

SB 36-FN - AS INTRODUCED

2023 SESSION

23-0895

05/10

SENATE BILL **36-FN**

AN ACT relative to systems of care for healthy aging.

SPONSORS: Sen. Gannon, Dist 23; Sen. Watters, Dist 4; Sen. D'Allesandro, Dist 20; Sen. Avard, Dist 12; Sen. Bradley, Dist 3; Sen. Ricciardi, Dist 9; Sen. Carson, Dist 14; Sen. Rosenwald, Dist 13; Sen. Whitley, Dist 15; Sen. Ward, Dist 8; Sen. Pearl, Dist 17; Sen. Perkins Kwoka, Dist 21; Rep. Hobson, Rock. 14

COMMITTEE: Health and Human Services

ANALYSIS

This bill expands the state's systems of care for healthy aging, increases access to home and community based services, and expands the role of the office of the long-term care ombudsman.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to systems of care for healthy aging.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Statement of Findings. The general court hereby finds that:

2 I. The state of New Hampshire is ranked as having one of the fastest growing number of
3 older adults in the country.

4 II. As the number of older adults increases, the need for long-term care will increase.

5 III. Pursuant to the federal Older Americans Act, New Hampshire is required to promote
6 the development and implementation of comprehensive, coordinated, statewide systems of long-term
7 services and supports that is responsive to the needs and preferences of older individuals and their
8 family caregivers.

9 IV. The federal Americans with Disabilities Act prohibits unnecessary institutionalization of
10 individuals with disabilities.

11 V. RSA 151-E was established to provide Medicaid eligible elderly and chronically ill adults
12 with a continuum of long-term care options.

13 VI. Despite these federal and state mandates, historically there has been a lack of
14 investment in our state’s system and programs for older adults and adults with disabilities.

15 VII. The failure to invest in our home and community-based programs and systems has
16 resulted in a lack of a comprehensive, coordinated system of care. As a result, many older adults
17 and adults with disabilities have to receive their long-term care in an institution despite their
18 preference to remain healthy in their homes.

19 VIII. Rebalancing New Hampshire’s systems to expand more home and community-based
20 options will reduce the cost of providing services and allow our state to serve more people.

21 2 New Subdivision; Long-Term Care; System of Care for Healthy Aging. Amend RSA 151-E by
22 inserting after section 21 the following new subdivision:

System of Care For Healthy Aging

23 151-E:22 Purposes. The purposes of this subdivision are to:

24 I. Build upon existing infrastructure to establish comprehensive and coordinated systems of
25 care to ensure that older adults and adults with disabilities have access to and timely delivery of
26 supports and services and to ensure that they have a meaningful range of options.
27

28 II. Reduce the cost of providing long-term care by expanding the availability of less costly
29 home and community-based services.

30 III. Require the department of health and human services to expand and improve access to
31 home and community-based services for older adults and adults with disabilities in alignment with

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1 New Hampshire's state plan on aging, the federal Older Americans Act, Americans with Disabilities
2 Act, and Medicaid law.

3 151-E:23 Statement of Policy. It is the policy of New Hampshire to establish and implement
4 comprehensive and coordinated systems of care that promotes healthy aging and enables older
5 adults and adults with disabilities to have a meaningful choice in care options, including the ability
6 to receive the care they need in their homes and communities.

7 151-E:24 Definitions. In this subdivision:

8 I. "Disability" means a physical or mental impairment that substantially limits one or more
9 major life activities.

10 II. "Home and community-based services" means a range of medical and supportive services
11 provided to persons in their own homes or other community-based settings including, but not limited
12 to, adult day programs, and assisted living.

13 III. "Long-term services and supports" means a variety of services provided in both facilities
14 and community-based settings designed to meet a person's health or personal care needs to help
15 them live as independently and safely as possible when they can no longer perform everyday
16 activities on their own.

17 IV. "Older adult" means an individual who is 60 years of age or older.

18 V. "Systems of care" means:

19 (a) A comprehensive and coordinated delivery system for the provision of long-term
20 services and supports to New Hampshire's older adults and adults with disabilities.

21 (b) Systems of care is intended to provide services to all older adults and adults with
22 disabilities who require long-term services and supports.

