative audit on the home care workforce council.

103           16. “Ethics committee” is an advisory board created by the workforce council, which  
104 with its approval, shall design, implement and revise standards of conduct applied to each

105 individual involved in the personal care attendant program, council members, employees and  
106 contractors.

107 17. “Code of conduct” or “codes of conduct” or “ethics code” or “ethical code” or  
108 “code” refers to the document, which is written by the workforce council’s ethics committee,  
109 and approved by the nine member board of council, prescribing standards or guidelines for  
110 acceptable behavior and best practices for each individual involved in the personal care attendant  
111 program. The disciplinary committee or the appellate panel will adjudicate a complaint shall use  
112 this document.

113 18. “Ethical standards” or “standards” or “ethical guidelines” or “guidelines” are the  
114 rules, which governs human behavior in the state personal care attendant program and all  
115 workforce council activities, prescribed in the ethics code.

116 19. “Ombudsman” is a person who works with consumers, administrative consumers,  
117 family members, surrogates attendants, union representatives and advocates in the community,  
118 employed by the council, to mediate any conflicts between individual administrative consumers,  
119 consumers, personal care attendants, a family, contractors, or surrogates and shall determine if a  
120 complaint should be referred for a council disciplinary investigation and hearing.

121 20. “Affiliated member” is any individual who works on a disability related committee,  
122 board, or organization, serving in administrative capacity, and that person interfaces with the  
123 state, or federal government entities, and the organizational body to which a person belongs,  
124 receives state or federal funds or both.

125 21. “Non-affiliated member” is a person that does not serve in administrative  
126 capacity, on behalf of a disability related committee, board, or organization that receives state  
127 and/or federal funds, and the person does not interface with state or federal governmental entities

128           22. “Personal care attendant directory“ or “directory” is a statewide list of personal care  
129 attendants in order to provide better access to personal care attendants for administrative  
130 consumers and surrogates, as provided by the Personal Care Attendant Quality Home Care  
131 Workforce Council Law, Chapter 268 of the Acts of 2006.

132           23. “Continuing education and screening committee” is an advisory board of the council  
133 charged with the responsibility of developing, implementing and maintaining a statewide  
134 personal care curriculum and overseeing screening clinics to qualify individuals for the personal  
135 care attendant directory.

136           24. “Screening clinic” is an event sponsored by the workforce council, which allows  
137 administrative consumers and surrogates to interview prospective individuals who wish to be on  
138 the personal care attendant directory.

139           25. “Counsel member” or “members” or “member” refers to anyone who serves  
140 on the workforce council or its advisory committees for a specified period of time.

141           26. “Appointing officials” or “officials” are individuals of authority in state government  
142 who appoint people in the community who are representative of the population with disabilities  
143 and elderly, as members of the main board and certain subcommittees of the Personal Care  
144 Attendant Quality Home Care Workforce Council.

145           27. “Nominating agencies” are governmental or related organizations, which are  
146 charged with the responsibility of selecting potential members to the council and submitting the  
147 names to the appointing officials.

148           28. “Personal relationships” or “personal relationship” is any social, business or  
149 other type of interaction with two or more individual(s).

150           29. “Conflict of interest” is any personal relationship or interest outside the

151 confines of the council, which may unduly influence a member’s judgment regarding any or all  
152 issues before the council or its advisory committees or the relationship confuses social or  
153 professional boundaries.

154 30. “Corruption” is any conflict of interest, fraud, deception, or other unlawful  
155 act committed by members of the council, public officials, or other persons or entities, which  
156 adversely interferes with the functioning of the council or the state administration of the personal  
157 care attendant program.

158 31. “Appointment cycle” is a single instance of an official assigning an  
159 individual for a specified term on the council or an associated advisory committee.

160 32. “Independent disciplinary committee” is a board of seven individuals from  
161 the community representing the population needing services, which take the place of the regular  
162 disciplinary committee because of conflict of interest.

163 33. “Alternate members” or “alternative replacements” are the individuals  
164 representing the population being served, who can act as substitutes for appointed members on  
165 the general board, disciplinary committees, or appellate panels.

166 34. “Compelling evidence” is any verifiable statement, material, or other types of  
167 direct information, which can be cooperated during disciplinary proceedings.

168 35. ”Personal care attendant union” is an organization of personal care  
169 attendants in Massachusetts, which exists to collectively bargain with the council for higher  
170 wages and other benefits.

171 36. “Union member ” or “union members” are people who have joined the  
172 personal care union in order to bargain for increased wages and benefits.

173 38. “Union representative” is any member of the personal care attendant union

174 or other staff member of the Service Employees International Union, Local 1199.

175           39. “Union operations” refers to the practices associated with the administration  
176 of the personal care attendant union under the auspices of the Service Employees International  
177 Union, Local 1199, and includes such functions as union sponsored events, mailings or written  
178 communication of any type, phone calls, word of mouth communication, fundraising or due  
179 collection, staff meetings, board meetings, or any negotiations with the workforce council.

180           40. “Union abuse” or “union harassment“ or “harassment” is any act committed  
181 by any leader, representative, or member of the personal care attendant union, designed to  
182 coerce, pressure, deceive or intimidate members of the public to join their union, collect dues,  
183 support the union, or use manipulative tactics with the council during contract negotiations, or  
184 using personal information of attendants, administrative consumers, consumers, or surrogates,  
185 either with or without assistance from other people or entities, to gain some advantage over the  
186 system or the public.

187           41. “Contact” or “approach” is when a union representative or member attempts  
188 to interact with another member or potential member for recruiting or other business purposes, or  
189 other entities providing the union with confidential information unlawfully.

190           42. “Responsibility” is the act of following laws and ethical guidelines,  
191 regarding the personal care attendant program in Massachusetts and demonstrating a good faith  
192 effort to improve the quality of care, or taking on an obligation to complete certain tasks.

193           43. “Theft” is one or more instance(s) of stealing of money or personal property  
194 equaling any monetary value.

195           44. “Removal” is a temporary suspension from workforce council duties for members of  
196 the main board, subcommittee members, or employees of the workforce council, who are under  
197 disciplinary investigation.

198           45. “Termination” is permanent suspension from workforce council duties for members  
199 of the main board, subcommittees, or employees who receive a finding of a violation of council  
200 rules and ethical guidelines, from the disciplinary committee and is not over turned over on  
201 appeal, or is the procedure used by administrative consumers or surrogates to relieve someone of  
202 their personal care attendant responsibilities.

203           46. “Abandonment” is a criminal act of neglect committed by a  
204 personal care attendant, when he or she fails to report for duty without notifying the  
205 administrative consumer, or surrogate in a timely maner with a reasonable explanation, or not  
206 returning to work without notice, or leaving work spontaneously without completing the shift.

207           47. “Physical abuse” is any criminal act, which is purposeful in nature, meant to  
208 cause bodily harm to someone else through assault and battery, food poisoning or poisoning with  
209 other substances, such as drugs, alcohol, or other items.

210           48. “Psychological abuse” is any criminal event or aggressive language meant to  
211 adversely affect a persons mental state through making the victim have the perception of being  
212 fearful, unsafe physically or psychologically or both, or depressed or unworthy, or some adverse  
213 behavioral change occurs secondary to the perpetrator’s actions.

214           49. “Threat” is a form of psychological abuse, in which a statement is made,  
215 through any form of communication, describing a future event of danger to a victim, and there is  
216 likelihood that the one making such a comment has the ability to carry out the said act.

217           50. “Sexual abuse” is a criminal act of touching to sexual parts of the body, the

218 touching is inappropriate to the situation, is not consented to and is not apart of routine personal  
219 care, or is an instance of non-consensual intercourse.

220 51. “Neglect” or “negligence” is an criminal act of omission, by not giving care  
221 or support, or failure to follow through on one’s obligations, and, in all cases causes actual or  
222 potential harm to another person, either physically or psychologically or both.

223 52. “Direct abuse” or “primary abuse” is any criminal abusive or neglectful act  
224 defined in this section, in which, the abusive behavior is committed onto a victim by the  
225 perpetrator.

226 53. “Indirect abuse” or “secondary abuse” is any criminal abusive or neglectful  
227 act defined in this section, in which, the person perpetrating the abuse does so through other  
228 people, or places the victim in situations, where it is foreseeable that the victim may be harmed.

229 54. “Sexual harassment” is any criminal abusive act, through sexually explicit language  
230 or inappropriate touching, or other innuendo, which produces uncomfortable situations or hostile  
231 work or living environment for the intended victim.

232 55. “Criminal act” is any inappropriate behavior, which warrants arrest, criminal court  
233 proceedings, such as indictments, pretrial hearings and jury or bench trials in a criminal court of  
234 law, with imprisonment or financial fines, or both being possible.

235 56. “Family member of people with disabilities,” or “family members of those with  
236 disabilities,” is any relative of a person with physical or mental impairment, or both.

237 57. “Sanctions” or “penalties” are consequences, which are decided by the council  
238 disciplinary committee or a court when a person has been found in violation of the council code  
239 of conduct or the law or both.

240           58. “Independent living centers” are agencies, which assists people with disabilities live  
241 to independently in the community.

242           59. “Fiscal intermediaries” are agencies, which provide assistance with the personal care  
243 attendant payroll responsibilities.

244           60. “Personal information” is data, which identifies an individual or their  
245 characteristics, such as identification numbers, contact information, work hours, direct  
246 experience, or any other information, which are features of an individual.

247           61. “People with disabilities“ or “elderly” are individuals with physical or  
248 mental impairment, or both, which limits daily functioning in some manner, requiring personal  
249 care attendants or the person with such conditions and care requirements are at the age of 65  
250 years or older.

251           62. “Confidentiality” or “confidential” is the act of keeping information private  
252 and not allowing any disclosures to other people.

253           63. “Entity“ or “entities” refers to one or more organizations, which are  
254 involved in the personal care attendant program in Massachusetts.

255           64. “Fraud” is any instance of financial corruption by an organization including  
256 manipulation, efforts to conceal earnings, over charging union member dues or inflating others  
257 income, or any other type of financial misconduct intended to unlawfully profit from such acts.

258           65. “Substance abuse” is the act of taking any type of chemical into the body,  
259 through various means, which leads to physical or mental impairment.

260           66. “Recovery” is when somebody remains substance abuse free for at least two years  
261 and who is under the continuing care of a mental health professional or support group.

262           67. “Illegal alien” or “illegal aliens” are people who come from another country and  
263 crossed United States borders without going through the federal legal process and does not carry  
264 any official documentation to allow him or her to remain in the United States.

265           68. “Counsel director” or “director” is the leader of the Personal Care Attendant Quality  
266 Home Care Workforce Council.

