

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 1015

By: Cain of the Senate

and

Steele, Lindley, Mass,
Gilbert, Jackson, Sullivan
and Nations of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to poor persons; creating the Oklahoma Self-Directed Care Act; providing short title; stating legislative findings and intent; defining terms; directing the Oklahoma Health Care Authority and the Department of Human Services to establish certain pilot program; providing for program implementation upon federal approval; requiring interagency cooperative agreements; allowing choice of provider and direction of service delivery; providing for participation of specified persons; providing program parameters and consumer responsibility; specifying roles and responsibilities of agencies and the fiscal intermediary; providing for certain reimbursement; specifying employment criteria for specified purposes; providing for promulgation of rules and necessary waiver applications; providing for compliance with federal regulations; stating legislative intent regarding certain funds; allowing development of certain feature; specifying minimum requirements; specifying conditions for and requiring expansion of pilot program for additional populations; requiring specified feasibility study; requiring certain actions prior to certain allocation; requiring program review by agencies; providing for appointment of certain committee for specified purpose; requiring modification of State Medicaid Personal Care Program for specified purpose; specifying public policy; creating the Strategic Planning Committee on the Olmstead Decision; providing for operation, membership, quorum, cochairs, proceedings, subcommittees and staffing of the Committee; requiring cooperation; providing for travel reimbursement; providing for duties and responsibilities of Committee; requiring a report of findings and recommendations; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 198.12 of Title 56, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Self-Directed Care Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 198.13 of Title 56, unless there is created a duplication in numbering, reads as follows:

The Legislature finds that it recognizes the need to nurture the autonomy of citizens of this state who have disabilities by providing home- and community-based care services in the least restrictive and most appropriate setting possible. The Legislature hereby intends to provide such individuals with more choices in and greater control over the purchase of the home- and community-based care services they receive.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 198.14 of Title 56, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Self-Directed Care Act:

1. "Ancillary services" means services in addition to basic services provided to a consumer and includes the following:
 - a. housekeeping chores which are incidental to the basic services furnished, or which are essential to the health and welfare of the consumer, and
 - b. transportation services to enable the consumer to gain access to waiver services and other community services, activities and resources;
2. "Basic services" shall include, but not be limited to:
 - a. getting in and out of bed, wheelchair or motor vehicle,

- b. assistance with routine bodily functions including bathing and personal hygiene, dressing and grooming, and eating,
- c. assistance in acquiring, retaining and improving self-help, socialization and adaptive skills necessary to reside successfully in a home- and community-based setting,
- d. respite services for non-paid caregivers, which may include services consisting of general household activities such as meal preparation and routine household care, and
- e. health maintenance activities including, but not limited to, administration of medications by oral, rectal, vaginal, otic, ophthalmic, nasal, skin, topical, transdermal and gastrostomy tube routes, feedings through a tube, surface care of stoma sites, irrigation of catheter, and wound care if such activities in the opinion of the attending physician or licensed registered nurse may be performed safely in the home or community by a consumer-employed caregiver who has successfully completed competency-based training approved by the Department of Human Services;

3. "Budget allowance" means the amount of money made available each month to a consumer to purchase needed home- and community-based care services, based on the results of a functional needs assessment to be developed pursuant to the provisions of this act;

4. "Consumer" means a person who has chosen to participate in the program, has met the enrollment requirements, and has received an approved budget allowance;

5. "Fiscal intermediary" means an entity approved by the Oklahoma Health Care Authority that helps a consumer manage the

budget allowance of the consumer, retains the funds, and processes employment information, processes tax information, processes workers' compensation insurance premiums, reviews records to ensure correctness, writes paychecks to providers, and delivers paychecks to the consumer for distribution to providers and caregivers;

6. "Legal representative" means a person who is a legal guardian or conservator or who holds a durable power of attorney authorizing the making of health and medical care decisions as required by this section for a consumer;

7. "Personal care services" means those basic and ancillary services which enable the consumer in need of in-home care to live in the home and community of the consumer rather than in an institution and to carry out functions of daily living, self-care and mobility;

8. "Program" means the Self-Directed Care Pilot Program;

9. "Provider" means:

- a. a person licensed to render services that are eligible for reimbursement under this program, for whom the consumer is not the employer of record, or
- b. a consumer-employed caregiver for whom the consumer is the employer of record; and

10. "Representative" means an uncompensated individual designated by the consumer to assist in managing the budget allowance and needed services of the consumer.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 198.15 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. 1. The Oklahoma Health Care Authority and the Department of Human Services, hereinafter referred to as the Authority and the Department, respectively, are hereby directed to establish self-directed care pilot programs for the citizens of the state who have disabilities and are currently served by a home- and community-based

waiver which shall be based on the principles of consumer choice and control.

