

Independence, Dignity and Choice in Long-Term Care

This Act is designed to balance funding between programs that pay for nursing home care and programs that pay for home and community-based care to people who need long-term care. The Act defines “funding parity between nursing home care and home and community-based care” to mean that the distribution of the amounts expended for these two categories of long-term care under the Medicaid program reflects an appropriate balance between the service delivery costs of those people whose needs and preferences can most appropriately be met in a nursing home and those people whose needs and preferences can most appropriately be met in a home or community-based setting.

The Act directs the state commissioners of aging and human services to adopt modifications to the Medicaid Long-Term Care Intake System to promote increased use of home and community-based services. These include:

- implementing a comprehensive data system to track long-term care expenditures and services and consumer profiles and preferences;
- implementing a system of statewide long-term care service coordination and management designed to minimize administrative costs, improve access to services, and minimize obstacles to the delivery of long-term care services to people in need;
- identifying home and community-based long-term care service models that are determined to be efficient and cost-effective alternatives to nursing home care, and develop clear and concise performance standards for those services;
- developing and implementing a comprehensive consumer assessment instrument that is designed to facilitate an expedited process to authorize the provision of home and community-based care to a person prior to completion of a formal financial eligibility determination;
- developing and implementing a comprehensive quality assurance system with appropriate and regular assessments that is designed to ensure that all forms of long-term care available to consumers in the state are financially viable, cost-effective, and promote and sustain consumer independence; and
- seeking to make information available to the general public, through print and electronic media, on the various forms of long-term care available in the state and the rights accorded to long-term care consumers by statute and regulation.

This Act establishes a 15-member Medicaid Long-Term Care Funding Advisory Council. The Advisory Council is to monitor the implementation of the Act to develop recommendations to help recruit and train a stable workforce of home care providers and for changes to provider reimbursement under Medicaid home and community-based care programs. The Advisory Council is to meet at least quarterly during each fiscal year until such time as the state commissioner of aging certifies to the Governor and the Legislature that funding parity has been achieved.

Finally, the Act establishes a Unique Global Budget Appropriation Line Item for Medicaid long-term care expenditures in the Annual Appropriations Act for FY 2008 and each succeeding fiscal year in order to provide flexibility to align these expenditures with services to be provided during each fiscal year as necessary to effectuate the purposes of the bill.

Submitted as:

New Jersey

[Chapter 23, Public Laws of 2006](#)

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as the “Independence, Dignity and Choice
2 in Long-Term Care Act.”

3
4 Section 2. [*Findings, Declarations Relative to Long-Term Care for Medicaid Recipients.*]
5 The Legislature finds and declares that:

6 a. The current population of adults [60] years and older in this state is [insert
7 number] and this number is expected to [double] in size over the next [25] years;

8 b. A primary objective of public policy governing access to long-term care in this
9 state shall be to promote the independence, dignity and lifestyle choice of older adults and people
10 with physical disabilities or Alzheimer’s disease and related disorders;

11 c. Many states are actively seeking to “rebalance” their long-term care programs
12 and budgets in order to support consumer choice and offer more choices to older adults and people
13 with disabilities to live in their homes and communities;

14 d. This state has been striving to redirect long-term care away from an over-reliance
15 on institutional care toward home and community-based options;

16 e. It is still easier for older adults and people with disabilities to qualify for
17 Medicaid long-term care coverage if they are admitted to a nursing home than if they seek to
18 obtain services through one of the Medicaid home and community-based long-term care options
19 available in this state;

20 f. Older adults and those with physical disabilities or Alzheimer’s disease and
21 related disorders that require a nursing facility level of care should not be forced to choose
22 between going into a nursing home or giving up the medical assistance that pays for their needed
23 services, and thereby be denied the right to choose where they receive those services;

24 g. Eligibility for home and community-based long-term care services under
25 Medicaid should be based upon the same income and asset standards as those used to determine
26 eligibility for long-term care in an institutional setting; and

27 h. This bill ensures that, in the case of Medicaid-funded long-term care services,
28 “the money follows the person” to allow maximum flexibility between nursing homes and home
29 and community-based settings.

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31 Section 3. [*Definitions Relative to Long-Term Care for Medicaid Recipients.*] As used in
32 this Act:

33 a. “Commissioner” means the [Commissioner of Health and Senior Services].

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

40 c. “Home and community-based care” means Medicaid home and community-
41 based long-term care options available in this state, including, but not limited to, the [Community
42 Care Program for the Elderly and Disabled, Assisted Living, Adult Family Care, Caregiver
43 Assistance Program, Adult Day Health Services, Traumatic Brain Injury, AIDS Community Care
44 Alternatives Program, Community Resources for People with Disabilities, and Community
45 Resources for People with Disabilities Private Duty Nursing].

