

ENROLLED HOUSE
BILL NO. 2777

By: Steele, Denney, Cox, Tibbs
and Hoskin of the House

and

Crain and Johnson
(Constance) of the Senate

An Act relating to poor persons; amending Section 4, Chapter 434, O.S.L. 2005 (56 O.S. Supp. 2009, Section 198.15), which relates to the creation of self-directed care pilot programs; removing reference to pilot program; renaming program; updating statutory references; amending Section 5, Chapter 434, O.S.L. 2005 (56 O.S. Supp. 2009, Section 198.16), which relates to requirements and expansion of the Oklahoma Self-Directed Care Act; removing reference to pilot program; authorizing implementation of program statewide; modifying requirement that the Department of Human Services create certain committee; modifying membership and term of the committee; amending 56 O.S. 2001, Section 1010.1, as last amended by Section 5, Chapter 128, O.S.L. 2009 (56 O.S. Supp. 2009, Section 1010.1), which relates to the Oklahoma Medicaid Program Reform Act of 2003; establishing procedure to verify applicant's income; providing for cooperation by state agencies; amending Section 3, Chapter 270, O.S.L. 2007 (56 O.S. Supp. 2009, Section 1011.11), which relates to the retrieval of durable medical equipment; specifying implementation shall be subject to availability of funds; and providing an effective date.

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. 2009, 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 ~~establish self-directed care pilot programs~~ operate the Self-Directed Care Option for the citizens of the state who have disabilities and are currently served by a home- and community-based waiver with a Centers for Medicare and Medicaid Services approved self-directed option which shall be based on the principles of consumer choice and control.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~8. 7. Adaptive equipment.~~

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

1. Developing a job description;

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

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

4. Providing payments and tax requirements;

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

6. Directing and supervising consumer-employed caregivers;

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

8. Terminating the employment of an unsatisfactory caregiver.

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

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

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

3. Approving fiscal intermediaries;

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

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

6. Developing and implementing a quality assurance plan.

G. The responsibilities of the fiscal intermediary include, but 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;
3. The Authority shall apply for any necessary federal waivers or waiver amendments required to implement the program;
4. The Legislature intends that, as consumers relocate from institutional settings to community-based options, funds used to serve consumers in institutional settings shall follow consumers to cover the cost of community-based services; and
5. The Department of Human Services or other applicable state entity for the population served may develop an electronic benefit transfer feature for the provision of self-directed care services to consumers.

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

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

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

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

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

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

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

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

F. The Department of Human Services shall appoint a committee to assist the Department in the development of waivers and rules related to self-directed services, including the functional needs assessment used for determination of eligibility for the Self-Directed Services program. The committee shall be composed of ~~two consumers~~ self advocates or adults with developmental disabilities; two parents or family members of consumers; two advocates; ~~one representative from the Statewide Independent Living Council; one representative of an agency providing Advantage waiver services; one representative~~ two representatives of an agency providing Developmental Disabilities Services Division waiver services; one representative from the Oklahoma Parent Center; and one representative from the University of Oklahoma Health Sciences Center for Learning and Leadership. The committee shall sunset no later than ~~one (1) year~~ four (4) years after ~~the effective date of implementation of programs indicated in this act.~~ The Governor, President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint an at-large representative to the Committee.

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

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

SECTION 3. AMENDATORY 56 O.S. 2001, Section 1010.1, as last amended by Section 5, Chapter 128, O.S.L. 2009 (56 O.S. Supp. 2009, Section 1010.1), is amended to read as follows:

Section 1010.1 A. Section 1010.1 et seq. of this title shall be known and may be cited as the "Oklahoma Medicaid Program Reform Act of 2003".

B. Recognizing that many Oklahomans do not have health care benefits or health care coverage, that many small businesses cannot afford to provide health care benefits to their employees, and that, under federal law, barriers exist to providing Medicaid benefits to the uninsured, the Oklahoma Legislature hereby establishes provisions to lower the number of uninsured, assist businesses in

their ability to afford health care benefits and coverage for their employees, and eliminate barriers to providing health coverage to eligible enrollees under federal law.

C. Unless otherwise provided by law, the Oklahoma Health Care Authority shall provide coverage under the state Medicaid program to children under the age of eighteen (18) years whose family incomes do not exceed one hundred eighty-five percent (185%) of the federal poverty level.

