

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Ms. 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:

5 Mayflower Road
Andover, MA 01810

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

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

9 2. The Home Care Accountability and Supplemental Act (H-CASA) gives more
10 guidance to the Personal Care Attendant Home Care Workforce Council as to how to provide
11 administrative oversight for the Massachusetts personal care attendant program. It also gives the
12 state mechanisms to supervise the activities of the council. This legislation provides mandates
13 for the adoption of ethical codes, disciplinary procedures, and training opportunities for all
14 involved in the personal care attendant program, regardless of one's position. The Bill also
15 introduces ethical and legal procedures on how to avoid and respond to any corruption involving
16 the council throughout several sections. A new anti-discrimination clause is offered here, as well
17 as new directives for public negotiation. It also covers privacy issues and gives guidance as to
18 how the council shall protect personal information. Since some consumers are more capable
19 than others in management of the their own program, a redefinition is offered to delineate who
20 can be held legally responsible as far as people with disabilities and who are elderly. All this has
21 been done to raise quality control and program efficiency.

22 3. In this act, the amendments proposed for Chapter 268 (2006) is spread out through
23 this document. Section 1 of Chapter 268 is covered by sections two through seven of this act
24 while the amendments proposed for Sections 2 through 3 is found in section eight of this act.
25 Beginning with Sections 5 through 8, this act proposes 3 additional sections to chapter 118G.
26 Section 1, of this document offers the findings upon, which this Bill is based. Section 2 defines
27 terms. Section 3 provides amendments to sections 29-32 of Chapter 118G while specifying the

28 basic regulations for this act. Section 33 of Chapter 118G found in Section 4 in this act,
29 discusses administrative audits, while section five covers ethics. Section 6 states rules for
30 screening and training. Section seven discusses disciplinary procedures. Section 8 produces
31 section 39 reclassifying sections 34 and 35 of Chapter 118G and attaches all amendments to
32 Chapter 268 (2006) and mandates them applicable to Chapter 118G and explains other
33 requirements for this act.

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35 Section 1. Findings

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

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

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

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

46 5. No law governing the personal care attendant program should discriminate among
47 socioeconomic groups.

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

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

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

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

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

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61 Section 2. Definitions

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63 Amendments to Section 1 of Chapter 268 (2006) and Section 28-33 of Chapter
64 118G

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66 1. "Consumer" shall be redefined from Chapter 268 of the Acts of 2006 as a person
67 under the age of 18 or with mental defect, requiring a legal surrogate to manage the daily
68 personal care attendant program.

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

72 3. "Surrogate" is someone who has the legal responsibility and authority to substitute his
73 or her judgment on the behalf of a consumer, for the purpose of administering the consumer's
74 personal care attendant program.

75 4. "Personal care attendant" or "attendant" or "attendants" is any person(s) who assists
76 people with disabilities, or seniors or both, complete the tasks of daily living in a private
77 residence.

78 5. "Personal Care Attendant Quality Home Care Workforce Council" or "workforce
79 council" or "council" is the sub-agency, under the Executive Office of Health and Human
80 Services, designated in Chapter 268 (2006) to oversee the statewide personal care attendant
81 program in Massachusetts.

82 6. "Employee of the council" or "council employee" is anyone who is paid to conduct
83 council business.

84 7. "Contractor" or "provider" or "service provider" or "human service agency" is any
85 individual organization or other entity, which offers auxiliary assistance on behalf of the council,
86 has contracts with the council, or otherwise manages community direct support services to
87 people with disabilities or seniors in Massachusetts.

88 8. "Complaint" means the filing of a written grievance with the workforce council
89 against a personal care attendant, administrative consumer, a surrogate, or a contractor.

90 9. "Complaint process" is the series of steps taken to resolve a grievance in the personal
91 care attendant program.

92 10. "Complaint procedures" are the rules and regulations, which govern the complaint
93 process set by the workforce council.

94 11. "Disciplinary committee" is the technical advisory committee under the workforce
95 council that initially investigates, hears, and passes judgment on a complaint.

96 12. "Administrative appeal" or "review" is a hearing in which an appeal is heard
97 regarding the decision made by the disciplinary committee.

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

104 14. "Administrative audit" is an evaluation of the workforce council, to
105 ensure quality control and integrity of the sub-agency.

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

108 16. "Ethics committee" is an advisory board created by the workforce council, which
109 with its approval, shall design, implement and revise standards of conduct applied to each
110 individual involved in the personal care attendant program, council members, employees and
111 contractors.

112 17. "Code of conduct" or "codes of conduct" or "ethics code" or "ethical code" or
113 "code" refers to the document, which is written by the workforce council's ethics committee,
114 and approved by the nine member board of council, prescribing standards or guidelines for
115 acceptable behavior and best practices for each individual involved in the personal care attendant
116 program. The disciplinary committee or the appellate panel will adjudicate a complaint shall use
117 this document.

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

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

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

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

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

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

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

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

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

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

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

155 29. “Conflict of interest” is any personal relationship or interest outside the
156 confines of the council, which may unduly influence a member’s judgment regarding any or all
157 issues before the council or its advisory committees or the relationship confuses social or
158 professional boundaries.

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

163 31. “Appointment cycle” is a single instance of an official assigning an

164 individual for a specified term on the council or an associated advisory committee.

165 32. "Independent disciplinary committee" is a board of seven individuals from
166 the community representing the population needing services, which take the place of the regular
167 disciplinary committee because of conflict of interest.

168 33. "Alternate members" or "alternative replacements" are the individuals
169 representing the population being served, who can act as substitutes for appointed members on
170 the general board, disciplinary committees, or appellate panels.

171 34. "Compelling evidence" is any verifiable statement, material, or other types of
172 direct information, which can be cooperated during disciplinary proceedings.

173 35. "Personal care attendant union" is an organization of personal care
174 attendants in Massachusetts, which exists to collectively bargain with the council for higher
175 wages and other benefits.

176 36. "Union member" or "union members" are people who have joined the
177 personal care union in order to bargain for increased wages and benefits.

178 38. "Union representative" is any member of the personal care attendant union
179 or other staff member of the Service Employees International Union, Local 1199.

180 39. "Union operations" refers to the practices associated with the administration
181 of the personal care attendant union under the auspices of the Service Employees International
182 Union, Local 1199, and includes such functions as union sponsored events, mailings or written
183 communication of any type, phone calls, word of mouth communication, fundraising or due
184 collection, staff meetings, board meetings, or any negotiations with the workforce council.

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

192 41. "Contact" or "approach" is when a union representative or member attempts
193 to interact with another member or potential member for recruiting or other business purposes, or
194 other entities providing the union with confidential information unlawfully.

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

198 43. "Theft" is one or more instance(s) of stealing of money or personal property
199 equaling any monetary value.

200 44. "Removal" is a temporary suspension from workforce council duties for members of
201 the main board, subcommittee members, or employees of the workforce council, who are under
202 disciplinary investigation.

203 45. "Termination" is permanent suspension from workforce council duties for members
204 of the main board, subcommittees, or employees who receive a finding of a violation of council
205 rules and ethical guidelines, from the disciplinary committee and is not over turned over on
206 appeal, or is the procedure used by administrative consumers or surrogates to relieve someone of
207 their personal care attendant responsibilities.

208 46. "Abandonment" is a criminal act of neglect committed by a

209 personal care attendant, when he or she fails to report for duty without notifying the
210 administrative consumer, or surrogate in a timely maner with a reasonable explanation, or not
211 returning to work without notice, or leaving work spontaneously without completing the shift.
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214 47. "Physical abuse" is any criminal act, which is purposeful in nature, meant to
215 cause bodily harm to someone else through assault and battery, food poisoning or poisoning with
216 other substances, such as drugs, alcohol, or other items.

217 48. "Psychological abuse" is any criminal event or aggressive language meant to
218 adversely affect a persons mental state through making the victim have the perception of being
219 fearful, unsafe physically or psychologically or both, or depressed or unworthy, or some adverse
220 behavioral change occurs secondary to the perpetrator's actions.

