

**Adopted
AMENDMENT NO 1 PROPOSED TO**

Senate Bill No. 2416

BY: Senator(s) Burton

1 **AMEND by inserting the following sections after line 398 and**
2 **renumbering subsequent section(s) accordingly:**

3 **SECTION *.** (1) The Legislature finds and declares that:

4 (a) The current population of adults sixty (60) years
5 of age and older in Mississippi is expected to double in size over
6 the next twenty-five (25) years;

7 (b) A primary objective of public policy governing
8 access to long-term care in this state shall be to promote the
9 independence, dignity and lifestyle choice of older adults and
10 persons with physical disabilities or Alzheimer's disease and
11 related disorders;

12 (c) Many states are actively seeking to "rebalance"
13 their long-term care programs and budgets in order to support
14 consumer choice and offer more choices for older adults and
15 persons with disabilities to live in their homes and communities;

16 (d) The federal "New Freedom Initiative" was launched
17 in 2001 for the purpose of promoting the goal of independent
18 living for persons with disabilities; and Executive Order No.
19 13217, issued by the President of the United States on June 18,
20 2001, called upon the federal government to assist states and
21 localities to swiftly implement the 1999 United States Supreme
22 Court decision in *Olmstead v. L.C.* and directed federal agencies
23 to evaluate their policies, programs, statutes and regulations to

24 determine whether any should be revised or modified to improve the
25 availability of home- and community-based services for qualified
26 persons with disabilities;

27 (e) The federal "Older Americans Act Amendments of
28 2006" (Public Law 109-365) and the Deficit Reduction Act (DRA)
29 provided states with much flexibility to make significant reforms
30 to pursue innovative ideas in health care, Medicaid services for
31 the aging and disabled, consumer directed health care and
32 rebalancing long-term care. These amendments defined the
33 functions of Aging and Disability Resource Centers to provide
34 comprehensive information on long-term care program options and
35 directed states to create a state system of long-term care to
36 enable older individuals to receive long-term care in home- and
37 community-based settings and to provide counseling services
38 relating to such long-term care; and

39 (f) Older adults and those with physical disabilities
40 or Alzheimer's disease and related disorders that require a
41 nursing facility level of care should not be forced to choose
42 between going into a nursing home or giving up the medical
43 assistance that pays for their needed services, and thereby be
44 denied the right to choose where they receive those services;
45 their eligibility for home- and community-based long-term care
46 services under Medicaid should be based upon the same income and
47 asset standards as those used to determine eligibility for
48 long-term care in an institutional setting.

49 (2) As used in this act:

50 (a) The term "Aging and Disability Resource Center"
51 means a program established by a state as part of the state system
52 of long-term care, to provide a coordinated system for providing:

53 (i) Comprehensive information on the full range of
54 available public and private long-term care programs, options,

55 service providers and resources within a community, including
56 information on the availability of integrated long-term care;

57 (ii) Personal counseling to assist individuals in
58 assessing their existing or anticipated long-term care needs, and
59 developing and implementing a plan for long-term care designed to
60 meet their specific needs and circumstances; and

61 (iii) Consumers' access to the range of publicly
62 supported long-term care programs for which consumers may be
63 eligible, by serving as a convenient point of entry for such
64 programs.

65 (b) The term "at risk for institutional placement"
66 means, with respect to an older individual, that such individual
67 is unable to perform at least two (2) activities of daily living
68 without substantial assistance (including verbal reminding,
69 physical cuing or supervision) and is determined by the state
70 involved to be in need of placement in a long-term care facility.

71 (c) The term "long-term care services" means any
72 service, care or item:

73 (i) Intended to assist individuals in coping with,
74 and to the extent practicable compensate for, a functional
75 impairment in carrying out activities of daily living;

76 (ii) Furnished at home, in a community care
77 setting (including a small community care setting as defined in
78 subsection (g)(1), and a large community care setting as defined
79 in subsection (h)(1) of Section 1929 of the Social Security Act
80 (42 USC 1396t), or in a long-term care facility; and

81 (iii) Not furnished to prevent, diagnose, treat or
82 cure a medical disease or condition.

83 The term "state system of long-term care" means the federal,
84 state and local programs and activities administered by a state
85 that provide, support or facilitate access to long-term care to
86 individuals in such state.

