



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB5627

by Rep. Dwight Kay

SYNOPSIS AS INTRODUCED:

20 ILCS 2405/3

from Ch. 23, par. 3434

Amends the Disabled Persons Rehabilitation Act. In provisions concerning personal assistants contained in Public Acts 97-732 and 97-1019, provides that any person providing services as a personal assistant under the Department of Human Services' Home Services Program shall complete standardized instruction or education as determined by the Department concerning his or her obligations as a caregiver and provider of Medicaid services under the Home Services Program. Provides that the instruction or education must be available in languages other than English and to those who need accommodations due to disabilities; and that the Department shall adopt any rules necessary to implement the provision. Adds similar requirements to provisions concerning home care and home health workers who function as personal care attendants, personal assistants, or individual maintenance home health workers contained in Public Act 97-1158. Effective immediately.

LRB098 16969 KTG 52047 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 5. The Disabled Persons Rehabilitation Act is
5 amended by changing Section 3 as follows:

6 (20 ILCS 2405/3) (from Ch. 23, par. 3434)

7 (Text of Section from P.A. 97-732 and 97-1019)

8 Sec. 3. Powers and duties. The Department shall have the
9 powers and duties enumerated herein:

10 (a) To co-operate with the federal government in the
11 administration of the provisions of the federal Rehabilitation
12 Act of 1973, as amended, of the Workforce Investment Act of
13 1998, and of the federal Social Security Act to the extent and
14 in the manner provided in these Acts.

15 (b) To prescribe and supervise such courses of vocational
16 training and provide such other services as may be necessary
17 for the habilitation and rehabilitation of persons with one or
18 more disabilities, including the administrative activities
19 under subsection (e) of this Section, and to co-operate with
20 State and local school authorities and other recognized
21 agencies engaged in habilitation, rehabilitation and
22 comprehensive rehabilitation services; and to cooperate with
23 the Department of Children and Family Services regarding the

1 care and education of children with one or more disabilities.

2 (c) (Blank).

3 (d) To report in writing, to the Governor, annually on or
4 before the first day of December, and at such other times and
5 in such manner and upon such subjects as the Governor may
6 require. The annual report shall contain (1) a statement of the
7 existing condition of comprehensive rehabilitation services,
8 habilitation and rehabilitation in the State; (2) a statement
9 of suggestions and recommendations with reference to the
10 development of comprehensive rehabilitation services,
11 habilitation and rehabilitation in the State; and (3) an
12 itemized statement of the amounts of money received from
13 federal, State and other sources, and of the objects and
14 purposes to which the respective items of these several amounts
15 have been devoted.

16 (e) (Blank).

17 (f) To establish a program of services to prevent the
18 unnecessary institutionalization of persons in need of long
19 term care and who meet the criteria for blindness or disability
20 as defined by the Social Security Act, thereby enabling them to
21 remain in their own homes. Such preventive services include any
22 or all of the following:

23 (1) personal assistant services;

24 (2) homemaker services;

25 (3) home-delivered meals;

26 (4) adult day care services;

- 1 (5) respite care;
- 2 (6) home modification or assistive equipment;
- 3 (7) home health services;
- 4 (8) electronic home response;
- 5 (9) brain injury behavioral/cognitive services;
- 6 (10) brain injury habilitation;
- 7 (11) brain injury pre-vocational services; or
- 8 (12) brain injury supported employment.

9 The Department shall establish eligibility standards for
10 such services taking into consideration the unique economic and
11 social needs of the population for whom they are to be
12 provided. Such eligibility standards may be based on the
13 recipient's ability to pay for services; provided, however,
14 that any portion of a person's income that is equal to or less
15 than the "protected income" level shall not be considered by
16 the Department in determining eligibility. The "protected
17 income" level shall be determined by the Department, shall
18 never be less than the federal poverty standard, and shall be
19 adjusted each year to reflect changes in the Consumer Price
20 Index For All Urban Consumers as determined by the United
21 States Department of Labor. The standards must provide that a
22 person may not have more than \$10,000 in assets to be eligible
23 for the services, and the Department may increase or decrease
24 the asset limitation by rule. The Department may not decrease
25 the asset level below \$10,000.