2. The Department of Human Services shall implement each pilot program upon federal approval.

3. The Authority and the Department shall further establish interagency cooperative agreements to implement and administer each program.

4. Persons enrolled in the Self-Directed Care Pilot Program shall be authorized to choose the providers of services and to direct the delivery of services to best meet their long-term care needs.

5. The pilot program shall operate within funds appropriated by the Legislature.

B. Any person currently receiving waiver services in the home- and community-based waiver program as amended to include the Self-Directed Care Pilot Program and who is determined through the Department's assessment process to be able to direct his or her own care or to designate an eligible representative to assist the person in directing such care may choose to participate in the Self-Directed Care Pilot Program. For purposes of this section, a legal representative acts on behalf of the consumer.

C. 1. A consumer enrolled in the program shall be given a monthly budget allowance based on the results of his or her functional needs assessment.

2. The Department of Human Services shall develop purchasing guidelines, approved by the Authority, to assist a consumer in using the budget allowance to purchase needed, cost-effective services.

D. A consumer shall use the budget allowance only to pay for home- and community-based services that meet the long-term needs of the consumer and are a cost-efficient use of funds including, but not limited to:

1. Ancillary services as defined in Section 3 of this act;

2. Basic services as defined in Section 3 of this act;

3. Homemaking and chores, including housework, meals, shopping and transportation;

4. Home modifications and assistive devices that may increase the consumer's independence or make it possible to avoid institutional placement;

5. Day care and respite care services provided by adult day care facilities;

6. Personal care and support services provided in an assisted living facility should such facilities be subsequently approved for reimbursement under the state Medicaid program;

7. Durable medical equipment and supplies; and

8. Adaptive equipment.

E. A consumer shall be allowed to choose providers of services, as well as when and how services will be provided. A qualified consumer-employed caregiver is a person who is not legally responsible for the consumer's care, who is eighteen (18) years of age or older, has passed a criminal background check and a registry check pursuant to Sections 1025.2 and 1025.3 of Title 56 of the Oklahoma Statutes, and has the training necessary to meet the needs of the consumer. When the consumer is the employer of record, the consumer's roles and responsibilities include, but are not limited to, the following:

1. Developing a job description;

2. Selecting caregivers and submitting information for a criminal history background check;

3. Establishing and communicating needs, preferences and expectations about services being purchased;

4. Providing payments and tax requirements;

5. Being considered employer of record for purposes of the Workers' Compensation Act and paying premiums for workers'

compensation insurance from the budget allowance or being self-insured pursuant to the Workers' Compensation Act;

6. Directing and supervising consumer-employed caregivers;

7. Ensuring the accuracy and timely submission of records required by the fiscal intermediary; and

8. Terminating the employment of an unsatisfactory caregiver.

F. The roles and responsibilities of the Department include, but are not limited to:

1. Assessing the functional needs of each consumer to determine eligibility, developing a service plan, and establishing a budget allowance based on the needs assessment;

2. Offering or contracting for services which shall provide training, technical assistance, and support to the consumer;

3. Approving fiscal intermediaries;

4. Establishing minimum qualifications and training for all caregivers and providers;

5. Serving as the final arbiter of the fitness of any individual to be a caregiver or provider; and

6. Developing and implementing a quality assurance plan.

G. The responsibilities of the fiscal intermediary include, but are not limited to:

1. Providing recordkeeping services;

2. Retaining the monthly budget allowance;

3. Processing employment information;

4. Processing federal and state tax, unemployment and FICA;

5. Processing workers' compensation insurance premiums or payments for self-insurance pursuant to the Workers' Compensation Act;

6. Reviewing records to ensure correctness;

7. Writing paychecks to providers;

8. Completing criminal history background check and registry check for consumer-employed caregivers pursuant to Sections 1025.2 and 1025.3 of Title 56 of the Oklahoma Statutes; and

9. Delivering paychecks to the consumer for distribution to providers and caregivers.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 198.16 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. In order to implement the Oklahoma Self-Directed Care Act:

1. The Oklahoma Health Care Authority Board and the Commission for Human Services are hereby authorized to promulgate rules necessary to enact the provisions of this act;

2. The Oklahoma Health Care Authority shall take all actions necessary to ensure state compliance with federal regulations;

3. The Authority shall apply for any necessary federal waivers or waiver amendments required to implement the program;

4. The Legislature intends that, as consumers relocate from institutional settings to community-based options, funds used to serve consumers in institutional settings shall follow consumers to cover the cost of community-based services; and

5. The Department of Human Services or other applicable state entity for the population served may develop an electronic benefit transfer feature for the provision of self-directed care services to consumers.

