Ohio Legislative Service Commission

Bill Analysis

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S.B. 87

129th General Assembly
(As Introduced)

Sens. Tavares and Schiavoni, Skindell

BILL SUMMARY

- Requires, subject to any necessary federal approval, that the Ohio Department of Job and Family Services (ODJFS) permit an individual who is dually eligible for Medicaid and Medicare to participate in Medicaid managed care if the individual (1) receives Medicaid on the basis of being aged, blind, or disabled, (2) is eligible for the Medicare prescription drug benefit and full Medicaid benefits, and (3) is enrolled in a specialized Medicare Advantage plan for special needs individuals.

- Eliminates the eligibility requirement for the Assisted Living program under which an applicant must first be a nursing home resident, residential care facility resident for at least six months, or participant of the PASSPORT program, Choices program, or an ODJFS-administered Medicaid waiver program. (This provision is affected by the subsequent enactment of H.B. 153 (biennial budget).)

- Requires the Ohio Department of Aging to establish a presumptive eligibility process for the Assisted Living program under which an individual may be enrolled conditionally before the individual is determined to meet the program's financial eligibility requirements if (1) a written plan of care or individual service plan has been created for the individual and (2) the individual has been determined to meet the program's nonfinancial eligibility requirements. (This provision is affected by the subsequent enactment of H.B. 153 (biennial budget).)

- Requires ODJFS to establish a Home First component of the Ohio Home Care program under which an individual on a waiting list for the program may be enrolled in the program if (1) the individual has been admitted to a nursing facility, (2) a physician has determined that the individual has a medical condition that, unless the individual is enrolled in home and community-based services, will require the individual to be admitted to a nursing facility within 30 days, or (3) the

individual has been hospitalized and a physician has determined that, unless the individual is enrolled in home and community-based services, the individual is to be transported directly from the hospital to a nursing facility and admitted. (This provision is affected by the subsequent enactment of H.B. 153 (biennial budget).)

- Requires the ODJFS Director to seek federal approval for a pilot program to assist Medicaid recipients who have severe mental illnesses and reside in nursing facilities transition to home or community-based services.

- Requires ODJFS, after receiving federal approval for the pilot program, to contract with the Ohio Department of Mental Health (ODMH) to have ODMH operate the pilot program for two years.

- Requires that ODMH, in operating the pilot program, provide for a technical assistance advisor to (1) design and implement a training course for individuals who assist Medicaid recipients transition to home or community-based services under the pilot program and (2) provide technical assistance to Medicaid recipients seeking to transition to home or community-based services and individuals who assist such Medicaid recipients.

- Requires the Ohio Department of Development to request a waiver from the federal government to implement a pilot program under which certain public housing agencies are instructed to give priority in finding housing to individuals who are transitioning from a long-term care facility or at risk of immediate admission to a long-term care facility.

- Requires the Ohio Housing Finance Agency, in providing rental, homeownership, and program assistance, to adopt a mechanism to give priority to placing and aiding individuals who are transitioning from a long-term care facility or at risk of immediate admission to a long-term care facility.

- Provides that a volunteer is not liable in a civil action for damage resulting from conveying in a motor vehicle a recipient of a transportation service included in community-based long-term care services unless the volunteer's action that causes the damage constitutes willful or wanton misconduct.

- Requires ODJFS, in consultation with the Ohio Department of Aging, to study the issue of providing care coordination for the acute benefits provided under Medicaid waiver programs that provide home and community-based services.

- Requires the Ohio Department of Aging to study the issue of credentialing or licensing discharge planners employed by nursing homes and hospitals.

CONTENT AND OPERATION

Recommendations of the Unified Long-Term Care Budget Workgroup

The bill implements a number of recommendations made in 2010 by the Unified Long-Term Care Budget Workgroup.[1] The Workgroup was originally created by the biennial budget act for the 127th General Assembly — Am. Sub. H.B. 119. It was continued under the next biennial budget act, Am. Sub. H.B. 1 of the 128th General Assembly. The biennial budget act for the 129th General Assembly — Am. Sub. H.B. 153 — created the Unified Long-Term Care System Advisory Group.

Effect of H.B. 153

The bill was introduced before the enactment of H.B. 153. Some of the bill's provisions discussed below under "**Dual eligible individuals permitted to enroll in Medicaid managed care**," "**Assisted Living program**," and "**Home First for Ohio Home Care program**" were enacted in whole or in part by H.B. 153. For purposes of this analysis, the description of current law regarding these topics refers to the law as it existed before H.B. 153. The changes made by H.B. 153 are described separately. Amendments to the bill are necessary to coordinate its provisions with the provisions enacted by H.B. 153.

