

**MICHIGAN LONG TERM CARE CONSUMER CHOICE  
AND QUALITY IMPROVEMENT ACT**

**FEBRUARY 14, 2005**

**Sec. 1 Short title**

1. This act shall be known and may be cited as the “Michigan Long Term Care Consumer Choice and Quality Improvement Act”.

## **Overview: The Charge to Workgroup G and Its Report and Recommendations**

Workgroup G was charged by the Task Force with developing legislative and regulatory reform “...that assures safety and quality while removing unnecessary barriers that prevent Michigan from moving toward an efficient and dynamic continuum of care.” Fifty four individuals representing consumer advocacy groups, residential providers, area agencies on aging, state agencies and home health providers held a series of twelve meetings to address that important charge. In addition to the full work group meetings, seven subcommittees were also established concerning single point of entry, quality, assisted living, consumer advocate, Medicaid eligibility, vision and authority.

At the outset, three operating principles were established. First, the workgroup agreed to operate on a consensus basis to the greatest extent possible. Second, the workgroup decided it was advisable to produce proposed statutory language, as opposed to general recommendations or suggestions regarding what the statutory language should look like. The Workgroup considered this important to give the full Task Force a complete understanding, in as much detail as possible, as to necessary statutory changes. Third, Workgroup G recognized that while it had a general charge from the Task Force, as outlined above, there was also a need to address recommendations from various other workgroups that would require legislative or regulatory changes. Among the recommendations from other workgroups that were addressed by Workgroup G were those from Workgroup A for the creation of a single point of entry, external advocate, appeals process, and quality assurance mechanisms. From Workgroup C came recommendations to address the fragmented nature of long term care within state government, deal with certain Medicaid problems and define “assisted living”. These and other important issues identified by other workgroups are all addressed in our report.

Given the diversity of viewpoints, as well as the sheer overwhelming nature of the task in front of it, the chair felt it advisable to utilize the services of an experienced facilitator, Linda Phillips, an attorney from Ann Arbor, Michigan. Ms. Phillips ably assisted the workgroup in beginning its process and arriving at early consensus on a number of thorny issues. As the work progressed, however, it became apparent that outside facilitation was not always required but it always remained available. It is also noteworthy that the Workgroup G could not have finished its work without the assistance of Sara Koronotis, a paralegal from Michigan Protection and Advocacy Service, Inc.

The centerpiece of Workgroup G’s report is the proposal that there be a Michigan Long Term Care Consumer Choice and Quality Improvement Act that would be comprehensive in nature. A similar statute already in existence with which many members of the Task Force might be familiar is the Michigan Mental Health Code.

Highlights of the proposed Michigan Long Term Care Consumer Choice and Quality

Improvement Act are:

- A common set of definitions;
- A statement of the vision for the long term care system;
- The establishment of an authority charged with the responsibility for administering the long term care system;
- The creation of single points of entry as legal entities;
- A statutory scheme for both ensuring and improving quality of long term care; and
- The establishment of a consumer advocate to assist consumers and caregivers in securing and maintaining high quality, consumer directed supports.

Members of Workgroup G were unanimous in their support for the creation of a single Long Term Care authority that would oversee a well coordinated long term care system. Because Workgroup members were not able to reach consensus on what form the authority should take, where in state government it should be located, or the full extent of its responsibilities, the report identifies various options the Workgroup discussed for both the establishment and the responsibilities of the authority.

In addition to the proposed Michigan Long Term Care Act, the report also contains two additional reports. The first concerns assisted living. It responds to Workgroup C's recommendations that the term "assisted living" be defined and that individuals living in licensed adult foster care and homes for the aged be eligible to receive MiChoice services.

The second report concerns Medicaid eligibility. It responds to recommendations at various Workgroup meetings that Medicaid eligibility be simplified and that unnecessary barriers to services and supports be removed.

Finally, the report contains the recommendations of the Workgroup that these proposals, and, indeed, the full Task Force report, not be allowed to rest on bookshelves but that a committee of Task Force members be appointed to work with the governor's office, state legislators, and other policymakers to advocate for the prompt implementation of these important recommendations.

## Roster of Workgroup G Participants

Mark A. Cody, Chair

Linda Phillips, J.D., Facilitator

<b>Name</b>	<b>Affiliation</b>
Reginald Carter	Health Care Association of Michigan
RoAnne Chaney	Michigan Disability Rights Coalition
Priscilla Cheever	Assistant State Long Term Care Ombudsman
Senator Deborah Cherry	Michigan State Senate
Jan Christensen	Michigan Department of Community Health
Chris Conklin	Michigan Home Health Association & Visiting Nurses Association of Western Michigan
Dolores Coulter	Elder Law and Advocacy Section Council, State Bar of Michigan
Michael Daeschlein	Michigan Department of Community Health
Sara Duris	Alzheimer's Association
Carol Dye	Office of Services to the Aging
Andy Farmer	AARP
Mary Gear	Michigan Department of Community Health-Long Term Care Policy
Carl A. Gibson	Advocate
Representative Matthew Gillard	Michigan House of Representatives
Sharon Gire	Director, Office of Services to the Aging
John Grib	Senior Services, Kalamazoo
Terri Hamad	Monroe County Commission on Aging
Senator Beverly Hammerstrom	Michigan State Senate
John Hazewinkel	Michigan State University, Institute for Health Care Studies
Alison Hirschel	Michigan Poverty Law Program
Ed Kemp	Medical Services Administration
Linda Lawther	Michigan Center for Assisted Living
Irma Lopez	Michigan Department of Community Health
Clare Luz	MSU Professor & President of the Michigan Society of Gerontology
Jeannine Maison	Michigan Association of Licensed Homes for Adult Care

Sanford Mall	Attorney
Marcia Marklin	MORC
Susan Martin	Office of Representative Shaffer
Gigi Mericka	Blue Water Center for Independent Living
Kathleen Murphy	Michigan Assisted Living Association
Jim McGuire	AAA Region 1-B
Susan Oginsky	Health Care Association of Michigan
Suzann Ogland-Hand	Pine Rest
Marion Owen	Tri-County Office on Aging
Linda Phillips	Attorney
David Reusser	Huntington's Disease Society
Laurie Sauer	NEMCSA-Region 9AAA
Mary Schieve	AAA Region 1-B Board of Directors
Representative Rick Shaffer	State Representative
Sarah Slocum	State Long Term Care Ombudsman
Ellen Speckman-Randall	Michigan County Social Services Association
Bob Stampfly	Michigan State University Institute for Health Care Studies
Sally Steiner	Office of Services to the Aging
Susan Steinke	AARP
Barbara Stoops	Consumer
Joe Sutton	Sutton Advisors
Lauren Swanson	Office of Services to the Aging
Bill Tennant	Mental Health Association in Michigan
Hollis Turnham	Paraprofessional Healthcare Institute
Kate White	Elder Law of Michigan
Brad Vauter	Elder Law of Michigan
Tony Wong	Michigan Association of Centers for Independent Living
Deborah Wood	Family Independence Agency
Harvey Zuckerberg	Michigan Home Health Association

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**Sec. 2 Definitions**

1) Definitions: When used in this Act, the following words shall have the following meanings:

(a) “Authority” means the entity created pursuant to section 4 of this act.

(b) “Commission” means the long term care commission established pursuant to section 3 of this act.

(c) “Consumer” means an individual seeking or receiving public assistance for long term care.

(d) “Department” means the department of community health.

(e) “Director” means the director of the department.

(f) “Long term care” means those services and supports provided to an individual in a setting of his or her choice which are evaluative, preventive, habilitative, rehabilitative or health related in nature.

(g) “Medicaid” means the program for medical assistance established under title XIX of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396f, 1396g-1 to 1396r-6, and 1396r-8 to 1396v, and administered by the department under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b.

(h) “Person centered planning” means a process for planning and supporting the individual receiving services that builds upon the individual’s capacity to engage in activities that promote community life and that honors the individual’s preferences, choices, and abilities. The person-centered planning process involves families, friends, and professionals as the individual desires or requires.

(i) “Primary consumer” means the actual user of long term care services.

(j) “Secondary consumer” means family members or unpaid caregivers of consumers.

(k) “Single point of entry” means those entities created pursuant to section 6 of this act.

(l) “Transition services” means those services provided to assist an individual in moving from one setting to another setting of his or her choice and may include, but is not limited to, the payment of security deposits, moving expenses, purchase of essential furnishings and purchase of durable medical equipment.

### **Sec. 3 Findings and purpose**

1) The legislature finds that long term care services and supports are critically important for Michigan citizens, their families, caregivers and communities, that the need for long term care services and supports is expected to increase substantially as the number of older people and people with disabilities increases, that consumers will be best served by the creation and continuing refinement of a carefully coordinated long term care system that promotes healthy aging, consumer education and choice, innovation, quality, dignity, autonomy, the efficient and effective allocation of resources in response to consumer needs and preferences, and the opportunity for all long term care consumers, regardless of their age or source of payment, to develop and maintain their fullest human potential.

2) Consistent with section 51 of article IV of the state constitution of 1963, which declares that the health of the people of the state is a matter of primary public concern, and as required by section 8 of article VII of the state constitution of 1963, which declares that services for the care, treatment, education or rehabilitation of persons with disabilities shall always be fostered and supported, the department is charged with the primary responsibility for ensuring the development and availability of a system of long term care as described in this act.

3) The purpose of this Act is to ensure all of the following:

(a) That consumers have access to a well-coordinated, comprehensive, adequately funded and dynamic array of long term services and supports including but not limited to assessment, care planning, in-home services and supports, a range of assisted living options, care management services, respite care services, nursing facility care, hospice care, primary care, chronic care management, supports coordination, and acute care. This array of services and supports must be designed through a person centered planning process to meet existing consumer needs and preferences, be flexible and responsive to changing consumer needs and preferences, and encourage innovation and quality;

(b) That consumers are provided with sufficient education and support to make informed choices about their long term care service and supports options;

- (c) That the system is consumer focused, embraces person centered planning, and fosters the creation of innovative long term care options;
- (d) That services and supports are provided in the most independent living setting be consistent with the consumer's needs and preferences;
- (e) That access to long term care services and supports is determined by a uniform system for comprehensively assessing abilities and needs;
- (f) That public resources purchase, permit and promote high quality settings, services and supports through:
  - (1) adequate and consistent monitoring of publicly funded settings, services and supports;
  - (2) consistent and appropriate enforcement of statutory and regulatory standards;
  - (3) monitoring of outcomes of long term care for quality and adherence to the consumers' expressed preferences; and
  - (4) swift and effective remedies if services, supports, or settings fail to meet quality standards or to promote long term care consumers' dignity, autonomy, and choice.
- (g) The goal of the system shall be continuous quality improvement focused on consumer satisfaction and the consistent achievement of clear standards concerning the health, safety, autonomy and dignity of long term care managers; family members; and others when appropriate. These mechanisms shall assist regulators and policy makers in evaluating quality and consumer satisfaction and in determining necessary adaptations and improvements in the dynamic long term care system.
- (h) That long term care services are coordinated in a way that minimizes administrative cost, eliminates unnecessarily complex organization, minimizes program and service duplication, and maximizes the use of financial resources in meeting the needs and preferences of long term care consumers.
- (i) That the state collects, analyzes, and distributes to the public on an ongoing basis complete data regarding current utilization of long term care services and supports, unmet needs, consumer preferences, demographic data, workforce capacity, and other information that will assist the state in the continuing coordination and refinement of its long term care system. In addition, ensure the state publishes periodic reports that assess the adequacy and efficacy of the reimbursement and enforcement systems and identify areas requiring improvement, unmet needs, successful innovations, and best practices.

