HJR

58

Senate Health, Education and Social Services Committee

Legislation Checklist

Bill number: HJR 58

Sponsor: HESS (H)

Date referred to committee: 1/29/86

Synopsis completed:

Fiscal note:

Further referrals:

Passed out 2-4-86.
All 5 do pass

CONTACTS:

Greenberg
Pugh

COMMITTEE REPORT

SENATE

FURTHER:

1/29/86

Date 2-4-86

Mr. President

The Committee on HESS considered CSHJR 58 HESS

urging the United States Department of Health and Human Services to ease the restrictions on the granting of Medicaid 1915(c) waivers.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

[X] do pass

[ ] do pass with attached amendment(s)

[ ] replace with/or adopt CS for ________
[ ] new title
[ ] same title and recommends ________

[ ] and attached a "LETTER OF INTENT" [ ] NEW FISCAL NOTE

[ ] reports it back without recommendation

[ ] recommends referral to ________ Committee

MEMBERS SIGNING DO PASS	MEMBERS HAVING OTHER RECOMMENDATIONS
Joe Josephson	
Arliss Sturgulewski	
Edna DeVries	
Carl Steele	

Bettye Fahrenkamp (Do Pass)
Chairman

Chairman recommendation

BILL SHEFFIELD, GOVERNOR

File 147

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAL ASSISTANCE

POUCH H-07
JUNEAU, ALASKA 99811
PHONE: (907) 465-3355

January 23, 1986

The Honorable Max Gruenberg
Alaska State House
P.O. Box V
Juneau, Alaska 99811

Dear Representative Gruenberg:

During HESS hearings held January 22, 1986 on HJR58, you requested a complete list of community services that Medicaid would pay for if our Medicaid waiver was approved. The list is as follows:

- Adult Residential Care (excluding room and board)
- Adult Foster Care
- Home Health Nursing
- Home Health Aide Services
- Personal Care Attendant Services
- Homemaker Services
- Respite Care
- Adult Day Care
- Case Management

I am also enclosing a list of all Medicaid agency heads across the country as you requested.

If I can be of any further help, please let me know.

Sincerely,

Rod Betit
Director

Enclosure

cc: Commissioner John Pugh

06-F145LH

file HJR 58

CS HJR 58 (HESS) URGES U.S. DEPT. OF HEALTH AND HUMAN SERVICES TO EASE THE RESTRICTIONS AGAINST GRANTING MEDICAID WAIVERS FOR HOME AND COMMUNITY BASED SERVICES:

**

- ADULT FOSTER CARE
- PERSONAL CARE ATTENDANT SERVICES
- HOME HEALTH NURSING
- HOME HEALTH AIDE
- ADULT RESIDENTIAL CARE
- RESPITE CARE
- ADULT DAY CARE
- CASE MANAGEMENT
- HOMEMAKER SERVICES

THE WAIVER PROVISION WAS INTENDED TO CONTAIN RAPIDLY RISING MEDICAL COSTS BY OFFERING PAYMENT FOR SERVICES WITHIN THE COMMUNITY RATHER THAN IN HIGH COST INSTITUTIONS. LAW REQUIRES "COST NEUTRAL" -- THAT COST OF CARE IN COMMUNITY BE NO GREATER THAN COST OF CARE IN INSTITUTION. HOWEVER, FED. REGS. REQUIRE THAT COST OF CARE IN COMMUNITY BE 75% OF THE COST OF CARE IN AN INSTITUTION.

ALASKA'S DEPT. HEALTH AND SOCIAL SERVICES HAS BEEN APPLYING FOR A WAIVER SINCE 1982 (AT LEGISLATURE'S DIRECTION). THE LATEST APPLICATION WAS RETURNED IN THE LATE SPRING OF 1985 TO BE REWRITTEN ACCRODING TO THE FEDERAL REGULATIONS.

** NOTE: HB 98 WOULD PUT PERSONAL CARE ATTENDANT SERVICES INTO THE MEDICAID PROGRAM. THE WAIVER WOULD ALLOW THE FULL RANGE OF COMMUNITY-BASED SERVICES LISTED ABOVE.