23 (c) The system of care shall have the following characteristics:

24 (1) A comprehensive array of long-term services and supports including, but not
25 limited to, personal care, homemaker services, transportation, meal delivery or preparation,
26 emergency response systems, adult day care, and family caregiver support to enable older adults and
27 adults with disabilities to remain independent and in the setting of their choice.

28 (2) An absence of significant gaps in services and barriers to services.

29 (3) Sufficient administrative capacity to ensure quality service delivery.

30 (4) Services that are consumer-driven, community-based, and culturally and
31 linguistically competent.

32 (5) Transparent, with information made available and known to consumers,
33 providers, and payers.

34 (6) A funding system that supports a full range of service options.

35 (7) A performance measurement system for accountability, monitoring and reporting
36 of system quality, access and cost.

1 151-E:25 Duties of Commissioner of the Department of Health and Human Services. The
2 commissioner of the department of health and human services shall:

3 I. Modify the policies and practices of the department of health and human services
4 necessary to implement this section, including advocating for necessary changes to statutes,
5 administrative rules, appropriations, and department policy and practice.

6 II. Coordinate the plans and activities of the commissioner with the bureau of elderly and
7 adult services, the bureau of family assistance and division of long-term supports and services to
8 implement the systems of care and reduce duplication of efforts across divisions and bureaus within
9 the department.

10 III. On an annual basis, publicly release the revised rates for home and community-based
11 waiver services consistent with the rate setting requirements set forth in RSA 126-A:18-a.

12 IV. Ensure the department's state budget request for all home and community-based waiver
13 programs for adults are adjusted annually, at a minimum, to align with the current Centers for
14 Medicare and Medicaid Services' home health agency market basket index.

15 V. Treat any unspent funds allocated to the Choices for Independence Program as non-
16 lapsing.

17 VI. Increase capacity to provide long-term services and supports, including building the
18 capacity of the long-term services and supports workforce.

19 VII. Maximize federal funding for home and community-based services through Medicaid
20 waivers and state plan amendments.

21 VIII. Enhance the performance measures and waiver assurances included in the Choices for
22 Independence waiver to improve quality and oversight of vendors.

23 IX. Operationalize and adequately fund a robust presumptive eligibility process for home
24 and community-based waiver services, including a mechanism for third party participation.

25 X. Improve functionality of NH EASY system for individuals applying for services and
26 provide additional trainings for professionals who frequently assist people applying for services and
27 develop associated performance metrics.

28 XI. Ensure applications for Medicaid long-term services are user friendly and processed in a
29 timely manner and develop performance metrics to measure these attributes.

30 XII Maintain an online portal for providers, case managers, navigators and other long-term
31 care service providers to enable them to easily identify and access available long-term care services
32 and supports for older adults and adults with disabilities. The portal functions required by this
33 section may be assigned to an entity that has responsibilities in addition to those required by this
34 section. The portal shall contain the following information:

35 (a) A current list of home and community-based care waiver service providers accepting
36 new clients, including links to websites and contact telephone numbers, organized by region that is
37 updated on a weekly basis.

- 1 (b) Non-Medicaid resources to support the cost of home and community-based services.
- 2 (c) Referral information for legal service organizations.
- 3 (d) Guidance regarding family navigation of hospital discharge protocols and options.

4 XIII. Create a public facing online dashboard to track home and community-based waiver
5 services data, including, but not limited to, results of any performance measurement assessments,
6 waiver services authorized but not paid, current wait times for receiving waiver services and the
7 number of people from institutionalized care into the community.

8 151-E:26 Expansion of ServiceLink. The department shall:

9 I. Create a new navigator program in each ServiceLink office to provide support and
10 assistance to persons in short and long-term institutional settings to transition into community-
11 based settings, including but not limited to, assistance with completing Medicaid applications.

12 II. Increase staffing to enable expanded capacity to provide long-term care counseling
13 services for adults, including but not limited to, educating consumers about available community-
14 based resources for long-term services and supports, assistance with completing Medicaid
15 applications and conducting assessments for presumptive eligibility.

16 III. The department shall establish performance metrics for ServiceLink offices to assess
17 each office's ability to provide the services contained in this section.

18 IV. On a biennial basis, the department shall perform a financial review to determine
19 whether ServiceLink offices are receiving sufficient funding to maintain their operations and make
20 legislative budget requests if additional funding is warranted.

