

S B

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Alaska State Legislature

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[Senator Bettye Davis@legis.state.ak.us](mailto:Senator_Bettye_Davis@legis.state.ak.us)
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Senator Bettye Davis

SB 238 - "An Act amending the eligibility threshold for medical assistance for persons in a medical or intermediate care facility."

SPONSOR STATEMENT

This bill amends and restores the Medicaid income eligibility threshold for individuals who reside in a medical or intermediate care facility from a specified monthly income limit to 300% of the Social Security income benefit rate. This threshold is also used for people who receive home and community-based waiver services. In 2003 the Legislature fixed the Medicaid long-term services income eligibility limit for persons in medical or intermediate care facilities at \$1,656 per month which was 300% Supplemental Security Income (SSI) at that time. 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 SSI, the income equivalent of which in 2009 was \$2,022. The result was that small Social Security cost of living adjustments have disqualified many needy disabled people from the program.

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, however, have procedural drawbacks, including numerous responsibilities and restrictions, limited access to income, assistance of an attorney, and a trustee to manage trust assets.

As background, the Supplemental Security Income (SSI) 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/she performed before the disability occurred or cannot do alternate work because of a severe physical or mental condition. For a child to be eligible, he/she must suffer from serious physical and/or mental problems. For both adults and children, the disability must last, or be expected to last for at least a year.

Medicaid services are critical to the well-being 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 also will save the Legislature from amending statutes every year or two as the Federal Poverty Level guidelines and Supplemental Security Income levels increase with the cost of living.

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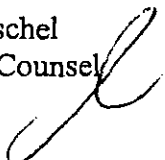
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MEMORANDUM

February 4, 2010

SUBJECT: Sectional Summary (SB 238 (Work Order No. 26-LS1362\A))

TO: Senator Bettye Davis
Attn: Thomas Obermeyer

FROM: Jean M. Mischel
Legislative Counsel 

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Amends the eligibility threshold for medical assistance applicants who are in a medical or intermediate care facility from a specified monthly income limit to 300 percent of the Social Security income benefit rate.

JMM:ljw
10-060.ljw

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 238
 (S) Publish Date: 2/3/10

Identifier (file name): SB238-DHSS-SDMS-1-29-10 Dept. Affected: Health & Social Services
 Title: Medicaid for Medical & Intermediate Care RDU: Senior and Disability Services
 Component: Senior and Disability Medicaid Services
 Sponsor: Davis
 Requester: Senate HSS Component Number: 2662

Expenditures/Revenue (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURE								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURE								
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CHANGE IN REVENUES								
---------------------------	--	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)
 This bill would increase the Medicaid income eligibility standard for individuals who reside in medical institutions, typically nursing facilities. This standard is also used for people who receive home and community-based waiver services. Currently, this standard is fixed at \$1,656 per month. The bill would increase the amount to 300 percent of the federal Supplemental Security Income (SSI) monthly benefit, which is currently \$674, adjusted for cost of living each year. Initially, the new standard for Medicaid nursing facility residents and waiver recipients would be \$2,022 per month.

 DHSS does not anticipate that increasing the monthly standard for this eligibility category will increase the number of Medicaid recipients receiving services. While this is contrary to DHSS expectations when the Legislature fixed the standard at a set dollar amount in 2003, experience shows that as individuals receive cost of living increases in pensions or Social Security payments that raise their incomes over \$1,656 per month, they use Medicaid qualifying income trusts to reduce their countable income below that amount and continue to qualify for Medicaid.
 (Continued on Page 2).

Prepared by: William J. Streur, Deputy Commissioner
 Division: DHSS Health Care Services

Phone: 269-7827
 Date/Time: 1/29/10 12:00 AM

Approved by: Alison Elgee, Assistant Commissioner
DHSS Finance & Management Services

Date: 1/29/2010

ANALYSIS CONTINUATION

Another consideration is that Medicaid recipients who qualify under this institutional income standard are required to make a contribution toward the cost of the Medicaid institutional or waiver services they receive if their countable income exceeds the personal needs allowance established for their living arrangement. The personal needs allowance for people on waivers has historically been set in regulation and the amount varies depending on the person's living situation, and is not linked to the institutional income standard. DHSS has not assumed an increase to the personal needs allowance. Therefore, DHSS does not anticipate an increase in Medicaid spending as a result of this legislation. If DHSS increased the personal needs allowance in conjunction with increasing the income eligibility standard, it would increase Medicaid expenditures.

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Under the Supervision of
JANICE COFFIELD, THOMAS D. CRANFIELD, JR.,
AND BRIAN YOST

Effective Date of Statutes
See Alaska Constitution, art. II, § 18

Annotated through Sup. Ct. Op. No. 5589. For complete
scope of annotations, see preface. For detailed in-
formation on the use of the Alaska Statutes,
see User's Guide in Volume 1.



