



Sen. M. Maggie Crotty

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09500SB0765sam003

LRB095 05416 HLH 34598 a

1 AMENDMENT TO SENATE BILL 765

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 765, AS AMENDED, by  
3 replacing everything after the enacting clause with the  
4 following:

5 "Section 5. The Disabilities Services Act of 2003 is  
6 amended by adding a heading to Article 1 immediately before  
7 Section 1 of the Act, by adding a heading to Article 2  
8 immediately before Section 5 of the Act, by adding Article 3  
9 and a heading to Article 99 immediately after Section 30 of the  
10 Act as follows:

11 (20 ILCS 2407/Art. 1 heading new)

12 ARTICLE 1. SHORT TITLE

13 (20 ILCS 2407/Art. 2 heading new)

14 ARTICLE 2. DISABILITIES SERVICES ACT of 2003

1 (20 ILCS 2407/Art. 3 heading new)

2 ARTICLE 3. OLMSTEAD IMPLEMENTATION ACT

3 (20 ILCS 2407/51 new)

4 Sec. 51. Legislative intent. It is the intent of the  
5 General Assembly to promote the civil rights of persons with  
6 disabilities by providing community-based services for persons  
7 with disabilities when such services are determined  
8 appropriate and desired by the affected persons, as required by  
9 Title II of the Americans with Disabilities Act under the  
10 United States Supreme Court's decision in Olmstead v. L.C., 527  
11 U.S. 581 (1999). In accordance with Section 6071 of the Deficit  
12 Reduction Act of 2005 (P.L. 109-171), the purpose of this Act  
13 is: (i) to eliminate barriers or mechanisms, whether in State  
14 law, the State Medicaid plan, the State budget, or otherwise,  
15 that prevent or restrict the flexible use of funds to enable  
16 individuals with disabilities to receive support for  
17 appropriate and necessary long-term services in settings of  
18 their choice; (ii) to increase the use of home and  
19 community-based, rather than institutional, long-term care  
20 services; (iii) to increase the ability of the State Medicaid  
21 program to assure continued provision of home and  
22 community-based long-term care service to eligible individuals  
23 who choose to transition from an institutional to a community  
24 setting; and (iv) to ensure that procedures are in place to

1 provide quality assurance for eligible individuals receiving  
2 Medicaid home and community-based long-term care services and  
3 to provide for continuous quality improvement in such services.  
4 More specifically, this Article amends the Disabilities  
5 Services Act of 2003 (notwithstanding Section 30 of the Act) to  
6 mandate the creation of a flexible system of financing for  
7 long-term services and supports in Illinois that would allow  
8 available Medicaid funds to be spent on home and  
9 community-based services when an individual residing in an  
10 institution moves to the most appropriate and preferred  
11 community-based setting of his or her choice.

12 (20 ILCS 2407/52 new)

13 Sec. 52. Applicability; definitions. In accordance with  
14 section 6071 of the Deficit Reduction Act of 2005 (P.L.  
15 109-171), as used in this Article:

16 "Home and community-based long-term care services". The  
17 term "home and community-based long-term care services" means,  
18 with respect to a State Medicaid program, a service aid, or  
19 benefit, home and community-based services (including home  
20 health and personal care services) that are provided to a  
21 person with a disability (and are voluntarily accepted), as  
22 part of his or her long-term care that: (i) is provided under  
23 the State's qualified HCB program or that could be provided  
24 under such a program but is otherwise provided under the  
25 Medicaid program; (ii) is delivered in a qualified residence;

1 and (iii) is necessary for the person with a disability to live  
2 in the community.

3 "Departments". The term "Departments" means for the  
4 purposes of this Act, the Department of Human Services, the  
5 Department on Aging, Department of Children and Family  
6 Services, Department of Healthcare and Family Services and  
7 Department of Public Health, unless otherwise noted.

8 "Eligible Individual". The term "eligible individual"  
9 means a person of any age in Illinois who (i) has resided, for  
10 a period of not less than 6 months, in an inpatient facility;  
11 (ii) is receiving Medicaid benefits for inpatient services  
12 furnished by the inpatient facility; (iii) with respect to whom  
13 a determination has been made that, but for the provision of  
14 home and community-based long-term care services, the  
15 individual would continue to require the level of care provided  
16 in an inpatient facility; (iv) who is deemed appropriate by the  
17 inter-disciplinary team for home or community-based services;  
18 and (v) who wants to transfer from an inpatient facility to a  
19 qualified residence. For the purposes of this Act, "eligible  
20 individual" does not include a person with a disability  
21 receiving acute care mental health treatment in a  
22 State-operated mental health center for less than 30  
23 consecutive days in a one-year period, or a person committed to  
24 a State-operated mental health forensic program, or  
25 developmental center forensic program.

