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HOUSE BILL 672 By
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SENATE BILL 893
By Rochelle

AN ACT to amend Tennessee Code Annotated, Title 4; Title 56;
Title 68 and Title 71, relative to long-term care.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. (a) The commissioner of health shall report to the house health and human resources committee and the senate general welfare, health and human resources committee of the general assembly on or before January 15 of each year on the implementation of the long-term care services plan developed pursuant to Tennessee Code Annotated, Title 71, Chapter 5, Part 14.

(b)(1) At least thirty (30) days before the state submits any waiver, waiver amendment, or state plan amendment to the United States department of health and human services concerning services to older and/or disabled persons that is within the scope of the long-term care services plan developed pursuant to Tennessee Code Annotated, Title 71, Chapter 5, Part 14, the commissioner of health shall file a full report on such proposed waiver or amendment with the finance committees of the house of representatives and the senate of the general assembly.

(2) No such waiver or amendment shall be implemented unless it is specifically funded in the general appropriations act.

SECTION 2. Tennessee Code Annotated, Title 71, Chapter 5, is amended by adding the following as a new section to be appropriately designated:

Section _____. (a) To address the need of the state of Tennessee for a comprehensive long-term care system that makes an appropriate place for both institutional care and a broad array of home- and community-based services, this section establishes a program which is intended to encourage a wide variety of quality, cost-effective and affordable long-term care choices. This program shall be known as client long-term evaluation, assessment and referral (CLEAR). CLEAR is designed to provide data collection and individual assessment and referral to community-based services and appropriate placement in long-term care facilities.

(b) As used in this section:

(1) "Area agency on aging" means the agency defined in Tennessee Code Annotated, Section 71-2-103.

(2) "Assessment services" means evaluation of an individual's health and functional status to determine the need for long-term care services and to identify appropriate service options that meet these needs utilizing the form.

(3) "Director" means the executive director of the commission on aging.

(4) "Hospital" shall have the meaning ascribed to such term under Tennessee Code Annotated, Section 68-11-201.

(5) "Nursing Home" shall have the meaning ascribed to such term under Tennessee Code Annotated Section, 68-11-201.

(c) (1) There is hereby established the client long-term evaluation, assessment and referral (CLEAR) program. The CLEAR program shall be administered by the director of aging and shall be implemented by area agencies on aging, in cooperation with county health departments, in accordance with the provisions of this section.

(2) Any entity that provides assessment services pursuant to this section shall not also directly provide long-term care services.

(d) Prior to July 1, 2000, the commissioner of health shall adopt by rule, promulgated in accordance with the provisions of title 4, chapter 5, a client long-term evaluation, assessment and referral (CLEAR) data entry form. The purpose of this form is for data collection and referral services. Such form shall be concise and questions shall be limited to those necessary to carry out the stated purposes. The client long-term evaluation, assessment and referral (CLEAR) data entry form shall include, but not be limited to, preadmission screening and evaluation questions. Prior to the adoption of the client long-term evaluation, assessment and referral (CLEAR) data entry form by the commissioner of health, the director shall approve the form. The client long-term evaluation, assessment and referral (CLEAR) data entry form shall be used by all persons providing assessment services.

(e) On and after July 1, 2000, each individual, prior to admission to a nursing home as a resident of the facility, shall receive assessment services to be provided by the appropriate area agency on aging in cooperation with the director and with appropriate assistance from county health departments, except that:

(A) such assessment services may be provided by a hospital to a patient of the hospital who is considering becoming a resident of a nursing home upon discharge from the hospital;

(B) such assessment services may be provided as authorized by rule adopted by the director pursuant to subsection (i); and

(C) such assessment shall not apply to individuals who are exempt from preadmission evaluations under law.

(f) The director and the area agencies on aging shall cooperate in providing assessment services under this section. Area agencies on aging shall provide assessment services under this section to assist persons seeking or needing long-term care. In providing such services, the staff of the area agencies on aging shall provide

assessment, referral and case management services. In providing such services, staff of the area agencies on aging shall also act as advocates on behalf of such persons seeking or needing long-term care.

(g) The director, after consultation with the commissioner of health, shall assure that each area agency on aging shall compile comprehensive resource information for use by individuals and agencies related to long-term care resources, including offices of the department of health, the department of human services and county health departments. This information shall include, but not be limited to, resources available to assist persons to choose alternatives to institutional care.

(h) Nursing homes and hospitals shall make available information referenced in subsection (g) to each person seeking admission or upon discharge as appropriate. Any person licensed to practice the healing arts pursuant to Tennessee Code Annotated, Title 63, shall make the same resource information available to any person identified as seeking or needing long-term care. Each senior center and each area agency on aging shall make available such information.

(i) The director shall adopt rules to govern such matters, as the director deems necessary for the administration of this act. Such rules shall be promulgated in accordance with the provisions of Title 4, Chapter 5.

SECTION 3. Tennessee Code Annotated, Title 71, Chapter 5, Part 14, is amended by adding the following as a new section:

Section _____. (a)(1) By January 1, 2000, the long-term care services planning council shall develop a program for home- and community-based services to elderly and disabled individuals in need of assistance that is consistent with the long-term care services plan. The program shall provide services to elderly and disabled individuals in need of assistance who do not qualify for skilled nursing home services under medical assistance pursuant to part 1 of this chapter. The council shall report on the program to

the general assembly. The comptroller of the treasury shall conduct an actuarial study of the program.

(2) Nothing in the program developed pursuant to this section shall be construed to create entitlement for individuals.

(3) The program shall identify eligible services, the extent and manner in which such services are allocated and made available to elderly and disabled individuals in need of assistance who do not qualify for skilled nursing home services under medical assistance pursuant to part 1 of this chapter, and the manner in which such services are coordinated with each other and long-term care services available outside the program, including, but not limited to, medical assistance and medicare.

(4) To the extent possible, the choice of an eligible individual under the program, and that individual's family, regarding which covered services to receive and the providers who will provide such services shall be followed.

(5) The program shall impose cost-sharing to be set by rule with respect to covered services.

(6) The program shall provide for quality assurance and safeguards for the eligible individuals.

(7) The program shall designate a state agency to administer the program or to supervise administration of the program.

(b)(1) Home- and community-based services, as defined in Section 71-5-103, shall be available to eligible elderly and disabled individuals in need of assistance under the program established by this section. The program shall set limits to services based on available fiscal resources. The services shall be specified in a manner that permits flexibility for providers to meet the needs of eligible individuals in a cost-effective manner with services to be delivered in an individual's home, a range of community residential arrangements, or outside the home.

(2) Home- and community-based services shall be provided under the program set forth in this section to eligible individuals if:

(A) An assessment pursuant to Section 2 of this act has been made; and

(B) An individualized plan of care is developed with involvement from the individual or the individual's representative.

(3)The state shall make reasonable efforts to identify and arrange services described in the plan, but nothing in this section shall be construed as requiring the state to provide all the services such plan may specify.

(c) The commissioner of health is authorized to promulgate rules and regulations to effectuate the purposes of this section. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5. This act shall take effect upon becoming a law, the public welfare requiring it.