

By Senator Klein

28-1269-98

See HB 551

1                                   A bill to be entitled  
2           An act relating to persons with disabilities;  
3           creating ss. 410.701, 410.702, 410.703,  
4           410.704, 410.705, 410.706, F.S.; establishing  
5           the home and community-based personal care  
6           services for persons with disabilities program  
7           in the Department of Children and Family  
8           Services; directing the Agency for Health Care  
9           Administration to request a waiver of Medicaid  
10          regulations; providing conditions for  
11          implementation; providing a repeal date;  
12          requiring reports; amending s. 400.0065, F.S.;  
13          directing the State Long-Term Care Ombudsman to  
14          promote the home and community-based personal  
15          care services for persons with disabilities  
16          program among disabled adults who would  
17          otherwise require nursing home care; providing  
18          an effective date.

19  
20 Be It Enacted by the Legislature of the State of Florida:

21  
22           Section 1. Sections 410.701, 410.702, 410.703,  
23 410.704, 410.705, and 410.706, Florida Statutes, are created  
24 to read:

25           410.701 Short Title.--Sections 410.701-410.706 may be  
26 cited as "The Home and Community-based Personal Care Services  
27 for Persons with Disabilities Act."

28           410.702 Legislative Intent.--It is the intent of the  
29 Legislature to provide, under federal authorization and  
30 subject to available appropriations, home and community-based  
31 personal care services for persons with disabilities who would

1 otherwise require nursing home care. The Legislature intends  
2 through ss. 410.701-410.706 to further develop the continuum  
3 of home and community-based services for disabled adults.

4 410.703 Definitions.--As used in ss. 410.701-410.706,  
5 the term:

6 (1) "Activities of daily living" means those tasks  
7 that are necessary to maintain a safe and healthy level of  
8 daily living, including household and community-level  
9 activities.

10 (2) "Assistive Technology" means any piece of  
11 equipment, product, or device that is used to increase,  
12 maintain, improve, or replace functional capabilities of  
13 individuals with disabilities.

14 (3) "Department" means the Department of Children and  
15 Family Services.

16 (4) "Eligible person" means a person:

17 (a) Who is at least 18 years of age, but under 60  
18 years of age;

19 (b) Who has a permanent physical or mental limitation  
20 that restricts his or her ability to perform the normal  
21 activities of daily living and impedes his or her capacity to  
22 live independently or with relatives or friends without the  
23 provision of community-based services;

24 (c) Who is eligible for Medicaid Nursing Home (NH);  
25 and

26 (d) For whom the total reimbursement for in-home  
27 personal care services would not exceed the costs of  
28 institutionalization in a nursing home for the same period.

29 (5) "Independent living skills training" means  
30 structured, nonresidential training services that are directed  
31 at the development and maintenance of community living skills

1 and are provided on a regularly scheduled basis for one or  
2 more days per week to allow a recipient to function at the  
3 recipient's maximum potential. When required, these services  
4 should include, but should not be limited to, social skills  
5 training that allows for reintegration into the community,  
6 budgeting and financial issues, and self-advocacy training.

7 (6) "Personal care assistance" means assistance with  
8 eating, bathing, dressing, personal hygiene, and activities of  
9 daily living, including assistance with the preparation but  
10 not the cost of meals and homemaker services that are  
11 necessary for the health and safety of the recipient.

12 (7) "Supported living" means assistance or support  
13 designed to maximize or maintain independence and  
14 self-direction at different intervals in time.

15 410.704 Federal waiver and duties of department.--

16 (1) The Agency for Health Care Administration shall  
17 seek any necessary waiver of Medicaid regulations from the  
18 Federal Government to develop and implement a home and  
19 community-based personal care services program for persons  
20 with disabilities needing personal care services.

21 (2) The department shall design and operate in each  
22 district a program to provide home and community-based  
23 personal care services to eligible persons. Eligibility is  
24 limited to Medicaid-eligible persons with disabilities whose  
25 need for personal care services meet the level of service  
26 provided in a nursing home environment. Services provided  
27 under ss. 410.701-410.706 must be offered at a level required  
28 to maintain eligibility under s. 410.703.

29 (3) The program content of personal care services for  
30 eligible persons may be established in department rules to the  
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1 extent authorized or required by federal waiver, but must  
2 include at least the following:  
3 (a) Independent living skills training, to be  
4 indicated in the eligible person's plan of care and provided  
5 by contracting through community-level, nonprofit,  
6 disability-related organizations;  
7 (b) In-home residential care as needed, including, but  
8 not limited to:  
9 1. Supported living;  
10 2. Personal care assistance;  
11 3. Respite care;  
12 4. Adult day care; and  
13 5. Interpreter services.  
14 (c) Environmental modifications necessary to increase  
15 the accessibility and functionality of the home environment to  
16 a level usable by the eligible person. Modifications made to  
17 rented or leased property must hold back sufficient funds to  
18 comply with the Fair Housing Act Amendments of 1988, which  
19 require that certain modifications be returned to their  
20 original condition upon fulfillment of the leasing agreement;  
21 (d) Assistive technology;  
22 (e) Medical equipment or supplies; and  
23 (f) Transportation services as provided by the local  
24 paratransit service provider.  
25 (4) The department shall provide a system of  
26 reimbursement for services provided under ss. 410.701-410.706  
27 that encourages both the most cost-effective provision of  
28 services, and the widest possible range of service options for  
29 the eligible person.  
30 (5) An eligible person shall, upon acceptance into the  
31 waiver program, select one or more vendors to provide the

1 services under ss. 410.701-410.706. An eligible person may not  
2 select a vendor with which the eligible person has any current  
3 professional relationship, excluding previous or current  
4 experience as a client of the vendor's services or which is  
5 owned or operated by a member of the eligible person's family.

