



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB0470

Introduced 2/8/2007, by Sen. M. Maggie Crotty

SYNOPSIS AS INTRODUCED:

See Index

Amends the Disability Services Act of 2005. Adds a new Article to the Act. Provides that certain disabled persons have the right to have the amount of public funds that are, or would have been, expended for their care in an institution transferred to pay for their community-based services in a qualified residence. Requires the Departments of Human Services, Aging, Children and Family Services, Healthcare and Family Services, and Public Aid to develop appropriate fiscal payment mechanisms and methodologies that support choice. Provides that the cost of community-based services provided under the Act may not exceed the cost of care in the institutional facility in which the individual most recently resided. Requires the Department of Human Services, the Department on Aging, the Department of Public Health, and the Department of Healthcare and Family Services to work together with organizations composed of or representing persons with disabilities to ensure that persons with disabilities and their families, guardians, and advocates are informed of their rights under the Act in a manner that is easily understandable and accessible to persons with disabilities. Requires the Department of Healthcare and Family Services and the Department of Public Health to make annual reports. Effective July 1, 2007.

LRB095 10789 HLH 31119 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Disabilities Services Act of 2003 is amended
5 by adding a heading to of Article 1 immediately before Section
6 1 of the Act, by adding a heading to Article 2 immediately
7 before Section 5 of the Act, by adding Article 3 and a heading
8 to Article 99 immediately after Section 30 of the Act as
9 follows:

10 (20 ILCS 2407/Art. 1 heading heading new)

11 ARTICLE 1 heading. SHORT TITLE

12 (20 ILCS 2407/Art. 2 heading heading new)

13 ARTICLE 2 heading. DISABILITIES SERVICES ACT of 2003

14 (20 ILCS 2407/Art. 3 heading heading new)

15 ARTICLE 3 heading. OLMSTEAD IMPLEMENTATION ACT

16 (20 ILCS 2407/51 new)

17 Sec. 51. Legislative intent. It is the intent of the
18 General Assembly to promote the civil rights of persons with
19 disabilities by providing community-based services for persons
20 with disabilities when such services are determined

1 appropriate and desired by the affected persons, as required by
2 Title II of the Americans with Disabilities Act under the
3 United States Supreme Court's decision in Olmstead v. L.C., 527
4 U.S. 581 (1999). In accordance with Section 6071 of the Deficit
5 Reduction Act of 2005 (P.L. 109-171), the purpose of this Act
6 is: (i) to eliminate barriers or mechanisms, whether in State
7 law, the State Medicaid plan, the State budget, or otherwise,
8 that prevent or restrict the flexible use of funds to enable
9 individuals with disabilities to receive support for
10 appropriate and necessary long-term services in the community
11 settings of their choice; (ii) to increase the use of home and
12 community-based, rather than institutional, long-term care
13 services; (iii) to increase the ability of the State Medicaid
14 program to ensure continued provision of home and
15 community-based long-term care service to eligible individuals
16 who choose to transition from an institutional to a community
17 setting; and (iv) to ensure that procedures are in place that
18 are at least comparable to those required under the qualified
19 HCB program to provide quality assurance for eligible
20 individuals receiving Medicaid home and community-based
21 long-term care services and to provide for continuous quality
22 improvement in such services. More specifically, this Article
23 amends the Illinois Disability Services Act of 2003
24 (notwithstanding Section 30 of the Act) to mandate the creation
25 of a flexible system of financing for long-term services and
26 supports in Illinois that would allow available Medicaid funds

1 budgeted for nursing homes and institutional services to be
2 spent on home and community-based services when an individual
3 residing in an institution moves to the most appropriate and
4 preferred community-based setting of his or her choice.

5 (20 ILCS 2407/52 new)

6 Sec. 52. Applicability; definitions. In accordance with
7 section 6071 of the Deficit Reduction Act of 2005 (P.L.
8 109-171), as used in this Article:

9 "Home and community-based long-term care services". The
10 term "home and community-based long-term care services" means,
11 with respect to a State Medicaid program, a service, aid, or
12 benefit that is provided to a person with a disability (and is
13 voluntarily accepted) as part of his or her long-term care
14 that: (i) is provided under the State's qualified HCB program
15 or that could be provided under such a program but is otherwise
16 provided under the Medicaid program; (ii) is delivered in a
17 qualified residence; and (iii) is necessary for the person with
18 a disability to live in the community.

19 "Eligible individual". The term "eligible individual"
20 means a person with a disability of any age in Illinois: (i)
21 who is receiving Medicaid benefits for inpatient services
22 furnished by an inpatient facility; (ii) with respect to whom a
23 determination has been made that, but for the provision of home
24 and community-based long-term care services, the individual
25 would continue to require the level of care provided in an

1 inpatient facility; (iii) who is deemed appropriate by the
2 State's treatment professionals for home or community-based
3 services; and (iv) who wants to transfer from an inpatient
4 facility to a qualified residence. For the purposes of this
5 Act, "eligible individual" does not include a person with a
6 disability receiving acute care mental health treatment in a
7 State-operated mental health center for less than 30
8 consecutive days in a one-year period.

