

1 H.140

2 Introduced by Representatives Pugh of South Burlington, Haas of Rochester,
3 Batchelor of Derby, Burditt of West Rutland, Donahue of
4 Northfield, Frank of Underhill, French of Randolph, Krowinski
5 of Burlington, McFaun of Barre Town, Mrowicki of Putney,
6 and Trieber of Rockingham

7 Referred to Committee on

8 Date:

9 Subject: Human services; long-term care; Choices for Care

10 Statement of purpose of bill as introduced: This bill proposes to codify and to
11 clarify implementation of Vermont's Choices for Care Medicaid Section 1115
12 waiver.

13 An act relating to Choices for Care

14 It is hereby enacted by the General Assembly of the State of Vermont:

15 Sec. 1. 33 V.S.A. chapter 74 is added to read:

16 CHAPTER 74. CHOICES FOR CARE

17 § 7401. DEFINITIONS

18 As used in this chapter:

19 (1) "Agency" means the Agency of Human Services.

1 (2) “Choices for Care” means a program implemented by the
2 Department through a long-term care Medicaid Section 1115 waiver that offers
3 participants a choice of settings for long-term care services.

4 (3) “Department” means the Department of Disabilities, Aging, and
5 Independent Living.

6 (4) “Home- and community-based services” means long-term care
7 services received in a home or community setting, except nursing home care,
8 and may include:

9 (A) services provided to individuals with traumatic brain injury
10 through a Medicaid waiver;

11 (B) services provided in residential care homes and assisted living
12 residences;

13 (C) assisted community care services;

14 (D) attendant services;

15 (E) homemaker services;

16 (F) services funded through the Older Americans Act;

17 (G) adult day services;

18 (H) home health services;

19 (I) respite services for families including an individual with
20 Alzheimer’s disease;

1 (J) services provided by the Home Access Project of the Vermont
2 Center for Independent Living;

3 (K) programs providing meals for young people with disabilities;

4 (L) services provided by the Sue Williams Freedom Fund of the
5 Vermont Center for Independent Living;

6 (M) living skills services from the Vermont Association for the Blind
7 and Visually Impaired;

8 (N) services under the Program for All-Inclusive Care of the Elderly
9 (PACE);

10 (O) services under the Home Share Vermont program; and

11 (P) transportation services.

12 (5) “Long-term care” means care or services received by an individual
13 in a nursing home or through home- and community-based services designed
14 to assist older Vermonters and persons with disabilities to remain independent
15 and avoid inappropriate institutionalization.

16 § 7402. IMPLEMENTATION

17 (a) The Department shall implement a long-term care Medicaid Section
18 1115 waiver, to be known as the “Choices for Care” program, by rule with
19 approval from the Centers for Medicare and Medicaid Services. The rules for
20 operation of the Section 1115 waiver shall include criteria and standards for
21 eligibility, levels of assistance, assessments, and reviews, and the appeal and

1 fair hearing process. If the long-term care Medicaid Section 1115 waiver is
2 included in a broader Medicaid waiver, such as the Global Commitment to
3 Health, the provisions of this chapter shall apply to the relevant portions of that
4 waiver.

5 (b)(1) Outside of the legislative session, the Health Care Oversight
6 Committee shall have oversight for the development, implementation, and
7 ongoing operation of Choices for Care, as well as any other long-term care
8 Medicaid waiver applied for and received by the Agency.

9 (2)(A) The Department shall submit quarterly reports about the
10 utilization of services and expenses under Choices for Care. The reports shall
11 include:

12 (i) a comparison of actual expenditures to estimated expenditures
13 and projected expenditures for the remainder of the fiscal year;

14 (ii) the average cost per beneficiary by need group; and

15 (iii) the number of individuals on the wait list for each need group.

16 (B) During the legislative session, the Department shall submit the
17 reports to the House Committee on Human Services, the Senate Committee on
18 Health and Welfare, and the House and Senate Committees on Appropriations.

19 Outside of the legislative session, the Department shall submit the reports to
20 the Health Care Oversight Committee.

