

ASSEMBLY, No. 2893

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED MAY 14, 2012

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE
District 37 (Bergen)

SYNOPSIS

"Innovative Services for Persons with Developmental Disabilities Act."

CURRENT VERSION OF TEXT

As introduced.



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2

1 AN ACT concerning persons with developmental disabilities,
2 supplementing Title 30 of the Revised Statutes, and amending
3 P.L.2008, c.128.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. (New section) Sections 1 through 7 of this act shall be
9 known as the "Innovative Services for Persons with Developmental
10 Disabilities Act."

11

12 2. (New section) The Legislature finds and declares that:

13 a. There are nearly 5,000 persons with developmental
14 disabilities on the priority waiting list for residential placements,
15 and that number is growing;

16 b. There are an additional 2,500 persons with developmental
17 disabilities who are institutionalized in State-operated
18 developmental centers, many of whom are candidates for placement
19 into community residential programs funded by the Department of
20 Human Services;

21 c. From time to time, shortages also exist in the availability of
22 non-residential services provided to persons with developmental
23 disabilities, and existing methodologies of serving persons with
24 developmental disabilities are unable to produce sufficient services
25 to keep pace with demand;

26 d. Many persons with developmental disabilities and their
27 family members, guardians, and friends are willing to assist
28 financially with the cost of services, but there are limited
29 opportunities to do so under the methods currently employed by the
30 department, and such persons may be fearful that providing
31 financial assistance toward the cost of services will be used to their
32 detriment;

33 e. Persons with developmental disabilities should have
34 available to them, commensurate with their needs and abilities, the
35 same housing options that are available to persons who do not have
36 developmental disabilities; however, large congregate facilities,
37 especially those in rural areas that are isolated from the general
38 public and prevent participation in everyday life by persons with
39 developmental disabilities should be avoided;

40 f. Similarly, facilities located on the grounds of or in a
41 building where inpatient medical treatment or custodial care is
42 offered should be avoided, but innovative service arrangements
43 which use a combination of public and private funds and address
44 barriers to transportation for persons with disabilities should be
45 encouraged;

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 g. Innovative service arrangements should encourage persons
2 with developmental disabilities to: engage in social interactions
3 with their peers who are not disabled, to the fullest extent possible;
4 engage in social interactions with persons of their own choosing; be
5 active and integrated members of the community; exercise
6 individualized choice as to the type, time, and frequency of
7 participation in community activities; and successfully move from a
8 developmental center or the home of a parent to an independent
9 community setting;

10 h. Private housing and other service providers are willing to
11 develop innovative approaches to the delivery of services, but
12 opportunities for them to do so must be increased and obstacles
13 must be removed; and

14 i. Action must be taken to encourage the development and
15 implementation of innovative services for persons with
16 developmental disabilities, and the Legislature, consistent with the
17 public policy of the State, must establish a mechanism to learn
18 about development and implementation efforts as well as the
19 obstacles which may arise from time to time and negatively affect
20 the development and implementation of innovative services,
21 particularly those obstacles that the Legislature may be able to
22 eliminate.

23

24 3. (New section) As used in sections 1 through 7 of this act:

25 "Department" means the Department of Human Services.

26 "Developmental disability" means developmental disability as
27 defined in section 3 of P.L.1977, c.82 (C.30:6D-3).

28 "Innovative service arrangement" means residential or day
29 services for persons with developmental disabilities that involve the
30 use of self-directed support services, as defined in section 3 of
31 P.L.2008, c.128 (C.30:6D-12.3), or other arrangements that are
32 materially different or used in materially different ways than the
33 arrangements currently and most commonly used by the Department
34 of Human Services, including, but not limited to, a service
35 arrangement that is:

36 (1) privately funded, in whole or in part, with assurances from
37 the department to undertake the funding of the service arrangement
38 once State funding is available or when a reasonable amount of
39 funds are legitimately exhausted;

40 (2) not traditionally used to serve persons with developmental
41 disabilities;

42 (3) funded, in whole or in part, by other governmental sources
43 not dedicated to serving persons with developmental disabilities
44 exclusively;

45 (4) designed to attract private funding that can be used to serve
46 persons with developmental disabilities; or

47 (5) some combination of the above.

1 4. (New section) a. It is declared to be the public policy of the
2 State to encourage the establishment of innovative service
3 arrangements.

4 b. The department shall encourage the establishment of
5 innovative service arrangements, and may do so by:

6 (1) providing grants and other aid, if necessary, to foster the
7 development of innovative service arrangements;

8 (2) providing technical assistance, if requested, to foster the
9 development of innovative service arrangements;

10 (3) soliciting proposals from potential providers of innovative
11 service arrangements which use a combination of public and private
12 funding, or exclusively private funding initially, with the assurance
13 of future public funding;

14 (4) removing obstacles to the development of innovative service
15 arrangements;

16 (5) creating incentives to attract private funding for innovative
17 service arrangements;

18 (6) facilitating cooperation among government agencies, as
19 appropriate; and

20 (7) encouraging the development of opportunities for innovative
21 service arrangements funded by a combination of public and private
22 sources.

