SUGGESTED STATE LEGISLATION

Supplement

Developed by the
Committee on Suggested State Legislation
The Council of State Governments

A SILVER SOCIETY:
AGING IN AMERICA

SUGGESTED STATE LEGISLATION

Supplement

A Silver Society: Aging in America

Developed by the
Committee on Suggested State Legislation

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SUGGESTED STATE LEGISLATION SUPPLEMENT
A SILVER SOCIETY: AGING IN AMERICA

(Compiled from SSL drafts, recent state legislation, and legislation from recent SSL dockets)

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Foreword

The Council of State Governments (CSG) is pleased to bring you this **Supplement edition of *Suggested State Legislation***, a valued series of compilations of draft legislation from state statutes on topics of current interest and importance to the states. The CSG Committee on Suggested State Legislation compiled this supplement as part of Vermont Governor James Douglas' initiative as the 2006 CSG President - "Spanning the Spectrum of Healthy Living - Childhood to Adulthood."

That initiative addressed the need for a comprehensive approach to healthy living. It explored many of the key ingredients to create and maintain healthy lifestyles and healthy communities. And it highlighted how state policymakers can help their constituents and communities prepare for healthy, productive futures. This Suggested State Legislation "Supplement" contains articles, Suggested State Legislation drafts, recent state legislation, and state legislation from previous SSL dockets, which address a variety of state services to America's aging population.

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ABOUT THIS SUPPLEMENT

As baby boomers near retirement, and as health care costs continue to increase, the nation's attention has turned increasingly to the much-discussed "age wave." Policymakers and the media have highlighted the potential economic, social and political consequences of the fact that the 76 million Americans born between 1946 and 1964 will reshape our country's policies as they grow older.

While many people associate aging with disease and disability, the reality is that Americans are living longer and healthier lives than ever before. And local, state and federal efforts to promote healthy aging can pay off in improved health, better quality-of-life and increased productivity for millions of seniors.

Vermont Governor James Douglas was the 2006 President of The Council of State Governments. His initiative as CSG's president, "Spanning the Spectrum of Healthy Living - Childhood to Adulthood," addressed the need for a comprehensive approach to healthy living. It explored many of the key ingredients to create and maintain healthy lifestyles and healthy communities. And it highlighted how state policymakers can help their constituents and communities prepare for healthy, productive futures.

This Suggested State Legislation "Supplement" is part of Governor Douglas' initiative. This supplement contains articles, Suggested State Legislation drafts, recent state legislation, and state legislation from previous SSL dockets, which address a variety of state services to America's aging population.

THE COUNCIL OF STATE GOVERNMENTS
SUGGESTED STATE LEGISLATION SUPPLEMENT
A SILVER SOCIETY: AGING IN AMERICA

OVERVIEW (*Trends in America: Charting the Course Ahead* – CSG, June 2005*)*

Two simple facts are shaping America's future: People are living longer and having fewer children. The outcome of these two trends is that the percentage of older people in the United States is growing. The aging population will have profound consequences, which state leaders are beginning to recognize but largely have not addressed.

In the first half of the 20th century, the graphs of population distribution by age group resembled half-pyramids, with a large base of younger people supporting a small top layer of older people. Longer life expectancies in the future should change that half-pyramid into a bullet-shape.

Most social programs, public and private health insurance systems and retirement funds rely on younger working generations to support older generations. There are currently nearly five people of working age for each older person. In the near future, this ratio will drop to fewer than three workers for each older person. Demographers and policy-makers alike worry there will not be enough younger workers or productivity gains in the economy to adequately address these programs' future financial needs.

According to the U.S. Census Bureau, the number of people older than 65 will more than double between 2000 and 2050, and the population over age 85 will quadruple. Fueling America's population transformation are the 76 million baby boomers born between 1946 and 1964. This unusually large demographic group has changed America's institutions as they have grown older, starting with schools and then moving into the work force. The boomers' upcoming exodus from the work force will gain momentum rapidly as the first wave of boomers turns 65 in 2011.

What does this trend mean for states?

Americans' expectations of what it means to get older are changing. This is partly because of the boomers' influence. The boomers are healthier, more financially secure and more educated than previous generations. Despite these positive characteristics, the aging of the population will provide many challenges as well.

The aging of the population will continue to exert pressure on health care costs, forcing difficult choices.

According to the Centers for Disease Control and Prevention, health care expenditures for a 65-year-old on average are four times those for a 40-year-old. Because there will be more older people who live longer, experts predict that overall U.S. health care expenditures will increase 25 percent by 2030.

Long-term care needs are particularly problematic. The Medicaid program is currently the largest payer for those types of services, accounting for almost half of all long-term care spending. Few Americans have long-term care insurance or sufficient resources to provide for their needs should they become disabled. Thus, the government ends up picking up the tab.

Changing family structures combined with the aging population may lead to a caregiving crisis.

Currently, families provide most of the support for aging individuals. According to the National Family Caregiving Alliance, nearly one out of every four households is involved in caring for people age 50 or over. The combination of an aging populace and changing family structures—including fewer children, higher divorce rates, more single parent families, greater job mobility and delayed childbearing—means that family members may provide fewer of the support services seniors need in the future.

Because states and localities are often the human service payers and providers of last resort, there are concerns about the adequacy of social service networks and the potential rise of elder abuse and neglect. There is already a shortage of allied health professionals such as nurse aides, who could help fill the caregiving gap, and the shortage will only get worse in the next few years.

State tax structures may not be well-equipped to handle the aging of the population.

As the population ages, state tax collections will be affected. State budgets rely heavily on income and sales taxes for revenue. As more and more baby boomers retire, states may see a dramatic decline in income tax revenues. Why? For one thing, many states exempt all or part of private and public pension income from taxation. This results in a smaller tax base.

Although baby boomers are wealthier than previous generations, their consumption patterns may change as they age. For instance, older individuals may spend more money on non-taxed services such as health care. In addition, retired baby boomers may have less disposable income than they did while they were working, which could affect state sales tax revenues.

Also, many states have enacted a homestead exemption or have given tax credits that reduce the amount of property taxes paid by the elderly. This exemption may restrict local revenues, possibly putting greater emphasis on intergovernmental aid.

Work force shortages are on the horizon and will be particularly problematic in certain sectors of the economy.

Since a vibrant economy can translate into a healthy revenue base, states are closely examining aging's impact on the work force. Baby boomers comprise as much as 60 percent of today's prime-age work force, and their retirement will leave many vacancies.

Some economic sectors will be hit harder than others. Don Jakeway, CEO of the Michigan Economic Development Corporation, notes that the need for many manufacturing positions may be eliminated by industry advancements as technology, robotics and new techniques increase productivity and require fewer people.

However, the labor-intensive service sectors may face a different scenario. Health care, teaching and other service industries are expected to experience acute shortages as the need for additional workers increases just as many workers are eligible to retire. State governments are particularly vulnerable to future work force shortages. Thirty percent of the states work force will be eligible for retirement by 2006, according to a 2002 study by CSG and the National Association of State Personnel Executives.

State pension and retirement systems face funding problems.

As federal policy-makers debate the future of Social Security, state pension and retirement funds face similar funding dilemmas. The combination of poor economic returns in the recent past and growing liabilities from increasing numbers of retirees has translated into funding problems for nearly every state's public retirement system.

This is occurring at a time when state revenues are not rising sharply and the costs of other state priorities, health care in particular, are increasing. Since state courts have declared that government must pay all pension benefits regardless of the state's fiscal situation, states are looking into ways to deal with the current funding situation and avoid similar situations in the future.

There is a growing need for elder-ready communities.

"States and communities would be well advised to adapt their physical infrastructures and services to the needs of older Americans," said Vermont Governor Jim Douglas. Elder-ready communities are pedestrian-friendly, have public transportation options and are relatively compact so that people do not have to travel far to get to the grocery store, pharmacy or health care providers. Because mobility is a major consideration as people age, elder-friendly communities focus on alleviating the problems associated with elderly drivers. As age increases, sensory and motor capabilities decline, perception and attention impairments become more common and, as a result, driving becomes more difficult. According to the National Highway Traffic Safety Administration, drivers over the age of 65 are more likely than all other drivers to be involved in and killed in traffic accidents on a per-mile-driven and per-licensed-driver basis.

Elder-ready communities have elder-friendly housing such as smaller, one-story dwellings. Older people often do not want to live in large houses that require a lot of upkeep. In addition, as more people retire and live on fixed incomes, housing affordability will become a major issue.

States are already promoting the concept of elder-ready communities. In 2000, Florida launched its Elder Ready Communities Program to help local leaders assess their community's elder readiness and develop a plan to promote an elder-friendly environment. By actively encouraging local communities to be sensitive to the needs of seniors, states can play a major role in addressing the effects of the aging population.

What does the future hold?

In the next few years, we won't experience cataclysmic effects from the aging population. The changes will be gradual, but over time the cumulative demographic, social and political consequences will likely be dramatic.

Scientific and medical advances will continue to contribute to long and relatively healthy lives. The recent trend toward policies that favor home- and community-based care, rather than institutional care, will continue, and new technologies will allow seniors to live independently longer. Health care and services that cater to older Americans will play an increasingly significant role in the economy. End-of-life and quality-of-life issues will take a prominent place in political debates as people live longer—sometimes with serious medical conditions.

The aging baby boomers will redefine what it means to retire. Many will continue working well into their 70s and 80s, perhaps retiring from one career to try something new. Others will be actively engaged in their communities through volunteer work or political activism. One way or another, the boomers will force policy-makers to reconsider the way retirement systems are structured and funded.

STATE SOLUTIONS *(Trends in America, Navigating Turbulence to Success* – CSG, December 2005)

Comprehensive State Programs

New York's Project 2015 is a government-wide initiative to address the aging and increasing diversity of the state's population. Begun in 1998, the effort is led by the state Office for the Aging Thirty-six agencies have reviewed their policies, programs and structures in light of demographic changes and have identified top priorities that should be addressed within the next 10 years.

Similarly, Minnesota's Project 2030 involved an intensive planning process in 1997 and 1998 to analyze the aging population's impact on communities and state and local government.

In March 2005, Governor Jim Douglas signed an executive order creating a Commission on Healthy Aging. Composed of public and private experts from a variety of fields, the commission is working to ensure focus and coordination as Vermont strives to make healthy aging the rule, rather than the exception. The initiative has two goals: containing health care costs and keeping seniors healthy, active and productive in their communities.

State Efforts to Contain Health Care Costs

Two areas in which the age wave is already significantly affecting state governments are raising health care costs and the need to ensure adequate caregiving systems for seniors. States are using a variety of approaches to control the health care costs associated with caring for the elderly. To limit future Medicaid payments for long-term care services, some states have offered incentives for individuals to purchase long-term care insurance, while others are seeking ways for patients to use more of their personal assets to pay for nursing home care before becoming eligible for Medicaid. Other strategies include disease and injury prevention efforts, greater efficiencies in providing care, and restructuring state agencies that support seniors so they encourage independence and provide alternatives to nursing home care when appropriate.

Preventing Disease and Injury

Strategies to avert illness in the elderly are aimed at preventing or delaying chronic diseases and their complications, injuries and vaccine preventable infectious diseases.[1] State efforts to promote healthy lifestyles and avoid chronic diseases focus on improving nutrition, reducing smoking and increasing physical activity. New York's Supplemental Nutrition Assistance Program, for example, provides home-delivered meals, congregate meals, and nutritional counseling and education for the frail elderly at nutritional risk.[2]

West Virginia's Wheeling Walks program used a powerful eight-week media campaign to encourage seniors to walk, starting with 10-minute increments. Thirty percent of participants

surveyed after the program were regular walkers, compared with 16 percent in a comparison community. The program's success was attributed to the intensity of the media campaign, supported by workplace events and physicians who wrote prescriptions for walking.[3] Some educational efforts seek to reduce seniors' susceptibility to traffic accidents.

The GrandDriver campaign is a social marketing campaign aimed at elderly drivers and their adult family members in Virginia, Maryland and the District of Columbia. Its goal is to make families aware of the signs of impaired driving and help the elderly make plans to stop driving. The initiative also encourages larger traffic lights, more prominent signs for intersections, more clearly marked street names, and automobile industry incentives to assess the impact of new technologies on older drivers.[4]

Managing Use of Health Care Treatments and Medications

Another strategy to control health care costs is to integrate the appropriate use of medical technologies and treatments, in-home supports for patients and prescription medications. To reduce the cost of care for Medicaid patients with chronic conditions such as asthma, diabetes and hypertension, states have implemented disease management programs, which combine proven, cost-effective medical treatments with complete patient education. Georgia, for example, assigned case managers to frail and disabled Medicaid beneficiaries. The coordination of care decreased the need for nursing home and hospital care, and reduced overall per capita program costs.[5] Other programs focus on educating patients with chronic diseases to manage their conditions and avoid complications. Washington state, for instance, started a telephone outreach service on self-management for Medicaid clients with asthma, diabetes, heart failure and chronic kidney disease. This led to estimated savings of $2 million by reducing emergency room visits and hospital admissions.[6]

Appropriately prescribed and administered medications are often a cost-effective way to help individuals with chronic conditions stay healthy and control the complications of their diseases.[7] Several states have addressed the affordability of prescription drugs.[8] New York recently expanded the Elderly Pharmaceutical Insurance Coverage program by increasing income eligibility levels and reducing enrollment fees.[9] Illinois, New Hampshire, Minnesota and Wisconsin are among the states that use the I-SaveRX program. Individuals use the state-sponsored system to directly purchase renewal prescriptions from pharmacies in Canada, England, Scotland and Ireland, where prices are 20 percent to 25 percent lower than in the United States.[10] Arizona's free CoppeRx Card provides seniors discounts at 500 pharmacies on some prescription drugs. And North Carolina integrated its Senior Care prescription assistance program with the new Medicare Prescription Drug discount cards, which enables seniors to take advantage of both programs at their pharmacies.[11]

Integrating Support Programs for Efficiency

To enable older adults and their caregivers to seamlessly use lower cost community- and home-based services as an alternative to more costly nursing homes and assisted living, states have integrated the state agencies and programs that support these services. Oregon and Washington have completely integrated state aging and long-term care Medicaid services. In Wisconsin, an example of the approach many states have taken, state agencies have not been fully integrated, but the Family Care Program's resource centers provide single entry points for

all types of long-term care services available to the elderly. These integrated systems allow consumers to choose less costly non-institutional sources for their care. Thus state resources are used in the most efficient manner. Services are coordinated through care management organizations that are paid for all services rendered to the elderly, including nursing home care, and are held accountable for patient results.

State Approaches to Caregiving

Closely associated with efforts to contain health care costs is the challenge of providing appropriate care for the elderly. State approaches range from efforts to support informal care provided by family and friends to initiatives centered on more formal systems of care. Although they take various forms, these initiatives generally share the recognition that helping seniors stay in their homes and communities as long as possible will save money and help them maintain their quality of life.

Supporting Families and Communities

One approach is to establish a physical and social environment that supports healthy aging in place and delays the need for caregiving as long as possible. Such an environment includes accessible, affordable housing linked with needed support services, transportation systems that keep older adults mobile once they stop driving, effective wellness and nutrition programs, and responsive mental health services.[12] Florida's Communities for a Lifetime is a statewide initiative to help communities create a better place for older adults to live, while benefiting all residents. Participating communities use their existing resources and technical assistance from the state to improve housing, health care, transportation, community education, and volunteer opportunities.[13]

Other state programs help support individuals who care for aging family members. California's Caregiver Resource Centers, for example, help families care for members with adult-onset brain impairments, including Alzheimer's and stroke. Available services include information and referral, family consultation and care planning, respite care, counseling, support groups, education, and legal and financial consultation.[14] Pennsylvania's Family Caregiver Support program provides needs assessments, education, counseling, up to $200 a month to help pay for out-of-pocket expenses, and one-time grants of up to $2,000 for income-eligible families.[15]

States are also allowing consumers and caregivers more control in selecting the service options that work best for them under state-supported programs. For example, the Illinois Local Area Agencies on Aging provide vouchers to family caregivers for goods and services they need to continue providing personal care to their family member. The average value of the vouchers is $1,000 per year, which can be used for items ranging from respite care and home modifications to haircuts and lawn care.[16]

Encouraging Home- and Community-Based Care

In addition to supporting the informal care provided by family members and friends, states have also tested policy options related to formal systems of care, such as compensating family members who care for elderly relatives in their homes;[17] enhancing benefits for home-

care workers by helping them obtain health insurance or increasing wages;[18] and offering home- and community-based care models, including adult day care.[19] For instance, New York, through its Community Services for the Elderly (CSE), provides a flexible, locally directed funding stream for community-based, supportive services for frail, low-income elderly who need assistance to maintain their independence at home. CSE supports adult day care, shopping assistance, counseling, transportation, protective or other services to maximize an elderly person's independence in the home and community.

Several states have focused on comprehensive systems of home and community-based care. For example, Illinois' Older Adult Services Act of 2004 promotes transforming the state's comprehensive system of seniors' services from a primarily facility-based system to a primarily home- and community-based system, taking into account the continuing need for 24-hour skilled nursing care and group housing with services. The restructuring will encompass the provision of housing, health, financial and supportive services. It will include all aspects of the delivery system regardless of the setting in which the service is provided.[20]

In 2000, Connecticut launched its Home Care and Assisted Living Alternatives to Nursing Home Care Initiative, building on home- and community-based service options the state began in 1996. The program is designed to allow seniors in need of long-term supportive care to remain in the community and avoid or delay nursing home care. It also sponsors a variety of pilot projects where additional support is provided to enable the elderly to remain independent whether supported by state and HUD-funded independent living housing, private-payment for assisted living, or an expansion of income eligibility criteria for Connecticut's home care program.[21] Similarly, Florida's Nursing Home Diversion Program, established through a Medicaid waiver, has been placing patients in less intensive levels of care since 1999.[22] And New York provides non-medical in-home services, case management, non-institutional respite and ancillary services to functionally impaired elderly who are in need of community-based long-term care but who are not eligible for similar services under Medicaid.[23]

FOOTNOTES

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[19]Chura, Hillary. 2005. "A Little Known Reprieve from Providing Care." Global Action on Aging. [Cited 20 August 2005: 5.]
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[21]The Council of State Governments. 2003. "Innovations Awards Program: East Region 2003 Semifinalists" [online]. [Cited 20 October 2005].
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LEGISLATION

Preventing Disease and Injury

Regarding the Revocation/Denial of an Elder's Driver's License Based on Statements Made by Their Treating Physicians (2007 SSL)

This Act directs that the state division of driver's licensing may not issue or renew a driver's license to any person when the division has received a written statement from a licensed treating physician or optometrist stating that the person is not capable of safely operating a motor vehicle. The licensed treating physician or optometrist may request an examination by the division. The division can also require an individual to submit to a reexamination when the division staff believe an individual is unsafe or otherwise unqualified to be licensed. Upon the conclusion of the examination or the refusal to be examined the division may cancel the driver's license.

Submitted as:
Wyoming
HB 0059/Enrolled Act No. 41
Status: Enacted into law in 2005.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [*Short Title*.] This Act may be cited as "An Act to Establish Procedures to Revoke Driver Licenses."

Section 2. [*Authority of State Driver License Division to Cancel License or Permit*.] The [division] may cancel any driver's license or instruction permit upon determining that the licensee or permittee was not entitled to the license or permit, that the licensee or permittee failed to give the required or correct information in his application, or that the license or permit has been altered or upon receipt of a written statement from a licensed treating physician or optometrist stating that the licensee or permittee is not capable of safely operating a motor vehicle. The licensed treating physician or optometrist may request an examination by the [division] under [insert citation].

Section 3. [*Severability*.] [Insert severability clause.]

Section 4. [*Repealer*.] [Insert repealer clause.]

Section 5. [*Effective Date.*] [Insert effective date.]

Emergency Evacuation Plans for People with Disabilities (2004 SSL)

This Act directs that by January 1, 2004, every high-rise building owner must establish and maintain an emergency evacuation plan for disabled occupants of the building who have notified the owner of their need for assistance. As used in the Act, "high-rise building" means any building 80 feet or more in height. The owner is responsible for maintaining and updating the plan as necessary to ensure that the plan continues to comply with the provisions of the Act. It exempts municipalities with more than 1,000,000 people and which already have ordinances establishing emergency procedures for high-rise buildings.

Submitted as:
Illinois
Public Act 92-0705
Status: Enacted into law in 2002.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [*Short Title*.] This Act may be cited as "An Act to Establish Emergency Evacuation Plans in High-Rise Buildings for People with Disabilities."

Section 2. [*Scope*.] This Act does not apply within a municipality with a population of over [1,000,000] that, before the effective date of this Act, has adopted an ordinance establishing emergency procedures for high-rise buildings.

Section 3. [*Required Emergency Evacuation Plan for People with Disabilities*.] By [January 1, 2004], every high-rise building owner must establish and maintain an emergency evacuation plan for disabled occupants of the building who have notified the owner of their need for assistance. As used in this Act, "high-rise building" means any building [80] feet or more in height. The owner is responsible for maintaining and updating the plan as necessary to ensure that the plan continues to comply with the provisions of this Act.

Section 4. [*Plan Requirements*.]

(a) Each plan must establish procedures for evacuating people with disabilities from the building in the event of an emergency, when those people have notified the owner of their need for assistance.

(b) Each plan must provide for a list to be maintained of people who have notified the owner that they are disabled and would require special assistance in the event of an emergency. The list must include the unit, office, or room number location that the disabled person occupies in the building. It is the intent of this Act that these lists must be maintained for the sole purpose of emergency evacuation. The lists may not be used or disseminated for any other purpose.

(c) The plan must provide for a means to notify occupants of the building that a list identifying people with a disability in need of emergency evacuation assistance is maintained by the owner, and the method by which occupants can place their name on the list.

Section 5. [*Severability*.] [Insert severability clause.]

Section 6. [*Repealer*.] [Insert repealer clause.]

Section 7. [*Effective Date.*] [Insert effective date.]

Financial Elder Abuse Reporting Statement

According to California legislative analysis, California's Elder and Dependent Adult Civil Protection Act is a comprehensive statutory scheme enacted to prevent elder and dependent adult abuse and neglect and to prosecute those that inflict that abuse or neglect on elders and dependent adults. That Act:

- Requires mandated reporters who observes or has knowledge of elder or dependent adult physical or financial abuse or neglect, or is told by the elder or dependent adult that he/she has experienced abuse, to immediately report the known or suspected abuse.
- Defines "mandated reporter" as any person who is a provider of care to the elder or dependent adult, a health practitioner, clergy member, employee of county adult protective services or a local law enforcement and custody.
- Provides that a mandated reporter's failure to report elder or dependent adult abuse is a misdemeanor, punishable by imprisonment in county jail for up to six months or a fine not to exceed $1,000 or by both, and if the failure to report results in death or great bodily injury the punishment is imprisonment in county jail for up to one year or a fine not to exceed $5,000 or both.
- Provides that mandated reporters are immune from criminal or civil liability as a result of any report of any known or suspected abuse of an elder or dependent adult, unless it can be proven that a false report was made and the person knew the report was false.
- Allows, but does not require, any person who is not a mandated reporter and who suspects an elder or dependent adult has been the victim of abuse to report the same to a long-term care ombudsman program or local law enforcement agency when the abuse is alleged to have occurred in a long-term facility, or to the county adult protective services agency when the suspected abuse has occurred elsewhere.
- Authorizes various agencies, including investigators from adult protective services, local law enforcement, the Bureau of Medi-Cal Fraud, and the Dept. of Consumer Affairs, to receive information relevant to an incident of elder or dependent adult abuse.
- Requires county adult protective services to provide humane societies, fire departments, and environmental health and building code enforcement offices with instructional materials regarding elder and dependent adult abuse and neglect.
- Defines "financial abuse" of an elder or dependent adult as the taking, secreting, appropriation, or retention of real or personal property of the elder or dependent adult to a wrongful use or with intent to defraud, or both or assisting another person in the above activities, and deems the taking, secreting, appropriating, or retaining of property for a wrongful use if it is done in bad faith.

