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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

WILLIAM J. WILKINS, STAFF DIRECTOR AND CHIEF COUNSEL
MARY McCAULEY, MINORITY CHIEF OF STAFF

June 21, 1988

Dear Mel,

Greetings from Senator Durenberger. Our Senator once again has requested your help. We very much appreciated the input you gave us last July and we seriously want your opinions again now. The Senator is getting a great deal of pressure to sign onto Senator Chafee's Medicaid Reform Legislation. We have had draft legislation done for us to give to Chafee "which correlates with your comments and concerns of last summer. If Senator Chafee will incorporate these concerns of yours into the legislation, we could potential sign onto this bill, however only if these additions in your opinion correlate with the needs you outlined for us last year.

Enclosed is the draft legislation. Please call Helen Darling or myself before Tuesday, June 28th at 202-224-3244. I will be difficult to reach so try for Helen first. Thank you for your time and attention on this very important matter. The Senator very much values your input on this subject.

Sincerely,



Mary C. Edwards
Health/Human Resource LA
Senator Dave Durenberger

Senator Dave Durenberger Amendments
The Medicaid Home and Community Quality Services Act
June 15, 1988

Amendment #1: Rate Setting:

Pg. 47, line 3, insert new (7)

- (7) set forth methods and procedures to assure -
- A) a fair and equitable mechanism for establishing rates of payment for the ICF/MR program and for community and family support services provided under this title which is consistently applied to both public and private programs and facilities and which is based on valid and appropriate indices including-
 - (i) the specific needs of the individual in accordance with the individual's written habilitation plan with particular attention to the specialized requirements of individuals with severe physical disabilities, sensory disabilities, challenging behavior and multiple disabilities,
 - (ii) minimum and prevailing wages for all staff,
 - (iii) annual cost of living allowances,
 - (iv) health benefit packages for all staff,
 - (v) all fixed costs for provider operation including FICA, workers, compensation, liability insurance, rent, utilities, maintenance, and
 - (vi) all other costs required to provide community and family support services as required in Section 7 of this Act.

Impact:

This amendment would be inserted into the mandated requirements for each state's five year "implementation strategy." This five year plan must go to public hearings and be reviewed formally by both the state council on developmental disabilities and the state protection and advocacy system. It would force the state to publicly disclose its rate setting mechanism and set minimal federal criteria for compliance. These criteria include all of the rate setting items in the UCPA of California resolution of March 5, 1988.

Amendment # 2: Transition and Down-Sizing Costs

Page 47, line 3, insert new (8) after (7):

- (8) set forth methods and procedures of payment for community and family support services provided under this title which recognizes both the increased per diem costs associated with a planned reduction in the number of individuals receiving services in a large facility and the start up costs of transitioning individuals with severe disabilities to community

living facilities and/or family home and/or foster family homes including-

- (i) acquisition or leasing costs,
- (ii) Moving in costs including the amortization of furnishings and equipment,
- (iii) recruitment, employment and training of personnel prior to providing services, and
- (iv) the phase-in costs of residents until the new facility or family home is fully occupied.

Impact:

This amendment would be inserted into the mandated requirements of each state's five year "implementation strategy." This five year plan must go to public hearings and be reviewed formally by the State Council on Developmental Disabilities and the state protection and advocacy system. It would force the state to establish a specialized payment system for a facility's planned down-sizing or closure and transition of residents to alternative living arrangements. This language includes all of the elements of this issue in the UCPA of California resolution of March 5, 1988.

Amendment # 3: Facility Phase Down, Phase Out Plans

Pg. 26, line 12, insert new (C)

(C) in the case of a State deciding to reduce or eliminate funding support for individuals receiving services in ICF/MR facilities of more than 15 beds as a result of the limitation on payments for services providing in large facilities in Section 4 of this Act, the State must set forth in the implementation strategy specific objectives and a projected schedule for such reduction, including-

- (i) the identification of the facilities to be affected by such objectives,
- (ii) the procedures and criteria for identifying such facilities, which must include

- (I) a quantitative and qualitative analysis of the most recent facility certification surveys,

- (II) a quantitative analysis of the achievement in the

facility's

measured individual

service outcomes for independence
productivity and integration,

- (III) a quantitative and qualitative analysis of the most recent twelve months of incident reports and all other reports to state and federal licensing, regulatory and monitoring agencies,

- (IV) a qualitative and quantitative analysis of all reports and activities on behalf of individuals in large facilities by the system for providing protection and advocacy

under Part C of the Developmental Disabilities Assistance and Bill of Rights Act,

(V) a quantitative analysis of the distance from the family and/or home community of the residents, and

(VI) a quantitative analysis of the distance from the facility to support services and generic community resources.

(iii) a state assurance that no facility which is in substantial compliance with the criteria under (C)(ii) will be reduced or closed by the state prior to such action being taken with facilities of a larger and more congregate setting unless a facility voluntarily requests to reduce its number of certified beds or to close

(iv) a state assurance that no preference will be shown to public over private facilities, and

(v) a timely appeal process and a speedy hearing before an impartial hearing officer for any such facility.

The largest FRC would have to close first.

Impact:

This amendment would insert into the State's five year implementation strategy as a mandated requirement. This five year plan must go to public hearings and be reviewed by the state council on developmental disabilities and the state protection and advocacy system. This amendment will prevent a state from being arbitrary, capricious and self-serving in any decisions to reduce the number of certified ICF/MR beds in large facilities by establishing a formal, objective, public process which must be identified in the plan. It also provides a bias in favor of maintaining smaller, dispersed or cluster facilities over large, congregate settings if the facility is in substantial compliance with the criteria.

Amendment # 4: Parental Participation

Pg. 6, lines 12-15 change to

(A) such individual, the parents of the individual if a child, the guardian of the individual, and, as appropriate, the spouse, other family member, advocate of such individual, and any other person requested by the individual, and

Impact:

This proposed amendment clarifies that the parents of minor children and the guardian of an adult with severe disabilities are Members of the interdisiplinary team with full participation.

Amendment # 5: Institutional Waiver

During the transition, an institution would be required to meet the standards within the bill or the institution would be phased out within five years. Individual facilities, however, ~~would~~ be allowed to apply for a waiver so the state can continue to receive uncapped federal reimbursement for cost of care to Medicaid patients. Only facilities within a certain range would be eligible to apply, preferably facilities with under 50 beds. An independent review board would assess the residents based on the national quality standards. The burden of proof is on the institution, which has a strong financial incentive to take action.