

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE

4 FOR

HOUSE BILL NO. 3393

By: Nelson of the House

5 and

6 Anderson of the Senate

7
8
9 COMMITTEE SUBSTITUTE

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

1 payments; clarifying school districts not responsible
2 for additional costs; precluding liability; providing
3 for codification; providing an effective date; and
4 declaring an emergency.

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

6 SECTION 1. AMENDATORY Section 4, Chapter 434, O.S.L.
7 2005 (56 O.S. Supp. 2009, Section 198.15), is amended to read as
8 follows:

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

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

20 3. The Authority and the Department shall further establish
21 interagency cooperative agreements to implement and administer ~~each~~
22 the program.

23 4. Persons enrolled in the Self-Directed Care ~~Pilot Program~~
24 Option shall be authorized to choose the providers of services and

1 to direct the delivery of services to best meet their long-term care
2 needs.

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

5 B. Any person currently receiving waiver services in ~~the~~ a
6 home- and community-based waiver program as amended to include the
7 Self-Directed Care ~~Pilot Program~~ Option and who is determined
8 through the Department's assessment process to be able to direct ~~his~~
9 ~~or her~~ their own care or to designate an eligible representative to
10 assist the person in directing ~~such~~ care may choose to participate
11 in the Self-Directed Care ~~Pilot Program~~ Option. For purposes of
12 this section, a legal representative acts on behalf of the consumer.

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

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

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

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

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

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

5 4. ~~Home modifications and assistive devices that may increase~~
6 ~~the consumer's independence or make it possible to avoid~~
7 ~~institutional placement;~~

8 ~~5.~~ Day care and respite care services provided by adult day
9 care facilities;

10 ~~6.~~ 5. Personal care and support services provided in an
11 assisted living facility should ~~such~~ the facilities be subsequently
12 approved for reimbursement under the state Medicaid program;

13 ~~7.~~ 6. Durable medical equipment and supplies; and

14 ~~8.~~ 7. Adaptive equipment.

15 E. A consumer shall be allowed to choose providers of services,
16 as well as when and how services will be provided including the
17 provision of home- and community-based self-directed services in
18 conjunction with the Scholarships for Students with Disabilities
19 Program created in Section 4 of this act so long as they are
20 included in the Individual Plan arranged with the case manager, do
21 not provide services for which another third party is legally liable
22 and responsible and may not be used to pay for special education and
23 related services that are included in the individualized education
24 program (IEP) of a child under the provision of the Individuals with

1 Disabilities Education Act (IDEA). A qualified consumer-employed
2 caregiver is a person who is not legally responsible for the
3 consumer's care, who is eighteen (18) years of age or older, has
4 passed a criminal background check and a registry check pursuant to
5 Sections 1025.2 and 1025.3 of ~~Title 56 of the Oklahoma Statutes~~ this
6 title, and has the training necessary to meet the needs of the
7 consumer. When the consumer is the employer of record, the
8 consumer's roles and responsibilities include, but are not limited
9 to, the following:

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

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

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

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

8 3. Approving fiscal intermediaries;

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

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

13 6. Developing and implementing a quality assurance plan.

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

16 1. Providing recordkeeping services;

17 2. Retaining the ~~monthly~~ budget allowance;

18 3. Processing employment information;

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

20 5. Processing workers' compensation insurance premiums or
21 payments for self-insurance pursuant to the Workers' Compensation
22 Act;

23 6. Reviewing records to ensure correctness;

24 7. Writing paychecks to providers;

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

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

6 SECTION 2. AMENDATORY Section 5, Chapter 434, O.S.L.
7 2005 (56 O.S. Supp. 2009, Section 198.16), is amended to read as
8 follows:

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

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

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

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

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

22 5. The Department of Human Services or other applicable state
23 entity for the population served may develop an electronic benefit
24

1 transfer feature for the provision of self-directed care services to
2 consumers.

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

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

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

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

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

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

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

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

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

1 representative from the Oklahoma Parent Center; and one
2 representative from the University of Oklahoma Health Sciences
3 Center for Learning and Leadership. The committee shall sunset no
4 later than ~~one (1) year~~ four (4) years after the effective date of
5 implementation of programs indicated in this act. The Governor,
6 President Pro Tempore of the Senate and the Speaker of the House of
7 Representatives shall each appoint an at-large representative to the
8 Committee.

