

**OLR Bill Analysis****sHB 6668*****AN ACT PROVIDING QUALITY CARE, FINANCIAL OVERSIGHT AND NURSING HOME FUNDING REFORM.*****SUMMARY:**

This bill requires the Long-Term Care Planning Committee (LTCPC) to submit a plan to the Human Services, Public Health, and Aging committees by January 1, 2010 to implement the recommendations in the February 15, 2002 final report of the Ad Hoc Task Force on Nursing Home Costs in Connecticut.

The bill also establishes a Personal Care Attendant (PCA) Quality Home Care Workforce Council (council) to ensure the quality of long-term personal care. It allows the council and PCAs paid through state programs to engage in collective bargaining.

EFFECTIVE DATE: July 1, 2009

**§ 1 — LONG-TERM CARE PLANNING COMMITTEE PLAN CONTENTS**

The LTCPC's plan must describe measures to implement the following recommendations by July 1, 2010:

1. require pre-admission screening of all potential nursing home residents conducted by independent, trained professionals to prevent the inappropriate admission of individuals with psychiatric disabilities or histories of physical or sexual abuse;
2. require nursing homes to meet or exceed national Citizens' Coalition for Nursing Home Reform's (NCCNHR) recommended minimum staffing standards (4.13 direct care nursing hours per resident per day. See BACKGROUND);
3. ensure that the Department of Public Health (DPH) nursing home quality of care standards are evidenced-based and not cost-based;
4. require the direct care and indirect care cost components of the state's Medicaid nursing home rate setting formula to be reimbursed at 95% of actual costs and that facility maintenance costs are considered indirect care costs;
5. provide nursing homes where more than 90% of their patients receive Medicaid with supplemental disproportionate share payments of five percent of the home's allowable costs, excluding property and capital costs;
6. strengthen the Department of Social Services' (DSS) audit capabilities so it ensures nursing homes are only reimbursed for allowable Medicaid costs; and

7. expand training and educational programs, including higher education programs, to address the shortage of trained healthcare professionals.

## **§§ 2& 4 — PCA QUALITY HOME CARE WORKFORCE COUNCIL**

### ***Definitions***

Under the bill, the following definitions apply:

1. “consumer” means a person who receives PCA services under state programs, including: (a) the Acquired Brain Injury (ABI) Medicaid waiver program, (b) the PCA Medicaid waiver program for disabled adults, (c) the Connecticut Homecare Program for the Elderly (CHCPE), (d) the state-funded Connecticut Homecare Program for Disabled Adults (CHCPDA) pilot program, and (e) the Department of Developmental Services (DDS)-administered individual and family support waiver and comprehensive waiver programs;
2. “surrogate” means a consumer's legal guardian or person identified in a written agreement as responsible for the consumer's care;
3. “advocate” means a person employed by, or affiliated with, an organization that advocates on behalf of seniors or individuals with disabilities; and
4. “personal care attendant” means a person employed by a consumer or surrogate to provide personal care services to a consumer.

### ***Membership***

The council consists of 13 members and is chaired by the DSS commissioner or his designee. Ten of the members must be consumers, surrogates, or advocates and are appointed as follows: the governor, Senate president pro tempore, and House speaker each nominate two, and the majority and minority leaders of the House and Senate each nominate one. Additional members include the DDS commissioner and the Healthcare Advocate or their designees. All council appointments must be made by August 15, 2009.

Under the bill, members must serve three-year terms and until a successor is appointed. The original appointing authority must fill vacancies for the expiration of the term of the member being replaced. Members are not compensated for their service but are reimbursed, within available appropriations, for expenses incurred while performing their duties.

The DSS commissioner must call the council's first meeting by September 15, 2009. Additional meetings must be held (1) at times determined by the commissioner or (2) when any five council members submit a written request to the commissioner. A majority of the council constitutes a quorum for the purposes of conducting council business.

### ***Duties and Responsibilities***

The bill requires the council to:

1. undertake PCA recruiting efforts and act as an employer of PCAs for collective bargaining purposes;
2. provide training, education, and certification recommendations for PCAs,
3. provide routine, emergency, and respite PCA referrals to consumers and surrogates, and
4. maintain an accurate referral list first developed by the DSS and DDS commissioners that (a) identifies PCAs who have been paid through state-funded programs and (b) lists the training, education, and certification of PCAs.

The bill prohibits the referral list from providing the PCA's address or identifying (1) the consumer's name or (2) any family relationship between the consumer and the PCA.

The bill allows the council to take the following actions:

1. make or enter into contracts or other necessary or convenient instruments to carry out its powers and duties, including contracts with public and private agencies, organizations, corporations, and individuals for services;
2. adopt regulations to carry out the bill;
3. within available appropriations, employ, discharge, set compensation for, and prescribe the powers and duties of necessary staff, agents, and contractors;
4. within available appropriations, establish offices, incur expenses, and create reasonable and proper liabilities to carry out the bill;
5. take all necessary actions to seek and accept grants for funds, services, or property from federal and state sources, including federal Medicaid matching funds;
6. coordinate activities and cooperate with similar agencies in other states;
7. establish a technical advisory committee to assist the council;
8. keep records, conduct research, and gather relevant statistics;
9. acquire, hold, or dispose of real or personal property or any interest in the property, and construct, lease, or otherwise provide facilities for council activities, except that it cannot exercise any power of eminent domain;
10. delegate to the appropriate people the power to execute contracts and other instruments on its behalf and delegate any of its powers and duties if consistent with carrying out the bill; and
11. perform any necessary or convenient acts to execute its powers.

