



# LAWS OF ALASKA

1990

**Source**

SB 334 (efd am)

**Chapter No.**

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**AN ACT**

Directing the Department of Health and Social Services to seek permission to use options and receive waivers under the Medicaid program for the cost of home or community-based services for developmentally delayed children, developmentally disabled persons, disabled adults, and older Alaskans; directing other agencies to assist in that process; and providing for an effective date.

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**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

THE ACT FOLLOWS ON PAGE 1, LINE 15

Approved by the Governor: May 3, 1990  
Actual Effective Date: May 4, 1990

## AN ACT

Directing the Department of Health and Social Services to seek permission to use options and receive waivers under the Medicaid program for the cost of home or community-based services for developmentally delayed children, developmentally disabled persons, disabled adults, and older Alaskans; directing other agencies to assist in that process; and providing for an effective date.

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\* Section 1. FINDINGS; INTENT. (a) The legislature finds that children and adults who are experiencing disabling conditions have individual and changing needs that can be best addressed by having available to them a mix of services, including home and community-based services and institutional care. The historical focus of the Medicaid program has been on providing services in institutional settings for adults who need outside assistance in daily living and for children who need developmental help. Therefore, some persons whose needs could be met outside of institutions have, nevertheless, become institutionalized so that they could receive services through the Medicaid program. Other persons in need have received no services until their conditions deteriorated to the point where they met the Medicaid criteria for institutionalization. Nursing facilities, hospitals, and intermediate care facilities for the mentally retarded should remain readily available for those whose needs require that kind of setting, but the availability of home and community-based services should also

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1 be expanded so that, when possible, persons could be deinstitutionalized,  
2 avoid institutionalization, or avoid becoming at risk of institutionaliza-  
3 tion and be assisted to live on their own, with their families, or in group  
4 settings that allow semi-independent living in their own communities.  
5 Furthermore, home and community-based services can help persons whose  
6 disabling conditions might never require institutional care, but whose  
7 lives could be more comfortable and more productive if the services were  
8 provided.

9 (b) It is the legislature's intent in enacting this Act to require  
10 the Department of Health and Social Services to seek approval from the  
11 federal government to use some Medicaid program money to broaden the range  
12 of home and community-based services that are available for appropriate  
13 groups of developmentally delayed children, developmentally disabled pers-  
14 sons, disabled adults, and older Alaskans, who could benefit from them,  
15 especially those who would otherwise require Medicaid program money for  
16 more costly institutionalization. The choice of which waivers and options  
17 would be applied for and which population groups should be served would be  
18 made by the department after priorities are recommended by the Governor's  
19 Council for the Handicapped and Gifted and the Older Alaskans Commission.  
20 Through budget oversight, legislative hearings, and other legislative  
21 action, the legislature would give specific budgetary authority and policy  
22 directives to the department to guide it when it applies for the options  
23 and waivers.

24 \* Sec. 2. PRELIMINARY RESEARCH. (a) The Governor's Council for the  
25 Handicapped and Gifted and the Older Alaskans Commission shall, in consul-  
26 tation with other appropriate public and private agencies, conduct re-  
27 search, compile statistics, and prepare information and documents that  
28 would be useful to the Department of Health and Social Services in deter-  
29 mining necessary services, optimal service delivery areas and methods, and  
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1 the appropriate groups of developmentally delayed children, developmentally  
2 disabled persons, disabled adults, and older Alaskans, for which the de-  
3 partment may apply for home and community-based options and waivers under  
4 42 U.S.C. 1396n and other federal laws relating to the Medicaid program.

5 (b) By June 1, 1991, the Governor's Council for the Handicapped and  
6 Gifted and the Older Alaskans Commission shall submit written reports to  
7 the legislature and the Department of Health and Social Services document-  
8 ing their recommendations for the scope and substance of the options and  
9 waivers that the department may apply for under this Act, including their  
0 recommended priorities for which specific populations should be served.

1 \* Sec. 3. PRELIMINARY DETERMINATIONS; FISCAL ANALYSIS OF PROPOSED  
2 PROGRAM CHANGES. (a) Based on the written reports, including the priority  
3 designations, received under sec. 2(b) of this Act, the Department of  
4 Health and Social Services shall make a preliminary determination of which  
5 options and waivers it plans to apply for. The department shall, by  
6 January 15, 1992, submit to the legislature a report estimating the fiscal  
7 effect of implementing the particular options and waivers for which it  
8 plans to seek approval from the federal government under this Act. The  
9 report must include for each population group for which approval for an  
0 option or waiver will be sought

1 (1) a description of the group and its geographical distribu-  
2 tion, including the number of persons to be served in each geographical  
3 area;

4 (2) the specific types of services to be provided under the  
5 option or waiver;

6 (3) the cost to the state of implementing the option or waiver,  
7 including administrative costs, the cost of services to be provided under  
8 the options or waivers, and other affected Medicaid program costs; the  
9 report must specifically address whether use of the option or waiver will

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1 result in the provision of services to a newly eligible population not  
2 previously receiving Medicaid services; and

3 (4) the cost to the state of serving the group and other affect-  
4 ed Medicaid program costs if the option or waiver is not approved and  
5 implemented, including administrative costs and the costs of services that  
6 would be provided in the existing health care delivery system without using  
7 the option or waiver.

