



Sen. M. Maggie Crotty

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1 AMENDMENT TO SENATE BILL 618

2 AMENDMENT NO. _____. Amend Senate Bill 618 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Olmstead Implementation Act.

6 Section 5. Findings. Illinois institutionalizes people
7 with developmental disabilities at a rate higher than almost
8 any other state. Illinois ranks 49th out of the 50 states in
9 the percentage of adults with developmental disabilities being
10 served in community-based settings of 1-6 persons (Reference:
11 The State of the States in Developmental Disabilities 2005). In
12 2005, 21% of Illinois nursing home residents expressed or
13 indicated a preference to return to the community (Reference:
14 the federal Centers for Medicare and Medicaid Services (CMS)
15 Minimum Data Set). Approximately 73.37% of Illinois' long-term
16 care dollars, however, are currently allocated toward
17 institutional care as compared to 26.63% for community-based
18 care (Reference: MEDSTAT data taken from CMS reports). A
19 preliminary report by the University of Illinois Institute of
20 Government and Public Affairs, commissioned by the House Human
21 Services Appropriations Committee and the Senate
22 Appropriations Committee of the Illinois General Assembly,
23 concluded that "the hallmarks of both Illinois' DD and MH
24 systems are a heavy tilt towards institutional settings that is

1 out of step with national policies and a low level of funding
2 for IDHS-funded, community-provided services". The report
3 calls on the State to "increase support for living in community
4 settings", and notes that "the persistence of institutional
5 care as a major component of State policy in Illinois is not in
6 the spirit of major recent social legislation, including the
7 ADA, the Olmstead decision, the Individuals with Disabilities
8 Education Act (IDEA), and the HCBS waiver, which was intended
9 to rid Medicaid law of its pro-institutional bias" (Reference:
10 The Adequacy of State Payments to Community-Based Agencies,
11 March 31, 2005).

12 Section 10. Purpose. It is the intent of the General
13 Assembly to promote the civil rights of persons with
14 disabilities by providing community-based services for persons
15 with disabilities when those services are determined
16 appropriate and not opposed by the affected persons, as
17 required by Title II of the Americans with Disabilities Act
18 under the United States Supreme Court's decision in *Olmstead v.*
19 *L.C.*, 527 U.S. 581 (1999). The purpose of this Act is to
20 eliminate barriers or mechanisms, whether in the State law, the
21 State Medicaid plan, the State budget, or otherwise, that
22 prevent or restrict the flexible use of funds to enable
23 individuals to receive support for appropriate and necessary
24 long-term services in the community settings of their choice.

25 Section 15. Definitions. As used in this Act:

26 "Community-based service" means a voluntary service, aid,
27 or benefit that is provided to a person with a disability as
28 part of his or her long-term care that is provided under the
29 State's qualified HCB program, or any other home or
30 community-based program as defined by State or federal law, or
31 that could be provided under such a program but is otherwise
32 provided by the State.

1 "Community service provider" means any person authorized
2 by the State to provide community services and may include
3 families, agencies, and other new providers who help to create
4 a wider array of community-based services.

5 "Eligible individual" means a person with a disability of
6 any age who: (i) resides in an institution or institutional
7 facility; (ii) with respect to whom a determination has been
8 made that, but for the provision of community-based services,
9 the individual would continue to require the level of care
10 provided in an institution or institutional facility; and (iii)
11 who is deemed appropriate for community-based services, and
12 does not oppose those services.

13 "Institution" or "institutional facility" means a skilled
14 nursing or intermediate long-term care facility subject to
15 licensure by the Department of Public Health under the Nursing
16 Care Act, an intermediate care facility for the mentally
17 retarded (ICF-DDs) with over 8 beds, an institution for mental
18 diseases, or a State-operated developmental center or mental
19 health center, whether publicly or privately owned.

20 "Individual's authorized representative" means, with
21 respect to an eligible individual, the individual's parent,
22 family member, guardian, advocate, or other authorized
23 representative of the individual.

24 "Qualified residence" means, with respect to an eligible
25 individual: (i) a home owned or leased by the individual or the
26 individual's authorized representative; (ii) an apartment with
27 an individual lease, with lockable access and egress, and that
28 includes living, sleeping, bathing, and cooking areas over
29 which the individual or the individual's authorized
30 representative has domain and control; and (iii) a residence,
31 in a community-based residential setting (as defined by State
32 or federal law), in which no more than 8 unrelated individuals
33 reside.

34 "Public funds" means any funds appropriated by the General

1 Assembly to the Department of Human Services, the Department on
2 Aging, or the Department of Healthcare and Family Services.

3 Section 20. Redistribution of public funds; community
4 services.

5 (a) A person with a disability of any age living in an
6 institution or institutional facility who is deemed
7 appropriate for community-based services, and does not oppose
8 those services, may have public funds that would otherwise have
9 been expended for his or her services provided in an
10 institution expended instead for any community service or
11 support that the State generally offers to people with
12 disabilities. As persons with disabilities relocate from
13 institutions or institutional facilities to a qualified
14 residence, funds shall be redistributed from the institutional
15 line item of the State budget to the community services line
16 item to cover the per person cost of the shift in services.