California Chapter 140 of 2005 establishes the Financial Elder Abuse Reporting Act of 2005. This Act extends mandated reporting requirements for financial abuse of an elder or dependent adult to all officers and employees of certain financial institutions.

Specifically, Chapter 140 of 2005:

- Defines "mandated reporter of suspected financial abuse of an elder or dependent adult" as all officers and employees of financial institutions.
- Defines "financial institution" as a depository institution, an institution-affiliated party, or a federal, state, or institution-affiliated party credit union.

- Incorporates the existing definition of "financial abuse" in the state Welfare and Institutions Code, which states that financial abuse of an elder or dependent adult occurs when a person or entity does any of the following:
    1. Takes, secretes, appropriates, or retains real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both.
    2. Assists in taking, secreting, appropriating, or retaining real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both.
- Specifies that any mandated reporter of suspected financial abuse of an elder or dependent adult who has direct contact with the elder or dependent adult or who reviews or approves the elder's or dependent adult's financial documents, records, or transactions in connection with providing financial services with respect to an elder or dependent adult, and who within the scope of his or her employment and professional practice, has observed or has knowledge of an incident, that is directly related to the transaction or matter that is within that scope of practice, that reasonably appears to be financial abuse, or who reasonably suspects that abuse based upon the information before him/her standing alone, shall report the known or suspected instance of financial abuse by telephone immediately, or as soon as practicably possible, and written report sent within two working days to the local adult protective services (APS) agency, or the local law enforcement agency.
- Specifies that an allegation by the elder or dependent adult, or any other person, that financial abuse has occurred is not sufficient to trigger the reporting requirement if both of the following conditions are met:
    1. The mandated reporter is aware of no other corroborating or independent evidence of the alleged abuse.
    2. In the exercise of his/her professional judgment, the mandated reporter reasonably believes that the abuse did not occur.
- Provides that a mandated reporter of suspected financial use of an elder or dependent adult who fails to report financial abuse shall be subject to a civil penalty not exceeding $1,000. If the failure to report is willful, the civil penalty may be up to $5,000.
- Specifies that the civil penalty shall be paid by the financial institution who is the employer of the mandated reporter to the party bringing the action.
- Provides that the foregoing civil penalty shall be recovered only in a civil action brought against the financial institution by the Attorney General (AG), district attorney or county counsel, and that no action may be brought under this section by any person other than the AG, district attorney, or county counsel.
- Further provides that multiple actions for the civil penalty may not be brought for the same violation.
- Provides that the Act shall not be construed to limit, expand, or otherwise modify any civil liability or remedy which may exist under this or any other law.
- Provides that reports under the Act are privileged against defamation liability but are subject to disclosure as required by law or court order.
- Specifies that a county APS agency shall provide mandated reporters of suspected financial abuse of an elder or dependent adult with instructional materials regarding elder and dependent adult abuse and neglect, and their obligation to report such abuse.

Submitted as:
California Chapter 140 of 2005 (Enacted into law in 2005)

Handling Nursing Home Patients Safely

This draft Act establishes a program and fund to help nursing homes buy and install lifts and related equipment to enable nursing home employees to safely handle and move patients. The program will also pay for training nursing home employees on equipment and techniques to eliminate manually lifting nursing home patients.

Submitted as:
Ohio
Excerpted from HB 66
Status: Enacted into law in 2005.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [*Short Title*.] This Act may be cited as "An Act to Enable Nursing Homes to Implement a Facility Policy of No Manual Lifting of Residents by Employees."

Section 2. [*Long-Term Care Loan Fund Program Relating to Equipment and Training to Help Lift or Move Nursing Home Residents*.]

(A) The state [Bureau of Workers' Compensation] shall operate a Long-Term Care Loan Fund Program. The [Administrator of Workers' Compensation] may adopt rules, employ personnel, and do all things necessary for that purpose.

(B) The [administrator] shall use the Long-Term Care Loan Fund Program to make loans without interest to employers that are nursing homes for the purpose of allowing those employers to purchase, improve, install, or erect sit-to-stand floor lifts, ceiling lifts, other lifts, and fast electric beds, and to pay for the education and training of personnel, in order to implement a facility policy of no manual lifting by employees of residents by employees. The [administrator], with the advice and consent of an [Workers' Compensation Oversight Commission], may adopt rules establishing criteria for loan eligibility, maximum loan amounts, loan periods, default penalties, and any other terms the [administrator] considers necessary for a loan.

(C) There is hereby created in the state treasury a Long-Term Care Loan Fund. The Fund shall consist of money the [administrator], with the advice and consent of the [oversight commission], requests the [director of budget and management] to transfer from the [Safety and Hygiene Fund] created in [insert citation]. The [fund] shall be used solely for purposes identified in this section. All investment earnings of the [fund] shall be credited to the [fund].

(D) As used in this section, "nursing home" means [insert definition.]

Section 3. [*Severability*.] [Insert severability clause.]

Section 4. [*Repealer*.] [Insert repealer clause.]

Section 5. [*Effective Date.*] [Insert effective date.]

Safe Patient Handling and Movement Practices of Nurses in Hospitals and Nursing Homes

This Act requires hospitals and nursing homes to identify, assess, and develop strategies to control the risk of injury to patients and nurses from lifting, transferring, repositioning, or moving patients.

Under the Act, hospitals and nursing homes must:

- Analyze the risk of injury to both patients and nurses posed by the patient handling needs of the patient populations served by the hospital or nursing home;
- Analyze the physical environment in which patient handling and movement occurs;
- Educate staff about how to identify, assess, and control of risks of injury to patients and nurses during patient handling;
- Develop alternative ways to reduce risks associated with patient handling, including evaluating equipment and limiting handling or moving patients manually to emergency, life-threatening, or exceptional circumstances;
- Develop procedures whereby nurses can refuse to handle or move patients when that involves unacceptable risk of injury, and
- Compile an annual report about the feasibility of incorporating patient handling equipment into any architectural plans to build or remodel a hospital or nursing home.

Submitted as:
Texas
SB 1525 (enrolled version)
Status: Enacted into law in 2005.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [*Short Title*.] This Act may be cited as "An Act to Ensure Safe Patient Handling and Movement Practices in Nursing Homes."

Section 2. [*Definitions*.] As used in this Act:

(A) "Hospital" means a general or special hospital, as defined by [insert citation], a private mental hospital licensed under [insert citation], or another hospital that is maintained or operated by the state.

(B) "Nursing home" means an institution licensed under [insert citation.]

Section 3. [*Required Safe Patient Handling and Movement Policy*.]

(A) The governing body of a hospital or the quality assurance committee of a nursing home shall adopt and ensure implementation of a policy to identify, assess, and develop strategies to control risk of injury to patients and nurses associated with the lifting, transferring, repositioning, or movement of a patient.

(B) The policy shall establish a process that, at a minimum, includes:

(I) an analysis of the risk of injury to both patients and nurses posed by the patient handling needs of the patient populations served by the hospital or nursing home and the physical environment in which patient handling and movement occurs;

(II) educating nurses in the identification, assessment, and control of risks of injury to patients and nurses during patient handling;

(III) an evaluation of alternative ways to reduce risks associated with patient handling, including evaluation of equipment and the environment;

(IV) a restriction, to the extent feasible with existing equipment and aids, of manual patient handling or movement of all or most of a patient's weight to emergency, life-threatening, or otherwise exceptional circumstances;

(V) collaboration with and an annual report to the nurse staffing committee;

(VI) procedures for nurses to refuse to perform or be involved in patient handling or movement that the nurse believes in good faith will expose a patient or a nurse to an unacceptable risk of injury;

(VII) submitting an annual report to the governing body or the quality assurance committee on activities related to the identification, assessment, and development of strategies to control risk of injury to patients and nurses associated with the lifting, transferring, repositioning, or movement of a patient; and

(VIII) in developing architectural plans for constructing or remodeling a hospital or nursing home or a unit of a hospital or nursing home in which patient handling and movement occurs, consideration of the feasibility of incorporating patient handling equipment or the physical space and construction design needed to incorporate that equipment at a later date.

Section 4. [*Severability*.] [Insert severability clause.]

Section 5. [*Repealer*.] [Insert repealer clause.]

Section 6. [*Effective Date.*] [Insert effective date.]

LEGISLATION

Managing Use of Health Care Treatments and Medications

Health Care Directives Registry (2006 SSL)

This Act:

- Authorizes the Secretary of State, subject to the availability of funding, to establish and maintain an online health care directives registry;
- Requires the registry to be accessible through a web site maintained by the Secretary of State;
- Establishes that failure to register a health care directive with the Secretary of State does not affect the validity of a health care directive;
- Stipulates filing requirements for the registry may include the following notarized or witnessed documents and any notarized or witnessed revocations of these documents:
    - A. A health care power of attorney;
    - B. A living will; or
    - C. A mental health care power of attorney.
- Stipulates that the Secretary of State is not required to review documents submitted to ensure compliance with state law;
- Requires people who submit a document for registration to provide a return address and submit any fee prescribed by the Secretary of State for the registry;
- Establishes that failure to notify the Secretary of the revocation of a document does not affect the validity of a health care directive;
- Establishes a process by which health care directives submitted are reviewed for accuracy by the people submitting them;
- Stipulates that entries may only be activated upon confirmation of accuracy;
- Requires the Secretary of State to assign registrants a unique file number and password upon receipt of a completed registration form;
- Requires the Secretary of State to provide registrants with a card that identifies their file number and password;
- Establishes that online health care directives are only accessible by entering the file number and password on the Internet web site;
- Declares health care directives are confidential and shall not be disclosed to anyone other than the person who submitted the document or the person's personal representative;
- Requires the Secretary of State to delete a document filed when the Secretary receives revocation of a document along with that document's file number and password;
- Prohibits the Secretary from using information contained in submitted documents for any other purpose;
- Requires the Secretary of State to purge documents from the registry every five years in order to eliminate documents of people who have passed away;
- Instructs the director of state department of health services to share registry of death certificates with the Secretary of State for purging purposes;
- Prohibits the legislature from appropriating or transferring general fund monies or other state monies to support, promote and maintain the registry;
- Establishes a Health Care Directives Registry Fund consisting of monies received by the Secretary for operation of the registry;

- Allows the Secretary of State to accept gifts, grants, donations, bequests and contributions to support, maintain and promote the registry;
- Requires the Secretary to use fund monies to support, promote and maintain the registry;
- Directs that the Secretary shall administer the fund, and the monies in the fund are continuously appropriated;
- Requires the State Treasurer, upon notice of the Secretary of State, to invest and divest monies in the fund; monies earned from investment shall be credited to the fund;
- Stipulates that health care providers are not required to request information from the registry about whether the patient has executed a health care directive;
- Stipulates that this Act does not affect the duty of the health care providers to provide information to a patient regarding health care directives;
- Clarifies that health care providers may access the registry for the purpose of providing care if the provider has the patient's password and file number;
- Stipulates that a health care provider who relies in good faith on a health care directive filed with the registry is immune from liability;
- Allows the Secretary, upon request of the person who submitted a document, to transmit health care directive information to the registry system of another jurisdiction; and
- Exempts the state from civil liability (except for acts of gross negligence, willful misconduct or intentional wrongdoing) for any claims or demands arising out of the administration and operation of the registry.

Submitted as:
Arizona
Chapter 219 of 2004
Status: Enacted into law in 2004.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [*Short Title*.] This Act may be cited as "An Act to Establish a Registry of Health Care Directives."

Section 2. [*Establishing a Health Care Directives Registry*.]

A. Subject to the availability of monies, the [secretary of state] shall establish and maintain a Health Care Directives Registry.

B. The registry shall be accessible through a web site maintained by the [secretary of state].

C. The [secretary of state] may accept gifts, grants, donations, bequests and other forms of voluntary contributions to support, promote and maintain the registry. The [legislature or the secretary of state] shall not appropriate or transfer state general fund or other state monies to support, promote and maintain the registry.

Section 3. [*Filing Requirements*.]

A. A person may submit to the [secretary of state], in a form prescribed by the [secretary of state], the following documents and any revocations of these documents for registration:

1. a health care power of attorney.

2. a living will.

3. a mental health care power of attorney.

B. The person who submits a document for registration pursuant to this section must provide a return address.

C. Documents submitted pursuant to this section must be notarized or witnessed as prescribed by this Act.

Section 4. [*Effect of Non-registration or Revocation*.]

A. Failure to register a document with the [secretary of state] pursuant to this Act does not affect the validity of a health care directive.

B. Failure to notify the [secretary of state] of the revocation of a document filed pursuant to this Act does not affect the validity of a revocation that otherwise meets the requirements for a revocation pursuant to this Act.

Section 5. [*Registration; Purge of Registered Documents*.]

A. On receipt of a completed registration form, the [secretary of state] shall create a digital reproduction of the form, enter the reproduced form into the health care directives registry database and assign each registration a unique file number and password.

B. The [secretary of state] is not required to review a document to ensure that it complies with the particular statutory requirements applicable to the document.

C. After entering the reproduced document into the registry database, the [secretary of state] shall return the original document to the person who submitted the document and provide that person with a printed record of the information entered into the database under the file number and a wallet size card that contains the document's file number and a password.

D. The person who submitted the document shall review the printed record. If the information is accurate, the person shall check the box marked "no corrections required" and sign and return the printed record to the [secretary of state].

E. If the person who submitted the document determines that the printed record is inaccurate, the person shall correct the information and sign and return the corrected printed record to the [secretary of state]. On receipt of a corrected printed record, the [secretary of state] shall make the proper corrections and send a corrected printed record to the person who submitted the document. If the information is accurate, the person shall check the box marked "no corrections required" and sign and return the printed record to the [secretary of state's office].

F. The [secretary of state] shall activate the entry into the Health Care Directives Registry Database only after receiving a printed record marked "no corrections required."

G. The [secretary of state] shall delete a document filed with the registry pursuant to this section when the [secretary of state] receives a revocation of a document along with that document's file number and password.

H. The entry of a document pursuant to this Act does not:

1. affect the validity of the document.

2. relate to the accuracy of information contained in the document.

3. create a presumption regarding the validity of the document or the accuracy of information contained in the document.

I. The [secretary of state] shall purge a document filed with the registry on verification by the [director of the department of health services] of the death of the person who submitted the document. The [secretary of state] shall purge the registry of documents pursuant to this

subsection at least once every [five years]. The [director of the department of health services] shall share its registry of death certificates with the [secretary of state] in order to conduct the document purge required by this subsection.

Section 6. [*Registry Information; Confidentiality; Transfer of Information.*]

A. The registry established pursuant to this Act is accessible only by entering the file number and password on the Internet web site.

B. Registrations, file numbers, passwords and any other information maintained by the [secretary of state] pursuant to this Act are confidential and shall not be disclosed to any person other than the person who submitted the document or the person's personal representative.

C. Notwithstanding subsection B, a health care provider may access the registry and receive a patient's health care directive documents for the provision of health care services by submitting the patient's file number and password.

D. The [secretary of state] shall use information contained in the registry only for purposes prescribed in this Act.

E. At the request of a person who submitted the document, the [secretary of state] may transmit the information received regarding the health care directive to the registry system of another jurisdiction as identified by the person.

Section 7. [*Liability; Limitation*.]

A. Except for acts of gross negligence, willful misconduct or intentional wrongdoing, this state is not subject to civil liability for any claims or demands arising out of the administration or operation of the registry established pursuant to this Act.

B. This Act does not require a health care provider to request from the registry information about whether a patient has executed a health care directive. A health care provider who makes good faith health care decisions in reliance on the provisions of an apparently genuine health care directive received from the registry is immune from criminal and civil liability to the same extent and under the same conditions as prescribed in [insert citation].

C. This Act does not affect the duty of a health care provider to provide information to a patient regarding health care directives pursuant to federal law.

Section 8. [*Health Care Directives Registry Fund*.]

A. The [Health Care Directives Registry Fund] is established consisting of monies received pursuant to this Act. The [secretary of state] shall administer the fund. Monies in the fund are continuously appropriated.

B. On notice from the [secretary of state], the [state treasurer] shall invest and divest monies in the fund as provided by [insert citation], and monies earned from investment shall be credited to the fund.

C. The [secretary of state] shall use fund monies to support, promote and maintain the registry.

D. Fund monies shall not include monies appropriated from the state [General Fund].

Section 9. [*Severability*.] [Insert severability clause.]

Section 10. [*Repealer*.] [Insert repealer clause.]

Section 11. [*Effective Date*.] [Insert effective date.]

Prescription Drug Labels: Purpose of Drug (2004 SSL)

This Act specifies that prescription labels must include information concerning the purpose for which a drug is being prescribed if a patient requests that information. It also specifies that a pharmacist may fill a prescription even if the information is not provided, without having to contact the practitioner or patient. Physicians, podiatrists, dentists, optometrists, advance practice nurses and physician assistants would be required to inform patients of the option to have this information included on the prescription label, but failure to do so would not result in any disciplinary action against the practitioner's professional license.

Submitted as:
Colorado
Chapter 78 of 2003
Status: Enacted into law in 2003.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [*Short Title*.] This Act may be cited as "An Act Requiring Certain Information on Prescription Drug Labels."

Section 2. [*Definition*.] As used in this Act, "Order" means a prescription order which is any order, other than a chart order, authorizing the dispensing of a single drug or device that is written, mechanically produced, computer generated and signed by the practitioner, transmitted electronically or by facsimile, or produced by other means of communication by a practitioner and that includes the name or identification of the patient, the date, the symptom or purpose for which the drug is being prescribed, if included by the practitioner at the patient's authorization, and sufficient information for compounding, dispensing, and labeling.

Section 3. [*Prescription Drug Labeling*.]

(A) A prescription drug dispensed pursuant to an order as defined in this Act must be labeled as follows:

(1) If the prescription is for an anabolic steroid, the purpose for which the anabolic steroid is being prescribed shall appear on the label.

(2) If the prescription is for any drug other than an anabolic steroid, the symptom or purpose for which the drug is being prescribed shall appear on the label, if, after being advised by the practitioner, the patient or the patient's authorized representative so requests.

(B) If the symptom or purpose for which a drug is being prescribed is not provided by the practitioner, the pharmacist may fill the prescription order without contacting the practitioner, patient, or the patient's representative, unless the prescription is for an anabolic steroid.

Section 4. [*Prescriptions - Requirement to Advise Patients*.]

(A) Physicians or Physician Assistants:

(1) A physician licensed under [insert citation], or a physician assistant licensed under [insert citation] and who has been delegated the authority to prescribe medication, may advise the physician's or the physician assistant's patients of their option to have the symptom or purpose for which a prescription is being issued included on a prescription order.

(2) A physician's or a physician assistant's failure to advise a patient under subsection (A)(1) of this section shall not be grounds for any disciplinary action against the physician's or the physician assistant's professional license.

(3) Failure to advise a patient pursuant to subsection (1) of this section shall not be grounds for any civil action against a physician or physician's assistant in a negligence or tort action, nor shall such failure be evidence in any civil action against a physician or a physician's assistant.

(B) Podiatrists:

(1) A podiatrist licensed under [insert citation] may advise the podiatrist's patients of their option to have the symptom or purpose for which a prescription is being issued included on the prescription order.

(2) A podiatrist's failure to advise a patient under subsection (B)(1) of this section shall not be grounds for any disciplinary action against the podiatrist's professional license.

(3) Failure to advise a patient pursuant to subsection (B)(1) of this section shall not be grounds for any civil action against a podiatrist in a negligence or tort action, nor shall such failure be evidence in any civil action against a podiatrist.

(C) Dentists:

(1) A dentist licensed under [insert citation] has the right to prescribe such drugs or medicine, perform such surgical operations, administer such general or local anesthetics, and use such appliances as may be necessary to the proper practice of dentistry. A dentist shall not prescribe, distribute, or give to a family member or himself or herself any habit-forming drug, as defined in [insert citation], or any controlled substance, as defined in [insert citation], other than in the course of legitimate dental practice and pursuant to the rules promulgated by the [state board of dentistry] regarding controlled substance record keeping.

(2) A dentist licensed under [insert citation] may advise the dentist's patients of their option to have the symptom or purpose for which a prescription is being issued included on the prescription order.

(3) A dentist's failure to advise a patient under subsection (C)(2) of this section shall not be grounds for any disciplinary action against the dentist's professional license.

(4) Failure to advise a patient pursuant to subsection (C)(2) of this section shall not be grounds for any civil action against a dentist in a negligence or tort action, nor shall such failure be evidence in any civil action against a dentist.

(D) Advanced Practice Nurses:

(1) An advanced practice nurse who has been granted authority to prescribe prescription drugs and controlled substances under [insert citation] may advise the nurse's patients of their option to have the symptom or purpose for which a prescription is being issued included on the prescription order.

(2) A nurse's failure to advise a patient under subsection (D)(1) of this section shall not be grounds for any disciplinary action against the nurse's professional license.

(3) Failure to advise a patient pursuant to subparagraph (D)(1) of this section shall not be grounds for any civil action against a nurse in a negligence or tort action, nor shall such failure be evidence in any civil action against a nurse.

(E) Optometrists:

(1) An optometrist licensed under [insert citation] may advise the optometrist's patients of their option to have the symptom or purpose for which a prescription is being issued included on the prescription order.

(2) An optometrist's failure to advise a patient under subsection (E)(1) of this section shall not be grounds for any disciplinary action against the optometrist's professional license.

Section 5. [*Severability*.] [Insert severability clause.]

Section 6. [*Repealer*.] [Insert repealer clause.]

Section 7. [*Effective Date*.] [Insert effective date.]

Utilization of Unused Prescriptions (2003 SSL)

This Act directs the state board of health, the state board of pharmacy and the state health commission to jointly develop and implement a pilot program through which unused prescription drugs, other than opiates, can be transferred from nursing facilities to pharmacies operated by city-county health departments or county pharmacies for the purpose of distributing the medication to state residents who are medically indigent. Medically indigent people are those who have no health insurance or who lack reasonable means to purchase prescribed medications.

