

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 Article 1 immediately before Section 1  
6 of the Act, by adding a heading to Article 2 immediately before  
7 Section 5 of the Act, by adding Article 3 and a heading to  
8 Article 99 immediately before Section 90 of the Act as follows:

9 (20 ILCS 2407/Art. 1 heading new)

10 ARTICLE 1. SHORT TITLE

11 (20 ILCS 2407/Art. 2 heading new)

12 ARTICLE 2. DISABILITIES SERVICES ACT of 2003

13 (20 ILCS 2407/Art. 3 heading new)

14 ARTICLE 3. OLMSTEAD IMPLEMENTATION ACT

15 (20 ILCS 2407/51 new)

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

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

1 Illinois that would allow available Medicaid funds to be spent  
2 on home and community-based services when an individual  
3 residing in an institution or long-term care facility moves to  
4 the most appropriate and preferred community-based setting of  
5 his or her choice.

6 (20 ILCS 2407/52 new)

7 Sec. 52. Applicability; definitions. In accordance with  
8 Section 6071 of the Deficit Reduction Act of 2005 (P.L.  
9 109-171), as used in this Article:

10 "Home and community-based long-term care services". The  
11 term "home and community-based long-term care services" means,  
12 with respect to a State Medicaid program, a service aid, or  
13 benefit, home and community-based services, including but not  
14 limited to home health and personal care services, that are  
15 provided to a person with a disability, and are voluntarily  
16 accepted, as part of his or her long-term care that: (i) is  
17 provided under the State's qualified home and community-based  
18 program or that could be provided under such a program but is  
19 otherwise provided under the Medicaid program; (ii) is  
20 delivered in a qualified residence; and (iii) is necessary for  
21 the person with a disability to live in the community.

22 "Case manager". The term "case manager" has the meaning as  
23 defined in the Illinois Act on the Aging.

24 "Departments". The term "Departments" means for the  
25 purposes of this Act, the Department of Human Services, the

1 Department on Aging, Department of Children and Family  
2 Services, Department of Healthcare and Family Services and  
3 Department of Public Health, unless otherwise noted.

4 "Eligible Individual". The term "eligible individual"  
5 means a person in Illinois who (i) has resided, for a period of  
6 not less than 6 months, in a long-term care facility; (ii) is  
7 receiving Medicaid benefits for long-term care services  
8 furnished by that long-term care facility; (iii) with respect  
9 to whom a determination has been made that, but for the  
10 provision of home and community-based long-term care services,  
11 the individual would continue to require the level of care  
12 provided in a long-term care facility; (iv) who is deemed  
13 appropriate by the inter-disciplinary team or case managers for  
14 home or community-based long-term care services; and (v) who  
15 wants to transfer from a long-term care facility to a qualified  
16 residence. For the purposes of this Act, "eligible individual"  
17 does not include a person with a disability receiving acute  
18 care mental health treatment in a State-operated mental health  
19 center for less than 30 consecutive days in a one-year period,  
20 or a person committed to a State-operated mental health  
21 forensic program, or developmental center forensic program.

22 "Long-term care facility". The term "long-term care  
23 facility", for the purposes of this Article, means a skilled  
24 nursing or intermediate long-term care facility subject to  
25 licensure by the Department of Public Health under the Nursing  
26 Home Care Act, an intermediate care facility for the

1 developmentally disabled (ICF-DDs), an institution for mental  
2 diseases, child care institutions licensed by the Department of  
3 Children and Family Services, any community living facility as  
4 defined in the Community Living Facilities Licensing Act (210  
5 ILCS 35), any community residential alternative as defined in  
6 the Community Residential Alternatives Licensing Act (405 ILCS  
7 30), any supportive living facility as provided in the Public  
8 Aid Code (305 ILCS 5/5-5.01a), and a State-operated  
9 developmental center or mental health center, whether publicly  
10 or privately owned.

