

4/20/2009

The Honorable Patricia Vance, Chair
Senate Aging and Youth Committee
Senate Box 203013
351 Main Capitol Bldg.
Harrisburg, PA 17120

Dear Senator Vance:

I write on behalf of the County Commissioners Association of Pennsylvania regarding the joint informational hearing with the Senate Labor and Industry Committee concerning consumer workforce councils. CCAP has no formal position on consumer workforce councils, although our members have expressed concerns with the use of intergovernmental agreements to establish them.

Recently, the CCAP Board of Directors discussed at great length the efforts in several counties to establish consumer workforce councils for the purpose of creating a structured workforce for home health care workers, and establishing a mechanism for those workers to negotiate salary and benefits. While CCAP strongly supports allowing counties the greatest possible flexibility to make decisions locally, board members were concerned that such agreements could bind a non-participating county to paying for or providing services and benefits that are not currently required through county revenues and resources. More importantly, the board responded with concern to reports that a trigger would be reached if three counties would sign such agreements, launching the program statewide.

There are a number of concerns with establishing this structure without legislative oversight, and the board expressed concern that other counties could be forced to adopt a similar model. The board felt that having a council in several counties and not others could create an environment for litigation relying on a promise of the same public benefits being provided consistently across the state.

After much debate, the CCAP Board adopted a motion stating that if such agreements are to be considered for local consumer workforce councils, they should be adopted legislatively and not by local ordinance. The CCAP Human Services Committee met later that same day, and a similar discussion led to an identical motion by that committee.

I hope this letter will clarify the concerns of Commissioners with regard to consumer workforce councils. I would be happy to discuss this with you at your convenience. Please feel free to contact me at any time.

Sincerely,


Brinda Carroll Penyak
Deputy Director

4/20/2009

The Honorable John Gordner, Chair
Senate Labor and Industry Committee
Senate Box 203027
351 Main Capitol Bldg.
Harrisburg, PA 17120

Dear Senator Gordner:

I write on behalf of the County Commissioners Association of Pennsylvania regarding the joint informational hearing with the Senate Aging and Youth Committee concerning consumer workforce councils. CCAP has no formal position on consumer workforce councils, although our members have expressed concerns with the use of intergovernmental agreements to establish them.

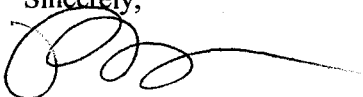
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After much debate, the CCAP Board adopted a motion stating that if such agreements are to be considered for local consumer workforce councils, they should be adopted legislatively and not by local ordinance. The CCAP Human Services Committee met later that same day, and a similar discussion led to an identical motion by that committee.

I hope this letter will clarify the concerns of Commissioners with regard to consumer workforce councils. I would be happy to discuss this with you at your convenience. Please feel free to contact me at any time.

Sincerely,



Brinda Carroll Penyak
Deputy Director



COMMONWEALTH OF PENNSYLVANIA

April 21, 2009

Thomas H. Earle, CEO
Liberty Resources, Inc.
714 Market Street, Suite 100
Philadelphia, PA 19106

Dear Mr. Earle:

We have concluded our legal analysis of the draft Consumer Workforce Council (CWC) proposal to determine compliance and conformity to existing and applicable labor laws, regulations and policies as they pertain to programs serving Pennsylvania's disability and aging communities. I have enclosed a copy of the legal memo for your review.

While the analysis has identified several issues and concerns that will require further revision, we believe the general concept offers a positive framework for continuing this discussion. We understand that it is not a finished product, but a work-in-progress and the Administration is interested in moving such discussions forward.

As Pennsylvania's population ages, the demands increase on those in whom we entrust the care of our older loved ones. One way to address this need is to expanding the availability and quality of consumer directed home care services. Creation of an entity like the CWC could provide a mechanism for deliberating the steps necessary to ensure the future success of consumer directed model of care in Pennsylvania's home care delivery system.

The Administration recognizes the benefit of this approach and we look forward to entering into discussions with all interested parties to refine the concept and advance the interests of our direct care workforce. We believe that establishing such a Council could assist in achieving the following goals: rebalancing Pennsylvania's long-term care system; increasing independence and choice for those in need of services; expanding the availability of consumer directed home care services; assuring quality in long term care; controlling costs; and, recruiting, training and retaining direct care workers.

However, it will be important to ensure that an open process is observed and the perspectives of the entire spectrum of stakeholders are solicited and fairly considered. Moreover, the General Assembly has recently expressed interest in pursuing a legislative remedy and we should thoroughly explore that possibility.

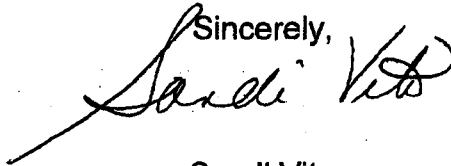
Recognizing that there will be policy and operational issues to be addressed in the further development and implementation of any such initiative, we must continue to work closely with consumers, consumer advocacy groups, workers, workers' representatives and the General Assembly to ensure any proposal is properly vetted with the affected groups.

Throughout this process, it has always been our intention to ensure that the stakeholders and concerned communities would have the opportunity to deliberate the concept and specific language of any proposed model in public meetings and forums. The upcoming joint public hearing of the Senate Labor and Industry Committee and Senate Aging and Youth Committee will provide the appropriate opportunity to begin that process.

One of the great strengths of the Commonwealth's home care system is the flexibility that we afford consumers, permitting them to choose to receive their care either from our well-established network of professional home care provider agencies or by directly hiring their own caregivers. To this end, the Commonwealth supports the creation of a venue that would allow consumers and direct care workers to address the labor shortage, worker training and qualification challenges faced by our direct care workforce.

I thank you and the members of the Steering Committee who have laid the foundation for the creation of a strategy to address labor force shortages, wages and benefits and other issues affecting both consumers and workers. I look forward to working with you and all the stakeholders as we strive to improve the quality of jobs and quality of care.

Sincerely,

A handwritten signature in black ink, appearing to read "Sandi Vito". The signature is fluid and cursive, with a long horizontal stroke extending to the left.


Sandi Vito
Acting Secretary

cc: Secretary Estelle B. Richman
Secretary John Michael Hall



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

TO: Sandi Vito
Acting Secretary
Department of Labor and Industry

FROM: Jane C. Pomerantz 
Chief Counsel

DATE: April 20, 2009

SUBJECT: **Labor and Industry Analysis of Intergovernmental Cooperative Agreement
Creating the Consumer Workforce Council**

You have asked me to outline any key legal issues raised by the Intergovernmental Cooperative Agreement (IGA) prepared by the Consumer Attendant Workforce Steering and Legal Committees establishing a Pennsylvania Consumer Workforce Council (Council). This analysis is based upon the perspective of the Department of Labor and Industry and if the Council version complies with the requirements of the Intergovernmental Cooperative Act. Any issues regarding compliance with Medicare or other federal or state assistance programs for home care workers will have to be addressed by the Departments of Aging and Public Welfare.