The Act also:

- Authorizes residents of a nursing facility, or the representative or guardian of a resident, to donate unused non-opiate prescription medications for dispensation to medically indigent people;
- Makes an exception to provisions of the pharmacist licensure laws that prohibit pharmacists from selling, bartering, or giving away unused medications for participation in the program;
- Provides liability protection for physicians, pharmacists, and other health care professionals for participation in the program when acting within the scope of practice of their license and in good faith compliance with the rules promulgated pursuant to the Act;
- Requires that the rules promulgated to implement the program provide for:
    1. A formulary for the medications to be distributed pursuant to the program,
    2. The protection of the privacy of the individual for whom the medication was originally prescribed,
    3. The integrity and safe storage and safe transfer of the medication, which may include limiting the drugs made available through the program to those that were originally dispensed by unit dose or an individually sealed dose or which remain in intact packaging, and
    4. The tracking of and accountability for the medications; and
- Requires the state board of health, the state board of pharmacy, the state health commission, the state board of medical licensure and supervision, and the state board of osteopathic examiners to review and evaluate the program no later than 18 months after its implementation and report any recommendations to the governor and the Legislature.

Submitted as:
Oklahoma
HB1297 (enrolled version)
Status: enacted into law in 2001.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [*Short Title*.] This Act may be cited as the "Utilization of Unused Prescription Medications Act."

Section 2. [*Pilot Program*.]

(A) The [State Board of Health], the [State Board of Pharmacy] and the [State Health Care Authority] shall jointly develop and implement a pilot program consistent with public health and safety through which unused prescription drugs, other than prescription drugs defined

as controlled dangerous substances by [insert citation], may be transferred from nursing facilities to pharmacies operated by city-county health departments or county pharmacies for the purpose of distributing the medication to residents of this state who are medically indigent.

(B) The [State Board of Health], the [State Board of Pharmacy], the [State Health Care Authority], the [State Board of Medical Licensure and Supervision], and the [State Board of Osteopathic Examiners] shall review and evaluate the program no later than [eighteen (18)] months after its implementation and shall submit a report and any recommendations to the [Governor], the [Speaker of the House of Representatives], the [President Pro Tempore of the Senate], and the [Chairs] of the appropriate legislative committees.

(C) The [State Board of Health], the [State Board of Pharmacy] and the [State Health Care Authority] shall promulgate rules and establish procedures necessary to implement the program established by this section. The rules and procedures shall provide:

1. For a formulary for the medications to be distributed pursuant to the program;

2. For the protection of the privacy of the individual for whom the medication was originally prescribed;

3. For the integrity and safe storage and safe transfer of the medication, which may include but shall not be limited to limiting the drugs made available through the program to those that were originally dispensed by unit dose or an individually sealed dose or which remain in intact packaging;

4. For the tracking of and accountability for the medications; and

5. For other matters necessary for the implementation of the program.

(D) In accordance with the rules and procedures of a program established pursuant to this section, the resident of a nursing facility, or the representative or guardian of a resident may donate unused prescription medications, other than prescription drugs defined as controlled dangerous substances by [insert citation], for dispensation to medically indigent people.

(E) Physicians, pharmacists and other health care professionals shall not be subject to liability for participation in the program established by this Act when acting within the scope of practice of their license and in good faith compliance with the rules promulgated pursuant to the Utilization of Unused Prescription Medications Act.

(F) For purposes of this section, "medically indigent" means a person who has no health insurance or who otherwise lacks reasonable means to purchase prescribed medications.

Section 3. [*Penalties*.] It shall be unlawful for any person, firm or corporation to sell, offer for sale, barter or give away any unused quantity of drugs obtained by prescription, except through a program pursuant to the Utilization of Unused Prescription Medications Act or as otherwise provided by the State Board of Pharmacy or except as permitted by [insert citation].

Section 4. [*Severability*.] [Insert severability clause.]

Section 5. [*Repealer*.] [Insert repealer clause.]

Section 6. [*Effective Date.*] [Insert effective date.]

LEGISLATION

Integrating Support Programs for Efficiency

Older Adult Services (2006 SSL)

This Act is designed to transform the state older adult services system into a primarily home- and community-based system, taking into account the continuing need for 24-hour skilled nursing care and congregate housing with services. It encompasses the housing, health, financial and other supportive older adult services.

Submitted as:
Illinois
Public Act 93-1031
Status: Enacted into law in 2004.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [*Short Title*.] This Act may be cited as "The Older Adult Services Act."

Section 2. [*Purpose*.] The purpose of this Act is to transform [this state's] comprehensive system of older adult services from a primarily facility-based service delivery system to primarily a home-based and community-based system, taking into account the continuing need for 24-hour skilled nursing care and congregate housing with services. Such restructuring shall encompass the provision of housing, health, financial, and supportive older adult services. It is envisioned that this restructuring will promote the development, availability, and accessibility of a comprehensive, affordable, and sustainable service delivery system that places a high priority on home-based and community-based services. Such restructuring will encompass all aspects of the delivery system regardless of the setting in which the service is provided.

Section 3. [*Definitions*.] As used in this Act:

"Advisory Committee" means the [Older Adult Services Advisory Committee].

"Certified nursing home" means any nursing home licensed under the [insert citation] and certified under Title XIX of the Social Security Act to participate as a vendor in the medical assistance program under [insert citation].

"Comprehensive case management" means the assessment of needs and preferences of an older adult at the direction of the older adult or the older adult's designated representative and the arrangement, coordination, and monitoring of an optimum package of services to meet the needs of the older adult.

"Consumer-directed" means decisions made by an informed older adult from available services and care options, which may range from independently making all decisions and managing services directly to limited participation in decision-making, based upon the functional and cognitive level of the older adult.

"Coordinated point of entry" means an integrated access point where consumers receive information and assistance, assessment of needs, care planning, referral, assistance in completing applications, authorization of services where permitted, and follow-up to ensure that referrals and services are accessed.

"Department" means the [Department on Aging], in collaboration with the departments of [Public Health and Public Aid] and other relevant agencies and in consultation with the Advisory Committee, except as otherwise provided.

"Departments" means the [Department on Aging], the [departments of Public Health and Public Aid], and other relevant agencies in collaboration with each other and in consultation with the [Advisory Committee], except as otherwise provided.

"Family caregiver" means an adult family member or another individual who is an uncompensated provider of home-based or community-based care to an older adult.

"Health services" means activities that promote, maintain, improve, or restore mental or physical health or that are palliative in nature.

"Older adult" means a person age [60] or older and, if appropriate, the person's family caregiver.

"Person-centered" means a process that builds upon an older adult's strengths and capacities to engage in activities that promote community life and that reflect the older adult's preferences, choices, and abilities, to the extent practicable.

"Priority service area" means an area identified by the [Departments] as being less-served with respect to the availability of and access to older adult services in [this state]. The [Departments] shall determine by rule the criteria and standards used to designate such areas.

"Priority service plan" means the plan developed pursuant to Section 5 of this Act.

"Provider" means any supplier of services under this Act.

"Residential setting" means the place where an older adult lives.

"Restructuring" means the transformation of [this state's] comprehensive system of older adult services from funding primarily a facility-based service delivery system to primarily a home-based and community-based system, taking into account the continuing need for 24-hour skilled nursing care and congregate housing with services.

"Services" means the range of housing, health, financial, and supportive services, other than acute health care services, that are delivered to an older adult with functional or cognitive limitations, or socialization needs, who requires assistance to perform activities of daily living, regardless of the residential setting in which the services are delivered.

"Supportive services" means non-medical assistance given over a period of time to an older adult that is needed to compensate for the older adult's functional or cognitive limitations, or socialization needs, or those services designed to restore, improve, or maintain the older adult's functional or cognitive abilities.

Section 4. [*Designation of Lead Agency; Annual Report*.]

(a) The [Department on Aging] shall be the lead agency for: the provision of services to older adults and their family caregivers; restructuring [this state's] service delivery system for older adults; and the implementation of this Act, except where otherwise provided. The [Department on Aging] shall collaborate with the [departments of Public Health and Public Aid] and any other relevant agencies, and shall consult with the [Advisory Committee], in all aspects of these duties, except as otherwise provided in this Act.

(b) The [Departments] shall promulgate rules to implement this Act pursuant to [insert citation].

(c) On [January 1, 2006], and each [January 1 thereafter], the [Department] shall issue a report to the [General Assembly] on progress made in complying with this Act, impediments thereto, recommendations of the [Advisory Committee], and any recommendations for

legislative changes necessary to implement this Act. To the extent practicable, all reports required by this Act shall be consolidated into a single report.

Section 5. [*Priority Service Areas; Service Expansion*.]

(a) The requirements of this Section are subject to the availability of funding.

(b) The [Department] shall expand older adult services that promote independence and permit older adults to remain in their own homes and communities. Priority shall be given to both the expansion of services and the development of new services in priority service areas.

(c) Inventory of services. The [Department] shall develop and maintain an inventory and assessment of the types and quantities of public older adult services and, to the extent possible, privately provided older adult services, including the unduplicated count, location, and characteristics of individuals served by each facility, program, or service and the resources supporting those services.

(d) Priority service areas. The [Departments] shall assess the current and projected need for older adult services throughout the State, analyze the results of the inventory, and identify priority service areas, which shall serve as the basis for a priority service plan to be filed with the [Governor] and the [General Assembly] no later than [July 1, 2006], and every [5 years] thereafter.

(e) Moneys appropriated by the [General Assembly] for the purpose of this Section, receipts from donations, grants, fees, or taxes that may accrue from any public or private sources to the [Department] for the purpose of this Section, and savings attributable to the nursing home conversion program as calculated in subsection (h) shall be deposited into the [Department on Aging State Projects Fund]. Interest earned by those moneys in the [Fund] shall be credited to the [Fund].

(f) Moneys described in subsection (e) from the [Department on Aging State Projects Fund] shall be used for older adult services, regardless of where the older adult receives the service, with priority given to both the expansion of services and the development of new services in priority service areas. Fundable services shall include:

(1) Housing, health services, and supportive services:

(A) adult day care;

(B) adult day care for persons with Alzheimer's disease and related disorders;

(C) activities of daily living;

(D) care-related supplies and equipment;

(E) case management;

(F) community reintegration;

(G) companion;

(H) congregate meals;

(I) counseling and education;

(J) elder abuse prevention and intervention;

(K) emergency response and monitoring;

(L) environmental modifications;

(M) family caregiver support;

(N) financial;

(O) home delivered meals;

(P) homemaker;

(Q) home health;
(R) hospice;
(S) laundry;
(T) long-term care ombudsman;
(U) medication reminders;
(V) money management;
(W) nutrition services;
(X) personal care;
(Y) respite care;
(Z) residential care;
(AA) senior benefits outreach;
(BB) senior centers;
(CC) services provided under the [insert citation], or sheltered care services that meet the requirements of the [insert citation];
(DD) telemedicine devices to monitor recipients in their own homes as an alternative to hospital care, nursing home care, or home visits;
(EE) training for direct family caregivers;
(FF) transition;
(GG) transportation;
(HH) wellness and fitness programs; and
(II) other programs designed to assist older adults to remain independent and receive services in the most integrated residential setting possible for that person.

(2) Older Adult Services Demonstration Grants, pursuant to subsection (l) of this Section.

(g) Older Adult Services Demonstration Grants. The [Department] shall establish a program of demonstration grants to assist in the restructuring of the delivery system for older adult services and provide funding for innovative service delivery models and system change and integration initiatives. The [Department] shall prescribe, by rule, the grant application process. At a minimum, every application must include:

(1) The type of grant sought;
(2) A description of the project;
(3) The objective of the project;
(4) The likelihood of the project meeting identified needs;
(5) The plan for financing, administration, and evaluation of the project;
(6) The timetable for implementation;
(7) The roles and capabilities of responsible individuals and organizations;
(8) Documentation of collaboration with other service providers, local community government leaders, and other stakeholders, other providers, and any other stakeholders in the community;
(9) Documentation of community support for the project, including support by other service providers, local community government leaders, and other stakeholders;
(10) The total budget for the project;
(11) The financial condition of the applicant; and
(12) Any other application requirements that may be established by the [Department] by rule.

(h) Each project may include provisions for a designated staff person who is responsible for the development of the project and recruitment of providers.

(i) Projects may include, but are not limited to: adult family foster care; family adult day care; assisted living in a supervised apartment; personal services in a subsidized housing project; evening and weekend home care coverage; small incentive grants to attract new providers; money following the person; cash and counseling; managed long-term care; and at least one respite care project that establishes a local coordinated network of volunteer and paid respite workers, coordinates assignment of respite workers to caregivers and older adults, ensures the health and safety of the older adult, provides training for caregivers, and ensures that support groups are available in the community.

(j) A demonstration project funded in whole or in part by an Older Adult Services Demonstration Grant is exempt from the requirements of [insert citation]. To the extent applicable, however, for the purpose of maintaining the statewide inventory authorized by the [insert citation], the [Department] shall send to the [Health Facilities Planning Board] a copy of each grant award made under this subsection (g).

(k) The [Department], in collaboration with the [Departments of Public Health and Public Aid], shall evaluate the effectiveness of the projects receiving grants under this Section.

(l) No later than [July 1] of each year, the [Department of Public Health] shall provide information to the [Department of Public Aid] to enable the [Department of Public Aid] to [annually] document and verify the savings attributable to the nursing home conversion program for the previous fiscal year to estimate an annual amount of such savings that may be appropriated to the [Department on Aging State Projects Fund] and notify the [General Assembly], the [Department on Aging], the [Department of Human Services], and the [Advisory Committee] of the savings no later than [October 1] of the same fiscal year.

Section 6. [*Older Adult Services Restructuring*.] No later than [January 1, 2005], the [Department] shall commence the process of restructuring the older adult services delivery system. Priority shall be given to both the expansion of services and the development of new services in priority service areas. Subject to the availability of funding, the restructuring shall include, but not be limited to, the following:

(1) Planning. The [Department] shall develop a plan to restructure the State's service delivery system for older adults. The plan shall include a schedule for the implementation of the initiatives outlined in this Act and all other initiatives identified by the participating agencies to fulfill the purposes of this Act. Financing for older adult services shall be based on the principle that "money follows the individual." The plan shall also identify potential impediments to delivery system restructuring and include any known regulatory or statutory barriers.

(2) Comprehensive case management. The [Department] shall implement a statewide system of holistic comprehensive case management. The system shall include the identification and implementation of a universal, comprehensive assessment tool to be used statewide to determine the level of functional, cognitive, socialization, and financial needs of older adults. This tool shall be supported by an electronic intake, assessment, and care planning system linked to a central location. "Comprehensive case management" includes services and coordination such as (i) comprehensive assessment of the older adult (including the physical, functional, cognitive, psycho-social, and social needs of the individual); (ii) development and implementation of a service plan with the older adult to mobilize the formal and family resources

and services identified in the assessment to meet the needs of the older adult, including coordination of the resources and services with any other plans that exist for various formal services, such as hospital discharge plans, and with the information and assistance services; (iii) coordination and monitoring of formal and family service delivery, including coordination and monitoring to ensure that services specified in the plan are being provided; (iv) periodic reassessment and revision of the status of the older adult with the older adult or, if necessary, the older adult's designated representative; and (v) in accordance with the wishes of the older adult, advocacy on behalf of the older adult for needed services or resources.

(3) Coordinated point of entry. The [Department] shall implement and publicize a statewide coordinated point of entry using a uniform name, identity, logo, and toll-free number.

(4) Public web site. The [Department] shall develop a public web site that provides links to available services, resources, and reference materials concerning caregiving, diseases, and best practices for use by professionals, older adults, and family caregivers.

(5) Expansion of older adult services. The [Department] shall expand older adult services that promote independence and permit older adults to remain in their own homes and communities.

(6) Consumer-directed home and community-based services. The [Department] shall expand the range of service options available to permit older adults to exercise maximum choice and control over their care.

(7) Comprehensive delivery system. The [Department] shall expand opportunities for older adults to receive services in systems that integrate acute and chronic care.

(8) Enhanced transition and follow-up services. The [Department] shall implement a program of transition from one residential setting to another and follow-up services, regardless of residential setting, pursuant to rules with respect to (i) resident eligibility, (ii) assessment of the resident's health, cognitive, social, and financial needs, (iii) development of transition plans, and (iv) the level of services that must be available before transitioning a resident from one setting to another.

(9) Family caregiver support. The [Department] shall develop strategies for public and private financing of services that supplement and support family caregivers.

(10) Quality standards and quality improvement. The [Department] shall establish a core set of uniform quality standards for all providers that focus on outcomes and take into consideration consumer choice and satisfaction, and the [Department] shall require each provider to implement a continuous quality improvement process to address consumer issues. The continuous quality improvement process must benchmark performance, be person-centered and data-driven, and focus on consumer satisfaction.

(11) Workforce. The [Department] shall develop strategies to attract and retain a qualified and stable worker pool, provide living wages and benefits, and create a work environment that is conducive to long-term employment and career development. Resources such as grants, education, and promotion of career opportunities may be used.

(12) Coordination of services. The [Department] shall identify methods to better coordinate service networks to maximize resources and minimize duplication of services and ease of application.

(13) Barriers to services. The [Department] shall identify barriers to the provision, availability, and accessibility of services and shall implement a plan to address those barriers. The plan shall: (i) identify barriers, including but not limited to, statutory and regulatory complexity, reimbursement issues, payment issues, and labor force issues; (ii) recommend

changes to State or federal laws or administrative rules or regulations; (iii) recommend application for federal waivers to improve efficiency and reduce cost and paperwork; (iv) develop innovative service delivery models; and (v) recommend application for federal or private service grants.

(14) Reimbursement and funding. The [Department] shall investigate and evaluate costs and payments by defining costs to implement a uniform, audited provider cost reporting system to be considered by all [Departments] in establishing payments. To the extent possible, multiple cost reporting mandates shall not be imposed.

(15) Medicaid nursing home cost containment and Medicare utilization. The [Department of Public Aid], in collaboration with the [Department on Aging and the Department of Public Health] and in consultation with the [Advisory Committee], shall propose a plan to contain Medicaid nursing home costs and maximize Medicare utilization. The plan must not impair the ability of an older adult to choose among available services. The plan shall include, but not be limited to, (i) techniques to maximize the use of the most cost-effective services without sacrificing quality and (ii) methods to identify and serve older adults in need of minimal services to remain independent, but who are likely to develop a need for more extensive services in the absence of those minimal services.

(16) Bed reduction. The [Department of Public Health] shall implement a nursing home conversion program to reduce the number of Medicaid-certified nursing home beds in areas with excess beds. The [Department of Public Aid] shall investigate changes to the Medicaid nursing facility reimbursement system in order to reduce beds. Such changes may include, but are not limited to, incentive payments that will enable facilities to adjust to the restructuring and expansion of services required by the Older Adult Services Act, including adjustments for the voluntary closure or layaway of nursing home beds certified under Title XIX of the federal Social Security Act. Any savings shall be reallocated to fund home-based or community-based older adult services pursuant to Section 5 of this Act.

(17) Financing. The [Department] shall investigate and evaluate financing options for older adult services and shall make recommendations in the report required by Section 4 concerning the feasibility of these financing arrangements. These arrangements shall include, but are not limited to:

(A) private long-term care insurance coverage for older adult services;

(B) enhancement of federal long-term care financing initiatives;

(C) employer benefit programs such as medical savings accounts for long-term care;

(D) individual and family cost-sharing options;

(E) strategies to reduce reliance on government programs;

(F) fraudulent asset divestiture and financial planning prevention; and

(G) methods to supplement and support family and community caregiving.

(18) Older Adult Services Demonstration Grants. The [Department] shall implement a program of demonstration grants that will assist in the restructuring of the older adult services delivery system, and shall provide funding for innovative service delivery models and system change and integration initiatives pursuant to subsection (g) of Section 5.

(19) Bed Need Methodology Update. For the purposes of determining areas with excess beds, the [Departments] shall provide information and assistance to the [Health Facilities Planning Board] to update the [Bed Need Methodology for Long-Term Care] to update the

assumptions used to establish the methodology to make them consistent with modern older adult services.

Section 7. [*Nursing Home Conversion Program*.]

(a) The [Department of Public Health], in collaboration with the [Department on Aging and the Department of Public Aid], shall establish a nursing home conversion program. Start-up grants, pursuant to subsections (l) and (m) of this Section, shall be made available to nursing homes as appropriations permit as an incentive to reduce certified beds, retrofit, and retool operations to meet new service delivery expectations and demands.

(b) Grant moneys shall be made available for capital and other costs related to:

(1) the conversion of all or a part of a nursing home to an assisted living establishment or a special program or unit for persons with Alzheimer's disease or related disorders licensed under the [insert citation] or a supportive living facility established under [insert citation]

(2) the conversion of multi-resident bedrooms in the facility into single-occupancy rooms; and

(3) the development of any of the services identified in a priority service plan that can be provided by a nursing home within the confines of a nursing home or transportation services. Grantees shall be required to provide a minimum of a [20 percent] match toward the total cost of the project.

(c) Nothing in this Act shall prohibit the co-location of services or the development of multifunctional centers under subsection (f) of Section e of this Act, including a nursing home offering community-based services or a community provider establishing a residential facility.

(d) A certified nursing home with at least [50 percent] of its resident population having their care paid for by the Medicaid program is eligible to apply for a grant under this Section.

(e) Any nursing home receiving a grant under this Section shall reduce the number of certified nursing home beds by a number equal to or greater than the number of beds being converted for one or more of the permitted uses under item (1) or (2) of subsection (b). The nursing home shall retain the Certificate of Need for its nursing and sheltered care beds that were converted for [15 years]. If the beds are reinstated by the provider or its successor in interest, the provider shall pay to the fund from which the grant was awarded, on an amortized basis, the amount of the grant. The Department shall establish, by rule, the bed reduction methodology for nursing homes that receive a grant pursuant to item (3) of subsection (b).

(f) Any nursing home receiving a grant under this Section shall agree that, for a minimum of [10 years] after the date that the grant is awarded, a minimum of [50 percent] of the nursing home's resident population shall have their care paid for by the Medicaid program. If the nursing home provider or its successor in interest ceases to comply with the requirement set forth in this subsection, the provider shall pay to the fund from which the grant was awarded, on an amortized basis, the amount of the grant.

(g) Before awarding grants, the [Department of Public Health] shall seek recommendations from the [Department on Aging and the Department of Public Aid]. The [Department of Public Health] shall attempt to balance the distribution of grants among geographic regions, and among small and large nursing homes. The [Department of Public Health] shall develop, by rule, the criteria for the award of grants based upon the following factors:

(1) the unique needs of older adults (including those with moderate and low incomes), caregivers, and providers in the geographic area of the State the grantee seeks to serve;

(2) whether the grantee proposes to provide services in a priority service area;

(3) the extent to which the conversion or transition will result in the reduction of certified nursing home beds in an area with excess beds;

(4) the compliance history of the nursing home; and

(5) any other relevant factors identified by the [Department], including standards of need.

(h) A conversion funded in whole or in part by a grant under this Section must not:

(1) diminish or reduce the quality of services available to nursing home residents;

(2) force any nursing home resident to involuntarily accept home-based or community-based services instead of nursing home services;

(3) diminish or reduce the supply and distribution of nursing home services in any community below the level of need, as defined by the [Department] by rule; or

(4) cause undue hardship on any person who requires nursing home care.

