



General Assembly

**Substitute Bill No. 6668**

January Session, 2009

\*          HB06668HS          031909          \*

**AN ACT PROVIDING QUALITY CARE, FINANCIAL OVERSIGHT AND NURSING HOME FUNDING REFORM.**

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

1       Section 1. Section 17b-337 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective July 1, 2009*):

3       (a) There shall be established a Long-Term Care Planning  
4 Committee for the purpose of exchanging information on long-term  
5 care issues, coordinating policy development and establishing a long-  
6 term care plan for all persons in need of long-term care. Such policy  
7 and plan shall provide that individuals with long-term care needs have  
8 the option to choose and receive long-term care and support in the  
9 least restrictive, appropriate setting. Such plan shall integrate the three  
10 components of a long-term care system including home and  
11 community-based services, supportive housing arrangements and  
12 nursing facilities. Such plan shall include: (1) A vision and mission  
13 statement for a long-term care system; (2) the current number of  
14 persons receiving services; (3) demographic data concerning such  
15 persons by service type; (4) the current aggregate cost of such system  
16 of services; (5) forecasts of future demand for services; (6) the type of  
17 services available and the amount of funds necessary to meet the  
18 demand; (7) projected costs for programs associated with such system;  
19 (8) strategies to promote the partnership for long-term care program;

20 (9) resources necessary to accomplish goals for the future; (10) funding  
21 sources available; and (11) the number and types of providers needed  
22 to deliver services. The plan shall address how changes in one  
23 component of such long-term care system impact other components of  
24 such system.

25 (b) The Long-Term Care Planning Committee shall, within available  
26 appropriations, study issues relative to long-term care including, but  
27 not limited to, the case-mix system of Medicaid reimbursement,  
28 community-based service options, access to long-term care and  
29 geriatric psychiatric services. The committee shall evaluate issues  
30 relative to long-term care in light of the United States Supreme Court  
31 decision, *Olmstead v. L.C.*, 119 S. Ct. 2176 (1999), requiring states to  
32 place persons with disabilities in community settings rather than in  
33 institutions when such placement is appropriate, the transfer to a less  
34 restrictive setting is not opposed by such persons and such placement  
35 can be reasonably accommodated.

36 (c) The Long-Term Care Planning Committee shall consist of: (1)  
37 The chairpersons and ranking members of the joint standing and select  
38 committees of the General Assembly having cognizance of matters  
39 relating to human services, public health, elderly services and  
40 long-term care; (2) the Commissioner of Social Services, or the  
41 commissioner's designee; (3) one member of the Office of Policy and  
42 Management appointed by the Secretary of the Office of Policy and  
43 Management; (4) one member from the Department of Social Services  
44 appointed by the Commissioner of Social Services; (5) one member  
45 from the Department of Public Health appointed by the Commissioner  
46 of Public Health; (6) one member from the Department of Economic  
47 and Community Development appointed by the Commissioner of  
48 Economic and Community Development; (7) one member from the  
49 Office of Health Care Access appointed by the Commissioner of  
50 Health Care Access; (8) one member from the Department of  
51 Developmental Services appointed by the Commissioner of  
52 Developmental Services; (9) one member from the Department of  
53 Mental Health and Addiction Services appointed by the Commissioner

54 of Mental Health and Addiction Services; (10) one member from the  
55 Department of Transportation appointed by the Commissioner of  
56 Transportation; (11) one member from the Department of Children and  
57 Families appointed by the Commissioner of Children and Families;  
58 and (12) the executive director of the Office of Protection and  
59 Advocacy for Persons with Disabilities or the executive director's  
60 designee. The committee shall convene no later than ninety days after  
61 June 4, 1998. Any vacancy shall be filled by the appointing authority.  
62 The chairperson shall be elected from among the members of the  
63 committee. The committee shall seek the advice and participation of  
64 any person, organization or state or federal agency it deems necessary  
65 to carry out the provisions of this section.

66 (d) Not later than January 1, 1999, and every three years thereafter,  
67 the Long-Term Care Planning Committee shall submit a long-term  
68 care plan pursuant to subsection (a) of this section to the joint standing  
69 and select committees of the General Assembly having cognizance of  
70 matters relating to human services, public health, elderly services and  
71 long-term care, in accordance with the provisions of section 11-4a, and  
72 such plan shall serve as a guide for the actions of state agencies in  
73 developing and modifying programs that serve persons in need of  
74 long-term care.