(j) That state and the long term care industry build and sustain an adequate, well-trained, highly motivated and appropriately compensated workforce across the long term care continuum.

(k) That all stakeholders including consumers and their families and advocates, providers, representatives of the long term care workforce, public officials and others have a continuing opportunity for meaningful input in the development and refinement of the long term care system.

#### **Sec. 4 Long term care commission**

1) A commission on long term care is hereby established, to be appointed by the governor.

2) The commission shall consist of twenty-five members appointed by the governor. Commission membership shall consist of fourteen consumers, of which at least fifty percent are primary consumers and of those primary consumers at least fifty percent shall be users of Medicaid services, the remainder comprised of secondary consumers and consumer organization representatives, seven providers or provider organization representatives, three direct care workers and one member with expertise in long term care research from a university. Overall commission membership shall also reflect the geographic and cultural diversity of the state.

3) One representative each from the single point entry network, the State Long Term Care Ombudsman, the designated protection and advocacy system, the Department of Community Health, the Department of Human Services and the Department of Labor and Economic Growth, all of whom  serve in non-voting supporting roles as ex-officio members. Staff from the Medical Services Administration, the Office of Services to the Aging shall serve as resources to the commission and shall assist the commission as needed.

4) Voting member terms shall be three years, staggered to ensure continuity and renewable under the appointment process. If a vacancy occurs during the term of a voting member, the governor shall appoint a replacement to serve out the remainder of the term and shall maintain the same composition for the commission as set forth in sec. 4(2).

5) Commissioners are entitled to receive per diem compensation and reimbursement for actual and necessary expenses while acting as an official representative of the commission as defined by commission policies and procedures. Commission policies and reimbursement shall establish and practice full accommodation to individual support needs of commission members, including their direct care and support workers or personal assistants, support facilitation or other persons serving them as secondary consumers.

6) The governor shall designate one person from among the consumer membership to serve as chairperson of the commission, who shall serve at the pleasure of the governor.

7) The commission shall do all of the following:

- (a) Serve as an effective and visible advocate for all consumers of long term care supports and services.
- (b) Participate in the preparation and review, prior to the submission to the governor, of an ongoing, comprehensive statewide plan and budget for long term care services and supports design, allocations and strategies to address and meet identified consumer preferences and needs.
- (c) Ensure the broadest possible ongoing public participation in statewide planning as part of subsection (1)(b).
- (d) Ensure broad, culturally competent and effective public education initiatives are ongoing on long term care issues, choices and opportunities for direct involvement by the public.
- (e) Advise the governor and legislature regarding changes in federal and state programs, statutes and policies.
- (f) Establish additional advisory committees, councils or workgroups as deemed helpful or necessary in pursuit of the commission's mission.
- (g) Meet at least six times per year.
- (h) A quorum of the commission shall consist of at least 50% of the voting membership, provided at least eight consumer members are present or participating. Participation may be by telephone or other means, in accordance with other statutory provisions and as determined by the commission.

## **Sec. 5 Long term care authority**

1) (Insert here language directing how the authority will be created, where it will be located, etc.).

2) The long term care authority shall do all of the following:

- (a) Serve as an effective, visible and accessible advocate for all consumers of long term care supports and services.
- (b) Prepare and implement an ongoing, comprehensive statewide plan for the governor for long term care services and supports design, administration and oversight to ensure delivery of an organized system which meets identified consumer preferences and needs.

(c) Develop and implement an ongoing budget which ensures state financial resources follow consumer preferences under the comprehensive state plan for review by the commission prior to submission to the governor.

(d) Ensure the broadest possible ongoing public participation in statewide planning as part of subsection (2)(b).

(e) Recommend to the department director designations and de-designations of the state's single points of entry (SPE) network agencies under established guidelines; recommend contract awards; establish performance and review standards for SPEs; receive standardized annual and other reporting from SPE agencies.

(f) Ensure broad, culturally competent and effective public education initiatives are ongoing on long term care issues and choices.

(g) Advise the governor, the legislature and directors of relevant agencies and department heads regarding changes in federal and state programs, statutes and policies.

**NOTE: The two paragraphs that appear above for which there was no consensus would be inserted here.**

(j) As part of its ongoing planning, identify and address long term care workforce capacity, training and regulatory issues in both the public and private sectors.

(k) Retain state approval over proposed changes in Medicaid policy and services related to long term care before publication and comment; continually reform eligibility policy to improve timeliness and access.

(l) Develop and maintain a comprehensive state database and information collection system on long term care service and supports capacities and utilization that is publicly accessible, while protecting individual consumer privacy, for the purposes of individual and state-aggregated planning, forecasting and research.

(m) Ensure all necessary and vital linkages between acute, primary and chronic care management supports and services are maintained and continually strengthened to compliment, leverage and enhance services, supports and choices in the long term care system.

(n) Develop and implement policies and procedures that will facilitate efficient and timely transition services for individuals moving from a nursing facility to home or apartment in the community. Services may include, but are not limited to payment of security deposits, moving expenses purchase of essential furnishings and durable medical equipment.

(o) Identify and implement progressive management models, culture change and indicated administrative restructuring to maximize efficiency, optimize program design and services delivery; provide technical assistance in these areas to providers and interested members of the public.

(p) Establish a comprehensive, uniform and enforceable consumer rights and appeals system.

## **Sec. 6 Single points of entry**

1) It is the intent of the legislature that locally or regionally based single points of entry for long term care serve as visible and effective access points for persons seeking long term care and promote consumer education and choice of long term care options.

2) The director shall designate and maintain locally and regionally based single points of entry for long term care that will serve as visible and effective access points for persons seeking long term care and promote consumer choice.

3) The department shall monitor designated single points of entry for long term care to:

(a) prevent bias in eligibility determination and the promotion of specific services to the detriment of consumer choice and control;

(b) Review all consumer assessments and care plans to ensure consistency, quality and adherence to the principles of person-centered planning and other criteria established by the department;

(c) Assure the provision of quality assistance and supports;

(d) Assure consumer access to an independent consumer advocate.

4) The department shall establish and publicize a toll-free telephone number for those areas of the state in which a single point of entry is operational as a means of access to the single point of entry for consumers and others.

5) The department shall promulgate rules establishing standards of reasonable promptness for the delivery of single point of entry services and for long term care services and supports.

6) The department shall require that designated single points of entry for long term care perform the following duties and responsibilities:

(a) Provide consumers and any others with information on and referral to any and all long term care options, services, and supports;

- (b) Facilitate movement between supports, services, and settings in an adequate and timely manner that assures the safety and well-being of the consumer;
- (c) Assess a consumer's eligibility for all Medicaid long term care programs utilizing a comprehensive level of care tool;
- (d) Assist consumers to obtain a financial determination of eligibility for publicly funded long term care programs;
- (e) Assist consumers to develop their long term care support plans through a person centered planning process;
- (f) Authorize and, if requested, arrange for needed transition services for consumers living in nursing facilities;
- (g) Work with consumers in acute and primary care settings as well as community settings to assure that they are presented with the full array of long term care options;
- (h) Re-evaluate consumers' need and eligibility for long term care services on a regular basis;
- (i) Perform the authorization of Medicaid services identified in the consumer's care supports plan.

7) The department shall, in consultation with consumers, stakeholders and members of the public, establish criteria for the designation of local or regional single points of entry for long term care. The criteria shall assure that single points of entry for long term care:

- (a) Are not a provider of direct Medicaid services. For purpose of this act, care management and supports coordination are not defined as a direct Medicaid service;
- (b) Are free from all legal and financial conflicts of interest with a providers of Medicaid services;
- (c) Are capable of serving as the focal point for all persons seeking information about long term care in their region, including those who will pay privately for services;
- (d) Are capable of performing consumer data collection, management, and reporting in compliance with state requirements;
- (e) Have quality assurance standards and procedures that measure consumer satisfaction, monitor consumer outcomes and trigger care and supports plan changes;

(f) Maintain internal and external appeals processes that provide for a review of individual decisions;

(g) Complete an initial evaluation of applicants for long term care within two business days after contact by the individual or his or her legal representative; and

(h) In partnership with the consumer, develop a preliminary person centered plan within seven days after the applicant is found eligible for services.

8) Designated single points of access for long term care that fail to meet the above criteria, and other fiscal and performance standards as determined by the department, may be subject to de-designation by the department.

9) The department shall promulgate rules establishing timelines of within two business days or less for the completion of initial evaluations of individuals in urgent or emergent situations and shall by rule establish timelines for the completion of a final evaluation and assessment for all individuals, provided such timeline is not longer than two weeks from time of first contact.

10) The department shall solicit proposals from entities seeking designation as a single point of entry and shall, no later than October 1, 2005, designate at least three agencies to serve as a single point of entry in at least three separate areas of the state. There shall be no more than one single point of entry in each designated region. The designated agencies shall serve in that capacity for an initial period of three years, subject to the provisions of Sec. 4(3).

11) The department shall evaluate the performance of the designated agencies on an annual basis and shall make its report and recommendations for improvement to the single point of entry system available to the legislature and the public.

12) No later than October 1, 2008, the department shall have a designated agency to serve as a single point of entry in each region of the state. Nothing in this section shall be construed to prohibit the department from designating single points of entry throughout the entire state prior to said date.

13) The department shall promulgate rules to implement this act within six months of enactment.

## **Sec. 7 Quality**

1) The authority shall have a continuing responsibility to monitor state agencies' performance in responding to, investigating, and ensuring appropriate outcomes to complaints and in performing its survey and enforcement functions. The Long Term Care Authority shall issue regulations and policy bulletins, as appropriate, and take other appropriate action to improve performance or address serious deficiencies in state

agencies' practices with regard to handling complaints and in performing survey and enforcement functions.

