



Senate Bill 731 (as introduced 8-5-09)  
Sponsor: Senator Jason E. Allen  
Committee: Senior Citizens and Veterans Affairs

Date Completed: 8-18-09

### **CONTENT**

The bill would create the "Michigan Quality Community Care Council Act" to do all of the following:

- Create the Michigan Quality Community Care Council, through which the Department of Community Health (DCH) would have to arrange for the provision of personal assistance services under the home help program.
- Transfer to the proposed Council, by resolution, a public body corporate created by agreement between the DCH and a consortium of at least three counties to perform functions similar to the Council's.
- Provide for the transfer of employees to the Council, and for the protection of their status, salary, and benefits.
- Prescribe the makeup and responsibilities of the Council's board of directors.
- Require the board to hire a chief executive officer (CEO), who would be responsible for the day-to-day operations of the Council.
- Specify the Council's powers and duties, including promoting and coordinating effective and efficient personal assistance services, creating one or more provider registries, and, subject to DCH approval and legislative authorization, establishing providers' wages and other economic benefits.
- Allow the Council to perform certain functions for providers and consumers.
- Permit the DCH to reimburse the Council for services rendered by providers to consumers in addition to personal assistance services.
- Allow the Council to become a participating municipality under the Municipal Employees Retirement Act.
- Prohibit the Council from discriminating in employment or provision of services.
- Require the Council, the DCH, and other entities to seek Federal approval needed to implement the proposed Act.

"Consumer" would mean a person receiving personal assistance services as a beneficiary under a Medicaid State plan optional program, including the home help program. "Provider" would mean an individual who was selected and directed by a consumer to provide personal assistance services to the consumer and, if desired, removed by the consumer, and for whom the Council performed functions described in the proposed Act.

"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-R 400.1107 of the Michigan Administrative Code.

#### Michigan Quality Community Care Council

The bill would create the Michigan Quality Community Care Council as a public body that would possess the powers, duties, and jurisdiction vested in it under the proposed Act and other laws.

For fiscal year 2009-10 and each subsequent fiscal year, the DCH would have to arrange through the Council for the provision of personal assistance services under the home help program. The DCH also could arrange through the Council for the provision of services under other programs.

A public body corporate created by an agreement between the DCH and a consortium under the Urban Cooperation Act, and authorized to perform functions similar to the Council's under the proposed Act, would be transferred by resolution to the Council, and the Council would have to accept the powers, duties, functions, responsibilities, and jurisdictions of that public body corporate. The transfer would include programs, assets, contractual rights, obligations, and employees, including any existing obligations to recognize a representative of providers and to honor any unexpired collective bargaining agreement with that representative. ("Consortium" would mean a consortium created by three or more counties under the Urban Cooperation Act that includes among its purposes the provision of services to the aging or disabled in those counties.)

#### Transfer of Employees

Employees of the predecessor body who were necessary for the Council's operation would be transferred to the Council and appointed as employees of the Council.

The employees would have to be given seniority credits and sick leave, vacation, insurance, and pension credits in accordance with the records or labor agreements from the transferring employer. Members and beneficiaries of any pension or retirement system or other benefits established by the

transferring employer would continue to have rights, privileges, benefits, obligations, and status with respect to the established system. The Council would have to assume the obligations acquired by the predecessor body with regard to wages, salaries, hours, working conditions, sick leave, health and welfare, and pension or retirement provisions for transferred employees. If the transferred employees were not guaranteed sick leave, health and welfare, and pension or retirement pay based on seniority, the Council would not be required to provide those benefits retroactively. If the transferred employees were represented by a labor organization in relation to the predecessor body, the Council would have to continue to recognize the labor organization as the employees' exclusive representative.

No employee who was transferred to a position with the Council could, by reason of the transfer, be placed in any worse position with respect to workers' compensation, pension, seniority, wages, sick leave, vacation, health and welfare insurance, or any other benefits he or she enjoyed with his or her transferring employer.

#### Board of Directors

The Council would be directed and governed by an 11-member board of directors, consisting of the DCH Director, or the Director's designee from within the Department; the Director of the Department of Human Services (DHS), or the Director's designee from within the Department; and nine members appointed by the DCH Director to represent consumers, consumer representatives, consumer advocates, or consortiums. At least one appointed member would have to represent a consortium, if any existed, and at least six would have to represent consumers, consumer representatives, or consumer advocates. Appointed members would serve six-year, staggered terms. Initial appointments would have to be made within 56 days of the effective date of the proposed Act. After the initial appointments, if a vacancy occurred, the board would have to appoint a replacement.

The board would have to hold its first meeting, at a time determined by the DCH Director, within 60 days after the appointment of a majority of members. The board biannually would have to elect a

chairperson and could elect other officers it considered necessary. The board would have to adopt a schedule of regular meetings.

The board would have to comply with the Open Meetings Act and the Freedom of Information Act.

