

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 HOUSE BILL 3393

By: Nelson of the House

4 and

5 Anderson of the Senate

6 AS INTRODUCED

7 An Act relating to developmental disabilities;
8 amending Section 4, Chapter 434, O.S.L. 2005 (56 O.S.
9 Supp. 2009, Section 198.15), which relates to the
10 creation of self-directed care pilot programs;
11 removing reference to pilot program; renaming
12 program; updating statutory references; allowing
13 payment for a certain scholarship program;
14 prohibiting certain uses; amending Section 5, Chapter
15 434, O.S.L. 2005 (56 O.S. Supp. 2009, Section
16 198.16), which relates to requirements and expansion
17 of the Oklahoma Self-Directed Care Act; removing
18 reference to pilot program; authorizing
19 implementation of program statewide; eliminating
20 requirement that the Department of Human Services
21 create certain committee; amending 70 O.S. 2001,
22 Section 13-101, which relates to special education
23 services for children with disabilities; authorizing
24 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.

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

2 SECTION 1. AMENDATORY Section 4, Chapter 434, O.S.L.
3 2005 (56 O.S. Supp. 2009, Section 198.15), is amended to read as
4 follows:

5 Section 198.15 A. 1. The Oklahoma Health Care Authority and
6 the Department of Human Services, hereinafter referred to as the
7 Authority and the Department, respectively, are hereby directed to
8 establish ~~self-directed care pilot programs~~ the Self-Directed Care
9 Program for the citizens of the state who have disabilities and are
10 currently served by a home- and community-based waiver which shall
11 be based on the principles of consumer choice and control.

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

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

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

21 5. The ~~pilot program~~ Self-Directed Care Program shall operate
22 within funds appropriated by the Legislature.

23 B. Any person currently receiving waiver services in the home-
24 and community-based waiver program as amended to include the Self-

1 Directed Care ~~Pilot~~ Program and who is determined through the
2 Department's assessment process to be able to direct his or her own
3 care or to designate an eligible representative to assist the person
4 in directing such care may choose to participate in the Self-
5 Directed Care ~~Pilot~~ Program. For purposes of this section, a legal
6 representative acts on behalf of the consumer.

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

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

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

17 1. Ancillary services as defined in Section ~~3~~ 198.14 of this
18 ~~act~~ title;

19 2. Basic services as defined in Section ~~3~~ 198.14 of this ~~act~~
20 title;

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

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

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

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

9 7. Durable medical equipment and supplies; and

10 8. Adaptive equipment.

11 E. A consumer shall be allowed to choose providers of services,
12 as well as when and how services will be provided including the
13 provision of home- and community-based self-directed services in
14 conjunction with the Scholarships for Students with Disabilities
15 Program created in Section 4 of this act so long as they are
16 included in the Individual Plan arranged with the case manager, do
17 not provide services for which another third party is legally liable
18 and responsible and may not be used to pay for special education and
19 related services that are included in the individualized education
20 program (IEP) of a child under the provision of the Individuals with
21 Disabilities Education Act (IDEA). A qualified consumer-employed
22 caregiver is a person who is not legally responsible for the
23 consumer's care, who is eighteen (18) years of age or older, has
24 passed a criminal background check and a registry check pursuant to

1 Sections 1025.2 and 1025.3 of ~~Title 56 of the Oklahoma Statutes~~ this
2 title, and has the training necessary to meet the needs of the
3 consumer. When the consumer is the employer of record, the
4 consumer's roles and responsibilities include, but are not limited
5 to, the following:

- 6 1. Developing a job description;
- 7 2. Selecting caregivers and submitting information for a
8 criminal history background check;
- 9 3. Establishing and communicating needs, preferences and
10 expectations about services being purchased;
- 11 4. Providing payments and tax requirements;
- 12 5. Being considered employer of record for purposes of the
13 Workers' Compensation Act and paying premiums for workers'
14 compensation insurance from the budget allowance or being self-
15 insured pursuant to the Workers' Compensation Act;
- 16 6. Directing and supervising consumer-employed caregivers;
- 17 7. Ensuring the accuracy and timely submission of records
18 required by the fiscal intermediary; and
- 19 8. Terminating the employment of an unsatisfactory caregiver.

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

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

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

3 3. Approving fiscal intermediaries;

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

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

8 6. Developing and implementing a quality assurance plan.

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

11 1. Providing recordkeeping services;

12 2. Retaining the monthly budget allowance;

13 3. Processing employment information;

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

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

18 6. Reviewing records to ensure correctness;

19 7. Writing paychecks to providers;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 D. The Authority and the Department shall conduct a feasibility
22 study on the future design and implementation of expanding the home-
23 and community-based waiver program to include additional people with
24 developmental disabilities, spinal cord injury or traumatic brain

1 injury; provided, however, before allocating any new monies to such
2 program, the Department and the Authority shall prepare and submit
3 to the Legislature the results of the feasibility study and a fiscal
4 impact statement.