267           Section 3: Basic Regulations

268           1. Section 29.b – 27-37 The nine member board of the workforce council shall be chosen by the  
269 Governor, the Secretary of the Department of Elder Affairs, and the Director of the Massachusetts Office  
270 on Disability. This shall be done from a pool of applicants who have applied through various nominating  
271 agencies, which will choose possible candidates to be selected for service on the council by the  
272 designated public officials. A recommendation form shall be filled out by the nominating agency in  
273 support of those individuals, should accompany an application. The council and the Executive Office of  
274 Health and Human Services (EOHHS) shall create the form. The application and recommendation form  
275 shall be turned over to the official no later than 90 days before the selection is to be made. These officials  
276 shall appoint individuals to two and three-year terms.

277           2. c. The Governor shall choose three individuals – one person from the Governor’s Council on  
278 Disability, and one affiliated member and one non-affiliated member from the Disability Policy  
279 Consortium. The Director of the Office on Disability shall appoint one non-affiliated member who is a  
280 surrogate, family member, or administrative consumer from the Massachusetts Home Care Association,  
281 and two affiliated from the Statewide Independent Living Council, which will nominate people from  
282 independent living centers across the commonwealth. The Secretary of the Department of Elder Affairs  
283 shall choose two from the Massachusetts Council of Aging, one of which has to be a non-affiliated  
284 member in the community and one affiliated member from the council or another government sponsored  
285 agency in Massachusetts dealing with seniors, and one person from the Developmental Disabilities

286 Council, which could be either an affiliated or non-affiliated member, perhaps a surrogate and/or a family  
287 member of someone needing personal care attendants.

288 3. d. The person from the Governor's Council on Disability shall serve a term of two years while  
289 one person from the Disability Policy Consortium shall serve two years and the other person in the same  
290 organization shall serve three years. The Massachusetts Home Care Association shall nominate one  
291 individual to a term of three years. The nominees from the Statewide Independent Living Council shall  
292 nominate one person to serve two years while one individual shall serve three years. The Massachusetts  
293 Council on Aging shall nominate one person to serve two years while the other individual serves three  
294 years. The Developmental Disabilities Council shall nominate one person for a three-year term. The  
295 council and the agencies listed shall make the public aware of council vacancies six months in advance  
296 through the statewide press and disability publications and shall include information on how to apply for  
297 such a post. If a vacancy appears before a term is up, the agency or organization, which nominated the  
298 first person must nominate a second person to the official who made the original appointment. The  
299 official shall make the appointment within 60 days of the vacancy and re-appointments to the council, in  
300 that case, are possible under the discretion of the official.

301 4. e. Each official, under his or her discretion, may appoint one candidate, not  
302 nominated by the other nominating agencies, in each appointment cycle. Such candidates shall fill out the  
303 standard application form and be recommended by another Massachusetts citizen with anti-corruption  
304 rules, cited below, being applicable. Applicants for positions on the council shall not have personal  
305 relationships with their appointers, their nominators, the personal care attendant union, or any other type  
306 of relationship, which would create a conflict of interest. Any appointing officials, council members,  
307 council employees, common citizens who may have outside knowledge of such conduct, can make reports  
308 of based on paragraph five e in this section, or investigations of such discoveries of such behavior, from  
309 media reports, shall be initiated by Attorney General. If the discovery of corruption is made on the  
310 council level, procedures found below shall be followed. When new members are appointed to the

311 council, individuals or contractors are hired by the council, or those who wish to have other types of  
312 association with the council, every named entity shall sign an agreement, upon pains of perjury to follow  
313 council's ethics guidelines and such a process shall be repeated with every release of a revised version of  
314 a code within 90 days of a new version of it being adopted by the council. Issues of conflicts of interest  
315 or corruption shall be covered in the ethics code and ethics training for all workforce council members  
316 and employees shall occur once a year, conducted by an ethics instructor. The statutory requirements for  
317 nominating all candidates shall be that such individuals have to have normal intellect, have to be of the  
318 age of majority of 18 years or older, shall not be a personal care attendant, shall have a disability or shall  
319 be related to someone with disability, shall be a surrogate, or represent the community with disabilities in  
320 some other manor. Appointing officials shall make appointments known through the statewide press and  
321 disability publications. Upon enactment of this act, this new arrangement shall be in effect for the next  
322 series of appointments and shall run concurrently thereafter.

323 5. f. If there are instances of corruption such as conflicts of interest, or violations of  
324 confidentiality on the council, the member(s) involved shall be removed pursuant to Section 7, paragraph  
325 13m, of this act, at least during investigations. Any Massachusetts citizen with knowledge of such  
326 occurrences must report it to the counsel director. From there, the director will discuss the matter with the  
327 council's attorney and the Assistant Secretary for Disability Affairs at the EOHHS. If this group finds  
328 that state laws may have been violated, the suspected member shall be suspended and the Attorney  
329 General shall be called in for further review and such a process has to occur within 90 days. In such a  
330 case, the Attorney General shall appoint the Commissioner of the Massachusetts Rehabilitation  
331 Commissioner to select an alternate replacement for the council, for the time being, from nominating  
332 agency of his choosing other than those described. If the Attorney General finds there was corruption, the  
333 accused member will be terminated from the council and prosecuted. The permanent replacement shall  
334 be appointed as usual in the next appointment cycle. The Commissioner of the Massachusetts  
335 Rehabilitation Commission shall name a maximum of to three replacements, in case of multiple people

336 involved with corruption at the same time. In case more than three members and their respective  
337 nominating agencies and officials being involved in conflicts of interest situations, the Attorney General  
338 shall choose the Secretary of the Department of Veterans Affairs to appoint a maximum of three alternate  
339 replacements and the Commissioner of the Department of Public Health to appoint a maximum of three  
340 alternate replacements. Active alternate members cannot be chosen in the council regular appointment  
341 cycle. Whatever is required to stabilize the integrity of the council is under the discretion of the council  
342 attorney and the council director while the matter is being investigated, except when it comes to having  
343 the authority to removing or replacing the later person because of possible wrongdoing. Once the  
344 investigation is over, the authority to appoint members to the council will return to the standard officials  
345 and nominating agencies or organizations, unless there is legislative intervention to create other  
346 arrangements. If the member is cleared of wrongdoing, by all investigative entities, the member can  
347 continue serving, if there is still time in the term, and the substitute will relinquish the post in such a case,  
348 or the substitute will finish the term. As for the director, the Assistant Secretary for Disability Affairs at  
349 the Executive Office of Health and Human Services and the council attorney will decide if the matter  
350 should be reported to the Attorney General. If so the Assistant Secretary and EOHHS, Disability  
351 Division, under such circumstances, shall suspend the director, pending an investigation and become the  
352 acting director of the council until the corruption issues are resolved. If there was corruption committed  
353 by the council director, a replacement shall be named within 90 days after that point. The original  
354 director can also be reinstated immediately, after being exonerated of all wrongdoing, if he or she desires.

355           6. g. The oversight for the council shall come from three sources: One, the  
356 Auditor shall conduct a biannual administrative audit, which is established in Section 4. Two, the Joint  
357 Committee of Health and Human Services shall officially assume oversight responsibilities for the  
358 council activities in the Massachusetts legislature and may perform independent regular or emergency  
359 investigations. Three, the Joint Committee of Health Care and Finance shall perform regular three-year  
360 reviews of the council budget and any emergency budgetary requests regarding workforce council

361 funding. To assist with that function, the director of the workforce council shall write brief progress  
362 reports to members of those two committees and answer any questions from those legislators. The rest of  
363 the oversight regulations are explained in section four of this act.

364 7. Section 30.a – 72-75: The workforce council will not discriminate on the  
365 basis of gender, ethnicity, minority status, or income level, when recruiting for the personal care attendant  
366 directory.

367 8. Section 30.c – 92-95: For the purposes of this act, the council must not place any personal  
368 care attendant in the personal care attendant directory without their knowledge, understanding, and  
369 written authorization, prior to listing. The workforce council or its contractor responsible for the  
370 directory must explain in writing the required standards for inclusion to be in the directory and have a  
371 person assigned to answer questions if needed. There must be a procedure to remove a person's name  
372 from the directory and this process must be explained at the time of consent. Even though the  
373 Commonwealth of Massachusetts has the right to furnish the names of all personal care attendants in the  
374 state to the council, the council shall not place those names on the personal care attendant directory  
375 without permission from the individuals. The council has 18 to 24 months, upon enactment of this act, to  
376 secure permission from the present members on the directory already and for those that refuse to give  
377 permission or do not respond to the request, shall be removed from the directory. After this 18 to 24  
378 month period, whenever the procedures are in place, the rule for permission will operate concurrently.  
379 The council shall not share any identities of personal care attendants directly with the union. Since the  
380 directory is a public document and there are indirect ways, in which the union can discover those  
381 identities, the council and the personal care attendant union shall adopt the following policy: All  
382 attendants who wish to sign up to be on the directory have to do so through the directory contractor. If  
383 the attendants become union members first, the union is allowed to instruct the new members how to  
384 place their name on the directory, but the union shall not do it for them and the directory contractor shall

385 follow-up with regular consent procedures. Moreover, unless a perspective union member initiates  
386 contact with the union first, in basic terms, the union cannot approach attendants to become members  
387 without the attendant's permission.

388           9. Add Section 30.d: If the union would like to approach an attendant, the union must send  
389 information about the organization through the mail first. With this information packet, the union must  
390 provide a permission slip asking if the person would like more information, or would like to join. If the  
391 person gives permission to receive further information, the union can contact the individual by mail,  
392 phone, email, facsimile, or in person. The union must give the person their preference on how they wish  
393 to be contacted and union must honor the request and shall not do anything else unless the individual  
394 requests a different type of contact. At that point, the union is prohibited from contacting the person  
395 again unless that individual approaches the union at another time. There is a three-month period, in  
396 which the union can send two initial mailings to recruit a prospective member. During this period, the  
397 union cannot utilize any other form of contact. If the perspective member does not respond or denies  
398 further contact, the union must delete that person's contact information and not contact that person again  
399 unless contact comes from that person.

400           10. e. The union may send out notices to other groups such as administrative consumers,  
401 surrogates, the population of people who are elders or family members who are related to people who are  
402 disabled, unless otherwise notified. No other contact shall be used with those groups, unless initiated by  
403 those people. Every individual has the right to engage with the union, as much or as long, as they want  
404 and to discontinue any association with the union, when and if they desire.

405           11. f. In carrying out the duties and responsibilities of section  
406 30.a-c, the council will observe confidentiality practices. The council will adopt policies for obeying the  
407 federal Health Insurance Portability and Accountability Act (HIPAA, 1996) and other state statues  
408 regarding the personal privacy of all individuals in the commonwealth. The stated privacy rule in this

409 section also applies to the consumers and administrative consumers in that all attendants must keep all  
410 information regarding those individuals confidential. All attendants must have permission from  
411 administrative consumers or surrogates regarding who the attendant can communicate with under the  
412 behalf of consumers and administrative consumers and under what circumstances, such as in cases of  
413 emergency.