Compliance with Intergovernmental Cooperation Act

The Pennsylvania Constitution was amended in 1968 to include an explicit provision authorizing intergovernmental cooperation between governmental units. Pennsylvania Constitution Article IX, Section 5. To implement this Constitutional Amendment, the Legislature enacted the Intergovernmental Cooperation Act of July 12, 1972, P.L. 762, which is now codified at 53 Pa.C.S. §§2301 to 2315. That Act authorizes two or more "local governments" to "jointly cooperate... in the exercise or in the performance of their respective governmental functions, powers or responsibilities." 53 Pa.C.S. §2303(a). In order to do so, the local governments are required to enter into "any joint agreements as may be deemed appropriate for such purposes." 53 Pa.C.S. § 2303(b). In other words, if a County has the power to take an action or deliver a service under the provisions of law, its code or charter, then the County has the power to cooperate with other local governments in doing so. It may then delegate or transfer those functions, powers or responsibilities to another local government or "similar entity." Furthermore, the Intergovernmental Cooperation Act permits local governments to enter

into intergovernmental cooperation with the Commonwealth. 53 Pa.C.S. §2307(1). An agreement between a local government and the Commonwealth must be submitted to the Local Government Commission for review and recommendation. 53 Pa.C.S. §2314.

It appears that the CWC proposal meets all the requirements of the Intergovernmental Cooperation Act.

Designation of Employer

A major legal issue is designation of the Consumer as employer and the Council as a joint but limited employer of those workers. The Council determines or negotiates wages, leave entitlement and benefits for the workers; bargains with any labor organization if selected by the workers; acts as a unified voice for Consumers at the bargaining table; addresses grievances of workers with regard to matters under the Council's control without interfering with the principle Consumer control. While the Council will facilitate orientation and training, it will provide training only at the direction of Consumers. It will not determine qualifications of workers. Nor will the Council perform fiscal inter-mediary/management services. The Council will ensure that the FMS agencies make arrangements and payments on behalf of Consumers for worker's compensation coverage and if practical, for tort liability insurance to protect Consumers and workers.

It is unclear as written who will be determined to be the employer for purposes of unemployment and workers compensation, especially in light of the fact that UC and WC case law have never embraced the concept of joint employers. For purposes of UC and WC, the entity that has direction and control over the workers are determined to be the employer and liable for the payment UC taxes and WC premiums. This determination involves a difficult balancing test based on the facts of an individual case. However, under both laws, the courts have determined only one entity to be the employer. Some might not view this as an issue as long as one entity, whether the Council or the consumer, pays the UC taxes and WC premiums to ensure that the workers are covered.

Collective Bargaining Issues

While it appears that the Pennsylvania Labor Relations Board may have jurisdiction under the Pennsylvania Employment Relations Act (PERA) (43 P.S. § 1101.101 *et seq.*), the state public sector labor law, the language of the IGA cannot determine the application of PERA by simply designating the Council as a collective bargaining agent. For there to be an authorized collective bargaining agent under Pennsylvania labor laws, the state Labor Board must certify a union to represent employees of a "public employer" for collective bargaining. That is true even when the "public employer" agrees to recognize a union for collective bargaining purposes. 43 P.S. §1101. 602(a). Thus, the entity created must qualify as a "public employer" under existing law. In the absence of a designated "employer", a certified labor organization, and bona fide collective bargaining, the collective setting of wages may not qualify for the labor anti-trust exemption.

A "public authority" can be a "public employer" for purposes of collective bargaining. 43 P.S. § 1101.301(1). If the Council determines wages and benefits, it could be recognized as a limited public employer for purposes of collective bargaining. *Novembrino v. International Assoc. Of Machinists*, 601 A.2d 916 (Pa. Cmwlth. 1992); *In the Matter of The Employees of City of Bethlehem*, 16 PPER ¶ 16114 (Final Order 1985). The fact that private consumers are the employers with regard to hiring, firing, and direction, etc., would not necessarily deprive the Labor Board of jurisdiction over the public authority with respect to the limited items under the control of the Council. *United Assoc. of Journeymen, etc. v. PLRB*, 613 A.2d 155 (Pa. Cmwlth. 1992). Therefore, the Council and the consumer can, for purposes of PERA, be considered joint employers. However, the remedy will lay with the employer violating the Act, so the worker will not be able to look to the Council to remedy violations by the consumer.

Minimum Wage and Overtime

There is also the issue of whether the workers covered by the IGA establishing the Council would be considered "domestic workers" for purposes of minimum wage and overtime. A simple statement in the definition of Personal Care Attendant that they shall be classified as "domestic workers" for purposes of workers compensation would not determine this. The issue of whether a worker is entitled to minimum wage and overtime involves what the worker does and who the employer is.

Under the Pennsylvania Minimum Wage Act (MWA), employment in "[d]omestic services in or about the *private home of the employer*" is exempt from the MWA's minimum wage and overtime provisions. 43 P.S. § 333.105(a)(2). The regulations define *domestic services* as "work in or about a private dwelling for an employer in his capacity as a householder, as distinguished from work in or about a private dwelling for such employer in the employer's pursuit of a trade, occupation, profession, enterprise or vocation." 34 Pa. Code § 231.1. There are no further definitions for "domestic services" or "domestic worker" provided for in the MWA. Therefore, the fact that the IGA, in language and in administration, states that the consumer is the employer could eventually require a determination by L&I that these workers are exempt from minimum wage and overtime, under both PA's MWA and the federal Fair Labor Standards Act.

In addition, a case is now before the Supreme Court, *Bayada Nurses Inc. v. Department of Labor and Industry*, that challenges L&I's interpretations of MWA and its regulations concerning the domestic services exemption for payment of minimum wages and overtime.

Workers Compensation

The fact that the IGA states that all workers employed solely or jointly by the Council are "domestic workers" for purposes of workers compensation will not be binding on insurance companies. Coverage of workers compensation is determined by the facts of an individual case and the actual work performed. Nonetheless, this language has no effect because the insurance companies will make the decision regarding the premiums for workers regardless of how they are defined in the IGA.

Regarding whether L&I should sign the IGA, I believe that as administrator of the workers compensation law and SWIF, L&I should not sign an agreement that pre-determines coverage of workers compensation.

