

**ALASKA STATE LEGISLATURE**  
**SENATE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE**

February 1, 2010

1:32 p.m.

**MEMBERS PRESENT**

Senator Bettye Davis, Chair  
Senator Joe Paskvan, Vice Chair  
Senator Johnny Ellis  
Senator Joe Thomas  
Senator Fred Dyson

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 238

"An Act amending the eligibility threshold for medical assistance for persons in a medical or intermediate care facility."

- MOVED SB 238 OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: SB 238

SHORT TITLE: MEDICAID FOR MEDICAL & INTERMEDIATE CARE

SPONSOR(S): SENATOR(S) DAVIS

|          |     |                                 |
|----------|-----|---------------------------------|
| 01/22/10 | (S) | READ THE FIRST TIME - REFERRALS |
| 01/22/10 | (S) | HSS, FIN                        |
| 02/01/10 | (S) | HSS AT 1:30 PM BUTROVICH 205    |

**WITNESS REGISTER**

TOM OBERMEYER, staff to Senator Davis  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Provided an overview of SB 238.

JON SHERWOOD, Medical Assistant Administrator  
Department of Health and Social Services (DHSS)  
Juneau, AK

**POSITION STATEMENT:** Explained the Medicaid long-term services income eligibility limit and calculations.

VANCE L. SANDERS, Attorney at Law  
Representing himself  
Juneau, AK

**POSITION STATEMENT:** Supported SB 238.

MARIE DARLIN, President  
AARP Capital City Task Force  
Juneau, AK

**POSITION STATEMENT:** Supported SB 238.

HOLLY HANDLER, Attorney at Law  
Juneau, AK

**POSITION STATEMENT:** Supported SB 238.

DENISE DANIELLO, Executive Director  
Alaska Commission on Aging  
Juneau, AK

**POSITION STATEMENT:** Supported SB 238.

#### **ACTION NARRATIVE**

[1:32:04 PM](#)

**CHAIR BETTYE DAVIS** called the Senate Health and Social Services Standing Committee meeting to order at 1:32 p.m. Present at the call to order were Senators Dyson, Ellis, Paskvan, and Davis.

#### **SB 238-MEDICAID FOR MEDICAL & INTERMEDIATE CARE**

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**CHAIR DAVIS** announced consideration of SB 238. This bill mirrors a bill in the House and was introduced on the Senate side at the request of members of that body.

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**TOM OBERMEYER**, aide to Senator Davis, presented the sponsor statement for SB 238. SB 238 amends the eligibility threshold for medical assistance for persons in a medical or intermediate care facility. In 2003 the legislature changed Alaska Statute Sec. 47.07.020(b)(6), the Medicaid long-term services income eligibility limit for persons in medical or intermediate care facilities from 300 percent supplemental income security to an

equivalent fixed dollar amount of \$1656 per month. This change created an income ceiling for waiver eligibility, effectively freezing the eligibility limit for the last seven years rather than allowing the limit to adjust annually in tandem with the federal Supplemental Security Income (SSI) limit. The result was that small Social Security cost-of-living adjustments have disqualified many needy disabled people from the program.

He said that near the end of 2008, many individuals who are aged, blind, or disabled and requiring institutional care, received notices that they would no longer be eligible for the Home and Community-Based Services waivers after the 2009 cost-of-living adjustment went into effect. Because the waiver eligibility limits no longer increase with the cost of living, it placed a number of people over the \$1656 per month limit, which is 300 percent of the 2003 SSI benefit rate. The 2009 income equivalent at 300 percent SSI was \$2022 per month. (He referred members to the attached fiscal note.) Alternatives for preserving eligibility, particularly for those requiring lifetime or long-term care, include creation of a Medicaid Qualifying Income Trust, also known as a Miller Trust. Trusts have procedural drawbacks including numerous responsibilities and restrictions, limited access to income, the need for an attorney, and the need for a trustee to manage trust assets.

