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STATE OF CONNECTICUT

BY HIS EXCELLENCY

DANNEL P. MALLOY

EXECUTIVE ORDER NO. 10

WHEREAS, this administration is committed to ensuring that Connecticut residents have access to high-quality home care services;

WHEREAS, personal care attendants are individuals who provide supportive home care, personal care or other non-professional services to Connecticut's disabled or elderly residents who require assistance;

WHEREAS, without assistance from personal care attendants, these residents would otherwise require institutional care, such as that provided in a nursing home;

WHEREAS, this Executive Order addresses independent personal care attendants who are paid through various programs administered by the Department of Social Services and Department of Developmental Services designed to enable low-income residents to continue living at home, instead of living at a nursing home or other institutional care facility;

WHEREAS, Connecticut's PCA waiver programs save the State millions of dollars per year, because the average cost of providing in-home personal care is typically much less than the cost of care provided in nursing homes or similar settings;

WHEREAS, the quality of life for Connecticut's disabled and elderly residents is improved by the option of receiving self-directed in-home care;

WHEREAS, demand for personal care attendant services is expected to rise in the coming years in light of Connecticut's growing senior population;

WHEREAS, personal care attendants typically earn low wages, no benefits, no paid time off, and receive no standardized training;

WHEREAS, as a result, the pool of personal care attendants in this State suffers from high turnover and inconsistent quality;

WHEREAS, there is a need to improve both the quality of care and the living and working conditions of the personal care attendants; and

WHEREAS, reform of the PCA waiver programs requires careful consideration of the economic impact of such reform and must ensure Connecticut's right to receive the maximum amount of federal funds to which it is entitled to receive and, therefore, should include all of the relevant stakeholders.

NOW, THEREFORE, I, DANNEL P. MALLOY, Governor of the State of Connecticut, by virtue of the power and authority vested in me by the Constitution and by the Statutes of the State of Connecticut do hereby **ORDER AND DIRECT**:

1. **Definitions.** For the purposes of this Executive Order, the following definitions shall apply:

a. "PCA waiver programs" means (A) the program for individuals with acquired brain injuries, established pursuant to section 17b-260a of the general statutes, (B) the personal care assistance program, established pursuant to section 17b-605a of the general statutes, (C) the Connecticut home care program for the elderly, established pursuant to section 17b-342 of the general statutes, (D) the pilot program to provide home care services for disabled persons, established pursuant to section 17b-617 of

the general statutes, (E) the individual and family support waiver program administered by the Department of Developmental Services, (F) the comprehensive waiver program administered by the Department of Developmental Services, or (G) any state-funded program that provides services from a personal care attendant.

b. "Consumer" means a person who receives services from a personal care attendant under a PCA waiver program.

c. "Surrogate" means a consumer's legal guardian or a person identified in a written agreement as having responsibility for the care of a consumer.

d. "Personal care attendant" means a person employed by a consumer or surrogate to provide personal care assistance to a consumer.

e. "Personal care assistance" means supportive home care, personal care or another nonprofessional service provided to a person with a disability or an elderly person who requires assistance to (A) meet such person's daily living needs, (B) ensure such person may adequately function in such person's home, or (C) provide such person with safe access to the community.

2. **Personal Care Attendant Quality Home Care Workforce Council.** There is established a council to ensure the quality of long-term personal home care that shall be known as the Personal Care Attendant Quality Home Care Workforce Council. The council shall represent the executive branch of the state for the purpose of carrying out its duties and responsibilities as contained in this Executive Order. The council shall be composed of seven members including the Commissioner of Social Services, or the commissioner's designee, who shall serve as chairperson, the Commissioner of Developmental Services, or the commissioner's designee, and the Healthcare Advocate or the Healthcare Advocate's designee. The remaining four members of the council shall include consumers or their surrogates and or advocates for the elderly and people with disabilities and shall be appointed by the Governor. All appointments to the council shall be made not later than October 1, 2011. The chairperson shall convene the first meeting of the council not later than November 1, 2011. Subsequent meetings shall be held at times determined by the council chairperson or upon the written request of any three members of the council to the chairperson. Members serve at the pleasure of the Governor. A majority of the members of the council shall constitute a quorum for the transaction of any business. Vacancies shall be filled by the Governor. Members of the council shall receive no compensation for their service on the council.

