

# SENATE BILL No. 731

August 5, 2009, Introduced by Senators ALLEN, KAHN, PATTERSON, BASHAM, GARCIA, STAMAS, GILBERT, SCOTT, OLSHOVE, CLARK-COLEMAN, SWITALSKI, JACOBS, JANSEN, CHERRY, RICHARDVILLE, BIRKHOLZ and WHITMER and referred to the Committee on Senior Citizens and Veterans Affairs.

A bill to create the Michigan quality community care council; to prescribe the powers and duties of the council; to prescribe the powers and duties of certain state departments; and to provide for the transfer of programs, employees, and funds.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act shall be known and may be cited as the  
2 "Michigan quality community care council act".

3           Sec. 2. As used in this act:

4           (a) "Board" means the board of directors of the council  
5 created under section 4.

6           (b) "Consortium" means a consortium created by 3 or more  
7 counties under the urban cooperation act of 1967, 1967 (Ex Sess) PA  
8 7, MCL 124.501 to 124.512, that includes among its purposes the

1 provision of services to the aging or disabled in those counties.

2 (c) "Consumer" means a person receiving personal assistance  
3 services as a beneficiary under a medicaid state plan optional  
4 program, including, but not limited to, the home help program.

5 (d) "Consumer advocate" means a person recognized by the  
6 department as a representative of consumers and consumer concerns.

7 (e) "Consumer representative" means a person designated by a  
8 consumer to act on behalf of the consumer.

9 (f) "Council" means the Michigan quality community care  
10 council created in section 3.

11 (g) "Department" means the department of community health.

12 (h) "Fiscal year" means the annual period beginning on October  
13 1 of each year and ending on the following September 30.

14 (i) "Home help program" means the personal care program or  
15 other program established under the personal care option of the  
16 state's medicaid program through which payments are made on behalf  
17 of eligible persons to individual providers for personal assistance  
18 services, including, but not limited to, the adult home help  
19 services payments program under R 400.1101 to R 400.1107 of the  
20 Michigan administrative code and any successor program.

21 (j) "Medicaid" means the program of medical assistance  
22 established under title XIX of the social security act, 42 USC 1396  
23 to 1396v, and administered under the social welfare act, 1939 PA  
24 280, MCL 400.1 to 400.119b.

25 (k) "Personal assistance services" means assistance with  
26 personal and nonpersonal activities of daily living provided to a  
27 consumer with functional limitations in meeting basic needs under

1 the home help program.

2 (l) "Provider" means an individual who meets all of the  
3 following criteria:

4 (i) The individual is selected and directed by a consumer to  
5 provide personal assistance services to the consumer, and, if  
6 desired, removed by the consumer.

7 (ii) The council performs functions described in this act in  
8 relation to the individual.

9 Sec. 3. (1) The Michigan quality community care council is  
10 created. The council is a public body that shall possess the  
11 powers, duties, and jurisdictions vested in the council under this  
12 act and other laws.

13 (2) For the fiscal year ending September 30, 2010 and each  
14 subsequent fiscal year, the department shall arrange through the  
15 council for the provision of personal assistance services under the  
16 home help program. The department may arrange through the council  
17 for the provision of services under other programs.

18 (3) A public body corporate created by an agreement between  
19 the department and the consortium under the urban cooperation act  
20 of 1967, 1967 (Ex Sess) PA 7, MCI 124.501 to 124.512, and  
21 authorized to perform functions similar to the council under this  
22 act shall by resolution transfer to the council and the council  
23 shall accept the powers, duties, functions, responsibilities, and  
24 jurisdictions of the public body corporate, including, but not  
25 limited to, programs, assets, contractual rights, obligations, and  
26 employees, including any existing obligations to recognize a  
27 representative of providers under 1947 PA 336, MCL 423.201 to

1 423.217, and to honor any unexpired collective bargaining agreement  
2 with such a representative.