The Supplemental Security Income program is a federal needs-based disability program for low income adults over age 65, blind, or disabled. For an adult, the SSI disability requirement is based on the ability to work. An adult is considered disabled if the person cannot do the work that he or she performed before the disability occurred and cannot do alternate work because of a severe physical or mental condition. For a child to be eligible, he or she must suffer from serious physical and/or mental problems. For both adults and children the disability must last, or be expected to last, at least a year. Medicaid services are critical to the wellbeing of Alaska's most vulnerable citizens. Supporting SB 238 will ensure that eligible Alaskans can continue to receive nursing home care and in-home services. It will also save the legislature from amending statutes every year or two as the federal poverty-level guidelines and supplemental security levels increase with the cost of living.

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MR. OBERMEYER noted that SB 238 has a zero fiscal note accompanied by a good deal of written analysis from the Department of Health and Social Services.

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CHAIR DAVIS called John Sherwood to represent the administration.

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JON SHERWOOD, Medical Assistant Administrator, Department of Health and Social Services (DHSS) said, as stated previously, this bill would increase the income standard used to determine Medicaid eligibility for people who are in nursing homes or receiving Home and Community Based Waiver (HCBW) services. Basically, these are people who need an institutional level of care. It would allow the income standard to increase according to cost-of-living increases granted under the federal Supplemental Security Income program. Those are the same kind of cost-of-living increases people get in their Social Security payments.

Currently, people who are over income for this category of Medicaid, because of the large expense of providing services, use a device called a Qualifying Income Trust (QIT) or Miller Trust to reduce their countable income for Medicaid to below the income standard (\$1656 per month) and qualify for Medicaid. As a result of this standard being fixed in law, he has not seen people losing Medicaid eligibility, however they are subject to significant inconvenience and expense in setting up the trust, and management can impose hardships on themselves and their families. The Department of Health and Social Services does not anticipate that raising the need standard will add more people to the Medicaid program; therefore they are assuming a zero fiscal note.

MR. SHERWOOD pointed out that people who meet this institutional level of care and are in a nursing home or on a waiver program are subject to a calculation called a cost-of-care calculation that takes place after HSS determines their eligibility. This calculation takes into effect all of their income and provides some deductions including a Personal Needs Allowance (PNA), a deduction to cover the cost of a spouse or other dependents living in the community, medical expenses that are not covered by the Medicaid program, and some others. Once they have completed that calculation, HSS determines what amount of money individuals must pay for their cost of care; that is, what portion they must pay their providers for the cost of care. That in turn reduces the amount the state pays to providers for their care. He said he raises that issue because this proposed change in the statute would not affect the Personal Needs Allowance;

the PNA is set in regulation, and they assume they will keep it at its current levels for the time being.

He stressed that if they were to increase the Personal Needs Allowance, it would decrease the amount of money people are paying for their cost of care and would have a fiscal impact on the program.

MR. SHERWOOD said this change would prevent a number of people from having to get a trust, and it would allow the standard to move with adjustments to the cost of living on the SSI program. He reiterated that the cost of care and Personal Needs Allowance are separate, and they are not proposing to change the Personal Needs Allowances as part of this bill.

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SENATOR DYSON asked Mr. Sherwood from what sources a person who is institutionalized might receive income.

MR. SHERWOOD replied that the most common source of income is a Social Security payment or another retirement payment such as state, federal, or private retirement. Some people would qualify for Social Security Disability Insurance benefits. If people are receiving cash assistance from the state, they don't fall under this category; they fall under another category of Medicaid, so they are not subject to these standards or the cost of care calculation.

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SENATOR DYSON questioned why the legislature wouldn't want them to exhaust this other source of income to pay their bills first.

MR. SHERWOOD explained that they are required to use their income to pay toward the cost of their care after certain income deductions are applied. Some of those deductions are explicit under federal law. The Personal Needs Allowance is subject to some degree of flexibility by the state; but the state has set levels that should afford people enough funds to support themselves in their living situation. It is slightly higher for nursing homes than for assisted living homes and persons being cared for in their own homes. In nursing homes, the Medicaid payment includes a payment for room and board. In other settings, by federal law, the state is prohibited from paying for room and board; in some of these situations people have to pay rent or a separate fee for room and board that isn't reimbursed by Medicaid. The idea is to give people a Personal Needs Allowance that is sufficient to meet their living expenses

in the community. Those allowances will not increase if this bill passes.

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SENATOR DYSON said he was unclear about whether SB 238 proposes to raise the limit so people can have more personal income and not be disqualified from these categories of public income.