23

24 5. (New section) To implement the public policy of this State,
25 the department shall facilitate the establishment of a wide variety of
26 innovative services arrangements.

27 a. (1) The department shall seek funding for innovative service
28 arrangements in any application for federal assistance or
29 reimbursement, through the Medicaid program established pursuant
30 to P.L.1968, c.413 (C.30:4D-1 et seq.) or another applicable
31 program, unless seeking such funding for a particular innovative
32 service arrangement would be:

33 (a) expressly contrary to a federal requirement for such
34 assistance or reimbursement; or

35 (b) unsuitable for inclusion in an application for federal
36 assistance or reimbursement.

37 (2) The inability to include a particular innovative service
38 arrangement in an application for assistance or reimbursement
39 pursuant to this subsection shall not preclude the department from
40 encouraging the development of such an arrangement.

41 b. The department shall ensure that the establishment of an
42 innovative service arrangement does not unfairly benefit a person
43 with a developmental disability with the financial means to
44 purchase such services, in whole or in part, to the detriment of a
45 person with a developmental disability without such financial
46 means. To avoid such an unfair benefit, the department may:

47 (1) delay funding for a person with a developmental disability
48 until an opening for services for that person is available on the

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1 waiting list for services maintained by the department, in
2 accordance with the department's waiting list procedures provided
3 for by regulation;

4 (2) encourage the voluntary use of private funds as a means to
5 create additional innovative service arrangements; and

6 (3) facilitate a donation from a person with a developmental
7 disability or the person's family, guardian, or friends. At the end of
8 the life of a person with a developmental disability, the person's
9 ownership interest or the financial equivalent of the value of such
10 interest in an innovative service arrangement shall become the
11 property of the State or of a nonprofit corporation approved by the
12 department to receive such property.

13 c. (1) The department shall not require any financial
14 contribution, which is made by a person with a developmental
15 disability or the person's family member, guardian or friend, or
16 through a trust or other similar device to fund an innovative service
17 arrangement while waiting for assistance from the department, to
18 continue beyond the time that the person would otherwise become
19 eligible for assistance from the department, in accordance with the
20 procedures for the waiting list for services maintained by the
21 department, provided for by regulation.

22 (2) The person with a developmental disability and a legally
23 responsible relative shall remain liable for maintenance in
24 accordance with R.S.30:4-66; however, nothing in this act shall
25 expand any such liability or make a person with a developmental
26 disability, family member, guardian, friend, trust, or other similar
27 device liable to a claim for reimbursement which did not exist prior
28 to the enactment of this act.

29 d. The department shall ensure that a person with a
30 developmental disability shall not be removed involuntarily from a
31 waiting list for services maintained by the department because of a
32 private placement in an innovative service arrangement.

33 e. The department shall expeditiously resolve, pursuant to the
34 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
35 seq.), as a contested case, a dispute which may arise between a
36 person proposing to establish an innovative service arrangement or
37 a person seeking to use such arrangement, and the department.

38

39 6. (New section) One year after the effective date of this act,
40 and annually thereafter, the Commissioner of Human Services shall
41 report to the Governor and, pursuant to section 2 of P.L.1991, c.164
42 (C.52:14-19.1), to the Legislature on the implementation of this act.

43

44 7. (New section) Any rules and regulations adopted by the
45 Commissioner of Human Services to effectuate the purposes of this
46 act shall be adopted pursuant to the "Administrative Procedure
47 Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and, at a minimum, shall
48 address:

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6

1 a. the purposes of this act as delineated in section 2 of this act;
2 and

3 b. the development of innovative service arrangements in a
4 manner consistent with the purposes of the federal "Developmental
5 Disabilities Assistance and Bill of Rights Act of 2000," Pub. L.106-
6 402, 42 U.S.C.s.15001 et seq. and P.L.2003, c.54, so that persons
7 with developmental disabilities and their families participate in the
8 design of, and have access to: needed community services;
9 individualized supports, including transportation; and other forms
10 of assistance which promote self-determination, independence,
11 productivity, and integration and inclusion in all facets of
12 community life.

13

14 8. Section 3 of P.L.2008, c. 128 (C.30:6D-12.3) is amended to
15 read as follows:

16 3. As used in this act:

17 "Commissioner" means the Commissioner of Human Services.

18 "Department" means the Department of Human Services.

19 "Developmental disability" means developmental disability as
20 defined in section 3 of P.L.1977, c.82 (C.30:6D-3).

21 "Self-directed support services" means an arrangement in which
22 funding is made available by the department, through the Division
23 of Developmental Disabilities or any other division in the
24 department, to a person with a developmental disability or person
25 who has been authorized to serve as a fiduciary of the person with a
26 developmental disability, who is living in his own home, the home
27 of a family member or guardian, or some other similar living
28 environment. The purpose of the arrangement is to support the
29 needs of the person with a developmental disability by allowing the
30 person, or his family or guardian, or both, to determine the nature
31 and scope of services to be provided, in lieu of the department
32 placing the person with a developmental disability in a **【residential】**
33 program operated by the department directly or by contracting with
34 a **【residential】** provider of services for persons with developmental
35 disabilities.