Definition of Personal Care Attendant

The Consumer Workforce Council proposal defines direct care workers as "personal care attendant" (PCA) instead of the term "consumer directed home care worker" or some other broader definition that encompasses consumer directed workers in a variety of care settings. The definition of PCA is too specific to a particular program, and, therefore, the IGA should use a broader definition that clearly includes consumer directed home care services for older Pennsylvanians.

For this reason along with others best addressed by the Departments of Public Welfare and Aging, the Council Workforce Council proposal as currently written appears to focus on consumers with disabilities, almost eliminating any focus on the aging community. While this may be unintentional, the stated policy purpose of the agreement is to address the workforce needs and allow consumer direction for both the aging and disability communities -- the proposal is not intended to encompass the MH/MR community.

Members of the Board

The wording for Article V. A.1. regarding the appointment of the Board is problematic because if all counties became parties to the agreement there could be at least 67 member appointed under this section.

Proposed new Article V.A.:

- A. Appointment of the Board. The Council shall be governed by a board of directors, the majority of whom shall be Consumers as defined in this Agreement. The Board shall consist of a total of twenty-five (25) members who shall be appointed within sixty (60) calendars days of the Effective Date. Those Board members shall be appointed as follows:
1. For the first four year term after the effective date of this agreement, one (1) member appointed by each County which is a original Party to this Agreement and one (1) member appointed by majority vote of the Board of Directors the County Commissioners Assn. of PA; for all subsequent terms four (4) member appointed by majority vote of the Board of Directors the County Commissioners Assn. of PA;

Moreover, the payers of services, the Departments of Public Welfare and Aging must have powers to reject agreements and other activities that have an adverse fiscal impact on their respective agencies.

Liabilities of the Council

Another issue to be addressed, just for the purpose of discussion, is if the assertion in the agreement that the Council is a separate legal entity does not stand, will legal responsibilities and liabilities pass through to the members of the Council or to the signatories of the agreement. The Intergovernmental Cooperation Act states that all Commonwealth departments and agencies in the performance of their administrative duties shall deem . . . [these entities] . . . as legal entity. (53 Pa.C.S.A. § 2316). This would prevent Commonwealth departments or agencies from denying the legality of the Council as a legal entity. This, however, does not guarantee that the Council would be deemed a legal entity in private lawsuits. We cannot find any cases that cover this issue of liability. This issue of liability in private lawsuits could be covered by the Council securing general liability insurance to protect itself, its employees and board members.

According to the Council of Governments Director's Handbook, one of these entities would be considered a local agency under the Political Subdivision Tort Claims Act (Act). (42 Pa.C.S.A. § 8501.) A local agency and its employees are not liable for injuries or damages caused to a person or property while they are acting in the capacity of a political subdivision. (42 Pa.C.S.A. § 8541.) This governmental immunity for local agencies has some exceptions. (42 Pa.C.S.A. § 8542.) In the COG Director's Handbook, it is stated that COGs and its member municipalities have shared liability. (Page 31, under Risk Management). <http://www.newpa.com/get-local-gov-support/publications/index.aspx> . However, it is unclear on what basis the Handbook makes this statement regarding shared liability.

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Senate Box 203078
Harrisburg, PA - 17120-3078
(717) 787-7680
Fax (717) 772-4524
www.lgc.state.pa.us

**LOCAL GOVERNMENT
COMMISSION**
Created in 1935

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Michael P. Gasbarre

ASSISTANT DIRECTOR
Patrick F. Kieftly

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Senator John N. Wozniak

Representative Thomas A. Tangrotti
Representative Robert L. Freeman
Representative David R. Kessler

Representative Chris Ross
Representative Mauree Gingrich

12 December 2007

Jane C. Pomerantz, Esquire
Deputy Chief Counsel
Department of Labor and Industry
10th Floor, Labor & Industry Building
7th and Forster Streets
Harrisburg, Pennsylvania 17120

Dear Ms. Pomerantz:

We are writing with regard to your December 7, 2007, submission of a proposed Intergovernmental Agreement ("Agreement") between the Commonwealth of Pennsylvania, by and through the Departments of Aging and Public Welfare, and the Counties of Allegheny, Luzerne, and Washington ("Counties"). The Agreement would create an intergovernmental entity, the "Pennsylvania Quality Home Care Commission," which would be delegated certain powers and duties vested with the Commonwealth or the Counties to provide home health care services. The submission is required pursuant to Title 53 of the Pennsylvania Consolidated Statutes (Pa.C.S.), Section 2314 (relating to review of certain intergovernmental cooperation agreements by the Local Government Commission).¹

As you are aware, the Local Government Commission (Commission) staff has had an opportunity to discuss modifications of previous drafts of this agreement with both you and Sandy Vito, Deputy Secretary for Workforce Development, Department of Labor and Industry. This discussion resulted in recommended modifications of the draft agreement, a majority of which are reflected in this current submission. This correspondence is to inform you that the Commission has conducted its statutorily required review of the Agreement at its meeting on Wednesday, December, 12, 2007.

¹ Please note that we do not regard the Commission's role in reviewing agreements between the Commonwealth and a municipality as involving a power to veto or enjoin; but, in accordance with the requirements of 53 Pa.C.S. § 2314, the Commission is charged with undertaking a review of the Agreement to determine whether it is in proper form and compatible with the laws of this Commonwealth. The Commission also has the authority to make a recommendation.

Jane C. Pomerantz, Esquire
Page 2
12 December 2007

With regard to its consideration of the submitted Agreement, the Commission opines that the Agreement is in proper form and compatible with the laws of this Commonwealth, with the proviso that, in accordance with 53 Pa.C.S., Section 2305, and the Agreement itself, the Counties must adopt the Agreement by ordinance. Thus, the Commission's comments are conditioned on the assumption that, in order to meet the relevant requirements of 53 Pa.C.S., Section 2307,² concerning the content of an ordinance, the Counties will incorporate the Agreement into the ordinances that they are required to enact.

