Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

HOUSE ENROLLED ACT No. 1391

AN ACT to amend the Indiana Code concerning human services.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 12-7-2-22, AS AMENDED BY P.L.145-2006, SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 22. "Board" means the following:

(1) For purposes of IC 12-10-10, **IC 12-10-10.5,** and IC 12-10-11, the community and home options to institutional care for the elderly and disabled board established by IC 12-10-11-1.

(2) For purposes of 12-12-7-5, the meaning set forth in IC 12-12-7-5(a).

(3) For purposes of IC 12-15-35, the meaning set forth in IC 12-15-35-2.

SECTION 2. IC 12-7-2-44.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 44.6. "Countable asset" **means the following:**

(1) For purposes of IC 12-10-10.5, in determining eligibility for the community living pilot program, property that is included in determining assets in the same manner as determining an individual's eligibility for the Medicaid aged and disabled waiver.

(2) For purposes of IC 12-20, ~~means~~ noncash property that is not necessary for the health, safety, or decent living standard of a household that:

~~(1)~~ **(A)** is owned wholly or in part by the applicant or a member of the applicant's household;

~~(2)~~ **(B)** the applicant or the household member has the legal right to sell or liquidate; and

~~(3)~~ **(C)** includes:

~~(A)~~ **(i)** real property other than property that is used for the production of income or that is the primary residence of the household;

~~(B)~~ **(ii)** savings and checking accounts, certificates of deposit, bonds, stocks, and other intangibles that have a net cash value; and

~~(C)~~ **(iii)** boats, other vehicles, or any other personal property used solely for recreational or entertainment purposes.

SECTION 3. IC 12-7-2-76, AS AMENDED BY P.L.145-2006, SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 76. (a) "Eligible individual", for purposes of:

(1) IC 12-10-10, has the meaning set forth in IC 12-10-10-4; **and**

(2) IC 12-10-10.5, has the meaning set forth in IC 12-10-10.5-3.

(b) "Eligible individual" has the meaning set forth in IC 12-14-18-1.5 for purposes of the following:

(1) IC 12-10-6.

(2) IC 12-14-2.

(3) IC 12-14-18.

(4) IC 12-14-19.

(5) IC 12-15-2.

(6) IC 12-15-3.

(7) IC 12-16-3.5.

(8) IC 12-20-5.5.

SECTION 4. IC 12-7-2-146, AS AMENDED BY SEA 24-2014, SECTION 63, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 146. "Program" refers to the following:

(1) For purposes of IC 12-8-12.5, the meaning set forth in IC 12-8-12.5-1.

(2) For purposes of IC 12-10-7, the adult guardianship services program established by IC 12-10-7-5.

(3) For purposes of IC 12-10-10, the meaning set forth in IC 12-10-10-5.

(4) For purposes of IC 12-10-10.5, the meaning set forth in IC 12-10-10.5-4.

~~*(4)*~~ **(5)** *For purposes of ~~IC 12-17.2-2-14,~~* **IC 12-17.2-2-14.2,** *the meaning set forth in ~~IC 12-17.2-2-14.~~* **IC 12-17.2-2-14.2(a).**

~~*(5)*~~ **(6)** *For purposes of* ~~*IC 12-17.2-3.7,*~~ **IC 12-17.2-3.6,** *the meaning set forth in* ~~*IC 12-17.2-3.7-7.*~~ **IC 12-17.2-3.6-7.**

~~*(4)*~~ **(7)** *For purposes of* ~~*IC 12-17.2-3.7,*~~ **IC 12-17.2-3.8,** *the meaning set forth in* ~~*IC 12-17.2-3.7-5.*~~ **IC 12-17.2-3.8-2.**

~~*(5)*~~ ~~*(6)*~~ **(8)** For purposes of IC 12-17.6, the meaning set forth in IC 12-17.6-1-5.

SECTION 5. IC 12-10-10.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]:

Chapter 10.5. Community Living Pilot Program

Sec. 1. As used in this chapter, "board" refers to the community and home options to institutional care for the elderly and disabled board established by IC 12-10-11-1.

Sec. 2. As used in this chapter, "case management" means an administrative function conducted locally by an area agency on aging that includes the following:

(1) Assessment of an individual to determine the individual's functional impairment level and corresponding need for services.

(2) Initial verification of an individual's income and assets.

(3) Development of a care plan that:

(A) addresses an eligible individual's needs;

(B) takes into consideration the individual's family and community members who are willing to provide services to meet any of the individual's needs; and

(C) is consistent with a person centered approach to client care.

(4) Supervision of the implementation of appropriate and available services for an eligible individual.

(5) Advocacy on behalf of an eligible individual's interests.

(6) Monitoring the quality of community and home care services provided to an eligible individual.

(7) Reassessment of the care plan to determine:

(A) the continuing need and effectiveness of the community and home care services provided to an eligible individual under this chapter; and

(B) the annual reverification of an eligible individual's income and assets, as may be required by the division under section 3(d) of this chapter.

(8) Provision of information and referral services to individuals in need of community and home care services.

