

1 S.59

2 Introduced by Senators Campbell, Ashe, Ayer, Baruth, Fox, Galbraith, Lyons,
3 MacDonald, McCormack, Pollina, Starr, White, and Zuckerman

4 Referred to Committee on

5 Date:

6 Subject: Labor; collective bargaining; independent direct support service
7 providers

8 Statement of purpose of bill as introduced: This bill proposes to authorize the
9 State to establish standards regarding terms and conditions of employment for
10 independent direct support providers in order to ensure the quality and
11 availability of self-directed home care services through Vermont's home- and
12 community-based programs. It also establishes a Direct Support Provider
13 Workforce Council to advise the State regarding the recruitment and retention
14 of such providers, and it allows independent direct support providers to bargain
15 collectively with the State.

16 An act relating to independent direct support providers

17 It is hereby enacted by the General Assembly of the State of Vermont:

1 Sec. 1. FINDINGS

2 The General Assembly finds:

3 (1) The State of Vermont has a long-standing dedication to allowing
4 elders and those with disabilities to receive services in their own homes and
5 communities, allowing them to live with dignity, independence, and choice.

6 Elders have a right to age in place, and people with disabilities have a
7 right to live in the community and to be integrated and included in all facets of
8 community life.

9 (2) Home- and community-based services must be accessible to all who
10 need them and want them. Public funding for home- and community-based
11 services should be made available based on need.

12 (3) People who receive services increasingly want the ability to
13 self-direct their own care, and they and the State of Vermont are best served by
14 an experienced, well-trained, stable, independent provider workforce that
15 affords service recipients within state programs the highest-quality care
16 possible.

17 (4) The 2008 Legislative Study of the Direct Care Workforce in
18 Vermont found that service recipients who hire their own direct care workers
19 repeatedly report having difficulty recruiting and retaining workers and they
20 must typically wait nearly three months to fill an open position.

1 (5) The demand for home- and community-based services is expected to
2 increase dramatically as Vermont's population ages but, at its current rate, the
3 supply is expected to remain stagnant.

4 (6) Workers who perform this work have a deep commitment to service
5 recipients and their work but low wages and a lack of benefits and career
6 ladders lead to very high rates of turnover.

7 (7) The 2008 Legislative Study recommended a number of
8 improvements for the direct care workforce in Vermont. It suggested
9 establishing a process for implementing and monitoring progress on these
10 recommendations, with representation from state agencies, service recipients,
11 direct care workers, advocates, and providers.

12 (8) Many states have established councils with the authority to make
13 recommendations to state officials to improve retention, recruitment, and
14 quality in the direct support provider workforce available to recipients of
15 home- and community-based services. These councils enhance the leadership
16 and decision-making roles of participants in the system.

17 (9) Independent direct support providers should have a mechanism to
18 participate in such processes in a coordinated manner on issues that affect the
19 provider workforce to improve Vermont's home- and community-based
20 service programs.

1 Sec. 2. 21 V.S.A. § chapter 20 is added to read:

2 CHAPTER 20. INDEPENDENT DIRECT SUPPORT PROVIDERS.

3 § 1631. DEFINITIONS

4 As used in this chapter:

5 (1) “Board” means the State Labor Relations Board established by
6 3 V.S.A. § 921.

7 (2) “Collective bargaining,” or “bargaining collectively” means the
8 process of negotiating terms or conditions of employment and the subjects
9 included in section 1603 of this chapter between the State and the exclusive
10 representatives of independent direct support providers with the intent to arrive
11 at an agreement which, when reached, shall be reduced to writing.

12 (3) “Service recipient” means a person who receives home- and
13 community-based services under the Choice for Care Medicaid waiver, the
14 Attendant Services Program (ASP), the Children’s Personal Care Service
15 Program, the Developmental Disabilities Services Program, or any successor
16 program or similar program subsequently established.

17 (4) “Exclusive representative” means a labor organization that has been
18 elected and certified under this chapter and has the right to represent
19 independent direct support providers for the purpose of collective bargaining.

1 (5) “Independent direct support provider” means any individual who
2 provides home- and community-based services to a service recipient and is
3 employed by this service recipient, shared living provider, or surrogate.

4 (6) “Shared living provider” means a person who operates under a
5 contract with a developmental disabilities service agency and provides
6 individualized home support for one or two people who live in his or her home.

7 (7) “Surrogate” means a service recipient’s authorized family member,
8 legal guardian, or a person identified in a written agreement as having
9 responsibility for the care of a service recipient.

