



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB3465

Introduced 02/23/05, by Rep. James D. Brosnahan

SYNOPSIS AS INTRODUCED:

New Act

Creates the Community First Act. Provides that all persons who reside in, or are eligible to reside in, institutional care facilities have the right to have the amount of public funds that are or would have been expended on him or her for services provided by an institutional facility transferred to pay for community services. Requires the Department of Human Services, Department of Public Health, Department on Aging, and institutional facilities to inform eligible persons of their right to funding for community services under this Act. Requires the Department of Public Aid and the Department of Public Health to publish, annually, a report describing the implementation of the Act. Provides that the Act shall not alter or affect the manner in which persons with disabilities are determined eligible or appropriate for community services, except to the extent the determinations are based on the availability of community services, and shall not be read to limit in any way the rights of people with disabilities under federal or State law. Requires the Department of Public Aid, in consultation with the Department of Human Services, the Department of Public Health, and the Department on Aging, to adopt any rules necessary for the implementation and administration of this Act.

LRB094 11319 BDD 42145 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Community First Act.

6 Section 5. Purpose. It is the intent of the General
7 Assembly to promote the civil rights of persons with
8 disabilities by allowing those who want and are eligible for
9 community services to receive them under the United States
10 Supreme Court's decision in *Olmstead v. L.C.*, 527 U.S. 581
11 (1999).

12 The General Assembly finds that disability services
13 funding in Illinois has been weighed in favor of institutions
14 and has, thus, caused or contributed to the unnecessary
15 institutionalization of thousands of people with disabilities,
16 including senior citizens, in Illinois.

17 Accordingly, as people with disabilities relocate from
18 institutional facilities to the community, funds shall be
19 transferred from these facilities to in-home and community
20 services to cover the cost of the shift in services. For
21 persons who are not currently institutionalized but would
22 otherwise be placed in an institution, funds shall be made
23 available for community services to the extent they would be
24 available for institutional care.

25 Section 10. Applicability; definitions.

26 (a) This Act applies to all persons who reside in, or are
27 eligible to reside in, any institutional facility.

28 (b) As used in this Act:

29 "Community service" means any service, aid, or benefit that
30 is provided to a person with a disability as part of his or her
31 long-term care that: (i) is delivered in the person's own home,

1 family home, or a facility with no more than 8 people; (ii) the
2 State generally provides to people with disabilities; and (iii)
3 is necessary for the disabled person to live in the community.

4 "Community service provider" means any person authorized
5 by the State to provide community services.

6 "Institution" or "institutional facility" means a skilled
7 nursing facility, an intermediate care facility for the
8 mentally retarded, an institution for mental diseases, a
9 State-operated developmental center, a State-operated mental
10 health center, or any other long-term care facility in excess
11 of 8 beds, whether publicly or privately owned.

12 "Institution for mental diseases" has the meaning set forth
13 in Title XIX of the Social Security Act, 42 U.S.C. § 1396d.

14 "Intermediate care facility for the mentally retarded" has
15 the meaning set forth in Title XIX of the Social Security Act,
16 42 U.S.C. § 1396d.

17 "Public funds" means any funds provided by the State of
18 Illinois or any of its agencies, including funds paid for out
19 of federally funded Medicaid programs as well as funds
20 generated from State revenue sources only. The term "public
21 funds" does not include Medicare funds.

22 "Skilled nursing facility" has the meaning set forth in
23 Title XVIII of the Social Security Act, 42 U.S.C. § 1395i-3(a).

24 Section 15. Availability of public funds for community
25 services.

26 (a) Any person covered under subsection (a) of Section 10
27 has the right to have the amount of public funds that are or
28 would have been expended on him or her for services provided by
29 an institutional facility transferred to pay for community
30 services.

31 (b) A person may use any public funds that would otherwise
32 have been expended on him or her for services provided an
33 institution for any community service or support that the State
34 generally offers to people with disabilities, provided the
35 service is necessary for the person to live in the community.