414 12. g. In addition to the requirements in paragraph eight to 11 of this section, the council must  
415 issue a consent form to every administrative consumer, personal care attendant, and surrogate, for the  
416 purpose of seeking permission to use their personal information to perform research, data gathering,  
417 sharing with other agencies, or for other administrative operations. If permission is not granted, the  
418 council cannot use that information publicly, but the council can keep that information in a secure and  
419 confidential file. Copies of a non-authorization shall be forwarded to all agencies involved with that  
420 administrative consumer, or the consumer based upon the surrogate's wishes, those entities shall not share  
421 anymore information with the council. The workforce council shall only use the minimum amount of  
422 personal information to accomplish administrative tasks. If a person's information was used in  
423 administrative operations before enactment of this amendment, the council shall notify the person in  
424 question and disclosing what the information was used for and proper authorization to continue shall be  
425 sought. In such a case, the administrative consumer, or surrogate in question does not have ethical or  
426 legal recourse against the council, even if they object to prior unauthorized disclosures.

427 13. h. Legislators and the union can work together on irregularities on the council or other  
428 related issues under certain circumstances. For purposes of this act, the council, for the most part, is an  
429 independent body in state government, which can make its own judgments unfettered by outside  
430 influences. If the union would like the legislature to be involved with certain issues on the council, the  
431 issue must be raised first with that council. If the union contacts some legislators, the union must not  
432 offer money or other political favors. By the same reasoning, legislators cannot offer the union assistance  
433 in return for union support. Other regulations on union abuse in section seven should be followed as well.

434 14. Section 31.a – 97-101 Administrative consumers or the consumer’s

435 surrogate retain the right to select, hire, schedule, train, direct supervise the work of, and terminate any  
436 personal care attendant providing services. Administrative consumer or the consumer’s surrogate may  
437 elect to receive long-term, in-home personal care services from personal care attendants who are not  
438 referred to them by the council or directory contractor. No outside entity or other regulations shall  
439 interfere with these rights.

440 15. b. Regarding acts of abandonment, the attendant must be absent from work without some  
441 type of communication with their administrative consumer or a surrogate for the next 24 hours, from the  
442 time the missed shift began. If communication is not established, after three attempts from the  
443 administrative consumer, human service agencies or surrogate to reach the attendant, abandonment has  
444 occurred. In the case communication is established, the reason for the absence without providing prior  
445 notice within a minimum of 24 hours, must be a medical emergency, or related event involving the  
446 authorities, accompanied by a doctors note or police report, in the case of a automobile accident, or other  
447 related events. Other reasons for the unexcused absence and whether to accept such reasoning is solely  
448 between the attendant and the administrative consumer, provider, or surrogate. The documentation must  
449 be provided within seven days of a single absence. If the absences continue concurrently or sporadically,  
450 without prior notice, abandonment may have occurred, without further corroborating documentation from  
451 qualified professionals or authorities. In the case of the attendant wanting to resign, unless otherwise  
452 agreed upon between the attendant and the administrative consumer, provider or surrogate, two to four  
453 weeks notice shall be given before the attendant leaves his or her position. Unless other arrangements are  
454 made between the administrative consumer, provider or surrogate and the attendant, the said employee  
455 leaves his or her position less than 14 days, abandonment has legally occurred. Abandonment has also  
456 occurred if the attendant has left a shift without just cause, such as a medical emergency. Being late for  
457 work, however, does not qualify as abandonment.

458           16. c. Any other type of neglect, or physical, psychological, or sexual abuse, theft or secondary  
459 theft, shall elicit a response from the state. This also includes milder, but serious acts of misconduct.  
460 Regarding personal care attendants, any type of substance abuse, whether alcohol or other drugs, on or off  
461 duty, is strictly prohibited. For these purposes, the council shall establish a code of conduct and  
462 disciplinary procedures under sections five and seven respectively. There is also a prohibition against  
463 illegal aliens working as attendants in Massachusetts based on federal law and will be detailed in sections  
464 five and seven. Political or administrative corruption having to do with the workforce council or union  
465 abuse is considered to be illegal behavior under this act, and the consequences for such acts shall also be  
466 stated in the present section and section seven. This clause, therefore, has authority over the behavior of  
467 administrative consumers, surrogates, contractors, members on the council, subcommittee members  
468 associated with the council, workforce council employees, appointing officials and elected political  
469 leaders in state government. To prevent criminal acts and improve the quality of services, the council,  
470 pursuant to section six in this act, shall prescribe training and screening procedures.

471           17. d. Any contractors assisting the workforce council in recruiting of personal  
472 care attendants, or other human service organizations providing community services to the targeted  
473 population, must pay attention to the guidelines set by the council. If an attendant harms a consumer or  
474 an administrative consumer, any secondary entity who assisted with the recruitment or hiring of the  
475 accused can be held in violation of this act and other criminal laws. This type of behavior shall be  
476 considered indirect abuse and shall be handled as a crime under section seven, paragraph 12l under this  
477 act. Individuals making recommendations to the council, the directory contractor or to individuals are  
478 responsible as far as what they know about the person from prior experience. If it can be proven that a  
479 contractor or individual who assisted the person being listed on the directory or being hired  
480 independently, knew that the individual demonstrated character flaws, which posed a foreseeable risk or  
481 did not follow recruitment procedures correctly, can held to account. In terms of giving references, if the  
482 person being asked is aware of potential difficulty, which may arise, the person being asked can either

483 refuse to give the reference, or explain that they would not recommend that person, but the reference may  
484 not disclose the reasons. The principle for this rule is a person cannot deceive an individual asking for a  
485 reference on behalf of an applicant, who the reference knows or suspects would commit a crime in the  
486 personal care attendant position. If the reference portrays the applicant as somebody other than what they  
487 know of that person, this regulation would be violated. If a member or employee of the council was  
488 involved, termination or removal is possible. If the applicant is hired anyway, however, despite a  
489 reference's warning or gives the applicant no support, and a criminal act occurred with the attendant, the  
490 reference in question cannot be held in violation of this regulation.

491           18. Add to Section 31.e: All negotiations must be carried out in public  
492 session. Members of the public however, must refrain from interfering in the proceedings. The council  
493 and the personal care attendant union shall make rules regarding public observations. An attorney  
494 representing the workforce council shall be present in such negotiations. The union may have legal  
495 representation, as well, in such proceedings. The attorneys shall not speak during negotiating sessions,  
496 except when legal issues arise, and if necessary, if expeditious legal input cannot resolve the matter within  
497 the session, the lawyers can request the parties' recess or break for legal advising. Legal counsel can  
498 speak to their respective clients before negotiations begin, in between bargaining sessions and recesses  
499 within negotiating sessions, but the attorneys can only comment on legal matters, not on the specific  
500 issues pertaining to the negotiation.

501           19. g. The personal care attendant union shall negotiate with the  
502 council in an appropriate manner in that this organization cannot use threats or intimidation as leverage in  
503 the process. Peaceful protest is allowed, under certain conditions, discussed in paragraph 21h of this  
504 section. This organization must obey section 30d of Chapter of 268 (2006), in that no striking, work  
505 stoppage, slowdown, or the encouragement there of, shall occur for any reason. Any type of fraud, from

506 the union, such as manipulation of financial records, overcharging the membership in dues, or other  
507 criminal acts constitutes fraud under state or federal law, is strictly prohibited

508           20. h. The union is allowed to picket during contract negotiations or when  
509 important legislation to the union is being considered. Such protest may occur outside the State House or  
510 outside legislator's offices as long as no disruptive behavior occurs within the State House. Other  
511 protests can occur outside of buildings where negotiations are occurring observing the same rules and shall  
512 not be disruptive to anyone coming out or in of those buildings or the State House. The union members  
513 shall not approach anyone in the vicinity for recruiting purposes during those times. All city ordinances  
514 shall be obeyed with regard to the approximate distance between a building and the picket line. The  
515 union is forbidden from picketing outside provider office's, consumer's, administrative consumer's or  
516 surrogate's residences, or committing other acts, which disrupt community life. Such protests shall not  
517 be violent in accordance with this act and other laws of the commonwealth. The participation of any  
518 member shall not interfere with his or her work schedules with their consumers or administrative  
519 consumers.

520           21. i. If the union would like consumers, administrative consumers, surrogates,  
521 or family members of people with disabilities to attend their events, the union has to invite such  
522 individuals, and not leave it to the members to elicit the ones they work with to attend such functions. It  
523 must be left to the discretion of those individuals outside of the union whether they attend. No attendant  
524 shall coerce, pressure, or intimidate consumers, administrative consumers, surrogates, or family members  
525 of people with disabilities, in supporting any union initiatives by threatening to resign, refusing to do  
526 certain tasks, changing one's temperament, or other tactics designed to elicit support for the union. Union  
527 members acting as personal care attendants shall not counsel the consumers, administrative consumers,  
528 surrogates, or family members of those with disabilities, even if asked, and must direct them to other  
529 union representatives or other people for advice on such matters, because of the conflict of interest. The

530 union must mail information to administrative consumers, surrogates, or family members of those with  
531 disabilities, if they would like to support an initiative. For these purposes, privacy rules for attendants,  
532 cited in section three, paragraphs eight d and nine e, shall apply to consumers administrative consumers,  
533 surrogates and family members of those with disabilities. Union representatives shall not visit homes or  
534 apartments of consumers or administrative consumers to discuss union business with an attendant on duty  
535 for any reason.

536 22. j. The union has no right to collect any information from fiscal intermediaries, human  
537 service agencies or independent living centers, regarding personal information of personal care attendants,  
538 consumers, administrative consumers, or surrogates. The reverse is also true, in that, such entities cannot  
539 approach the union with that type of information. Administrative consumers or consumers shall not be  
540 coerced or manipulated into sharing information of attendant hours or any other personal information  
541 regarding personal care attendants with union representatives. If administrative consumers, surrogates, or  
542 any other person who has such information, makes disclosures to a union representative, willingly or  
543 inadvertently, such conversations have to be kept confidential and ought not be used for union operations,  
544 either publicly or privately, unless it is consented to in writing by the informant. The informant must only  
545 speak about his or her own experience to be useful for union operations. Any reference from one person  
546 to a union representative, regarding another person must be ignored by the individual associated with the  
547 union, in that he or she cannot pass it along within the organization, in order to be utilized for union  
548 business. The union representative cannot confirm such heresy information from the person cited in a  
549 conversation, unless he or she comes to the union representative, confirms what was said, and consents in  
550 to it writing, being used for union operations. In all cases, the union must eliminate all personal  
551 information, except the main facts the organization requires for union operations. If the union acquires  
552 information regarding a consumer, it must always come from, and shall be authorized by his or her  
553 surrogate. In all cases, the personal care attendant union, through the Service Employees International

554 Union, Local 1199, shall keep all consent forms, for any personal information, on file for a maximum of  
555 the 10 years, for administrative audit purposes.

556 23. k. The union does not have the authority to influence the administrative consumers or  
557 surrogates in the way they work with personal care attendants. The union cannot speak to administrative  
558 consumers, or surrogate, or hold them or the state civilly liable in court, on behalf of an attendant, who  
559 had some difficulty those particular individuals in accordance with section seven, paragraph 40mm.

