

SENATE BILL 608

By Massey

AN ACT to amend Tennessee Code Annotated, Section 33-2-404; Title 33, Chapter 5; Section 68-11-202 and Section 71-2-412, relative to promulgation of rules for licensure of settings of home-based and community-based services and supports for individuals with intellectual and developmental disabilities.

WHEREAS, individuals with an intellectual or developmental disability should be afforded choice and control over needed long-term services and supports; and

WHEREAS, choice and control over needed long-term services and supports can also be cost-effective and cost-controlled; and

WHEREAS, home- and community-based services and supports should be person-centered, provided in the most integrated setting appropriate to the individual's needs, and driven by the needs, goals, and preferences of the individual; now, therefore,

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

SECTION 1. Tennessee Code Annotated, Section 33-2-404, is amended by deleting subsection (b) and substituting the following:

(b) Notwithstanding any law to the contrary, each department has the authority to enact or amend its rules for licensure as needed to be consistent with the federal home-based and community-based settings final rule and consistent with the express intent of the final rule that services are received in the most integrated setting appropriate to the individual's needs, published in the Federal Register at 79 FR 2947 (January 16, 2014), including the authority to differentiate licensure requirements for any entity contracted to provide medicaid-reimbursed home- and community-based services in order to allow the facility or entity to comply with the federal rule and continue to

receive medicaid reimbursement for home- and community-based services. Rules adopted by the department under this subsection (b) must be developed with input from stakeholders and promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5; except, that the department shall not promulgate emergency rules under this subsection (b) as defined in § 4-5-208. Licensure survey and enforcement must be conducted in a manner consistent with any rule issued under this subsection (b).

SECTION 2. Tennessee Code Annotated, Section 68-11-202, is amended by deleting subsection (h) and substituting the following:

(h) Notwithstanding any law to the contrary, the board has the authority to amend its rules for licensure of any board-regulated facility or entity as needed to be consistent with the federal home-based and community-based settings final rule and consistent with the express intent of the final rule that services are received in the most integrated setting appropriate to the individual's needs, published in the Federal Register at 79 FR 2947 (January 16, 2014), including the authority to differentiate licensure requirements for any board-regulated facility or entity contracted to provide medicaid-reimbursed home- and community-based services pursuant to title 71, chapter 5, part 14, in order to allow the facility or entity to comply with the federal rule and continue to receive medicaid reimbursement for home- and community-based services. Rules adopted by the board under this subsection (h) must be developed with input from stakeholders and promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5; except, that the board shall not promulgate emergency rules under this subsection (h) as defined in § 4-5-208. Licensure survey and enforcement must be conducted in a manner consistent with any rule issued under this subsection (h).

SECTION 3. Tennessee Code Annotated, Section 71-2-412, is amended by deleting subsection (c) and substituting the following:

(c) Notwithstanding any law to the contrary, the commissioner has the authority to amend the rules for licensure of adult day care by entities contracted to provide medicaid-reimbursed home- and community-based services pursuant to title 71, chapter 5, part 14, as needed to be consistent with the home-based and community-based settings final rule and consistent with the express intent of the final rule that services are received in the most integrated setting appropriate to the individual's needs published in the Federal Register at 79 FR 2947 (January 16, 2014), including the authority to differentiate licensure requirements for any entity contracted to provide Medicaid-reimbursed home- and community-based services pursuant to title 71, chapter 5, part 14, in order to allow the facility or entity to comply with the federal rule and continue to receive medicaid reimbursement for home- and community-based services. Rules adopted by the department under this subsection (c) must be developed with input from stakeholders and promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5; except, that the department shall not promulgate emergency rules under this subsection (c) as defined in § 4-5-208. Licensure survey and enforcement shall be conducted in a manner consistent with any rule issued under this subsection (c).

SECTION 4. Tennessee Code Annotated, Title 33, Chapter 5, is amended by adding the following language as a new section:

(a) Notwithstanding any law to the contrary, the bureau of TennCare is authorized to make eligible for consumer direction and reimbursement qualifying home- and community-based services received from non-contracted providers when:

- (1) Services are provided by a state-licensed program or provider;
- (2) Services are provided in the most integrated setting appropriate to the individual's needs;

(3) Services are comparable to those included in the home- and community-based CHOICES program;

(4) Services align with the person-centered individualized support plan; and

(5) Services do not exceed annual cost limits assigned to a CHOICES benefit group.

(b) The bureau of TennCare has the authority to enact or amend its rules to reflect additional services eligible for consumer direction.

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