1 Public funds shall be available for transfer regardless of the
2 person's age. A person need not be institutionalized to be
3 eligible for public funds under this Act, provided that they
4 are otherwise eligible for institutional services.

5 (c) The cost of community services provided under this Act
6 is limited to the actual, individual cost of the person's
7 institutionalization and shall not be controlled by the Service
8 Cost Maximum established by the Illinois Department of Public
9 Aid or any other cost limitation established by State
10 regulation, rule, policy, or procedure.

11 (d) Funds transferred under this Act shall be paid by the
12 State to the community service provider in the same manner as
13 the State would otherwise use to reimburse community service
14 providers for services rendered to persons with disabilities.

15 (e) When the transfer of funds from institutional to
16 community services results in aggregate cost savings, those
17 savings may be used only for the following purposes:

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

20 (ii) to provide other services necessary to transfer
21 people with disabilities into the community, including
22 housing and home modifications.

23 (f) Funding for clients under this Act must remain
24 available to the person as long as he or she remains eligible
25 for services in an institution and wants community services.
26 Funding shall not depend upon the availability of slots under
27 the Medicaid Home and Community Based Services waivers;
28 however, nothing in this Act prohibits the State from seeking
29 waiver funds to pay for community services for persons
30 transferred under this Act.

31 Section 20. Information and dissemination.

32 (a) The State shall ensure that persons covered under this
33 Act are informed of their right to funding for community
34 services under this Act.

35 (b) The Department of Human Services and the Department on

1 Aging must ensure persons with disabilities and their families,
2 guardians, and advocates are informed of their rights under
3 this Act in a manner that is easily understandable and
4 accessible to people with disabilities. The Department must
5 ensure that multiple methods of dissemination are employed and
6 must make all feasible efforts to inform people currently
7 institutionalized, including at their individual team or
8 program meetings.

9 (c) The Department of Human Services and the Department on
10 Aging shall ensure that all nursing home residents listed under
11 the Minimum Data Set (MDS) of the Centers for Medicare and
12 Medicaid Services as preferring to live in the community are
13 informed of and given the opportunity to exercise their rights
14 under this Act.

15 (d) The Department of Human Services and the Department on
16 Aging shall use organizations comprised of or representing
17 people with disabilities to ensure that people with
18 disabilities and their families, guardians, and advocates are
19 informed of their rights under this Act.

20 (e) The Department of Public Health shall ensure that, as a
21 condition of licensing and certification, all facilities
22 covered under this Act inform all residents prior to admission
23 and annually thereafter of their rights under this Act.
24 Additionally, the Department shall require each facility to
25 post in a prominent location on each residential ward a notice
26 containing information on services available under this Act.

27 (f) The Department of Public Health shall further ensure
28 that prospective residents of facilities covered under this Act
29 are notified of their rights under this Act through the
30 pre-admission screening and annual resident review process.

31 Section 25. Public reporting. The Department of Public Aid
32 and the Department of Public Health shall publish annually a
33 report describing the implementation of the Act and containing,
34 at a minimum, the following data:

35 (i) the number of people who received community

1 services under the Act;

2 (ii) the number of people per facility who applied to
3 transfer to the community;

4 (iii) the number of people per facility who in fact
5 transferred; and

6 (iv) the number of persons who avoided institutional
7 placement as a result of this Act.

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

10 Section 30. Effect of the Act on existing rights. This Act
11 shall not alter or affect the manner in which persons with
12 disabilities are determined eligible or appropriate for
13 community services, except to the extent the determinations are
14 based on the availability of community services. This Act shall
15 not be read to limit in any way the rights of people with
16 disabilities under the U.S. Constitution, the Americans with
17 Disabilities Act, Section 504 of the Rehabilitation Act, the
18 Social Security Act, or any other federal or State law.

19 Section 35. Rules. The Department of Public Aid, in
20 consultation with the Department of Human Services, the
21 Department of Public Health, and the Department on Aging, must
22 adopt any rules necessary for the implementation and
23 administration of this Act.