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

10 ~~F. The Department of Human Services shall appoint a committee~~
11 ~~to assist the Department in the development of waivers and rules~~
12 ~~related to self directed services, including the functional needs~~
13 ~~assessment used for determination of eligibility for the Self-~~
14 ~~Directed Services program. The committee shall be composed of two~~
15 ~~consumers; two parents or family members of consumers; two~~
16 ~~advocates; one representative from the Statewide Independent Living~~
17 ~~Council; one representative of an agency providing Advantage waiver~~
18 ~~services; one representative of an agency providing Developmental~~
19 ~~Disabilities Services Division waiver services; and one~~
20 ~~representative from the University of Oklahoma Health Sciences~~
21 ~~Center for Learning and Leadership. The committee shall sunset no~~
22 ~~later than one (1) year after the effective date of this act. The~~
23 ~~Governor, President Pro Tempore of the Senate and the Speaker of the~~

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1 ~~House of Representatives shall each appoint an at-large~~
2 ~~representative to the Committee.~~

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

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

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

12 Section 13-101. A. The several school districts of Oklahoma
13 are hereby authorized to provide special education and related
14 services necessary for children with disabilities as hereinafter
15 defined. Two or more school districts may establish cooperative
16 programs of special education for children with disabilities when
17 such arrangement is approved by the State Board of Education. Funds
18 may be expended for school services for an additional period during
19 the summer months for approved programs for qualified children with
20 disabilities, provided their individualized education program
21 (I.E.P.) states the need for extended school year special education
22 and related services. Children with disabilities shall mean
23 children, as defined in the Individuals with Disabilities Education
24 Act (IDEA), P.L. No. 105-17, who are three (3) years of age.

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

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

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

20 1. ~~The district directly~~ Directly providing special education
21 for such children;

22 2. ~~The district joining~~ Joining in a cooperative program with
23 another district or districts to provide special education for such
24 children;

1 3. ~~The district joining~~ Joining in a written agreement with a
2 private or public institution, licensed residential child care and
3 treatment facility or day treatment facility within such district to
4 provide special education for children who are deaf or
5 hard-of-hearing, children who are blind or partially blind or other
6 eligible children with disabilities; ~~or~~

7 4. Transferring eligible children and youth with disabilities
8 to other school districts which accept them and provide special
9 education and related services for such children, with the district
10 in which the child resides paying tuition therefor as hereinafter
11 provided. For those students who transfer pursuant to the
12 provisions of the Education Open Transfer Act, the receiving school
13 district shall assume all responsibility for education and shall
14 count the student for federal and state funding purposes according
15 to the provisions of subsection B of Section 13-103 of this title;
16 or

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

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

23 A. There is hereby created the Scholarships for Students with
24 Disabilities Program. The Scholarships for Students with

1 Disabilities Program is established to provide a scholarship to a
2 private school of choice for students with disabilities for whom an
3 individualized education program (IEP) in accordance with the
4 Individuals with Disabilities Education Act (IDEA) has been
5 developed.

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

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

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

1 student in another private school that is eligible for the program
2 as provided in subsection D of this section.

3 C. If the parent requests a scholarship and the student is
4 accepted by the private school pending the availability of a space
5 for the student, the parent of the student shall notify the school
6 district sixty (60) days prior to the first scholarship payment and
7 before entering the private school in order to be eligible for the
8 scholarship when a space becomes available for the student in the
9 private school.

10 D. To be eligible to participate in the Scholarships for
11 Students with Disabilities Program, a private school shall notify
12 the State Department of Education of its intent to participate by
13 May 1 of the school year preceding the school year in which it
14 intends to participate. The notice shall specify the grade levels
15 and services that the private school has available for students with
16 disabilities who are participating in the scholarship program. The
17 State Department of Education shall approve a private school as
18 eligible to participate in the Scholarships for Students with
19 Disabilities Program upon determination that the private school:

20 1. Meets the accreditation requirements set by the State Board
21 of Education or another accrediting association approved by the
22 State Board of Education;

23 2. Demonstrates fiscal soundness by having been in operation
24 for one (1) school year or providing the State Department of

1 Education with a statement by a certified public accountant
2 confirming that the private school desiring to participate is
3 insured and the owner or owners have sufficient capital or credit to
4 operate the school for the upcoming year by serving the number of
5 students anticipated with expected revenues from tuition and other
6 sources that may be reasonably expected. In lieu of a statement, a
7 surety bond or letter of credit for the amount equal to the
8 scholarship funds for any quarter may be filed with the Department;

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

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

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

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

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

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

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

- 1 a. the parent shall select the private school from the
2 schools approved for eligibility pursuant to
3 subsection D of this section and apply for the
4 admission of the child,
- 5 b. the parent shall request the scholarship at least
6 sixty (60) days prior to the date of the first
7 scholarship payment,
- 8 c. any student participating in the scholarship program
9 shall attend throughout the school year, unless
10 excused by the school for illness or other good cause,
11 and shall comply fully with the code of conduct for
12 the school,
- 13 d. the parent shall fully comply with the parental
14 involvement requirements of the private school, unless
15 excused by the school for illness or other good cause,
16 and
- 17 e. upon receipt of a scholarship warrant, the parent to
18 whom the warrant is made shall restrictively endorse
19 the warrant to the private school for deposit into the
20 account of the private school.

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

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

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

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

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

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

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

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

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

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

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