



## Community First Choice Option Coalition

# The Community First Choice Option for Pennsylvania – Fiscal Common Sense<sup>1</sup>

*Pennsylvania has a unique opportunity to improve the quality of life for seniors and people with disabilities while saving money by providing cost-effective community-based care rather than expensive institution-based services. The Community First Choice Option (CFCO) makes home-based care available to people of all ages and disabilities who meet the Medicaid criteria for institutional care. Savings generated from the CFCO can be used to fund the reduction of Pennsylvania's waiting list for services for people with intellectual disabilities (ID).*

## **Introduction**

CFCO, authorized by the Affordable Care Act, provides Pennsylvania with a strategic opportunity to strengthen the state's commitment to helping seniors and people with disabilities live as independently as possible in communities across the Commonwealth.<sup>2</sup> CFCO allows states to offer home and community-based attendant services (also called personal

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<sup>1</sup> Sponsored by the Community First Choice Option Coalition of Pennsylvania, for more information, see [www.communityfirstchoicecoalition.org](http://www.communityfirstchoicecoalition.org); lead authors Leslie Allen, J.D.; Ilene Shane, J.D., and Brian Baxter, MPA, with special thanks to Thomas Earle, Esq., and Nancy Salandra with Liberty Resources, Inc., the Center for Independent Living for Philadelphia, Steve Gold, Esq., Laval Miller Wilson, Esq., from the Pennsylvania Health Law Project, Estelle Richman, Spencer Rand, Esq., Professor at the Beasley School of Law, Temple University and Jeff Iseman, Policy Analyst at the Pennsylvania Statewide Independent Living Council.

<sup>2</sup> 1915(k) Social Security Act, §2401, enacted on March 23, 2010. §2401 added a new §1915(k) of the Social Security Act to establish the Community First Choice option.

assistance services or attendant care) to Medicaid recipients who are seniors or people with physical disabilities. The time has come for Pennsylvania to balance its existing expensive entitlement to long-term care provided in institutional settings for seniors and people with disabilities with opportunities for cost-effective personal assistance services in the least restrictive setting.<sup>3</sup>

This report summarizes why CFCO is right for Pennsylvania. Pennsylvania should adopt the CFCO because long-term care provided in the community is both what people want and is less expensive than care provided in unnecessary institutional settings.

### **The Case for Home and Community-Based Long-term Living Services**

CFCO is consistent with two decades of annual budget decisions made under four governors to fund home and community-based alternatives to expensive institutional care for seniors and people with physical disabilities.

It's What People Want: People want to live independently in their homes. Illness, aging, and physical disability can mean that a person needs some extra help with the activities of daily living. CFCO makes it possible for those who need extra help to stay in their homes. Currently, Pennsylvania—as is the case for many other states—has an “institutional bias” because nursing home services are available based on a legal entitlement under federal law<sup>4</sup>, but home-based services are not an entitlement. The CFCO gives people choice. The CFCO provides funding for personal

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<sup>3</sup> Providing services to people with disabilities in the least restrictive setting is consistent with the Americans with Disabilities Act's Community Integration mandate decided in Olmstead v. L. C. 527 U.S. 581 (1999)

<sup>4</sup> 42 USC 1396 et seq.

assistance services that enable people to remain in their homes when they need assistance to perform tasks of daily living.<sup>5</sup>

Pennsylvanians want community-based services. According to a quarterly survey by the Centers for Medicare and Medicaid, 87.08% of residents in a Pennsylvania nursing facility want information on community-based alternatives.<sup>6</sup> This demand for home-based services is echoed in a recent AARP comparative study on home-based services, which concluded that the vast majority of institutionalized people want home-based services—which is also significantly less expensive than institutional care.<sup>7</sup>

It's Cost-Effective: Home and community-based long-term living is significantly less expensive than the cost of care in public or private institutions. To the extent that people can be served in their home rather than nursing homes, PA can save an annual average of nearly \$30,000 per recipient.<sup>8</sup> In Pennsylvania, the average cost for home and community-based attendant services for seniors and people with physical disabilities is about \$26,750 per year, while nursing home care costs average about \$60,225

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<sup>5</sup> Kathleen Sebelius, *Report to Congress Community First Choice: Interim Report to Congress as Required by the Patient Protection and Affordable Care Act of 2010 (P.L. 11-148)*, DEPARTMENT OF HEALTH AND HUMAN SERVICES OFFICE OF THE SECRETARY, 2014, last accessed November 11, 2012, available at <http://www.medicare.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/community-first-choice-interim-report-to-congress.pdf>.