21 151-E:27 Office of Long-Term Care Ombudsman Positions Established.

22 I. The department of health and human services shall add 3 additional regional ombudsman
23 positions to the office of long-term care ombudsman responsible for receiving, identifying,
24 investigating, and resolving complaints or problems made by, or on behalf of individuals receiving
25 home and community-based services through the Choices for Independence Program.

26 II. The department of health and human services shall add a new full-time deputy long-term
27 care ombudsman to oversee and supervise the home and community-based investigations conducted
28 by the regional ombudsman.

29 III. The department shall add a new full-time staff person to the office of long-term care
30 ombudsman to assist with performing intake for individuals reporting complaints or problems or on
31 behalf of individuals applying for or receiving home and community-based services through the
32 Choices for Independence Program or Older Americans Act.

33 IV. The department shall direct to the office of long-term care ombudsman the resources
34 necessary to establish an online reporting system to track and monitor complaints and problems
35 experienced by individuals applying for or receiving home and community-based services through
36 the Choices for Independence Program or Older Americans Act.

1 V. The department shall create a new classified position known as the long-term systems of
2 care director within the office of long-term care ombudsman. The director of long-term systems of
3 care shall develop strategies to improve the well-being of older adults and adults with disabilities
4 and their families; promote coordination across state agencies; identify cost-savings, opportunities to
5 increase efficiency, improve options for service delivery and effectiveness; and assist with the
6 implementation of this section.

7 VI. In addition to the requirements contained in RSA 161-F:17, the long-term systems of
8 care director shall report annually to the commissioner of health and human services, the governor,
9 the state commission on aging and the health and human services oversight committee. The report
10 shall provide detailed information regarding the status of the implementation of this section.

11 3 Department Staffing. The commissioner of health and human services shall fill classified
12 positions necessary to implement the system of care for healthy aging established in section 2 of this
13 act, including additional staffing to perform rate setting, streamlining of application process,
14 creation and maintenance of public facing dashboard and online portal for providers, updating of
15 performance measures and other required activities.

16 4 Long-Term Care; Presumptive Eligibility. RSA 151-E:18 is repealed and reenacted to read as
17 follows:

18 151-E:18 Presumptive Eligibility.

19 I. The commissioner of the department shall address the disparity between the date services
20 are available for individuals seeking home and community-based services as an alternative to
21 nursing home care, by establishing a presumptive eligibility program for individuals who choose to
22 receive services in a less restrictive setting.

23 II. The presumptive eligibility program shall authorize medical assistance for up to 90 days
24 for individuals with pending applications following a presumptive eligibility process.

25 III. The expedited medical and financial assessment shall be completed within 14 business
26 days of the filing of a Medicaid application.

27 IV. Presumptive eligibility shall begin on the date the department determines that the
28 individual likely meets the eligibility standards and ends on the date eligibility is determined.

29 V. The commissioner of the department shall designate appropriate entities to act as
30 qualified providers to assist screening individuals for presumptive eligibility including but not
31 limited to, ServiceLink, hospital, rehabilitation, nursing facility and assisted living discharge
32 planners, and Choices for Independence Program case managers.

33 VI. The Medicaid applicant shall acknowledge in writing the uncertainty of continuing
34 services covered beyond the presumptive eligibility period.

35 VII. The commissioner of the department shall ensure that adequate funding is allocated to
36 support implementation of the presumptive eligibility program.

1 VIII. If necessary, the commissioner of the department shall seek approval of the
2 presumptive eligibility program from the Center for Medicare and Medicaid Services.

3 IX. The commissioner of the department shall adopt rules, pursuant to RSA 541-A relative
4 to the process to determine presumptive eligibility within 90 days after the passage of this section,
5 including the following:

6 (a) A process to determine presumptive eligibility.

7 (b) A definition of a qualified provider.

8 (c) Content and format of forms required under this section.

9 5 New Paragraph; Long-Term Care; Accurate Cost Estimates. Amend RSA 151-E:16 by
10 inserting after paragraph II the following new paragraph:

11 III. Medicaid waiver program rates shall be adjusted each biennium, based at a minimum,
12 upon the Centers for Medicare and Medicaid Services Market Basket index rate.

