January 26, 2010

HOUSE BILL No. 1325

DIGEST OF HB 1325 (Updated January 25, 2010 7:40 pm - DI 77)

Citations Affected: IC 4-13; IC 12-9.1; IC 12-10; IC 12-15; noncode.

Synopsis: Long term care services. Specifies the amount and the manner in which the state is to complete the allotment process and distribute funds to the area agencies on aging (agency) for the provision of home and community based services. Requires the division on aging to establish a provider network and a program and standards for providers of home and community based services for persons in the CHOICE program. Provides the agency with flexibility in the management of certain program funding, and prohibits the division of aging from imposing restrictions that are not in the division's contract with an agency. Allows spouses and parents of individuals who are at risk of being institutionalized to provide attendant care services, and limits the amount of services that can be reimbursed. Requires the dissemination of specified information as part of: (1) a nursing facility's notification to applicants; (2) the nursing facility preadmission screening program; and (3) the hospital discharge process. Allows an agency on to make presumptive eligibility determinations for the aged and disabled Medicaid waiver under specified circumstances. Requires the office of the secretary of family and social services to make certain calculations of savings, use the calculated savings, and ensure that costs for services do not exceed funding available.

Effective: July 1, 2010.

Crouch, Brown C, Reske

January 13, 2010, read first time and referred to Committee on Public Health.
January 26, 2010, amended, reported — Do Pass.

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January 26, 2010

Second Regular Session 116th General Assembly (2010)

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 2009 Regular and Special Sessions of the General Assembly.

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HOUSE BILL No. 1325

A BILL FOR 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 4-13-2-18.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 18.5. (a) Notwithstanding any other law, the state shall complete the allotment process and either distribute the funds by warrant or make an electronic transfer to the area agencies on aging in the following manner:**

(1) On the first business day following June 30:

(A) fifty percent (50%) of the money allocated by the state to the area agencies on aging for the provision of home and community based services; and

(B) federal dollars for home and community based services provided by the area agencies on aging.

(2) On January 1 or the first business day following January 1 if January 1 is a Sunday:

(A) the remaining fifty percent (50%) of the money allocated by the state to the area agencies on aging for the provision of home and community based services; and

(B) federal dollars for home and community based services provided by the area agencies on aging.

(b) Notwithstanding any other law, if the state fails to distribute the funds to the area agencies on aging described in subsection (a), the state shall pay the financing costs on the borrowed principal, equity, or line of credit used by an area agency on aging to maintain services and operations that occur as a result of the failure to distribute the funds.

SECTION 2. IC 12-9.1-1-4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 4. (a) The division may establish an office within the division to implement this chapter.**

(b) Not later than July 1, 2011, the division shall:

(1) implement a program and standards for identifying, recruiting, training, certifying, and enrolling individuals to be independent providers of home and community based care services for individuals; and

(2) establish a network of independent providers of home and community based care services for individuals.

(c) The division may contract with a state educational institution or an area agency on aging in implementing the program described in subsection (b).

(d) The division shall consult with the following in developing the program and standards described in subsection (b):

(1) The area agencies on aging.

(2) Indiana Association for Home and Hospice Care.

(3) Indiana Home Care Task Force.

(4) Organizations representing senior citizens with statewide membership.

(5) Organizations representing persons with disabilities with statewide membership.

(6) An employee association or union that represents home and community based services employees in Indiana.

(e) The division shall do the following:

(1) Create and maintain a statewide registry that lists independent home and community based services providers who have been trained and certified by the division, and provide the list of names by each area agencies on aging district.

(2) Identify liability and health insurance options for independent home and community based services providers.

(3) Establish fiscal intermediary services within the division

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for individuals who are consumers of self-directed home and community based care services through the community and home options to institutional care for the elderly and disabled program (CHOICE) and the Medicaid aged and disabled waiver.

(4) Create in service training and professional enrichment programs with the area agencies on aging for maintaining the skills and quality of services by independent home and community based services providers.

(5) Maintain a self-directed care hotline and support services to address emergencies and other needs of individuals who are consumers of self-directed home and community based care services.

(f) The division may review options to participate in federal programs that support the establishment and development of networks for home and community based services.

