



General Assembly

**Amendment**

February Session, 2012

LCO No. 4757

**\*HB0531204757SR0\***

Offered by:  
SEN. MARKLEY, 16<sup>th</sup> Dist.

To: Subst. House Bill No. 5312      File No. 586      Cal. No. 417

**"AN ACT CREATING A PROCESS FOR FAMILY CHILD CARE PROVIDERS AND PERSONAL CARE ATTENDANTS TO COLLECTIVELY BARGAIN WITH THE STATE."**

1      Strike sections 4 to 8, inclusive, in their entirety, and insert the  
2      following in lieu thereof:

3      "Sec. 4. (NEW) (*Effective July 1, 2012*) For purposes of this section  
4      and sections 5 to 7, inclusive, of this act:

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

15 program administered by the Department of Developmental Services,  
16 (F) the comprehensive waiver program administered by the  
17 Department of Developmental Services, and (G) any state-funded  
18 program that provides services from a personal care attendant;

19 (2) "Surrogate" means an employer's legal guardian or a person  
20 identified in a written agreement as having responsibility for the care  
21 of an employer;

22 (3) "Personal care attendant" means any person employed by an  
23 employer or surrogate to provide personal care assistance to an  
24 employer; and

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

31 Sec. 5. (NEW) (*Effective July 1, 2012*) (a) There is established the  
32 Personal Care Attendant Workforce Council to ensure the quality of  
33 long-term personal home care. Said council shall be composed of the  
34 following members:

35 (1) The Commissioner of Social Services, or the commissioner's  
36 designee;

37 (2) The Commissioner of Developmental Services, or the  
38 commissioner's designee;

39 (3) The Healthcare Advocate, or the Healthcare Advocate's  
40 designee;

41 (4) The Secretary of the Office of Policy and Management, or the  
42 secretary's designee;

43 (5) Three appointed by the Governor one of whom shall be an

44 employer with a developmental disability, or such employer's  
45 surrogate, one of whom shall be an employer with a physical  
46 disability, or such employer's surrogate, and one of whom shall be an  
47 elderly employer, or such employer's surrogate;

48 (6) One appointed by the speaker of the House of Representatives  
49 who shall be an employer with a developmental disability, or such  
50 employer's surrogate;

51 (7) One appointed by the president pro tempore of the Senate who  
52 shall be an employer with a physical disability, or such employer's  
53 surrogate;

54 (8) One appointed by the majority leader of the House of  
55 Representatives who shall be an elderly employer, or such employer's  
56 surrogate;

57 (9) One appointed by the majority leader of the Senate who shall be  
58 an employer with a developmental disability, or such employer's  
59 surrogate;

60 (10) One appointed by the minority leader of the House of  
61 Representatives who shall be an employer with a physical disability, or  
62 such employer's surrogate; and

63 (11) One appointed by the minority leader of the Senate who shall  
64 be an elderly employer, or such employer's surrogate.

65 (b) All initial appointments to the council shall be made not later  
66 than August 1, 2012. The chairperson of the council shall be appointed  
67 by the Governor from among its members. The chairperson shall  
68 convene the first meeting of the council not later than September 1,  
69 2012. Members of the council shall serve coterminously and at the  
70 pleasure of the appointing authority in accordance with section 4-1a of  
71 the general statutes. A majority of the members of the Personal Care  
72 Attendant Workforce Council shall constitute a quorum for the  
73 transaction of any business. Members of the Personal Care Attendant

74 Workforce Council shall receive no compensation for their service but  
75 shall be reimbursed for actual expenses necessarily incurred in  
76 performance of their duties. The council shall be within the  
77 Department of Social Services for administrative purposes only.

78 (c) The Personal Care Attendant Workforce Council shall have the  
79 following duties and responsibilities relating to personal care  
80 attendants: (1) Study issues relating to the recruitment, retention and  
81 adequacy of personal care attendants; and (2) develop a plan to  
82 improve the quality, stability and availability of personal care  
83 attendants by (A) developing a means to identify and recruit personal  
84 care attendants, (B) developing training and educational opportunities  
85 for personal care attendants and employers, (C) developing one or  
86 more registries to (i) provide routine, emergency and respite referrals  
87 of qualified personal care attendants to employers and surrogates who  
88 are authorized to receive long-term, in-home personal care services by  
89 a personal care attendant, (ii) enable employers and surrogates to  
90 access information about prospective personal care attendants such as  
91 their training, educational background and work experience, and (iii)  
92 provide appropriate employment opportunities for personal care  
93 attendants, and (D) establishing standards for wages, benefits and  
94 conditions of employment for personal care attendants.

95 (d) On or after July 1, 2013, the commissioners of the departments  
96 having cognizance of the covered waiver programs shall review the  
97 plans recommended by the Personal Care Attendant Workforce  
98 Council pursuant to subsection (c) of this section. The commissioners  
99 shall include in budgetary requests submitted to the Office of Policy  
100 and Management requests for funding necessary to implement aspects  
101 of such plans that meet said commissioners' approval.