10 § 1632. STATE RESPONSIBILITIES; INDEPENDENT DIRECT SUPPORT

11 PROVIDER WORKFORCE

12 (a) The State, through the Governor or designee, shall, with the advice of
13 the Direct Support Provider Workforce Council:

14 (1) establish minimum compensation terms, including benefits and other
15 terms and conditions of employment for independent direct support providers.
16 Service recipients who employ independent providers may opt to pay higher
17 hourly rates if program rules allow;

18 (2) create and maintain an independent direct support provider registry
19 to provide referrals of qualified independent direct support providers to service
20 recipients and surrogates who are authorized to receive such home- and
21 community-based services through state programs, who choose to employ and

1 direct independent direct support providers for the provision of such services,
2 and who desire such referrals, as well as to provide appropriate employment
3 opportunities for independent direct support providers, including a means by
4 which such individuals can more easily pursue long-term careers within state
5 programs;

6 (3) provide educational and training opportunities for independent direct
7 support providers and service recipients; and

8 (4) provide resources and training to ensure that any willing service
9 recipients can manage their own services.

10 (b) The State shall exercise its authority under subsection (a) of this section
11 subject to the requirements of 3 V.S.A. chapter 27, as made applicable to
12 independent direct support providers by § 1633.

13 (c) The Secretary of Human Services shall compile and maintain a list of
14 the names and addresses of all independent direct support providers who have
15 been paid for providing home- and community-based services within the
16 previous six months. The list shall not include the name of any service
17 recipient and shall not indicate that an independent direct support provider is a
18 relative of a service recipient or has the same address as a service recipient.

19 The Secretary shall ensure that anyone contracting with the State to provide
20 support in the employment of independent direct support providers, including
21 any intermediary payroll service organization, shall assist and cooperate with

1 the Secretary in implementing this section including the compiling and
2 maintenance of the list by the Secretary.

3 § 1633. ESTABLISHMENT OF LIMITED COLLECTIVE BARGAINING;

4 SCOPE OF BARGAINING

5 (a) Independent direct support providers shall have the right to bargain
6 collectively with the State, through the Governor's designee, over their terms
7 and conditions of employment, subject to the limitations in subsection (c) of
8 this section. Independent direct support providers shall have the rights and
9 obligations of state employees pursuant to 3 V.S.A. chapter 27, including
10 access to procedures for petition, election, grievances, unfair labor practice
11 procedures, and dispute resolution, to the extent that such procedures do not
12 conflict with this chapter. This section does not require that independent direct
13 support providers be considered employees of the State for any other purposes.

14 (b) Subject to the limitations provided in subsection (c) of this section, the
15 scope of collective bargaining for independent direct support providers under
16 this section shall include:

17 (1) compensation terms and payment methods and procedures;

18 (2) professional development and training;

19 (3) health and safety conditions and workplace benefits;

20 (4) the collection and disbursement of dues or fees to the exclusive
21 representative;

1 (5) procedures for resolving grievances against the State;

2 (6) issues relating to the recruitment, retention, or referral of qualified

3 independent direct support providers; and

4 (7) any other matters relating to the role of the State and its contractors

5 in regulating, subsidizing, and enhancing the quality of home- and

6 community-based services within the State.

7 (c) Notwithstanding subsections (a) and (b) of this section, a collective

8 bargaining agreement or award under this chapter shall not infringe upon any

9 rights of service recipients or their surrogates to hire, direct, supervise, or

10 discontinue the employment of any particular independent direct support

11 provider. No collective bargaining agreement or award under this section shall

12 provide for a reduction in Medicaid funds provided to the State or for a

13 reduction in the services that independent direct support providers provide to

14 service recipients.

15 (d) Any agreement reached between the parties shall be subject to approval

16 by the General Assembly solely for the purpose of securing sufficient funding

17 pursuant to 3 V.S.A. § 982. Nothing shall prevent the parties from agreeing to

18 and effecting those provisions of an agreement which have received the

19 approval of the General Assembly or those provisions which do not require

20 action by the General Assembly. Upon the General Assembly's appropriating

1 sufficient funds, the agreement shall become effective at the beginning of the
2 next fiscal year.

3 (e) Nothing in this section shall alter the rights and obligations of private
4 sector employers and employees under the National Labor Relations Act,
5 29 U.S.C. § 151 et seq.