26 The services shall be provided, as established by the

1 Department by rule, to eligible persons to prevent unnecessary
2 or premature institutionalization, to the extent that the cost
3 of the services, together with the other personal maintenance
4 expenses of the persons, are reasonably related to the
5 standards established for care in a group facility appropriate
6 to their condition. These non-institutional services, pilot
7 projects or experimental facilities may be provided as part of
8 or in addition to those authorized by federal law or those
9 funded and administered by the Illinois Department on Aging.
10 The Department shall set rates and fees for services in a fair
11 and equitable manner. Services identical to those offered by
12 the Department on Aging shall be paid at the same rate.

13 Personal assistants shall be paid at a rate negotiated
14 between the State and an exclusive representative of personal
15 assistants under a collective bargaining agreement. In no case
16 shall the Department pay personal assistants an hourly wage
17 that is less than the federal minimum wage.

18 Solely for the purposes of coverage under the Illinois
19 Public Labor Relations Act (5 ILCS 315/), personal assistants
20 providing services under the Department's Home Services
21 Program shall be considered to be public employees and the
22 State of Illinois shall be considered to be their employer as
23 of the effective date of this amendatory Act of the 93rd
24 General Assembly, but not before. The State shall engage in
25 collective bargaining with an exclusive representative of
26 personal assistants working under the Home Services Program

1 concerning their terms and conditions of employment that are
2 within the State's control. Nothing in this paragraph shall be
3 understood to limit the right of the persons receiving services
4 defined in this Section to hire and fire personal assistants or
5 supervise them within the limitations set by the Home Services
6 Program. The State shall not be considered to be the employer
7 of personal assistants for any purposes not specifically
8 provided in this amendatory Act of the 93rd General Assembly,
9 including but not limited to, purposes of vicarious liability
10 in tort and purposes of statutory retirement or health
11 insurance benefits. Personal assistants shall not be covered by
12 the State Employees Group Insurance Act of 1971 (5 ILCS 375/).

13 Any person providing services as a personal assistant under
14 the Department's Home Services Program shall complete
15 standardized instruction or education as determined by the
16 Department concerning his or her obligations as a caregiver and
17 provider of Medicaid services under the Home Services Program.
18 The instruction or education must be available in languages
19 other than English and to those who need accommodations due to
20 disabilities. The Department shall adopt any rules necessary to
21 implement this provision.

22 The Department shall execute, relative to nursing home
23 prescreening, as authorized by Section 4.03 of the Illinois Act
24 on the Aging, written inter-agency agreements with the
25 Department on Aging and the Department of Healthcare and Family
26 Services⁷ to effect the intake procedures and eligibility

1 criteria for those persons who may need long term care. On and
2 after July 1, 1996, all nursing home prescreenings for
3 individuals 18 through 59 years of age shall be conducted by
4 the Department, or a designee of the Department.

5 The Department is authorized to establish a system of
6 recipient cost-sharing for services provided under this
7 Section. The cost-sharing shall be based upon the recipient's
8 ability to pay for services, but in no case shall the
9 recipient's share exceed the actual cost of the services
10 provided. Protected income shall not be considered by the
11 Department in its determination of the recipient's ability to
12 pay a share of the cost of services. The level of cost-sharing
13 shall be adjusted each year to reflect changes in the
14 "protected income" level. The Department shall deduct from the
15 recipient's share of the cost of services any money expended by
16 the recipient for disability-related expenses.

17 To the extent permitted under the federal Social Security
18 Act, the Department, or the Department's authorized
19 representative, may recover the amount of moneys expended for
20 services provided to or in behalf of a person under this
21 Section by a claim against the person's estate or against the
22 estate of the person's surviving spouse, but no recovery may be
23 had until after the death of the surviving spouse, if any, and
24 then only at such time when there is no surviving child who is
25 under age 21, blind, or permanently and totally disabled. This
26 paragraph, however, shall not bar recovery, at the death of the