2) The authority shall establish a single toll free hotline to receive complaints from recipients of all Medicaid funded long term care services and settings. State employees responsible for this function shall:

- (a) Staff the complaint line 24 hours a day, 7 days per week;
- (b) Be trained and certified in information and referral skills;
- (c) Conduct a brief intake;
- (d) Provide information and referral services to callers including information about relevant advocacy organizations; and
- (e) Route the call to the appropriate state agency or advocacy organization to record and respond to the consumer's concern. Relevant state agencies shall ensure on-call staff is available after hours to respond to any calls that are of an emergency nature. The authority shall ensure that hotline staff are consistently informed how to contact on-call staff at all relevant state agencies to which long term care complaints may be referred.

3) The authority shall also ensure that consumers can file complaints about any Medicaid funded long term care setting or service using a simple, web-based complaint form.

4) The authority shall publicize the availability of the 24 hour hotline and web based complaint system through appropriate public education efforts.

5) The authority shall form a workgroup to determine if state agencies' complaint protocols ensure a timely and complete response and to monitor for appropriate outcomes. The workgroup shall also address whether state agencies are performing their survey and enforcement functions in the most effective manner and if their practices promote quality and person-centered planning.

- (a) The workgroup shall be comprised of a minimum of 50 percent consumers and/or consumer advocacy groups. The remainder of the workgroup shall include the State Long Term Care Ombudsman and/or his/her representative, long term care providers, a representative from the designated protection and advocacy system, and representatives from the departments that enforce the regulations in long term care facilities.

(b) The workgroup will be charged with examining the number of consumer complaints received, the timeliness of response to these complaints, the process used by state investigators for these complaints, and the resolutions of these concerns. The workgroup will utilize existing resources such as Auditor General reports on state agencies that regulate long term care facilities or services and any additional data it requires to perform its duties. Based on these findings, the workgroup will issue recommendations to the authority and to the director.

(c) The workgroup shall also be charged with a comprehensive review of state law and policy, including licensing laws and regulations, receivership provisions, and other mechanisms for regulating long term care services to determine whether these laws and policies should be deleted, amended, or modified to promote quality, efficiency, and person centered planning or to reflect changes in the long term care system. The workgroup shall issue recommendations to the authority and to the director.

6) The departments responsible for licensing of long term care settings shall, within twelve months of the date of enactment of this statute, promulgate rules to establish a process for identifying all licensed long term care settings which, absent intervention by the state, are likely to either close or in which care is likely to diminish or remain below acceptable standards. In promulgating these rules, the departments shall consider, but not be limited to, the facility's financial stability, administrative capability, physical plant, and regulatory history.

7) If a department has a reasonable suspicion that a licensed facility lacks administrative capability, financial stability, financial capability, or is not structurally sound, it shall have the right to request any and all relevant documentation including, but not limited to, independent audits of the facility, credit reports, physical plant inspections by appropriate professionals, and other relevant information. It may also investigate and consider factors such as whether the facility has filed for bankruptcy or whether foreclosure has been filed, consistently declining occupancy rates, chronic noncompliance, or other relevant information.

8) In the event a department identifies a facility to be nonviable, it shall take appropriate measures to protect the health and safety of the residents which may include the following:

(a) The prompt appointment of a temporary manager or receiver with authority to take all actions necessary for the purpose of stabilizing the facility and protecting the residents, including:

1. Making all improvements necessary to ensure residents receive services that

meet or exceed minimum regulatory standards; or

2. If necessary and appropriate, arranging for the safe and orderly transfer of residents out of the facility consistent with their person centered plan and choices.

(b) Redistributing beds within the community to other facilities or making funding available in other long term care settings, including home and community based care.

9)The State shall ensure that relevant state agencies have sufficient staff to meet all statutory or regulatory time frames for the completion of their responsibilities; effectively and expediently monitor services, supports, and facilities; respond to complaints; and enforce existing state laws and regulations regarding minimum standards for long term care services, supports, and facilities.

### **Sec. 8 Consumer advocate**

1) No later than six months after the enactment of this act, the governor shall designate an agency with the independence and capacity to serve as an advocate for long term care consumers, as set forth in this section. This designation shall continue indefinitely unless, for good cause shown, the agency is unwilling or incapable of performing its duties as set forth in this section.

2) The designated agency shall have the responsibility to identify, investigate and resolve complaints concerning services provided pursuant to this act; shall assist applicants for long term care who have been denied services and supports; and shall pursue legal, administrative and other remedies at the individual and systemic level to ensure the protection of and advocacy for the rights of long term care consumers.

3) The designated agency shall have access at reasonable times to any consumer in a location in which services and supports are provided.

4) The designated agency shall have access to the medical and mental health records of long term care consumers or applicants for long term care under any of the following conditions:

(a) With consent of the consumer or applicant or his or her legal representative;

(b) Without consent, if the consumer is unable to give consent and there is no legal representative or the state is the individual's representative and the designated agency has received a complaint or has probable cause to believe that abuse or neglect has occurred; or

(c) Without consent, if the consumer is unable to give consent and the legal representative has refused or failed to act on behalf of the individual and the designated agency has received a complaint or has probable cause to believe that abuse or neglect has occurred.

5) Records requested by the designated agency shall be made available for review and copying within three business days or, in the event of death or a request made pursuant to 4(b) or (c), within 24 hours.

6) The designated agency shall maintain an office in each of the service areas of the single points of entry.

7) The designated agency shall coordinate its activities with those of the state long term care ombudsman and the designated protection and advocacy system.

8) The designated agency shall prepare an annual report and provide information to the public and to policymakers regarding the problems of long term care consumers.

9) The legislature shall appropriate sufficient funds to enable the designated agency to perform its duties.

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*Discussion: These definitions are set forth for use throughout the Act. The definition of long term care was especially challenging. Historically, long term care has meant the services of a residential provider, typically a nursing home. That definition or concept is not workable for purposes of this Act. What Workgroup G settled on will, we believe, encompass all forms of long term care, wherever it may be provided, while not overlapping with acute care and other forms of health care.*

*It was necessary to include definitions of “consumer” as well as “primary consumer” and “secondary consumer” to make clear the categories of individuals who could be appointed to the long term care commission. These definitions, as well as the definition of person-centered planning were borrowed, in large measure, from the Michigan Mental Health Code.*

*Finally, it should be noted that a definition of “department” is included and that definition refers to the Michigan Department of Community Health. Obviously, the ultimate decision as to where the authority will be housed, its relationship to MDCH and other issues may call for a modification of this definition.*

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**FEBRUARY 14, 2005**

**Sec. 1 Short title**

This act shall be known and may be cited as the “Michigan Long Term Care Consumer Choice and Quality Improvement Act.”

**Sec. 2 Definitions**

1) Definitions: When used in this Act, the following words shall have the following meanings:

(a) “Authority” means the entity created pursuant to section 4 of this act.

(b) “Commission” means the long term care commission established pursuant to section 3 of this act.

(c) “Consumer” means an individual seeking or receiving public assistance for long term care.

(d) “Department” means the department of community health.

(e) “Director” means the director of the department.

(f) “Long term care” means those services and supports provided to an individual in a setting of his or her choice which are evaluative, preventive, habilitative, rehabilitative or health related in nature.

(g) “Medicaid” means the program for medical assistance established under title XIX of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396f, 1396g-1 to 1396r-6, and 1396r-8 to 1396v, and administered by the department under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b.

(h) “Person centered planning” means a process for planning and supporting the individual receiving services that builds upon the individual’s capacity to engage in activities that promote community life and that honors the individual’s preferences, choices, and abilities. The person-centered planning process involves families, friends, and professionals as the individual desires or requires.

(i) “Primary consumer” means the actual user of long term care services.

(j) “Secondary consumer” means family members or unpaid caregivers of consumers.

(k) “Single point of entry” means those entities created pursuant to section 6 of this act.

(l) “Transition services” means those services provided to assist an individual in moving from one setting to another setting of his or her choice and may include, but is not limited to, the payment of security deposits, moving expenses, purchase of essential furnishings and purchase of durable medical equipment.

### **Sec. 3 Findings and purpose**

1) The legislature finds that long term care services and supports are critically important for Michigan citizens, their families, caregivers and communities, that the need for long term care services and supports is expected to increase substantially as the number of older people and people with disabilities increases, that consumers will be best served by the creation and continuing refinement of a carefully coordinated long term care system that promotes healthy aging, consumer education and choice, innovation, quality, dignity, autonomy, the efficient and effective allocation of resources in response to consumer needs and preferences, and the opportunity for all long term care consumers, regardless of their age or source of payment, to develop and maintain their fullest human potential.

2) Consistent with section 51 of article IV of the state constitution of 1963, which declares that the health of the people of the state is a matter of primary public concern, and as required by section 8 of article VII of the state constitution of 1963, which declares that services for the care, treatment, education or rehabilitation of persons with disabilities shall always be fostered and supported, the department is charged with the primary responsibility for ensuring the development and availability of a system of long term care as described in this act.

3) The purpose of this Act is to ensure all of the following:

(a) That consumers have access to a well-coordinated, comprehensive, adequately funded and dynamic array of long term services and supports including but not limited to assessment, care planning, in-home services and supports, a range of assisted living options, care management services, respite care services, nursing facility care, hospice care, primary care, chronic care management, supports coordination, and acute care. This array of services and supports must be designed through a person centered planning process to meet existing consumer needs and preferences, be flexible and responsive to changing consumer needs and preferences, and encourage innovation and quality;

(b) That consumers are provided with sufficient education and support to make informed choices about their long term care service and supports options;

- (c) That the system is consumer focused, embraces person centered planning, and fosters the creation of innovative long term care options;
- (d) That services and supports are provided in the most independent living setting be consistent with the consumer's needs and preferences;
- (e) That access to long term care services and supports is determined by a uniform system for comprehensively assessing abilities and needs;
- (f) That public resources purchase, permit and promote high quality settings, services and supports through:
  - (1) adequate and consistent monitoring of publicly funded settings, services and supports;
  - (2) consistent and appropriate enforcement of statutory and regulatory standards;
  - (3) monitoring of outcomes of long term care for quality and adherence to the consumers' expressed preferences; and
  - (4) swift and effective remedies if services, supports, or settings fail to meet quality standards or to promote long term care consumers' dignity, autonomy, and choice.
- (g) The goal of the system shall be continuous quality improvement focused on consumer satisfaction and the consistent achievement of clear standards concerning the health, safety, autonomy and dignity of long term care managers; family members; and others when appropriate. These mechanisms shall assist regulators and policy makers in evaluating quality and consumer satisfaction and in determining necessary adaptations and improvements in the dynamic long term care system.
- (h) That long term care services are coordinated in a way that minimizes administrative cost, eliminates unnecessarily complex organization, minimizes program and service duplication, and maximizes the use of financial resources in meeting the needs and preferences of long term care consumers.
- (i) That the state collects, analyzes, and distributes to the public on an ongoing basis complete data regarding current utilization of long term care services and supports, unmet needs, consumer preferences, demographic data, workforce capacity, and other information that will assist the state in the continuing coordination and refinement of its long term care system. In addition, ensure the state publishes periodic reports that assess the adequacy and efficacy of the reimbursement and enforcement systems and identify areas requiring improvement, unmet needs, successful innovations, and best practices.

