



Sen. M. Maggie Crotty

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LRB095 05416 HLH 34695 a

1 AMENDMENT TO SENATE BILL 765

2 AMENDMENT NO. _____. Amend Senate Bill 765, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Disabilities Services Act of 2003 is
6 amended by adding a heading to Article 1 immediately before
7 Section 1 of the Act, by adding a heading to Article 2
8 immediately before Section 5 of the Act, by adding Article 3
9 and a heading to Article 99 immediately before Section 90 of
10 the Act as follows:

11 (20 ILCS 2407/Art. 1 heading new)

12 ARTICLE 1. SHORT TITLE

13 (20 ILCS 2407/Art. 2 heading new)

14 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 public funds to
16 enable individuals with disabilities to receive support for
17 appropriate and necessary long-term services in settings of
18 their choice; (ii) to increase the use of home and
19 community-based long-term care services, rather than
20 institutions or long-term care facilities; (iii) to increase
21 the ability of the State Medicaid program to assure continued
22 provision of home and community-based long-term care services
23 to eligible individuals who choose to transition from an
24 institution or a long-term care facility to a community

1 setting; and (iv) to ensure that procedures are in place that
2 are at least comparable to those required under the qualified
3 home and community based program to provide quality assurance
4 for eligible individuals receiving Medicaid home and
5 community-based long-term care services and to provide for
6 continuous quality improvement in such services. More
7 specifically, this Article amends the Disabilities Services
8 Act of 2003 (notwithstanding Section 30 of the Act) and the
9 Illinois Act on the Aging to mandate the creation of a flexible
10 system of financing for long-term services and supports in
11 Illinois that would allow available Medicaid funds to be spent
12 on home and community-based services when an individual
13 residing in an institution or long-term care facility moves to
14 the most appropriate and preferred community-based setting of
15 his or her choice.

16 (20 ILCS 2407/52 new)

17 Sec. 52. Applicability; definitions. In accordance with
18 section 6071 of the Deficit Reduction Act of 2005 (P.L.
19 109-171), as used in this Article:

20 "Home and community-based long-term care services". The
21 term "home and community-based long-term care services" means,
22 with respect to a State Medicaid program, a service aid, or
23 benefit, home and community-based services, including but not
24 limited to home health and personal care services, that are
25 provided to a person with a disability, and are voluntarily

1 accepted, as part of his or her long-term care that: (i) is
2 provided under the State's qualified home and community based
3 program or that could be provided under such a program but is
4 otherwise provided under the Medicaid program; (ii) is
5 delivered in a qualified residence; and (iii) is necessary for
6 the person with a disability to live in the community.

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

9 "Departments". The term "Departments" means for the
10 purposes of this Act, the Department of Human Services, the
11 Department on Aging, Department of Children and Family
12 Services, Department of Healthcare and Family Services and
13 Department of Public Health, unless otherwise noted.

14 "Eligible Individual". The term "eligible individual"
15 means a person in Illinois who (i) has resided, for a period of
16 not less than 6 months, in a long-term care facility; (ii) is
17 receiving Medicaid benefits for long-term care services
18 furnished by that long-term care facility; (iii) with respect
19 to whom a determination has been made that, but for the
20 provision of home and community-based long-term care services,
21 the individual would continue to require the level of care
22 provided in a long-term care facility; (iv) who is deemed
23 appropriate by the inter-disciplinary team or case managers for
24 home or community-based long-term care services; and (v) who
25 wants to transfer from a long-term care facility to a qualified
26 residence. For the purposes of this Act, "eligible individual"

1 does not include a person with a disability receiving acute
2 care mental health treatment in a State-operated mental health
3 center for less than 30 consecutive days in a one-year period,
4 or a person committed to a State-operated mental health
5 forensic program, or developmental center forensic program.

6 "Long-term care facility". The term "long-term care
7 facility", for the purposes of this Article, means a skilled
8 nursing or intermediate long-term care facility subject to
9 licensure by the Department of Public Health under the Nursing
10 Home Care Act, an intermediate care facility for the
11 developmentally disabled (ICF-DDs), an institution for mental
12 diseases, child care institutions licensed by the Department of
13 Children and Family Services, any community living facility as
14 defined in the Community Living Facilities Licensing Act (210
15 ILCS 35), any community residential alternative as defined in
16 the Community Residential Alternatives Licensing Act (405 ILCS
17 30), any Supportive Living Facility as provided in the Public
18 Aid Code (305 ILCS 5/5-5.01a), and a State-operated
19 developmental center or mental health center, whether publicly
20 or privately owned.