Very truly yours,



Michael P. Gasbarre
Executive Director

MPG:dag

c: Sandy Vito, Deputy Secretary
Workforce Development
Department of Labor and Industry

² The ordinance adopted by the governing body of a local government entering into intergovernmental cooperation or delegating or transferring any functions, powers or responsibilities to another local government or to a council of governments, consortium or any other similar entity shall specify:

- (1) The conditions of agreement in the case of cooperation with or delegation to other local governments, the Commonwealth, other states or the Federal Government.
- (2) The duration of the term of the agreement.
- (3) The purpose and objectives of the agreement, including the powers and scope of authority delegated in the agreement.
- (4) The manner and extent of financing the agreement.
- (5) The organizational structure necessary to implement the agreement.
- (6) The manner in which real or personal property shall be acquired, managed, licensed or disposed of.
- (7) That the entity created under this section shall be empowered to enter into contracts for policies of group insurance and employee benefits, including Social Security, for its employees.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF AGING
555 Walnut Street, 5th Floor
HARRISBURG, PENNSYLVANIA
17101-1919

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JAN 12 2009

SECRETARY OF AGING

January 8, 2009

(717) 783-1550

County Executive Dan Onorato
Allegheny County Courthouse
436 Grant Street, Room 101
Pittsburgh, PA 15219

Dear County Executive Onorato:

The Commonwealth of Pennsylvania, represented by the Secretaries of Aging, Public Welfare and Labor and Industry, recognizes that as Pennsylvania's population ages, the demands increase on those in whom we entrust the care of our older loved ones.

Increasingly and fortunately, Pennsylvanians are living longer and are living at home. They are able to remain in the comfort of their own homes because of our expanding home care industry. In some cases, seniors turn to trusted home care agencies to find a direct care worker to assist them on a daily basis. In many cases, however, seniors turn to an informal network of direct care workers who are trusted because of their reputation in the community. The same is true of the tens of thousands of disabled Pennsylvanians who are proudly living independently with the assistance of an attendant care worker.

For many consumers, the ability to select a personal care attendant of their choosing is paramount, more important than dealing with an established home care agency. One of the great strengths of the Commonwealth's home care system is the flexibility that we afford consumers, permitting them to choose to receive their care either from our well-established network of professional home care provider agencies or by directly hiring their own caregivers.

However, regardless of the employment status of the direct care worker, our home care delivery system faces significant workforce shortages, raising the specter of waiting lists for home and attendant care services and the potential for unsafe conditions for seniors or disabled individuals who wish to remain in their homes. To this end, the Commonwealth supports the creation of a venue that would allow consumers and direct care workers to address the labor shortage, worker training and qualification challenges faced by our direct care workforce. Such a venue would allow consumers and direct care workers to give voice to the many barriers they face and facilitate their ability to influence state policymakers as we establish spending priorities for the future.

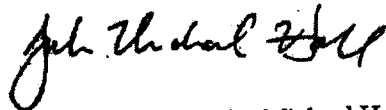
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JAN 20 2009
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We have reviewed the draft Consumer Workforce Council proposal. We understand that it is not a finished product, but a work-in-progress. And while we have identified a number of concerns that will require further revision, we believe the general concept offers a positive framework for beginning the discussion. Should such discussions move forward, it will be important to ensure that an open process is observed, where the perspectives of the entire spectrum of stakeholders are solicited and fairly considered.

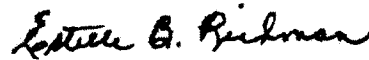
It is also important to note that mere creation of a venue such as the Consumer Workforce Council will not, by itself, bind or create obligations for the counties or the Commonwealth. Nor would creation of such an entity commit the State to increasing wages for direct care workers or appropriations for home or attendant care programs. Those outcomes can only result from normal legislative processes, where the realities of the State's fiscal situation are considered and the disparate views of interested parties are weighed. Creation of such an entity would, however, create a public forum for these debates—a mechanism for deliberating the steps necessary to ensure the future success of Pennsylvania's home care delivery system.

Should you also see the benefit of this approach, we look forward to entering into fruitful discussions with you to refine the concept and advance the interests of our direct care workforce.

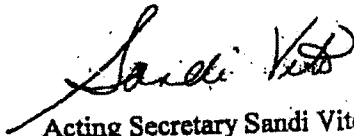
Sincerely,



Acting Secretary John Michael Hall
Department of Aging



Secretary Estelle B. Richman
Department of Public Welfare



Acting Secretary Sandi Vito
Department of Labor and Industry

CC: Kathleen McKenzie, Deputy County Manager



COMMONWEALTH OF PENNSYLVANIA

January 30, 2009

Honorable John Gordner, Chair
Senate Labor and Industry Committee
Room 351 Main Capitol Building
Harrisburg, Pennsylvania 17120

Honorable Patricia Vance, Chair
Senate Aging and Youth Committee
Room 168 Main Capitol Building
Harrisburg, Pennsylvania 17120

Dear Senators Gordner and Vance:

Enclosed please find a copy of the proposed model agreement for the Consumer Workforce Council (CWC) as submitted by the Consumer/Attendant Workforce Steering Committee. A copy of the transmittal cover letter from the Committee with regard to the proposal is also provided.

As I have indicated previously, the concept of the CWC model is under legal review by the Departments of Public Welfare, Aging, and Labor and Industry. The review is necessary in order to determine compliance and conformity to existing laws, regulations and policies pertaining to programs serving Pennsylvania's disability and aging communities, as well as with applicable labor laws.

Since the legal reviews have not yet been completed, presentation of the proposal to you does not imply endorsement. Once this legal review has been completed, I will gladly share any comments or recommendations made by the respective departments.

Throughout this process, it has always been our intention to ensure that the stakeholders and concerned communities would have the opportunity to deliberate the concept and specific language of any proposed model in public meetings and forums once the legal review has been completed.

We are committed to working with the General Assembly, employers, employee representatives, educators and other stakeholders to ensure consumers have access to a high quality longterm care workforce and workers have the appropriate training, the ability to support themselves and their families and have access to healthcare.

As part of that public vetting process, I was pleased that learn that you plan to conduct a joint hearing of your respective committees on the concept.

Thank you for your interest in this matter and if I can provide any additional information or can be of further assistance, please do not hesitate to contact me.