11 "Interdisciplinary team" means a group of persons that  
12 represents those professions, disciplines, or service areas  
13 that are relevant to identifying an individual's strengths and  
14 needs, and designs a program to meet those needs. This team  
15 shall include at least a physician, a social worker, other  
16 professionals, and the individual. In facilities serving  
17 individuals with developmental disabilities, at least one  
18 member of the team shall be a qualified mental retardation  
19 professional. The interdisciplinary team includes the  
20 individual, the individual's guardian, the individual's  
21 authorized representative, the individual's primary service  
22 providers, including staff most familiar with the individual's  
23 needs. The individual or his or her guardian may also invite  
24 other individuals to meet with the interdisciplinary team and  
25 participate in the process of identifying the individual's  
26 strengths and needs.

1       "Qualified residence". The term "qualified residence"  
2 means, with respect to an eligible individual: (i) a home owned  
3 or leased by the individual or the individual's authorized  
4 representative (as defined by P.L. 109-171); (ii) an apartment  
5 with an individual lease, with lockable access and egress, and  
6 which includes living, sleeping, bathing, and cooking areas  
7 over which the individual or the individual's family has domain  
8 and control; and (iii) a residence, in a community-based  
9 residential setting, as defined by administrative rule.

10       "Self-directed services". The term "self-directed  
11 services" means, with respect to home and community-based  
12 long-term care services for an eligible individual, those  
13 services for the individual that are planned and purchased  
14 under the direction and control of the individual or the  
15 individual's authorized representative, including the amount,  
16 duration, scope, provider, and location of such services, under  
17 the State Medicaid program consistent with the following  
18 requirements:

19           (a) Assessment: there is an assessment of the needs,  
20 capabilities, and preferences of the individual with  
21 respect to such services.

22           (b) Individual service care or treatment plan: based on  
23 the assessment, there is developed jointly with such  
24 individual or the individual's authorized representative,  
25 a plan for such services for the individual that is  
26 approved by the State and that (i) specifies those

1 services, if any, that the individual or the individual's  
2 authorized representative would be responsible for  
3 directing; (ii) identifies the methods by which the  
4 individual or the individual's authorized representative  
5 or an agency designated by an individual or representative  
6 will select, manage, and dismiss providers of such  
7 services.

8 "Public Funds" means any funds appropriated by the General  
9 Assembly to the Department of Human Services, the Department on  
10 Aging, the Department of Children and Family Services, or the  
11 Department of Healthcare and Family Services, for settings and  
12 services as defined in this Article.

13 (20 ILCS 2407/53 new)

14 Sec. 53. Allocation of public funds.

15 (a) Any eligible individual, as defined in Section 52, has  
16 the right to have public funds available to pay for his or her  
17 home and community-based long-term care services in a qualified  
18 residence when such individual moves from a long-term care  
19 facility to the most appropriate and preferred community-based  
20 setting of his or her choice. The amount of public funds  
21 available shall be funded in accordance with the individual  
22 service, care, or treatment plan and shall be the greater of  
23 (A) the funding that would be available to the individual  
24 through the applicable State-operated home and community-based  
25 waiver program as determined by administrative rule or statute,

1 or (B)(i) an amount no greater than the licensure category of  
2 the facility in which the individual received care reduced by  
3 the average capital component of the overall facility rate and  
4 (ii) further qualified by the weighted average rate by  
5 geographic area grouping that a facility of the same licensure  
6 category would receive in the area of the individual's  
7 qualified residence.

8 (b) In accordance with Sections 15(2) and 20(b)(2) of this  
9 Act, all eligible individuals under this Act shall have an  
10 individual service, care, or treatment plan that is reviewed by  
11 the interdisciplinary team or case managers at least annually  
12 that is consistent with the requirements under subparts (A) and  
13 (B) of item 8 of subsection (b) of the Deficit Reduction Act of  
14 2005 (P.L. 109-171), and that includes an individualized budget  
15 that identifies the dollar value of the services consistent  
16 with the requirements under subsection (b)(8)(C) of Section  
17 6071 and supports under the control and direction of the  
18 individual or the individual's authorized representative. The  
19 service, care, or treatment plan must contain assurances that  
20 each eligible individual has been provided the opportunity to  
21 make an informed choice regarding their right under subsection  
22 (a).

