



General Assembly

February Session, 2012

Raised Bill No. 5433

LCO No. 1852

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Referred to Committee on Labor and Public Employees

Introduced by:
(LAB)

AN ACT CREATING A PROCEDURE FOR PERSONAL CARE ATTENDANTS TO COLLECTIVELY BARGAIN WITH THE STATE.

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

1 Section 1. (NEW) (*Effective July 1, 2012*) (a) For purposes of this
2 section and sections 2 to 4, inclusive, of this act:

3 (1) "Consumer" means a person who receives services from a
4 personal care attendant under a state-funded program, including, but
5 not limited to, (A) the program for individuals with acquired brain
6 injuries, established pursuant to section 17b-260a of the general
7 statutes, (B) the personal care assistance program, established pursuant
8 to section 17b-605a of the general statutes, (C) the Connecticut home
9 care program for the elderly, established pursuant to section 17b-342 of
10 the general statutes, (D) the pilot program to provide home care
11 services to disabled persons, established pursuant to section 17b-617 of
12 the general statutes, (E) the individual and family support waiver
13 program administered by the Department of Developmental Services,
14 (F) the comprehensive waiver program administered by the
15 Department of Developmental Services, and (G) any state-funded
16 program that provides services from a personal care attendant;

17 (2) "Surrogate" means a consumer's legal guardian or a person
18 identified in a written agreement as having responsibility for the care
19 of a consumer;

20 (3) "Personal care attendants" means persons employed by a
21 consumer or surrogate to provide personal care assistance to a
22 consumer; and

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

29 Sec. 2. (NEW) (*Effective July 1, 2012*) (a) There is established the
30 Personal Care Attendant Quality Home Care Workforce Council to
31 ensure the quality of long-term personal home care. Said council shall
32 be composed of nine members, which shall include: (1) The
33 Commissioner of Social Services, or the commissioner's designee; (2)
34 the Commissioner of Developmental Services, or the commissioner's
35 designee; (3) the Healthcare Advocate or the Healthcare Advocate's
36 designee; (4) the Secretary of the Office of Policy and Management; (5)
37 one member appointed by the Governor; and (6) four members who
38 shall each be a consumer or surrogate, one of whom shall be appointed
39 by the speaker of the House of Representatives, one of whom shall be
40 appointed by the president pro tempore of the Senate, one of whom
41 shall be appointed by the minority leader of the House of
42 Representatives, and one of whom shall be appointed by the minority
43 leader of the Senate. All initial appointments to the Personal Care
44 Attendant Quality Home Care Workforce Council shall be made not
45 later than August 1, 2012. The chairperson of the Personal Care
46 Attendant Quality Home Care Workforce Council shall be the member
47 appointed by the Governor. The chairperson shall convene the first
48 meeting of the council not later than September 1, 2012. Subsequent

49 meetings shall be held at times determined by the chairperson of the
50 Personal Care Attendant Quality Home Care Workforce Council or
51 upon the written request of any five members of said council to the
52 chairperson. Members may serve three-year terms from the date of
53 their appointment or until successors are appointed, except (A) the
54 initial appointees of the speaker of the House of Representatives and
55 the president pro tempore of the Senate shall serve two-year terms,
56 and (B) the initial appointees of the majority leader of the House of
57 Representatives and the majority leader of the Senate shall serve one-
58 year terms. A majority of the members of the Personal Care Attendant
59 Quality Home Care Workforce Council shall constitute a quorum for
60 the transaction of any business. Vacancies shall be filled by the
61 appointing authority for the expiration of the term of the member
62 being replaced not later than thirty days after the date of the vacancy.
63 Members of the Personal Care Attendant Quality Home Care
64 Workforce Council shall receive no compensation for their service but
65 shall be reimbursed for actual expenses necessarily incurred in
66 performance of their duties.

67 (b) The Personal Care Attendant Quality Home Care Workforce
68 Council, with the assistance of the Department of Social Services, shall
69 have the following duties and responsibilities relating to personal care
70 attendants: (1) Study issues relating to the recruitment, retention and
71 adequacy of personal care attendants; and (2) develop a plan to
72 improve the quality, stability and availability of personal care
73 attendants by (A) developing a means to identify and recruit personal
74 care attendants, (B) developing training and educational opportunities
75 for personal care attendants and consumers, (C) developing one or
76 more registries to (i) provide routine, emergency and respite referrals
77 of qualified personal care attendants to consumers and surrogates who
78 are authorized to receive long-term, in-home personal care services by
79 a personal care attendant, (ii) enable consumers and surrogates to
80 access information about prospective personal care attendants such as
81 their training, educational background and work experience, and (iii)
82 provide appropriate employment opportunities for personal care

83 attendants, and (D) establishing standards for wages, benefits and
84 conditions of employment for personal care attendants.