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

224 50. "Sexual abuse" is a criminal act of touching to sexual parts of the body, the
225 touching is inappropriate to the situation, is not consented to and is not apart of routine personal
226 care, or is an instance of non-consensual intercourse.

227 51. "Neglect" or "negligence" is an criminal act of omission, by not giving care
228 or support, or failure to follow through on one's obligations, and, in all cases causes actual or
229 potential harm to another person, either physically or psychologically or both.

230 52. "Direct abuse" or "primary abuse" is any criminal abusive or neglectful act
231 defined in this section, in which, the abusive behavior is committed onto a victim by the
232 perpetrator.

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

236 54. "Sexual harassment" is any criminal abusive act, through sexually explicit language
237 or inappropriate touching, or other innuendo, which produces uncomfortable situations or hostile
238 work or living environment for the intended victim.

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

242 56. "Family member of people with disabilities," or "family members of those with
243 disabilities," is any relative of a person with physical or mental impairment, or both.

244 57. "Sanctions" or "penalties" are consequences, which are decided by the council
245 disciplinary committee or a court when a person has been found in violation of the council code
246 of conduct or the law or both.

247 58. "Independent living centers" are agencies, which assists people with disabilities live
248 to independently in the community.

249 59. "Fiscal intermediaries" are agencies, which provide assistance with the personal care
250 attendant payroll responsibilities.

251 60. "Personal information" is data, which identifies an individual or their
252 characteristics, such as identification numbers, contact information, work hours, direct
253 experience, or any other information, which are features of an individual.
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61. “People with disabilities“ or “elderly” are individuals with physical or mental impairment, or both, which limits daily functioning in some manner, requiring personal care attendants or the person with such conditions and care requirements are at the age of 65 years or older.

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

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

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

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

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

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

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

Section 3: Basic Regulations

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

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

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

312 4. e. Each official, under his or her discretion, may appoint one candidate, not
313 nominated by the other nominating agencies, in each appointment cycle. Such candidates shall fill out the
314 standard application form and be recommended by another Massachusetts citizen with anti-corruption
315 rules, cited below, being applicable. Applicants for positions on the council shall not have personal
316 relationships with their appointers, their nominators, the personal care attendant union, or any other type
317 of relationship, which would create a conflict of interest. Any appointing officials, council members,
318 council employees, common citizens who may have outside knowledge of such conduct, can make reports
319 of based on paragraph five e in this section, or investigations of such discoveries of such behavior, from
320 media reports, shall be initiated by Attorney General. If the discovery of corruption is made on the
321 council level, procedures found below shall be followed. When new members are appointed to the
322 council, individuals or contractors are hired by the council, or those who wish to have other types of
323 association with the council, every named entity shall sign an agreement, upon pains of perjury to follow
324 council’s ethics guidelines and such a process shall be repeated with every release of a revised version of
325 a code within 90 days of a new version of it being adopted by the council. Issues of conflicts of interest
326 or corruption shall be covered in the ethics code and ethics training for all workforce council members
327 and employees shall occur once a year, conducted by an ethics instructor. The statutory requirements for
328 nominating all candidates shall be that such individuals have to have normal intellect, have to be of the
329 age of majority of 18 years or older, shall not be a personal care attendant, shall have a disability or shall
330 be related to someone with disability, shall be a surrogate, or represent the community with disabilities in
331 some other manor. Appointing officials shall make appointments known through the statewide press and
332 disability publications. Upon enactment of this act, this new arrangement shall be in effect for the next
333 series of appointments and shall run concurrently thereafter.

334 5. f. If there are instances of corruption such as conflicts of interest, or violations of
335 confidentiality on the council, the member(s) involved shall be removed pursuant to Section 7, paragraph
336 13m, of this act, at least during investigations. Any Massachusetts citizen with knowledge of such
337 occurrences must report it to the counsel director. From there, the director will discuss the matter with the
338 council’s attorney and the Assistant Secretary for Disability Affairs at the EOHHS. If this group finds
339 that state laws may have been violated, the suspected member shall be suspended and the Attorney
340 General shall be called in for further review and such a process has to occur within 90 days. In such a
341 case, the Attorney General shall appoint the Commissioner of the Massachusetts Rehabilitation

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

366 6. g. The oversight for the council shall come from three sources: One, the
367 Auditor shall conduct a biannual administrative audit, which is established in Section 4. Two, the Joint
368 Committee of Health and Human Services shall officially assume oversight responsibilities for the
369 council activities in the Massachusetts legislature and may perform independent regular or emergency
370 investigations. Three, the Joint Committee of Health Care and Finance shall perform regular three-year
371 reviews of the council budget and any emergency budgetary requests regarding workforce council
372 funding. To assist with that function, the director of the workforce council shall write brief progress
373 reports to members of those two committees and answer any questions from those legislators. The rest of
374 the oversight regulations are explained in section four of this act.

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

378 8. Section 30.c – 92-95: For the purposes of this act, the council must not place any personal
379 care attendant in the personal care attendant directory without their knowledge, understanding, and
380 written authorization, prior to listing. The workforce council or its contractor responsible for the
381 directory must explain in writing the required standards for inclusion to be in the directory and have a
382 person assigned to answer questions if needed. There must be a procedure to remove a person's name
383 from the directory and this process must be explained at the time of consent. Even though the

384 Commonwealth of Massachusetts has the right to furnish the names of all personal care attendants in the
385 state to the council, the council shall not place those names on the personal care attendant directory
386 without permission from the individuals. The council has 18 to 24 months, upon enactment of this act, to
387 secure permission from the present members on the directory already and for those that refuse to give
388 permission or do not respond to the request, shall be removed from the directory. After this 18 to 24
389 month period, whenever the procedures are in place, the rule for permission will operate concurrently.
390 The council shall not share any identities of personal care attendants directly with the union. Since the
391 directory is a public document and there are indirect ways, in which the union can discover those
392 identities, the council and the personal care attendant union shall adopt the following policy: All
393 attendants who wish to sign up to be on the directory have to do so through the directory contractor. If
394 the attendants become union members first, the union is allowed to instruct the new members how to
395 place their name on the directory, but the union shall not do it for them and the directory contractor shall
396 follow-up with regular consent procedures. Moreover, unless a perspective union member initiates
397 contact with the union first, in basic terms, the union cannot approach attendants to become members
398 without the attendant's permission.

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

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

416 11. f. In carrying out the duties and responsibilities of section
417 30.a-c, the council will observe confidentiality practices. The council will adopt policies for obeying the
418 federal Health Insurance Portability and Accountability Act (HIPAA, 1996) and other state statues
419 regarding the personal privacy of all individuals in the commonwealth. The stated privacy rule in this
420 section also applies to the consumers and administrative consumers in that all attendants must keep all
421 information regarding those individuals confidential. All attendants must have permission from
422 administrative consumers or surrogates regarding who the attendant can communicate with under the
423 behalf of consumers and administrative consumers and under what circumstances, such as in cases of
424 emergency.

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

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

445 14. Section 31.a – 97-101 Administrative consumers or the consumer's
446 surrogate retain the right to select, hire, schedule, train, direct supervise the work of, and terminate any
447 personal care attendant providing services. Administrative consumer or the consumer's surrogate may
448 elect to receive long-term, in-home personal care services from personal care attendants who are not
449 referred to them by the council or directory contractor. No outside entity or other regulations shall
450 interfere with these rights.

451 15. b. Regarding acts of abandonment, the attendant must be absent from work without some
452 type of communication with their administrative consumer or a surrogate for the next 24 hours, from the
453 time the missed shift began. If communication is not established, after three attempts from the
454 administrative consumer, human service agencies or surrogate to reach the attendant, abandonment has
455 occurred. In the case communication is established, the reason for the absence without providing prior
456 notice within a minimum of 24 hours, must be a medical emergency, or related event involving the
457 authorities, accompanied by a doctors note or police report, in the case of a automobile accident, or other
458 related events. Other reasons for the unexcused absence and whether to accept such reasoning is solely
459 between the attendant and the administrative consumer, provider, or surrogate. The documentation must
460 be provided within seven days of a single absence. If the absences continue concurrently or sporadically,
461 without prior notice, abandonment may have occurred, without further corroborating documentation from
462 qualified professionals or authorities. In the case of the attendant wanting to resign, unless otherwise
463 agreed upon between the attendant and the administrative consumer, provider or surrogate, two to four
464 weeks notice shall be given before the attendant leaves his or her position. Unless other arrangements are
465 made between the administrative consumer, provider or surrogate and the attendant, the said employee

466 leaves his or her position less than 14 days, abandonment has legally occurred. Abandonment has also
467 occurred if the attendant has left a shift without just cause, such as a medical emergency. Being late for
468 work, however, does not qualify as abandonment.

