



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB0242

Introduced 1/31/2019, by Sen. Andy Manar

SYNOPSIS AS INTRODUCED:

20 ILCS 2405/3

from Ch. 23, par. 3434

Amends the Rehabilitation of Persons with Disabilities Act. Provides that a home care consumer in the Department of Human Services' Home Services Program has the right and discretion to: (1) select and hire a personal assistant or other individual provider of his or her choice; and (2) determine the number of hours per week his or her personal assistant or other individual provider may work. Provides that, subject to the Department's authority to approve the total monthly hours in a home care consumer's service plan, no limitation shall be imposed on the number of hours per week a personal assistant or other individual provider may work unless the following conditions are satisfied: (A) as an exception to any limit imposed by the Department, a personal assistant or other individual provider may work and be paid for all hours worked up to at least 66 hours per week if the personal assistant or other individual provider works for a home care consumer who: (i) receives services under a court-ordered service plan; (ii) has a Determination of Need score of 70 or above; or (iii) has an exceptional care rate; (B) the Department shall establish an exceptions and appeals process that permits a home care consumer to request an exception to any limit imposed by the Department up to a maximum of no less than 66 hours per week; and (C) if the home care consumer would face a serious risk of institutionalization, the Department shall work with the home care consumer to ensure that appropriate care in the community will be provided, whether through authorized overtime or another solution. Provides that nothing shall limit the Department's authority under any other statute to disqualify an individual from providing services in the Department's Home Services Program for reasons other than the number of weekly hours worked by the individual.

LRB101 08289 KTG 53356 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 Rehabilitation of Persons with Disabilities
5 Act is amended by changing Section 3 as follows:

6 (20 ILCS 2405/3) (from Ch. 23, par. 3434)

7 Sec. 3. Powers and duties. The Department shall have the
8 powers and duties enumerated herein:

9 (a) To co-operate with the federal government in the
10 administration of the provisions of the federal
11 Rehabilitation Act of 1973, as amended, of the Workforce
12 Innovation and Opportunity Act, and of the federal Social
13 Security Act to the extent and in the manner provided in
14 these Acts.

15 (b) To prescribe and supervise such courses of
16 vocational training and provide such other services as may
17 be necessary for the habilitation and rehabilitation of
18 persons with one or more disabilities, including the
19 administrative activities under subsection (e) of this
20 Section, and to co-operate with State and local school
21 authorities and other recognized agencies engaged in
22 habilitation, rehabilitation and comprehensive
23 rehabilitation services; and to cooperate with the

1 Department of Children and Family Services regarding the
2 care and education of children with one or more
3 disabilities.

4 (c) (Blank).

5 (d) To report in writing, to the Governor, annually on
6 or before the first day of December, and at such other
7 times and in such manner and upon such subjects as the
8 Governor may require. The annual report shall contain (1) a
9 statement of the existing condition of comprehensive
10 rehabilitation services, habilitation and rehabilitation
11 in the State; (2) a statement of suggestions and
12 recommendations with reference to the development of
13 comprehensive rehabilitation services, habilitation and
14 rehabilitation in the State; and (3) an itemized statement
15 of the amounts of money received from federal, State and
16 other sources, and of the objects and purposes to which the
17 respective items of these several amounts have been
18 devoted.

19 (e) (Blank).

20 (f) To establish a program of services to prevent the
21 unnecessary institutionalization of persons in need of
22 long term care and who meet the criteria for blindness or
23 disability as defined by the Social Security Act, thereby
24 enabling them to remain in their own homes. Such preventive
25 services include any or all of the following:

26 (1) personal assistant services;

- 1 (2) homemaker services;
- 2 (3) home-delivered meals;
- 3 (4) adult day care services;
- 4 (5) respite care;
- 5 (6) home modification or assistive equipment;
- 6 (7) home health services;
- 7 (8) electronic home response;
- 8 (9) brain injury behavioral/cognitive services;
- 9 (10) brain injury habilitation;
- 10 (11) brain injury pre-vocational services; or
- 11 (12) brain injury supported employment.