6 (f) Nothing in this section shall constitute a grant to direct support
7 providers of the right to strike

8 § 1634. ELECTION; BARGAINING UNIT

9 (a) The State shall, upon request, provide within seven days to any
10 organization which has as one of its primary purposes the collective bargaining
11 representation of independent direct support providers in their relations with
12 state or other public entities the most recent list of independent direct support
13 providers compiled under section 1632 of this section.

14 (b) A representation election for independent direct support providers
15 conducted by the Board pursuant to 3 V.S.A. chapter 27 shall be by mail
16 ballot.

17 (c) Notwithstanding 3 V.S.A. § 941(e), the bargaining unit for purposes of
18 collective bargaining pursuant to this chapter shall be a statewide unit of
19 independent direct support providers. Eligible independent direct support
20 providers shall have the right to participate in a representation election but
21 shall not have the right to vote on or otherwise determine the collective

1 bargaining unit. Eligible independent direct support providers shall all be
2 independent direct support providers who have been paid for providing
3 home- and community-based services within the previous six months.

4 Sec. 3. DIRECT SUPPORT PROVIDER WORKFORCE COUNCIL

5 (a) There is established a Direct Support Provider Workforce Council to
6 stabilize the workforce and improve the quality of services provided. The
7 council shall consist of:

8 (1) The Secretary of Human Services or designee;

9 (2) The Commissioner of Disabilities, Aging, and Independent Living or
10 designee;

11 (3) The Commissioner of Health or designee;

12 (4) A recipient of Developmental Disabilities Services who manages his
13 or her services, appointed by the Committee on Committees;

14 (5) A recipient of Developmental Disabilities Services who manages his
15 or her services representing Green Mountain Self-Advocates, appointed by the
16 Speaker of the House;

17 (6) A service recipient of the Choices for Care Program who manages
18 his or her services representing the interests of people with disabilities,
19 appointed by the Committee on Committees;

1 (7) A service recipient of the Choices for Care Program who manages
2 his or her services representing Community of Vermont Elders, appointed by
3 the Speaker of the House;

4 (8) A service recipient of the Choices for Care Program who manages
5 his or her services representing the interests of elders, appointed by the
6 Speaker of the House;

7 (9) A service recipient of the Attendant Services Program representing
8 Vermont Center for Independent Living, appointed by the Committee on
9 Committees;

10 (10) A family member of a service recipient of Children's Personal Care
11 Program, appointed by the Speaker of the House; and

12 (11) A family member of a service recipient of Children's Personal Care
13 Program representing Vermont Family Network, appointed by the Committee
14 on Committees.

15 (b) All initial appointments to the Council shall be made not later than
16 August 1, 2013. The chair shall convene the first meeting of the Council no
17 later than September 1, 2013. The chair of the Council shall be appointed by
18 the Governor from among its members. Members shall serve coterminously
19 and at the pleasure of their appointing authority. A majority of members of the
20 Direct Support Provider Workforce Council shall constitute a quorum for the
21 transaction of any business. Members of the Direct Support Provider

1 Workforce Council shall receive no compensation for their service but shall be
2 reimbursed for actual expenses necessarily incurred in performance of their
3 duties. The Council shall be within the Agency of Human Services for
4 administrative purposes only.

5 (c) The Direct Support Provider Workforce Council shall advise the State
6 regarding issues relating to attracting and retaining a quality independent direct
7 support provider workforce to be available to all service recipients. In
8 particular, the Council shall monitor progress and make recommendations for
9 furthering the direct support provider workforce goals and policies of
10 21 V.S.A. chapter 20, including proposing plans and making recommendations
11 to improve the quality, stability, and availability of the independent direct
12 support provider workforce. In particular, the Council shall propose plans and
13 recommendations regarding:

14 (1) direct support provider compensation, including access to health care
15 and other benefits;

16 (2) accessible orientation, training, and professional development;

17 (3) recruitment and retention;

18 (4) improvements to the registry system;

19 (5) career opportunities; and

20 (6) new data collection to provide a fuller picture of the workforce.

1 (d) The Commissioners of Disabilities, Aging, and Independent Living, of
2 Mental Health, and of Health shall review the plans recommended by the
3 Direct Support Provider Workforce Council pursuant to subsection (c) of this
4 section within 30 days of submission to the State. The Commissioners shall
5 consider for inclusion in budgetary requests submitted to the Department of
6 Finance and Management requests for the funding necessary to implement the
7 plans.

8 Sec. 4. EFFECTIVE DATE

9 This act shall take effect on passage.