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

482 17. d. Any contractors assisting the workforce council in recruiting of personal
483 care attendants, or other human service organizations providing community services to the targeted
484 population, must pay attention to the guidelines set by the council. If an attendant harms a consumer or
485 an administrative consumer, any secondary entity who assisted with the recruitment or hiring of the
486 accused can be held in violation of this act and other criminal laws. This type of behavior shall be
487 considered indirect abuse and shall be handled as a crime under section seven, paragraph 121 under this
488 act. Individuals making recommendations to the council, the directory contractor or to individuals are
489 responsible as far as what they know about the person from prior experience. If it can be proven that a
490 contractor or individual who assisted the person being listed on the directory or being hired
491 independently, knew that the individual demonstrated character flaws, which posed a foreseeable risk or
492 did not follow recruitment procedures correctly, can held to account. In terms of giving references, if the
493 person being asked is aware of potential difficulty, which may arise, the person being asked can either
494 refuse to give the reference, or explain that they would not recommend that person, but the reference may
495 not disclose the reasons. The principle for this rule is a person cannot deceive an individual asking for a
496 reference on behalf of an applicant, who the reference knows or suspects would commit a crime in the
497 personal care attendant position. If the reference portrays the applicant as somebody other than what they
498 know of that person, this regulation would be violated. If a member or employee of the council was
499 involved, termination or removal is possible. If the applicant is hired anyway, however, despite a
500 reference's warning or gives the applicant no support, and a criminal act occurred with the attendant, the
501 reference in question cannot be held in violation of this regulation.

502 18. Add to Section 31.e: All negotiations must be carried out in public
503 session. Members of the public however, must refrain from interfering in the proceedings. The council
504 and the personal care attendant union shall make rules regarding public observations. An attorney
505 representing the workforce council shall be present in such negotiations. The union may have legal
506 representation, as well, in such proceedings. The attorneys shall not speak during negotiating sessions,

507 except when legal issues arise, and if necessary, if expeditious legal input cannot resolve the matter within
508 the session, the lawyers can request the parties' recess or break for legal advising. Legal counsel can
509 speak to their respective clients before negotiations begin, in between bargaining sessions and recesses
510 within negotiating sessions, but the attorneys can only comment on legal matters, not on the specific
511 issues pertaining to the negotiation.

512 19. g. The personal care attendant union shall negotiate with the
513 council in an appropriate manner in that this organization cannot use threats or intimidation as leverage in
514 the process. Peaceful protest is allowed, under certain conditions, discussed in paragraph 21h of this
515 section. This organization must obey section 30d of Chapter of 268 (2006), in that no striking, work
516 stoppage, slowdown, or the encouragement there of, shall occur for any reason. Any type of fraud, from
517 the union, such as manipulation of financial records, overcharging the membership in dues, or other
518 criminal acts constitutes fraud under state or federal law, is strictly prohibited

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

531 21. i. If the union would like consumers, administrative consumers, surrogates,
532 or family members of people with disabilities to attend their events, the union has to invite such
533 individuals, and not leave it to the members to elicit the ones they work with to attend such functions. It
534 must be left to the discretion of those individuals outside of the union whether they attend. No attendant
535 shall coerce, pressure, or intimidate consumers, administrative consumers, surrogates, or family members
536 of people with disabilities, in supporting any union initiatives by threatening to resign, refusing to do
537 certain tasks, changing one's temperament, or other tactics designed to elicit support for the union. Union
538 members acting as personal care attendants shall not counsel the consumers, administrative consumers,
539 surrogates, or family members of those with disabilities, even if asked, and must direct them to other
540 union representatives or other people for advice on such matters, because of the conflict of interest. The
541 union must mail information to administrative consumers, surrogates, or family members of those with
542 disabilities, if they would like to support an initiative. For these purposes, privacy rules for attendants,
543 cited in section three, paragraphs eight d and nine e, shall apply to consumers administrative consumers,
544 surrogates and family members of those with disabilities. Union representatives shall not visit homes or
545 apartments of consumers or administrative consumers to discuss union business with an attendant on duty
546 for any reason.

547 22. j. The union has no right to collect any information from fiscal intermediaries, human
548 service agencies or independent living centers, regarding personal information of personal care attendants,
549 consumers, administrative consumers, or surrogates. The reverse is also true, in that, such entities cannot
550 approach the union with that type of information. Administrative consumers or consumers shall not be
551 coerced or manipulated into sharing information of attendant hours or any other personal information
552 regarding personal care attendants with union representatives. If administrative consumers, surrogates, or
553 any other person who has such information, makes disclosures to a union representative, willingly or
554 inadvertently, such conversations have to be kept confidential and ought not be used for union operations,
555 either publicly or privately, unless it is consented to in writing by the informant. The informant must only
556 speak about his or her own experience to be useful for union operations. Any reference from one person
557 to a union representative, regarding another person must be ignored by the individual associated with the
558 union, in that he or she cannot pass it along within the organization, in order to be utilized for union
559 business. The union representative cannot confirm such heresy information from the person cited in a
560 conversation, unless he or she comes to the union representative, confirms what was said, and consents in
561 to it writing, being used for union operations. In all cases, the union must eliminate all personal
562 information, except the main facts the organization requires for union operations. If the union acquires
563 information regarding a consumer, it must always come from, and shall be authorized by his or her
564 surrogate. In all cases, the personal care attendant union, through the Service Employees International
565 Union, Local 1199, shall keep all consent forms, for any personal information, on file for a maximum of
566 the 10 years, for administrative audit purposes.

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

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

575 25. m. The personal care attendant union may endorse and contribute to
576 political candidates, if they desire. The union shall not, however, promise money to candidates for their
577 support of a particular union position although the union may contribute money to a candidate without
578 announcing the reason, except in general terms, for doing so before an election. The union also shall not
579 threaten a politician or the opponent with taking votes away if they do not support their initiatives
580 regarding the personal care attendant program. Language of dissatisfaction to a politician can be
581 expressed without mention of financial or vote gain or loss. When the union has a legitimate concern
582 over procedural rules on the council in which case, the union should publicly state their complaint before
583 the Joint Committee on Health and Human Services. No other outside interference should influence the
584 council, but elected officials may assist the union, provided the parties follow section three, paragraph
585 13h.

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

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

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

609 29. p. Section 32.h –163-164: The council may keep records and engage in
610 research and the gathering of relevant statistics. In completing these tasks, the council shall hire expert
611 consultants in statistics and relevant methods of research. Any reports from the workforce council, which
612 contain any research or statistics, has to give full credit to those consultants, listing their name(s), area of
613 expertise, affiliation and contact information. The Personal Care Quality Home Care Workforce Council
614 shall encourage independent research on the personal care services in Massachusetts by applying for state
615 of federal grants and inviting scientific researchers to take part in research projects.

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

621 31. r. In a hiring situation, the information the council or contractor administering the directory
622 gathers on a particular individual can be shared with administrative consumer or surrogates, in the interest
623 of the safety and

624 well-being of those being served. It is permissible, upon request, for the council or its provider
625 responsible for the directory to disseminate whether the council has disciplined a certain attendant, who
626 has been or is currently on the directory, within 10 years, but the details, of which, cannot be revealed.
627 Moreover, the privacy rules stated in this section do not apply under the conditions of section seven, and,
628 for the purposes of paragraph four d therein.