a. The council, with the assistance of the Department of Social Services, shall have the following duties and responsibilities relating to personal care attendants: (A) Not later than November 1, 2011, commence a study of issues relating to the recruitment and retention of personal care attendants; and (B) develop a plan and make recommendations to the Commissioner of Social Services to improve the quality, stability and availability of personal care attendants by (i) developing better means to identify and recruit personal care attendants, (ii) developing training and educational opportunities for personal care attendants and consumers, (iii) developing one or more registries ("PCA Registries") to (I) provide routine, emergency and respite referrals of qualified personal care attendants to consumers and surrogates who are authorized to receive long-term, in-home personal care services by a personal care attendant, (II) enable consumers and surrogates to access relevant information about prospective personal care attendants such as their training, educational background and work experience, and (III) provide appropriate employment opportunities for personal care attendants, and (iv) meeting and conferring with the majority representative of personal care attendants as described further herein.

b. The members of the council shall study the experiences and best practices of other states that administer similar programs providing personal care assistance.

c. Commencing July 1, 2013, the council shall have the authority to: (1) recruit prospective personal care attendants; (2) provide training and education to personal care attendants and consumers; and (3) establish or operate the PCA Registries. The council may take such action directly, through a contractual agreement with another entity, or through an agreement with the Department of Social Services.

3. **PCA Lists.** The Commissioner of Social Services, in consultation with and with the assistance of the Commissioner of Developmental Services, shall compile a list each month of the names and addresses of all personal care attendants who have within the previous six (6) months been paid through a PCA waiver program that provides personal care services, and such list shall specify the PCA waiver program through which each personal care attendant is paid ("**PCA List**"). The PCA List shall not include the name of any consumer, any designation that a personal care attendant is a relative of a consumer or any designation that the personal care attendant's home address is the same as a consumer's address. Any vendor or contractor that provides fiscal intermediary services for the state shall assist and cooperate with said commissioners in compiling and maintaining the PCA List. The Commissioner of Social Services shall ensure that all current and future contracts with vendors or contractors providing fiscal intermediary services shall require the fiscal intermediary to cooperate in the creation and maintenance of the PCA List. The PCA List shall be a public record, as defined in section 1-200 of the general statutes, and shall not be an exempt record under section 1-210 of the general statutes.

a. The council, in consultation with the commissioners, shall use the PCA List to monitor recruitment, retention and other employment patterns of personal care attendants and for other appropriate purposes.

b. Not later than November 1, 2011, the Commissioner of Social Services shall provide the initial PCA List to the council. The commissioner shall also provide an updated PCA List each month to the council, or upon the council's request. The commissioner shall comply with any reasonable request of the council concerning the form of the list.

4. Nothing in this Executive Order shall be construed as limiting the rights of a consumer or surrogate to (1) hire or refuse to hire, (2) supervise, (3) direct the activities of, and (4) terminate the employment of any personal care attendant. A consumer or surrogate may hire a personal care attendant who has not been referred by the council.

5. **Majority Representative.** The Personal Care Attendant Quality Home Care Workforce Council shall recognize a majority representative for the personal care attendants for the purpose of discussing issues of mutual concern through a meet and confer process ("**Majority Representative**").

a. The only units appropriate for the purpose of selecting a Majority Representative within the meet and confer process shall be: (1) a state-wide unit of all personal care attendants, (2) a state-wide unit of personal care attendants who provide services under programs administered by the Department of Social Services, or (3) a state-wide unit of personal care attendants who provide services under programs administered by the Department of Developmental Services.

b. An impartial third party, who is mutually acceptable to the council and the organization seeking to become the Majority Representative, shall designate a Majority Representative pursuant to the election process or authorization card verification procedure described in this Executive Order.

c. The council shall designate the most recent monthly PCA List prior to a request by an organization for an election as a Majority Representative as the approved list for purposes of conducting an election or verifying the majority of signed authorization cards (**the "Approved List"**). The council shall provide the Approved List to the impartial third party conducting such election or verifying such majority of authorization cards and any organization seeking to be designated as the Majority Representative.