12 The Department shall establish eligibility standards
13 for such services taking into consideration the unique
14 economic and social needs of the population for whom they
15 are to be provided. Such eligibility standards may be based
16 on the recipient's ability to pay for services; provided,
17 however, that any portion of a person's income that is
18 equal to or less than the "protected income" level shall
19 not be considered by the Department in determining
20 eligibility. The "protected income" level shall be
21 determined by the Department, shall never be less than the
22 federal poverty standard, and shall be adjusted each year
23 to reflect changes in the Consumer Price Index For All
24 Urban Consumers as determined by the United States
25 Department of Labor. The standards must provide that a
26 person may not have more than \$10,000 in assets to be

1 eligible for the services, and the Department may increase
2 or decrease the asset limitation by rule. The Department
3 may not decrease the asset level below \$10,000.

4 The services shall be provided, as established by the
5 Department by rule, to eligible persons to prevent
6 unnecessary or premature institutionalization, to the
7 extent that the cost of the services, together with the
8 other personal maintenance expenses of the persons, are
9 reasonably related to the standards established for care in
10 a group facility appropriate to their condition. These
11 non-institutional services, pilot projects or experimental
12 facilities may be provided as part of or in addition to
13 those authorized by federal law or those funded and
14 administered by the Illinois Department on Aging. The
15 Department shall set rates and fees for services in a fair
16 and equitable manner. Services identical to those offered
17 by the Department on Aging shall be paid at the same rate.

18 Except as otherwise provided in this paragraph,
19 personal assistants shall be paid at a rate negotiated
20 between the State and an exclusive representative of
21 personal assistants under a collective bargaining
22 agreement. In no case shall the Department pay personal
23 assistants an hourly wage that is less than the federal
24 minimum wage. Within 30 days after July 6, 2017 (the
25 effective date of Public Act 100-23), the hourly wage paid
26 to personal assistants and individual maintenance home

1 health workers shall be increased by \$0.48 per hour.

2 Solely for the purposes of coverage under the Illinois
3 Public Labor Relations Act, personal assistants providing
4 services under the Department's Home Services Program
5 shall be considered to be public employees and the State of
6 Illinois shall be considered to be their employer as of
7 July 16, 2003 (the effective date of Public Act 93-204),
8 but not before. Solely for the purposes of coverage under
9 the Illinois Public Labor Relations Act, home care and home
10 health workers who function as personal assistants and
11 individual maintenance home health workers and who also
12 provide services under the Department's Home Services
13 Program shall be considered to be public employees, no
14 matter whether the State provides such services through
15 direct fee-for-service arrangements, with the assistance
16 of a managed care organization or other intermediary, or
17 otherwise, and the State of Illinois shall be considered to
18 be the employer of those persons as of January 29, 2013
19 (the effective date of Public Act 97-1158), but not before
20 except as otherwise provided under this subsection (f). The
21 State shall engage in collective bargaining with an
22 exclusive representative of home care and home health
23 workers who function as personal assistants and individual
24 maintenance home health workers working under the Home
25 Services Program concerning their terms and conditions of
26 employment that are within the State's control. Nothing in

1 this paragraph shall be understood to limit the right of
2 the persons receiving services defined in this Section to
3 hire and fire home care and home health workers who
4 function as personal assistants and individual maintenance
5 home health workers working under the Home Services Program
6 or to supervise them within the limitations set by the Home
7 Services Program. The State shall not be considered to be
8 the employer of home care and home health workers who
9 function as personal assistants and individual maintenance
10 home health workers working under the Home Services Program
11 for any purposes not specifically provided in Public Act
12 93-204 or Public Act 97-1158, including but not limited to,
13 purposes of vicarious liability in tort and purposes of
14 statutory retirement or health insurance benefits. Home
15 care and home health workers who function as personal
16 assistants and individual maintenance home health workers
17 and who also provide services under the Department's Home
18 Services Program shall not be covered by the State
19 Employees Group Insurance Act of 1971.

20 A home care consumer, as defined in Section 17.1, in the
21 Department's Home Services Program has the right and discretion
22 to select and hire a personal assistant or other individual
23 provider of his or her choice. A home care consumer in the
24 Department's Home Services Program also has the right and
25 discretion to determine the number of hours per week his or her
26 personal assistant or other individual provider may work.