(j) That state and the long term care industry build and sustain an adequate, well-trained, highly motivated and appropriately compensated workforce across the long term care continuum.

(k) That all stakeholders including consumers and their families and advocates, providers, representatives of the long term care workforce, public officials and others have a continuing opportunity for meaningful input in the development and refinement of the long term care system.

#### **Sec. 4 Long term care commission**

1) A commission on long term care is hereby established, to be appointed by the governor.

2) The commission shall consist of twenty-five members appointed by the governor. Commission membership shall consist of fourteen consumers, of which at least fifty percent are primary consumers and of those primary consumers at least fifty percent shall be users of Medicaid services, the remainder comprised of secondary consumers and consumer organization representatives, seven providers or provider organization representatives, three direct care workers and one member with expertise in long term care research from a university. Overall commission membership shall also reflect the geographic and cultural diversity of the state.

3) One representative each from the single point entry network, the State Long Term Care Ombudsman, the designated protection and advocacy system, the Department of Community Health, the Department of Human Services and the Department of Labor and Economic Growth, all of whom  serve in non-voting supporting roles as ex-officio members. Staff from the Medical Services Administration, the Office of Services to the Aging shall serve as resources to the commission and shall assist the commission as needed.

4) Voting member terms shall be three years, staggered to ensure continuity and renewable under the appointment process. If a vacancy occurs during the term of a voting member, the governor shall appoint a replacement to serve out the remainder of the term and shall maintain the same composition for the commission as set forth in sec. 4(2).

5) Commissioners are entitled to receive per diem compensation and reimbursement for actual and necessary expenses while acting as an official representative of the commission as defined by commission policies and procedures. Commission policies and reimbursement shall establish and practice full accommodation to individual support needs of commission members, including their direct care and support workers or personal assistants, support facilitation or other persons serving them as secondary consumers.

6) The governor shall designate one person from among the consumer membership to serve as chairperson of the commission, who shall serve at the pleasure of the governor.

7) The commission shall do all of the following:

- (a) Serve as an effective and visible advocate for all consumers of long term care supports and services.
- (b) Participate in the preparation and review, prior to the submission to the governor, of an ongoing, comprehensive statewide plan and budget for long term care services and supports design, allocations and strategies to address and meet identified consumer preferences and needs.
- (c) Ensure the broadest possible ongoing public participation in statewide planning as part of subsection (1)(b).
- (d) Ensure broad, culturally competent and effective public education initiatives are ongoing on long term care issues, choices and opportunities for direct involvement by the public.
- (e) Advise the governor and legislature regarding changes in federal and state programs, statutes and policies.
- (f) Establish additional advisory committees, councils or workgroups as deemed helpful or necessary in pursuit of the commission's mission.
- (g) Meet at least six times per year.
- (h) A quorum of the commission shall consist of at least 50% of the voting membership, provided at least eight consumer members are present or participating. Participation may be by telephone or other means, in accordance with other statutory provisions and as determined by the commission.

## **Sec. 5 Long term care authority**

1) (Insert here language directing how the authority will be created, where it will be located, etc.).

2) The long term care authority shall do all of the following:

- (a) Serve as an effective, visible and accessible advocate for all consumers of long term care supports and services.
- (b) Prepare and implement an ongoing, comprehensive statewide plan for the governor for long term care services and supports design, administration and oversight to ensure delivery of an organized system which meets identified consumer preferences and needs.

(c) Develop and implement an ongoing budget which ensures state financial resources follow consumer preferences under the comprehensive state plan for review by the commission prior to submission to the governor.

(d) Ensure the broadest possible ongoing public participation in statewide planning as part of subsection (2)(b).

(e) Recommend to the department director designations and de-designations of the state's single points of entry (SPE) network agencies under established guidelines; recommend contract awards; establish performance and review standards for SPEs; receive standardized annual and other reporting from SPE agencies.

(f) Ensure broad, culturally competent and effective public education initiatives are ongoing on long term care issues and choices.

(g) Advise the governor, the legislature and directors of relevant agencies and department heads regarding changes in federal and state programs, statutes and policies.

**NOTE: The two paragraphs that appear above for which there was no consensus would be inserted here.**

(j) As part of its ongoing planning, identify and address long term care workforce capacity, training and regulatory issues in both the public and private sectors.

(k) Retain state approval over proposed changes in Medicaid policy and services related to long term care before publication and comment; continually reform eligibility policy to improve timeliness and access.

(l) Develop and maintain a comprehensive state database and information collection system on long term care service and supports capacities and utilization that is publicly accessible, while protecting individual consumer privacy, for the purposes of individual and state-aggregated planning, forecasting and research.

(m) Ensure all necessary and vital linkages between acute, primary and chronic care management supports and services are maintained and continually strengthened to compliment, leverage and enhance services, supports and choices in the long term care system.

(n) Develop and implement policies and procedures that will facilitate efficient and timely transition services for individuals moving from a nursing facility to home or apartment in the community. Services may include, but are not limited to payment of security deposits, moving expenses purchase of essential furnishings and durable medical equipment.

(o) Identify and implement progressive management models, culture change and indicated administrative restructuring to maximize efficiency, optimize program design and services delivery; provide technical assistance in these areas to providers and interested members of the public.

(p) Establish a comprehensive, uniform and enforceable consumer rights and appeals system.

## **Sec. 6 Single points of entry**

1) It is the intent of the legislature that locally or regionally based single points of entry for long term care serve as visible and effective access points for persons seeking long term care and promote consumer education and choice of long term care options.

2) The director shall designate and maintain locally and regionally based single points of entry for long term care that will serve as visible and effective access points for persons seeking long term care and promote consumer choice.

3) The department shall monitor designated single points of entry for long term care to:

(a) prevent bias in eligibility determination and the promotion of specific services to the detriment of consumer choice and control;

(b) Review all consumer assessments and care plans to ensure consistency, quality and adherence to the principles of person-centered planning and other criteria established by the department;

(c) Assure the provision of quality assistance and supports;

(d) Assure consumer access to an independent consumer advocate.

4) The department shall establish and publicize a toll-free telephone number for those areas of the state in which a single point of entry is operational as a means of access to the single point of entry for consumers and others.

5) The department shall promulgate rules establishing standards of reasonable promptness for the delivery of single point of entry services and for long term care services and supports.

6) The department shall require that designated single points of entry for long term care perform the following duties and responsibilities:

(a) Provide consumers and any others with information on and referral to any and all long term care options, services, and supports;

- (b) Facilitate movement between supports, services, and settings in an adequate and timely manner that assures the safety and well-being of the consumer;
- (c) Assess a consumer's eligibility for all Medicaid long term care programs utilizing a comprehensive level of care tool;
- (d) Assist consumers to obtain a financial determination of eligibility for publicly funded long term care programs;
- (e) Assist consumers to develop their long term care support plans through a person centered planning process;
- (f) Authorize and, if requested, arrange for needed transition services for consumers living in nursing facilities;
- (g) Work with consumers in acute and primary care settings as well as community settings to assure that they are presented with the full array of long term care options;
- (h) Re-evaluate consumers' need and eligibility for long term care services on a regular basis;
- (i) Perform the authorization of Medicaid services identified in the consumer's care supports plan.

7) The department shall, in consultation with consumers, stakeholders and members of the public, establish criteria for the designation of local or regional single points of entry for long term care. The criteria shall assure that single points of entry for long term care:

- (a) Are not a provider of direct Medicaid services. For purpose of this act, care management and supports coordination are not defined as a direct Medicaid service;
- (b) Are free from all legal and financial conflicts of interest with a providers of Medicaid services;
- (c) Are capable of serving as the focal point for all persons seeking information about long term care in their region, including those who will pay privately for services;
- (d) Are capable of performing consumer data collection, management, and reporting in compliance with state requirements;
- (e) Have quality assurance standards and procedures that measure consumer satisfaction, monitor consumer outcomes and trigger care and supports plan changes;

(f) Maintain internal and external appeals processes that provide for a review of individual decisions;

(g) Complete an initial evaluation of applicants for long term care within two business days after contact by the individual or his or her legal representative; and

(h) In partnership with the consumer, develop a preliminary person centered plan within seven days after the applicant is found eligible for services.

8) Designated single points of access for long term care that fail to meet the above criteria, and other fiscal and performance standards as determined by the department, may be subject to de-designation by the department.

9) The department shall promulgate rules establishing timelines of within two business days or less for the completion of initial evaluations of individuals in urgent or emergent situations and shall by rule establish timelines for the completion of a final evaluation and assessment for all individuals, provided such timeline is not longer than two weeks from time of first contact.

10) The department shall solicit proposals from entities seeking designation as a single point of entry and shall, no later than October 1, 2005, designate at least three agencies to serve as a single point of entry in at least three separate areas of the state. There shall be no more than one single point of entry in each designated region. The designated agencies shall serve in that capacity for an initial period of three years, subject to the provisions of Sec. 4(3).

11) The department shall evaluate the performance of the designated agencies on an annual basis and shall make its report and recommendations for improvement to the single point of entry system available to the legislature and the public.

12) No later than October 1, 2008, the department shall have a designated agency to serve as a single point of entry in each region of the state. Nothing in this section shall be construed to prohibit the department from designating single points of entry throughout the entire state prior to said date.

13) The department shall promulgate rules to implement this act within six months of enactment.

## **Sec. 7 Quality**

1) The authority shall have a continuing responsibility to monitor state agencies' performance in responding to, investigating, and ensuring appropriate outcomes to complaints and in performing its survey and enforcement functions. The Long Term Care Authority shall issue regulations and policy bulletins, as appropriate, and take other appropriate action to improve performance or address serious deficiencies in state

agencies' practices with regard to handling complaints and in performing survey and enforcement functions.

2) The authority shall establish a single toll free hotline to receive complaints from recipients of all Medicaid funded long term care services and settings. State employees responsible for this function shall:

- (a) Staff the complaint line 24 hours a day, 7 days per week;
- (b) Be trained and certified in information and referral skills;
- (c) Conduct a brief intake;
- (d) Provide information and referral services to callers including information about relevant advocacy organizations; and
- (e) Route the call to the appropriate state agency or advocacy organization to record and respond to the consumer's concern. Relevant state agencies shall ensure on-call staff is available after hours to respond to any calls that are of an emergency nature. The authority shall ensure that hotline staff are consistently informed how to contact on-call staff at all relevant state agencies to which long term care complaints may be referred.