1 person, of moneys for services provided to the person or in
2 behalf of the person under this Section to which the person was
3 not entitled; provided that such recovery shall not be enforced
4 against any real estate while it is occupied as a homestead by
5 the surviving spouse or other dependent, if no claims by other
6 creditors have been filed against the estate, or, if such
7 claims have been filed, they remain dormant for failure of
8 prosecution or failure of the claimant to compel administration
9 of the estate for the purpose of payment. This paragraph shall
10 not bar recovery from the estate of a spouse, under Sections
11 1915 and 1924 of the Social Security Act and Section 5-4 of the
12 Illinois Public Aid Code, who precedes a person receiving
13 services under this Section in death. All moneys for services
14 paid to or in behalf of the person under this Section shall be
15 claimed for recovery from the deceased spouse's estate.
16 "Homestead", as used in this paragraph, means the dwelling
17 house and contiguous real estate occupied by a surviving spouse
18 or relative, as defined by the rules and regulations of the
19 Department of Healthcare and Family Services, regardless of the
20 value of the property.

21 The Department shall submit an annual report on programs
22 and services provided under this Section. The report shall be
23 filed with the Governor and the General Assembly on or before
24 March 30 each year.

25 The requirement for reporting to the General Assembly shall
26 be satisfied by filing copies of the report with the Speaker,

1 the Minority Leader and the Clerk of the House of
2 Representatives and the President, the Minority Leader and the
3 Secretary of the Senate and the Legislative Research Unit, as
4 required by Section 3.1 of the General Assembly Organization
5 Act, and filing additional copies with the State Government
6 Report Distribution Center for the General Assembly as required
7 under paragraph (t) of Section 7 of the State Library Act.

8 (g) To establish such subdivisions of the Department as
9 shall be desirable and assign to the various subdivisions the
10 responsibilities and duties placed upon the Department by law.

11 (h) To cooperate and enter into any necessary agreements
12 with the Department of Employment Security for the provision of
13 job placement and job referral services to clients of the
14 Department, including job service registration of such clients
15 with Illinois Employment Security offices and making job
16 listings maintained by the Department of Employment Security
17 available to such clients.

18 (i) To possess all powers reasonable and necessary for the
19 exercise and administration of the powers, duties and
20 responsibilities of the Department which are provided for by
21 law.

22 (j) (Blank).

23 (k) (Blank).

24 (l) To establish, operate and maintain a Statewide Housing
25 Clearinghouse of information on available, government
26 subsidized housing accessible to disabled persons and

1 available privately owned housing accessible to disabled
2 persons. The information shall include but not be limited to
3 the location, rental requirements, access features and
4 proximity to public transportation of available housing. The
5 Clearinghouse shall consist of at least a computerized database
6 for the storage and retrieval of information and a separate or
7 shared toll free telephone number for use by those seeking
8 information from the Clearinghouse. Department offices and
9 personnel throughout the State shall also assist in the
10 operation of the Statewide Housing Clearinghouse. Cooperation
11 with local, State and federal housing managers shall be sought
12 and extended in order to frequently and promptly update the
13 Clearinghouse's information.

14 (m) To assure that the names and case records of persons
15 who received or are receiving services from the Department,
16 including persons receiving vocational rehabilitation, home
17 services, or other services, and those attending one of the
18 Department's schools or other supervised facility shall be
19 confidential and not be open to the general public. Those case
20 records and reports or the information contained in those
21 records and reports shall be disclosed by the Director only to
22 proper law enforcement officials, individuals authorized by a
23 court, the General Assembly or any committee or commission of
24 the General Assembly, and other persons and for reasons as the
25 Director designates by rule. Disclosure by the Director may be
26 only in accordance with other applicable law.

1 (Source: P.A. 97-732, eff. 6-30-12; 97-1019, eff. 8-17-12;
2 revised 8-23-12.)

3 (Text of Section from P.A. 97-732 and 97-1158)

4 Sec. 3. Powers and duties. The Department shall have the
5 powers and duties enumerated herein:

6 (a) To co-operate with the federal government in the
7 administration of the provisions of the federal Rehabilitation
8 Act of 1973, as amended, of the Workforce Investment Act of
9 1998, and of the federal Social Security Act to the extent and
10 in the manner provided in these Acts.