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claims under medicaid, medicare, or similar welfare programs providing medical services. 32 ALR4th 671. Criminal liability of pharmacy or pharmacist for welfare fraud in connection with supplying prescription drugs. 16 ALR5th 390.

Sec. 47.07.020. Eligible persons. (a) All residents of the state for whom the Social Security Act requires Medicaid coverage are eligible to receive medical assistance under 42 U.S.C. 1396 — 1396p (Title XIX, Social Security Act).

(b) In addition to the persons specified in (a) of this section, the following optional groups of persons for whom the state may claim federal financial participation are eligible for medical assistance:

(1) persons eligible for but not receiving assistance under any plan of the state approved under 42 U.S.C. 1381 — 1383c (Title XVI, Social Security Act, Supplemental Security Income) or a federal program designated as the successor to the aid to families with dependent children program;

(2) persons in a general hospital, skilled nursing facility, or intermediate care facility, who, if they left the facility, would be eligible for assistance under one of the federal programs specified in (1) of this subsection;

(3) persons under age 21 who are under supervision of the department, for whom maintenance is being paid in whole or in part from public funds, and who are in foster homes or private child-care institutions;

(4) aged, blind, or disabled persons, who, because they do not meet income and resources requirements, do not receive supplemental security income under 42 U.S.C. 1381 — 1383c (Title XVI, Social Security Act), and who do not receive a mandatory state supplement, but who are eligible, or would be eligible if they were not in a skilled nursing facility or intermediate care facility to receive an optional state supplementary payment;

(5) persons under age 21 who are in an institution designated as an intermediate care facility for the mentally retarded and who are financially eligible as determined by the standards of the federal program designated as the successor to the aid to families with dependent children program;

(6) persons in a medical or intermediate care facility whose income while in the facility does not exceed 300 percent of the supplemental security income benefit rate under 42 U.S.C. 1381 — 1383c (Title XVI, Social Security Act) but who would not be eligible for an optional state supplementary payment if they left the hospital or other facility;

(7) persons under age 21 who are receiving active treatment in a psychiatric hospital and who are financially eligible as determined by the standards of the federal program designated as the successor to the Aid to Families with Dependent Children program;

(8) persons under age 21 and not covered under (a) of this section, who would be eligible for benefits under the federal program designated as the successor to the aid to families with dependent children program, except that they have the care and support of both their natural and adoptive parents;

(9) pregnant women not covered under (a) of this section and who meet the income and resource requirements of the federal program designated as the successor to the aid to families with dependent children program;

(10) persons under age 21 not covered under (a) of this section who the department has determined cannot be placed for adoption without medical assistance because of a special need for medical or rehabilitative care and who the department has determined are hard-to-place children eligible for subsidy under AS 25.23.190 — 25.23.220;

(11) persons who can be considered under 42 U.S.C. 1396a(e)(3) (Title XIX, Social Security Act, Medical Assistance) to be individuals with respect to whom a supplemental security income is being paid under 42 U.S.C. 1381 — 1383c (Title XVI, Social Security Act) because they meet all of the following criteria:

(A) they are 18 years of age or younger and qualify as disabled individuals under 42 U.S.C. 1382c(a) (Title XVI, Social Security Act);

(B) the department has determined that

ALASKA STATUTES 1962

2003 SUPPLEMENT

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Under the Supervision of

TERESA BUCHHOLZ, ANN GRADY, THOMAS D. CRANFIELD, JR., AND BRIAN M. YOST

Effective Date of Statutes

See Alaska Constitution, art. II, § 18

Annotated through Sup. Ct. Op. No. 5704. For complete scope of annotations, see preface. For detailed information on the use of the Alaska Statutes, see User's Guide in Volume 1 of the 2002 main set.



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- (12) "medical assistance record" means records required to be kept by state or federal law or regulation regarding claims to a medical assistance agency;
- (13) "organization" has the meaning given in AS 11.81.900;
- (14) "person" has the meaning given in AS 11.81.900;
- (15) "property" has the meaning given in AS 11.81.900;
- (16) "reckless disregard" means acting recklessly, as that term is defined in AS 11.81.900;
- (17) "services" or "medical assistance services" means a health care benefit that may qualify for reimbursement under AS 47.07 or AS 47.08, including health care benefits provided, attempted to be provided, or claimed to have been provided to another, by a medical assistance provider, or "services" as defined in AS 11.81.900;
- (18) "unconditional discharge" has the meaning given in AS 12.55.185. (§ 3 ch 66 SLA 2003)

✓ Chapter 07. Medical Assistance for Needy Persons.