13 6 Personal Care Services; Definition of Personal Care Services Provider. Amend RSA 161-I:2,
14 XII(c) to read as follows:

15 (c) Is not:

16 (1) The eligible consumer's legally responsible relative, except as authorized
17 pursuant to RSA 161-I:3-a;

18 (2) The eligible consumer's legal guardian, *except as authorized pursuant to RSA*
19 *161-I:3-a*;

20 (3) The eligible consumer's representative; or

21 (4) A person granted power of attorney by the eligible consumer, *except as*
22 *authorized pursuant to RSA 161-I:3-a*.

23 7 Personal Care Services; Authorization of Legally Responsible Relative. Amend RSA 161-I:3-a
24 to read as follows:

25 161-I:3-a Authorization of Legally Responsible Relative, *Guardian, or Person Granted*
26 *Power of Attorney*. The department may authorize reimbursement to a legally responsible relative,
27 *a guardian, or a person granted power of attorney by the eligible consumer* who provides
28 personal care to an eligible consumer with special health care needs residing at home. Such
29 reimbursement shall occur only when the department determines that the needs of the eligible
30 consumer, the unavailability of appropriate providers or suitable alternative care services, and cost
31 efficiencies make utilization of a legally responsible relative, *guardian, or person granted power*
32 *of attorney by the eligible consumer* for the provision of such services necessary and appropriate.
33 Reimbursement shall be limited to care that is medically necessary due to specific health needs and
34 shall not be made for care generally expected and provided by a legally responsible relative,
35 *guardian, or person granted power of attorney by the eligible consumer*. The department
36 shall not authorize reimbursement to a legally responsible relative, *guardian, or person granted*
37 *power of attorney by the eligible consumer* until a plan and rules adopted pursuant to RSA 541-

1 A, are reviewed and approved by the oversight committee on health and human services, established
2 in RSA 126-A:13.

3 8 New Section; Personal Care Services; Financial Eligibility for Adult Home and Community-
4 based Care Waiver Programs. Amend RSA 167 by inserting after section 4-e by the following new
5 section:

6 167:4-f Financial Eligibility.

7 I. Financial eligibility for Medicaid adult home and community-based waiver programs shall
8 include the following resource limits:

9 (a) For married individuals, revert to the standard in place prior to the passage of the
10 federal Affordable Care Act, so that only the resources in the name of the applicant, and not the
11 resources in the name of the applicant's spouse are counted for purposes of determining Medicaid
12 resource eligibility; and

13 (b) For single individuals, establish a resource limit of \$15,000.

14 II. If necessary, the commissioner of the department shall seek approval from the
15 appropriate federal oversight agency.

16 9 Office of the Long-Term Care Ombudsman; Office Established. Amend RSA 161-F:10 to read
17 as follows:

18 161-F:10 Office Established. There is hereby established the office of the long-term care
19 ombudsman to be administratively attached to the department of health and human services under
20 RSA 21-G:10 or administered through contract with an independent non-profit agency under the
21 oversight of the department of health and human services. The office shall be responsible for
22 receiving, identifying, investigating, and resolving complaints or problems made by, or on behalf of,
23 elderly residents of facilities ***and individuals receiving home and community-based services***
24 ***through the Choices for Independence program or Older Americans Act***, that relate to the
25 health, safety, welfare, and rights of residents. The office shall investigate the administrative acts
26 and omissions of any ***licensed provider***, facility or government agency, as defined in RSA 161-F:11,
27 [~~V and VI~~] ***VI and V***, and shall represent the interests of [~~residents~~] ***adults receiving licensed***
28 ***long-term care services*** in the development and implementation of public policy, rules, and laws
29 affecting [~~residents of long-term care facilities~~] ***recipients of licensed long-term care services***.

30 10 Office of the Long-Term Care Ombudsman. Amend RSA 161-F:11 is repealed and reenacted
31 to read as follows:

32 161-F:11 Definitions. In this subdivision:

33 I. "Act" means any action of any individual, licensed provider, facility, or government agency
34 including any failure or refusal to act by such individual, licensed provider, facility, or government
35 agency.

36 II. "Administrator" means any person who is charged with the general administration or
37 supervision of a licensed provider organization or facility whether or not such person has an

1 ownership interest and whether or not such person's functions and duties are shared with one or
2 more other persons.

