

NO. 56. AN ACT RELATING TO LONG-TERM CARE WAIVER.

(H.543)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. LONG-TERM CARE MEDICAID 1115 WAIVER

(a) The department of aging and independent living shall implement the long-term care Medicaid 1115 waiver by rule in fiscal year 2006 upon approval from the Centers for Medicare and Medicaid Services. The rules for operation of the 1115 waiver shall include criteria and standards for eligibility, levels of assistance, assessments, and reviews, and the appeal and fair hearing process. Final proposed rules filed pursuant to this act shall be filed with the chair of the health access oversight committee created in Sec. 13 of No. 14 of the Acts of 1995. If the long-term care Medicaid 1115 waiver is included in a broader Medicaid waiver, including the “global commitment,” the provisions of this act shall apply to the relevant portions of that waiver.

(b) Outside the legislative session, the health access oversight committee shall have oversight for the development, implementation, and ongoing operation of any long-term care Medicaid waivers applied for and received by the agency of human services. The secretary of human services shall report to the committee upon its request and annually to the general assembly by January 15.

(c)(1) If the long-term care Medicaid 1115 waiver is approved, the department shall implement the waiver in such a manner as to assure that any individual receiving services on the date the waiver becomes effective shall

continue to receive appropriate services. The process for reassessing entitlement for services for individuals under this subdivision is as follows:

(A) The individual shall first be assessed under the new level of care criteria established under the waiver to determine entitlement to services.

(B) If the individual is no longer entitled to services under the new criteria, the individual shall be assessed under the Guidelines for Nursing Home Eligibility adopted in April 1997, which is the level of care criteria in effect prior to the waiver. If the individual is entitled to services under the Guidelines, the individual shall continue to receive services.

(C) If the individual is not entitled to services under subdivision (A) or (B) of this subdivision (1), the individual shall no longer receive services, but shall be treated appropriately under the new rules.

(2) The department shall adopt by rule a process by which an individual who is eligible for, but not entitled to, services and who is in the high needs group as defined by the waiver may apply for an exception to the entitlement rule if the individual has a critical need for long-term care services due to special circumstances.

(3) The department shall develop and maintain waiting lists both of applicants categorized by need level for whom there is insufficient funding to provide services under the long-term care Medicaid 1115 waiver and of individuals applying for long-term care services under state-funded programs.

(d) The department shall adopt by rule a process by which individuals entering the long-term care system are assessed and informed of their options prior to entering a nursing home. The rule shall ensure that the assessment and information is provided in a timely manner so as not to delay discharges from hospitals and shall include provisions for emergency admissions to nursing homes.

(e) The department shall prioritize the provision of homemaker services to individuals who have high needs as defined under the long-term care Medicaid 1115 waiver and are on the waiting list for long-term care services.

(f) If a modification in the rules is necessary outside the legislative session to ensure that the funding for entitled individuals is not jeopardized, the department shall file recommended modifications to the health access oversight committee. After the review and recommendation of the health access oversight committee or within three weeks of filing, whichever is earlier, the department may adopt interim changes by rule under the expedited rulemaking process set out in Sec. 27(b) of H.537 [Medicaid budget].

(g) Any savings realized due to the implementation of the long-term care Medicaid 1115 waiver shall be retained by the department and reinvested into providing home- and community-based services under the waiver. If at any time the agency reapplies for a Medicaid waiver to provide these services, it shall include a provision in the waiver that any savings shall be reinvested.

(h) “Long-term care” means care or services received by an individual in a nursing home, or through home- and community-based services designed to assist older Vermonters and people with disabilities to remain independent and avoid inappropriate institutionalization. “Home- and community-based services” include:

(1) services funded through a long-term care Medicaid 1115 waiver;

(2) services provided to individuals with traumatic brain injury through a Medicaid waiver;

(3) services provided in residential care homes and assisted living residences;

(4) assisted community care services;

(5) attendant services;

(6) homemaker services;

(7) services funded through the Older Americans Act;

(8) adult day services;

(9) home health services;

(10) respite services for families including an individual with Alzheimer’s disease;

(11) services provided by the Home Access Project of the Vermont Center for Independent Living;

(12) programs providing meals for young people with disabilities;

(13) services provided by the Sue Williams Freedom Fund of the Vermont Center for Independent Living;

(14) living skills services from the Vermont Association for the Blind and Visually Impaired;

(15) services under the Program for All-Inclusive Care of the Elderly (PACE);

(16) services under the Home Share Vermont program; and

(17) transportation services.