<sup>6</sup> This number comes from the MDS study mandatorily collected for each patient in a nursing home receiving government dollars where nursing home residents are asked if they wanted to be informed on an ongoing basis of their community-based alternatives. *MDS Frequency Report: Third Quarter 2014*, THE CENTERS FOR MEDICARE AND MEDICAID, 2014, last accessed November 11, 2014, available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Computer-Data-and-Systems/Minimum-Data-Set-3-0-Public-Reports/Minimum-Data-Set-3-0-Frequency-Report.html>.

<sup>7</sup> Wendy For-Grage and Jenna Walls, *State Studies Find Home and Community-Based Services to Be Cost-Effective*, AARP PUBLIC POLICY INSTITUTE, last accessed November 11, 2014, available at [http://www.aarp.org/content/dam/aarp/research/public\\_policy\\_institute/ltc/2013/state-studies-find-hcbs-cost-effective-spotlight-AARP-ppi-ltc.pdf](http://www.aarp.org/content/dam/aarp/research/public_policy_institute/ltc/2013/state-studies-find-hcbs-cost-effective-spotlight-AARP-ppi-ltc.pdf). This study reveals that Pennsylvania has declined to conduct a study tracking the progress of rebalancing efforts for Home and Community Based Services.

<sup>8</sup> DHS Budget Models for the Governor's Spring Update for the FY 2014-2015 budget.

per person per year.<sup>9</sup> Consistent with other states, Pennsylvania saves an average of nearly \$30,000 per person per year when it supports an individual in the community.

### Pennsylvania's Budget for Long-term Living Services

The CFCO will ease the rising cost of long-term living for Pennsylvania's aging population. Pennsylvania allocates nearly \$5 billion for long-term living services for seniors and people with physical disabilities. Growth in this budget is driven by two factors: the significant projected increase in the population age 85 and over and the federally mandated entitlement to Medicaid-funded nursing home services for which many of our seniors and people with disabilities are eligible.

Adopting the CFCO is consistent with the current budgetary priorities in Pennsylvania. The Commonwealth has budgeted enough funds each year over the past ten years for personal care services to flatten and even slightly decrease the number of Medicaid-funded nursing home bed-days. The FY 2014-2015 budget appropriates approximately \$1.5 billion for home and community-based long-term living services for seniors and people with physical disabilities, compared to \$3.1 billion budgeted for nursing home services.<sup>10</sup>

### How the CFCO Would Work in Pennsylvania

Three of Pennsylvania's Medicaid home and community-based waiver programs focus primarily on seniors and people with physical disabilities. They are the Aging Waiver, the Attendant Care Waiver, and the Independence Waiver. Together these waivers provide a total of \$1.3 billion of personal assistance or attendant care services. Forty-one thousand (41,000) seniors

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<sup>9</sup> *Id.*

<sup>10</sup> PA application to CMS under the Balancing Incentive Program Plan, Appendix 1.

and people with physical disabilities receive services under these programs.

If the Commonwealth implements the CFCO, the federal government will increase the Federal Medical Assistance Percentages by 6%.<sup>11</sup> The savings from the CFCO 6% increase in federal matching funds can be used to meet the urgent needs of people with intellectual disabilities on the ID Waiting List and the needs of people with autism for specialized home and community-based services. Over the past ten years, governors and the legislature have given high priority to the expansion of home and community-based services for people with intellectual disabilities in annual budgets. Community-based services to people with autism have also been expanded in recent years.