629

630 Section 4: Oversight Regulations

631

632 1. Add section 33.e. According to paragraph 28o, section three there shall be oversight of the
633 council through various state mechanisms. Every third year there will be an administrative audit of the
634 workforce council through the Office of the State Auditor. The Auditor will appoint seven people from
635 the community who are either administrative consumers, the elderly, personal care attendants, family
636 members of those with disabilities, or surrogates with one or two legal and accounting consultants, who
637 can submit their names to the Auditor directly for consideration or are appointed staff from the Auditor's
638 office. One personal care attendant shall be chosen for this duty, while the others will be a mixture of the
639 people mentioned. The Auditor shall follow regulations for assignment of alternate members found in
640 section three, paragraph 2c. Council members and the other individuals involved will only know the
641 identity of the members of audit team at the time of the evaluation. The group shall access financial and
642 research consultants to assist the team with their task. The objective of such a review is threefold: (a).
643 To ensure the performance reviews of the council are accurate. (b). To ensure that the council itself is
644 fiscally sound and is operating in an efficient manor. (c). To ensure the council is serving public interest
645 in an ethical and legally responsible manor. The administrative audit shall be done through the use of
646 compelling evidence.

647 2. f. All workforce council members, their employees, contractors and any

648 other entities associated with the council must cooperate with the investigation. The council must make
649 all records available for inspection. Anyone individual or entities involved in council administration and
650 services must submit to interviews with members of the audit committee. Any service provider, including
651 contractors, the union and any other entities that have contracts with the council shall also make their
652 records available regarding that business relationship. The audit committee has the latitude to decide
653 what documents should be inspected and from where. The immediate focus of the audit committee shall
654 be on the past three years, but the audit committee has the ability to review other administrative audits
655 and take the investigation back as much as nine years, if the audit committee finds the some of the
656 problems stem back at least two audit cycles. Within the nine-year time frame, the audit committee has
657 discretion as to how many additional years they want to go back. This process may include reviews of
658 previous documentation or interviewing past council members, employees, or other outside individuals
659 who had dealings with the council in the targeted time frame.

660 3. g. The audit committee must report any fraud, ethical or legal violations, or

661 negligence committed by the council board members, employees, or contractors.

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

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

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

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

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

686 Section 5: Ethics

687

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

689

690 1. Add section 34.a. In accordance with section three, paragraph 28o, the workforce council
691 shall establish an ethics committee in order to establish a code of conduct for administrative consumers,
692 surrogates, attendants and contractors. Within six months of this act being established, the council will
693 appoint seven-member ethics committee. Two members will be from the council and five will not be
694 involved with this sub-agency. Two members must be personal care attendants and five shall comprise
695 some combination of people with disabilities and family members of people with disabilities, the elderly,
696 or surrogates. The director will appoint all ethics committee members for a three-year term. Such a
697 committee will establish a code of conduct, which will have information on how to conduct council
698 business and activities, administrative consumer, surrogate and personal care attendant behavior and
699 outside contractor and agency protocol when working within the personal care system and with regard to

700 relating to the workforce council. The workforce council shall hire an expert on ethics and appoint the
701 attorney from the council to be technical advisors to work with the council ethics committee with the
702 development, implementation and maintenance of the code. These guidelines shall be revised every
703 seven to ten years at the discretion of the workforce council. Before adopting any version of the ethics
704 code, the council will make it available to the segment of the public affected by these guidelines and have
705 a three-month comment period prior to final adoption by the council. Any new versions of the code shall
706 go into effect 90 days after council adoption, while the public is notified. The ethics committee will serve
707 to gather research on ethical issues in personal care and public policy. The guidelines should be clear
708 about what is acceptable, but should not reduce administrative consumer control or interfere with the
709 relationship between service providers, people with disabilities, surrogates and their personal care
710 attendants. Hence, there shall be few activities listed in the code as violations, which personal care
711 attendants, providers, consumers or administrative consumers and surrogates cannot partake in, as long as
712 those tasks increase function and quality of life for those with disabilities.

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

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

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

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

731

732 Section 6: Screening and Training

733

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

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

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

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

753 4. d. Every candidate must have a Criminal Offence Record Investigation, Sexual Offender
754 Record Investigation and a cross-reference with Homeland Security terrorist watch lists, completed by the
755 contractor developing and maintaining the directory. The associated contractor given responsibility for
756 the directory must follow title 8, section 1325 of the United States code and refrain from recruiting illegal
757 immigrants. In doing so, the contractor must cross-reference each interested individual with the United
758 States Customs and Border Protection agency and the United States Immigration and Customs agency.
759 When this legislation is enacted, the directory contractor shall be required to complete all background
760 checks herein on all personal care attendants already on the directory within six months. Any attendants
761 who do not pass these background checks shall not be placed the directory. If there is a directory all
762 ready in place by the time this act is passed and implemented, those on the directory have to be screened
763 for citizenship status and terrorist ties. If there are irregularities found on attendants, such persons must
764 be unlisted within 30 days of the finding. The contractor with the directory responsibility and the council
765 is obligated to inform law enforcement and cooperate with those agencies if there are people who pose a
766 threat to the safety of the community or is a national security threat. The contractor shall follow these
767 procedures every time it finds there is a person who made it on the directory who should not be there
768 because of questionable backgrounds and an oversight occurred when he or she was placed on the
769 directory by mistake. Since paper copies of this of the directories may become out of date because of
770 unlisting requirements in some cases, phone numbers and e-mail contact information shall be provided for
771 administrative consumers and surrogates who want to know if certain attendants are properly listed. In
772 case a web-listing is developed, that version must be kept up to date each week. The council shall
773 supervise all of these activities along with the other reviews discussed. It is because this clause concerns
774 the public safety and wellbeing of those being served, the background checks, presented herein
775 supercedes any right to privacy, cited in section three.

776 5. e. To enforce the prohibition of substance abuse regarding PCAs, the state,
777 through the council, is required to devise a random substance abuse screening program for all personal
778 care attendants in Massachusetts, on and off the directory within 18 to 24 months of enacting this act.

779 The individuals or organization the attendant works for have a right to automatically receive a report of
780 the results each time a test is done to one of their attendants. The privacy rule found in section three, 32s
781 does not apply here because this is an employment situation, not a hiring situation and the safety of the
782 administrative consumer or consumer has to take precedence. The workforce council and the attendant
783 shall receive the other copies of the results.

784 6. f. Administrative consumers and surrogates in the community shall interview applicants at a
785 screening clinic, in each region of the state, on a semi-regular basis to be set by the workforce council's
786 continuing education and screening committee for the purposes of qualifying prospective attendants for
787 the personal care attendant directory. The interviewers must fill out an evaluation form, which will be
788 attached to the application. The interviewers will be volunteers for this duty with travel reimbursement
789 being offered or transportation being arranged by the council, if necessary. In addition to this clinic, all
790 administrative consumers, surrogates and prospective attendants shall be made aware by the council, that
791 other individuals in need may wish to conduct their own interviews with personal care attendants on the
792 directory, in their area, for regular duty, or for emergencies.

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

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

809 9. i. The council must make these required classes available to those
810 who do not wish to be part the personal care attendant directory as well. Every individual who serves as a
811 personal care attendant in the Commonwealth of Massachusetts must take the minimum training, even for
812 those who are already working as personal care attendants. The exception would be health care
813 professionals with an active license or certificates in Massachusetts will be excused from most of those
814 basic workshops, but they will be expected to take the statutorily required training in CPR/First Aide and
815 ethics, if their last course in those areas is over the time required by the council or the state, or both.
816 When a person has taken a course to fulfill the curriculum of the workforce council, it is the responsibility
817 of the individual to report attendance with the appropriate documentation, unless the council has a direct
818 way to verify if someone took a proticular training, which shall be made clear at the time of registration.

819 All such records shall be reviewed every three-months by the council, however it wants to execute such
820 tasks.

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

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

833 12. l. The council may charge a minimal fee for education events it directly
834 sponsors up to \$100 per person. The council may assist with financial aid, whether the event is directly
835 sponsored or not, for those who qualify under council guidelines, accept third party payment on behalf of
836 the student, or provide certain training at a lower cost or for free.