Dual eligible individuals permitted to enroll in Medicaid managed care

The bill requires the Ohio Department of Job and Family Services (ODJFS) to permit an individual who is dually eligible for Medicaid and Medicare to participate in Medicaid managed care under certain circumstances.[2] To be eligible to volunteer to participate in Medicaid managed care, a dually eligible individual must (1) receive Medicaid on the basis of being aged, blind, or disabled, (2) be a full-benefit dual eligible individual (*i.e.*, eligible for the Medicare prescription drug benefit and full Medicaid benefits), and (3) be enrolled in a specialized Medicare Advantage plan for special needs individuals. However, no dually eligible individual is to be permitted to volunteer to participate in Medicaid managed care until ODJFS receives a federal Medicaid waiver if such a waiver is needed to avoid violating a federal Medicaid requirement.

ODJFS has two responsibilities under the bill with respect to dual eligible individuals who volunteer to participate in Medicaid managed care. First, ODJFS must

[1] Ohio Department of Aging, *Ohio's Progress Toward a Unified Long-term Care Budget* (last visited April 17, 2012), available at <*www*.aging.ohio.gov/resources/publications/ULTCS_report_2010.pdf>.

[2] R.C. 5111.161 (primary) and 5111.16.

arrange for such individuals to enroll in Medicaid managed care organizations (*i.e.*, health insuring corporations that are under contract with ODJFS to provide, or arrange for the provision of, Medicaid recipients' health care services). Second, ODJFS must take into consideration the recommendations of the Unified Long-Term Care Budget Workgroup concerning the integration of dually eligible individuals into Medicaid managed care.

H.B. 153 provisions regarding dual eligible individuals

H.B. 153 includes provisions that expand the group of individuals who may be required or permitted to participate in the Medicaid care management system, as long as any necessary waiver of federal Medicaid requirements is received. H.B. 153's expansion applies to individuals who are included in the Medicaid coverage group known as the "aged, blind, and disabled" and includes individuals who are dually eligible for Medicaid and Medicare.

H.B. 153 also authorizes the ODJFS Director to seek federal approval to implement a demonstration project to test and evaluate the integration of the care that dual eligible individuals receive under the Medicare and Medicaid programs. If approval is granted, the demonstration project must be implemented in accordance with the terms of the approval, including terms regarding the project's duration.

Assisted Living program

The bill eliminates certain eligibility requirements for the Assisted Living program and requires the Ohio Department of Aging (ODA) to establish a presumptive eligibility process for the program. The Assisted Living program is a component of Medicaid under which eligible Medicaid recipients are permitted to reside in a residential care facility (the statutory term for assisted living facility) rather than continue or begin to reside in a nursing facility. ODA administers the Assisted Living program pursuant to an interagency agreement with ODJFS.

Eligibility requirements eliminated

The bill eliminates certain eligibility requirements for the Assisted Living program. Under the bill, an individual no longer needs to be one of the following at the time the individual applies for the program:

(1) A nursing facility resident who is seeking to move to an assisted living facility and would remain in a nursing facility for long-term care if not for the Assisted Living program;

(2) A participant of the PASSPORT program, Choices program, or an ODJFS-administered Medicaid waiver program who would move to a nursing facility if not for the Assisted Living program;

(3) A resident of an assisted living facility who has resided in an assisted living facility for at least six months immediately before the date the individual applies for the Assisted Living program.[3]

Presumptive eligibility

Under the presumptive eligibility process that the bill requires ODA to establish for the Assisted Living program, an individual may be enrolled conditionally in the program before the individual is determined to meet the program's financial eligibility requirements if (1) a written plan of care or individual service plan has been created for the individual and (2) the individual has been determined to meet the program's nonfinancial eligibility requirements.[4]

H.B. 153 provisions regarding the Assisted Living program

H.B. 153 includes provisions that establish a state-funded component of the Assisted Living program. The state-funded component is not to be part of the Medicaid program. The Ohio Department of Aging is to administer the state-funded component independently rather than, as is the case with the Medicaid-funded components of the program, through an interagency agreement with ODJFS.

The eligibility requirements described above (see "**Eligibility requirements eliminated**") have been eliminated by H.B. 153 with respect to the Medicaid-funded component of the Assisted Living program.