26 "Inpatient facility". The term "inpatient facility" means

1 a skilled nursing or intermediate long-term care facility  
2 subject to licensure by the Department of Public Health under  
3 the Nursing Home Care Act, an intermediate care facility for  
4 the developmentally disabled (ICF-DDs), an institution for  
5 mental diseases, child care institutions licensed by the  
6 Department of Children and Family Services, any community  
7 living facility as defined in the Community Living Facilities  
8 Licensing Act (210 ILCS 35), any community residential  
9 alternative as defined in the Community Residential  
10 Alternatives Licensing Act (405 ILCS 30), any Supportive Living  
11 Facility as provided in the Public Aid Code (305 ILCS  
12 5/5-5.01a), and a State-operated developmental center or  
13 mental health center, whether publicly or privately owned.

14 "Interdisciplinary team" means a group of persons that  
15 represents those professions, disciplines, or service areas  
16 that are relevant to identifying an individual's strengths and  
17 needs, and designs a program to meet those needs. This team  
18 shall include at least a physician, a social worker, other  
19 professionals, and the individual. In intermediate care  
20 facilities for the developmentally disabled (ICF/DDs) at least  
21 one member of the team shall be a qualified mental retardation  
22 professional. The interdisciplinary team includes the  
23 individual, the individual's guardian, the individual's  
24 authorized representative, the individual's primary service  
25 providers, including staff most familiar with the individual's  
26 needs. The individual or his or her guardian may also invite

1 other individuals to meet with the interdisciplinary team and  
2 participate in the process of identifying the individual's  
3 strengths and needs.

4 "Qualified residence". The term "qualified residence"  
5 means, with respect to an eligible individual: (i) a home owned  
6 or leased by the individual or the individual's authorized  
7 representative (as defined by P.L. 109-171); (ii) an apartment  
8 with an individual lease, with lockable access and egress, and  
9 which includes living, sleeping, bathing, and cooking areas  
10 over which the individual or the individual's family has domain  
11 and control; and (iii) a residence, in a community-based  
12 residential setting, in which no more than 4 unrelated  
13 individuals reside.

14 "Self-directed services". The term "self-directed  
15 services" means, with respect to home and community-based  
16 long-term care services for an eligible individual, those  
17 services for the individual that are planned and purchased  
18 under the direction and control of the individual or the  
19 individual's authorized representative, including the amount,  
20 duration, scope, provider, and location of such services, under  
21 the State Medicaid program consistent with the following  
22 requirements:

23 (a) Assessment: there is an assessment of the needs,  
24 capabilities, and preferences of the individual with  
25 respect to such services.

26 (b) Service plan: based on the assessment, there is

1       developed jointly with such individual or the individual's  
2       authorized representative, a plan for such services for the  
3       individual that is approved by the State and that (i)  
4       specifies those services, if any, that the individual or  
5       the individual's authorized representative would be  
6       responsible for directing; (ii) identifies the methods by  
7       which the individual or the individual's authorized  
8       representative or an agency designated by an individual or  
9       representative will select, manage, and dismiss providers  
10       of such services.

11       "Public Funds" means any funds appropriated by the General  
12       Assembly to the Department of Human Services, the Department on  
13       Aging, the Department of Children and Family Services, or the  
14       Department of Healthcare and Family Services.

15           (20 ILCS 2407/53 new)

16       Sec. 53. Allocation of public funds.

17       (a) Any eligible individual, as defined in Section 52, has  
18       the right to have an amount equal to the amount of public funds  
19       that are, or would have been, expended for his or her care in  
20       an inpatient facility available to pay for his or her home and  
21       community-based long-term care services in a qualified  
22       residence.

23       (b) In accordance with Sections 15(2) and 20(b) (2) of this  
24       Act, all eligible individuals under this Act shall have an  
25       individual service or treatment plan that is reviewed by the

1 individual treatment professionals at least annually that is  
2 consistent with the requirements under subparts (A) and (B) of  
3 item 8 of subsection (b) of the Deficit Reduction Act of 2005  
4 (P.L. 109-171), and that includes an individualized budget that  
5 identifies the dollar value of the services consistent with the  
6 requirements under subsection (b)(8)(C) of section 6071 and  
7 supports under the control and direction of the individual or  
8 the individual's authorized representative. The service or  
9 treatment plan must contain assurances that each eligible  
10 individual has been provided the opportunity to make an  
11 informed choice regarding their right under subsection (a).