85 (c) Commencing July 1, 2013, the Personal Care Attendant Quality
86 Home Care Workforce Council shall have the authority to (1) recruit
87 prospective personal care attendants, (2) provide training and
88 education to personal care attendants and consumers, and (3) establish
89 or operate the registries described in subsection (b) of this section. The
90 council may contract with the Department of Social Services or any
91 other entity for the purposes of this subsection.

92 (d) (1) The Personal Care Attendant Quality Home Care Workforce
93 Council shall have the authority to bargain and enter into agreements
94 with an organization representing personal care attendants that has
95 been designated by the State Board of Labor Relations, pursuant to
96 section 5-275 of the general statutes, as the exclusive bargaining agent
97 of such personal care attendants to establish the terms and conditions
98 of participation of personal care attendants in the programs covered by
99 this section and section 1 of this act, including, but not limited to, state
100 reimbursement rates, benefits, payment procedures, contract grievance
101 arbitration, and training, professional development and other
102 requirements and opportunities appropriate for such personal care
103 attendants.

104 (2) For purposes of section 5-270 of the general statutes and
105 subsections (a) and (b) of section 5-278 of the general statutes, the
106 Personal Care Attendant Quality Home Care Workforce Council shall
107 be considered an executive branch employer and the chairperson of
108 said council shall be considered the employer's chief executive officer.

109 (3) No provision of any agreement or award which may be reached
110 pursuant to collective bargaining between the Personal Care Attendant
111 Quality Home Care Workforce Council and any organization
112 representing personal care attendants shall interfere with the right of a
113 consumer or surrogate to hire, refuse to hire, supervise, direct the
114 activities of, or terminate the employment of any personal care

115 attendant.

116 (e) (1) Not later than October 1, 2012, and monthly thereafter, the
117 Personal Care Attendant Quality Home Care Workforce Council shall
118 compile and maintain a list of the names and addresses of all personal
119 care attendants who have been paid through a state-funded program
120 that provides personal care services administered by the Department
121 of Social Services or Developmental Services within the previous six
122 calendar months. The list shall not include the name of any consumer,
123 or indicate that a personal care attendant is a relative of a consumer or
124 has the same address as a consumer. Any vendor or contractor that
125 provides personal care services shall assist and cooperate with said
126 council in compiling and maintaining such list. The Personal Care
127 Attendant Quality Home Care Workforce Council shall utilize such list
128 for the purposes of this section. Such list shall be a public record, as
129 defined in section 1-200 of the general statutes.

130 (2) Not later than seven days after receiving a request from an
131 employee organization, as defined in subsection (d) of section 5-270 of
132 the general statutes, that is interested in representing an appropriate
133 unit of personal care attendants, the Personal Care Attendant Quality
134 Home Care Workforce Council shall provide to the employee
135 organization the most recent list of personal care attendants compiled
136 pursuant to subdivision (1) of this subsection.

137 Sec. 3. (NEW) (*Effective July 1, 2012*) (a) Personal care attendants
138 shall have the right to bargain collectively, and shall have such other
139 rights and obligations incident thereto as are created by sections 5-270
140 to 5-279, inclusive, of the general statutes, except:

141 (1) The following shall be prohibited subjects of bargaining: (A)
142 Application of state employee benefits to personal care attendants,
143 including, but not limited to, health benefits and pensions, (B) a
144 consumer or surrogate's right to hire, refuse to hire, supervise, direct
145 the activities of, or terminate the employment of any personal care
146 attendant, (C) any proposal that would prevent surrogates from hiring

147 personal care attendants not identified on the list described in
148 subsection (e) of this section, and (D) a procedure for grievance
149 arbitration against a consumer or surrogate;

150 (2) No provision of any contract or award shall provide for a
151 reduction in the services provided by personal care attendants to
152 consumers or a reduction in Medicaid funds provided to the state;

153 (3) The provisions of section 5-280 of the general statutes shall not
154 apply to personal care attendants. A contract or award reached
155 pursuant to this act may include provisions calling for the state or its
156 fiscal intermediary to deduct from reimbursement payments the
157 regular dues, fees and assessments that a member is charged and
158 nonmember service fees limited to the lesser of dues and initiation fees
159 required of members or the proportionate share of expenses incident to
160 collective bargaining;

161 (4) The provisions of sections 5-276a and 5-276b of the general
162 statutes and subsections (c) to (g), inclusive, of section 5-278 of the
163 general statutes shall not apply to collective bargaining involving
164 personal care attendants. Any impasse between the parties shall be
165 resolved in accordance with subsection (b) of this section;

166 (5) In any proceeding which may be filed under section 5-272 of the
167 general statutes, the State Board of Labor Relations shall be without
168 jurisdiction over, or authority to issue any remedy against, any
169 consumer or surrogate;

170 (6) Any election required in order to resolve any question
171 concerning representation involving personal care attendants shall be
172 conducted by mail ballot; and

173 (7) A personal care attendant shall not be considered a state
174 employee and shall be exempt from any and all provisions of the
175 general statutes creating rights, obligations, privileges or immunities to
176 state employees as a result of or incident to their state service.

