

# ASSEMBLY, No. 2823

## STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED MARCH 9, 2006

**Sponsored by:**

**Assemblyman JIM WHELAN**

**District 2 (Atlantic)**

**Assemblyman LOUIS D. GREENWALD**

**District 6 (Camden)**

**Assemblyman NELSON T. ALBANO**

**District 1 (Cape May, Atlantic and Cumberland)**

**Assemblyman JEFF VAN DREW**

**District 1 (Cape May, Atlantic and Cumberland)**

**Assemblyman GORDON M. JOHNSON**

**District 37 (Bergen)**

**Co-Sponsored by:**

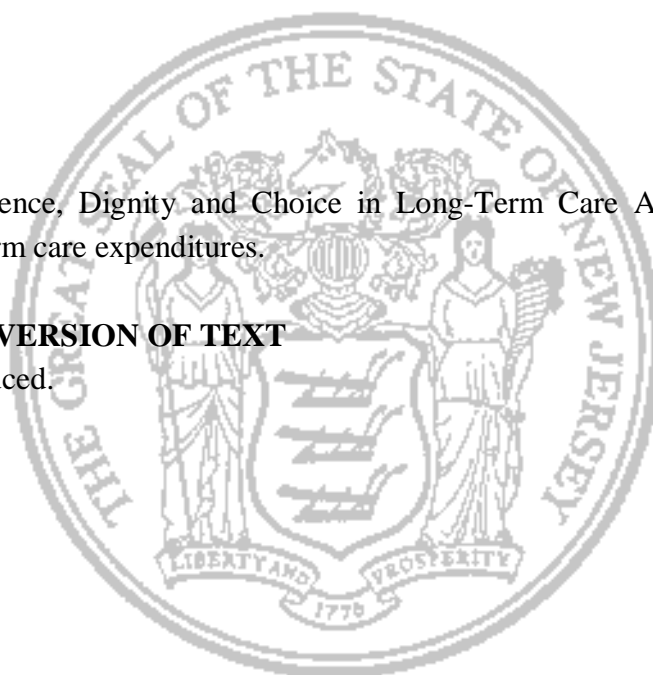
**Assemblymen Manzo, Prieto, Assemblywoman Quigley, Assemblymen Vas, Gordon, Sires, Panter, Wisniewski, Assemblywomen Cruz-Perez, Voss and Assemblyman Thompson**

**SYNOPSIS**

"Independence, Dignity and Choice in Long-Term Care Act"; reallocates State long-term care expenditures.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 5/12/2006)**

1 AN ACT concerning long-term care for Medicaid recipients and  
2 supplementing Title 30 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the  
8 "Independence, Dignity and Choice in Long-Term Care Act."

9

10 2. The Legislature finds and declares that:

11 a. The current population of adults 60 years of age and older in  
12 New Jersey is about 1.4 million, and this number is expected to  
13 double in size over the next 25 years;

14 b. A primary objective of public policy governing access to  
15 long-term care in this State shall be to promote the independence,  
16 dignity and lifestyle choice of older adults and persons with  
17 physical disabilities or Alzheimer's disease and related disorders;

18 c. Many states are actively seeking to "rebalance" their long-  
19 term care programs and budgets in order to support consumer  
20 choice and offer more choices for older adults and persons with  
21 disabilities to live in their homes and communities;

22 d. New Jersey has been striving to redirect long-term care away  
23 from an over-reliance on institutional care toward more home and  
24 community-based options; however, it is still often easier for older  
25 adults and persons with disabilities to qualify for Medicaid long-  
26 term care coverage if they are admitted to a nursing home than if  
27 they seek to obtain services through one of the Medicaid home and  
28 community-based long-term care options available in this State,  
29 such as the Community Care Program for the Elderly and Disabled,  
30 Assisted Living, Adult Family Care, Caregiver Assistance Program,  
31 Adult Day Health Services, Traumatic Brain Injury, AIDS  
32 Community Care Alternatives Program, Community Resources for  
33 People with Disabilities, or Community Resources for People with  
34 Disabilities Private Duty Nursing;

