

SB3378



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB3378

Introduced 2/14/2014, by Sen. Heather A. Steans

SYNOPSIS AS INTRODUCED:

20 ILCS 105/4.02

from Ch. 23, par. 6104.02

Amends the Illinois Act on the Aging. In provisions concerning the Community Care Program, provides that in regard to reforms of service delivery and changes to the State's home and community based services waiver, the Community Care Program shall ensure the availability of services to clients of the program, including, but not limited to: assistance in the home, adult day services, emergency home response, community reintegration services, and medication management. Provides that these services shall be made available to clients that demonstrate a need for them regardless of the model of service delivery or federal waiver under which their care is delivered. Effective immediately.

LRB098 19782 KTG 54997 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 Illinois Act on the Aging is amended by
5 changing Section 4.02 as follows:

6 (20 ILCS 105/4.02) (from Ch. 23, par. 6104.02)

7 Sec. 4.02. Community Care Program. The Department shall
8 establish a program of services to prevent unnecessary
9 institutionalization of persons age 60 and older in need of
10 long term care or who are established as persons who suffer
11 from Alzheimer's disease or a related disorder under the
12 Alzheimer's Disease Assistance Act, thereby enabling them to
13 remain in their own homes or in other living arrangements. Such
14 preventive services, which may be coordinated with other
15 programs for the aged and monitored by area agencies on aging
16 in cooperation with the Department, may include, but are not
17 limited to, any or all of the following:

18 (a) (blank);

19 (b) (blank);

20 (c) home care aide services;

21 (d) personal assistant services;

22 (e) adult day services;

23 (f) home-delivered meals;

- 1 (g) education in self-care;
- 2 (h) personal care services;
- 3 (i) adult day health services;
- 4 (j) habilitation services;
- 5 (k) respite care;
- 6 (k-5) community reintegration services;
- 7 (k-6) flexible senior services;
- 8 (k-7) medication management;
- 9 (k-8) emergency home response;
- 10 (l) other nonmedical social services that may enable
- 11 the person to become self-supporting; or
- 12 (m) clearinghouse for information provided by senior
- 13 citizen home owners who want to rent rooms to or share
- 14 living space with other senior citizens.

15 The Department shall establish eligibility standards for

16 such services. In determining the amount and nature of services

17 for which a person may qualify, consideration shall not be

18 given to the value of cash, property or other assets held in

19 the name of the person's spouse pursuant to a written agreement

20 dividing marital property into equal but separate shares or

21 pursuant to a transfer of the person's interest in a home to

22 his spouse, provided that the spouse's share of the marital

23 property is not made available to the person seeking such

24 services.

25 Beginning January 1, 2008, the Department shall require as

26 a condition of eligibility that all new financially eligible

1 applicants apply for and enroll in medical assistance under
2 Article V of the Illinois Public Aid Code in accordance with
3 rules promulgated by the Department.

4 The Department shall, in conjunction with the Department of
5 Public Aid (now Department of Healthcare and Family Services),
6 seek appropriate amendments under Sections 1915 and 1924 of the
7 Social Security Act. The purpose of the amendments shall be to
8 extend eligibility for home and community based services under
9 Sections 1915 and 1924 of the Social Security Act to persons
10 who transfer to or for the benefit of a spouse those amounts of
11 income and resources allowed under Section 1924 of the Social
12 Security Act. Subject to the approval of such amendments, the
13 Department shall extend the provisions of Section 5-4 of the
14 Illinois Public Aid Code to persons who, but for the provision
15 of home or community-based services, would require the level of
16 care provided in an institution, as is provided for in federal
17 law. Those persons no longer found to be eligible for receiving
18 noninstitutional services due to changes in the eligibility
19 criteria shall be given 45 days notice prior to actual
20 termination. Those persons receiving notice of termination may
21 contact the Department and request the determination be
22 appealed at any time during the 45 day notice period. The
23 target population identified for the purposes of this Section
24 are persons age 60 and older with an identified service need.
25 Priority shall be given to those who are at imminent risk of
26 institutionalization. The services shall be provided to