Sec. 1a. TASK FORCE ON THE FUTURE SUSTAINABILITY OF
NURSING HOMES

The commissioner of aging and independent living shall convene a task force to assist the commissioner in developing statewide recommendations on the future of nursing homes, including the Vermont Veterans' Home, in Vermont. The recommendations shall address the transition issues for nursing homes as more individuals use home- and community-based long-term care services, how nursing homes can convert the services offered to provide long-term care services differently, unmet needs for nursing home services for individuals, accessibility for individuals with disabilities in nursing homes, and the methods which nursing homes can use to become more resident-centered in the provision of long-term care. The task force shall include representatives from providers of long-term care and organizations representing individuals receiving long-term care. The department of aging and independent living

shall chair the task force and shall provide administrative support. The department of aging and independent living shall report to the house committee on human services and the senate committee on health and welfare on the recommendations developed under this section by January 15, 2007.

Sec. 1b. MORTALITY REPORT

The commissioners of the department of aging and independent living and the department of health, in consultation with other individuals and organizations and the state long-term care ombudsman, shall develop a plan for annually reporting, reviewing, and analyzing deaths of individuals who receive long-term care. The department of health shall provide public health statistics and consultation from the chief medical examiner. The commissioners shall report the plan to the house committee on human services and the senate committee on health and welfare by January 15, 2006. For the purposes of this section, “long-term care” shall have the same meaning as in 33 V.S.A. § 7051(1).

Sec. 2. LONG-TERM CARE OMBUDSMAN

The department of aging and independent living shall provide the long-term care ombudsman established under chapter 75 of Title 33 funding from the department's current appropriation to create two full-time equivalent positions to serve individuals who receive services under the long-term care Medicaid 1115 waiver.

Sec. 3. 33 V.S.A. chapter 75 is amended to read:

CHAPTER 75. STATE LONG-TERM CARE OMBUDSMAN

§ 7501. DEFINITIONS

For purposes of this chapter:

(1) “Long-term care” means care or services received by an individual in a long-term care facility or provided to an individual under the long-term care Medicaid 1115 waiver.

(2) “Long-term care facility” means a residential care home or an assisted living residence or nursing home as defined by section 7102 of this title.

~~(1)~~(3) “Office” means the office of the state long-term care ombudsman.

~~(2)~~(4) “Older person” means ~~a person~~ an individual who is 60 years of age or older.

~~(3)~~(5) “Ombudsman” means ~~a person~~ an individual who intervenes on behalf of a private individual to resolve complaints and, in this chapter, refers to any person or organization designated by the state ombudsman as part of the

office of the state long-term care ombudsman, in accordance with the Older Americans Act.

~~(4) “Long-term care facility” means a residential care home or nursing home as defined by section 7102 of this title.~~

§ 7502. OFFICE OF THE LONG-TERM CARE OMBUDSMAN
ESTABLISHED

The office of the long-term care ombudsman is established in the department of aging and ~~disabilities~~ independent living to represent the interests of older persons and persons with disabilities under the age of 60 ~~residing in receiving~~ long-term care facilities in accordance with the provisions of this chapter and the Older Americans Act. For the purposes of this section, long-term care facilities shall include facilities in which placements are made by, and facilities funded through, the department of ~~mental health and mental retardation~~ aging and independent living, division of disabilities and aging services. Subject to the provisions of 42 U.S.C. § 3058g, the department may operate the office and carry out the program, directly or by contract or other arrangement with any public agency or nonprofit private organization. The office shall be headed by an individual, to be known as the state long-term care ombudsman, who shall be selected from among individuals with expertise and experience in the fields of long-term care and advocacy.

§ 7503. RESPONSIBILITIES OF THE OFFICE

The office shall:

- (1) Investigate and resolve complaints on behalf of ~~residents of~~ individuals receiving long-term care ~~facilities~~.
- (2) Analyze and monitor the development and implementation of federal, state, and local laws, and of regulations and policies relating to long-term care, long-term care facilities, or providers of long-term care and recommend changes it deems appropriate.
- (3) Provide information to the public, agencies, legislators and others, as it deems necessary, regarding problems and concerns of ~~residents of~~ individuals receiving long-term care ~~facilities~~, including recommendations related to such problems and concerns.
- (4) Develop and establish policies and procedures for involvement by volunteers in the work of the office.
- (5) Promote the development of citizen and consumer organizations in the work of the office and the quality of life of ~~residents of~~ individuals receiving long-term care ~~facilities~~.
- (6) Establish by rule procedures for protecting the confidentiality of its clients as required by the Older Americans Act.
- (7) Establish by rule qualifications and training for ombudsmen, monitor their performance, and establish by rule procedures for certifying staff and volunteer ombudsmen.

(8) Train persons and organizations in advocating for the interests of ~~residents of~~ individuals receiving long-term care facilities.

(9) Develop and implement a uniform reporting system to collect and analyze information relating to complaints by individuals receiving long-term care and conditions in long-term care facilities.