Section

- 10. Purpose
- 20. Eligible persons
- 30. Medical services to be provided
- 32. Inpatient psychiatric services for persons under 21 years of age
- 35. [Repealed]
- 36. Cost containment measures authorized

Section

- 42. Recipient cost-sharing
- 70. Payment rates for health facilities
- 73. Uniform accounting, budgeting, and reporting
- 74. Audits and inspections
- 110 — 190. [Repealed]
- 900. Definitions

Sec. 47.07.010. Purpose. It is declared by the legislature as a matter of public concern that the needy persons of this state who are eligible for medical care at public expense under this chapter should seek only uniform and high quality care that is appropriate to their condition and cost-effective to the state and receive that care, regardless of race, age, national origin, or economic standing. It is equally a matter of public concern that providers of services under this chapter should operate honestly, responsibly, and in accordance with applicable laws and regulations in order to maintain the integrity and fiscal viability of the state's medical assistance program, and that those who do not operate in this manner should be held accountable for their conduct. It is vital that the department administer this chapter in a manner that promotes effective, long-term cost containment of the state's medical assistance expenditures while providing medical care to recipients. Accordingly, this chapter authorizes the department to apply for participation in the national medical assistance program as provided for under 42 U.S.C. 1396 — 1396p (Title XIX, Social Security Act). (§ 1 ch 182 SLA 1972; am § 4 ch 66 SLA 2003)

Effect of amendments. — The 2003 amendment, effective September 9, 2003, rewrote the first sentence, added the second sentence, and in the last sentence substituted "department" for "Department of Health and Social Services."

NOTES TO DECISIONS

Cited in *Garner v. State*, 63 P.3d 264 (Alaska 2003).

Sec. 47.07.020. Eligible persons. (a) All residents of the state for whom the Social Security Act requires Medicaid coverage are eligible to receive medical assistance under 42 U.S.C. 1396 — 1396p (Title XIX, Social Security Act).

(b) In addition to the persons specified in (a) of this section, the following optional groups of persons for whom the state may claim federal financial participation are eligible for medical assistance:

(1) persons eligible for but not receiving assistance under any plan of the state approved under 42 U.S.C. 1381 — 1383c (Title XVI, Social Security Act, Supplemental Security Income) or a federal program designated as the successor to the aid to families with dependent children program;

(2) persons in a general hospital, skilled nursing facility, or intermediate care facility, who, if they left the facility, would be eligible for assistance under one of the federal programs specified in (1) of this subsection;

(3) persons under age 21 who are under supervision of the department, for whom maintenance is being paid in whole or in part from public funds, and who are in foster homes or private child-care institutions;

(4) aged, blind, or disabled persons, who, because they do not meet income and resources requirements, do not receive supplemental security income under 42 U.S.C. 1381 — 1383c (Title XVI, Social Security Act), and who do not receive a mandatory state supplement, but who are eligible, or would be eligible if they were not in a skilled nursing facility or intermediate care facility to receive an optional state supplementary payment;

(5) persons under age 21 who are in an institution designated as an intermediate care facility for the mentally retarded and who are financially eligible as determined by the standards of the federal program designated as the successor to the aid to families with dependent children program;

(6) persons in a medical or intermediate care facility whose income while in the facility does not exceed \$1,656 a month but who would not be eligible for an optional state supplementary payment if they left the hospital or other facility;

(7) persons under age 21 who are receiving active treatment in a psychiatric hospital and who are financially eligible as determined by the standards of the federal program designated as the successor to the Aid to Families with Dependent Children program;

(8) persons under age 21 and not covered under (a) of this section, who would be eligible for benefits under the federal program designated as the successor to the aid to families with dependent children program, except that they have the care and support of both their natural and adoptive parents;

(9) pregnant women not covered under (a) of this section and who meet the income and resource requirements of the federal program designated as the successor to the aid to families with dependent children program;

(10) persons under age 21 not covered under (a) of this section who the department has determined cannot be placed for adoption without medical assistance because of a special need for medical or rehabilitative care and who the department has determined are hard-to-place children eligible for subsidy under AS 25.23.190 — 25.23.210;

(11) persons who can be considered under 42 U.S.C. 1396a(e)(3) (Title XIX, Social Security Act, Medical Assistance) to be individuals with respect to whom a supplemental security income is being paid under 42 U.S.C. 1381 — 1383c (Title XVI, Social Security Act) because they meet all of the following criteria:

(A) they are 18 years of age or younger and qualify as disabled individuals under 42 U.S.C. 1382c(a) (Title XVI, Social Security Act);

(B) the department has determined that

(i) they require a level of care provided in a hospital, nursing facility, or intermediate care facility for the mentally retarded;

(ii) it is appropriate to provide their care outside of an institution; and

(iii) the estimated amount that would be spent for medical assistance for their individual care outside an institution is not greater than the estimated amount that would otherwise be expended individually for medical assistance within an appropriate institution;

(C) if they were in a medical institution, they would be eligible for medical assistance under other provisions of this chapter; and



February 1, 2010

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The Honorable Bettye Davis, Chair
Senate Health, Education and Social Services Committee
Alaska State Capitol, Room 30
Juneau, AK 99801-1182

RE: SB 238 (Davis)—Support

Dear Chair Davis:

On behalf of the members of AARP in Alaska, we encourage you and your colleagues on the Senate Health and Social Services Committee to support SB 238, which you authored.