17 (b) The cost of community services provided under this Act
18 shall not exceed the cost of care in the institutional facility
19 in which the individual most recently resided. When the
20 redistribution of funds from institutional to community
21 services results in aggregate cost savings, those savings may
22 be used only for the following purposes:

23 (i) to expand the availability, quality, or stability
24 of community services for people with disabilities; and

25 (ii) to provide other services necessary to transfer
26 people with disabilities into the community, including
27 housing and home modifications.

28 The redistribution required in this Section shall not have
29 the effect of:

30 (i) diminishing or reducing the quality of services
31 available to institutional residents; or

32 (ii) forcing any institutional resident to
33 involuntarily accept community-based services in lieu of

1 institutional services, or causing any institutional
2 resident to be involuntarily transferred or discharged.

3 (c) Funding for persons under this Act shall remain
4 available to the person as long as he or she remains eligible
5 for services in an institution and does not oppose the transfer
6 from the institution to the community.

7 Section 25. Implementation. As people with disabilities
8 relocate from institutional facilities to a qualified
9 residence, the Departments of Human Services, Aging, Public
10 Health, and Healthcare and Family Services shall develop a
11 model by which State funding appropriated to cover the costs of
12 such persons' long term care in institutions may be used to
13 cover the cost of their long term care in the community. In
14 conjunction with these efforts, the Departments shall
15 strengthen efforts to divert people from going into
16 institutions by addressing issues relating to preadmission
17 screening, as well as barriers relating to home and
18 community-based services eligibility and quality.

19 Section 30. Information and dissemination.

20 (a) The State shall ensure that persons covered under this
21 Act are informed of their opportunity to receive community
22 services under this Act.

23 (b) The Department of Human Services, Department on Aging,
24 Department of Public Health, and Department of Healthcare and
25 Family Services shall work together to ensure that persons with
26 disabilities and their families, guardians, and advocates are
27 informed of their opportunities for services under this Act in
28 a manner that is easily understandable and accessible to people
29 with disabilities. The Departments shall ensure that
30 appropriate methods of dissemination are employed and shall
31 make all feasible efforts to inform people currently
32 institutionalized, including at their individual team or

1 program meetings. The Department of Human Services and the
2 Department on Aging shall ensure that all nursing home
3 residents listed under the Minimum Data Set (MDS) of the
4 Centers for Medicare and Medicaid Services as preferring to
5 live in the community are informed of and given the opportunity
6 to exercise their rights under this Act.

7 (c) The Department of Human Services, Department on Aging,
8 Department of Public Health, and Department of Healthcare and
9 Family Services shall use organizations comprised of or
10 representing people with disabilities to ensure that people
11 with disabilities, particularly residents of institutions
12 covered under this Act, and their families, guardians, and
13 advocates are informed of their opportunities for services
14 under this Act.

15 (d) The Department of Public Health shall ensure that, as a
16 condition of licensing and certification, all institutions
17 covered under this Act shall inform all residents annually of
18 their opportunities to choose home and community alternatives
19 under this Act. Additionally, the Department shall require each
20 facility to post in a prominent location on each residential
21 ward a notice containing information on services available
22 under this Act. Signs posted on residential wards shall comply
23 with the accessibility standards of the Americans with
24 Disabilities Act.

25 (e) On or before January 1 of each year, the Department of
26 Healthcare and Family Services and the Department of Public
27 Health shall, jointly, report to the Governor and the General
28 Assembly on the implementation of this Act and include, at a
29 minimum, the following data:

30 (i) the Departments' efforts to promote
31 community-based services;

32 (ii) the number of institutional residents referred or
33 identified in the previous year;

34 (iii) the number of people per institutional facility

1 who applied to transfer to the community;

2 (iv) the number of institutional residents who in fact
3 transferred from the institution to community-based
4 services;

5 (v) the number of people who received community
6 services under this Act;

7 (vi) any obstacles the Departments confronted in
8 assisting institutional residents to make the transition
9 from an institution to a community-based residence; and

10 (vii) the Departments' recommendations for removing
11 the obstacles.

12 This report must be made available to the general public,
13 including via the Departments' websites.

14 Section 35. Effect of the Act on existing rights. This Act
15 does not alter or affect the manner in which persons with
16 disabilities are determined eligible or appropriate for
17 community services, except to the extent the determinations are
18 based on the availability of community services. This Act does
19 not limit in any way the rights of people with disabilities
20 under the U.S. Constitution, the Americans with Disabilities
21 Act, Section 504 of the Rehabilitation Act, the Social Security
22 Act, or any other State law.

23 Section 40. Rules. The Department of Human Services,
24 Department on Aging, Department of Public Health, and
25 Department of Healthcare and Family Services shall each adopt
26 any rules necessary for the implementation and administration
27 of this Act.

28 Section 99. Effective date. This Act takes effect July 1,
29 2006."