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BILL



ANALYSIS

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Senate Bill 731 (Substitute S-3 as reported)  
Sponsor: Senator Jason E. Allen  
Committee: Senior Citizens and Veterans Affairs

Date Completed: 6-9-10

### **RATIONALE**

Home Help Services is a program administered by the Department of Human Services (DHS) and funded through the Department of Community Health (DCH). The program provides funding for individuals to hire providers who will assist with daily activities at home. To receive the services, an individual must be eligible for Medicaid and need physical help to perform activities of daily living, such as eating, bathing, taking medicine, preparing meals, doing laundry, or performing light housework. If individuals need help finding a provider, the DHS refers them to the Michigan Quality Community Care Council, which maintains a registry to connect home care providers with consumers in their area. The Council was established under an interlocal agreement between the DCH and the Tri-County Aging Consortium (the Area Agency on Aging serving Clinton, Eaton, and Ingham Counties). To ensure that consumers continue to receive this service, it has been suggested that State law should provide for a registry of home care workers.

### **CONTENT**

**The bill would create the "Michigan Home Help Integrity Act" to do the following:**

- **Create the Michigan Home Help Advisory Council in the Department of Community Health.**
- **Require the Council to advise the DCH regarding the creation and maintenance of a registry or registries of providers.**
- **Require the Council to provide lists of individuals on a registry to**

**consumers receiving personal assistance services under a Medicaid program.**

- **Require the Council to develop standards and procedures for providers to be listed on the registry, including a criminal history check.**
- **Prescribe other responsibilities of the Council.**
- **Specify that neither the Council nor the DCH would be the employer of a provider of home-based care.**
- **State a legislative intent that the proposed Act not be interpreted to allow for the unionization of home help workers.**

### Creation & Organization of Council

The Michigan Home Help Advisory Council would consist of the following 13 members:

- The DCH Director or his or her designated representative from within the Department.
- The DHS Director or his or her designated representative from within that Department.
- Nine members appointed by the DCH Director to represent consumers, consumer representatives, consumer advocates, or consortiums.
- One member appointed by the Governor from a list of three or more individuals selected by the Senate Majority Leader.
- One member appointed by the Governor from a list of three or more individuals selected by the Speaker of the House of Representatives.

Of the nine members appointed by the DCH Director, at least one would have to represent a consortium, if any existed. At least seven Council members would have to represent consumers, consumer representatives, or consumer advocates. The DCH Director would have to appoint members representing consumers, consumer representatives, consumer advocates, or consortiums within 56 days of the bill's effective date.

Of the members initially appointed by the Director, one would have to be appointed for a term expiring on July 31, 2010, three for a term expiring on July 31, 2011, two for a term expiring on July 31, 2012, and three for a term expiring on July 31, 2013. Otherwise, Council members would have to be appointed for four-year terms. Council members would serve without compensation but could be reimbursed for actual and necessary expenses incurred while attending Council meetings or performing other authorized official duties.

At least 60 days after a majority of the members were appointed, the Council would have to hold its first meeting. Council members would have to elect a chairperson and could elect other officers as they considered necessary. All officers would have to be elected biannually. The Council would be subject to the Open Meetings Act and the Freedom of Information Act.

The bill would define "consumer" as a person receiving personal assistance services as a beneficiary under a Medicaid State plan optional program, including the home help program. "Consumer representative" would mean a person designated by a consumer to act on his or her behalf. "Consumer advocate" would mean a person recognized by the DCH as a representative of consumers and consumer concerns.

"Personal assistance services" would mean assistance with personal and nonpersonal activities of daily living provided to a consumer with functional limitations in meeting basic needs under the home help program.

"Home help program" would mean the personal care program or other program established under the personal care option of the State's Medicaid program through which payments are made on behalf of

eligible people to individual providers for personal assistance services, including the adult home help services payments program under R 400.1101-400.1107 of the Michigan Administrative Code and any successor program.

#### Registry of Providers

In cooperation with the DCH, the Council would be required to advise the Department regarding the creation and maintenance of one or more registries of providers in this State. In doing so, the Council would have to develop and apply standards and procedures for qualifying people to serve as providers seeking placement on a registry maintained by the Council, and removal of providers from a registry for cause. The standards and procedures would have to include, at least, a criminal history check as provided in Section 20173a of the Public Health Code. (That section prohibits a health facility or agency from hiring, contracting with, or granting privileges to an individual who has direct access to patients or residents, until the facility or agency conducts a criminal history check on the individual.)

In creating and maintaining one or more registries, the Council also would have to develop a review process for people denied a listing or removed from a registry. Registry membership would be at the sole discretion of the Council.

In addition, the Council would have to provide lists of available people on a registry, by geographic area or in other accessible form, to consumers upon request, and inform consumers, or their representatives, of the background and qualifications of the people, and that the consumers or their representatives would be free to select or reject any referrals made through the Council.

("Provider" would mean an individual who is employed by the consumer with respect to selection, hiring, firing, supervision, direction, and control over the work location and the physical conditions there.)