23 (c) In accordance with any Disabilities Services Plan or  
24 plan update under this Act and Section 6071 of the Deficit  
25 Reduction Act of 2005 (P.L. 109-171) and the Older Adult  
26 Services Act, the Departments, in consultation with



1 organizations comprised of or representing people with  
2 disabilities or people aged 60 or older and providers of  
3 Medicaid acute and long-term care services, shall develop  
4 appropriate fiscal payment mechanisms and methodologies, by  
5 December 1, 2008, that effectively support choice and eliminate  
6 any legal, budgetary, or other barriers to flexibility in the  
7 availability of Medicaid funds to pay for long-term care  
8 services for individuals in the appropriate home and  
9 community-based long-term care settings of their choice,  
10 including costs to transition from a long-term care facility to  
11 a qualified residence. With respect to the individualized  
12 budgets described in subsection (b), the fiscal payment  
13 mechanisms and methodologies must: (i) describe the method for  
14 calculating the dollar values in such budgets based on reliable  
15 costs and service utilization; (ii) define a process for making  
16 adjustments in such dollar values to reflect changes in  
17 individual assessments and service, care, or treatment plans;  
18 and (iii) provide a procedure to evaluate expenditures under  
19 such budgets.

20 (d) In addition to Section 4.4 of the Community Services  
21 Act of 2004 (P.A. 094-0498), to the extent that savings are  
22 realized, those moneys must be deposited into the Olmstead  
23 Implementation Fund, created as a special fund in the State  
24 treasury, and the Older Adult Services Fund, created as a  
25 special fund in the State treasury, with the allocation between  
26 these 2 funds based on a formula determined by the Departments

1 by administrative rule, and shall be used to expand the  
2 availability, quality, or stability of home and  
3 community-based long-term care services and supports for  
4 persons with disabilities including, but not limited to the  
5 following: in-home consumer/family supports; integrated,  
6 accessible, and affordable housing options and home  
7 modifications.

8 (e) The allocation of public funds for home and  
9 community-based long-term care services shall not have the  
10 effect of: (i) diminishing or reducing the quality of services  
11 available to residents of long-term care facilities; (ii)  
12 forcing any residents of long-term care facilities to  
13 involuntarily accept home and community-based long-term care  
14 services, or causing any residents of long-term care facilities  
15 to be involuntarily transferred or discharged; (iii) causing  
16 reductions in long-term care facility reimbursement rates in  
17 effect as of July 1, 2008; (iv) causing any delay of long-term  
18 care facility payments; or (v) diminishing access to a full  
19 array of long-term care options. If an eligible individual  
20 moves to a qualified residence and determines it is not the  
21 appropriate or preferred setting, they remain entitled to  
22 return to a long-term care facility under Title XIX of the  
23 Social Security Act (42 U.S.C. §1396a(a)(10)(A),  
24 §1396d(a)(15), §1396a(a)(1) at the established rate for that  
25 facility.

26 (f) Funding for eligible individuals under this Act shall

1 remain available to the eligible individual, in accordance with  
2 the individual service or treatment plan, as long as he or she  
3 remains eligible for services in a long-term care facility and  
4 prefers home and community-based long-term care services.

5 (20 ILCS 2407/54 new)

6 Sec. 54. Quality assurance and quality improvement.

7 (a) In accordance with subsection (c) (11) of Section 6071  
8 of the Deficit Reduction Act of 2005 (P.L. 109-171), the  
9 Departments shall develop a plan for quality assurance and  
10 quality improvement for home and community-based long-term  
11 care services under the State Medicaid program, including a  
12 regulatory plan to assure the health and welfare of eligible  
13 individuals under this Act.

14 (b) This plan shall require the Departments to apply for  
15 any available federal strategic planning and implementation  
16 funding to carry out the intent of this legislation, and to  
17 seek any appropriate federal Medicaid waivers to maximize  
18 federal financial participation.