H.B. 153 includes provisions that establish an eligibility category for the state-funded component of the Assisted Living program that applies to presumptively eligible individuals. To be in this category, an individual must (1) have an application for the Medicaid-funded component pending and (2) meet the nonfinancial eligibility requirements of the Medicaid-funded component. Eligibility is limited to a maximum of three months for presumptively eligible individuals.

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[3] R.C. 5111.891.

[4] R.C. 5111.895 (primary), 5111.861, and 5111.89.

Home First for Ohio Home Care program

The bill requires ODJFS to establish a Home First component of the Ohio Home Care waiver that ODJFS administers as part of the Medicaid program.[5] Ohio Home Care provides home and community-based services to Medicaid recipients under age 60 who, if not for Ohio Home Care, would need to be admitted to a nursing facility or require long-term hospitalization.[6]

The Home First component is a process under which eligible individuals may enroll in Ohio Home Care. For an individual to be eligible to enroll in Ohio Home Care through the Home First component, the individual must be eligible, and on a waiting list, for Ohio Home Care and at least one of the following must apply:

(1) The individual must have been admitted to a nursing facility.

(2) A physician must have determined and documented in writing that the individual has a medical condition that, unless the individual is enrolled in home and community-based services such as Ohio Home Care, will require the individual to be admitted to a nursing facility within 30 days of the physician's determination.

(3) The individual must have been hospitalized and a physician must have determined and documented in writing that, unless the individual is enrolled in home and community-based services such as Ohio Home Care, the individual is to be transported directly from the hospital to a nursing facility and admitted.

County departments of job and family services are given responsibilities under the Home First component. Each month, each county department is required to identify individuals residing in the county that the county department serves who are eligible for the Home First component. When a county department identifies such an individual, the county department must determine whether Ohio Home Care is appropriate for the individual and whether the individual would rather participate in Ohio Home Care than continue or begin to reside in a nursing facility. If the county department determines that Ohio Home Care is appropriate for the individual and the individual would rather participate in Ohio Home Care than continue or begin to reside in a nursing facility, the county department must so notify ODJFS. On receipt of the notice, ODJFS is required to approve the individual's enrollment in Ohio Home Care, unless the enrollment would cause Ohio Home Care to exceed any limit on the number of individuals who may be enrolled in Ohio Home Care as set by the United States Secretary of Health and Human Services in the waiver authorizing Ohio Home Care.

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[5] R.C. 5111.862 (primary) and 5111.85.

[6] Ohio Administrative Code 5101:3-46-02.

The bill requires ODJFS to certify to the Director of Budget and Management the estimated increase in costs of Ohio Home Care resulting from enrollment of individuals pursuant to the Home First component. ODJFS must certify such costs each quarter.

H.B. 153 provisions regarding Home First for Ohio Home Care program

H.B. 153 includes provisions that require ODJFS to establish a Home First process for the Ohio Home Care program unless it is terminated. An individual is to be eligible for the Home First component if the individual has been determined to be eligible for the program and at least one of the following applies:

(1) If the individual is under age 21, the individual received inpatient hospital services for at least 14 consecutive days, or had at least 3 inpatient hospital stays during the 12 months immediately preceding the date the individual applies for the program;

(2) If the individual is at least age 21 but less than age 60, the individual received inpatient hospital services for at least 14 consecutive days immediately preceding the date the individual applies for the program;

(3) The individual received private duty nursing services under the Medicaid program for at least 12 consecutive months immediately preceding the date the individual applies for the program;

(4) The individual does not reside in a nursing facility or hospital long-term care unit at the time the individual applies for the program but is at risk of imminent admission due to a documented loss of a primary caregiver;

(5) The individual resides in a nursing facility at the time the individual applies for the program;

(6) At the time the individual applies for the program, the individual participates in the Money Follows the Person demonstration project and either resides in a residential treatment facility or inpatient hospital setting. H.B. 153 defines "residential treatment facility" as a residential facility that is licensed by ODMH and serves children and either has more than 16 beds or is part of a campus of multiple facilities that, combined, have a total of more than 16 beds.

An individual determined to be eligible for the Home First component of the Ohio Home Care program is to be enrolled in the program in accordance with ODJFS's rules.

