



November 16, 2017

Governor Charlie Baker
State House, Room 280
Boston, MA 02133

RE: Request to Veto H.3821, An Act Authorizing the Department of Elder Affairs to Establish a Home Care Worker Registry

Dear Governor Baker:

We are writing as a coalition to respectfully request that you veto H.3821, An Act Authorizing the Department of Elder Affairs to Establish a Home Care Worker Registry. Together, our combined associations represent over 300 home care agencies providing care to seniors and disabled adults. Collectively, these agencies employ over 30,000 dedicated home care aides providing direct care services throughout the Commonwealth.

Governor Baker, we thank you and Lieutenant Governor Polito for doing the right thing in July when you sent Outside Section 13 back to the Legislature with an amendment through Attachment E citing privacy, confidentiality, and due process concerns. You added opt-out language that would give our dedicated home care aides a voice and a choice in determining what personal information could be collected and then disclosed to third parties. You provided a clear roadmap to achieve the dual goals of establishing a home care aide registry for consumers while ensuring privacy protections for home care aides. Unfortunately, the Legislature rejected your amendment and has returned to your desk, once again, legislation that exposes these essential frontline direct care workers to enormous privacy and due process violations.

We believe the language included in H.3821 contradicts the state's current focus on increasing data security and privacy protections for state employees and all citizens of the Commonwealth. Despite concerns repeatedly raised by your Administration and our coalition, the Legislature ignored a critical opportunity to stand up and make necessary changes to this legislation that would have empowered these workers, the majority of whom are women, to decide whether or not to release their personally identifiable information to third parties.

Below please find new information and key updates our coalition urges you to review as you consider H.3821:

1. **California Governor's Veto:** The California Legislature recently passed home care registry legislation that was vetoed by Democratic Governor Jerry Brown. It should be noted that California already has a home care aide registry. The legislation filed by SEIU in that state sought to have registered home care aides' names and telephone numbers released upon request to a labor organization unless a home care aide opts out of allowing the information to be shared. Governor Brown vetoed the bill, despite the opt-out provision, citing concerns about releasing

the personal information of home care aides who joined the registry without knowing their information would be disclosed.

The Home Care Association of America provided a legal analysis of the California legislation (AB1513) prepared by the Littler Workforce Policy Institute (Attached). Please note the specific references to the National Labor Relations Act outlined in Section C on pages 6 through 9 of the attached document. This section highlights the detailed process required by federal law and regulations that must be completed prior to a union having access to the personal information of employees. This legal analysis, combined with the legal assessment from Jackson Lewis, PC that the Home Care Aide Council shared with your Administration on July 10, 2017, outline several state and federal legal challenges related to the implementation of this bill as currently drafted.

2. **Exemption Amendment:** H.3821 contains one change made via amendment to the original Outside Section 13. The Legislature added exemption language for survivors of domestic violence, sexual assault and stalking. As Jane Doe, Inc., the experts and authority on issues related to domestic violence stated clearly in their letter to Senate President Rosenberg on October 11, 2017, exemptions do not work. Under this law, home care agencies will be forced to ask home care workers about their status as a victim of domestic violence, sexual assault or stalking to determine if they qualify for an exemption. It is widely known in the community of domestic violence experts that exemptions create additional challenges for survivors. Many survivors never tell family or close friends let alone their prospective employers. Requiring survivors to inform their employers of their status through an exemption process will re-victimize the victim. Exemptions also will not protect individuals that may be targeted for violence by their estranged partners or disgruntled clients and/or their family members.

Universal protections, for all women and men are the answer, not exemptions. This could have been achieved by simply adding opt-out language as recommended by the amendment you offered in Attachment E of your FY18 Budget Veto message, or by simply deleting the personally identifiable information as advocated so strongly by Senate Minority Leader Bruce Tarr. During his remarks on the floor of the Senate this Tuesday, Senator Tarr stated, "*There is no reason to take a chance on the safety of individuals who do incredibly important work in the homes of vulnerable citizens. No reason at all. We have a proud record of standing up for victims. Why would we compromise that now? We have a bill subject to the legislative process that offers us a path forward without the risk. I hope we will stand up for the safety of home care workers and I hope the amendment is adopted.*" We are disappointed the Senate did not heed Senator Tarr's impassioned plea and approve the necessary amendments to ensure the privacy of home care aides.

3. **Workforce Shortage Concerns:** There are also concerns that this legislation will force home care aides to leave the field for jobs that do not jeopardize their privacy and due process rights as a condition of employment and will create a disincentive for home care agencies to serve publicly subsidized consumers. At a time when the state is already facing an extreme shortage of qualified and dedicated home care aides to support consumers in the community, the last thing the Commonwealth should be doing is spending limited state dollars to set up a Home Care Aide Registry targeted to only one segment of this critical workforce. This bill will further exacerbate

the existing workforce crisis and could lead to significant waitlists and increased costs for services to publicly funded home care clients.

On behalf of the 30,000 dedicated home care aides, our coalition urges you to veto this bill. This legislation will put disenfranchised, low-wage workers committed to caring for elders enrolled in the state home care program at risk. These women are simply asking to be heard, to have the same opportunity to protect their privacy and personally identifiable information that is provided to personal care attendants, state employees, and all citizens of the Commonwealth.

Thank you for your attention to this request and your outstanding commitment to strengthening and supporting the Massachusetts home care aide workforce and the consumers they care for in the community.

Sincerely,



Bill Delahunt on behalf of
Massachusetts Chapter, Home Care Association of America



Lisa Gurgone
Home Care Aide Council



Pat Kelleher
Home Care Alliance of Massachusetts

cc: Lieutenant Governor Karyn Polito
Secretary Michael J. Heffernan, Executive Office for Administration and Finance