ENGROSSED SENATE
BILL NO. 1015

By: Cain of the Senate

and

Steele, Lindley and Mass of the House

[public health and safety - Oklahoma Self-Directed Care Act – codification – noncodification - effective date]

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 2559 of Title 63, unless there is created a duplication in numbering, reads as follows:

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

B. The Legislature finds that:

1. Alternatives to institutional care, such as in-home and community-based care, should be encouraged;

2. Giving consumers of in-home and community-based services, including family and friends, the opportunity to select the services they need and the providers they want enhances their sense of dignity and autonomy; and

3. Providing consumers with choice and control of services and providers, as substantiated by current research and demonstration projects, has been beneficial and should be further developed for implementation statewide.

C. 1. Recognizing the need to nurture the autonomy of citizens of this state who have disabilities by providing long-term care services in the least restrictive and appropriate setting possible, the Legislature hereby intends to provide such individuals with more

choices in and greater control over the purchased long-term care services they receive.

2. The Oklahoma Health Care Authority is hereby directed to establish self-directed care programs which shall be based on the principles of consumer choice and control. The Authority shall implement each program upon federal approval. The Authority shall further establish interagency cooperative agreements and shall work with the Department of Human Services to implement and administer each program. Persons enrolled in the Medicaid home and community-based 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. The program shall not replace or duplicate any existing self- or consumer-directed waiver service or waiver program. The program shall operate within funds appropriated by the Legislature.

3. Any person who is medically and financially eligible to participate, and who is 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 Medicaid waiver program.

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

a. is eligible to receive State Plan Personal Care Services,

b. chooses to receive State Plan Personal Care Services, and

c. is able to direct his or her own care or to designate an eligible representative to assist in directing such care.

D. As used in this section:

1. “Ancillary services” means services in addition to the basic services provided to a consumer who needs one or more of the basic services, and include the following:

a. homemaker-type services including, but not limited to, shopping, laundry, cleaning and seasonal chores,

b. companion-type services including, but not limited to, transportation, letter writing, reading mail and escort to functions, and

c. assistance with cognitive tasks including, but not limited to, managing finances, planning activities and making decisions;

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 health maintenance activities, bathing and personal hygiene, dressing and grooming, and feeding;

3. "Budget allowance" means the amount of money made available each month to a consumer to purchase needed long-term care services, based on the results of a functional needs assessment to be developed pursuant to the provisions of Section 2 of this act;

4. “Consultant” means an individual who provides technical assistance to consumers in meeting the consumer’s responsibilities;

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

6. “Fiscal intermediary" means an entity approved by the Oklahoma Health Care Authority that helps a consumer manage the consumer's budget allowance, retains the funds, and processes employment information, processes tax information, reviews records to ensure correctness, writes paychecks to providers, and delivers

paychecks to the consumer for distribution to providers and caregivers;

7. "Health maintenance activities" include, but are 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 professional nurse may be performed by the consumer if the consumer were physically capable, and the procedure may be performed safely in the home;

8. “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;

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

10. "Provider" means:

a. a person licensed or otherwise permitted 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

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

E. 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. Each department shall develop purchasing guidelines, approved by the Authority, to assist a consumer in using the budget allowance to purchase needed, cost effective services.

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

1. Personal care services;

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

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

4. Assistance in taking self-administered medication;

5. Day care and respite care services provided by adult day care or nursing 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. Coaching services to achieve cognitive tasks;

8. Durable medical equipment and supplies; and

9. Adaptive equipment.

G. A consumer shall be allowed to choose providers of services, as well as when and how services will be provided. A provider may include a consumer's neighbor, friend, spouse or relative, other than a legally responsible relative or other person.

1. In cases where a consumer is the employer of record, the consumer's roles and responsibilities include, but are not limited to:

a. developing a job description,

b. selecting caregivers and submitting information for a criminal history background check,

c. communicating needs, preferences and expectations about services being purchased,

d. providing payments and tax requirements,

e. directing supervising and training personal care attendants,

f. establishing needs, references and expectations about purchased services, and

g. ending the employment of an unsatisfactory caregiver.

2. In cases where a consumer is not the employer of record, the consumer’s roles and responsibilities include, but are not limited to:

a. communicating establishing needs, preferences, and expectations about services being purchased,

b. ending the services of an unsatisfactory provider,

c. directing, supervising and training personal care attendants, and

d. providing the fiscal agent with all information necessary for provider payments and tax requirements.

H. The roles and responsibilities of the Authority and the various departments include, but are not limited to:

1. Assessing each consumer's functional needs and helping with development of and providing ongoing assistance with a service plan;

2. Offering case management services which shall provide training, technical assistance, and support to the consumer;

3. Completing criminal history background check for providers;

4. Approving fiscal intermediaries;

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

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

I. The fiscal intermediary's roles and responsibilities include, but are not limited to:

1. Providing recordkeeping services;

2. Retaining the monthly budget allowance;

3. Processing employment information;

4. Processing tax information;

5. Reviewing records to ensure correctness;

6. Writing paychecks to providers; and

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

J. 1. The agency shall, as allowable, reimburse consumer-employed caregivers for the cost of conducting criminal history background checks as required by this section.

2. For purposes of this section, a person who has undergone a criminal history background check, who is qualified for employment under this section and any applicable rule, and who has not been unemployed for more than one hundred eighty (180) days following such check is not required to be rechecked. Such person shall attest under penalty of perjury to not having been convicted of a disqualifying offense since completing such check.

K. In order to implement these sections:

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

2. The Authority shall take all actions necessary to ensure state compliance with federal regulations. The agency shall apply for any necessary federal waivers or waiver amendments required to implement the program;

3. The Legislature intends that, as consumers relocate from institutional settings to community-based options, funds used to house consumers in such settings shall be transferred from such settings to community services to cover the cost of the shift in services; and

4. The Department of Human Services may develop an electronic benefit transfer feature for the provision of self-directed care services to consumers.

L. The Authority, the Department of Human Services and the State Department of Health shall each, on an ongoing basis, review and assess the implementation of the self-directed care 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.

SECTION 2. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The Department of Human Services shall appoint a committee of no more than fifteen people to develop a consumer functional needs assessment. The committee shall be composed of two consumers; two parents or family members of consumers; two representatives from the Developmental Disabilities Services Division of the Department of Human Services; two representatives from the Aging Services Division of the Department of Human Services; two advocates; two representatives from the Statewide Independent Living Council; and up to three at-large representatives. The committee shall sunset no later than one year after the effective date of this act.

SECTION 3. This act shall become effective November 1, 2005.

Passed the Senate the 15th day of March, 2005.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2005.

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Presiding Officer of the House
of Representatives