12 (c) In accordance with any disability services plan or plan  
13 update under this Act and section 6071 of the Deficit Reduction  
14 Act of 2005 (P.L. 109-171), the Departments shall develop  
15 appropriate fiscal payment mechanisms and methodologies, by  
16 December 1, 2008, that effectively support choice and eliminate  
17 any legal, budgetary, or other barriers to flexibility in the  
18 availability of Medicaid funds to pay for long-term care  
19 services for individuals in the appropriate home and  
20 community-based long-term care settings of their choice,  
21 including costs to transition from an inpatient facility to a  
22 qualified residence. As part of this process, the Department of  
23 Human Services, Division of Developmental Disabilities shall  
24 review its Intermediate Care Facility for Developmental  
25 Disabilities (ICF/DD) downsizing rate methodology. During its  
26 review, the Division shall confer and consult with community



1 stakeholders including individuals and entities who utilize or  
2 provide ICF/DD, CILA, and other services alternatives, those  
3 who advocate for individuals with developmental disabilities,  
4 and other State agencies having financial or regulatory roles  
5 involving these facilities. The Division shall consider and  
6 develop proposals and strategies that could provide incentives  
7 to reduction, downsizing, closure, or conversion of ICFs/DDs,  
8 such as changes in formulas and methodology, changes in the  
9 provider tax, funding levels, procedures for the determination  
10 of downsizing rates, and financing opportunities and programs  
11 to support conversions, or alternative uses, or both, of  
12 facilities. The Division shall develop a report by December 1,  
13 2007. As appropriate, the Division shall develop estimates of  
14 the implementation costs of proposed strategies and  
15 incentives. With respect to the individualized budgets  
16 described in subsection (b), the fiscal payment mechanisms and  
17 methodologies must: (i) describe the method for calculating the  
18 dollar values in such budgets based on reliable costs and  
19 service utilization; (ii) define a process for making  
20 adjustments in such dollar values to reflect changes in  
21 individual assessments and service plans; and (iii) provide a  
22 procedure to evaluate expenditures under such budgets.

23 (d) The cost of home and community-based long-term care  
24 services provided under this Act shall be funded in accordance  
25 with the individual service or treatment plan, but shall not  
26 exceed 60% of the weighted average (weighted by Medicaid

1 patient days) inpatient facility rates for the geographic  
2 grouping, by licensure category. Each qualified residence  
3 shall be paid 60% of the weighted average inpatient facility  
4 geographic group rate, based upon the inpatient facility  
5 geographic group in which it is located. The rates paid to  
6 qualified residences shall be reviewed semi-annually, and  
7 adjusted, if necessary, on April 1 and October 1 to assure that  
8 the rates coincide with 60% of weighted average inpatient  
9 facility geographic group's rates.

10 (e) In addition to Section 4.4 of the Community Services  
11 Act of 2004 (P.A. 094-0498), whenever any appropriation, or any  
12 portion of any appropriation, for any fiscal year related to  
13 the funding of an inpatient facility is reduced due to the  
14 redistribution of funds under this Act, to the extent that  
15 savings are realized, those moneys must be deposited into the  
16 Olmstead Implementation Fund, created as a special fund in the  
17 State treasury, and shall be used to expand the availability,  
18 quality, or stability of home and community-based long-term  
19 care services and supports for persons with disabilities (such  
20 as in-home consumer/family supports; integrated, accessible,  
21 and affordable housing options and home modifications; etc.).

22 (f) The allocation of public funds for home and  
23 community-based long-term care services shall not have the  
24 effect of: (i) diminishing or reducing the quality of services  
25 available to residents of inpatient facilities; (ii) forcing  
26 any residents of inpatient facilities to involuntarily accept

1 home and community-based long-term care services, or causing  
2 any residents of inpatient facilities to be involuntarily  
3 transferred or discharged; (iii) causing reductions in  
4 inpatient facility reimbursement rates in effect as of July 1,  
5 2008; or (iv) causing any delay of inpatient facility payments.  
6 If an eligible individual moves to a qualified residence and  
7 determines it is not the appropriate or preferred setting, they  
8 remain entitled to return to an inpatient facility under Title  
9 XIX of the Social Security Act (42 U.S.C §1396a(a)(10)(A),  
10 §1396d(a)(15), §1396a(a)(1).

11 (g) Funding for eligible individuals under this Act shall  
12 remain available to the eligible individual, in accordance with  
13 the individual service or treatment plan, as long as he or she  
14 remains eligible for services in an inpatient facility and  
15 prefers home and community-based long-term care services.

16 (20 ILCS 2407/54 new)

17 Sec. 54. Quality assurance and quality improvement.

18 (a) In accordance with subsection (c) (11) of section 6071  
19 of the Deficit Reduction Act of 2005 (P.L. 109-171), the  
20 Departments shall develop a plan for quality assurance and  
21 quality improvement for home and community-based long-term  
22 care services under the State Medicaid program, including a  
23 regulatory plan to assure the health and welfare of eligible  
24 individuals under this Act.

