

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 523

Introduced by Aguilar, 35

Read first time January 17, 2007

Committee: Health and Human Services

A BILL

- 1 FOR AN ACT relating to home care; to adopt the Quality Home Care
- 2 Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 12 of this act shall be known
2 and may be cited as the Quality Home Care Act.

3 Sec. 2. The Legislature finds that:

4 (1) Thousands of Nebraska seniors and persons with
5 disabilities live independently in their own homes which they
6 prefer and which is less costly than institutional care such as in
7 nursing homes;

8 (2) Currently, many Nebraska seniors and persons with
9 disabilities receive long-term care in their homes from individuals
10 providing home care, hired directly by them under various
11 government programs;

12 (3) Long-term home care services are far less costly,
13 saving Nebraska taxpayers significant amounts through lower
14 reimbursement rates;

15 (4) Rapid turnover and critical shortages of home care
16 workers in home and community-based services detrimentally affect
17 the continuity and quality of home care in Nebraska, particularly
18 as the need for such services will continue to grow;

19 (5) The quality of long-term home and community-based
20 services in Nebraska would benefit from improved oversight,
21 higher standards, better accountability, and increased access and
22 availability. The quality of long-term home and community-based
23 services would be further benefited by a well-trained, stable home
24 care workforce earning reasonable wages and benefits; and

25 (6) Nebraska seniors, persons with disabilities, and

1 taxpayers would benefit from the establishment of a Quality Home
2 Care Council that has the power and duty to improve the quality of
3 long-term home and community-based services.

4 Sec. 3. For purposes of the Quality Home Care Act:

5 (1) Consumer means the individual to whom a home care
6 worker provides home care services;

7 (2) Council means the Quality Home Care Council;

8 (3) Department means the Department of Health and Human
9 Services Finance and Support; and

10 (4) Home care worker means a person selected by a
11 consumer or the consumer's guardian or agent to provide home
12 care for compensation, including, but not limited to, child care
13 for children with disabilities, chore services, home care chore
14 services, homemaker services, personal assistance services, or
15 respite services, as defined in rules and regulations of the
16 department adopted pursuant to the Medical Assistance Act or a
17 waiver under the act or pursuant to the Adult Protective Services
18 Act.

19 Sec. 4. (1) The Quality Home Care Council is created.
20 The council shall consist of nine members to be appointed by the
21 Governor and confirmed by the Legislature. The majority of the
22 council's membership shall be Nebraska seniors or persons with
23 disabilities who receive or who have received home care services.
24 One member shall be a rural health advocate. One member shall
25 be appointed to represent each of the following entities, or a

1 successor entity, for as long as a comparable entity exists:

2 (a) The department;

3 (b) A statewide independent living council;

4 (c) An area agency on aging as defined in section
5 81-2208; and

6 (d) A statewide or national advocacy organization for the
7 aging.

8 (2) Members of the council shall be appointed for terms
9 of three years, except that, of the members first appointed, three
10 members shall be appointed for terms of two years, three members
11 shall be appointed for terms of three years, and three members
12 shall be appointed for terms of four years. If a seat on the
13 council becomes vacant for any reason before the end of the term,
14 the Governor shall appoint a person who represents the same entity,
15 if any, as the person whose seat has been vacated, to become
16 effective immediately for the unexpired period of the term. The
17 members of the council shall receive the sum of twenty dollars
18 per diem, while actually engaged in the business of the council
19 and shall be reimbursed for the necessary expenses incurred in
20 the performance of their duties as provided in sections 81-1174 to
21 81-1177.

22 (3) The council shall select one of its members to serve
23 as chairperson. A new chairperson shall be selected each calendar
24 year.

25 (4) The chairperson or a majority of the members of the

1 council may call regular or special meetings of the council. The
2 council shall meet at a place, date, and hour determined by the
3 council. A majority of the members of the council shall constitute
4 a quorum.

5 (5) The council shall employ an executive director and
6 other staff as necessary to assist the council in carrying out its
7 duties.

8 (6) The council shall work cooperatively with consumers,
9 other state agencies, and public and private entities concerned
10 about the quality of home care services.

11 (7) The council shall exercise all powers necessary to
12 carry out the purposes of the Quality Home Care Act, including
13 the power to contract, lease, acquire, hold, own, encumber, insure,
14 sell, replace, deal in and with, and dispose of personal property.

15 (8) Council staff shall be within the department to carry
16 out the purposes of the Quality Home Care Act under the direction
17 of the council.