1 eligible persons age 60 and older to the extent that the cost
2 of the services together with the other personal maintenance
3 expenses of the persons are reasonably related to the standards
4 established for care in a group facility appropriate to the
5 person's condition. These non-institutional services, pilot
6 projects or experimental facilities may be provided as part of
7 or in addition to those authorized by federal law or those
8 funded and administered by the Department of Human Services.
9 The Departments of Human Services, Healthcare and Family
10 Services, Public Health, Veterans' Affairs, and Commerce and
11 Economic Opportunity and other appropriate agencies of State,
12 federal and local governments shall cooperate with the
13 Department on Aging in the establishment and development of the
14 non-institutional services. The Department shall require an
15 annual audit from all personal assistant and home care aide
16 vendors contracting with the Department under this Section. The
17 annual audit shall assure that each audited vendor's procedures
18 are in compliance with Department's financial reporting
19 guidelines requiring an administrative and employee wage and
20 benefits cost split as defined in administrative rules. The
21 audit is a public record under the Freedom of Information Act.
22 The Department shall execute, relative to the nursing home
23 prescreening project, written inter-agency agreements with the
24 Department of Human Services and the Department of Healthcare
25 and Family Services, to effect the following: (1) intake
26 procedures and common eligibility criteria for those persons

1 who are receiving non-institutional services; and (2) the
2 establishment and development of non-institutional services in
3 areas of the State where they are not currently available or
4 are undeveloped. On and after July 1, 1996, all nursing home
5 prescreenings for individuals 60 years of age or older shall be
6 conducted by the Department.

7 As part of the Department on Aging's routine training of
8 case managers and case manager supervisors, the Department may
9 include information on family futures planning for persons who
10 are age 60 or older and who are caregivers of their adult
11 children with developmental disabilities. The content of the
12 training shall be at the Department's discretion.

13 The Department is authorized to establish a system of
14 recipient copayment for services provided under this Section,
15 such copayment to be based upon the recipient's ability to pay
16 but in no case to exceed the actual cost of the services
17 provided. Additionally, any portion of a person's income which
18 is equal to or less than the federal poverty standard shall not
19 be considered by the Department in determining the copayment.
20 The level of such copayment shall be adjusted whenever
21 necessary to reflect any change in the officially designated
22 federal poverty standard.

23 The Department, or the Department's authorized
24 representative, may recover the amount of moneys expended for
25 services provided to or in behalf of a person under this
26 Section by a claim against the person's estate or against the

1 estate of the person's surviving spouse, but no recovery may be
2 had until after the death of the surviving spouse, if any, and
3 then only at such time when there is no surviving child who is
4 under age 21, blind, or permanently and totally disabled. This
5 paragraph, however, shall not bar recovery, at the death of the
6 person, of moneys for services provided to the person or in
7 behalf of the person under this Section to which the person was
8 not entitled; provided that such recovery shall not be enforced
9 against any real estate while it is occupied as a homestead by
10 the surviving spouse or other dependent, if no claims by other
11 creditors have been filed against the estate, or, if such
12 claims have been filed, they remain dormant for failure of
13 prosecution or failure of the claimant to compel administration
14 of the estate for the purpose of payment. This paragraph shall
15 not bar recovery from the estate of a spouse, under Sections
16 1915 and 1924 of the Social Security Act and Section 5-4 of the
17 Illinois Public Aid Code, who precedes a person receiving
18 services under this Section in death. All moneys for services
19 paid to or in behalf of the person under this Section shall be
20 claimed for recovery from the deceased spouse's estate.
21 "Homestead", as used in this paragraph, means the dwelling
22 house and contiguous real estate occupied by a surviving spouse
23 or relative, as defined by the rules and regulations of the
24 Department of Healthcare and Family Services, regardless of the
25 value of the property.

26 The Department shall increase the effectiveness of the

1 existing Community Care Program by:

2 (1) ensuring that in-home services included in the care
3 plan are available on evenings and weekends;

4 (2) ensuring that care plans contain the services that
5 eligible participants need based on the number of days in a
6 month, not limited to specific blocks of time, as
7 identified by the comprehensive assessment tool selected
8 by the Department for use statewide, not to exceed the
9 total monthly service cost maximum allowed for each
10 service; the Department shall develop administrative rules
11 to implement this item (2);

12 (3) ensuring that the participants have the right to
13 choose the services contained in their care plan and to
14 direct how those services are provided, based on
15 administrative rules established by the Department;

