

CHAPTER 97-87

House Bill No. 1523

An act relating to long-term care; providing legislative findings and intent; creating the “Long-Term Care Community Diversion Pilot Project Act”; providing definitions; providing for evaluation of criteria and procedures for long-term care through community diversion pilot projects; providing for design and implementation of pilot projects; providing for funding and participant cost-sharing; providing for selection of pilot project areas; providing service requirements; providing for quality of care standards; authorizing contracts for managed care services; revising certificate-of-need nursing home bed need methodology to accommodate pilot project development; requiring annual reports; requiring independent evaluation of pilot projects; specifying responsibilities of the Department of Elderly Affairs and the Agency for Health Care Administration; creating the long-term care interagency advisory council; providing for appointment of members; providing council duties; amending s. 400.071, F.S.; authorizing the agency to consider specified certificate-of-need review criteria for nursing homes; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Legislative findings and intent.—The Legislature finds that state expenditures for long-term care services continue to increase at a rapid rate and that Florida faces increasing pressure in its efforts to meet the long-term care needs of the public. It is the intent of the Legislature that the Department of Elderly Affairs, in consultation with the Agency for Health Care Administration, implement long-term care community diversion pilot projects to test the effectiveness of managed care and outcome-based reimbursement principles when applied to long-term care.

Section 2. Short title.—This act may be cited as the “Long-Term Care Community Diversion Pilot Project Act.”

Section 3. Definitions.—As used in this act, the term:

(1) “Agency” means the Agency for Health Care Administration.

(2) “Community diversion” means a strategy that places participants in the most appropriate care settings and provides comprehensive home and community-based services of sufficient quantity, type, and duration to prevent or delay the need for long-term placement in a nursing facility.

(3) “Community diversion pilot project” means any pilot service delivery system that places participants in the most appropriate care settings and provides comprehensive home and community-based services of sufficient quantity, type, and duration to prevent or delay the need for long-term placement in a nursing facility.

(4) “Community diversion pilot project area” means a geographic area selected by the department where the department will conduct a community diversion pilot project.

(5) “Department” means the Department of Elderly Affairs.

(6) “Managed care organization” means an entity that meets the requirements of the Department of Insurance for operation as a health maintenance organization and meets the qualifications for participation as a managed care organization established by the agency and the department.

(7) “Participant” means an individual enrolled in a community diversion pilot project.

Section 4. Evaluation of long-term care through the pilot projects.—

(1) The department shall evaluate the Comprehensive Assessment and Review for Long-Term Care (CARES) Program processes, procedures, and instruments, and its ability to predict nursing home placement. The department may revise these processes, procedures, and instruments as necessary to increase the number of persons diverted from institutional placement. Nothing in this section shall be construed to prevent the department from directing CARES to review and evaluate nursing home residents. The department shall:

(a) Ensure that the CARES process is an effective predictor of the need for nursing facility care; and

(b) Assess the use of CARES as a single entry point for aging and long-term care services.

(2) The department shall develop a capitation rate-setting method that:

(a) Assures sufficient savings from the state Medicaid nursing home budget category to fund the community diversion pilot projects; and

(b) Assures that expenditures do not exceed the average nursing home cost in the pilot project area, excluding Medicaid acute care costs and Medicaid cost-sharing.

(3) The department shall evaluate:

(a) The standards in existing Medicaid managed care contracts to determine if they are sufficient to assure access, quality, and cost-effectiveness of services for frail elders.

(b) The cost-effectiveness of the services provided by the pilot projects.

(c) The impact of nursing home bed growth on state expenditures.

(d) Methods to encourage competition among long-term care service providers that will improve service quality, price, and participant satisfaction.

(e) Criteria for selecting the managed care organizations, including, but not limited to, quality assurance processes, grievance procedures, service

costs, accessibility, adequacy of provider networks, and administrative costs.

(f) Criteria for participant eligibility.

Section 5. Implementation of the long-term care community diversion pilot projects.—

(1) In designing and implementing the community diversion pilot projects, the department shall work in consultation with the agency.

(2) The department shall select projects whose design and providers demonstrate capacity to maximize the placement of participants in the least restrictive appropriate care setting.

(3) The department shall provide to prospective participants a choice of participating in a community diversion pilot project or any other appropriate placement available. To the extent possible, individuals shall be allowed to choose their care providers.

(4) The department shall enroll participants. Providers shall not directly enroll participants in community diversion pilot projects.

(5) In selecting the pilot project area, the department shall consider the following factors in the area:

(a) The nursing home occupancy level.

(b) The number of certificates of need awarded for nursing home beds for which renovation, expansion, or construction has not begun.

(c) The annual number of additional nursing home beds.

(d) The annual number of nursing home admissions.

(e) The adequacy of community-based long-term care service providers.

