

1 ENGROSSED SENATE AMENDMENT
TO

2 ENGROSSED HOUSE
3 BILL NO. 1363

By: Peters, McDaniel (Jeanie),
Newell and Cockroft of the
House

4
5 and

Jolley and Allen of the
Senate

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8
9 An Act relating to poor persons; creating the
10 Oklahoma Choices for Long-Term Care Act; stating
purpose; making legislative findings; stating
11 eligibility for the ADvantage Waiver Program;
directing Oklahoma Health Care Authority to create a
12 system of eligibility for home- and community-based
services; directing Department of Human Services to
13 make certain changes in regulations; directing
Authority to submit applications for waivers by
14 certain date; providing that copies of waivers be
provided to certain individuals; requiring authority
15 to implement waivers within certain time period;
requiring Authority to include certain information in
16 annual report; directing the Long-Term Care
Management Authority (LTCA) to lead efforts to
17 address long-term supports and service needs;
providing for certain duties; directing certain state
18 agencies to cooperate and collaborate; directing LTCA
to assume administrative agent responsibilities for
19 ADvantage Waiver Program; providing certain duties;
providing for codification; and declaring an
20 emergency.

21 AUTHOR: Add the following House Coauthor: Christian

22 AMENDMENT NO. 1. Page 1, strike the title, enacting clause and
entire bill and insert

23 "An Act relating to poor persons; creating the
24 Oklahoma Choices for Long-Term Care Act; stating

1 purpose; making legislative findings; stating
2 eligibility for the ADvantage waiver program;
3 directing Oklahoma Health Care Authority to create a
4 system of eligibility for home- and community-based
5 services; directing Department of Human Services to
6 make certain changes in regulations; directing
7 Authority to submit applications for waivers by
8 certain date; providing that copies of waivers be
9 provided to certain individuals; requiring authority
10 to implement waivers within certain time period;
11 requiring authority to include certain information in
12 annual report; providing procedures and requirements
13 for the administration of the Oklahoma ADvantage
14 Waiver Program; authorizing the promulgation of
15 certain rules; providing for noncodification;
16 providing for codification; and providing an
17 effective date.

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

19 SECTION 1. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1017.1 of Title 56, unless there
21 is created a duplication in numbering, reads as follows:

22 A. Sections 1 through 7 of this act shall be known and may be
23 cited as the "Oklahoma Choices for Long-Term Care Act".

24 B. The purpose of the Oklahoma Choices for Long-Term Care Act
is to make long-term services and supports for citizens easily
accessible, cost-effective and of high quality and to provide a
comprehensive and systematic approach to addressing these needs.
The Oklahoma Choices for Long-Term Care Act shall provide older
Oklahomans and adults with physical disabilities the opportunity to

1 choose where they live and receive their services, and provide
2 efficient administration of the ADvantage Waiver Program.

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1017.2 of Title 56, unless there
5 is created a duplication in numbering, reads as follows:

6 The Legislature finds that:

7 1. Oklahoma has a successful home- and community-based services
8 program known as the ADvantage Waiver Program for the frail, elderly
9 and adults with physical disabilities age twenty-one (21) and over
10 who do not have mental retardation nor a cognitive impairment. The
11 ADvantage Waiver Program provides the following services: case
12 management, transitional case management, advantage personal care,
13 advanced supportive/restorative, skilled nursing - home health
14 setting, RN assessment evaluation, occupational therapy, physical
15 therapy, respiratory therapy, speech/language therapy, adult day
16 health, personal care in adult day health, therapy in adult day
17 health, home-delivered meals, NF extended respite, in-home respite,
18 in-home extended respite, environmental modifications, hospice,
19 consumer-directed personal care assistant services and supports,
20 assisted living, and specialized medical equipment and supplies;

21 2. Many Oklahomans who could safely stay at home with cost-
22 effective home- and community-based services go into nursing
23 facilities the day assistance is needed because their eligibility
24 for nursing facility supports is "presumed" by the nursing facility,

1 while eligibility for home and community supports can take weeks or
2 months. If their circumstances are such that they need immediate or
3 urgent care, they lose their choice to live and receive their
4 services at home. Once they are in a nursing facility, they may
5 lose their home or the supports they need to stay at home; and

6 3. The cost of serving Oklahomans who are in nursing facilities
7 when they could be living and receiving services at home is
8 significantly higher than the cost of serving them with home- and
9 community-based services.