The board would have to prepare a budget before the beginning of each fiscal year and provide for a system of accounts for the Council to conform to a uniform system required by law and for the auditing of the Council's accounts. The board would have to obtain an annual audit by an independent CPA, in accordance with generally accepted government auditing standards.

Board members would have to discharge their duties in a nonpartisan manner, in good faith, and with the degree of diligence that an ordinarily prudent person would exercise under similar circumstances in a like position. A board member could rely up the opinion of counsel for the Council; the report of an independent appraiser selected by the board; and the Council's financial statements represented to the board member to be correct by the Council officer or agent having charge of its books or stated in a written report by the State Auditor General or a CPA, or accounting firm, to reflect the Council's financial condition.

A board member would not be subject to personal liability if acting in good faith within the scope of his or her authority, or on account of liability of the Council. The board could indemnify a board member or an officer, appointee, or employee of the Council against liability arising out of the discharge of his or her official duties.

Board members, officers, and employees of the Council would be public servants and subject to applicable law with respect to conflicts of interest.

Board members would serve without compensation, but could be reimbursed for actual and necessary expenses.

The Governor could remove a board member for gross neglect of duty, corrupt conduct in office, or any other misfeasance or malfeasance in office.

### Chief Executive Officer

The board of directors would have to select and retain a CEO for the Council. The CEO would have to administer the Council in accordance with the operating budget adopted by the board, general policy guidelines established by the board, other applicable governmental procedures and policies, and the proposed Act. The CEO would be responsible for the day-to-day operations of the Council and the supervision of all Council employees. All terms and conditions of the CEO's employment would have to be specified in a written contract between the CEO and the board. The CEO would serve at the pleasure of the board.

### Council Powers & Duties

State departments and agencies would have to cooperate with and assist the Council in the performance of its powers and duties under the proposed Act, and in the implementation of any agreements entered into by the Council as authorized by the Act.

Except as otherwise provided in the proposed Act, the Council could do all things necessary or convenient to implement the purposes, objectives, and provisions of the Act and the purposes, objectives, and jurisdictions vested in the Council or the board. This would include the power to do all of the following:

- Adopt, amend, and repeal bylaws for the regulation of its affairs and the conduct of its business.
- Sue and be sued in its own name and plead and be impleaded.
- Incur debts, liabilities, and obligations.
- Fix and collect charges, rates, rents, fares, fees, loan repayments, loan interest rates, or other charges on loans.
- Enter into contracts, agreements, or instruments necessary, incidental, or convenient to the performance of its duties and execution of its powers, duties, and jurisdictions with any government agency or any other person or entity, upon terms and conditions acceptable to the Council.
- Solicit, receive, and accept gifts, grants, labor, loans, contributions of money, property, or other things of value, and other aid or payment from any government agency or any other person

or entity, upon terms and conditions acceptable to the Council, or participate in any government program.

- Apply for and receive loans, grants, guarantees, or other financial assistance from any government agency or any other source.
- Procure insurance or become a self-funded insurer against loss in connection with the Council's property, assets, or activities.
- Indemnify and procure insurance indemnifying board members from personal loss or accountability for liability asserted by a person with regard to Council obligations, or from any personal liability or accountability by reason of the Council obligations.
- Invest Council money, at the discretion of the board, in instruments, obligations, securities, or property determined proper by the board.
- Contract for goods and services as necessary.
- Employ, appoint, engage, compensate, and transfer legal and technical experts, other officers, agents, employees, or other personnel, as the board considered necessary.
- Contract for professional or technical assistance.
- Acquire property or rights or interest in property on terms and conditions and in a manner the Council considered proper.
- Hold, clear, remediate, improve, maintain, manage, sell, exchange, lease, or grant easements and licenses on property or rights or interests in property that the Council acquired, held, or controlled.
- Dispose of property or rights or interest in property to any person or entity on terms and conditions, and in a manner and for consideration the Council considered proper, fair, and valuable.
- Promulgate necessary rules and regulations and provide for their enforcement to accomplish the purposes of the proposed Act.

The Council would not have the power to impose or levy a tax.

The Council would have to seek to promote and coordinate effective and efficient personal assistance services, and would have to create one or more registries of providers in Michigan. Regarding the registry or registries, the Council would have

to develop and apply standards and procedures for qualifying people to serve as providers who sought placement on a registry maintained by the Council and for removal of providers from a registry for cause; and develop a review process for people denied a listing on or removed from a registry. Registry membership would be at the sole discretion of the Council.

The Council also would have to provide lists of available people listed 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 representatives were free to select or reject any referrals made through the Council.

In addition, the Council would have to do all of the following:

- Espouse, support, and work to preserve consumer selection and self-direction of providers.
- Provide support to providers through a variety of methods aimed at encouraging competence, achieving quality services for consumers, and improving provider retention through improved job satisfaction.
- Protect the confidential status of information relating to consumers, subject to waiver by the consumers or their representatives, and assure that the activities of the Council complied with the requirements of State and Federal law.
- Subject to DCH approval and legislative authorization, establish the wages and other economic benefits of providers.

