

ENROLLED ACT NO. 89, SENATE

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2007 GENERAL SESSION

AN ACT relating to long term care and the Wyoming Medical Assistance and Services Act (Medicaid); modifying the Medicaid reimbursement formulas for nursing homes and other long term care facilities; modifying limitations on new nursing home construction; expanding the Medicaid home and community based waiver program; providing transition services; authorizing application to the federal government for Medicaid program long term care waivers; authorizing and regulating an adult foster home care system; authorizing alternative long term care pilot programs; granting rulemaking authority; requiring a report; providing appropriations; authorizing positions; and providing for an effective date.

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

Section 1. W.S. 42-6-101 through 42-6-108 are created to read:

CHAPTER 6
LONG TERM CARE CHOICES PROGRAM

42-6-101. Short title.

This act shall be known and may be cited as the "Wyoming Long Term Care Choices Act".

42-6-102. Definitions.

(a) As used in this act:

(i) "Adult foster care" means care in a home licensed as an adult foster home and care provided to a resident of the home while temporarily away from the adult foster home;

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(ii) "Adult foster home" means any family home or facility in which residential care is provided in a homelike environment for five (5) or fewer adults who are not related to the provider by blood, marriage or adoption. "Adult foster home" does not include any residential facility otherwise licensed or funded by the state of Wyoming. The homes shall be regulated in accordance with W.S. 35-2-901 through 35-2-912 and this act which shall govern in case of conflict;

(iii) "Alternative eldercare home" means a facility and program which:

(A) Provides services and care at the highest level required by a resident and as permitted under the applicable facility;

(B) Shall be licensed as a health care facility pursuant to W.S. 35-2-901 through 35-2-912;

(C) Creates communities that allow long-term residents to develop lasting relationships with other residents and staff;

(D) Maintains residences as units independent from each other;

(E) Provides, at a minimum, a private bedroom and bathroom for each resident;

(F) Provides services to Medicaid supported residents at the Medicaid reimbursement rates;

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(G) Maintains all common spaces within the house, including secured exterior space, accessible and open to all residents during waking hours;

(H) Provides an office space for a nurse within each house;

(J) Provides a common area in each house including a seating area;

(K) Provides public and staff bathroom facilities;

(M) Creates a residential home environment in all aspects, using residential materials and designs appropriate to the style of the community;

(N) Is committed to a restraint free environment;

(O) Implements a culture of learning and participation by the residents and honors the elder hood stage of life.

(iv) "Assisted living facility" means as defined in W.S. 35-2-901(a)(xxii);

(v) "Department" means the department of health;

(vi) "Home medical testing" means medical testing designed to be done in the home of the person being tested by a person who is not a licensed health care professional and includes but is not limited to testing done using a home blood pressure monitor or a home diabetes management blood sugar monitor;

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(vii) "Long term care assessment" means a form and an assessment process conforming with relevant federal regulations and designed to measure the abilities and disabilities of a person in the activities of daily living to determine the person's need for long term care. As of January 1, 2007 the department of health form LT-101 entitled "Assessment of Medical Necessity for Long Term Care" and the assessment needed to complete it shall be the long term care assessment;

(viii) "Medicaid" means the program administered by the state pursuant to the Wyoming Medical Assistance and Services Act and this act and partly funded by the federal government pursuant to Title XIX of the federal Social Security Act;

(ix) "Nursing home" means a nursing care facility as defined in W.S. 35-2-901(a)(xvi) and licensed pursuant to Wyoming Statutes, article 9, chapter 2, title 35;

(x) "Residential care" means the provision of room and board and services that assist the resident in activities of daily living including but not limited to bathing, dressing, grooming, eating, medication management, incontinence care, home medical testing, money management or recreation;

(xi) "This act" means W.S. 42-6-101 through 42-6-108.

42-6-103. Rulemaking; guidance.

The department is authorized to promulgate rules and regulations to implement this act. The rules and regulations shall seek to implement the objectives of this

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act by expanding the long term care system to one emphasizing consumer choice and home, home like and community based care alternatives.

42-6-104. Alternative long term care home pilot programs authorized.