3 III. "Complaint" means a problem, concern, issue, or situation identified or received by the
4 office that is made by, or on behalf of, individuals or residents that may adversely affect the health,
5 safety, welfare and rights of individuals or residents, including the appointment and activities of
6 legal representatives, providers of long-term care services, public agencies, and health and social
7 services agencies.

8 IV. "Facility" means any residential facility or institution, whether public or private, offering
9 health or health related services, personal care assistance or protective oversight for older adults or
10 adults with disabilities and which is subject to regulation, visitation, inspection, or supervision by
11 any government agency. Facilities include, but are not limited to, nursing homes, skilled nursing
12 homes, extended care facilities, convalescent homes, homes for the aged, veterans' homes, assisted
13 living facilities, and any other residential care facility providing care for older adults or adults with
14 disabilities licensed or certified under RSA 151.

15 V. "Government agency" means any department, division, office, bureau, board, commission,
16 authority, or any other agency or instrumentality created by any county or municipality or by the
17 state, or to which the state is a party, which is responsible for the regulation, inspection, visitation,
18 or supervision of facilities or which provides services to residents of facilities.

19 VI. "Legal representative" means any individual, duly appointed or designated in the
20 manner required by law to act on behalf of another individual, including:

21 (a) An attorney.

22 (b) A guardian or conservator.

23 (c) An agent acting pursuant to a power of attorney.

24 VII. "Licensed provider" means any organization, whether public or private, offering health
25 or health related services, personal care assistance or protective oversight for through the Choices
26 for Independence Program or the Older Americans Act, and which is subject to regulation, visitation,
27 inspection, or supervision by any government agency. Licensed providers include, but are not
28 limited to, home care agencies, personal care agencies, adult day programs, and any other
29 organization providing home and community based long term services and supports care for older
30 adults or adults with disabilities licensed or certified under RSA 151.

31 VIII. "Long-term care ombudsman" means the person who is the administrator and chief
32 executive officer of the office.

33 IX. "Long-term care ombudsman representative" means any employee or volunteer who is
34 designated by the long-term care ombudsman to represent, or act on behalf of, the office.

35 X. "Office" means the office of the long-term care ombudsman, established by RSA 161-F:10.

36 XI. "Resident" means any person 60 years of age or older who resides in a facility as defined
37 in RSA 161-F:1.

1 11 Powers and Duties of the Long-Term Care Ombudsman. Amend RSA 161-F:13 - 161-F:15 to
2 read as follows:

3 161-F:13 Powers and Duties.

4 I. The long-term care ombudsman shall:

5 (a) Investigate any act, omission, practice, policy or procedure of any individual,
6 **licensed provider**, facility, or government agency that may adversely affect the health, safety,
7 welfare, or civil or human rights of[
8

9 ~~(1) Any [elderly] **individual receiving home and community-based services as**~~
10 ~~**part of the Choices for Independence program or Older Americans Act from a licensed**~~
11 ~~**provider or** resident of a facility[~~;~~ ~~or~~~~

12 ~~(2) Any non-elderly resident of a facility where such investigation shall:~~

13 ~~(A) Benefit elderly residents of that facility or facilities generally; and~~

14 ~~(B) Not significantly diminish the long-term care ombudsman's ability to~~
15 ~~investigate complaints regarding elderly residents of facilities].~~

16 (b) Represent the interests of residents **and individuals receiving home and**
17 **community-based services** before governmental agencies and seek administrative, legal, and other
18 remedies to protect the health, safety, welfare, and rights of residents.

19 (c) Establish an advisory committee, which shall include **individuals receiving home**
20 **and community-based services or** residents and their legal representatives, older persons,
21 providers of services, representatives of government agencies and representatives of community
22 organizations serving older people, which shall meet quarterly in order to provide consultation to the
23 long-term care ombudsman in planning and operating this subdivision.

24 (d) Provide information as appropriate to facilities, other agencies, and the public
25 regarding the problems and concerns of **individuals receiving services through the Choices for**
26 **Independence Program or the Older Americans Act from licensed providers** or residents of
27 facilities.

28 (e) Inform **individuals receiving services through the Choices for Independence**
29 **Program or the Older Americans Act, facility** residents, family members, and others acting on
30 behalf of **individuals receiving services through the Choices for Independence Program or**
31 **the Older Americans Act or facility** residents how to access the assistance and services of the
32 office and the services and assistance of other providers or agencies, including legal services.