SECTION 3. IC 12-10-1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 6. (a) The area agencies on aging designated by the bureau in each planning and service region shall do the following:

(1) Determine the needs and resources of the aged in the area.

(2) Coordinate, in cooperation with other agencies or organizations in the area, region, district, or county, all programs and activities providing health, recreational, educational, or social services for the aged.

(3) Secure local matching money from public and private sources to provide, improve, or expand the sources available to meet the needs of the aged.

(4) Develop, in cooperation with the division and in accordance with the regulations of the commissioner of the federal Administration on Aging, an area plan for each planning and service area to provide for the following:

(A) A comprehensive and coordinated system for the delivery of services needed by the aged in the area.

(B) The collection and dissemination of information and referral sources.

(C) The effective and efficient use of all resources meeting the needs of the aged.

(D) The inauguration of new services and periodic evaluation of all programs and projects delivering services to the aged, with special emphasis on the low income and minority residents of the planning and service area.

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(E) The establishment, publication, and maintenance of a toll free telephone number to provide information, counseling, and referral services for the aged residents of the planning and service area.

(5) Conduct case management (as defined in IC 12-10-10-1).

(6) Perform any other functions required by regulations established under the Older Americans Act (42 U.S.C. 3001 et seq.).

(b) The division shall pay the costs associated with the toll free telephone number required under subsection (a).

(c) To the extent allowable under federal law concerning the expenditure of funds, the division shall:

(1) authorize area agencies on aging to manage funds for a program specified in section 3 of this chapter with maximum flexibility to allow the delivery of the most appropriate and cost effective services under the program; and

(2) refrain from imposing any restrictions on an area agency on aging other than those required under the terms of the contract between the division and the area agency on aging or agreed upon by both the division and the area agency on aging.

SECTION 4. IC 12-10-12-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 10. (a) The notification required under section 8 of this chapter must notify the applicant of the following:

(1) That the applicant is required under state law to apply to the agency serving the county of the applicant's residence for participation in a nursing facility preadmission screening program.

(2) That the applicant's failure to participate in the nursing facility preadmission screening program could result in the applicant's ineligibility for Medicaid reimbursement for per diem in any nursing facility for not more than one (1) year.

(3) That the nursing facility preadmission screening program consists of an assessment of the applicant's need for care in a nursing facility made by a team of individuals familiar with the needs of individuals seeking admission to nursing facilities.

(4) The contact information for the agency that provides services in the area in which the nursing facility is located.

(5) A list developed by the agency and the office of all long term care options under the law that may be available to the individual.

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(b) The notification must be signed by the applicant or the applicant's parent or guardian if the applicant is not competent before admission.

(c) If the applicant is admitted:

(1) the nursing facility shall retain one (1) signed copy of the notification for one (1) year; and

(2) the nursing facility shall deliver one (1) signed copy to the agency serving the county in which the applicant resides.

(d) A person who violates this section commits a Class A infraction.

SECTION 5. IC 12-10-12-16, AS AMENDED BY P.L.121-2008, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 16. (a) A screening team shall conduct a nursing facility preadmission screening program for each individual within the time permitted under this chapter. The program must consist of an assessment of the following:

(1) The individual's medical needs.

(2) The availability of services, other than services provided in a nursing facility, that are appropriate to the individual's **health and social** needs **to maintain the individual in the least restrictive environment.**

(3) The cost effectiveness of providing services appropriate to the individual's needs that are provided outside of, rather than within, a nursing facility.

(b) The assessment must be conducted in accordance with rules adopted under IC 4-22-2 by the director of the division in cooperation with the office.

(c) Communication among members of a screening team or between a screening team and the division, the office, or the agency during the prescreening process may be conducted by means including any of the following:

(1) Standard mail.

(2) Express mail.

(3) Facsimile machine.

(4) Secured electronic communication.

(d) A representative:

(1) of the agency serving the area in which the individual's residence is located; and

(2) who is familiar with personal care assessment;

shall explain and provide a written copy of the results of the assessment to the individual or the individual's parent or guardian if the individual is not competent, in the least time practicable after the completion of the assessment.

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(e) In the explanation required in subsection (d), the representative shall include the services identified in subsection (a)(2).