3) The authority shall also ensure that consumers can file complaints about any Medicaid funded long term care setting or service using a simple, web-based complaint form.

4) The authority shall publicize the availability of the 24 hour hotline and web based complaint system through appropriate public education efforts.

5) The authority shall form a workgroup to determine if state agencies' complaint protocols ensure a timely and complete response and to monitor for appropriate outcomes. The workgroup shall also address whether state agencies are performing their survey and enforcement functions in the most effective manner and if their practices promote quality and person-centered planning.

- (a) The workgroup shall be comprised of a minimum of 50 percent consumers and/or consumer advocacy groups. The remainder of the workgroup shall include the State Long Term Care Ombudsman and/or his/her representative, long term care providers, a representative from the designated protection and advocacy system, and representatives from the departments that enforce the regulations in long term care facilities.

(b) The workgroup will be charged with examining the number of consumer complaints received, the timeliness of response to these complaints, the process used by state investigators for these complaints, and the resolutions of these concerns. The workgroup will utilize existing resources such as Auditor General reports on state agencies that regulate long term care facilities or services and any additional data it requires to perform its duties. Based on these findings, the workgroup will issue recommendations to the authority and to the director.

(c) The workgroup shall also be charged with a comprehensive review of state law and policy, including licensing laws and regulations, receivership provisions, and other mechanisms for regulating long term care services to determine whether these laws and policies should be deleted, amended, or modified to promote quality, efficiency, and person centered planning or to reflect changes in the long term care system. The workgroup shall issue recommendations to the authority and to the director.

6) The departments responsible for licensing of long term care settings shall, within twelve months of the date of enactment of this statute, promulgate rules to establish a process for identifying all licensed long term care settings which, absent intervention by the state, are likely to either close or in which care is likely to diminish or remain below acceptable standards. In promulgating these rules, the departments shall consider, but not be limited to, the facility's financial stability, administrative capability, physical plant, and regulatory history.

7) If a department has a reasonable suspicion that a licensed facility lacks administrative capability, financial stability, financial capability, or is not structurally sound, it shall have the right to request any and all relevant documentation including, but not limited to, independent audits of the facility, credit reports, physical plant inspections by appropriate professionals, and other relevant information. It may also investigate and consider factors such as whether the facility has filed for bankruptcy or whether foreclosure has been filed, consistently declining occupancy rates, chronic noncompliance, or other relevant information.

8) In the event a department identifies a facility to be nonviable, it shall take appropriate measures to protect the health and safety of the residents which may include the following:

(a) The prompt appointment of a temporary manager or receiver with authority to take all actions necessary for the purpose of stabilizing the facility and protecting the residents, including:

1. Making all improvements necessary to ensure residents receive services that

meet or exceed minimum regulatory standards; or

2. If necessary and appropriate, arranging for the safe and orderly transfer of residents out of the facility consistent with their person centered plan and choices.

(b) Redistributing beds within the community to other facilities or making funding available in other long term care settings, including home and community based care.

9)The State shall ensure that relevant state agencies have sufficient staff to meet all statutory or regulatory time frames for the completion of their responsibilities; effectively and expediently monitor services, supports, and facilities; respond to complaints; and enforce existing state laws and regulations regarding minimum standards for long term care services, supports, and facilities.

## **Sec. 8 Consumer advocate**

1) No later than six months after the enactment of this act, the governor shall designate an agency with the independence and capacity to serve as an advocate for long term care consumers, as set forth in this section. This designation shall continue indefinitely unless, for good cause shown, the agency is unwilling or incapable of performing its duties as set forth in this section.

2) The designated agency shall have the responsibility to identify, investigate and resolve complaints concerning services provided pursuant to this act; shall assist applicants for long term care who have been denied services and supports; and shall pursue legal, administrative and other remedies at the individual and systemic level to ensure the protection of and advocacy for the rights of long term care consumers.

3) The designated agency shall have access at reasonable times to any consumer in a location in which services and supports are provided.

4) The designated agency shall have access to the medical and mental health records of long term care consumers or applicants for long term care under any of the following conditions:

(a) With consent of the consumer or applicant or his or her legal representative;

(b) Without consent, if the consumer is unable to give consent and there is no legal representative or the state is the individual's representative and the designated agency has received a complaint or has probable cause to believe that abuse or neglect has occurred; or

(c) Without consent, if the consumer is unable to give consent and the legal representative has refused or failed to act on behalf of the individual and the designated agency has received a complaint or has probable cause to believe that abuse or neglect has occurred.

5) Records requested by the designated agency shall be made available for review and copying within three business days or, in the event of death or a request made pursuant to 4(b) or (c), within 24 hours.

6) The designated agency shall maintain an office in each of the service areas of the single points of entry.

7) The designated agency shall coordinate its activities with those of the state long term care ombudsman and the designated protection and advocacy system.

8) The designated agency shall prepare an annual report and provide information to the public and to policymakers regarding the problems of long term care consumers.

9) The legislature shall appropriate sufficient funds to enable the designated agency to perform its duties.

# MICHIGAN LONG TERM CARE CONSUMER CHOICE AND QUALITY IMPROVEMENT ACT

FEBRUARY 14, 2005

*Discussion: These definitions are set forth for use throughout the Act. The definition of long term care was especially challenging. Historically, long term care has meant the services of a residential provider, typically a nursing home. That definition or concept is not workable for purposes of this Act. What Workgroup G settled on will, we believe, encompass all forms of long term care, wherever it may be provided, while not overlapping with acute care and other forms of health care.*

*It was necessary to include definitions of “consumer” as well as “primary consumer” and “secondary consumer” to make clear the categories of individuals who could be appointed to the long term care commission. These definitions, as well as the definition of person-centered planning were borrowed, in large measure, from the Michigan Mental Health Code.*

*Finally, it should be noted that a definition of “department” is included and that definition refers to the Michigan Department of Community Health. Obviously, the ultimate decision as to where the authority will be housed, its relationship to MDCH and other issues may call for a modification of this definition.*

## **Sec. 2 Definitions**

1) Definitions: When used in this Act, the following words shall have the following meanings:

- (a) “Authority” means the entity created pursuant to section 4 of this act.
- (b) “Commission” means the long term care commission established pursuant to section 3 of this act.
- (c) “Consumer” means an individual seeking or receiving public assistance for long term care.
- (d) “Department” means the department of community health.
- (e) “Director” means the director of the department.
- (f) “Long term care” means those services and supports provided to an individual in a setting of his or her choice which are evaluative, preventive, habilitative, rehabilitative or health related in nature.
- (g) “Medicaid” means the program for medical assistance established under title XIX of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396f, 1396g-1

to 1396r-6, and 1396r-8 to 1396v, and administered by the department under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b.

(h) "Person centered planning" means a process for planning and supporting the individual receiving services that builds upon the individual's capacity to engage in activities that promote community life and that honors the individual's preferences, choices, and abilities. The person-centered planning process involves families, friends, and professionals as the individual desires or requires.

(i) "Primary consumer" means the actual user of long term care services.

(j) "Secondary consumer" means family members or unpaid caregivers of consumers.

(k) "Single point of entry" means those entities created pursuant to section 6 of this act.

(l) "Transition services" means those services provided to assist an individual in moving from one setting to another setting of his or her choice and may include, but is not limited to, the payment of security deposits, moving expenses, purchase of essential furnishings and purchase of durable medical equipment.

# MICHIGAN LONG TERM CARE CONSUMER CHOICE AND QUALITY IMPROVEMENT ACT

FEBRUARY 14, 2005

*Discussion: Because Task Force and Workgroup members have spent considerable time and energy creating a vision for a dynamic, coordinated, consumer focused, efficient long term care system, members of Workgroup G believed it was important to memorialize in statute the defining elements of that shared vision. The Workgroup relied, in part, on the Visions and Values document prepared by MDCH for the Task Force. It is the hope of the Workgroup that, once enacted, this vision will guide and inform policymakers as they continue to develop and revise the state's long term care system.*

## Sec. 3 Findings and purpose

1) The legislature finds that long term care services and supports are critically important for Michigan citizens, their families, caregivers and communities, that the need for long term care services and supports is expected to increase substantially as the number of older people and people with disabilities increases, that consumers will be best served by the creation and continuing refinement of a carefully coordinated long term care system that promotes healthy aging, consumer education and choice, innovation, quality, dignity, autonomy, the efficient and effective allocation of resources in response to consumer needs and preferences, and the opportunity for all long term care consumers, regardless of their age or source of payment, to develop and maintain their fullest human potential.

2) Consistent with section 51 of article IV of the state constitution of 1963, which declares that the health of the people of the state is a matter of primary public concern, and as required by section 8 of article VII of the state constitution of 1963, which declares that services for the care, treatment, education or rehabilitation of persons with disabilities shall always be fostered and supported, the department is charged with the primary responsibility for ensuring the development and availability of a system of long term care as described in this act.

3) The purpose of this Act is to ensure all of the following:

(a) That consumers have access to a well-coordinated, comprehensive, adequately funded and dynamic array of long term services and supports including but not limited to assessment, care planning, in-home services and supports, a range of assisted living options, care management services, respite care services, nursing facility care, hospice care, primary care, chronic care management, supports coordination, and acute care. This array of services and supports must be designed through a person centered planning process to meet existing consumer needs and preferences, be flexible and responsive to changing consumer needs and preferences, and encourage innovation and quality;

(b) That consumers are provided with sufficient education and support to make informed choices about their long term care service and supports options;

- (c) That the system is consumer focused, embraces person centered planning, and fosters the creation of innovative long term care options;
- (d) That services and supports are provided in the most independent living setting consistent with the consumer's needs and preferences;
- (e) That access to long term care services and supports is determined by a uniform system for comprehensively assessing abilities and needs;
- (f) That public resources purchase, permit and promote high quality settings, services and supports through:
  - (1) adequate and consistent monitoring of publicly funded settings, services and supports;
  - (2) consistent and appropriate enforcement of statutory and regulatory standards;
  - (3) monitoring of outcomes of long term care for quality and adherence to the consumers' expressed preferences; and
  - (4) swift and effective remedies if services, supports, or settings fail to meet quality standards or to promote long term care consumers' dignity, autonomy, and choice.
- (g) The goal of the system shall be continuous quality improvement focused on consumer satisfaction and the consistent achievement of clear standards concerning the health, safety, autonomy and dignity of long term care consumers. Oversight of providers shall include mechanisms to solicit, document, and evaluate consumer satisfaction, needs, preferences, and suggestions including, but not limited to, interviews by regulators with long term care service and support recipients; advocates; direct care workers; case managers; family members; and others when appropriate. These mechanisms shall assist regulators and policy makers in evaluating quality and consumer satisfaction and in determining necessary adaptations and improvements in the dynamic long term care system.
- (h) That long term care services are coordinated in a way that minimizes administrative cost, eliminates unnecessarily complex organization, minimizes program and service duplication, and maximizes the use of financial resources in meeting the needs and preferences of long term care consumers.
- (i) That the state collects, analyzes, and distributes to the public on an ongoing basis complete data regarding current utilization of long term care services and supports, unmet needs, consumer preferences, demographic data, workforce capacity, and other information that will assist the state in the continuing coordination and refinement of its long term care system. In addition, ensure the

state publishes periodic reports that assess the adequacy and efficacy of the reimbursement and enforcement systems and identify areas requiring improvement, unmet needs, successful innovations, and best practices.

