

TO: MEMBERS OF THE HUMAN SERVICES COMMITTEE
FROM: NEW ENGLAND HEALTH CARE EMPLOYEES UNION, DISTRICT 1199,
SEIU HEALTHCARE
DATE: MARCH 14, 2009

Friends: Below is a copy of the revised proposed JFS language for House Bill 6668 (the JFS language is set forth in **bold/italicized/underlined** language in the current version of the bill). In my earlier transmission to you, I omitted one sentence in Section 2 regarding the conduct of business of the Home Care Council.

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:

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 Section 17b-337 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2009*):

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

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

restrictive setting is not opposed by such persons and such placement can be reasonably accommodated.

(c) The Long-Term Care Planning Committee shall consist of: (1) The chairpersons and ranking members of the joint standing and select committees of the General Assembly having cognizance of matters relating to human services, public health, elderly services and long-term care; (2) the Commissioner of Social Services, or the commissioner's designee; (3) one member of the Office of Policy and Management appointed by the Secretary of the Office of Policy and Management; (4) one member from the Department of Social Services appointed by the Commissioner of Social Services; (5) one member from the Department of Public Health appointed by the Commissioner of Public Health; (6) one member from the Department of Economic and Community Development appointed by the Commissioner of Economic and Community Development; (7) one member from the Office of Health Care Access appointed by the Commissioner of Health Care Access; (8) one member from the Department of Developmental Services appointed by the Commissioner of Developmental Services; (9) one member from the Department of Mental Health and Addiction Services appointed by the Commissioner of Mental Health and Addiction Services; (10) one member from the Department of Transportation appointed by the Commissioner of Transportation; (11) one member from the Department of Children and Families appointed by the Commissioner of Children and Families; and (12) the executive director of the Office of Protection and Advocacy for Persons with Disabilities or the executive director's designee. The committee shall convene no later than ninety days after June 4, 1998. Any vacancy shall be filled by the appointing authority. The chairperson shall be elected from among the members of the committee. The committee shall seek the advice and participation of any person, organization or state or federal agency it deems necessary to carry out the provisions of this section.

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

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

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

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

Sec. 2. (NEW) (*Effective July 1, 2009*) (a) There is established a council to ensure the quality of long-term personal home care that shall be known as the Personal Care Attendant Quality Home Care Workforce Council. The council shall be composed of thirteen members including the Commissioner of Social Services or the commissioner's designee, who shall serve as chairperson, the Commissioner of Developmental Services or the commissioner's designee, and the Healthcare Advocate or the Healthcare Advocate's designee. The remaining ten members of the council shall be consumers, surrogates or advocates, as defined in subsection (b) of this section, and shall be appointed as follows: Two by the Governor, two by the speaker of the House of Representatives, two by the president pro tempore of the Senate, one by the majority leader of the House of Representatives, one by the majority leader of the Senate, one by the minority leader of the House of Representatives, and one by the minority leader of the Senate. All appointments to the council shall be made not later than August 15, 2009. The council shall convene its first meeting not later than September 15, 2009. Subsequent meetings shall be held at times determined by the council chairperson or upon the written request of any five members of the council to the chairperson. Members shall serve three-year terms from the date of their appointment and until successors are appointed. A majority of the Council shall constitute a quorum for the transaction of any business. Vacancies shall be filled for the expiration of the term of the member being replaced in the same manner as original appointments. Members of the council shall not receive compensation for their service on the council but shall be reimbursed for actual expenses necessarily incurred in performance of their duties on the council.

(b) For purposes of this section, (1) "consumer" means a person who receives services from a personal care attendant under a state-funded program, including, but not limited

to, (A) the program for individuals with acquired brain injuries established pursuant to section 17b-260a of the general statutes, (B) the personal care assistance program, established pursuant to section 17b-605a of the general statutes, (C) the Connecticut home care program for the elderly, established pursuant to section 17b-342 of the general statutes, (D) the pilot program to provide home care services for disabled persons, established pursuant to section 17b-617 of the general statutes, (E) the individual and family support waiver program, administered by the Department of Developmental Services, and (F) the comprehensive waiver program, administered by the Department of Developmental Services and any successors to these programs and any other, similar state financed programs involving Consumers or Surrogates hiring and employment of an individual personal care attendant; (2) "surrogate" means a consumer's legal guardian or a person identified in a written agreement as having responsibility for the care of a consumer; (3) "advocate" means a person employed by, or affiliated with, an organization that advocates on behalf of senior citizens or persons with disabilities; and (4) "personal care attendant" means a person employed by a consumer or surrogate to provide personal care services to a consumer; and "personal care services" mean supportive home care, personal care and other non-professional services to persons with disabilities or seniors who require assistance to meet their daily living needs, ensure adequate functioning in their home and permit safe access to the community under a Personal Care Services Program.

(c) The council shall have the following duties and responsibilities: (1) To undertake recruiting efforts of personal care attendants; (2) to provide training, education and certification recommendations and opportunities for personal care attendants; (3) to provide routine, emergency and respite referrals of personal care attendants to consumers and surrogates; (4) to maintain an accurate list, that shall first be developed by the Commissioners of Social Services and Developmental Services, (A) identifying personal care attendants who have been paid through state-funded programs, including, but not limited to, those programs identified in subsection (b) of this section, and (B) listing the training, education, and certification and address of each such attendant, ~~but not providing the personal care attendant's address;~~ identifying a consumer's name or identifying any family relationship between the consumer and the personal care attendant, or designation of any personal care attendant's address as an address shared with a consumer. The Council shall make such lists available to consumers and members of the public upon request.