3 (4) The employees of the predecessor body who are necessary  
4 for the operation of the council shall be transferred to the  
5 council by the predecessor body and appointed as employees of the  
6 council subject to all rights and benefits and both of the  
7 following:

8 (a) The employees shall be given seniority credits and sick  
9 leave, vacation, insurance, and pension credits in accordance with  
10 the records or labor agreements from the transferring employer.  
11 Members and beneficiaries of any pension or retirement system or  
12 other benefits established by the transferring employer shall  
13 continue to have rights, privileges, benefits, obligations, and  
14 status with respect to the established system. The council shall  
15 assume the obligations acquired by the predecessor body with regard  
16 to wages, salaries, hours, working conditions, sick leave, health  
17 and welfare, and pension or retirement provisions for transferred  
18 employees. If the transferred employees were not guaranteed sick  
19 leave, health and welfare, and pension or retirement pay based on  
20 seniority, the council shall not be required to provide these  
21 benefits retroactively. If the transferred employees were  
22 represented by a labor organization in relation to the predecessor  
23 body, the council shall continue to recognize the labor  
24 organization as the exclusive representative of the employees.

25 (b) No employee who is transferred to a position with the  
26 council shall by reason of the transfer be placed in any worse  
27 position with respect to worker's compensation, pension, seniority,

1 wages, sick leave, vacation, health and welfare insurance, or any  
2 other benefits that employer enjoyed with his or her transferring  
3 employer.

4 (5) State departments and agencies shall cooperate with and  
5 assist the council in the performance of its powers and duties  
6 under this act and in the implementation of any agreements entered  
7 into by the council as authorized by this act.

8 Sec. 4. (1) The council shall be directed and governed by a  
9 board of directors consisting of the following 11 members:

10 (a) The director of the department or his or her designated  
11 representative from within the department.

12 (b) The director of the department of human services or his or  
13 her designated representative from within that department.

14 (c) Nine members appointed as provided under subsections (2)  
15 and (3) to represent consumers, consumer representatives, consumer  
16 advocates, or consortiums. Not less than 1 member appointed under  
17 this subdivision shall represent a consortium, if any such  
18 consortiums exist. Not less than 6 members of the council shall  
19 represent consumers, consumer representatives, or consumer  
20 advocates.

21 (2) Except as otherwise provided in this subsection, board  
22 members shall be appointed for a term of 6 years. Initial  
23 appointments under subsection (1)(c) shall be made by the director  
24 of the department within 56 days of the effective date of this act.  
25 Of the board members initially appointed by the director, 1 member  
26 shall be appointed for a term expiring on July 31, 2010, 2 members  
27 shall be appointed for a term expiring on July 31, 2011, 1 member

1 shall be appointed for a term expiring on July 31, 2012, 2 members  
2 shall be appointed for a term expiring on July 31, 2013, 1 member  
3 shall be appointed for a term expiring on July 31, 2014, and 2  
4 members shall be appointed for a term expiring on July 31, 2015.

5 (3) After the initial appointments under subsection (2), if a  
6 vacancy occurs among the board members described in subsection  
7 (1)(c) by expiration of a term, the board shall appoint an  
8 individual satisfying the requirements of subsection (1)(c) to a  
9 new 6-year term. If a vacancy occurs on the board among the board  
10 members described in subsection (1)(c) other than by expiration of  
11 a term, the vacancy shall be filled by the board for the remainder  
12 of the term of the unexpired term. Board members may continue to  
13 serve until a successor is appointed and qualified.

14 (4) Appointments under this section shall be filed with the  
15 secretary of state. Upon appointment to the board, and upon taking  
16 and filing of the oath of office required by section 1 of article  
17 XI of the state constitution of 1963, the board member shall enter  
18 office and exercise the duties of the office of board member.

19 Sec. 5. (1) Not less than 60 days following the appointment of  
20 a majority of the members of the board, the board shall hold its  
21 first meeting at a date and time determined by the department  
22 director. The board members shall elect from among the board  
23 members an individual to serve as chairperson of the board and may  
24 elect other officers as the board considers necessary. All officers  
25 shall be elected biannually by the board.