(a) Three (3) pilot program grants are authorized to study the feasibility of innovation in long term care facilities. Eligible recipients shall include cities, counties and any entity planning for long term care needs or providing long term care including private nonprofit and private for profit entities. The department shall solicit proposals for the grants through a request for proposals developed in consultation with the advisory council on aging. The department, in consultation with the council, shall select the recipients from the proposals received. The department shall negotiate any specific provisions of the grant award needed and shall administer the grants. In selecting the recipients, the council shall:

(i) Consider the extent to which the proposal moves the staff of the facility to a more patient centered culture;

(ii) Consider one (1) project to reconfigure an existing nursing home to achieve a resident-centered cultural change;

(iii) Fund one (1) study relating to the creation of an alternative eldercare home, as defined in W.S. 42-6-102(a)(iii), provided that an acceptable project proposal is received in response to the request for proposals;

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(iv) Fund one (1) study relating to the creation of an alternative eldercare home, as defined in W.S. 42-6-102(a)(iii), which shall require that the home:

(A) Maintains residences as units independent from other facilities such that there is no physical connection or shared roof structures between houses;

(B) Provides a secured exterior patio or garden with covered seating for each house accessible by all residents including those with wheelchairs and assistive devices;

(C) Provides for locked storage of hazardous materials and control of kitchen access during high traffic periods of meal preparation and clean-up;

(D) Provides a den in each house to accommodate television viewing and limited overnight guests;

(E) Implements a self-managed work team approach to in-house and clinical support staffing. Each house shall have its own core in-house staffing that is specific and dedicated to a single house;

(F) Uses a home base facility for the clinical support team members that is outside and separate from the house; and

(G) Maintains a lift free environment by providing ceiling lifts in each resident's bedroom and bathroom.

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(v) Consider the extent to which there is a market for the proposed facility or the extent to which people in need of long term care are likely to choose the proposed facility; and

(vi) Consider the extent to which the proposed pilot project will determine the effectiveness of its approach to elder care in a timely manner.

(b) Each grant proposal shall include plans for a local or applicant match of twenty-five percent (25%) of the grant amount.

(c) For applicants that have completed any appropriate needs study or market study, the grant funding may be used for design and development of the facility and the organization which will operate it. If this is done, the grant recipient shall agree to accept Medicaid clients in the facility without discrimination.

(d) The department is directed to work with grant recipients in the development of rules and regulations which are compatible with the culture of the homes and which will assure appropriate licensure for the care provided and the needs of the elder residents. The department shall inform the joint labor, health and social services interim committee if legislation is needed to authorize any necessary rules and regulations.

(e) As a condition of receiving the grants, each grantee shall agree to provide training and reports to other parties in the state interested in innovative long term care approaches.

42-6-105. Adult foster care homes; licensure; suspension or revocation.

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(a) The department may initiate and license an adult foster care pilot project subject to the following:

(i) The applicant shall pay a one-time fee of one hundred dollars (\$100.00) which shall be deposited in the general fund;

(ii) The department, a public health nurse or other employee of a local department of health shall complete an inspection of the proposed adult foster care home;

(iii) The proposed home shall comply with all state and local building, sanitation, utility, fire and zoning codes applicable to single family dwellings;

(iv) The home shall have the ability to evacuate all resident clients within three (3) minutes in case of emergency;

(v) The home shall provide a private room with a handicapped accessible bathroom for each resident client. Spouses occupying the same room by mutual consent shall be deemed to have a private room;

(vi) The pilot program shall consist of no more than five (5) adult foster homes. At least three (3) of the homes shall be in counties with a population of thirty thousand (30,000) or less.

(b) The department may, after notice and opportunity for hearing, revoke or suspend any license issued pursuant to this section, may prohibit a facility from accepting new resident clients, may place conditions on the continuation

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of a license, or may require a facility to take specified remedial actions within a specified time, if:

(i) There is a threat to the health, safety or welfare of any resident client;

(ii) There is credible evidence of abuse, neglect or exploitation of any resident client;

(iii) The facility is not operated in compliance with this act or any rules and regulations promulgated pursuant to this act.