B. The Oklahoma Self-Directed Care Act, at a minimum, shall meet the following requirements:

1. The cost in the aggregate of the services offered through the self-directed care plan shall be equal to or less than the cost of a home- and community-based waiver or comparable waiver program;

2. The baseline level of consumer satisfaction shall be measured by a third party prior to initiation of the Oklahoma Self-Directed Care Act;

3. The scope of services offered within the Self-Directed Care Pilot Program shall comply with current state statutes and rules, and federal regulations; and

4. Program evaluation which shall include an indication of whether consumer satisfaction for Self-Directed Care Pilot Program consumers is higher than or equal to consumer satisfaction for home- and community-based waiver clients or other comparable waiver programs, as measured by a third party.

C. Upon the approval of the Centers for Medicare and Medicaid Services and the availability of funds, the Authority and the Department shall expand the Oklahoma Self-Directed Care Pilot Program statewide if the evaluation provided for in subsection B of this section demonstrates consumer satisfaction with and cost-effectiveness in the delivery of the program.

D. The Authority and the Department shall conduct a feasibility study on the future design and implementation of expanding the home- and community-based waiver program to include additional people with developmental disabilities, spinal cord injury or traumatic brain injury; provided, however, before allocating any new monies to such program, the Department and the Authority shall prepare and submit to the Legislature the results of the feasibility study and a fiscal impact statement.

E. The Authority and the Department of Human Services shall each, on an ongoing basis, review and assess the implementation of the Self-Directed Care Pilot Program. By January 15 of each year, the Authority shall submit a written report to the Governor and Legislature that includes each agency's review of the program.

F. The Department of Human Services shall appoint a committee to assist the Department in the development of waivers and rules related to self-directed services, including the functional needs assessment used for determination of eligibility for the Self-Directed Services program. The committee shall be composed of two

consumers; two parents or family members of consumers; two advocates; one representative from the Statewide Independent Living Council; one representative of an agency providing Advantage waiver services; one representative of an agency providing Developmental Disabilities Services Division waiver services; and one representative from the University of Oklahoma Health Sciences Center for Learning and Leadership. The committee shall sunset no later than one (1) year after the effective date of this act. The Governor, President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint an at-large representative to the Committee.

G. The Authority is hereby directed to modify the state Medicaid program Personal Care Program to allow any person to self-direct his or her own personal care services who:

1. Is eligible to receive Personal Care Program services;
2. Chooses to receive Personal Care Program services; and
3. Is able to direct his or her own care or to designate an eligible representative to assist in directing such care.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 198.11b of Title 56, unless there is created a duplication in numbering, reads as follows:

A. It is the public policy of the State of Oklahoma to:

1. Recognize and support individuals with disabilities by treating them with dignity and respect as productive members of our society in Oklahoma;
2. Acknowledge their contributions as productive and independent citizens in the state and the useful work they perform in their local communities;
3. Support a service delivery system for individuals with disabilities ensuring that the individuals, their families, or guardians are well informed as to the types of services and resources available to such individuals in order to encourage their

independence, self-esteem, and self-worth, regardless of the severity of the disability; and

4. Recognize that self-choice on the part of individuals with disabilities is critical and that the most appropriate setting for meeting their needs should be a paramount consideration when determining appropriate placement of such individuals in community-based programs, residential care facilities, or any other placement or service that benefits the needs and well-being of individuals with disabilities.

B. There is hereby created the Strategic Planning Committee on the Olmstead Decision to continue until January 1, 2007. The purpose of the Committee is to develop a comprehensive, strategic plan of implementation for the State of Oklahoma regarding the Olmstead Decision.

C. The Strategic Planning Committee on the Olmstead Decision shall be composed of seventeen appointed members, eighteen ex officio members, and representatives from disability-related organizations, all of whom shall be voting members, as follows:

1. a. The Governor shall appoint:
 - (1) one person who is a community placement service provider for persons with disabilities,
 - (2) one person who is an advocate for persons with disabilities,
 - (3) one parent or personal representative of a person with disabilities,
 - (4) one member from an organization that provides direct care services within the Advantage Waiver Program, and
 - (5) one member who is a consumer of disability services.

b. The President Pro Tempore of the Senate shall appoint:

- (1) one member of the State Senate who is a member of the Human Resources Committee,
- (2) one member of the State Senate who is a member of the Appropriations Subcommittee on Health and Human Services,
- (3) a representative of a nonprofit agency, in a city of five hundred thousand (500,000) or more population, that collaborates on programs and services for persons with disabilities,
- (4) two members who are consumers of disability services, and
- (5) one member of the State Senate.

c. The Speaker of the House of Representatives shall appoint:

- (1) one member of the House of Representatives who is a member of the Human Services Committee,
- (2) one member of the House of Representatives who is a member of the Mental Health Committee,
- (3) one parent or personal representative of a person with disabilities,
- (4) two members who are consumers of disability services, and
- (5) one member of the Oklahoma House of Representatives;