26 (2) The business of the board shall be conducted at a public  
27 meeting of the board held in compliance with the open meetings act,

1 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date,  
2 and place of the meeting shall be given in the manner required by  
3 the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. The board  
4 shall adopt bylaws consistent with the open meetings act, 1976 PA  
5 267, MCL 15.261 to 15.275, governing its procedures and the holding  
6 of meetings. After organization, the board shall adopt a schedule  
7 of regular meetings and adopt a regular meeting date, place, and  
8 time. A special meeting of the board may be called by the  
9 chairperson of the board or as provided in bylaws adopted by the  
10 board. Notice of a special meeting shall be given in the manner  
11 required by the open meetings act, 1976 PA 267, MCL 15.261 to  
12 15.275.

13 (3) The board shall organize and make its own policies and  
14 procedures and shall adopt bylaws not inconsistent with this act  
15 governing its operations. A majority of the members of the board  
16 serving constitute a quorum for transaction of business. The board  
17 shall meet at the call of the chairperson and as may be provided in  
18 the bylaws.

19 (4) The board shall keep a written or printed record of each  
20 meeting, which record and any other document or record prepared,  
21 owned, used, in the possession of, or retained by the council in  
22 the performance of an official function shall be made available to  
23 the public in compliance with the freedom of information act, 1976  
24 PA 442, MCL 15.231 to 15.246.

25 (5) The board shall provide for a system of accounts for the  
26 council to conform to a uniform system required by law and for the  
27 auditing of the accounts of the council. The board shall obtain an

1 annual audit of the council by an independent certified public  
2 accountant and report on the audit and auditing procedures in the  
3 manner provided by sections 6 to 13 of the uniform budgeting and  
4 accounting act, 1968 PA 2, MCL 141.426 to 141.433. The audit also  
5 shall be in accordance with generally accepted government auditing  
6 standards.

7 (6) Before the beginning of each fiscal year, the board shall  
8 cause to be prepared a budget for the council. The board shall  
9 adopt a budget for the fiscal year in accordance with the uniform  
10 budget and accounting act, 1968 PA 2, MCL 141.421 to 141.440a.

11 Sec. 6. (1) A board member shall discharge the duties of his  
12 or her position in a nonpartisan manner, in good faith, and with  
13 the degree of diligence, care, and skill that an ordinarily prudent  
14 person would exercise under similar circumstances in a like  
15 position. In discharging his or her duties, the board member or an  
16 officer, employee, or agent of the council, if acting in good  
17 faith, may rely upon any of the following:

18 (a) The opinion of counsel for the council.

19 (b) The report of an independent appraiser selected by the  
20 board.

21 (c) Financial statements of the council represented to the  
22 board member to be correct by the officer or agent of the council  
23 having charge of its books of account or stated in a written report  
24 by the state auditor general or a certified public accountant, or a  
25 firm of certified accountants, to reflect the financial condition  
26 of the council.

27 (2) A board member is not subject to personal liability if



1 acting in good faith within the scope of his or her authority or on  
2 account of liability of the council, and the board may indemnify a  
3 board member or an officer, appointee, or employee of the council  
4 against liability arising out of the discharge of his or her  
5 official duties.

6 (3) Board members and officers and employees of the council  
7 are public servants subject to 1968 PA 317, MCL 15.321 to 15.330,  
8 and are subject to any other applicable law with respect to  
9 conflicts of interest. The board shall establish policies and  
10 procedures requiring periodic disclosure of relationships which may  
11 give rise to conflicts of interest. The board shall require that a  
12 board member with a direct interest in any matter before the board  
13 disclose the board member's interest and any reasons reasonably  
14 known to the board member or officer why the transaction may not be  
15 in the best interest of the public or the council before the board  
16 takes any action with respect to the matter. The disclosure shall  
17 become part of the record of the council's proceedings. The board  
18 shall establish policies that are no less stringent than those  
19 provided for public officers and employees by 1973 PA 196, MCL  
20 15.341 to 15.348, and coordinate efforts for the board to preclude  
21 the opportunity for and the occurrence of transactions by the  
22 council that would create a conflict of interest involving board  
23 members and officers or employees of the council.

