

Chapter 171

(House Bill 171)

AN ACT concerning

Collective Bargaining – Independent Home Care Providers

FOR the purpose of establishing collective bargaining rights for certain independent home care providers; providing that there may be only one appropriate bargaining unit for certain independent home care providers; authorizing providers to designate an exclusive representative; requiring that certain procedures relating to the election and certification of an exclusive representative, collective bargaining process, and bargaining agreements be governed by certain provisions of the collective bargaining law for State employees; prohibiting the State Labor Relations Board from conducting a certain election within a certain period; requiring an exclusive representative to represent all independent home care providers, whether or not they are members of the provider organization; providing for the scope of collective bargaining for independent home care providers; authorizing collective bargaining negotiations pertaining to independent home care providers to include, ~~under certain circumstances~~ subject to certain conditions, negotiations relating to the right of an employee organization to receive service fees from nonmembers; requiring an exclusive representative, if a memorandum of understanding contains a certain service fee provision, to provide notice of the service fee provision to independent home care providers before a certain vote is held; providing that certain independent home care providers are not required to pay certain fees and are required to make certain other payments; specifying that the certification of certain exclusive representatives under this Act does not prevent provider organizations or other persons from communicating with or appearing before or making proposals to certain State agencies at a public meeting or hearing; prohibiting a provider organization from calling or directing a strike; providing that the provisions of this Act may not alter certain rights of home care consumers with regard to independent home care providers; declaring the intent of the General Assembly as it relates to the application of a certain exemption to State and federal antitrust laws; providing for the application and construction of this Act; providing that a certain provider organization certified as the majority representative in a certain election pursuant to a certain Executive Order shall continue as the exclusive representative without the requirement of an additional election and certification; defining certain terms; declaring that the provisions of this Act are severable; and generally relating to collective bargaining for independent home care providers.

BY adding to

Article – Health – General

Section 15–901 through 15–907 to be under the new subtitle “Subtitle 9. Collective Bargaining by Independent Home Care Providers”

Annotated Code of Maryland

(2009 Replacement Volume and 2010 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health – General

SUBTITLE 9. COLLECTIVE BARGAINING BY INDEPENDENT HOME CARE PROVIDERS.

15–901.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “INDEPENDENT HOME CARE PROVIDER” MEANS AN INDIVIDUAL WHO:

(1) PROVIDES HOME CARE SERVICES THAT ARE DIRECTLY REIMBURSED BY THE STATE OR A FISCAL INTERMEDIARY FUNCTIONING ON BEHALF OF THE STATE, AND NOT BY AN AGENCY OR BUSINESS THAT EMPLOYS EMPLOYEES OR REFERS INDEPENDENT CONTRACTORS AS HOME CARE PROVIDERS, UNDER:

(i) THE MEDICAID WAIVER FOR OLDER ADULTS THAT IS JOINTLY ADMINISTERED BY THE DEPARTMENT AND THE DEPARTMENT OF AGING AS ESTABLISHED UNDER § 15–132 OF THIS TITLE, OR ANY SUCCESSOR PROGRAM;

(ii) THE MEDICAID PERSONAL CARE PROGRAM UNDER THE STATE MEDICAL ASSISTANCE PROGRAM, OR ANY SUCCESSOR PROGRAM;

(iii) THE LIVING AT HOME WAIVER PROGRAM UNDER SUBTITLE 8 OF THIS TITLE, OR ANY SUCCESSOR PROGRAM; AND

(iv) THE IN-HOME AIDE SERVICE PROGRAM ADMINISTERED BY THE DEPARTMENT OF HUMAN RESOURCES, OR ANY SUCCESSOR PROGRAM; ~~AND~~

(2) IS NOT EMPLOYED OR REFERRED BY A PRIVATE AN AGENCY OR BUSINESS THAT EMPLOYS EMPLOYEES OR REFERS INDEPENDENT CONTRACTORS AS HOME CARE PROVIDERS;

(3) CONTRACTS DIRECTLY WITH A PROGRAM PARTICIPANT FOR HOME CARE SERVICES; AND

(4) PROVIDES HOME CARE SERVICES TO A PROGRAM PARTICIPANT PERSONALLY AND DOES NOT SUBCONTRACT WITH ANY OTHER PARTY TO PROVIDE THE SERVICES TO A PROGRAM PARTICIPANT.

(c) (1) "PROVIDER ORGANIZATION" MEANS AN ORGANIZATION THAT:

~~(1)~~ (i) INCLUDES INDEPENDENT HOME CARE PROVIDERS; AND

~~(2)~~ (ii) HAS AS ONE OF ITS PURPOSES THE REPRESENTATION OF INDEPENDENT HOME CARE PROVIDERS IN THEIR RELATIONS WITH THE STATE.