16 (4) ensuring that the determination of need tool is
17 accurate in determining the participants' level of need; to
18 achieve this, the Department, in conjunction with the Older
19 Adult Services Advisory Committee, shall institute a study
20 of the relationship between the Determination of Need
21 scores, level of need, service cost maximums, and the
22 development and utilization of service plans no later than
23 May 1, 2008; findings and recommendations shall be
24 presented to the Governor and the General Assembly no later
25 than January 1, 2009; recommendations shall include all
26 needed changes to the service cost maximums schedule and

1 additional covered services;

2 (5) ensuring that homemakers can provide personal care
3 services that may or may not involve contact with clients,
4 including but not limited to:

5 (A) bathing;

6 (B) grooming;

7 (C) toileting;

8 (D) nail care;

9 (E) transferring;

10 (F) respiratory services;

11 (G) exercise; or

12 (H) positioning;

13 (6) ensuring that homemaker program vendors are not
14 restricted from hiring homemakers who are family members of
15 clients or recommended by clients; the Department may not,
16 by rule or policy, require homemakers who are family
17 members of clients or recommended by clients to accept
18 assignments in homes other than the client;

19 (7) ensuring that the State may access maximum federal
20 matching funds by seeking approval for the Centers for
21 Medicare and Medicaid Services for modifications to the
22 State's home and community based services waiver and
23 additional waiver opportunities, including applying for
24 enrollment in the Balance Incentive Payment Program by May
25 1, 2013, in order to maximize federal matching funds; this
26 shall include, but not be limited to, modification that

1 reflects all changes in the Community Care Program services
2 and all increases in the services cost maximum;

3 (8) ensuring that the determination of need tool
4 accurately reflects the service needs of individuals with
5 Alzheimer's disease and related dementia disorders;

6 (9) ensuring that services are authorized accurately
7 and consistently for the Community Care Program (CCP); the
8 Department shall implement a Service Authorization policy
9 directive; the purpose shall be to ensure that eligibility
10 and services are authorized accurately and consistently in
11 the CCP program; the policy directive shall clarify service
12 authorization guidelines to Care Coordination Units and
13 Community Care Program providers no later than May 1, 2013;

14 (10) working in conjunction with Care Coordination
15 Units, the Department of Healthcare and Family Services,
16 the Department of Human Services, Community Care Program
17 providers, and other stakeholders to make improvements to
18 the Medicaid claiming processes and the Medicaid
19 enrollment procedures or requirements as needed,
20 including, but not limited to, specific policy changes or
21 rules to improve the up-front enrollment of participants in
22 the Medicaid program and specific policy changes or rules
23 to insure more prompt submission of bills to the federal
24 government to secure maximum federal matching dollars as
25 promptly as possible; the Department on Aging shall have at
26 least 3 meetings with stakeholders by January 1, 2014 in

1 order to address these improvements;

2 (11) requiring home care service providers to comply
3 with the rounding of hours worked provisions under the
4 federal Fair Labor Standards Act (FLSA) and as set forth in
5 29 CFR 785.48(b) by May 1, 2013;

6 (12) implementing any necessary policy changes or
7 promulgating any rules, no later than January 1, 2014, to
8 assist the Department of Healthcare and Family Services in
9 moving as many participants as possible, consistent with
10 federal regulations, into coordinated care plans if a care
11 coordination plan that covers long term care is available
12 in the recipient's area; and

13 (13) maintaining fiscal year 2014 rates at the same
14 level established on January 1, 2013.

15 By January 1, 2009 or as soon after the end of the Cash and
16 Counseling Demonstration Project as is practicable, the
17 Department may, based on its evaluation of the demonstration
18 project, promulgate rules concerning personal assistant
19 services, to include, but need not be limited to,
20 qualifications, employment screening, rights under fair labor
21 standards, training, fiduciary agent, and supervision
22 requirements. All applicants shall be subject to the provisions
23 of the Health Care Worker Background Check Act.

24 The Department shall develop procedures to enhance
25 availability of services on evenings, weekends, and on an
26 emergency basis to meet the respite needs of caregivers.

1 Procedures shall be developed to permit the utilization of
2 services in successive blocks of 24 hours up to the monthly
3 maximum established by the Department. Workers providing these
4 services shall be appropriately trained.