6. **Election Process.** An election shall be conducted to designate a Majority Representative when an organization seeking to be so designated presents signed authorization cards to the Governor or the Governor's designee demonstrating that at least twenty per cent of the providers identified on the Approved List choose to be represented by such organization.

a. After a request for an election is made by the organization seeking to be become the Majority Representative any other organization seeking to be designated as the Majority Representative shall have fourteen days to present signed authorization cards to the Governor or the Governor's designee demonstrating that at least twenty per cent of the providers identified on the Approved List choose to be represented by such other organization.

b. All personal care attendants identified on the Approved List shall be eligible to vote in the election. The organization that receives the majority of votes cast in an election shall be designated by the impartial third party conducting the election as the Majority Representative.

7. **Authorization Card Verification.** In the alternative to the election process, an organization seeking to be designated as the Majority Representative may be designated as such upon a showing of a majority of signed authorization cards by those persons whose names appear on the Approved List to the impartial third party. Such impartial third party shall verify that such organization has been authorized by a majority of personal care attendants to represent such personal care attendants. The provisions of this paragraph shall only be available if no other organization has previously been designated as Majority Representative pursuant to this paragraph.

8. All costs associated with an election or verification of authorization cards shall be paid by the organization(s) seeking to become Majority Representative.

9. The Majority Representative shall continue to act as such for so long as such organization complies with its responsibilities concerning representation of such personal care attendants. Personal care attendants who seek to remove the Majority Representative shall seek such removal in accordance with the election processes set forth in this Executive Order. Personal care attendants may not seek such removal earlier than one year after the organization is designated as the Majority Representative.

10. The council or any vendor or contractor that provides fiscal intermediary services to the state shall make payroll deductions of voluntary dues and contributions authorized by personal care attendants not later than ninety days after a request by the Majority Representative showing that the Majority Representative has been authorized to receive such dues or contributions.

11. **Meet and Confer Process.** The Personal Care Attendant Quality Home Care Workforce Council and the Majority Representative shall meet and confer concerning ways for improving the quality and accessibility of personal care assistance programs for consumers and surrogates who participate in programs administered by the state.

a. The council and the Majority Representative shall discuss relevant issues including: (1) the quality and availability of personal care assistance services in the state; (2) the improvement of the recruitment and retention of qualified personal care attendants; (3) standards for compensating personal care attendants; (4) state payment procedures related to PCA waiver programs; and (5) training, professional development and other requirements and opportunities appropriate for personal care attendants, including consideration of training currently utilized by DSS and/or DDS.

b. Mutual understandings reached during the meet and confer process shall be documented in writing. If any such understanding requires legislation or rule making, the Majority Representative may make recommendations for such legislation or rule making to the relevant department or the General Assembly, as appropriate.

12. To the extent permitted by law, the Personal Care Attendant Quality Home Care Workforce Council may seek and accept any grant of money, services or property from the federal government, the state, a political subdivision or an agency of such governmental entities or any other private individual or entity, including, but not limited to, federal matching funds under Title XIX of the Social Security Act, and may do all things necessary to make an application for any such grant for the purpose of carrying out its responsibilities as contained in this Executive Order.

13. The council may coordinate its activities and cooperate with similar agencies in other states.


14. **Working Group.** There is established a working group to make recommendations on the best ways to structure collective bargaining rights and relationships for designated majority representatives of personal care attendants to enable such representatives to collectively bargain the terms and conditions of the participation of personal care attendants in the PCA waiver programs. In preparing its recommendations, the group shall examine such systems as have been adopted in other states. The working group shall not advance any recommendation that would jeopardize the state's ability to receive

Medicaid assistance from the federal government to subsidize the cost of in-home PCA services to the state's low-income residents at current levels.

a. The working group shall consist of five persons appointed by the Governor, at least two of whom shall have expertise in labor relations and at least two of whom shall have expertise in issues relating to Medicaid. The working group shall be established on or before October 1, 2011.

b. Not later than February 1, 2012, the working group shall issue a report to the Governor. Such report shall include a discussion of issues and recommendations concerning the timing, structure, parties and scope of collective bargaining by personal care attendants relating to their participation in the PCA waiver programs.

Dated at Hartford, Connecticut this 21st day of September, 2011.


DANNEL P. MALLOY
Governor

By His Excellency's Order


Denise Merrill
Secretary of the State

