

THE HOUSE OF REPRESENTATIVES
Monday, February 22, 2010

Committee Substitute for
House Bill No. 3393

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 3393 - By: NELSON, PITTMAN, SHUMATE AND KERN of the House and ANDERSON of the Senate.

An Act relating to developmental disabilities; amending Section 4, Chapter 434, O.S.L. 2005 (56 O.S. Supp. 2009, Section 198.15), which relates to the creation of self-directed care pilot programs; removing reference to pilot program; renaming program; updating statutory references; allowing payment for a certain scholarship program; prohibiting certain uses; amending Section 5, Chapter 434, O.S.L. 2005 (56 O.S. Supp. 2009, Section 198.16), which relates to requirements and expansion of the Oklahoma Self-Directed Care Act; removing reference to pilot program; authorizing implementation of program statewide; modifying requirement that the Department of Human Services create certain committee; modifying membership and term of the committee; amending 70 O.S. 2001, Section 13-101, which relates to special education services for children with disabilities; requiring resident districts to transfer a child upon request of a parent; authorizing districts to provide scholarship for certain students to attend certain institutions; creating the Scholarships for Students with Disabilities Program; stating intent; specifying procedures; establishing eligibility requirements for students; requiring certain notice; establishing eligibility requirement for a private school; specifying certain compliance requirements; requiring forfeiture for failure to comply; establishing formula for maximum scholarship amount; providing for payments; clarifying school districts not responsible for additional costs; precluding liability; providing for codification; providing an effective date; and declaring an emergency.

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

- 1 SECTION 1. AMENDATORY Section 4, Chapter 434, O.S.L. 2005 (56 O.S.
- 2 Supp. 2009, Section 198.15), is amended to read as follows:

1 Section 198.15 A. 1. The Oklahoma Health Care Authority and the Department of
2 Human Services, hereinafter referred to as the Authority and the Department,
3 respectively, are hereby directed to ~~establish self-directed care pilot programs~~ operate the
4 Self-Directed Care Option for the citizens of the state who have disabilities and are
5 currently served by a home- and community-based waiver with a Centers for Medicare
6 and Medicaid Services approved self-directed option which shall be based on the
7 principles of consumer choice and control.

8 2. The Department of Human Services shall implement ~~each pilot~~ the program
9 upon federal approval.

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

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

15 5. The ~~pilot program~~ Self-Directed Care Option shall operate within funds
16 appropriated by the Legislature.

17 B. Any person currently receiving waiver services in ~~the a~~ a home- and community-
18 based waiver program as amended to include the Self-Directed Care ~~Pilot Program~~
19 Option and who is determined through the Department's assessment process to be able
20 to direct ~~his or her~~ their own care or to designate an eligible representative to assist the
21 person in directing ~~such~~ care may choose to participate in the Self-Directed Care ~~Pilot~~

1 ~~Program~~ Option. For purposes of this section, a legal representative acts on behalf of the
2 consumer.

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

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

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

- 12 1. Ancillary services as defined in Section ~~3~~ 198.14 of this ~~act~~ title;
- 13 2. Basic services as defined in Section ~~3~~ 198.14 of this ~~act~~ title;
- 14 3. Homemaking and chores, including housework, meals, shopping and
15 transportation;
- 16 4. ~~Home modifications and assistive devices that may increase the consumer's~~
17 ~~independence or make it possible to avoid institutional placement;~~
- 18 ~~5.~~ Day care and respite care services provided by adult day care facilities;
- 19 ~~6.~~ 5. Personal care and support services provided in an assisted living facility
20 should ~~such~~ the facilities be subsequently approved for reimbursement under the state
21 Medicaid program;
- 22 ~~7.~~ 6. Durable medical equipment and supplies; and

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 §. 7. Adaptive equipment.

2 E. A consumer shall be allowed to choose providers of services, as well as when and
3 how services will be provided including the provision of home- and community-based self-
4 directed services in conjunction with the Scholarships for Students with Disabilities
5 Program created in Section 4 of this act so long as they are included in the Individual
6 Plan arranged with the case manager, do not provide services for which another third
7 party is legally liable and responsible and may not be used to pay for special education
8 and related services that are included in the individualized education program (IEP) of a
9 child under the provision of the Individuals with Disabilities Education Act (IDEA). A
10 qualified consumer-employed caregiver is a person who is not legally responsible for the
11 consumer's care, who is eighteen (18) years of age or older, has passed a criminal
12 background check and a registry check pursuant to Sections 1025.2 and 1025.3 of ~~Title~~
13 ~~56 of the Oklahoma Statutes~~ this title, and has the training necessary to meet the needs
14 of the consumer. When the consumer is the employer of record, the consumer's roles and
15 responsibilities include, but are not limited to, the following:

