

ASSEMBLY, No. 2823

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED MARCH 9, 2006

Sponsored by:

Assemblyman JIM WHELAN

District 2 (Atlantic)

Assemblyman LOUIS D. GREENWALD

District 6 (Camden)

Assemblyman NELSON T. ALBANO

District 1 (Cape May, Atlantic and Cumberland)

Assemblyman JEFF VAN DREW

District 1 (Cape May, Atlantic and Cumberland)

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

Co-Sponsored by:

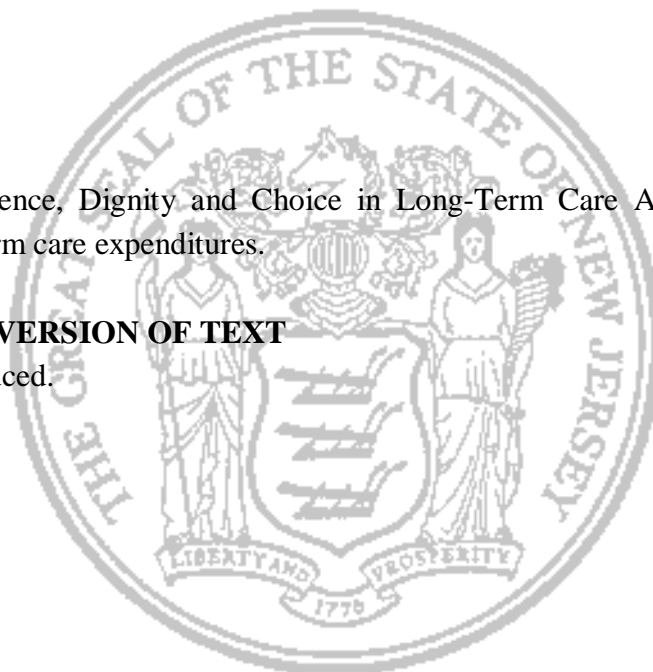
Assemblymen Manzo, Prieto, Assemblywoman Quigley, Assemblymen Vas, Gordon, Sires, Panter, Wisniewski, Assemblywomen Cruz-Perez, Voss and Assemblyman Thompson

SYNOPSIS

"Independence, Dignity and Choice in Long-Term Care Act"; reallocates State long-term care expenditures.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/12/2006)

1 AN ACT concerning long-term care for Medicaid recipients and
2 supplementing Title 30 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the
8 "Independence, Dignity and Choice in Long-Term Care Act."

9

10 2. The Legislature finds and declares that:

11 a. The current population of adults 60 years of age and older in
12 New Jersey is about 1.4 million, and this number is expected to
13 double in size over the next 25 years;

14 b. A primary objective of public policy governing access to
15 long-term care in this State shall be to promote the independence,
16 dignity and lifestyle choice of older adults and persons with
17 physical disabilities or Alzheimer's disease and related disorders;

18 c. Many states are actively seeking to "rebalance" their long-
19 term care programs and budgets in order to support consumer
20 choice and offer more choices for older adults and persons with
21 disabilities to live in their homes and communities;

22 d. New Jersey has been striving to redirect long-term care away
23 from an over-reliance on institutional care toward more home and
24 community-based options; however, it is still often easier for older
25 adults and persons with disabilities to qualify for Medicaid long-
26 term care coverage if they are admitted to a nursing home than if
27 they seek to obtain services through one of the Medicaid home and
28 community-based long-term care options available in this State,
29 such as the Community Care Program for the Elderly and Disabled,
30 Assisted Living, Adult Family Care, Caregiver Assistance Program,
31 Adult Day Health Services, Traumatic Brain Injury, AIDS
32 Community Care Alternatives Program, Community Resources for
33 People with Disabilities, or Community Resources for People with
34 Disabilities Private Duty Nursing;

35 e. The federal "New Freedom Initiative" was launched in 2001
36 for the purpose of promoting the goal of independent living for
37 persons with disabilities; and Executive Order No. 13217, issued by
38 the President of the United States on June 18, 2001, called upon the
39 federal government to assist states and localities to swiftly
40 implement the 1999 United States Supreme Court decision in
41 *Olmstead v. L.C.* and directed federal agencies to evaluate their
42 policies, programs, statutes and regulations to determine whether
43 any should be revised or modified to improve the availability of
44 community-based services for qualified persons with disabilities;

45 f. Executive Order No. 100, issued by the Governor on March
46 23, 2004, directed the Commissioner of Health and Senior Services,
47 in consultation with the State Treasurer, to prepare an analysis and
48 recommendations for developing a global long-term care budgeting

