



Thomas H. Earle, Esquire
Chairperson - Labor & Industry Workforce Steering
Committee

Written Testimony in Support of Consumer Workforce
Council Draft IGA Agreement
Senate Hearing - April 28, 2009

Introduction

I am a civil rights attorney with 17 years of litigation experience focused on the representation of children and adults with mental or physical disabilities. I am also the current Chief Executive Officer of Liberty Resources, Inc. ("LRI"). LRI is the non-profit Center for Independent Living for Philadelphia. LRI is one of the largest centers in the United States and has an operating budget exceeding \$63 million dollars. It serves over 5,000 people with disabilities under and over the age of 60. On July 2, 2008, at a stakeholder meeting attended by over thirty representatives of the disabled and aging communities, I was appointed by the Secretary of Labor & Industry to be the Chairperson of a diverse Steering Committee to develop a workforce alternative to the unacceptable Quality Home Care Commission ("QHCC").

Since its inception 29 years ago, LRI has advocated zealously for the creation and then the expansion of Consumer-controlled, community-based Attendant services.¹ The motivation for this hard work has been and continues to be the desire of Consumers, regardless of age and disability, to live in their own homes instead of segregated, expensive and undesirable nursing home facilities and institutions.²

¹ The Attendant services are for non-medical assistance including activities of daily living that Consumers need to live independently in their own homes in the communities of their choice.

² To this end, LRI works in tandem with other leading disability rights organizations such as ADAPT, other Consumer controlled and driven Centers for Independent Living and other Community-based organizations on the local, state and national levels. The Consumers we are including are seniors and people with disabilities not covered by the MH/MR system.



LRI currently serves 2,900 Consumers who receive attendant and home support services through the Office of Long-Term Living and/or Department of Aging. Over 70 percent of LRI's Consumers choose to receive their attendant service under the Consumer Control Model where each of them interviews, hires, schedules, directs and terminates the attendant home care worker of their choice. Less than 30 percent of LRI's Consumers choose to receive their services from Home Care agencies, such as those collectively represented by the Pennsylvania Homecare Providers Association. For the reasons stated below, LRI, its Consumers, Staff and its Consumer-led Board of Directors, together with the CWC Coalition, unequivocally support the Consumer Workforce Council as submitted by the Steering Committee.

Key Reasons to Support the CWC

1. Unlike the QHCC, the CWC was developed by a stakeholder steering committee that included Consumers both under and over the age of 60, attendant workers, and statewide disability and aging groups that included PA ADAPT, the Pennsylvania Council on Independent Living, AARP of PA, Statewide Council on Independent Living and others.³
2. The CWC, in stark contrast to the QHCC, clearly preserves the Consumer's absolute right to serve as the individual employer of record whereby the Consumer (no one else) hires, schedules, directs and, if desired, terminates the home care attendant.
3. The CWC also preserves the absolute right of a Consumer to choose the fiscal agent provider of their choice to handle payroll functions including obtaining EIN #, FICA deductions, unemployment compensation insurance, and an individual worker's compensation policy. All of these fiscal functions

³ Numerous other organizations participated on the Steering Committee, including P4A, the Pennsylvania Homecare Providers Association, the Disabilities Rights Network of Pennsylvania, SEIU, 1199C, Disabled in Action of Pennsylvania, Pennsylvania Alliance of Retired Americans, Pennsylvania Council of Churches, and representatives of the Commonwealth's Office of Long Term Living, Department of Labor & Industry.



would continue to operate in the same manner as they do now through the current existing network of fiscal agents/fiscal management service providers authorized by the Commonwealth.