16 1. Developing a job description;

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

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

21 4. Providing payments and tax requirements;

- 1 5. Being considered employer of record for purposes of the Workers' Compensation
2 Act and paying premiums for workers' compensation insurance from the budget
3 allowance or being self-insured pursuant to the Workers' Compensation Act;
- 4 6. Directing and supervising consumer-employed caregivers;
- 5 7. Ensuring the accuracy and timely submission of records required by the fiscal
6 intermediary; and
- 7 8. Terminating the employment of an unsatisfactory caregiver.
- 8 F. The roles and responsibilities of the Department include, but are not limited to:
- 9 1. Assessing the functional needs of each consumer to determine eligibility,
10 developing a service plan, and establishing a budget allowance based on the needs
11 assessment;
- 12 2. Offering or contracting for services which shall provide training, technical
13 assistance, and support to the consumer;
- 14 3. Approving fiscal intermediaries;
- 15 4. Establishing minimum qualifications and training for all caregivers and
16 providers;
- 17 5. Serving as the final arbiter of the fitness of any individual to be a caregiver or
18 provider; and
- 19 6. Developing and implementing a quality assurance plan.
- 20 G. The responsibilities of the fiscal intermediary include, but are not limited to:
- 21 1. Providing recordkeeping services;
- 22 2. Retaining the ~~monthly~~ budget allowance;

- 1 3. Processing employment information;
- 2 4. Processing federal and state tax, unemployment and FICA;
- 3 5. Processing workers' compensation insurance premiums or payments for self-
- 4 insurance pursuant to the Workers' Compensation Act;
- 5 6. Reviewing records to ensure correctness;
- 6 7. Writing paychecks to providers;
- 7 8. Completing criminal history background check and registry check for consumer-
- 8 employed caregivers pursuant to Sections 1025.2 and 1025.3 of ~~Title 56 of the Oklahoma~~
- 9 ~~Statutes~~ this title; and
- 10 9. Delivering paychecks to the consumer for distribution to providers and
- 11 caregivers.

12 SECTION 2. AMENDATORY Section 5, Chapter 434, O.S.L. 2005 (56 O.S.
13 Supp. 2009, Section 198.16), is amended to read as follows:

14 Section 198.16 A. In order to implement the Oklahoma Self-Directed Care Act:

- 15 1. The Oklahoma Health Care Authority Board and the Commission for Human
- 16 Services are hereby authorized to promulgate rules necessary to enact the provisions of
- 17 this act;
- 18 2. The Oklahoma Health Care Authority shall take all actions necessary to ensure
- 19 state compliance with federal regulations;
- 20 3. The Authority shall apply for any necessary federal waivers or waiver
- 21 amendments required to implement the program;

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

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

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

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

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

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

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

20 C. Upon the approval of the Centers for Medicare and Medicaid Services and the
21 availability of funds, the Authority and the Department shall ~~expand~~ implement the
22 ~~Oklahoma~~ Self-Directed Care ~~Pilot~~ Program statewide if the evaluation provided for in

1 subsection B of this section demonstrates consumer satisfaction with and cost-
2 effectiveness in the delivery of the program.

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

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

13 F. The Department of Human Services shall appoint a committee to assist the
14 Department in the development of waivers and rules related to self-directed services,
15 including the functional needs assessment used for determination of eligibility for the
16 Self-Directed Services program. The committee shall be composed of two ~~consumers~~ self
17 advocates or adults with developmental disabilities; two parents or family members of
18 consumers; two advocates; ~~one representative from the Statewide Independent Living~~
19 ~~Council~~; ~~one representative of an agency providing Advantage waiver services~~; ~~one~~
20 ~~representative~~ two representatives of an agency providing Developmental Disabilities
21 Services Division waiver services; one representative from the Oklahoma Parent Center;
22 and one representative from the University of Oklahoma Health Sciences Center for

1 Learning and Leadership. The committee shall sunset no later than ~~one (1) year~~ four (4)
2 years after the effective date of implementation of programs indicated in this act. The
3 Governor, President Pro Tempore of the Senate and the Speaker of the House of
4 Representatives shall each appoint an at-large representative to the Committee.