33 (f) Ensure regular and timely access to and response from the office.

34 (g) Comment on, facilitate public comment on, and recommend changes to existing or
35 proposed laws, rules, regulations and other governmental policies and actions that affect the health,
36 safety, welfare, and rights of **individuals receiving services through the Choices for**
Independence Program or the Older Americans Act and facility residents.

1 (h) Provide technical support for the development of resident and family councils to
2 protect the well-being and rights of *individuals receiving services through the Choices for*
3 *Independence Program or the Older Americans Act and facility* residents.

4 (i) Provide for education and training of the long-term care ombudsman office staff and
5 volunteers.

6 (j) Educate facilities, agencies, and staff members concerning the rights and welfare of
7 *individuals receiving services through the Choices for Independence Program or the Older*
8 *Americans Act and facility* residents.

9 (k) Promote and support development of citizen organizations to participate in the
10 ombudsman program.

11 II. The files maintained by the office shall be confidential and shall not be disclosed unless
12 such disclosure is authorized by law or required by court order. Nothing in this paragraph shall be
13 construed to prohibit the disclosure of information gathered in any investigation to any interested
14 party as may be necessary to resolve the complaint.

15 III. The long-term care ombudsman shall adopt rules, pursuant to RSA 541-A, to ensure the
16 efficient conduct of the business, duties, and general administration of the office and to assure
17 compliance with the requirements of the Older Americans Act, as set forth in 42 U.S.C. 3058f-3058g.

18 161-F:14 Access to Facilities, Residents, and Records.

19 I. In the course of an investigation, the representative of the office shall:

20 (a) Make the necessary inquiries and obtain such information as he or she deems
21 necessary.

22 (b) Enter and inspect the premises of a *licensed provider organization*, facility, or
23 government agency and inspect there any books, files, medical records, or other records that pertain
24 to residents, subject to RSA 161-F:14, II.

25 (c) Conduct private interviews with *individuals receiving services through the*
26 *Choices for Independence Program or the Older Americans Act*, residents, staff members, and
27 others deemed appropriate to the investigation and who consent to such interviews.

28 II. The representative of the office shall first seek to obtain the written permission of the
29 *individual receiving services through the Choices for Independence Program or the Older*
30 *Americans Act*, resident, or the resident's legal representative to inspect any books, files, medical
31 records, or other records which pertain to the resident. If the representative of the office cannot
32 obtain such permission because a resident is unable to provide such permission and has no legal
33 representative or the investigation pertains to the acts or omissions of the legal representative, the
34 long-term care ombudsman representative shall, upon written determination of the long-term care
35 ombudsman that such circumstances exist, inspect any books, files, medical records, or other records
36 which pertain to that resident. The written determination shall be provided to the person in charge
37 of the *licensed provider organization or the facility*. The representative of the office shall

1 maintain the confidentiality of all books, files, medical records, or other records inspected under the
2 provisions of this paragraph except as they may pertain to the resolution of the ongoing
3 investigation.

4 III. In an investigation, the representatives of the office shall have the authority to apply to
5 the superior court for an order authorizing entry when an administrator of a facility refuses such
6 representative entry as provided in subparagraph I(b) or paragraph II.

7 IV. Authorized representatives of the office with proper identification shall have access to
8 *individuals receiving services through the Choices for Independence Program or the Older*
9 *Americans Act or* residents of a facility to:

10 (a) Visit, talk with, and make personal, social, and other appropriate services available.

11 (b) Inform them of their rights and entitlements and corresponding obligations under
12 federal and state law by distribution of educational materials, discussion in groups, or discussion
13 with individual residents.

14 (c) Engage in other methods of assisting, advising, and representing residents or clients
15 to extend to them the full enjoyment of their rights.

16 161-F:15 Retaliation Prohibited; Penalty.

17 I. No discriminatory, disciplinary, or retaliatory action shall be taken against any officer or
18 employee of a *licensed provider organization*, facility or government agency by such *licensed*
19 *provider organization*, facility or government agency; nor against *any individuals receiving*
20 *services through the Choices for Independence Program or the Older Americans Act or*
21 resident of a facility; nor against any legal representative or family member of any *individual or*
22 *facility* resident; nor against any volunteer for any communication by such volunteer with the office
23 or for any information given or disclosed by him or her in good faith to aid the office in carrying out
24 its duties and responsibilities.