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

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842

843 Section 7: Disciplinary Procedures

844

845 1. Add Section 36.a. Pursuant to section three, paragraph 28o of this act, the council shall devise
846 disciplinary procedures and a committee to adjudicate cases before it. There are four groups of people or
847 entities that can be brought before a disciplinary committee for administrative review of a complaint.
848 These groups are as follows: personal care attendants, administrative consumers, surrogates, people
849 directly involved in the workforce council and contractors, or other individuals, which provide assistance
850 in recruiting for the personal care attendant directory. The committee can hear cases where the offence
851 took place at maximum three years prior to the complaint being filed and can include current and previous
852 working relationships. The investigation and appellate process is the same for all groups. Only the
853 definition of compelling evidence shall be used as a guideline during a disciplinary investigation or

854 hearing to judge any information presented. No hearsay evidence or information that cannot be
855 substantiated shall be admissible at any level of the council disciplinary process. The personal care
856 attendant union under the Service Employees International Union, Local 1199, and other individuals or
857 entities of the community that may have influenced illegal or unethical acts in the personal care attendant
858 system, shall not appear before the disciplinary committee of the council, but can be prosecuted by a local
859 District Attorney in state court and the council, through its attorney, shall refer such cases for independent
860 investigation when the council becomes aware of such situations. In all cases, which is before the
861 workforce council's disciplinary committee, or appeared panel, the committee has the right to seek court
862 intervention, through their legal representative, when and if necessary, to enforce its disciplinary decision.
863 It is the code of conduct that will serve to be the standard of any council disciplinary decision,
864 investigation or procedure

865 2. b. The disciplinary committee comprises one member of the main board,
866 the legal representative of the council, three personal care attendants and two non-affiliate members from
867 the public representing people with disabilities, the elderly, or family members or surrogates who are
868 related to an individual who is handicapped. The point of the attorney is to be a legal observer of the
869 proceedings and is to advise on all legal matters. The attorney will be present for all disciplinary
870 committee hearings, but he or she, will only speak when legal issues arise. One person from the council
871 has to be on the ethics committee. The workforce council director will appoint the members to the
872 disciplinary committee for a term no more than two years. The professional ethicist who advises the
873 ethics committee may also advise the disciplinary committee. Names of non-affiliate members shall be
874 derived through a lottery process and the names can be submitted to the EOHHS, which shall be kept on
875 file for no more than two years. Such individuals wanting to serve shall provide verification of having a
876 disability, being in a family member, who is related to someone who is disabled or has to submit proof
877 that the person is currently working as an attendant for somebody residing in Massachusetts. Standards
878 for verification are at the discretion of the council. If a member of the disciplinary committee has prior
879 personal knowledge of the accused, the complainant, or anyone else appearing before the committee, or a
880 previous or current personal relationship, whether direct or indirect, the member must excuse himself or
881 herself, because of conflict of interest. The counsel director shall choose alternate members from the
882 lottery, cited in this paragraph or by council re-assignment, if one or more primary members cannot serve
883 on the regular disciplinary committee in this paragraph, or appellate panel, cited in paragraph 24x. If
884 three or more disciplinary or appellate members cannot serve because of conflict of interest, the director
885 has to provide the list of alternates to the Attorney General so he can impanel an independent committee
886 to investigate and hear a complaint, pursuant to paragraph 17q of this section. The alternate members
887 shall be present during the investigations or hearings, but cannot express their opinion, or participate in
888 anyway. The Attorney General shall appoint an alternate attorney or ethicist or both, within 10 days of
889 being notified by the council director if said advisors have conflicts of interests regarding a cases before
890 the disciplinary committee. Such contingencies shall also be used with independent disciplinary
891 committees cited in paragraph 17q. It is permissible to have postponements for illness or questions of
892 corruption for up to 30 days. If this involves a committee member, an alternate member shall replace the
893 primary member for the duration of the case, then, if there is a following case, the individuals reverse
894 roles, or the alternate member may retain the primary position for the remainder of the term if the original
895 member cannot continue.

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

906 4. d. Within 60 days, informal interviews or a hearing or both shall
907 be completed, in which testimony on either side can be offered. The disciplinary committees, regardless
908 of the type, have the right to make the rules as to how hearings are to be conducted and inform all parties
909 in writing at five business days from the date the complaint is received with any other information the
910 council and the disciplinary committee wants to impart. The regular review process with the main board
911 will set such standards approving of such rules on how hearings should be conducted, pursuant to section
912 3, paragraph 28o in this act. The disciplinary committee has limited subpoena power in that it can order
913 any documentation or other pieces of evidence concerning the alleged incident and to compel testimony.
914 The final report shall be rendered with the council's decision within 90 days following the complaint
915 being filed. The purpose of this process is to determine if the attendant in question violated any council
916 ethical guidelines and if any administrative recourse is required such as levying financial penalties or
917 taking the accused attendant's name off the directory. A finding of wrongdoing, however, does not equal
918 a legal verdict of guilty in a court of law. Once a decision is rendered, records will be kept under file
919 with the council. The only people or entities, which can have access to sealed information are courts,
920 legal counsel, or legislative committee, by subpoena. No committee or council member shall discuss or
921 profit from the cases they investigate. This applies to people on audit teams or members of the council in
922 that these members cannot speak on the audit or disciplinary cases, or profit from them. If said
923 individuals do commit such acts, the council can terminate current members off their committees or the
924 council or both. The Attorney General may be called in by the attorney for the workforce council and the
925 he or she has the right to sue in state court for any total profits they might have gained and perhaps seek
926 criminal penalties as well under other statutes. The Auditor shall dismiss any current member(s) from the
927 audit team. The Attorney General may sue past members of audit teams, disciplinary committees,
928 independent disciplinary committees, or appellate panels, if they violate confidentiality or profit from the
929 work.

930 5. e. If a possible criminal act has been found such as abuse or neglect by an attendant, and is
931 reported to the workforce council initially, the council is required within six to 12 hours to refer the
932 matter local District Attorney, the indicated state protective agencies, and the police departments where
933 the alleged crime occurred for further investigation and prosecution with reports being made available to
934 the Attorney General and other appropriate state agencies. The disciplinary committee is entitled to
935 investigate such acts. If the accused is incarcerated at the time of the hearing, he or she can appear by
936 video camera. All court dates have to supersede dates for council disciplinary hearings, in which case, the
937 disciplinary committee shall reschedule.

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

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

958 8. h. The council shall fine the attendant who is abusing substances while placing consumers or
959 administrative consumers in potential or actual harm, for the first two offences, no less than \$100 and at a
960 maximum of 10,000, and suspend him or her from the directory for a period decided by the disciplinary
961 committee. The disciplinary committee has the choice of suspending an attendant from the directory for a
962 period of one to two years, or indefinitely, depending on the extent of the harm done to a consumer or
963 administrative consumer and the severity of any legal penalties attached to the alleged incident. A third
964 offence accompanied by actual or potential harmful circumstances to consumers or administrative
965 consumers will result in a fine of no more than \$10,000 and indefinite suspension from the directory. If
966 the attendant only fails a drug test, but does not endanger a consumer or administrative consumer, the
967 council can only monitor that attendant through the ombudsman, cited paragraph 35hh of this section or
968 in some other manner agreed to by the council. If the attendant passes drug tests for two years, the
969 monitoring shall stop unless failure happens in the future. In order to become re-registered onto the
970 directory after suspension, the personal care attendant has to submit documentation to the council and
971 referred to the disciplinary committee for review and must provide evidence of recovery, such as going
972 through a treatment program, having regular contact with a sponsor and any other supporting information
973 that the disciplinary committee may consider helpful. Additionally, attendant must prove they did not
974 harm a person with a disability, an elder, or a member of the public while under the influence of a
975 substance, or during the commission of some other crime within the suspended time frame. The
976 disciplinary committee may question involved individuals, choose to conduct a hearing, or decide the
977 petition based on the written documentation provided. There can be opposing testimony allowed at that
978 time. The disciplinary committee must decide on re-registration between 30 and 60 days of the petition.
979 If the attendant did harm someone else while under the influence, the person is to be banned indefinitely

980 from the directory. Whether someone keeps their job due to a failed drug test is between the employing
981 individual or organization and the attendant.

