
By: **Delegates Hubbard, Benson, Haynes, Morhaim, Murray,
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Introduced and read first time: February 7, 2003

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Quality Home Care Services Commission**

3 FOR the purpose of establishing the Maryland Quality Home Care Services
4 Commission; providing for the purpose and composition of the Commission;
5 providing for the terms of members of the Commission; requiring the
6 Commission to appoint an executive director; requiring the Commission to
7 establish certain qualifications and requirements, provide certain training
8 opportunities, provide certain referrals, and coordinate with certain agencies;
9 authorizing the Commission to advise certain agencies on certain regulations;
10 prohibiting the Commission from providing a certain referral under certain
11 circumstances; authorizing the Commission to adopt certain regulations;
12 authorizing the Commission to engage in carrying out certain provisions;
13 requiring the Commission to be considered an employer of certain providers for
14 certain purposes; authorizing certain providers to engage in certain collective
15 bargaining activities; prohibiting a certain provider or group of providers from
16 engaging in certain activities related to a strike; prohibiting certain wage and
17 benefit increases from taking effect without approval of the General Assembly;
18 prohibiting a certain provider from being considered as a certain employee;
19 prohibiting the Commission from being considered the employer of a certain
20 provider for certain purposes; providing that consumers have certain rights
21 concerning the employment of certain providers; prohibiting the Commission
22 from reducing certain hours of certain services; providing for a certain
23 construction of this Act; requiring the Commission, in consultation with certain
24 entities, to submit a certain report on or before a certain date; requiring the
25 report to include certain information; specifying the terms of the initial
26 members of the Commission; authorizing the Commission to be eligible to
27 participate in a certain employees' system; defining certain terms; and generally
28 relating to the Maryland Quality Home Care Services Commission.

29 BY adding to
30 Article - Health - General
31 Section 20-801 through 20-810, inclusive, to be under the new subtitle "Subtitle
32 8. Maryland Quality Home Care Services Commission"
33 Annotated Code of Maryland

1 (2000 Replacement Volume and 2002 Supplement)

2 BY repealing and reenacting, without amendments,
3 Article - State Personnel and Pensions
4 Section 31-101(a) and (f)
5 Annotated Code of Maryland
6 (1997 Replacement Volume and 2002 Supplement)

7 BY repealing and reenacting, with amendments,
8 Article - State Personnel and Pensions
9 Section 31-102
10 Annotated Code of Maryland
11 (1997 Replacement Volume and 2002 Supplement)

12 Preamble

13 WHEREAS, Thousands of Maryland seniors and individuals with disabilities
14 live independently in their own homes, which they prefer and which are less costly
15 than institutional care such as nursing homes; and

16 WHEREAS, Many Maryland seniors and individuals with disabilities currently
17 receive personal home care services from individual providers hired directly by the
18 individuals under State and federally funded programs; and

19 WHEREAS, Quality personal home care services allow Maryland seniors,
20 individuals with disabilities, and the individuals' families the choice of allowing
21 seniors and individuals with disabilities to remain in their homes, rather than forcing
22 them into institutional care; and

23 WHEREAS, Home and community-based options are less costly than nursing
24 homes and other institutional care, and therefore save Maryland taxpayers
25 significant amounts of money; and

26 WHEREAS, There is a growing shortage of qualified individuals to provide
27 personal home care services to seniors and individuals with disabilities in the State,
28 and Maryland's Task Force on Personal Care in 1999 found "a documented problem in
29 securing and retaining quality care givers" due, in part, to a lack of consumer
30 involvement and inadequate State coordination; and

31 WHEREAS, Consumers are well served by programs that support
32 self-direction, individual autonomy, dignity, and choice; now, therefore

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

Article - Health - General

SUBTITLE 8. MARYLAND QUALITY HOME CARE SERVICES COMMISSION.

20-801.

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

(B) (1) "AGENCY" MEANS A STATE OR LOCAL AGENCY THAT COORDINATES PERSONAL HOME CARE SERVICES THROUGH AN INDIVIDUAL PROVIDER PROGRAM.

(2) "AGENCY" INCLUDES:

(I) THE DEPARTMENT;

(II) THE DEPARTMENT OF HUMAN RESOURCES; AND

(III) THE DEPARTMENT OF AGING.