POPULATIONS LIKELY TO BENEFIT: DISABLED, ELDERLY, MENTALLY ILL.

received Senate HESS approval 2-4-86 - all DO PASS

Introduced: 1/24/86
Referred: Rules

Original sponsor: Health, Education and Social Services Committee

1 IN THE HOUSE — BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

2 COMMITTEE SUBSTITUTE FOR HOUSE JOINT RESOLUTION NO. 58 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 Urging the United States Department of
6 Health and Human Services to ease the
7 restrictions on the granting of Medicaid
8 1915(c) waivers.

9 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 WHEREAS Congress enacted the Medicaid waiver for home and community-
11 based services (42 U.S.C. 1396n(c)), known as the 1915(c) waiver, in sec.
12 2176 of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35) to
13 contain rapidly increasing medical costs by offering payment for services
14 within the community to maintain certain patients, including the elderly,
15 the developmentally disabled, and the mentally ill, outside of high-cost
16 institutions; and

17 WHEREAS the 1915(c) waiver allows each state the flexibility necessary
18 to determine the types of alternative services to be offered, the groups to
19 be covered, and the geographical areas of the state to be included; and

20 WHEREAS although the groups usually covered by the 1915(c) waiver,
21 including the elderly, use institutional services extensively, they are
22 also the groups who would benefit the most if Medicaid permitted them to
23 utilize noninstitutional services; and

24 WHEREAS the states have recognized the benefits of the 1915(c) waiver
25 by dramatically increasing waiver applications from 69 requests in 39
26 states in 1983, to 138 requests in 47 states in 1984; and

27 WHEREAS the states have found it increasingly difficult to obtain
28 1915(c) waivers because the new federal regulations covering the waivers
29 are extremely stringent and have been strictly construed by the United

1 States Department of Health and Human Services;

2 BE IT RESOLVED by the Alaska State Legislature that the United States
3 Department of Health and Human Services is requested to ease the restric-
4 tions against granting the 1915(c) waivers by amending the regulations
5 covering the 1915(c) waiver and the official interpretations of the regu-
6 lations to promote, rather than to restrict, the beneficial purposes of
7 sec. 2176 of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35).

8 COPIES of this resolution shall be sent to the Honorable Dr. Otis
9 Bowen, Secretary of the U.S. Department of Health and Human Services; to
10 the Honorable Lowell P. Weicker, Jr., Chairman of the Subcommittee on
11 Labor, Health and Human Services, U.S. Senate Committee on Appropriations;
12 to the Honorable Fortney H. Stark, Chairman of the Subcommittee on Health,
13 U.S. House of Representatives Committee on Ways and Means; to the Honorable
14 Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the
15 Honorable Don Young, U.S. Representative, members of the Alaska delegation
16 in Congress; and to the primary committee that deals with matters of health
17 in each legislative house of each state of the United States other than
18 Alaska.

Alaska State Legislature

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

DATE: January 28, 1986

TO: Senator Bettye Fahrenkamp, Chairperson
Senate HESS Committee

FROM: Rep. Max Gruenberg, Jr., Co-Chair
House HESS Committee

SUBJECT: CS HJR 58
Urging the United States Department of Health and Human Services to ease the restrictions on the granting of Medicaid 1915(c) waivers.

This resolution is substantially the same as the one introduced at the Western Legislative Conference.

House HESS version

In CS HJR 58, the Committee added additional committees in Congress and other states to receive copies of the Resolution.

I would greatly appreciate an early scheduling of this resolution in your committee.

Thank you very much.

MEMORANDUM

TO: MAX GRUENBERG

FROM: NANCY BENNETT

DATE: JUNE 10, 1985

RE: MEDICAID WAIVER

BACKGROUND

The Medicaid waiver for Home and Community Based Services, known as 1915 (c) waivers, was established in 1981 by a federal law known as OBRA, section 2176 (Omnibus Reconciliation Act of 1981).