982 9. i. Regarding illegal aliens, such individuals must be reported to the federal authorities
983 whenever they are found in the system. Administrative consumers, surrogates and agencies will be held
984 to this reporting requirement. If a complaint is filed with the workforce council against any individual or
985 human service agency claiming said entities knew that they had illegal aliens as personal care attendants,
986 the disciplinary committee has the right to investigate. State penalties for illegal aliens working in the
987 personal care attendant program is no less than \$10,000 and automatic suspension from the personal care
988 attendant directory. The council must report such offenders to the federal authorities. Penalties for not
989 reporting illegal aliens, is no less than \$10,000 and individuals and organizations may face other penalties
990 based on federal statutes.

991 10. j. Administrative consumers are equally responsible for their conduct with
992 the personal care attendant and can be brought before the disciplinary committee. A complaint by an
993 attendant or someone that has legitimate concerns about sexual harassment, utilizing an attendant to
994 perform an unlawful act or something that would harm the administrative consumer, or attendant. The
995 penalties in this case are, written warnings, fines between \$100 and \$10,000 can be levied, mandatory
996 skills training or mentoring, psychological therapy or psychiatric treatment, further ethics training, filing
997 in probate court for a competency hearing to determine whether a surrogate should be involved or a
998 recommendation to the legal authorities for further criminal investigation and possible prosecution. In the
999 case of an administrative consumer perpetrating the abuse, it has to be proven that the act was not due to
1000 the person's disability, or any medical treatment he or she might have received for the individual to be
1001 responsible and in violation of the ethical code, which would require the application of sanctions

1002 11. k. Surrogates are held to account and the sanctions for a personal care attendant applies to
1003 surrogates with the additional possibility of replacing offending surrogate in probate court with another
1004 individual to take over the surrogacy of the particular consumers who experienced maltreatment, such as
1005 negligence, or any other form of direct, or indirect abuse or criminal act committed by the prior surrogate
1006 such as utilizing an attendant to perform an unlawful act or something that would harm the administrative
1007 consumer, or attendant.

1008 12. l. The disciplinary committee may issue a fine between \$100 to \$10,000 for any contractors
1009 who violate ethics standards can be levied, contracts with the council may be severed, the state can sue
1010 those corporate entities for negligence, the disciplinary committee may recommend the agency found in
1011 violation and lose state funding, or that the state revoke their business license or a combination of these
1012 penalties can be applied. In which case, a hearing by the Governor's Council on Disability shall be
1013 conducted to perform a review of the allegations and give recommendations to the Governor, the
1014 Secretary of Elder Affairs, the Director of the Massachusetts Office on Disability and any other state
1015 agency necessary to carry out the sanctions.

1016 13. m. Because any type of abuse or neglect shall be taken seriously, the disciplinary committee
1017 can levy a \$10,000 fine per incident to administrative consumers, personal care attendants, surrogates and
1018 contractors who hire attendants. Consumers or administrative consumers have to experience some type of
1019 primary or secondary abuse for such penalties to apply. If other abuses occur between contractor

1020 employees, attendants harming family members or surrogates of people with disabilities, or some other
1021 combination thereof, the council shall not investigate, therefore, making such issues matters for law
1022 enforcement. The perpetrator must abuse consumers or administrative consumers in one of the stated
1023 categories in order for the alleged offense to be investigated and heard by the disciplinary committee and
1024 associate penalties to be applied.

1025 14. n. If a person being an employment reference on behalf of a prospective attendant and knew
1026 the person they were referring had character flaws or had background difficulty, and that attendant may
1027 have committed an illegal or unethical act against a consumer or administrative consumer, or some
1028 individual, or entity in the community, the person who is giving the reference may be accountable by the
1029 District Attorney where the administrative consumer or consumer resides. This rule applies also to union
1030 representatives of the personal care attendant union who may be recruiting attendants. In all cases, the
1031 council can refer the matter to the Attorney General for criminal investigation. The penalty for such an
1032 act is a \$5,000 fine and not more than one-year imprisonment, or another sentence, which is consistent
1033 with other laws under the discretion of a criminal court. Anyone who employs or uses personal care
1034 attendants may keep lists of references for each attendant so that if there is a investigation, authorities can
1035 question those original supportive individuals. If it is found that such individuals were misleading in their
1036 references, the authorities have the right to apply the legal penalties described in this clause. The
1037 disciplinary committee of the council shall not be involved in such situation.

1038 15. o. Any suspected ethical or unlawful act on, or related to the council, shall
1039 initiate an investigation from the attorney for the council, director, the Assistant Secretary of the EOHHS,
1040 Disability Division and the Attorney General. Such complaints shall be filed with the director who shall
1041 notify the Assistant Secretary of EOHHS, Disability Division and the council attorney, who will intern,
1042 notify the Attorney General. Formation of the committee has to occur within 72 hours of the complaint
1043 being filed and the investigation shall occur immediately with the Attorney General or his or her staff
1044 being included in the discussions. If one member, or more, commits corruption on the council, such
1045 persons shall be removed, at least temporarily, while investigations are conducted and completed.
1046 Council members and employees shall notify the director of their knowledge of a potential corruption by
1047 another member, or other individuals involved in the council, or they shall be subject to investigation and
1048 possibly be held legally liable. The council director shall remove the member by phone immediately
1049 followed by a letter to the accused within five days. While an internal investigation needs to occur within
1050 30 days, the Attorney General may choose to initiate a criminal investigation simultaneously or wait until
1051 the internal investigation is completed, under his sole discretion. If the corruption resides with an
1052 employee of the council, and if it is discovered, that employee shall face either suspension or termination,
1053 or both, under the discretion of the director. The same procedures for reporting members to the Attorney
1054 General, will apply to any employees who have conflicts of interests or who have committed other
1055 wrongful acts against the council. The proceedings can go forward as long as it is within the statutes of
1056 limitations for the type of the suspected corrupt acts. The Attorney General shall conduct the
1057 investigation within 90 days to decide if the conflict of interest violated any state or federal law. Other
1058 types of corruption shall be investigated and prosecuted in a similar manner. Such acts shall not appear
1059 before the disciplinary committee of the council.

1060 16. p. When the director discovers any type of corruption, however this occurs, he or she shall
1061 follow these procedures. If the council director does not follow these procedures, or is involved in a
1062 conflict of interest or other corruption, reported by any person or entity, the same rules in paragraph 15o
1063 apply, except any initial report of suspected criminal or unethical behavior on the part of the director has
1064 to be reported to the Assistant Secretary of the EOHHS, Disability Division, where this official shall take
1065 control of the council until the director is either cleared and reinstated or a new replacement is found due
1066 to termination of the director. Under section four of this act, the Auditor has the right to also conduct an
1067 emergency administrative audit if such circumstances emerge. If the official who made the appointment
1068 or the nominating agency or organization is suspected of being involved in the corruption or not
1069 thoroughly vetting the candidate, these entities shall be investigated as well with possible civil or criminal
1070 penalties being assessed. The member or employee who had the conflict of interest or committed some
1071 other type corruption during an investigation, shall be reported to the council director and attorney for
1072 investigation. If a member of the council finds himself or herself in a conflict and resigns because he or
1073 she cannot resolve it, the possible consequences may not occur.

1074 17. q. In the case of corruption within the standing disciplinary committee involving a particular
1075 case, or the case being investigated presents a conflict of interest for most members of the committee, the
1076 council director shall ask the Attorney General to appoint an independent disciplinary committee based on
1077 applications from the file at the EOHHS of seven people from the community, based on paragraph two b
1078 who are disabled, personal care attendants, or who are family members who are disabled, to investigate
1079 the ethical violations. The Attorney General may also choose people of his own, provided such people
1080 represent the population with disabilities or personal care attendants in some way and has no current
1081 association with the council. The attorney for the council shall be present throughout the investigation,
1082 to give legal advice to the panel, applying the general rules according to this act and other laws of the
1083 commonwealth. The independent disciplinary committee can also have ethical advice from the expert
1084 working with the ethics committee according to regulations found in paragraph two b of this section. The
1085 independent disciplinary committee shall operate within the rules of this section for the regular
1086 disciplinary committee, based on paragraph two b and shall render a decision within 90 days, cited in
1087 paragraph of four d. This independent disciplinary committee can apply the penalties outlined in
1088 paragraphs seven g – 14n and 18r. The independent disciplinary committee shall be disbanded once the
1089 investigation is over. Any member of the council, its employees, or members of subcommittees of the
1090 council can be disciplined in this manner for suspected corruption. Any appointing political official or
1091 nominating agency or organization, which may have committed corruption, shall not be investigated by
1092 the council's disciplinary committee, but the Attorney General may investigate and prosecute such
1093 individuals and entities, under state and federal laws that pertain to such unlawful acts.

