

1 ENGROSSED HOUSE
2 BILL NO. 3393

By: Nelson, Pittman, Shumate
and Kern of the House

3 and

4 Anderson of the Senate

5
6
7 (developmental disabilities - amending 56 O.S.,
8 Section 198.15 - self-directed care pilot
9 programs - amending 56 O.S., Section 198.16 -
10 special education services - effective date -
11 emergency)
12
13

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

15 SECTION 1. AMENDATORY Section 4, Chapter 434, O.S.L.
16 2005 (56 O.S. Supp. 2009, Section 198.15), is amended to read as
17 follows:

18 Section 198.15 A. 1. The Oklahoma Health Care Authority and
19 the Department of Human Services, hereinafter referred to as the
20 Authority and the Department, respectively, are hereby directed to
21 ~~establish self-directed care pilot programs~~ operate the Self-
22 Directed Care Option for the citizens of the state who have
23 disabilities and are currently served by a home- and community-based
24 waiver with a Centers for Medicare and Medicaid Services approved

1 self-directed option which shall be based on the principles of
2 consumer choice and control.

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

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

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

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

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

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

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

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

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

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

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

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

17 5. ~~Day care and respite care services provided by adult day~~
18 ~~care facilities;~~

19 6. ~~5.~~ Personal care and support services provided in an
20 assisted living facility should ~~such~~ the facilities be subsequently
21 approved for reimbursement under the state Medicaid program;

22 7. ~~6.~~ Durable medical equipment and supplies; and

23 8. ~~7.~~ Adaptive equipment.
24

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

- 20 1. Developing a job description;
- 21 2. Selecting caregivers and submitting information for a
22 criminal history background check;
- 23 3. Establishing and communicating needs, preferences and
24 expectations about services being purchased;

1 4. Providing payments and tax requirements;

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

6 6. Directing and supervising consumer-employed caregivers;

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

9 8. Terminating the employment of an unsatisfactory caregiver.

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

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

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

17 3. Approving fiscal intermediaries;

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

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

22 6. Developing and implementing a quality assurance plan.

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

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

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

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

1. The Oklahoma Health Care Authority Board and the Commission for Human Services are hereby authorized to promulgate rules necessary to enact the provisions of this act;
2. The Oklahoma Health Care Authority shall take all actions necessary to ensure state compliance with federal regulations;

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

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

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

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

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

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

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

22 4. Program evaluation which shall include an indication of
23 whether consumer satisfaction for Self-Directed Care ~~Pilot~~ Program
24 consumers is higher than or equal to consumer satisfaction for

1 home- and community-based waiver clients or other comparable waiver
2 programs, as measured by a third party.

3 C. Upon the approval of the Centers for Medicare and Medicaid
4 Services and the availability of funds, the Authority and the
5 Department shall ~~expand~~ implement the ~~Oklahoma~~ Self-Directed Care
6 ~~Pilot~~ Program statewide if the evaluation provided for in subsection
7 B of this section demonstrates consumer satisfaction with and cost-
8 effectiveness in the delivery of the program.

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

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

22 F. The Department of Human Services shall appoint a committee
23 to assist the Department in the development of waivers and rules
24 related to self-directed services, including the functional needs

1 assessment used for determination of eligibility for the Self-
2 Directed Services program. The committee shall be composed of two
3 ~~consumers~~ self advocates or adults with developmental disabilities;
4 two parents or family members of consumers; two advocates; ~~one~~
5 ~~representative from the Statewide Independent Living Council; one~~
6 ~~representative of an agency providing Advantage waiver services; one~~
7 ~~representative~~ two representatives of an agency providing
8 Developmental Disabilities Services Division waiver services; one
9 representative from the Oklahoma Parent Center; and one
10 representative from the University of Oklahoma Health Sciences
11 Center for Learning and Leadership. The committee shall sunset no
12 later than ~~one (1) year~~ four (4) years after ~~the effective date of~~
13 implementation of programs indicated in this act. The Governor,
14 President Pro Tempore of the Senate and the Speaker of the House of
15 Representatives shall each appoint an at-large representative to the
16 Committee.