5 Beginning on the effective date of this Amendatory Act of
6 1991, no person may perform chore/housekeeping and home care
7 aide services under a program authorized by this Section unless
8 that person has been issued a certificate of pre-service to do
9 so by his or her employing agency. Information gathered to
10 effect such certification shall include (i) the person's name,
11 (ii) the date the person was hired by his or her current
12 employer, and (iii) the training, including dates and levels.
13 Persons engaged in the program authorized by this Section
14 before the effective date of this amendatory Act of 1991 shall
15 be issued a certificate of all pre- and in-service training
16 from his or her employer upon submitting the necessary
17 information. The employing agency shall be required to retain
18 records of all staff pre- and in-service training, and shall
19 provide such records to the Department upon request and upon
20 termination of the employer's contract with the Department. In
21 addition, the employing agency is responsible for the issuance
22 of certifications of in-service training completed to their
23 employees.

24 The Department is required to develop a system to ensure
25 that persons working as home care aides and personal assistants
26 receive increases in their wages when the federal minimum wage

1 is increased by requiring vendors to certify that they are
2 meeting the federal minimum wage statute for home care aides
3 and personal assistants. An employer that cannot ensure that
4 the minimum wage increase is being given to home care aides and
5 personal assistants shall be denied any increase in
6 reimbursement costs.

7 The Community Care Program Advisory Committee is created in
8 the Department on Aging. The Director shall appoint individuals
9 to serve in the Committee, who shall serve at their own
10 expense. Members of the Committee must abide by all applicable
11 ethics laws. The Committee shall advise the Department on
12 issues related to the Department's program of services to
13 prevent unnecessary institutionalization. The Committee shall
14 meet on a bi-monthly basis and shall serve to identify and
15 advise the Department on present and potential issues affecting
16 the service delivery network, the program's clients, and the
17 Department and to recommend solution strategies. Persons
18 appointed to the Committee shall be appointed on, but not
19 limited to, their own and their agency's experience with the
20 program, geographic representation, and willingness to serve.
21 The Director shall appoint members to the Committee to
22 represent provider, advocacy, policy research, and other
23 constituencies committed to the delivery of high quality home
24 and community-based services to older adults. Representatives
25 shall be appointed to ensure representation from community care
26 providers including, but not limited to, adult day service

1 providers, homemaker providers, case coordination and case
2 management units, emergency home response providers, statewide
3 trade or labor unions that represent home care aides and direct
4 care staff, area agencies on aging, adults over age 60,
5 membership organizations representing older adults, and other
6 organizational entities, providers of care, or individuals
7 with demonstrated interest and expertise in the field of home
8 and community care as determined by the Director.

9 Nominations may be presented from any agency or State
10 association with interest in the program. The Director, or his
11 or her designee, shall serve as the permanent co-chair of the
12 advisory committee. One other co-chair shall be nominated and
13 approved by the members of the committee on an annual basis.
14 Committee members' terms of appointment shall be for 4 years
15 with one-quarter of the appointees' terms expiring each year. A
16 member shall continue to serve until his or her replacement is
17 named. The Department shall fill vacancies that have a
18 remaining term of over one year, and this replacement shall
19 occur through the annual replacement of expiring terms. The
20 Director shall designate Department staff to provide technical
21 assistance and staff support to the committee. Department
22 representation shall not constitute membership of the
23 committee. All Committee papers, issues, recommendations,
24 reports, and meeting memoranda are advisory only. The Director,
25 or his or her designee, shall make a written report, as
26 requested by the Committee, regarding issues before the

1 Committee.

2 The Department on Aging and the Department of Human
3 Services shall cooperate in the development and submission of
4 an annual report on programs and services provided under this
5 Section. Such joint report shall be filed with the Governor and
6 the General Assembly on or before September 30 each year.

7 The requirement for reporting to the General Assembly shall
8 be satisfied by filing copies of the report with the Speaker,
9 the Minority Leader and the Clerk of the House of
10 Representatives and the President, the Minority Leader and the
11 Secretary of the Senate and the Legislative Research Unit, as
12 required by Section 3.1 of the General Assembly Organization
13 Act and filing such additional copies with the State Government
14 Report Distribution Center for the General Assembly as is
15 required under paragraph (t) of Section 7 of the State Library
16 Act.