SB 238 corrects a situation which occurred in 2003 when the Legislature changed eligibility for long-term care services in facilities from 300% of the SSI level to \$1,656 per month. Since then, each year some Alaskans would find themselves no longer eligible than when the 300% level was used.

Alaska has a long history of using home and community based services in preference to institutionalized care. SB 238 will allow our most frail and vulnerable citizens to remain in their homes and communities or in institutional settings, when appropriate.

The beneficiaries of SB 238 are not well off financially. They are at risk economically as well as from a health standpoint.

AARP recommends an "AYE" vote on SB 238.

Should you have any questions about our position, please feel free to contact me (586-3637) or Patrick Luby, AARP Advocacy Director (907-762-3314).

Thank you for your consideration.

Sincerely,

Marie Darlin, Coordinator
AARP Capital City Task Force
415 Willoughby Avenue, Apt. 506
Juneau, AK 99801
586-3637 (voice)
463-3580 (fax)

CC: Vice-Chair Joe Paskvan
Senator Johnny Ellis
Senator Joe Thomas
Senator Fred Dyson

HEALTH / FINANCES / CONNECTING / GIVING / ENJOYING

Jennie Chin Hansen, President
William D. Novelli, Chief Executive Officer

Senate Finance Committee – Testimony for SB 238
March 15, 2010

- Good Morning. My name is Denise Daniello, executive director for the Alaska Commission on Aging.
- We are pleased to offer our strong support for SB 238.
- This is an important piece of legislation for older Alaskans who receive small cost-of-living increases to their Social Security and other benefit amounts. The impact from this freeze has been that from 2003 forward, a small cost-of-living adjustment to Social Security can put a senior over the \$1,656 limit and in effect disqualifies them from receiving Medicaid long-term support services. These vulnerable individuals are at-risk both financially and with regards to their health.
- Our office became alerted to this issue around Christmastime in 2008 when many individuals on Social Security receiving waiver services were issued notice from the State that they would no longer be eligible for these services after the 2009 Social Security COLA went into effect. They were given the choice of either paying out-of-pocket for these services or establishing a Medicaid qualifying income trust, also known as a Miller Trust, to preserve their income eligibility. They were very distraught and called our office for help. Some called their legislators.
- (As has already been explained...) the Miller Trust reduces one's countable income below the income standard, which is now set at \$1,656, so that a person can continue to qualify for Medicaid.
- The Miller Trust is a useful tool for maintaining income eligibility but has some drawbacks:
 - First, it requires an individual to seek legal assistance from an attorney to establish the Trust and then to find a person they trust to manage their account. Some elderly Medicaid recipients have no friends or family they know who can serve as reliable trustees. They must either trust a stranger to manage their money or forego benefits. Some recipients risk their money by having less-than-trustworthy relatives serve as a trustee. Recently, we learned of a case involving an elder whose granddaughter left the state with the individual's trust account funds.
 - Secondly, trustees have a lot of legal responsibilities that include registering the trust with the court system, arranging for an identification number from the IRS, setting up a special account with the bank, arranging for direct deposits to that account through Social Security, and securing approval from the Division of Public Assistance for the Trust. Trustees are also responsible for properly managing the Trust that includes distributing the correct monthly allowance to the Medicaid recipient, making allowable expenses with Trust funds that are not clearly defined by law (which creates confusion for Trustees), tracking and documenting receipts, and passing an annual audit with Public Assistance.

- Thirdly, it costs money to establish the Trust – \$800 to \$1,200, according to estimates from Alaska Legal Services. This fee is paid for by the senior who is living on a fixed income.
- Fourth, a Miller Trust is irrevocable. In the rare event that a person's health turns around and they are no longer medically eligible for long-term services, they will not have access to the trust funds for their daily expenses.
- Finally, managing one's own expenses is a matter of personal dignity for many older Alaskans. Being forced to give up this right can be stressful and humiliating, as well as financially risky.
- The Alaska Commission on Aging supports SB 238. We believe that this legislation is good public policy that promotes more efficient use of public funds since fewer individuals will have the need to establish Miller Trusts in order to maintain their income eligibility for Medicaid services when they receive COLA adjustments to their Social Security and other public benefits.
- Passage of this legislation will also ensure that eligible Alaskans can continue to receive nursing home care and in-home services, which are critical to an elderly person's health and well-being.
- Thank you.