24 (4) Board members shall serve without compensation but may be  
25 reimbursed for actual and necessary expenses incurred while  
26 attending board meetings or performing other authorized official  
27 business of the council.

1           (5) The governor may remove a board member from office for  
2 gross neglect of duty, corrupt conduct in office, or any other  
3 misfeasance or malfeasance in office.

4           Sec. 7. The board shall select and retain a chief executive  
5 officer for the council. The chief executive officer shall  
6 administer the council in accordance with the operating budget  
7 adopted by the board, general policy guidelines established by the  
8 board, other applicable governmental procedures and policies, and  
9 this act. The chief executive officer shall be responsible for the  
10 day-to-day operations of the council and supervision of all council  
11 employees. All terms and conditions of the chief executive  
12 officer's employment by the council shall be specified in a written  
13 contract between the chief executive and the board. The chief  
14 executive officer shall serve at the pleasure of the board.

15           Sec. 8. (1) Except as otherwise provided in this act, the  
16 council may do all things necessary or convenient to implement the  
17 purposes, objectives, and provisions of this act and the purposes,  
18 objectives, and jurisdictions vested in the council or the board by  
19 this act or other law, including, but not limited to, all of the  
20 following:

21           (a) Adopt and use a corporate seal.

22           (b) Adopt, amend, and repeal bylaws for the regulation of its  
23 affairs and the conduct of its business.

24           (c) Sue and be sued in its own name and plead and be  
25 impleaded.

26           (d) Incur debts, liabilities, and obligations.

27           (e) Fix and collect charges, rates, rents, fares, fees, loan

1 repayments, loan interest rates, or other charges on loans.

2 (f) Make and enter into contracts, agreements, or instruments  
3 necessary, incidental, or convenient to the performance of its  
4 duties and execution of its powers, duties, and jurisdictions under  
5 this act with any federal, state, local, or intergovernmental  
6 government agency or with any other person or entity, public or  
7 private, upon terms and conditions acceptable to the council.

8 (g) Solicit, receive, and accept gifts, grants, labor, loans,  
9 contributions of money, property, or other things of value, and  
10 other aid or payment from any federal, state, local, or  
11 intergovernmental government agency or from any other person or  
12 entity, public or private, upon terms and conditions acceptable to  
13 the council, or participate in any other way in a federal, state,  
14 local, or intergovernmental government program.

15 (h) Make application for and receive loans, grants,  
16 guarantees, or other financial assistance from any state, federal,  
17 local, or intergovernmental government agency or from any other  
18 source, public or private.

19 (i) Procure insurance or become a self-funded insurer against  
20 loss in connection with the property, assets, or activities of the  
21 council.

22 (j) Indemnify and procure insurance indemnifying board members  
23 from personal loss or accountability for liability asserted by a  
24 person with regard to bonds or other obligations of the council, or  
25 from any personal liability or accountability by reason of the  
26 issuance of the bonds or other obligations or by reason of any  
27 other action taken or the failure to act by the council.

1           (k) Invest money of the council under, at the discretion of  
2 the board, in instruments, obligations, securities, or property  
3 determined proper by the board and name and use depositories for  
4 council money. Investments shall be made consistent with an  
5 investment policy adopted by the board that complies with 1943 PA  
6 20, MCL 129.91 to 129.97a.

7           (l) Contract for goods and services as necessary.

8           (m) Employ, appoint, engage, compensate, and transfer legal  
9 and technical experts, other officers, agents, employees, or other  
10 personnel, permanent or temporary, as considered necessary by the  
11 board.

12           (n) Contract for the services of persons or entities for  
13 rendering professional or technical assistance, including, but not  
14 limited to, consultants, managers, legal counsel, engineers,  
15 accountants, and auditors.

16           (o) Establish and maintain an office.

