SUBJECT: Individual cost cap exceptions in Medicaid waiver programs

COMMITTEE: Public Health —favorable, without amendment

VOTE: 5 ayes — Delisi, Laubenberg, Truitt, Dawson, Jackson

0 nays

4 absent — Coleman, McReynolds, Solis, Zedler

SENATE VOTE: On final passage, March 31 — 30-0, on Local and Uncontested Calendar

WITNESSES: For — Bob Kafka, ADAPT of Texas

Against — None

On — Adelaide Horn, Department of Aging and Disability Services

BACKGROUND: Medicaid is a state-operated health care program and the primary funding source for long-term care services for people with low incomes. Each state submits a Medicaid State Plan that defines the services provided, as well as who is eligible to receive them. Medicaid is designed as an entitlement, meaning that all services in the Medicaid State Plan must be available statewide to all who qualify. Medicaid services include both acute care services and long-term care services. The Medicaid State Plan also defines the state's income and asset requirements to qualify for Medicaid.

Medicaid home and community-based waiver programs provide an expanded set of services – above and beyond the services defined in the Medicaid State Plan - to a limited number of people who meet specific criteria. These programs provide personal care attendant services, home-delivered meals, and programs that offer a range of self-directed supports. In Texas, eligibility for waiver programs is set at the same income eligibility and medical eligibility levels as institutions. Medicaid waiver programs include Community-Based Alternative, Community Living Assistance and Support Services, Deaf/Blind with Multiple Disabilities, Medically Dependent Children's Program, and Consolidated Waiver

Program. Individual cost caps on a person's individual plan of care, equal to the cost of serving an individual in an institution, have been put in place by the Department of Aging and Disability Services (DADS) in order to manage the aggregate so that it is cost-neutral for the state. Medicaid law requires cost neutrality, meaning that the aggregate cost of waiver programs not exceed the cost of institutions.

In 2001, the 77th Legislature included Rider 7b in the state budget for fiscal years 2002-03 to allow individuals with higher service needs to maintain eligibility in Medicaid waiver programs. The provision applies only to people currently receiving services, so people being enrolled in these programs still are denied if projected costs exceed the individual cost cap for that particular waiver program. Under Rider 7b, an individual service plan can be amended with no denial of waiver services based on individual cost caps. The fiscal 2004-05 budget retains Rider 7b, with the added provision that an individual be allowed to exceed the cost cap only up to 133 percent, and for a limited period of up to six months in a 12-month service plan.

DIGEST:

SB 626 would statutorily require DADS to continue to provide services under a Medicaid waiver program to a person receiving those services on September 1, 2005, even if the cost exceeded the individual cost limit specified in the waiver, if continuation of services were necessary for the person to live in the most integrated setting appropriate to the needs of the person and it did not affect DADS compliance with federal cost-neutrality requirements.

For persons not meeting those requirements, the bill would enable DADS to continue to provide services under a waiver program to a person receiving medical assistance at a cost exceeding the individual cost limit specified in the waiver program so long as the cost did not exceed 133.3 percent of the individual cost limit. Continuation of the services, however, would have to maintain the federal cost-neutrality of the waiver program. The executive commissioner of the Health and Human Services Commission could adopt rules under which DADS could exempt a person from the 133.3 percent cost limit.

The bill would take effect on September 1, 2005, and would apply only to a person receiving medical assistance on or after the effective date,

regardless of when eligibility for that assistance was determined.

SUPPORTERS SAY:

SB 626 would grant statutory authority to DADS to exempt people from the individual cost caps for certain Medicaid waiver programs that provide community-based programs to people with disabilities. By exempting individuals who temporarily exceed a waiver cost limit due to extenuating circumstances, the bill would help to keep individuals currently living within the community out of nursing homes and ICF/MR facilities. With great success, this has been a pilot program for four years under Rider 7b. SB 626 would codify it.

Exemption from individual cost caps is an integral piece of the home and community-based Medicaid waiver system. Enacting this legislation would allow someone to stay in the community because that person already was settled and wanted to stay because a support system was in place in both the public and whatever informal care the person received. Allowing these individuals to go over the cost cap just a small amount would keep them in the most integrated setting.

In reality, only a small number of people seeking enrollment in waiver programs significantly exceed the individual cost cap. SB 626 would apply to all five Medicaid waiver programs within DADS, with the total number of those recipients grandfathered equaling 33,200. In the years that Rider 7b has been in effect, only 332 individuals (1 percent) have exceeded the 100 percent cost neutrality limit, and no one has ever exceeded 133.3 percent or the full 12-month period. It would not be possible for a few people in waiver programs with higher service costs to skew the average expenditure rate enough to jeopardize budget neutrality.

In Texas waiver programs, the aggregate cost is considerably less than the cost of services in nursing facilities or other institutions. The average cost cap for individuals living in the community is around $30,000 a year, which is cheaper than nursing home and other facility care. SB 626 would be cost-effective and save money because if individuals were placed in institutions, it would actually cost more than the small amount going over the cap.

OPPONENTS SAY: No apparent opposition.