25 (b) This plan shall require the Departments to apply for

1 any available federal strategic planning and implementation  
2 funding to carry out the intent of this legislation, and to  
3 seek any appropriate Federal Medicaid waivers to maximize  
4 Federal financial participation.

5 (20 ILCS 2407/55 new)

6 Sec. 55. Dissemination of information; reports.

7 (a) The State shall ensure that all eligible individuals  
8 are informed of their right to receive home and community-based  
9 long-term care services under this Act. The Departments shall  
10 work together with organizations comprised of, or representing  
11 people with disabilities and providers of Medicaid acute and  
12 long-term care services, to ensure that persons with  
13 disabilities and their families, guardians, and advocates are  
14 informed of their rights under this Act in a manner that is  
15 easily understandable and accessible to people with  
16 disabilities. The Departments shall ensure that multiple  
17 methods of dissemination are employed and shall make concerted  
18 efforts to inform people currently in inpatient facilities,  
19 including at their individual team or program meetings. The  
20 Department of Public Health shall ensure that, as a condition  
21 of licensing and certification, all inpatient facilities  
22 covered under this Act shall inform all residents annually of  
23 their opportunities to choose home and community alternatives  
24 under this Act. Additionally, the Department shall require each  
25 inpatient facility to post in a prominent location a notice

1 containing information on rights and services available under  
2 this Act. Notices posted shall comply with the accessibility  
3 standards of the Americans with Disabilities Act.

4 (b) On or before April 1 of each year, in conjunction with  
5 their annual reports, the Departments shall report to the  
6 Governor and the General Assembly on the implementation of this  
7 Act and include, at a minimum, the following data; (i) a  
8 description of the fiscal payment mechanisms and methodologies  
9 developed under this Act that effectively support choice (money  
10 follows the person); (ii) an accounting of the savings realized  
11 under this Act and the ways in which these savings were spent;  
12 (iii) information concerning the dollar amounts of State  
13 Medicaid expenditures for fiscal years 2006 and 2007, for  
14 long-term care services and the percentage of such expenditures  
15 that were for institutional long-term care services or were for  
16 home and community-based long-term care services; (iv) a  
17 description of the Departments' efforts to inform all eligible  
18 individuals of their rights under this Act; (v) the number of  
19 eligible individuals referred or identified under this Act in  
20 the previous fiscal year, the number of eligible individuals  
21 who applied to transfer to home and community-based long-term  
22 care services in the previous fiscal year, and the number of  
23 eligible individuals who, in fact, transferred from an  
24 inpatient facility to a qualified residence in the previous  
25 fiscal year; (vi) documentation that the Departments have met  
26 the requirements under Section 5 to assure the health and

1 welfare of eligible individuals receiving home and  
2 community-based long-term care services; and (vii) any  
3 obstacles the Departments confronted in assisting residents of  
4 inpatient facilities to make the transition to a qualified  
5 residence, and the Departments' recommendations for removing  
6 those obstacles. This report must be made available to the  
7 general public, including via the Departments' websites.

8 (20 ILCS 2407/56 new)

9 Sec. 56. Effect on existing rights.

10 (a) This Article does not alter or affect the manner in  
11 which persons with disabilities are determined eligible or  
12 appropriate for home and community-based long-term care  
13 services, except to the extent the determinations are based on  
14 the availability of community services.

15 (b) This Article shall not be read to limit in any way the  
16 rights of people with disabilities under the U.S. Constitution,  
17 the Americans with Disabilities Act, Section 504 of the  
18 Rehabilitation Act, the Social Security Act, or any other  
19 federal or State law.

20 (20 ILCS 2407/57 new)

21 Sec. 57. Rules. The Departments shall adopt any rules  
22 necessary for the implementation and administration of this Act  
23 within 6 months of the effective date of this Act.

1 (20 ILCS 2407/58 new)

2 Sec. 58. Service provider cost reporting and  
3 accountability. The Departments shall adopt any rules  
4 necessary for the implementation of service provider cost  
5 reporting to ensure accountability under this Act within 6  
6 months of the effective date of this Act.

7 (20 ILCS 2407/Art. 99 heading new)

8 ARTICLE 99. AMENDATORY PROVISIONS; EFFECTIVE DATE

9 Section 90. The State Finance Act is amended by adding  
10 Section 5.675 as follows:

11 (30 ILCS 105/5.675 new)

12 Sec. 5.675. The Olmstead Implementation Fund.

13 Section 99. Effective date. This Act takes effect July 1,  
14 2008.".