19 (20 ILCS 2407/55 new)

20 Sec. 55. Dissemination of information; reports.

21 (a) The State shall ensure that all eligible individuals  
22 are informed of their right to receive home and community-based  
23 long-term care services under this Act. The Departments shall  
24 work together with organizations comprised of, or representing

1 people with disabilities or people aged 60 or older and  
2 providers of Medicaid acute and long-term care services, to  
3 ensure that persons with disabilities and their families,  
4 guardians, and advocates are informed of their rights under  
5 this Act in a manner that is easily understandable and  
6 accessible to people with disabilities. The Departments shall  
7 ensure that multiple methods of dissemination are employed and  
8 shall make concerted efforts to inform people currently in  
9 long-term care facilities, including at their individual team  
10 or program meetings. The Department of Public Health shall  
11 ensure that, as a condition of licensing and certification, all  
12 long-term care facilities covered under this Act shall inform  
13 all residents annually of their opportunities to choose home  
14 and community alternatives under this Act. Additionally, the  
15 Department shall require each long-term care facility to post  
16 in a prominent location a notice containing information on  
17 rights and services available under this Act. Notices posted  
18 shall comply with the accessibility standards of the Americans  
19 with Disabilities Act.

20 (b) On or before April 1 of each year, in conjunction with  
21 their annual reports, the Departments shall report to the  
22 Governor and the General Assembly on the implementation of this  
23 Act and include, at a minimum, the following data; (i) a  
24 description of the fiscal payment mechanisms and methodologies  
25 developed under this Act that effectively support choice; (ii)  
26 an accounting of the savings realized under this Act and the

1 ways in which these savings were spent; (iii) information  
2 concerning the dollar amounts of State Medicaid expenditures  
3 for fiscal years 2009 and 2010, for long-term care services and  
4 the percentage of such expenditures that were for an  
5 institution or long-term care services or were for home and  
6 community-based long-term care services; (iv) a description of  
7 the Departments' efforts to inform all eligible individuals of  
8 their rights under this Act; (v) the number of eligible  
9 individuals referred or identified under this Act in the  
10 previous fiscal year, the number of eligible individuals who  
11 applied to transfer to home and community-based long-term care  
12 services in the previous fiscal year, and the number of  
13 eligible individuals who, in fact, transferred from a long-term  
14 care facility to a qualified residence in the previous fiscal  
15 year; (vi) documentation that the Departments have met the  
16 requirements under Section 5 to assure the health and welfare  
17 of eligible individuals receiving home and community-based  
18 long-term care services; and (vii) any obstacles the  
19 Departments confronted in assisting residents of long-term  
20 care facilities to make the transition to a qualified  
21 residence, and the Departments' recommendations for removing  
22 those obstacles. This report must be made available to the  
23 general public, including via the Departments' websites.

24 (20 ILCS 2407/56 new)

25 Sec. 56. Effect on existing rights.

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

6       (b) This Article shall not be read to limit in any way the  
7 rights of people with disabilities under the U.S. Constitution,  
8 the Americans with Disabilities Act, Section 504 of the  
9 Rehabilitation Act, the Social Security Act, or any other  
10 federal or State law.

11       (20 ILCS 2407/57 new)

12       Sec. 57. Rules. The Departments shall adopt any rules  
13 necessary for the implementation and administration of this Act  
14 within 6 months of the effective date of this Act.

15       (20 ILCS 2407/58 new)

16       Sec. 58. Service provider cost reporting and  
17 accountability. The Departments shall adopt any rules  
18 necessary for the implementation of service provider cost  
19 reporting to ensure accountability under this Act within 6  
20 months of the effective date of this Act.

21       (20 ILCS 2407/Art. 99 heading new)

22       ARTICLE 99. AMENDATORY PROVISIONS; EFFECTIVE DATE

1           Section 90. The State Finance Act is amended by adding  
2 Sections 5.675 and 5.676 as follows:

3           (30 ILCS 105/5.675 new)

4           Sec. 5.675. The Olmstead Implementation Fund.

5           (30 ILCS 105/5.676 new)

6           Sec. 5.676. The Older Adult Services Fund.

7           Section 99. Effective date. This Act takes effect July 1,  
8 2008.