



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB1287

Introduced 2/10/2009, by Sen. Donne E. Trotter

SYNOPSIS AS INTRODUCED:

20 ILCS 105/4.02

from Ch. 23, par. 6104.02

Amends the Illinois Act on the Aging. Provides that beginning July 1, 2009, a vendor of home care aide services or personal assistant services is entitled to a rate increase of \$1.32 per hour if (i) the vendor uses at least \$0.70 of that increase to increase the wages of home care aides and personal assistants and (ii) the vendor uses an additional \$0.13 of that increase for health insurance assistance for home care aides and personal assistants. Provides that a vendor that receives this increase must submit to the Department proof that the vendor has increased home care aides' and personal assistants' wages by at least \$0.70 per hour and used the additional \$0.13 per hour for health insurance assistance for home care aides and personal assistants. Provides that a vendor may submit this proof by either an audited supplemental to the Direct Service Workers cost report or proof of the terms of a collective bargaining agreement. Effective July 1, 2009.

LRB096 06139 DRJ 16221 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Act on the Aging is amended by
5 changing Section 4.02 as follows:

6 (20 ILCS 105/4.02) (from Ch. 23, par. 6104.02)

7 Sec. 4.02. Community Care Program. The Department shall
8 establish a program of services to prevent unnecessary
9 institutionalization of persons age 60 and older in need of
10 long term care or who are established as persons who suffer
11 from Alzheimer's disease or a related disorder under the
12 Alzheimer's Disease Assistance Act, thereby enabling them to
13 remain in their own homes or in other living arrangements. Such
14 preventive services, which may be coordinated with other
15 programs for the aged and monitored by area agencies on aging
16 in cooperation with the Department, may include, but are not
17 limited to, any or all of the following:

18 (a) (blank);

19 (b) (blank);

20 (c) home care aide services;

21 (d) personal assistant services;

22 (e) adult day services;

23 (f) home-delivered meals;

- 1 (g) education in self-care;
- 2 (h) personal care services;
- 3 (i) adult day health services;
- 4 (j) habilitation services;
- 5 (k) respite care;
- 6 (k-5) community reintegration services;
- 7 (k-6) flexible senior services;
- 8 (k-7) medication management;
- 9 (k-8) emergency home response;
- 10 (l) other nonmedical social services that may enable
- 11 the person to become self-supporting; or
- 12 (m) clearinghouse for information provided by senior
- 13 citizen home owners who want to rent rooms to or share
- 14 living space with other senior citizens.

15 The Department shall establish eligibility standards for

16 such services taking into consideration the unique economic and

17 social needs of the target population for whom they are to be

18 provided. Such eligibility standards shall be based on the

19 recipient's ability to pay for services; provided, however,

20 that in determining the amount and nature of services for which

21 a person may qualify, consideration shall not be given to the

22 value of cash, property or other assets held in the name of the

23 person's spouse pursuant to a written agreement dividing

24 marital property into equal but separate shares or pursuant to

25 a transfer of the person's interest in a home to his spouse,

26 provided that the spouse's share of the marital property is not

1 made available to the person seeking such services.

2 Beginning July 1, 2002, the Department shall require as a
3 condition of eligibility that all financially eligible
4 applicants apply for medical assistance under Article V of the
5 Illinois Public Aid Code in accordance with rules promulgated
6 by the Department.

7 Beginning January 1, 2008, the Department shall require as
8 a condition of eligibility that all new financially eligible
9 applicants apply for and enroll in medical assistance under
10 Article V of the Illinois Public Aid Code in accordance with
11 rules promulgated by the Department.

12 The Department shall, in conjunction with the Department of
13 Public Aid (now Department of Healthcare and Family Services),
14 seek appropriate amendments under Sections 1915 and 1924 of the
15 Social Security Act. The purpose of the amendments shall be to
16 extend eligibility for home and community based services under
17 Sections 1915 and 1924 of the Social Security Act to persons
18 who transfer to or for the benefit of a spouse those amounts of
19 income and resources allowed under Section 1924 of the Social
20 Security Act. Subject to the approval of such amendments, the
21 Department shall extend the provisions of Section 5-4 of the
22 Illinois Public Aid Code to persons who, but for the provision
23 of home or community-based services, would require the level of
24 care provided in an institution, as is provided for in federal
25 law. Those persons no longer found to be eligible for receiving
26 noninstitutional services due to changes in the eligibility