Sec. 3. (a) As used in this chapter, "eligible individual" means

an individual who meets the following criteria:

(1) Is a resident of Indiana.

(2) Is:

(A) at least sixty (60) years of age; or

(B) an individual with a disability.

(3) Has countable assets that do not exceed two hundred fifty thousand dollars ($250,000). In determining assets under this subdivision, the division shall exclude an additional twenty thousand dollars ($20,000) in countable assets.

(4) Qualifies under criteria developed by the board as having an impairment that places the individual at risk of losing the individual's independence, as described in subsection (b).

(5) Applies initially for the program after December 31, 2014.

(b) For purposes of subsection (a), an individual is at risk of losing the individual's independence if the individual is unable to perform any of the following:

(1) Two (2) or more activities of daily living. The use by or on behalf of the individual of any of the following services or devices does not make the individual ineligible for services under this chapter:

(A) Skilled nursing assistance.

(B) Supervised community and home care services, including skilled nursing supervision.

(C) Adaptive medical equipment and devices.

(D) Adaptive nonmedical equipment and devices.

(2) One (1) activity of daily living if, using the needs based assessment established under section 10(1) of this chapter and in accordance with written standards that are established by the division under section 5(c) of this chapter, the area agency on aging determines that addressing the single activity of daily living would significantly reduce the likelihood of the individual's loss of independence and the need for additional services.

(3) An activity if, using the needs based assessment established under section 10(1) of this chapter and in accordance with written standards that are established by the division under section 5(c) of this chapter, the area agency on aging determines that targeted intervention or assistance with the activity would significantly reduce the likelihood of the individual's loss of independence and the need for additional services.

(c) The division shall, in accordance with standards established

under section 10(3) of this chapter, establish a cost participation schedule for an eligible individual based on the eligible individual's income and countable assets. The cost participation schedule must meet the following:

(1) Exclude from cost participation an eligible individual whose income and countable assets do not exceed one hundred fifty percent (150%) of the federal income poverty level.

(2) In calculating income and countable assets for an eligible individual, deduct the medical expenses of the following:

(A) The individual.

(B) The spouse of the individual.

(C) The dependent children of the individual.

(3) Exclude twenty thousand dollars ($20,000) of an eligible individual's countable assets from consideration in determining an eligible individual's cost participation.

(d) The division may require annual reverification for eligible individuals who the division determines are likely to experience a material increase in income or assets. An individual shall submit the information requested by the division to carry out the redetermination allowed by this subsection.

(e) The division may not require a family or other person to provide services as a condition of an individual's eligibility for or participation in the program.

Sec. 4. As used in this chapter, "program" refers to the community living pilot program established by section 5 of this chapter.

Sec. 5. (a) Beginning January 1, 2015, the community living pilot program is established.

(b) The division shall administer the program. The division shall do the following:

(1) In consultation with the area agencies on aging, designate four (4) area agencies on aging to participate in the program. In determining the four (4) area agencies on aging to participate in the program, the division shall consider the following criteria:

(A) Geographic diversity.

(B) Urban and rural representation.

(C) Size of the area agency on aging's waiting list for services.

(D) Size of the population served by the area agency on aging.

(2) Report data and outcome measures concerning the

program to the board and, in an electronic format under IC 5-14-6, to the legislative council and an appropriate interim study committee determined by the legislative council before the following:

(A) March 15, 2016.

(B) September 15, 2016.

(C) March 15, 2017.

Each report under this subdivision must include an analysis on the areas participating in the program and whether implementation of the program has affected the admission of individuals to comprehensive care beds in nursing facilities in the area.

(c) The division shall establish written standards setting forth criteria that the area agency on aging shall use in determining whether an individual who is unable to perform one (1) activity of daily living or one (1) activity is eligible for the program. An area agency on aging may not determine that an individual who is unable to perform one (1) activity of daily living or one (1) activity is eligible for the program until the division establishes the standards required by this subsection.

Sec. 6. (a) Except as provided in subsection (b), the case management under this chapter of an individual leading to participation in the program may not be conducted by any agency that delivers services under the program.

(b) If the division determines that there is no alternative agency capable of delivering services to the individual, the area agency on aging that performs the assessment under the program may also deliver the services.

(c) The division shall provide the necessary funding to provide case management services for the program, as determined under section 10(2) of this chapter.

Sec. 7. Except as provided in section 8 of this chapter, state money for home health services under this chapter must be distributed only to licensed health care professionals, facilities, and agencies.

Sec. 8. The division shall establish a program to train relatives of eligible individuals to provide homemaker and personal care services to those eligible individuals.

Sec. 9. The office of the secretary, in consultation with the local area agencies on aging, shall negotiate reimbursement rates for services provided under this chapter.

Sec. 10. The division, in consultation with the area agencies on

aging, shall develop policies that establish the following:

(1) A needs based assessment to be used in determining a client's needs and care plan under section 2(3) of this chapter.

(2) The percentage of program dollars adequate to provide case management services.

(3) A cost participation schedule for program recipients as required by section 3(c) of this chapter.

(4) Program performance measures.

(5) Data and outcome measures for the program to be collected and reported under section 5(b)(2) of this chapter.