(j) That state and the long term care industry build and sustain an adequate, well-trained, highly motivated and appropriately compensated workforce across the long term care continuum.

(k) That all stakeholders including consumers and their families and advocates, providers, representatives of the long term care workforce, public officials and others have a continuing opportunity for meaningful input in the development and refinement of the long term care system.

# MICHIGAN LONG TERM CARE CONSUMER CHOICE AND QUALITY IMPROVEMENT ACT

FEBRUARY 14, 2005

*Discussion: The idea for a long term care commission had its genesis in the reports and recommendations from Workgroups A and E. Workgroup G concurred in these recommendations and drafted the following statutory language to create a commission that would be reflective of a wide variety of viewpoints but would ultimately be most responsive to consumer needs. It is the intent of Workgroup G that policy and financing decisions to be made by policymakers will be subject to review by an informed and dynamic body.*

## **Sec. 4 Long term care commission**

- 1) A commission on long term care is hereby established, to be appointed by the governor.
- 2) The commission shall consist of twenty-five members appointed by the governor. Commission membership shall consist of fourteen consumers, of which at least fifty percent are primary consumers and of those primary consumers at least fifty percent shall be users of Medicaid services, the remainder comprised of secondary consumers and consumer organization representatives, seven providers or provider organization representatives, three direct care workers and one member with expertise in long term care research from a university. Overall commission membership shall also reflect the geographic and cultural diversity of the state.
- 3) One representative each from the single point entry network, the State Long Term Care Ombudsman, the designated protection and advocacy system, the Department of Community Health, the Department of Human Services and the Department of Labor and Economic Growth, all of whom shall serve in non-voting supporting roles as ex-officio members. Staff from the Medical Services Administration, the Office of Services to the Aging shall serve as resources to the commission and shall assist the commission as needed.
- 4) Voting member terms shall be three years, staggered to ensure continuity and renewable under the appointment process. If a vacancy occurs during the term of a voting member, the governor shall appoint a replacement to serve out the remainder of the term and shall maintain the same composition for the commission as set forth in sec. 4(2).
- 5) Commissioners are entitled to receive per diem compensation and reimbursement for actual and necessary expenses while acting as an official representative of the commission as defined by commission policies and procedures. Commission policies and reimbursement shall establish and practice full accommodation to individual support needs of commission members, including their direct care and support workers or personal assistants, support facilitation or other persons serving them as secondary consumers.
- 6) The governor shall designate one person from among the consumer membership to

serve as chairperson of the commission, who shall serve at the pleasure of the governor.

7) The commission shall do all of the following:

- (a) Serve as an effective and visible advocate for all consumers of long term care supports and services.
- (b) Participate in the preparation and review, prior to the submission to the governor, of an ongoing, comprehensive statewide plan and budget for long term care services and supports design, allocations and strategies to address and meet identified consumer preferences and needs.
- (c) Ensure the broadest possible ongoing public participation in statewide planning as part of subsection (1)(b).
- (d) Ensure broad, culturally competent and effective public education initiatives are ongoing on long term care issues, choices and opportunities for direct involvement by the public.
- (e) Advise the governor and legislature regarding changes in federal and state programs, statutes and policies.
- (f) Establish additional advisory committees, councils or workgroups as deemed helpful or necessary in pursuit of the commission's mission.
- (g) Meet at least six times per year.
- (h) A quorum of the commission shall consist of at least 50% of the voting membership, provided at least eight consumer members are present or participating. Participation may be by telephone or other means, in accordance with other statutory provisions and as determined by the commission.

## MICHIGAN LONG TERM CARE CONSUMER CHOICE AND QUALITY IMPROVEMENT ACT

FEBRUARY 14, 2005

*Discussion: Consistent with the recommendations of other Workgroups, as well as those of outside experts, Workgroup G concluded that it was imperative to centralize decision making for long term care. This centralized authority, as we have named it, would be responsible for a wide variety of tasks including the development of a comprehensive statewide plan and budget for long term care, public education, making recommendations concerning the designation and de-designation of single points of entry, review and approval of any proposed Medicaid policy that would affect long term care and the establishment of a rights and appeals system.*

*While the Workgroup was unanimous in its belief that such an authority is necessary, there was not consensus on how such an authority would ultimately fit with the existing state agencies. We did agree that the governor should issue an Executive Order as soon as possible to bring the essential functions outlined below together, so that there is a locus of responsibility. This would be similar to the creation of the State Office of Administrative Hearings and Rules, as was accomplished by Executive Order 2005-1. Beyond that, however, legislation is required to give the authority permanence. The several ways in which such an authority could be structured, as identified by the Workgroup members are:*

- 1. As an autonomous Type I agency within an existing department, either the Department of Community Health or the Department of Human Services;*
- 2. As an autonomous Type I agency within an existing department that has no direct responsibility for long term care, e.g., the Department of Management and Budget;*
- 3. As a newly created department of state government; or*
- 4. As an administration level section of a department, similar to the Administration on Mental Health and Substance Abuse Services within the Department of Community Health.*

*There was also a lack of consensus on one issue related to the authority's responsibilities, that being whether the authority should be responsible for licensing, certification, regulation and complaint investigation. On the one hand, some felt that it will be essential to give the authority charge over these activities and only then can necessary culture change be achieved. Those who hold this position feel that there is a lack of consumer oversight of these processes and that state officials responsible for licensing and regulation need to be accountable to an authority which is moving long term care towards a more consumer oriented model. On the other hand, other members of Workgroup G felt that the sheer number of state officials that would become employees of the authority would make it an unwieldy and cumbersome bureaucracy.*

*The language that was proposed on that point reads as follows:*

- (h) Retain authority over all licensing and state certification, inspection and formal complaint investigations of organizational and facility based provider services.*
- (i) Retain state certification and regulatory authorities over direct care workers accept those individuals as licensed under the Public Health Code.*

## **Sec. 5 Long term care authority**

**(1) (Insert here language directing how the authority will be created, where it will be located, etc.).**

**(2) The long term care authority shall do all of the following:**

- (a) Serve as an effective, visible and accessible advocate for all consumers of long term care supports and services.
- (b) Prepare and implement an ongoing, comprehensive statewide plan for the governor for long term care services and supports design, administration and oversight to ensure delivery of an organized system which meets identified consumer preferences and needs.
- (c) Develop and implement an ongoing budget which ensures state financial resources follow consumer preferences under the comprehensive state plan for review by the commission prior to submission to the governor.
- (d) Ensure the broadest possible ongoing public participation in statewide planning as part of subsection (2)(b).
- (e) Recommend to the department director designations and de-designations of the state's single points of entry (SPE) network agencies under established guidelines; recommend contract awards; establish performance and review standards for SPEs; receive standardized annual and other reporting from SPE agencies.
- (f) Ensure broad, culturally competent and effective public education initiatives are ongoing on long term care issues and choices.
- (g) Advise the governor, the legislature and directors of relevant agencies and department heads regarding changes in federal and state programs, statutes and policies.

**NOTE: The two paragraphs that appear above for which there was no consensus would be inserted here.**

- (j) As part of its ongoing planning, identify and address long term care workforce capacity, training and regulatory issues in both the public and private sectors.
- (k) Retain state approval over proposed changes in Medicaid policy and services related to long term care before publication and comment; continually reform eligibility policy to improve timeliness and access.
- (l) Develop and maintain a comprehensive state database and information collection system on long term care service and supports capacities and utilization that is publicly accessible, while protecting individual consumer privacy, for the purposes of individual

and state-aggregated planning, forecasting and research.

- (m) Ensure all necessary and vital linkages between acute, primary and chronic care management supports and services are maintained and continually strengthened to compliment, leverage and enhance services, supports and choices in the long term care system.
- (n) Develop and implement policies and procedures that will facilitate efficient and timely transition services for individuals moving from a nursing facility to home or apartment in the community. Services may include, but are not limited to payment of security deposits, moving expenses purchase of essential furnishings and durable medical equipment.
- (o) Identify and implement progressive management models, culture change and indicated administrative restructuring to maximize efficiency, optimize program design and services delivery; provide technical assistance in these areas to providers and interested members of the public.
- (p) Establish a comprehensive, uniform and enforceable consumer rights and appeals system.

**MICHIGAN LONG TERM CARE CONSUMER CHOICE  
AND QUALITY IMPROVEMENT ACT**

**FEBRUARY 14, 2005**

*Discussion: One of the key elements of effective long term care reform will be the establishment of single points of entry. The language that Workgroup G has drafted and now presents to the Task Force is consistent with the principles that were developed by Workgroup A and has been shared with that workgroup. While it is presented as part of a comprehensive act, Workgroup G members urge the Task Force, as part of its final report, to recommend that lawmakers enact, as quickly as possible, the proposed single point of entry statute and not wait for passage of the entire act.*

**Sec. 6 Single points of entry**

1) It is the intent of the legislature that locally or regionally based single points of entry for long term care serve as visible and effective access points for persons seeking long term care and promote consumer education and choice of long term care options.

2) The director shall designate and maintain locally and regionally based single points of entry for long term care that will serve as visible and effective access points for persons seeking long term care and promote consumer choice.

3) The department shall monitor designated single points of entry for long term care to:

(a) prevent bias in eligibility determination and the promotion of specific services to the detriment of consumer choice and control;

(b) Review all consumer assessments and care plans to ensure consistency, quality and adherence to the principles of person-centered planning and other criteria established by the department;

(c) Assure the provision of quality assistance and supports;

(d) Assure consumer access to an independent consumer advocate.

4) The department shall establish and publicize a toll-free telephone number for those areas of the state in which a single point of entry is operational as a means of access to the single point of entry for consumers and others.

5) The department shall promulgate rules establishing standards of reasonable promptness for the delivery of single point of entry services and for long term care services and supports.