560 24. 1. The union must do their part in making sure the people they recruit are  
561 appropriate to do personal care work. The union may work with the council and other administrative  
562 consumers, providers, surrogates and family members of those with disabilities on how the union can  
563 assist in increasing and maintaining the quality of care.

564 25. m. The personal care attendant union may endorse and contribute to  
565 political candidates, if they desire. The union shall not, however, promise money to candidates for their  
566 support of a particular union position although the union may contribute money to a candidate without  
567 announcing the reason, except in general terms, for doing so before an election. The union also shall not  
568 threaten a politician or the opponent with taking votes away if they do not support their initiatives  
569 regarding the personal care attendant program. Language of dissatisfaction to a politician can be  
570 expressed without mention of financial or vote gain or loss. When the union has a legitimate concern  
571 over procedural rules on the council in which case, the union should publicly state their complaint before  
572 the Joint Committee on Health and Human Services. No other outside interference should influence the  
573 council, but elected officials may assist the union, provided the parties follow section three, paragraph  
574 13h.

575 26. n. The disciplinary procedures and penalties for any violations of this section shall follow  
576 section seven, paragraph 37jj.

577           27. The current content in sections 31.f-g – 134-137 of Chapter 268 (2006), regarding legal  
578 liability is deleted and new language on the subject is introduced in section five of this act.

579           28. o. Section 32.g – 161-162: Pursuant to section one of Chapter 268 (2006), the council may  
580 establish technical advisory committees to assist with the function of the council. This act establishes that  
581 the performance of the council shall be evaluated every three years through an independent team, under  
582 the direction of the Auditor, outlined in section four of this act. There shall be an ethics committee  
583 associated with the council to develop and maintain a code of conduct for members of the council,  
584 administrative consumers, surrogates and contractors, in accordance with section five in this act with  
585 some basic procedures being specified in paragraphs four d and five e in this section. Skills training of  
586 personal care attendants, administrative consumers, surrogates and contractors, based on a statewide  
587 curriculum, shall be developed, implementation and maintained by a continuing education and screening  
588 committee, pursuant to section six. The council shall establish disciplinary procedures and avenues for  
589 appeal regarding inappropriate behavior in the personal care attendant program or its administration  
590 thereof, in accordance with section seven. Moreover, except for the audit team, which is under the  
591 control of the Auditor, this act requires the Personal Care Attendant Quality Home Care Attendant  
592 Workforce Council integrate such committees to collaborate on joint tasks as needed. Procedures for  
593 performing such collaborative work and under what circumstances are to be determined by the council.  
594 Moreover, each of these three committees shall meet once a year to review their own guidelines and  
595 render recommendations to the main board of the council regarding policy and procedures for their own  
596 operations or other issues for those advisory boards. Once policies are passed or amended by the main  
597 board, the committees are free to use such policies for their own purposes.

598           29. p. Section 32.h –163-164: The council may keep records and engage in  
599 research and the gathering of relevant statistics. In completing these tasks, the council shall hire expert  
600 consultants in statistics and relevant methods of research. Any reports from the workforce council, which

601 contain any research or statistics, has to give full credit to those consultants, listing their name(s), area of  
602 expertise, affiliation and contact information. The Personal Care Quality Home Care Workforce Council  
603 shall encourage independent research on the personal care services in Massachusetts by applying for state  
604 of federal grants and inviting scientific researchers to take part in research projects.

605           30. i. The public has a right to inspect any council records or raw data upon request, for which a  
606 report is based. The council must comply unless the release of the information could jeopardize  
607 confidentiality. In such a case, the council shall make every attempt to eliminate any potential risk or  
608 provide a clear and reasonable explanation in writing to the petitioner within 30 days as to why their  
609 request has to be denied.

610           31. r. In a hiring situation, the information the council or contractor administering the directory  
611 gathers on a particular individual can be shared with administrative consumer or surrogates, in the interest  
612 of the safety and  
613 well-being of those being served. It is permissible, upon request, for the council or its provider  
614 responsible for the directory to disseminate whether the council has disciplined a certain attendant, who  
615 has been or is currently on the directory, within 10 years, but the details, of which, cannot be revealed.  
616 Moreover, the privacy rules stated in this section do not apply under the conditions of section seven, and,  
617 for the purposes of paragraph four d therein.

#### 618 Section 4: Oversight Regulations

619           1. Add section 33.e. According to paragraph 28o, section three there shall be oversight of the  
620 council through various state mechanisms. Every third year there will be an administrative audit of the  
621 workforce council through the Office of the State Auditor. The Auditor will appoint seven people from  
622 the community who are either administrative consumers, the elderly, personal care attendants, family  
623 members of those with disabilities, or surrogates with one or two legal and accounting consultants, who  
624 can submit their names to the Auditor directly for consideration or are appointed staff from the Auditor's

625 office. One personal care attendant shall be chosen for this duty, while the others will be a mixture of the  
626 people mentioned. The Auditor shall follow regulations for assignment of alternate members found in  
627 section three, paragraph 2c. Council members and the other individuals involved will only know the  
628 identity of the members of audit team at the time of the evaluation. The group shall access financial and  
629 research consultants to assist the team with their task. The objective of such a review is threefold: (a).  
630 To ensure the performance reviews of the council are accurate. (b). To ensure that the council itself is  
631 fiscally sound and is operating in an efficient manor. (c). To ensure the council is serving public interest  
632 in an ethical and legally responsible manor. The administrative audit shall be done through the use of  
633 compelling evidence.

634 2. f. All workforce council members, their employees, contractors and any  
635 other entities associated with the council must cooperate with the investigation. The council must make  
636 all records available for inspection. Anyone individual or entities involved in council administration and  
637 services must submit to interviews with members of the audit committee. Any service provider, including  
638 contractors, the union and any other entities that have contracts with the council shall also make their  
639 records available regarding that business relationship. The audit committee has the latitude to decide  
640 what documents should be inspected and from where. The immediate focus of the audit committee shall  
641 be on the past three years, but the audit committee has the ability to review other administrative audits  
642 and take the investigation back as much as nine years, if the audit committee finds the some of the  
643 problems stem back at least two audit cycles. Within the nine-year time frame, the audit committee has  
644 discretion as to how many additional years they want to go back. This process may include reviews of  
645 previous documentation or interviewing past council members, employees, or other outside individuals  
646 who had dealings with the council in the targeted time frame.

647 3. g. The audit committee must report any fraud, ethical or legal violations, or  
648 negligence committed by the council board members, employees, or contractors.

649           4. h. Members of the audit committee must not have been a part of the council or its activities  
650 for the past 12 years or had relationships with members of the council. If there is a conflict of interest, the  
651 person assisting with the investigation must report it to the auditor and excuse themselves for part of or all  
652 of the investigation

653           5. i. The Auditor can conduct surprise, emergency, and small reviews before the third year at his  
654 or her discretion to deter any problems. These mini “spot checks” will focus on one narrow aspect of the  
655 operation and shall follow the same composition and rules as stated above in this section. The council  
656 and any associates will receive no prior notice to such inspections.

657           6. j. The report shall be primarily sent to the three appointing officials, the  
658 nominating agencies, the Attorney General, the council and will be made available to administrative  
659 consumers, surrogates, family members of people with disabilities, personal care attendants and their  
660 union. The rest of the public may have access to the report in a manner to be determined by the Auditor.

661           7. k. This report shall also be sent to the legislative Joint Committee of Health and Human  
662 Services and the Joint Committee on Health Care and Finance every third year. Pursuant to section three,  
663 paragraph six, the former committee may perform investigations of its own, in cases of corruption, and  
664 might recommend additional legislative action to remedy any corrupt situation. The Joint Committee of  
665 Health and Human Services Committee has subpoena power and can refer any matter regarding the  
666 council to other investigative agencies and perform its own regular reviews and public hearings on  
667 council performance. Legislators on the two cited committees cited in this paragraph may attend council  
668 meetings periodically to provide additional oversight and support. Again, pursuant to section three,  
669 paragraph six, the council shall provide quarterly reports to the committees through the director.

670           8. l. Administrative audits shall take 90 days to complete, but the Auditor can take an extra 20  
671 days to finish the process if there are complications, such as illness or corruption of members. The first  
672 administrative audit shall take place within 18 to 24 months following the passage of this act.

673 Section 5: Ethics

674 Additional amendments to section 1 of Chapter 268 (2006)

675 1. Add section 34.a. In accordance with section three, paragraph 28o, the workforce council  
676 shall establish an ethics committee in order to establish a code of conduct for administrative consumers,  
677 surrogates, attendants and contractors. Within six months of this act being established, the council will  
678 appoint seven-member ethics committee. Two members will be from the council and five will not be  
679 involved with this sub-agency. Two members must be personal care attendants and five shall comprise  
680 some combination of people with disabilities and family members of people with disabilities, the elderly,  
681 or surrogates. The director will appoint all ethics committee members for a three-year term. Such a  
682 committee will establish a code of conduct, which will have information on how to conduct council  
683 business and activities, administrative consumer, surrogate and personal care attendant behavior and  
684 outside contractor and agency protocol when working within the personal care system and with regard to  
685 relating to the workforce council. The workforce council shall hire an expert on ethics and appoint the  
686 attorney from the council to be technical advisors to work with the council ethics committee with the  
687 development, implementation and maintenance of the code. These guidelines shall be revised every  
688 seven to ten years at the discretion of the workforce council. Before adopting any version of the ethics  
689 code, the council will make it available to the segment of the public affected by these guidelines and have  
690 a three-month comment period prior to final adoption by the council. Any new versions of the code shall  
691 go into effect 90 days after council adoption, while the public is notified. The ethics committee will serve  
692 to gather research on ethical issues in personal care and public policy. The guidelines should be clear  
693 about what is acceptable, but should not reduce administrative consumer control or interfere with the  
694 relationship between service providers, people with disabilities, surrogates and their personal care  
695 attendants. Hence, there shall be few activities listed in the code as violations, which personal care  
696 attendants, providers, consumers or administrative consumers and surrogates cannot partake in, as long as  
697 those tasks increase function and quality of life for those with disabilities.

698           2. b. The ethics committee and the council may elect to adopt already established standards  
699 from other organizations, in part or whole, as long as those guidelines are relevant to, or can be revised  
700 for personal care issues, and the council obtains permission from that organization to use the material.

701           3. c. Any personal care attendant or surrogate who lives in a surrounding state is  
702 not excused from following the code of conduct if their administrative consumer or consumer resides in  
703 Massachusetts.

704           4. d. The council shall mail out copies of the code, once it has been approved to all  
705 administrative consumers, surrogates, human service agencies and attendants in Massachusetts.

