

August 20, 2002

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 Connecticut's request for a waiver from Medicaid Transfer of Asset rules. The state is 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, the Connecticut proposal would punish people who had 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.

In a June 2001 Special Session, the General Assembly authorized the Connecticut Commissioner of Social Services to seek a waiver of federal law from the existing transfer of assets rules under the Medicaid program, subject to the Commissioner submitting the waiver proposal to two committees of the Connecticut General Assembly -- the Human Services and Appropriations Committees -- for public hearing, after which the Committees may "...advise the commissioner of their approval, denial, or modifications, if any, of his application."

The Commissioner submitted the waiver proposal to the two committees in early 2002. The public comments received on the proposed waiver were uniformly negative. The Human Services Committee of the Connecticut General Assembly, after public hearing, unanimously rejected the waiver proposal. The Appropriations Committee failed to approve the proposed waiver by declining to act on it.

The Commissioner of Social Services ignored both the legislative process and the public hearings and submitted the waiver proposal to the Center for Medicare and Medicaid Services (CMS) for approval. Since its submission, both Senators Dodd and Lieberman, as well as all six members of the U.S. House of Representatives from Connecticut have voiced their opposition to the waiver, including Rep. Nancy Johnson, based upon their substantial concerns about the negative effect it would have on persons legitimately needing long-term care services under Medicaid.

Our opposition to the waiver proposal arises from our concern about the likely negative effects of the proposal:

- All of those affected by this waiver will unquestionably need long-term nursing home or home health care, yet be unable to pay for that care. Thus, the health and safety of older and disabled citizens will be seriously jeopardized.
- Those who need nursing home care would not be able to gain entry. Connecticut law allows facilities to deny admission when there is no payment source.

- In cases where nursing home admission has already occurred and the penalty is 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 proposal suggests that the elderly can predict their medical and financial circumstances five years into the future. It punishes unwitting elders who have helped their families with commonly made gifts and then experience unforeseeable medical events such as stroke or Alzheimer's disease.
- The waiver proposal wrongly claims that it will expand the use of long-term care insurance. The cost of long-term care insurance is not affordable for many elders. It is definitely not available for many individuals who already have serious chronic illnesses.
- The harsh penalty of the proposed waiver 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.
- The waiver will create unacceptable new obstacles for vulnerable, frail elderly and disabled persons to get care, because the waiver will require record keeping and documentation that is far beyond the normal practices of the elderly, especially poor and chronically ill elders. Therefore, low-income elders would be denied admission to a nursing home because of inadequate record keeping.
- The waiver 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 waiver 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 proposal appears to us to contravene federal law in the following respects:

- The proposed waiver fails 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 fide research or demonstration program. Instead, it is 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 and are not waivable by CMS. Similar waiver requests by Minnesota and South Dakota were previously denied for this reason by HCFA (now CMS).
- The waiver would permit Connecticut 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 the Connecticut Transfer of Asset Waiver Proposal. Thank you very much for your consideration of these comments.

Sincerely,

AARP

AFSCME Retirees

Alliance for Retired Americans

Alzheimer's Association

American Association for International Aging

American Association of Homes and Services for the Aging

American Foundation for the Blind

American Geriatrics Society

American Society of Consultant Pharmacists

Association for Gerontology and Human Development in Historically Black
Colleges and Universities

B'nai B'rith International Center for Senior Services

Catholic Health Association of the United States

Eldercare America, Inc

Families USA

Gray Panthers

National Association for Hispanic Elderly

National Association for Home Care

National Academy of Elder Law Attorneys

National Association of Area Agencies on Aging

National Association of Nutrition and Aging Services Programs

National Association of Professional Geriatric Care Managers

National Association of Retired and Senior Volunteer Program Directors, Inc.

National Association of Retired Federal Employees

National Association of Senior Companion Project Directors

National Association of State Long-Term Care Ombudsman Programs

National Caucus and Center on Black Aged

National Committee to Preserve Social Security and Medicare

National Council on the Aging

National Hispanic Council on Aging

National Indian Council on Aging

National Senior Citizens Law Center

OWL, the voice of midlife and older women

The Retired Officers Association

United Auto Workers Retired Workers Department

United Jewish Communities

Volunteers of America

cc: The Honorable Tom Scully