8 (b) During the process of developing the applications that would be  
9 submitted to the federal government for its approval under this Act, reli-  
10 able information should become available to substantiate the costs of  
11 implementing home and community-based options and waivers. The legislature  
12 acknowledges that reliable information on this subject is not currently  
13 available, although long-term cost avoidance is likely because home and  
14 community-based services will help slow the rate of growth in the need for  
15 construction of additional nursing home beds and help persons avoid insti-  
16 tutionalization. Therefore, it is the legislature's intent that fiscal  
17 notes prepared for this Act should reflect only the costs of researching,  
18 writing, negotiating, and obtaining approval of the applications to the  
19 federal government and the costs of preparing the fiscal analysis required  
20 under (a) of this section. Estimates of program implementation costs,  
21 including the costs of services, should be made only after comprehensive  
22 data is available.

23 \* Sec. 4. FINAL DETERMINATION; APPLICATIONS FOR OPTIONS AND WAIVERS.

24 (a) After legislative review during the Second Session of the Seventeenth  
25 Alaska State Legislature, and before September 15, 1992, the Department of  
26 Health and Social Services shall apply to the Secretary of Health and Human  
27 Services for permission to use home and community-based options and waivers  
28 that may be approved under 42 U.S.C. 1396n(c) - (d) and other federal laws  
29 for developmentally delayed children, developmentally disabled persons,  
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1 disabled adults, and older Alaskans, especially those for whom the depart-  
2 ment determines that but for the provision of the services the persons  
3 would require the level of care provided in a hospital, nursing facility,  
4 or intermediate care facility for the mentally retarded, the cost of which  
5 could be reimbursed under the federal Medicaid program. When determining  
6 which options and waivers it will apply for under this subsection, the  
7 department shall consider the priorities recommended by the Governor's  
8 Council for the Handicapped and Gifted and the Older Alaskans Commission  
9 and the specific budgetary authority and policy directives set by the  
0 legislature.

1 (b) In its process of seeking permission to use options and receive  
2 waivers under (a) of this section, the Department of Health and Social  
3 Services may seek to provide all appropriate services allowed by federal  
4 law that are consistent with the needs of the population groups for which  
5 the department intends to provide services under the options and waivers.

6 (c) While preparing applications required under (a) of this section,  
7 the Department of Health and Social Services shall consult with the Gover-  
8 nor's Council for the Handicapped and Gifted and the Older Alaskans Commis-  
9 sion. In addition, 60 days before submitting applications to the Secretary  
0 of Health and Human Services, the department shall deliver a copy of the  
1 proposed applications to the council and the commission for their review  
2 and comment. The department shall consider comments made by the council  
3 and commission and amend the applications as considered appropriate by the  
4 department before submitting them to the Secretary of Health and Human  
5 Services.

6 (d) The Department of Health and Social Services may submit more than  
7 one application under this section if more than one group of persons could  
8 be effectively served by home or community-based options or waivers consis-  
9 tent with (a) of this section and the requirements of 42 U.S.C. 1396n(c) -  
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1 (d) and other federal laws.

2 \* Sec. 5. INTERAGENCY COORDINATION. The Governor's Council for the  
3 Handicapped and Gifted, the Older Alaskans Commission, and the Department  
4 of Health and Social Services shall enter into an interagency agreement for  
5 carrying out this Act. The agreement must provide that

6 (1) the Department of Health and Social Services is recognized  
7 as the lead agency responsible for applying to the federal government for  
8 the use of options and waivers described in this Act; and

9 (2) all three agencies will cooperate with each other in provid-  
10 ing requested nonconfidential information that would assist the agencies in  
11 fulfilling their duties under this Act.

12 \* Sec. 6. DEFINITIONS. In this Act

13 (1) "developmentally delayed children" means children who are  
14 eligible for Medicaid under federal regulations and need early intervention  
15 services because they

16 (A) are experiencing developmental delays, as measured by  
17 appropriate diagnostic instruments and procedures, in cognitive devel-  
18 opment; physical development, including vision and hearing; language  
19 and speech development; psychosocial development; or self-help skills;

20 (B) have a diagnosed physical or mental condition that is  
21 likely to result in developmental delay described in (A) of this  
22 paragraph; or

23 (C) are at risk of having substantial developmental delays  
24 as described in (A) of this paragraph if early intervention services  
25 are not provided;

26 (2) "developmentally disabled person" means a person who is  
27 eligible for Medicaid under federal regulations and has a severe, chronic  
28 disability that

29 (A) is attributable to a mental or physical impairment or  
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1 combination of mental and physical impairments;

2 (B) is manifested before the person attains age 22;

3 (C) is likely to continue indefinitely;

4 (D) results in substantial functional limitations in three  
5 or more of the following areas of major life activity: self-care,  
6 receptive and expressive language, learning, mobility, self-direction,  
7 capacity for independent living, and economic self-sufficiency; and

8 (E) reflects the person's need for a combination and se-  
9 quence of special, interdisciplinary, or generic care, treatment, or  
10 other services that are of lifelong or extended duration and are  
11 individually planned and coordinated;

12 (3) "disabled adult" means a person 18 years of age or older who  
13 is eligible for Medicaid under federal regulations and is unable to engage  
14 in any substantial gainful activity by reason of a medically determinable  
15 physical or mental impairment that can be expected to result in death or  
16 that has lasted or can be expected to last for a continuous period of at  
17 least 12 months;

18 (4) "older Alaskans" has the meaning given in AS 47.65.060,  
19 except that it includes only older Alaskans who are eligible for Medicaid  
20 under federal regulations.

21 \* Sec. 7. This Act takes effect immediately under AS 01.10.070(c).  
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