(c) If, in the professional judgment of the state health officer, there is a clear and present threat to the health or safety of a resident client, the state health officer may close an adult foster home and transfer the residents to another place. The department shall also initiate proceedings pursuant to subsection (b) of this section within three (3) working days.

(d) The department shall complete a criminal records check on any individual employed by adult foster homes and on any individual, other than a resident client or a resident client's spouse, who at the time of licensure is expected to live in the adult foster home or who, after licensure, lives or comes to live in the adult foster home. The department may refuse to license a facility or prohibit the individual from living in the facility if he has been convicted of a felony indicating he may abuse a resident or steal from a resident.

(e) The department shall promulgate rules and regulations consistent with this act to govern the pilot project.

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(f) The department shall report to the joint labor, health and social services interim committee on the status of all adult foster care home pilot projects annually by October 1 of each year. The report shall include:

(i) The location of each pilot project home;

(ii) The licensure status of each pilot project home;

(iii) The average number of adults receiving foster care in each home;

(iv) Both the total number of complaints and the number of complaints by pilot project home which were filed with the department and the number of complaints that were substantiated by the department;

(v) Both the total number of complaints and the number of complaints by pilot project home filed with the long term care ombudsman program and the number of complaints that were substantiated by the ombudsman program;

(vi) Both the total number of complaints and the number of complaints by pilot project home filed with adult protective services and the number of complaints that were substantiated by adult protective services;

(vii) The number of inspections conducted at each pilot project home by the department, a public health nurse or a local health department and a summary of the findings for each visit.

42-6-106. Home and community based waiver program expanded; requirements.

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(a) The department is authorized to seek from the federal government expansion of the number of slots in the home and community based waiver program from one thousand one hundred fifty (1,150) to one thousand four hundred fifty (1,450). Additional expansions may be authorized through the biennial budget.

(b) The department is authorized to increase the provider reimbursement levels by an amount up to three dollars (\$3.00) per hour for hourly services or seventeen and six-tenths percent (17.6%) above the prevailing rate for nonhourly services as of December 1, 2006. The department shall report to the joint labor, health and social services interim committee by November 1, 2007 the extent to which reimbursement improvements and any other changes made have improved the availability of home health care services and any additional remedies that may be needed. The length of the report shall not exceed one thousand (1,000) words plus any appropriate charts and graphs. Additional reports may be made from time to time as the need arises.

(c) The department shall set goals for expanding the number of Medicaid home and community based clients in self directed budget options and shall report progress toward those goals to the joint labor, health and social services interim committee no later than November 1, 2007, November 1, 2008 and November 1, 2009. The department shall allow these options to be managed by persons designated to do so in advanced health care directives.

(d) Consistent with approved budgets, the department shall make available a pool of state funds to meet transitional needs of clients moving from a more restrictive to a less restrictive environment in

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circumstances where Medicaid funds are not available due to federal restrictions. If sufficient funds are available, these state funds may also be used to meet short term needs of clients seeking to avoid placements in more restrictive environments. The department shall govern the expenditure of these funds through contracts, policies and rules and regulations as needed.

42-6-107. Assisted living expansion; reimbursement increase.

The department shall seek federal approval to increase the number of allowed slots in the assisted living Medicaid waiver from one hundred forty-six (146) to one hundred sixty-eight (168) slots.

42-6-108. Adult day care.

The department shall investigate adult day care providers in Wyoming with respect to access, rates, administration of rules and regulations and their impact on providers and clients, and shall report its findings to the joint labor, health and social services interim committee and to the advisory council on aging. The report shall not exceed two thousand (2,000) words in length plus appropriate charts and graphs.

Section 2. W.S. 9-2-1208(a) and (b)(iv), 35-2-901(a)(x), by creating new paragraphs (xxiv) and (xxv) and by renumbering (xxiv) as (xxvi), 35-2-906 by creating a new subsection (f) and 42-4-101 are amended to read:

9-2-1208. Community based in-home services.

(a) The department of health shall administer a state program to provide community based in-home services for

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senior citizens. Priority shall be given to persons at risk of placement in nursing homes, assisted living or other institutional care settings and the program may serve persons who are not senior citizens if the program's services are needed, as determined by consultation and assessment pursuant to the Wyoming Long Term Care Choices Act, to avoid institutional placement.