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

- 20 1. Is eligible to receive Personal Care Program services;
- 21 2. Chooses to receive Personal Care Program services; and
- 22 3. Is able to direct his or her own care or to designate an
23 eligible representative to assist in directing such care.

24

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

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

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

23 B. The State Board of Education is authorized to modify and
24 redefine by regulation the eligibility definitions whenever such

modification is required to receive federal assistance under the Individuals with Disabilities Education Act (IDEA), P.L. No. 105-17. Rules developed pursuant to Section 18-109.5 of this title shall provide for such modification and revised definitions.

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

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

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

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

4. Transferring eligible children and youth with disabilities to other school districts which accept them and provide special education and related services for ~~such~~ the children, with the

1 district in which the child resides paying tuition ~~therefor~~ as
2 ~~hereinafter~~ otherwise provided. A child shall be transferred by the
3 resident district upon the submission of a written request by the
4 parent and subject to the approval of the receiving district. For
5 those students who transfer pursuant to the provisions of the
6 Education Open Transfer Act, the receiving school district shall
7 assume all responsibility for education and shall count the student
8 for federal and state funding purposes according to the provisions
9 of subsection B of Section 13-103 of this title; or

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

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

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

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

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

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

22 C. If the parent requests a scholarship and the student is
23 accepted by the private school pending the availability of a space
24 for the student, the parent of the student shall notify the school

1 district sixty (60) days prior to the first scholarship payment and
2 before entering the private school in order to be eligible for the
3 scholarship when a space becomes available for the student in the
4 private school.

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

15 1. Meets the accreditation requirements set by the State Board
16 of Education or another accrediting association approved by the
17 State Board of Education;

18 2. Demonstrates fiscal soundness by having been in operation
19 for one (1) school year or providing the State Department of
20 Education with a statement by a certified public accountant
21 confirming that the private school desiring to participate is
22 insured and the owner or owners have sufficient capital or credit to
23 operate the school for the upcoming year by serving the number of
24 students anticipated with expected revenues from tuition and other

1 sources that may be reasonably expected. In lieu of a statement, a
2 surety bond or letter of credit for the amount equal to the
3 scholarship funds for any quarter may be filed with the Department;

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

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

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

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

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

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

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

- 20 a. the parent shall select the private school from the
21 schools approved for eligibility pursuant to
22 subsection D of this section and apply for the
23 admission of the child,
24

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

4 c. any student participating in the scholarship program
5 shall attend throughout the school year, unless
6 excused by the school for illness or other good cause,
7 and shall comply fully with the code of conduct for
8 the school,

9 d. the parent shall fully comply with the parental
10 involvement requirements of the private school, unless
11 excused by the school for illness or other good cause,
12 and

13 e. upon receipt of a scholarship warrant, the parent to
14 whom the warrant is made shall restrictively endorse
15 the warrant to the private school for deposit into the
16 account of the private school.

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

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

21 1. The maximum scholarship granted for an eligible student with
22 disabilities shall be a calculated amount equivalent to the average
23 local and county revenue for the school district which is chargeable
24 in the State Aid formula, state-dedicated revenue, and state-

1 appropriated funds per average daily membership generated by that
2 student for the applicable school year including the additional
3 costs associated with the provision of special education and related
4 services that are provided for in the IEP for the student under the
5 provision of IDEA;

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

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

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

20 5. A school district shall not be responsible for any
21 additional costs associated with special education and related
22 services for the student including the cost of teachers, equipment,
23 material, and special costs associated with the special education
24 class.

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

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

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

9 Passed the House of Representatives the 4th day of March, 2010.

10

11

12 Presiding Officer of the House of
13 Representatives

14 Passed the Senate the ____ day of _____, 2010.

15

16

17 Presiding Officer of the Senate

18

19

20

21

22

23

24