Pilot program for institutionalized individuals with severe mental illness

The bill requires the ODJFS Director to seek federal approval for a pilot program to assist Medicaid recipients who have severe mental illnesses and reside in nursing facilities transition to home or community-based services.[7] The Director is required to seek the approval not later than 90 days after the bill's effective date. The ODJFS Director is permitted to adopt rules establishing additional eligibility requirements for the pilot program. To the extent possible, the pilot program is to be modeled after the Money Follows the Person demonstration project. That demonstration project is funded by a grant that the United States Secretary of Health and Human Services awarded the state for the purpose of assisting the state to (1) increase the use of home and community-based, rather than institutional, long-term care services under the Medicaid program, (2) eliminate barriers or mechanisms that prevent or restrict the flexible use of Medicaid funds to enable Medicaid-eligible individuals to receive support for appropriate and necessary long-term services in the settings of their choice, (3) increase the ability of the Medicaid program to assure continued provision of home and community-based long-term care services to eligible individuals who choose to transition from an institution to a community setting, and (4) ensure that procedures are in place to provide quality assurance for eligible individuals receiving Medicaid home and community-based services and to provide for continuous quality improvement in such services.

Not later than 90 days after receiving federal approval for the pilot program, ODJFS must contract with the Ohio Department of Mental Health (ODMH) to have ODMH operate the pilot program for two years. ODMH, in operating the pilot program, is required to provide for a technical assistance advisor to (1) design and implement a training course for individuals who assist Medicaid recipients transition to home or community-based services under the pilot program and (2) provide technical assistance to Medicaid recipients seeking to transition to home or community-based services and individuals who assist such Medicaid recipients.

The bill requires ODMH and ODJFS to prepare and complete a report on the pilot program not later than one year after it ceases operation. The report is to be submitted to the Governor, Senate President, Senate Minority Leader, Speaker of the House of Representatives, House Minority Leader, and the Director of the Legislative Service Commission.

[7] Section 3.

Housing for persons leaving or at risk of needing facility services

The bill provides for individuals who are transitioning from a long-term care facility or at risk of immediate admission to a long-term care facility to receive priority regarding certain housing. "Long-term care facilities" are defined by the bill as nursing homes, county and district homes, and county nursing homes.

Specifically, the bill requires the Ohio Department of Development to request a waiver from the federal government to implement a pilot program under which public housing agencies operating under federal regulations that prohibit discrimination on the basis of disability in U.S. Department of Housing and Urban Development (HUD) programs or activities are instructed to give such individuals priority in finding housing.[8] The bill requires the Ohio Housing Finance Agency, in providing rental, homeownership, and program assistance, to adopt a mechanism to give priority to placing and aiding such individuals.[9]

Qualified immunity for volunteer community transportation service

The bill provides that a volunteer is not liable in a civil action for damage resulting from conveying in a motor vehicle a recipient of a transportation service included in community-based long-term care services. However, the immunity does not apply if the volunteer's action that causes the damage constitutes willful or wanton misconduct.[10]

"Volunteer" is defined by the bill as an individual who provides a service without the expectation of receiving and without receipt of any compensation or other form of remuneration from any person or governmental entity. "Community-based long-term care services," as defined by current law, are health and social services provided to persons in their own homes or in community care settings, including (1) case management, (2) home health care, (3) homemaker services, (4) chore services, (5) respite care, (6) adult day care, (7) home-delivered meals, (8) personal care, (9) physical, occupational, and speech therapy, (10) transportation, and (11) any other health and social services provided to persons that allow them to retain their independence in their own homes or in community care settings.[11]

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[8] R.C. 122.63.

[9] R.C. 175.14.

[10] R.C. 2305.2310(B).

[11] R.C. 173.14 (not in the bill) and 2305.2310(A).

Study of care coordination for Medicaid acute benefits

ODJFS is required by the bill to study the issue of providing care coordination for the acute benefits provided under Medicaid waiver programs that provide home and community-based services. ODJFS is to make the study in consultation with the Ohio Department of Aging. Not later than one year after the bill's effective date, the two departments must submit a report regarding the study to the Governor, Senate President, Senate Minority Leader, Speaker of the House of Representatives, House Minority Leader, and the Director of the Legislative Service Commission.[12]

Study of credentialing or licensing discharge planners

The bill requires the Ohio Department of Aging to study the issue of credentialing or licensing discharge planners employed by nursing homes and hospitals. In conducting the study, the Department must examine the qualifications, including educational qualifications, that a discharge planner should have to be credentialed or licensed. A report, which is to include recommendations regarding credentialing or licensing, is due not later than one year after the bill's effective date. The Department must submit the report to the Governor, Senate President, Senate Minority Leader, Speaker of the House of Representatives, House Minority Leader, and the Director of the Legislative Service Commission.[13]

HISTORY

ACTION	DATE
Introduced	02-22-11

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[12] Section 4.

[13] Section 5.