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

(e) Personal care attendants shall be considered, by virtue of this Act, employees of the State of Connecticut as defined by and solely for the purposes of the State Employee Relations Act, Chapter 68, Connecticut General Statutes, Sections 5-270, et seq., which shall apply to personal care attendants except to the extent that any particular parts of chapter 68 is inconsistent with this section, in which case this section shall control.

Personal care attendants shall not, by virtue of this Act, be eligible for benefits available to state employees under Chapters 64a, 65, 66 or 67, Connecticut General Statutes, nor shall they be considered, by virtue of this Act, public employees or state employees for any purpose other than those set forth in this paragraph.

(f) The PCA Quality Home Care Workforce Council shall be considered the employer of personal care attendants, as defined by and solely for the purposes of said chapter 68. The Council shall have the authority and obligation to bargain and enter into agreements with a representative of personal care attendants that has been designated by the State Board of Labor Relations as the exclusive bargaining agent of such attendants, and through such agreements shall have the authority to establish minimum standards governing such attendants' compensation, including wages and benefits, the form and manner of compensation payments, and other terms and conditions of employment affecting the attendant workforce, provided that consumers and surrogates shall retain the rights provided for them in paragraph A of this section.

(g) The parties to such collective bargaining shall have access to those impasse resolution procedures provided for in the State Employee Relations Act, Chapter 68, Connecticut General Statutes, Section 5-276a, except that any decision issued by an interest arbitrator shall not have the status of an award that is final and binding on the employer and designated employee organization, as provided in Sections 5-276a (6) and 5-278, but shall only have the status of a recommended resolution of unresolved issues, which the parties may or may not choose to accept as an agreement. Any such recommended resolution of unresolved issues shall take into consideration the nature and needs of the Personal Care Services Programs at issue and the needs and welfare of consumers, including recruitment, retention and quality needs with respect to the personal care attendant workforce, as well as those factors listed in Section 5-276a (5) to the extent relevant.

(h) Personal care attendants who are employees of the Council under this section are not, for that reason, State employees or employees of the Council for any other purpose. Nothing in this chapter shall alter the obligations of the State or the consumer to provide their share of social security, federal and state unemployment taxes, Medicare and worker's compensation insurance under the Federal Insurance Contributions Act, federal and state unemployment law or the Connecticut Workers' Compensation Act.

(i) Consistent with section 5-279 of Chapter 68, nothing in this Act shall constitute a grant of the right to strike to personal care attendants.

(j) The only bargaining unit appropriate for the purpose of collective bargaining as provided for under this Act shall be a statewide unit of all personal care attendants. Personal care attendants who are related to or members of the family of the consumer or surrogate shall not for that reason be excluded from the unit.

(k) Neither the Council nor its contractors may be held vicariously liable for the action or inaction of any personal care attendant, whether or not that personal care attendant was included on the Council's referral directory or referred to a consumer or the consumer's surrogate.

(l) The members of the Council are immune from any liability resulting from implementation of this Act.

Sec. 3. (NEW) (Effective July 1, 2009) (a) The PCA Quality Home Care Workforce Council may make and execute contracts and all other instruments necessary or convenient for the performance of its duties or exercise of its powers, including contracts with public and private agencies, organizations, corporations and individuals to pay them for services rendered or furnished.

(b) The Council may issue rules or regulations, as necessary, for implementing the purposes and policies of this Act.

(c) Subject to appropriation, the Council may establish offices, employ and discharge employees, agents and contractors as necessary, and prescribe their duties and powers and fix their compensation, incur expenses, and create such liabilities as are reasonable and proper for the administration of this Act.

(d) The Council may solicit and accept for use any grant of money, services or property from the federal government, the state or any political subdivision or agency thereof, including federal matching funds under Title XIX of the Federal Social Security Act, and do all things necessary to cooperate with the federal government, the state, or any political subdivision or agency thereof, in making an application for any grant.

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

(f) The Council may establish technical advisory committees to assist the Council.

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

(h) The Council may acquire, hold or dispose of real or personal property, or any interest therein, and construct, lease or otherwise provide facilities for the activities conducted under this Act, but the Council may not exercise any power of eminent domain.

(i) The Council may delegate to the appropriate persons the power to execute contracts and other instruments on its behalf and delegate any of its powers and duties, if consistent with the purposes of this Act.

(k) The Council may perform other acts necessary or convenient to execute the powers expressly granted to it.

Sec. 4. (NEW) (Effective July 1, 2009) (a) The Department of Social Services, the Department of Developmental Services, other agencies of the State of Connecticut, Consumers, Surrogates, and any fiscal intermediaries or other contractors or agents of the State shall cooperate in the implementation of this Act and of any agreements reached by the Council with a representative of personal care attendants that has been designated by the State Board of Labor Relations as the exclusive bargaining agent of such attendants, including making any lawful payroll deductions authorized by the agreements.

(b) The Department of Social Services shall request from the Secretary of the United States Department of Health and Human Services any waiver of federal Medicaid requirements necessary to permit the use of federal moneys as provided in this Act, if any, and shall do so in conformity with the requirements of Chapter 319o, Connecticut General Statutes, Section 17b-8. The Department of Social Services, the Department of Developmental Services, and all other public agencies shall take all actions reasonably necessary to obtain any approval from the Secretary of the United States Department of Health and Human Services needed to implement any part of this Act or to insure continued federal funding of any program governed by this Act.

(c) Staffing to assist the Council in carrying out duties required by this Act shall be provided by the Department of Social Services.

(d) If any section, subsection, subdivision, paragraph, sentence, or clause of this Act is held to be invalid or unconstitutional, such decision shall not affect any remaining portion or part thereof which can be given effect without the invalid provision.