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

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

12 SECTION 3. AMENDATORY 70 O.S. 2001, Section 13-101, is amended to read
13 as follows:

14 Section 13-101. A. The several school districts of Oklahoma are hereby authorized
15 to provide special education and related services necessary for children with disabilities
16 as hereinafter defined. Two or more school districts may establish cooperative programs
17 of special education for children with disabilities when such arrangement is approved by
18 the State Board of Education. Funds may be expended for school services for an
19 additional period during the summer months for approved programs for qualified
20 children with disabilities, provided their individualized education program (I.E.P.) states
21 the need for extended school year special education and related services. Children with

1 disabilities shall mean children, as defined in the Individuals with Disabilities Education
2 Act (IDEA), P.L. No. 105-17, who are three (3) years of age.

3 Provided, on and after July 1, 1991, children from age birth through two (2) years
4 (0-36 months) of age who meet the eligibility criteria specified in Section 13-123 of this
5 title, shall be served pursuant to the provisions of the Oklahoma Early Intervention Act.
6 The attendance of said children in special education classes shall be included in the
7 average daily membership computations for State Aid purposes.

8 B. The State Board of Education is authorized to modify and redefine by regulation
9 the eligibility definitions whenever such modification is required to receive federal
10 assistance under the Individuals with Disabilities Education Act (IDEA), P.L. No. 105-
11 17. Rules developed pursuant to Section 18-109.5 of this title shall provide for such
12 modification and revised definitions.

13 C. It shall be the duty of each school district to provide special education and
14 related services for all children with disabilities as herein defined who reside in that
15 school district in accordance with the Individuals with Disabilities Education Act (IDEA);
16 ~~P.L. No. 105-17. This duty may be satisfied~~ The district may satisfy this duty by:

- 17 1. ~~The district directly~~ Directly providing special education for such children;
- 18 2. ~~The district joining~~ Joining in a cooperative program with another district or
19 districts to provide special education for such children;
- 20 3. ~~The district joining~~ Joining in a written agreement with a private or public
21 institution, licensed residential child care and treatment facility or day treatment facility
22 within such district to provide special education for children who are deaf or

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1 hard-of-hearing, children who are blind or partially blind or other eligible children with
2 disabilities; ~~or~~

3 4. Transferring eligible children and youth with disabilities to other school districts
4 which accept them and provide special education and related services for ~~such~~ the
5 children, with the district in which the child resides paying tuition ~~therefor~~ as
6 ~~hereinafter~~ otherwise provided. A child shall be transferred by the resident district upon
7 the submission of a written request by the parent and subject to the approval of the
8 receiving district. For those students who transfer pursuant to the provisions of the
9 Education Open Transfer Act, the receiving school district shall assume all responsibility
10 for education and shall count the student for federal and state funding purposes
11 according to the provisions of subsection B of Section 13-103 of this title; or

12 5. Beginning with the 2010-2011 school year, providing a scholarship at the request
13 of a parent for a student to attend a private institution pursuant to Section 4 of this act.

14 SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma
15 Statutes as Section 13-101.1 of Title 70, unless there is created a duplication in
16 numbering, reads as follows:

17 A. There is hereby created the Scholarships for Students with Disabilities Program.
18 The Scholarships for Students with Disabilities Program is established to provide a
19 scholarship to a private school of choice for students with disabilities for whom an
20 individualized education program (IEP) in accordance with the Individuals with
21 Disabilities Education Act (IDEA) has been developed.

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1 B. The parent of a public school student with a disability may request and receive a
2 scholarship for the child to enroll in and attend a private school in accordance with this
3 section if:

4 1. The student has spent the prior school year in attendance at a public school in
5 this state. For purposes of this section, "prior school year in attendance" means that the
6 student was enrolled in and reported by a school district for funding purposes during the
7 preceding school year; and

8 2. The parent has obtained acceptance for admission of the student to a private
9 school that is eligible for the program as provided in subsection D of this section and has
10 notified, in writing, the school district of the request for a scholarship at least sixty (60)
11 days prior to the date of the first scholarship payment. For purposes of continuity of
12 educational choice, the scholarship shall remain in force until the student returns to a
13 public school or graduates from high school. If the residence of the student changes, the
14 district of residence shall assume responsibility for the scholarship. At any time, the
15 parent of the student may remove the student from the private school and place the
16 student in another private school that is eligible for the program as provided in
17 subsection D of this section.

18 C. If the parent requests a scholarship and the student is accepted by the private
19 school pending the availability of a space for the student, the parent of the student shall
20 notify the school district sixty (60) days prior to the first scholarship payment and before
21 entering the private school in order to be eligible for the scholarship when a space
22 becomes available for the student in the private school.