17           (p) Acquire by gift, devise, transfer, exchange, purchase,  
18 lease, or otherwise on terms and conditions and in a manner the  
19 council considers proper property or rights or interests in  
20 property. Property or rights or interests in property acquired by  
21 the council may be by purchase contract, lease purchase, agreement,  
22 installment sales contract, land contract, or otherwise.

23           (q) Hold, clear, remediate, improve, maintain, manage,  
24 protect, control, sell, exchange, lease, or grant easements and  
25 licenses on property or rights or interests in property that the  
26 council acquires, holds, or controls.

27           (r) Convey, sell, transfer, exchange, lease, or otherwise

1 dispose of property or rights or interest in property to any person  
2 or entity on terms and conditions, and in a manner and for  
3 consideration the council considers proper, fair, and valuable.

4 (s) Promulgate necessary rules and regulations and provide for  
5 their enforcement to accomplish the purposes of this act.

6 (t) Do all other acts and things necessary or convenient to  
7 exercise the powers, duties, and jurisdictions of the council under  
8 this act or other laws that relate to the purposes, powers, duties,  
9 and jurisdictions of the council.

10 (2) Notwithstanding any other provision of law to the  
11 contrary, the council shall not have the power to impose or levy a  
12 tax.

13 Sec. 9. (1) The council shall do all of the following:

14 (a) Seek to promote and coordinate effective and efficient  
15 personal assistance services.

16 (b) Create and maintain 1 or more registries of providers in  
17 this state as follows:

18 (i) Develop and apply standards and procedures for qualifying  
19 persons to serve as providers who seek placement on a registry  
20 maintained by the council and removal of providers from a registry  
21 for cause.

22 (ii) Develop a review process for persons denied a listing on  
23 or removed from a registry. Registry membership shall be at the  
24 sole discretion of the council.

25 (iii) Provide lists of available persons listed on a registry,  
26 by geographic area or in other accessible form, to consumers upon  
27 request and inform consumers, or their representatives, of the

1 background and qualifications of the persons and that the consumers  
2 or their representatives are free to select or reject any referrals  
3 made through the council.

4 (c) Espouse, support, and work to preserve consumer selection  
5 and self-direction of providers.

6 (d) Provide support to providers through a variety of methods  
7 aimed at encouraging competence, achieving quality services for  
8 consumers, and improving provider retention through improved job  
9 satisfaction.

10 (e) Protect the confidential status of information relating to  
11 consumers, subject to waiver by the consumers or their  
12 representatives, and assure that the activities of the council  
13 comply with the requirements of state and federal law.

14 (f) Subject to department approval and legislative  
15 authorization, establish the wages and other economic benefits of  
16 providers.

17 (2) The relationship between the council and its providers  
18 shall be consistent with the principles of consumer self-direction,  
19 preserving the consumer's exclusive right to select, direct, and  
20 remove a provider who renders personal assistance services to the  
21 consumer.

22 (3) The council may perform any of the following functions for  
23 providers and consumers:

24 (a) Assist consumers in making a decision of whom to employ to  
25 provide personal assistance services, how the personal assistance  
26 services will be provided, and how long the employed provider will  
27 render the personal assistance services.

1 (b) Facilitate and coordinate orientation processes to assist  
2 providers in the performance of authorized services, with the  
3 consent of and direction from consumers or their representatives.

4 (c) Develop recruitment and retention programs to expand the  
5 pool of available, qualified providers.

6 (d) Assist consumers by designating persons as meeting minimum  
7 qualification criteria for providing personal assistance services  
8 as established by the council.

9 (e) Provide or facilitate provision of provider training and  
10 otherwise assist providers through the dissemination of information  
11 that assists them to be successful in rendering personal assistance  
12 services to consumers.

13 (f) Develop a system to facilitate the provision of routine,  
14 emergency, and respite referrals for the provision of personal  
15 assistance services through a pool of back-up providers, with the  
16 ability to provide on-call service available 24 hours a day, 7 days  
17 a week.

18 (g) Encourage and solicit private and public sector  
19 involvement, support, and financing for the council.

