



S.B. 50

126th General Assembly
(As Introduced)

Sens. Fingerhut, Carey, Miller, Fedor

BILL SUMMARY

- Requires the Department of Job and Family Services to seek federal approval to establish an assisted living Medicaid waiver component.
- Makes an appropriation if certain conditions are met.

CONTENT AND OPERATION

Medicaid waiver for assisted living services

(R.C. 5111.86 to 5111.862)

The bill requires the Department of Job and Family Services to apply to the United States Secretary of Health and Human Services for a waiver to establish an assisted living Medicaid waiver component.¹ This purpose of the waiver is to provide home and community-based services to eligible Medicaid recipients. The Department of Job and Family Services may enter into an agreement with the Department of Aging for the Department of Aging to administer the waiver program.

Eligibility for waiver

(R.C. 5111.861)

To be eligible for the assisted living waiver program,² a Medicaid recipient must meet both of the following requirements:

¹ See "**COMMENT**" describing Medicaid waiver programs.

² "Assisted living" is not defined in the bill or in current law.

(1) Reside in a residential care facility³ that has a Medicaid provider agreement with the Department of Job and Family Services;

(2) Have needed to move to or continue to reside in a nursing facility⁴ if not for the Medicaid assisted living waiver program.

Rule-making

(R.C. 5111.862)

The bill authorizes the Department of Job and Family services to adopt rules governing the Medicaid waiver program. If the Department enters into an agreement with the Department of Aging to administer the program, the Department of Aging must be consulted before rules are adopted.

Appropriation shift

(Section 2)

If the Department of Job and Family Services enters into an agreement with the Department of Aging for Aging to administer the waiver program, the bill requires the Director of Budget and Management to reduce the Job and Family Services appropriation by the amount Job and Family Services estimates its spending will decrease as a result of the transfer of persons approved for the waiver program. If such a reduction is made, the bill appropriates the state and federal shares of the estimated costs of the program to Aging.

³ Under the bill, as in current law, a "residential care facility" is a facility that provides accommodations for seventeen or more unrelated individuals and supervision and personal care services for three or more of those individuals who are dependent on the services of others by reason of age or physical or mental impairment; or a facility that provides accommodations for three or more unrelated individuals, supervision and personal care services for at least three of those individuals who are dependent on the services of others by reason of age or physical or mental impairment, and, to at least one of those individuals, skilled nursing care (R.C. 3721.01).

⁴ Under the bill, as in current law, a "nursing facility" is a facility, or a distinct part of a facility, that is certified as a nursing facility under the Medicaid Program and is not an intermediate care facility for the mentally retarded (R.C. 5111.20). A nursing facility provides skilled nursing care.

COMMENT

Types of waivers

A Medicaid waiver is "an option granted to a state . . . that 'waives' certain federal requirements so the state may use innovative methods for delivering or paying for Medicaid services."⁵ The federal requirements that states seek to waive involve such things as statewideness (the application of a program throughout the state), financial eligibility standards, and the freedom of patients to choose their own doctor or other Medicaid provider. Medicaid waivers are granted by the Secretary of Health and Human Services. There are several types of waivers commonly referred to by the sections of the Social Security Act under which they are granted.

1915 waivers

The bill requires the Department of Job and Family Services to apply for a waiver under section 1915 of the Social Security Act.⁶ That section allows general requirements for state Medicaid plans to be waived for two years with an option to renew.⁷ A waiver under division (b) of § 1915, intended "to promote cost-effectiveness and efficiency," allows a state to:

- (i) Implement a primary care case-management system or a specialty physician system.
- (ii) Designate a locality to act as central broker in assisting Medicaid recipients to choose among competing health care plans.
- (iii) Share with recipients (through provision of additional services) cost-savings made possible through the recipients' use of more cost-effective medical care.
- (iv) Limit recipients' choice of providers (except in emergency situations and with respect to family planning services) to providers that fully meet reimbursement, quality, and utilization standards, which are established under the state's Medicaid plan and

⁵ MARTHA P. KING & STEPHEN M. CHRISTIAN, *MEDICAID SURVIVAL KIT xxxii* (3d ed. 2001). *The MEDICAID SURVIVAL KIT is published by the National Conference of State Legislatures.*

⁶ 42 United States Code 1396n.

⁷ *The requirements are set forth in 42 U.S.C. 1396a.*

are consistent with access, quality, and efficient and economical furnishing of care.⁸

Federal law authorizes the waiver of any of the requirements generally imposed on state Medicaid plans (subject to certain limitations).⁹

A waiver under division (c) of § 1915 allows a state to include as "medical assistance" services provided in a home or community setting that are normally provided in a nursing home or other institution.¹⁰ They are therefore commonly known as home- and community-based services waivers. The general requirements of state Medicaid plans that may be waived under § 1915(c) are statewideness, comparability of services, and financial eligibility rules.¹¹ The services offered under 1915(c) waivers may include any or all of the following: case management services; homemaker services; home health aide services; personal care services; adult day health services; habilitation services; respite care services; day treatment or other partial hospitalization services, rehabilitation services and clinical services for individuals with chronic mental illness; and other services that the state may request and the Centers for Medicare and Medicaid Services (CMS) may approve.¹²

If a state wants to combine the features of a 1915(b) waiver (limiting freedom of choice) with the features of a 1915(c) waiver (providing home- and community-based services), it may apply for concurrent waivers.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-08-05	p. 157

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⁸ 42 Code of Federal Regulations 430.25(c)(1).

⁹ 42 C.F.R. 430.25(d)(1).

¹⁰ 42 C.F.R. 430.25(c)(2).

¹¹ 42 C.F.R. 430.25(d)(2).

¹² 42 C.F.R. 440.180. *The provision of services is subject to certain conditions and limitations. For example, habilitation and day treatment are not intended for individuals aged 65 or older.* 42 C.F.R. 440.180(d), 440.181.