706           5. e. Upon enactment of this act, the council shall have six months to establish  
707 the ethics subcommittee, and, from that point, the committee shall have 18 to 24 months to develop the  
708 first ethics code and with public comment, the code shall be approved three months later. If public  
709 comment is overwhelmingly negative to a new version of the ethics code, at the discretion of the council,  
710 the ethics committee may re-draft the code, in part or whole, within a certain time frame specified by the  
711 council and the process shall continue until public reaction is mostly positive, for which, the council shall  
712 decide on a criteria. The public may also comment throughout the development of any version of the  
713 ethics code. This adoption and public comment process shall be initiated whenever the ethics code is  
714 being revised and its adoption is being sought. The drafting and development of any version of the code,  
715 therefore, shall be made public knowledge by methods to be determined by the council.

## 716           Section 6: Screening and Training

717           1. Add section 35.a. Based on paragraph 28o of section three in this act, the council shall  
718 provide training for all council members, employees, administrative consumers, surrogates, and  
719 contractors in different content areas. The council shall establish a continuing education and screening  
720 committee comprised of volunteers, which will assist the council devise standards for continuing

721 education, establish content areas of knowledge, adjust curriculums, monitor educational outcomes and  
722 maintain or adjust screening criteria for the directory. This committee shall develop and implement  
723 strategies to educate administrative consumers, surrogates, the elderly, family members of people with  
724 disabilities and the general public in Massachusetts regarding the disciplinary guidelines outlined in  
725 section seven of this act. These committee members shall serve three-year terms appointed by the  
726 director of the council and interested individuals within the disability population or family members of a  
727 person with a disability, personal care attendants, or persons who are elderly, shall apply to the EOHHS in  
728 a manner consistent with section three, paragraph 2c of this act. Two members shall come from the  
729 council, two shall be personal care attendants, and three shall be some combination thereof. Educational  
730 consultants shall be provided as advisors to assist with the development, implementation and the  
731 maintenance of the curriculum.

732           2. b. Each individual who wants to be part of the directory must comply with the following  
733 requirements:

734           3. c. Each candidate has to fill out a basic job application, which will be  
735 kept on file with the council or contractor administrating the directory

736           4. d. Every candidate must have a Criminal Offence Record Investigation, Sexual Offender  
737 Record Investigation and a cross-reference with Homeland Security terrorist watch lists, completed by the  
738 contractor developing and maintaining the directory. The associated contractor given responsibility for  
739 the directory must follow title 8, section 1325 of the United States code and refrain from recruiting illegal  
740 immigrants. In doing so, the contractor must cross-reference each interested individual with the United  
741 States Customs and Border Protection agency and the United States Immigration and Customs agency.  
742 When this legislation is enacted, the directory contractor shall be required to complete all background  
743 checks herein on all personal care attendants already on the directory within six months. Any attendants  
744 who do not pass these background checks shall not be placed the directory. If there is a directory all

745 ready in place by the time this act is passed and implemented, those on the directory have to be screened  
746 for citizenship status and terrorist ties. If there are irregularities found on attendants, such persons must  
747 be unlisted within 30 days of the finding. The contractor with the directory responsibility and the council  
748 is obligated to inform law enforcement and cooperate with those agencies if there are people who pose a  
749 threat to the safety of the community or is a national security threat. The contractor shall follow these  
750 procedures every time it finds there is a person who made it on the directory who should not be there  
751 because of questionable backgrounds and an oversight occurred when he or she was placed on the  
752 directory by mistake. Since paper copies of this of the directories may become out of date because of  
753 unlisting requirements in some cases, phone numbers and e-mail contact information shall be provided for  
754 administrative consumers and surrogates who want to know if certain attendants are properly listed. In  
755 case a web-listing is developed, that version must be kept up to date each week. The council shall  
756 supervise all of these activities along with the other reviews discussed. It is because this clause concerns  
757 the public safety and wellbeing of those being served, the background checks, presented herein  
758 supercedes any right to privacy, cited in section three.

759           5. e. To enforce the prohibition of substance abuse regarding PCAs, the state,  
760 through the council, is required to devise a random substance abuse screening program for all personal  
761 care attendants in Massachusetts, on and off the directory within 18 to 24 months of enacting this act.  
762 The individuals or organization the attendant works for have a right to automatically receive a report of  
763 the results each time a test is done to one of their attendants. The privacy rule found in section three, 32s  
764 does not apply here because this is an employment situation, not a hiring situation and the safety of the  
765 administrative consumer or consumer has to take precedence. The workforce council and the attendant  
766 shall receive the other copies of the results.

767           6. f. Administrative consumers and surrogates in the community shall interview applicants at a  
768 screening clinic, in each region of the state, on a semi-regular basis to be set by the workforce council's  
769 continuing education and screening committee for the purposes of qualifying prospective attendants for

770 the personal care attendant directory. The interviewers must fill out an evaluation form, which will be  
771 attached to the application. The interviewers will be volunteers for this duty with travel reimbursement  
772 being offered or transportation being arranged by the council, if necessary. In addition to this clinic, all  
773 administrative consumers, surrogates and prospective attendants shall be made aware by the council, that  
774 other individuals in need may wish to conduct their own interviews with personal care attendants on the  
775 directory, in their area, for regular duty, or for emergencies.

776 7. g. These candidates will, if pre-approved by the screeners, will then obtain training for a  
777 specified number of hours to be determined by the council. This act requires these following basic  
778 courses be mandatory: CPR/First Aide for all personal care attendants, Ethics of Personal Care and abuse  
779 training for consumers, administrative consumers, personal care attendants, and surrogates. The  
780 surrogates may take life saving courses under the council as electives. Other content areas shall be  
781 developed such as interviewing skills, interpersonal communication and relationships and self-care, but  
782 such training is optional. The council must inquire periodically with administrative consumers, personal  
783 care attendants and surrogates what electives would be helpful within an assigned time period designated  
784 by the council. Non-surrogates shall be allowed to take these courses if they can be identified as having a  
785 family relationship to an administrative consumer or consumer.

786 8. h. Every attendant involved in the Massachusetts personal care attendant program, or are direct  
787 care staff working for human service agencies, must receive, at least, one training on personal care ethics  
788 during the duration of a current version of the ethics code, in addition to administrative consumers, and  
789 surrogates. The first training shall be taken within the first 18 months from the time, of which, a new  
790 version of the ethics code is released. The CPR/First Aide re-certification period shall follow standard  
791 state regulations. Any other requirements are to be determined by the council.

792 9. i. The council must make these required classes available to those

793 who do not wish to be part the personal care attendant directory as well. Every individual who serves as a  
794 personal care attendant in the Commonwealth of Massachusetts must take the minimum training, even for  
795 those who are already working as personal care attendants. The exception would be health care  
796 professionals with an active license or certificates in Massachusetts will be excused from most of those  
797 basic workshops, but they will be expected to take the statutorily required training in CPR/First Aide and  
798 ethics, if their last course in those areas is over the time required by the council or the state, or both.  
799 When a person has taken a course to fulfill the curriculum of the workforce council, it is the responsibility  
800 of the individual to report attendance with the appropriate documentation, unless the council has a direct  
801 way to verify if someone took a proticular training, which shall be made clear at the time of registration.  
802 All such records shall be reviewed every three-months by the council, however it wants to execute such  
803 tasks.

804           10. j. Educational accommodations shall be allowed to make training more  
805 accessible and easy to obtain. If one takes a college course that is related to the content areas set by the  
806 council, it could be applied if the student can offer proof to the council that course was completed with a  
807 passing grade. Other formats such as video or internet courses with certain proof of required completion,  
808 is to be specified by the educational regulations set by council. Other learning disability  
809 accommodations shall made available by the council, on an individual basis and if needed, according to  
810 the federal Americans with Disabilities Act (1990).

811           11. k. The council shall provide trainings through independent living  
812 centers, colleges, and direct workshops/conferences sponsored the council or through other entities and  
813 practices. The council shall ensure that all instructors are qualified to speak on their subject matter.  
814 Administrative consumers and surrogates, or family members, can teach some seminars. Medical, mental  
815 health, rehabilitation, business, legal or ethics professionals may teach other workshops.

816           12. l. The council may charge a minimal fee for education events it directly

817 sponsors up to \$100 per person. The council may assist with financial aid, whether the event is directly  
818 sponsored or not, for those who qualify under council guidelines, accept third party payment on behalf of  
819 the student, or provide certain training at a lower cost or for free.

820           13. m. Once this act is passed, the council has six months to establish a  
821 continuing education committee and 18 to 24 months to organize a training curriculum with its logistics  
822 developed.

### 823 Section 7: Disciplinary Procedures

824           1. Add Section 36.a. Pursuant to section three, paragraph 28o of this act, the council shall devise  
825 disciplinary procedures and a committee to adjudicate cases before it. There are four groups of people or  
826 entities that can be brought before a disciplinary committee for administrative review of a complaint.  
827 These groups are as follows: personal care attendants, administrative consumers, surrogates, people  
828 directly involved in the workforce council and contractors, or other individuals, which provide assistance  
829 in recruiting for the personal care attendant directory. The committee can hear cases where the offence  
830 took place at maximum three years prior to the complaint being filed and can include current and previous  
831 working relationships. The investigation and appellate process is the same for all groups. Only the  
832 definition of compelling evidence shall be used as a guideline during a disciplinary investigation or  
833 hearing to judge any information presented. No hearsay evidence or information that cannot be  
834 substantiated shall be admissible at any level of the council disciplinary process. The personal care  
835 attendant union under the Service Employees International Union, Local 1199, and other individuals or  
836 entities of the community that may have influenced illegal or unethical acts in the personal care attendant  
837 system, shall not appear before the disciplinary committee of the council, but can be prosecuted by a local  
838 District Attorney in state court and the council, through its attorney, shall refer such cases for independent  
839 investigation when the council becomes aware of such situations. In all cases, which is before the  
840 workforce council's disciplinary committee, or appeared panel, the committee has the right to seek court

841 intervention, through their legal representative, when and if necessary, to enforce its disciplinary decision.  
842 It is the code of conduct that will serve to be the standard of any council disciplinary decision,  
843 investigation or procedure

844 2. b. The disciplinary committee comprises one member of the main board,  
845 the legal representative of the council, three personal care attendants and two non-affiliate members from  
846 the public representing people with disabilities, the elderly, or family members or surrogates who are  
847 related to an individual who is handicapped. The point of the attorney is to be a legal observer of the  
848 proceedings and is to advise on all legal matters. The attorney will be present for all disciplinary  
849 committee hearings, but he or she, will only speak when legal issues arise. One person from the council  
850 has to be on the ethics committee. The workforce council director will appoint the members to the  
851 disciplinary committee for a term no more than two years. The professional ethicist who advises the  
852 ethics committee may also advise the disciplinary committee. Names of non-affiliate members shall be  
853 derived through a lottery process and the names can be submitted to the EOHHS, which shall be kept on  
854 file for no more than two years. Such individuals wanting to serve shall provide verification of having a  
855 disability, being in a family member, who is related to someone who is disabled or has to submit proof  
856 that the person is currently working as an attendant for somebody residing in Massachusetts. Standards  
857 for verification are at the discretion of the council. If a member of the disciplinary committee has prior  
858 personal knowledge of the accused, the complainant, or anyone else appearing before the committee, or a  
859 previous or current personal relationship, whether direct or indirect, the member must excuse himself or  
860 herself, because of conflict of interest. The counsel director shall choose alternate members from the  
861 lottery, cited in this paragraph or by council re-assignment, if one or more primary members cannot serve  
862 on the regular disciplinary committee in this paragraph, or appellate panel, cited in paragraph 24x. If  
863 three or more disciplinary or appellate members cannot serve because of conflict of interest, the director  
864 has to provide the list of alternates to the Attorney General so he can impanel an independent committee  
865 to investigate and hear a complaint, pursuant to paragraph 17q of this section. The alternate members

866 shall be present during the investigations or hearings, but cannot express their opinion, or participate in  
867 anyway. The Attorney General shall appoint an alternate attorney or ethicist or both, within 10 days of  
868 being notified by the council director if said advisors have conflicts of interests regarding a cases before  
869 the disciplinary committee. Such contingencies shall also be used with independent disciplinary  
870 committees cited in paragraph 17q. It is permissible to have postponements for illness or questions of  
871 corruption for up to 30 days. If this involves a committee member, an alternate member shall replace the  
872 primary member for the duration of the case, then, if there is a following case, the individuals reverse  
873 roles, or the alternate member may retain the primary position for the remainder of the term if the original  
874 member cannot continue.