20 (h) Develop methods of ongoing communication and information  
21 sharing with providers and consumers that supports and facilitates  
22 a positive relationship between providers and consumers and their  
23 representatives.

24 (i) Assist providers with addressing barriers to employment by  
25 supplying providers with information, referrals, or assisting with  
26 access to services supportive to providers such as child care,  
27 transportation, and indigent health care benefits.

1 (j) Facilitate compliance with applicable medicaid regulations  
2 and policies, or those of private sector payers.

3 (k) Facilitate and coordinate advanced training for providers.

4 (l) Facilitate and coordinate mentoring for consumers and  
5 providers with the goal of supporting successful consumer-provider  
6 relationships, including a strong consumer-employer role.

7 (m) Perform the functions described in this act in relation to  
8 individual providers of personal assistance services and similar  
9 services under other publicly and privately funded programs.

10 (n) Facilitate the development of mentoring programs for  
11 providers and consumers.

12 (o) Authorize provider time sheets or vouchers.

13 (p) Supervise the completion, submittal, and issuance of  
14 employment-related forms and data required by law.

15 (q) Withhold and deposit state and federal income taxes, if  
16 requested.

17 (r) Complete and submit claims for reimbursement for  
18 authorized services rendered by providers as verified by consumers.

19 (s) Inform providers about the earned income tax credit  
20 provisions of state and federal tax law and manage advanced earned  
21 income tax credit payments when appropriate.

22 (t) Inform providers about other public benefits to which they  
23 may be entitled.

24 (4) The department may reimburse the council for services  
25 rendered by providers to consumers in addition to personal  
26 assistance services.

27 (5) The council may enter into agreements, contracts, or



1 arrangements with a governmental entity or other persons necessary  
2 or appropriate to assist the council in carrying out its duties and  
3 functions under this act.

4 (6) The council may participate with this state in enhancing  
5 federal funding for the provision of personal assistance services.

6 (7) The council may receive local, state, federal, and other  
7 funds to pay for personal assistance services and to accomplish the  
8 purposes of this act. Funds to support the operation of the council  
9 may be provided by the department.

10 (8) To the extent permitted under the law of this state, the  
11 council may elect to become a participating municipality on behalf  
12 of council employees under the municipal employees retirement act  
13 of 1984, 1984 PA 427, MCL 38.1501 to 38.1555.

14 Sec. 10. The council shall comply with all applicable law  
15 prohibiting discrimination. The council shall not fail or refuse to  
16 hire, recruit, or promote, demote, discharge, or otherwise  
17 discriminate against a person with respect to employment,  
18 compensation, or a term, condition, or privilege of employment  
19 because of religion, race, color, national origin, age, sex, sexual  
20 orientation, height, weight, marital status, partisan  
21 considerations, or a disability or genetic information that is  
22 unrelated to the person's ability to perform the duties of a  
23 particular job or position. The council shall not limit, segregate,  
24 or classify an employee or applicant for employment in a way that  
25 deprives or tends to deprive the employee or applicant of an  
26 employment opportunity or otherwise adversely affects the status of  
27 an employee or applicant because of religion, race, color, national

1 origin, age, sex, sexual orientation, height, weight, marital  
2 status, partisan considerations, or a disability or genetic  
3 information that is unrelated to the person's ability to perform  
4 the duties of a particular job or position. The council shall not  
5 provide services in a manner that discriminates against a person  
6 with respect to employment, compensation, or a term, condition, or  
7 privilege of employment because of religion, race, color, national  
8 origin, age, sex, sexual orientation, height, weight, marital  
9 status, partisan considerations, or a disability or genetic  
10 information that is unrelated to the person's ability to receive  
11 services from the council.

12       Sec. 11. The council, the department, and any other necessary  
13 state departments or agencies shall seek any form of federal  
14 approval needed to implement the provisions of this act.

15       Sec. 12. This act shall be construed liberally to effectuate  
16 the legislative intent and the purpose of this act. All powers  
17 granted in this act shall be broadly interpreted to effectuate the  
18 intent and purposes of this act.