#### Additional Council Functions

The Council would be required to do the following, in cooperation with the DCH:

- Seek to promote and coordinate effective and efficient personal assistance services.
- Espouse, support, and work to preserve consumer selection and self-direction of providers.
- Establish support mechanisms for providers aimed at encouraging competence, achieving quality services for consumers, and improving provider retention through improved job satisfaction.

The Council could participate with the State in enhancing Federal funding for the provision of personal assistance services.

### Role of the Council & DCH

Neither the DCH nor the Council could be considered the employer of a provider of home-based care. All employment decisions regarding a provider could be made only by the consumer.

The relationship between the DCH and its providers would have to be consistent with the principles of consumer self-direction, preserving the consumer's exclusive right to select, direct, and remove a provider who rendered personal assistive services to the consumer.

The bill contains the following statement: "It is the intent of the legislature that this public act establish and ensure integrity within the home help program. No part of this act shall be interpreted to allow for the unionization of home help workers. Home help workers are not state employees and are exclusively employed by the home help consumer. All employment decisions regarding a home help worker are to be made only by the home help consumer."

### **BACKGROUND**

The Michigan Quality Community Care Council (MQC3) was established after the DCH and the Tri-County Aging Consortium, in 2004, entered into an interlocal agreement under the Urban Cooperation Act to create the Council. According to a DCH Beneficiary Eligibility Bulletin dated December 23, 2004, "The [Council] is an independent governmental agency formed to enhance and expand the provision of personal care services rendered by individual providers, including the creation

and maintenance of a registry(ies) of qualified direct care workers. The [Council] will also facilitate and coordinate support services for individual providers of personal care services in order to improve the quality and outcomes of services provided to Home Help beneficiaries."

At approximately the same time as the MQC3 was established, SEIU (Service Employees International Union) Healthcare Michigan was formed. Members of this entity include home care workers, registered nurses, nursing home aides, and hospital support staff. According to its website, "SEIU Healthcare Michigan has partnered with the state and the Michigan Quality Community Care Council...to create a registry to help connect home care providers with home care consumers in their area."

Consumers remain responsible for choosing, hiring, and firing providers, according to the Council's website. The website also describes the process for individuals to be placed on the registry, and states that the MQC3 will run a criminal history check and a national sex offender registry check on applicants, and runs a criminal history check on registered providers every six months. The Council offers consumers training in how to act as an employer and, in collaboration with other organizations, offers various training opportunities to providers.

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

The Home Help Services program enables Medicaid-eligible clients to remain in their own homes, by defraying the cost of hiring someone to help with activities of daily living. Without this assistance, the individuals might have to move to nursing homes, adult foster care facilities, or homes for the aged—an alternative that is more costly for taxpayers and less desirable for residents. Although home help providers may be relatives, friends, or neighbors, some consumers have difficulty finding someone to hire. A registry of qualified and reliable providers not only connects consumers with workers who will meet their needs, but also protects consumers from being victimized by unscrupulous or

incompetent individuals. At the same time, a registry helps home care workers find stable employment.

Although some DHS offices have lists of people willing to perform home help services, and the Michigan Quality Community Care Council maintains a registry of providers, there is nothing in State law requiring any entity to establish or maintain such a registry, requiring that providers on a registry be subject to criminal history checks, or otherwise requiring standards for providers. The bill would remedy this by establishing the Home Help Advisory Council; requiring it to advise the DCH on the creation and maintenance of one or more registries of providers, and to provide consumers with lists of individuals on a registry; and requiring the Council to establish standards, including criminal history checks, for qualifying people who want to be listed on a registry. This statutory language would help ensure the continuation of a registry in the future.

#### **Opposing Argument**

With the aging of the baby boomer population, Michigan can expect to see unprecedented growth in demand for long-term care services and supports, including in-home and other community-based care. While the bill recognizes the need for quality care and public protection, it is not clear why a new public entity is necessary to perform many of the functions currently performed by the Michigan Quality Community Care Council. Also, when the focus of the future is going to be on community-based care, it is not clear why the State would move away from the existing community ties of the MQC3 and related resources.

#### **Opposing Argument**

Michigan's long-term care system has long been poorly coordinated and fragmented across programs and services, according to Aging Services of Michigan. In 2004, Governor Granholm appointed the Michigan Medicaid Long-Term Care Task Force to examine this system and make recommendations to improve quality, expand the reach of home- and community-based services, and reduce barriers to an efficient continuum of long-term care services. Since the task force issued its report in 2005, aging services providers have been waiting for an integrated system

of care that would focus on independence and consumer choice, as well as provide related health care. This legislation, however, could further fragment and isolate a single program of care.

Legislative Analyst: Suzanne Lowe

#### **FISCAL IMPACT**

The Department could see a small increase in cost associated with reimbursing members of the Michigan Home Help Advisory Council for qualifying expenses.

Fiscal Analyst: David Fosdick

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.