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Section 4. *[Process to Rebalance Allocation of Funding for Expansion of Long-Term Care Services; Pilot Program, Use Statewide.]*

(1) a. Beginning in [fiscal year 2008, and in each succeeding fiscal year through fiscal year 2013], the [commissioner of aging], in consultation with the [State Treasurer] and the [Commissioner of Human Services] and in accordance with the provisions of this section, shall implement a process that rebalances the overall allocation of funding within the [Department of Health and Senior Services] for long-term care services through the expansion of home and community-based services for people eligible for long-term care as defined by regulation of the [commissioner]. The expansion of home and community-based services shall be funded, within the existing level of appropriations, by diverting people in need of long-term care to allow maximum flexibility between nursing home placements and home and community-based services. The [State Treasurer], after review and analysis, shall determine the transfer of such funding to home and community-based services provided by the [Departments of Health and Senior Services] and [Human Services] as is necessary to effectuate the purposes of this Act.

b. Beginning in [fiscal year 2008], and in each succeeding [fiscal year through fiscal year 2013], funds equal to the amount of the reduction in the projected growth of Medicaid expenditures for nursing home care pursuant to paragraph (1) of this subsection, for state dollars only plus the percentage anticipated for programs and people that will receive federal matching dollars, shall be reallocated to home and community-based care through a global budget and expended solely for such care, until the [commissioner] determines that total Medicaid expenditures for long-term care have been sufficiently rebalanced to achieve funding parity between nursing home care and home and community-based care. Any funds so reallocated, which are not expended in the fiscal year in which they are reallocated, shall be reserved for expenditures for home and community-based care in a subsequent fiscal year.

c. Subject to federal approval, the home and community-based services to which funds are reallocated pursuant to this Act shall include services designated by the [commissioner], in consultation with the [Commissioner of Human Services] and the [Medicaid Long-Term Care Funding Advisory Council] established pursuant to this Act.

d. Notwithstanding the provisions of this subsection to the contrary, this Act shall not be construed to authorize a reduction in funding for Medicaid-approved services based upon the approved State Medicaid nursing home reimbursement methodology, including existing cost screens used to determine daily rates, annual rebasing and inflationary adjustments.

(2) The [commissioner], in consultation with the [Commissioner of Human Services], shall adopt modifications to the Medicaid Long-Term Care Intake System that promote increased use of home and community-based services. These modifications shall include the following:

a. commencing [March 1, 2007], on a pilot basis in [counties] pursuant to [insert citation]:

(i) the provision of home and community-based services available under Medicaid, as designated by the [commissioner], in consultation with the [Commissioner of Human Services] and the [Medicaid Long-Term Care Funding Advisory Council] established pursuant to this Act, pending completion of a formal Medicaid Financial Eligibility Determination for the recipient of services, for a period that does not exceed a time limit established by the [commissioner]; except that the cost of any services provided pursuant to this subparagraph to a person who is subsequently determined to be ineligible for Medicaid may be recovered from that person; and

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

95 b. commencing [March 1, 2008], expansion of the services and measures provided
96 for in paragraph (1) of this subsection to all of the remaining counties in the state, subject to the
97 [commissioner] conducting or otherwise providing for an evaluation of the pilot programs in
98 [counties] prior to that date and determining from that evaluation that the pilot programs are cost-
99 effective and should be expanded statewide.

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101 Section 5. *[Duties of Commissioner Relative to Report on Budget, Management Plan.]*

102 (1) The [commissioner], in consultation with the [Medicaid Long-Term Care Funding
103 Advisory Council] established pursuant to this Act, shall:

104 a. No later than [October 1, 2007], present a report to the [Governor and the
105 Legislature] pursuant to [insert citation], that provides a detailed budget and management plan for
106 effectuating the purposes of this Act, including a projected schedule and procedures for the
107 implementation and operation of the Medicaid long-term care expenditure reforms required
108 pursuant thereto; and

109 b. No later than [January 1, 2008], present a report to the [Governor], and to the
110 [Legislature] pursuant to [insert citation], that documents the reallocation of funds to home and
111 community-based care pursuant to this Act, and present an updated report no later than [January 1]
112 of each succeeding year until the [commissioner] determines that total Medicaid expenditures for
113 long-term care have been sufficiently rebalanced to achieve funding parity between nursing home
114 care and home and community-based care, at which point the [commissioner] shall document and
115 certify to the [Governor and the Legislature] that such funding parity has been achieved.

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117 Section 6. *[Duties of Commissioner Relative to Funding Parity, Coordination, Assessment*
118 *Instrument.]*

119 (1) The [commissioner], in consultation with the [Medicaid Long-Term Care Funding
120 Advisory Council] established pursuant to this Act, shall:

121 a. Implement, by such time as the [commissioner] certifies to the [Governor and the
122 Legislature] that funding parity has been achieved pursuant to this Act, a comprehensive data
123 system to track long-term care expenditures and services and consumer profiles and preferences.
124 The data system shall include, but not be limited to: the number of vacant nursing home beds
125 annually and the number of nursing home residents transferred to home and community-based
126 care pursuant to this Act; annual long-term care expenditures for nursing home care and each of
127 the home and community based long-term care options available to Medicaid recipients; and
128 annual percentage changes in both long-term care expenditures for, and the number of Medicaid
129 recipients utilizing, nursing home care and each of the home and community based long-term care
130 options, respectively;

