

Legislative Scorecard Summary
H.R. 3778, 115th Congress, First Session (2017)
The Direct Care Opportunity Act of 2017

Introduction

The Southwest PA Partnership for Aging developed a scorecard implementing the Principles of an Ideal Long Term Living System for Pennsylvania's Older Adults to use to understand and analyze the potential impact of legislation. A bill, H.R. 3778, concerning the direct care workforce is currently under consideration in the U.S. House of Representatives. Members of SWPPA's Policy Committee reviewed the legislation and, using the scorecard, addressed how each principle was reflected in the bill.

Recent brief history on federal legislation regarding recruitment and retention of a direct care workforce reveals that the Elder Justice Act (2010) included opportunities for grants to be offered to entities to recruit and train direct care workers; however, the EJA was not funded. Representative Peter King (Democrat, NY) has initiated subsequent legislation to fund the bill, including grants for the development of direct care workers. The legislation has not made it out of committee. Senator Robert Casey (Democrat, PA) and Representative Linda Sanchez (Democrat, CA) have also submitted legislation several times in the last five years to augment the direct care workforce. None have made it out of committee. Skopos Labs, a predictive artificial intelligence for proposed legislation, gives H.R. 3778, a 1 % chance of passing based on language from previous bills considered in Congress.

Bill Summary

This bill, H.R.3778, The Direct Care Opportunity Act of 2017, was introduced by Representative Robert Scott of Virginia and Mrs. Susan Davis of California (both Democrats) on September 14, 2017 and was referred to the Committees on Education and the Workforce and Energy and Commerce. Representative Scott is a ranking member on the Committee on Education and the Workforce

The primary focus of the bill is to award grants for the recruitment, retention, and advancement of direct care workers. It further

- Provides funding to fifteen entities to invest in strategies that will create jobs and enhance the direct care workforce pipeline.
- Implements models and strategies to make the field of direct care more attractive, such as training, career pathways, or mentoring, allowing for local and regional innovation to address workforce shortages and needs in a high-demand field.
- Encourages retention and career advancement in the growing field of direct care.
- Responds to the needs of a growing aging population and allows older Americans, people with disabilities, and others who require direct care services to remain in their communities, when possible.

Source: FACT SHEET, Committee on Education and The Workforce Democrats

Scoring of H.R. 3778
Using the Principles of the Ideal Long Term Living System for
Pennsylvania's Older Adults

Principle 1. Person Centered-Score MEDIUM-HIGH (3.5)

On the positive side, this bill incorporates some language of “older adult dignity” and “independence”, and highlights the importance of access from their “own homes and communities.” It addresses the importance of social participation in later life as well as integration into the community, both of which are parts of emotional and social health and well-being. On the minus side, the bill does not consistently emphasize the uniqueness of individual-choice as in a person-centered approach. It also does not speak to training of direct care workers to include a “person-centered” philosophy.

Principle 2. Able to Acknowledge that Risk Exists While Supporting Maximum Independence-Score MEDIUM-HIGH (3.5)

This bill does make the direct connection between the existence of a viable, competent workforce and the way such a workforce would positively impact supporting seniors and persons with disabilities so they can live with dignity, safety and independence in their own homes and communities and in the most integrated settings appropriate to their needs and preferences; however, it does not directly speak to assessing risk and maximizing independence for elders who may receive direct care.

HR 3778 also acknowledges that more needs to be done to assure that the direct care workforce in the United States is capable of meeting the health care and quality of life needs of older Americans in the 21st century. Typically, quality of life includes respect for each person's inherent right to choose how to balance degree of risk with living independently. This also means that some elders may elect to live in risky situations.

Principle 3. Focused on Quality of Life and Quality of Care-Score MEDIUM-HIGH (3.5)

The emphasis in this proposed legislation is on developing quality of care for older adults through recruiting, training, and retaining a direct care workforce. The bill does not speak to what “quality of care” or “quality of life” for older adults consists of or how this could be included in training of direct care workers or in the evaluation of the grantee's performance. However, those applying for these proposed grants are suggested to coordinate with institutions of higher education regarding training for direct care workers and to also develop measurable outcomes for competent care delivered by trained direct care workers. The language in the bill might be strengthened from suggesting coordination with higher education institutions to requiring it and requiring “quality of care and quality of life” measures among outcome measures developed.

Principle 4. Simple to Understand and Access –Score MEDIUM (3)

The bill anticipates that those receiving grants will be able to provide a career ladder for direct care workers through training, improved benefits, and pay increases thus preventing turnover and addressing worker shortages in nursing homes, assisted living facilities, and in home care

organizations. Where this occurs, elders and their caregivers may be able to have more dependable relationships with more competent direct care workers.

What is not clear in the bill is what processes grantees will employ for increasing pay and benefits, how increased pay and benefits will continue after the grant period, and whether/how this will affect the broader direct care industry.

The proposed legislation encourages grantees to coordinate their efforts with local and state boards and organizations, but does not have requirements that would inform elders and their caregivers of the availability of trained caregivers and how they might access those individuals.

Principle 5. Coordinated with Seamless Transitions through a Comprehensive Array of Services-Score LOW-MEDIUM (2.5)

The Bureau of Labor Statistics projects that personal care aides and home health aides will be two of the occupations with the most new jobs created in the country by 2024. These positions support and provide many of the services in a comprehensive long term living system. The bill identifies the need to have a workforce adequate “in both size and ability” to meet the demand for such services.

Nevertheless, this bill does not address creating or supporting a network of services or the smooth transition between services specifically. It also does not consider that competent direct care workers can in some instances serve to delay an elder from progressing to a more advanced level of care. It does, however, recognize that direct care workers provide the bulk of services for older adults in nursing homes, assisted living facilities and individuals’ homes – which are three components of a long term living continuum.