1 Subject to the Department's authority to approve the total
2 monthly hours in a home care consumer's service plan, the State
3 of Illinois and any of its departments, including the
4 Department, shall not impose a limit on the number of hours per
5 week a personal assistant or other individual provider may work
6 that is less than 55 hours per week. Subject to the
7 Department's authority to approve the total monthly hours in a
8 home care consumer's service plan, the State of Illinois and
9 any of its departments, including the Department, shall not
10 impose any limit on the number of hours per week a personal
11 assistant or other individual provider may work unless the
12 following conditions are satisfied:

13 (1) As an exception to any limit imposed by the
14 Department, a personal assistant or other individual
15 provider may work and be paid for all hours worked up to at
16 least 66 hours per week if, subject to verification by the
17 Department, the personal assistant or other individual
18 provider works for: (i) a home care consumer receiving
19 services under a court-ordered service plan; (ii) a home
20 care consumer with a Determination of Need score of 70 or
21 above (or the equivalent under any new assessment tool); or
22 (iii) a home care consumer with an exceptional care rate.

23 (2) The Department shall establish an exceptions and
24 appeals process that permits a home care consumer to
25 request an exception to any limit imposed by the Department
26 up to a maximum of no less than 66 hours per week.

1 Exceptions shall be approved as appropriate to maintain
2 consumer independence and shall be approved, at a minimum,
3 under the following circumstances which must be verified by
4 the Department:

5 (A) Delayed arrival of a provider.

6 (B) Sudden loss of a provider.

7 (C) Unexpected illness of a provider.

8 (D) Extraordinary circumstances justified by the
9 health and safety issues of the home care consumer.

10 The exceptions and appeals process shall also permit a
11 home care consumer to apply to be pre-approved for the use
12 of a personal assistant or other individual provider for
13 hours worked above the weekly maximum. Such pre-approval
14 shall last for not less than one year from the date of the
15 approval. Additionally, the exceptions and appeals process
16 shall permit a home care consumer to apply after the fact
17 for the approval of the prior use of a personal assistant
18 or other individual provider who worked up to a maximum of
19 no less than 66 hours per week.

20 (3) Notwithstanding any limit imposed by the
21 Department on the number of hours per week a home care
22 consumer's personal assistant or other individual provider
23 may work, if the home care consumer would face a serious
24 risk of institutionalization, the Department shall work
25 with the home care consumer to ensure that appropriate care
26 in the community will be provided, whether through

1 authorized overtime or another solution.

2 Nothing in this subsection shall limit the Department's
3 authority under any other statute to disqualify an individual
4 from providing services in the Department's Home Services
5 Program for reasons other than the number of weekly hours
6 worked by the individual.

7 The Department shall execute, relative to nursing home
8 prescreening, as authorized by Section 4.03 of the Illinois
9 Act on the Aging, written inter-agency agreements with the
10 Department on Aging and the Department of Healthcare and
11 Family Services, to effect the intake procedures and
12 eligibility criteria for those persons who may need long
13 term care. On and after July 1, 1996, all nursing home
14 prescreenings for individuals 18 through 59 years of age
15 shall be conducted by the Department, or a designee of the
16 Department.

17 The Department is authorized to establish a system of
18 recipient cost-sharing for services provided under this
19 Section. The cost-sharing shall be based upon the
20 recipient's ability to pay for services, but in no case
21 shall the recipient's share exceed the actual cost of the
22 services provided. Protected income shall not be
23 considered by the Department in its determination of the
24 recipient's ability to pay a share of the cost of services.
25 The level of cost-sharing shall be adjusted each year to
26 reflect changes in the "protected income" level. The

1 Department shall deduct from the recipient's share of the
2 cost of services any money expended by the recipient for
3 disability-related expenses.