1 D. To be eligible to participate in the Scholarships for Students with Disabilities
2 Program, a private school shall notify the State Department of Education of its intent to
3 participate by May 1 of the school year preceding the school year in which it intends to
4 participate. The notice shall specify the grade levels and services that the private school
5 has available for students with disabilities who are participating in the scholarship
6 program. The State Department of Education shall approve a private school as eligible
7 to participate in the Scholarships for Students with Disabilities Program upon
8 determination that the private school:

9 1. Meets the accreditation requirements set by the State Board of Education or
10 another accrediting association approved by the State Board of Education;

11 2. Demonstrates fiscal soundness by having been in operation for one (1) school
12 year or providing the State Department of Education with a statement by a certified
13 public accountant confirming that the private school desiring to participate is insured
14 and the owner or owners have sufficient capital or credit to operate the school for the
15 upcoming year by serving the number of students anticipated with expected revenues
16 from tuition and other sources that may be reasonably expected. In lieu of a statement, a
17 surety bond or letter of credit for the amount equal to the scholarship funds for any
18 quarter may be filed with the Department;

19 3. Complies with the antidiscrimination provisions of 42 U.S.C., Section 2000d;

20 4. Meets state and local health and safety laws and codes;

21 5. Will be academically accountable to the parent for meeting the educational needs
22 of the student;

1 6. Employs or contracts with teachers who hold baccalaureate or higher degrees, or
2 have at least three (3) years of teaching experience in public or private schools, or have
3 special skills, knowledge, or expertise that qualifies them to provide instruction in
4 subjects taught;

5 7. Complies with all state laws relating to general regulation of private schools; and

6 8. Adheres to the tenets of its published disciplinary procedures prior to the
7 expulsion of a scholarship student.

8 E. 1. Scholarship program participants shall comply with the following:

9 a. the parent shall select the private school from the schools approved for
10 eligibility pursuant to subsection D of this section and apply for the
11 admission of the child,

12 b. the parent shall request the scholarship at least sixty (60) days prior to
13 the date of the first scholarship payment,

14 c. any student participating in the scholarship program shall attend
15 throughout the school year, unless excused by the school for illness or
16 other good cause, and shall comply fully with the code of conduct for
17 the school,

18 d. the parent shall fully comply with the parental involvement
19 requirements of the private school, unless excused by the school for
20 illness or other good cause, and

1 e. upon receipt of a scholarship warrant, the parent to whom the warrant
2 is made shall restrictively endorse the warrant to the private school for
3 deposit into the account of the private school.

4 2. A participant who fails to comply with this subsection forfeits the scholarship.

5 F. Provisions governing payment of scholarships shall be as follows:

6 1. The maximum scholarship granted for an eligible student with disabilities shall
7 be a calculated amount equivalent to the average local and county revenue for the school
8 district which is chargeable in the State Aid formula, state-dedicated revenue, and state-
9 appropriated funds per average daily membership generated by that student for the
10 applicable school year including the additional costs associated with the provision of
11 special education and related services that are provided for in the IEP for the student
12 under the provision of IDEA;

13 2. The amount of the scholarship shall be the amount calculated in paragraph 1 of
14 this subsection or the amount of tuition and fees for the private school, whichever is less;

15 3. The school district shall report all students who are attending a private school
16 under this program to the State Department of Education;

17 4. The initial payment shall be made after the school district verifies admission
18 acceptance and enrollment. Quarterly payments shall be made upon verification of
19 continued enrollment and attendance at the private school. Payment shall be by
20 individual warrant made payable to the parent of the student and mailed to the private
21 school that the parent chooses. The parent shall restrictively endorse the warrant to the
22 private school for deposit into the account of the private school; and

1 5. A school district shall not be responsible for any additional costs associated with
2 special education and related services for the student including the cost of teachers,
3 equipment, material, and special costs associated with the special education class.

4 G. No liability shall arise on the part of the state based on the award or use of any
5 scholarship provided through the Scholarships for Students with Disabilities Program.

6 SECTION 5. This act shall become effective July 1, 2010.

7 SECTION 6. It being immediately necessary for the preservation of the public
8 peace, health and safety, an emergency is hereby declared to exist, by reason whereof
9 this act shall take effect and be in full force from and after its passage and approval.

10 COMMITTEE REPORT BY: COMMITTEE ON HUMAN SERVICES, dated 02-18-10 -
11 DO PASS, As Amended and Coauthored.