The original concept of the waiver was to contain rapidly rising medical costs by offering payment for services within the community to maintain the elderly, the mentally retarded and the mentally ill out of high cost institutions. States can apply for Medicaid waivers for a variety of services and eligible groups based on needs of the individual state, although the process is cumbersome and time consuming. The law has allowed states great flexibility in the past in determining what kinds of alternative services may be offered, what groups may be targeted and what geographical areas of the state will be covered. Applicants must be screened, and states must establish a pre-admission screening/case management service for the clients. Applicants must also be eligible for Medicaid if institutionalized, must be in the process of applying for institutionalization and the services provided through the waiver must cost the same or less than institutional services.

Nationally, it has been found that only 7% of the Medicaid clients are elderly but that this group uses over 50% of the funding available, with expenditures for nursing home care taking the major portion. By 1984, there were 138 applications filed by 47 states; one year before, in 1983, there were only 69 requests from 39 states. The increased activity of states in attempting the arduous process of waiver application indicates the perceived need for these services. In many cases, the quality of life of clients maintained in the community by personal care attendants, home health and other services is a major consideration.

Studies have shown that the most cost effective method of service delivery of home and community based services is through strict limitation of the services to targeted groups. Also shown, is that alternative services have not brought about the enormous cost savings which had been predicted, and, in fact, have often proven to be cost neutral. Some states, such as Alaska, "purchase" nursing home beds contractually through Medicaid on a prospective basis. While this method allows the state and providers of services to prepare budgets and plan with assurance, it also commits funding so

that it cannot be diverted for other services without a policy change.

ALASKAN EXPERIENCE

Alaska has higher nursing home costs than are experienced nationally, but as in other states, finds that a small number of Medicaid clients use the major portion of funding through institutional services (nursing homes, API and Harborview and this year Hope Cottages will become Medicaid eligible). Alaska also has a disproportionately high number of people handicapped by serious injuries (no doubt connected with our high accident rate) who cannot qualify for D.D. services and have limited community services available for their use. The chronically mentally ill are another under-served population in the state who could benefit from a range of community services which may eliminate the API "revolving door" syndrome.

The Senate HESS Committee instructed Commissioner Helen Bierne, Department of Health and Services, to apply for a Medicaid Waiver for non-institutional services in 1982, and amended the Medicaid statute at that time to indicate legislative approval for funding these services. Since that time, the state has been in the process of applying for the waiver - each application has been returned for more information or verification of information. The latest request, signed by the Governor in early 1985, was returned to be re-written according to the final Medicaid Waiver regulations just published this spring. Unlike other states, Alaska does not have a full time person working on the Medicaid waiver, and has lost two Medical Assistance Division positions in this year's budget process, so it is unknown when the Division will be able to complete the total re-write of the waiver application.

THE FUTURE OF THE MEDICAID WAIVER

The effect of the new regulations is devastating, and has been interpreted by some to mean that the administration is dumping the program. Some facets of the final regulations include:

1. States must estimate populations and costs of services. If the estimate is exceeded, the federal government will not reimburse but, rather, those costs must be born by the state and the state may not place a cap on services.

2. It is now more difficult to become eligible for waiver services. The draft regulations formerly controlling the program allowed waiver services if the difference between services and institutionalization was cost neutral, now all Medicaid costs (including medical services) must be compared to the cost of the waiver and the waiver must prove to be less expensive.

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3. There is a greater emphasis on health and safety standards, which will raise costs to states to verify information.

4. States who have current waivers in place were given only 90 days to comply with new regulations or lose existing waivers.

The only hopeful consideration for the future of the waiver is that the Federal government is considering making non-institutional services an option under the Medicaid program. The effect of this change is that states could include selected services in their State Plan, and it would be absorbed into the normal Medicaid process. Of course, the regulations would need to be examined prior to final comment, but if the code allowed states sufficient flexibility in selecting services offered and eligible groups benefited, this process could well be the one of choice.

Critics claim new HCFA regulations will cripple Medicaid waiver program

By Kathy A. Fackelmann

Regulations issued in March by the Health Care Financing Administration are too restrictive and eliminate the incentives in the Medicaid home and community-based waiver program, state Medicaid officials are saying.

"We feel that the final rules will actually deter states from seeking new waivers," said Barbara D. Matula, director of the North Carolina Division of Medical Assistance in testimony before the House Energy and Commerce health subcommittee.

