

Ballot Proposal 4 of 2012



MICHIGAN QUALITY HOME CARE COUNCIL: COLLECTIVE BARGAINING FOR IN-HOME WORKERS

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Ballot Proposal 2012-4
November 2012 General Election
Placed on the ballot by Initiative Petition

Complete to 10-10-12

THE CONTENT OF THE BALLOT PROPOSAL:

The following is the official language as it will appear on the ballot.

**A PROPOSAL TO AMEND THE STATE CONSTITUTION
TO ESTABLISH THE MICHIGAN QUALITY HOME CARE COUNCIL
AND PROVIDE COLLECTIVE BARGAINING
FOR IN-HOME CARE WORKERS**

This proposal would:

Allow in-home care workers to bargain collectively with the Michigan Quality Home Care Council (MQHCC). Continue the current exclusive representative of in-home care workers until modified in accordance with labor laws.

Require MQHCC to provide training for in-home care workers, create a registry of workers who pass background checks, and provide financial services to patients to manage the cost of in-home care.

Preserve patients' rights to hire in-home care workers who are not referred from the MQHCC registry who are bargaining unit members.

Authorize the MQHCC to set minimum compensation standards and terms and conditions of employment.

Should this proposal be approved?

YES

NO

BRIEF SUMMARY:

Passage of Proposal 4 would amend the State Constitution to establish the Michigan Quality Home Care Council, hereinafter referred to as the "Council", and provide collective bargaining rights for in-home care workers. It would add a new Section 31 to Article V of the State Constitution and amend the existing Section 5 of Article XI.

The proposed constitutional amendment has been placed on the ballot as the result of a petition drive sponsored by the Citizens for Affordable Quality Home Care, which has a website at: <http://www.keepphomecaresafe.org/>. While there does not appear to be a coalition opposition group, the website of one representative opponent, the Mackinac Center, can be found at: <http://www.miballot2012.org/17298>.

Currently, Medicaid-eligible elderly or disabled individuals who qualify for the Adult Home Help program employ in-home care workers through the program to allow them to stay in their own homes, rather than moving to a nursing home. The Adult Home Help beneficiary decides who will provide their approved services; often it is a relative or friend. The Department of Human Services administers the Adult Home Help Program while the Department of Community Health funds it through combined state and federal revenues. The operation of the program will not be affected by the vote on Proposal 4.

The establishment of the Council includes designation of the council as the "public employer" of in-home care workers. This would be the body with whom workers would negotiate for purposes of collective bargaining on wages and terms and conditions of employment. The Council would also be responsible to create a statewide registry of in-home care workers, which currently exists within the Michigan Quality Community Care Council (MQCCC), though Adult Home Help program participants would not be required to hire from the registry, which is also currently true.

The proposal would guarantee to in-home care workers the same collective bargaining rights as other public employees who are not members of the state civil service, but also specifies that the workers would not be able to strike. Currently, only state police troopers and sergeants have collective bargaining rights enshrined in the State Constitution.

Recent passage of PA 76 of 2012 statutorily declared that in-home care workers are not public employees. That act prohibits the Department of Community Health from withholding union dues from in-home care workers' pay. A recent court injunction has temporarily barred enactment of PA 76. Proposal 12-4 would invalidate parts of PA 76 and re-institute collective bargaining by in-home care workers.

FISCAL IMPACT:

If Proposal 4 were to pass, there would, in the short term, be relatively little fiscal impact on the State of Michigan. The State had previously funded a nearly identical organization to the Council, the MQCCC, at \$1.0 million annually. This funding was discontinued in FY 2011-12. Proposal language regarding funding of the Council is contingent on Legislative appropriation. It would be up to the Governor and Legislature as to whether to appropriate funds for the Council activities each year.

It is difficult to predict what the outcome of future contract negotiations with the in-home care worker's representative Service Employees Union International (SEIU) might be. It is reasonable to assume that unions will seek increased wages and benefits for their members. The Medicaid in-home care service providers currently do not have health care benefits, which have been negotiated by workers in some other states. What is not clear

is whether union negotiated wage and benefit changes will be supported with state appropriations, as they are within Civil Service.