25 II. No person shall interfere with the long-term care ombudsman or with representatives of
26 the office in the performance of their official duties.

27 III. Any person who knowingly or willfully violates the provisions of this section shall be
28 guilty of a misdemeanor.

29 12 Review; Reports Required. Amend RSA 161-F:17 to read as follows:

30 161-F:17 Review; Reports Required.

31 I. The long-term care ombudsman shall establish and maintain a statewide reporting
32 system to collect and analyze data relating to complaints and conditions *of individuals receiving*
33 *services through the Choices for Independence Program or the Older Americans Act or* in
34 facilities for the purpose of identifying and resolving individual and systemic complaints, problems
35 and issues and for the purpose of developing reports as required pursuant to this section.

36 II. The office shall file a report of the activities of the ombudsman program and the
37 ombudsman activities concerning complaints and conditions *of individuals receiving services*

1 *through the Choices for Independence Program or the Older Americans Act and* in facilities
2 and the protection of the rights of *individuals receiving services through the Choices for*
3 *Independence Program or the Older Americans Act and* residents of the facilities with the
4 commissioner of health and human services, the governor, the general court, *the oversight*
5 *committee on health and human services, the commission on aging*, and the public within 120
6 days following the end of each federal fiscal year.

7 13 Effective Date. This act shall take effect July 1, 2023.

SB 36-FN- FISCAL NOTE
 AS INTRODUCED

AN ACT relative to systems of care for healthy aging.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General <input type="checkbox"/> Education <input type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Federal matching funds			

METHODOLOGY:

This bill makes the following statutory changes relative to a system of care for healthy aging:

1. Creates a system of care for healthy aging to coordinate available services;
2. Expands ServiceLink by creating a new navigator program and allowing for additional staffing;
3. Expands the scope of the Office of the Long-Term Care Ombudsman to include oversight of home- and community-based services;
4. Creates new positions within the Office of the Long-Term Care Ombudsman;
5. Creates a presumptive eligibility process for home- and community-based care;
6. Requires that the Department update rates for home- and community-based services to align with the Centers for Medicare and Medicaid Services (CMS) market basket index rate;
7. Allows guardians and persons granted power of attorney to serve as paid caregivers to individuals receiving personal care services; and
8. Makes several changes to how financial eligibility for home-and community-based services under Medicaid are determined, including increasing the resource limit and reverting spousal impoverishment rules to the standard in place before passage of the federal Affordable Care Act.

The Department of Health and Human Services anticipates that these changes will have the following fiscal impacts:

System of Care for Healthy Aging

As noted above, the bill creates a system of care for healthy aging. The Department states that the proposed online portal for providers, case managers, and navigators will require significant systems changes. The Department expects the online portal to have a significant indeterminable cost for FY 2024. The Department expects to be able to utilize federal Medicaid matching funds for most of the systems changes, therefore the proposed online portal will also have a significant indeterminable increase to state revenue. The Department expects the costs to be 50 percent federal funds and 50 percent state funds.

ServiceLink Expansion

The bill requires that ServiceLink create a navigator program for long-term care and increase staffing to: (1) expand capacity and provide assistance with educating consumers about community based resources for long-term care, (2) assist with completing Medicaid applications, and (3) conduct assessments for presumptive eligibility. The Department expects that this expansion will require 46 full-time equivalent staff. The Department estimates the cost of 46 full time equivalent staff to be approximately \$3.2 million per year.

The Department intends to seek CMS approval for Medicaid administrative claiming for ServiceLink staff. Subject to CMS approval the Department may receive an indeterminable increase in federal matching funds for the portion of ServiceLink staff that can be used for Medicaid administrative claiming. The percentage of the cost that will be covered by federal funds and state funds will likely depend on time studies of ServiceLink contract staff.

The bill requires the Department establish performance metrics for ServiceLink offices and implement processes for monitoring offices based on those metrics. The Department expects this will require two-full time staff: one Program Specialist IV (Labor grade 25, Step 5), and one Program Specialist III (Labor Grade 23, Step 5). The Program Specialist IV will be a ServiceLink Program Coordinator, and will be assigned to coordinate the expanded navigator program. The Program Specialist III will be in charge of monitoring performance metrics. The Department estimates the cost of a Program Specialist III to be \$91,000 for FY 2024, \$93,000 for FY 2025, and \$96,000 for FY 2026. The Department estimates the cost of a Program Specialist IV to be \$97,000 for FY 2024, \$99,000 for FY 2025, and \$102,000 for FY 2026. The cost of the new positions will be eligible for federal matching funds, and costs will be 50 percent federal and 50 percent state.