(i) The [Department] shall prescribe, by rule, the grant application process. At a minimum, every application must include:

(1) the type of grant sought;

(2) a description of the project;

(3) the objective of the project;

(4) the likelihood of the project meeting identified needs;

(5) the plan for financing, administration, and evaluation of the project;

(6) the timetable for implementation;

(7) the roles and capabilities of responsible individuals and organizations;

(8) documentation of collaboration with other service providers, local community government leaders, and other stakeholders, other providers, and any other stakeholders in the community;

(9) documentation of community support for the project, including support by other service providers, local community government leaders, and other stakeholders;

(10) the total budget for the project;

(11) the financial condition of the applicant; and

(12) any other application requirements that may be established by the [Department] by rule.

(j) A conversion project funded in whole or in part by a grant under this Section is exempt from the requirements of [insert citation]. The [Department of Public Health], however, shall send to the [Health Facilities Planning Board] a copy of each grant award made under this Section.

(k) Applications for grants are public information, except that nursing home financial condition and any proprietary data shall be classified as nonpublic data.

(l) The [Department of Public Health] may award grants from the [Long Term Care Civil Money Penalties Fund] established under Section 1919(h)(2)(A)(ii) of the Social Security Act and 42 CFR 488.422(g) if the award meets federal requirements.

Section 8. [*Older Adult Services Advisory Committee*.]

(a) The [Older Adult Services Advisory Committee] is created to advise the [directors of Aging, Public Aid, and Public Health] on all matters related to this Act and the delivery of services to older adults in general.

(b) The [Advisory Committee] shall be comprised of the following:

(1) The [Director of Aging] or his or her designee, who shall serve as chair and shall be an ex officio and nonvoting member.

(2) The [Director of Public Aid] and the [Director of Public Health] or their designees, who shall serve as vice-chairs and shall be ex officio and nonvoting members.

(3) One representative each of the [Governor's Office, the Department of Public Aid, the Department of Public Health, the Department of Veterans' Affairs, the Department of Human Services, the Department of Insurance, the Department of Commerce and Economic Opportunity, the Department on Aging, the Department on Aging's State Long Term Care Ombudsman, the Housing Finance Authority, and the Housing Development Authority], each of whom shall be selected by his or her respective director and shall be an ex officio and nonvoting member.

(4) [Thirty-two] members appointed by the [Director of Aging] in collaboration with the [directors of Public Health and Public Aid], and selected from the recommendations of statewide associations and organizations, as follows:

(A) [One] member representing the [Area Agencies on Aging];

(B) [Four] members representing nursing homes or licensed assisted living establishments;

(C) [One] member representing home health agencies;

(D) [One] member representing case management services;

(E) [One] member representing statewide senior center associations;

(F) [One] member representing [Community Care Program homemaker services];

(G) [One] member representing [Community Care Program adult day services];

(H) [One] member representing nutrition project directors;

(I) [One] member representing hospice programs;

(J) [One] member representing individuals with Alzheimer's disease and related dementias;

(K) [Two] members representing statewide trade or labor unions;

(L) [One] advanced practice nurse with experience in gerontological nursing;

(M) [One] physician specializing in gerontology;

(N) [One] member representing regional long-term care ombudsmen;

(O) [One] member representing township officials;

(P) [One] member representing municipalities;

(Q) [One] member representing county officials;

(R) [One] member representing the parish nurse movement;

(S) [One] member representing pharmacists;

(T) [Two] members representing statewide organizations engaging in advocacy or legal representation on behalf of the senior population;

(U) [Two] family caregivers;

(V) [Two] citizen members over the age of [60];

(W) [One] citizen with knowledge in the area of gerontology research or health care law;

(X) [One] representative of health care facilities licensed under the [Hospital Licensing Act]; and

(Y) [One] representative of primary care service providers.

(c) Voting members of the [Advisory Committee] shall serve for a term of [3 years] or until a replacement is named. All members shall be appointed no later than [January 1, 2005]. Of the initial appointees, as determined by lot, [10 members shall serve a term of one year]; [10 shall serve for a term of 2 years]; and [12 shall serve for a term of 3 years]. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of that term. [The Advisory Committee] shall meet at least quarterly and may meet more frequently at the call of the Chair. A simple majority of those appointed shall constitute a quorum. The affirmative vote of a majority of those present and voting shall be necessary for [Advisory Committee] action. Members of the [Advisory Committee] shall receive no compensation for their services.

(d) The [Advisory Committee] shall have an [Executive Committee] comprised of the [Chair, the Vice Chairs, and up to 15 members of the Advisory Committee appointed by the Chair] who have demonstrated expertise in developing, implementing, or coordinating the system restructuring initiatives defined in Section 6 of this Act. The [Executive Committee] shall have responsibility to oversee and structure the operations of the [Advisory Committee] and to create and appoint necessary subcommittees and subcommittee members.

(e) The [Advisory Committee] shall study and make recommendations related to the implementation of this Act, including but not limited to system restructuring initiatives as defined in Section 6 of this Act or otherwise related to this Act.

Section 9. [*Severability*.] [Insert severability clause.]

Section 10. [*Repealer*.] [Insert repealer clause.]

Section 11. [*Effective Date.*] [Insert effective date.]

Relating to Pharmaceutical Assistance Programs and Pharmaceutical Discount Purchasing Cards (2006 SSL)

This Act directs the state Commissioner of Health and the state Commissioner of the Department for the Aging to develop a single application form for citizens to use to seek eligibility for various pharmaceutical assistance programs and pharmaceutical discount purchasing cards. The Commissioners must obtain copies of the application forms used by such pharmaceutical assistance programs and pharmaceutical discount purchasing cards in the state, compile a list of the various information required to complete such application forms, identify common elements, and analyze the forms for readability and simplicity. Upon completion of this analysis, the Commissioners must then design a single, concise application form that is logically formatted, written in clear and easily comprehensible language, and covers any and all data that may be required to obtain eligibility for any such pharmaceutical assistance program or pharmaceutical discount purchasing card. Upon completion of the design for the single concise application form for pharmaceutical assistance programs and pharmaceutical discount purchasing cards in the state, the Commissioners must place such application form on their respective departments' websites and cooperate with the programs and pharmaceutical companies to encourage the use of the design throughout the state. In order to perform the duties provided in the new subsection, the Commissioners may appoint an advisory task force of stakeholders to assist them in this endeavor.

Submitted as:
Virginia
Chapter 318, 2004
Status: Enacted into law in 2004.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [*Short Title*.] This Act may be cited as "An Act Concerning Pharmaceutical Assistance Programs and Pharmaceutical Discount Purchasing Cards."

Section 2. [*Alternative Means of Disseminating Information*.]

A. The [Commissioner] shall create links from the [Department of Health's] website to the [Department for the Aging's] website and its affiliated sites pertaining to pharmaceutical assistance programs and pharmaceutical discount purchasing cards. The [Commissioner of the Department for the Aging] shall cooperate with the [Commissioner of Health] by ensuring that such information is available on the [department for the Aging's] website.

B. The [Commissioner] shall ensure that all clinical sites administered by local health departments are provided with adequate information concerning the services of the [Department for the Aging], including, but not limited to, its toll-free telephone number and its website information on pharmaceutical assistance programs and pharmaceutical discount purchasing cards.

C. The [Commissioner of Health and the Commissioner of the Department for the Aging] shall coordinate the dissemination of information to the public regarding any pharmaceutical discount purchasing card programs while maintaining a neutral posture regarding such programs. In addition, with such funds as may be made available, the [Commissioner of Health and the Commissioner of the Department for the Aging] shall disseminate information to the public concerning recent congressional actions relating to pharmaceutical benefits to be provided under the Medicare program and how such benefits may help senior citizens with the costs of pharmaceutical benefits.

D. The [Commissioner] shall establish a toll-free telephone number, to be administered by the [Department of Health], which shall provide recorded information concerning services available from the [Department for the Aging], the [state Agencies on Aging], and other appropriate organizations for senior citizens.

E. The [Commissioner of Health and the Commissioner of the [Department for the Aging] shall develop a strategy, in coordination with the [state Agencies on Aging] and other private and nonprofit organizations, for disseminating information to the public concerning the availability of pharmaceutical assistance programs and for training senior citizen volunteers to assist in completing applications for pharmaceutical assistance programs and pharmaceutical discount purchasing cards.

Section 3. [*Application Forms.*] In addition to the responsibilities set forth in Section 2 of this Act, the [Commissioner of Health and the Commissioner of the Department for the Aging] shall encourage pharmaceutical manufacturers to include application forms for pharmaceutical discount purchasing card programs on their respective websites in a format capable of being downloaded and printed by consumers. When practicable, the website maintained by the [Department for the Aging] shall include direct links to such forms.

Section 4. [*Feasibility and Standards for Developing a Single Application Form.*]

A. The [Commissioner of Health and the Commissioner of the Department for the Aging] shall report to the [Governor] and [General Assembly] by [October 30, 2004], on the feasibility of developing a single application form for residents of this state to use to seek eligibility for the [nearly 50] pharmaceutical assistance programs and pharmaceutical discount purchasing cards.

B. In determining feasibility, the [Commissioners] shall obtain copies of the application forms used by such pharmaceutical assistance programs and pharmaceutical discount purchasing cards in this state. [Commissioners] should review and analyze such forms, and their analysis should include but not be limited to:

(1) compiling a list of the various information required to complete such application forms;

(2) identifying common elements; and

(3) analyzing the forms for readability and simplicity.

C. Upon completion of this analysis, the [Commissioners] shall assess the feasibility of designing a single, concise application form that is logically formatted, written in clear and easily comprehensible language, and covers any and all data that may be required to obtain eligibility for any such pharmaceutical assistance program or pharmaceutical discount purchasing card.

D. To assist them in completing the responsibilities set forth in subsections A and B of this section, the [Commissioners] may appoint an advisory task force of stakeholders.

Section 5. [*Severability*.] [Insert severability clause.]

Section 6. [*Repealer*.] [Insert repealer clause.]

Section 7. [*Effective Date.*] [Insert effective date.]

Statewide Stroke Emergency Transport Plan and Stroke Facility Criteria

This Act establishes a council and committee to set up a statewide stroke emergency transportation plan and to develop criteria for a stroke facility. The stroke emergency transport plan must include:

- Training requirements to recognize and treat strokes, including emergency screening procedures;
- A list of appropriate early treatments to stabilize patients;
- Protocols to rapidly transport someone to a stroke facility when that is appropriate and it is safe to bypass another health care facility; and
- Plans to coordinate with other statewide agencies to educate people about strokes, transporting stroke victims, and stroke facilities.

Submitted as:
Texas
SB 330
Status: Enacted into law in 2005.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [*Short Title*.] This Act may be cited as "An Act Create a Statewide Stroke Emergency Transport Plan."

Section 2. [*Definitions*.]

(A) "Department" means the [Department of State Health Services.]

(B) "Executive commissioner" means the [Executive Commissioner of the Health and Human Services Commission.]

(C) "Advisory council" means the advisory council established under this Act.

(D) "Stroke committee" means the committee appointed under this Act.

(E) "Stroke facility" means a health care facility that:

(1) is capable of primary or comprehensive treatment of stroke victims;

(2) is part of an emergency medical services and trauma care system as defined by this Act;

(3) has a health care professional available 24 hours a day, seven days a week who is knowledgeable about stroke care and capable of carrying out acute stroke therapy; and

(4) records patient treatment and outcomes.

Section 3. [*Advisory Council and Stroke Committee*.]

(A) There is hereby created an [advisory council] to help establish a statewide stroke emergency transport plan and stroke facility criteria.

(B) The [advisory council] shall consist of the following members: [insert membership].

(C) The [advisory council] shall appoint a [stroke committee] to help the [advisory council] develop a statewide stroke emergency transport plan and stroke facility criteria.

(B) The [stroke committee] must include the following members:

(1) A licensed physician appointed from a list of physicians eligible for accreditation in vascular neurology from the Accreditation Council for Graduate Medical Education, recommended by a statewide organization of neurologists;

(2) a licensed interventional neuroradiologist appointed from a list of neuroradiologists recommended by a statewide organization of radiologists;

(3) a neurosurgeon with stroke expertise;

(4) a member of the state Council on Cardiovascular Disease and Stroke who has expertise in stroke care;

(5) a licensed physician appointed from a list of physicians recommended by a statewide organization of emergency physicians;

(6) a neuroscience registered nurse with stroke expertise; and

(7) a volunteer member of a nonprofit organization specializing in stroke treatment, prevention, and education

Section 4. [*Duties of Stroke Committee; Development of Stroke Emergency Transport Plan and Stroke Facility Criteria*.]

(A) The [advisory council], with the assistance of the [stroke committee] and in collaboration with the state [Council on Cardiovascular Disease and Stroke], shall develop a statewide stroke emergency transport plan and stroke facility criteria.

(B) The stroke emergency transport plan must include:

(1) training requirements to recognize and treat strokes, including emergency screening procedures;

(2) a list of appropriate early treatments to stabilize patients;

(3) protocols to rapidly transport someone to a stroke facility when that is appropriate and it is safe to bypass another health care facility; and

(4) plans to coordinate with other statewide agencies to educate people about strokes, transporting stroke victims, and stroke facilities.

(C) In developing the stroke emergency transport plan and stroke facility criteria, the [stroke committee] shall consult the criteria for stroke facilities established by national medical organizations such as the Joint Commission on Accreditation of Healthcare Organizations.

Section 5. [*Rules*.] The [executive commissioner] may adopt rules regarding a statewide stroke emergency transport plan and stroke facility criteria based on recommendations from the [advisory council].

Section 6. [*Reporting Requirements: Statewide Stroke Emergency Transport Plan*.] Not later than [January 1, 2007], the [advisory council] shall submit a report of the statewide stroke emergency transport plan and the stroke facility criteria to the [governor, lieutenant governor, speaker of the house of representatives, and executive commissioner of the Health and Human Services Commission].

Section 7. [*Severability*.] [Insert severability clause.]

Section 8. [*Repealer*.] [Insert repealer clause.]

Section 9. [*Effective Date.*] [Insert effective date.]

LEGISLATION

State Approaches to Caregiving

Long-Term Care Partnership Program (2006 SSL)

This Act directs the state department of health to disregard or not count benefits from certain long term care insurance policies as assets under the state Medicaid program.

Submitted as:
Idaho
HB658 (Enrolled Version)
Status: Enacted into law in 2004.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [*Short Title*.] This Act may be cited as "The Long-Term Care Partnership Program."

Section 2. [*Definitions*.] As used in this Act:

(1) "Asset disregard" means the total assets an individual can own and maintain under Medicaid and still qualify for benefits at the time the individual applies for benefits:

(a) If the individual is a beneficiary of a Long-Term Care Partnership Program approved policy; and

(b) Has exhausted the benefits of the policy.

(2) "Department" means the state [department of health and welfare].

(3) "Long-Term Care Partnership program approved policy" means a long-term care insurance policy which is approved by the state [department of insurance] and is provided through state approved long-term care insurers through the Long-Term Care Partnership Program.

(4) "Medicaid" means the Federal Medical Assistance Program established under Title XIX of the Social Security Act.

Section 3. [*Long-Term Care Partnership Program*.]

(1) This Act hereby establishes a Long-Term Care Partnership Program, to be administered by the [department] with the assistance of the [department of insurance]. The Long-Term Care Partnership Program shall:

(a) Provide incentives for people to insure against the costs of providing for their long-term care needs;

(b) Provide a mechanism for people to qualify for coverage of the cost of their long term care needs under Medicaid without first being required to substantially exhaust their resources;

(c) Provide counseling services to people who are planning for their long-term care needs; and

(d) Alleviate the financial burden on the state's medical assistance program by encouraging the pursuit of private initiatives.

(2) Upon exhausting benefits under a Long-Term Care Partnership Program policy, certain resources of an individual, as described in subsection (3) of this section, shall not be considered by the [department] as a determination of any of the following:

(a) Eligibility for Medicaid;

(b) Amount of any Medicaid payment; or

(c) Any subsequent recovery by the state of a payment for medical services.

(3) The [department] shall promulgate necessary rules and amendments to the state plan to allow for asset disregard. To provide asset disregard, for purchasers of a Long-Term Care Partnership Program policy, the [department] shall count insurance benefits paid under the policy toward asset disregard to the extent the payments are for covered services under the Long-Term Care Partnership Program policy.

Section 4. [*Eligibility*.]

(1) An individual who is a beneficiary of a Long-Term Care Partnership Program policy is eligible for assistance under Medicaid using the asset disregard under Section 3 of this Act.

(2) If the Long-Term Care Partnership Program is discontinued, an individual who purchased a Long-Term Care Partnership Policy prior to the date the Program is discontinued shall be eligible to receive asset disregard.

(3) The [department] may enter into reciprocal agreements with other states to extend the asset disregard to residents of the state who purchased long-term care policies in another state which has a substantially similar asset disregard program to the program under Section 3 of this Act.

Section 5. [*Administration*.] The [department] and the state [department of insurance] are authorized to adopt rules to implement the provisions of this Act for its administration.

Section 6. [*Notice*.]

(1) A long-term care insurance policy issued after the effective date of this Act shall contain a notice provision to the consumer detailing in plain language the current law pertaining to asset disregard and asset tests.

(2) The notice to the consumer under subsection (1) of this section shall be developed by the [director of the department of insurance].

Section 7. [*Severability*.] [Insert severability clause.]

Section 8. [*Repealer*.] [Insert repealer clause.]

Section 9. [*Effective Date.*] [Insert effective date.]

Pooled Trusts for People with Disabilities (2004 SSL)

This Act enables people with disabilities to pool their assets into a common trust to help generate income without having to count the interest earned from the joint trust assets against their eligibility requirements for state medical assistance.

Submitted as:
Pennsylvania
Chapter 168 of 2002
Status: Enacted into law in 2002.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [*Short Title*.] This Act may be cited as "The Pooled Trust Act."

Section 2. [*Definitions*.] The following words and phrases when used in this Act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Beneficiary" means an individual with a disability who has the right to receive services and benefits of a pooled trust.

"Board" means a group of people vested with the management of the business affairs of a trustee.

"Disability" means a physical or mental impairment as defined in section 1614 of the Social Security Act (49 Stat. 620, 42 U.S.C. 2 § 1382c).

"Pooled Trust" means a trust that meets all of the following:

(1) Contains assets of more than one beneficiary.

(2) Each beneficiary has a disability.

(3) Is managed by a nonprofit corporation.

(4) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts. Accounts in the trust may be established by the parent, grandparent or legal guardian of the person with a disability, by the individual with a disability or by a court.

(5) Upon the death of a beneficiary, amounts in the beneficiary's accounts are:

(i) Retained by the trust for the benefit of other beneficiaries, or other people with disabilities; or

(ii) Used to reimburse the [state] in an amount equal to the total amount of medical assistance paid on behalf of the beneficiary.

"Trustee." A nonprofit organization that manages a pooled trust.

Section 3. [*Organization of a Pooled Trust*.]

(a) Administration -- A pooled trust shall be administered by a trustee governed by a board. The trust may employ people as necessary.

(b) Fiduciary Status of Board -- The members of a board and employees of a trustee, if any, shall stand in a fiduciary relationship to the beneficiaries and the trustee regarding investment of the trust and shall not profit, either directly or indirectly, with respect thereto.

(c) Control and Management -- A trustee shall maintain a separate account for each beneficiary of a pooled trust, but for purposes of investment and management of funds, the trustee may pool these accounts. The trustee shall have exclusive control and authority to manage and invest the money in the pooled trust in accordance with this section, subject, however, to the exercise of that degree of judgment, skill and care under the prevailing circumstances that a person of prudence, discretion and intelligence, who are familiar with investment matters, exercise in the management of their affairs, considering the probable income to be derived from the investment and the probable safety of their capital. The trustee may charge a trust management fee to cover the costs of administration and management of the pooled trust.

(d) Conflict of Interest -- A board member shall disclose and abstain from participation in a discussion or voting on an issue when a conflict of interest arises with the board member on a particular issue or vote.

(e) Compensation -- No board member may receive compensation for services provided as a member of the board. No fees or commissions may be paid to a board member. A board member may be reimbursed for necessary expenses incurred which are in the best interest of the beneficiaries of the pooled trust as a board member upon presentation of receipts.

(f) Disbursements -- The trustee shall disburse money from a beneficiary's account only on behalf of the beneficiary. A disbursement from a beneficiary's account shall be in the best interest of the beneficiary.

Section 4. [*Pooled Trust Fund*.] All money received for pooled trust funds shall be deposited with a court-approved corporate fiduciary or with the [State Treasury] if no court-approved corporate fiduciary is available to the trustee. The funds shall be pooled for investment and management. A separate account shall be maintained for each beneficiary, and quarterly accounting statements shall be provided to each beneficiary by the trustee. The court-approved corporate fiduciary or the [State Treasury] shall provide quarterly accounting statements to the trustee. The court-approved corporate fiduciary or the [State Treasury] may charge a trust management fee to cover the costs of managing the funds in the pooled trust.

Section 5. [*Reporting*.]

(a) Preparation and Filing of Annual Financial Report -- In addition to reports required to be filed under [insert citation relating to partnerships and limited liability companies], the trustee shall file an annual report with the [Office Of Attorney General] along with an itemized statement which shows the funds collected for the year, income earned, salaries paid, other expenses incurred and the opening and final trust balances. A copy of this statement shall be available to the beneficiary, trustor or designee of the trustor, upon request.

(b) Preparation of Annual Beneficiary's Report -- The trustee shall prepare and provide each trustor or the trustor's designee annually with a detailed individual statement of the services provided to the trustor's beneficiary during the previous 12 months and of the services to be provided during the following 12 months. The trustee shall provide a copy of this statement to the beneficiary, upon request.

Section 6. [*Coordination of Services*.]

(a) Medical Assistance -- In the determination of eligibility for medical assistance benefits, the interest of any disabled beneficiary in a pooled trust shall not be considered as a resource for purposes of determining the beneficiary's eligibility for medical assistance.

(b) Reductions -- No State agency shall reduce the benefits or services available to an individual because that person is a beneficiary of a pooled trust. The beneficiary's interest in a pooled trust shall not be reachable in satisfaction of a claim for support and maintenance of the beneficiary.

Section 7. [*Notice*.] The [Office of the Attorney General] shall make available information on the treatment of pooled trusts to the people with disabilities in the medical assistance program.

Section 8. [*Applicability*.] This Act shall apply to pooled trusts established on or after the effective date of this Act and to the accounts of individual beneficiaries established on or after the effective date of this Act in pooled trusts created before the effective date of this Act.

Section 9. [*Severability*.] [Insert severability clause.]

Section 10. [*Repealer*.] [Insert repealer clause.]

Section 11. [*Effective Date.*] [Insert effective date.]