36 "Services" means services as defined in section 3 of P.L.1977,
37 c.82 (C.30:6D-3).

38 (cf: P.L.2008, c.128, s.3)

39

40 9. This act shall take effect on the 180th day after the date of
41 enactment, but the Commissioner of Human Services may take such
42 anticipatory administrative action in advance thereof as shall be
43 necessary for the implementation of this act.

STATEMENT

1
2
3 This bill, which is designated the "Innovative Services for
4 Persons with Developmental Disabilities Act," requires the
5 Department of Human Services (DHS) to encourage the
6 establishment of innovative service arrangements for persons with
7 developmental disabilities.

8 "Innovative service arrangements" is defined in the bill as
9 residential or day services for persons with developmental
10 disabilities that involve the use of self-directed support services (as
11 defined in section 3 of P.L.2008, c.128 (C.30:6D-12.3) or other
12 arrangements that are materially different or used in materially
13 different ways than arrangements currently and most commonly
14 used by DHS. They include arrangements that are:

- 15 • privately funded, in whole or in part, with assurances from DHS
16 to undertake the funding of the arrangement once State funding
17 is available or when a reasonable amount of funds are
18 legitimately exhausted;
- 19 • not traditionally used to serve persons with developmental
20 disabilities;
- 21 • funded, in whole or in part, by other governmental sources not
22 dedicated to serving persons with developmental disabilities
23 exclusively;
- 24 • designed to attract private funding which can be used to serve
25 persons with developmental disabilities; or
- 26 • some combination of the above.

27 The bill also requires DHS to facilitate the establishment of a
28 wide variety of innovative service arrangements. Specifically, the
29 bill provides that DHS shall:

- 30 • seek funding for innovative service arrangements in any
31 application for federal assistance or reimbursement, through
32 Medicaid or another applicable program, unless seeking such
33 funding for a particular innovative service arrangement would
34 be: expressly contrary to a federal requirement for such
35 assistance or reimbursement; or unsuitable for inclusion in an
36 application for federal assistance or reimbursement. (This
37 provision, however, would not preclude DHS from encouraging
38 the development of such an arrangement.);
- 39 • ensure that the establishment of an innovative service
40 arrangement does not unfairly benefit a person with a
41 developmental disability with the financial means to purchase
42 such services, in whole or in part, to the detriment of a person
43 with a developmental disability without such financial means;
- 44 • not require certain financial contributions, which are made while
45 waiting for assistance from DHS, to continue beyond the time
46 that a person with a developmental disability would otherwise
47 become eligible for assistance from DHS, in accordance with
48 DHS procedures for its waiting list for services, provided for by

1 regulation. The person with a developmental disability and a
2 legally responsible relative would remain liable for
3 maintenance, in accordance with R.S.30:4-66; however, the bill
4 would not expand any such liability or make a contributor (a
5 person with a developmental disability, family member,
6 guardian, friend, trust, or other similar device) liable to a claim
7 for reimbursement which did not exist prior to the bill's
8 enactment;

- 9 • ensure that a person with a developmental disability shall not be
10 removed involuntarily from a DHS waiting list for services
11 because of a private placement in an innovative service
12 arrangement; and
- 13 • expeditiously resolve, pursuant to the "Administrative Procedure
14 Act," as a contested case, a dispute which may arise between a
15 person proposing to establish an innovative service arrangement
16 or a person seeking to use such arrangement, and DHS.

17 The Commissioner of Human Services is required to report to the
18 Governor and the Legislature on the implementation of the
19 provisions of the bill one year after the effective date, and annually
20 thereafter.

21 In addition, any rules and regulations adopted by the
22 commissioner, at a minimum, must address the purposes of the bill,
23 as delineated in the findings and declaration section of the bill
24 (section 2), which includes provisions concerning the waiting list
25 for services, housing options, and the encouragement of innovative
26 service arrangements that help persons with developmental
27 disabilities with social interactions, individualized choice in
28 community activities, and relocation to communities from
29 developmental centers. Further, the bill provides that the
30 regulations must address the development of innovative service
31 arrangements in a manner consistent with federal and State law so
32 that persons with developmental disabilities and their families
33 participate in the design of, and have access to: needed community
34 services; individualized supports, including transportation; and
35 other forms of assistance which promote self-determination,
36 independence, productivity, and integration and inclusion in all
37 facets of community life.

38 The bill also expands the definition of "self-directed support
39 services" in section 3 of P.L.2008, c.128 (C.30:6D-12.3), by
40 deleting the word "residential" so that self-directed support service
41 arrangements (in which DHS funding is made available to a person
42 with a developmental disability or another person authorized to
43 serve as the person's fiduciary) may be made in lieu of DHS placing
44 a person with a developmental disability in any DHS program or
45 contracting with any provider, rather than limiting self-directed
46 support arrangements to be made only in lieu of residential
47 placements or contracts with residential service providers.

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1 Lastly, the bill takes effect on the 180th day after enactment, but
2 provides that the commissioner may take such anticipatory
3 administrative action in advance as necessary for implementation of
4 the bill.