1 criteria shall be given 60 days notice prior to actual
2 termination. Those persons receiving notice of termination may
3 contact the Department and request the determination be
4 appealed at any time during the 60 day notice period. With the
5 exception of the lengthened notice and time frame for the
6 appeal request, the appeal process shall follow the normal
7 procedure. In addition, each person affected regardless of the
8 circumstances for discontinued eligibility shall be given
9 notice and the opportunity to purchase the necessary services
10 through the Community Care Program. If the individual does not
11 elect to purchase services, the Department shall advise the
12 individual of alternative services. The target population
13 identified for the purposes of this Section are persons age 60
14 and older with an identified service need. Priority shall be
15 given to those who are at imminent risk of
16 institutionalization. The services shall be provided to
17 eligible persons age 60 and older to the extent that the cost
18 of the services together with the other personal maintenance
19 expenses of the persons are reasonably related to the standards
20 established for care in a group facility appropriate to the
21 person's condition. These non-institutional services, pilot
22 projects or experimental facilities may be provided as part of
23 or in addition to those authorized by federal law or those
24 funded and administered by the Department of Human Services.
25 The Departments of Human Services, Healthcare and Family
26 Services, Public Health, Veterans' Affairs, and Commerce and

1 Economic Opportunity and other appropriate agencies of State,
2 federal and local governments shall cooperate with the
3 Department on Aging in the establishment and development of the
4 non-institutional services. The Department shall require an
5 annual audit from all personal assistant and home care aide
6 vendors contracting with the Department under this Section. The
7 annual audit shall assure that each audited vendor's procedures
8 are in compliance with Department's financial reporting
9 guidelines requiring an administrative and employee wage and
10 benefits cost split as defined in administrative rules. The
11 audit is a public record under the Freedom of Information Act.
12 The Department shall execute, relative to the nursing home
13 prescreening project, written inter-agency agreements with the
14 Department of Human Services and the Department of Healthcare
15 and Family Services, to effect the following: (1) intake
16 procedures and common eligibility criteria for those persons
17 who are receiving non-institutional services; and (2) the
18 establishment and development of non-institutional services in
19 areas of the State where they are not currently available or
20 are undeveloped. On and after July 1, 1996, all nursing home
21 prescreenings for individuals 60 years of age or older shall be
22 conducted by the Department.

23 As part of the Department on Aging's routine training of
24 case managers and case manager supervisors, the Department may
25 include information on family futures planning for persons who
26 are age 60 or older and who are caregivers of their adult

1 children with developmental disabilities. The content of the
2 training shall be at the Department's discretion.

3 The Department is authorized to establish a system of
4 recipient copayment for services provided under this Section,
5 such copayment to be based upon the recipient's ability to pay
6 but in no case to exceed the actual cost of the services
7 provided. Additionally, any portion of a person's income which
8 is equal to or less than the federal poverty standard shall not
9 be considered by the Department in determining the copayment.
10 The level of such copayment shall be adjusted whenever
11 necessary to reflect any change in the officially designated
12 federal poverty standard.

13 The Department, or the Department's authorized
14 representative, shall recover the amount of moneys expended for
15 services provided to or in behalf of a person under this
16 Section by a claim against the person's estate or against the
17 estate of the person's surviving spouse, but no recovery may be
18 had until after the death of the surviving spouse, if any, and
19 then only at such time when there is no surviving child who is
20 under age 21, blind, or permanently and totally disabled. This
21 paragraph, however, shall not bar recovery, at the death of the
22 person, of moneys for services provided to the person or in
23 behalf of the person under this Section to which the person was
24 not entitled; provided that such recovery shall not be enforced
25 against any real estate while it is occupied as a homestead by
26 the surviving spouse or other dependent, if no claims by other

1 creditors have been filed against the estate, or, if such
2 claims have been filed, they remain dormant for failure of
3 prosecution or failure of the claimant to compel administration
4 of the estate for the purpose of payment. This paragraph shall
5 not bar recovery from the estate of a spouse, under Sections
6 1915 and 1924 of the Social Security Act and Section 5-4 of the
7 Illinois Public Aid Code, who precedes a person receiving
8 services under this Section in death. All moneys for services
9 paid to or in behalf of the person under this Section shall be
10 claimed for recovery from the deceased spouse's estate.
11 "Homestead", as used in this paragraph, means the dwelling
12 house and contiguous real estate occupied by a surviving spouse
13 or relative, as defined by the rules and regulations of the
14 Department of Healthcare and Family Services, regardless of the
15 value of the property.