Sincerely,

Sandi Vito
Acting Secretary

Enclosure

**DRAFT WORK PRODUCT
CONSUMER/ATTENDANT WORKFORCE
STEERING & LEGAL COMMITTEES 9/5/2008**

**INTERGOVERNMENTAL COOPERATION
AGREEMENT**

BETWEEN THE

**COMMONWEALTH OF PENNSYLVANIA, by and through its
Departments of Aging and Public Welfare, and its
Office of Long Term Living**

AND THE

COUNTY OF _____

AND THE

COUNTY OF _____

AND THE

COUNTY OF _____

CREATING THE

**PENNSYLVANIA CONSUMER WORKFORCE COUNCIL,
A LEGAL ENTITY ESTABLISHED UNDER
53 PA.C.S. CH. 23 SUBCH. A
(Relating to Intergovernmental Cooperation)**

DRAFT WORK PRODUCT
CONSUMER/ATTENDANT WORKFORCE
STEERING & LEGAL COMMITTEES
9/5/2008

WHEREAS, Counties may operate or fund hospitals and can be liable to pay the cost of the care and treatment of its indigent patients (16 P.S. §2110 and §5310); and

WHEREAS, Counties have the power and duty to care for dependents in public or County nursing homes, and to provide or contract with entities in order to provide care and services designed to help "dependents" and potential "dependents" to "live outside of the County institution" (62 P.S. §2301 and §2302); and

WHEREAS, the Counties, including the Counties to this Agreement, have the power to make appropriations for the support of public institutions providing nursing home care to dependents (62 P.S. §2306 and §2311); and

WHEREAS, _____ and _____ Counties administer a public nursing home for the care of "dependents". The Counties are committed to "right-sizing" their nursing homes and to transitioning the maximum number of residents in public nursing homes to the community utilizing long term living options where possible; and

WHEREAS, the Counties incur costs for the operation of these nursing homes (62 P.S. §441.1 and §443.1) and the Counties are concerned over the increasing costs of such institutionalized care; and

WHEREAS, the same persons who are eligible for placement and care in a nursing home, including public nursing homes, are eligible for home and community based services (62 P.S. §441.8) in Pennsylvania; and

WHEREAS, the Counties which are party to this Agreement, both through the Area Agencies on Aging (which in the case of _____ County is part of County government) within their geographic boundaries and through their respective human services departments, provide community and home based services to their elderly residents; and

WHEREAS, under the Attendant Care Services Act, 62 P.S. §3051 *et seq.*, it is the policy of the Commonwealth to increase the availability of attendant care services for adults with disabilities to enable them to live in their own homes and communities and it is further stated that attendant care services may be provided by County governments and County human service departments (§3052(1) and (4)); and

**DRAFT WORK PRODUCT
CONSUMER/ATTENDANT WORKFORCE
STEERING & LEGAL COMMITTEES**

9/5/2008

This **INTERGOVERNMENTAL COOPERATION AGREEMENT**, (**"AGREEMENT"**), is entered into by and between the **Commonwealth of Pennsylvania, through its Departments of Aging and Public Welfare and its Office of Long-Term Living** (hereinafter referred to as the **"Commonwealth"**), the **County of _____** (hereinafter referred to as **"_____ County"**), the **County of _____** (hereinafter referred to as **"_____ County"**), and the **County of _____** (hereinafter **"_____ County"**).

WITNESSETH THAT:

WHEREAS, there is a continuing workforce shortage in recruiting and retaining the direct care workers who support Pennsylvania citizens in their homes and the community. Successful home care programs for seniors and persons with disabilities require continuity, maximum flexibility and intergovernmental cooperation to recruit and retain a qualified and trained direct care workforce; and

WHEREAS, Pennsylvania is in need of rebalancing its long term living system from a high cost institutionalized system to a system of less expensive and more desirable consumer directed long-term care to seniors and persons with disabilities in order that they may live in their homes and communities; and

WHEREAS, _____ and _____ Counties, as other County governments, have a responsibility for the health, safety and welfare of its residents including the elderly and persons with disabilities, and have an interest in maintaining those persons in their homes, and transitioning others from institutions, including county nursing homes, to the community; and

WHEREAS, there are many human services for County residents, including the elderly and others, that are in part funded by, and the responsibility of, the County government; and

WHEREAS, Counties, including those party to this Agreement, have the power and duty to provide or contract for care and services designed to help "dependents" remain in or return to community living, outside County institutions (16 P.S. §2164(8)); and

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WHEREAS, under the Attendant Care Services Act, the Commonwealth's Department of Public Welfare shall establish and develop programs of attendant care services for eligible individuals (§3054) and, further, that the Department may initiate demonstration projects to test new ways of providing attendant care services in both urban and rural environments (§3056); and

WHEREAS, the Commonwealth supports and finances certain efforts of the Counties with respect to long term care for seniors and persons with disabilities, and in particular, shares the goals of these Counties to rebalance programs away from institutions and towards community and home based services; and

WHEREAS, in pursuit of this goal, the Parties to this Agreement believe that, through greater cooperation and coordination, they can improve and facilitate the consumer employer service delivery model for providing personal care services to enable eligible seniors and persons with disabilities in the Counties and throughout the Commonwealth to live in their homes and communities; and

WHEREAS, the Parties to this Agreement believe that establishing an Intergovernmental Cooperation Entity called the Consumer Workforce Council will assist them to achieve the following goals: rebalancing Pennsylvania's long-term care system; increasing independence and choice for those in need of services; expanding the availability of consumer directed home care services; assuring quality in long term care; controlling costs; and, recruiting, training and retaining direct care workers; and

WHEREAS, at present there is no statewide Consumer entity in the Commonwealth which efficiently addresses the goals and performs the functions that are planned for the Intergovernmental Cooperation Entity created here; and

WHEREAS, public authorities have been created in other states which successfully support consumer choices for seniors and those with disabilities and which encourage workforce development; and

WHEREAS, 53 PA.C.S. CH. 23 SUBCH. A (Relating to Intergovernmental Cooperation) authorizes Counties, such as _____ County, _____ County, and _____ County, to cooperate, and establish a joint public authority in order to perform the functions, powers and

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responsibilities of the Counties with respect to long term care services provided to the elderly and other eligible dependents; and

WHEREAS, 53 PA.C.S. CH. 23 SUBCH. A (Relating to Intergovernmental Cooperation) provides that the ordinance of a County entering into intergovernmental cooperation can delegate and transfer any functions or powers or responsibilities to another local government, a council of governments, consortium, or "any other similar entity" (53 Pa.C.S.A. §2307), which entity, once established, shall be treated by all Commonwealth departments and agencies as a "legal entity" (53 Pa.C.S.A. §2316); and

WHEREAS, it is the intent of the Commonwealth to assist the formation and administration of the Consumer Workforce Council to fund it under the existing and applicable programs administered by the Departments of Public Welfare and Aging, to use this Intergovernmental Cooperation Entity to assist and promote the consumer employer service delivery model for personal care services to seniors and persons with disabilities, not just in the Counties that participate in this Agreement, but throughout the Commonwealth; and

WHEREAS, in order to effectively implement recruitment and retention policies for consumer employed at-home personal care workers, it is the intent of the Parties that the Intergovernmental Cooperation Entity also be an employer for limited purposes of those direct care workers covered by this Agreement, but operate in a manner that is fully consistent with the principles of consumer direction and control.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual promises hereinafter set forth, the Parties, intending to be legally bound, agree as follows:

