



# House of Representatives

General Assembly

**File No. 300**

February Session, 2016

Substitute House Bill No. 5586

*House of Representatives, March 30, 2016*

The Committee on Human Services reported through REP. ABERCROMBIE of the 83rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT CONCERNING WORKERS' COMPENSATION COVERAGE FOR INJURIES SUSTAINED BY PERSONAL CARE ATTENDANTS EMPLOYED DIRECTLY BY CONSUMERS IN THE COMMUNITY FIRST CHOICE PROGRAM.***

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

1 Section 1. (NEW) (*Effective July 1, 2016*) (a) For purposes of this  
2 section, sections 17b-706a and 31-275 of the general statutes, as  
3 amended by this act, and section 4 of this act, (1) "consumer" and  
4 "personal care attendant" have the same meaning as provided in  
5 section 17b-706 of the general statutes, and (2) "Community First  
6 Choice program" means a Medicaid-funded program that provides  
7 home and community-based care. The Commissioner of Social  
8 Services, in consultation with the Commissioner of Developmental  
9 Services, shall collaborate with the Commissioner of Administrative  
10 Services to procure workers' compensation coverage for any personal  
11 care attendant employed directly by a consumer in the Community  
12 First Choice program. The Commissioner of Social Services shall

13 require any fiscal intermediary for the program to administer workers'  
14 compensation benefits and disburse the benefits to such personal care  
15 attendant who sustains injuries on the property of a consumer.

16 (b) The Commissioner of Social Services shall, if necessary, amend  
17 the Medicaid state plan, in accordance with section 17b-8 of the general  
18 statutes, to (1) require a fiscal intermediary to administer and disburse  
19 workers' compensation benefits pursuant to subsection (a) of this  
20 section, and (2) increase allotment of Medicaid moneys per consumer,  
21 to the extent permissible under federal law, to cover any additional  
22 cost for workers' compensation benefits provided pursuant to  
23 subsection (a) of this section.

24 (c) The provisions of this section shall not apply to a personal care  
25 attendant hired by a consumer through a third-party employer.

26 Sec. 2. Subparagraph (B) of subdivision (2) of subsection (e) of  
27 section 17b-706a of the general statutes is repealed and the following is  
28 substituted in lieu thereof (*Effective July 1, 2016*):

29 (B) In those covered programs where budgets provided to  
30 consumers receiving direct support services are allocated using the  
31 individual budget methodology, budgets shall be increased to account  
32 for additional expenses caused by (i) a contract or award negotiated in  
33 accordance with this section [which] that includes increases in wages  
34 or benefits, or (ii) any additional cost to a consumer enrolled in the  
35 Community First Choice program for workers' compensation benefits  
36 for personal care attendants.

37 Sec. 3. Subparagraph (B) of subdivision (9) of section 31-275 of the  
38 general statutes is repealed and the following is substituted in lieu  
39 thereof (*Effective July 1, 2016*):

40 (B) "Employee" shall not be construed to include:

41 (i) Any person to whom articles or material are given to be treated  
42 in any way on premises not under the control or management of the  
43 person who gave them out;

44 (ii) One whose employment is of a casual nature and who is  
45 employed otherwise than for the purposes of the employer's trade or  
46 business;

47 (iii) A member of the employer's family dwelling in his house; but,  
48 if, in any contract of insurance, the wages or salary of a member of the  
49 employer's family dwelling in his house is included in the payroll on  
50 which the premium is based, then that person shall, if he sustains an  
51 injury arising out of and in the course of his employment, be deemed  
52 an employee and compensated in accordance with the provisions of  
53 this chapter;

54 (iv) Any person, other than a personal care attendant who has  
55 workers' compensation coverage pursuant to section 1 of this act,  
56 engaged in any type of service in or about a private dwelling provided  
57 he is not regularly employed by the owner or occupier over twenty-six  
58 hours per week;

59 (v) An employee of a corporation who is a corporate officer and  
60 who elects to be excluded from coverage under this chapter by notice  
61 in writing to his employer and to the commissioner; or

62 (vi) Any person who is not a resident of this state but is injured in  
63 this state during the course of his employment, unless such person (I)  
64 works for an employer who has a place of employment or a business  
65 facility located in this state at which such person spends at least fifty  
66 per cent of his employment time, or (II) works for an employer  
67 pursuant to an employment contract to be performed primarily in this  
68 state.