Principle 6. Focused on Prevention, Wellness and Early Connection to Home and Community-Based Services- Score LOW-MEDIUM (2)

This bill is not a prevention-focused bill in any explicit manner. Direct care workers are not usually considered in prevention, wellness, and early connection to home and community based services. An adequately trained work force could engage in prevention and wellness by supporting those living in the community through a range of activities such as encouraging appropriate exercise and social affiliation activities. Identification of barriers and potential problems likely to impair independence is also key. Therefore, adequate training of direct care workers is very important and should include the importance of prevention, wellness, and early connection to services for seniors and persons with disabilities.

Principle 7. Vested in a Viable and Competent Direct Care Workforce-Score MEDIUM (3)

This bill acknowledges the challenges faced in the creation of a viable and competent workforce, one that is prepared to meet the ever growing demand for long term living services, and the implications of not finding ways to successfully overcome these challenges. Those challenges include low wages, irregular benefits, and lack of opportunities for advancement and growth and result in high turnover, systematic workforce shortages, and negative impacts on quality of care. Efforts must be made to create strategies that can successfully reduce barriers to the recruitment, retention and advancement of direct care workers. These strategies should be specific to region and geography and take into account the current state of affairs for the

direct care workforce within the region. Strategies should be sustainable and replicable, to create the most opportunity for direct care worker positions.

One might conjecture that this bill tends to *professionalize* direct care workers as the solution to the direct care workforce while doing nothing to address the more important issue of creating an economically sustainable way for employers to pay higher wages (for improved skills) and offer meaningful benefits, which ultimately is what leads to improved retention and a more stable workforce in any industry.

Principle 8. Focused on Continued Learning and Quality Improvement-Score MEDIUM-HIGH (3.5)

Grant recipients are required to report extensively on their projects, including their methods, information on individuals served, information on direct care workers, levels of satisfaction of care receivers, and direct care workers, etc. This data will be used to evaluate the efficacy of the projects and will be compiled and submitted to several entities including Congress, the Secretary of Labor, and the Secretary of Health and Human Services. The Comptroller General of the United States will also conduct a study and submit results to Congress which will assess how the project reached its goals and recommendations for future legislative or administrative action. Consumers, providers, and the government are involved in this evaluation process.

While important data from these pilot programs will be gathered and analyzed, the bill does not outline specific plans to disseminate the information learned to long term living service consumers and providers. This omission is seen as short-sighted.

Principle 9. Financially Feasible and Encourage Public/Private Participation-Score MEDIUM-HIGH (3)

This proposed legislation highlights the economic necessity and practicality of investing in direct care (it will be one of the sectors with the most new jobs created by 2024, and there already exists workforce shortage). H.R.3778 also recognizes the need for adequate wages and benefits while utilizing analysis of reliable data and consultation with those affected. Eligible grantees must demonstrate consultation and/or coordination of their respective efforts with public/private entities. While the bill speaks to adequate wages and benefits, it does not specifically address reimbursement rates and the relationship of those rates to the ability to pay increased wages and benefits nor is there mention of amounts of funding for potential grantees. How successful programs would maintain increased wages and benefits after the grant period is also not addressed.

Eligible entities for the fifteen grants of 5 years are primarily non-profits and states; there is little mention of private involvement.

Scoring Summary

1. Person Centered-

Score Medium-High (3.5)

2. Able to Acknowledge that Risk Exists While Supporting Maximum Independence-

Score Medium-High (3.5)

3. Focused on Quality of Life and Quality of Care-

Score –High (3.5)

4. Simple to Understand and Access –

Score Medium (3)

5. Coordinated with Seamless Transitions through a Comprehensive Array of Services-

Score Low-Medium (2.5)

6. Focused on Prevention, Wellness and Early Connection to Home and Community-Based Services-

Score Low-Medium (2)

7. Vested in a Viable and Competent Direct Care Workforce-

Score Medium (3)

8. Focused on Continued Learning and Quality Improvement-

Score Medium-High (3.5)

9. Financially Feasible and Encourage Public/Private Participation

Score Medium (3)

Total Score of 27.5 out of a total possible 36 or 76.4%

Conclusion

The Direct Care Act identifies an integral component and contemporary issue of the long term care system: **the importance of recruiting, training, and retaining direct care workers**. The bill recognizes the critical contributions of direct care workers in supporting elders and caregivers in institutions as well as in their homes. It also recognizes worker shortages and attributes this to low wages, inconsistent benefits, and high turnover and offers a remedy of offering 15 eligible grantees, some form of funding over 5 years to address the problem. The solution, however tempting, is incomplete from this scorecard analysis. Important aspects such as the following need to be addressed to give more substance to the bill: specifying training include “person-centered” approaches, assessing risk vs maximizing independence in training, requiring potential grantees to coordinate with institutions of higher education regarding training

and outcome measures which include quality of life and quality of care measures, suggesting how wage and benefit increases can occur and how they can be sustained beyond the grant period, how project performance evaluation information at the conclusion of the grant period can be disseminated to providers, consumers, and caregivers, emphasizing the critical impact that direct care workers can have in delaying a transition to a higher level of care as well as relief for caregivers, including prevention and wellness as part of training for direct care workers, generating alternate solutions for employers to increase wages and benefits for direct care workers and to be able to sustain these increases.

The scorecard reflection of 76.4% means that HR3778 is a very good beginning to bring the critical issue of direct care worker shortages to the attention of legislators, but that improvements, which are discussed in this analysis, can be made to this proposed legislation.