(C) "COMMISSION" MEANS THE MARYLAND QUALITY HOME CARE SERVICES COMMISSION.

(D) "CONSUMER" MEANS AN INDIVIDUAL WHO RECEIVES PERSONAL HOME CARE SERVICES FROM AN INDIVIDUAL PROVIDER THROUGH AN INDIVIDUAL PROVIDER PROGRAM.

(E) (1) "INDIVIDUAL PROVIDER" MEANS AN INDIVIDUAL WHO CONTRACTS WITH AN AGENCY TO PROVIDE PERSONAL HOME CARE SERVICES TO A CONSUMER THROUGH AN INDIVIDUAL PROVIDER PROGRAM.

(2) "INDIVIDUAL PROVIDER" INCLUDES A SELF-EMPLOYED ATTENDANT, COMMUNITY ATTENDANT, OR PERSONAL ASSISTANT PROVIDING SERVICES DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION.

(F) (1) "INDIVIDUAL PROVIDER PROGRAM" MEANS:

(I) THE MEDICAL ASSISTANCE PERSONAL CARE PROGRAM;

(II) THE COMMUNITY ATTENDANT SERVICES AND SUPPORT PROGRAM;

(III) THE WAIVER FOR OLDER ADULTS;

(IV) THE ATTENDANT CARE PROGRAM; AND

(V) THE SENIOR CARE PROGRAM.

(2) "INDIVIDUAL PROVIDER PROGRAM" DOES NOT INCLUDE:

(I) MEDICAID HOME HEALTH CARE;

- 1 (II) MEDICARE HOME HEALTH CARE;
- 2 (III) ASSISTED LIVING;
- 3 (IV) A SKILLED NURSING FACILITY SERVICE; OR
- 4 (V) ANY OTHER FACILITY-BASED SERVICES.

5 (G) "PERSONAL HOME CARE SERVICES" MEANS PERSONAL CARE OR RESPITE
6 CARE SERVICES PROVIDED TO A CONSUMER IN THE CONSUMER'S HOME THROUGH
7 AN INDIVIDUAL PROVIDER PROGRAM.

8 20-802.

9 (A) THERE IS A MARYLAND QUALITY HOME CARE SERVICES COMMISSION.

10 (B) THE PURPOSE OF THE COMMISSION IS TO:

11 (1) ENSURE THAT THE QUALITY OF PERSONAL HOME CARE SERVICES
12 PROVIDED BY INDIVIDUAL PROVIDERS IS IMPROVED THROUGH REGULATION,
13 INCREASED ACCOUNTABILITY, AND THE ENHANCED ABILITY OF CONSUMERS TO
14 OBTAIN PERSONAL HOME CARE SERVICES;

15 (2) ENCOURAGE STABILITY IN THE INDIVIDUAL PROVIDER WORKFORCE
16 THROUGH COLLECTIVE BARGAINING AND TRAINING OPPORTUNITIES; AND

17 (3) RECRUIT FOR, TRAIN, STABILIZE, AND IMPROVE THE INDIVIDUAL
18 PROVIDER WORKFORCE.

19 20-803.

20 (A) (1) THE COMMISSION CONSISTS OF 11 MEMBERS AND SIX ALTERNATE
21 MEMBERS APPOINTED BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE
22 SENATE COMMITTEE WITH JURISDICTION OVER THE COMMISSION.

23 (2) OF THE 11 MEMBERS:

24 (I) SIX MEMBERS SHALL BE CURRENT OR FORMER CONSUMERS OF
25 PERSONAL HOME CARE SERVICES; AND

26 (II) FIVE MEMBERS SHALL BE FROM EACH OF THE FOLLOWING
27 AGENCIES AND ORGANIZATIONS:

- 28 1. THE GOVERNOR'S OFFICE FOR INDIVIDUALS WITH
29 DISABILITIES;
- 30 2. THE MARYLAND MEDICAL ASSISTANCE PROGRAM;
- 31 3. THE MARYLAND STATEWIDE INDEPENDENT LIVING
32 COUNCIL;

1 4. THE MARYLAND DISABILITY LAW CENTER; AND

2 5. AN ORGANIZATION REPRESENTING SENIOR CITIZENS.