4 To the extent permitted under the federal Social
5 Security Act, the Department, or the Department's
6 authorized representative, may recover the amount of
7 moneys expended for services provided to or in behalf of a
8 person under this Section by a claim against the person's
9 estate or against the estate of the person's surviving
10 spouse, but no recovery may be had until after the death of
11 the surviving spouse, if any, and then only at such time
12 when there is no surviving child who is under age 21 or
13 blind or who has a permanent and total disability. This
14 paragraph, however, shall not bar recovery, at the death of
15 the person, of moneys for services provided to the person
16 or in behalf of the person under this Section to which the
17 person was not entitled; provided that such recovery shall
18 not be enforced against any real estate while it is
19 occupied as a homestead by the surviving spouse or other
20 dependent, if no claims by other creditors have been filed
21 against the estate, or, if such claims have been filed,
22 they remain dormant for failure of prosecution or failure
23 of the claimant to compel administration of the estate for
24 the purpose of payment. This paragraph shall not bar
25 recovery from the estate of a spouse, under Sections 1915
26 and 1924 of the Social Security Act and Section 5-4 of the

1 Illinois Public Aid Code, who precedes a person receiving
2 services under this Section in death. All moneys for
3 services paid to or in behalf of the person under this
4 Section shall be claimed for recovery from the deceased
5 spouse's estate. "Homestead", as used in this paragraph,
6 means the dwelling house and contiguous real estate
7 occupied by a surviving spouse or relative, as defined by
8 the rules and regulations of the Department of Healthcare
9 and Family Services, regardless of the value of the
10 property.

11 The Department shall submit an annual report on
12 programs and services provided under this Section. The
13 report shall be filed with the Governor and the General
14 Assembly on or before March 30 each year.

15 The requirement for reporting to the General Assembly
16 shall be satisfied by filing copies of the report as
17 required by Section 3.1 of the General Assembly
18 Organization Act, and filing additional copies with the
19 State Government Report Distribution Center for the
20 General Assembly as required under paragraph (t) of Section
21 7 of the State Library Act.

22 (g) To establish such subdivisions of the Department as
23 shall be desirable and assign to the various subdivisions
24 the responsibilities and duties placed upon the Department
25 by law.

26 (h) To cooperate and enter into any necessary

1 agreements with the Department of Employment Security for
2 the provision of job placement and job referral services to
3 clients of the Department, including job service
4 registration of such clients with Illinois Employment
5 Security offices and making job listings maintained by the
6 Department of Employment Security available to such
7 clients.

8 (i) To possess all powers reasonable and necessary for
9 the exercise and administration of the powers, duties and
10 responsibilities of the Department which are provided for
11 by law.

12 (j) (Blank).

13 (k) (Blank).

14 (l) To establish, operate, and maintain a Statewide
15 Housing Clearinghouse of information on available
16 government subsidized housing accessible to persons with
17 disabilities and available privately owned housing
18 accessible to persons with disabilities. The information
19 shall include, but not be limited to, the location, rental
20 requirements, access features and proximity to public
21 transportation of available housing. The Clearinghouse
22 shall consist of at least a computerized database for the
23 storage and retrieval of information and a separate or
24 shared toll free telephone number for use by those seeking
25 information from the Clearinghouse. Department offices and
26 personnel throughout the State shall also assist in the

1 operation of the Statewide Housing Clearinghouse.
2 Cooperation with local, State, and federal housing
3 managers shall be sought and extended in order to
4 frequently and promptly update the Clearinghouse's
5 information.

6 (m) To assure that the names and case records of
7 persons who received or are receiving services from the
8 Department, including persons receiving vocational
9 rehabilitation, home services, or other services, and
10 those attending one of the Department's schools or other
11 supervised facility shall be confidential and not be open
12 to the general public. Those case records and reports or
13 the information contained in those records and reports
14 shall be disclosed by the Director only to proper law
15 enforcement officials, individuals authorized by a court,
16 the General Assembly or any committee or commission of the
17 General Assembly, and other persons and for reasons as the
18 Director designates by rule. Disclosure by the Director may
19 be only in accordance with other applicable law.

20 (Source: P.A. 99-143, eff. 7-27-15; 100-23, eff. 7-6-17;
21 100-477, eff. 9-8-17; 100-587, eff. 6-4-18; 100-863, eff.
22 8-14-18; 100-1148, eff. 12-10-18.)