

HOUSE BILL No. 6195

May 19, 2010, Introduced by Reps. Johnson and Rocca and referred to the Committee on Regulatory Reform.

A bill to create the Michigan quality community care council; to prescribe the powers and duties of the council; to prescribe the powers and duties of certain state departments; and to provide for the transfer of programs, employees, and funds.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan quality community care council act".

3 Sec. 2. As used in this act:

4 (a) "Board" means the board of directors of the council
5 created under section 4.

6 (b) "Consortium" means a consortium created by 3 or more
7 counties under the urban cooperation act of 1967, 1967 (Ex Sess) PA
8 7, MCL 124.501 to 124.512, that includes among its purposes the
9 provision of services to the aging or disabled in those counties.

1 (c) "Consumer" means a person receiving personal assistance
2 services as a beneficiary under a medicaid state plan optional
3 program, including, but not limited to, the home help program.

4 (d) "Consumer advocate" means a person recognized by the
5 department as a representative of consumers and consumer concerns.

6 (e) "Consumer representative" means a person designated by a
7 consumer to act on behalf of the consumer.

8 (f) "Council" means the Michigan quality community care
9 council created in section 3.

10 (g) "Department" means the department of community health.

11 (h) "Fiscal year" means the annual period beginning on October
12 1 of each year and ending on the following September 30.

13 (i) "Home help program" means the personal care program or
14 other program established under the personal care option of the
15 state's medicaid program through which payments are made on behalf
16 of eligible persons to individual providers for personal assistance
17 services, including, but not limited to, the adult home help
18 services payments program under R 400.1101 to R 400.1107 of the
19 Michigan administrative code and any successor program.

20 (j) "Medicaid" means the program of medical assistance
21 established under title XIX of the social security act, 42 USC 1396
22 to 1396v, and administered under the social welfare act, 1939 PA
23 280, MCL 400.1 to 400.119b.

24 (k) "Personal assistance services" means assistance with
25 personal and nonpersonal activities of daily living provided to a
26 consumer with functional limitations in meeting basic needs under
27 the home help program.

1 (l) "Provider" means an individual who is selected and directed
2 by a consumer or consumer representative to provide personal
3 assistance services to the consumer, and, if desired, removed by
4 the consumer or consumer representative.

5 Sec. 3. (1) The Michigan quality community care council is
6 created. The council is a public body that shall possess the
7 powers, duties, and jurisdictions vested in the council under this
8 act and other laws.

9 (2) For the fiscal year ending September 30, 2010 and each
10 subsequent fiscal year, the department shall arrange through the
11 council for the provision of consumer-directed services under the
12 home help program. The department may arrange through the council
13 for the provision of personal assistance services under other
14 programs. The department shall not restrict the consumer's or the
15 consumer representative's right to hire providers on the basis that
16 they are not listed on the council registry.

17 (3) A public body corporate created by an agreement between
18 the department and the consortium under the urban cooperation act
19 of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, and
20 authorized to perform functions similar to the council under this
21 act shall by resolution transfer to the council and the council
22 shall accept and have the powers, duties, functions,
23 responsibilities, and jurisdictions of the public body corporate,
24 including, but not limited to, programs, assets, contractual
25 rights, obligations, and employees, including obligations to
26 recognize and bargain with a representative of providers and to
27 honor any unexpired collective bargaining agreement with such a

1 representative.

2 (4) The employees of the predecessor body who are necessary
3 for the operation of the council shall be transferred to the
4 council by the predecessor body and appointed as employees of the
5 council subject to all rights and benefits and both of the
6 following:

7 (a) The employees shall be given seniority credits and sick
8 leave, vacation, insurance, and pension credits in accordance with
9 the records or labor agreements from the transferring employer.
10 Members and beneficiaries of any pension or retirement system or
11 other benefits established by the transferring employer shall
12 continue to have rights, privileges, benefits, obligations, and
13 status with respect to the established system. The council shall
14 assume the obligations acquired by the predecessor body with regard
15 to wages, salaries, hours, working conditions, sick leave, health
16 and welfare, and pension or retirement provisions for transferred
17 employees. If the transferred employees were not guaranteed sick
18 leave, health and welfare, and pension or retirement pay based on
19 seniority, the council shall not be required to provide these
20 benefits retroactively. If the transferred employees were
21 represented by a labor organization in relation to the predecessor
22 body, the council shall continue to recognize the labor
23 organization as the exclusive representative of the employees.