87 (d) "Home- and community-based services" means Medicaid
88 home- and community-based long-term care options available in this
89 state, including, but not limited to, the Community Care Program
90 for the Elderly and Disabled, Assisted Living, Adult Family Care,
91 Caregiver Assistance Program, Adult Day Health Services, Traumatic
92 Brain Injury, AIDS Community Care Alternatives Program, Community
93 Resources for People with Disabilities, and Community Resources
94 for People with Disabilities Private Duty Nursing.

95 (3) (a) There is hereby established the Long-Term Care
96 Advisory Council within the Mississippi Department of Human
97 Services. The advisory council shall be entitled to receive such
98 information from the Department of Human Services, the Division of
99 Medicaid, the State Department of Rehabilitation Services and
100 other agencies relating to services for the aged and disabled, as
101 the advisory council deems necessary to carry out its
102 responsibilities under this act.

103 (b) The advisory council shall be provided a copy of
104 the Division of Medicaid's study titled Comprehensive Review of
105 Long-Term Services Money Follows the Person Program in response to
106 RFP #2006505-01 and shall assess and develop a recommendation no
107 later than December 1, 2007, to the Governor, the Lieutenant
108 Governor and Speaker of the House of Representatives on the impact
109 this study and of federal amendments to the "Older Americans Act"
110 and the Deficit Reduction Act of 2005 on Mississippi's public and
111 private system of programs and care for the aged and disabled.

112 (c) The advisory council shall comprise fifteen (15)
113 members as follows:

114 (i) The Executive Director of the Department of
115 Human Services, the Executive Director of the Division of
116 Medicaid-Office of the Governor, the Executive Directors of the
117 State Department of Rehabilitation Services and the State

118 Department of Mental Health, or their designees, as ex officio
119 members;

120 (ii) The Public Health Policy Advisor to the
121 Governor; and

122 (iii) Ten (10) public members to be appointed by
123 the Governor as follows: one (1) person appointed upon the
124 recommendation of AARP; one (1) person upon the recommendation of
125 the Mississippi Association of Area Agencies on Aging; one (1)
126 person upon the recommendation of the Mississippi Association for
127 the Rights of Citizens with Disabilities (The ARC); one (1) person
128 upon the recommendation of the Mississippi Health Care
129 Association; one (1) person upon the recommendation of the
130 Mississippi Hospital Association; one (1) person that represents
131 the independent nursing home industry; one (1) person who is a
132 representative of the home care industry; one (1) person upon the
133 recommendation of the Coalition for Citizens with Disabilities;
134 one (1) person upon the recommendation of the Living Independently
135 for Everyone (L.I.F.E.) organization; and one (1) person appointed
136 upon the recommendation of the Mississippi Department of
137 Transportation.

138 (d) The advisory council shall organize as soon as
139 possible after the appointment of its members upon call of the
140 Governor and shall select from its membership a chairman and a
141 secretary.

142 (e) The Department of Human Services and the Division
143 of Medicaid shall provide such staff and administrative support to
144 the advisory council as it requires to carry out its
145 responsibilities.

146 (f) The advisory council shall identify home- and
147 community-based long-term care service models that are determined
148 by the division to be efficient and cost-effective alternatives to
149 nursing home care, and develop clear and concise performance

150 standards for those services for which standards are not already
151 available in a home- and community-based services waiver.

152 (4) Upon presentation of its recommendation to the Governor,
153 the Lieutenant Governor and the Speaker of the House of
154 Representatives, the Long-Term Care Advisory Council shall be
155 dissolved.

156 **SECTION *.** Section 43-7-7, Mississippi Code of 1972, is
157 amended as follows:

158 43-7-7. (1) The Department of Human Services shall be
159 responsible for the collection of data and statistics and for
160 making a continuing study of conditions affecting the general
161 welfare of the aging population; for providing for an inter-agency
162 and inter-departmental exchange of ideas; for encouraging and
163 assisting in the development of programs for the aging in
164 municipalities and counties of the state; for cooperation with
165 public and private agencies and departments in coordinating
166 programs for the aging; for encouraging and promoting biological,
167 physiological and sociological research; for making
168 recommendations for residential housing and needed nursing and
169 custodial care facilities.