102 (e) (1) For purposes of sections 4-65a and 5-270 of the general  
103 statutes and subsection (a) of section 5-278 of the general statutes, the  
104 Personal Care Attendant Workforce Council shall be within the  
105 executive branch of state government. An organization representing  
106 personal care attendants that has been designated by the State Board of

107 Labor Relations, pursuant to section 5-275 of the general statutes or  
108 subsection (f) of section 6 of this act, as the exclusive bargaining agent  
109 of such personal care attendants, shall have the right to bargain with  
110 the state concerning the terms and conditions of participation of  
111 personal care attendants in the programs covered by this section and  
112 section 4 of this act, including, but not limited to, (A) state  
113 reimbursement rates, (B) benefits, (C) payment procedures, (D)  
114 contract grievance arbitration, and (E) training, professional  
115 development and other requirements and opportunities appropriate  
116 for such personal care attendants.

117 (2) (A) No provision of any agreement or award which may be  
118 reached pursuant to collective bargaining between the state and any  
119 organization representing personal care attendants shall interfere with  
120 the right of an employer or surrogate to hire, refuse to hire, supervise,  
121 direct the activities of, or terminate the employment of any personal  
122 care attendant.

123 (B) In those covered programs where budgets provided to  
124 employers receiving direct support services are allocated using the  
125 individual budget methodology, budgets shall be increased to account  
126 for additional expenses caused by a contract or award negotiated in  
127 accordance with this section which includes increases in wages or  
128 benefits.

129 (f) (1) Not later than October 1, 2012, and monthly thereafter, the  
130 Personal Care Attendant Workforce Council shall compile and  
131 maintain a registry list of the names and addresses of all personal care  
132 attendants who have been paid through the state-funded programs  
133 identified in subdivision (1) of section 4 of this act within the previous  
134 six calendar months. The list shall not include the name of any  
135 employer, or indicate that a personal care attendant is a relative of an  
136 employer or has the same address as an employer. Any fiscal  
137 intermediary that provides administrative services to the state  
138 concerning state-funded programs shall assist and cooperate with said  
139 council in compiling and maintaining such list. The Personal Care

140 Attendant Workforce Council shall utilize such list for the purposes of  
141 this section and sections 6 and 7 of this act. Such list shall be a public  
142 record, as defined in section 1-200 of the general statutes.

143 (2) Not later than seven days after receiving a request from an  
144 employee organization, as defined in subsection (d) of section 5-270 of  
145 the general statutes, that is interested in representing an appropriate  
146 unit of personal care attendants, the Personal Care Attendant  
147 Workforce Council shall provide to the employee organization the  
148 most recent list of personal care attendants compiled pursuant to  
149 subdivision (1) of this subsection.

150 Sec. 6. (NEW) (*Effective July 1, 2012*) (a) Personal care attendants  
151 shall not be considered state employees and shall be exempt from any  
152 and all provisions of the general statutes creating rights, obligations,  
153 privileges or immunities to state employees as a result of or incident to  
154 their state service.

155 (b) Personal care attendants shall have the right to bargain  
156 collectively and shall have such other rights and obligations incident  
157 thereto as are created by sections 5-270 to 5-279, inclusive, of the  
158 general statutes except as set forth in subsections (c), (d) and (f) of this  
159 section, except:

160 (1) The following shall be prohibited subjects of bargaining: (A) An  
161 employer or surrogate's right to (i) hire or refuse to hire, (ii) supervise,  
162 (iii) direct the activities of, or (iv) terminate the employment of any  
163 personal care attendant, (B) any proposal that would prevent  
164 surrogates from hiring personal care attendants not on the registry list  
165 described in section 5 of this act, (C) any proposal that would prevent  
166 employers or surrogates from requiring any additional training, (D) a  
167 procedure for grievance arbitration against any employer or surrogate,  
168 and (E) application of state employee benefits to personal care  
169 attendants, including, but not limited to, health benefits and pensions;

170 (2) No provision of any agreement or award shall provide for a  
171 reduction in Medicaid funds provided to the state, nor shall any

172 provision of any agreement or award provide for a reduction in the  
173 services of personal care attendants to employers. Any provision in  
174 any agreement or award which would require an additional  
175 appropriation in order to maintain the levels of services provided by  
176 existing appropriations shall be submitted to the General Assembly for  
177 approval in accordance with subdivision (8) of subsection (c) of this  
178 section;

179 (3) The provisions of section 5-280 of the general statutes shall not  
180 apply to personal care attendants. An agreement or award reached  
181 pursuant to this section may include provisions calling for the state or  
182 its fiscal intermediary to deduct from reimbursement payments the  
183 regular dues, fees and assessments that a member is charged and  
184 nonmember service fees limited to the lesser of dues and initiation fees  
185 required of members or the proportionate share of expenses incident to  
186 collective bargaining. Dues or fees may be charged only with respect to  
187 earnings from participation in the waiver programs covered by this  
188 section. No dues or fees may be charged for the first sixty days of a  
189 personal care attendant's participation in a program covered by this  
190 section;

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

196 (5) In any proceeding which may be filed under section 5-272 of the  
197 general statutes, the State Board of Labor Relations shall be without  
198 jurisdiction over, or authority to issue any remedy against, any  
199 employer or surrogate; and

200 (6) Any election required in order to resolve any question  
201 concerning representation involving personal care attendants shall be  
202 conducted by mail ballot. No provision of this section shall grant  
203 personal care attendants a right to strike and such strikes are

204 prohibited.