LEGISLATION

Supporting Families and Communities

Access to Decedents' Electronic Mail Accounts (2007 SSL)

This Act requires email service providers to give estate executors and administrators access to, or copies of, the decedent's email account. The decedent must have been domiciled in Connecticut when they died, and estate executors and administrators must present proof of their status. Email service providers need not disclose information if doing so would violate federal law. Under the Act, an email service provider is an intermediary that gives end users the ability to send or receive email. An electronic mail account contains all email the end user sent or received that the provider has stored or recorded in its regular course of business. It also contains other stored or recorded electronic information directly related to the email services it provided, such as billing and payment information. Executors and administrators can satisfy the Act's requirements by giving the service provider a written request, a copy of the death certificate, and a certified copy of their certificate of appointment. Alternatively, a probate judge who has jurisdiction over the estate can order disclosure.

Submitted as:
Connecticut
PA 05-136
Status: Enacted into law in 2005.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [*Short Title*.] This Act may be cited as "An Act Concerning Access to Decedents' Electronic Mail Accounts."

Section 2. [*Definitions*.]

(a) As used in this Act:

(1) "Electronic mail service provider" means any person who is an intermediary in sending or receiving electronic mail, and provides to end users of electronic mail services the ability to send or receive electronic mail; and

(2) "Electronic mail account" means all electronic mail sent or received by an end user of electronic mail services provided by an electronic mail service provider that is stored or recorded by such electronic mail service provider in the regular course of providing such services and any other electronic information stored or recorded by such electronic mail service provider that is directly related to the electronic mail services provided to such end user by such electronic mail service provider, including, but not limited to, billing and payment information.

Section 3. [*Access to Decedents' Electronic Mail Accounts*.]

(a) An electronic mail service provider shall provide, to the executor or administrator of the estate of a deceased person who was domiciled in this state at the time of his or her death, access to or copies of the contents of the electronic mail account of such deceased person upon receipt by the electronic mail service provider of:

(1) a written request for such access or copies made by such executor or administrator, accompanied by a copy of the death certificate and a certified copy of the certificate of appointment as executor or administrator; or

(2) an order of the court of probate that by law has jurisdiction of the estate of such deceased person.

(c) Nothing in this section shall be construed to require an electronic mail service provider to disclose any information in violation of any applicable federal law.

Section 4. [*Severability*.] [Insert severability clause.]

Section 5. [*Repealer*.] [Insert repealer clause.]

Section 6. [*Effective Date.*] [Insert effective date.]

Intergenerational Respite Care Assisted Living Facility Pilot Program (2007 SSL)

This Act creates a five-year intergenerational respite care assisted living facility pilot project as a not-for-profit facility. This facility will provide respite care for children and adults with disabilities and elderly adults with special needs who are currently cared for in their homes for a period of at least 24 hours a day and no more than 14 days.

Submitted as:
Florida
HB1559 (enrolled version)
Status: Enacted into law in 2005.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [*Short Title*.] This Act may be cited as "An Act Relating to Intergenerational Respite Care."

Section 2. [*Legislative Intent: Intergenerational Respite Care Assisted Living*.]

(1) It is the intent of the Legislature to establish a pilot program to:

(a) Facilitate the receipt of in-home, family-based care by minors and adults with disabilities and elderly persons with special needs through respite care for up to [14 days].

(b) Prevent caregiver "burnout," in which the caregiver's health declines and he or she is unable to continue to provide care so that the only option for the person with disabilities or special needs is to receive institutional care.

(c) Foster the development of intergenerational respite care assisted living facilities to temporarily care for minors and adults with disabilities and elderly persons with special needs in the same facility and to give caregivers the time they need for rejuvenation and healing.

(2) The state [Agency for Health Care Administration] shall establish a [5-year] pilot program, which shall license an intergenerational respite care assisted living facility that will provide temporary personal, respite, and custodial care to minors and adults with disabilities and elderly persons with special needs who do not require 24-hour nursing services. The intergenerational respite care assisted living facility must:

(a) Meet all applicable requirements and standards contained in [insert citation] except that, for purposes of this section, the term "resident" means a person of any age temporarily residing in and receiving care from the facility.

(b) Provide respite care services for minors and adults with disabilities and elderly persons with special needs for a period of at least 24 hours but not for more than [14 consecutive days].

(c) Provide a facility or facilities in which minors and adults reside in distinct and separate living units.

(d) Provide a facility that has a maximum of [48 beds] and is operated by a not-for-profit entity.

(3) The agency may establish policies necessary to achieve the objectives specific to the pilot program and may adopt rules necessary to implement the program.

(4) After [4 years], the agency shall present its report on the effectiveness of the pilot program to the [President] of the recommendation as to whether the [Legislature] should make the program permanent.

Section 3. [*Severability*.] [Insert severability clause.]

Section 4. [*Repealer*.] [Insert repealer clause.]

Section 5. [*Effective Date*.] [Insert effective date.]

Assisted Living Communities (2002 SSL)

This Act:

- Requires certification of assisted living communities by the state of aging services;
- Defines "activities of daily living", "assistance with self-administration of medication," "assisted living community," "client," "danger," "health services," "instrumental activities of daily living," "living unit," and "mobile non-ambulatory;"
- Establishes physical requirements of the community and required services;
- Permits clients to contract or arrange for additional services to be provided by people outside the assisted living community, if permitted by the community's policies;
- Requires an assisted living community to inform clients regarding policies relating to contracting or arranging for additional services upon entering into a lease agreement;
- Requires communities to help residents find appropriate living arrangements upon a move-out notice and to share information on alternative living arrangements provided by the state office of aging services;
- Prohibits any business from operating or marketing its services as an assisted living community without having a current application for certification on file or receiving certification;
- Requires the office of aging services to determine the feasibility of recognizing accreditation by other organizations in lieu of certification;
- Requires the state cabinet for health services to promulgate an administrative regulation to establish procedures related to applying for, reviewing, approving, denying, or revoking certification, as well as to the conduct of hearings upon appeals;
- Requires an initial and annual certification review with an on-site visit;
- Requires personnel that conduct certification reviews to have the skills, training, experience, and ongoing education to perform certification reviews;
- Authorizes the cabinet to assess a certification review fee of twenty dollars per living unit that in the aggregate is no less than three hundred dollars and no more than one thousand six hundred dollars;
- Requires the office of aging services to submit a yearly breakdown of fees assessed and costs incurred for conducting reviews;
- Authorizes the office to request any additional information or conduct additional on-site visits;
- Requires the office of aging services to report any alleged or actual cases of health services being delivered by the staff of an assisted living community;
- Requires staff to report abuse, neglect, or exploitation;
- Identifies client criteria;
- Establishes the content required in the lease agreement and disclosure;
- Requires grievance policies to address confidentiality of complaints and the process for resolving grievances;
- Requires an assisted living community to provide consumer education materials to the public or refer the request for information to the office of aging services;
- Establishes staffing requirements;

- Establishes orientation and in-service education requirements for employees;
- Exempts assisted living communities open or under construction on or before the effective date of this Act from the requirement that each living unit be at least two hundred square feet and have a bathtub or shower;
- Establishes penalties for operating or marketing as an assisted living community without having a current application on file or being certified;
- Exempts religious orders from certification requirements;
- Prohibits businesses that do not provide assistance with activities of daily living or assistance with self-administration of medications from certification;
- Requires the office to provide written correspondence to any lender, upon request, to denote whether the architectural drawings and lease agreement conditionally met certification requirements; permits the office to charge a fee of no more than two hundred fifty dollars for the written correspondence to the lender, and
- Requires a criminal record check for initial employment in an assisted living facility.

Submitted as:
Kentucky
HB 148
Status: Enacted into law in 2000.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [*Short Title*.] This Act may be cited as "An Act Relating To Assisted Living Communities."

Section 2. [*Definitions*.] As used in this Act:

(1) "Activities of daily living" means normal daily activities, including bathing, dressing, grooming, transferring, toileting, and eating;

(2) "Assistance with self-administration of medication" means:

(a) Reminding the client to take medications;

(b) Reading the medication's label;

(c) Confirming that medication is being taken by the client for whom it is prescribed;

(d) Opening the dosage packaging or medication container, but not removing or handling the actual medication;

(e) Storing the medication in a manner that is accessible to the client; and

(f) Making available the means of communicating with the client's physician and pharmacy for prescriptions by telephone, facsimile, or other electronic device.

(3) "Assisted living community" means a series of living units on the same site, operated as [one (1)] business entity, and certified under Section 5 of this Act to provide services for [five (5)] or more adult people not related within the third degree of consanguinity to the owner or manager;

(4) "Client" means an adult person who has entered into a lease agreement with an

assisted living community;

(5) "Crime" means a conviction of or a plea of guilty to a felony offense related to theft; abuse or sale of illegal drugs; abuse, neglect, or exploitation of an adult; or the commission of a sex crime. Conviction of or a plea of guilty to an offense committed outside this state is a crime if the offense would have been a felony in this state if committed in this state.

(6) "Danger" means physical harm or threat of physical harm to one's self or others;

(7) "Direct service" means personal or group interaction between the employee and the nursing facility resident or the senior citizen;

(8) "Health services" has the same meaning as in [insert citation];

(9) "Instrumental activities of daily living" means activities to support independent living including, but not limited to, housekeeping, shopping, laundry, chores, transportation, and clerical assistance;

(10) "Living unit" means a portion of an assisted living community occupied as the living quarters of a client under a lease agreement;

(11) "Mobile non-ambulatory" means unable to walk without assistance, but able to move from place to place with the use of a device including, but not limited to, a walker, crutches, or wheelchair;

(12) "Nursing pool" means any person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in nursing facilities for medical personnel including, but not limited to, nurses, nursing assistants, nurses' aides, and orderlies;

(13) "Office" means the [office of aging services]; and

(14) "Senior citizen" means a person [sixty (60)] years of age or older.

Section 3. [*Assisted Living Units*.]

(1) Each living unit in an assisted living community shall:

(a) Be at least [two hundred (200)] square feet for single occupancy, or for double occupancy if the room is shared with a spouse or another individual by mutual agreement;

(b) Include at least [one (1)] unfurnished room with a lockable door, private bathroom with a tub or shower, provisions for emergency response, window to the outdoors, and a telephone jack;

(c) Have an individual thermostat control if the assisted living community has more than [twenty (20)] units; and

(d) Have temperatures that are not under a client's direct control at a minimum of [seventy-one (71)] degrees Fahrenheit in winter conditions and a maximum of [eighty-one (81) degrees] Fahrenheit in summer conditions if the assisted living community has [twenty (20)] or fewer units.

(2) Each client shall be provided access to central dining, a laundry facility, and a central living room.

(3) Each assisted living community shall comply with applicable building and life safety codes.

Section 4. [*Assisted Living Communities – Services*.]

(1) The assisted living community shall provide each client with the following services according to the lease agreement:

(a) Assistance with activities of daily living and instrumental activities of daily

living;

(b) [Three (3)] meals and snacks made available each day;

(c) Scheduled daily social activities that address the general preferences of clients; and

(d) Assistance with self-administration of medication.

(2) Clients of an assisted living community may arrange for additional services under direct contract or arrangement with an outside agent, professional, provider, or other individual designated by the client if permitted by the policies of the assisted living community.

(3) Upon entering into a lease agreement, an assisted living community shall inform the client in writing about policies relating to the contracting or arranging for additional services.

(4) Each assisted living community shall assist each client upon a move-out notice to find appropriate living arrangements. Each assisted living community shall share information provided from the [office] regarding options for alternative living arrangements at the time a move-out notice is given to the client.

Section 5. [*Certification Review Process For Assisted Living Communities*.]

(1) The [cabinet for health services] shall establish by the promulgation of administrative regulation under [insert citation], an initial and annual certification review process for assisted living communities that shall include an on-site visit. This administrative regulation shall establish procedures related to applying for, reviewing, and approving, denying, or revoking certification, as well as the conduct of hearings upon appeals as governed under [insert citation].

(2) No assisted living community shall operate unless its owner or manager has:

(a) Filed a current application for the assisted living community to be certified by the [office]; or

(b) Received certification of the assisted living community from the [office].

(3) No business shall market its services as an assisted living community unless its owner or manager has:

(a) Filed a current application for the assisted living community to be certified by the [office]; or

(b) Received certification of the assisted living community from the [office].

(4) The [office] shall determine the feasibility of recognizing accreditation by other organizations in lieu of certification from the [office].

(5) Individuals designated by the [office] to conduct certification reviews shall have the skills, training, experience, and ongoing education to perform certification reviews.

(6) Upon conducting a certification review, the [office] shall assess an assisted living community certification fee in the amount of [twenty (20)] dollars per living unit that in the aggregate for each assisted living community is no less than [three hundred (300)] dollars and no more than [one thousand six hundred (1,600)] dollars. The [office] shall submit to the [legislative research commission], by [June 30] of each year, a breakdown of fees assessed and costs incurred for conducting certification reviews.

(7) Notwithstanding any provision of law to the contrary, the [office] may request any additional information from an assisted living community or conduct additional on-site visits to ensure compliance with the provisions of Sections 1 to 16 of this Act.

Section 6. [*Reporting and Record Keeping*.]

(1) The [office] shall report to the [division of licensing and regulation] any alleged or

actual cases of health services being delivered by the staff of an assisted living community.

(2) An assisted living community shall have written policies on reporting and record keeping of alleged or actual cases of abuse, neglect, or exploitation of an adult.

(3) Any assisted living community staff member who has reasonable cause to suspect that a client has suffered abuse, neglect, or exploitation shall report the abuse, neglect, or exploitation.

Section 7. [*Client Criteria*.]

A client shall meet the following criteria:

(1) Be ambulatory or mobile non-ambulatory, unless due to a temporary health condition for which health services are being provided in accordance with subsections (2) and (3) of Section 4 of this Act; and

(2) Not be a danger.

Section 8. [*Lease Agreements*.]

A lease agreement, in no smaller type than twelve (12) point font, shall be executed by the client and the assisted living community and shall include:

(1) Client data, for the purpose of providing service, to include:

(a) A functional needs assessment pertaining to the client's ability to perform activities of daily living and instrumental activities of daily living;

(b) Emergency contact person's name;

(c) Name of responsible party or legal guardian, if applicable;

(d) Attending physician's name;

(e) Information regarding personal preferences and social factors;

(f) Advance directive under [insert citation], if desired by the client; and

(g) Optional information helpful to identify services that meet the client's needs.

(2) Assisted living community's policy regarding termination of the lease agreement;

(3) Terms of occupancy;

(4) General services and fee structure;

(5) Information regarding specific services provided, description of the living unit, and associated fees;

(6) Provisions for modifying client services and fees;

(7) Minimum [thirty (30)] day notice provision for a change in the community's fee structure;

(8) Minimum [thirty (30)] day move-out notice provision for client nonpayment, subject to applicable landlord or tenant laws;

(9) Provisions for assisting any client that has received a move-out notice to find appropriate living arrangements prior to the actual move-out date;

(10) Refund and cancellation policies;

(11) Description of any special programming, staffing, or training if an assisted living community is marketed as providing special programming, staffing, or training on behalf of clients with particular needs or conditions;

(12) Other community rights, policies, practices, and procedures;

(13) Other client rights and responsibilities, including compliance with subsections (2) and (3) of Section 4 of this Act; and

(14) Grievance policies that minimally address issues related to confidentiality of complaints and the process for resolving grievances between the client and the assisted living community.

Section 9. [*Consumer Information*.]

(1) An assisted living community shall provide any interested person with a:

(a) Consumer publication, as approved by the [office], that contains a thorough description of state laws and regulations governing assisted living communities;

(b) Standard consumer checklist provided by the [office]; and

(c) Description of any special programming, staffing, or training if the assisted living community markets itself as providing special programming, staffing, or training on behalf of clients with particular needs or conditions.

(2) An assisted living community may refer a request for information required in subsection (1)(a) of this Section to the [office].

Section 10. [*Staffing Requirements: Assisted Living Communities.*]

(1) Staffing in an assisted living community shall be sufficient in number and qualification to meet the [twenty-four (24)] hour scheduled and unscheduled needs of its clients and the services provided.

(2) [One (1)] awake staff member shall be on site at all times.

(3) An assisted living community shall have a designated manager who is at least [twenty-one (21)] years of age, has at least a high school diploma or a General Educational Development diploma, and has demonstrated management or administrative ability to maintain the daily operations.

(4) No employee who has an active communicable disease reportable to the [department for public health] shall be permitted to work in an assisted living community if the employee is a danger to the clients or other employees.

Section 11. [*Staff Orientation and In-Service Education*.]

Assisted living community staff and management shall receive orientation and in-service education on the following topics as applicable to the employee's assigned duties:

(1) Client rights;

(2) Community policies;

(3) Adult first aid;

(4) Cardiopulmonary resuscitation;

(5) Adult abuse and neglect;

(6) Alzheimer's disease and other types of dementia;

(7) Emergency procedures;

(8) Aging process;

(9) Assistance with activities of daily living and instrumental activities of daily living;

(10) Particular needs or conditions if the assisted living community markets itself as providing special programming, staffing, or training on behalf of clients with particular needs or conditions; and

(11) Assistance with self-administration of medication.

Section 12. [*Exemptions*.]

(1) Any assisted living community that was open or under construction on or before the effective date of this Act shall be exempt from the requirement that each living unit have a bathtub or shower.

(2) Any assisted living community that was open or under construction on or before the effective date of this Act shall have a minimum of [one (1)] bathtub or shower for each [five (5)] clients.

(3) Any assisted living community that was open or under construction on or before the effective date of this Act shall be exempt from the requirement that each living unit shall be at least [two hundred (200)] square feet for single occupancy, or for double occupancy if the room is shared with a spouse or another individual by mutual agreement.

Section 13. [*Applications and Certification: Penalties for Not Complying*.]

(1) Any assisted living community that provides services without filing a current application with the [office] or receiving certification by the [office] may be fined up to [five hundred (500)] dollars per day.

(2) Any business that markets its services as an assisted living community without filing a current application with the [office] or receiving certification by the [office] may be fined up to [five hundred (500)] dollars per day.

Section 14. [*Religious Orders*.] Religious orders providing assistance with activities of daily living, instrumental activities of daily living, and self-administration of medication to vowed members residing in the order's retirement housing shall not be required to comply with the provisions of Sections 1 to 16 of this Act.

Section 15. [*Certification: Exceptions*.] Any business, not licensed or certified in another capacity, that complies with some provisions of Sections 1 to 16 of this Act but does not provide assistance with any activities of daily living or assistance with self-administration of medication shall not be eligible for certification as an assisted living community under Sections 1 to 16 of this Act.

Section 16. [*Architectural Drawings and Lease Agreements: Correspondence Noting Compliance with this Act*.] If a person or business seeks financing for an assisted living community project, the [office] shall provide written correspondence to the lender, upon request, to denote whether the architectural drawings and lease agreement conditionally comply with the provisions of Sections 1 to 16 of this Act. The [office] may charge a fee of no more than [two hundred fifty (250)] dollars or the written correspondence to the lender.

Section 17. [*Prohibiting Using Convicted Felons as Employees*.]

(1) No long-term care facility as defined by [insert citation] or nursing pool providing staff to a nursing facility, or assisted living community shall knowingly employ a person in a position which involves providing direct services to a resident or client if that person has been convicted of a felony offense related to theft; abuse or sale of illegal drugs; abuse, neglect, or exploitation of an adult; or a sexual crime.

(2) A nursing facility or nursing pool providing staff to a nursing facility, or assisted living community may employ people convicted of or pleading guilty to an offense classified as a misdemeanor if the crime is not related to abuse, neglect, or exploitation of an adult.

(3) Each long-term care facility as defined by [insert citation], or nursing pool providing staff to a nursing facility, or assisted living community shall request all conviction information from the [justice cabinet] for any applicant for employment.

(4) The long-term care facility or nursing pool providing staff to a nursing facility, or assisted living community may temporarily employ an applicant pending the receipt of the conviction information.

Section 18. [*Employment Application Forms: Specifications.*]

(1) Each application form provided by the employer, or each application form provided by a facility either contracted or operated by the [department for mental health and mental retardation services] of the [cabinet for health services], to the applicant for initial employment in an assisted living community, nursing facility, or nursing pool providing staff to a nursing facility, or in a position funded by the [department for social services] or the [office of aging services] of the [cabinet for families and children] and which involves providing direct services to senior citizens shall conspicuously state the following:

> "For this type of employment, state law requires a criminal record check as a condition of employment."

(2) Any request for criminal records of an applicant as provided under subsection (1) of this section shall be on a form or through a process approved by the [justice cabinet]. The [justice cabinet] may charge a fee to be paid by the applicant or state agency in an amount no greater than the actual cost of processing the request and shall not exceed [five (5)] dollars per application.

Section 19. [*Severability*.] [Insert severability clause.]

Section 20. [*Repealer*.] [Insert repealer clause.]

Section 21. [*Effective Date*.] [Insert effective date.]

LEGISLATION

Encouraging Home- and Community-Based Care

Self-Directed In-Home Care (2003 SSL)

This Act provides that someone in need of self-directed in-home care who is a recipient approved to receive certain Medicaid waiver services, or a participant in the state Community and Home Options to Institutional Care for the Elderly And Disabled (CHOICE) program, may employ registered personal services attendants to provide attendant care services. It exempts from these provisions home health agencies, hospice programs, and health care professionals who practice within the scope of their license. It allows a personal services attendant to perform certain self-directed in-home services and medical activities that, in the opinion of the attending physician, meet certain conditions and for which the attendant has received training or instruction on how to properly perform the medical activity from a licensed health professional.

The Act requires an individual in need of in-home care and the individual's case manager to develop an authorized care plan. It provides that procedures must be adopted to receive and adjudicate certain complaints against personal services attendants.

The law also establishes a Governor's Commission on Caregivers to study issues regarding the availability and quality of caregivers in long-term care health settings. It requires the commission to submit a report to the governor and legislative council.

Submitted as:
Indiana
SB 215 (enrolled version)
Status: Enacted into law in 2001.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [*Short Title*.] This Act may be cited as "The Self-Directed In-Home Care Act."

Section 2. [*Definitions*.] As used in this Act:

"Ancillary Services" means services ancillary to the basic services provided to an individual in need of self-directed in-home care who needs at least [one (1)] of the basic services as defined in this Section. The term includes the following:

(1) Homemaker type services, including shopping, laundry, cleaning, and seasonal chores.

(2) Companion type services, including transportation, letter writing, mail reading, and escort services.

(3) Assistance with cognitive tasks, including managing finances, planning activities, and making decisions.

"Attendant Care Services" means those basic and ancillary services, which the individual chooses to direct and supervise a personal services attendant to perform, that enable an individual in need of self-directed in-home care to live in the individual's home and community rather than in an institution and to carry out functions of daily living, self-care, and mobility.

"Basic Services" means a function that could be performed by the individual in need of self-directed in-home care if the individual were not physically disabled. The term includes the following:

(1) Assistance in getting in and out of beds, wheelchairs, and motor vehicles.

(2) Assistance with routine bodily functions, including:

(A) health-related services;

(B) bathing and personal hygiene;

(C) dressing and grooming; and

(D) feeding, including preparation and cleanup.