131 b. Commence the following no later than [January 1, 2008]:

132 (i) implement a system of statewide long-term care service coordination and
133 management designed to minimize administrative costs, improve access to services, and minimize
134 obstacles to the delivery of long-term care services to people in need;

135 (ii) identify home and community based long-term care service models that
136 are determined by the [commissioner] to be efficient and cost-effective alternatives to nursing
137 home care, and develop clear and concise performance standards for those services for which
138 standards are not already available in a home and community-based services waiver;

139 (iii) develop and implement with the [Commissioner of Human Services] a
140 Comprehensive Consumer Assessment Instrument that is designed to facilitate an expedited
141 process to authorize the provision of home and community-based care to a person through fast
142 track eligibility prior to completion of a formal financial eligibility determination; and

143 (iv) develop and implement a comprehensive quality assurance system with
144 appropriate and regular assessments that is designed to ensure that all forms of long-term care
145 available to consumers in this state are financially viable, cost-effective, and promote and sustain
146 consumer independence; and

147 c. Seek to make information available to the general public on a statewide basis,
148 through print and electronic media, regarding the various forms of long-term care available in this
149 state and the rights accorded to long-term care consumers by statute and regulation, as well as
150 information about public and nonprofit agencies and organizations that provide informational and
151 advocacy services to assist long-term care consumers and their families.

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153 Section 7. *[Medicaid Long-Term Care Funding Advisory Council.]*

154 (1) There is established the [Medicaid Long-Term Care Funding Advisory Council] within
155 the [Department of Health and Senior Services]. The [advisory council] shall meet at least
156 [quarterly each fiscal year] until such time as the [commissioner] certifies to the [Governor and the
157 Legislature] that funding parity has been achieved pursuant to this Act, and shall be entitled to
158 receive such information from the [Departments of Health and Senior Services, Human Services]
159 and the [Treasury] as the [advisory council] deems necessary to carry out its responsibilities under
160 this Act.

161 (2) The [advisory council] shall:

162 a. monitor, assess, and advise the [commissioner] about the implementation and
163 operation of the Medicaid long-term care expenditure reforms and other provisions of this Act;
164 and

165 b. develop recommendations for a program to recruit and train a stable workforce
166 of home care providers, including recommendations for changes to provider reimbursement under
167 Medicaid home and community-based care programs.

168 c. The [advisory council] shall comprise [15 members] as follows:

169 (1) the [commissioner], the [Commissioner of Human Services and the
170 State Treasurer], or their designees, as ex officio members; and

171 (2) [12 public members] to be appointed by the [commissioner] as follows:
172 [one person appointed upon the recommendation of AARP; one person upon the recommendation
173 of the state Association of Area Agencies on Aging, one person upon the recommendation of the
174 state Association of County Offices for the Disabled; one person upon the recommendation of the
175 Health Care Association of the state; one person upon the recommendation of the state
176 Association of Non-Profit Homes for the Aging; one person upon the recommendation of the state
177 Hospital Association; one person upon the recommendation of the (Center for State Health
178 Policy); one person upon the recommendation of the Elder Rights Coalition; one person upon the
179 recommendation of the County Welfare Directors Association; one person upon the
180 recommendation of the Adult Day Services Association; one person upon the recommendation of
181 a labor union that represents home and community-based health care workers; and one person who
182 is a representative of the home care industry].

183 d. The [advisory council] shall organize as soon as possible after the appointment
184 of its members, and shall annually select from its membership a [chairman] who shall serve until
185 his successor is elected and qualifies. The members shall also select a [secretary] who need not be
186 a member of the [advisory council].

187 e. The [department] shall provide such staff and administrative support to the
188 [advisory council] as it requires too carry out its responsibilities.

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190 Section 8. *[Waiver of Federal Requirements.]* The [Commissioner of Human Services],
191 with the approval of the [Commissioner of Health and Senior Services], shall apply to the Federal

192 Centers for Medicare and Medicaid Services for any waiver of federal requirements, or for any
193 state plan amendments or home and community-based services waiver amendments, which may
194 be necessary to obtain federal financial participation for state Medicaid expenditures in order to
195 effectuate the purposes of this Act.

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197 Section 9. [*Tracking Expenditures.*] The [commissioner], in consultation with the
198 [Commissioner of Human Services], shall track Medicaid long-term care expenditures necessary
199 to carry out the provisions of this Act.

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201 Section 10. [*Inclusion of Budget Line for Medicaid Long-Term Care Expenditures.*] There
202 shall be included a Unique Global Budget Appropriation Line Item for Medicaid Long-Term Care
203 Expenditures in the [Annual Appropriations Act] for [fiscal year 2008] and each succeeding fiscal
204 year in order to provide flexibility to align these expenditures with services to be provided during
205 each fiscal year as necessary to effectuate the purposes of this Act.

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207 Section 11. [*Severability.*] [Insert severability clause.]

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209 Section 12. [*Repealer.*] [Insert repealer clause.]

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211 Section 13. [*Effective Date.*] [Insert effective date.]