1 (c)(1) The process for reassessing entitlement for services for individuals
2 under this subdivision is as follows:

3 (A) The individual shall first be assessed under the new level of care
4 criteria established under the waiver to determine entitlement to services.

5 (B) If the individual is no longer entitled to services under the new
6 criteria, the individual shall be assessed under the Guidelines for Nursing
7 Home Eligibility adopted in April 1997, which was the level of care criteria in
8 effect prior to the waiver. If the individual is entitled to services under the
9 Guidelines, the individual shall continue to receive services.

10 (C) If the individual is not entitled to services under subdivision (A)
11 or (B) of this subdivision (1), the individual shall no longer receive services,
12 but shall be treated appropriately under the new rules.

13 (2) The Department shall adopt by rule a process by which an individual
14 who is eligible for but not entitled to services and who is in the high needs
15 group as defined by the waiver may apply for an exception to the entitlement
16 rule if the individual has a critical need for long-term care services due to
17 special circumstances.

18 (3) The Department shall develop and maintain waiting lists both of
19 applicants categorized by highest needs, high needs, and moderate needs for
20 whom there is insufficient funding to provide services under the long-term care

1 Medicaid Section 1115 waiver and of individuals applying for long-term care
2 services under state-funded programs.

3 (d) The Department shall adopt by rule a process by which individuals
4 entering the long-term care system are assessed to determine need level and
5 informed of their options prior to entering a nursing home. The rule shall
6 ensure that the assessment and information is provided in a timely manner so
7 as not to delay discharges from hospitals and shall include provisions for
8 emergency admissions to nursing homes.

9 (e) The Department shall prioritize the provision of homemaker services to
10 individuals who have high needs as defined under the long-term care Medicaid
11 Section 1115 waiver and are on the waiting list for long-term care services.

12 (f) If a modification in the rules is necessary outside the legislative session
13 to ensure that the funding for entitled individuals is not jeopardized, the
14 Department shall file recommended modifications with the Health Care
15 Oversight Committee. After the review and recommendation of the Health
16 Care Oversight Committee or within three weeks of filing, whichever is earlier,
17 the department may adopt interim changes using the expedited rulemaking
18 process set forth in 2012 Acts and Resolves No. 75, Sec. 84. Expedited rules
19 adopted pursuant to this subsection shall have the full force and effect of law.

20 (g)(1) Any savings realized due to the implementation of the long-term
21 care Medicaid Section 1115 waiver shall be retained by the Department and

1 reinvested into providing home- and community-based services under the
2 waiver. If at any time the Agency reapplies for a Medicaid waiver to provide
3 these services, it shall include a provision in the waiver that any savings shall
4 be reinvested.

5 (2) In its annual budget presentation, the Department of Disabilities,
6 Aging, and Independent Living shall include the amount of savings generated
7 from individuals receiving home- and community-based services instead of
8 services in a nursing home through the Choices for Care waiver and a plan
9 with details on the recommended use of the appropriation. The plan shall
10 include the base appropriation; the method for determining savings; how the
11 savings will be reinvested in home- and community-based services, including
12 the allocation between increases in caseloads and increases in provider
13 reimbursements; and a breakdown of how many individuals are receiving
14 services by type of service. The Department shall convene a working group
15 from its Advisory Council for the purpose of providing input on the
16 advisability of seeking renewal of the waiver and how with any new waiver
17 there can be timely reporting to providers and consumers on reinvested
18 savings.

19 (h) Any funds appropriated for long-term care under the long-term care
20 waiver authorized under this act shall be used for long-term care services to
21 recipients. In using these funds, the Department shall give priority to services

1 to individuals assessed as high and highest needs and meeting the terms and
2 conditions of the waiver as approved by the Centers for Medicare and
3 Medicaid Services. Any remaining funds from the long-term care
4 appropriation may be used for other long-term care services as defined in
5 section 7401 of this title. The remaining funds shall be allocated and spent in
6 ways that are sustainable into the future and do not create an unsustainable
7 base budget. Any funds that are not spent in the year for which they were
8 appropriated shall be carried over to the next fiscal year.

9 Sec. 2. EFFECTIVE DATE

10 This act shall take effect on passage.