MR. SHERWOOD said that is correct, but explained that the bill increases the standard the state uses to determine whether people are eligible for Medicaid; it does not change the amount of money they can keep before they have to start paying their providers for the cost of their care.

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MR. SHERWOOD expanded that in federal terms, the cost-of-care calculation is referred to as "post-eligibility." After the determination of eligibility, Medicaid calculates how much money a person has to pay for his care. Those are two separate calculations; they are not done at the same time, and they don't use the same rules.

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SENATOR THOMAS joined the meeting.

SENATOR PASKVAN asked Mr. Sherwood approximately what the net amount of monies is in these Miller Trusts and if he is correct that these funds are used to pay living expenses separate and apart from the program.

MR. SHERWOOD replied that there are limits on the amount of money that can be made available to individuals through the Miller Trusts directly. That money is typically used to pay room and board and other living expenses; each trust is tailored to the needs of the individual. The cost-of-care calculation ignores the existence of a Miller Trust. The trust is used to determine eligibility and after the state determines the cost of care, they have access to all of the funds that go into the Miller Trust.

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SENATOR PASKVAN asked what happens to any money within the Miller Trust upon death.

MR. SHERWOOD said people in this income group tend not to accumulate money in this trust; if they do, the balance is used

to reimburse the Medicaid program for expenses incurred on their behalf.

SENATOR PASKVAN responded "So this isn't a savings account."

MR. SHERWOOD concurred. He said the Miller Trust has been referred to as a "flush trust" by one attorney he knows, because money comes in and goes out each month.

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SENATOR PASKVAN ventured that if SB 238 passes, a person with an income of less than \$2022 will not have to open a Miller Trust.

MR. SHERWOOD responded "That is correct".

SENATOR PASKVAN asked what the typical cost of setting up and administering a Miller Trust would be.

MR. SHERWOOD answered that when he was working more closely with trust policy, the cost ran between approximately \$800 and \$2000 to set up the trust.

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SENATOR PASKVAN said he understands that by raising the limit, recipients won't have to spend that money. They can earn up to \$2022 per month to pay for other costs of living.

MR. SHERWOOD affirmed that if recipients' income falls below the \$2022 per month they would not have to open a trust. This would save them the expense of setting it up; it would save them the burden of trust accounting; and it would save them from having to find a reputable person to act as their trustee.

SENATOR THOMAS joined the meeting.

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SENATOR THOMAS said his only experience with Miller Trusts has been that they are a simple arrangement and generally apply to people who have have Social Security income and have divested themselves of most of their possessions. He asked if other groups of people qualify for these trusts and have assets in excess of what is generally allowed under state assistance laws.

MR. SHERWOOD answered that a Miller Trust is used only for income. The asset test that affects this category of Medicaid allows a maximum of \$2000. There is a generous spousal deduction and some assets are exempt such as a home and car, so to use the

trust people still have to divest themselves of accountable assets beyond the asset standard. Generally, people who use a Miller Trust have some kind of retirement or disability income in excess of the standard. It is most commonly used by people who are in nursing homes or qualify for Home and Community Based Waivers.

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SENATOR THOMAS wondered if any additional funds are usually directed to the care facility, since those funds have to be accounted for and used to pay for individuals' care at the end of the year.

MR. SHERWOOD replied that people, especially those in nursing homes, have to pay most of their income toward their cost-of-care, so they tend not to accumulate money. If they do accumulate money that takes them over the \$2000, then they need to spend that money in a way that will not also create problems for their eligibility; they cannot convert that money to another accountable asset. If they have no other needs to be met, DHSS would typically recommend that people pay their provider an additional sum toward their cost of care.

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VANCE L. SANDERS, Attorney at Law, Juneau, Alaska, started out with Alaska Legal Services in 1984 and has been practicing law here for many years. He is also the President of Alaska Legal Services Corporation but was speaking on this issue as an individual and expressed strong support for SB 238.

This is a complicated area of the law, he said. There are three things people have to do to qualify for Medicaid. First, their accountable resources have to be below a certain limit, depending on whether they are married or single. That limit is \$2000 per single individual; for married persons it is \$109,640 per community spouse this year. Certain things are not counted such as a car or a home valued at less than \$500,000. Second, their level of care has to be either skilled nursing or intermediate, which means that they cannot care for themselves. The third criterion is that their income must be below a certain amount that was frozen in time by the state of Alaska in 2003 at \$1656 per month, the SSI limit at that time.

