

HOUSE BILL 1371

J1, K3

71r2498
CF SB 968

By: **Delegate Gaines**

Introduced and read first time: March 2, 2007

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Quality and Stability in the Personal Care Workforce Act**

3 FOR the purpose of granting independent providers who provide services that are
4 reimbursed under the State Medical Assistance Personal Care Program or the
5 State Waiver for Older Adults Program the right to form, join, or assist a labor
6 organization for the purpose of collective bargaining; establishing certain
7 procedures for the election of the exclusive representative of independent
8 providers; requiring the Department of Health and Mental Hygiene to issue a
9 designation letter to the exclusive representative on receipt of the election
10 results; requiring the Department to retain a copy of the designation letter and
11 forward copies to certain persons; requiring the Department to meet with
12 independent providers and their exclusive representative on certain matters
13 with the purpose of entering into a certain binding agreement; establishing the
14 membership of a certain committee; requiring the Department and the exclusive
15 representative to conclude negotiations in a certain manner; requiring the
16 Department and the exclusive representative to submit a dispute to arbitration
17 and jointly appoint an arbiter under certain circumstances; specifying that the
18 findings of the arbiter are binding on both parties; requiring the Governor to
19 include certain funds in the State budget to pay for certain costs; defining
20 certain terms; providing for the construction of this Act; making the provisions
21 of this Act severable; and generally relating to the organization of independent
22 personal care providers.

23 BY adding to

24 Article – Health – General

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 15–1A–01 through 15–1A–06 to be under the new subtitle “Subtitle 1A.
2 Organization of Personal Care Providers”
3 Annotated Code of Maryland
4 (2005 Replacement Volume and 2006 Supplement)

5 Preamble

6 WHEREAS, Independent home care providers serve thousands of vulnerable
7 consumers in Maryland; and

8 WHEREAS, Without access to these services, consumers would not be afforded
9 the opportunity to stay in their homes and in their communities; and

10 WHEREAS, Demand for home care is expected to increase dramatically in the
11 coming years; and

12 WHEREAS, It is estimated that Maryland’s senior population will grow by
13 800,000, or 73.3%, before 2020, and demand for home health, personal care, and home
14 care aides in all long–term care settings will increase by 244% in the next 50 years;
15 and

16 WHEREAS, Home care services save the State millions of dollars a year – the
17 average Medicaid expenditure in Maryland for individuals who received in–home
18 personal care services in 2003 was \$4,373 per individual per year, while the average
19 cost of nursing home care ranges between \$55,000 and \$65,000 per individual per
20 year; and

21 WHEREAS, The State is best served by an experienced, well–trained, stable
22 provider workforce that affords consumers the highest quality care possible; and

23 WHEREAS, This provider workforce is in a crisis because many providers do
24 not earn a living wage, and are not offered the training and support they need in order
25 to provide the highest quality services possible; and

26 WHEREAS, The combination of these factors causes the turnover rate in the
27 profession to top 50%, reducing the consistency and stability with which consumers
28 receive services; and

29 WHEREAS, The State recognizes the importance of these services to its
30 residents and the need to improve both the quality of care and the living and working
31 conditions of the providers; now, therefore,

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

3 **Article - Health - General**

4 **SUBTITLE 1A. ORGANIZATION OF PERSONAL CARE PROVIDERS.**

5 **15-1A-01.**

6 (A) IN THIS SUBTITLE THE FOLLOWING TERMS HAVE THE MEANINGS
7 INDICATED.

8 (B) "COLLECTIVE BARGAINING" MEANS GOOD FAITH NEGOTIATIONS
9 WITH THE DEPARTMENT BY AN AUTHORIZED EXCLUSIVE REPRESENTATIVE OF
10 INDEPENDENT PROVIDERS.

11 (C) "EXCLUSIVE REPRESENTATIVE" MEANS THE ORGANIZATION
12 ELECTED IN ACCORDANCE WITH § 15-1A-04 OF THIS SUBTITLE AND THAT
13 REPRESENTS TO THE DEPARTMENT THE INTERESTS OF THE MAJORITY OF
14 INDEPENDENT PROVIDERS.

15 (D) "INDEPENDENT PROVIDER" MEANS AN INDIVIDUAL WHO:

16 (1) PROVIDES SERVICES THAT ARE REIMBURSED UNDER:

17 (I) THE OLDER ADULTS PROGRAM; OR

18 (II) THE PERSONAL CARE PROGRAM; AND

19 (2) IS NOT EMPLOYED BY AN AGENCY.

