

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2013

Bill Number: S.59 Name of Bill: An act relating to independent direct support providers

Agency/Dept: AOA/DHR Author of Bill Review Kate G. Duffy

Date of Bill Review: May 13, 2013 Status of bill (check one)

☐ Upon introduction ☐ As passed by 1st body ☒ As passed by both bodies ☐ Fiscal

Recommended Position:

☒ Support ☐ Oppose ☐ Remain Neutral ☐ Support with Modifications

ANALYSIS

1. Summary of bill and issues it addresses.

S.59 grants independent direct care providers, also known as home care providers, the right to join a union and, if they choose to unionize, to bargain with the State on reimbursement rates, training and development, agency fees, and procedures to resolve grievances. The bill aims to professionalize and improve the quality and standards related to these care providers, with the ultimate goal of providing better care and service to the recipients who retain these independent direct care providers. The bill also establishes a "Self-Determination Alliance," which is a group comprised of service recipients, to advise the state on issues related to stabilizing the independent direct care provider workforce and improving the quality of services provided.

2. Is there a need for this bill?

Arguably, yes. Independent direct care providers are not highly compensated and do not receive adequate training. As the need for independent direct care providers grows with an aging population, there is a need to ensure the availability and quality of the services provided to elders and persons with disabilities. Unionization could lead to greater salaries and training, which could professionalize this growing workforce and ultimately improve the service provided.

3. What are likely to be the fiscal and programmatic implications of this bill for this Department?

DHR or some other entity will be required to engage in bargaining and resolution of grievances, if unionization occurs. This will put a strain on DHR resources, and additional resources will be required, including contractors providing necessary services such as mediation and fact finding.

4. What are likely to be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?

The Departments of Aging and Independent Living and Health will be required to provide information and support to engage in collective bargaining, should unionization occur. Bargaining could lead to increases in the budgets of these departments to increase payments to independent direct care providers. Both departments appear to support the bill.

The Labor Board could incur significant costs to conduct a union election. If unionization does occur, the work of the Labor Board could increase. The Labor Board appears to support the bill.

The Attorney General's Office could be required to defend lawsuits related to actions taken by independent care providers. Although the bill provides the State will not be vicariously liable and will not be deemed a joint employer, the statute's statement to this effect could be disregarded by a court, and the court could look to the relationship between the State and the providers to create enhanced liability. The Attorney General's Office has expressed reservations about the bill for this reason.

5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it?

Labor organizations will compete to represent independent direct care providers and one union could become the exclusive representative for this group and might be entitled to receive agency fees. Labor generally supports the bill, and will use the creation of a non-traditional union in one instance to expand the scope of individuals and groups entitled to bargain with the State.

6. Other stakeholders:

- 6.1 Who else is likely to support the proposal and why?

Some independent direct care providers and some service recipients will support the bill as a means to achieve greater funding and control for independent direct care providers.

- 6.2 Who else is likely to oppose the proposal and why?

Some service recipients will see the bill as an intrusion into their relationship with the independent direct care provider they hire. Individuals who are ideologically opposed to unions will also oppose the bill.

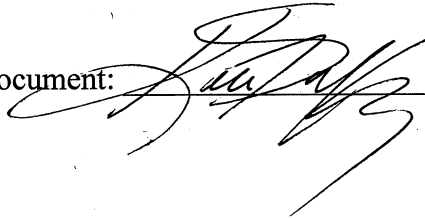
7. Rationale for recommendation:

The Administration has committed to support the bill, which could enhance the quality of care provided to vulnerable populations. As more and more care is provided to elders and individuals in a non-institutional setting, the need for a stable and qualified care provider workforce is critical. Unionization may be a means to improve the quality of the services provided.

8. Specific modifications that would be needed to recommend support of this bill.

DHR believes two minor errors appear in the draft: (1) in Section 1632 (5) the citation should be "subdivision 1643(b)" not "subdivision 1643(b)(3)"; (2) in Section 1638(e) the citation should be "subdivision 1637 (b) or (c)" not "1637 (1) and (2)." DHR requests review of the citations by the Governor's counsel for validation.

Commissioner has reviewed this document:

A handwritten signature in black ink, appearing to be "L. Duff", written over a horizontal line.

Date:

5/13/13