10 SECTION 3. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1017.3 of Title 56, unless there
12 is created a duplication in numbering, reads as follows:

13 To be eligible for the ADvantage Waiver Program, a person shall:

14 1. Qualify financially for Medicaid;

15 2. Be sixty-five (65) years of age or older or be a physically
16 disabled adult as determined by the Social Security Administration,
17 age twenty-one (21) years or older without mental retardation or
18 cognitive impairment;

19 3. Be determined to meet the nursing facility institutional
20 level of care by the Aging Services Division of the Department of
21 Human Services;

22 4. Reside in his or her own home or a family member's home; and

23 5. Have needs that can be safely met with waiver services and
24 family or community supports.

1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1017.4 of Title 56, unless there
3 is created a duplication in numbering, reads as follows:

4 A. The Oklahoma Health Care Authority is directed to create a
5 system of enrollment, Medicaid eligibility, and certification for
6 home- and community-based services provided by the ADvantage 1915C
7 Waiver Program that provides for presumptive Medicaid eligibility
8 and certification that is the same as that which exists for nursing
9 facilities as provided for in administrative rules promulgated by
10 the Oklahoma Health Care Authority Board. The system shall
11 facilitate the provision of home- and community-based services to
12 persons at risk of placement in a nursing facility but who elect to
13 be served in a home- and community-based setting in lieu of nursing
14 facility services.

15 B. The Department of Human Services is directed to make such
16 changes in its regulations, policies and procedures as are necessary
17 to implement the enrollment, Medicaid eligibility, and certification
18 requirements established pursuant to subsection A of this section.

19 C. The Oklahoma Health Care Authority shall develop and submit
20 for approval no later than November 1, 2011, applications for
21 waivers or amendments to waivers of applicable federal laws and
22 regulations as necessary to implement the provisions of the Oklahoma
23 Choices for Long-Term Care Act. Copies of all waivers submitted to
24 the United States Centers for Medicare and Medicaid Services shall

1 be provided to the Governor, the Speaker of the Oklahoma House of
2 Representatives and the President Pro Tempore of the Oklahoma State
3 Senate within ten (10) days of their submissions. Waivers and
4 amendments to waivers approved by the United States Centers for
5 Medicare and Medicaid Services as provided in this section shall be
6 provided to the Governor, the Speaker of the Oklahoma House of
7 Representatives and the President Pro Tempore of the Oklahoma State
8 Senate within ten (10) days of their approval. The Oklahoma Health
9 Care Authority shall implement any waivers and amendments to waivers
10 approved by the United States Centers for Medicare and Medicaid
11 Services no later than January 1, 2012, or within sixty (60) days of
12 their approval. The Oklahoma Health Care Authority shall report the
13 savings as the result of the Oklahoma Choices for Long-Term Care Act
14 each year in its annual report.

15 SECTION 5. NEW LAW A new section of law not to be
16 codified in the Oklahoma Statutes reads as follows:

17 A. On or before January 1, 2012, the Oklahoma Health Care
18 Authority shall initiate a request for proposals to contract for the
19 performance of functions required in the day-to-day operation of the
20 administration of the Oklahoma Medicaid ADvantage Waiver Program.
21 Factors to be considered when selecting a proposal and awarding a
22 contract shall include, but not be limited to, cost of services,
23 availability of services, capability of providing quality services,
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1 and any previous experience with a state agency providing such
2 services.

3 B. Such request for proposals shall comply with the provisions
4 of the Oklahoma Central Purchasing Act.

5 C. State employees currently performing the function shall be
6 allowed to compete under the provisions of the Privatization of
7 State Functions Act.

8 D. The Oklahoma Health Care Authority Board is authorized to
9 approve a contract for the administration of the ADvantage Waiver
10 Program pursuant to this section.

11 E. The Oklahoma Health Care Authority Board shall promulgate
12 rules and establish procedures necessary to implement the request
13 for proposals and for the administration of the ADvantage Waiver
14 program pursuant to this section.

15 SECTION 6. This act shall become effective September 1, 2011."

16 Passed the Senate the 20th day of April, 2011.

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Presiding Officer of the Senate

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20 Passed the House of Representatives the ____ day of _____,
21 2011.