The relationship between the Council 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 assistance services to the consumer.

The Council also could perform any of the following functions for providers and consumers:

- Assist consumers in deciding whom to employ to provide personal assistance services, how those services would be

- provided, and how long the employed provider would render them.
- Facilitate and coordinate orientation processes to assist providers in the performance of authorized services, with the consent of and direction from consumers or their representatives.
  - Develop recruitment and retention programs to expand the pool of available, qualified providers.
  - Assist consumers by designating people as meeting minimum qualification criteria for providing personal assistance services, as established by the Council.
  - Provide or facilitate provider training and otherwise assist providers through the dissemination of information that assisted them to be successful in rendering personal assistance services to consumers.
  - Develop a system to facilitate the provision of routine, emergency, and respite referrals for providing personal assistance services through a pool of back-up providers, with the ability to provide on-call service available 24 hours a day, seven days a week.
  - Encourage and solicit private and public sector involvement, support, and financing for the Council.
  - Develop methods of ongoing communication and information-sharing with providers and consumers that supported and facilitated a positive relationship between providers and consumers and their representatives.
  - Assist providers with addressing barriers to employment by supplying providers with information, referrals, or assistance with access to services supportive to providers, such as child care, transportation, and indigent health care benefits.
  - Facilitate compliance with applicable Medicaid regulations and policies, or those of private sector payers.
  - Facilitate and coordinate advanced training for providers.
  - Facilitate and coordinate mentoring for consumers and providers with the goal of supporting successful consumer-provider relationships, including a strong consumer-employer role.
  - Perform the functions described in the proposed Act in relation to individual providers of personal assistance services and similar services under other publicly or privately funded programs.

- Facilitate the development of mentoring programs for providers and consumers.
- Authorize provider time sheets or vouchers.
- Supervise the completion, submittal, and issuance of employment-related forms and data required by law.
- Withhold and deposit State and Federal income taxes, if requested.
- Complete and submit claims for reimbursement for authorized services rendered by providers as verified by consumers.
- Inform providers about the earned income tax credit provisions of State and Federal tax law and manage advanced earned income tax credit payments when appropriate.
- Inform providers about other public benefits to which they could be entitled.

The DCH could reimburse the Council for services rendered by providers to consumers in addition to personal assistance services.

The Council could enter into agreements, contracts, or arrangements with a governmental entity or other people necessary or appropriate to assist the Council in carrying out its duties and functions under the proposed Act.

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

The Council could receive local, State, Federal, and other funds to pay for personal assistance services and to accomplish the purposes of the proposed Act. Funds to support the operation of the Council could be provided by the DCH.

To the extent permitted under Michigan law, the Council could elect to become a participating municipality on behalf of Council employees under the Municipal Employees Retirement Act.

#### Discrimination Prohibition

The Council would have to comply with all applicable law prohibiting discrimination.

The Council could not fail or refuse to hire, recruit, or promote, demote, discharge, or otherwise discriminate against a person with respect to employment, compensation, or a term, condition, or privilege of employment

because of religion, race, color, national origin, age, sex, sexual orientation, height, weight, marital status, partisan consideration, or a disability or genetic information that was unrelated to his or her ability to perform the duties of a particular job or position. The Council could not limit, segregate, or classify an employee or applicant for employment in a way that deprived or tended to deprive him or her of an employment opportunity or otherwise adversely affected his or her status because of those factors.

The Council also could not provide services in a manner that discriminated against a person with respect to employment, compensation, or a term, condition, or privilege of employment because of religion, race, color, national origin, age, sex, sexual orientation, height, weight, marital status, partisan considerations, or a disability or genetic information that was unrelated to his or her ability to receive services from the Council.

#### Other Provisions

Federal Approval. The Council, the DCH, and any other necessary State departments or agencies would have to seek any form of Federal approval needed to implement the proposed Act.

Construction of Act. The proposed Act would have to be construed liberally to effectuate the legislative intent and the purpose of the Act. Powers granted in the Act would have to be broadly interpreted to effectuate its intent and purposes.

Legislative Analyst: Patrick Affholter

#### **FISCAL IMPACT**

In 2004, the Michigan Department of Community Health and the Tri County Office on Aging collaborated to create the Michigan Quality Community Care Council (MQCCC) through provisions described in the Urban Cooperation Act. This organization provides a central registry of available providers through the Adult Home Help program, completes criminal history and reference checks, and provides training services. The activities of the MQCCC are currently supported with about \$1.0 million Gross through the Adult Home Help Services line in the DCH appropriation. Discussions with the

DCH suggest that Senate Bill 731 largely would codify the current structure and activities of the MQCCC. Because this bill largely describes current activities, there would likely be no fiscal impact associated with it.

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.