



General Assembly

Substitute Bill No. 6486

January Session, 2011

* _____HB06486HS_____031811_____*

AN ACT CONCERNING HOME HEALTH CARE SERVICES AND THE ESTABLISHMENT OF A PERSONAL CARE ATTENDANT WORKFORCE COUNCIL.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2011*) (a) For purposes of this
2 section and sections 2 to 4, inclusive, of this act: (1) "Consumer" means
3 a person who receives services from a personal care attendant under a
4 state-funded program, including, but not limited to, (A) the program
5 for individuals with acquired brain injuries, established pursuant to
6 section 17b-260a of the general statutes, (B) the personal care assistance
7 program, established pursuant to section 17b-605a of the general
8 statutes, (C) the Connecticut home care program for the elderly,
9 established pursuant to section 17b-342 of the general statutes, (D) the
10 pilot program to provide home care services for disabled persons,
11 established pursuant to section 17b-617 of the general statutes, (E) the
12 individual and family support waiver program administered by the
13 Department of Developmental Services, (F) the comprehensive waiver
14 program administered by the Department of Developmental Services,
15 and (G) any state-funded program that provides services from a
16 personal care attendant; (2) "surrogate" means a consumer's legal
17 guardian or a person identified in a written agreement as having
18 responsibility for the care of a consumer; (3) "personal care attendant"
19 means a person employed by a consumer or surrogate to provide

20 personal care assistance to a consumer; and (4) "personal care
21 assistance" means supportive home care, personal care or another
22 nonprofessional service provided to a person with a disability or an
23 elderly person who requires assistance to (A) meet such person's daily
24 living needs, (B) ensure such person may adequately function in such
25 person's home, or (C) provide such person with safe access to the
26 community.

27 (b) There is established a council to ensure the quality of long-term
28 personal home care that shall be known as the Personal Care
29 Attendant Quality Home Care Workforce Council. The council shall be
30 composed of thirteen members including the Commissioner of Social
31 Services, or the commissioner's designee, who shall serve as
32 chairperson, the Commissioner of Developmental Services, or the
33 commissioner's designee, and the Healthcare Advocate or the
34 Healthcare Advocate's designee. The remaining ten members of the
35 council shall be consumers or surrogates and shall be appointed as
36 follows: Two each by the Governor, the speaker of the House of
37 Representatives and the president pro tempore of the Senate, one each
38 by the majority leader of the House of Representatives, the majority
39 leader of the Senate, the minority leader of the House of
40 Representatives and the minority leader of the Senate. All
41 appointments to the council shall be made not later than August 1,
42 2011. The chairperson shall convene the first meeting of the council not
43 later than September 1, 2011. Subsequent meetings shall be held at
44 times determined by the council chairperson or upon the written
45 request of any five members of the council to the chairperson.
46 Members may serve three-year terms from the date of their
47 appointment or until successors are appointed, except (1) the initial
48 appointees of the speaker of the House of Representatives and the
49 president pro tempore of the Senate shall serve two-year terms, and (2)
50 the initial appointees of the majority leader of the House of
51 Representatives and the majority leader of the Senate shall serve one-
52 year terms. A majority of the members of the council shall constitute a
53 quorum for the transaction of any business. Vacancies shall be filled by

54 the appointing authority for the expiration of the term of the member
55 being replaced not later than thirty days after the date of the vacancy.
56 Members of the council shall receive no compensation for their service
57 on the council but shall be reimbursed for actual expenses necessarily
58 incurred in performance of their duties.

59 (c) (1) The council, with the assistance of the Department of Social
60 Services, shall have the following duties and responsibilities relating to
61 personal care attendants: (A) Not later than October 1, 2011, commence
62 a study of issues relating to the recruitment, retention and adequacy of
63 personal care attendants; and (B) develop a plan and make
64 recommendations to the Commissioner of Social Services to improve
65 the quality, stability and availability of personal care attendants by (i)
66 developing better means to identify and recruit personal care
67 attendants, (ii) developing training and educational opportunities for
68 personal care attendants and consumers, (iii) developing one or more
69 registries to (I) provide routine, emergency and respite referrals of
70 qualified personal care attendants to consumers and surrogates who
71 are authorized to receive long-term, in-home personal care services by
72 a personal care attendant, (II) enable consumers and surrogates to
73 access relevant information about prospective personal care attendants
74 such as their training, educational background and work experience,
75 and (III) provide appropriate employment opportunities for personal
76 care attendants, and (iv) establishing standards concerning the wages,
77 benefits, and conditions of employment for personal care attendants.

78 (2) The members of the council shall develop the expertise necessary
79 to perform their responsibilities in accordance with subdivision (1) of
80 this subsection by studying the experiences and best practices of other
81 states that administer similar programs providing personal care
82 assistance.

83 (3) The Commissioner of Social Services may implement, modify or
84 reject the recommendations made by the council, in accordance with
85 subparagraph (B) of subdivision (1) of this subsection.