1094 18. r. If one or more members of the council or its employees are found guilty of in court of
1095 breaking state or federal law, through some type of corruption that has taken place on the council, the
1096 Attorney General may ask for those penalties under those statutes. In this case, the guilty parties shall be
1097 dismissed from the council in the same manner as the removal outlined in paragraph 13m of this section.

1098 19. s. In the case of any violations on an administrative audit, the audit team or the Auditor can
1099 refer the matter to the Attorney General for criminal investigation. A hearing by the Governor's Council
1100 on Disability shall be conducted to perform a review of the allegations and give recommendations to the
1101 appointing officials, cited in section three, paragraph one.

1102 20. t. There are two situations in which an ethics investigation, regarding corruption, conducted
1103 by the disciplinary committee, can run concurrently with a legal investigation: One, the alleged
1104 corruption might have violated both the law and council ethical guidelines. Two, the offence did not rise
1105 to the level of legal action or the person was legally cleared, but nevertheless, the alleged offence may
1106 have violated council ethical standards. If the disciplinary committee finds the person violated the code,
1107 penalties are a letter of censure, fines up to \$10,000, termination from the council, or a combination of
1108 sanctions can be pursued. Censure shall be sent to the accused, the council, the appointing official who
1109 appointed the accused member, the nominating agency or organization and the Governor. The fine shall
1110 be paid to the council with 30 days of notification, unless other arrangements are made, the fee shall be
1111 increased by 10% per month until payment is received.

1112 21. u. If the council discovers through administrative audit, or other sources, that a prior member
1113 committed some type of corruption while on, or employed by the council, the council and the Attorney
1114 General shall initiate legal and ethical investigations with their potential consequences involved for the
1115 retired individual, outlined in paragraphs 16p, 17q and 18r, of this section.

1116 22. v. Moreover, if members of the council, employees, or other
1117 entities involved in council business, fail to sign the ethics agreement of the Personal Care Attendant
1118 Quality Home Care Workforce Council, those individuals or entities shall not be allowed to serve and will
1119 be dismissed by the director if ethics agreements are not signed within 30 days of being given to the
1120 recipient. The notification outlined 13m shall be followed for these purposes.

1121 23. w. In the case of an individual who is fined more than \$100, that individual is entitled to a
1122 payment plan provided by the Personal Care Attendant Quality Home Care Workforce Council, if they
1123 come under income guidelines set forth by the council, so that person can make payments toward the total
1124 amount. Corporate entities, serving as contractors, however, shall not take advantage of the same benefit.
1125 Whoever is being fined, or how the fee schedule is arranged, violators are to make payment within 30
1126 days of a written decision. For every month of a missed payment, an additional fee of \$75, for
1127 individuals, and \$300 for agencies or corporate entities will be assessed. If payment is still not made
1128 within the agreed upon time frame, or the accused refuses to pay, the council can seek intervention,
1129 through its legal counsel and the Attorney General, and ask a court to garnish some percentage of the
1130 person's income until the fine is paid including interest. In cases where the person is incarcerated, the
1131 court may order a payment delay until release and the person is gainfully employed or the court can freeze
1132 assets reaching the amount owed, or as close to it as possible.

1133 24. x. The personal care attendants, administrative consumers and surrogates shall maintain
1134 mandatory trainings. Attendants shall offer proof of life saving skills if possible. If on the directory, any
1135 such attendant who has not kept current shall be removed from the directory. For attendants that do not
1136 keep current, the council may fine that person for one time \$150 after a time period designated by the
1137 council. An ombudsman, cited in paragraph 33ff in this section, may encourage such training be
1138 completed. The attendant may submit their name for the directory again once their training is upgraded.
1139 For administrative consumers and surrogates must maintain current on ethics. Failure to do so within a
1140 12 to 18 months of a new version of a code of conduct being released, a one time \$150 fine will be
1141 assessed by the council and urging by an ombudsman to complete such training shall be initiated. Such
1142 fines should not involve the disciplinary committee, but the individual assigned to handle fines, cited in

1143 paragraph 38kk in this section shall be the one to submit the fines for missing mandatory trainings. The
1144 council shall decide any other procedures needed to fulfill these requirements for 22v.

1145 25. y. Consumers under the age of 18 or individuals with intellectual
1146 handicaps are exempt from complaints against them because of behavior difficulties or being under the
1147 age of majority.

1148 26. z. The losing side in the initial disciplinary case can request an independent administrative
1149 appeal or review conducted by an appellate panel comprised of people with disabilities, personal care
1150 attendants, law enforcement and other non-related members drawn from a random pool of individuals
1151 who have volunteered to serve if called for a period of two years. The Governor and the Secretary of the
1152 Department of Elder Affairs shall appoint two individuals each while the Director of the Office on
1153 Disability shall appoint three with a magistrate presiding to be appointed by the judiciary when the proper
1154 documentation is filed in the appropriate court of law by the council's attorney. Identification of these
1155 members shall be kept confidential to protect any undue influences. The members of the appellate panel
1156 shall appointed at the same two year interval as the regular members are being appointed. Members of
1157 the appellate panel shall report any conflict of interest with the council, or the parties involved and excuse
1158 themselves immediately so the original appointing official who chose that member can select another
1159 member, following rules from paragraph two b in this section. In case of any corruption on the part of
1160 one or more officials, section three, paragraph five f shall apply, in that the Commissioner of the
1161 Massachusetts Rehabilitation Commission shall appoint three appellate members while the other two
1162 alternate officials, if needed, shall appoint two members each. The director shall notify the appropriate
1163 official(s) of need for alternate members at the proper time. The magistrate in charge of the proceedings
1164 has to sign off on the decision before the final report is issued. If the decision is unjust or unlawful, the
1165 magistrate may use his or her substitute judgment in the decision.

1166 27. aa. The goal of the panel is twofold: To review the rules and procedures of the council and
1167 to ensure all members of the council, associated employees or contractors correctly followed the rules and
1168 procedures.

1169 28. bb. The appeal will be filed with the council director, who will activate the panel within 10
1170 days of the appeal being filed. The appellate panel will then hold their first meeting within 45 working
1171 days of that notification. The panel will then hold a hearing involving the administrative consumer(s)
1172 affected, their surrogates, if applicable, the council's governing members, employees and contractors or
1173 other agents of the council, or independent entities, or individuals, who were involved in the original
1174 complaint. There can be character or eyewitness testimony offered in front of the panel and a review of
1175 the case records will be undertaken. No new evidence, however, can be introduced that was not included
1176 in the first investigation.

1177 29. cc. The appellate panel has 90 days to complete its investigation and write a
1178 report with copies going to the administrative consumer and the attendant involved. The report will also
1179 be available to the council, the Governor, the Secretary of the Massachusetts Department of Elder Affairs
1180 and the Director of the Massachusetts Office on Disability. The judgment of the appellate panel either
1181 can uphold the prior ruling or override it. If rules or procedures need to be changed, the appellate panel

1182 may note it in their recommendations. If the accused is still found in violation, the appeals panel will not
1183 adjust the prior recommended sanctions. Once the ruling is made, there can be no other appeals in court
1184 or to other entities.

1185 30. dd. All sides may have legal representation in such disciplinary proceedings
1186 and attorneys are allowed to represent their clients in any outside interviews. In hearings, the members of
1187 the disciplinary committee, appellate panels, and independent disciplinary committee do most of the
1188 questioning although attorneys for the opposing sides are allowed to perform direct and cross-
1189 examination of witnesses or make oral arguments on behalf of their clients. Legal counsel will be
1190 provided, depending on income level, to be determined by the council.