875           3. c. If an administrative consumer or consumer is harmed, or is in a potential state of danger,  
876 caused by the behavior of a personal care attendant; such as physical, psychological, or sexual abuse,  
877 sexual harassment, neglect, abandonment, malicious damage to property, theft, an immediate state  
878 investigation by the council's disciplinary committee will be initiated, after receiving a complaint from an  
879 administrative consumer or his or her surrogate, other acquaintance of the individual or other mandated  
880 reporters. The committee has the right to investigate and punish off duty crimes or offenses by any  
881 attendant working in Massachusetts, if it presents a clear and present threat to the consumer or  
882 administrative consumer, such as going to work intoxicated or becoming arrested after a criminal act;  
883 thereby causing abandonment. In all cases, the council shall initiate all investigations promptly and  
884 professionally.

885           4. d. Within 60 days, informal interviews or a hearing or both shall  
886 be completed, in which testimony on either side can be offered. The disciplinary committees, regardless  
887 of the type, have the right to make the rules as to how hearings are to be conducted and inform all parties  
888 in writing at five business days from the date the complaint is received with any other information the  
889 council and the disciplinary committee wants to impart. The regular review process with the main board

890 will set such standards approving of such rules on how hearings should be conducted, pursuant to section  
891 3, paragraph 28o in this act. The disciplinary committee has limited subpoena power in that it can order  
892 any documentation or other pieces of evidence concerning the alleged incident and to compel testimony.  
893 The final report shall be rendered with the council's decision within 90 days following the complaint  
894 being filed. The purpose of this process is to determine if the attendant in question violated any council  
895 ethical guidelines and if any administrative recourse is required such as levying financial penalties or  
896 taking the accused attendant's name off the directory. A finding of wrongdoing, however, does not equal  
897 a legal verdict of guilty in a court of law. Once a decision is rendered, records will be kept under file  
898 with the council. The only people or entities, which can have access to sealed information are courts,  
899 legal counsel, or legislative committee, by subpoena. No committee or council member shall discuss or  
900 profit from the cases they investigate. This applies to people on audit teams or members of the council in  
901 that these members cannot speak on the audit or disciplinary cases, or profit from them. If said  
902 individuals do commit such acts, the council can terminate current members off their committees or the  
903 council or both. The Attorney General may be called in by the attorney for the workforce council and the  
904 he or she has the right to sue in state court for any total profits they might have gained and perhaps seek  
905 criminal penalties as well under other statutes. The Auditor shall dismiss any current member(s) from the  
906 audit team. The Attorney General may sue past members of audit teams, disciplinary committees,  
907 independent disciplinary committees, or appellate panels, if they violate confidentiality or profit from the  
908 work.

909 5. e. If a possible criminal act has been found such as abuse or neglect by an attendant, and is  
910 reported to the workforce council initially, the council is required within six to 12 hours to refer the  
911 matter local District Attorney, the indicated state protective agencies, and the police departments where  
912 the alleged crime occurred for further investigation and prosecution with reports being made available to  
913 the Attorney General and other appropriate state agencies. The disciplinary committee is entitled to  
914 investigate such acts. If the accused is incarcerated at the time of the hearing, he or she can appear by

915 video camera. All court dates have to supersede dates for council disciplinary hearings, in which case, the  
916 disciplinary committee shall reschedule.

917 6. f. If an attendant is found in violation of complaint filed, the council can levy  
918 penalties against that individual, but the imposition of such action will be delayed if the decision is to be  
919 appealed, which has to be filed within 10 days of the original decision. The exception to this is if the  
920 workforce council refers the matter to the criminal justice system for investigation and prosecution, the  
921 legal process has to go forward while the administrative appeal progresses. Even if the administrative  
922 appeal exonerates the attendant, the finding does not override any court or criminal investigative process.  
923 Reports from the council investigation shall be made available upon subpoena from attorneys from either  
924 side for use at trial.

925 7. g. There are various penalties open to the council. The disciplinary committee can give the  
926 offender a warning in writing. Fines between \$100 and \$10,000 can be levied. In the all instances, unless  
927 an appeal has been filed, payment is expected by 30 days and 30 days after a failed appeal. The council  
928 can take the attendant's name off the directory either temporarily or permanently. The council can order  
929 the attendant attend counseling or psychiatric treatment if the individual is to keep serving people with  
930 disabilities. The council can also order further ethics or abuse training. A combination of sanctions is  
931 possible. If the attendant is a repeat offender who presents in front of the council's disciplinary  
932 committee, the penalties become more serious, until the third offence when the said committee must  
933 impose permanent expulsion from the directory and \$10,000 fine, and, depending on the circumstances, a  
934 report may be filed with the criminal justice system if such sanctions have not already occurred. The  
935 committee can repeat or increase severity of sanctions with repeat offenders as the disciplinary committee  
936 sees fit until the third time where the maximum penalties must be applied.

937 8. h. The council shall fine the attendant who is abusing substances while placing consumers or  
938 administrative consumers in potential or actual harm, for the first two offences, no less than \$100 and at a

939 maximum of 10,000, and suspend him or her from the directory for a period decided by the disciplinary  
940 committee. The disciplinary committee has the choice of suspending an attendant from the directory for a  
941 period of one to two years, or indefinitely, depending on the extent of the harm done to a consumer or  
942 administrative consumer and the severity of any legal penalties attached to the alleged incident. A third  
943 offence accompanied by actual or potential harmful circumstances to consumers or administrative  
944 consumers will result in a fine of no more than \$10,000 and indefinite suspension from the directory. If  
945 the attendant only fails a drug test, but does not endanger a consumer or administrative consumer, the  
946 council can only monitor that attendant through the ombudsman, cited paragraph 35hh of this section or  
947 in some other manner agreed to by the council. If the attendant passes drug tests for two years, the  
948 monitoring shall stop unless failure happens in the future. In order to become re-registered onto the  
949 directory after suspension, the personal care attendant has to submit documentation to the council and  
950 referred to the disciplinary committee for review and must provide evidence of recovery, such as going  
951 through a treatment program, having regular contact with a sponsor and any other supporting information  
952 that the disciplinary committee may consider helpful. Additionally, attendant must prove they did not  
953 harm a person with a disability, an elder, or a member of the public while under the influence of a  
954 substance, or during the commission of some other crime within the suspended time frame. The  
955 disciplinary committee may question involved individuals, choose to conduct a hearing, or decide the  
956 petition based on the written documentation provided. There can be opposing testimony allowed at that  
957 time. The disciplinary committee must decide on re-registration between 30 and 60 days of the petition.  
958 If the attendant did harm someone else while under the influence, the person is to be banned indefinitely  
959 from the directory. Whether someone keeps their job due to a failed drug test is between the employing  
960 individual or organization and the attendant.

961 9. i. Regarding illegal aliens, such individuals must be reported to the federal authorities  
962 whenever they are found in the system. Administrative consumers, surrogates and agencies will be held  
963 to this reporting requirement. If a complaint is filed with the workforce council against any individual or

964 human service agency claiming said entities knew that they had illegal aliens as personal care attendants,  
965 the disciplinary committee has the right to investigate. State penalties for illegal aliens working in the  
966 personal care attendant program is no less than \$10,000 and automatic suspension from the personal care  
967 attendant directory. The council must report such offenders to the federal authorities. Penalties for not  
968 reporting illegal aliens, is no less than \$10,000 and individuals and organizations may face other penalties  
969 based on federal statutes.

970           10. j. Administrative consumers are equally responsible for their conduct with  
971 the personal care attendant and can be brought before the disciplinary committee. A complaint by an  
972 attendant or someone that has legitimate concerns about sexual harassment, utilizing an attendant to  
973 perform an unlawful act or something that would harm the administrative consumer, or attendant. The  
974 penalties in this case are, written warnings, fines between \$100 and \$10,000 can be levied, mandatory  
975 skills training or mentoring, psychological therapy or psychiatric treatment, further ethics training, filing  
976 in probate court for a competency hearing to determine whether a surrogate should be involved or a  
977 recommendation to the legal authorities for further criminal investigation and possible prosecution. In the  
978 case of an administrative consumer perpetrating the abuse, it has to be proven that the act was not due to  
979 the person's disability, or any medical treatment he or she might have received for the individual to be  
980 responsible and in violation of the ethical code, which would require the application of sanctions

981           11. k. Surrogates are held to account and the sanctions for a personal care attendant applies to  
982 surrogates with the additional possibility of replacing offending surrogate in probate court with another  
983 individual to take over the surrogacy of the particular consumers who experienced maltreatment, such as  
984 negligence, or any other form of direct, or indirect abuse or criminal act committed by the prior surrogate  
985 such as utilizing an attendant to perform an unlawful act or something that would harm the administrative  
986 consumer, or attendant.

987           12. 1. The disciplinary committee may issue a fine between \$100 to \$10,000 for any contractors  
988 who violate ethics standards can be levied, contracts with the council may be severed, the state can sue  
989 those corporate entities for negligence, the disciplinary committee may recommend the agency found in  
990 violation and lose state funding, or that the state revoke their business license or a combination of these  
991 penalties can be applied. In which case, a hearing by the Governor's Council on Disability shall be  
992 conducted to perform a review of the allegations and give recommendations to the Governor, the  
993 Secretary of Elder Affairs, the Director of the Massachusetts Office on Disability and any other state  
994 agency necessary to carry out the sanctions.