3 (3) THE SIX ALTERNATE MEMBERS:

4 (I) SHALL ATTEND AND PARTICIPATE IN COMMISSION MEETINGS;
5 AND

6 (II) MAY ONLY VOTE IN THE ABSENCE OF THE CONSUMER MEMBER
7 FOR WHOM THE INDIVIDUAL SERVES AS AN ALTERNATE.

8 (B) (1) THE TERM OF A MEMBER IS 3 YEARS.

9 (2) THE TERMS OF THE MEMBERS ARE STAGGERED AS REQUIRED BY
10 THE TERMS PROVIDED FOR MEMBERS OF THE COMMISSION ON OCTOBER 1, 2003.

11 (3) AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE UNTIL A
12 SUCCESSOR IS APPOINTED AND QUALIFIES.

13 (4) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN SERVES
14 ONLY FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED AND
15 QUALIFIES.

16 (5) A MEMBER MAY NOT SERVE MORE THAN TWO CONSECUTIVE TERMS.
17 20-804.

18 THE COMMISSION SHALL APPOINT AN EXECUTIVE DIRECTOR WHO SHALL BE
19 THE CHIEF ADMINISTRATIVE OFFICER OF THE COMMISSION.

20 20-805.

21 (A) THE COMMISSION SHALL:

22 (1) ESTABLISH QUALIFICATIONS AND REQUIREMENTS FOR AN
23 INDIVIDUAL PROVIDER THAT:

24 (I) COMPLY WITH MINIMUM REQUIREMENTS UNDER CURRENT
25 LAWS; AND

26 (II) REQUIRE CONFIRMATION THAT AN INDIVIDUAL PROVIDER IS
27 NOT LISTED ON ANY LONG-TERM CARE ABUSE AND NEGLECT REGISTRY;

28 (2) PROVIDE TRAINING OPPORTUNITIES FOR INDIVIDUAL PROVIDERS
29 AND CONSUMERS OF PERSONAL HOME CARE SERVICES;

30 (3) ESTABLISH OR USE A REFERRAL LIST OF INDIVIDUAL PROVIDERS;

31 (4) PROVIDE ROUTINE, EMERGENCY, AND RESPITE REFERRALS OF AN
32 INDIVIDUAL PROVIDER TO A CONSUMER; AND

1 (5) COORDINATE WITH AN AGENCY TO PROVIDE PERSONAL HOME CARE
2 SERVICES.

3 (B) THE COMMISSION:

4 (1) SHALL COORDINATE THE ESTABLISHMENT OR REVISION OF
5 QUALIFICATIONS AND REQUIREMENTS OF AN INDIVIDUAL PROVIDER WITH AN
6 AGENCY;

7 (2) MAY ADVISE AN AGENCY ON REGULATIONS GOVERNING
8 QUALIFICATIONS AND REQUIREMENTS OF AN INDIVIDUAL PROVIDER; AND

9 (3) MAY NOT PROVIDE A REFERRAL OF AN INDIVIDUAL PROVIDER
10 UNLESS THE INDIVIDUAL PROVIDER MEETS:

11 (I) QUALIFICATIONS AND REQUIREMENTS ESTABLISHED BY THE
12 COMMISSION; AND

13 (II) MINIMUM REQUIREMENTS FOR TRAINING ESTABLISHED BY
14 THE COMMISSION.

15 (C) THE COMMISSION MAY ADOPT REGULATIONS TO CARRY OUT THE
16 PROVISIONS OF THIS SUBTITLE.

17 20-806.

18 IN CARRYING OUT THE PROVISIONS OF THIS SUBTITLE, THE COMMISSION MAY:

19 (1) MAKE, EXECUTE, AND ENTER INTO CONTRACTS AND OTHER
20 INSTRUMENTS NECESSARY FOR THE PERFORMANCE OF ITS DUTIES, INCLUDING
21 CONTRACTS WITH PUBLIC AND PRIVATE AGENCIES, ORGANIZATIONS,
22 CORPORATIONS, AND INDIVIDUALS TO PAY THE COMMISSION FOR SERVICES
23 RENDERED OR FURNISHED;

24 (2) MAINTAIN OFFICES;

25 (3) EMPLOY AND DISCHARGE EMPLOYEES, AGENTS, AND CONTRACTORS
26 AS NECESSARY;