1 process designed to provide the Department of Health and Senior
2 Services with the authority and flexibility to move Medicaid
3 recipients into the appropriate level of care based on their
4 individual needs, and to identify specific gaps and requirements
5 necessary to streamline paperwork and expedite the process of
6 obtaining Medicaid eligibility for home care options for those who
7 qualify;

8 g. Executive Order No. 31, issued by the Governor on April 21,
9 2005, established a "money follows the person" pilot program and
10 set aside funding in fiscal year 2006 for home and community-
11 based long-term care;

12 h. Older adults and those with physical disabilities or
13 Alzheimer's disease and related disorders that require a nursing
14 facility level of care should not be forced to choose between going
15 into a nursing home or giving up the medical assistance that pays
16 for their needed services, and thereby be denied the right to choose
17 where they receive those services; their eligibility for home and
18 community-based long-term care services under Medicaid should be
19 based upon the same income and asset standards as those used to
20 determine eligibility for long-term care in an institutional setting;
21 and

22 i. The enactment of this bill will ensure that, in the case of
23 Medicaid-funded long-term care services, "the money follows the
24 person" from nursing homes to home and community-based settings
25 when it does not compromise federal funding or services in the
26 nursing home and, in so doing, significantly expands the choices
27 available to consumers of these services and thereby fulfills the goal
28 of personal independence so highly valued by the growing number
29 of older adults and persons with disabilities in this State.

30

31 3. As used in this act:

32 "Commissioner" means the Commissioner of Health and Senior
33 Services.

34 "Funding parity between nursing home care and home and
35 community-based care" means that the distribution of the amounts
36 expended for these two categories of long-term care under the
37 Medicaid program reflects an appropriate balance between the
38 service delivery costs of those persons whose needs and preferences
39 can most appropriately be met in a nursing home and those persons
40 whose needs and preferences can most appropriately be met in a
41 home or community-based setting.

42 "Home and community-based care" means Medicaid home and
43 community-based long-term care options available in this State,
44 including, but not limited to, the Community Care Program for the
45 Elderly and Disabled, Assisted Living, Adult Family Care,
46 Caregiver Assistance Program, Adult Day Health Services,
47 Traumatic Brain Injury, AIDS Community Care Alternatives
48 Program, Community Resources for People with Disabilities, and

1 Community Resources for People with Disabilities Private Duty
2 Nursing.

3
4 4. a. (1) Beginning in fiscal year 2008, and in each succeeding
5 fiscal year through fiscal year 2013, the commissioner, in
6 consultation with the State Treasurer and the Commissioner of
7 Human Services and in accordance with the provisions of this
8 section, shall implement a process that rebalances the overall
9 allocation of funding within the Department of Health and Senior
10 Services for long-term care services through the expansion of home
11 and community-based services for persons eligible for long-term
12 care as defined by regulation of the commissioner. The expansion
13 of home and community-based services shall be funded, within the
14 existing level of appropriations, by diverting persons in need of
15 long-term care from nursing home placements to home and
16 community-based services.

17 (2) Beginning in fiscal year 2008, and in each succeeding fiscal
18 year through fiscal year 2013, funds equal to the amount of the
19 reduction in the projected growth of Medicaid expenditures for
20 nursing home care pursuant to paragraph (1) of this subsection, for
21 State dollars only plus the percentage anticipated for programs and
22 persons that will receive federal matching dollars, shall be
23 reallocated to home and community-based care through a global
24 budget and expended solely for such care, until the commissioner
25 determines that total Medicaid expenditures for long-term care have
26 been sufficiently rebalanced to achieve funding parity between
27 nursing home care and home and community-based care. Any
28 funds so reallocated, which are not expended in the fiscal year in
29 which they are reallocated, shall be reserved for expenditures for
30 home and community-based care in a subsequent fiscal year.

31 (3) Subject to federal approval, the home and community-based
32 services to which funds are reallocated pursuant to this act shall
33 include services provided under the Medicaid Enhanced
34 Community Options and Assisted Living Waivers.

35 (4) Notwithstanding the provisions of this subsection to the
36 contrary, this act shall not be construed to authorize a reduction in
37 funding for Medicaid-approved services based upon the approved
38 State Medicaid nursing home reimbursement methodology,
39 including existing cost screens used to determine daily rates, annual
40 rebasing and inflationary adjustments.