"Commission" refers to the [Governor's Commission on Caregivers] established by Section 12 of this Act.

"Health Facility" has the meaning as defined under [insert citation].

"Health-Related Services" means those medical activities that:

(1) In the opinion of the attending physician, could be performed by the individual if the individual were physically capable, and if the medical activity can be safely performed in the home; and

(2) The person who performs the medical activity has received training or instruction from a licensed health professional, within the professional's scope of practice, in how to properly perform the medical activity for the individual in need of self-directed services.

"Individual In Need of Self-Directed In-Home Care" means a disabled individual, or person responsible for making health related decisions for the disabled individual, who:

(1) Is approved to receive Medicaid waiver services under 42 U.S.C. 1396n(c), or is a participant in the state [Community and Home Options to Institutional Care Program] for the elderly and disabled under [insert citation];

(2) Is in need of attendant care services because of impairment;

(3) Requires assistance to complete functions of daily living, self-care, and mobility, including those functions included in attendant care services;

(4) Chooses to self-direct a paid personal services attendant to perform attendant care services; and

(5) Assumes the responsibility to initiate self-directed in-home care and exercise judgment regarding the manner in which those services are delivered, including the decision to employ, train, and dismiss a personal services attendant.

"Long Term Care Caregivers" means certified nurse aides, licensed practical nurses, and registered nurses employed in health facilities, home health care, and other community based settings as defined under [insert citations].

"Personal Services Attendant" means an individual who is registered to provide attendant care services under this Act and who has entered a contract with an individual and acts under the individual's direction to provide attendant care services that could be performed by the individual if the individual were physically capable.

"Self-Directed In-Home Health Care" means the process by which an individual, who is prevented by a disability from performing basic and ancillary services that the individual would perform if not disabled, chooses to direct and supervise a paid personal services attendant to perform those services in order for the individual to live in the individual's home and community rather than an institution.

Section 3. [*Responsibility for Hiring, Recruiting, Training, Payment for Self-Directed In-Home Care*.]

(a) Except as provided in subsection (b), an individual in need of self-directed in-home care is responsible for recruiting, hiring, training, paying, certifying any employment related

documents, dismissing, and supervising in the individual's home during service hours a personal services attendant who provides attendant care services for the individual.

(b) If an individual in need of self-directed in-home care is:

(1) Less than twenty-one (21) years of age; or

(2) Unable to direct in-home care because of a brain injury or mental deficiency;

the individual's parent, spouse, legal guardian, or a person possessing a valid power of attorney may make employment, care, and training decisions and certify any employment-related documents on behalf of the individual.

(c) An individual in need of self-directed in-home care or an individual under subsection (b) and the individual's case manager shall develop an authorized care plan. The authorized care plan must include a list of weekly services or tasks that must be performed to comply with the authorized care plan.

Section 4. [*Employing Personal Services Attendants for Self-Directed In-Home Care*.]

(a) A personal services attendant who is hired by the individual in need of self-directed in-home care is an employee of the individual in need of self-directed in-home care.

(b) The [division] is not liable for any actions of a personal services attendant or an individual in need of self-directed in-home care.

(c) A personal services attendant and an individual in need of self-directed in-home care are each liable for any negligent or wrongful act or omission in which the person personally participates.

Section 5. [*Contracting for Self-Directed In-Home Care*.] The individual in need of self-directed in-home care and the personal services attendant must each sign a contract, in a form approved by the [insert agency], that includes, at a minimum, the following provisions:

(1) The responsibilities of the personal services attendant.

(2) The frequency the personal services attendant will provide attendant care services.

(3) The duration of the contract.

(4) The hourly wage of the personal services attendant. The wage may not be less than the federal minimum wage or more than the rate that the recipient is eligible to receive under a Medicaid home- and community-based services waiver or the [Community and Home Options to Institutional Care for the Elderly and Disabled Program for Attendant Care Services].

(5) Reasons and notice agreements for early termination of the contract.

Section 6. [*Registration*.]

(a) An individual who desires to provide attendant care services must register with the [insert agency] or with an organization designated by the [insert agency].

(b) The [insert agency] shall register an individual who provides the following:

(1) A personal resume containing information concerning the individual's qualifications, work experience, and any credentials the individual may hold. The individual must certify that the information contained in the resume is true and accurate.

(2) The individual's limited criminal history check from the state [central repository for criminal history information] under [insert citation] or another source allowed by law.

(3) If applicable, the individual's state [nurse aide registry] report from the state [department of health]. This subdivision does not require an individual to be a nurse aide.

(4) [Three (3)] letters of reference.

(5) A registration fee. The [insert agency] shall establish the amount of the registration fee, not to exceed [thirty (30)] dollars.

(6) Proof that the individual is at least [eighteen (18)] years old.

(7) Any other information required by the [insert agency].

(c) A registration is valid for [one (1)] year. A personal services attendant may renew the personal services attendant's registration by updating any information in the file that has changed and by paying the fee required under subsection (a)(5). The limited criminal history check and report required under subsection (a)(2) and (a)(3) must be updated every [two (2)] years.

(d) The [insert agency] shall maintain a file for each personal services attendant that contains:

(1) Comments related to the provision of attendant care services submitted by an individual in need of self-directed in-home care who has employed the personal services attendant; and

(2) The items described in subsection (a)(1) through (a)(4).

(e) Upon request, the [insert agency] shall provide to an individual in need of self-directed in-home care the following:

(1) Without charge, a list of personal services attendants who are registered with the [insert agency] and available within the requested geographic area.

(2) A copy of the information of a specified personal services attendant who is on file with the [insert agency] under subsection

(f). The [insert agency] may charge a fee for shipping, handling, and copying expenses, not to exceed [five (5)] dollars per file.

Section 7. [*Compensation for Self-Directed In-Home Care*.]

(a) An individual may not provide attendant care services for compensation from Medicaid or the community and home options to institutional care for the elderly and disabled program for an individual in need of self-directed in-home care services unless the individual is registered under Section 6 of this Act.

(b) An individual who is a legally responsible relative of an individual in need of self-directed in- home care, including a parent of minor individual and a spouse, is precluded from providing attendant care services for compensation under this Act.

Section 8. [*Rules and Medicaid Waiver*.]

(a) The [insert agency] shall apply for any federal waivers necessary to implement this Act.

(b) The [insert agency] shall amend the state [Home and Community Based Services] waiver program under the state Medicaid plan to provide for the payment for attendant care services provided by a personal services attendant for an individual in need of self-directed in-home care under this Act, including any related record keeping and employment expenses. However, the [insert agency] may not implement the provisions of this Act for Medicaid waiver recipients until:

(1) Any necessary waiver is approved; and

(2) The [insert agency] has filed an affidavit with the [governor] attesting that the appropriate federal waiver applied for under this Section is in effect. The [insert agency] shall

file the affidavit not later than [five (5)] days after the [insert agency] is notified that the waiver is approved.

(c) If the [insert agency] receives a waiver under this Section from the United States Department of Health and Human Services, and the governor [receives] the affidavit filed under subsection (b), the [insert agency] shall implement the waiver not later than [sixty (60)] days after the [governor] receives the affidavit.

Section 9. [*Self-Directed In-Home Care: Eligibility Under Medicaid; Payment, Record Keeping*.]

(a) The [insert agency] shall not, to the extent permitted by federal law, consider as income money paid under this Act to or on behalf of an individual in need of self-directed in-home care to enable the individual to employ registered personal services attendants, for purposes of determining the individual's income eligibility for services under this Act.

(b) The [insert agency] shall adopt rules concerning:

(1) The method of payment to a personal services attendant who provides authorized services under this Act; and

(2) Record keeping requirements for personal attendant services.

(c) The [insert agency] may adopt other rules under [insert citation] as necessary to implement this Act.

Section 10. [*Demonstration Projects*.] The [insert agency] may:

(1) Initiate demonstration projects to test new ways of providing attendant care services; and

(2) Research ways to best provide attendant care services in urban and rural areas.

Section 11. [*Complaints Concerning Self-Directed In-Home Care*.] The [insert agency] shall adopt rules under [insert citation] concerning the following:

(1) The receipt, review, and investigation of complaints concerning the neglect, abuse, mistreatment, or misappropriation of property of an individual in need of self-directed in-home care by a personal services attendant.

(2) Establish notice and administrative hearing procedures in accordance with [insert citation].

(3) Appeal procedures, including judicial review of administrative hearings.

(4) Procedures to place a personal services attendant who has been determined to have been guilty of neglect, abuse, mistreatment, or misappropriation of property of an individual in need of self-directed in-home care on the state nurse aide registry.

Section 12. [*Governor's Commission on Caregivers*.]

(a) The [Governor's Commission on Caregivers] is established.

(b) The commission consists of the following members:

(1) The [governor] or the governor's designee, who shall serve as the chairperson.

(2) The [state health commissioner] or the commissioner's designee.

(3) The [president of the state board of nursing] or the president's designee.

(4) The [secretary of family and social services] or the secretary's designee.

(5) The [chairman of the commission for higher education] or the chairman's designee.

(6) The [state superintendent of public instruction] or the superintendent's designee.

(7) The [commissioner of the department of workforce development] or the commissioner's designee.

(8) The [director of the department of commerce] or the director's designee.

(9) The [commissioner of the department of labor] or the commissioner's designee.

(10) [One (1)] member appointed by the [governor] to represent each of the following organizations:

(A) The state [association of homes and services for the aging].

(B) The state [health care association].

(C) The state [association for home and hospice care].

(D) The state [nurses association].

(E) The state [health and hospital association].

(F) The state [home care task force].

(G) The state [association of area agencies on aging].

(H) [United Senior Action].

(I) The state [university school of nursing]

(J) [Ivy Tech State College].

(11) [One (1)] member appointed by the governor to represent a private postsecondary educational institution that offers nursing degrees.

(c) The commission shall do the following:

(1) Review data and information on the availability of and need for long-term care caregivers.

(2) Evaluate barriers to increasing the supply of long-term care caregivers.

(3) Evaluate the adequacy of existing training programs in the state for long-term caregivers.

(4) Develop recommendations to increase the supply of long-term care caregivers, including the following:

(A) Welfare to work programs.

(B) Worker recruitment and incentive programs.

(C) Immigration.

(D) Linkages between training programs and the long term care and senior services industries.

(E) Cross-training of nurse aides across the continuum of long term care services.

(F) Potential roles for various state agencies and educational institutions represented on the commission.

(d) [Eleven (11)] members of the commission constitute a quorum.

(e) The affirmative votes of at least [eleven (11)] members of the commission are required for the commission to take any action, including the approval of a final report.

(f) Each member of the commission who is not a state employee is entitled to the minimum salary per diem provided by [insert citation].

(g) The commission may contract with a private individual or organization to provide the staff support necessary for the operation of the commission, including conducting research and developing the report required under subsection (h).

(h) The commission shall submit a report to the [governor] and the [legislative council] not later than [insert date].

Section 13. [*Non-Applicability*.] This Act does not apply to:

(1) An individual who provides attendant care services and who is employed by and under the direct control of a home health agency as defined under [insert citation].

(2) An individual who provides attendant care services and who is employed by and under the direct control of a licensed hospice program under [insert citation].

(3) An individual who provides attendant care services and who is employed by and under the control of an employer that is not the individual who is receiving the services.

(4) A practitioner as defined under [insert citation], who is practicing under the scope of the practitioner's license as defined under [insert citation].

Section 14. [*Severability*.] [Insert severability clause.]

Section 15. [*Repealer*.] [Insert repealer clause.]

Section 16. [*Effective Date.*] [Insert effective date.]

Senior Living Program (2002 SSL)

This Act establishes a Senior Living Program to help low- and moderate-income seniors obtain services that permit them to stay in their homes instead of moving to a nursing home. The Act creates a Senior Living Trust Fund, provides for the development and provision of Senior Living Program information and electronic access to that information, a caregiver support and education program, and a senior living insurance policy and incentives study.

Submitted as:
Iowa
SF 2193
Status: Enacted into law in 2000.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [*Short Title*] This Act may be cited as the "Senior Living Program Act."

Section 2. [*Legislative Findings: Goal.*]

1. The legislature finds that:

a. The preservation, improvement, and coordination of the health care infrastructure of this state are critical to the health and safety of its citizens.

b. An increasing number of seniors and people with disabilities in the state require long-term care services provided outside of a medical institution.

c. A full array of long-term care services is necessary to provide cost-effective and appropriate services to the varied population of health care consumers.

d. The supported development of long-term care alternatives, including assisted-living facility services, adult day care, and home and community-based services, is critical in areas of the state where such alternatives otherwise are not likely to be developed.

e. Cost containment in the delivery of health care is necessary to improve services and access for all citizens of this state.

f. Grants are necessary to cover the expenditures related to the development of alternative health care services. Development of these alternatives will improve access to and delivery of long-term care services to underserved people or in underserved areas, which will in turn contain or reduce the cost and improve the quality of health care services.

g. A continuing source of funding is necessary to enhance the state's ability to meet the rising demand of seniors with low and moderate incomes in obtaining an appropriate variety of long-term care services.

2. The goal of this program is to create a comprehensive long-term care system that is consumer-directed, provides a balance between the alternatives of institutionally and non-institutionally provided services, and contributes to the quality of the lives of the citizens of this state.

Section 3. [*Definitions*.] As used in this Act:

1. “Affordable” means rates for payment of services which do not exceed the rates established for providers of medical and health services under the [Medical Assistance Program] with eligibility for an individual equal to the eligibility for medical assistance pursuant to [insert citation]. In relation to services provided by a provider of services under a home and community-based waiver, “affordable” means that the total monthly cost of the home and community-based waiver services provided do not exceed the cost for that level of care as established by rule by the [department of human services], in consultation with the [department of elder affairs].

2. “Assisted living” means assisted living as defined in section 14 of this Act.

3. “Case mix reimbursement” means a reimbursement methodology that recognizes the acuity and need level of the residents of a nursing facility.

4. “Long-term care alternatives” means those services specified under the medical assistance program as home and community-based waiver services for elder people or adults with disabilities, elder group homes certified under [insert citation], [assisted-living programs] certified under [insert citation], and the PACE program.

5. “Long-term care provider” means a provider of services through long-term care alternatives.

6. “Long-term care service development” means any of the following:

a. The remodeling of existing space and, if necessary, the construction of additional space required to accommodate development of long-term care alternatives, excluding the development of assisted-living programs or elder group home alternatives.

b. New construction for long-term care alternatives, excluding new construction of assisted-living programs or elder group homes, if the [senior living coordinating unit] determines that new construction is more cost-effective than the conversion of existing space.

7. “Nursing facility” means a licensed nursing facility as defined in [insert citation] or a licensed hospital as defined in [insert citation], a distinct part of which provides long-term care nursing facility beds.

8. “Nursing facility conversion” means any of the following:

a. The remodeling of nursing facility space existing on [insert date], and certified for medical assistance nursing facility reimbursement and, if necessary, the construction of additional space required to accommodate an assisted-living program.

b. New construction of an assisted-living program if existing nursing facility beds are no longer licensed and the [senior living coordinating unit] determines that new construction is more cost-effective than the conversion of existing space.

9. “PACE program” means a program of all-inclusive care for the elderly established pursuant to 42 U.S.C. § 1396(u)(4) that provides delivery of comprehensive health and social services to seniors by integrating acute and long-term care services, and that is operated by a public, private, nonprofit, or proprietary entity. “Pre-PACE program” means a PACE program in the initial start-up phase that provides the same scope of services as a PACE program.

10. “People with disabilities” means individuals [eighteen (18)] years of age or older with disabilities as disability is defined in [insert citation].

11. “Senior” means elder as defined in [insert citation] and as defined under the PACE program pursuant to 42 U.S.C. § 1396(u)(4).

12. “Senior living coordinating unit” means the [senior living coordinating unit] created within the [department of elder affairs] pursuant to [insert citation], or its designee.

13. "Senior living program" means the Senior Living Program created in this Act to provide for long-term care alternatives, long-term care service development, and nursing facility conversion.

Section 4. [*Senior Living Trust Fund*.]

1. A Senior Living Trust Fund is created in the state treasury under the authority of the [department of human services]. Money received through intergovernmental agreements for the Senior Living Program and money received from sources, including grants, contributions, and participant payments, shall be deposited in the fund.

2. The [department of human services], upon receipt of federal revenue on or after [insert date], from public nursing facilities participating in the medical assistance program, shall deposit the federal revenue received in the trust fund, less a sum of [five thousand (5,000)] dollars as an administration fee per participating public nursing facility.

3. Money deposited in the trust fund shall be used only for the purposes of The Senior Living Program as specified in this Act.

4. The trust fund shall be operated in accordance with the guidelines of the Health Care Financing Administration of the United States Department of Health and Human Services. The trust fund shall be separate from the General Fund of the state and shall not be considered part of the General Fund of the state. The money in the trust fund shall not be considered revenue of the state, but rather shall be funds of the Senior Living Program. The money in the trust fund shall not be transferred, used, obligated, appropriated, or otherwise encumbered, except to provide for the purposes of this Act. Interest or earnings on money deposited in the trust fund shall be credited to the trust fund.

5. The [department of human services] shall adopt rules to administer the trust fund and to establish procedures for participation by public nursing facilities in the intergovernmental transfer of funds to the Senior Living Trust Fund.

6. The [treasurer] of this state shall provide a quarterly report of trust fund activities and balances to the [senior living coordinating unit].

Section 5. [*Allocations: Senior Living Trust Fund.*]

1. Money deposited in the Senior Living Trust Fund created by this Act shall be used only as provided in appropriations from the trust fund to the [department of human services] and the [department of elder affairs], and for purposes, including the awarding of grants, as specified in this Act.

2. Money in the trust fund is allocated, subject to their appropriation by the [Legislature], as follows:

a. To the [department of human services], a maximum of [insert amount] dollars for the fiscal period beginning [insert date], and ending on or before [insert date], to be used for the conversion of existing nursing facility space and development of long-term care alternatives.

b. To the [department of elder affairs], an amount necessary, annually, for expenses incurred in implementation and administration of the long-term care alternatives programs and for delivery of long-term care services to seniors with low or moderate incomes.

c. To the [department of human services], an amount necessary, annually, for all of the following:

(1) Expenses incurred in implementation of the Senior Living Program.

(2) Expenses incurred in administration of medical assistance home and community-based waivers and the PACE program due to implementation of the Senior Living Trust Fund.

(3) Expenses incurred due to increased service delivery provided under medical assistance home and community-based waivers as a result of nursing facility conversions and long-term care service development, for the fiscal period beginning [insert date], and ending on or before [insert date].

(4) Expenses incurred in program administration related to implementation of nursing facility case mix reimbursement under the medical assistance program.

d. To the [department of human services], an amount necessary to provide funding for nursing facility provider reimbursements, using the percentile-based reimbursement system, and to provide funding for the transition to a case-mix reimbursement system. Funding shall be provided under this section for the percentile-based reimbursement system, until such time as the case-mix reimbursement system is fully implemented.

e. To the [department of human services] an amount necessary, annually, for additional expenses incurred relative to implementation of the senior living program in assisting home and community-based waiver consumers with rent expenses pursuant to the state supplementary assistance program.

3. Any funds remaining after disbursement of money under subsection 2 shall be invested with the interest earned to be available in subsequent fiscal years for the purposes provided in subsection 2, paragraph "b", and subsection 2, paragraph "c", subparagraphs (1) and (2).

Section 6. [*Nursing Facility Conversion and Long-Term Care Service Development Grants.*]

1. The [department of human services], at the direction of the [senior living coordinating unit], may use money appropriated to the [department] from the Senior Living Trust Fund to award grants to any of the following:

a. A licensed nursing facility that has been an approved provider under the medical assistance program for the [three (3)] year period prior to application for the grant. The grant awarded may be used to convert all or a portion of the licensed nursing facility to a certified assisted-living program and may be used for capital or one-time expenditures, including but not limited to start-up expenses, training expenses, and operating losses for the first year of operation following conversion associated with the nursing facility conversion.

b. A long-term care provider or a licensed nursing facility that has been an approved provider under the medical assistance program for the three-year period prior to application for the grant or a provider that will meet applicable medical assistance provider requirements as specified in subsection 2, paragraph "c" or "d." The grant awarded may be used for capital or one-time expenditures, including but not limited to start-up expenses, training expenses, and operating losses for the first year of operation for long-term care service development.

2. A grant shall be awarded only to an applicant who meets all of the following criteria, as applicable to the type of grant:

a. The applicant is a long-term care provider or a nursing facility that is located in an area determined by the [senior living coordinating unit] to be underserved with respect to a

particular long-term care alternative service, and that has demonstrated the ability or potential to provide quality long-term care alternative services.

b. The applicant is able to provide a minimum matching contribution of [twenty (20)] percent of the total cost of any conversion, remodeling, or construction.

c. The applicant is applying for a nursing facility conversion grant and is able to demonstrate all of the following:

(1) Conversion of the nursing facility or a distinct portion of the nursing facility to an assisted-living program is projected to offer efficient and economical care to people who require long-term care services in the service area.

(2) Assisted-living services are otherwise not likely to be available in the area for people who are eligible for services under the medical assistance program.

(3) The resulting reduction in the availability of nursing facility services is not projected to cause undue hardship on those people who require nursing facility services for a period of at least [ten (10)] years.

(4) Public support following a community-based assessment.

(5) Conversion of the nursing facility is projected to result in a lower per client reimbursement cost to the grant applicant under the medical assistance program.

d. The applicant is applying for a long-term care service development grant and is able to demonstrate all of the following:

(1) Long-term care service development is projected to offer efficient and economical care to people who require long-term care services in the service area.

(2) The proposed long-term care alternative is otherwise not likely to be available in the area for people who are eligible for services under the medical assistance program.

(3) Public support following a community-based assessment.

e. The applicant agrees to do all of the following as applicable to the type of grant:

(1) Participate and maintain a minimum medical assistance client base participation rate of [forty (40)] percent, subject to the demand for participation by people who are eligible for medical assistance.

(2) Provide a service delivery package that is affordable for those people who are eligible for services under the medical assistance home and community-based services waiver program.

(3) Provide a refund to the Senior Living Trust Fund, on an amortized basis, in the amount of the grant, if the applicant or the applicant's successor in interest ceases to operate an affordable long-term care alternative within the first [ten (10)] year period of operation following the awarding of the grant or if the applicant or the applicant's successor in interest fails to maintain a participation rate of [forty (40)] percent in accordance with subparagraph (1).

3. The [department of human services] shall adopt rules in consultation with the [senior living coordinating unit] to provide all of the following:

a. An application process and eligibility criteria for the awarding of grants. The eligibility criteria shall include but are not limited to the applicant's demonstration of an affordable service package, the applicant's use of the funds for allowable costs, and the applicant's ability to refund the funds if required under subsection 2, paragraph "e," subparagraph (3). The primary eligibility criterion used shall be the applicant's potential impact

on the overall goal of moving toward a balanced, comprehensive, affordable, high quality, long-term care system.

b. Criteria to be used in determining the amount of the grant awarded.

c. Weighted criteria to be used in prioritizing the awarding of grants to individual grantees during a grant cycle. Greater weight shall be given to the applicant's demonstration of potential reduction of nursing facility beds, the applicant's ability to meet demonstrated community need, and the established history of the applicant in providing quality long-term care services.

d. Policies and procedures for certification of the matching funds required of applicants under subsection 2, paragraph "b."

e. Other procedures the [department of human services] deems necessary for the proper administration of this section, including but not limited to the submission of progress reports on a bimonthly basis to the [senior living coordinating unit].

