



Sen. M. Maggie Crotty

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LRB095 05416 HLH 34245 a

1 AMENDMENT TO SENATE BILL 765

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 765 by replacing  
3 everything after the enacting clause with the following:

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

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

11 ARTICLE 1. SHORT TITLE

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

13 ARTICLE 2. DISABILITIES SERVICES ACT of 2003

1 (20 ILCS 2407/Art. 3 heading new)

2 ARTICLE 3. OLMSTEAD IMPLEMENTATION ACT

3 (20 ILCS 2407/51 new)

4 Sec. 51. Legislative intent. It is the intent of the  
5 General Assembly to promote the civil rights of persons with  
6 disabilities by providing community-based services for persons  
7 with disabilities when such services are determined  
8 appropriate and desired by the affected persons, as required by  
9 Title II of the Americans with Disabilities Act under the  
10 United States Supreme Court's decision in Olmstead v. L.C., 527  
11 U.S. 581 (1999). In accordance with Section 6071 of the Deficit  
12 Reduction Act of 2005 (P.L. 109-171), the purpose of this Act  
13 is: (i) to eliminate barriers or mechanisms, whether in State  
14 law, the State Medicaid plan, the State budget, or otherwise,  
15 that prevent or restrict the flexible use of funds to enable  
16 individuals with disabilities to receive support for  
17 appropriate and necessary long-term services in the community  
18 settings of their choice; (ii) to increase the use of home and  
19 community-based, rather than institutional, long-term care  
20 services; (iii) to increase the ability of the State Medicaid  
21 program to ensure continued provision of home and  
22 community-based long-term care service to eligible individuals  
23 who choose to transition from an institutional to a community  
24 setting; and (iv) to ensure that procedures are in place that  
25 are at least comparable to those required under the qualified

1 HCB program to provide quality assurance for eligible  
2 individuals receiving Medicaid home and community-based  
3 long-term care services and to provide for continuous quality  
4 improvement in such services. More specifically, this Article  
5 amends the Illinois Disability Services Act of 2003  
6 (notwithstanding Section 30 of the Act) to mandate the creation  
7 of a flexible system of financing for long-term services and  
8 supports in Illinois that would allow available Medicaid funds  
9 budgeted for nursing homes and institutional services to be  
10 spent on home and community-based services when an individual  
11 residing in an institution moves to the most appropriate and  
12 preferred community-based setting of his or her choice.

13 (20 ILCS 2407/52 new)

14 Sec. 52. Applicability; definitions. In accordance with  
15 section 6071 of the Deficit Reduction Act of 2005 (P.L.  
16 109-171), as used in this Article:

17 "Home and community-based long-term care services". The  
18 term "home and community-based long-term care services" means,  
19 with respect to a State Medicaid program, a service, aid, or  
20 benefit that is provided to a person with a disability (and is  
21 voluntarily accepted) as part of his or her long-term care  
22 that: (i) is provided under the State's qualified HCB program  
23 or that could be provided under such a program but is otherwise  
24 provided under the Medicaid program; (ii) is delivered in a  
25 qualified residence; and (iii) is necessary for the person with

1 a disability to live in the community.

2 "Eligible individual". The term "eligible individual"  
3 means a person with a disability of any age in Illinois: (i)  
4 who is receiving Medicaid benefits for inpatient services  
5 furnished by an inpatient facility; (ii) with respect to whom a  
6 determination has been made that, but for the provision of home  
7 and community-based long-term care services, the individual  
8 would continue to require the level of care provided in an  
9 inpatient facility; (iii) who is deemed appropriate by the  
10 State's treatment professionals for home or community-based  
11 services; and (iv) who wants to transfer from an inpatient  
12 facility to a qualified residence. For the purposes of this  
13 Act, "eligible individual" does not include a person with a  
14 disability receiving acute care mental health treatment in a  
15 State-operated mental health center for less than 30  
16 consecutive days in a one-year period.

17 "Inpatient facility". The term "inpatient facility" means  
18 a skilled nursing or intermediate long-term care facility  
19 subject to licensure by the Department of Public Health under  
20 the Nursing Care Act, an intermediate care facility for the  
21 mentally retarded (ICF-DDs), an institution for mental  
22 diseases, child care institutions licensed by the Department of  
23 Children and Family Services, and a State-operated  
24 developmental center or mental health center, whether publicly  
25 or privately owned.