41 b. The commissioner, in consultation with the Commissioner of
42 Human Services, shall adopt modifications to the Medicaid long-
43 term care intake system that promote increased use of home and
44 community-based services. These modifications shall include, but
45 not be limited to, the following:

46 (1) commencing January 1, 2007, on a pilot basis in Atlantic and
47 Warren counties:

48 (a) the provision of home and community-based services

1 available under Medicaid, in addition to care management services,
2 pending completion of a formal Medicaid financial eligibility
3 determination for the recipient of services, for a period that does not
4 exceed a time limit established by the commissioner; except that the
5 cost of any services provided pursuant to this subparagraph to a
6 person who is subsequently determined to be ineligible for
7 Medicaid may be recovered from that person; and

8 (b) the use of mechanisms for making fast-track Medicaid
9 eligibility determinations, a revised clinical assessment instrument,
10 and a computerized tracking system for Medicaid long-term care
11 expenditures; and

12 (2) commencing March 1, 2008, expansion of the services and
13 measures provided for in paragraph (1) of this subsection to all of
14 the remaining counties in the State, subject to the commissioner
15 conducting or otherwise providing for an evaluation of the pilot
16 programs in Atlantic and Warren counties prior to that date and
17 determining from that evaluation that the pilot programs are cost-
18 effective and should be expanded Statewide.

19

20 5. The commissioner, in consultation with the Medicaid Long-
21 Term Care Funding Advisory Council established pursuant to this
22 act, shall:

23 a. no later than July 1, 2007, present a report to the Governor,
24 and to the Legislature pursuant to section 2 of P.L.1991, c.164
25 (C.52:14-19.1), that provides a detailed budget and management
26 plan for effectuating the purposes of this act, including a projected
27 schedule and procedures for the implementation and operation of
28 the Medicaid long-term care expenditure reforms required pursuant
29 thereto; and

30 b. no later than January 1, 2008, present a report to the
31 Governor, and to the Legislature pursuant to section 2 of P.L.1991,
32 c.164 (C.52:14-19.1), that documents the reallocation of funds to
33 home and community-based care pursuant to section 4 of this act,
34 and present an updated report no later than January 1 of each
35 succeeding year until the commissioner determines that total
36 Medicaid expenditures for long-term care have been sufficiently
37 rebalanced to achieve funding parity between nursing home care
38 and home and community-based care, at which point the
39 commissioner shall document and certify to the Governor and the
40 Legislature that such funding parity has been achieved.

41

42 6. The commissioner, in consultation with the Medicaid Long-
43 Term Care Funding Advisory Council established pursuant to this
44 act, shall:

45 a. Implement, by such time as the commissioner certifies to the
46 Governor and the Legislature that funding parity has been achieved
47 pursuant to subsection b. of section 5 of this act, a comprehensive
48 data system to track long-term care expenditures and services and

1 consumer profiles and preferences. The data system shall include,
2 but not be limited to: the number of vacant nursing home beds
3 annually and the number of nursing home residents transferred to
4 home and community-based care pursuant to this act; annual long-
5 term care expenditures for nursing home care and each of the home
6 and community based long-term care options available to Medicaid
7 recipients; and annual percentage changes in both long-term care
8 expenditures for, and the number of Medicaid recipients utilizing,
9 nursing home care and each of the home and community based
10 long-term care options, respectively;

11 b. Complete the following no later than January 1, 2008:

12 (1) implement a system of Statewide long-term care service
13 coordination and management designed to minimize administrative
14 costs, improve access to services, and minimize obstacles to the
15 delivery of long-term care services to people in need;

16 (2) identify home and community based long-term care service
17 models that are determined by the commissioner to be efficient and
18 cost-effective alternatives to nursing home care, and develop clear
19 and concise performance standards for those services for which
20 standards are not already available in a home and community-based
21 services waiver;

22 (3) develop and implement with the Commissioner of Human
23 Services a comprehensive consumer assessment instrument that is
24 designed to facilitate an expedited process to authorize the
25 provision of home and community-based care to a person through
26 presumptive eligibility prior to completion of a formal financial
27 eligibility determination; and

28 (4) develop and implement a comprehensive quality assurance
29 system with appropriate and regular assessments that is designed to
30 ensure that all forms of long-term care available to consumers in
31 this State are financially viable, cost-effective, and promote and
32 sustain consumer independence; and

33 c. Seek to make information available to the general public on a
34 Statewide basis, through print and electronic media, regarding the
35 various forms of long-term care available in this State and the rights
36 accorded to long-term care consumers by statute and regulation, as
37 well as information about public and nonprofit agencies and
38 organizations that provide informational and advocacy services to
39 assist long-term care consumers and their families.