17 Those persons previously found eligible for receiving
18 non-institutional services whose services were discontinued
19 under the Emergency Budget Act of Fiscal Year 1992, and who do
20 not meet the eligibility standards in effect on or after July
21 1, 1992, shall remain ineligible on and after July 1, 1992.
22 Those persons previously not required to cost-share and who
23 were required to cost-share effective March 1, 1992, shall
24 continue to meet cost-share requirements on and after July 1,
25 1992. Beginning July 1, 1992, all clients will be required to
26 meet eligibility, cost-share, and other requirements and will

1 have services discontinued or altered when they fail to meet
2 these requirements.

3 For the purposes of this Section, "flexible senior
4 services" refers to services that require one-time or periodic
5 expenditures including, but not limited to, respite care, home
6 modification, assistive technology, housing assistance, and
7 transportation.

8 The Department shall implement an electronic service
9 verification based on global positioning systems or other
10 cost-effective technology for the Community Care Program no
11 later than January 1, 2014.

12 The Department shall require, as a condition of
13 eligibility, enrollment in the medical assistance program
14 under Article V of the Illinois Public Aid Code (i) beginning
15 August 1, 2013, if the Auditor General has reported that the
16 Department has failed to comply with the reporting requirements
17 of Section 2-27 of the Illinois State Auditing Act; or (ii)
18 beginning June 1, 2014, if the Auditor General has reported
19 that the Department has not undertaken the required actions
20 listed in the report required by subsection (a) of Section 2-27
21 of the Illinois State Auditing Act.

22 The Department shall delay Community Care Program services
23 until an applicant is determined eligible for medical
24 assistance under Article V of the Illinois Public Aid Code (i)
25 beginning August 1, 2013, if the Auditor General has reported
26 that the Department has failed to comply with the reporting

1 requirements of Section 2-27 of the Illinois State Auditing
2 Act; or (ii) beginning June 1, 2014, if the Auditor General has
3 reported that the Department has not undertaken the required
4 actions listed in the report required by subsection (a) of
5 Section 2-27 of the Illinois State Auditing Act.

6 The Department shall implement co-payments for the
7 Community Care Program at the federally allowable maximum level
8 (i) beginning August 1, 2013, if the Auditor General has
9 reported that the Department has failed to comply with the
10 reporting requirements of Section 2-27 of the Illinois State
11 Auditing Act; or (ii) beginning June 1, 2014, if the Auditor
12 General has reported that the Department has not undertaken the
13 required actions listed in the report required by subsection
14 (a) of Section 2-27 of the Illinois State Auditing Act.

15 The Department shall provide a bi-monthly report on the
16 progress of the Community Care Program reforms set forth in
17 this amendatory Act of the 98th General Assembly to the
18 Governor, the Speaker of the House of Representatives, the
19 Minority Leader of the House of Representatives, the President
20 of the Senate, and the Minority Leader of the Senate.

21 The Department shall conduct a quarterly review of Care
22 Coordination Unit performance and adherence to service
23 guidelines. The quarterly review shall be reported to the
24 Speaker of the House of Representatives, the Minority Leader of
25 the House of Representatives, the President of the Senate, and
26 the Minority Leader of the Senate. The Department shall collect

1 and report longitudinal data on the performance of each care
2 coordination unit. Nothing in this paragraph shall be construed
3 to require the Department to identify specific care
4 coordination units.

5 In regard to community care providers, failure to comply
6 with Department on Aging policies shall be cause for
7 disciplinary action, including, but not limited to,
8 disqualification from serving Community Care Program clients.
9 Each provider, upon submission of any bill or invoice to the
10 Department for payment for services rendered, shall include a
11 notarized statement, under penalty of perjury pursuant to
12 Section 1-109 of the Code of Civil Procedure, that the provider
13 has complied with all Department policies.

14 In regard to reforms of service delivery and changes to the
15 State's home and community based services waiver, the Community
16 Care Program shall ensure the availability of services to
17 clients of the program, including, but not limited to:
18 assistance in the home, adult day services, emergency home
19 response, community reintegration services, and medication
20 management. These services shall be made available to clients
21 that demonstrate a need for them regardless of the model of
22 service delivery or federal waiver under which their care is
23 delivered.

24 (Source: P.A. 97-333, eff. 8-12-11; 98-8, eff. 5-3-13.)

25 Section 99. Effective date. This Act takes effect upon
26 becoming law.