995           13. m. Because any type of abuse or neglect shall be taken seriously, the disciplinary committee  
996 can levy a \$10,000 fine per incident to administrative consumers, personal care attendants, surrogates and  
997 contractors who hire attendants. Consumers or administrative consumers have to experience some type of  
998 primary or secondary abuse for such penalties to apply. If other abuses occur between contractor  
999 employees, attendants harming family members or surrogates of people with disabilities, or some other  
1000 combination thereof, the council shall not investigate, therefore, making such issues matters for law  
1001 enforcement. The perpetrator must abuse consumers or administrative consumers in one of the stated  
1002 categories in order for the alleged offense to be investigated and heard by the disciplinary committee and  
1003 associate penalties to be applied.

1004           14. n. If a person being an employment reference on behalf of a prospective attendant and knew  
1005 the person they were referring had character flaws or had background difficulty, and that attendant may  
1006 have committed an illegal or unethical act against a consumer or administrative consumer, or some  
1007 individual, or entity in the community, the person who is giving the reference may be accountable by the  
1008 District Attorney where the administrative consumer or consumer resides. This rule applies also to union  
1009 representatives of the personal care attendant union who may be recruiting attendants. In all cases, the  
1010 council can refer the matter to the Attorney General for criminal investigation. The penalty for such an  
1011 act is a \$5,000 fine and not more than one-year imprisonment, or another sentence, which is consistent

1012 with other laws under the discretion of a criminal court. Anyone who employs or uses personal care  
1013 attendants may keep lists of references for each attendant so that if there is a investigation, authorities can  
1014 question those original supportive individuals. If it is found that such individuals were misleading in their  
1015 references, the authorities have the right to apply the legal penalties described in this clause. The  
1016 disciplinary committee of the council shall not be involved in such situation.

1017           15. o. Any suspected ethical or unlawful act on, or related to the council, shall  
1018 initiate an investigation from the attorney for the council, director, the Assistant Secretary of the EOHHS,  
1019 Disability Division and the Attorney General. Such complaints shall be filed with the director who shall  
1020 notify the Assistant Secretary of EOHHS, Disability Division and the council attorney, who will intern,  
1021 notify the Attorney General. Formation of the committee has to occur within 72 hours of the complaint  
1022 being filed and the investigation shall occur immediately with the Attorney General or his or her staff  
1023 being included in the discussions. If one member, or more, commits corruption on the council, such  
1024 persons shall be removed, at least temporarily, while investigations are conducted and completed.  
1025 Council members and employees shall notify the director of their knowledge of a potential corruption by  
1026 another member, or other individuals involved in the council, or they shall be subject to investigation and  
1027 possibly be held legally liable. The council director shall remove the member by phone immediately  
1028 followed by a letter to the accused within five days. While an internal investigation needs to occur within  
1029 30 days, the Attorney General may choose to initiate a criminal investigation simultaneously or wait until  
1030 the internal investigation is completed, under his sole discretion. If the corruption resides with an  
1031 employee of the council, and if it is discovered, that employee shall face either suspension or termination,  
1032 or both, under the discretion of the director. The same procedures for reporting members to the Attorney  
1033 General, will apply to any employees who have conflicts of interests or who have committed other  
1034 wrongful acts against the council. The proceedings can go forward as long as it is within the statutes of  
1035 limitations for the type of the suspected corrupt acts. The Attorney General shall conduct the  
1036 investigation within 90 days to decide if the conflict of interest violated any state or federal law. Other

1037 types of corruption shall be investigated and prosecuted in a similar manner. Such acts shall not appear  
1038 before the disciplinary committee of the council.

1039 16. p. When the director discovers any type of corruption, however this occurs, he or she shall  
1040 follow these procedures. If the council director does not follow these procedures, or is involved in a  
1041 conflict of interest or other corruption, reported by any person or entity, the same rules in paragraph 15o  
1042 apply, except any initial report of suspected criminal or unethical behavior on the part of the director has  
1043 to be reported to the Assistant Secretary of the EOHHS, Disability Division, where this official shall take  
1044 control of the council until the director is either cleared and reinstated or a new replacement is found due  
1045 to termination of the director. Under section four of this act, the Auditor has the right to also conduct an  
1046 emergency administrative audit if such circumstances emerge. If the official who made the appointment  
1047 or the nominating agency or organization is suspected of being involved in the corruption or not  
1048 thoroughly vetting the candidate, these entities shall be investigated as well with possible civil or criminal  
1049 penalties being assessed. The member or employee who had the conflict of interest or committed some  
1050 other type corruption during an investigation, shall be reported to the council director and attorney for  
1051 investigation. If a member of the council finds himself or herself in a conflict and resigns because he or  
1052 she cannot resolve it, the possible consequences may not occur.

1053 17. q. In the case of corruption within the standing disciplinary committee involving a particular  
1054 case, or the case being investigated presents a conflict of interest for most members of the committee, the  
1055 council director shall ask the Attorney General to appoint an independent disciplinary committee based on  
1056 applications from the file at the EOHHS of seven people from the community, based on paragraph two b  
1057 who are disabled, personal care attendants, or who are family members who are disabled, to investigate  
1058 the ethical violations. The Attorney General may also choose people of his own, provided such people  
1059 represent the population with disabilities or personal care attendants in some way and has no current  
1060 association with the council. The attorney for the council shall be present throughout the investigation,  
1061 to give legal advice to the panel, applying the general rules according to this act and other laws of the

1062 commonwealth. The independent disciplinary committee can also have ethical advice from the expert  
1063 working with the ethics committee according to regulations found in paragraph two b of this section. The  
1064 independent disciplinary committee shall operate within the rules of this section for the regular  
1065 disciplinary committee, based on paragraph two b and shall render a decision within 90 days, cited in  
1066 paragraph of four d. This independent disciplinary committee can apply the penalties outlined in  
1067 paragraphs seven g – 14n and 18r. The independent disciplinary committee shall be disbanded once the  
1068 investigation is over. Any member of the council, its employees, or members of subcommittees of the  
1069 council can be disciplined in this manner for suspected corruption. Any appointing political official or  
1070 nominating agency or organization, which may have committed corruption, shall not be investigated by  
1071 the council’s disciplinary committee, but the Attorney General may investigate and prosecute such  
1072 individuals and entities, under state and federal laws that pertain to such unlawful acts.

1073 18. r. If one or more members of the council or its employees are found guilty of in court of  
1074 breaking state or federal law, through some type of corruption that has taken place on the council, the  
1075 Attorney General may ask for those penalties under those statutes. In this case, the guilty parties shall be  
1076 dismissed from the council in the same manner as the removal outlined in paragraph 13m of this section.

1077 19. s. In the case of any violations on an administrative audit, the audit team or the Auditor can  
1078 refer the matter to the Attorney General for criminal investigation. A hearing by the Governor’s Council  
1079 on Disability shall be conducted to perform a review of the allegations and give recommendations to the  
1080 appointing officials, cited in section three, paragraph one.

1081 20. t. There are two situations in which an ethics investigation, regarding corruption, conducted  
1082 by the disciplinary committee, can run concurrently with a legal investigation: One, the alleged  
1083 corruption might have violated both the law and council ethical guidelines. Two, the offence did not rise  
1084 to the level of legal action or the person was legally cleared, but nevertheless, the alleged offence may  
1085 have violated council ethical standards. If the disciplinary committee finds the person violated the code,

1086 penalties are a letter of censure, fines up to \$10,000, termination from the council, or a combination of  
1087 sanctions can be pursued. Censure shall be sent to the accused, the council, the appointing official who  
1088 appointed the accused member, the nominating agency or organization and the Governor. The fine shall  
1089 be paid to the council with 30 days of notification, unless other arrangements are made, the fee shall be  
1090 increased by 10% per month until payment is received.

1091           21. u. If the council discovers through administrative audit, or other sources, that a prior member  
1092 committed some type of corruption while on, or employed by the council, the council and the Attorney  
1093 General shall initiate legal and ethical investigations with their potential consequences involved for the  
1094 retired individual, outlined in paragraphs 16p, 17q and 18r, of this section.

1095           22. v. Moreover, if members of the council, employees, or other  
1096 entities involved in council business, fail to sign the ethics agreement of the Personal Care Attendant  
1097 Quality Home Care Workforce Council, those individuals or entities shall not be allowed to serve and will  
1098 be dismissed by the director if ethics agreements are not signed within 30 days of being given to the  
1099 recipient. The notification outlined 13m shall be followed for these purposes.

1100           23. w. In the case of an individual who is fined more than \$100, that individual is entitled to a  
1101 payment plan provided by the Personal Care Attendant Quality Home Care Workforce Council, if they  
1102 come under income guidelines set forth by the council, so that person can make payments toward the total  
1103 amount. Corporate entities, serving as contractors, however, shall not take advantage of the same benefit.  
1104 Whoever is being fined, or how the fee schedule is arranged, violators are to make payment within 30  
1105 days of a written decision. For every month of a missed payment, an additional fee of \$75, for  
1106 individuals, and \$300 for agencies or corporate entities will be assessed. If payment is still not made  
1107 within the agreed upon time frame, or the accused refuses to pay, the council can seek intervention,  
1108 through its legal counsel and the Attorney General, and ask a court to garnish some percentage of the  
1109 person's income until the fine is paid including interest. In cases where the person is incarcerated, the

1110 court may order a payment delay until release and the person is gainfully employed or the court can freeze  
1111 assets reaching the amount owed, or as close to it as possible.

1112 24. x. The personal care attendants, administrative consumers and surrogates shall maintain  
1113 mandatory trainings. Attendants shall offer proof of life saving skills if possible. If on the directory, any  
1114 such attendant who has not kept current shall be removed from the directory. For attendants that do not  
1115 keep current, the council may fine that person for one time \$150 after a time period designated by the  
1116 council. An ombudsman, cited in paragraph 33ff in this section, may encourage such training be  
1117 completed. The attendant may submit their name for the directory again once their training is upgraded.  
1118 For administrative consumers and surrogates must maintain current on ethics. Failure to do so within a  
1119 12 to 18 months of a new version of a code of conduct being released, a one time \$150 fine will be  
1120 assessed by the council and urging by an ombudsman to complete such training shall be initiated. Such  
1121 fines should not involve the disciplinary committee, but the individual assigned to handle fines, cited in  
1122 paragraph 38kk in this section shall be the one to submit the fines for missing mandatory trainings. The  
1123 council shall decide any other procedures needed to fulfill these requirements for 22v.

1124 25. y. Consumers under the age of 18 or individuals with intellectual  
1125 handicaps are exempt from complaints against them because of behavior difficulties or being under the  
1126 age of majority.