26 "Qualified HCB program". The term "qualified HCB program"

1 means a program providing home and community-based long-term  
2 care services operating under Medicaid, whether or not  
3 operating under waiver authority.

4 "Qualified residence". The term "qualified residence"  
5 means, with respect to an eligible individual: (i) a home owned  
6 or leased by the individual or the individual's authorized  
7 representative (as defined by P.L. 109-171); (ii) an apartment  
8 with an individual lease, with lockable access and egress, and  
9 which includes living, sleeping, bathing, and cooking areas  
10 over which the individual or the individual's family has domain  
11 and control; and (iii) a residence, in a community-based  
12 residential setting, in which no more than 4 unrelated  
13 individuals reside.

14 "Self-directed services". The term "self-directed  
15 services" means, with respect to home and community-based  
16 long-term care services for an eligible individual, such  
17 services for the individual that are planned and purchased  
18 under the direction and control of such individual or the  
19 individual's authorized representative, including the amount,  
20 duration, scope, provider, and location of such services, as  
21 described in the individual service or treatment plan.

22 "Public funds" means any funds appropriated by the General  
23 Assembly to the Department of Human Services, the Department on  
24 Aging, the Department of Children and Family Services, or the  
25 Department of Healthcare and Family Services.

1 (20 ILCS 2407/53 new)

2 Sec. 53. Redistribution of public funds for community  
3 services.

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

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

21 (c) In accordance with any Disability Services Plan or Plan  
22 update developed under this Act and section 6071 of the Deficit  
23 Reduction Act of 2005 (P.L. 109-171), the Departments of Human  
24 Services, Aging, Children and Family Services, Department of  
25 Healthcare and Family Services, and Public Health shall develop  
26 appropriate fiscal payment mechanisms and methodologies that

1 effectively support choice (money follows the person) and  
2 eliminate any legal, budgetary, or other barriers to  
3 flexibility in the availability of Medicaid funds to pay for  
4 long-term care services for eligible individuals in the  
5 appropriate home and community-based long-term care settings  
6 of their choice, including costs to transition from an  
7 inpatient facility to a qualified residence. With respect to  
8 the individualized budgets described in subsection (b), the  
9 fiscal payment mechanisms and methodologies must: (i) describe  
10 the method for calculating the dollar values in such budgets  
11 based on reliable costs and service utilization; (ii) define a  
12 process for making adjustments in such dollar values to reflect  
13 changes in individual assessments and service plans; and (iii)  
14 provide a procedure to evaluate expenditures under such  
15 budgets.

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

21 (e) In accordance with Section 4.4 of the Community  
22 Services Act of 2004 (P.L. 094-0498), whenever any  
23 appropriation, or any portion of an appropriation, for any  
24 fiscal year related to the funding of an inpatient facility is  
25 reduced due to the redistribution of funds under this Act, to  
26 the extent that savings are realized, those moneys must be

1 deposited into the Olmstead Implementation Fund, created as a  
2 special fund in the State treasury, and shall be used to expand  
3 the availability, quality, or stability of home and  
4 community-based long-term care services and supports for  
5 persons with disabilities (such as in-home consumer/family  
6 supports; integrated, accessible, and affordable housing  
7 options and home modifications, etc).

8 (f) The redistribution required in this Section shall not  
9 have the effect of: (i) diminishing or reducing the quality of  
10 services available to residents of inpatient facilities; or  
11 (ii) forcing any residents of inpatient facilities to  
12 involuntarily accept home and community-based long-term care  
13 services, or causing any residents of inpatient facilities to  
14 be involuntarily transferred or discharged.

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

20 (20 ILCS 2407/54 new)

21 Sec. 54. Quality assurance and quality improvement. In  
22 accordance with subsection (11) of section 6071 of the Deficit  
23 Reduction Act of 2005 (P.L. 109-171), the Departments of Human  
24 Services, Aging, Children and Family Services, Public Health,  
25 and Department of Healthcare and Family Services shall develop



1 a plan for quality assurance and quality improvement for home  
2 and community-based long-term care services under the State  
3 Medicaid program, including a plan to assure the health and  
4 welfare of eligible individuals under this Act.