### ***Consumer and Surrogate Rights***

The bill grants a consumer or surrogate who receives a PCA referral from the council the specific right to hire, refuse to hire, supervise, fire, and direct the activities of a PCA. It also specifies that a consumer or surrogate may hire a PCA not referred by the council.

### **§ 3 — COLLECTIVE BARGAINING**

The bill requires, only for the purposes of collective bargaining, that (1) a PCA be considered a state employee and subject to state employee collective bargaining laws and (2) the council be considered the PCA's employer.

The bill specifies that this does not alter the state's or consumer's obligation to provide their portion of any 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.

#### ***PCA Representative***

Under the bill, the council has the authority and obligation to bargain and enter into agreements with a PCA representative. This representative must be designated by the State Board of Labor Relations as the PCA's exclusive bargaining agent to negotiate for wages, benefits, and other employment terms and conditions.

Notwithstanding this, the bill specifies that consumers and surrogates have the rights described in the previous section.

#### ***Bargaining Units***

Under the bill, a statewide unit of all PCAs is the only bargaining unit allowed between the council and a PCA representative. The bill prohibits the exclusion of PCAs who are family members of a consumer or surrogate from the bargaining unit because of the family relationship.

#### ***Elective Arbitration***

The bill allows the council and the PCA's bargaining agent to participate in elective arbitration. It requires the arbitrator to consider the following factors when making a decision:

1. the history of negotiations between the parties, including those leading to the arbitration;
2. existing employment conditions of similar groups of employees;
3. prevailing labor market wages, fringe benefits, and working conditions;
4. overall compensation paid to employees involved in the arbitration, including direct wages, overtime and premium pay, leave time, insurance, pensions, medical and hospitalization benefits, food and apparel, and all other benefits received;

5. the employer's ability to pay;
6. cost of living changes;
7. the employees' interests and welfare;
8. the nature of the PCA programs at issue; and
9. the consumers' needs and welfare, including PCA workforce recruitment, retention, and quality.

Notwithstanding the state's elective binding arbitration law, the bill prohibits an arbitrator's award from being final and binding upon the council or PCA bargaining agent. It must be considered a recommended resolution the council and bargaining agent may incorporate into their collective bargaining agreement.

### ***Strikes***

The bill prohibits PCAs that have the right to collectively bargain from participating in any strike.

### ***Liability***

The bill prohibits the council or its contractors from being held vicariously liable for a PCA's action or inaction, regardless of whether the PCA was listed on the council's referral directory or referred to a consumer or surrogate. It also grants council members immunity from any liability resulting from the bill's implementation.

### ***Implementation***

The bill requires DSS, DDS, other state agencies, council members, consumers, surrogates, contractors, state agents, and fiscal intermediaries to cooperate to implement (1) the bill and (2) any agreements reached by the council and PCA bargaining agent, including making required payroll deductions authorized by the collective bargaining agreement.

It also requires the DSS commissioner to submit any federal waiver applications necessary to carry out the bill. And it requires the DDS and DSS commissioners and other state agencies to take all reasonably necessary actions to obtain federal waiver approval and ensure continued federal funding.

## **BACKGROUND**

### ***Ad Hoc Task Force on Nursing Home Costs in Connecticut***

The legislature created the task force in 2001 to investigate whether the state's Medicaid nursing home rates appropriately reflected actual costs, including wages, benefits, staffing, and collectively bargained wages and benefits. In 2002, the task force submitted its final report to the Appropriations, Human Services, Public Health, and Labor committees.

### **National Citizen's Coalition for Nursing Home Reform Staffing Recommendations**

NCCNHR is a national consumer advocacy organization that has lobbied for increased direct care staffing levels in nursing homes for several years. Its recommended minimum staffing standards were adopted by its membership in 1998 and developed in consultation with long-term care experts over a period of years. These "NCCNHR Staffing Standards" require a minimum of 4.13 direct nursing care hours per resident per day distributed as follows:

<b>Minimum Level Direct Care Staff (registered nurse (RN), licensed vocational nurse (LVN)/licensed practical nurse (LPN), or certified nurse assistant (CAN))</b>	
Day Shift	1 FTE for each 5 residents (1.60 hours per resident day)
Evening Shift	1 FTE for each 10 residents (0.80 hours per resident per day)
Night Shift	1 FTE for each 15 residents (0.53 hours per day)
<b>Minimum Licensed Nurses (RN and LVN/LPNs) providing direct care, treatments and medications, planning, coordination, and supervision at the unit level</b>	
Day Shift	1 FTE for each 15 residents (0.53 hours per resident day)
Evening Shift	1 FTE for each 20 residents (0.40) hours per resident per day)
Night Shift	1 FTE for each 30 residents (0.27) hours per day)
<b>TOTAL DIRECT CARE NURSING HOURS</b>	<b>4.13 per resident per day</b>

### **PCA Services**

PCAs provide non-medical care, such as assistance with bathing, dressing, eating, walking, toileting, or transfer from a bed to a chair.

DSS currently offers PCA services under the following Medicaid Home and Community Based Service waiver programs: the CHCPE's PCA Pilot program, the Acquired Brain Injury

program, and the PCA Waiver program for disabled adults. DDS offers PCA services under its individual and family support waiver and comprehensive waiver programs.

Under these programs, participants hire their own assistants to help with personal care and activities of daily living, instead of going through a home health care agency. The participant hires and manages the assistant, but a financial intermediary handles the paperwork.

### ***Related Bills***

SB 454, favorably reported by the Aging and Public Health committees, phases in minimum direct care staffing standards over three years starting October 1, 2011.

### **COMMITTEE ACTION**

Human Services Committee

Joint Favorable Substitute

Yea 13    Nay 6    (03/19/2009)