SECTION 6. IC 12-10-12-28.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 28.5. Before discharging a patient who will be participating in preadmission screening under this chapter, a hospital licensed under IC 16-21 shall:

(1) give the patient a list **that has been provided to the hospital by the area agencies on aging** of all **the** long term care options that

~~(1)~~ may be available to the patient **in the area agencies on aging service area;**

~~(2) are located within the hospital's service area; and~~

~~(3) are known to the hospital;~~

(2) provide the patient with contact information for the agency that provides services in the area in which the hospital is located;

(3) inform the patient in writing that a representative from the agency is available to provide additional information and counseling at no cost to the patient concerning long term care options; and

(4) coordinate whenever possible with the agency to facilitate counseling with the patient concerning long term care options before placement of the patient.

SECTION 7. IC 12-10-17.1-10, AS ADDED BY P.L.141-2006, SECTION 44, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 10. (a) An individual may not provide attendant care services for compensation from Medicaid or the community and home options to institutional care for the elderly and disabled program for an individual in need of self-directed in-home care services unless the individual is registered under section 12 of this chapter.

(b) **Subject to rules adopted by the division under IC 4-22-2, the division shall reimburse under this chapter** an individual who is a legally responsible relative of an individual **who is at risk of being institutionalized and** in need of self-directed in-home care ~~including a parent of a minor individual and a spouse, is precluded from providing~~ **to provide** attendant care services ~~for compensation under this chapter.~~ **in an amount not to exceed eight (8) hours a day and five (5) days a week.**

SECTION 8. IC 12-15-2.1 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]:

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Chapter 2.1. Presumptive Eligibility for Aged and Disabled Medicaid Waiver Applicants

Sec. 1. (a) An area agency on aging employee may determine that an applicant who meets the following conditions is presumptively eligible for the Medicaid aged and disabled waiver:

(1) The applicant or the applicant's legal guardian has completed the required Medicaid application form.

(2) The applicant meets the medical eligibility requirements in IC 12-10-11.5-4(2)(B).

(3) The applicant is at risk for being institutionalized if the applicant does not receive immediate long term care services.

(b) The area agency on aging's determination that an individual is presumptively eligible for the Medicaid aged and disabled waiver under subsection (a):

(1) must be based on information submitted by the applicant; and

(2) authorizes the immediate commencement of the provision of services needed by the applicant in compliance with rules adopted by the office under section 4 of this chapter.

Sec. 2. The office shall apply to the United States Department of Health and Human Services for an amendment to the Medicaid aged and disabled waiver if an amendment is necessary to implement this chapter.

Sec. 3. The area agency on aging shall:

(1) notify the office of the presumptive eligibility determination not later than five (5) business days after the date on which the determination is made; and

(2) forward the application to the county office in the county in which the applicant resides for a final eligibility determination in the manner specified by the office.

Sec. 4. The office:

(1) shall adopt rules under IC 4-22-2 concerning the services an individual may receive if the individual is determined to be presumptively eligible for the Medicaid aged and disabled waiver under this chapter; and

(2) may adopt rules under IC 4-22-2 to implement this chapter.

SECTION 9. [EFFECTIVE JULY 1, 2010] **(a) The office of the secretary of family and social services, in consultation with the area agencies on aging, shall calculate:**

(1) the number of individuals during the course of each state fiscal year who would have been served in a health facility;

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and

(2) the average cost to serve each individual in a health facility or other institution;

under the Medicaid program if this act were not implemented.

(b) The office of the secretary shall use the savings calculated under subsection (a) for the purchase of home and community based services for additional individuals.

(c) This act is subject to funding available to the office of the secretary of family and social services, including federal funds. The office of the secretary shall ensure that the cost of the services provided under this act does not exceed funding made available to the office of the secretary for the programs established under this act.

(d) This SECTION expires July 1, 2011.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred House Bill 1325, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 4-13-2-18.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 18.5. (a) Notwithstanding any other law, the state shall complete the allotment process and either distribute the funds by warrant or make an electronic transfer to the area agencies on aging in the following manner:**

(1) On the first business day following June 30:

(A) fifty percent (50%) of the money allocated by the state to the area agencies on aging for the provision of home and community based services; and

(B) federal dollars for home and community based services provided by the area agencies on aging.