6) The department shall require that designated single points of entry for long term care perform the following duties and responsibilities:

- (a) Provide consumers and any others with information on and referral to any and all long term care options, services, and supports;
- (b) Facilitate movement between supports, services, and settings in an adequate and timely manner that assures the safety and well-being of the consumer;
- (c) Assess a consumer's eligibility for all Medicaid long term care programs utilizing a comprehensive level of care tool;
- (d) Assist consumers to obtain a financial determination of eligibility for publicly funded long term care programs;
- (e) Assist consumers to develop their long term care support plans through a person centered planning process;
- (f) Authorize and, if requested, arrange for needed transition services for consumers living in nursing facilities;
- (g) Work with consumers in acute and primary care settings as well as community settings to assure that they are presented with the full array of long term care options;
- (h) Re-evaluate consumers' need and eligibility for long term care services on a regular basis;
- (i) Perform the authorization of Medicaid services identified in the consumer's care supports plan.

7) The department shall, in consultation with consumers, stakeholders and members of the public, establish criteria for the designation of local or regional single points of entry for long term care. The criteria shall assure that single points of entry for long term care:

- (a) Are not a provider of direct Medicaid services. For purpose of this act, care management and supports coordination are not defined as a direct Medicaid service;
- (b) Are free from all legal and financial conflicts of interest with a providers of Medicaid services;
- (c) Are capable of serving as the focal point for all persons seeking information about long term care in their region, including those who will pay privately for services;

- (d) Are capable of performing consumer data collection, management, and reporting in compliance with state requirements;
  - (e) Have quality assurance standards and procedures that measure consumer satisfaction, monitor consumer outcomes and trigger care and supports plan changes;
  - (f) Maintain internal and external appeals processes that provide for a review of individual decisions;
  - (g) Complete an initial evaluation of applicants for long term care within two business days after contact by the individual or his or her legal representative; and
  - (h) In partnership with the consumer, develop a preliminary person centered plan within seven days after the applicant is found eligible for services.
- 8) Designated single points of access for long term care that fail to meet the above criteria, and other fiscal and performance standards as determined by the department, may be subject to de-designation by the department.
- 9) The department shall promulgate rules establishing timelines of within two business days or less for the completion of initial evaluations of individuals in urgent or emergent situations and shall by rule establish timelines for the completion of a final evaluation and assessment for all individuals, provided such timeline is not longer than two weeks from time of first contact.
- 10) The department shall solicit proposals from entities seeking designation as a single point of entry and shall, no later than October 1, 2005, designate at least three agencies to serve as a single point of entry in at least three separate areas of the state. There shall be no more than one single point of entry in each designated region. The designated agencies shall serve in that capacity for an initial period of three years, subject to the provisions of Sec. 4(3).
- 11) The department shall evaluate the performance of the designated agencies on an annual basis and shall make its report and recommendations for improvement to the single point of entry system available to the legislature and the public.
- 12) No later than October 1, 2008, the department shall have a designated agency to serve as a single point of entry in each region of the state. Nothing in this section shall be construed to prohibit the department from designating single points of entry throughout the entire state prior to said date.

13) The department shall promulgate rules to implement this act within six months of enactment.

**MICHIGAN LONG TERM CARE CONSUMER CHOICE  
AND QUALITY IMPROVEMENT ACT**

**FEBRUARY 14, 2005**

***Discussion: This section was drafted to set standards for quality in all long term care settings, to establish processes for ensuring that services and supports are delivered in a manner that is consistent with quality, safety and the choices of the consumer, as expressed through his or her person-centered plan. It calls for the promulgation of rules that will allow the state to intervene with facilities that may not be viable over the long run, so as to prevent disruption in the lives of the residents of those facilities and to avoid placing any resident of any facility at risk of harm.***

**Sec. 7 Quality**

1) The authority shall have a continuing responsibility to monitor state agencies' performance in responding to, investigating, and ensuring appropriate outcomes to complaints and in performing its survey and enforcement functions. The Long Term Care Authority shall issue regulations and policy bulletins, as appropriate, and take other appropriate action to improve performance or address serious deficiencies in state agencies' practices with regard to handling complaints and in performing survey and enforcement functions.

2) The authority shall establish a single toll free hotline to receive complaints from recipients of all Medicaid funded long term care services and settings. State employees responsible for this function shall:

(a) Staff the complaint line 24 hours a day, 7 days per week;

(b) Be trained and certified in information and referral skills;

(c) Conduct a brief intake;

(d) Provide information and referral services to callers including information about relevant advocacy organizations; and

(e) Route the call to the appropriate state agency or advocacy organization to record and respond to the consumer's concern. Relevant state agencies shall ensure on-call staff is available after hours to respond to any calls that are of an emergency nature. The authority shall ensure that hotline staff are consistently informed how to contact on-call staff at all relevant state agencies to which long term care complaints may be referred.

3) The authority shall also ensure that consumers can file complaints about any Medicaid funded long term care setting or service using a simple, web-based complaint form.

4) The authority shall publicize the availability of the 24 hour hotline and web based complaint system through appropriate public education efforts.

5) The authority shall form a workgroup to determine if state agencies' complaint protocols ensure a timely and complete response and to monitor for appropriate outcomes. The workgroup shall also address whether state agencies are performing their survey and enforcement functions in the most effective manner and if their practices promote quality and person-centered planning.

(a) The workgroup shall be comprised of a minimum of 50 percent consumers and/or consumer advocacy groups. The remainder of the workgroup shall include the State Long Term Care Ombudsman and/or his/her representative, long term care providers, a representative from the designated protection and advocacy system, and representatives from the departments that enforce the regulations in long term care facilities.

(b) The workgroup will be charged with examining the number of consumer complaints received, the timeliness of response to these complaints, the process used by state investigators for these complaints, and the resolutions of these concerns. The workgroup will utilize existing resources such as Auditor General reports on state agencies that regulate long term care facilities or services and any additional data it requires to perform its duties. Based on these findings, the workgroup will issue recommendations to the authority and to the director.

(c) The workgroup shall also be charged with a comprehensive review of state law and policy, including licensing laws and regulations, receivership provisions, and other mechanisms for regulating long term care services to determine whether these laws and policies should be deleted, amended, or modified to promote quality, efficiency, and person centered planning or to reflect changes in the long term care system. The workgroup shall issue recommendations to the authority and to the director.

6) The departments responsible for licensing of long term care settings shall, within twelve months of the date of enactment of this statute, promulgate rules to establish a process for identifying all licensed long term care settings which, absent intervention by the state, are likely to either close or in which care is likely to diminish or remain below acceptable standards. In promulgating these rules, the departments shall consider, but not be limited to, the facility's financial stability, administrative capability, physical plant, and regulatory history.

7) If a department has a reasonable suspicion that a licensed facility lacks administrative capability, financial stability, financial capability, or is not structurally sound, it shall have the right to request any and all relevant documentation including, but not limited to, independent audits of the facility, credit reports, physical plant inspections by appropriate professionals, and other relevant information. It may also investigate and consider factors such as whether the facility has filed for bankruptcy or whether

foreclosure has been filed, consistently declining occupancy rates, chronic noncompliance, or other relevant information.

8) In the event a department identifies a facility to be nonviable, it shall take appropriate measures to protect the health and safety of the residents which may include the following:

(a) The prompt appointment of a temporary manager or receiver with authority to take all actions necessary for the purpose of stabilizing the facility and protecting the residents, including:

1. Making all improvements necessary to ensure residents receive services that meet or exceed minimum regulatory standards; or
2. If necessary and appropriate, arranging for the safe and orderly transfer of residents out of the facility consistent with their person centered plan and choices.

(b) Redistributing beds within the community to other facilities or making funding available in other long term care settings, including home and community based care.

9) The State shall ensure that relevant state agencies have sufficient staff to meet all statutory or regulatory time frames for the completion of their responsibilities; effectively and expediently monitor services, supports, and facilities; respond to complaints; and enforce existing state laws and regulations regarding minimum standards for long term care services, supports, and facilities.

**MICHIGAN LONG TERM CARE CONSUMER CHOICE  
AND QUALITY IMPROVEMENT ACT**

**FEBRUARY 14, 2005**

*Discussion: As more long term consumers are served in the community and as new and different types of settings for the delivery of services and supports develop, so it is necessary for advocacy services to evolve. The following proposal creates a designated consumer advocacy agency. The language draws upon the strength of two existing advocacy organizations- the State Long Term Care Ombudsman and Michigan Protection and Advocacy Services, Inc., but does not assume that either would be the designated agency to serve as consumer advocate. The enabling legislation for those two agencies is found at 42 USC §3058g and 42 USC §15043, respectively.*

**Sec. 8 Consumer advocate**

1) No later than six months after the enactment of this act, the governor shall designate an agency with the independence and capacity to serve as an advocate for long term care consumers, as set forth in this section. This designation shall continue indefinitely unless, for good cause shown, the agency is unwilling or incapable of performing its duties as set forth in this section.

2) The designated agency shall have the responsibility to identify, investigate and resolve complaints concerning services provided pursuant to this act; shall assist applicants for long term care who have been denied services and supports; and shall pursue legal, administrative and other remedies at the individual and systemic level to ensure the protection of and advocacy for the rights of long term care consumers.

3) The designated agency shall have access at reasonable times to any consumer in a location in which services and supports are provided.

4) The designated agency shall have access to the medical and mental health records of long term care consumers or applicants for long term care under any of the following conditions:

(a) With consent of the consumer or applicant or his or her legal representative;

(b) Without consent, if the consumer is unable to give consent and there is no legal representative or the state is the individual's representative and the designated agency has received a complaint or has probable cause to believe that abuse or neglect has occurred;  
or

(c) Without consent, if the consumer is unable to give consent and the legal representative has refused or failed to act on behalf of the individual and the designated agency has received a complaint or has probable cause to believe that abuse or neglect has occurred.

5) Records requested by the designated agency shall be made available for review and copying within three business days or, in the event of death or a request made pursuant to 4(b) or (c), within 24 hours.

6) The designated agency shall maintain an office in each of the service areas of the single points of entry.

7) The designated agency shall coordinate its activities with those of the state long term care ombudsman and the designated protection and advocacy system.

8) The designated agency shall prepare an annual report and provide information to the public and to policymakers regarding the problems of long term care consumers.

9) The legislature shall appropriate sufficient funds to enable the designated agency to perform its duties.

## **Workgroup G Recommendations On Assisted Living**

**January 2005**

This is in response to Workgroup C's recommendations to: 1) define "assisted living" and 2) include licensed adult foster care homes and homes for the aged as part of the eligible settings to receive MI-Choice waiver benefits. With regard to the recommendation relating to the MI-Choice waiver, Workgroup G formulated a plan on how to implement this recommendation. With regard to the recommendation to define "assisted living," Workgroup G studied many aspects of assisted living in Michigan. Workgroup G then determined that further analyses need to be completed prior to formulating a legal definition of assisted living.