205 (c) (1) If the organization representing personal care attendants and  
206 the state do not reach an agreement not later than one hundred fifty  
207 days after negotiations have begun, the parties shall jointly select an  
208 arbitrator. The arbitrator selected shall have experience as an impartial  
209 arbitrator of labor-management disputes and shall not be an individual  
210 employed as an advocate or consultant for labor or management in  
211 labor-management disputes. If the parties fail to agree on an arbitrator  
212 not later than one hundred sixty days after the negotiations have  
213 begun, the selection shall be made using the procedures under the  
214 voluntary labor arbitration rules of the American Arbitration  
215 Association.

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

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

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

228 (5) The factors to be considered by the arbitrator in arriving at a  
229 decision are: (A) The nature and needs of the personal care assistance  
230 program and the needs and welfare of employers, including interests  
231 in better recruitment, retention and quality with respect to the covered  
232 personal care attendants; (B) the history of negotiations between each  
233 party including those leading to the proceeding; (C) the existing  
234 conditions of employment of similar groups of workers; (D) changes in  
235 the cost of living; and (E) the interests and welfare of the covered

236 personal care attendants.

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

239 (7) Any agreement or award reached pursuant to this section shall  
240 be reduced to writing and submitted to the General Assembly for  
241 approval by filing the agreement or award with the clerks of the House  
242 of Representatives and Senate. No provision of any agreement or  
243 award resulting from the collective bargaining process which would  
244 require supercedence of any law or regulation shall take effect without  
245 affirmative legislative approval.

246 (8) Notwithstanding any other provision of sections 5 to 7, inclusive,  
247 of this act, any provision of any agreement or award requiring the  
248 appropriation of additional funds shall be subject to the state's regular  
249 budgetary approval process, subject to funds being made available and  
250 affirmative legislative approval. Other provisions of the agreement or  
251 award shall be deemed approved unless affirmatively rejected by a  
252 majority of either house not later than thirty days after the filing with  
253 the clerk of that chamber, provided the thirty-day period shall not  
254 begin or expire unless the General Assembly is in regular session. Once  
255 approved by the General Assembly, any provision of an agreement or  
256 award need not be resubmitted by the parties to such agreement or  
257 award as part of a future agreement approval process unless changes  
258 in the language of such provision are negotiated by the parties.

259 (d) The provisions of this section shall not alter the obligations of  
260 the state or the employer to provide the state's or the employer's share  
261 of Social Security, federal and state unemployment contributions,  
262 Medicare or workers' compensation insurance.

263 (e) The bargaining units of personal care attendants appropriate for  
264 the purpose of collective bargaining shall be (1) a state-wide unit of all  
265 personal care attendants, (2) a state-wide unit of personal care  
266 attendants who provide services under programs administered by the  
267 Department of Social Services, or (3) a state-wide unit of personal care

268 attendants who provide services under programs administered by the  
269 Department of Developmental Services. Personal care attendants who  
270 are members of the employer's or surrogate's family shall not be  
271 excluded from the bargaining unit because of such personal care  
272 attendant's familial relationship to an employer or surrogate.

273 (f) Any organization certified as the majority representative of  
274 personal care attendants in any election held prior to the effective date  
275 of this section, pursuant to Executive Order Number 10 of Governor  
276 Dannel P. Malloy, may provide proof of such certification to the State  
277 Board of Labor Relations and the State Board of Labor Relations shall  
278 certify such majority representative as the exclusive bargaining  
279 representative for such personal care attendants without the  
280 requirement of an additional election unless and until such time as a  
281 question concerning representation is appropriately raised under this  
282 section and section 2 of this act.

283 Sec. 7. (NEW) (*Effective July 1, 2012*) The Commissioners of Social  
284 Services and Developmental Services shall submit any application for a  
285 waiver of federal law necessary to effectuate the provisions of sections  
286 4 to 6, inclusive, of this act, in accordance with the provisions of section  
287 17b-8 of the general statutes. The Commissioners of Social Services and  
288 Developmental Services and any other department or agency of the  
289 state shall take all actions reasonably necessary to obtain approval for  
290 any such waiver and to ensure the continuation of necessary federal  
291 funding.

292 Sec. 8. (NEW) (*Effective July 1, 2012*) The state shall not be liable for  
293 any action, including, but not limited to, any civil action, any grievance  
294 arbitration or any prohibited practice proceeding, brought by the  
295 exclusive bargaining agent of such personal care attendants based  
296 upon any alleged wrongdoing by an employer or surrogate arising  
297 pursuant to sections 5 to 7, inclusive, of this act."