A DESCRIPTION OF THE PROPOSAL:

The proposed Constitutional amendment would require that state programs that provide in-home services that assist elderly and disabled participants, primarily the Medicaid Adult Home Help Program, financed in whole or in part by state funds, the option to hire and direct individual providers of such services. This option is current program practice.

The proposal would establish the Michigan Quality Home Care Council (Council) within the Executive Branch of the State to be governed by an 11-member board. The Director of the Department of Community Health would serve as the Chair, with the membership including the Director of the Department of Human Services and nine appointees of the Governor. Of the nine appointees, no fewer than seven would have to be current or former program participants, participant representatives, or participant advocates. Initially, however, at least seven of the appointments would need to be filled by similarly qualified current board members of the MQCCC. [There is more information on MQCCC in the ***Background Information*** section of this analysis.] The positions would have four-year terms.

The Council's purpose would be to facilitate the option of in-home personal care service participants to hire and direct individual service providers and improve availability, reliability, and skills of the individual provider workforce. Specific duties and functions would include the following:

- Provide training opportunities to improve service provider skills and facilitate the participants' ability to hire and manage providers.
- Provide for a registry that may refer qualified providers who have had appropriate background checks for employment. Participants would retain the right to hire providers not referred from the registry.
- Ensure that financial management services are available to participants to facilitate their ability to employ providers, to ensure compliance with applicable laws, and to make appropriate employment-related payroll deductions.
- Set compensation standards, subject to appropriations by the Legislature, and other terms and conditions of employment for individual providers by program participants.
- Conduct other related duties and functions.

Language also directs that the Council would "assume and succeed" to the authorities, duties, and obligations of MQCCC. This would include the obligation to recognize provider representatives as mentioned above and to honor any unexpired agreements [most importantly the SEIU labor contract], not to exceed a term of three years.

The proposal mandates that the participant-employed providers would have rights to collective bargaining with the Council as are otherwise provided by law to public employees not within the classified civil service when relating with their public employers. The Council would be governed by such collective bargaining arrangements,

to be enforced by the appropriate labor relations agency. New language proposed to be inserted into Section 5 of Article XI states that the providers would not be considered public or state employees. The providers would not, therefore, be entitled to legal benefits reserved to public or state employees. Collective bargaining would not deprive the service recipients their rights to select, supervise, train, direct, or terminate an individual provider. The service providers would not have the right to strike.

Finally, the proposal states that nothing in the proposal should be construed in a manner that conflicts with the State's obligations under Medicaid.

BACKGROUND INFORMATION:

Michigan's Medicaid Adult Home Help Program

The Adult Home Help program provides payment for personal care services to Medicaid-eligible aged, blind, and disabled persons which enable them to remain in independent living arrangements. It was established in 1981 as part of Michigan's overall strategy to increase community-based alternatives and reduce dependence on institutional care settings such as adult foster care and nursing homes.

Adult Home Help services are non-specialized personal care activities that are financed through the Medicaid program and provided to SSI or Medicaid-Only recipients who meet program eligibility requirements. Covered services include assistance with eating, toileting, bathing, dressing, taking medication, shopping, housecleaning, meal preparation, and laundry services.

Although the program is funded in the Community Health budget, it is operated through local Department of Human Service (DHS) offices. A service worker in the DHS office does an assessment of need, determines the level of services required, and, whenever possible, uses recipient input in the selection of the provider. Services are typically provided by family members, friends, neighbors, or personnel working for public or private agencies providing home care services. According to a survey, 44% of the providers were related to the person receiving services.

Generally, the service worker rates range from a low of \$8 per hour to \$15 per hour for individuals, with somewhat higher per-hour rates for agencies. Similar personal care services funded through community mental health boards for persons with mental illness and developmental disabilities are reimbursed at rates which are reported to be higher than those paid through the Adult Home Help program.