Office of Long Term Care Ombudsman

The Department expects the expansion of the office of long term ombudsman to require the hiring of three Ombudsmen, one Supervisor V to serve as the Deputy Long-Term Care Ombudsman, one Program Assistant III to serve as the intake specialist for the office of long term care ombudsmen, and one Administrator I to serve as the director of long term systems of care. The Department estimates the cost of the additional staff to be \$572,000 for FY 2024, \$582,000 for FY 2025, and \$600,000 for FY 2026.

The bill requires the office of long-term care ombudsman to make systems changes to allow for tracking of complaints and investigations related to Choices For Independence (CFI) or Older Americans Act services. The Department expects the system changes to result in an indeterminable increase in state expenditures for FY 2024. The Department does not expect the system changes to have a fiscal impact beyond FY 2024.

The percentage of the cost that will be covered by federal funds and state funds will likely depend on time studies of long term care ombudsman staff.

Presumptive Eligibility

The bill requires that the Department create a system of presumptive eligibility for home- and community-based services under Medicaid. To implement presumptive eligibility, the Department would need to obtain approval for an 1115 demonstration waiver from CMS. To obtain a 1115 demonstration waiver the Department would need to demonstrate that presumptive eligibility is cost neutral, therefore the Department expects presumptive eligibility to have \$0 or minimal fiscal impact on state revenues and expenditures if CMS approves a 1115 waiver. If CMS does not approve an 1115 waiver the Department assumes that presumptive eligibility would not be implemented.

CMS Market Basket

The bill requires that the Department increase Choices for Independence (CFI) rates by at least the percentage indicated in the CMS Market Basket each year. The Department expects there to be a significant indeterminable increase in state expenditures and revenues as a result of this change. Currently, the CFI rates are based on an approved methodology in accordance with the CFI 1915(c) waiver. The current rate methodology differs from the proposed legislation in two ways: 1) the current methodology updates rates biennially; and 2) the current methodology is subject to budget limitations.

Under the existing methodology, the CFI rates after being adjusted for the CMS Market Basket may be adjusted again if:

- 1) Necessary to comply with budget neutrality requirements;
- 2) The legislature sets the CFI rate increase through legislation; or
- 3) The total estimated expenditures need to be aligned with the legislative appropriation.

The bill does not allow the Department to adjust CFI rates to comply with budget neutrality or align expenditures with the legislative appropriations. The Department states that if the CFI rates are always adjusted according to the Market Basket without additional appropriation, the CFI program could run out of funding. The projected CMS Market Basket index for home health agencies is projected to be 3.8 percent for FY 2024, an additional 3.0 percent for FY 2025, and an additional 2.8 percent for FY 2026. Any increased costs would be covered by 50 percent federal funds and 50 percent state funds.

Allowing Powers of Attorney and Guardians to Serve as Personal Care Providers

The bill allows legal guardians and persons granted power of attorney over an individual to serve as paid personal care provider of that individual. The Department does not expect this change to affect state revenues or expenditures, because it does not affect the number of people eligible for services or the amount that will be paid for those services, only who may be paid to provide those services.

Financial Eligibility Changes

The proposed legislation increases the resource limit for home- and community-based services under Medicaid waivers to \$15,000. The Department expects this change to have a moderate indeterminable increase to state expenditures. The proposed change is subject to CMS approval. The Department assumes if CMS does not approve of the resource limit increase, it will not be implemented.

The bill requires the Department include resources in the name of the applicant only and not the applicant's spouse in determining eligibility for home- and community-based services under a waiver. As with the change above, the Department expects this will have a moderate indeterminable increase to state expenditures. The proposed change is subject to CMS approval. Again, the Department assumes that if CMS does not approve of the change to resource rules, the proposal will not be implemented.

Any increased costs from these sections will be covered by 50 percent federal funds and 50 percent state funds.

AGENCIES CONTACTED:

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