27 (4) PRESCRIBE EMPLOYEE DUTIES, POWERS, AND COMPENSATION;

28 (5) INCUR EXPENSES AND CREATE LIABILITIES FOR THE
29 ADMINISTRATION OF THE COMMISSION;

30 (6) SOLICIT AND ACCEPT FOR USE ANY GRANT OF MONEY, SERVICES, OR
31 PROPERTY FROM THE FEDERAL OR STATE GOVERNMENT, ANY POLITICAL
32 SUBDIVISION, OR AN AGENCY;

33 (7) COORDINATE ITS ACTIVITIES AND COOPERATE WITH SIMILAR
34 AGENCIES IN OTHER STATES;

- 1 (8) ESTABLISH A TECHNICAL ADVISORY COMMITTEE TO ASSIST THE
2 COMMISSION;
- 3 (9) RETAIN RECORDS;
- 4 (10) ENGAGE IN RESEARCH AND GATHERING OF RELEVANT STATISTICS;
- 5 (11) ACQUIRE, HOLD, OR DISPOSE OF REAL OR PERSONAL PROPERTY;
- 6 (12) CONSTRUCT, LEASE, OR OTHERWISE PROVIDE FACILITIES FOR THE
7 ADMINISTRATION OF THE COMMISSION;
- 8 (13) SUE AND BE SUED;
- 9 (14) DELEGATE AUTHORITY AS NECESSARY TO ADMINISTER THE
10 COMMISSION; AND
- 11 (15) OFFER RECRUITMENT, TRAINING, AND REFERRAL SERVICES TO
12 OUTSIDE ENTITIES FOR A FEE.

13 20-807.

14 (A) (1) THE COMMISSION SHALL BE CONSIDERED THE EMPLOYER OF AN
15 INDIVIDUAL PROVIDER FOR PURPOSES OF COLLECTIVE BARGAINING.

16 (2) AN INDIVIDUAL PROVIDER MAY:

17 (I) FORM, JOIN, AND PARTICIPATE IN AN EMPLOYEE
18 ORGANIZATION; AND

19 (II) BARGAIN COLLECTIVELY THROUGH A REPRESENTATIVE THE
20 INDIVIDUAL PROVIDER HAS CHOSEN ON MATTERS CONCERNING EMPLOYMENT
21 RELATIONS.

22 (3) AN INDIVIDUAL PROVIDER OR GROUP OF INDIVIDUAL PROVIDERS
23 MAY NOT ENGAGE IN, INDUCE, INITIATE, OR RATIFY A STRIKE.

24 (4) AN INCREASE IN INDIVIDUAL PROVIDER WAGES OR BENEFITS
25 NEGOTIATED OR AGREED TO BY THE COMMISSION MAY NOT TAKE EFFECT UNLESS
26 APPROVED BY THE GENERAL ASSEMBLY.

27 (B) AN INDIVIDUAL PROVIDER MAY NOT BE CONSIDERED AN EMPLOYEE OF
28 THE STATE.

29 (C) THE COMMISSION MAY NOT BE CONSIDERED THE EMPLOYER OF AN
30 INDIVIDUAL PROVIDER FOR PURPOSES OF VICARIOUS LIABILITY DUE TO
31 NEGLIGENCE OR AN INTENTIONAL TORT OF AN INDIVIDUAL PROVIDER.

1 20-808.

2 (A) A CONSUMER SHALL HAVE THE RIGHT TO SELECT, SUPERVISE, AND
3 TERMINATE THE WORK OF AN INDIVIDUAL PROVIDER WHO PROVIDES PERSONAL
4 HOME CARE SERVICES TO THE CONSUMER.

5 (B) THE COMMISSION MAY NOT REDUCE THE HOURS OF PERSONAL CARE
6 SERVICES PROVIDED TO A CONSUMER BELOW THE AMOUNT OF HOURS DETERMINED
7 TO BE NECESSARY BY AN AGENCY.

8 20-809.