(2) "PROVIDER ORGANIZATION" DOES NOT INCLUDE AN AGENCY OR BUSINESS THAT EMPLOYS EMPLOYEES OR REFERS INDEPENDENT CONTRACTORS AS HOME CARE PROVIDERS.

15-902.

IN ACCORDING INDEPENDENT HOME CARE PROVIDERS AND THEIR REPRESENTATIVES RIGHTS UNDER THIS SUBTITLE, IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE STATE ACTION EXEMPTION TO THE APPLICATION OF FEDERAL AND STATE ANTITRUST LAWS BE FULLY AVAILABLE TO THE EXTENT THAT THE ACTIVITIES OF THE INDEPENDENT HOME CARE PROVIDERS AND THEIR REPRESENTATIVES ARE AUTHORIZED UNDER THIS TITLE.

15-903.

(A) THERE SHALL BE ONLY ONE APPROPRIATE BARGAINING UNIT OF INDEPENDENT HOME CARE PROVIDERS IN THE STATE.

(B) INDEPENDENT HOME CARE PROVIDERS MAY DESIGNATE, IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBTITLE, WHICH PROVIDER ORGANIZATION, IF ANY, SHALL BE THE EXCLUSIVE REPRESENTATIVE OF ALL INDEPENDENT HOME CARE PROVIDERS IN THE STATE.

(C) (1) THE ELECTION AND CERTIFICATION OF THE EXCLUSIVE REPRESENTATIVE OF INDEPENDENT HOME CARE PROVIDERS SHALL BE GOVERNED BY THE PROCEDURES SET FORTH IN TITLE 3, SUBTITLE 4 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.

(2) ALL ELECTIONS SHALL BE CONDUCTED BY THE STATE LABOR RELATIONS BOARD AND SUBJECT TO THE REQUIREMENTS AND LIMITATIONS OF TITLE 3, SUBTITLE 4 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.

(3) THE STATE LABOR RELATIONS BOARD MAY NOT CONDUCT AN ELECTION FOR AN EXCLUSIVE REPRESENTATIVE IF AN ELECTION OR CERTIFICATION OF AN EXCLUSIVE REPRESENTATIVE HAS TAKEN PLACE WITHIN THE PRECEDING 2 YEARS.

(4) A PROVIDER ORGANIZATION DESIGNATED AS THE EXCLUSIVE REPRESENTATIVE SHALL REPRESENT ALL INDEPENDENT HOME CARE PROVIDERS IN THE STATE FAIRLY AND WITHOUT DISCRIMINATION, WHETHER OR NOT THE INDEPENDENT HOME CARE PROVIDERS ARE MEMBERS OF THE PROVIDER ORGANIZATION.

15-904.

(A) THE DEPARTMENT AND THE DEPARTMENTS OF HUMAN RESOURCES AND AGING SHALL DESIGNATE APPROPRIATE REPRESENTATIVES TO PARTICIPATE IN COLLECTIVE BARGAINING WITH THE PROVIDER ORGANIZATION CERTIFIED AS THE EXCLUSIVE REPRESENTATIVE OF INDEPENDENT HOME CARE PROVIDERS.

(B) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, THE PARTIES SHALL ADHERE TO THE BARGAINING PROCESS SET FORTH IN § 3-501 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.

(C) THE STATE AGENCIES SPECIFIED IN SUBSECTION (A) OF THIS SECTION THAT ARE ENGAGED IN BARGAINING SHALL NEGOTIATE, IN CONSULTATION WITH THE DEPARTMENT OF BUDGET AND MANAGEMENT, ALL MATTERS THAT REQUIRE APPROPRIATION OF STATE FUNDS.

(D) COLLECTIVE BARGAINING SHALL INCLUDE ALL MATTERS RELATING TO THE TERMS AND CONDITIONS OF PARTICIPATION BY INDEPENDENT HOME CARE PROVIDERS IN THE PROVISION OF HOME CARE SERVICES UNDER THE PROGRAMS SPECIFIED IN § 15-901(B) OF THIS SUBTITLE, INCLUDING:

(1) REIMBURSEMENT RATES;

- (2) BENEFITS;
- (3) PAYMENT PROCEDURES;
- (4) CONTRACT GRIEVANCE PROCEDURES;
- (5) TRAINING;
- (6) MEMBER DUES DEDUCTIONS; AND

(7) OTHER TERMS AND CONDITIONS OF PARTICIPATION BY INDEPENDENT HOME CARE PROVIDERS IN THE PROVISION OF HOME CARE SERVICES UNDER THE PROGRAMS SPECIFIED IN § 15-901(B) OF THIS SUBTITLE.