MR. SANDERS explained that SSI is a federal payment program for people who are determined by the federal government to be disabled, have not paid money into the insurance system, are low income and have few resources but meet the disability test. That

is Title 16 of the federal Social Security Act and is called "the SSI limit." Title 2 is the insurance status. It applies the same disability test, but resources are not relevant; it is just like a federal insurance program for people who are disabled.

The state of Alaska made a policy decision in 2003 to freeze the income limit for people to qualify for Medicaid. These are primarily people on Home and Community Based Waivers, so they are at home getting Medicaid, those in long-term care facilities such as Wildflower Court in Juneau, and now in pioneers' homes. Since that time, as those people's income has gone up due to cost-of-living adjustments or other factors, they have no longer qualified and have had to use a Miller Trust to artificially reduce their income.

That sounds easy, but these are people who are already at home and unable to care for themselves, in a nursing home or pioneers' home, or are in triage; now they have to face the difficulty of creating a trust. These trusts are not easy to set up and average from \$500 to \$1000, which for people who are making \$1700 to \$2000 per month is a lot. In Anchorage, that fee can be up to \$2000 for a single trust fee. They are 24-page documents that have to incorporate not only federal and state law, but anticipate that these people's health status may change. When he does a trust, he anticipates three different scenarios: walking around Medicaid, home and community-based Medicaid, or nursing home Medicaid. So they have a 24-page trust, a family in crisis, and in Juneau, unless a person is fortunate enough to have the Office of Public Advocacy appointed as his conservator or guardian, there are no trustees. That is a chronic problem throughout Alaska. Once a trust is created, it has to be registered with the superior court; it has to be assigned an Employer Identification Number (EIN) by the IRS because it is a separate legal entity; it requires a separate bank account, and there is an annual review by the state of Alaska. He reiterated that these are complicated things and the people who have to deal with them are generally not qualified by education or inclination to administer them. It is an amazingly difficult thing for these families to pull off.

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MR. SANDERS said he sees this as a pro-family bill. SB 238 raises that artificial income limit and ties it to the federal SSI limit; as that goes up, the income limit goes up. That will obviate the need for many families to come up with the money to pay for these trusts and go through this trust experience. He agrees with Mr. Sherwood that it should be a zero fiscal note.

It will not change the cost-of-care calculation for post-eligibility.

2:05:30 PM

MARIE DARLIN, President, AARP Capital City Task Force, Juneau, Alaska, said AARP supports SB 238 and urges the committee to pass this legislation. She expressed her appreciation for Mr. Sanders's clear explanation of Miller Trusts. She related that several people at Fireweed Place were affected by the increase in Social Security last year and had to begin looking at trusts. They were very upset because they did not have the money to pay for it and some gave up. Those who were able to create one with the support of family found the process very difficult. AARP has been concerned about this since the limit was fixed in 2003. Most beneficiaries of this bill not well off financially; they are at risk both economically and from a health standpoint. If they don't get the care they need and are not able to stay at home, it will increase the cost to the state more when they end up in long-term care facilities.

She concluded by emphasizing that this bill supports the home and community based services the state is trying to promote and that are so badly needed.

2:09:20 PM

HOLLY HANDLER, Attorney at Law, Juneau, Alaska, said she sets up Miller Trusts for clients and assists them with problems that occur during the lifetime of these trusts. In December 2008, because no adjustment to the Medicaid standard to SSI was in place, dozens of Alaskans across the state received notification that their benefits were being cancelled because of a small cost of living increase in Social Security. Some of the people she represented exceeded the income limit by only a few dollars. Because of this problem, they had to set up Miller Trusts. These are irrevocable trusts, which means they last for the lifetime of the creator unless they are dissolved in court.

MS. HANDLER said that, while some people are fortunate to have caring family members who will serve as trustee to manage the trust account, others have no family or friends they can trust with the whole of their finances. She emphasized that when a trustee becomes responsible for a Miller Trust, they become responsible for administering the person's entire income, and for SSI eligibility. If the trustee manages the trust irresponsibly or incorrectly, it can jeopardize Medicaid eligibility.