1191 32. ee. If someone on the appellate panel or audit committee does not report a
1192 conflict of interest and remove themselves from the investigation, or identity of such members is
1193 unlawfully revealed, the person or entity who committed such acts, shall be charged a \$10,00 fine and
1194 must not be chosen for council or related duty again. Such a penalty shall be executed by the Attorney
1195 General's office in a court of law. Further more, any person who attempts to influence the outcome of
1196 any disciplinary procedures set forth in this section, and in section four, by having unlawful contact with
1197 members disciplinary committees, audit teams, or appellate panels, or through falsification of evidence,
1198 shall be referred to the Attorney General for possible criminal investigation and prosecution, under
1199 criminal statutes chosen by his or her office. Members of these committees must not engage in such
1200 behavior, either alone or with others, to influence the outcomes of cases outside of normal committee
1201 procedures, and must report anyone who approaches them to attempt to influence their opinion, or use
1202 them in anyway to influence the outcome of the investigation. Failure to report, and, if discovered may
1203 result in the same investigation by the Attorney General and related penalties.

1204 33. ff. Penalties from other state and federal laws may be applied, if those
1205 statutes were violated as well and if the determination is made by the correct authorities. The Personal
1206 Care Attendant Quality Home Care Workforce Council or associated investigators shall make the
1207 appropriate referrals and recommendations to those law enforcement agencies for a further processing

1208 34. gg. If the Auditor's office is corrupt, affecting reviews of the council, the
1209 Attorney General shall investigate and apply the appropriate legal penalties, if the courts agree. The
1210 Attorney General shall do the same with the three appointing officials, if their offices are corrupt and
1211 affect the council adversely. In terms of the Attorney General's office being corrupt affecting council
1212 performance, the Governor, the Joint Committee of the Judiciary and the Joint Committee of Health and
1213 Human Services shall investigate and exercise their rights under the Massachusetts State Constitution, in
1214 dealing with such circumstances.

1215 35. hh. The council shall hire ombudsmen to serve in different parts of the state to work with
1216 individuals in the community namely people with disabilities, surrogates, family members of the person
1217 needing care and personal care attendants. The ombudsman will work with anyone having minor day-to-
1218 day problems with attendants, providers, consumers, administrative consumers, family members, or
1219 surrogates. The ombudsman will receive complaints and he or she can make a determination within
1220 seven to 14 days of receiving such reports whether the incident(s) alleged warrant a full disciplinary

1221 investigation. The ombudsmen are mandated reporters pursuant to M.G.L. Chapter 19c, sections 5, 10 of
1222 the state code and must report all suspected cases of abuse to law enforcement and any other appropriate
1223 state investigative agencies. In the case of emergency calls to the ombudsman must visit the victim
1224 within five hours and must notify authorities where the victim resides immediately. Whenever possible,
1225 however, the ombudsman will attempt mediation to solve smaller disputes with the people involved and
1226 whoever else is needed to be present. The personal care attendant can have some kind of representation at
1227 such meetings if they so desire. Moreover, if the attendant has the problem, he or she can initiate the
1228 same type of meeting with their administrative consumer or the surrogate with the ombudsman and a
1229 representative or other advocates being present. If however, an investigation is warranted, the
1230 ombudsman will refer the matter to the workforce director who will then form a disciplinary committee.
1231 The disciplinary process should only be done when there are serious allegations, not for disputes, which
1232 could be solved in other ways.

1233 36. ii. If other entities such as law enforcement or social service
1234 agencies receive complaints regarding the personal care attendant program, such agencies shall share that
1235 information within two days of obtaining the complaint so the council can begin its own investigation.

1236 37. jj. The council shall make information available to every
1237 administrative consumer, surrogate and personal care attendant registered in the personal care program
1238 regarding complaints procedures. The workforce council shall write a summary of all disciplinary
1239 proceedings and their outcomes for the previous two-year period, omitting any identifying information, in
1240 biannual performance review reports. Information that is described in this chapter will disclosed and
1241 summarized for this purpose.

1242 38. kk. The council shall provide transportation for people with disabilities,
1243 who require it, to and from disciplinary committee and appellate panel meetings. The members of such
1244 committees can consider holding hearings at a location closer to the opposing parties. A third option is
1245 to arrange teleconferences or videoconferences with the participants. Moreover, the council shall provide
1246 any special accommodations, which a person with a disability requires to participate fully and function
1247 during the disciplinary hearing, complying with purposes of this act

1248 39. ll. Any Massachusetts citizen can report any union abuse. Investigations of this type are
1249 beyond the scope of the disciplinary procedures of the council and must be handled by the Attorney
1250 General. If the union is found in violation of section three, in any manner, the basic penalty shall be a
1251 fine of \$10,000 per offence to the union and any individual union members or staff involved, plus any
1252 other fines from other laws that might have been violated. If the entities mentioned in paragraph 23j in
1253 section three violate the stated privacy rules, the disciplinary committee cannot hear such a case, but a
1254 state court can apply the \$10,000 per violation to such entities and individuals employed by such
1255 organizations who were involved in disclosing confidential information. Additional fines of other state or
1256 federal privacy laws could also be applied to such defendants as well. The same penalties, in the same
1257 manner, shall be applied to any other persons not mentioned in paragraph 23j in section three. Depending
1258 on the circumstances, the Attorney General may file criminal charges against union leaders and other
1259 members if he or she thinks it is necessary. Any unsolicited visits from union representatives to private
1260 residences shall be treated as trespassing under the law, if reported. Citizens who are harassed by the

1261 union, may apply for restraining orders in a court of law with specified penalties at the discretion of the
1262 court. Any inappropriate interaction between politicians and the union, cited in section three, paragraph
1263 13h, if discovered, shall be investigated and prosecuted by the Attorney General under laws deemed
1264 appropriate. The Legislative Joint Committees on Ethics, and, Health and Human Services, shall also
1265 investigate and determine appropriate penalties or other actions.

1266 40. mm. There are civil liability prohibitions in this act under certain conditions. An attendant
1267 cannot sue any administrative consumer or surrogate independently. The union cannot hold said parties
1268 responsible in a court of law on the behalf of an attendant for any reason. There is no civil liability for the
1269 council, its members, subcommittees, or advisors. The personal care attendant union and any other entity
1270 that has contractual obligations to the council cannot be held liable civilly other than what is prescribed in
1271 this act, unless other laws supercede according to a court of law. Whereas, only the penalties provided in
1272 this act shall be applied to all parties mentioned except under certain conditions. Attendants, surrogates
1273 and human service agencies can be held civilly liable beyond the consequences mentioned in this act in
1274 accordance with Massachusetts state law. This can only apply in cases of serious injury, such as brain
1275 damage, sensory disability, bodily mutilation, psychological trauma, disease process, or wrongful death
1276 caused by a personal care attendant or some decision or omission that placed the consumer or
1277 administrative consumer in jeopardy. Other than those instances where the quality of life for consumers
1278 or administrative consumers is permanently altered and degraded will lawsuits independent of council
1279 discipline will be allowed to go forward in a court of law, unless a court decides other laws supercede this
1280 act. A complaint with the council's disciplinary committee and other investigative agencies must be filed
1281 first and investigative processes must be completed before any independent civil suits can be filed in a
1282 court of law.

1283 41. nn. Upon enactment of this act, the council has 18 to 24 months to develop the policies,
1284 procedures and logistics, necessary to implement the directives set forth in this section.

1285

1286 Section 8: Amendment Requirements

1287

1288 Amendments to section 2 of Chapter 268 (2006)

1289

1290 1. Add section 36.a. Sections 2-8 of this act state amendments to Chapter 268 (2006) only for
1291 the targeted clauses mentioned, leaving the rest of the law intact. Thus, these amendments shall apply to
1292 Chapter 118G, through the Personal Care Attendant Quality Home Care Workforce Council Law (2006).

1293 2. b. This act will go into effect immediately upon enactment although it will
1294 take maximum of 18 to 24 months after enactment to fully implement the regulations in certain sections.

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