75 (e) Not later than January 1, 2010, the Long-Term Care Planning  
76 Committee shall submit a plan, in accordance with the provisions of  
77 section 11-4a, to implement the recommendations of the Ad Hoc Task  
78 Force on Nursing Home Costs in Connecticut, as stated in its final  
79 report dated February 15, 2002, to the joint standing committees of the  
80 General Assembly having cognizance of matters relating to human  
81 services and public health and to the select committee of the General  
82 Assembly having cognizance of matters relating to aging. Such plan  
83 shall describe the measures to be implemented by July 1, 2010, to: (1)  
84 Require preadmission screening of all potential nursing home  
85 admissions to be conducted by trained professionals independent of  
86 the nursing home to ensure that individuals with certain psychiatric  
87 disabilities or a history of physical or sexual abuse are not

88 inappropriately admitted to a nursing home; (2) require nursing homes  
89 to meet or exceed the minimum staffing standards recommended by  
90 the National Citizens' Coalition for Nursing Home Reform; (3) ensure  
91 that the standards for the quality of care in nursing homes is  
92 determined by the Department of Public Health based on the best  
93 available clinical evidence and not on the basis of cost; (4) require that,  
94 under the Medicaid rate system, direct care costs and indirect care  
95 costs are reimbursed at a rate of ninety-five per cent of actual costs; (5)  
96 ensure that facility maintenance costs are considered indirect care costs  
97 under the Medicaid rate system; (6) provide nursing homes in which  
98 Medicaid patients account for more than ninety per cent of patient  
99 days with supplemental disproportionate share payments equal to five  
100 per cent of the nursing home's allowable costs, excluding property and  
101 capital costs; (7) strengthen the Department of Social Services' audit  
102 capabilities so that the department can ensure that nursing homes  
103 receive reimbursement only for costs that are allowable under  
104 Medicaid; and (8) expand training and educational programs,  
105 including, but not limited to, higher education programs, to address  
106 the shortage of trained health care professionals.

107 [(e)] (f) Any state agency, when developing or modifying any  
108 program that, in whole or in part, provides assistance or support to  
109 persons with long-term care needs, shall, to the maximum extent  
110 feasible, include provisions that support care-giving provided by  
111 family members and other informal caregivers and promote consumer-  
112 directed care.

113 Sec. 2. (NEW) (*Effective July 1, 2009*) (a) There is established a council  
114 to ensure the quality of long-term personal home care that shall be  
115 known as the Personal Care Attendant Quality Home Care Workforce  
116 Council. The council shall be composed of thirteen members including  
117 the Commissioner of Social Services or the commissioner's designee,  
118 who shall serve as chairperson, the Commissioner of Developmental  
119 Services or the commissioner's designee, and the Healthcare Advocate  
120 or the Healthcare Advocate's designee. The remaining ten members of  
121 the council shall be consumers, surrogates or advocates, as defined in

122 subsection (b) of this section, and shall be appointed as follows: Two  
123 each by the Governor, the speaker of the House of Representatives and  
124 the president pro tempore of the Senate, one each by the majority  
125 leader of the House of Representatives, the majority leader of the  
126 Senate, the minority leader of the House of Representatives, and the  
127 minority leader of the Senate. All appointments to the council shall be  
128 made not later than August 15, 2009. The chairperson shall convene  
129 the first meeting of the council not later than September 15, 2009.  
130 Subsequent meetings shall be held at times determined by the council  
131 chairperson or upon the written request of any five members of the  
132 council to the chairperson. Members shall serve three-year terms from  
133 the date of their appointment and until successors are appointed. A  
134 majority of the council shall constitute a quorum for the transaction of  
135 any business. Vacancies shall be filled for the expiration of the term of  
136 the member being replaced in the same manner as original  
137 appointments. Members of the council shall not receive compensation  
138 for their service on the council but shall be reimbursed for actual  
139 expenses necessarily incurred in performance of their duties on the  
140 council.

141 (b) For purposes of this section, (1) "consumer" means a person who  
142 receives services from a personal care attendant under a state-funded  
143 program, including, but not limited to, (A) the program for individuals  
144 with acquired brain injuries established pursuant to section 17b-260a  
145 of the general statutes, (B) the personal care assistance program,  
146 established pursuant to section 17b-605a of the general statutes, (C) the  
147 Connecticut home care program for the elderly, established pursuant  
148 to section 17b-342 of the general statutes, (D) the pilot program to  
149 provide home care services for disabled persons, established pursuant  
150 to section 17b-617 of the general statutes, (E) the individual and family  
151 support waiver program, administered by the Department of  
152 Developmental Services, and (F) the comprehensive waiver program,  
153 administered by the Department of Developmental Services; (2)  
154 "surrogate" means a consumer's legal guardian or a person identified  
155 in a written agreement as having responsibility for the care of a

156 consumer; (3) "advocate" means a person employed by, or affiliated  
157 with, an organization that advocates on behalf of senior citizens or  
158 persons with disabilities; and (4) "personal care attendant" means a  
159 person employed by a consumer or surrogate to provide personal care  
160 services to a consumer.