11 (b) To prescribe and supervise such courses of vocational
12 training and provide such other services as may be necessary
13 for the habilitation and rehabilitation of persons with one or
14 more disabilities, including the administrative activities
15 under subsection (e) of this Section, and to co-operate with
16 State and local school authorities and other recognized
17 agencies engaged in habilitation, rehabilitation and
18 comprehensive rehabilitation services; and to cooperate with
19 the Department of Children and Family Services regarding the
20 care and education of children with one or more disabilities.

21 (c) (Blank).

22 (d) To report in writing, to the Governor, annually on or
23 before the first day of December, and at such other times and
24 in such manner and upon such subjects as the Governor may
25 require. The annual report shall contain (1) a statement of the

1 existing condition of comprehensive rehabilitation services,
2 habilitation and rehabilitation in the State; (2) a statement
3 of suggestions and recommendations with reference to the
4 development of comprehensive rehabilitation services,
5 habilitation and rehabilitation in the State; and (3) an
6 itemized statement of the amounts of money received from
7 federal, State and other sources, and of the objects and
8 purposes to which the respective items of these several amounts
9 have been devoted.

10 (e) (Blank).

11 (f) To establish a program of services to prevent
12 unnecessary institutionalization of persons with Alzheimer's
13 disease and related disorders or persons in need of long term
14 care who are established as blind or disabled as defined by the
15 Social Security Act, thereby enabling them to remain in their
16 own homes or other living arrangements. Such preventive
17 services may include, but are not limited to, any or all of the
18 following:

- 19 (1) home health services;
- 20 (2) home nursing services;
- 21 (3) homemaker services;
- 22 (4) chore and housekeeping services;
- 23 (5) day care services;
- 24 (6) home-delivered meals;
- 25 (7) education in self-care;
- 26 (8) personal care services;

- 1 (9) adult day health services;
- 2 (10) habilitation services;
- 3 (11) respite care; or
- 4 (12) other nonmedical social services that may enable
- 5 the person to become self-supporting.

6 The Department shall establish eligibility standards for
7 such services taking into consideration the unique economic and
8 social needs of the population for whom they are to be
9 provided. Such eligibility standards may be based on the
10 recipient's ability to pay for services; provided, however,
11 that any portion of a person's income that is equal to or less
12 than the "protected income" level shall not be considered by
13 the Department in determining eligibility. The "protected
14 income" level shall be determined by the Department, shall
15 never be less than the federal poverty standard, and shall be
16 adjusted each year to reflect changes in the Consumer Price
17 Index For All Urban Consumers as determined by the United
18 States Department of Labor. The standards must provide that a
19 person may have not more than \$10,000 in assets to be eligible
20 for the services, and the Department may increase the asset
21 limitation by rule. Additionally, in determining the amount and
22 nature of services for which a person may qualify,
23 consideration shall not be given to the value of cash, property
24 or other assets held in the name of the person's spouse
25 pursuant to a written agreement dividing marital property into
26 equal but separate shares or pursuant to a transfer of the

1 person's interest in a home to his spouse, provided that the
2 spouse's share of the marital property is not made available to
3 the person seeking such services.

4 The services shall be provided to eligible persons to
5 prevent unnecessary or premature institutionalization, to the
6 extent that the cost of the services, together with the other
7 personal maintenance expenses of the persons, are reasonably
8 related to the standards established for care in a group
9 facility appropriate to their condition. These
10 non-institutional services, pilot projects or experimental
11 facilities may be provided as part of or in addition to those
12 authorized by federal law or those funded and administered by
13 the Illinois Department on Aging. The Department shall set
14 rates and fees for services in a fair and equitable manner.
15 Services identical to those offered by the Department on Aging
16 shall be paid at the same rate.

17 Personal care attendants shall be paid:

18 (i) A \$5 per hour minimum rate beginning July 1, 1995.

19 (ii) A \$5.30 per hour minimum rate beginning July 1,
20 1997.

21 (iii) A \$5.40 per hour minimum rate beginning July 1,
22 1998.

