

APR 23 1985

THE COMMUNITY AND FAMILY LIVING AMENDMENTS OF 1985
S. 873 SECTION-BY-
SECTION SUMMARY *

INTRODUCTION -THE MEDICAID PROGRAM

A complete understanding of how the provisions of the Community and Family Living Amendments (CFLA) will work requires at least a basic understanding of the framework of the Medicaid program.

The Medicaid program is established in the Social Security Act by Title XIX, "Grants to States for Medical Assistance Programs," which is administered by the Health Care Financing Administration (HCFA) of the Department of Health and Human Services (HHS).

Medicaid is a program managed by the individual states on the basis of a state plan approved by the Secretary of HHS. Federal Financial Participation or FFP, is the percentage payment, based on a specified formula, made to the state for the cost of services provided to eligible individuals. States have certain mandates if they choose to participate in the program and also certain options with respect to persons considered eligible and services to be offered. In order to be eligible for Supplemental Security Income (SSI), a person who is under 65 must meet the Social Security disability test as well as have low income and few assets.

Medicaid is an entitlement program, meaning that those persons who meet eligibility requirements are entitled to receive the services they need if such services are offered as part of the state plan. Among other eligibility criteria, persons receiving SSI benefits under Title XVI of the Social Security Act are entitled to Medicaid services.

Section 1901 of the Social Security Act sets forth the purpose of the Medicaid program:

- o For the purpose of enabling each state, as far as practicable under the conditions in such state, to furnish (1) medical assistance on behalf of families with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services, and (2) rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to states which have submitted, and had approved by the Secretary of Health, Education and Welfare **, State plans for medical assistance.

* April 19, 1985

** HEW now HHS

Other sections of Title XIX which are particularly relevant to CFLA are the following:

Sec. 1902 - State plans for medical assistance
o sets forth the requirements for Medicaid state plans, including those services which must be offered and those individuals who must be covered.

Sec. 1903 - Payment to States
o sets forth the FFP formulas and other criteria and conditions of payment; FFP ranges from 50%, in states with high per capita income, to 78%, in states with low per capita income.

Sec. 1905 - Definitions
o includes descriptions of persons who may be covered for Medicaid even though not eligible for cash, SSI, or welfare payments .
o includes a list of those services (in addition to those required) which may be paid for as "medical assistance" if the state chooses to include them in the state plan.
o includes definitions of services in intermediate care facilities and in intermediate care facilities for mentally retarded persons or persons with related conditions; these are optional services.

Sec. 1915 - Provisions respecting inapplicability and waiver of certain requirements of Title XIX
o includes the home or community-based services waiver provisions applicable to elderly or disabled people at risk of institutionalization.

THE COMMUNITY AND FAMILY LIVING AMENDMENTS

The CFLA bill contains eleven sections, many of which make direct amendments to the language of Title XIX of the Social Security Act. Following is a summary of what each of the eleven sections of CFLA provides. Please refer to S. 873 for precise language.

Section 1; Specifies the title as the "Community and Family Living Amendments of 1985."

Section 2; Amends the definitions section of Title XIX (section 1905) to include definitions of the following terms:

- o "Severely Disabled Individual" is defined with the intent of including persons who fall within the Social Security definitions of disability, with the further restriction that such disability must have manifest itself before the age of 35; except, that in the case of mental impairment, before the age of 22. Earnings shall not be considered in determining whether an individual is under a disability. (To be eligible for Medicaid, a severely disabled individual must also meet the applicable income and assets tests.)
- o "Community and Family Support Services" are services which enable an individual to begin, resume, or continue living in a family home or community living facility. (They include a number of services specified in a new Sec. 1919(a) added by Section 3(c) of CFLA. See below.)
- o "Family Home" includes an individual's or couple's home or natural, adoptive, or foster family home.
- o "Community Living Facility" means a single household which is no larger than 3 times the area's average household size; located in a residential neighborhood populated primarily by individuals who are not severely, disabled; meets HHS and State safety, sanitation, and other standards; meets standards with respect to resident's personal funds; and is staffed by trained individuals who cooperate in the implementation of the individual's habilitation plan.
- o "Written Habilitation or Rehabilitation Plan" is a plan for medical assistance and other services for the individual which is developed by an interdisciplinary team, the individual, and family members or advocates as appropriate and which is responsive to the individual's needs; is designed to enable the individual to attain to the greatest extent possible capabilities for independence or self-care; is designed to promote interaction between disabled and non-disabled persons in the community; and is re-evaluated at least once a year.
- o "Case Management Services" means services rendered by an independent professional who maintains an ongoing relationship with the individual; coordinates the development and implementation of the individual written plan; provides information about and assists in obtaining services in addition to those under Title XIX; periodically reviews the individual's changing needs; cooperates in the development of other individual plans, such as educational or vocational plans; and is available to the family or individual for consultation or crisis intervention.
- o "Individual and Family Support Services" means (1) services for carrying out the activities of daily living which the individual is unable to do, such as personal care and attendant care, and (2) services to the family which assist the

services; preventive services; and other services defined by the state and approved by the Secretary.