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

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

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

18 Section 13-101. A. The several school districts of Oklahoma
19 are hereby authorized to provide special education and related
20 services necessary for children with disabilities as hereinafter
21 defined. Two or more school districts may establish cooperative
22 programs of special education for children with disabilities when
23 such arrangement is approved by the State Board of Education. Funds
24 may be expended for school services for an additional period during

1 the summer months for approved programs for qualified children with
2 disabilities, provided their individualized education program
3 (I.E.P.) states the need for extended school year special education
4 and related services. Children with disabilities shall mean
5 children, as defined in the Individuals with Disabilities Education
6 Act (IDEA), P.L. No. 105-17, who are three (3) years of age.

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

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

20 C. It shall be the duty of each school district to provide
21 special education and related services for all children with
22 disabilities as herein defined who reside in that school district in
23 accordance with the Individuals with Disabilities Education Act
24

1 (~~IDEA~~), ~~P.L. No. 105-17~~. ~~This duty may be satisfied~~ The district
2 may satisfy this duty by:

3 1. ~~The district directly~~ Directly providing special education
4 for such children;

5 2. ~~The district joining~~ Joining in a cooperative program with
6 another district or districts to provide special education for such
7 children;

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

14 4. Transferring eligible children and youth with disabilities
15 to other school districts which accept them and provide special
16 education and related services for ~~such~~ the children, with the
17 district in which the child resides paying tuition ~~therefor~~ as
18 ~~hereinafter~~ otherwise provided. A child shall be transferred by the
19 resident district upon the submission of a written request by the
20 parent and subject to the approval of the receiving district. For
21 those students who transfer pursuant to the provisions of the
22 Education Open Transfer Act, the receiving school district shall
23 assume all responsibility for education and shall count the student
24

1 for federal and state funding purposes according to the provisions
2 of subsection B of Section 13-103 of this title; or

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

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

9 A. There is hereby created the Scholarships for Students with
10 Disabilities Program. The Scholarships for Students with
11 Disabilities Program is established to provide a scholarship to a
12 private school of choice for students with disabilities for whom an
13 individualized education program (IEP) in accordance with the
14 Individuals with Disabilities Education Act (IDEA) has been
15 developed.

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

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

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

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

21 D. To be eligible to participate in the Scholarships for
22 Students with Disabilities Program, a private school shall notify
23 the State Department of Education of its intent to participate by
24 May 1 of the school year preceding the school year in which it

1 intends to participate. The notice shall specify the grade levels
2 and services that the private school has available for students with
3 disabilities who are participating in the scholarship program. The
4 State Department of Education shall approve a private school as
5 eligible to participate in the Scholarships for Students with
6 Disabilities Program upon determination that the private school:

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

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

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

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

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

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

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

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

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

12 a. the parent shall select the private school from the
13 schools approved for eligibility pursuant to
14 subsection D of this section and apply for the
15 admission of the child,

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

19 c. any student participating in the scholarship program
20 shall attend throughout the school year, unless
21 excused by the school for illness or other good cause,
22 and shall comply fully with the code of conduct for
23 the school,
24

1 d. the parent shall fully comply with the parental
2 involvement requirements of the private school, unless
3 excused by the school for illness or other good cause,
4 and

5 e. upon receipt of a scholarship warrant, the parent to
6 whom the warrant is made shall restrictively endorse
7 the warrant to the private school for deposit into the
8 account of the private school.

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

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

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

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

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

4 4. The initial payment shall be made after the school district
5 verifies admission acceptance and enrollment. Quarterly payments
6 shall be made upon verification of continued enrollment and
7 attendance at the private school. Payment shall be by individual
8 warrant made payable to the parent of the student and mailed to the
9 private school that the parent chooses. The parent shall
10 restrictively endorse the warrant to the private school for deposit
11 into the account of the private school; and

12 5. A school district shall not be responsible for any
13 additional costs associated with special education and related
14 services for the student including the cost of teachers, equipment,
15 material, and special costs associated with the special education
16 class.

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

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

21 SECTION 6. It being immediately necessary for the preservation
22 of the public peace, health and safety, an emergency is hereby
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24

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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