

S 2311 -- An Act Relating to Human Services -- Social and Human Services Programs Rate Review and Rate Setting Process Act of 2022

Common Cause Rhode Island opposes S 2311 -- An Act Relating to Human Services -- Social and Human Services Programs Rate Review and Rate Setting Process Act of 2022 because, as written, it violates the Separation of Powers in the Rhode Island Constitution, including the Appointments Clause in Article IX, Section 5. Specifically, the newly-created Social and Human Services Provider Rate Review and Rate Setting Advisory Committee (herein "Advisory Committee") is not actually advisory, and not appointed by the governor.

On page 4, lines 29-34 and page 5, lines 1-17 the legislation creates a 24-member Advisory Committee, with seven members appointed by the Speaker of the House, seven members appointed by the President of the Senate, and 10 members appointed by the Secretary of the Executive Office of Health and Human Services. None are appointed directly by the governor.

The Rhode Island Constitution states, Article IX, Section 5, in part:

"The *governor* shall, by and with the advice and consent of the senate, appoint all officers of the state whose appointment is not herein otherwise provided for and all members of any board, commission or other state or quasi-public entity which exercises *executive power* under the laws of this state." [Emphasis added]

It is not a problem for someone other than the governor to make appointments to bodies that do not exercise executive power, including purely advisory bodies. However, the Advisory Committee proposed in S 2311 is hardly that. Rather it is a policy-making policy in its own words.

In § 40-23-4(a), the legislation states, "The advisory committee shall: ... (2) define and establish consistent policy and methods for standardized service rate development, for the purposes of conducting a biennial "rate setting" in coordination with EOHHS by July 1, 2023 to ensure enough social and human service providers in order that care and services are available for beneficiaries and/or eligible persons." In § 40-23-4(b)(1) the Committee will "Determine whether any provider rates not scheduled for review during the next calendar year should be recommended for review during that calendar year."

A public body that establishes policy and methods and makes determinations is performing executive functions under our constitution.

There are two ways to cure the constitutional defects in the proposed legislation. One would be to give the appointment power exclusively to the governor with the advice and consent of the Senate. The other would be to make the Committee truly advisory in nature. Common Cause Rhode Island urges the committee to amend the legislation and is ready to work with the sponsor and the committee to do so.