24 (b) No employee who is transferred to a position with the
25 council shall by reason of the transfer be placed in any worse
26 position with respect to worker's compensation, pension, seniority,
27 wages, sick leave, vacation, health and welfare insurance, or any

1 other benefits that employer enjoyed with his or her transferring
2 employer.

3 (5) State departments and agencies shall cooperate with and
4 assist the council in the performance of its powers and duties
5 under this act and in the implementation of any agreements entered
6 into by the council as authorized by this act.

7 Sec. 4. (1) The council shall be directed and governed by a
8 board of directors consisting of the following 13 members:

9 (a) The director of the department or his or her designated
10 representative from within the department.

11 (b) The director of the department of human services or his or
12 her designated representative from within that department.

13 (c) One member appointed by the governor from a list of 3 or
14 more individuals selected by the senate majority leader and 1
15 member appointed by the governor from a list of 3 or more
16 individuals selected by the speaker of the house of
17 representatives.

18 (d) Nine members appointed as provided under subsections (2)
19 and (3) to represent consumers, consumer representatives, consumer
20 advocates, or consortiums. Not fewer than 1 member appointed under
21 this subdivision shall represent a consortium, if any such
22 consortiums exist. Not fewer than 7 members of the council shall
23 represent consumers, consumer representatives, or consumer
24 advocates.

25 (2) Except as otherwise provided in this subsection, board
26 members shall be appointed for a term of 6 years. Initial
27 appointments under subsection (1)(d) shall be made by the director

1 of the department within 56 days of the effective date of this act.
2 Of the board members initially appointed by the director, 1 member
3 shall be appointed for a term expiring on July 31, 2011, 2 members
4 shall be appointed for a term expiring on July 31, 2012, 1 member
5 shall be appointed for a term expiring on July 31, 2013, 2 members
6 shall be appointed for a term expiring on July 31, 2014, 1 member
7 shall be appointed for a term expiring on July 31, 2015, and 2
8 members shall be appointed for a term expiring on July 31, 2016.

9 (3) After the initial appointments under subsection (2), if a
10 vacancy occurs among the board members described in subsection
11 (1)(d) by expiration of a term, the board shall appoint an
12 individual satisfying the requirements of subsection (1)(d) to a
13 new 6-year term. If a vacancy occurs on the board among the board
14 members described in subsection (1)(d) other than by expiration of
15 a term, the vacancy shall be filled by the board for the remainder
16 of the term of the unexpired term. Board members may continue to
17 serve until a successor is appointed and qualified.

18 (4) Appointments under this section shall be filed with the
19 secretary of state. Upon appointment to the board, and upon taking
20 and filing of the oath of office required by section 1 of article
21 XI of the state constitution of 1963, the board member shall enter
22 office and exercise the duties of the office of board member.

23 Sec. 5. (1) Not less than 60 days following the appointment of
24 a majority of the members of the board, the board shall hold its
25 first meeting at a date and time determined by the department
26 director. The board members shall elect from among the board
27 members an individual to serve as chairperson of the board and may

1 elect other officers as the board considers necessary. All officers
2 shall be elected biannually by the board.

3 (2) The business of the board shall be conducted at a public
4 meeting of the board held in compliance with the open meetings act,
5 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date,
6 and place of the meeting shall be given in the manner required by
7 the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. The board
8 shall adopt bylaws consistent with the open meetings act, 1976 PA
9 267, MCL 15.261 to 15.275, governing its procedures and the holding
10 of meetings. After organization, the board shall adopt a schedule
11 of regular meetings and adopt a regular meeting date, place, and
12 time. A special meeting of the board may be called by the
13 chairperson of the board or as provided in bylaws adopted by the
14 board. Notice of a special meeting shall be given in the manner
15 required by the open meetings act, 1976 PA 267, MCL 15.261 to
16 15.275.

17 (3) The board shall organize and make its own policies and
18 procedures and shall adopt bylaws not inconsistent with this act
19 governing its operations. A majority of the members of the board
20 serving constitute a quorum for transaction of business. The board
21 shall meet at the call of the chairperson and as may be provided in
22 the bylaws.

23 (4) The board shall keep a written or printed record of each
24 meeting, which record and any other document or record prepared,
25 owned, used, in the possession of, or retained by the council in
26 the performance of an official function shall be made available to
27 the public in compliance with the freedom of information act, 1976

1 PA 442, MCL 15.231 to 15.246.

2 (5) The board shall provide for a system of accounts for the
3 council to conform to a uniform system required by law and for the
4 auditing of the accounts of the council. The board shall obtain an
5 annual audit of the council by an independent certified public
6 accountant and report on the audit and auditing procedures in the
7 manner provided by sections 6 to 13 of the uniform budgeting and
8 accounting act, 1968 PA 2, MCL 141.426 to 141.433. The audit also
9 shall be in accordance with generally accepted government auditing
10 standards.