(E) (1) (I) ~~SUBJECT TO SUBPARAGRAPH (II)~~ SUBPARAGRAPHS (II) AND (III) OF THIS PARAGRAPH, COLLECTIVE BARGAINING MAY INCLUDE NEGOTIATIONS RELATING TO THE RIGHT OF A PROVIDER ORGANIZATION THAT IS THE EXCLUSIVE REPRESENTATIVE TO RECEIVE SERVICE FEES FROM NONMEMBERS.

(II) THE REPRESENTATIVES OF THE STATE MAY NOT REACH AN AGREEMENT CONTAINING A SERVICE FEE PROVISION UNLESS THE REPRESENTATIVES OF THE STATE CONCLUDE THAT THE AGREEMENT AS A WHOLE WILL NOT ADVERSELY IMPACT NONMEMBER PROVIDERS.

(III) THE REPRESENTATIVES OF THE STATE MAY ONLY AGREE TO A SERVICE FEE PROVISION IF THE SERVICE FEE PROVISION WOULD REQUIRE NONMEMBERS TO PAY SERVICE FEES ON A SLIDING SCALE IN APPROXIMATE PROPORTION TO THE AMOUNT EACH NONMEMBER RECEIVES IN REIMBURSEMENT THROUGH:

1. THE MEDICAID WAIVER FOR OLDER ADULTS THAT IS JOINTLY ADMINISTERED BY THE DEPARTMENT AND THE DEPARTMENT OF AGING AS ESTABLISHED UNDER § 15-132 OF THIS TITLE, OR ANY SUCCESSOR PROGRAM;

2. THE MEDICAID PERSONAL CARE PROGRAM UNDER THE STATE MEDICAL ASSISTANCE PROGRAM, OR ANY SUCCESSOR PROGRAM;

3. THE LIVING AT HOME WAIVER PROGRAM UNDER SUBTITLE 8 OF THIS TITLE, OR ANY SUCCESSOR PROGRAM; AND

4. THE IN-HOME AIDE SERVICE PROGRAM ADMINISTERED BY THE DEPARTMENT OF HUMAN RESOURCES, OR ANY SUCCESSOR PROGRAM.

(2) AN INDEPENDENT HOME CARE PROVIDER WHOSE RELIGIOUS BELIEFS ARE OPPOSED TO JOINING OR FINANCIALLY SUPPORTING ANY COLLECTIVE BARGAINING ORGANIZATION:

(I) IS NOT REQUIRED TO PAY A SERVICE FEE; BUT

(II) SHALL PAY AN AMOUNT OF MONEY AS DETERMINED IN COLLECTIVE BARGAINING NEGOTIATIONS, NOT TO EXCEED ANY SERVICE FEE NEGOTIATED UNDER PARAGRAPH (1) OF THIS SUBSECTION, TO ANY CHARITABLE ORGANIZATION EXEMPT FROM TAXATION UNDER § 501(C)(3) OF THE INTERNAL REVENUE CODE AND TO FURNISH TO THE STATE AGENCIES ENGAGED IN COLLECTIVE BARGAINING UNDER THIS SUBTITLE AND THE EXCLUSIVE REPRESENTATIVE WRITTEN PROOF OF THE PAYMENT.

(3) (I) AN INDEPENDENT HOME CARE PROVIDER WHO PROVIDES HOME CARE SERVICES ONLY TO AN IMMEDIATE FAMILY MEMBER IS NOT REQUIRED TO PAY A SERVICE FEE.

(II) AN INDEPENDENT HOME CARE PROVIDER WHO PROVIDES SERVICES TO AN IMMEDIATE FAMILY MEMBER AND ANY OTHER INDIVIDUAL WHO IS NOT AN IMMEDIATE FAMILY MEMBER MAY BE REQUIRED TO PAY A SERVICE FEE THAT IS PROPORTIONATE TO THE AMOUNT THE PROVIDER RECEIVES IN REIMBURSEMENT FOR THE PROVIDER'S SERVICES TO ANY INDIVIDUAL WHO IS NOT AN IMMEDIATE FAMILY MEMBER.

(III) AN INDEPENDENT HOME CARE PROVIDER MAY BE REQUIRED TO PROVIDE WRITTEN DOCUMENTATION OF THE PROVISION OF HOME CARE SERVICES TO AN IMMEDIATE FAMILY MEMBER.