Sec. 11. The division may do the following:

(1) Audit an area agency on aging for compliance with this chapter.

(2) Impose a penalty on an area agency on aging for any violation of this chapter.

Sec. 12. This chapter expires June 30, 2017.

SECTION 6. IC 12-15-12-14 IS REPEALED [EFFECTIVE UPON PASSAGE]. ~~Sec. 14. (a) This section applies to a Medicaid recipient:~~

~~(1) who is determined by the office to be eligible for enrollment in a Medicaid managed care program;~~

~~(2) whose Medicaid eligibility is not based on the individual's aged, blind, or disabled status; and~~

~~(3) who resides in a county having a population of:~~

~~(A) more than one hundred eighty-five thousand (185,000) but less than two hundred fifty thousand (250,000);~~

~~(B) more than one hundred seventy-five thousand (175,000) but less than one hundred eighty-five thousand (185,000);~~

~~(C) more than two hundred fifty thousand (250,000) but less than two hundred seventy thousand (270,000);~~

~~(D) more than three hundred thousand (300,000) but less than four hundred thousand (400,000); or~~

~~(E) more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).~~

~~(b) Not later than January 1, 2003, the office shall require a recipient described in subsection (a) to enroll in the risk-based managed care program.~~

~~(c) The office:~~

~~(1) shall apply to the United States Department of Health and Human Services for any approval necessary; and~~

~~(2) may adopt rules under IC 4-22-2;~~

~~to implement this section.~~

SECTION 7. [EFFECTIVE UPON PASSAGE] **(a) As used in this**

SECTION, "long term care services" refers to services provided in any setting that an individual who is aged or has a disability or chronic condition needs in order to perform an activity of daily living or other daily tasks.

(b) Before December 1, 2014, the office of the secretary of family and social services, in conjunction with the state department of health and the office of management and budget, shall provide a written report in electronic format under IC 5-14-6 to the general assembly that includes the following:

(1) A review of excess skilled nursing facility bed capacity, the effect the excess capacity has on the efficient operation of a skilled nursing facility, and the quality of health care delivered to individuals in these settings.

(2) An analysis of previous Indiana policies for reducing the excess capacity of skilled nursing facility bed capacity and other states' approaches to reduce skilled nursing home bed capacity.

(c) Before October 1, 2015, the office of the secretary of family and social services, in conjunction with the state department of health and the office of management and budget, shall provide a written report in electronic format under IC 5-14-6 to the general assembly that includes the following:

(1) A review of all current long term care services available in Indiana, including regulated and unregulated methods of service delivery.

(2) An analysis of:

(A) past policies implemented in Indiana; and

(B) other states' approaches;

to serve individuals in a home and community based setting and in an institutional care setting more efficiently and cost effectively through the use of emerging technologies, including telemedicine and remote patient monitoring.

(3) An analysis of demographic trends by:

(A) payor sources; and

(B) demand and utilization of long term care services options;

statewide and by county or other geographic setting.

(4) An analysis of program and policy options for long term care services where demand exceeds current capacity for providing the services.

(5) A review of Medicaid reimbursement for skilled nursing facility care, and a determination concerning whether:

(A) the reimbursement methodology should be modified to reflect current and future care models; and

(B) incentives should be included in reimbursement for quality care and quality outcomes.

(6) An analysis of past policies in Indiana and other states' approaches to manage construction of additional skilled nursing facilities, including certificates of need and moratoriums. The analysis must include the following:

(A) The costs and benefits to Indiana's budget and the Medicaid program in whether or not additional skilled nursing facilities are built, including the impact on Medicaid utilization for skilled nursing services.

(B) The impact of additional skilled nursing facilities on the availability and cost of capital for the renovation and new construction of skilled nursing facilities, residential care facilities, assisted living facilities, and other senior housing options.

(d) In conducting the reports required by this SECTION, the office of the secretary of family and social services shall collaborate with the following:

(1) An academic institution researching the areas described in subsection (b).

(2) Consumer advocacy organizations representing the individuals who receive long term care services.

(3) Indiana area agencies on aging.

(4) Representatives of the following:

(A) Nursing facilities.

(B) Assisted living facilities.

(C) Home health care agencies.

(D) Hospitals.

(E) Any other long term care services providers.

(e) This SECTION expires December 31, 2015.

SECTION 8. [EFFECTIVE JULY 1, 2014] **(a) Before December 1, 2016, the office of the secretary of family and social services shall report to the budget committee and, in an electronic format under IC 5-14-6, to the general assembly on the following concerning any Medicaid risk-based managed care program that includes Medicaid recipients who are eligible for Medicaid based on the individual's aged, blind, or disabled status:**

(1) Recipient access to health care providers and medical care.

(2) Methods developed and employed to improve care coordination.

(3) Enhanced services provided by managed care organizations.

(4) Impact on the consistency and quality of care in the delivery of medical care.

(5) Impact on Medicaid spending.

(6) Any other information the secretary of family and social services deems appropriate.

(b) This SECTION expires June 30, 2017.

SECTION 9. **An emergency is declared for this act.**

Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____