23 Solely for the purposes of coverage under the Illinois
24 Public Labor Relations Act (5 ILCS 315/), personal care
25 attendants and personal assistants providing services under
26 the Department's Home Services Program shall be considered to

1 be public employees, and the State of Illinois shall be
2 considered to be their employer as of the effective date of
3 this amendatory Act of the 93rd General Assembly, but not
4 before. Solely for the purposes of coverage under the Illinois
5 Public Labor Relations Act, home care and home health workers
6 who function as personal care attendants, personal assistants,
7 and individual maintenance home health workers and who also
8 provide services under the Department's Home Services Program
9 shall be considered to be public employees, no matter whether
10 the State provides such services through direct
11 fee-for-service arrangements, with the assistance of a managed
12 care organization or other intermediary, or otherwise, and the
13 State of Illinois shall be considered to be the employer of
14 those persons as of the effective date of this amendatory Act
15 of the 97th General Assembly, but not before except as
16 otherwise provided under this subsection (f). The State shall
17 engage in collective bargaining with an exclusive
18 representative of home care and home health workers who
19 function as personal care attendants, personal assistants, and
20 individual maintenance home health workers working under the
21 Home Services Program concerning their terms and conditions of
22 employment that are within the State's control. Nothing in this
23 paragraph shall be understood to limit the right of the persons
24 receiving services defined in this Section to hire and fire
25 home care and home health workers who function as personal care
26 attendants, personal assistants, and individual maintenance

1 home health workers working under the Home Services Program or
2 to supervise them within the limitations set by the Home
3 Services Program. The State shall not be considered to be the
4 employer of home care and home health workers who function as
5 personal care attendants, personal assistants, and individual
6 maintenance home health workers working under the Home Services
7 Program for any purposes not specifically provided in Public
8 Act 93-204 or this amendatory Act of the 97th General Assembly,
9 including but not limited to, purposes of vicarious liability
10 in tort and purposes of statutory retirement or health
11 insurance benefits. Home care and home health workers who
12 function as personal care attendants, personal assistants, and
13 individual maintenance home health workers and who also provide
14 services under the Department's Home Services Program shall not
15 be covered by the State Employees Group Insurance Act of 1971
16 (5 ILCS 375/).

17 Any home care and home health worker who functions as a
18 personal care attendant, personal assistant, or individual
19 maintenance home health worker and provides services under the
20 Department's Home Services Program shall complete standardized
21 instruction or education as determined by the Department
22 concerning his or her obligations as a caregiver and provider
23 of Medicaid services under the Home Services Program. The
24 instruction or education must be available in languages other
25 than English and to those who need accommodations due to
26 disabilities. The Department shall adopt any rules necessary to

1 implement this provision.

2 The Department shall execute, relative to the nursing home
3 prescreening project, as authorized by Section 4.03 of the
4 Illinois Act on the Aging, written inter-agency agreements with
5 the Department on Aging and the Department of Public Aid (now
6 Department of Healthcare and Family Services), to effect the
7 following: (i) intake procedures and common eligibility
8 criteria for those persons who are receiving non-institutional
9 services; and (ii) the establishment and development of
10 non-institutional services in areas of the State where they are
11 not currently available or are undeveloped. On and after July
12 1, 1996, all nursing home prescreenings for individuals 18
13 through 59 years of age shall be conducted by the Department.

14 The Department is authorized to establish a system of
15 recipient cost-sharing for services provided under this
16 Section. The cost-sharing shall be based upon the recipient's
17 ability to pay for services, but in no case shall the
18 recipient's share exceed the actual cost of the services
19 provided. Protected income shall not be considered by the
20 Department in its determination of the recipient's ability to
21 pay a share of the cost of services. The level of cost-sharing
22 shall be adjusted each year to reflect changes in the
23 "protected income" level. The Department shall deduct from the
24 recipient's share of the cost of services any money expended by
25 the recipient for disability-related expenses.