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Presiding Officer of the House
of Representatives

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14 services; directing Department of Human Services to
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16 Authority to submit applications for waivers by
17 certain date; providing that copies of waivers be
18 provided to certain individuals; requiring authority
19 to implement waivers within certain time period;
20 requiring Authority to include certain information in
21 annual report; directing the Long-Term Care
22 Management Authority (LTCA) to lead efforts to
23 address long-term supports and service needs;
24 providing for certain duties; directing certain state
agencies to cooperate and collaborate; directing LTCA
to assume administrative agent responsibilities for
ADvantage Waiver Program; providing certain duties;
providing for codification; and declaring an
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21 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

22 SECTION 7. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1017.1 of Title 56, unless there
24 is created a duplication in numbering, reads as follows:

1 A. Sections 1 through 7 of this act shall be known and may be
2 cited as the "Oklahoma Choices for Long-Term Care Act".

3 B. The purpose of the Oklahoma Choices for Long-Term Care Act
4 is to make long-term services and supports for citizens easily
5 accessible, cost-effective and of high quality and to provide a
6 comprehensive and systematic approach to addressing these needs.
7 The Oklahoma Choices for Long-Term Care Act shall provide older
8 Oklahomans and adults with physical disabilities the opportunity to
9 choose where they live and receive their services, and provide
10 efficient administration of the ADvantage Waiver Program.

11 SECTION 8. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1017.2 of Title 56, unless there
13 is created a duplication in numbering, reads as follows:

14 The Legislature finds that:

15 1. Oklahoma has a successful home- and community-based services
16 program known as the ADvantage Waiver Program for the frail, elderly
17 and adults with physical disabilities age twenty-one (21) and over
18 who do not have mental retardation nor a cognitive impairment. The
19 ADvantage Waiver Program provides the following services: case
20 management, transitional case management, advantage personal care,
21 advanced supportive/restorative, skilled nursing - home health
22 setting, RN assessment evaluation, occupational therapy, physical
23 therapy, respiratory therapy, speech/language therapy, adult day
24 health, personal care in adult day health, therapy in adult day

1 health, home-delivered meals, NF extended respite, in-home respite,
2 in-home extended respite, environmental modifications, hospice, and
3 specialized medical equipment and supplies;

4 2. Many Oklahomans who could safely stay at home with cost-
5 effective home- and community-based services go into nursing
6 facilities the day assistance is needed because their eligibility
7 for nursing facility supports is "presumed" by the nursing facility,
8 while eligibility for home and community supports can take weeks or
9 months. If their circumstances are such that they need immediate or
10 urgent care, they lose their choice to live and receive their
11 services at home. Once they are in a nursing facility, they may
12 lose their home or the supports they need to stay at home; and

13 3. The cost of serving Oklahomans who are in nursing facilities
14 when they could be living and receiving services at home is
15 significantly higher than the cost of serving them with home- and
16 community-based services.

17 SECTION 9. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1017.3 of Title 56, unless there
19 is created a duplication in numbering, reads as follows:

20 To be eligible for the ADvantage Waiver Program, a person shall:

21 1. Qualify financially for Medicaid;

22 2. Be sixty-five (65) years of age or older or be a physically
23 disabled adult as determined by the Social Security Administration,
24

1 age twenty-one (21) years or older without mental retardation or
2 cognitive impairment;

3 3. Be determined to meet the nursing facility institutional
4 level of care by the Aging Services Division of the Department of
5 Human Services;

6 4. Reside in his or her own home or a family member's home; and

7 5. Have needs that can be safely met with waiver services and
8 family or community supports.

9 SECTION 10. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1017.4 of Title 56, unless there
11 is created a duplication in numbering, reads as follows:

12 A. The Oklahoma Health Care Authority is directed to create a
13 system of eligibility for home- and community-based services
14 provided by the ADvantage 1915C Waiver Program that provides for
15 presumptive eligibility.

16 B. The Department of Human Services is directed to make such
17 changes in its regulations, policies and procedures as are necessary
18 to implement the eligibility requirements established pursuant to
19 subsection A of this section.