2. The ex officio voting members shall be:

- a. the Attorney General, or designee,
- b. the Director of the Department of Human Services, or designee,
- c. the Division Director of the Developmental Disabilities Division of the Department of Human Services, if not the designee of the Director of Human Services,

- d. the State Commissioner of Health, or designee,
- e. the Commissioner of the Department of Mental Health and Substance Abuse Services, or designee,
- f. the Administrator of the Oklahoma Health Care Authority, or designee,
- g. the Director of the Office of State Finance, or designee,
- h. the Director of the State Department of Rehabilitation Services, or designee,
- i. the Director of the Office of Handicapped Concerns, or designee,
- j. the Director of the Oklahoma Employment Security Commission, or designee,
- k. the state coordinator for the federal Ticket To Work and Work Incentive Act, if not the designee of the Oklahoma Employment Security Director,
- l. the Executive Director of a local housing authority, or designee,
- m. the Executive Director of the Oklahoma Housing Finance Agency, or designee,
- n. the State Superintendent of Public Instruction, or designee,
- o. the Director of the Department of Transportation, or designee,
- p. the Commissioner of Labor, or designee,
- q. a representative from a local transit authority, or from a Community Action Agency, that provides transportation services to individuals with disabilities, and
- r. the Director of the Oklahoma Commission on Children and Youth, or designee; and

3. The membership may also include as voting members, but need not be limited to, a representative from each of the following disability-related organizations:

- a. the Developmental Disabilities Council,
- b. the Statewide Independent Living Council,
- c. the Centers for Independent Living,
- d. the Center for Learning and Leadership,
- e. the Oklahoma Disability Law Center,
- f. ABLE-Tech, and
- g. the Oklahoma Mental Health Consumer Council.

D. 1. Members shall serve at the pleasure of their appointing authorities. A vacancy on the Committee shall be filled by the original appointing authority.

2. The Committee shall be composed of persons serving on the Strategic Planning Committee on the Olmsted Decision, immediately prior to enactment of Enrolled House Bill No. 1253 of the 1st Session of the 50th Oklahoma Legislature.

3. A majority of the members of the Committee shall constitute a quorum. A majority of the members present at a meeting may act for the Committee.

4. The President Pro Tempore and the Speaker shall each designate a cochair from among the members of the Committee.

5. The cochairs of the Committee shall annually establish a schedule of each year's meetings. The Committee shall meet at least four times annually.

6. Proceedings of all meetings of the Committee shall comply with the provisions of the Oklahoma Open Meeting Act.

7. The Committee may divide into subcommittees in furtherance of its purpose.

E. 1. The Department of Human Services and the Office of the Attorney General shall serve as lead agencies and as such shall provide primary staffing for the Committee. Appropriate personnel

from the Oklahoma Health Care Authority and the Department of Mental Health and Substance Abuse Services shall also assist with the work of the Committee.

2. The Committee may use the expertise and services of the staffs of the State Senate and the House of Representatives and may, as necessary, employ and contract for the advice and services of experts in the field as well as other necessary professional and clerical staff.

F. All departments, officers, agencies, and employees of this state shall cooperate with the Committee in fulfilling its duties and responsibilities including, but not limited to, providing any information, records, or reports requested by the Committee.

G. Members of the Committee shall receive no compensation for their service, but shall receive travel reimbursement as follows:

1. Legislative members of the Committee shall be reimbursed for necessary travel expenses incurred in the performance of their duties in accordance with the provisions of Section 456 of Title 74 of the Oklahoma Statutes; and

2. Nonlegislative members of the Committee shall be reimbursed by their appointing authorities or respective agencies for necessary travel expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act.

H. The duties and responsibilities of the Strategic Planning Committee on the Olmstead Decision shall include, but need not be limited to:

- a. developing a comprehensive, strategic plan for Oklahomans with disabilities, pursuant to the Olmstead Decision,
- b. reviewing Oklahoma's service delivery system and the way in which persons with disabilities currently access the services,

- c. reviewing existing statutes, policies, programs, services and funding sources that affect Oklahomans with disabilities, including, but not limited to, identifying unique approaches and strategies to funding,
- d. identifying and reviewing funding and resource information available to persons with disabilities and their families in this state,
- e. identifying gaps and barriers in programs and services to individuals with disabilities and making any recommendations to enhance programs and the delivery system for persons with disabilities in Oklahoma, and
- f. taking all other actions necessary to develop the comprehensive strategic plan.

I. The Committee shall prepare and submit a report of its findings and recommendations to the Legislature and Governor by July 15, 2005, and each July 15 thereafter, and shall submit a final report by January 1, 2007.

SECTION 7. This act shall become effective July 1, 2005.

SECTION 8. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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CJ

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