11 (6) Before the beginning of each fiscal year, the board shall
12 cause to be prepared a budget for the council. The board shall
13 adopt a budget for the fiscal year in accordance with the uniform
14 budget and accounting act, 1968 PA 2, MCL 141.421 to 141.440a.

15 Sec. 6. (1) A board member shall discharge the duties of his
16 or her position in a nonpartisan manner, in good faith, and with
17 the degree of diligence, care, and skill that an ordinarily prudent
18 person would exercise under similar circumstances in a like
19 position. In discharging his or her duties, the board member or an
20 officer, employee, or agent of the council, if acting in good
21 faith, may rely upon any of the following:

22 (a) The opinion of counsel for the council.

23 (b) The report of an independent appraiser selected by the
24 board.

25 (c) Financial statements of the council represented to the
26 board member to be correct by the officer or agent of the council
27 having charge of its books of account or stated in a written report

1 by the state auditor general or a certified public accountant, or a
2 firm of certified accountants, to reflect the financial condition
3 of the council.

4 (2) A board member is not subject to personal liability if
5 acting in good faith within the scope of his or her authority or on
6 account of liability of the council, and the board may indemnify a
7 board member or an officer, appointee, or employee of the council
8 against liability arising out of the discharge of his or her
9 official duties.

10 (3) Board members and officers and employees of the council
11 are public servants subject to 1968 PA 317, MCL 15.321 to 15.330,
12 and are subject to any other applicable law with respect to
13 conflicts of interest. The board shall establish policies and
14 procedures requiring periodic disclosure of relationships which may
15 give rise to conflicts of interest. The board shall require that a
16 board member with a direct interest in any matter before the board
17 disclose the board member's interest and any reasons reasonably
18 known to the board member or officer why the transaction may not be
19 in the best interest of the public or the council before the board
20 takes any action with respect to the matter. The disclosure shall
21 become part of the record of the council's proceedings. The board
22 shall establish policies that are no less stringent than those
23 provided for public officers and employees by 1973 PA 196, MCL
24 15.341 to 15.348, and coordinate efforts for the board to preclude
25 the opportunity for and the occurrence of transactions by the
26 council that would create a conflict of interest involving board
27 members and officers or employees of the council.

1 (4) Board members shall serve without compensation but may be
2 reimbursed for actual and necessary expenses incurred while
3 attending board meetings or performing other authorized official
4 business of the council.

5 (5) The governor may remove a board member from office for
6 gross neglect of duty, corrupt conduct in office, or any other
7 misfeasance or malfeasance in office.

8 Sec. 7. The board shall select and retain a chief executive
9 officer for the council. The chief executive officer shall
10 administer the council in accordance with the operating budget
11 adopted by the board, general policy guidelines established by the
12 board, other applicable governmental procedures and policies, and
13 this act. The chief executive officer shall be responsible for the
14 day-to-day operations of the council and supervision of all council
15 employees. All terms and conditions of the chief executive
16 officer's employment by the council shall be specified in a written
17 contract between the chief executive and the board. The chief
18 executive officer shall serve at the pleasure of the board.

19 Sec. 8. (1) Except as otherwise provided in this act, the
20 council may do all things necessary or convenient to implement the
21 purposes, objectives, and provisions of this act and the purposes,
22 objectives, and jurisdictions vested in the council or the board by
23 this act or other law, including, but not limited to, all of the
24 following:

25 (a) Adopt and use a corporate seal.

26 (b) Adopt, amend, and repeal bylaws for the regulation of its
27 affairs and the conduct of its business.

1 (c) Sue and be sued in its own name and plead and be
2 impleaded.

3 (d) Incur debts, liabilities, and obligations.

4 (e) Fix and collect charges, rates, rents, fares, fees, loan
5 repayments, loan interest rates, or other charges on loans.

6 (f) Make and enter into contracts, agreements, or instruments
7 necessary, incidental, or convenient to the performance of its
8 duties and execution of its powers, duties, and jurisdictions under
9 this act with any federal, state, local, or intergovernmental
10 government agency or with any other person or entity, public or
11 private, upon terms and conditions acceptable to the council.