40

41 7. a. There is established the Medicaid Long-Term Care
42 Funding Advisory Council within the Department of Health and
43 Senior Services. The advisory council shall meet at least quarterly
44 during each fiscal year until such time as the commissioner certifies
45 to the Governor and the Legislature that funding parity has been
46 achieved pursuant to subsection b. of section 5 of this act, and shall
47 be entitled to receive such information from the Departments of
48 Health and Senior Services, Human Services and the Treasury as

1 the advisory council deems necessary to carry out its
2 responsibilities under this act.

3 b. The advisory council shall:

4 (1) monitor and assess, and advise the commissioner on, the
5 implementation and operation of the Medicaid long-term care
6 expenditure reforms and other provisions of this act; and

7 (2) develop recommendations for a program to recruit and train
8 a stable workforce of home care providers, including
9 recommendations for changes to provider reimbursement under
10 Medicaid home and community-based care programs.

11 c. The advisory council shall comprise 13 members as follows:

12 (1) the commissioner, the Commissioner of Human Services and
13 the State Treasurer, or their designees, as ex officio members; and

14 (2) 10 public members to be appointed by the commissioner as
15 follows: one person appointed upon the recommendation of AARP;
16 one person upon the recommendation of the New Jersey
17 Association of Area Agencies on Aging, one person upon the
18 recommendation of the New Jersey Association of County Offices
19 for the Disabled; one person upon the recommendation of the
20 Health Care Association of New Jersey; one person upon the
21 recommendation of the New Jersey Association of Non-Profit
22 Homes for the Aging; one person upon the recommendation of the
23 New Jersey Hospital Association; one person upon the
24 recommendation of the Rutgers Center for State Health Policy; one
25 person upon the recommendation of the New Jersey Elder Rights
26 Coalition; one person upon the recommendation of a labor union
27 that represents home and community-based health care workers;
28 and one person who is a representative of the home care industry.

29 d. The advisory council shall organize as soon as possible after
30 the appointment of its members, and shall annually select from its
31 membership a chairman who shall serve until his successor is
32 elected and qualifies. The members shall also select a secretary
33 who need not be a member of the advisory council.

34 e. The department shall provide such staff and administrative
35 support to the advisory council as it requires to carry out its
36 responsibilities.

37

38 8. The commissioner, in consultation with the Commissioner of
39 Human Services, shall apply to the federal Centers for Medicare
40 and Medicaid Services for any waiver of federal requirements, or
41 for any State plan amendments or home and community-based
42 services waiver amendments, which may be necessary to obtain
43 federal financial participation for State Medicaid expenditures in
44 order to effectuate the purposes of this act.

45

46 9. The commissioner, in consultation with the Commissioner of
47 Human Services, shall track Medicaid long-term care expenditures
48 necessary to carry out the provisions of this act.

- 1 be met in a home or community-based setting.
- 2 • The home and community-based services to which funds are
3 reallocated pursuant to this bill are to include services provided
4 under the Medicaid Enhanced Community Options and Assisted
5 Living Waivers.
- 6 • The provisions of the bill are not to be construed to authorize a
7 reduction in funding for Medicaid-approved services based upon the
8 approved State Medicaid nursing home reimbursement
9 methodology, including existing cost screens used to determine
10 daily rates, annual rebasing and inflationary adjustments.
- 11 • The commissioner, in consultation with the Commissioner of
12 Human Services, is to adopt modifications to the Medicaid long-
13 term care intake system that promote increased use of home and
14 community-based services. These modifications are to include, but
15 not be limited to, the following:
- 16 -- commencing January 1, 2007, on a pilot basis in Atlantic and
17 Warren counties: the provision of home and community-based
18 services available under Medicaid, in addition to care management
19 services, pending completion of a formal Medicaid financial eligibility
20 determination for the recipient of services, for a period that does not
21 exceed a time limit established by the commissioner; except that the
22 cost of any services provided to a person who is subsequently
23 determined to be ineligible for Medicaid may be recovered from that
24 person; and the use of mechanisms for making fast-track Medicaid
25 eligibility determinations, a revised clinical assessment instrument,
26 and a computerized tracking system for Medicaid long-term care
27 expenditures; and
- 28 -- commencing March 1, 2008, expansion of the pilot programs to
29 all of the remaining counties, subject to the commissioner conducting
30 or otherwise providing for an evaluation of the pilot programs and
31 determining from that evaluation that the programs are cost-effective
32 and should be expanded Statewide.
- 33 • The commissioner, in consultation with the Medicaid Long-Term
34 Care Funding Advisory Council established pursuant to the bill, is
35 to:
- 36 -- no later than July 1, 2007, present a report to the Governor
37 and the Legislature that provides a detailed budget and management
38 plan for effectuating the purposes of the bill; and
- 39 -- no later than January 1, 2008, present a report to the Governor
40 and the Legislature that documents the reallocation of funds to
41 home and community-based care, and present an updated report no
42 later than January 1 of each succeeding year until the commissioner
43 determines that total Medicaid expenditures for long-term care have
44 been sufficiently rebalanced to achieve funding parity between
45 nursing home care and home and community-based care, at which
46 point the commissioner is to document and certify to the Governor
47 and the Legislature that funding parity has been achieved.