16 The Department shall increase the effectiveness of the
17 existing Community Care Program by:

18 (1) ensuring that in-home services included in the care
19 plan are available on evenings and weekends;

20 (2) ensuring that care plans contain the services that
21 eligible participants need based on the number of days in a
22 month, not limited to specific blocks of time, as
23 identified by the comprehensive assessment tool selected
24 by the Department for use statewide, not to exceed the
25 total monthly service cost maximum allowed for each
26 service; the Department shall develop administrative rules

1 to implement this item (2);

2 (3) ensuring that the participants have the right to
3 choose the services contained in their care plan and to
4 direct how those services are provided, based on
5 administrative rules established by the Department;

6 (4) ensuring that the determination of need tool is
7 accurate in determining the participants' level of need; to
8 achieve this, the Department, in conjunction with the Older
9 Adult Services Advisory Committee, shall institute a study
10 of the relationship between the Determination of Need
11 scores, level of need, service cost maximums, and the
12 development and utilization of service plans no later than
13 May 1, 2008; findings and recommendations shall be
14 presented to the Governor and the General Assembly no later
15 than January 1, 2009; recommendations shall include all
16 needed changes to the service cost maximums schedule and
17 additional covered services;

18 (5) ensuring that homemakers can provide personal care
19 services that may or may not involve contact with clients,
20 including but not limited to:

21 (A) bathing;

22 (B) grooming;

23 (C) toileting;

24 (D) nail care;

25 (E) transferring;

26 (F) respiratory services;

1 (G) exercise; or

2 (H) positioning;

3 (6) ensuring that homemaker program vendors are not
4 restricted from hiring homemakers who are family members of
5 clients or recommended by clients; the Department may not,
6 by rule or policy, require homemakers who are family
7 members of clients or recommended by clients to accept
8 assignments in homes other than the client; and

9 (7) ensuring that the State may access maximum federal
10 matching funds by seeking approval for the Centers for
11 Medicare and Medicaid Services for modifications to the
12 State's home and community based services waiver and
13 additional waiver opportunities in order to maximize
14 federal matching funds; this shall include, but not be
15 limited to, modification that reflects all changes in the
16 Community Care Program services and all increases in the
17 services cost maximum.

18 By January 1, 2009 or as soon after the end of the Cash and
19 Counseling Demonstration Project as is practicable, the
20 Department may, based on its evaluation of the demonstration
21 project, promulgate rules concerning personal assistant
22 services, to include, but need not be limited to,
23 qualifications, employment screening, rights under fair labor
24 standards, training, fiduciary agent, and supervision
25 requirements. All applicants shall be subject to the provisions
26 of the Health Care Worker Background Check Act.

1 The Department shall develop procedures to enhance
2 availability of services on evenings, weekends, and on an
3 emergency basis to meet the respite needs of caregivers.
4 Procedures shall be developed to permit the utilization of
5 services in successive blocks of 24 hours up to the monthly
6 maximum established by the Department. Workers providing these
7 services shall be appropriately trained.

8 Beginning on the effective date of this Amendatory Act of
9 1991, no person may perform chore/housekeeping and home care
10 aide services under a program authorized by this Section unless
11 that person has been issued a certificate of pre-service to do
12 so by his or her employing agency. Information gathered to
13 effect such certification shall include (i) the person's name,
14 (ii) the date the person was hired by his or her current
15 employer, and (iii) the training, including dates and levels.
16 Persons engaged in the program authorized by this Section
17 before the effective date of this amendatory Act of 1991 shall
18 be issued a certificate of all pre- and in-service training
19 from his or her employer upon submitting the necessary
20 information. The employing agency shall be required to retain
21 records of all staff pre- and in-service training, and shall
22 provide such records to the Department upon request and upon
23 termination of the employer's contract with the Department. In
24 addition, the employing agency is responsible for the issuance
25 of certifications of in-service training completed to their
26 employees.

1 Beginning July 1, 2009, a vendor of home care aide services
2 or personal assistant services is entitled to a rate increase
3 of \$1.32 per hour if (i) the vendor uses at least \$0.70 of that
4 increase to increase the wages of home care aides and personal
5 assistants and (ii) the vendor uses an additional \$0.13 of that
6 increase for health insurance assistance for home care aides
7 and personal assistants. A vendor that receives this increase
8 must submit to the Department proof that the vendor has
9 increased home care aides' and personal assistants' wages by at
10 least \$0.70 per hour and used the additional \$0.13 per hour for
11 health insurance assistance for home care aides and personal
12 assistants. A vendor may submit this proof by either an audited
13 supplemental to the Direct Service Workers cost report or proof
14 of the terms of a collective bargaining agreement.