The program provided services to over 57,000 persons in Fiscal Year 2010-11 at a total cost of almost \$291.7 million, of which \$85.6 million was GF/GP and the balance federal, representing the blended Medicaid match rate which was temporarily enhanced.

Michigan Quality Community Care Council

In June 2004 the MQCCC was established pursuant to an interlocal agreement between the Michigan Department of Community Health and the Tri-County Aging Consortium under the Urban Cooperation Act, PA 7 of 1967. The MQCCC was created to establish and maintain a registry of workers who could provide personal assistance services.

The MQCCC currently maintains a list, or registry, of providers of in-home care services for individuals who are unable to adequately care for themselves at home. Services available from the providers include assisting with eating or feeding, using the toilet, bathing, grooming, dressing, transferring from one position to another, moving around the home, taking medicine, preparing meals and clean-up, shopping for essential items, and doing laundry and basic housework. The registry is a way of connecting those who are eligible to receive care with those who have the skills necessary to do the work.

Unionization

In April 2006, the SEIU ratified a union contract with MQCCC, creating the union Local 79. This resulted from an election held in 2005 under Michigan's Public Employment Relation Act (PERA). The election involved approximately 43,000 in-home workers (balloters) and resulted in the SEIU becoming their bargaining representative.

Notably, the contract between MQCCC and SEIU resulted in wage increases between 5% and 36% depending on what county the services are provided in. Currently, hourly wages range from \$8 to \$15 per hour.

Offsetting a portion of the wage increase are the required union dues of 2.75% of gross wages. In FY 2011-12, the Medicaid Adult Home Help appropriation is \$290.0 million, which primarily pays the wages of the in-home care workers. Approximately \$8.0 million in dues, then, are received by SEIU from the union members annually. The 2.75% fee is collected by Michigan Department of Community Health from each service provider warrant and forwarded to SEIU.

PA 76 of 2012, PERA Bargaining Unit Exclusion

In April of 2012 Governor Snyder signed into law PA 76 which amended the PERA to:

- Exclude a person who receives a government subsidy in his or her private employment from the definition of "public employee."
- Provide that the exclusion could not be superseded by an interlocal agreement, memorandum of understanding, commitment, or similar document.
- Forbid the recognition of a bargaining unit consisting of individuals who are not public employees.
- Invalidate a bargaining unit formed or recognized in violation of that prohibition.

It was understood by the proponents of this act that, among other things, representation by SEIU of the in-home health service providers would be nullified and that the Michigan Department of Community Health would cease collecting the 2.75% union fee.

In July 2012, a federal district court judge issued a temporary injunction against PA 76 of 2012. The Attorney General is appealing the ruling, and, in the meantime, the Michigan Department of Community Health continues to collect the union fees and forward them on to SEIU.

Other Useful Discussions

Other useful discussions of this topic can be found at the following links:

<http://www.detroitnews.com/article/20121001/POLITICS01/210010341>

<http://www.crcmich.org/PUBLICAT/2010s/2012/memo1119.html>

ARGUMENTS MADE BY PROPONENTS:

** Proponents say that a registry provides for a reliable resource of service providers. Although MQCCC currently maintains a registry, which is not supported financially by the State, having Constitutional support will identify it as a priority. There are some supporters that see this as a consumer rights issue and that it is a requirement of a robust long-term care service system. Additionally, it is argued that collective bargaining results in better wages which will attract a higher caliber of worker and greater family participation. Also, economically it is less expensive for the State to provide in-home care services rather than to pay for nursing home services.

ARGUMENTS MADE BY OPPONENTS:

** Opponents say that negotiating wages for in-home care workers is problematic in that it appears, ultimately, that the Legislature and Governor may or may not be required to appropriate adequate funding. There have been complaints from some family member care givers who consider the ballot proposal as "forced unionization" for collective bargaining. There is also an objection that as a result of unionization, union dues can be burdensome on individuals who are already receiving low wages. The current union dues are 2.75% of wages. The State is likely to continue the program whether the ballot proposal passes or not.