161 (c) The council shall have the following duties and responsibilities:  
162 (1) To undertake recruiting efforts of personal care attendants and to  
163 act as an employer of personal care attendants in accordance with  
164 section 3 of this act; (2) to provide training, education and certification  
165 recommendations and opportunities for personal care attendants; (3)  
166 to provide routine, emergency and respite referrals of personal care  
167 attendants to consumers and surrogates; and (4) to maintain an  
168 accurate list, that shall first be developed by the Commissioners of  
169 Social Services and Developmental Services, (A) identifying personal  
170 care attendants who have been paid through state-funded programs,  
171 including, but not limited to, those programs identified in subsection  
172 (b) of this section, and (B) listing the training, education and  
173 certification of each such attendant, but not providing the personal  
174 care attendant's address, identifying a consumer's name or identifying  
175 any family relationship between the consumer and the personal care  
176 attendant. The council shall have the authority to take the actions  
177 described in section 4 of this act.

178 (d) A consumer or surrogate, who is referred a personal care  
179 attendant by the council, shall have the right to (1) hire or refuse to  
180 hire, (2) supervise, (3) direct the activities of, and (4) terminate the  
181 employment of any such personal care attendant. A consumer or  
182 surrogate may hire a personal care attendant who has not been  
183 referred by the council.

184 Sec. 3. (NEW) (*Effective July 1, 2009*) (a) A personal care attendant  
185 shall be a state employee, as defined in subsection (b) of section 5-270  
186 of the general statutes only for the purposes of collective bargaining  
187 pursuant to sections 5-270 to 5-280, inclusive, of the general statutes  
188 and not for any other purpose. Sections 5-270 to 5-280, inclusive, of the

189 general statutes shall apply to personal care attendants except as  
190 provided in this section. For purposes of this section, "personal care  
191 attendant" has the same meaning as provided in section 2 of this act.

192 (b) As the employer of personal care attendants for purposes of  
193 collective bargaining, the Personal Care Attendant Quality Home Care  
194 Workforce Council established under section 2 of this act shall have  
195 the authority and obligation to bargain and enter into agreements with  
196 a representative of personal care attendants that has been designated  
197 by the State Board of Labor Relations, pursuant to section 5-275 of the  
198 general statutes, as the exclusive bargaining agent of such attendants  
199 to establish wages, benefits and other terms and conditions of  
200 employment for such attendants. Notwithstanding the provisions of  
201 this subsection, consumers and surrogates shall have the rights  
202 described in subsection (d) of section 2 of this act.

203 (c) The council and the bargaining agent of such attendants may  
204 participate in the elective binding arbitration procedures as provided  
205 in section 5-276a of the general statutes. The factors to be considered  
206 by the arbitrator in arriving at a decision on the issues submitted by  
207 the council and the bargaining agent shall include: (1) The factors  
208 described in subdivision (5) of subsection (e) of section 5-276a of the  
209 general statutes; (2) the nature of the personal care services programs  
210 at issue; and (3) the needs and welfare of consumers, including  
211 recruitment, retention and quality needs with respect to the personal  
212 care attendant workforce. Notwithstanding the provisions of  
213 subdivision (6) of subsection (e) of section 5-276a of the general  
214 statutes, the award of the arbitrator shall not be final and binding upon  
215 the council or designated representative of such attendants but shall be  
216 a recommended resolution for unresolved issues that the council and  
217 designated representative of such attendants may incorporate into  
218 their collective bargaining agreement.

219 (d) Personal care attendants shall not be considered employees of  
220 the council or the state for any purpose except for the purpose of  
221 collective bargaining, pursuant to sections 5-270 to 5-280, inclusive, of

222 the general statutes. The provisions of this section shall not alter the  
223 obligations of the state or the consumer to provide the state's or the  
224 consumer's share of Social Security, federal and state unemployment  
225 taxes, Medicare and workers' compensation insurance under the  
226 Federal Insurance Contributions Act, federal and state unemployment  
227 law or the Connecticut Workers' Compensation Act.