1127 26. z. The losing side in the initial disciplinary case can request an independent administrative  
1128 appeal or review conducted by an appellate panel comprised of people with disabilities, personal care  
1129 attendants, law enforcement and other non-related members drawn from a random pool of individuals  
1130 who have volunteered to serve if called for a period of two years. The Governor and the Secretary of the  
1131 Department of Elder Affairs shall appoint two individuals each while the Director of the Office on  
1132 Disability shall appoint three with a magistrate presiding to be appointed by the judiciary when the proper  
1133 documentation is filed in the appropriate court of law by the council's attorney. Identification of these

1134 members shall be kept confidential to protect any undue influences. The members of the appellate panel  
1135 shall appointed at the same two year interval as the regular members are being appointed. Members of  
1136 the appellate panel shall report any conflict of interest with the council, or the parties involved and excuse  
1137 themselves immediately so the original appointing official who chose that member can select another  
1138 member, following rules from paragraph two b in this section. In case of any corruption on the part of  
1139 one or more officials, section three, paragraph five f shall apply, in that the Commissioner of the  
1140 Massachusetts Rehabilitation Commission shall appoint three appellate members while the other two  
1141 alternate officials, if needed, shall appoint two members each. The director shall notify the appropriate  
1142 official(s) of need for alternate members at the proper time. The magistrate in charge of the proceedings  
1143 has to sign off on the decision before the final report is issued. If the decision is unjust or unlawful, the  
1144 magistrate may use his or her substitute judgment in the decision.

1145           27. aa. The goal of the panel is twofold: To review the rules and procedures of the council and  
1146 to ensure all members of the council, associated employees or contractors correctly followed the rules and  
1147 procedures.

1148           28. bb. The appeal will be filed with the council director, who will activate the panel within 10  
1149 days of the appeal being filed. The appealet panel will then hold their first meeting within 45 working  
1150 days of that notification. The panel will then hold a hearing involving the administrative consumer(s)  
1151 affected, their surrogates, if applicable, the council's governing members, employees and contractors or  
1152 other agents of the council, or independent entities, or individuals, who were involved in the original  
1153 complaint. There can be character or eyewitness testimony offered in front of the panel and a review of  
1154 the case records will be undertaken. No new evidence, however, can be introduced that was not included  
1155 in the first investigation.

1156           29. cc. The appellate panel has 90 days to complete its investigation and write a

1157 report with copies going to the administrative consumer and the attendant involved. The report will also  
1158 be available to the council, the Governor, the Secretary of the Massachusetts Department of Elder Affairs  
1159 and the Director of the Massachusetts Office on Disability. The judgment of the appealet panel either  
1160 can uphold the prior ruling or override it. If rules or procedures need to be changed, the appealet panel  
1161 may note it in their recommendations. If the accused is still found in violation, the appeals panel will not  
1162 adjust the prior recommended sanctions. Once the ruling is made, there can be no other appeals in court  
1163 or to other entities.

1164 30. dd. All sides may have legal representation in such disciplinary proceedings  
1165 and attorneys are allowed to represent their clients in any outside interviews. In hearings, the members of  
1166 the disciplinary committee, appellate panels, and independent disciplinary committee do most of the  
1167 questioning although attorneys for the opposing sides are allowed to perform direct and cross-  
1168 examination of witnesses or make oral arguments on behalf of their clients. Legal counsel will be  
1169 provided, depending on income level, to be determined by the council.

1170 32. ee. If someone on the appellate panel or audit committee does not report a  
1171 conflict of interest and remove themselves from the investigation, or identity of such members is  
1172 unlawfully revealed, the person or entity who committed such acts, shall be charged a \$10,00 fine and  
1173 must not be chosen for council or related duty again. Such a penalty shall be executed by the Attorney  
1174 General's office in a court of law. Further more, any person who attempts to influence the outcome of  
1175 any disciplinary procedures set forth in this section, and in section four, by having unlawful contact with  
1176 members disciplinary committees, audit teams, or appellate panels, or through falsification of evidence,  
1177 shall be referred to the Attorney General for possible criminal investigation and prosecution, under  
1178 criminal statutes chosen by his or her office. Members of these committees must not engage in such  
1179 behavior, either alone or with others, to influence the outcomes of cases outside of normal committee  
1180 procedures, and must report anyone who approaches them to attempt to influence their opinion, or use

1181 them in anyway to influence the outcome of the investigation. Failure to report, and, if discovered may  
1182 result in the same investigation by the Attorney General and related penalties.

1183 33. ff. Penalties from other state and federal laws may be applied, if those  
1184 statutes were violated as well and if the determination is made by the correct authorities. The Personal  
1185 Care Attendant Quality Home Care Workforce Council or associated investigators shall make the  
1186 appropriate referrals and recommendations to those law enforcement agencies for a further processing

1187 34. gg. If the Auditor's office is corrupt, affecting reviews of the council, the  
1188 Attorney General shall investigate and apply the appropriate legal penalties, if the courts agree. The  
1189 Attorney General shall do the same with the three appointing officials, if their offices are corrupt and  
1190 affect the council adversely. In terms of the Attorney General's office being corrupt affecting council  
1191 performance, the Governor, the Joint Committee of the Judiciary and the Joint Committee of Health and  
1192 Human Services shall investigate and exercise their rights under the Massachusetts State Constitution, in  
1193 dealing with such circumstances.

1194 35. hh. The council shall hire ombudsmen to serve in different parts of the state to work with  
1195 individuals in the community namely people with disabilities, surrogates, family members of the person  
1196 needing care and personal care attendants. The ombudsman will work with anyone having minor day-to-  
1197 day problems with attendants, providers, consumers, administrative consumers, family members, or  
1198 surrogates. The ombudsman will receive complaints and he or she can make a determination within  
1199 seven to 14 days of receiving such reports whether the incident(s) alleged warrant a full disciplinary  
1200 investigation. The ombudsmen are mandated reporters pursuant to M.G.L. Chapter 19c, sections 5, 10 of  
1201 the state code and must report all suspected cases of abuse to law enforcement and any other appropriate  
1202 state investigative agencies. In the case of emergency calls to the ombudsman must visit the victim  
1203 within five hours and must notify authorities where the victim resides immediately. Whenever possible,  
1204 however, the ombudsman will attempt mediation to solve smaller disputes with the people involved and

1205 whoever else is needed to be present. The personal care attendant can have some kind of representation at  
1206 such meetings if they so desire. Moreover, if the attendant has the problem, he or she can initiate the  
1207 same type of meeting with their administrative consumer or the surrogate with the ombudsman and a  
1208 representative or other advocates being present. If however, an investigation is warranted, the  
1209 ombudsman will refer the matter to the workforce director who will then form a disciplinary committee.  
1210 The disciplinary process should only be done when there are serious allegations, not for disputes, which  
1211 could be solved in other ways.

1212           36. ii. If other entities such as law enforcement or social service  
1213 agencies receive complaints regarding the personal care attendant program, such agencies shall share that  
1214 information within two days of obtaining the complaint so the council can begin its own investigation.

1215           37. jj. The council shall make information available to every  
1216 administrative consumer, surrogate and personal care attendant registered in the personal care program  
1217 regarding complaints procedures. The workforce council shall write a summary of all disciplinary  
1218 proceedings and their outcomes for the previous two-year period, omitting any identifying information, in  
1219 biannual performance review reports. Information that is described in this chapter will disclosed and  
1220 summarized for this purpose.

1221           38. kk. The council shall provide transportation for people with disabilities,  
1222 who require it, to and from disciplinary committee and appellate panel meetings. The members of such  
1223 committees can consider holding hearings at a location closer to the opposing parties. A third option is  
1224 to arrange teleconferences or videoconferences with the participants. Moreover, the council shall provide  
1225 any special accommodations, which a person with a disability requires to participate fully and function  
1226 during the disciplinary hearing, complying with purposes of this act

1227           39. ll. Any Massachusetts citizen can report any union abuse. Investigations of this type are  
1228 beyond the scope of the disciplinary procedures of the council and must be handled by the Attorney  
1229 General. If the union is found in violation of section three, in any manner, the basic penalty shall be a  
1230 fine of \$10,000 per offence to the union and any individual union members or staff involved, plus any  
1231 other fines from other laws that might have been violated. If the entities mentioned in paragraph 23j in  
1232 section three violate the stated privacy rules, the disciplinary committee cannot hear such a case, but a  
1233 state court can apply the \$10,000 per violation to such entities and individuals employed by such  
1234 organizations who were involved in disclosing confidential information. Additional fines of other state or  
1235 federal privacy laws could also be applied to such defendants as well. The same penalties, in the same  
1236 manner, shall be applied to any other persons not mentioned in paragraph 23j in section three. Depending  
1237 on the circumstances, the Attorney General may file criminal charges against union leaders and other  
1238 members if he or she thinks it is necessary. Any unsolicited visits from union representatives to private  
1239 residences shall be treated as trespassing under the law, if reported. Citizens who are harassed by the  
1240 union, may apply for restraining orders in a court of law with specified penalties at the discretion of the  
1241 court. Any inappropriate interaction between politicians and the union, cited in section three, paragraph  
1242 13h, if discovered, shall be investigated and prosecuted by the Attorney General under laws deemed  
1243 appropriate. The Legislative Joint Committees on Ethics, and, Health and Human Services, shall also  
1244 investigate and determine appropriate penalties or other actions.

1245           40. mm. There are civil liability prohibitions in this act under certain conditions. An attendant  
1246 cannot sue any administrative consumer or surrogate independently. The union cannot hold said parties  
1247 responsible in a court of law on the behalf of an attendant for any reason. There is no civil liability for the  
1248 council, its members, subcommittees, or advisors. The personal care attendant union and any other entity  
1249 that has contractual obligations to the council cannot be held liable civilly other than what is prescribed in  
1250 this act, unless other laws supercede according to a court of law. Whereas, only the penalties provided in  
1251 this act shall be applied to all parties mentioned except under certain conditions. Attendants, surrogates

1252 and human service agencies can be held civilly liable beyond the consequences mentioned in this act in  
1253 accordance with Massachusetts state law. This can only apply in cases of serious injury, such as brain  
1254 damage, sensory disability, bodily mutilation, psychological trauma, disease process, or wrongful death  
1255 caused by a personal care attendant or some decision or omission that placed the consumer or  
1256 administrative consumer in jeopardy. Other than those instances where the quality of life for consumers  
1257 or administrative consumers is permanently altered and degraded will lawsuits independent of council  
1258 discipline will be allowed to go forward in a court of law, unless a court decides other laws supercede this  
1259 act. A complaint with the council's disciplinary committee and other investigative agencies must be filed  
1260 first and investigative processes must be completed before any independent civil suits can be filed in a  
1261 court of law.

1262 41. nn. Upon enactment of this act, the council has 18 to 24 months to develop the policies,  
1263 procedures and logistics, necessary to implement the directives set forth in this section.

1264 Section 8: Amendment Requirements

1265 Amendments to section 2 of Chapter 268 (2006)

1266 1. Add section 36.a. Sections 2-8 of this act state amendments to Chapter 268 (2006) only for  
1267 the targeted clauses mentioned, leaving the rest of the law intact. Thus, these amendments shall apply to  
1268 Chapter 118G, through the Personal Care Attendant Quality Home Care Workforce Council Law (2006).

1269 2. b. This act will go into effect immediately upon enactment although it will  
1270 take maximum of 18 to 24 months after enactment to fully implement the regulations in certain sections.