D. 1. The Authority is directed to apply for a waiver or waivers to the Centers for Medicaid and Medicare Services (CMS) that will accomplish the purposes outlined in subsection B of this section. The Authority is further directed to negotiate with CMS to include in the waiver authority provisions to:

- a. increase access to health care for Oklahomans,
- b. reform the Oklahoma Medicaid Program to promote personal responsibility for health care services and appropriate utilization of health care benefits through the use of public-private cost sharing,
- c. enable small employers, and/or employed, uninsured adults with or without children to purchase employer-sponsored, state-approved private, or state-sponsored health care coverage through a state premium assistance payment plan. If by January 1, 2012, the Employer/Employee Partnership for Insurance Coverage Premium Assistance Program is not consuming more than seventy-five percent (75%) of its dedicated source of funding, then the program will be expanded to include parents of children eligible for Medicaid, and
- d. develop flexible health care benefit packages based upon patient need and cost.

2. The Authority may phase in any waiver or waivers it receives based upon available funding.

3. The Authority is authorized to develop and implement a premium assistance plan to assist small businesses and/or their eligible employees to purchase employer-sponsored insurance or "buy-in" to a state-sponsored benefit plan.

4. a. The Authority is authorized to seek from the Centers for Medicare and Medicaid Services any waivers or amendments to existing waivers necessary to accomplish an expansion of the premium assistance program to:
 - (1) include for-profit employers with two hundred fifty employees or less up to any level supported by existing funding resources, and
 - (2) include not-for-profit employers with five hundred employees or less up to any level supported by existing funding resources.
- b. Foster parents employed by employers with greater than two hundred fifty employees shall be exempt from the qualifying employer requirement provided for in this paragraph and shall be eligible to qualify for the premium assistance program provided for in this section if supported by existing funding.

E. For purposes of this paragraph, "for-profit employer" shall mean an entity which is not exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code and "not-for-profit employer" shall mean an entity which is exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code.

F. The Authority is authorized to seek from the Centers for Medicare and Medicaid Services any waivers or amendments to existing waivers necessary to accomplish an extension of the premium assistance program to include qualified employees whose family income does not exceed two hundred fifty percent (250%) of the federal poverty level, subject to the limit of federal financial participation.

G. The Authority is authorized to create as part of the premium assistance program an option to purchase a high-deductible health insurance plan that is compatible with a health savings account.

H. 1. There is hereby created in the State Treasury a revolving fund to be designated the "Health Employee and Economy Improvement Act (HEEIA) Revolving Fund".

2. The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of:

- a. all monies received by the Authority pursuant to this section and otherwise specified or authorized by law,
- b. monies received by the Authority due to federal financial participation pursuant to Title XIX of the Social Security Act, and
- c. interest attributable to investment of money in the fund.

3. All monies accruing to the credit of the fund are hereby appropriated and shall be budgeted and expended by the Authority to implement a premium assistance plan, unless otherwise provided by law.

1. 1. The Authority shall establish a procedure for verifying an applicant's individual income by utilizing available Oklahoma Tax Commission records, new hire report data collected by the Oklahoma Employment Security Commission, and child support payment data collected by the Department of Human Services in accordance with federal and state law.

2. The Oklahoma Tax Commission, Oklahoma Employment Security Commission, and Department of Human Services shall cooperate in accordance with federal and state law with the Authority to establish procedures for the secure electronic transmission of an applicant's individual income data to the Authority.

SECTION 4. AMENDATORY Section 3, Chapter 270, O.S.L. 2007 (56 O.S. Supp. 2009, Section 1011.11), is amended to read as follows:

Section 1011.11 A. The Oklahoma Health Care Authority shall develop and implement, ~~no later than December 31, 2010~~ as funds become available, a durable medical equipment retrieval program that will allow the Authority to:

1. Retrieve durable medical equipment, purchased with Medicaid funds, from the Medicaid consumers who no longer utilize the equipment; and

2. Donate such equipment to community-based programs that will distribute the equipment to individuals who are disabled or elderly.

B. The Oklahoma Health Care Authority Board shall promulgate rules and establish procedures necessary to implement the program established in this section.

C. For the purpose of this section, "durable medical equipment" means equipment that is primarily and customarily used to serve a medical purpose, can withstand repeated use and is appropriate for use in the home.

SECTION 5. This act shall become effective November 1, 2010.

Passed the House of Representatives the 17th day of May, 2010.

Presiding Officer of the House of
Representatives

Passed the Senate the 21st day of May, 2010.

Presiding Officer of the Senate