(6) The department may require participants to contribute to their cost of care in an amount not to exceed the cost-sharing required of Medicaid-eligible nursing home residents.

(7) Community diversion pilot projects must:

(a) Provide services for participants that are of sufficient quality, quantity, type, and duration to prevent or delay nursing facility placement.

(b) Integrate acute and long-term care services, and the funding sources for such services, as feasible.

(c) Encourage individuals, families, and communities to plan for their long-term care needs.

(d) Provide skilled and intermediate nursing facility care for participants who cannot be adequately cared for in noninstitutional settings.

Section 6. Quality of care.—The department, in consultation with the agency, shall develop quality of care standards for community diversion pilot projects. Such standards shall apply to all contractors and subcontractors, and must include, but are not limited to, outcome measures, utilization review, grievance and conflict resolution, patient satisfaction, and care and service standards.

Section 7. Contracts.—The department, in consultation with the agency, shall select and contract with managed care organizations to provide long-term care within community diversion pilot project areas.

Section 8. Certificate of need.—To ensure that Medicaid community diversion pilot projects result in a reduction in the projected average monthly nursing home caseload, the agency shall, in accordance with the provisions of s. 408.034(4):

(1) Reduce the projected nursing home bed need in each certificate-of-need batching cycle in the community diversion pilot project areas.

(2) Reduce the conditions imposed on existing nursing homes or those to be constructed, in accordance with the number of projected community diversion slots.

(3) Adopt rules to reduce the number of beds in Medicaid-participating nursing homes eligible for Medicaid, through a Medicaid-selective contracting process or some other appropriate method.

(4) Determine the feasibility of increasing the nursing home occupancy threshold used in determining nursing home bed needs under the certificate-of-need process.

Section 9. Reports and evaluations.—

(1) Beginning January 1, 1998, and continuing each January 1 while the community diversion pilot projects are operating, the department shall report to the Legislature regarding the implementation and operation of community diversion pilot projects.

(2) The department shall contract for an independent evaluation of the community diversion pilot projects. Such evaluation must include a careful review and assessment of the actual cost for the provision of services to participants.

(3) The department, in consultation with the agency, shall assess the feasibility of implementing a managed long-term care system throughout the state to serve appropriate Medicaid-eligible long-term care recipients age 60 years and older.

Section 10. Long-term care interagency advisory council.—

(1) The long-term care interagency advisory council is created within the Department of Elderly Affairs to advise the secretary of the department on matters related to the long-term care community diversion pilot projects. The department and the agency shall provide staff support to the council,

as determined by the secretary of the department and the director of the agency.

(a) The Secretary of the Department of Children and Family Services shall appoint four members, one each to represent the following:

1. Consumers, or family or guardians of consumers, of optional state supplementation, adult protective services, developmental services, or mental health services from the department.

2. Providers of community-based services.

3. Consumer advocacy organizations.

4. Consumers, or representatives of consumers, who have non-age related physical disabilities.

(b) The Secretary of the Department of Elderly Affairs shall appoint five members, one each to represent the following:

1. The nursing home industry.

2. The assisted living industry.

3. Consumers of long-term care services.

4. Providers of community-based services.

5. Area Agencies on Aging.

(c) The Commissioner of Insurance shall appoint one member to represent the insurance industry.

(d) The Director of the Agency for Health Care Administration shall appoint three members, one each to represent the following:

1. The hospital industry.

2. The home health industry.

3. Health maintenance organizations.

(2) Council members representing industries or organizations shall serve at their own expense.

(3) Consumer council members shall be reimbursed by the appointing department for travel expenses incurred in attending council meetings.

(4) The council shall discuss, evaluate, and develop recommendations regarding the following topics:

(a) Implementation of community diversion pilot projects and the possibility of statewide implementation.

(b) Budgetary constraints and other issues related to providing a full continuum of long-term care services.

(c) The use and potential use of assistive technologies and equipment in the provision of long-term care services.

(d) Mechanisms to encourage families and other potential caregivers to assist people in need of long-term care.

(e) Related issues that the council determines are necessary and appropriate.

Section 11. Subsection (7) of section 400.071, Florida Statutes, is amended to read:

400.071 Application for license.—

(7) The agency may not issue a license to a nursing home ~~that~~ which fails to receive a certificate of need under the provisions of ss. 408.031-408.045. The agency ~~may~~ shall consider, in addition to the other criteria specified in s. 408.035, the statement of intent by the applicant to designate a percentage of the beds of the facility for use by patients eligible for care under Title XIX of the Social Security Act, the percentage to be all or a portion of the need for such beds as identified in the local health plan. It is the intent of the Legislature that preference be given to an application which most closely meets the need for such beds.

Section 12. This act shall take effect upon becoming a law.

Approved by the Governor May 23, 1997.

Filed in Office Secretary of State May 23, 1997.