86 (d) Commencing July 1, 2013, the council shall have the authority to
87 (1) recruit prospective personal care attendants, (2) provide training
88 and education to personal care attendants and consumers, (3) establish
89 or operate a registry, as described in subparagraph (B)(iii) of
90 subdivision (1) of subsection (c) of this section. The council may take
91 such action directly, through a contractual agreement with another
92 entity or with the agreement of the Department of Social Services.

93 (e) If personal care attendants designate a collective bargaining
94 representative, the authority exercised by the council and the
95 Commissioner of Social Services pursuant to this subsection shall be
96 subject to the provisions of sections 5-270 to 5-280, inclusive, of the
97 general statutes, and made applicable to personal care attendants in
98 accordance with sections 1 to 4, inclusive, of this act, except as
99 otherwise provided in sections 1 to 4, inclusive, of this act.

100 (f) (1) The Commissioner of Social Services, in consultation with and
101 with the assistance of the Commissioner of Developmental Services,
102 shall compile and maintain a list of the names and addresses of all
103 personal care attendants who have been paid through a state-funded
104 program that provides personal care services. The list shall not include
105 the name of any consumer, any designation that a personal care
106 attendant is a relative of a consumer or any designation that the
107 personal care attendant's home address is the same as a consumer's
108 address. Such list shall be updated not less than one time per month.
109 Any vendor or contractor that provides personal care services shall
110 assist and cooperate with said commissioners in compiling and
111 maintaining such list. The commissioners, in consultation with the
112 council, shall use such list to monitor recruitment, retention and other
113 employment patterns of personal care attendants and for other
114 appropriate purposes.

115 (2) Not later than October 1, 2011, the Commissioner of Social
116 Services shall provide the initial list of personal care attendants to the
117 council and to the State Board of Labor Relations. The commissioner
118 shall also provide updated lists of personal care attendants upon

119 request of the council or the State Board of Labor Relations. The
120 commissioner shall comply with any reasonable request of the council
121 or the State Board of Labor Relations concerning the form of the list.

122 (3) Not later than seven days after receiving a request from an
123 employee organization, as defined in subsection (d) of section 5-270 of
124 the general statutes, that is interested in representing an appropriate
125 unit of personal care attendants and that may petition the State Board
126 of Labor Relations pursuant to section 5-275 of the general statutes, the
127 State Board of Labor Relations shall provide the most recent list of
128 personal care attendants that has been provided to the State Board of
129 Labor Relations in accordance with this subsection to such employee
130 organization.

131 (g) A consumer or surrogate shall have the right to (1) hire or refuse
132 to hire, (2) supervise, (3) direct the activities of, and (4) terminate the
133 employment of any personal care attendant. A consumer or surrogate
134 may hire a personal care attendant who has not been referred by the
135 council.

136 Sec. 2. (NEW) (*Effective July 1, 2011*) (a) A personal care attendant
137 shall be a state employee, as defined in subsection (b) of section 5-270
138 of the general statutes, only for the purposes of collective bargaining
139 pursuant to sections 5-270 to 5-280, inclusive, of the general statutes
140 and not for any other purpose. Sections 5-270 to 5-280, inclusive, of the
141 general statutes shall apply to personal care attendants except as
142 provided in this section. A personal care attendant shall not be eligible
143 for benefits available to a state employee.

144 (b) As the employer of personal care attendants for purposes of
145 collective bargaining, the Personal Care Attendant Quality Home Care
146 Workforce Council established under section 1 of this act shall have
147 the authority and obligation to bargain and enter into agreements with
148 a representative of personal care attendants that has been designated
149 by the State Board of Labor Relations, pursuant to section 5-275 of the
150 general statutes, as the exclusive bargaining agent of such attendants

151 to establish wages, benefits and other terms and conditions of
152 employment for such attendants. For purposes of section 5-278 of the
153 general statutes, the council shall be considered an executive branch
154 employer and the Commissioner of Social Services, or the
155 commissioner's designee, shall be considered the employer's chief
156 executive officer. Notwithstanding the provisions of this subsection,
157 consumers and surrogates shall have the rights described in subsection
158 (g) of section 1 of this act.

159 (c) Any collective bargaining agreement reached between the
160 council and the bargaining agent of the personal care attendants and
161 any arbitrator's award that is issued concerning the council and the
162 bargaining agent of the personal care attendants shall be binding on
163 the parties except no provision of any such agreement or award that
164 requires additional state funding shall become final until the General
165 Assembly approves the appropriation of such funds. The council and
166 the bargaining agent of the personal care attendants may participate in
167 the elective binding arbitration procedures as provided in section 5-
168 276a of the general statutes. The factors to be considered by the
169 arbitrator in arriving at a decision on the issues submitted by the
170 council and the bargaining agent shall include: (1) The factors
171 described in subdivision (5) of subsection (e) of section 5-276a of the
172 general statutes; (2) the nature of the personal care services programs
173 at issue; and (3) the needs and welfare of consumers, including
174 recruitment, retention and quality needs with respect to personal care
175 attendants.