(F) NOTWITHSTANDING SUBSECTION (D) OF THIS SECTION, THE REPRESENTATIVES OF THE STATE:

(1) MAY NOT BE REQUIRED TO NEGOTIATE ANY MATTER THAT IS INCONSISTENT WITH APPLICABLE LAW; AND

(2) MAY NEGOTIATE AND REACH AGREEMENT WITH REGARD TO ANY MATTER THAT IS INCONSISTENT WITH APPLICABLE LAW ONLY IF IT IS UNDERSTOOD THAT THE AGREEMENT WITH RESPECT TO THE MATTER CANNOT

BECOME EFFECTIVE UNLESS THE APPLICABLE LAW IS AMENDED BY THE GENERAL ASSEMBLY IN A MANNER THAT ELIMINATES INCONSISTENCY.

(G) (1) THE PARTIES SHALL REDUCE THEIR AGREEMENT TO A MEMORANDUM OF UNDERSTANDING THAT COMPLIES WITH THE PROVISIONS OF § 3-601 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.

(2) IF THE MEMORANDUM OF UNDERSTANDING CONTAINS A SERVICE FEE PROVISION, BEFORE THE VOTE TO RATIFY THE MEMORANDUM OF UNDERSTANDING IS HELD, THE EXCLUSIVE REPRESENTATIVE SHALL PROVIDE NOTICE THAT THE MEMORANDUM OF UNDERSTANDING CONTAINS A PROVISION FOR A SERVICE FEE THAT WILL BE CHARGED ON A SLIDING SCALE TO INDEPENDENT HOME CARE PROVIDERS.

15-905.

THE CERTIFICATION OF AN EXCLUSIVE REPRESENTATIVE OF INDEPENDENT HOME CARE PROVIDERS BY THE STATE AGENCIES ENGAGED IN COLLECTIVE BARGAINING UNDER THIS SUBTITLE DOES NOT PREVENT THE CERTIFIED PROVIDER ORGANIZATION OR ANY OTHER ORGANIZATION OR INDIVIDUAL FROM COMMUNICATING WITH ANY STATE OFFICIAL ON MATTERS OF INTEREST, INCLUDING APPEARING BEFORE OR MAKING PROPOSALS TO THE STATE AGENCIES ENGAGED IN COLLECTIVE BARGAINING AT A PUBLIC MEETING OR HEARING OR AT ANY OTHER FORUM OF THE STATE AGENCIES.

15-906.

(A) A PROVIDER ORGANIZATION MAY NOT CALL OR DIRECT A STRIKE OR OTHER COLLECTIVE CESSATION OF THE DELIVERY OF SERVICES.

(B) THIS SUBTITLE MAY NOT BE CONSTRUED TO GRANT ANY RIGHT, OR IMPLY THAT INDEPENDENT HOME CARE PROVIDERS HAVE ANY RIGHT, TO ENGAGE IN A STRIKE OR OTHER COLLECTIVE CESSATION OF THE DELIVERY OF SERVICES.

15-907.

(A) THIS SUBTITLE MAY NOT BE CONSTRUED TO MAKE INDEPENDENT HOME CARE PROVIDERS EMPLOYEES OF THE STATE.

(B) THIS SUBTITLE MAY NOT BE CONSTRUED IN ANY WAY TO DENY PROGRAM RECIPIENTS OF INDEPENDENT HOME CARE SERVICES THE RIGHT TO SELECT, DIRECT, AND TERMINATE THE SERVICES OF INDEPENDENT HOME CARE PROVIDERS.

SECTION 2. AND BE IT FURTHER ENACTED, That, notwithstanding the provisions of § 15–903 of the Health – General Article as enacted by Section 1 of this Act, the provider organization certified as the majority representative of independent home care providers in the election held pursuant to Executive Order 01.01.2007.15 prior to the effective date of this Act shall continue as the exclusive representative without the requirement of an additional election and certification.

SECTION 3. AND BE IT FURTHER ENACTED, That if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

SECTION 4. AND BE IT FURTHER ENACTED, That:

(a) On or before December 31 of each year through 2014, the Department of Health and Mental Hygiene shall report to the Senate Finance Committee and the House ~~Economic Matters~~ Appropriations Committee, in accordance with § 2–1246 of the State Government Article, on the status of the independent home care providers participating in the programs specified in § 15–901(b) of the Health – General Article as enacted by Section 1 of this Act.

(b) The report shall include:

(1) the number of independent home care providers participating in the programs and the number of consumers served by the programs;

(2) the number of independent home care providers who join the collective bargaining unit established under this Act and the number of consumers served by each of the providers; and

(3) an analysis of any positive or negative trends resulting from the implementation of this Act.

SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 10, 2011.