35 e. The federal "New Freedom Initiative" was launched in 2001  
36 for the purpose of promoting the goal of independent living for  
37 persons with disabilities; and Executive Order No. 13217, issued by  
38 the President of the United States on June 18, 2001, called upon the  
39 federal government to assist states and localities to swiftly  
40 implement the 1999 United States Supreme Court decision in  
41 *Olmstead v. L.C.* and directed federal agencies to evaluate their  
42 policies, programs, statutes and regulations to determine whether  
43 any should be revised or modified to improve the availability of  
44 community-based services for qualified persons with disabilities;

45 f. Executive Order No. 100, issued by the Governor on March  
46 23, 2004, directed the Commissioner of Health and Senior Services,  
47 in consultation with the State Treasurer, to prepare an analysis and  
48 recommendations for developing a global long-term care budgeting

1 process designed to provide the Department of Health and Senior  
2 Services with the authority and flexibility to move Medicaid  
3 recipients into the appropriate level of care based on their  
4 individual needs, and to identify specific gaps and requirements  
5 necessary to streamline paperwork and expedite the process of  
6 obtaining Medicaid eligibility for home care options for those who  
7 qualify;

8 g. Executive Order No. 31, issued by the Governor on April 21,  
9 2005, established a "money follows the person" pilot program and  
10 set aside funding in fiscal year 2006 for home and community-  
11 based long-term care;

12 h. Older adults and those with physical disabilities or  
13 Alzheimer's disease and related disorders that require a nursing  
14 facility level of care should not be forced to choose between going  
15 into a nursing home or giving up the medical assistance that pays  
16 for their needed services, and thereby be denied the right to choose  
17 where they receive those services; their eligibility for home and  
18 community-based long-term care services under Medicaid should be  
19 based upon the same income and asset standards as those used to  
20 determine eligibility for long-term care in an institutional setting;  
21 and

22 i. The enactment of this bill will ensure that, in the case of  
23 Medicaid-funded long-term care services, "the money follows the  
24 person" from nursing homes to home and community-based settings  
25 when it does not compromise federal funding or services in the  
26 nursing home and, in so doing, significantly expands the choices  
27 available to consumers of these services and thereby fulfills the goal  
28 of personal independence so highly valued by the growing number  
29 of older adults and persons with disabilities in this State.

30

31 3. As used in this act:

32 "Commissioner" means the Commissioner of Health and Senior  
33 Services.

34 "Funding parity between nursing home care and home and  
35 community-based care" means that the distribution of the amounts  
36 expended for these two categories of long-term care under the  
37 Medicaid program reflects an appropriate balance between the  
38 service delivery costs of those persons whose needs and preferences  
39 can most appropriately be met in a nursing home and those persons  
40 whose needs and preferences can most appropriately be met in a  
41 home or community-based setting.

42 "Home and community-based care" means Medicaid home and  
43 community-based long-term care options available in this State,  
44 including, but not limited to, the Community Care Program for the  
45 Elderly and Disabled, Assisted Living, Adult Family Care,  
46 Caregiver Assistance Program, Adult Day Health Services,  
47 Traumatic Brain Injury, AIDS Community Care Alternatives  
48 Program, Community Resources for People with Disabilities, and

1 Community Resources for People with Disabilities Private Duty  
2 Nursing.

3  
4 4. a. (1) Beginning in fiscal year 2008, and in each succeeding  
5 fiscal year through fiscal year 2013, the commissioner, in  
6 consultation with the State Treasurer and the Commissioner of  
7 Human Services and in accordance with the provisions of this  
8 section, shall implement a process that rebalances the overall  
9 allocation of funding within the Department of Health and Senior  
10 Services for long-term care services through the expansion of home  
11 and community-based services for persons eligible for long-term  
12 care as defined by regulation of the commissioner. The expansion  
13 of home and community-based services shall be funded, within the  
14 existing level of appropriations, by diverting persons in need of  
15 long-term care from nursing home placements to home and  
16 community-based services.

17 (2) Beginning in fiscal year 2008, and in each succeeding fiscal  
18 year through fiscal year 2013, funds equal to the amount of the  
19 reduction in the projected growth of Medicaid expenditures for  
20 nursing home care pursuant to paragraph (1) of this subsection, for  
21 State dollars only plus the percentage anticipated for programs and  
22 persons that will receive federal matching dollars, shall be  
23 reallocated to home and community-based care through a global  
24 budget and expended solely for such care, until the commissioner  
25 determines that total Medicaid expenditures for long-term care have  
26 been sufficiently rebalanced to achieve funding parity between  
27 nursing home care and home and community-based care. Any  
28 funds so reallocated, which are not expended in the fiscal year in  
29 which they are reallocated, shall be reserved for expenditures for  
30 home and community-based care in a subsequent fiscal year.