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

231 (f) The only bargaining unit appropriate for the purpose of  
232 collective bargaining between the council and a representative of  
233 personal care attendants, as provided in this section, shall be a state-  
234 wide unit of all personal care attendants. Personal care attendants who  
235 are members of the consumer's or surrogate's family shall not be  
236 excluded from the bargaining unit for the reason of the family  
237 relationship.

238 (g) The council or its contractors shall not be held vicariously liable  
239 for the action or inaction of any personal care attendant, whether or  
240 not such personal care attendant was included on the council's referral  
241 directory or referred to a consumer or a surrogate.

242 (h) The members of the council shall be immune from any liability  
243 resulting from implementation of sections 2 to 4, inclusive, of this act.

244 Sec. 4. (NEW) (*Effective July 1, 2009*) (a) The Personal Care Attendant  
245 Quality Home Care Workforce Council established under section 2 of  
246 this act may make and execute contracts and all other instruments  
247 necessary or convenient for the performance of the council's duties or  
248 exercise of its powers, including contracts with public and private  
249 agencies, organizations, corporations and individuals for services.

250 (b) The council may adopt regulations, in accordance with chapter  
251 54 of the general statutes, to carry out the provisions of sections 2 to 4,  
252 inclusive, of this act.

253 (c) The council may, within available appropriations, establish  
254 offices, employ and discharge employees, agents and contractors as  
255 necessary and prescribe their duties and powers and fix their  
256 compensation, incur expenses and create liabilities as are reasonable  
257 and proper for the administration of sections 2 to 4, inclusive, of this  
258 act.

259 (d) The council may seek and accept any grant of money, services or  
260 property from the federal government, the state, a political subdivision  
261 or an agency of such governmental entities, including, but not limited  
262 to, federal matching funds under Title XIX of the Social Security Act,  
263 and may do all things necessary to make an application for any such  
264 grant.

265 (e) The council may coordinate its activities and cooperate with  
266 similar agencies in other states.

267 (f) The council may establish technical advisory committees to assist  
268 the council.

269 (g) The council may keep records and engage in research and the  
270 gathering of relevant statistics.

271 (h) The council may acquire, hold or dispose of real or personal  
272 property, or any interest in such property, and construct, lease or  
273 otherwise provide facilities for the activities conducted under sections  
274 2 to 4, inclusive, of this act but the council may not exercise any power  
275 of eminent domain.

276 (i) The council may delegate to the appropriate persons the power  
277 to execute contracts and other instruments on its behalf and delegate  
278 any of its powers and duties if such delegation is consistent with the  
279 purposes of sections 2 to 4, inclusive, of this act.

280 (j) The council may perform any acts necessary or convenient to  
281 execute the powers granted to it in sections 2 to 4, inclusive, of this act.

282 Sec. 5. (NEW) (*Effective July 1, 2009*) (a) The Department of Social

283 Services, the Department of Developmental Services, other state  
 284 agencies, members of the Personal Care Attendant Quality Home Care  
 285 Workforce Council, consumers, surrogates, contractors, agents of the  
 286 state and fiscal intermediaries shall cooperate in the implementation of  
 287 sections 2 to 4, inclusive, of this act and with any agreements reached  
 288 by the Personal Care Attendant Quality Home Care Workforce Council  
 289 and a representative of personal care attendants that has been  
 290 designated by the State Board of Labor Relations, pursuant to section  
 291 5-275 of the general statutes, as the exclusive bargaining agent of such  
 292 attendants. Such obligation to cooperate shall include making required  
 293 payroll deductions as authorized by the collective bargaining  
 294 agreement.

295 (b) The Commissioner of Social Services shall submit an application  
 296 for a waiver of federal law as is necessary to effectuate the provisions  
 297 of sections 2 to 4, inclusive, of this act, in accordance with section 17b-8  
 298 of the general statutes. The Commissioner of Social Services, the  
 299 Commissioner of Developmental Services and other state agencies  
 300 shall take all actions reasonably necessary to obtain approval for any  
 301 such waiver and to ensure the continuation of necessary federal  
 302 funding.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2009</i>	17b-337
Sec. 2	<i>July 1, 2009</i>	New section
Sec. 3	<i>July 1, 2009</i>	New section
Sec. 4	<i>July 1, 2009</i>	New section
Sec. 5	<i>July 1, 2009</i>	New section

**HS**            *Joint Favorable Subst.*