- (3) Excludes the following services from payment as community and family support services: room and board (except temporary or for extraordinary costs due to disabling condition); cash payments; services which are covered under Title XVIII or other specified sections of the Social Security Act; educational services generally available free to citizens without regard to income; and services to persons in hospitals, SNFs, or ICFs.
- (4) Administrative costs are treated as other administrative costs of the state plan.

Section 1919(b): Provides that community and family support services are in addition to other services for which the individual is eligible under the State Medicaid plan.

Section 1919(c): Establishes that, in order to receive payment for community, and family support services provided under the state plan after September 30, 1988, the state agency administering the state plan must:

- (1) enter into a community and family living implementation agreement with the Secretary of HHS;
- (2) make reports to the Secretary as required;
- (3) make the agreement and reports available for public inspection;
- (4) provide for yearly review by an independent auditor; and
- (5) submit copies of the audit to the Governor, state legislature, and the Secretary.

Section 1919(d); Provides that the community and family living implementation agreement must:

- (1) include provisions to assure that: community living facilities are not unduly concentrated in any area; staff are adequately trained; training is made available to natural, adoptive and foster families; case management and, as necessary, individual and family support services are available to any eligible severely disabled individual; protective intervention services are available, as necessary, to severely disabled individuals regardless of income or resources; placements by public agencies will be made as close to the natural home as possible; each com-

munity living facility is accredited, licensed, or certified; periodic independent monitoring and reviews of quality of services are conducted; procedures are established for hearings and appeals regarding placement; availability of quality services will be adequate to meet changing needs and to allow SSI beneficiaries to reside in family homes or community living facilities; and suitable state supplements will be available.

- (2) with respect to severely disabled individuals living in facilities which are not family homes or community living facilities, assure that: admissions will be restricted through the use of community based services; individuals living in SNFs, ICFs, board and care facilities, or other facilities over 15 beds will be evaluated, including assessment of their community needs, and such population will be reduced over 10 years (according to a plan set forth in the agreement; prior to transfer of persons from such facilities to community living facilities or family homes, an individual community transfer plan will be developed by the interdisciplinary team, individual, and family member; notice will be given to the individual and family prior to transfer; procedures will be established for a hearing on the grounds that community services are inappropriate or inadequate or are not yet available in the area; alternate provisions will be made for individuals in facilities which cease operation; facilities receiving state or federal funds will be certified or accredited; and the state will cooperate in on-site surveys and inspections.
- (3) include descriptions of methods to be used to achieve the following: to advise persons of services available to them and the right to free dom of choice of provider and to a fair hearing; to assure fair and equitable provisions to protect the interests of public employees, including training and retraining; to assure application of fair employment standards and equitable compensation to employees in private facilities; and to assure timely submission of data to the Secretary.
- (4) Provides for "state maintenance of effort" intended to ensure that states expand or institute new community-based services rather than use federal Medicaid dollars to fund services currently funded with state tax dollars.

Section 1919(e): Provides that the Secretary may conduct an independent audit.

Section 1919(f): Provides that based on the audit, the Secretary may treat as an overpayment amounts paid to the state for services which do not comply with the Community and Family Living Amendments.

Section 1919(g): Provides for compliance reviews by the Comptroller General of the U.S. from time to time.

Section 1919(h); Provides for a waiver of the statewide requirement (1902) for a state to provide any new service.

Section 3(d); Amends the ICF/MR "definition" in Section 1905 to require that, in order for a state to receive federal reimbursement for services rendered in an ICF/MR, a facility must:

- assess each newly admitted individual and develop an individual written habilitation plan including an assessment of his needs for community and family support services;
- be in a state which has an implementation agreement in effect including a plan for reduction of the number of persons in facilities which do not meet the size and location requirements of community living facilities; and
- if not state-run, have agreed with the state agency to cooperate in the implementation agreement.

Section 3(e): Includes several conforming amendments to the Social Security Act.

Section 4: Section 1903 is amended by adding a new subsection (s) "Limitation on Payments for Services Provided in Large Facilities." The section provides that, on or after October 1, 2000, there will be a limit on the total amount of Medicaid funding available to a state for services provided to severely disabled individuals under 65 in SNF or ICF facilities having more than 15 beds. The limit is 15% of the greater of:

- (1) the amount paid to a state for ICF/MR services in any fiscal year (chosen by the state) ending prior to October 1, 1985; or
- (2) an annual amount based on the rate of federal payment to a state for SNF and ICF services to severely disabled individuals under 65 in facilities having more than 15 beds during the quarter ending December 31, 1989.