21 "Interdisciplinary team" means a group of persons that
22 represents those professions, disciplines, or service areas
23 that are relevant to identifying an individual's strengths and
24 needs, and designs a program to meet those needs. This team
25 shall include at least a physician, a social worker, other
26 professionals, and the individual. In facilities serving

1 individuals with developmental disabilities, at least one
2 member of the team shall be a qualified mental retardation
3 professional. The interdisciplinary team includes the
4 individual, the individual's guardian, the individual's
5 authorized representative, the individual's primary service
6 providers, including staff most familiar with the individual's
7 needs. The individual or his or her guardian may also invite
8 other individuals to meet with the interdisciplinary team and
9 participate in the process of identifying the individual's
10 strengths and needs.

11 "Qualified residence". The term "qualified residence"
12 means, with respect to an eligible individual: (i) a home owned
13 or leased by the individual or the individual's authorized
14 representative (as defined by P.L. 109-171); (ii) an apartment
15 with an individual lease, with lockable access and egress, and
16 which includes living, sleeping, bathing, and cooking areas
17 over which the individual or the individual's family has domain
18 and control; and (iii) a residence, in a community-based
19 residential setting, as defined by administrative rule.

20 "Self-directed services". The term "self-directed
21 services" means, with respect to home and community-based
22 long-term care services for an eligible individual, those
23 services for the individual that are planned and purchased
24 under the direction and control of the individual or the
25 individual's authorized representative, including the amount,
26 duration, scope, provider, and location of such services, under

1 the State Medicaid program consistent with the following
2 requirements:

3 (a) Assessment: there is an assessment of the needs,
4 capabilities, and preferences of the individual with
5 respect to such services.

6 (b) Individual service care or treatment plan: based on
7 the assessment, there is developed jointly with such
8 individual or the individual's authorized representative,
9 a plan for such services for the individual that is
10 approved by the State and that (i) specifies those
11 services, if any, that the individual or the individual's
12 authorized representative would be responsible for
13 directing; (ii) identifies the methods by which the
14 individual or the individual's authorized representative
15 or an agency designated by an individual or representative
16 will select, manage, and dismiss providers of such
17 services.

18 "Public Funds" means any funds appropriated by the General
19 Assembly to the Department of Human Services, the Department on
20 Aging, the Department of Children and Family Services, or the
21 Department of Healthcare and Family Services, for settings and
22 services as defined in this Article.

23 (20 ILCS 2407/53 new)

24 Sec. 53. Allocation of public funds.

25 (a) Any eligible individual, as defined in Section 52, has

1 the right to have public funds available to pay for his or her
2 home and community-based long-term care services in a qualified
3 residence when such individual moves from a long-term care
4 facility to the most appropriate and preferred community-based
5 setting of his or her choice. The amount of public funds
6 available shall be funded in accordance with the individual
7 service, care, or treatment plan and shall be the greater of
8 (A) the funding that would be available to the individual
9 through the applicable State-operated home and community based
10 waiver program as determined by administrative rule or statute,
11 or (B) (i) an amount no greater than the weighted average rate
12 by geographic area grouping of the individual's qualified
13 residence and (ii) an amount no greater than the licensure
14 category of the facility in which they received care reduced by
15 the average capital component of the overall facility rate.

16 (b) In accordance with Sections 15(2) and 20(b)(2) of this
17 Act, all eligible individuals under this Act shall have an
18 individual service, care, or treatment plan that is reviewed by
19 the interdisciplinary team or case managers at least annually
20 that is consistent with the requirements under subparts (A) and
21 (B) of item 8 of subsection (b) of the Deficit Reduction Act of
22 2005 (P.L. 109-171), and that includes an individualized budget
23 that identifies the dollar value of the services consistent
24 with the requirements under subsection (b)(8)(C) of section
25 6071 and supports under the control and direction of the
26 individual or the individual's authorized representative. The

1 service, care, or treatment plan must contain assurances that
2 each eligible individual has been provided the opportunity to
3 make an informed choice regarding their right under subsection
4 (a).

5 (c) In accordance with any Disabilities Services Plan or
6 plan update under this Act and section 6071 of the Deficit
7 Reduction Act of 2005 (P.L. 109-171) and the Older Adult
8 Services Act, the Departments, in consultation with
9 organizations comprised of or representing people with
10 disabilities or people aged 60 or older and providers of
11 Medicaid acute and long-term care services, shall develop
12 appropriate fiscal payment mechanisms and methodologies, by
13 December 1, 2008, that effectively support choice and eliminate
14 any legal, budgetary, or other barriers to flexibility in the
15 availability of Medicaid funds to pay for long-term care
16 services for individuals in the appropriate home and
17 community-based long-term care settings of their choice,
18 including costs to transition from a long-term care facility to
19 a qualified residence. With respect to the individualized
20 budgets described in subsection (b), the fiscal payment
21 mechanisms and methodologies must: (i) describe the method for
22 calculating the dollar values in such budgets based on reliable
23 costs and service utilization; (ii) define a process for making
24 adjustments in such dollar values to reflect changes in
25 individual assessments and service, care, or treatment plans;
26 and (iii) provide a procedure to evaluate expenditures under

1 such budgets.