6 (6) The department shall, subject to appropriation,  
7 use available federal, state, local, and private funds  
8 including, but not limited to, Medicaid funds available under  
9 Title XIX of the Federal Social Security Act, as amended, to  
10 carry out the purposes of ss. 410.701-410.706.

11 (7) The department shall adopt rules concerning the  
12 certification of agencies as Medicaid providers for the  
13 purposes of ss. 410.701-410.706, fiscal and administrative  
14 procedures for reviewing plans of care, reimbursement rates,  
15 and the scope, duration, and content of programs and the  
16 eligibility for specific services provided under ss.  
17 410.701-410.706.

18 410.705 Implementation contingent upon federal  
19 waiver.--

20 (1) The implementation of ss. 410.701-410.706 is  
21 conditioned upon the issuance of any necessary waiver by the  
22 Federal Government and available appropriations. The  
23 provisions of ss. 410.701-410.706 shall be implemented to the  
24 extent authorized by federal waiver. If necessary, the  
25 department shall propose legislation that conforms with the  
26 waiver provisions no later than the next regular legislative  
27 session following the issuance of the waiver.

28 (2) The provisions of ss. 410.701-410.706 which are  
29 approved by the Federal Government and are authorized by  
30 federal waiver shall be implemented only for so long as  
31 specified in the federal waiver, unless otherwise extended by

1 the Federal Government. The department shall provide written  
2 notice of the termination date of the waiver to the President  
3 of the Senate and the Speaker of the House of Representatives.

4 (3) Sections 410.701-410.706 are repealed July 1,  
5 2004.

6 Section 410.706 Biennial report.--Upon implementation  
7 of ss. 410.701-410.706 and prior to the end of every second  
8 year thereafter, the department shall issue a report to the  
9 President of the Senate and the Speaker of the House of  
10 Representatives, which must contain, at a minimum: the number  
11 of individuals participating in the waiver program; the  
12 percentage change in participation from the previous period,  
13 if applicable; and strategies for increasing participation, if  
14 current levels are below maximum enrollment levels set by the  
15 federal waiver.

16 Section 2. Subsection (2) of section 400.0065, Florida  
17 Statutes, is amended to read:

18 400.0065 State Long-Term Care Ombudsman; duties and  
19 responsibilities; conflict of interest.--

20 (2) The State Long-Term Care Ombudsman shall have the  
21 duty and authority to:

22 (a) Assist and support the efforts of the State  
23 Long-Term Care Ombudsman Council in the establishment and  
24 coordination of district ombudsman councils throughout the  
25 state.

26 (b) Perform the duties specified in state and federal  
27 law, rules, and regulations.

28 (c) Within the limits of federal and state funding  
29 authorized and appropriated, employ such personnel, including  
30 staff for district ombudsman councils, as are necessary to  
31 perform adequately the functions of the office and provide or

1 contract for legal services to assist the state and district  
2 ombudsman councils in the performance of their duties. Staff  
3 positions for each district ombudsman council may be  
4 established as career service positions, and shall be filled  
5 in consultation with the respective district ombudsman  
6 council.

7 (d) Contract for services necessary to carry out the  
8 activities of the office.

9 (e) Apply for, receive, and accept grants, gifts, or  
10 other payments, including, but not limited to, real property,  
11 personal property, and services from a governmental entity or  
12 other public or private entity or person, and make  
13 arrangements for the use of such grants, gifts, or payments.

14 (f) Perform the duties specified in state and federal  
15 law without interference by officials of the Department of  
16 Elderly Affairs, the Agency for Health Care Administration, or  
17 the Department of Health and Rehabilitative Services. The  
18 ombudsman shall report to the Governor, the President of the  
19 Senate, and the Speaker of the House of Representatives  
20 whenever organizational or departmental policy issues threaten  
21 the ability of the Office of State Long-Term Care Ombudsman to  
22 carry out its duties under state or federal law.

23 (g) Coordinate, to the greatest extent possible, state  
24 and district ombudsman services with the protection and  
25 advocacy systems for individuals with developmental  
26 disabilities and mental illnesses and with legal assistance  
27 programs for the poor through adoption of memoranda of  
28 understanding and other means.

29 (h) Inform potentially eligible persons under ss.  
30 410.701-410.706 with a priority of contacting those  
31 potentially eligible persons already living in nursing homes,

1 of the existence of the various waiver programs available,  
2 including, but not limited to, home and community-based  
3 personal care services for persons with disabilities;

4 (i) Assist potentially eligible persons under ss.  
5 410.701-410.706 with application procedures necessary to  
6 participate in the waiver program; and

7 (j) Promote waiver programs among persons with  
8 disabilities as a viable option to institutionalization.

9 Section 3. This act shall take effect upon becoming a  
10 law.

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13 LEGISLATIVE SUMMARY

14 Creates the home and community-based personal care  
15 services for persons with disabilities program in the  
16 Department of Children and Family Services for disabled  
17 adults who would otherwise require nursing home care.  
18 Directs the Agency for Health Care Administration to  
19 request a waiver of Medicaid regulations. Provides  
20 conditions for implementation of the program and directs  
21 the State Long-Term Care Ombudsman to promote the  
22 program.  
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