The amount determined above will be adjusted for inflation using the Consumer Price Index,

Exempted from the requirements of this section are payments for services to individuals:

- o in facilities meeting the size and location requirements of community living facilities;
- o in facilities which were in operation and have not increased bed size since September 30, 1985 and which have no more than 15 beds (grandfather clause);
- o in cluster homes;
- o if the facility provides services which are necessary for the achievement of significant developmental or therapeutic objectives and are not available in family homes and community living facilities in the state, but only to the extent that the length of stay is projected beforehand and when combined with time in other SNF or ICF facilities (after September 30, 2000) does not exceed 2 years.

Definition?

Section 5: Section 1903 is amended by adding a new subsection (t) "Reduction in Federal Matching for Services Provided in Large Facilities." Provides for a reduction in the FFP percentage beginning October 1, 1988 (or 2 years after enactment) at the rate of 1% per quarter for ten years for services provided to severely disabled individuals under 65 in SNF and ICF facilities. This provision results in a 40% reduction in the federal match over 10 years. (For example, 50% federal Medicaid percentage would become 30% by 1998; 75% would become 45%.)

For those states not having a community and family living implementation agreement in effect, an alternate formula results in a 60% reduction in federal match over the 10 year period. (For example, 50% federal Medicaid percentage would become 20% by 1998; 75% would become 30%.)

Exempted from these provisions are payments for services described above as exempt from the 15% limit (Section 4 or new Section 1903(s)(2)).

Section 6: Adds a new subsection to new Section 1919 which requires the state, as a condition of payment, to have in effect a system to protect and advocate the rights related to medical assistance under the Act of severely disabled individuals eligible for those services. The Agency implementing the system must be independent of service providing agencies; have the authority to pursue legal, administrative, and other appropriate remedies; and have the authority to obtain access to records.

Section 7: Adds a new subsection to Sec. 1919 which establishes the right of any person injured or adversely affected by a violation of Section 1919 or CFLA by the State agency administering the state plan to sue for an injunction. The suit may be brought in U.S. District court and reasonable attorney's fees may be recovered. A requirem 1

is made for notification of the Secretary of HHS, the U.S. Attorney General, and the state agency of intention to sue.

Section 8: Requires that the state Medicaid plan must provide for payment for community and family support services through the use of rates which the state assures the Secretary are reasonable and adequate: (1) to ensure services in conformity with state and federal law and applicable quality and safety standards, and (2) to assure that severely disabled individuals have reasonable access to community and family support services of adequate quality.

Section 9(a): (Provisions in Section 9 (a)-(c) are designed to eliminate some of the current "institutional bias" in the Medicaid program.)

Amends Section 1902 to include a new subsection (k) which allows the state, at its option, to provide community and family support and other Medicaid services to severely disabled individuals who spend (or the family spends) at least 5 percent of adjusted gross income for necessary medical care and community and family support services as defined in Sec. 1919. The state must set forth the criteria for identifying such individuals in its state plan. Conforming amendments are made to Sec. 1903(f)(4) concerning payments.

Section 9(c): Amends Section 1902 to provide that if a state establishes a separate income standard for Medicaid eligibility for individuals in medical institutions, the state must establish the same separate income standard for all severely disabled individuals. (The present limit on this separate standard is \$912 per month; such income is available for co-payment.)

This section also adds a provision that a state may choose to provide services under the plan to disabled individuals who would be eligible for SSI except for resources deemed to them as children or spouses.

Section 9(d): Adds a new subsection (5) to Sec. 1902 (e) which provides for persons who would otherwise be eligible for SSI (and therefore Medicaid) except for Social Security benefits they receive as an "adult disabled child" of a retired, disabled, or deceased worker. This section provides that they will be deemed to be receiving SSI which will make them eligible for community and family support service:

Section 10:

- (a) Provides that the Secretary conduct a study of the status of disabled individuals in each state who are eligible or entitled to receive services under the Social Security Act. He/she shall report to the Congress at least every two years on the states' progress in achieving the national goal of access to community-based services and appropriate living arrangements for all disabled individuals. The Secretary must make a comprehensive report to Congress by 1997 including the impact of federal law, fiscal and demographic data, and any recommendations for changes in Federal legislation.

(b) Within 12 months of enactment, the Secretary must publish proposed regulations regarding this Act and must issue final regulations not later than 18 months following enactment. The Secretary shall be prepared to receive and preliminarily review state implementation agreements by June, 1987.

Section 11: Provides that the effective date of the Act shall be October 1, 1986.