

SUBJECT: Individual cost cap exceptions for certain Medicaid waiver programs

COMMITTEE: Human Services — favorable, without amendment

VOTE: 6 ayes — Rose, S. King, J. Davis, Naishtat, Parker, Pierson

0 nays

3 absent — Eissler, Herrero, Hughes

SENATE VOTE: On final passage, May 8 — 31-0

WITNESSES: None

BACKGROUND: States may apply for waivers in accordance with federal law, 42 U.S.C. 1396n(c), to provide home or community-based services to patients that would otherwise require care in a hospital, nursing facility, or intermediate care facility for the mentally retarded. Medicaid law requires that these waiver programs be cost neutral, meaning that the aggregate cost of waiver programs does not exceed the cost of institutional care. The Department of Aging and Disability Services (DADS) administers many home and community-based services (HCBS) waiver programs for eligible Texans. DADS has set individual cost caps on a person's plan of care, equal to the cost of serving the individual in an institution, in order to manage aggregate costs and maintain cost neutrality.

In 2005, the 79th Legislature enacted SB 626 by Zaffirini, which requires DADS to continue to provide services under certain HCBS waiver programs even if the cost exceeds the individual cost limit specified in the waiver, if continuation of services is necessary for the person to live in the most integrated setting appropriate to the needs of the person and it does not affect DADS compliance with federal cost-neutrality requirements. For persons not meeting these requirements, DADS can continue to provide services under a waiver program to a person receiving medical assistance at a cost exceeding the individual cost limit if the cost does not exceed 133.3 percent of the individual cost limit. The HCBS waiver programs included in SB 626 are the Community-Based Alternatives, Community Living Assistance and Support Services, Deaf-Blind/Multiple

Disabilities, Consolidated Waiver, and Medically Dependent Children Programs. The Home and Community-Based Services (HCS) program also is a HCBS waiver program, but it was not included in SB 626.

DIGEST:

SB 1866 would address all HCBS Medicaid waiver programs that were granted in accordance with 42 U.S.C. Section 1396n(c) with the exception of the Texas Home Living program. DADS could not provide services under a Medicaid waiver program to a person if the projected cost of providing those services over a 12-month period exceeded the individual cost limit specified for the program. Exceptions would be made to continue to provide services under waiver programs if necessary for the person to live in the most integrated setting appropriate for the person and if continuing to provide services did not affect DADS' compliance with the federal average per capita expenditure requirements for Medicaid HCBS waiver programs.

DADS could continue to provide services under a Medicaid waiver program other than the HCS program to a person who had exceeded the program cost limit but was not otherwise eligible for benefits in excess of the cost limit if the project cost of providing the services to the person did not exceed 133.3 percent of the cost limit and providing the service would not affect DADS' compliance with the federal average per capita expenditure. DADS could exempt a person from the 133.3 percent cost limit if it was necessary to protect a person's health and safety and there was no available arrangement other than the one provided under the waiver program in which the person's health could be protected. The need to stay in this living arrangement would have to be evidenced by clinical assessments and supporting documents.

DADS could continue to provide services under the HCS waiver program if the person was not otherwise eligible for benefits in excess of 133.3 percent of the cost limit, if DADS determined:

- it was necessary to protect a person's health and safety;
- there was no available arrangement other than the one provided under the waiver program in which the person's health could be protected;
- it would not affect DADS' compliance with the average per capita expenditure requirement; and

- it would not affect any cost-effectiveness requirement provided by the general appropriations act that limited expenditures for the HCS program.

If a federal agency determined that compliance with any of these provisions would make the state ineligible to receive federal funds to administer one of the HCBS waiver programs, a state agency could, but would not be required to, implement the provision.

SB 1866 would take effect September 1, 2007.

NOTES:

According to the fiscal note, the bill would cost \$205,342 in general revenue in fiscal 2008-09. These costs reflect the DADS estimate for providing services in excess of the 133.3 percent cost limit for eight clients through the end of the biennium.