(10) Submit to the general assembly and the governor on or before January 15 of each year a report on complaints by individuals receiving long-term care, conditions ~~and care~~ in long-term care facilities, and the quality of long-term care and recommendations to address identified problems.

(11) Perform such other activities as the office deems necessary on behalf of ~~residents of~~ individuals receiving long-term care facilities.

§ 7504. AUTHORITY OF THE STATE OMBUDSMAN

In fulfilling the responsibilities of the office, the state ombudsman may:

(1) Hire or contract with persons or organizations to fulfill the purposes of this chapter.

(2) Communicate and visit with any resident of a individual receiving long-term care facility, provided that the ombudsman shall obtain permission from the individual or the individual's guardian or legal representative to enter the individual's home. Toward that end, long-term care facilities shall provide the state ombudsman access to their facilities, and long-term care providers shall ensure the state ombudsman access to individuals for whom they provide long-term care.

(3) ~~With the written consent of the resident or the resident's guardian or legal representative, review the records of residents of long-term care facilities. Toward that end, long-term care facilities shall provide the state ombudsman access to records relating to their residents.~~ Have appropriate access to review the medical and social records of an individual receiving long-term care services as required by 42 U.S.C. § 3058g(b).

(4) Pursue administrative, judicial, or other remedies on behalf of ~~residents of~~ individuals receiving long-term care facilities, including access orders from a district or superior judge when access under subdivision (2) or (3) of this section has been unreasonably denied and all other reasonable attempts to gain access have been pursued and have failed.

(5) Delegate to ombudsmen any part of the state ombudsman's authority.

(6) Adopt rules necessary to carry out the provisions of this chapter and those of the Older Americans Act relating to the ombudsman program.

(7) Take such further actions as are necessary in order to fulfill the purposes of this chapter.

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§ 7509. CONFLICT OF INTEREST

(a) The department by rule shall prohibit any ombudsman or immediate family member of any ombudsman from having any interest in a long-term

care facility or provider of long-term care which creates a conflict of interest in carrying out the ombudsman's responsibilities under this chapter.

(b) The state ombudsman, consistent with the requirements of the Older Americans Act, shall be able to speak on behalf of the interest of ~~residents of~~ individuals receiving long-term care ~~facilities~~ and to carry out all duties prescribed in this chapter without being made subject to any disciplinary or retaliatory personnel or other action as a consequence of so doing. The commissioner of aging and ~~disabilities~~ independent living shall establish a committee of no fewer than five persons, who represent the interests of ~~residents of~~ individuals receiving long-term care ~~facilities~~ and who are not state employees, for the purpose of assuring that the state ombudsman is able to carry out all prescribed duties without a conflict of interest. The commissioner shall solicit from this committee its assessment of the state ombudsman's capacity to perform in accordance with this subsection and shall submit that assessment as an appendix to the report required under ~~section~~ subdivision 7503(10) of this title. The department, in consultation with this committee, shall establish rules which implement this subsection.

Sec. 3a. NURSING HOME RATES

(a) Any change in the method for calculating nursing home rates to a calculation based on a certain number of nursing home bed days shall follow the process established in chapter 25 of Title 3.

(b) The agency of human services shall amend the Medicaid Payment Rates for Long Term Care Facilities Rules to include the following criteria to be considered by the agency when determining eligibility for a special rate under Rule 10.3:

(13) the ratio of individuals receiving care in a nursing facility to individuals receiving home- and community-based services in the county in which the facility is located.

Sec. 4. Sec. 121(h) of No. 62 of the Acts of 1999 is repealed and 33 V.S.A.

§ 1902 is amended to read:

§ 1902. QUALIFICATION FOR MEDICAL ASSISTANCE

(a) In determining whether a person is medically indigent, the ~~commissioner~~ secretary of the agency of human services shall prescribe and use an income standard and requirements for eligibility which will permit the receipt of federal matching funds under Title XIX of the Social Security Act.

(b) Workers with disabilities whose income is less than 250 percent of the federal poverty level shall be eligible for Medicaid. The income also must not exceed the Medicaid protected income level for one or the supplemental security income (SSI) payment level for two, whichever is higher, after disregarding all earnings of the working individual with disabilities, any Social Security disability insurance benefits, and any veteran's disability benefits. Earnings of the working individual with disabilities shall be documented by evidence of Federal Insurance Contributions Act tax payments,

Self-employment Contributions Act tax payments, or a written business plan approved and supported by a third-party investor or funding source. The resource limit for this program shall be \$5,000.00 for an individual and \$6,000.00 for a couple at the time of enrollment in the program. Assets attributable to earnings made after enrollment in the program shall be disregarded.

Sec. 5. EFFECTIVE DATE

This act shall take effect upon passage.

Approved: June 13, 2005