

LCAO urges rejection of waivers for Medicaid transfer of assets rules

For Immediate Release

January 28, 2004

Contact:

The Honorable Tommy Thompson, Secretary
Department of Health & Human Services
200 Independence Avenue, SW
Washington, DC, 20201

Dear Secretary Thompson:

The undersigned members of the Leadership Council of Aging Organizations (LCAO) strongly urge you to reject the waivers for Medicaid Transfer of Asset rules requested by Connecticut, Massachusetts, Minnesota and any other state making similar requests. Each state is, at a minimum, seeking two exemptions from 42 U.S.C. §1396p:

- To impose a penalty period beginning on the date when the applicant is otherwise eligible for Medicaid coverage, i.e., when the individual needs long-term care (nursing home or home care) and lacks the income or resources to pay for that care, and,
- To permit a five-year, look-back period for transfers of real property.

We understand the need to prevent individuals from illegally transferring assets in order to improperly qualify for Medicaid benefits. However, these proposals would punish people who have never tried to cheat the system. It would be bad for consumers, families, and providers. It would cost, not save, money. Yet it would not likely affect those who try to illegally transfer assets.

On August 20, 2002, the LCAO wrote to you with details on why Connecticut's waiver proposal was both an inappropriate use of the waiver process (which has served many states well) and an illegal use of Section 1115 waivers as defined by Congress. The recent requests from Massachusetts and, particularly, Minnesota are even more egregious in their intent, avoidance of the law, and would cause even greater harm than what we describe in our discussion of waiving the aforementioned Medicaid rules.

We understand that both Senators Dodd and Lieberman as well as all six members of the U.S. House of Representatives from Connecticut, including Rep. Nancy Johnson, have voiced their opposition to Connecticut's waiver request.. We also understand that the entire Massachusetts delegation has opposed their state's waiver request, and that Senator

Breaux, Ranking Member of the Special Committee on Aging, has written to you opposing such waivers based upon his substantial concerns about how waivers would negatively affect persons with legitimate need for long-term care services under Medicaid.

Further, we understand that you have heard from aging advocates disputing Governor Roland's claim that recent legislation would somehow reduce the harm that his waiver proposal would cause.

Our opposition to these waiver proposals arises from the following concerns:

- The health and safety of older and disabled citizens will be seriously jeopardized. All of those affected will need long-term nursing home or home health care, yet be unable to pay for that care.
- Because many states allow facilities to deny admission when there is no payment source, those who need nursing home care would not be able to gain entry.
- In cases where nursing home admission has already occurred and the penalty has been applied, nursing homes will be required to provide uncompensated care for the duration of the penalty period or until hospitalization.
- Those in a hospital at the time of denial would be unable to leave since nursing homes and home care agencies will deny admission if there is no payment source. Hospitals will become the default providers of care as access to nursing homes is barred during the penalty period.
- The waiver proposals assume that the elderly can predict their medical and financial circumstances five years into the future. They punish unwitting elders who have helped their families with customary gifts but subsequently experience unforeseeable medical events such as stroke or Alzheimer's disease.
- The waiver proposals wrongly claim that the use of long-term care insurance will be expanded. Many elders cannot afford the cost of long-term care insurance, and it is definitely not available for many individuals who already have serious chronic illnesses.
- The harsh penalty of the proposed waivers would be applied to all those who are unable to immediately recover the funds or the value of property alleged to have been "improperly" transferred up to five years prior to the Medicaid application. Most transferees will have no legal obligation to refund the transfer (e.g., charitable and religious donations, campaign contributions, etc.). In other cases, transferees will be financially unable to make any refund or there will be no transferee from whom to recover.
- Low-income elders would be denied admission to a nursing home because the waivers will create unacceptable new obstacles, requiring record keeping and documentation that is far beyond the normal practices of the elderly, especially poor and chronically ill elders.
- The waivers will not save money nor encourage the sale of long-term care insurance. The persons most affected are those least able to obtain long-term care insurance.
- The waivers will generate unintended consequences. Rather than stopping asset transfers and encouraging the purchase of long-term care insurance, the proposal will encourage earlier and larger asset transfers by the elderly, discourage responsible decision-making, and ultimately add to Medicaid costs.

In addition, the waiver proposals appear to us to contravene federal law in the following respects:

- The proposed waivers fail to conform to the basic purpose of Section 1115 waivers, since it is devoid of any attempt to expand or improve services or service delivery under a bona

- vide research or demonstration program. Instead, they include a blatant eligibility restriction intended to cut expenditures.
- Federal law permits waivers of state plan requirements in section 1902 of the Medicaid statute, 42 U.S.C. §1396a. The transfer-of-asset rules created by Congress are not in this section cannot be waived by CMS. HCFA (now CMS) denied similar waiver requests by Minnesota and South Dakota for this reason.
 - The waivers would permit Connecticut, Massachusetts, and Minnesota to deny, rather than furnish, medical assistance to those who lack the income and resources to pay for medical care -- thus defeating, rather than promoting, Medicaid and waiver objectives.

For all the foregoing reasons, the LCAO respectfully requests that you reject these transfer of asset waiver proposals. Thank you very much for your consideration of these comments.

Sincerely,

AARP
AFSCME Retiree Program
Alliance for Retired Americans
Alzheimer's Association
American Association for International Aging
American Foundation for the Blind
American Geriatrics Society
Association for Gerontology and Human Development in
Historically Black Colleges and Universities
Association of Jewish Aging Services of North America
B'nai B'rith International
Eldercare America, Inc.
Families USA
Gray Panthers
International Union, UAW
Military Officers Association of America
National Academy of Elder Law Attorneys
National Association for Home Care and Hospice
National Association of Professional Geriatric Care Managers
National Association of Retired and Senior Volunteer Program Directors
National Association of Retired Federal Employees
National Association of Senior Companion Project Directors
National Association of State Long-Term Care Ombudsman Programs
National Citizens' Coalition for Nursing Home Reform
National Committee to Preserve Social Security and Medicare
National Council on the Aging
National Indian Council on Aging, Inc.
National Senior Citizens Law Center
OWL, the voice of midlife and older women
Volunteers of America