4. The [department of human services] shall adopt rules to ensure that a nursing facility that receives a nursing facility conversion grant allocates costs in an equitable manner.

5. In addition to the types of grants described in subsection 1, the [department of human services], at the direction of the [senior living coordinating unit], may also use money appropriated to the [department] from the Senior Living Trust Fund to award grants, of not more than [one hundred thousand (100,000)] dollars per grant, to licensed nursing facilities that are awarded nursing facility conversion grants and agree, as part of the nursing facility conversion, to also provide adult day care, child care for children with special needs, safe shelter for victims of dependent adult abuse, or respite care.

6. The [department of human services] shall establish a calendar for receiving and evaluating applications and for awarding of grants.

7. a. The [department of human services] shall develop a cost report to be completed by a grantee which includes, but is not limited to, revenue, costs, loans undertaken by the grantee, fixed assets of the grantee, a balance sheet, and a profit and loss statement.

b. Grantees shall submit, annually, completed cost reports to the [department of human services] regarding the project for a period of [ten (10)] years following the date of initial operation of the grantee's long-term care alternative.

8. The [department of human services], in consultation with the [department of elder affairs], shall provide annual reports to the [governor] and the [Legislature] concerning grants awarded. The annual report shall include the total number of applicants and approved applicants, an overview of the various grants awarded, and detailed reports of the cost of each project funded by a grant and information submitted by the approved applicant.

9. For the purpose of this section, "underserved" means areas in which [four and four-tenths (4.4)] percent of the number of people who are [sixty-five (65)] years of age and older is not greater than the number of currently licensed nursing facility beds and certified assisted-living units. In addition, the [department], in determining if an area is underserved, may consider additional information gathered through the [department's] own research or submitted by an applicant, including but not limited to any of the following:

a. Availability of and access to long-term care alternatives relative to people who are eligible for medical assistance.

b. The current number of seniors and people with disabilities and the projected number of these people.

c. The current number of seniors and people with disabilities requiring professional nursing care and the projected number of these people.

d. The current availability of long-term care alternatives and any known changes in the availability of such alternatives.

10. This section does not create an entitlement to any funds available for grants under this section, and the [department of human services] may only award grants to the extent funds are available and within its discretion, to the extent applications are approved.

11. In addition to any other remedies provided by law, the [department of human services] may recoup any grant funding previously awarded and disbursed to a grantee or the grantee's successor in interest and may reduce the amount of any grant awarded, but not yet disbursed, to a grantee or the grantee's successor in interest, by the amount of any refund owed by a grantee or the grantee's successor in interest pursuant to subsection 2, paragraph "e," subparagraph (3).

12. The [senior living coordinating unit] shall review projects that receive grants under this section to ensure that the goal to provide alternatives to nursing facility care is being met and that an adequate number of nursing facility services remains to meet the needs of the citizens of this state.

Section 7. [*Home and Community-Based Services for Seniors.*]

1. Beginning [insert date], the [department of elder affairs], in consultation with the [senior living coordinating unit], shall use funds appropriated from the Senior Living Trust Fund for activities related to the design, maintenance, or expansion of home and community-based services for seniors, including but not limited to adult day care, personal care, respite, homemaker, chore, and transportation services designed to promote the independence of and to delay the use of institutional care by seniors with low and moderate incomes. At any time that money is appropriated, the [department of elder affairs], in consultation with the senior living coordinating unit, shall disburse the funds to the area agencies on aging.

2. The [department of elder affairs] shall adopt rules, in consultation with the [senior living coordinating unit] and the [area agencies on aging] to provide all of the following:

a. (1) The criteria and process for disbursement of funds, appropriated in accordance with subsection 1, to [area agencies on aging].

(2) The criteria shall include, at a minimum, all of the following:

(a) A distribution formula that triple weights all of the following:

(i) People who are [seventy (75)] years of age and older.

(ii) People who are aged [sixty (60)] and older who are members of a racial minority.

(iii) People who are [sixty (60)] years of age and older who reside in rural areas as defined in the federal Older Americans Act.

(iv) People who are [sixty (60)] years of age and older who have incomes at or below the poverty level as defined in the federal Older Americans Act.

(b) A distribution formula that single weights people who are [sixty (60)] years of age and older who do not meet the criteria specified in subparagraph subdivision (a).

b. The criteria for long-term care providers to receive funding as subcontractors of the area agencies on aging.

c. Other procedures the [department of elder affairs] deems necessary for the proper administration of this section, including but not limited to the submission of progress reports, on a bimonthly basis, to the [senior living coordinating unit].

3. This section does not create an entitlement to any funds available for disbursement under this section and the [department of elder affairs] may only disburse money to the extent funds are available and, within its discretion, to the extent requests for funding are approved.

4. Long-term care providers that receive funding under this section shall submit annual reports to the appropriate [area agency on aging]. The [department of elder affairs] shall develop the report to be submitted, which shall include, but is not limited to, units of service provided, the number of service recipients, costs, and the number of units of service identified as necessitated but not provided.

5. The [department of elder affairs], in cooperation with the [department of human services], shall provide annual reports to the governor and the [Legislature] concerning the impact of money disbursed under this section on the availability of long-term care services in this state. The reports shall include the types of services funded, the outcome of those services, and the number of people receiving those services.

Section 8. [*PACE Program*.]

1. A person operating a PACE program shall have a PACE program agreement with the Health Care Financing Administration of the United States Department of Health and Human Services, shall enter a contract with the [department of human services] and shall comply with 42 U.S.C. § 1396(u)(4) and all regulations promulgated pursuant to that section.

2. Services provided under a PACE or pre-PACE program shall be provided on a capitated basis.

3. A pre-PACE program may contract with the [department of human services] to provide services to people who are eligible for medical assistance, on a capitated basis, for a limited scope of the PACE service package through a prepaid health plan agreement, with the remaining services reimbursed directly to the service providers by the medical assistance or federal Medicare programs.

4. PACE and pre-PACE programs are not subject to regulation under [insert citation].

5. A PACE or pre-PACE program shall, at the time of entering into the initial contract and of renewal of a contract with the [department of human services], demonstrate cash reserves in an amount established by rule of the [department] to cover expenses in the event of insolvency.

Section 9. [*Senior Living Program Information: Electronic Access, Education and Advisory Council.*]

1. The [department of elder affairs] and the [area agencies on aging], in consultation with the [senior living coordinating unit], shall create, on a county basis, a database directory of all health care and support services available to seniors. The [department of elder affairs] shall make the database electronically available to the public, and shall update the database on at least a monthly basis.

2. The [department of elder affairs] shall seek foundation funding to develop and provide an educational program for people who are aged [twenty-one (21)] and older which assists participants in planning for and financing health care services and other supports in their senior years.

3. The [department of human services] shall develop and distribute an informational packet to the public that explains, in layperson terms, the law, regulations, and rules under the medical assistance program relative to health care services options for seniors, including but not limited to those relating to transfer of assets, prepaid funeral expenses, and life insurance policies.

4. The [director of human services], the [director of the department of elder affairs], the [director of public health], the [director of the department of inspections and appeals], the [director of revenue and finance], and the [commissioner of insurance] shall constitute a [senior advisory council] to provide oversight in the development and operation of all informational aspects of the Senior Living Program under this section.

Section 10. [*Caregiver Support: Access And Education Programs.*]

The [department of human services] and the [department of elder affairs], in consultation with the [senior living coordinating unit], shall implement a caregiver support program to provide access to respite care and to provide education to caregivers in providing appropriate care to seniors and people with disabilities.

Section 11. [*Future Repeal.*] Section 6 of this Act is repealed on [June 30, 2005]. However, grants awarded and money appropriated for grants on or before [June 30, 2005], shall be disbursed to eligible applicants after that date if necessary.

Section 12. [*Resident Assessment.*] A nursing facility as defined in [insert citation] shall complete a resident assessment prior to initial admission of a resident and periodically during the resident's stay in the facility. The assessment shall be completed for each prospective resident and current resident regardless of payer source. The nursing facility may use the same resident assessment tool required for certification of the facility under the medical assistance and federal Medicare programs to comply with this section.

Section 13. [*Long-Term Care Senior Living Coordinating Unit.*]

1. A long-term care senior living coordinating unit is created within the [department of elder affairs]. The membership of the coordinating unit consists of:

a. The [director of human services].

b. The [director of the department of elder affairs].

c. The [director of public health].

d. The [director of the department of inspections and appeals].

e. [Two (2)] members appointed by the [governor].

f. [Four (4)] members of the [Legislature], as ex officio, nonvoting members.

2. The legislative members of the unit shall be appointed by the [majority leader of the Senate], after consultation with the [president of the Senate] and the [minority leader of the Senate], and by the [speaker of the House], after consultation with the [majority leader] and the [minority leader of the House of Representatives].

3. Non-legislative members shall receive actual expenses incurred while serving in their official capacity and may also be eligible to receive compensation as provided in [insert citation]. Legislative members shall receive compensation pursuant to [insert citation].

4. The [long-term care senior living coordinating unit] shall:

a. Develop, for legislative review, the mechanisms and procedures necessary to implement, utilizing current personnel, a case-managed system of long-term care based on a uniform comprehensive assessment tool.

b. Develop common intake and release procedures for the purpose of determining eligibility at one point of intake and determining eligibility for programs administered by the [departments of human services, public health, and elder affairs], such as the medical assistance program, federal food stamp program, and homemaker-home health aide programs.

c. Develop common definitions for long-term care services.

d. Develop procedures for coordination at the local and state level among the providers of long-term care, including when possible co-campusing of services. The [director of the department of general services] shall give particular attention to this section when arranging for office space for these three departments.

e. Prepare a long-range plan for the provision of long-term care services within the state.

f. Propose rules and procedures for the development of a comprehensive long-term care and community-based services program.

g. Submit a report of its activities to the [governor] and [Legislature] on [January 15] of each year.

h. Provide direction and oversight for disbursement of money from the Senior Living Trust Fund created by this Act.

i. Consult with the state universities and other institutions with expertise in the area of senior issues and long-term care.

Section 14. [*Assisted Living Programs.*] "Assisted living" means provision of housing with services that may include but are not limited to health-related care, personal care, and assistance with instrumental activities of daily living to [six (6)] or more tenants in a physical structure that provides a homelike environment. "Assisted living" also includes encouragement of family involvement, tenant self-direction, and tenant participation in decisions that emphasize choice, dignity, privacy, individuality, shared risk, and independence. "Assisted living" includes the provision of housing and assistance with instrumental activities of daily living only if personal care or health-related care is also included.

Section 15. [*Senior Living Insurance and Incentives Interim Study.*] The [legislative council] is requested to authorize a [senior living insurance and incentives study committee] to review current long-term care insurance laws, current long-term care insurance options available in the state, the types of services covered under a long-term care insurance option, and incentives for the purchase of long-term care insurance including, but not limited to, tax credits. The [study committee] shall include input from consumers, consumer advocates, the insurance industry, and the health care industry. The [study committee] shall submit a report of findings and recommendations to the [governor] and the [Legislature] on or before [insert date].

Section 16. [*Reimbursement Methodology Task Force.*] The [department of human services] shall convene a [task force] consisting of the members of the [senior living coordinating unit], representatives of the nursing facility industry, consumers and consumer advocates to develop a case-mix reimbursement methodology. The methodology developed shall include a limited number of levels of reimbursement. The task force shall submit a report of the

reimbursement methodology developed to the [governor] and the [Legislature] on or before [insert date]. The [department of human services] shall also include in the report a summary of the expenditures for nursing facility conversion and for long-term care service development.

Section 17. [*Residential Care Facilities: Application of Program.*] The [department of human services] shall review and shall make recommendations to the [Legislature] on or before [insert date], relating to the feasibility of applying the [Senior Living Program] and any changes in the reimbursement methodology to residential care facilities.

Section 18. [*Maintenance of Fiscal Effort.*] The fiscal effort, existing on [insert date], represented by appropriations made for long-term care services by the [Legislature], shall be maintained and a reduction shall not be made in such appropriations to the [department of human services] or the [department of elder affairs] for those services as a result of this Act.

Section 19. [*Department of Elder Affairs Appropriation.*] There is appropriated from the Senior Living Trust Fund created by this Act to the [department of elder affairs] for [fiscal year], the following amount, or so much thereof as is necessary, to be used for the purposes designated:

1. For the development of a comprehensive senior living program, including program administration and costs associated with implementation, salaries, support, maintenance, miscellaneous purposes, and for not more than [seven (7)] full-time equivalent positions: [insert amount].

2. The [department of elder affairs] may adopt emergency rules to carry out the provisions of this section.

Section 20. [*Department of Human Services Appropriation.*]

1. There is appropriated from the Senior Living Trust Fund created by this Act to the [department of human services] for [fiscal year], the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

a. To provide grants to nursing facilities for conversion to assisted living programs or to provide long-term care alternatives and to provide grants to long-term care providers for development of long-term care alternatives: [insert amount].

b. To supplement the medical assistance appropriation and to provide reimbursement for health care services and rent expenses to eligible people through the home and community-based services waiver and the state supplementary assistance program, including program administration and data system costs associated with implementation, salaries, support, maintenance, miscellaneous purposes, and for not more than [five (5)] full-time equivalent positions: [insert amount].

c. To implement nursing facility provider reimbursement at the seventieth percentile and case-mix reimbursement methodology changes: [insert amount].

2. The [department] shall transfer these funds to supplement other appropriations to the [department of human services] to carry out the purposes of this subsection. The total amount expended by the [department of human services] in [fiscal year] reimbursements under both the seventieth percentile and the case-mix reimbursement methodologies shall not exceed the amount appropriated in this subsection.

Section 21. [*Emergency Rules*.]

1. The [department of human services] and the [department of elder affairs] may adopt emergency rules to implement this Act.

2. If the [department of human services] or the [department of elder affairs] adopts emergency rules to implement this Act, the rules shall become effective immediately upon filing, unless a later effective date is specified in the rules. Any rules adopted in accordance with the provisions of this section shall also be published as notice of intended action as provided in [insert citation].

Section 22. [*Retroactive Applicability*.] The section in this Act that creates section 6 of this Act as it relates to receipt of federal funding, is retroactively applicable to [October 1, 1999].

Section 23. [*Severability*.] [Insert severability clause.]

Section 24. [*Repealer*.] [Insert repealer clause.]

Section 25. [*Effective Date*.] [Insert effective date.]

Assisted Living Reform

This Act:

- Ensures a basic standard of operation, clarification of the assisted living product for consumers, and standardized consumer protections and disclosures. Full protections, however, will only be available when the complete regulations contemplated by the Act are adopted.
- Officially defines an assisted living residence as 'an entity which houses 5 or more adult residents and provides/arranges for housing, daily food service, 24-hour on-site monitoring, case management, personal care and home care based on the mandatory development of an individualized service plan for each resident.'
- Requires all facilities which market themselves as assisted living residences to be licensed by the state Department of Health. Facilities who allow residents to age in place by providing additional care and services must be licensed and additionally certified by the state as an enhanced assisted living residence. An enhanced assisted living residence must meet further requirements in order to provide the additional services and care. Even further certification is required for specialized enhanced assisted living facilities which are specially equipped to provide services and care for individuals with chronic conditions such as dementia.
- Establishes a mandatory written residency agreement. The residency agreement must be written in plain language and in an easily readable text format and include the following consumer protections:

1. The criteria used by the residence to determine admission to the residence and the criteria which must be met in order to maintain residency at the facility,
2. The base rate for a residence in the facility,
3. The services included in the base rate fee,
4. A list and description of any other services available at the facility,
5. The fee scale for additional services available but not included in the base rate,
6. Billing and payment procedures,
7. The name of the resident's representative and/or the resident's legal representative,
8. Name, telephone number, street address and mailing address of the facility,
9. The name and mailing address of the owner and of the operator of the facility,
10. The licensure and, if applicable, additional certification status of the residence,
11. The license and/or certification status of the outside agencies providing home care, personal care, and other services at the residence,
12. Steps to take to change or modify the written residency agreement,
13. A description of the complaint resolution process,
14. Procedures for the resident to terminate the written residence agreement, including the refund policies, and

15. Procedures and justifications necessary for the residency operator to terminate the agreement, discharge the patient, or transfer the patient to another level of care, and the effective dates of the written residency agreement.

- Requires assisted living facilities, in addition to these disclosures in the written residency agreement, to provide each resident or anyone interested in becoming a resident the following:

1. A consumer information guide to assisted living which will be produced by the Department of Health,
2. Information about how residents can arrange for services independently of the facility if they are needed,
3. A statement assuring the resident they have the right to choose their own health care providers,
4. The availability of Medicare funds to pay for care,
5. The facility's toll-free number to use in making complaints, and
6. Information about state Ombudsman services pertaining to long term care.

Submitted as:
New York
Article 46B (S.7748/A.11820)
Status: Enacted into law in 2004.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [*Short Title*.] This Act may be cited as "The Assisted Living Reform Act."

Section 2. [*Legislative Findings*.] The [legislature] hereby finds and declares that congregate residential housing with supportive services in a home-like setting, commonly known as assisted living, is an integral part of the continuum of long-term care. Further, the philosophy of assisted living emphasizes aging in place, personal dignity, autonomy, independence, privacy and freedom of choice. The intent of this Act is to create a clear and flexible statutory structure for assisted living that provides a definition of assisted living residence; that requires licensure of the residence; that requires a written residency agreement that contains consumer protections; that enunciates and protects resident rights; and that provides adequate and accurate information for consumers, which is essential to the continued development of a viable market for assisted living. Entities, which hold themselves out as assisted living residences must apply for licensure and be approved by the state to operate as assisted living residences pursuant to this Act, and must comply with the requirements of this Act.

Section 3. [*Definitions*.] As used in this Act:

1. "Assisted living" and "assisted living residence" means an entity which provides or arranges for housing, on-site monitoring, and personal care services and/or home care services (either directly or indirectly) in a home-like setting to [five or more] adult residents unrelated to the assisted living provider. An applicant for licensure as assisted living that has been approved in accordance with the provisions of this Act must also provide daily food service, twenty-four

hour on-site monitoring, case management services, and the development of an individualized service plan for each resident. An operator of assisted living shall provide each resident with considerate and respectful care and promote the resident's dignity, autonomy, independence and privacy in the least restrictive and most home-like setting commensurate with the resident's preferences and physical and mental status. Assisted living and enhanced assisted living shall not include:

(a) residential health cares facilities or general hospitals licensed under [insert citation];

(b) continuing care retirement communities, which possess a certificate of authority pursuant to [insert citation], unless the continuing care retirement community is operating an assisted living residence as defined under this section;

(c) residential services for persons that are provided under a license pursuant to [insert citation] or other residential services primarily funded by or primarily under the jurisdiction of the [office for mental health];

(d) naturally occurring retirement communities, as defined in [insert citation];

(e) assisted living programs approved by the [department] pursuant to [insert citation];

(f) public or publicly assisted multi-family housing projects administered or regulated by the U.S. Department of Housing and Urban Development or the state [division of housing and community renewal] or funded through the [homeless housing assistance program] that were designed for the elderly or persons with disabilities, or homeless persons, provided such entities do not provide or arrange for home care, twenty-four hour supervision or both, beyond providing periodic coordination or arrangement of such services for residents at no charge to residents. Except, however, such entities that are in receipt of grants for conversion of elderly housing to assisted living facilities pursuant to Section 1701-q-2 of the United States Code shall license as an assisted living pursuant to this Act;

(g) an operating demonstration as such term is defined [insert citation];

(h) hospice and hospice residences as defined pursuant to [insert citation];

(i) an adult care facility as defined in [insert citation] that is not utilizing the term assisted living (or any derivation thereof) or is not required to obtain an enhanced assisted living certificate; and

(j) independent senior housing, shelters or residences for adults. For purposes of this Act, the [department] shall by regulation, define independent senior housing, provided such definition shall be based on whether the operator does not provide, arrange for, or coordinate personal care services or home care services on behalf of residents; and the facility does not provide case management services in a congregate care setting for residents. Nothing in this Act shall preclude a resident of independent senior housing from personally and directly obtaining private personal care or home care services from a licensed or certified home care agency.

2. "Applicant" shall mean the entity, which submits an assisted living licensure application with the [department] pursuant to this Act.

3. "Adult home" means an adult home as defined by [insert citation].

4. "Enriched housing program" means an enriched housing program, as defined in [insert citation].

5. "Assisted living operator" or "operator" means a person, persons or an entity, which has obtained the written approval of the [department] to operate an assisted living residence in accordance with this Act.

6. “Controlling person” means any person who by reason of a direct or indirect ownership interest, whether of record or beneficial, has the ability, acting either alone or in concert with others with ownership interests, to direct or cause the direction of the management or policies of said corporation, partnership or other entity.

7. “Resident” means an adult not related to the provider, who, pursuant to a residency agreement with a provider resides in an assisted living or enhanced assisted living residence, as applicable.

8. “Resident’s representative” means a family member or other individual identified in the residency agreement required under this Act who is authorized by a resident to communicate with residence employees regarding the health, well-being, needs of and services provided to such resident and to assist the resident in obtaining needed services.

9. “Resident's legal representative” means a person duly authorized under applicable state law to act on behalf of a resident. Such legal representative could include, but is not necessarily limited to, a court appointed guardian, an attorney in-fact under a durable power of attorney, an agent under a health care proxy or a representative payee, depending upon the action to be taken.

10. “Home care services” means the services as provided by a home care services agency which has been approved to operate pursuant to [insert citation].

11. “Individualized service plan” or “ISP” means a written plan developed pursuant to this Act.

12. “Monitoring” means an ability of the assisted living provider to respond to urgent or emergency needs or requests for assistance with appropriate staff, at any hour of any day or night of the week. Such monitoring must be provided on site.

13. “Aging in place” means, care and services at a facility which possesses an enhanced assisted living certificate which, to the extent practicable, within the scope of services set forth in the written residency agreement executed pursuant to this Act, accommodates a resident’s changing needs and preferences in order to allow such resident to remain in the residence as long as the residence is able and authorized to accommodate the resident’s current and changing needs. A residence that does not possess an enhanced assisted living certificate shall not be deemed able to accommodate a resident's needs if the resident requires or is in need of either enhanced assisted living or twenty-four hour skilled nursing care or medical care provided by facilities licensed pursuant to [insert citation].

14. “Enhanced assisted living” or “enhanced assisted living resident” means the care or services provided, or a resident who is provided the care and services, pursuant to an enhanced assisted living certificate.