Pennsylvania should use the savings generated from the CFCO's increase in the FMAP to serve people on the ID and autism waiting lists. Because these groups often require full 24-hour services or services that are more complex than what is covered under the CFCO, adopting the CFCO alone will not address the ID or Autism waiting lists. However, the savings generated from the CFCO should be used to reduce these waiting lists.

### The Risk of Increased Demand for Personal Assistance Services

The CFCO will not lead to a sudden increase in the number of requested services. Mercer Human Services Consulting, Inc. (Mercer) was hired by the Department of Human Services to provide a report on the financial impact of Pennsylvania's adoption of the CFCO. Mercer reported that 15,396 existing Medicaid recipients might be newly authorized to receive personal

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<sup>11</sup> *Medicaid Program; Community First Choice Option*, FEDERAL REGISTER, May 7, 2012, last accessed November 11, 2014, available at <https://www.federalregister.gov/articles/2012/05/07/2012-10294/medicaid-program-community-first-choice-option#h-34>.

assistance services, and that as many as 1,079 individuals might transition from state institutions if Pennsylvania were to adopt the CFCO, at a net cost to the state budget of just over \$100 million.

This 6-page report does not contain any rationale for how Mercer came up with its 15,396 person estimate. The CFCO only provides personal assistance services to those who are both currently Medicare eligible and require an institutional level of care.<sup>12</sup> For a decade, Pennsylvania has had three waivers making personal assistance services available to seniors and people with physical disabilities who are Medicaid recipients and nursing home eligible.<sup>13</sup> There is no waiting list for personal assistance services for Medicaid eligible people. As a result, there would be no projected increase in utilization of these services by seniors or people with physical disabilities upon the adoption of CFCO.

Mercer likely calculated this number by erroneously concluding that all people with intellectual disabilities and autism who are waiting for home and community-based services would use CFCO. Thirteen thousand, nine hundred and eighty seven (13,987) people are presently on the Emergency, Critical, and Planning sections of the ID waiting list.<sup>14</sup> Presumably, Mercer's number also included people with autism in need of services.

The fallacy of this analysis is that the services requested by persons on the ID waiting list are not covered by the CFCO. The CFCO covers services that assist in the activities of daily living. It does not cover 24-hour a day care, assistive technology, home modifications, physical therapy, speech therapy, occupational therapy, behavioral therapy, supported work, or day programs. Respite services are covered under the CFCO only at the state's

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<sup>12</sup> Sebelius, *Report to Congress Community First Choice: Interim Report to Congress as Required by the Patient Protection and Affordable Care Act of 2010 (P.L. 11-148)*.

<sup>13</sup> The three waivers are the Aging Waiver, the Attendant Care Waiver, and the Independence Waiver.

<sup>14</sup> 1915(k) Social Security Act, §2401.

discretion. Almost no people with ID or autism can have their needs met by personal assistance services alone.

To date, three states have implemented the CFCO. The two states that shared information with us have not experienced any significant increase in the number of services requested. In California, nearly all of the 493,546 recipients who received personal assistance services under the CFCO were already receiving them under another program.<sup>15</sup> While Oregon's official CFCO report has not yet been released, officials report that there had not been a significant increase of new applicants for personal assistance services. While officials in Maryland did report some use of the new personal assistance State Plan service by people with intellectual disabilities when they implemented the CFCO, the fact that neither California nor Oregon experienced any increase in their existing enrollment trends in personal assistance services as a result of their implementation of the CFCO undercuts the conclusions of the Mercer report for Pennsylvania.

## **Conclusion**

The Commonwealth has the opportunity to allow seniors and people with disabilities to live in the community while achieving state savings. The CFCO will make permanent Pennsylvania's commitment to allowing people who need assistance with the daily activities of living to remain at home. The option will generate additional federal Medicaid reimbursement without causing an increase in new community-based service requests. The additional revenue generated from the federal reimbursement as a result of the adoption of the CFCO should be reinvested to continue the state's efforts to reduce the ID waiting list.

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<sup>15</sup> Sebelius, *Report to Congress Community First Choice Option*, at p. 8.