Fiscal Analyst: Steve Stauff

■ This analysis was prepared by nonpartisan House staff for use by House members and the general public in their deliberations, and does not constitute an official statement of the intent of the proposal.

**Initiative Petition
Amendment to the Constitution**

Full Text of Proposal

A proposal to amend the State Constitution to establish the Michigan Quality Home Care Council and provide collective bargaining for in-home care workers. (Proposal provided under an initiative petition filed with the Secretary of State on July 9, 2012.)

The proposal would add a new §31 to Article 5 of the State Constitution and amend existing §5 of Article 11 to read as follows:

§31. (1) State programs to assist elderly persons and persons with disabilities by financing, in whole or in part, in-home personal care services, shall afford to program participants who are able to do so the option to hire and direct individual providers of such services.

(2) There is hereby established a Michigan Quality Home Care Council whose purpose shall be to facilitate participants' ability to more effectively exercise that option, including by improving the availability, reliability and skills of the individual provider workforce. Council duties and functions shall include:

- (a) Providing training opportunities for providers, to improve provider skills, and for participants, to facilitate their ability to hire and manage providers;
- (b) Providing for a registry that may refer qualified providers who have had appropriate background checks for employment, however participants shall retain the right to hire providers not referred from the registry;
- (c) Ensuring that financial management services are available to participants to facilitate their ability to employ providers, to ensure compliance with applicable laws, and to make appropriate employment-related payroll deductions;
- (d) Setting compensation standards, subject to appropriations by the Legislature, and other terms and conditions for the employment of individual providers by program participants; and
- (e) Other related duties and functions, not inconsistent with the foregoing, as assigned to the Council by law or as necessary or convenient to implement the purposes of this Section.

(3) The Council shall be governed by a board of eleven (11) members, including:

- (a) Nine individuals appointed by the Governor with expertise regarding participant needs, no fewer than seven of whom shall be current or former program participants, participant representatives, or participant advocates; however such positions shall initially be filled by those similarly qualified members of the Michigan Quality Community Care Council board who last filled those positions prior to the passage of this Section. Upon expiration of each such initial member's term of appointment, the position to be filled under this paragraph shall have a term of four years;

- (b) Serving as Chair, the Director of the Department of Community Health, or of the successor executive department principally responsible for administering State medical assistance programs providing services governed by this Section, or his designee; and
 - (c) The Director of the Department of Human Services, or of such successor executive department, as the Governor determines has responsibilities relating to State programs providing services governed by this Section, or his designee.
- (4) The Council shall be a public body within the Executive Branch, with the normal powers, duties, rights and responsibilities, including regarding contracting, acquiring and disposing of property, and adopting rules. The Council may accept gifts, grants, bequests, or assets from any source, expend such funds, and accept assistance from other governmental agencies, to effectuate its purposes. The Council shall assume and succeed to the authorities, duties and obligations of the Michigan Quality Community Care Council to the extent consistent with this Section, including any obligations to recognize provider representatives and to honor any unexpired agreements (to the extent of a term not to exceed 3 years) with such representatives, as last incurred or entered into by that Council prior to the adoption of this Section.
- (5) Consistent with this Section, participant-employed providers governed by this Section shall have the same rights relating to collective bargaining with the Council as are otherwise provided by law to public employees not within the classified civil service relating to their public employers, and the Council shall be governed by such collective bargaining arrangements, to be enforced by the appropriate labor relations agency. But such providers shall not, as a consequence of this Section, be considered public or State employees for any other purpose, nor be entitled to any other legal benefit reserved to such employees. Collective bargaining under this Section shall not deprive participants of their right to select, supervise, train and direct, or terminate, an individual provider. Such providers shall not have the right to strike.
- (6) Nothing in this Section shall be construed in a manner that conflicts with a state's obligations under Medicaid. The Department of Community Health or other responsible agency shall cooperate with the Council, including by providing assistance as necessary or convenient to implement the provisions of this Section.