- 1 • The commissioner, in consultation with the Medicaid Long-Term
2 Care Funding Advisory Council, is directed to:
- 3 -- Implement a comprehensive data system to track long-term
4 care expenditures and services and consumer profiles and
5 preferences.
- 6 -- Complete the following no later than January 1, 2008:
- 7 (1) implement a system of Statewide long-term care service
8 coordination and management designed to minimize administrative
9 costs, improve access to services, and minimize obstacles to the
10 delivery of long-term care services to people in need;
- 11 (2) identify home and community based long-term care service
12 models that are determined by the commissioner to be efficient and
13 cost-effective alternatives to nursing home care, and develop clear
14 and concise performance standards for those services;
- 15 (3) develop and implement a comprehensive consumer
16 assessment instrument that is designed to facilitate an expedited
17 process to authorize the provision of home and community-based
18 care to a person prior to completion of a formal financial eligibility
19 determination; and
- 20 (4) develop and implement a comprehensive quality assurance
21 system with appropriate and regular assessments that is designed to
22 ensure that all forms of long-term care available to consumers in
23 this State are financially viable, cost-effective, and promote and
24 sustain consumer independence; and
- 25 -- Seek to make information available to the general public,
26 through print and electronic media, on the various forms of long-
27 term care available in this State and the rights accorded to long-
28 term care consumers by statute and regulation.
- 29 • The bill establishes a 13-member Medicaid Long-Term Care
30 Funding Advisory Council.
- 31 -- The advisory council is to: monitor and assess, and advise the
32 commissioner on, implementation of the provisions of the bill; and
33 develop recommendations for a program to recruit and train a stable
34 workforce of home care providers, including recommendations for
35 changes to provider reimbursement under Medicaid home and
36 community-based care programs.
- 37 -- The advisory council is to meet at least quarterly during each
38 fiscal year until such time as the commissioner certifies to the
39 Governor and the Legislature that funding parity has been achieved,
40 and is entitled to receive such information from the Departments of
41 Health and Senior Services, Human Services and the Treasury as
42 the advisory council deems necessary to carry out its
43 responsibilities under the bill.
- 44 -- The advisory council is to include:
- 45 (1) the commissioner, the Commissioner of Human Services and
46 the State Treasurer, or their designees, as ex officio members; and
- 47 (2) 10 public members to be appointed by the commissioner, of
48 whom one each is to represent AARP, the New Jersey Association

- 1 of Area Agencies on Aging, the New Jersey Association of County
2 Offices for the Disabled, the Health Care Association of New
3 Jersey, the New Jersey Association of Non-Profit Homes for the
4 Aging, the New Jersey Hospital Association, the Rutgers Center for
5 State Health Policy, the New Jersey Elder Rights Coalition, a labor
6 union that represents home and community-based health care
7 workers, and the home care industry, respectively.
- 8 -- DHSS is to provide staff and administrative support to the
9 advisory council as required to carry out its responsibilities.
- 10 • The commissioner, in consultation with the Commissioner of
11 Human Services, is directed to apply to the federal Centers for
12 Medicare and Medicaid Services for any waiver of federal
13 requirements, or for any State plan amendments, which may be
14 necessary to obtain federal financial participation for State Medicaid
15 expenditures in order to effectuate the purposes of the bill.
- 16 • Finally, a unique global budget appropriation line item for Medicaid
17 long-term care expenditures is to be included in the annual
18 appropriations act for FY 2008 and each succeeding fiscal year in
19 order to provide flexibility to align these expenditures with services
20 to be provided during each fiscal year as necessary to effectuate the
21 purposes of the bill.