15 The Department is required to develop a system to ensure
16 that persons working as home care aides and personal assistants
17 receive increases in their wages when the federal minimum wage
18 is increased by requiring vendors to certify that they are
19 meeting the federal minimum wage statute for home care aides
20 and personal assistants . An employer that cannot ensure that
21 the minimum wage increase is being given to home care aides and
22 personal assistants shall be denied any increase in
23 reimbursement costs.

24 The Community Care Program Advisory Committee is created in
25 the Department on Aging. The Director shall appoint individuals
26 to serve in the Committee, who shall serve at their own

1 expense. Members of the Committee must abide by all applicable
2 ethics laws. The Committee shall advise the Department on
3 issues related to the Department's program of services to
4 prevent unnecessary institutionalization. The Committee shall
5 meet on a bi-monthly basis and shall serve to identify and
6 advise the Department on present and potential issues affecting
7 the service delivery network, the program's clients, and the
8 Department and to recommend solution strategies. Persons
9 appointed to the Committee shall be appointed on, but not
10 limited to, their own and their agency's experience with the
11 program, geographic representation, and willingness to serve.
12 The Director shall appoint members to the Committee to
13 represent provider, advocacy, policy research, and other
14 constituencies committed to the delivery of high quality home
15 and community-based services to older adults. Representatives
16 shall be appointed to ensure representation from community care
17 providers including, but not limited to, adult day service
18 providers, homemaker providers, case coordination and case
19 management units, emergency home response providers, statewide
20 trade or labor unions that represent home care aides and direct
21 care staff, area agencies on aging, adults over age 60,
22 membership organizations representing older adults, and other
23 organizational entities, providers of care, or individuals
24 with demonstrated interest and expertise in the field of home
25 and community care as determined by the Director.

26 Nominations may be presented from any agency or State

1 association with interest in the program. The Director, or his
2 or her designee, shall serve as the permanent co-chair of the
3 advisory committee. One other co-chair shall be nominated and
4 approved by the members of the committee on an annual basis.
5 Committee members' terms of appointment shall be for 4 years
6 with one-quarter of the appointees' terms expiring each year. A
7 member shall continue to serve until his or her replacement is
8 named. The Department shall fill vacancies that have a
9 remaining term of over one year, and this replacement shall
10 occur through the annual replacement of expiring terms. The
11 Director shall designate Department staff to provide technical
12 assistance and staff support to the committee. Department
13 representation shall not constitute membership of the
14 committee. All Committee papers, issues, recommendations,
15 reports, and meeting memoranda are advisory only. The Director,
16 or his or her designee, shall make a written report, as
17 requested by the Committee, regarding issues before the
18 Committee.

19 The Department on Aging and the Department of Human
20 Services shall cooperate in the development and submission of
21 an annual report on programs and services provided under this
22 Section. Such joint report shall be filed with the Governor and
23 the General Assembly on or before September 30 each year.

24 The requirement for reporting to the General Assembly shall
25 be satisfied by filing copies of the report with the Speaker,
26 the Minority Leader and the Clerk of the House of

1 Representatives and the President, the Minority Leader and the
2 Secretary of the Senate and the Legislative Research Unit, as
3 required by Section 3.1 of the General Assembly Organization
4 Act and filing such additional copies with the State Government
5 Report Distribution Center for the General Assembly as is
6 required under paragraph (t) of Section 7 of the State Library
7 Act.

8 Those persons previously found eligible for receiving
9 non-institutional services whose services were discontinued
10 under the Emergency Budget Act of Fiscal Year 1992, and who do
11 not meet the eligibility standards in effect on or after July
12 1, 1992, shall remain ineligible on and after July 1, 1992.
13 Those persons previously not required to cost-share and who
14 were required to cost-share effective March 1, 1992, shall
15 continue to meet cost-share requirements on and after July 1,
16 1992. Beginning July 1, 1992, all clients will be required to
17 meet eligibility, cost-share, and other requirements and will
18 have services discontinued or altered when they fail to meet
19 these requirements.

20 For the purposes of this Section, "flexible senior
21 services" refers to services that require one-time or periodic
22 expenditures including, but not limited to, respite care, home
23 modification, assistive technology, housing assistance, and
24 transportation.

25 (Source: P.A. 94-48, eff. 7-1-05; 94-269, eff. 7-19-05; 94-336,
26 eff. 7-26-05; 94-954, eff. 6-27-06; 95-298, eff. 8-20-07;

1 95-473, eff. 8-27-07; 95-565, eff. 6-1-08; 95-876, eff.
2 8-21-08.)

3 Section 99. Effective date. This Act takes effect July 1,
4 2009.