12 (g) Solicit, receive, and accept gifts, grants, labor, loans,
13 contributions of money, property, or other things of value, and
14 other aid or payment from any federal, state, local, or
15 intergovernmental government agency or from any other person or
16 entity, public or private, upon terms and conditions acceptable to
17 the council, or participate in any other way in a federal, state,
18 local, or intergovernmental government program.

19 (h) Make application for and receive loans, grants,
20 guarantees, or other financial assistance from any state, federal,
21 local, or intergovernmental government agency or from any other
22 source, public or private.

23 (i) Procure insurance or become a self-funded insurer against
24 loss in connection with the property, assets, or activities of the
25 council.

26 (j) Indemnify and procure insurance indemnifying board members
27 from personal loss or accountability for liability asserted by a

1 person with regard to bonds or other obligations of the council, or
2 from any personal liability or accountability by reason of the
3 issuance of the bonds or other obligations or by reason of any
4 other action taken or the failure to act by the council.

5 (k) Invest money of the council under, at the discretion of
6 the board, in instruments, obligations, securities, or property
7 determined proper by the board and name and use depositories for
8 council money. Investments shall be made consistent with an
9 investment policy adopted by the board that complies with 1943 PA
10 20, MCL 129.91 to 129.97a.

11 (l) Contract for goods and services as necessary.

12 (m) Employ, appoint, engage, compensate, and transfer legal
13 and technical experts, other officers, agents, employees, or other
14 personnel, permanent or temporary, as considered necessary by the
15 board.

16 (n) Contract for the services of persons or entities for
17 rendering professional or technical assistance, including, but not
18 limited to, consultants, managers, legal counsel, engineers,
19 accountants, and auditors.

20 (o) Establish and maintain an office.

21 (p) Acquire by gift, devise, transfer, exchange, purchase,
22 lease, or otherwise on terms and conditions and in a manner the
23 council considers proper property or rights or interests in
24 property. Property or rights or interests in property acquired by
25 the council may be by purchase contract, lease purchase, agreement,
26 installment sales contract, land contract, or otherwise.

27 (q) Hold, clear, remediate, improve, maintain, manage,

1 protect, control, sell, exchange, lease, or grant easements and
2 licenses on property or rights or interests in property that the
3 council acquires, holds, or controls.

4 (r) Convey, sell, transfer, exchange, lease, or otherwise
5 dispose of property or rights or interest in property to any person
6 or entity on terms and conditions, and in a manner and for
7 consideration the council considers proper, fair, and valuable.

8 (s) Promulgate necessary rules and regulations and provide for
9 their enforcement to accomplish the purposes of this act.

10 (t) Do all other acts and things necessary or convenient to
11 exercise the powers, duties, and jurisdictions of the council under
12 this act or other laws that relate to the purposes, powers, duties,
13 and jurisdictions of the council.

14 (2) Notwithstanding any other provision of law to the
15 contrary, the council shall not have the power to impose or levy a
16 tax.

17 Sec. 9. (1) Subject to any limitations and procedures provided
18 in this act, the council shall do all of the following:

19 (a) Seek to promote and coordinate effective and efficient
20 personal assistance services.

21 (b) Create and maintain a registry of providers in this state
22 as follows:

23 (i) Develop and apply standards and procedures for qualifying
24 persons to serve as providers who seek placement on a registry
25 maintained by the council and removal of providers from a registry.
26 These standards and procedures shall be at least as protective of
27 consumers as the standards and procedures currently employed by the

1 public body corporate described in section 3(3).

2 (ii) Develop a review process for persons denied a listing on
3 or removed from a registry.

4 (iii) Provide lists of available persons listed on a registry,
5 by geographic area or in other accessible form, to consumers upon
6 request and inform consumers, or their representatives, of the
7 background and qualifications of the persons and that the consumers
8 or their representatives are free to select or reject any referrals
9 made through the council.

10 (c) Espouse, support, and work to preserve consumer selection
11 and self-direction of providers.

12 (d) Provide support to providers through a variety of methods
13 aimed at encouraging competence, achieving quality services for
14 consumers, and improving provider retention through improved job
15 satisfaction.

16 (e) Protect the confidential status of information relating to
17 consumers, subject to waiver by the consumers or their
18 representatives, and assure that the activities of the council
19 comply with the requirements of state and federal law.

20 (f) Subject to legislative authorization and department
21 implementation, establish the wages and other economic benefits of
22 providers.

23 (2) The relationship between the council and its providers
24 shall be consistent with the principles of consumer self-direction,
25 preserving the consumer's exclusive employment rights to select,
26 hire, fire, supervise, and direct providers, and have control over
27 the work location and the physical conditions at that location.

