



# Senate Fiscal Agency

## NOVEMBER 2012 BALLOT PROPOSAL 12-4

An Overview

Prepared by  
Suzanne Lowe,  
Associate Director

Ellen Jeffries, Director

Phone (517) 373-2768

<http://www.senate.michigan.gov/sfa>



On November 6, 2012, Michigan voters will decide whether to adopt a constitutional amendment that would create an entity designed to ensure that recipients of services under the State's home care program have the option of hiring individual care providers; and that would establish the right of those providers to engage in collective bargaining. The result of a petition drive, Proposal 12-4 will appear on the ballot as follows:

***A PROPOSAL TO AMEND THE STATE CONSTITUTION TO ESTABLISH THE MICHIGAN QUALITY HOME CARE COUNCIL AND PROVIDE COLLECTIVE BARGAINING FOR IN-HOME CARE WORKERS***

*This proposal would:*

- *Allow in-home care workers to bargain collectively with the Michigan Quality Home Care Council (MQHCC). Continue the current exclusive representation of in-home care workers until modified in accordance with labor laws.*
- *Require MQHCC to provide training for in-home care workers, create a registry of workers who pass background checks, and provide financial services to patients to manage the cost of in-home care.*
- *Preserve patients' rights to hire in-home care workers who are not referred from the MQHCC registry who are bargaining unit members.*
- *Authorize the MQHCC to set minimum compensation standards and terms and conditions of employment.*

*Should this proposal be approved?*

If a majority of the electors vote "yes", the proposal will add Section 31 to Article V of the Michigan Constitution, and will amend Section 5 of Article XI.

**Introduction**

Proposal 12-4 relates to workers who provide in-home care to Medicaid-eligible recipients of services under an existing State program called Home Help Services. These workers, who are hired by the recipients and paid by the State, are often relatives or friends of the recipients. The workers belong to a labor union, SEIU Healthcare Michigan. For this purpose, the workers are considered public employees of an entity called the Michigan Quality Community Care Council.

In April 2012, legislation was enacted to prevent these workers from being considered public employees, and to prevent SEIU Healthcare Michigan from being recognized as their bargaining representative. A Federal lawsuit was filed to challenge that law. In June, the judge issued a preliminary injunction, preventing the law from taking effect for the time being. The Attorney General has filed a motion to appeal.

**The State's Home Help Program**

The Home Help Services program is administered by the Department of Human Services and the Department of Community Health (DCH), and is funded through the DCH. The program supports services to seniors and people with disabilities who are eligible for Medicaid and need assistance with personal care activities, such as eating, bathing, and dressing, as well as household chores.

Proposal 12-4 does not refer to the existing program, but it would require State programs that provide the same services to give recipients ("participants") the option to hire and direct individual providers. This would reflect the current practice, under which recipients select and hire the workers, who are paid by the State.

## **The Proposed Council**

According to Proposal 12-4, the purpose of the Michigan Quality Home Care Council would be to facilitate participants' ability to exercise the option of hiring and directing individual providers. The Council would be required to: 1) provide training opportunities to providers; 2) set compensation standards, subject to appropriations by the Legislature, and other terms of employment for the providers by program participants; 3) ensure that financial management services would be available to participants so they could hire providers, comply with applicable laws, and make appropriate employment-related payroll deductions; and 4) provide for a registry that could refer qualified providers who have appropriate background checks for employment. Participants also would have the right to hire providers not referred from the registry.

The Council would be a public body in the executive branch of State government, and would assume the authority, duties, and obligations of the existing Michigan Quality Community Care Council (MQC3). This would include the obligation to recognize provider representatives and honor unexpired agreements with them.

The proposed Council would be governed by an 11-member board, consisting of the DCH Director (or a person designated by the Director); the Director of the Department of Human Services (or his or her designee); and nine individuals appointed by the Governor with expertise regarding participant needs. At least seven of the appointed members would have to be current or former participants, participant representatives, or participant advocates. Initially, those positions would have to be filled by similarly qualified individuals who were on the MQC3 board before the adoption of Proposal 12-4.

## **The Right to Collective Bargaining**

Proposal 12-4 would give participant-employed providers the same rights relating to collective bargaining with the Michigan Quality Home Care Council as otherwise provided by law to public employees who do not belong to the classified civil service. The providers would not be considered public or State employees for any other purpose, and would not have the right to strike.

The ballot proposal also would amend the section of the Constitution that governs the classified State civil service (Article XI, Section 5) to exempt in-home personal care providers subject to the authority of the Michigan Quality Home Care Council from the classified civil service.

## **Background**

The proposed Michigan Quality Home Care Council would take over the duties and obligations of the existing Michigan Quality Community Care Council. The MQC3 was formed after the DCH entered into an Interlocal Agreement with the Tri-County Aging Consortium (the Area Agency on Aging that serves Clinton, Eaton, and Ingham Counties) under the Urban Cooperation Act in 2004. The Council was created to coordinate the personal assistance services provided by Home Help Services and to maintain a registry of providers in designated communities. The Council was funded by the State until this support ended in fiscal year 2011-12.