177 (b) (1) If the organization representing personal care attendants and
178 the chief executive officer do not reach an agreement within one
179 hundred fifty days after negotiations have begun, the parties shall
180 jointly select an arbitrator. The arbitrator selected shall have experience
181 as an impartial arbitrator of labor-management disputes, and shall not
182 be an individual employed as an advocate or consultant for labor or
183 management in labor-management disputes. If the parties fail to agree
184 on an arbitrator within one hundred sixty days after the negotiations
185 have begun, the selection shall be made using the procedures under
186 the voluntary labor arbitration rules of the American Arbitration
187 Association.

188 (2) Each party shall submit to the arbitrator, and to the other party, a
189 proposal setting forth such party's position on how each of the
190 unresolved issues shall be resolved.

191 (3) The arbitrator shall convene a hearing to allow each party to
192 provide evidence and argument to the arbitrator. Each party shall have
193 the right to submit written briefs to the arbitrator. The arbitration
194 record shall be officially closed at the later of the close of the hearing or
195 the arbitrator's receipt of briefs, whichever is later.

196 (4) The arbitrator's authority is limited to selecting the complete
197 proposal of one party or the other's on any unresolved issue. The
198 arbitrator shall issue an award not later than forty-five days after the
199 close of the record.

200 (5) The factors to be considered by the arbitrator in arriving at a
201 decision are: (A) The nature and needs of the personal care assistance
202 program and the needs and welfare of consumers, including interests
203 in better recruitment, retention and quality with respect to the covered
204 personal care attendants; (B) the history of negotiations between each
205 party including those leading to the proceeding; (C) the existing
206 conditions of employment of similar groups of personal care
207 attendants; (D) changes in the cost of living; and (E) the interests and
208 welfare of the covered personal care attendants.

209 (6) The costs of the arbitrator and any fees associated with the
210 arbitration proceeding shall be shared equally by each party.

211 (7) Any contract or award reached pursuant to this section shall be
212 reduced to writing and submitted to the General Assembly pursuant
213 to the provisions of subsection (b) of section 5-278 of the general
214 statutes.

215 (c) The provisions of this section shall not alter the obligations of the
216 state or the consumer to provide the state's or the consumer's share of
217 Social Security, federal and state unemployment contributions,
218 Medicare or workers' compensation insurance.

219 (d) The bargaining units of personal care attendants appropriate for
220 the purpose of collective bargaining shall be (1) a state-wide unit of all
221 personal care attendants, (2) a state-wide unit of personal care
222 attendants who provide services under programs administered by the
223 Department of Social Services, or (3) a state-wide unit of personal care
224 attendants who provide services under programs administered by the
225 Department of Developmental Services. Personal care attendants who
226 are members of the consumer's or surrogate's family shall not be
227 excluded from the bargaining unit solely because of such personal care
228 attendant's familial relationship to a consumer or surrogate.

229 (e) Any organization certified as the majority representative of
230 personal care attendants in any election held prior to the effective date
231 of this section pursuant to Executive Order Number 10 of Governor
232 Dannel P. Malloy may provide proof of such certification to the State
233 Board of Labor Relations and the State Board of Labor Relations shall
234 certify such majority representative as the exclusive bargaining
235 representative for such personal care attendants without the
236 requirement of an additional election unless and until such time as a
237 question concerning representation is appropriately raised under this
238 section and section 2 of this act.

239 Sec. 4. (NEW) (*Effective July 1, 2012*) The Commissioners of Social

240 Services and Developmental Services shall submit any application for a
241 waiver of federal law necessary to effectuate the provisions of sections
242 1 to 3, inclusive, of this act, in accordance with the provisions of section
243 17b-8 of the general statutes. The Commissioners of Social Services and
244 Developmental Services and any other department or agency of the
245 state shall take all actions reasonably necessary to obtain approval for
246 any such waiver and to ensure the continuation of necessary federal
247 funding.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2012</i>	New section
Sec. 2	<i>July 1, 2012</i>	New section
Sec. 3	<i>July 1, 2012</i>	New section
Sec. 4	<i>July 1, 2012</i>	New section

Statement of Purpose:

To provide a process for personal care attendants to collectively bargain with the state via the Personal Care Attendant Quality Home Care Workforce Council.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]