9 "Inpatient facility". The term "inpatient facility" means
10 a skilled nursing or intermediate long-term care facility
11 subject to licensure by the Department of Public Health under
12 the Nursing Care Act, an intermediate care facility for the
13 mentally retarded (ICF-DDs), an institution for mental
14 diseases, child care institutions licensed by the Department of
15 Children and Family Services, and a State-operated
16 developmental center or mental health center, whether publicly
17 or privately owned.

18 "Qualified HCB program". The term "qualified HCB program"
19 means a program providing home and community-based long-term
20 care services operating under Medicaid, whether or not
21 operating under waiver authority.

22 "Qualified residence". The term "qualified residence"
23 means, with respect to an eligible individual: (i) a home owned
24 or leased by the individual or the individual's authorized
25 representative (as defined by P.L. 109-171); (ii) an apartment
26 with an individual lease, with lockable access and egress, and

1 which includes living, sleeping, bathing, and cooking areas
2 over which the individual or the individual's family has domain
3 and control; and (iii) a residence, in a community-based
4 residential setting, in which no more than 4 unrelated
5 individuals reside.

6 "Self-directed services". The term "self-directed
7 services" means, with respect to home and community-based
8 long-term care services for an eligible individual, such
9 services for the individual that are planned and purchased
10 under the direction and control of such individual or the
11 individual's authorized representative, including the amount,
12 duration, scope, provider, and location of such services, as
13 described in the individual service or treatment plan.

14 "Public funds" means any funds appropriated by the General
15 Assembly to the Department of Human Services, the Department on
16 Aging, the Department of Children and Family Services, or the
17 Department of Healthcare and Family Services.

18 (20 ILCS 2407/53 new)

19 Sec. 53. Redistribution of public funds for community
20 services.

21 (a) Any eligible individual, as defined in Section 52, has
22 the right to have public funds that are, or would have been,
23 expended for his or her care in an inpatient facility
24 transferred to pay for his or her home and community-based
25 long-term care services in a qualified residence.

1 (b) In accordance with Sections 15(2) and 20(b)(2) of this
2 Act, all eligible individuals under this Act shall have an
3 individual service or treatment plan that is reviewed at least
4 annually that is consistent with the requirements under
5 subsection (b)(8)(A) of section 6071 of the Deficit Reduction
6 Act of 2005 (P.L. 109-171), and that includes an individualized
7 budget that identifies the dollar value of the services and
8 supports under the control and direction of the individual or
9 the individual's authorized representative. The service or
10 treatment plan must contain assurances that each eligible
11 individual has been provided the opportunity to make an
12 informed choice regarding their right under subsection (a).

13 (c) In accordance with any Disability Services Plan or Plan
14 update developed under this Act and section 6071 of the Deficit
15 Reduction Act of 2005 (P.L. 109-171), the Departments of Human
16 Services, Aging, Children and Family Services, Department of
17 Healthcare and Family Services, and Public Aid shall develop
18 appropriate fiscal payment mechanisms and methodologies that
19 effectively support choice (money follows the person) and
20 eliminate any legal, budgetary, or other barriers to
21 flexibility in the availability of Medicaid funds to pay for
22 long-term care services for eligible individuals in the
23 appropriate home and community-based long-term care settings
24 of their choice, including costs to transition from an
25 inpatient facility to a qualified residence. With respect to
26 the individualized budgets described in subsection (b), the

1 fiscal payment mechanisms and methodologies must: (i) describe
2 the method for calculating the dollar values in such budgets
3 based on reliable costs and service utilization; (ii) define a
4 process for making adjustments in such dollar values to reflect
5 changes in individual assessments and service plans; and (iii)
6 provide a procedure to evaluate expenditures under such
7 budgets.

8 (d) The cost of home and community-based long-term care
9 services provided under this Act shall be funded in accordance
10 with the individual service or treatment plan, but shall not
11 exceed the cost of care in the inpatient facility in which the
12 individual most recently resided.

13 (e) In accordance with Section 4.4 of the Community
14 Services Act of 2004 (P.L. 094-0498), whenever any
15 appropriation, or any portion of an appropriation, for any
16 fiscal year related to the funding of an inpatient facility is
17 reduced due to the redistribution of funds under this Act, to
18 the extent that savings are realized, those moneys must be
19 deposited into the Olmstead Implementation Fund, created as a
20 special fund in the State treasury, and shall be used to expand
21 the availability, quality, or stability of home and
22 community-based long-term care services and supports for
23 persons with disabilities (such as in-home consumer/family
24 supports; integrated, accessible, and affordable housing
25 options and home modifications, etc).

26 (f) The redistribution required in this Section shall not

1 have the effect of: (i) diminishing or reducing the quality of
2 services available to residents of inpatient facilities; or
3 (ii) forcing any residents of inpatient facilities to
4 involuntarily accept home and community-based long-term care
5 services, or causing any residents of inpatient facilities to
6 be involuntarily transferred or discharged.

7 (g) Funding for eligible individuals under this Act shall
8 remain available to the eligible individual, in accordance with
9 the individual service or treatment plan, as long as he or she
10 remains eligible for services in an inpatient facility and
11 prefers home and community-based long-term care services.