170 (2) Beginning with the 2009 fiscal year, the Department of
171 Human Services may, consistent with federal law and regulations,
172 promote the development and implementation of a state system of
173 long-term care that is a comprehensive, coordinated system that
174 enables older individuals to receive long-term care in home-and
175 community-based settings, in a manner responsive to the needs and
176 preferences of older individuals and their family caregivers by:

177 (a) Collaborating, coordinating and consulting with
178 other agencies in such state responsible for formulating,
179 implementing and administering programs, benefits and services
180 related to providing long-term care;

181 (b) Conducting analyses and making recommendations with
182 respect to strategies for modifying the state system of long-term
183 care to:

184 (i) Respond to the needs and preference of older
185 individuals and family caregivers;

186 (ii) Facilitate the provision, by service
187 providers, of long-term care in home- and community-based
188 settings; and

189 (iii) Target services to individuals at risk for
190 institutional placement, to permit such individuals to remain in
191 home- and community-based settings where appropriate and
192 available;

193 (c) Implementing (through area agencies on aging,
194 service providers and such other entities as the state determines
195 to be appropriate) evidence-based programs to assist older
196 individuals and their family caregivers in learning about and
197 making behavioral changes intended to reduce the risk of injury,
198 disease and disability among older individuals;

199 (d) Providing for the availability and distribution
200 (through public education campaigns, Aging and Disability Resource
201 Centers, area agencies on aging and other appropriate means) of
202 information relating to:

203 (i) The need to plan in advance for long-term
204 care; and

205 (ii) The full range of available public and
206 private long-term care (including integrated long-term care)
207 programs, options, services providers and resources; and

208 (e) Nothing in this section shall conflict with the
209 authority of another state agency.

210 **FURTHER, AMEND by striking lines 720 through 724 and**
211 **substituting in lieu thereof the following:**

212 (15) Home- and community-based services for the elderly
213 and disabled, as provided under Title XIX of the federal Social
214 Security Act, as amended, under waivers, subject to the
215 availability of funds specifically appropriated for that purpose
216 by the Legislature. Beginning in fiscal year 2009, and in each
217 succeeding fiscal year through fiscal year 2013, the division may
218 implement a process that promotes a rebalancing of the overall
219 allocation of Medicaid funding for long-term care services through
220 the expansion of home- and community-based services for persons
221 eligible for long-term care as defined by regulation of the
222 division, consistent with federal law and regulation. The
223 expansion of home- and community-based services may occur by the
224 voluntary migration of persons in need of long-term care from
225 nursing home placements to home- and community-based services
226 where appropriate and available to these persons. The Division of
227 Medicaid may apply to the federal Centers for Medicare and
228 Medicaid Services for any waiver of federal requirements, or for
229 any state plan amendments or home- and community-based services
230 waiver amendments, which may be necessary to obtain federal
231 financial participation for state Medicaid expenditures in order
232 to effectuate the purposes of this act. Provided, however, that
233 any programs proposed or implemented by the Division of Medicaid
234 under this paragraph (15) shall be in compliance and shall not
235 interfere with any federal court order regarding the rights of
236 disabled citizens.

237 **FURTHER, AMEND the title by inserting the following after the**
238 **semicolon on line 12:**

239 TO ESTABLISH A LONG-TERM CARE ADVISORY COUNCIL TO STUDY AND
240 DEVELOP RECOMMENDATIONS TO THE GOVERNOR AND THE 2008 REGULAR
241 SESSION OF THE LEGISLATURE RELATING TO THE SERVICES PROVIDED TO
242 THE AGED AND DISABLED UNDER RECENT AMENDMENTS TO FEDERAL LAW; TO
243 PROVIDE DEFINITIONS; TO SPECIFICALLY PROVIDE THAT THE ADVISORY
244 COUNCIL SHALL MAKE RECOMMENDATIONS RELATING TO COORDINATION OF
245 HOME- AND COMMUNITY-BASED SERVICES FOR THE AGED AND DISABLED AND
246 THE ESTABLISHMENT OF A COORDINATING UNIT OF GOVERNMENT; TO DIRECT
247 THE DEPARTMENT OF HUMAN SERVICES TO PROVIDE SUPPORT FOR THE WORK
248 OF THE ADVISORY COUNCIL; TO AMEND SECTION 43-7-7, MISSISSIPPI CODE

249 OF 1972, TO PRESCRIBE THE RESPONSIBILITIES OF THE DEPARTMENT OF
250 HUMAN SERVICES AS LEAD AGENCY FOR FEDERAL OLD AGE ASSISTANCE
251 PROGRAMS IN FISCAL YEAR 2009; TO AMEND SECTION 43-13-117,
252 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR AN EXPANSION OF HOME- AND
253 COMMUNITY-BASED SERVICES BY THE DIVISION OF MEDICAID, OFFICE OF
254 THE GOVERNOR, IN FISCAL YEAR 2009;