18 Sec. 5. The council shall ensure the quality of home care
19 services in Nebraska by:

20 (1) Establishing qualifications and reasonable standards
21 for accountability for home care workers and investigating the
22 background of home care workers and prospective home care workers;

23 (2) Identifying and recruiting qualified home care
24 workers and prospective home care workers;

25 (3) Providing training, either directly or through

1 contracts with the community colleges or other entities, for home
2 care workers and prospective home care workers, consumers, and
3 prospective consumers;

4 (4) Establishing a statewide referral registry of home
5 care workers to assist consumers and prospective consumers, in
6 conjunction with other agencies, in finding home care workers and
7 prospective home care workers. Before placing a home care worker
8 or prospective home care worker on the statewide referral registry,
9 the council shall determine that:

10 (a) The home care worker or prospective home care worker
11 has met the minimum requirements for training;

12 (b) The home care worker or prospective home care worker
13 is not listed on the Adult Protective Services Central Registry
14 established under section 28-376, the central register of child
15 protection cases established under section 28-718, or any similar
16 registry in any other state; and

17 (c) The home care worker or prospective home care worker
18 has satisfactorily undergone a criminal background check conducted
19 within the twelve-month period immediately preceding placement of
20 his or her name on the registry;

21 (5) Removing from the statewide referral registry any
22 home care worker or prospective home care worker whom the council
23 determines does not meet the qualifications established by the
24 council. The home care worker, prospective home care worker, or the
25 consumer to whom services are provided may request a hearing to

1 contest such removal pursuant to the Administrative Procedure Act;

2 (6) Taking action designed to retain qualified home care
3 workers by providing routine, emergency, and respite referrals of
4 home care workers to consumers to enable home care workers to
5 obtain needed leave time; and

6 (7) Setting the wages and establishing any economic
7 benefits for home care workers and establishing, in consultation
8 with the department, any other terms and conditions of employment
9 not reserved to consumers by the Quality Home Care Act.

10 Sec. 6. (1) All home care workers who become home care
11 workers on or after the effective date of this act and are employed
12 by or under contract with the state or any political subdivision
13 thereof or are otherwise compensated with public funds shall be
14 placed on the statewide referral registry described in section 5 of
15 this act before providing home care services in Nebraska.

16 (2) Home care workers providing home care services
17 pursuant to the act shall be placed on the statewide referral
18 registry described in section 5 of this act but shall be exempt
19 from the requirements of subdivisions (4)(a) and (c) of such
20 section.

21 (3) A consumer or a consumer's surrogate on behalf of the
22 consumer may elect to receive home care services from home care
23 workers who are not referred to them by the council and are not on
24 the statewide referral registry.

25 Sec. 7. Consumers may select, hire, and supervise the

1 work of and terminate any individual home care worker. Consumers
2 may file complaints regarding home care workers or the plan of care
3 with the council.

4 Sec. 8. (1) Home care workers shall be deemed public
5 employees of the council solely for purposes of collective
6 bargaining governed by the Industrial Relations Act. All provisions
7 of the Industrial Relations Act apply to the relationship between
8 the council and home care workers, except that in the case of a
9 conflict between a provision of the Industrial Relations Act and
10 the Quality Home Care Act, the Quality Home Care Act controls.

11 (2) For purposes of collective bargaining, the
12 appropriate unit of home care workers is a statewide unit.

13 (3) The showing of interest required to request an
14 election among home care workers is ten percent of the bargaining
15 unit.

16 (4) The collective bargaining agent selected by home care
17 workers shall negotiate with the council.

18 (5) Home care workers do not have the right to strike.

19 (6) Home care workers are not employees of the State of
20 Nebraska or any other public entity except the council for any
21 purpose and are employees of the council only for the purposes
22 expressly provided in the Quality Home Care Act. The State of
23 Nebraska shall cooperate with the council in implementing the
24 council's duties under the act and specifically in seeking any
25 appropriations necessary to comply with and implement the economic

1 terms of a collective bargaining agreement.

2 Sec. 9. The council shall submit a one-year budget and
3 a three-year budget to the department which includes a detailed
4 statement of the cost and plan for the council's activities and
5 services pursuant to the Quality Home Care Act.

6 Activities and services eligible for funding under the
7 act are limited to those functions described in sections 5 and 7 of
8 this act.

9 Funding for eligible activities and services of the
10 council shall come from the General Fund, federal funds allocated
11 to the department, and other funds as available. If the amount
12 of General Funds, federal funds, and other funds available are
13 insufficient to finance the council's activities and services under
14 the act, the executive director of the council shall notify the
15 council, the department, and the Legislature.

16 Sec. 10. The Legislative Performance Audit Section shall
17 conduct a performance audit of the council during calendar year
18 2011 and every three years thereafter. The section shall submit
19 the results of each such performance audit to the Legislature and
20 the Governor on or before December 31 of the year in which the
21 performance audit is conducted.

22 Sec. 11. The council shall advise the department
23 regarding the policies of the department as they relate to support
24 provided to the council. Upon request by the Policy Cabinet, the
25 council shall advise the Policy Cabinet on matters pertaining to

1 home health care.

2 Sec. 12. The council may adopt and promulgate rules and

3 regulations to carry out the Quality Home Care Act.