2 (d) In addition to Section 4.4 of the Community Services
3 Act of 2004 (P.A. 094-0498), to the extent that savings are
4 realized, those moneys must be deposited into the Olmstead
5 Implementation Fund, created as a special fund in the State
6 treasury, and the Older Adult Services Fund, created as a
7 special fund in the State treasury, with the allocation between
8 these 2 funds based on a formula determined by the Departments
9 by administrative rule, and shall be used to expand the
10 availability, quality, or stability of home and
11 community-based long-term care services and supports for
12 persons with disabilities including, but not limited to the
13 following: in-home consumer/family supports; integrated,
14 accessible, and affordable housing options and home
15 modifications.

16 (e) The allocation of public funds for home and
17 community-based long-term care services shall not have the
18 effect of: (i) diminishing or reducing the quality of services
19 available to residents of long-term care facilities; (ii)
20 forcing any residents of long-term care facilities to
21 involuntarily accept home and community-based long-term care
22 services, or causing any residents of long-term care facilities
23 to be involuntarily transferred or discharged; (iii) causing
24 reductions in long-term care facility reimbursement rates in
25 effect as of July 1, 2008; (iv) causing any delay of long-term
26 care facility payments; or (v) diminishing access to a full

1 array of long-term care options. If an eligible individual
2 moves to a qualified residence and determines it is not the
3 appropriate or preferred setting, they remain entitled to
4 return to a long-term care facility under Title XIX of the
5 Social Security Act (42 U.S.C §1396a(a) (10) (A), §1396d(a) (15),
6 §1396a(a) (1) at the established rate for that facility.

7 (f) 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 a long-term care 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.

14 (a) In accordance with subsection (c) (11) of section 6071
15 of the Deficit Reduction Act of 2005 (P.L. 109-171), the
16 Departments shall develop a plan for quality assurance and
17 quality improvement for home and community-based long-term
18 care services under the State Medicaid program, including a
19 regulatory plan to assure the health and welfare of eligible
20 individuals under this Act.

21 (b) This plan shall require the Departments to apply for
22 any available federal strategic planning and implementation
23 funding to carry out the intent of this legislation, and to
24 seek any appropriate Federal Medicaid waivers to maximize
25 Federal financial participation.

1 (20 ILCS 2407/55 new)

2 Sec. 55. Dissemination of information; reports.

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

1 (b) On or before April 1 of each year, in conjunction with
2 their annual reports, the Departments shall report to the
3 Governor and the General Assembly on the implementation of this
4 Act and include, at a minimum, the following data; (i) a
5 description of the fiscal payment mechanisms and methodologies
6 developed under this Act that effectively support choice; (ii)
7 an accounting of the savings realized under this Act and the
8 ways in which these savings were spent; (iii) information
9 concerning the dollar amounts of State Medicaid expenditures
10 for fiscal years 2009 and 2010, for long-term care services and
11 the percentage of such expenditures that were for an
12 institution or long-term care services or were for home and
13 community-based long-term care services; (iv) a description of
14 the Departments' efforts to inform all eligible individuals of
15 their rights under this Act; (v) the number of eligible
16 individuals referred or identified under this Act in the
17 previous fiscal year, the number of eligible individuals who
18 applied to transfer to home and community-based long-term care
19 services in the previous fiscal year, and the number of
20 eligible individuals who, in fact, transferred from a long-term
21 care facility to a qualified residence in the previous fiscal
22 year; (vi) documentation that the Departments have met the
23 requirements under Section 5 to assure the health and welfare
24 of eligible individuals receiving home and community-based
25 long-term care services; and (vii) any obstacles the
26 Departments confronted in assisting residents of long-term

1 care facilities to make the transition to a qualified
2 residence, and the Departments' recommendations for removing
3 those obstacles. This report must be made available to the
4 general public, including via the Departments' websites.

5 (20 ILCS 2407/56 new)

6 Sec. 56. Effect on existing rights.

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

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

17 (20 ILCS 2407/57 new)

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

21 (20 ILCS 2407/58 new)

22 Sec. 58. Service provider cost reporting and
23 accountability. The Departments shall adopt any rules

1 necessary for the implementation of service provider cost
2 reporting to ensure accountability under this Act within 6
3 months of the effective date of this Act.

4 (20 ILCS 2407/Art. 99 heading new)

5 ARTICLE 99. AMENDATORY PROVISIONS; EFFECTIVE DATE

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

8 (30 ILCS 105/5.675 new)

9 Sec. 5.675. The Olmstead Implementation Fund.

10 (30 ILCS 105/5.676 new)

11 Sec. 5.676. The Older Adult Services Fund.

12 Section 99. Effective date. This Act takes effect July 1,
13 2008."