In 2005, an election to organize the Home Health Services providers was held under Michigan's public employment relations act (PERA), which authorizes public employees to form labor unions, and governs collective bargaining between public employers and representatives of their employees. Some 43,000 ballots were sent to the workers, who returned 6,949 "yes" votes and 1,007 "no votes (and 589 spoiled ballots). The MQC3 recognized Service Employees International Union (SEIU) Healthcare Michigan as the providers' bargaining representative, and a contract was ratified in 2006.

Many people, however, do not consider in-home workers to be public employees and believe that this election should be invalidated. Toward this end, Public Act 76 of 2012 amended PERA to exclude from the definition of "public employee" a person who receives a government subsidy in his or her private employment; specify that this exclusion cannot be superseded by an interlocal agreement, memorandum of agreement, or similar document; prohibit the recognition of a bargaining unit consisting of individuals who are not public employees; and invalidate a bargaining unit formed or recognized in violation of that prohibition. Public Act 76 took effect on April 10, 2012, and states that it is retroactive.

In a letter dated May 24, 2012, Attorney General Schuette's chief legal counsel responded to a legislator's inquiry as to whether union dues could continue to be deducted from payments to home care providers, in light of the recent amendment to PERA. According to the letter, there was no legitimate or legal basis upon which the Department of Community Health could continue to withhold the dues.

On May 29, SEIU Healthcare Michigan filed a motion for a temporary restraining order and a preliminary injunction in the U.S. District Court for the Eastern District of Michigan. On June 21, the judge granted the motion (Case No. 12-12332). The Attorney General has filed a Notice of Intent to Appeal to the U.S. Court of Appeals for the Sixth Circuit.

### **The Present Situation**

According to the procedures set forth in the Interlocal Agreement that created the MQC3, the Department of Community Health has taken steps to withdraw from that agreement. Based on this, the Interlocal Agreement will terminate on or about April 11, 2013. If Proposal 12-4 is approved, the MQC3 will be replaced before then by the Michigan Quality Home Care Council. If the ballot proposal is not approved, the MQC3 will be discontinued when the Interlocal Agreement is terminated.

As a result of the preliminary injunction, the Department is continuing to collect union dues from providers' payments. The collective bargaining agreement between the MQC3 and SEIU has been extended several times and presently is scheduled to remain in effect until February 28, 2013. It is possible that the agreement could be extended again, but not beyond the time the MQC3 ceases to exist. If Proposal 12-4 is approved, the new Council will be bound by any collective bargaining agreement that has not expired, and will be obligated to engage in collective bargaining with representatives of the home care workers.

### **The Issues**

Many people objected when SEIU Healthcare Michigan was recognized as the bargaining representative of the Home Health Services providers. The reasons for opposition are varied.

Although the procedures under PERA were followed, there are claims that many or most of the workers did not know about the election to organize, and would prefer not to belong to a union. (Of the 41,000-plus providers, however, only approximately 2% have exercised their option not to be full members, according to the Federal court opinion.)

Also, many people believe that individuals should not be considered public employees simply because they receive payment from the government, as the providers do for their in-home services. This claim applies especially to situations in which the providers are related to the recipients.

People also object to the deduction of union dues from the amounts that the workers otherwise would receive for their services, and question whether belonging to the union actually benefits the low-paid workers. As union members, the workers must pay 2.75% of wages in dues (or pay a lower fair-share fee if they choose not to belong to the union). After being frozen for years, the wages were increased in the mid-2000s. While this

occurred not long after SEIU began to negotiate with the MQC3 for a contract, it also happened at the same time the minimum wage was raised by law. Subsequent increases resulted in a "floor" of \$8 per hour (except in counties where the wage exceeds that amount). Apart from the issue of wages, it is not known whether the providers' working conditions have improved or what other benefits they are experiencing due to union membership.

On the other hand, many people believe that Public Act 76 of 2012 undermined collective bargaining rights and that a constitutional amendment is necessary to protect those rights. When the legislation was enacted, and in the Federal lawsuit, opponents of the legislation claimed that it substantially impaired the contract between SEIU and the providers in violation of the Constitution, and the Federal court agreed with this claim.

Another consideration involves the role of the MQC3, or of the Michigan Quality Home Care Council if Proposal 12-4 is approved. The proposed purpose and responsibilities of that Council largely reflect those of the MQC3. These include maintaining a registry of providers, performing background checks on registrants, and offering recipients training in how to be an employer. The ability of the MQC3 to perform these functions has been significantly reduced since its State funding was terminated.

Many people believe that retaining (or re-establishing) the Council is important to ensure that participants in the Home Help Services program receive proper care from reliable, competent, and properly vetted providers, protection from those who are unscrupulous or unqualified, and assistance in finding suitable help and functioning as an employer. Advocates point out that, if the recipients could not receive in-home services, many would have to move into nursing homes or other facilities—an alternative that is more costly for taxpayers and less desirable for consumers. While the existence of the Home Help Services program does not depend on the Council, and will not be affected by the approval or disapproval of Proposal 12-4, the success of the program arguably does rely on the availability of a trained, responsible workforce to provide the services.

If Proposal 12-4 is approved, the existence of the Council will be established in the Constitution, its role will be spelled out, and the providers' right to bargain collectively will be protected. The legislative appropriations process, however, will continue to determine the level of State funding for the Council and, as the amendment states, the providers' compensation will be subject to appropriations by the Legislature.