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THE STATE SENATE
Wednesday, March 2, 2005

Committee Substitute for
Senate Bill No. 1015

COMMITTEE SUBSTITUTE FOR 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]

E 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

1 projects, has been beneficial and should be further developed for
2 implementation statewide.

3 C. 1. Recognizing the need to nurture the autonomy of citizens
4 of this state who have disabilities by providing long-term care
5 services in the least restrictive and appropriate setting possible,
6 the Legislature hereby intends to provide such individuals with more
7 choices in and greater control over the purchased long-term care
8 services they receive.

9 2. The Oklahoma Health Care Authority is hereby directed to
10 establish a self-directed care program which shall be based on the
11 principles of consumer choice and control. The Authority shall
12 implement the program upon federal approval. The Authority shall
13 further establish interagency cooperative agreements and shall work
14 with the Department of Human Services and the State Department of
15 Health to implement and administer the program. The program shall
16 allow persons enrolled in the Medicaid home and community-based
17 waiver program to choose the providers of services and to direct the
18 delivery of services to best meet their long-term care needs. The
19 program shall operate within funds appropriated by the Legislature.

20 3. Any person enrolled in the Medicaid home and community-based
21 waiver program or who receives personal care services under the
22 Medicaid State Plan Personal Care Program, who is able to direct his
23 or her own care or to designate an eligible representative, or the

1 legal representative of such person, may choose to participate in
2 the self-directed care program.

3 D. As used in this section:

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

- 7 a. homemaker-type services including, but not limited to,
8 shopping, laundry, cleaning and seasonal chores,
- 9 b. companion-type services including, but not limited to,
10 transportation, letter writing, reading mail and
11 escort to functions, and
- 12 c. assistance with cognitive tasks including, but not
13 limited to, managing finances, planning activities and
14 making decisions;

15 2. "Basic services" shall include, but not be limited to:

- 16 a. getting in and out of bed, wheelchair or motor
17 vehicle,
- 18 b. assistance with routine bodily functions including
19 health maintenance activities, bathing and personal
20 hygiene, dressing and grooming, and feeding;

21 3. "Budget allowance" means the amount of money made available
22 each month to a consumer to purchase needed long-term care services,

1 based on the results of a functional needs assessment to be
2 developed pursuant to the provisions of Section 2 of this act;

3 4. "Consultant" means an individual who provides technical
4 assistance to consumers in meeting the consumer's responsibilities;

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

8 6. "Fiscal intermediary" means an entity approved by the
9 Oklahoma Health Care Authority that helps a consumer manage the
10 consumer's budget allowance, retains the funds, and processes
11 employment information, processes tax information, reviews records
12 to ensure correctness, writes paychecks to providers, and delivers
13 paychecks to the consumer for distribution to providers and
14 caregivers;

15 7. "Health maintenance activities" include, but are not limited
16 to, administration of medications, feedings through a tube, surface
17 care of stoma sites, irrigation of catheter, and wound care if such
18 activities in the opinion of the attending physician or licensed
19 professional nurse may be performed by the consumer if the consumer
20 were physically capable, and the procedure may be performed safely
21 in the home;

22 8. "Legal representative" means a person who is a legal
23 guardian or conservator or who holds a durable power of attorney

1 authorizing the making of health and medical care decisions as
2 required by this section for a consumer;

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

7 10. "Provider" means:

8 a. a person licensed or otherwise permitted to render
9 services that are eligible for reimbursement under
10 this program, for whom the consumer is not the
11 employer of record, or

12 b. a consumer-employed caregiver for whom the consumer is
13 the employer of record; and

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

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

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

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

- 5 1. Personal care services;
- 6 2. Homemaking and chores, including housework, meals, shopping
7 and transportation;
- 8 3. Home modifications and assistive devices which may increase
9 the consumer's independence or make it possible to avoid
10 institutional placement;
- 11 4. Assistance in taking self-administered medication;
- 12 5. Day care and respite care services provided by adult day
13 care or nursing facilities;
- 14 6. Personal care and support services provided in an assisted
15 living facility should such facilities be subsequently approved for
16 reimbursement under the State Medicaid Program;
- 17 7. Coaching services to achieve cognitive tasks;
- 18 8. Durable medical equipment and supplies; and
- 19 9. Adaptive equipment.

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

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

- 4 a. developing a job description,
- 5 b. selecting caregivers and submitting information for a
6 criminal history background check,
- 7 c. communicating needs, preferences and expectations
8 about services being purchased,
- 9 d. providing payments and tax requirements,
- 10 e. directing supervising and training personal care
11 attendants,
- 12 f. establishing needs, references and expectations about
13 purchased services, and
- 14 g. ending the employment of an unsatisfactory caregiver.

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

- 18 a. communicating establishing needs, preferences, and
19 expectations about services being purchased,
- 20 b. ending the services of an unsatisfactory provider,
- 21 c. directing, supervising and training personal care
22 attendants, and

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

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

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

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

9 3. Completing criminal history background check for providers;

10 4. Approving fiscal intermediaries;

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

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

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

17 1. Providing recordkeeping services;

18 2. Retaining the monthly budget allowance;

19 3. Processing employment information;

20 4. Processing tax information;

21 5. Reviewing records to ensure correctness;

22 6. Writing paychecks to providers; and

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

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

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

13 K. In order to implement these sections:

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

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

21 3. The Legislature intends that, as consumers relocate from
22 institutional settings to community-based options, funds used to
23 house consumers in such settings shall be transferred from such

1 settings to community services to cover the cost of the shift in
2 services; and

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

6 L. The Authority, the Department of Human Services and the
7 State Department of Health shall each, on an ongoing basis, review
8 and assess the implementation of the self-directed care program. By
9 January 15 of each year, the Authority shall submit a written report
10 to the Governor and Legislature that includes each agency's review
11 of the program.

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

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

1 SECTION 3. This act shall become effective November 1, 2005.
2 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-23-05 - DO
3 PASS, As Amended and Coauthored.