31 (3) Subject to federal approval, the home and community-based  
32 services to which funds are reallocated pursuant to this act shall  
33 include services provided under the Medicaid Enhanced  
34 Community Options and Assisted Living Waivers.

35 (4) Notwithstanding the provisions of this subsection to the  
36 contrary, this act shall not be construed to authorize a reduction in  
37 funding for Medicaid-approved services based upon the approved  
38 State Medicaid nursing home reimbursement methodology,  
39 including existing cost screens used to determine daily rates, annual  
40 rebasing and inflationary adjustments.

41 b. The commissioner, in consultation with the Commissioner of  
42 Human Services, shall adopt modifications to the Medicaid long-  
43 term care intake system that promote increased use of home and  
44 community-based services. These modifications shall include, but  
45 not be limited to, the following:

46 (1) commencing January 1, 2007, on a pilot basis in Atlantic and  
47 Warren counties:

48 (a) the provision of home and community-based services

1 available under Medicaid, in addition to care management services,  
2 pending completion of a formal Medicaid financial eligibility  
3 determination for the recipient of services, for a period that does not  
4 exceed a time limit established by the commissioner; except that the  
5 cost of any services provided pursuant to this subparagraph to a  
6 person who is subsequently determined to be ineligible for  
7 Medicaid may be recovered from that person; and

8 (b) the use of mechanisms for making fast-track Medicaid  
9 eligibility determinations, a revised clinical assessment instrument,  
10 and a computerized tracking system for Medicaid long-term care  
11 expenditures; and

12 (2) commencing March 1, 2008, expansion of the services and  
13 measures provided for in paragraph (1) of this subsection to all of  
14 the remaining counties in the State, subject to the commissioner  
15 conducting or otherwise providing for an evaluation of the pilot  
16 programs in Atlantic and Warren counties prior to that date and  
17 determining from that evaluation that the pilot programs are cost-  
18 effective and should be expanded Statewide.

19  
20 5. The commissioner, in consultation with the Medicaid Long-  
21 Term Care Funding Advisory Council established pursuant to this  
22 act, shall:

23 a. no later than July 1, 2007, present a report to the Governor,  
24 and to the Legislature pursuant to section 2 of P.L.1991, c.164  
25 (C.52:14-19.1), that provides a detailed budget and management  
26 plan for effectuating the purposes of this act, including a projected  
27 schedule and procedures for the implementation and operation of  
28 the Medicaid long-term care expenditure reforms required pursuant  
29 thereto; and

30 b. no later than January 1, 2008, present a report to the  
31 Governor, and to the Legislature pursuant to section 2 of P.L.1991,  
32 c.164 (C.52:14-19.1), that documents the reallocation of funds to  
33 home and community-based care pursuant to section 4 of this act,  
34 and present an updated report no later than January 1 of each  
35 succeeding year until the commissioner determines that total  
36 Medicaid expenditures for long-term care have been sufficiently  
37 rebalanced to achieve funding parity between nursing home care  
38 and home and community-based care, at which point the  
39 commissioner shall document and certify to the Governor and the  
40 Legislature that such funding parity has been achieved.

41  
42 6. The commissioner, in consultation with the Medicaid Long-  
43 Term Care Funding Advisory Council established pursuant to this  
44 act, shall:

45 a. Implement, by such time as the commissioner certifies to the  
46 Governor and the Legislature that funding parity has been achieved  
47 pursuant to subsection b. of section 5 of this act, a comprehensive  
48 data system to track long-term care expenditures and services and

1 consumer profiles and preferences. The data system shall include,  
2 but not be limited to: the number of vacant nursing home beds  
3 annually and the number of nursing home residents transferred to  
4 home and community-based care pursuant to this act; annual long-  
5 term care expenditures for nursing home care and each of the home  
6 and community based long-term care options available to Medicaid  
7 recipients; and annual percentage changes in both long-term care  
8 expenditures for, and the number of Medicaid recipients utilizing,  
9 nursing home care and each of the home and community based  
10 long-term care options, respectively;

11 b. Complete the following no later than January 1, 2008:

12 (1) implement a system of Statewide long-term care service  
13 coordination and management designed to minimize administrative  
14 costs, improve access to services, and minimize obstacles to the  
15 delivery of long-term care services to people in need;

16 (2) identify home and community based long-term care service  
17 models that are determined by the commissioner to be efficient and  
18 cost-effective alternatives to nursing home care, and develop clear  
19 and concise performance standards for those services for which  
20 standards are not already available in a home and community-based  
21 services waiver;

22 (3) develop and implement with the Commissioner of Human  
23 Services a comprehensive consumer assessment instrument that is  
24 designed to facilitate an expedited process to authorize the  
25 provision of home and community-based care to a person through  
26 presumptive eligibility prior to completion of a formal financial  
27 eligibility determination; and

28 (4) develop and implement a comprehensive quality assurance  
29 system with appropriate and regular assessments that is designed to  
30 ensure that all forms of long-term care available to consumers in  
31 this State are financially viable, cost-effective, and promote and  
32 sustain consumer independence; and

33 c. Seek to make information available to the general public on a  
34 Statewide basis, through print and electronic media, regarding the  
35 various forms of long-term care available in this State and the rights  
36 accorded to long-term care consumers by statute and regulation, as  
37 well as information about public and nonprofit agencies and  
38 organizations that provide informational and advocacy services to  
39 assist long-term care consumers and their families.

40

41 7. a. There is established the Medicaid Long-Term Care  
42 Funding Advisory Council within the Department of Health and  
43 Senior Services. The advisory council shall meet at least quarterly  
44 during each fiscal year until such time as the commissioner certifies  
45 to the Governor and the Legislature that funding parity has been  
46 achieved pursuant to subsection b. of section 5 of this act, and shall  
47 be entitled to receive such information from the Departments of  
48 Health and Senior Services, Human Services and the Treasury as

1 the advisory council deems necessary to carry out its  
2 responsibilities under this act.

3 b. The advisory council shall:

4 (1) monitor and assess, and advise the commissioner on, the  
5 implementation and operation of the Medicaid long-term care  
6 expenditure reforms and other provisions of this act; and

7 (2) develop recommendations for a program to recruit and train  
8 a stable workforce of home care providers, including  
9 recommendations for changes to provider reimbursement under  
10 Medicaid home and community-based care programs.

11 c. The advisory council shall comprise 13 members as follows:

12 (1) the commissioner, the Commissioner of Human Services and  
13 the State Treasurer, or their designees, as ex officio members; and

14 (2) 10 public members to be appointed by the commissioner as  
15 follows: one person appointed upon the recommendation of AARP;  
16 one person upon the recommendation of the New Jersey  
17 Association of Area Agencies on Aging, one person upon the  
18 recommendation of the New Jersey Association of County Offices  
19 for the Disabled; one person upon the recommendation of the  
20 Health Care Association of New Jersey; one person upon the  
21 recommendation of the New Jersey Association of Non-Profit  
22 Homes for the Aging; one person upon the recommendation of the  
23 New Jersey Hospital Association; one person upon the  
24 recommendation of the Rutgers Center for State Health Policy; one  
25 person upon the recommendation of the New Jersey Elder Rights  
26 Coalition; one person upon the recommendation of a labor union  
27 that represents home and community-based health care workers;  
28 and one person who is a representative of the home care industry.

29 d. The advisory council shall organize as soon as possible after  
30 the appointment of its members, and shall annually select from its  
31 membership a chairman who shall serve until his successor is  
32 elected and qualifies. The members shall also select a secretary  
33 who need not be a member of the advisory council.

34 e. The department shall provide such staff and administrative  
35 support to the advisory council as it requires to carry out its  
36 responsibilities.

37

38 8. The commissioner, in consultation with the Commissioner of  
39 Human Services, shall apply to the federal Centers for Medicare  
40 and Medicaid Services for any waiver of federal requirements, or  
41 for any State plan amendments or home and community-based  
42 services waiver amendments, which may be necessary to obtain  
43 federal financial participation for State Medicaid expenditures in  
44 order to effectuate the purposes of this act.

45

46 9. The commissioner, in consultation with the Commissioner of  
47 Human Services, shall track Medicaid long-term care expenditures  
48 necessary to carry out the provisions of this act.