4. As Pennsylvania and Governor Edward G. Rendell continue to shift the Commonwealth's long-term care system away from segregated and costly nursing home facilities to integrated and cheaper home and community-based services ("HCBS"), the need for a reliable and retainable workforce of community-based attendant workers will continue to grow in parallel.⁴
5. Historically, community-based Attendants have been paid low hourly wages with no healthcare coverage and no paid vacation or sick time.⁵
6. Under the draft CWC Intergovernmental Agreement, the CWC would for very limited purposes serve as a joint employer of record. These limited functions would not interfere with or dilute the individual Consumer's right to interview, hire, schedule, direct or terminate their homecare attendant.
7. The limited functions of the CWC would include the ability to negotiate pooled healthcare coverage for Consumer model attendant workers; provide trainings such as CPR, First-Aid and Work Injury Reduction/Prevention;⁶ and most importantly, to guarantee the Consumer Council a voice at the collective-bargaining table should Attendant workers choose to join a labor organization/union.⁷
8. Importantly, the CWC would only be able to collectively bargain within the financial parameters set forth by the

⁴ Currently, the Commonwealth ranks close to last among other states in its community-based ratio for long-term care, with 80% of 2008/09 Medicaid funded services being wasted in nursing homes as compared to only 20% being spent on cost-efficient, integrated and desired HCBS. Efforts towards rebalancing can be accelerated with Money Follows the Person and the Federal Community Choice Act, whose legislation is currently underway.

⁵ In an unjust reality, community-based Attendants earn substantially less than their nursing home facilities counterparts and receive no healthcare, paid vacation or sick-time, performing identically the same work.

⁶ Under no circumstances would Consumers be unable to continue training their attendants in their own homes on a hands-on training basis.

⁷ The CWC would be recognized as a joint employer to serve as a party to the collective-bargaining process/negotiations by the Pennsylvania Labor Relations Board.



Governor's Budget Office and the Commonwealth's State Legislators' Budget approval process.

9. The CWC contains a "No-Harm" provision that would prohibit the reduction of Consumer's HCBS service hours or create a waiting list for Consumers seeking HCBS services.
10. The CWC also prohibits any work stoppages, sick-outs or work strikes by Attendants and instead requires binding arbitration.
11. Lastly, in other states where similar workforce initiatives have been formed, the funding levels for HCBS have increased substantially with more Consumers being served; and importantly, the wages, healthcare and other benefits for community-based Attendant workers have increased.

Debunking Misinformation, Propaganda and Myths about the CWC circulated by the Pennsylvania Homecare Providers Association and the R.E.A.L. Coalition

1. The CWC is not a union; it would be a statewide council composed of 18 Consumers (under & above 60) and seven county officials.
2. Attendant workers would not join the CWC.
3. The CWC IGA and its provisions would only apply to Consumers who directly hire and employ (Consumer Model) their Attendants and would not apply to Consumers receiving their Attendant Services through homecare agencies.
4. The CWC IGA does not circumvent the legislative process and/or legislative budget approval. It relies upon the Commonwealth's Intergovernmental Cooperation Law.⁸
5. Consumer model employers would not lose their current Attendant workers, including Attendant workers who are family or friends, and Attendants would have their own

⁸ Act of July 12, 1972, P.L. 762, 53 Pa.C.S. §§ 2301 et seq. which directly implements Article IX, Section 5 of the Pennsylvania Constitution



choice on deciding whether or not to join a labor organization/union.

6. The Attendant worker registry created and maintained by the CWC is primarily designed to provide Consumer model employers with back-up Attendant workers when their regular Attendant workers are sick or on vacation.
7. Consumers' decisions to terminate their Attendant workers would not constitute a grievance to be reviewed by a labor organization/union.
8. Only the removal of an Attendant worker from the CWC Registry would be a grievable matter.
9. All current registries used and maintained by current providers, CILs and AAAs would still be allowed.

Conclusion

As Pennsylvania ambitiously moves to expand tax-saving HCBS services and decrease the use of expensive, undesirable, and unsafe nursing home facilities, the need for a reliable and retainable Attendant workforce will grow as more Consumers need and receive such services. Only when the disabled and aging communities work in unison with labor, OLTL, and the Departments of Labor & Industry, Aging and Public Welfare, will we be able to collectively gather the leverage to increase the Medicaid reimbursement rate structure in Pennsylvania to finally allow for improved hourly wages and benefits for our deserving Attendant workers. Additional funding will also begin to flow to the Commonwealth as we continue to save money by avoiding unnecessary placement in nursing home facilities.