15. “Enhanced assisted living certificate” means a certificate issued by the [department] which authorizes an assisted living residence to provide aging in place by retaining residents who desire to continue to age in place and who:

(a) are chronically chairfast and unable to transfer, or chronically require the physical assistance of another person to transfer;

(b) chronically require the physical assistance of another person in order to walk;

(c) chronically require the physical assistance of another person to climb or descend stairs;

(d) are dependent on medical equipment and require more than intermittent or occasional assistance from medical personnel; or

(e) has chronic unmanaged urinary or bowel incontinence.

Section 4. [*Licensure Procedures and Requirements for Assisted Living*.]

(1) Adult homes and enriched housing programs which possess a valid operating certificate issued pursuant [insert citation], may call themselves assisted living provided they file an application for licensure and are approved by the department as assisted living and comply with all the requirements of this Act.

(2) In order to operate as assisted living, an operator shall be licensed as an adult home or enriched housing program and apply and be approved for licensure with the [commissioner] pursuant to this Act. The operator shall provide, on an application form developed by the [commissioner], the following information to the [commissioner] in order to be licensed:

(a) business name, street address, and mailing address of the residence and of the owners of the residence;

(b) status of current operating certificate;

(c) verification that the operator has a valid residency agreement in compliance with this Act to be entered into with each resident, resident's representative and resident's legal representative, if any, and shall include a copy of the information to be included in the residency agreement and disclosures as required pursuant to this Act that will be given to prospective residents; and

(d) any other information the [department] may deem necessary for the evaluation of the application provided such information is not duplicative of what is otherwise required of the applicant in obtaining an adult care facility license.

Section 5. [*Enhanced Assisted Living Certificate*.]

(1) Nothing in this Act shall require a residence to obtain an enhanced assisted living certificate unless such residence elects to provide aging in place by retaining residents described in this Act.

(2) An assisted living operator may apply to the [department] to obtain an enhanced assisted living certificate pursuant to this section.

(a) Such application shall be on a form approved by the [department].

(b) An assisted living operator may apply for such a certificate for the entire facility or any number of beds at the facility.

(c) To obtain an enhanced assisted living certificate, the applicant must submit a plan to the [department] setting forth how the additional needs of residents will be safely and appropriately met at such residence. Such plan shall include, but need not be limited to, a written description of services, staffing levels, staff education and training, work experience, and any environmental modifications that have been made or will be made to protect the health, safety and welfare of such persons in the residence.

(d) In addition to any other requirements of assisted living, an operator of enhanced assisted living may hire care staff directly pursuant to standards developed by the [department] or contract with a home care services agency which has been approved to operate pursuant to [insert citation].

(e) No assisted living residence shall be certified as enhanced assisted living unless and until the applicant obtains the written approval of the [department].

(3) No resident shall be permitted to continue to age in place under the terms of an enhanced assisted living certificate unless the operator, the resident's physician, and, if applicable, the resident’s licensed or certified home care agency, agree that the additional needs

of the resident can be safely and appropriately met at the residence. A resident eligible for enhanced assisted living or his or her representative shall submit to the residence a written report from a physician, which report shall state that:

(a) the physician has physically examined the resident within the last month; and

(b) the resident is not in need of twenty-four hour skilled nursing care or medical care which would require placement in a hospital or residential health care facility.

(4) The residence must notify a resident that, while the residence will make reasonable efforts to facilitate the resident's ability to age in place pursuant to an individualized service plan, there may be a point reached where the needs of the resident cannot be safely or appropriately met at the residence, requiring the transfer of the resident to a more appropriate facility in accordance with the provisions of this Act.

(5) If a resident reaches the point where he or she is twenty-four hour skilled nursing care or medical care required to be provided by facilities licensed pursuant to [insert citation], then the resident must be discharged from the residence and the operator shall initiate proceedings for the termination of the residency agreement of such resident in accordance with the provisions of [insert citation]. Provided, however, a resident may remain at the residence if each of the following conditions are met:

(a) a resident in need of twenty-four hour skilled nursing care or medical care hires appropriate nursing, medical or hospice staff to care for his or her increased needs;

(b) the resident's physician and home care services agency both determine and document that, with the provision of such additional nursing, medical or hospice care, the resident can be safely cared for in the residence, and would not require placement in a hospital, nursing home or other facility licensed under [insert];

(c) the operator agrees to retain the resident and to coordinate the care provided by the operator and the additional nursing, medical or hospice staff; and

(d) the resident is otherwise eligible to reside at the residence.

(6) In addition to the requirements otherwise required for licensure as assisted living, any residence that advertises or markets itself as serving individuals with special needs, including, but not limited to, individuals with dementia or cognitive impairments, must submit a special needs plan to the [department] setting forth how the special needs of such residents will be safely and appropriately met at such residence. Such plan shall include, but need not be limited to, a written description of specialized services, staffing levels, staff education and training, work experience, professional affiliations or special characteristics relevant to serving persons with special needs, and

(7) Any environmental modifications that have been made or will be made to protect the health, safety and welfare of such persons in the residence. In approving an application for special needs certification, the [department] shall develop standards to ensure adequate staffing and training in order to safely meet the needs of the resident. The standards shall be based upon recommendations of a task force established by [insert citation]. No residence shall market themselves as providing specialized services unless and until the [department] has approved such applicant for a special needs assisted living certificate.

(7) An enhanced assisted living certificate shall not be required of an adult care facility, or part thereof, which has obtained approval by the [department] to operate an assisted living program pursuant to [insert citation]. Provided, however, such exemption shall only apply to those beds at the facility which are subject to the assisted living program.

Section 6. [*General Applicability of Laws to Assisted Living and Enhanced Assisted Living Facilities*.]

(1) No entity shall establish, operate, provide, conduct, or offer assisted living in this state, or hold itself out as an entity which otherwise meets the definition of assisted living or advertise itself as assisted living or by a similar term, without obtaining the approval of the [department] to operate as an adult care facility pursuant to this Act. Provided however, that an entity may simultaneously apply for approval to operate as an adult care facility and as an assisted living residence pursuant to this Act. This subdivision shall not apply to assisted living programs approved by the [department] pursuant to [insert citation].

(2) An assisted living operator shall comply with all applicable statutes, rules and regulations required for maintaining a valid operating certificate issued pursuant to [insert citation] and shall obtain and maintain all other licenses, permits, registrations, or other governmental approvals required in addition to requirements under this Act.

(3) Approval for licensure or certification pursuant to this Act may be granted only to an applicant who satisfactorily demonstrates:

(a) that such applicant possesses a valid operating certificate to operate as an adult home or enriched housing program pursuant to [insert citation]. An applicant that does not currently possess such operating certificate as an adult home or enriched housing program may simultaneously apply and be approved for such certificate and all other licenses and certifications authorized under this Act;

(b) that such applicant which has an existing valid adult care facility operating certificate, is in good standing with the [department]. For purposes of this subdivision, good standing shall mean the applicant has not

(i) received any official written notice from the [department] of a proposed revocation, suspension, denial or limitation on the operating certificate of the facility or residence;

(ii) within the previous [three years], been assessed a civil penalty after a hearing conducted pursuant to [insert citation] for a violation that has not been rectified;

(iii) within the previous [year], received any official written notice from the [department] of a proposed assessment of a civil penalty for a violation described in [insert citation];

(iv) within the previous [three years], been issued an order pursuant to [insert citation];

(v) within the previous [three years], been placed on, and if placed on, removed from the [department's] "do not refer list" pursuant to [insert citation]. Provided however that in the case of an applicant which otherwise meets the requirements of this section, but is not in good standing as provided in this paragraph, the [department] may approve said applicant if it determines that the applicant is of good moral character and is competent to operate the residence. Such character and competence review shall be limited to applicants not in good standing pursuant to this paragraph or an applicant subject to paragraph (f) of this subdivision. As part of the review provided pursuant to this paragraph, the [department] shall, on its webpage, solicit and consider public comment;

(c) that such applicant has adequate financial resources to provide such assisted living as proposed;

(d) that the building, equipment, staff, standards of care and records to be employed in the operation comply with applicable statutes and any applicable local law;

(e) that any license or permit required by law for the operation of such residence has been issued to such operator; and

(f) in the case of an applicant which does not have an existing valid adult care facility operating certificate, such applicant shall otherwise comply with the provisions for certification as prescribed by [insert citation].

(4) The [department] shall develop an expedited review and approval process.

(5) The knowing operation of an assisted living or enhanced assisted living residence without the prior written approval of the [department] shall be a [class A misdemeanor]7.

(6) Every assisted living residence that is required to possess an assisted living residence license shall be licensed on a [biennial basis and shall pay a biennial licensure fee]. Such fee shall be [five hundred dollars per license], with an additional fee of [fifty dollars per resident whose annual income is above four hundred percent of the federal poverty level]. Such additional fee shall be based on the total occupied beds at the time of application, up to a maximum biennial licensure fee of [five thousand dollars]. Said fee shall be in addition to the fee charged by the [department] for certification as an adult care facility. Every assisted living residence that applies for an enhanced assisted living certificate or a special needs assisted living certificate shall pay an additional [biennial fee], in addition to any other fee required by this subdivision, in the amount of [two thousand dollars], provided that for any residence applying for both an enhanced assisted living certificate and a special needs assisted living certificate the amount of such fee shall be [three thousand dollars].

(7) The requirements of this Act shall be in addition to those required of an adult care facility. In the event of a conflict between any provision of this Act and [insert citation], the applicable provision of this Act or the applicable regulation shall supersede [insert citation] or the applicable regulation thereunder to the extent of such conflict.

(8) The assisted living operator shall not use deceptive or coercive marketing practices to encourage residents or potential residents to sign or reauthorize the residency agreement required pursuant to this Act.

Section 7. [*Residency Admission*.]

(1) An assisted living operator shall conduct an initial pre-admission evaluation of a prospective resident to determine whether or not the individual is appropriate for admission to the assisted living residence. Such evaluation shall be conducted by the operator and, if necessary, in conjunction with a home care services agency or appropriate employee pursuant to this Act. The operator shall conduct all such evaluations using an evaluation tool developed by the [department], to be based on the recommendations of the task force created pursuant to [insert citation] or one developed by the operator that receives approval by the [department].

(2) The assisted living operator shall not admit any resident if the operator is not able to meet the care needs of the resident within the scope of services authorized under this Act, and the individualized service plan; provided, further that no operator shall admit any resident in need of twenty-four hour skilled nursing care.

Section 8. [*Residency Agreement and Disclosures*.]

(1) Every operator shall execute with each resident a written residency agreement, in no less than twelve point type and written in plain language, which satisfies the requirements of this section. Such agreement shall:

(a) be dated and signed by the operator, the resident, resident's representative, and resident's legal representative, if any, and any other party to be charged under the agreement;

(b) contain the entire agreement of the parties and shall include the disclosures required by subdivision three of this section.

(2) The resident, resident's representative and resident's legal representative, if any, shall be given a complete copy of the agreement and all supporting documents and attachments and any changes whenever changes are made to the agreement.

(3) The residency agreement shall include, at a minimum:

(a) the name, telephone number, street address and mailing address of the residence;

(b) the name and mailing address of the owner of the residence and at least one natural person authorized to accept personal service on behalf of the owner of the residence;

(c) the name and address of the assisted living operator and at least one natural person authorized to accept personal service on behalf of the operator;

(d) a statement, to be updated as necessary, describing the licensure or certification status of the assisted living operator and any provider offering home care services or personal care services under an arrangement with the residence, including a specific listing of such providers;

(e) the effective period of the agreement;

(f) a description of the services to be provided to the resident and the base rate to be paid by the resident for those services;

(g) a description of any additional services available for an additional, supplemental, or community fee from the assisted living operator directly or through arrangements with the operator, stating who would provide such services, if other than such operator;

(h) a rate or fee schedule, including any additional, supplemental, or community fees charged for services provided to the resident, with a detailed explanation of which services and amenities are covered by such rates, fees, or charges;

(i) a description of the process through which the agreement may be modified, amended, or terminated, and setting forth the terms and time frames under which the agreement may be terminated by either party;

(j) a description of the complaint resolution process available to residents;

(k) the name of the resident's representative and resident's legal representative, if any, and a description of the representative's responsibilities;

(l) the criteria used by the operator to determine who may be admitted and who may continue to reside in the residence, including criteria related to the resident's care needs and compliance with reasonable rules of the residence;

(m) procedures and standards for termination of contract, discharge and transfer to another dwelling or facility;

(n) billing and payment procedures and requirements;

(o) procedures in the event the resident, resident's representative or resident's legal representative are no longer able to pay for services provided for in the resident agreement or for additional services or care needed by the resident; and

(p) terms governing the refund of any previously paid fees or charges in the event of a resident's discharge from the assisted living residence or termination of the resident agreement.

(4) In conjunction with any marketing materials and with the residency agreement required by this section, the assisted living operator shall disclose on a separate information sheet in plain language and in twelve point type the following to any individual who expresses an interest in residing in the residence, and to his or her designated representative and his or her legal representative, if any, upon request or prior to admission, whichever occurs first, and any current resident and to his or her designated representative and his or her legal representative, if any, if such information has not previously been disclosed to them:

(a) the consumer information guide developed by the [commissioner] pursuant to [insert citation];

(b) a statement listing the residence's licensure and if it has an enhanced assisted living certificate and/or special needs enhanced assisted living certificate and the availability of enhanced assisted living and/or special needs beds;

(c) any ownership interest in excess of [ten percent] on the part of the operator, whether legal or beneficial, in any entity which provides care, material, equipment or other services to residents;

(d) any ownership interest in excess of [ten percent] on the part of any entity which provides care, material, equipment or other services to residents, whether legal or beneficial, in the operator;

(e) a statement regarding the ability of residents to receive services from service providers with whom the operator does not have an arrangement;

(f) a statement that residents shall have the right to choose their health care providers, notwithstanding any other agreement to the contrary;

(g) a statement regarding the availability of public funds for payment for residential, supportive or home health services including, but not limited to availability of coverage of home health services under title eighteen of the federal social security act (Medicare);

(h) the [department's] toll free telephone number for reporting of complaints regarding home care services and the services provided by the assisted living operator; and

(i) a statement regarding the availability of long term care ombudsman services and the telephone number of the local and [state long term care ombudsman].

(5) Assisted living residency agreements and related documents executed by each resident, resident's representative or resident's legal representative shall be maintained by the operator in files from the date of execution until three years after the agreement is terminated. The agreements shall be made available for inspection by the [commissioner] upon request at any time.

Section 9. [*Individualized Service Plan*.]

(1) A written individualized service plan shall be developed for each resident of an assisted living residence upon admission.

(2) The individualized service plan shall be developed with the resident, the resident's representative and resident's legal representative if any, the assisted living operator, and if necessary a home care services agency. The initial individualized service plan shall be developed in consultation with the resident's physician; provided such consultation is documented in writing by the residence. If a resident is determined by his or her physician not to be in need of home care services, the participation of a home care services agency in an evaluation conducted pursuant to this subdivision shall not be necessary.

(3) The individualized service plan shall be developed in accordance with the medical, nutritional, rehabilitation, functional, cognitive and other needs of the resident.

(4) The individualized service plan shall include the services to be provided, and how and by whom services will be provided and accessed.

(5) The individualized service plan shall be reviewed and revised as frequently as necessary to reflect the changing care needs of the resident, but no less frequently than [every six months]. To the extent necessary, such review and revision shall be undertaken in consultation with the resident's physician.

Section 10. [*Rights of Residents in Assisted Living Residences*.]

(1) The principals enunciated in subdivision three of this section are declared to be the public policy of the state and a copy of such statement of rights and responsibilities shall be posted conspicuously in a public place in each residence covered hereunder.

(2) Every assisted living residence shall adopt and make public a statement of the rights and responsibilities of the residents residing in such residence, and shall treat such residents in accordance with the provisions of such statement.

(3) Resident's rights and responsibilities shall include, but not be limited to the following:

(a) every resident's participation in assisted living shall be voluntary, and prospective residents shall be provided with sufficient information regarding the residence to make an informed choice regarding participation and acceptance of services;

(b) every resident's civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, shall not be infringed;

(c) every resident shall have the right to have private communications and consultations with his or her physician, attorney, and any other person;

(d) every resident, resident's representative and resident's legal representative, if any, shall have the right to present grievances on behalf of himself or herself or others, to the residence's staff, administrator or assisted living operator, to governmental officials, to long term care ombudsmen or to any other person without fear of reprisal, and to join with other residents or individuals within or outside of the residence to work for improvements in resident care;

(e) every resident shall have the right to manage his or her own financial affairs;

(f) every resident shall have the right to have privacy in treatment and in caring for personal needs;

(g) every resident shall have the right to confidentiality in the treatment of personal, social, financial and medical records, and security in storing personal possessions;

(h) every resident shall have the right to receive courteous, fair and respectful care and treatment and a written statement of the services provided by the residence, including those required to be offered on an as-needed basis;

(i) every resident shall have the right to receive or to send personal mail or any other correspondence without interception or interference by the operator or any person affiliated therewith;

(j) every resident shall have the right not to be coerced or required to perform the work of staff members or contractual work;

(k) every resident shall have the right to have security for any personal possessions if stored by the operator;

(l) every resident shall have the right to receive adequate and appropriate assistance with activities of daily living, to be fully informed of their medical condition and

proposed treatment, unless medically contraindicated, and to refuse medication, treatment or services after being fully informed of the consequences of such actions, provided that an operator shall not be held liable or penalized for complying with the refusal of such medication, treatment or services by a resident who has been fully informed of the consequences of such refusal;

(m) every resident and visitor shall have the responsibility to obey all reasonable regulations of the residence and to respect the personal rights and private property of the other residents;

(n) every resident shall have the right to include their signed and witnessed version of the events leading to an accident or incident involving such resident in any report of such accident or incident;

(o) every resident shall have the right to receive visits from family members and other adults of the resident's choosing without interference from the assisted living residence; and

(p) every resident shall have the right to written notice of any fee increase not less than [forty-five days prior to the proposed effective date of the fee increase], provided however providing additional services to a resident shall not be considered a fee increase pursuant to this paragraph. Waiver of any provision contained within this subdivision shall be void;

(4) Each assisted living operator shall give a copy of the statement of rights and responsibilities to each resident at or prior to the time of admission to the residence, the resident's representative and resident's legal representative, if any, and to each member of the residence's staff and any current resident.

Section 11. [*Resident Funds*.] An assisted living operator or employee of a residence or any other entity which is a representative payee of a resident of such residence pursuant to designation by the social security administration or which otherwise assumes management responsibility over the funds of a resident shall maintain such funds in a fiduciary capacity to the resident. Any interest on money received and held for the resident shall be the property of the individual resident.

Section 12. [*Powers of the Commissioner*.]

(1) The [commissioner] is hereby authorized to:

(a) develop, in consultation with the [director of the state office for the aging], consumers, operators of assisted living residences and home care service agency providers, a consumer information guide to inform and assist the consumer in the selection of an assisted living residence;

(b) promulgate, in consultation with the [director of the state office for the aging], such rules and regulations as are necessary to implement the provisions of this Act;

(c) receive and investigate complaints regarding the condition, operation and quality of care of any entities holding themselves out as assisted living, or advertising themselves by a similar term;

(d) make necessary investigations to procure information required to implement the provisions of this Act; and

(e) exercise all other powers and functions as are necessary to implement the provisions of this Act.

(2) Nothing in this section shall restrict the availability of powers otherwise available to the [commissioner] under state law.

Section 13. [*Penalties and Enforcement*.] Any person who violates any provision of this Act or any rule or regulation promulgated by the [department], or the terms or conditions of any order or permit issued by the [department] pursuant to this Act, shall be subject to the maximum penalties which may be levied against a licensed adult care facility.

Section 14. [*Exemptions*.] An adult home shall mean an adult care facility established and operated for the purpose of providing long-term residential care, room, board, housekeeping, personal care, (either directly or indirectly), and supervision to five or more adults unrelated to the operator. The provisions of this subdivision shall not apply to any housing projects established pursuant to the [private housing finance law, the public housing law, the membership corporations law] or the [not-for-profit corporation law] except for those distinct programs operated by such projects which provide supervision and/or personal care and which are approved or certified by the [department].

Section 15. [*Assisted Living Residence Quality Oversight Fund*.]

(1) There is hereby established in the joint custody of the [comptroller and the commissioner of health] a special fund to be known as the "Assisted Living Residence Quality Oversight Fund".

(2) Such fund shall consist of all moneys collected by the [department of health] pursuant to [insert citation]. Any interest earned by the investment of moneys in such fund shall be added to such fund, become a part of such fund, and be used for the purpose of such fund.

(3) Moneys of such fund shall be available to the [department of health] for the purpose of carrying out the provisions of this Act. Additionally, [five hundred thousand dollars] shall be available to the [state office for the aging] for a [long term care ombudsman program] for the purpose of carrying out the provisions of this Act.

(4) The moneys of the fund shall be paid out on the audit and warrant of the [comptroller] on vouchers certified or approved by the [commissioner of health].

Section 16. [*Adult Care Facilities and Assisted Living Residences Task Force*.]

(1) A [Task Force on Adult Care Facilities and Assisted Living Residences] is hereby created, and shall consist of [ten members] to be appointed as follows: [six members shall be appointed by the Governor, two members shall be appointed by the president of the senate, and two members shall be appointed by the speaker of the assembly].

(2) The purpose of such task force, which shall be convened not later than [insert date], shall be to update and revise the requirements and regulations applicable to adult care facilities and assisted living residences to better promote resident choice, autonomy and independence. Ex officio members of the task force shall include the [commissioner of health, the director of the state office for the aging, the commissioner of the office of mental health, the chair of the commission on quality of care for the mentally disabled, or their designees]. The task force shall gather information regarding the various ways in which existing requirements and guidelines unduly infringe on affordability of care and services, individual resident choice, autonomy and independence, examine and evaluate such requirements and guidelines, and make recommendations to improve them so that they achieve their desired objectives for the resident populations they are designed to protect without infringing upon the choice, autonomy and independence of other residents.

(3) Such recommendations shall include, but not be limited to:

(a) minimizing duplicative or unnecessary regulatory oversight;

(b) ensuring that the indigent have adequate access to, and that there are a sufficient number of enhanced assisted living residences;

(c) developing affordable assisted living;

(d) promoting resident choice and independence;

(e) an evaluation tool, and,

(f) specific standards and criteria relating to the special needs certificates required by [insert citation]. The task force shall issue a report of its findings and recommendations to the [governor and legislature] on or before [insert date] and annually thereafter.

Section 17. [*Deadline for Existing, Qualified, Facilities to be Certified in Accordance with this Act*.] Any entity which qualifies as an assisted living residence pursuant to this Act and operating as an assisted living residence on or before the effective date of this Act shall within [sixty days] of such effective date apply to be licensed or certified with the [commissioner of health] in accordance with this Act and shall be required to comply with the provisions of this Act upon approval of all licenses and certifications for which the entity has applied during such period.

Section 18. [*Prohibiting Emergency Rules Regarding this Act*.] The [department of health] is not authorized to issue emergency regulations in regard to this Act.

Section 19. [*Severability*.] [Insert severability clause.]

Section 20. [*Repealer*.] [Insert repealer clause.]

Section 21. [*Effective Date*.] [Insert effective date.]