1 10. There shall be included a unique global budget appropriation  
2 line item for Medicaid long-term care expenditures in the annual  
3 appropriations act for fiscal year 2008 and each succeeding fiscal  
4 year in order to provide flexibility to align these expenditures with  
5 services to be provided during each fiscal year as necessary to  
6 effectuate the purposes of this act.

7  
8 11. This act shall take effect immediately.  
9

10  
11 STATEMENT  
12

13 This bill, which is designated the "Independence, Dignity and  
14 Choice in Long-Term Care Act," reallocates Medicaid long-term  
15 care expenditures to create a more appropriate balance between  
16 funding for institutional care and funding for care provided in the  
17 community.

18 The bill provides specifically as follows:

- 19 • Beginning in fiscal year (FY) 2008, and in each FY thereafter  
20 through FY 2013, the Commissioner of Health and Senior  
21 Services, in consultation with the State Treasurer and the  
22 Commissioner of Human Services, is to implement a process that  
23 rebalances the overall allocation of funding within the  
24 Department of Health and Senior Services (DHSS) for long-term  
25 care services through the expansion of home and community-  
26 based services for persons eligible for long-term care as defined  
27 by regulation of the commissioner. The expansion of home and  
28 community-based services is to be funded, within the existing  
29 level of appropriations, by diverting persons in need of long-term  
30 care from nursing home placements to home and community-  
31 based services.
- 32 • Beginning in FY 2008, and in each FY thereafter through FY  
33 2013, funds equal to the amount of the reduction in the projected  
34 growth of Medicaid expenditures for nursing home care, for State  
35 dollars only plus the percentage anticipated for programs and  
36 persons that will receive federal matching dollars, are to be  
37 reallocated to home and community-based care through a global  
38 budget and expended solely for such care, until the commissioner  
39 determines that total Medicaid expenditures for long-term care  
40 have been sufficiently rebalanced to achieve funding parity  
41 between nursing home care and home and community-based care.
- 42 • The bill defines "funding parity between nursing home care and  
43 home and community-based care" to mean that the distribution of  
44 the amounts expended for these two categories of long-term care  
45 under the Medicaid program reflects an appropriate balance between  
46 the service delivery costs of those persons whose needs and  
47 preferences can most appropriately be met in a nursing home and  
48 those persons whose needs and preferences can most appropriately



- 1 be met in a home or community-based setting.
- 2 • The home and community-based services to which funds are  
3 reallocated pursuant to this bill are to include services provided  
4 under the Medicaid Enhanced Community Options and Assisted  
5 Living Waivers.
- 6 • The provisions of the bill are not to be construed to authorize a  
7 reduction in funding for Medicaid-approved services based upon the  
8 approved State Medicaid nursing home reimbursement  
9 methodology, including existing cost screens used to determine  
10 daily rates, annual rebasing and inflationary adjustments.
- 11 • The commissioner, in consultation with the Commissioner of  
12 Human Services, is to adopt modifications to the Medicaid long-  
13 term care intake system that promote increased use of home and  
14 community-based services. These modifications are to include, but  
15 not be limited to, the following:
- 16 -- commencing January 1, 2007, on a pilot basis in Atlantic and  
17 Warren counties: the provision of home and community-based  
18 services available under Medicaid, in addition to care management  
19 services, pending completion of a formal Medicaid financial eligibility  
20 determination for the recipient of services, for a period that does not  
21 exceed a time limit established by the commissioner; except that the  
22 cost of any services provided to a person who is subsequently  
23 determined to be ineligible for Medicaid may be recovered from that  
24 person; and the use of mechanisms for making fast-track Medicaid  
25 eligibility determinations, a revised clinical assessment instrument,  
26 and a computerized tracking system for Medicaid long-term care  
27 expenditures; and
- 28 -- commencing March 1, 2008, expansion of the pilot programs to  
29 all of the remaining counties, subject to the commissioner conducting  
30 or otherwise providing for an evaluation of the pilot programs and  
31 determining from that evaluation that the programs are cost-effective  
32 and should be expanded Statewide.
- 33 • The commissioner, in consultation with the Medicaid Long-Term  
34 Care Funding Advisory Council established pursuant to the bill, is  
35 to:
- 36 -- no later than July 1, 2007, present a report to the Governor  
37 and the Legislature that provides a detailed budget and management  
38 plan for effectuating the purposes of the bill; and
- 39 -- no later than January 1, 2008, present a report to the Governor  
40 and the Legislature that documents the reallocation of funds to  
41 home and community-based care, and present an updated report no  
42 later than January 1 of each succeeding year until the commissioner  
43 determines that total Medicaid expenditures for long-term care have  
44 been sufficiently rebalanced to achieve funding parity between  
45 nursing home care and home and community-based care, at which  
46 point the commissioner is to document and certify to the Governor  
47 and the Legislature that funding parity has been achieved.