(b) The program authorized by this section may include but is not limited to the following in-home services:

(iv) Hospice care for individuals who are not able to pay for the care due to lack of income or assets and are not able to qualify for hospice services under the Medicaid program; and

35-2-901. Definitions; applicability of provisions.

(a) As used in this act:

(x) "Health care facility" means any ambulatory surgical center, assisted living facility, adult day care facility, adult foster care home, alternative eldercare home, birthing center, boarding home, freestanding diagnostic testing center, home health agency, hospice, hospital, intermediate care facility for the mentally retarded, medical assistance facility, nursing care facility, rehabilitation facility and renal dialysis center;

(xxiv) "Adult foster care home" means a home where care is provided for up to five (5) adults who are not related to the provider by blood, marriage or adoption, except in special circumstances, in need of long term care in a home like atmosphere. Clients in the home shall have

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private rooms which may be shared with spouses and shall have individual handicapped accessible bathrooms. "Adult foster home" does not include any residential facility otherwise licensed or funded by the state of Wyoming. The homes shall be regulated in accordance with this act and with the Wyoming Long Term Care Choices Act, which shall govern in case of conflict with this act;

(xxv) "Alternative eldercare home" means a facility as defined in W.S. 42-6-102(a)(iii). The homes shall be regulated in accordance with this act and with the Wyoming Long Term Care Choices Act which shall govern in case of conflict with this act;

~~(xxiv)~~(xxvi) "This act" means W.S. 35-2-901 through 35-2-912.

35-2-906. Construction and expansion of facilities; exemption.

(f) Beds in adult foster care homes and beds in alternative eldercare homes constructed pursuant to the pilot programs authorized in W.S. 42-6-104 and 42-6-105 shall not be considered as nursing care facility beds for the purposes of this section.

42-4-101. Short title.

This chapter may be cited as the "Wyoming Medical Assistance and Services Act". The program and services provided pursuant to this chapter and Title XIX of the federal Social Security Act may be cited as "Medicaid" or the "Medicaid program".

Section 3.

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(a) For transition services for persons leaving nursing homes or avoiding more restrictive placements, there is appropriated one hundred fifty thousand dollars (\$150,000.00) from the general fund to the department of health for the fiscal biennium ending June 30, 2008.

(b) For expansion of the long term care home and community based waiver program, there is appropriated to the department of health one million fifty-four thousand three hundred seventy-seven dollars (\$1,054,377.00) from the general fund and one million one hundred eighty-four thousand six hundred ninety-one dollars (\$1,184,691.00) in federal funds for the fiscal biennium ending June 30, 2008. There is appropriated from the general fund to the department of health five hundred fifty-six thousand dollars (\$556,000.00) and five hundred sixty-eight thousand dollars (\$568,000.00) in federal funds for additional costs to the Medicaid program.

(c) For improvement of the reimbursement of long term care home and community based waiver program providers, there is appropriated to the department of health four hundred ninety-two thousand eight hundred dollars (\$492,800.00) from the general fund and five hundred seven thousand two hundred dollars (\$507,200.00) in federal funds for the fiscal biennium ending June 30, 2008.

(d) For expansion of the assisted living waiver slots, there is appropriated to the department of health from the general fund two hundred forty-six thousand four hundred dollars (\$246,400.00) and two hundred fifty-three thousand six hundred dollars (\$253,600.00) in federal funds for the fiscal biennium ending June 30, 2008.

(e) For the expansion of the community based in-home program, eight hundred fifty thousand dollars (\$850,000.00)

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is appropriated to the department of health from the general fund for the fiscal biennium ending June 30, 2008.

(f) To administer programs created by this act, for the fiscal biennium ending June 30, 2008 there is appropriated to the department of health from the general fund ninety-four thousand eight hundred dollars (\$94,800.00) and ninety-four thousand eight hundred dollars (\$94,800.00) in federal funds.

(g) Two (2) additional full-time positions are authorized to the department of health.

(h) For purposes of the alternative eldercare grant programs created by this act, there is appropriated to the department of health from the general fund one hundred fifty thousand dollars (\$150,000.00) for the fiscal biennium ending June 30, 2008.

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Section 4. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk