

MEMORANDUM

DATE: March 31, 2009

TO: Representative Joseph W. Booth
Senator Karen E. Peterson

FROM: Ms. Daniese McMullin-Powell
Chairperson
State Council for Persons with Disabilities

RE: H.B. 69 [Direct Care Advanced Training Program]

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 69 which is intended to promote long-term care employee recruitment, training, and retention (lines 7-9). It establishes an advanced care training program within the Department of Education (lines 35-37). Trainees would obtain certification in any of three categories: behavioral care, restorative care, and leadership (lines 33-48). Certification would require 30 hours of classroom training (line 60); 30 hours of practical training (line 61); and a passing score on a competency test (lines 71-74). An employing provider pays the tuition (line 81). The DOE then reimburses the employer if the employee successfully secures certification for ½ the costs of tuition, books, materials, and “staff replacement expenses incurred...while the direct care employee is receiving the training” (lines 86-93). The provider is then required to pay \$600 to the employee upon successfully obtaining a certificate (lines 101-103).

SCPD truly appreciates your interest in promoting training of direct care workers, but believes that this particular bill may not be the best vehicle to achieve better-trained workers. FYI, there is also an effort within the state regarding direct care workforce training through the Governor’s Commission on Community Based Alternatives for Individuals with Disabilities’ Workforce Committee. SCPD has the following observations on the proposed legislation.

First, there is ostensibly no fiscal note on the bill. This is odd since the DOE would have to establish a training program, develop a curriculum and test, have funds to reimburse providers, and prepare an annual report to the Legislature. The Department’s costs may be limited by only permitting a small number of trainees (lines 75-76). Moreover, tuition reimbursement is only paid “as long as funds are available through the department” (lines 98-99). The bottom line is that the bill would require some State funds to implement.

Second, the cost of the training to providers would be substantial. Since the DOE only reimburses ½ costs for

successful trainees (line 89), and the employer must “front” costs (line 81), the employer would have to absorb all costs for an employee who fails the competency test or otherwise fails to obtain certification. Moreover, if the DOE “runs out of program funds” (line 98), the employer would have to pay all costs. A successful trainee is entitled to a \$600 bonus from the employer (with no DOE subsidy). The employer must pay an employee to “cover” for the trainee for 60 days and then only receives a maximum of 50% of the costs of the replacement employee. Finally, there is significant turnover among direct care workers which would undermine any employer incentive to invest significant sums in training. SCPDs prediction is that few, if any, providers would opt to participate in this program. It would be expensive and there is no clear benefit to the certification. There is no licensing or regulatory advantage to having an employee certified under this program.

Third, perhaps because the bill is modeled on a Pennsylvania act, it does not “integrate” well with existing Delaware law. For example, the definitions of “facility” (lines 16-17) and “provider” (lines 28-30) use terminology inconsistent with Delaware law. Delaware has licensing for “personal assistance services agencies (Title 16 Del.C. §122x; 16 DE Admin Code 4469) and regulates an “attendant services” program (Title 16 Del.C. Ch. 94). The long-term care licensing statute [Title 16 Del.C. §1102(4)] covers “neighborhood homes”, “family care homes”, “rest residential facilities”, “assisted living facilities” while the bill uses different terms. The bill treats “home health care agencies” as “long-term care” (lines 16-17) while Delaware law does not treat home health agencies under long-term care standards (Title 16 Del.C. §122o; 16 DE Admin Code 4406). This will create confusion concerning application of the bill to many types of facilities and employers.

Fourth, there is some obvious “tension” between the establishment of the certifications in the bill and the extensive requirements in the Delaware Code for certified nursing assistants (CNAs). Title 16 Del.C. Ch. 30A and 16 DE Admin Code 3220 contain extensive training and competency standards to obtain CNA certification. In turn, the long-term care facility minimum staffing statute [Title 16 Del.C. §1161] refers to CNAs and not persons who would be certified under the bill. Employers and employees have some incentive to secure CNA certification. There is no such incentive to obtain the certifications listed in the bill.

Fifth, there is some “tension” between the training components of the bill and training requirements in existing regulations for home health aides (16 DE Admin Code 4406) and personal assistants (16 DE Admin Code 4469). The training in the bill could be viewed as redundant.

Thank you for your consideration and please contact SCPD if you have any questions regarding our position on the proposed legislation.

cc: Governor Jack A. Markell
Ms. Rita M. Landgraf
Ms. Lillian Lowery
Mr. Brian Hartman, Esq.
Ms. Renee Bean
Ms. Ginger Nobles
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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