Therefore, in support of Workgroup C's recommendations, Workgroup G recommends that the Governor's Medicaid Long-Term Care Task Force incorporate the following recommendations in its final report to the Governor:

1. Immediately amend the MI-Choice Waiver application for the purpose of expanding waiver benefits to licensed assisted living settings including adult foster care homes and homes for the aged. In addition to this short-term strategy, other measures should be taken to ensure that all future comparable Medicaid programs allow Medicaid supports and services (money) to follow consumers to living arrangements of their choice including licensed and unlicensed assisted living settings.
2. Upon completion of the Governor's Medicaid Long-Term Care Task Force report, create an Assisted Living Regulatory and Education Committee to be comprised of public and private stakeholders. The Committee should be charged with the following tasks:
  - A. Study and propose modifications to existing adult foster care and home for the aged state statutes and administrative rules for the purpose of ensuring that they meet with the Task Force's stated philosophies and principles of quality and accountability; person-centered planning; money following the person and the availability of Medicaid reimbursement in assisted living (such as the MI-Choice waiver or comparable community-based benefits).
  - B. Study the array of unlicensed assisted living arrangements, determine whether existing licensing statutes are appropriately enforced and determine whether the scope of state regulation of assisted living should be modified in any way to uphold the philosophies and principles stated above.
  - C. In cooperation with other Task Force initiatives, create consumer education materials to be used by the Single Point of Entry and others that help consumers

make informed choices about the full array of assisted living services using clear distinctions regarding the applicable state regulations.

D. Specifically include mental health consumers and advocates in these assisted living discussions as these groups are engaging in comparable public policy discussions.

E. Determine the feasibility and appropriateness of developing a legal definition of “assisted living” and/or other related terms.

3. Acknowledge that some public confusion exists as to the meaning of the term “assisted living” and its use in a variety of licensed and unlicensed settings. Because Workgroup G concluded that the development of a more formal legal definition of “assisted living” is best delayed until the preceding steps have been taken, Workgroup G recommends that the following interim description of the term “assisted living” should be universally understood in the Medicaid Long-Term Care Task Force report:

**The term “assisted living,” as currently used in Michigan, is a marketing term often used by supported living arrangements such as state licensed adult foster care homes (MCL 400.703 through 400.707), state licensed homes for the aged (MCL 333.20106(3)), unlicensed settings such as housing with services contract establishments (MCL 333.26501(b)) and other supported independent living arrangements.**

## Workgroup G-Report on Medicaid Eligibility

February 2005

Medicaid eligibility is a topic of enormous complexity and scope and is, for the most part, beyond the purview of the Legislative and Regulatory Workgroup. Nevertheless the members of Workgroup G felt it was incumbent upon them to identify practices and policies which operate to create a bias in favor of institutional care, exclude individuals who might properly be served by Medicaid, or have an adverse effect on recipients' quality of life and continuity of care. In so doing, several issues were identified. The first is the state's failure to take advantage of a provision of federal law which allows short term nursing home residents to maintain a residence in the community. The second is the lack of a spend down provision for Medicaid home and community based services. The third is the reported failure of the state to timely process Medicaid applications, particularly in the metropolitan Detroit area. Finally, several changes were recommended that would minimize nursing home residents' risk of involuntary discharge and the transfer trauma that residents so often experience when they are forced to move.

### **1. Permit short term nursing home residents to use patient pay amounts to maintain homes in the community.**

With respect to the first issue, regulations require that most Medicaid funded nursing home residents contribute the majority of their monthly income to their cost of care. This is known as the "patient pay amount." In general, residents are permitted to keep only \$60 per month which is referred to as the "personal needs allowance." This amount is not sufficient to make mortgage, rent or utility payments or to otherwise maintain a home. Although many individuals enter a nursing home intending to stay only a short period of time before returning home, once they become eligible for Medicaid, they lose their financial ability to maintain their home. As a result, they are unable to return to the community.

Federal regulations allow a partial resolution to this dilemma which Workgroup G endorses. Pursuant to 42 CFR §435.832(d), states may permit nursing home residents to use their income above the personal needs allowance to maintain a home in the community instead of contributing that income to the cost of their care. Under federal law, the home maintenance allowance cannot continue for longer than six months and is only permitted if a physician certifies that the nursing home resident is likely to return home within that six month period. The regulation states:

**(d)Optional deduction: Allowance for home maintenance. For single individuals and couples, an amount (in addition to the personal needs allowance) for maintenance of the individual's or couple's home if---**

**(1) The amount is deducted for not more than a 6-month period; and**

**(2) A physician has certified that either of the individuals is likely to return**

**to the home within that period.**

By adopting this provision, the State will promote the return of individuals to their homes and, presumably, achieve long term cost savings.

**2. Create a spend down for the MiChoice program.**

The second issue concerns spend down requirements for the MiChoice program. To be financially eligible for Medicaid, an applicant must have income which does not exceed certain levels. Income eligibility for the MiChoice program is set at 300% of Supplement Security Income payment or \$1737. Typically, an applicant for Medicaid is allowed to “spend down” his or her income to the allowable limit. This is done by deducting medical expenses from income. When there are enough deductions to bring the person’s income level below the income limit, the person becomes eligible for Medicaid.

In the MiChoice program, however, unlike in nursing homes, applicants are not permitted to spend down at all. Thus, an applicant for the MiChoice program who has an income of \$1738, one dollar over the eligibility limit, would simply be ineligible for the MiChoice program regardless of the extent of his or her medical expenses. The state could remedy this unfortunate circumstance by submitting a supplemental waiver application to the federal government that would allow the state to permit spend down to the 300% of SSI level. In so doing, the state will enable individuals who would otherwise have to enter an institution to stay at home with MiChoice services. This recommendation is consistent with a recommendation made in a February, 2001 Lewin Group report to the federal government about the MiChoice program.

**3. Require prompt processing of Medicaid applications.**

Workgroup G also took note of anecdotal reports that Medicaid applications are delayed in some areas of the state well beyond the standard of promptness required by federal law. This places an unnecessary burden on providers, recipients and caregivers. If there is no certainty that an applicant will be found to be eligible for Medicaid, then the provider is at risk if it provides services and the consumer and his or her family incur potential financial liability and a possible disruption in services. For these reasons, it is imperative that the State bring all areas of the state into compliance with required standards for processing of applications.

**4. Reinstate bedholds for residents after hospitalization of therapeutic leave.**

Workgroup G noted that several Medicaid policies and the Public Health Code permit involuntary discharges or intrafacility transfers from nursing homes that are disruptive to the lives of residents. MCL 333.21777 was changed recently to require the State to pay nursing facilities to hold beds for nursing home residents who are temporarily hospitalized or absent for therapeutic leave only if the facility is at 98% or higher occupancy on the day the resident leaves the facility. Previously, the State paid for and facilities were obligated to hold the bed during certain hospitalizations or therapeutic leaves regardless of the occupancy rate at the facility. Since Michigan facilities rarely meet the 98% occupancy level and since Medicaid eligible residents do not have the resources to pay privately to hold their beds, residents who return to the

facility are often placed in different beds where they must adjust to unfamiliar roommates, caregivers, and routines. In some cases, there may be no appropriate bed to which the resident can return and he or she is faced with the even greater trauma of having to move to an completely different facility upon discharge from the hospital or return from therapeutic leave. The Workgroup believes the state should require facilities to hold a Medicaid resident's bed for 10 days during hospitalizations or for up to 18 days/year of therapeutic leave regardless of the occupancy level in the facility as was the case prior to the recent Public Health Code amendment. The workgroup also recommends payment to facilities be reinstated for bedholds regardless of occupancy levels.

#### **5. Permit use of patient pay amount for past medical bills including past nursing facility bills.**

Residents also face lack of medical care and possible dislocation from nursing homes because of Medicaid policies concerning uncovered medical bills. Although residents are permitted to divert patient pay amounts to cover otherwise uncovered medical expenses, this procedure is not widely understood or used. *See* Section 1902(r)(1) of the Social Security Act and 42 CFR 435.725 directing that amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party must be deducted from patient income in the post-eligibility process. Thus, some residents fail to obtain necessary medical care because they do not understand how they can pay for it. Moreover, since nonpayment is a permissible reason for discharge. *See* 42 C.F.R. § 483.12, residents who owe facilities for uncovered medical care may face involuntary discharge. Sometimes these uncovered nursing home bills were incurred during a poorly managed transition from Medicare or private pay status to Medicaid and resulted from errors or inaction by family members, nursing home staff, or FIA workers. In any case, federal law mandates that residents can divert patient pay amounts to cover these unpaid bills, *see* State Medicaid Manual Section 3703.8, which states that an income deduction is required for "[c]urrent payments or unpaid balance on old bills incurred outside the current prospective and 3-month retroactive periods not previously deducted in any budget period." Therefore, the State must create and enforce policies that permit residents to use patient pay amounts for uncovered medical expenses including unpaid nursing home bills incurred before the resident became Medicaid eligible. Doing so will bring state policy in line with federal law and reduce unnecessary involuntary discharges from nursing homes.

#### **6. Require full certification of all Medicaid nursing facilities.**

Michigan permits limited bed certification in nursing facilities. Thus, not all beds in all facilities with Medicaid provider agreements are considered Medicaid beds. In these Medicaid certified facilities, a private pay or Medicare funded resident may become eligible for Medicaid but, unlike residents in fully certified facilities, discover that no Medicaid bed is available. The resident is then forced to leave the facility to find a Medicaid bed in another nursing home. The state must follow the example of the majority of states and require all Medicaid certified nursing facilities to be fully certified, thus protecting Medicaid eligible residents from involuntary discharge.

The Workgroup is concerned about increasing the number of Medicaid nursing home beds and

thus possibly diverting Medicaid funds from home and community based services. However, this recommendation was made after balancing the harm from transfer trauma residents in facilities with limited bed certification may face against the possibility of increased Medicaid utilization of nursing home beds if the state requires full certification of all Medicaid certified facilities. Since Medicaid eligible residents who are discharged from nursing homes with limited bed certification when no Medicaid bed is available in the facility virtually always move to another Medicaid funded bed in a different facility, permitting them to remain in the original facility in a Medicaid bed would not increase Medicaid nursing home utilization but would significantly improve their quality of life.

#### **7. Require dual certification of all nursing facilities.**

Finally, the workgroup recommends the dual certification of all facilities, i.e., requiring that all Medicaid certified facilities become Medicare certified. It also supports the state considering waivers of this requirement for existing facilities that cannot meet Medicare certification requirements.