1 (3) Subject to any limitations and procedures provided in this
2 act, the council may perform any of the following functions for
3 providers and consumers:

4 (a) Assist consumers in making a decision of whom to employ to
5 provide personal assistance services, how the personal assistance
6 services will be provided, and how long the employed provider will
7 render the personal assistance services.

8 (b) Facilitate and coordinate orientation processes to assist
9 providers in the performance of authorized services, with the
10 consent of and direction from consumers or their representatives.

11 (c) Develop recruitment and retention programs to expand the
12 pool of available, qualified providers.

13 (d) Assist consumers by designating persons as meeting minimum
14 qualification criteria for providing personal assistance services
15 as established by the council.

16 (e) Provide or facilitate provision of provider training and
17 otherwise assist providers through the dissemination of information
18 that assists them to be successful in rendering personal assistance
19 services to consumers.

20 (f) Develop a system to facilitate the provision of routine,
21 emergency, and respite referrals for the provision of personal
22 assistance services through a pool of back-up providers, with the
23 ability to provide on-call service available 24 hours a day, 7 days
24 a week.

25 (g) Encourage and solicit private and public sector
26 involvement, support, and financing for the council.

27 (h) Develop methods of ongoing communication and information

1 sharing with providers and consumers that supports and facilitates
2 a positive relationship between providers and consumers and their
3 representatives.

4 (i) Assist providers with addressing barriers to employment by
5 supplying providers with information, referrals, or assisting with
6 access to services supportive to providers such as child care,
7 transportation, and indigent health care benefits.

8 (j) Facilitate compliance with applicable medicaid regulations
9 and policies, or those of private sector payers.

10 (k) Facilitate and coordinate advanced training for providers.

11 (l) Facilitate and coordinate mentoring for consumers and
12 providers with the goal of supporting successful consumer-provider
13 relationships, including a strong consumer-employer role.

14 (m) To the extent arranged by the department according to
15 section 3(2), perform the functions described in this act in
16 relation to services under other programs with the same authority
17 as performed under this act with respect to the home help program.

18 (n) Facilitate the development of mentoring programs for
19 providers and consumers.

20 (o) Subject to section 9(2), ensure the adequate performance
21 of necessary personnel and payroll functions with respect to
22 providers.

23 (4) The council may enter into agreements, contracts, or
24 arrangements with a governmental entity or other persons necessary
25 or appropriate to assist the council in carrying out its duties and
26 functions under this act.

27 (5) The council may participate with this state in enhancing

1 federal funding for the provision of personal assistance services.

2 (6) The council may receive local, state, federal, and other
3 funds to pay for personal assistance services and to accomplish the
4 purposes of this act. Funds to support the operation of the council
5 may be provided by the department.

6 (7) The council may elect to participate on behalf of council
7 employees, other than providers, under the municipal employees
8 retirement act of 1984, 1984 PA 427, MCL 38.1501 to 38.1555.

9 Sec. 10. The council shall comply with all applicable law
10 prohibiting discrimination. The council shall not fail or refuse to
11 hire, recruit, or promote, demote, discharge, or otherwise
12 discriminate against a person with respect to employment,
13 compensation, or a term, condition, or privilege of employment
14 because of religion, race, color, national origin, age, sex, sexual
15 orientation, height, weight, marital status, partisan
16 considerations, or a disability or genetic information that is
17 unrelated to the person's ability to perform the duties of a
18 particular job or position. The council shall not limit, segregate,
19 or classify an employee or applicant for employment in a way that
20 deprives or tends to deprive the employee or applicant of an
21 employment opportunity or otherwise adversely affects the status of
22 an employee or applicant because of religion, race, color, national
23 origin, age, sex, sexual orientation, height, weight, marital
24 status, partisan considerations, or a disability or genetic
25 information that is unrelated to the person's ability to perform
26 the duties of a particular job or position. The council shall not
27 provide services in a manner that discriminates against a person

1 with respect to employment, compensation, or a term, condition, or
2 privilege of employment because of religion, race, color, national
3 origin, age, sex, sexual orientation, height, weight, marital
4 status, partisan considerations, or a disability or genetic
5 information that is unrelated to the person's ability to receive
6 services from the council.

7 Sec. 11. The council, the department, and any other necessary
8 state departments or agencies shall seek any form of federal
9 approval needed to implement the provisions of this act.

10 Sec. 12. The council shall transmit a report to the governor
11 and the legislature annually.

12 Sec. 13. All powers granted in this act shall be broadly
13 interpreted to effectuate the intent and purposes of this act.