ARTICLE I
PURPOSE

A. Guiding Principles. The Consumer Workforce Council shall promote and coordinate quality and efficient Personal Care Services, provided through the consumer employer service delivery model in the most integrated (noninstitutional) settings possible. In doing so, it shall be guided by the following principles:

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1. To preserve and strengthen the Consumer's right to select, hire, directly train, schedule, supervise and terminate any Personal Care Attendant providing services to that Consumer under the Consumer Employer of Record Model;
2. To support and maintain the right of Consumers to select a Financial Management Services agency of his/her choice;
3. To have in its governance structure a majority of Consumers as serving on the Consumer Workforce Council provided in Article V;
4. To achieve and maintain fair living wages, healthcare and leave benefits for Personal Care Attendants;
5. To ensure that Consumer's service plan hours and Consumers seeking Personal Care Services are not adversely impacted or harmed ("no harm") by an increase in wage and benefits for Personal Care Attendants;
6. To respect and ensure the rights of Personal Care Attendants to organize and choose a collective bargaining representative free of interference, restraint or coercion and without expending public funds to persuade Personal Care Attendants to join or not to join a labor organization;
7. To ensure that there are no work stoppages by Personal Care Attendants providing services to Consumers;
8. To strive, together with the Commonwealth and the Union of Personal Care Attendants, if one is selected, to maximize reimbursement rates from CMS and other funding sources for Personal Care Services;
9. To establish, support and maintain a statewide registry of qualified and screened workforce of Personal Care Attendants;
10. To support and increase the workforce of Personal Care Attendants through training, career paths, and other methods aimed at encouraging competence, quality services, job satisfaction and job retention; and
11. To hire, where possible, qualified Consumers on its own staff.

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B. Purpose. The purpose of this Agreement is for the Parties to cooperate, pursuant to 53 PA.C.S. CH. 23 SUBCH. A (Relating to Intergovernmental Cooperation), in order to more efficiently and effectively perform their respective government functions, powers and responsibilities as referenced in the "whereas" clauses set forth above. Pursuant to 53 PA.C.S. CH. 23 SUBCH. A and any other applicable laws, the Counties, with the support and cooperation of the Commonwealth, exercising their statutory and regulatory powers, hereby create an Intergovernmental Cooperation Entity, as a separate legal entity, known as the "Pennsylvania Consumer Workforce Council" (hereinafter "Council"), in order to:

1. Implement the powers, privileges and authority of each of the Parties in such a manner as to facilitate the delivery of quality and reliable Personal Care Services, provided through the consumer employer service delivery model, throughout the Commonwealth as specified in this Agreement;
2. Ensure the quality of long-term, in-home Personal Care Services by recruiting, designing and developing certain required trainings (such as CPR, First Aid, Work Injury Prevention) and certain optional trainings, and stabilizing the workforce of Personal Care Attendants; and
3. Function, by agreement and direction of the Commonwealth and consistent with the Guiding Principles, as an employer for limited purposes of Personal Care Attendants throughout the Commonwealth; and
4. Create a mechanism for establishing wage and benefit levels for Personal Care Attendants throughout the Commonwealth through a method consistent with Medicaid requirements.
5. Be a unified voice for Consumers and, if Personal Care Attendants choose to be represented by a union, then to negotiate the wages and benefits of Personal Care Attendants with their union.

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ARTICLE II
DEFINITIONS

As used in this Agreement:

A. Board means the governing board of the Pennsylvania Consumer Workforce Council established by this Agreement.

B. Consumer means any person in Pennsylvania who is elderly and/or disabled and who receives Home and Community-Based, non-medical, personal care or personal assistance services as a beneficiary of the Medicaid program or other related publicly funded programs. The Consumer as employer of the personal care attendant will have his/her own Federal Employer Identification Number.

C. Consumer Advocate means a person active in the Commonwealth as a spokesperson of Consumers and their concerns with respect to home care.

D. Consumer Representative or Surrogate means a person appointed by a Consumer to act in his or her behalf.

E. Council means the Pennsylvania Consumer Workforce Council established by this Agreement, as a separate legal entity to the full extent authorized by 53 PA.C.S. CH. 23 SUBCH. A (Relating to Intergovernmental Cooperation), to be the unified voice of Consumers for the limited purposes enumerated in this Agreement.

F. Departments mean the Pennsylvania Department of Public Welfare, the Department of Aging, and the Office of Long Term Living.

G. Effective Date means the date upon which all of the following conditions are satisfied:

1. The Agreement is signed by authorized representatives of the Parties to this Agreement;

2. The Agreement is reviewed by the Local Government Commission as specified in 53 Pa.C.S.A. §2314;

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3. The Agreement is enacted by ordinance of at least two Counties.

H. Financial Management Services ("FMS") Agency is an entity retained by the Commonwealth and selected by Consumers to assist them with payroll-related tasks associated with employing Personal Care Attendants such as preparing paychecks and direct deposits; filing and paying the employer's share of state and federal taxes, including unemployment taxes; procuring worker's compensation insurance; issuing appropriate tax forms for the Personal Care Attendant; and providing other fiscal and supportive services.

I. Party or Parties means the Commonwealth and any County that is signatory to this Agreement, or any county, which subsequently, by ordinance, becomes a Party.

J. Personal Care Attendant (PCA) is a direct care in-home worker, including a personal aide or personal assistance worker, who has been selected by a Consumer or the Consumer's Surrogate, to provide Personal Care Services to that Consumer and who is employed by the Consumer under the consumer employer (self-directed) service delivery option. The PCA shall be classified as a "domestic worker" for purposes of workers compensation coverage, provided that such classification shall not be used to exempt Personal Care Attendants from coverage.

K. Personal Care Services includes a range of non-medical services for Consumers who require assistance to meet their daily living needs in order to live independently in the communities of the Consumer's choice and that meet the criteria under the Departments' Medicaid and Home and Community-Based waiver programs.

L. Commonwealth means the Commonwealth of Pennsylvania including its Departments of Public Welfare, of Aging and the Office of Long Term Living.