20 (E) "LABOR ORGANIZATION" MEANS AN ORGANIZATION THAT:

21 (1) INCLUDES INDEPENDENT PROVIDERS; AND

22 (2) HAS AS ONE OF ITS PRIMARY PURPOSES THE
23 REPRESENTATION OF INDEPENDENT PROVIDERS.

24 (F) "OLDER ADULTS PROGRAM" MEANS THE STATE WAIVER FOR
25 OLDER ADULTS PROGRAM.

1 **(G) “PERSONAL CARE PROGRAM” MEANS THE STATE MEDICAL**
2 **ASSISTANCE PERSONAL CARE PROGRAM.**

3 **15-1A-02.**

4 **NOTHING IN THIS SUBTITLE SHALL BE CONSTRUED TO:**

5 **(1) GRANT INDEPENDENT PROVIDERS STATUS AS STATE**
6 **EMPLOYEES; OR**

7 **(2) DENY PROGRAM RECIPIENTS FROM PARTICIPATING IN THE**
8 **DECISION-MAKING PROCESS REGARDING THEIR CARE.**

9 **15-1A-03.**

10 **INDEPENDENT PROVIDERS SHALL HAVE THE RIGHT TO FORM, JOIN, OR**
11 **ASSIST A LABOR ORGANIZATION FOR THE PURPOSE OF COLLECTIVE**
12 **BARGAINING THROUGH REPRESENTATIVES CHOSEN BY INDEPENDENT**
13 **PROVIDERS WITHOUT INTERFERENCE, RESTRAINT, OR COERCION.**

14 **15-1A-04.**

15 **(A) THE EXCLUSIVE REPRESENTATIVE SHALL BE ELECTED BY A MAIL**
16 **BALLOT ELECTION CONDUCTED BY THE AMERICAN ARBITRATION ASSOCIATION**
17 **OR ANOTHER INDEPENDENT ARBITER WITH EXPERIENCE IN CONDUCTING**
18 **REPRESENTATIVE ELECTIONS.**

19 **(B) IF A LABOR ORGANIZATION INTENDS TO CONDUCT A MAIL BALLOT**
20 **ELECTION, A LABOR ORGANIZATION SHALL COLLECT SIGNED CARDS FROM AT**
21 **LEAST 30% OF INDEPENDENT PROVIDERS INDICATING THEIR DESIRE FOR**
22 **REPRESENTATION.**

23 **(C) THE BALLOT SHALL OFFER INDEPENDENT PROVIDERS A CHOICE**
24 **BETWEEN:**

25 **(1) REPRESENTATION BY THE LABOR ORGANIZATION; AND**

26 **(2) NO REPRESENTATION.**

1 (D) A LABOR ORGANIZATION THAT REQUESTS THE AMERICAN
2 ARBITRATION ASSOCIATION OR ANOTHER INDEPENDENT ARBITER TO CONDUCT
3 A MAIL BALLOT ELECTION SHALL:

4 (1) NOTIFY THE DEPARTMENT PRIOR TO CONDUCTING THE
5 ELECTION; AND

6 (2) PAY FOR THE FULL COSTS OF THE ELECTION.

7 (E) THE ORGANIZATION CONDUCTING THE ELECTION:

8 (1) SHALL ESTABLISH PROCEDURES TO ENSURE THE SECRECY OF
9 ANY BALLOTS CAST IN AN ELECTION; AND

10 (2) SHALL NOTIFY THE LABOR ORGANIZATION AND THE
11 DEPARTMENT OF THE ELECTION RESULTS NO LATER THAN 14 DAYS AFTER THE
12 ELECTION.

13 (F) THE LABOR ORGANIZATION THAT RECEIVES THE MAJORITY OF THE
14 VOTES CAST IN AN ELECTION SHALL BE DESIGNATED THE EXCLUSIVE
15 REPRESENTATIVE OF INDEPENDENT PROVIDERS.

16 (G) (1) THE DEPARTMENT SHALL ISSUE A DESIGNATION LETTER OF
17 THE LABOR ORGANIZATION'S STATUS AS EXCLUSIVE REPRESENTATIVE ON
18 RECEIPT OF THE ELECTION RESULTS.

19 (2) THE DEPARTMENT SHALL RETAIN A COPY OF THE
20 DESIGNATION LETTER AND FORWARD COPIES TO:

21 (I) THE LABOR ORGANIZATION;

22 (II) THE GOVERNOR;

23 (III) THE PRESIDENT OF THE SENATE; AND

24 (IV) THE SPEAKER OF THE HOUSE.

25 15-1A-05.

