

By Senator Brown-Waite

10-1246-02

See HB 703

1 A bill to be entitled
2 An act relating to Medicaid home and
3 community-based services; creating s. 409.221,
4 F.S.; creating the "Florida Consumer-Directed
5 Care Act"; providing legislative findings;
6 providing legislative intent; establishing the
7 consumer-directed care program; providing for
8 consumer selection of certain long-term care
9 services and providers; providing for
10 interagency agreements between the Agency for
11 Health Care Administration and the Departments
12 of Elderly Affairs, Health, and Children and
13 Family Services; providing for program
14 eligibility and enrollment; providing
15 definitions; providing for consumer budget
16 allowances and purchasing guidelines;
17 specifying authorized services; providing roles
18 and responsibilities of consumers, the agency
19 and departments, and fiduciary intermediaries;
20 providing background screening requirements for
21 persons who render care under the program;
22 providing rulemaking authority of the agency
23 and departments; requiring the agency to apply
24 for federal waivers as necessary; requiring
25 ongoing program reviews and annual reports;
26 providing an effective date.

28 Be It Enacted by the Legislature of the State of Florida:

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30 Section 1. Section 409.221, Florida Statutes, is
31 created to read:

1 409.221 Consumer-directed care program.--
2 (1) SHORT TITLE.--This section may be cited as the
3 "Florida Consumer-Directed Care Act."
4 (2) LEGISLATIVE FINDINGS.--The Legislature finds that
5 alternatives to institutional care, such as in-home and
6 community-based care, should be encouraged. The Legislature
7 finds that giving recipients of in-home and community-based
8 services the opportunity to select the services they need and
9 the providers they want, including family and friends,
10 enhances their sense of dignity and autonomy. The Legislature
11 also finds that providing consumers choice and control, as
12 tested in current research and demonstration projects, has
13 been beneficial and should be developed further and
14 implemented statewide.
15 (3) LEGISLATIVE INTENT.--It is the intent of the
16 Legislature to nurture the autonomy of those citizens of the
17 state, of all ages, who have disabilities by providing the
18 long-term care services they need in the least restrictive,
19 appropriate setting. It is the intent of the Legislature to
20 give such individuals more choices in and greater control over
21 the purchased long-term care services they receive.
22 (4) CONSUMER-DIRECTED CARE.--
23 (a) Program established.--The Agency for Health Care
24 Administration shall establish the consumer-directed care
25 program which shall be based on the principles of consumer
26 choice and control. The agency shall establish interagency
27 cooperative agreements with and shall work with the
28 Departments of Elderly Affairs, Health, and Children and
29 Family Services to implement and administer the program. The
30 program shall allow enrolled persons to choose the providers
31 of services and to direct the delivery of services, to best

1 meet their long-term care needs. The program must operate
2 within the funds appropriated by the Legislature.

3 (b) Eligibility and enrollment.--Persons who are
4 enrolled in one of the Medicaid home and community-based
5 waiver programs and are able to direct their own care, or to
6 designate an eligible representative, may choose to
7 participate in the consumer-directed care program.

8 (c) Definitions.--For purposes of this section, the
9 term:

10 1. "Budget allowance" means the amount of money made
11 available each month to a consumer to purchase needed
12 long-term care services, based on the results of a functional
13 needs assessment.

14 2. "Consultant" means an individual who provides
15 technical assistance to consumers in meeting their
16 responsibilities under this section.

17 3. "Consumer" means a person who has chosen to
18 participate in the program, has met the enrollment
19 requirements, and has received an approved budget allowance.

20 4. "Fiscal intermediary" means an entity approved by
21 the agency that helps the consumer manage the consumer's
22 budget allowance, retains the funds, processes employment and
23 tax information, reviews records to ensure correctness, writes
24 paychecks to providers, and delivers paychecks to the consumer
25 for distribution to providers and caregivers.

26 5. "Provider" means:

27 a. A person licensed or otherwise permitted to render
28 services eligible for reimbursement under this program for
29 whom the consumer is not the employer of record; or

30 b. A consumer-employed caregiver for whom the consumer
31 is the employer of record.

1 6. "Representative" means an uncompensated individual
2 designated by the consumer to assist in managing the
3 consumer's budget allowance and needed services.

4 (d) Budget allowances.--Consumers enrolled in the
5 program shall be given a monthly budget allowance based on the
6 results of their assessed functional needs and the financial
7 resources of the program. Consumers shall receive the budget
8 allowance directly from an agency-approved fiscal
9 intermediary. Each department shall develop purchasing
10 guidelines, approved by the agency, to assist consumers in
11 using the budget allowance to purchase needed, cost-effective
12 services.

13 (e) Services.--Consumers shall use the budget
14 allowance only to pay for home and community-based services
15 that meet the consumer's long-term care needs and are a
16 cost-efficient use of funds. Such services may include, but
17 are not limited to, the following:

18 1. Personal care.