20 C. The Oklahoma Health Care Authority shall develop and submit
21 for approval no later than November 1, 2011, applications for
22 waivers or amendments to waivers of applicable federal laws and
23 regulations as necessary to implement the provisions of the Oklahoma
24 Choices for Long-Term Care Act. Copies of all waivers submitted to

1 the United States Centers for Medicare and Medicaid Services shall
2 be provided to the Governor, the Speaker of the Oklahoma House of
3 Representatives and the President Pro Tempore of the Oklahoma State
4 Senate within ten (10) days of their submissions. Waivers and
5 amendments to waivers approved by the United States Centers for
6 Medicare and Medicaid Services as provided in this section shall be
7 provided to the Governor, the Speaker of the Oklahoma House of
8 Representatives and the President Pro Tempore of the Oklahoma State
9 Senate within ten (10) days of their approval. The Oklahoma Health
10 Care Authority shall implement any waivers and amendments to waivers
11 approved by the United States Centers for Medicare and Medicaid
12 Services no later than January 1, 2012, or within sixty (60) days of
13 their approval. The Oklahoma Health Care Authority shall report the
14 savings as the result of the Oklahoma Choices for Long-Term Care Act
15 each year in its annual report.

16 SECTION 11. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1017.5 of Title 63, unless there
18 is created a duplication in numbering, reads as follows:

19 The Long-Term Care Management Authority (LTCA) shall be directed
20 to lead the state's efforts to address the long-term supports and
21 service needs of its citizens. With this responsibility, the LTCA
22 shall:

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1 1. Serve as a catalyst and change agent to lead the state's
2 efforts to enhance and sustain home- and community-based long-term
3 services and supports;

4 2. Collaborate with the Legislature to apply for both public
5 and private funding opportunities in conjunction with other state
6 agencies and receive designated appropriations for funding of long-
7 term services and supports initiatives;

8 3. Initiate joint planning, development, implementation,
9 evaluation and management of home- and community-based long-term
10 supports and services in this state;

11 4. Streamline the existing, sustainable private sector of
12 experienced home- and community-based providers to deliver critical
13 services to citizens at a lower cost, higher quality and in a timely
14 manner; and

15 5. Provide accountability for performance, transparency and
16 responsiveness to state agencies, private sector providers, the
17 Legislature, and other stakeholders through monthly, quarterly and
18 annual reports based on measurable goals, benchmarks and best
19 practices through ongoing information-sharing.

20 SECTION 12. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 1017.6 of Title 63, unless there
22 is created a duplication in numbering, reads as follows:

23 The Oklahoma Health Care Authority and the Department of Human
24 Services are directed to cooperate and collaborate with the Long-

1 Term Care Management Authority to address the long-term supports and
2 service needs to the citizens of this state.

3 SECTION 13. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1017.7 of Title 63, unless there
5 is created a duplication in numbering, reads as follows:

6 The Long-Term Care Management Authority (LTCA) is directed to
7 assume administrative agent responsibilities for the ADvantage
8 Waiver Program. The LTCA shall:

9 1. Prepare for transition by developing a comprehensive plan
10 for assuming administrative agent responsibilities that outlines the
11 key objectives, activities and timelines involved in the transition
12 of the operation and administrative responsibilities for the
13 ADvantage Waiver Program currently under the administration of the
14 Department of Human Services;

15 2. Implement the transition plan by assuming management
16 responsibilities for ADvantage Waiver Program operations;

17 3. Focus immediate efforts on the following areas to diminish
18 the increasing negative impact to members and service providers:

19 a. assess the current backlog of service plan
20 authorization and implement a plan to return service
21 authorizations to a best-practice timeline (no more
22 than five (5) days),
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- 1 b. evaluate challenges with the current service
2 authentication technology, AuthentiCare, and recommend
3 a plan for resolution,
4 c. investigate problems related to assessor subjectivity
5 involved in denied medical eligibility, voluntary
6 withdrawals, and nursing home placement and recommend
7 a plan for resolution, and
8 d. assess the extent of unpaid claims related to delayed
9 service plan authorizations and challenges with the
10 AuthentiCare system, and recommend a plan to return
11 claims payment to a best-practice timeline;

12 4. Evaluate and identify other areas of concern based on the
13 following Centers for Medicare and Medicaid Services Waiver
14 Assurances: level of care, service plans, qualified providers,
15 health and welfare, administrative authority, and financial
16 accountability;

17 5. Provide a status report of immediate efforts to the
18 Legislature by August 1, 2011;

19 6. Develop an improvement plan with performance measures to the
20 Legislature by September 1, 2011; and

21 7. Establish a monthly report to the Legislature on the
22 progress of ADvantage Waiver Program administration.

23 SECTION 14. It being immediately necessary for the preservation
24 of the public peace, health and safety, an emergency is hereby