26 The Department, or the Department's authorized

1 representative, shall recover the amount of moneys expended for
2 services provided to or in behalf of a person under this
3 Section by a claim against the person's estate or against the
4 estate of the person's surviving spouse, but no recovery may be
5 had until after the death of the surviving spouse, if any, and
6 then only at such time when there is no surviving child who is
7 under age 21, blind, or permanently and totally disabled. This
8 paragraph, however, shall not bar recovery, at the death of the
9 person, of moneys for services provided to the person or in
10 behalf of the person under this Section to which the person was
11 not entitled; provided that such recovery shall not be enforced
12 against any real estate while it is occupied as a homestead by
13 the surviving spouse or other dependent, if no claims by other
14 creditors have been filed against the estate, or, if such
15 claims have been filed, they remain dormant for failure of
16 prosecution or failure of the claimant to compel administration
17 of the estate for the purpose of payment. This paragraph shall
18 not bar recovery from the estate of a spouse, under Sections
19 1915 and 1924 of the Social Security Act and Section 5-4 of the
20 Illinois Public Aid Code, who precedes a person receiving
21 services under this Section in death. All moneys for services
22 paid to or in behalf of the person under this Section shall be
23 claimed for recovery from the deceased spouse's estate.
24 "Homestead", as used in this paragraph, means the dwelling
25 house and contiguous real estate occupied by a surviving spouse
26 or relative, as defined by the rules and regulations of the

1 Department of Healthcare and Family Services, regardless of the
2 value of the property.

3 The Department and the Department on Aging shall cooperate
4 in the development and submission of an annual report on
5 programs and services provided under this Section. Such joint
6 report shall be filed with the Governor and the General
7 Assembly on or before March 30 each year.

8 The requirement for reporting to the General Assembly shall
9 be satisfied by filing copies of the report with the Speaker,
10 the Minority Leader and the Clerk of the House of
11 Representatives and the President, the Minority Leader and the
12 Secretary of the Senate and the Legislative Research Unit, as
13 required by Section 3.1 of the General Assembly Organization
14 Act, and filing additional copies with the State Government
15 Report Distribution Center for the General Assembly as required
16 under paragraph (t) of Section 7 of the State Library Act.

17 (g) To establish such subdivisions of the Department as
18 shall be desirable and assign to the various subdivisions the
19 responsibilities and duties placed upon the Department by law.

20 (h) To cooperate and enter into any necessary agreements
21 with the Department of Employment Security for the provision of
22 job placement and job referral services to clients of the
23 Department, including job service registration of such clients
24 with Illinois Employment Security offices and making job
25 listings maintained by the Department of Employment Security
26 available to such clients.

1 (i) To possess all powers reasonable and necessary for the
2 exercise and administration of the powers, duties and
3 responsibilities of the Department which are provided for by
4 law.

5 (j) To establish a procedure whereby new providers of
6 personal care attendant services shall submit vouchers to the
7 State for payment two times during their first month of
8 employment and one time per month thereafter. In no case shall
9 the Department pay personal care attendants an hourly wage that
10 is less than the federal minimum wage.

11 (k) To provide adequate notice to providers of chore and
12 housekeeping services informing them that they are entitled to
13 an interest payment on bills which are not promptly paid
14 pursuant to Section 3 of the State Prompt Payment Act.

15 (l) To establish, operate and maintain a Statewide Housing
16 Clearinghouse of information on available, government
17 subsidized housing accessible to disabled persons and
18 available privately owned housing accessible to disabled
19 persons. The information shall include but not be limited to
20 the location, rental requirements, access features and
21 proximity to public transportation of available housing. The
22 Clearinghouse shall consist of at least a computerized database
23 for the storage and retrieval of information and a separate or
24 shared toll free telephone number for use by those seeking
25 information from the Clearinghouse. Department offices and
26 personnel throughout the State shall also assist in the

1 operation of the Statewide Housing Clearinghouse. Cooperation
2 with local, State and federal housing managers shall be sought
3 and extended in order to frequently and promptly update the
4 Clearinghouse's information.

5 (m) To assure that the names and case records of persons
6 who received or are receiving services from the Department,
7 including persons receiving vocational rehabilitation, home
8 services, or other services, and those attending one of the
9 Department's schools or other supervised facility shall be
10 confidential and not be open to the general public. Those case
11 records and reports or the information contained in those
12 records and reports shall be disclosed by the Director only to
13 proper law enforcement officials, individuals authorized by a
14 court, the General Assembly or any committee or commission of
15 the General Assembly, and other persons and for reasons as the
16 Director designates by rule. Disclosure by the Director may be
17 only in accordance with other applicable law.

18 (Source: P.A. 97-732, eff. 6-30-12; 97-1158, eff. 1-29-13;
19 revised 2-21-13.)

20 Section 99. Effective date. This Act takes effect upon
21 becoming law.