69 Sec. 4. (NEW) (*Effective July 1, 2016*) The Commissioner of Social  
70 Services, in consultation with the Commissioner of Developmental  
71 Services and the Commissioner of Administrative Services, shall adopt  
72 regulations in accordance with the provisions of chapter 54 of the  
73 general statutes to provide for workers' compensation coverage for  
74 personal care attendants employed directly by a consumer in the  
75 Community First Choice program. The regulations shall provide the

76 (1) type of benefits, (2) benefit rate, and (3) duration of the benefits.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2016</i>	New section
Sec. 2	<i>July 1, 2016</i>	17b-706a(e)(2)(B)
Sec. 3	<i>July 1, 2016</i>	31-275(9)(B)
Sec. 4	<i>July 1, 2016</i>	New section

**HS**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 17 \$	FY 18 \$
Social Services, Dept.	GF - Cost	See Below	See Below

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill will result in a cost to the state’s Medicaid program to fund workers’ compensation benefits for personal care attendants (PCAs) directly employed by consumers in the Community First Choice Program (CFC). The bill requires the cost of coverage to be in addition to the consumer’s current budget provided under the CFC. The bill does not specify the type, rate or duration of benefits but requires regulations to establish the benefit parameters. The cost to the state will depend on the (1) number of consumers who directly employ their PCA and (2) cost of the policy underwritten for consumers in the CFC. There are currently 1,737 individuals in the CFC with an average monthly cost per consumer of \$2,671. Total estimated gross FY 16 program expenditures are approximately \$45 million.<sup>1</sup> For reference, a 1% increase in monthly expenditures equates to approximately \$557,000 in increased state costs.

**The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to (1) the number of consumers served

<sup>1</sup> The CFC has a federal reimbursement rate of 56%.

in the CFC who directly employ their PCA and (2) the cost of workers' compensation coverage for the PCAs.

**OLR Bill Analysis****sHB 5586*****AN ACT CONCERNING WORKERS' COMPENSATION COVERAGE FOR INJURIES SUSTAINED BY PERSONAL CARE ATTENDANTS EMPLOYED DIRECTLY BY CONSUMERS IN THE COMMUNITY FIRST CHOICE PROGRAM.*****SUMMARY:**

This bill requires the Department of Social Services (DSS) commissioner, in consultation with the Department of Developmental Services (DDS) commissioner, to collaborate with the Department of Administrative Services commissioner to (1) obtain workers' compensation coverage for any personal care attendant (PCA) employed directly by a consumer in the Community First Choice Program (i.e., a Medicaid-funded program that provides home- and community-based care) and (2) adopt associated regulations that provide the type, rate, and duration of benefits. DSS must require the program's fiscal intermediaries to administer these benefits and disburse them to PCAs who are injured on a consumer's property (see BACKGROUND).

Consumers enrolled in a Community First Choice Program receive a budget from DSS to pay for their PCA care. The bill requires the program to increase a consumer's budget to accommodate the cost of providing workers' compensation benefits to his or her PCAs.

The bill also requires DSS to amend the Medicaid state plan to (1) require fiscal intermediaries to manage and disburse workers' compensation benefits as described above and (2) increase the Medicaid budget per consumer, to the extent allowed under federal law, to cover any additional cost for the workers' compensation benefits provided under the bill's provisions.

The bill requires PCAs who receive workers' compensation coverage under its provisions to be covered regardless of how many hours they work for a consumer. Currently, individuals who provide services in a private dwelling (like PCAs) only have to be covered if the consumer regularly employs them for at least 26 hours per week.

The bill also makes conforming changes.

EFFECTIVE DATE: July 1, 2016

## **DEFINITIONS**

Under the bill, a consumer is a person who receives services from a PCA in a state-funded program, including the following:

1. the acquired brain injury, PCA, individual and family support, and comprehensive Medicaid waiver programs;
2. the Connecticut Home Care Program for the Elderly;
3. the state-funded pilot program to provide home care services to disabled individuals; and
4. any state-funded program that provides PCA services.

A PCA is a person employed by a consumer or surrogate to provide personal care assistance to a consumer, but the bill's provisions do not apply to a PCA hired by a consumer through a third-party employer (e.g., home care agencies).

## **BACKGROUND**

### ***Community First Choice Program and Fiscal Intermediaries***

Under DSS' Community First Choice Program, certain Medicaid recipients eligible for home- and community-based services receive individual budgets to pay for PCA services. The recipient may select the PCA based on qualifications he or she defines.

The program's fiscal intermediaries help recipients manage their budgets and pay the PCAs for their services. Other fiscal intermediary

responsibilities under the program include collecting and processing PCA timesheets, tracking and reporting the disbursement of the recipient's budgeted funds, and periodically reporting to the individual and the state on how the funds are spent.

**Related Bills**

The following bills were favorably reported by the Labor Committee:

1. SB 210, which makes the state the state-funded PCAs' employer and requires the state to get workers' compensation coverage for them regardless of how many hours they work;
2. SB 393, which changes the threshold for requiring workers' compensation coverage for domestic workers (including state-funded PCAs) from 26 hours per week to \$1,000 in quarterly wages (the consumer remains the employer who pays the workers' compensation costs); and
3. HB 5368, which makes homecare registries the employer of domestic workers for workers' compensation purposes and requires the registries to provide coverage regardless of how many hours they work.

**COMMITTEE ACTION**

Human Services Committee

Joint Favorable Substitute

Yea 15    Nay 3    (03/15/2016)