176 (d) Personal care attendants shall not be considered employees of
177 the council or the state for any purpose except for the purpose of
178 collective bargaining, pursuant to sections 5-270 to 5-280, inclusive, of
179 the general statutes. The provisions of this section shall not alter the
180 obligations of the state or the consumer to provide the state's or the
181 consumer's share of Social Security, federal and state unemployment
182 taxes, Medicare and workers' compensation insurance under the
183 federal Insurance Contributions Act, federal and state unemployment
184 law or the Workers' Compensation Act.

185 (e) Consistent with the provisions of section 5-279 of the general
186 statutes, no provision of this section shall grant personal care
187 attendants a right to strike and such strikes are prohibited.

188 (f) The only bargaining unit appropriate for the purpose of
189 collective bargaining between the council and a representative of
190 personal care attendants, as provided in this section, shall be (1) a
191 state-wide unit of all personal care attendants, (2) a state-wide unit of
192 personal care attendants who provide services under programs
193 administered by the Department of Social Services, or (3) a state-wide
194 unit of personal care attendants who provide services under programs
195 administered by the Department of Developmental Services. Personal
196 care attendants who are members of the consumer's or surrogate's
197 family shall not be excluded from the bargaining unit for the reason of
198 the family relationship.

199 (g) Notwithstanding section 5-275 of the general statutes, the State
200 Board of Labor Relations shall not require an employee organization
201 interested in being designated as an exclusive bargaining
202 representative of personal care attendants to (1) notify the State Board
203 of Labor Relations that more than ten per cent of employees in a
204 bargaining unit desire to be exclusively represented for the purposes of
205 collective bargaining within the unit by the petitioning organization
206 and request the designation of such employee organization as their
207 exclusive representative, or (2) establish that more than ten per cent of
208 employees desire to be exclusively represented by the organization
209 before the State Board of Labor Relations directs an election. All
210 elections involving questions concerning the representation of
211 personal care attendants shall be conducted by mail ballot.

212 Sec. 3. (NEW) (*Effective July 1, 2011*) (a) The Personal Care Attendant
213 Quality Home Care Workforce Council established under section 1 of
214 this act may seek and accept any grant of money, services or property
215 from the federal government, the state, a political subdivision or an
216 agency of such governmental entities, including, but not limited to,
217 federal matching funds under Title XIX of the Social Security Act, and

218 may do all things necessary to make an application for any such grant.

219 (b) The council may coordinate its activities and cooperate with
 220 similar agencies in other states.

221 Sec. 4. (NEW) (*Effective July 1, 2011*) (a) The Department of Social
 222 Services, the Department of Developmental Services, other state
 223 agencies, members of the Personal Care Attendant Quality Home Care
 224 Workforce Council, established pursuant to section 1 of this act,
 225 consumers, surrogates, contractors, agents of the state and fiscal
 226 intermediaries shall cooperate in the implementation of sections 1 to 3,
 227 inclusive, of this act and with any agreements reached by the Personal
 228 Care Attendant Quality Home Care Workforce Council and a
 229 representative of personal care attendants that has been designated by
 230 the State Board of Labor Relations, pursuant to section 5-275 of the
 231 general statutes, as the exclusive bargaining agent of such attendants.
 232 Such obligation to cooperate shall include making required payroll
 233 deductions as authorized by the collective bargaining agreement or
 234 any arbitrator's award.

235 (b) The Commissioner of Social Services shall submit an application
 236 for a waiver of federal law, as is necessary, to effectuate the provisions
 237 of sections 1 to 3, inclusive, of this act, in accordance with the
 238 provisions of section 17b-8 of the general statutes. The Commissioner
 239 of Social Services, the Commissioner of Developmental Services and
 240 other state agencies shall take all actions reasonably necessary to
 241 obtain approval for any such waiver and to ensure the continuation of
 242 necessary federal funding.

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| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | <i>July 1, 2011</i> | New section |
| Sec. 2 | <i>July 1, 2011</i> | New section |
| Sec. 3 | <i>July 1, 2011</i> | New section |
| Sec. 4 | <i>July 1, 2011</i> | New section |

Statement of Legislative Commissioners:

In section 1(a), "For purposes of sections 1 to 4" was changed to "For purposes of this section and sections 2 to 4" for clarity and consistency with the drafting conventions of the general statutes. In section 1(c)(1)(A), "and" was inserted after the semicolon for accuracy. In section 1(e) "and" was inserted after "of the general statutes," for accuracy and clarity. In section 2(d), "Connecticut Workers' Compensation Act" was changed to "Workers' Compensation Act" for consistency of reference to said act in the general statutes.

HS *Joint Favorable Subst.-LCO*