19 2. Homemaking and chores, including housework, meals,
20 shopping, and transportation.

21 3. Home modifications and assistive devices which may
22 increase the consumer's independence or make it possible to
23 avoid institutional placement.

24 4. Assistance in taking self-administered medication.

25 5. Day care and respite care services, including those
26 provided by nursing home facilities pursuant to s. 400.141(6)
27 or by adult day care facilities licensed pursuant to s.
28 400.554.

29 (f) Consumer roles and responsibilities.--Consumers
30 shall be allowed to choose the providers of services, as well
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1 as when and how the services are provided. Providers may
2 include a consumer's neighbor, friend, spouse, or relative.
3 1. In cases where a consumer is the employer of
4 record, the consumer's roles and responsibilities include, but
5 are not limited to, the following:
6 a. Developing a job description.
7 b. Selecting caregivers and submitting information for
8 the background screening as required in s. 435.05.
9 c. Communicating needs, preferences, and expectations
10 about services being purchased.
11 d. Providing the fiscal intermediary with all
12 information necessary for provider payments and tax
13 requirements.
14 e. Ending the employment of an unsatisfactory
15 caregiver.
16 2. In cases where a consumer is not the employer of
17 record, the consumer's roles and responsibilities include, but
18 are not limited to, the following:
19 a. Communicating needs, preferences, and expectations
20 about services being purchased.
21 b. Ending the services of an unsatisfactory provider.
22 c. Providing the fiscal agent with all information
23 necessary for provider payments and tax requirements.
24 (g) Agency and departments roles and
25 responsibilities.--The agency's and the departments' roles and
26 responsibilities include, but are not limited to, the
27 following:
28 1. Assessing each consumer's functional needs, helping
29 with the service plan, and providing ongoing assistance with
30 the service plan.
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1 2. Offering the services of consultants who shall
2 provide training, technical assistance, and support to the
3 consumer.

4 3. Completing the background screening for providers.

5 4. Approving fiscal intermediaries.

6 5. Establishing the minimum qualifications for all
7 caregivers and providers and being the final arbiter of the
8 fitness of any individual to be a caregiver or provider.

9 (h) Fiscal intermediary roles and
10 responsibilities.--The fiscal intermediary's roles and
11 responsibilities include, but are not limited to, the
12 following:

13 1. Providing recordkeeping services.

14 2. Retaining the consumer-directed care funds,
15 processing employment and tax information, reviewing records
16 to ensure correctness, writing paychecks to providers, and
17 delivering paychecks to the consumer for distribution.

18 (i) Background screening requirements.--All persons
19 who render care under this section shall comply with the
20 requirements of s. 435.05. Persons shall be excluded from
21 employment pursuant to s. 435.06.

22 1. Persons excluded from employment may request an
23 exemption from disqualification, as provided in s. 435.07.
24 Persons not subject to certification or professional licensure
25 may request an exemption from the agency. In considering a
26 request for an exemption, the agency shall comply with the
27 provisions of s. 435.07.

28 2. The agency shall, as allowable, reimburse
29 consumer-employed caregivers for the cost of conducting
30 background screening as required by this section.

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1 (j) Rules; federal waivers.--In order to implement
2 this section:

3 1. The agency and the Departments of Elderly Affairs,
4 Health, and Children and Family Services are authorized to
5 adopt and enforce rules.

6 2. The agency shall take all necessary action to
7 ensure state compliance with federal regulations. The agency
8 shall apply for any necessary federal waivers needed to
9 implement the program.

10 (k) Reviews and reports.--The agency and the
11 Departments of Elderly Affairs, Health, and Children and
12 Family Services shall each, on an ongoing basis, review and
13 assess the implementation of the consumer-directed care
14 program. By January 15 of each year, the agency shall submit a
15 written report to the Legislature that includes each
16 department's review of the program and contains
17 recommendations for improvements to the program.

18 Section 2. This act shall take effect July 1, 2002.
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LEGISLATIVE SUMMARY

Creates the "Florida Consumer-Directed Care Act."
Provides legislative findings and intent. Establishes a
consumer-directed care program to provide for consumer
choice and control in the selection, purchase, and
delivery of Medicaid long-term care in-home and
community-based services. Provides for interagency
agreements between the Agency for Health Care
Administration and the Departments of Elderly Affairs,
Health, and Children and Family Services. Provides for
program eligibility and enrollment. Provides definitions.
Provides for consumer budget allowances and purchasing
guidelines. Specifies authorized services. Provides roles
and responsibilities of the consumer, the agency, the
departments, and fiscal intermediaries. Provides
background screening requirements for persons who render
care under the program. Provides rulemaking authority of
the agency and departments. Directs the agency to apply
for any necessary federal waivers. Requires the agency
and departments to review the program and provide annual
reports to the Legislature.