The Medicaid waiver program lets states apply to HCFA for waivers to provide services for Medicaid recipients at home, thus keeping them out of expensive institutional settings. The proposed regulations would require states to estimate total costs under their waiver programs and limit the number of eligible elderly to the number of long-term care beds in the state.

Under the waiver program, states can offer a range of home and community-based services, such as homemaker, home health and personal care services, to Medicaid patients who are likely to enter a long-term care facility. The program was designed to permit patients to be treated in their homes or in the community rather

Rep. Waxman says states will have to show savings, a step past budget neutrality

than long-term care facilities, where treatment is more costly. In 1983, Medicaid spent $14 billion for long-term care services provided by nursing homes and institutions. By 1990, that figure is expected to double.

Budget neutrality. By law, states must prove a waiver program is budget neutral, meaning that the cost of the program doesn't exceed the cost of caring for patients if a waiver program wasn't in effect.

The regulations "go well beyond assuring budget neutrality," said subcommittee Chairman Henry A. Waxman (D-CA). "Their overall effect is to require states to show that, each year, they will spend less money than they would have under their regular Medicaid program," Rep. Waxman contended, saying that under the new regulations, states will have to show actual savings for the government, a step beyond budget neutrality.

That's because HCFA won't allow expansion of the number of persons participating in the program, even if the elderly are moved out of an expensive institutional setting and into their homes to receive care.

Rep. Waxman Rep. Tauke

The regulations require states to estimate the total cost of the waiver program, and the federal government won't pay for costs that exceed original estimates. States that exceed the projected cost could lose their waiver.

"This means that Medicaid directors have to become seers," Ms. Matula said, noting that the regulations penalize states that exceed their cost projections even if they provide services that cost less than institutional care.

Limits unfair? The HCFA rules limit the number of Medicaid patients served in a waiver program to the number of long-term beds in operation and under construction in a state. That penalizes states that have attempted to contain Medicaid expenditures by controlling the number of nursing home beds, said Richard C. Ladd, administrator for Oregon's senior services division.

For example, Oregon has reduced the Medicaid nursing home population by 6% through home health services, Mr. Ladd said. "This has caused an extremely low growth rate in nursing home beds, and it has eliminated waiting lists for almost all of our nursing homes," he said. To demonstrate a need for a waiver program under the HCFA rules, Oregon would have to build nursing homes and keep them empty, Mr. Ladd said, calling that "a ridiculous situation."

Conversely, states that have too many nursing home beds are rewarded under the HCFA regulations, Ms. Matula said. States with a large number of nursing home beds under construction and in use will be able to serve more patients in a home setting.

While critics say the Office of Management and Budget wants to dismantle the waiver program, proponents of the regulations said the administration is committed to providing alternative care to eligible Medicaid patients.

An administration supporter, Rep. Thomas J. Tauke (R-IA), said, "Frankly, I don't think there's a desire on the part of this administration to hamstring the program."

HCFA's concerns. The waiver program was designed to treat patients who are likely to enter a nursing home, said Carolyne K. Davis, R.N., Ph.D., administrator of HCFA. But HCFA officials fear that if they expand the waiver program, patients will "come out of the woodwork," and the cost to the federal government of providing long-term care through Medicaid will soar, she said.

As an example of a large influx of patients, Dr. Davis cited one state with a waiver approved for 3,500 recipients that actually provided care to 7,000 patients.

State officials reiterated their con-

The rules link the size of a state's waiver program to long-term care beds

cern over ballooning Medicaid outlays. "HCFA and OMB are not alone in their concern for budget neutrality," Ms. Matula said. "As administrators of Medicaid, we would be derelict in our duty if we were not serving the needs of our clients in as cost-effective a manner as possible," she said.

Forty-six states currently operate home and community-based waiver programs. Elderly, disabled and mentally ill Medicaid patients are eligible to participate in the programs.

As many as one out of four nursing home patients could be treated in a home or community setting, many experts say. Many elderly, who may need help with routine chores, enter nursing homes because there is no other alternative. ■

STATE OF ALASKA
THE LEGISLATURE

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May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HESS 2-4-86 1:44 pm