In December 2008 when the most recent Social Security COLA went into effect, she represented two people who had no family to serve as trustee. One of these individuals found a niece out of state to manage the trust; but between December 2008 and now, that niece decided her financial needs were more important to her and took all of the money. This 70-year-old individual could not take care of himself and, due to this horrendous financial exploitation, could no longer pay rent or utilities. Rectifying the situation was not a simple matter of changing the trustee; it was a matter of finding an attorney to petition the court, explaining in court affidavits why the trustee had to be changed, obtaining a court order, registering that change in trustee with the courts, submitting the documents to public assistance for approval, submitting legal documents to the bank to change all of the trustee information, and dealing with the credit agencies to repair this person's credit.

In another instance in Ketchikan, a gentleman with end-stages of Parkinson's disease had to use a person he did not know well as a trustee. That trustee proceeded to mismanage the Medicaid account so that his Medicaid was jeopardized within months after setting up the trust.

MS. HANDLER stated that she is testifying in strong support of this bill because, not only will it make it easier for existing Medicaid recipients to maintain their eligibility, it will go a long way toward preventing the kind of financial exploitation and abuse of the disabled and elderly that is already a problem in the state and is made worse by the need to have these Miller Trusts in place. She added that she has had the pleasure of working with a number of fine employees at the Department of Public Assistance, Jim Steele included. Their workloads are increased whenever these Social Security COLAs go into effect.

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SENATOR PASKVAN asked what the typical cost to maintain a trustee is if it isn't the Office of Public Assistance (OPA) or a family member.

MS. HANDLER answered that in the cases she handled, the trustee charged approximately \$50 per month; for those who exceed the income limit by only a few dollars, that takes them below the \$1656 per month allowed to pay for food, shelter, and basic living expenses.

[2:17:01 PM](#)

DENISE DANIELLO, Executive Director, Alaska Commission on Aging, Juneau, Alaska, said the commission is very much in support of this bill. They first became aware of this issue last December, when her office received a number of calls from seniors who had gotten letters advising that, because of the 5.8 percent Social Security cost-of-living increase, they were disqualified from their Medicaid Waiver programs. Her office told them about the Miller Trusts and made referrals to local attorneys and Alaska Legal Services; luckily Holly Handler in Juneau was available to help many of these individuals.

MS. DANIELLO pointed out that one of the commission's concerns with the Miller Trusts, in addition to the things already mentioned, has to do with allowable expenses; according to the Personal Cost Allowance, a person can have the amount of \$1656 per month. Even though they've received a cost-of-living increase to help them pay for increases in food and housing, none of these additional funds over the \$1656 may be used to pay for those expenses. For an elderly person living in Fairbanks or another cold area of the state, the price of fuel is very high.

She said that since the income limit was set at \$1656 in 2003, these people have been increasingly less able to meet their basic living expenses. She commented that she hopes the Department of Health and Social Services and this committee will consider raising the amount of the personal care allowance at some point, to give people additional funds to cover the increased costs of food and housing.

MS. DANIELLO closed by saying this is a good investment. If the state is able to keep people healthy, allow them to keep decent housing and warmth, there is a better chance they will be able to stay in their homes, and for every year a person is able to remain independent, the state saves from \$80,000 to \$181,000. The cost for an older Alaskans waiver is only roughly \$23,000 per year.

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CHAIR DAVIS called Mr. Sherwood back to address Ms. Daniello's comment that the money cannot be used for food or fuel.

MR. SHERWOOD said the limiting factor is the personal needs allowance in the cost-of-care allowance. It can be used for anything but is capped at \$1656. If they have funds in excess of that amount they have to qualify for another deduction such as disabled dependent, spouse, or uncovered medical. Basically, to pay for their own food shelter and other living expenses, they

are allowed only \$1656 per month. That can be changed only through state regulation.

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CHAIR DAVIS closed public testimony. She said she believes that her questions have been answered and said she would be comfortable moving SB 238 out of committee.

[2:25:05 PM](#)

SENATOR PASKVAN moved to report SB 238, labeled 26-LS1362\A, out of committee with individual recommendations and attached fiscal note(s). There being no objection, SB 238 moved from committee.

[2:26:40 PM](#)

There being no further business to come before the committee, Chair Davis adjourned the meeting at 2:26 PM.