- 1 • The commissioner, in consultation with the Medicaid Long-Term  
2 Care Funding Advisory Council, is directed to:
  - 3 -- Implement a comprehensive data system to track long-term  
4 care expenditures and services and consumer profiles and  
5 preferences.
  - 6 -- Complete the following no later than January 1, 2008:
    - 7 (1) implement a system of Statewide long-term care service  
8 coordination and management designed to minimize administrative  
9 costs, improve access to services, and minimize obstacles to the  
10 delivery of long-term care services to people in need;
    - 11 (2) identify home and community based long-term care service  
12 models that are determined by the commissioner to be efficient and  
13 cost-effective alternatives to nursing home care, and develop clear  
14 and concise performance standards for those services;
    - 15 (3) develop and implement a comprehensive consumer  
16 assessment instrument that is designed to facilitate an expedited  
17 process to authorize the provision of home and community-based  
18 care to a person prior to completion of a formal financial eligibility  
19 determination; and
    - 20 (4) develop and implement a comprehensive quality assurance  
21 system with appropriate and regular assessments that is designed to  
22 ensure that all forms of long-term care available to consumers in  
23 this State are financially viable, cost-effective, and promote and  
24 sustain consumer independence; and
  - 25 -- Seek to make information available to the general public,  
26 through print and electronic media, on the various forms of long-  
27 term care available in this State and the rights accorded to long-  
28 term care consumers by statute and regulation.
- 29 • The bill establishes a 13-member Medicaid Long-Term Care  
30 Funding Advisory Council.
  - 31 -- The advisory council is to: monitor and assess, and advise the  
32 commissioner on, implementation of the provisions of the bill; and  
33 develop recommendations for a program to recruit and train a stable  
34 workforce of home care providers, including recommendations for  
35 changes to provider reimbursement under Medicaid home and  
36 community-based care programs.
  - 37 -- The advisory council is to meet at least quarterly during each  
38 fiscal year until such time as the commissioner certifies to the  
39 Governor and the Legislature that funding parity has been achieved,  
40 and is entitled to receive such information from the Departments of  
41 Health and Senior Services, Human Services and the Treasury as  
42 the advisory council deems necessary to carry out its  
43 responsibilities under the bill.
  - 44 -- The advisory council is to include:
    - 45 (1) the commissioner, the Commissioner of Human Services and  
46 the State Treasurer, or their designees, as ex officio members; and
    - 47 (2) 10 public members to be appointed by the commissioner, of  
48 whom one each is to represent AARP, the New Jersey Association

- 1 of Area Agencies on Aging, the New Jersey Association of County  
2 Offices for the Disabled, the Health Care Association of New  
3 Jersey, the New Jersey Association of Non-Profit Homes for the  
4 Aging, the New Jersey Hospital Association, the Rutgers Center for  
5 State Health Policy, the New Jersey Elder Rights Coalition, a labor  
6 union that represents home and community-based health care  
7 workers, and the home care industry, respectively.
- 8 -- DHSS is to provide staff and administrative support to the  
9 advisory council as required to carry out its responsibilities.
- 10 • The commissioner, in consultation with the Commissioner of  
11 Human Services, is directed to apply to the federal Centers for  
12 Medicare and Medicaid Services for any waiver of federal  
13 requirements, or for any State plan amendments, which may be  
14 necessary to obtain federal financial participation for State Medicaid  
15 expenditures in order to effectuate the purposes of the bill.
- 16 • Finally, a unique global budget appropriation line item for Medicaid  
17 long-term care expenditures is to be included in the annual  
18 appropriations act for FY 2008 and each succeeding fiscal year in  
19 order to provide flexibility to align these expenditures with services  
20 to be provided during each fiscal year as necessary to effectuate the  
21 purposes of the bill.