

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 HOUSE BILL 1700

By: Morrissette

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5  
6 AS INTRODUCED

7 An Act relating to poor persons; amending Section 4,  
8 Chapter 434, O.S.L. 2005 (56 O.S. Supp. 2008, Section  
9 198.15), which relates to the creation of self-  
10 directed care pilot programs; removing reference to  
11 pilot program; renaming program; updating statutory  
12 references; amending Section 5, Chapter 434, O.S.L.  
13 2005 (56 O.S. Supp. 2008, Section 198.16), which  
14 relates to requirements and expansion of the Oklahoma  
15 Self-Directed Care Act; removing reference to pilot  
16 program; authorizing implementation of program  
17 statewide; eliminating requirement that the  
18 Department of Human Services create certain  
19 committee; amending Section 7, Chapter 315, O.S.L.  
20 2006 (56 O.S. Supp. 2008, Section 1011.7), which  
21 relates to the plan to implement alternatives for  
22 long-term care; specifying content of the cash and  
23 counseling program; and providing an effective date.

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

SECTION 1. AMENDATORY Section 4, Chapter 434, O.S.L.  
2005 (56 O.S. Supp. 2008, Section 198.15), is amended to read as  
follows:

Section 198.15 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

1 establish ~~self-directed care pilot programs~~ the Self-Directed Care  
2 Program for the citizens of the state who have disabilities and are  
3 currently served by a home- and community-based waiver which shall  
4 be based on the principles of consumer choice and control.

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

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

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

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

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

24

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

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

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

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

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

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

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

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

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

1 7. Durable medical equipment and supplies; and

2 8. Adaptive equipment.

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

13 1. Developing a job description;

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

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

18 4. Providing payments and tax requirements;

19 5. Being considered employer of record for purposes of the  
20 Workers' Compensation Act and paying premiums for workers'  
21 compensation insurance from the budget allowance or being self-  
22 insured pursuant to the Workers' Compensation Act;

23 6. Directing and supervising consumer-employed caregivers;

24

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

3           8. Terminating the employment of an unsatisfactory caregiver.

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

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

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

11           3. Approving fiscal intermediaries;

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

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

16           6. Developing and implementing a quality assurance plan.

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

19           1. Providing recordkeeping services;

20           2. Retaining the monthly budget allowance;

21           3. Processing employment information;

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

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24

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

4           6. Reviewing records to ensure correctness;

5           7. Writing paychecks to providers;

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

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

11           SECTION 2.           AMENDATORY           Section 5, Chapter 434, O.S.L.  
12 2005 (56 O.S. Supp. 2008, Section 198.16), is amended to read as  
13 follows:

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

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

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

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

23           4. The Legislature intends that, as consumers relocate from  
24 institutional settings to community-based options, funds used to

1 serve consumers in institutional settings shall follow consumers to  
2 cover the cost of community-based services; and

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

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

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

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

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

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

23 C. Upon the approval of the Centers for Medicare and Medicaid  
24 Services and the availability of funds, the Authority and the

1 Department shall ~~expand~~ implement the ~~Oklahoma~~ Self-Directed Care  
2 ~~Pilot~~ Program statewide if the evaluation provided for in subsection  
3 B of this section demonstrates consumer satisfaction with and cost-  
4 effectiveness in the delivery of the program.

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

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

18 F. ~~The Department of Human Services shall appoint a committee~~  
19 ~~to assist the Department in the development of waivers and rules~~  
20 ~~related to self directed services, including the functional needs~~  
21 ~~assessment used for determination of eligibility for the Self-~~  
22 ~~Directed Services program. The committee shall be composed of two~~  
23 ~~consumers; two parents or family members of consumers; two~~  
24 ~~advocates; one representative from the Statewide Independent Living~~

1 ~~Council; one representative of an agency providing Advantage waiver~~  
2 ~~services; one representative of an agency providing Developmental~~  
3 ~~Disabilities Services Division waiver services; and one~~  
4 ~~representative from the University of Oklahoma Health Sciences~~  
5 ~~Center for Learning and Leadership. The committee shall sunset no~~  
6 ~~later than one (1) year after the effective date of this act. The~~  
7 ~~Governor, President Pro Tempore of the Senate and the Speaker of the~~  
8 ~~House of Representatives shall each appoint an at large~~  
9 ~~representative to the Committee.~~

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

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

17 SECTION 3. AMENDATORY Section 7, Chapter 315, O.S.L.  
18 2006 (56 O.S. Supp. 2008, Section 1011.7), is amended to read as  
19 follows:

20 Section 1011.7 The Oklahoma Health Care Authority shall develop  
21 and administer a plan for the implementation of alternatives for  
22 long-term care. The plan shall include, but not be limited to:

- 23 1. The continued development and funding of community-based  
24 options throughout the State of Oklahoma;

1           2. The establishment of a cash and counseling program that  
2 focuses on increasing personal responsibility, efficiency in  
3 utilization, and consumer satisfaction. The program shall include:

4           a. provisions ensuring that consumers receive a monthly  
5           budget based on the needs of that individual,

6           b. authority for consumers to use the budget to obtain  
7           personal care services and make home modifications to  
8           suit the needs of the individual, and

9           c. counselors available to work with consumers to develop  
10           and revise individual budgets;

11           3. The establishment of a program providing for state  
12 incentives to Oklahoma citizens for long-term care planning; and

13           4. Stronger private/public partnerships at the community level  
14 in order to address unmet patient needs.

15           SECTION 4. This act shall become effective November 1, 2009.

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17           52-1-6573           SDR           01/14/09