ARTICLE III
DUTIES

A. Duties. To the extent authorized by law, the Parties delegate to the Council the power and responsibility to carry out the following duties:

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1. Facilitating the consistent provision of quality home care services for Consumers who select and employ Personal Care Attendants (pursuant to the consumer employer or self-directed service delivery model);

2. Without interfering with the Consumer's right to select, hire, schedule, supervise and terminate their own Personal Care Attendants, serving as a limited employer of the Personal Care Attendants in order to perform certain employer-related functions with respect to the Personal Care Attendants, including the following:
 - (a) Facilitating, coordinating or providing orientation and basic training (such as CPR) to assist Personal Care Attendants in the performance of authorized services, with the input of, and direction from, Consumers; and
 - (b) Facilitating, coordinating or providing advance training for Personal Care Attendants if desired and requested by Consumers; and
 - (c) Determining or negotiating, within applicable budgeting constraints, wages, leave entitlement and benefits (e.g., disability, health and life) for Personal Care Attendants; and
 - (d) Bargaining collectively with any labor organization duly selected by the Personal Care Attendants with regard to those limited matters and subjects over which the Council has power and responsibility; and
 - (e) Ensuring that FMS agencies make appropriate arrangements and elections for the payment of worker's compensation insurance coverage for Consumers employing Personal Care Attendants and assisting FMS agencies in brokering such insurance; and
 - (f) Obtaining, if practical, general tort liability insurance coverage to protect Consumers and Personal Care Attendants for acts of Attendants within the scope of their employment; and

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(g) Directing the FMS agency, within the context of a collective bargaining agreement, to make deductions from the wages of Personal Care Attendants for benefit premiums, dues and fees as permitted by applicable law; and

(h) Maintaining, as necessary to fulfill responsibilities under this Agreement, personnel-type files on Personal Care Attendants; and

(i) Responding to and adjusting the grievances of Personal Care Attendants with regard to matters under the control of the Council without interfering with the principle of Consumer control; and

(j) Developing recruitment and retention programs, such as career ladder programs, to expand and maintain the pool of qualified direct care workers who provide Personal Care Services to Consumers; and

(k) Removing barriers to employment by supplying Personal Care Attendants with information, referrals, and assisting with access to services supportive to Personal Care Attendants such as childcare and transportation; and

(l) Advertising positions for Personal Care Attendants.

3. Establishing and maintaining a publicly available statewide registry of Personal Care Attendants (with their addresses so that the registry may be sorted geographically) from which Consumers throughout the Commonwealth, with the assistance of their FMS agency if needed, may select a Personal Care Attendant and to which they may refer an Attendant the Consumer has hired;

4. Developing and applying a methodology and criteria for qualifying Personal Care Attendants who seek placement on the registry maintained by the Council and for removing Personal Care Attendants from the registry;

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5. Establishing or negotiating a grievance/review process for those Personal Care Attendants denied a listing or removed from the registry;
6. Informing Consumers of the background and qualifications of potential Personal Care Attendants and informing Personal Care Attendants of service needs of Consumers;
7. Developing a system, in coordination with the FMS agencies, to facilitate the provision of routine, emergency, and respite referrals for the provision of Personal Care Services, in accordance with authorizations of payers of services, through a pool of back-up Personal Care Attendants, to ensure the availability of on-call service available 24 hours a day, 7 days a week;
8. Protecting the confidential status of any information relating to Consumers, subject to waiver by the Consumers or their Representatives;
9. Complying with all applicable laws, regulations, directives and manuals of the Departments of Aging and Public Welfare;
10. Encouraging private and public sector involvement, support, and financing for the Council;
11. Developing methods of ongoing communication and information sharing with Personal Care Attendants and Consumers that supports and facilitates a positive relationship between the Attendant and Consumers or their surrogates;
12. Ensuring compliance with all applicable Medicaid regulations and policies, or those of private sector payers, including if necessary ensuring that the Council is certified and authorized to be reimbursed for services under Medicaid and other publicly funded programs;
13. Facilitating and coordinating mentoring for Consumers and Personal Care Attendants with the goal of supporting successful Consumer- Attendant relationships.

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ARTICLE IV
CREATION OF THE COUNCIL

A. Creation and Legal Status of the Council. The Parties hereby establish the "Pennsylvania Consumer Workforce Council" an Intergovernmental Cooperation Entity, in accordance with 53 PA.C.S. CH. 23 SUBCH. A and other applicable laws, for the purpose of administering and executing this Agreement, which shall be a separate legal entity with the powers granted to it under this Agreement. For no purposes under state or federal law, other than as specifically set forth in this Agreement, shall the Council be considered part of the Commonwealth. The Council shall be considered a "local agency" and "government unit" for purposes of governmental immunity under 42 PA.C.S. CH. 85 SUBCHAPTER A (Relating to General Provisions) and SUBCHAPTER C (Relating to Action Against Local Parties). The Council shall be a "public employer" for the joint but limited employment of Personal Care Attendants who shall be "public employees" as those terms are defined by the Pennsylvania Public Employee Relations Act, 43 P.S. §1101.101, *et seq.*

B. Title to Council Assets. Except as otherwise provided in this Agreement, the Council shall have exclusive title to all of its property and no Party shall have an ownership interest in Council property.

C. Compliance with Law. The Council shall comply with all federal and state laws, rules, regulations, and orders applicable to this Agreement, as well as with any duties or obligations that may from time to time be transferred to it from any of the Parties.

D. Relationship of Parties. The Parties agree that no Party shall be responsible, in whole or in part, for the acts of the employees, agents, and servants of any other Party, whether acting separately or in conjunction with the implementation of this Agreement. The Parties shall only be bound and obligated under this Agreement as expressly agreed to by each Party. No Party may obligate any other Party. No officer, employee, agent, or servant of the Council, including any Personal Care Attendant, shall be, or shall be deemed to be, an officer, employee, agent, or servant of a Party or of the Commonwealth for any reason.

E. No Third-Party Beneficiaries. Except as otherwise provided in this Agreement, this Agreement does not create in any person, other than a

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Party, and is not intended to create by implication or otherwise, any direct or indirect benefit, obligation, duty, promise, right to be indemnified (such as contractually, legally, equitably, or by implication), right to be subrogated to any Party's rights under this Agreement, and/or any other right or benefit. Neither the Council, nor the Council's officers or employees, shall have a right to be indemnified by any of the Parties or the Commonwealth, for any purpose.

**ARTICLE V
BOARD, EXECUTIVE COMMITTEE, AND PROGRAM DIRECTOR**

A. Appointment of the Board. The Council shall be governed by a board of directors, the majority of whom shall be Consumers as defined in this Agreement. The Board shall consist of a total of twenty-five (25) members who shall be appointed within sixty (60) calendar days of the Effective Date. Those Board members shall be appointed as follows:

1. One (1) member appointed by each County which is a Party to this Agreement and one (1) member appointed by majority vote of the Board of Directors the County Commissioners Assn. of PA;

2. The Secretary of the Department of Public Welfare, the Secretary of the Department of Aging and the Director of the Commonwealth Office of Long Term Living, or a designated representative of each, shall be members of the Board; and

3. By a majority vote of the County and Commonwealth appointed members of the Board, an additional eighteen (18) members shall be selected from a list of Consumers recommended by the Centers for Independent Living in cooperation with the P4A (representing the Area Agencies on Aging) with a goal being to achieve a geographically and age diverse group of Consumer members.