1 **(A) THE DEPARTMENT SHALL MEET WITH THE INDEPENDENT**
2 **PROVIDERS AND THEIR EXCLUSIVE REPRESENTATIVE WITH THE PURPOSE OF**
3 **ENTERING INTO A WRITTEN AGREEMENT THAT SHALL BE BINDING ON BOTH THE**
4 **STATE AND THE EXCLUSIVE REPRESENTATIVE.**

5 **(B) THE TERMS OF BARGAINING SHALL INCLUDE:**

6 **(1) RATE OF REIMBURSEMENT;**

7 **(2) PAYMENT AND REFERRAL METHODS;**

8 **(3) BENEFITS;**

9 **(4) TRAINING TO IMPROVE QUALITY OF CARE FOR CONSUMERS**
10 **AND TO PROTECT THE HEALTH AND SAFETY OF THE INDEPENDENT PROVIDER;**

11 **(5) EQUIPMENT AND SUPPLIES; AND**

12 **(6) OTHER MATTERS THAT WOULD IMPROVE THE RECRUITMENT**
13 **AND RETENTION OF INDEPENDENT PROVIDERS AND THE QUALITY OF CARE**
14 **THAT THEY PROVIDE.**

15 **(C) THE WRITTEN AGREEMENT SHALL INCLUDE:**

16 **(1) THE ITEMS UNDER SUBSECTION (B) OF THIS SECTION THAT**
17 **THE NEGOTIATING PARTIES HAVE AGREED ON;**

18 **(2) A BINDING ARBITRATION PROCEDURE;**

19 **(3) A GRIEVANCE PROCESS;**

20 **(4) A MECHANISM FOR COLLECTION OF DUES AND**
21 **REPRESENTATION FEES; AND**

22 **(5) THE CREATION OF A LABOR MANAGEMENT CONSUMER**
23 **COMMITTEE THAT WILL MEET REGULARLY TO DISCUSS CONCERNS AND ISSUES**
24 **AS THEY ARISE.**

1 (D) (1) THE LABOR MANAGEMENT CONSUMER COMMITTEE SHALL
2 INCLUDE:

3 (I) INDEPENDENT PROVIDERS REPRESENTED BY THE
4 EXCLUSIVE REPRESENTATIVE;

5 (II) REPRESENTATIVES OF THE DEPARTMENT; AND

6 (III) CONSUMERS THAT ARE JOINTLY APPOINTED BY THE
7 EXCLUSIVE REPRESENTATIVE AND THE DEPARTMENT.

8 (2) THE CONSUMERS MAY BE NOMINATED BY THEMSELVES, THE
9 STATE MEDICAID ADVISORY COMMITTEE, OR AN ADVOCACY ORGANIZATION.

10 (E) THE DEPARTMENT AND THE EXCLUSIVE REPRESENTATIVE SHALL
11 MAKE EVERY REASONABLE EFFORT TO CONCLUDE NEGOTIATIONS IN A TIMELY
12 MANNER FOR INCLUSION BY THE DEPARTMENT IN ITS BUDGET REQUEST TO
13 THE GOVERNOR.

14 (F) THE DEPARTMENT AND THE EXCLUSIVE REPRESENTATIVE SHALL
15 CONCLUDE NEGOTIATIONS BEFORE JANUARY 1 FOR ANY ITEM REQUIRING AN
16 APPROPRIATION OF FUNDS FOR THE FISCAL YEAR THAT BEGINS ON THE
17 FOLLOWING JULY 1.

18 **15-1A-06.**

19 (A) IF THE DEPARTMENT AND THE EXCLUSIVE REPRESENTATIVE HAVE
20 NOT ENTERED INTO A FIRST WRITTEN AGREEMENT UNDER THIS SUBTITLE BY
21 OCTOBER 25, 2007, THE PARTIES SHALL SUBMIT THE DISPUTE TO
22 ARBITRATION.

23 (B) (1) THE DEPARTMENT AND THE EXCLUSIVE REPRESENTATIVE
24 SHALL JOINTLY APPOINT AN ARBITER ACCEPTABLE TO BOTH PARTIES.

25 (2) THE FINDINGS OF THE ARBITER SHALL BE BINDING ON BOTH
26 PARTIES.

27 SECTION 2. AND BE IT FURTHER ENACTED, That, beginning in fiscal year
28 2009, each year the Governor shall include in the annual budget submitted to the

1 General Assembly a General Fund appropriation in an amount required to
2 accommodate the costs resulting from the negotiations authorized under this Act.

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

9 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 June 1, 2007.