5 (20 ILCS 2407/55 new)

6 Sec. 55. Dissemination of information; reports.

7 (a) The State shall ensure that all eligible individuals  
8 are informed of their right to receive home and community-based  
9 long-term care services under this Act. The Departments of  
10 Human Services, Aging, Department of Healthcare and Family  
11 Services, and Public Health shall work together with  
12 organizations comprised of, or representing people with  
13 disabilities, to ensure that persons with disabilities and  
14 their families, guardians, and advocates are informed of their  
15 rights under this Act in a manner that is easily understandable  
16 and accessible to people with disabilities. The Departments  
17 shall ensure that multiple methods of dissemination are  
18 employed and shall make concerted efforts to inform people  
19 currently in inpatient facilities, including at their  
20 individual team or program meetings. The Departments of Human  
21 Services, Aging, Department of Healthcare and Family Services,  
22 and Public Health shall ensure that all nursing home residents  
23 listed under the Minimum Data Set (MDS) of the Centers for  
24 Medicare and Medicaid Services as preferring to live in the  
25 community are informed of and given the opportunity to exercise

1 their rights under this Act. The Department of Public Health  
2 shall ensure that, as a condition of licensing and  
3 certification, all inpatient facilities covered under this Act  
4 shall inform all residents annually of their opportunities to  
5 choose home and community alternatives under this Act.  
6 Additionally, the Department shall require each inpatient  
7 facility to post in a prominent location on each residential  
8 ward a notice containing information on rights and services  
9 available under this Act. Signs posted on residential wards  
10 shall comply with the accessibility standards of the Americans  
11 with Disabilities Act.

12 (b) On or before January 1 of each year, the Department of  
13 Healthcare and Family Services and the Department of Public  
14 Health shall report to the Governor and the General Assembly on  
15 the implementation of this Act and include, at a minimum, the  
16 following data: (i) a description of the fiscal payment  
17 mechanisms and methodologies developed under this Act that  
18 effectively support choice (money follows the person); (ii) an  
19 accounting of the savings realized under this Act and the ways  
20 in which these savings were spent; (iii) information concerning  
21 the dollar amounts of State Medicaid expenditures for fiscal  
22 years 2006 and 2007, for long-term care services and the  
23 percentage of such expenditures that were for institutional  
24 long-term care services or were for home and community-based  
25 long-term care services; (iv) a description of the Departments'  
26 efforts to inform all eligible individuals of their rights

1 under this Act; (v) the number of eligible individuals referred  
2 or identified under this Act in the previous fiscal year, the  
3 number of eligible individuals who applied to transfer to home  
4 and community-based long-term care services in the previous  
5 fiscal year, and the number of eligible individuals who, in  
6 fact, transferred from an inpatient facility to a qualified  
7 residence in the previous fiscal year; (vi) documentation that  
8 the Departments have met the requirements under Section 5 to  
9 assure the health and welfare of eligible individuals receiving  
10 home and community-based long-term care services; and (vii) Any  
11 obstacles the Department confronted in assisting residents of  
12 inpatient facilities to make the transition to a qualified  
13 residence, and the Department's recommendations for removing  
14 those obstacles. This report must be made available to the  
15 general public, including via the Departments' websites.

16 (20 ILCS 2407/56 new)

17 Sec. 56. Effect on existing rights.

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

23 (b) This Article shall not be read to limit in any way the  
24 rights of people with disabilities under the U.S. Constitution,  
25 the Americans with Disabilities Act, Section 504 of the

1 Rehabilitation Act, the Social Security Act, or any other  
2 federal or State law.

3 (20 ILCS 2407/57 new)

4 Sec. 57. Rules. The Departments of Human Services, Aging,  
5 Children and Family Services, Department of Healthcare and  
6 Family Services, and Public Health shall adopt any rules  
7 necessary for the implementation and administration of this  
8 Act.

9 (20 ILCS 2407/Art. 99 heading new)

10 ARTICLE 99. AMENDATORY PROVISIONS; EFFECTIVE DATE

11 Section 90. The State Finance Act is amended by adding  
12 Section 5.675 as follows:

13 (30 ILCS 105/5.675 new)

14 Sec. 5.675. The Olmstead Implementation Fund.

15 Section 99. Effective date. This Act takes effect July 1,  
16 2007."