(2) On January 1 or the first business day following January 1 if January 1 is a Sunday:

(A) the remaining fifty percent (50%) of the money allocated by the state to the area agencies on aging for the provision of home and community based services; and

(B) federal dollars for home and community based services provided by the area agencies on aging.

(b) Notwithstanding any other law, if the state fails to distribute the funds to the area agencies on aging described in subsection (a), the state shall pay the financing costs on the borrowed principal, equity, or line of credit used by an area agency on aging to maintain services and operations that occur as a result of the failure to distribute the funds.

SECTION 2. IC 12-9.1-1-4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 4. (a) The division may establish an office within the division to implement this chapter.**

(b) Not later than July 1, 2011, the division shall:

(1) implement a program and standards for identifying, recruiting, training, certifying, and enrolling individuals to be independent providers of home and community based care services for individuals; and

(2) establish a network of independent providers of home and

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community based care services for individuals.

(c) The division may contract with a state educational institution or an area agency on aging in implementing the program described in subsection (b).

(d) The division shall consult with the following in developing the program and standards described in subsection (b):

(1) The area agencies on aging.

(2) Indiana Association for Home and Hospice Care.

(3) Indiana Home Care Task Force.

(4) Organizations representing senior citizens with statewide membership.

(5) Organizations representing persons with disabilities with statewide membership.

(6) An employee association or union that represents home and community based services employees in Indiana.

(e) The division shall do the following:

(1) Create and maintain a statewide registry that lists independent home and community based services providers who have been trained and certified by the division, and provide the list of names by each area agencies on aging district.

(2) Identify liability and health insurance options for independent home and community based services providers.

(3) Establish fiscal intermediary services within the division for individuals who are consumers of self-directed home and community based care services through the community and home options to institutional care for the elderly and disabled program (CHOICE) and the Medicaid aged and disabled waiver.

(4) Create in service training and professional enrichment programs with the area agencies on aging for maintaining the skills and quality of services by independent home and community based services providers.

(5) Maintain a self-directed care hotline and support services to address emergencies and other needs of individuals who are consumers of self-directed home and community based care services.

(f) The division may review options to participate in federal programs that support the establishment and development of networks for home and community based services.".

Page 2, delete lines 31 through 42.

Page 3, delete lines 1 through 22.

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Page 3, line 41, delete "office under section 6 of this" and insert "**agency and the office**".

Page 3, line 42, delete "chapter".

Page 3, line 42, after "options" insert "**under the law**".

Page 4, line 1, delete "individual in the area." and insert "**individual.**".

Page 5, line 6, delete "(a)".

Page 5, line 11, delete ":".

Page 5, line 12, delete "(A)".

Page 5, line 12, delete ";" and insert "**in the area agencies on aging service area;**".

Page 5, line 13, delete "(B)".

Page 5, line 13, strike "are located within the hospital's service area; and".

Page 5, line 14, delete "(C)".

Page 5, line 14, strike "are known to the hospital;".

Page 5, delete lines 18 through 25.

Page 5, line 26, delete "(4)" and insert "**(3)**".

Page 5, line 30, delete "(5)" and insert "**(4)**".

Page 5, delete lines 33 through 39.

Page 7, after line 10, begin a new paragraph and insert:

"SECTION 9. [EFFECTIVE JULY 1, 2010] **(a) The office of the secretary of family and social services, in consultation with the area agencies on aging, shall calculate:**

(1) the number of individuals during the course of each state fiscal year who would have been served in a health facility; and

(2) the average cost to serve each individual in a health facility or other institution;

under the Medicaid program if this act were not implemented.

(b) The office of the secretary shall use the savings calculated under subsection (a) for the purchase of home and community based services for additional individuals.

(c) This act is subject to funding available to the office of the secretary of family and social services, including federal funds. The office of the secretary shall ensure that the cost of the services provided under this act does not exceed funding made available to the office of the secretary for the programs established under this act.

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(d) This SECTION expires July 1, 2011.".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1325 as introduced.)

BROWN C, Chair

Committee Vote: yeas 6, nays 2.

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