9 NOTHING IN THE SUBTITLE MAY BE CONSTRUED TO DIMINISH OBLIGATIONS OF
10 THE STATE, A COUNTY, OR A MUNICIPAL CORPORATION TO AN INDIVIDUAL
11 PROVIDER PROGRAM, INCLUDING:

- 12 (1) PAYROLL SERVICES;
- 13 (2) FISCAL INTERMEDIARY SERVICES; OR
- 14 (3) PROVIDING PARTICULAR BENEFITS TO AN INDIVIDUAL PROVIDER.

15 20-810.

16 (A) ON OR BEFORE OCTOBER 1, 2005, THE COMMISSION, IN CONSULTATION
17 WITH THE DEPARTMENT AND THE GOVERNOR'S OFFICE FOR INDIVIDUALS WITH
18 DISABILITIES, SHALL SUBMIT A REPORT TO THE GOVERNOR AND, SUBJECT TO §
19 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY.

20 (B) THE REPORT UNDER SUBSECTION (A) OF THIS SECTION SHALL EVALUATE:

21 (1) THE COMMISSION'S PROGRESS IN IMPROVING SERVICES TO
22 CONSUMERS AND ADDRESSING IMPROVEMENTS IN PERSONAL HOME CARE
23 SERVICES BY CREATING A MORE STABLE WORKFORCE; AND

24 (2) THE ROLE OF THE COMMISSION IN ADVOCATING IMPROVEMENTS
25 FOR HOME AND COMMUNITY-BASED SERVICES IN THE STATE, INCLUDING IN
26 INDIVIDUAL PROVIDER PROGRAMS.

27 **Article - State Personnel and Pensions**

28 31-101.

29 (a) In this subtitle the following words have the meanings indicated.

30 (f) "Employees' system" means the Employees' Retirement System or the
31 Employees' Pension System.

1 31-102.

2 Subject to § 22-202(b) of this article, the governmental units that are eligible to
3 participate in the employees' systems are:

4 (1) a political subdivision of the State, including:

5 (i) a county;

6 (ii) a municipal corporation; and

7 (iii) a special taxing area; and

8 (2) the following governmental units:

9 (i) an agency on aging, as designated by the legislative body of the
10 agency on aging;

11 (ii) the Allegany County Transit Authority;

12 (iii) subject to § 31-104 of this subtitle, the Baltimore Metropolitan
13 Council;

14 (iv) a board or commission created by an Act of the General
15 Assembly for public purpose and not for the profit of a private person;

16 (v) subject to § 31-105 of this subtitle, the Canal Place
17 Preservation and Development Authority;

18 (vi) the Chesapeake Bay Commission;

19 (vii) a cooperative library commission;

20 (viii) subject to § 31-103 of this subtitle, a community action agency,
21 as designated by the legislative body of the community action agency;

22 (ix) a fire department that receives any of its funds from or through
23 a county, municipal corporation, special taxing area, or other political subdivision of
24 the State;

25 (x) the Health Planning Council of Appalachia;

26 (xi) the Howard County Economic Development Authority;

27 (xii) the Interstate Commission on the Potomac River Basin;

28 (xiii) the Lower Shore Private Industry Council, Inc.;

29 (xiv) the Maryland Environmental Service;

- 1 (xv) subject to § 31-106 of this subtitle, the Maryland Stadium
2 Authority;
- 3 (xvi) a public library association or organization;
- 4 (xvii) the St. Mary's County Nursing Home;
- 5 (xviii) the Tri-County Council for Western Maryland, Inc.;
- 6 (xix) the Tri-County Council for Southern Maryland;
- 7 (xx) subject to § 31-107 of this subtitle, the University of Maryland
8 Medical System Corporation;
- 9 (xxi) the Upper Potomac River Commission;
- 10 (xxii) subject to § 31-106.1 of this subtitle, the Maryland African
11 American Museum Corporation; [and]
- 12 (xxiii) the Garrett County Office for Children, Youth and Families;
13 AND

14 (XXIV) THE MARYLAND QUALITY HOME CARE SERVICES
15 COMMISSION.

16 SECTION 2. AND BE IT FURTHER ENACTED, That the terms of the initial
17 members of the Maryland Quality Home Care Services Commission shall expire as
18 follows:

- 19 (1) 3 consumer members and 2 of the organizational or agency members
20 in 2005; and
- 21 (2) 3 consumer members and 3 of the organizational or agency members
22 in 2006.

23 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2003.