B. Vacancies. A vacancy on the Board shall be filled in the same manner as the original appointment for the balance of the unexpired term.

C. Meetings. The Board shall conduct its first meeting no earlier than ten (10) and no later than forty-five (45) days calendar days after the appointment of the Council, provided that a quorum of the Council has been

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appointed. The Board shall meet at least quarterly and hold such other meetings as it may determine at the place, date, and time as the Board shall determine.

D. Quorum and Voting. A majority of the Board members appointed and serving shall be required to constitute a quorum for the transaction of business. The Board shall act by a majority vote at a meeting at which a quorum is present. A quorum shall be necessary for the transaction of business by the Council. Each member of the Board is entitled to one vote.

E. Board Responsibilities. The Board shall do all of the following by a majority vote of its members appointed and serving:

1. Adopt bylaws, rules, and procedures consistent with this Agreement governing the Board and its actions and meetings. Initial bylaws shall be adopted within six (6) months of the first meeting of the Board;
2. Elect officers. Initial officers shall be appointed within thirty (30) days of the first meeting of the Board;
3. At the first meeting, terms of office shall be determined for Board members, other than appointees from the Commonwealth, to establish staggered terms of office, with one quarter of Board members, other than appointees from the Departments, being replaced each year.
4. Select, hire and if necessary dismiss a Program Director;
5. Approve policies to implement day-to-day operation of the Council, including policies governing any staff;
6. Provide for a system of accounts to conform to a uniform system required by law, and review and approve the Council's budget;
7. Provide for an annual audit;
8. Adopt personnel policies and procedures;
9. Adopt policies and procedures for contracting and procurement;

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10. Make a written Annual Report to the Parties and otherwise assure that the Parties are kept up to date with the activities of the Council;

11. Review, ratify or rescind the acts of the Executive Committee.

12. Take such other actions and steps as shall be necessary or advisable to accomplish the purposes of this Agreement;

F. Term of Office. The term of Board members, other than the Commonwealth appointees, shall be for four (4) years, with the exception of initial appointees under Article V.E.3. After an appointment has expired, the Board member shall continue to serve until such time that a replacement is appointed. In the case of the Commonwealth appointees, their term as Board members shall not exceed their term in their Commonwealth office.

G. Executive Committee.

1. The Council Board shall elect a five (5) member Executive Committee that shall include the Board Chairperson, Vice-board Chairperson, Treasurer, Secretary and the Program Director.

2. Except as otherwise provided under this paragraph, each member of the Executive Committee shall serve a term of four (4) years. To provide for staggered terms for the members initially appointed, two (2) members shall be appointed for a term of four (4) years, one (1) member shall be appointed for a term of three (3) years, one (1) member shall be appointed for a term of two (2) years and one member shall be appointed for a term of one (1) year. At least two (2) members of the Executive Committee shall be Consumers

3. If an Executive Committee is appointed, it shall exercise all the powers of the Council Board of Directors except those in E-11 above provided, however, that the Executive Committee shall be at all times subject to the directives, approval and control of the Board. It shall meet at the place, date and time as it may determine but not less than quarterly. A majority of the members of the Executive Committee shall constitute a quorum for the transaction of business.

H. Compensation. The members of the Board and Executive Committee shall receive no compensation for the performance of their duties. A

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Board or Executive Committee member may engage in private or public employment, or in a profession or business, except to the extent prohibited by law. The Council may reimburse members of the Board for actual and necessary expenses incurred (for example, travel, lodging, and meals) in the discharge of their official duties as provided by the Board.

I. Program Director. Not later than six (6) months after the first meeting of the Board, the Board shall select and retain a Program Director. The Program Director shall administer the affairs of the Council in accordance with the operating budget adopted by the Board, general policy guidelines established by the Board, other applicable governmental procedures and policies, and this Agreement. The Program Director shall be responsible for the day-to-day operations of the Council, the control, management, and oversight of the Council's functions, and supervision of all Council employees. All terms and conditions of the Program Director's employment shall be specified in a written contract between the Program Director and the Board, provided that the Program Director shall serve at the pleasure of the Board, notwithstanding any personnel policies or procedures adopted by the Council.

J. Ethics and Conflict of Interest. The Council will adopt an ethics and conflict of interest policy governing the conduct of Council's members, officers, appointees, and employees. The Council shall establish policies and procedures which, at a minimum, address conflicts of interest, voting conflicts, abstention of voting due to conflicts of interest and disclosure of relationships that may give rise to conflicts of interest.

K. Fiduciary Duty. The members of the Council are under a fiduciary duty to conduct the activities and affairs of the Council in the best interests of the Council, including the safekeeping and use of all Council monies and assets. The members of the Council shall discharge their duties in good faith with the care an ordinarily prudent individual in a like position would exercise under similar circumstances.

**ARTICLE VI
POWERS OF THE COUNCIL**

A. Powers. To the extent authorized by the law, the Parties delegate to the Council the power, privilege or authority that is specifically enumerated in this Agreement, including the power to:

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1. Make or enter into contracts, or agreements with governmental entities, agencies or other persons necessary or appropriate to assist the Council in carrying out its duties and functions under this Agreement;

2. Acquire, own, hold, operate, maintain, lease, or sell real or personal property and dispose of, divide, or distribute any property, including, but not limited to, equipment and office space;

3. Incur debts, liabilities, or obligations that, except as expressly authorized by the Parties, do not constitute the debts, liabilities, or obligations of any of the Parties;

4. Cooperate with other public agency(ies);

5. Expand the scope of the Council operations to include individual consumers who employ home care aides or attendants through the use of insurance or private pay arrangements, so long as it does not interfere with the publicly funded programs for Personal Care Services;

6. Receive local, State, Federal or private funds, to accomplish the purposes of this Agreement;

7. Form other entities necessary to further the purposes of the Agreement, however under no circumstances will the Council be itself a FMS;

8. Sue and be sued in the name of the Council;

9. Employ, appoint, engage, compensate, transfer, or discharge necessary personnel subject to the personnel policies established by the Council;

10. Enter into contracts for policies of group insurance and employee benefits for its employees;

11. Enter into neutrality and recognition agreements, as permitted by applicable law, with bona fide labor organizations seeking to organize the Personal Care Attendants.