(The proposal would also amend §5 of Article 11 of the State Constitution. The proposed addition to §5 of Article 11 is indicated in italics.)

§5. The classified state civil service shall consist of all positions in the state service except those filled by popular election, heads of principal departments, members of boards and commissions, the principal executive officer of boards and commissions heading principal departments, employees of courts of record, employees of the legislature, employees of the state institutions of higher education, all persons in the armed forces of the state, *IN-HOME PERSONAL CARE PROVIDERS SUBJECT TO THE AUTHORITY OF THE MICHIGAN QUALITY HOME CARE COUNCIL*, eight exempt positions in the office of the governor, and within each principal department, when requested by the department head, two other exempt positions, one of which shall be policy-making. The civil service commission may exempt three additional positions of a policy-making nature within each principal department.

The civil service commission shall be non-salaried and shall consist of four persons, not more than two of whom shall be members of the same political party, appointed by the governor for terms of eight years, no two of which shall expire in the same year.

The administration of the commission's powers shall be vested in a state personnel director who shall be a member of the classified service and who shall be responsible to and selected by the commission after open competitive examination.

The commission shall classify all positions in the classified service according to their respective duties and responsibilities, fix rates of compensation for all classes of positions, approve or disapprove disbursements for all personal services, determine by competitive examination and performance exclusively on the basis of merit, efficiency and fitness the qualifications of all candidates for positions in the classified service, make rules and regulations covering all personnel transactions, and regulate all conditions of employment in the classified service.

State Police Troopers and Sergeants shall, through their elected representative designated by 50% of such troopers and sergeants, have the right to bargain collectively with their employer concerning conditions of their employment, compensation, hours, working conditions, retirement, pensions, and other aspects of employment except promotions which will be determined by competitive examination and performance on the basis of merit, efficiency and fitness; and they shall have the right 30 days after commencement of such bargaining to submit any unresolved disputes to binding arbitration for the resolution thereof the same as now provided by law for Public Police and Fire Departments.

No person shall be appointed to or promoted in the classified service who has not been certified by the commission as qualified for such appointment or promotion. No appointments, promotions, demotions or removals in the classified service shall be made for religious, racial or partisan considerations.

Increases in rates of compensation authorized by the commission may be effective only at the start of a fiscal year and shall require prior notice to the governor, who shall transmit such increases to the legislature as part of his budget. The legislature may, by a majority vote of the members elected to and serving in each house, waive the notice and permit increases in rates of compensation to be effective at a time other than the start of a fiscal year. Within 60 calendar days following such transmission, the legislature may, by a two-thirds vote of the members elected to and serving in each house, reject or reduce increases in rates of compensation authorized by the commission. Any reduction ordered by the legislature shall apply uniformly to all classes of employees affected by the increases and shall not adjust pay differentials already established by the civil service commission. The legislature may not reduce rates of compensation below those in effect at the time of the transmission of increases authorized by the commission.

The appointing authorities may create or abolish positions for reasons of administrative efficiency without the approval of the commission. Positions shall not be created nor abolished except for reasons of administrative efficiency. Any employee considering himself aggrieved by the abolition or creation of a position shall have a right of appeal to the commission through established grievance procedures.

The civil service commission shall recommend to the governor and to the legislature rates of compensation for all appointed positions within the executive department not a part of the classified service.

To enable the commission to exercise its powers, the legislature shall appropriate to the commission for the ensuing fiscal year a sum not less than one percent of the aggregate payroll of the classified service for the preceding fiscal year, as certified by the commission. Within six months after the conclusion of each fiscal year the commission shall return to the state treasury all moneys unexpended for that fiscal year.

The commission shall furnish reports of expenditures, at least annually, to the governor and the legislature and shall be subject to annual audit as provided by law.

No payment for personal services shall be made or authorized until the provisions of this constitution pertaining to civil service have been complied with in every particular. Violation of any of the provisions hereof may be restrained or observance compelled by injunctive or mandamus proceedings brought by any citizen of the state.