12 (20 ILCS 2407/54 new)

13 Sec. 54. Quality assurance and quality improvement. In
14 accordance with subsection (11) of section 6071 of the Deficit
15 Reduction Act of 2005 (P.L. 109-171), the Departments of Human
16 Services, Aging, Children and Family Services, Public Health,
17 and Department of Healthcare and Family Services shall develop
18 a plan for quality assurance and quality improvement for home
19 and community-based long-term care services under the State
20 Medicaid program, including a plan to assure the health and
21 welfare of eligible individuals under this Act.

22 (20 ILCS 2407/55 new)

23 Sec. 55. Dissemination of information; reports.

24 (a) The State shall ensure that all eligible individuals

1 are informed of their right to receive home and community-based
2 long-term care services under this Act. The Departments of
3 Human Services, Aging, Department of Healthcare and Family
4 Services, and Public Aid shall work together with organizations
5 comprised of, or representing people with disabilities, to
6 ensure that persons with disabilities and their families,
7 guardians, and advocates are informed of their rights under
8 this Act in a manner that is easily understandable and
9 accessible to people with disabilities. The Departments shall
10 ensure that multiple methods of dissemination are employed and
11 shall make concerted efforts to inform people currently in
12 inpatient facilities, including at their individual team or
13 program meetings. The Departments of Human Services, Aging,
14 Department of Healthcare and Family Services, and Public Aid
15 shall ensure that all nursing home residents listed under the
16 Minimum Data Set (MDS) of the Centers for Medicare and Medicaid
17 Services as preferring to live in the community are informed of
18 and given the opportunity to exercise their rights under this
19 Act. The Department of Public Health shall ensure that, as a
20 condition of licensing and certification, all inpatient
21 facilities covered under this Act shall inform all residents
22 annually of their opportunities to choose home and community
23 alternatives under this Act. Additionally, the Department
24 shall require each inpatient facility to post in a prominent
25 location on each residential ward a notice containing
26 information on rights and services available under this Act.

1 Signs posted on residential wards shall comply with the
2 accessibility standards of the Americans with Disabilities
3 Act.

4 (b) On or before January 1 of each year, the Department of
5 Public Aid and the Department of Public Health shall report to
6 the Governor and the General Assembly on the implementation of
7 this Act and include, at a minimum, the following data: (i) a
8 description of the fiscal payment mechanisms and methodologies
9 developed under this Act that effectively support choice (money
10 follows the person); (ii) an accounting of the savings realized
11 under this Act and the ways in which these savings were spent;
12 (iii) information concerning the dollar amounts of State
13 Medicaid expenditures for fiscal years 2006 and 2007, for
14 long-term care services and the percentage of such expenditures
15 that were for institutional long-term care services or were for
16 home and community-based long-term care services; (iv) a
17 description of the Departments' efforts to inform all eligible
18 individuals of their rights under this Act; (v) the number of
19 eligible individuals referred or identified under this Act in
20 the previous fiscal year, the number of eligible individuals
21 who applied to transfer to home and community-based long-term
22 care services in the previous fiscal year, and the number of
23 eligible individuals who, in fact, transferred from an
24 inpatient facility to a qualified residence in the previous
25 fiscal year; (vi) documentation that the Departments have met
26 the requirements under Section 5 to assure the health and

1 welfare of eligible individuals receiving home and
2 community-based long-term care services; and (vii) Any
3 obstacles the Department confronted in assisting residents of
4 inpatient facilities to make the transition to a qualified
5 residence, and the Department's recommendations for removing
6 those obstacles. This report must be made available to the
7 general public, including via the Departments' websites.

8 (20 ILCS 2407/56 new)

9 Sec. 56. Effect on existing rights.

10 (a) This Article does not alter or affect the manner in
11 which persons with disabilities are determined eligible or
12 appropriate for home and community-based long-term care
13 services, except to the extent the determinations are based on
14 the availability of community services.

15 (b) This Article shall not be read to limit in any way the
16 rights of people with disabilities under the U.S. Constitution,
17 the Americans with Disabilities Act, Section 504 of the
18 Rehabilitation Act, the Social Security Act, or any other
19 federal or State law.

20 (20 ILCS 2407/57 new)

21 Sec. 57. Rules. The Departments of Human Services, Aging,
22 Children and Family Services, Department of Healthcare and
23 Family Services, and Public Aid shall adopt any rules necessary
24 for the implementation and administration of this Act.

1 INDEX

2 Statutes amended in order of appearance

3 20 ILCS 2407/Art. 1

4 heading heading new

5 20 ILCS 2407/Art. 2

6 heading heading new

7 20 ILCS 2407/Art. 3

8 heading heading new

9 20 ILCS 2407/51 new

10 20 ILCS 2407/52 new

11 20 ILCS 2407/53 new

12 20 ILCS 2407/54 new

13 20 ILCS 2407/55 new

14 20 ILCS 2407/56 new

15 20 ILCS 2407/57 new

16 20 ILCS 2407/Art. 99

17 heading new

18 30 ILCS 105/5.675 new