

LEADERSHIP COUNCIL
of
AGING ORGANIZATIONS

Barbara B. Kennelly, Chair

August 25, 2005

Via Fax

United States Senate
United States House of Representatives

Dear Senator/Representative:

The undersigned members of the Leadership Council of Aging Organizations (LCAO) strongly urge you to reject two proposals to change Medicaid eligibility rules that would severely harm our nation's vulnerable older adults and individuals with disabilities who need long-term care. These proposals, which are under consideration as part of budget reconciliation in the Senate Finance Committee and the House Energy and Commerce Committee, would:

- 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,
- Mandate a five-year look-back period for transfers.

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 had never tried to cheat the system. It would be bad for consumers, families, and providers. Yet it would have little effect on those who deliberately try to game the system.

A few of the likely victims of such measures are: the grandparent caring for a grandchild who provides savings to help pay for the grandchild's education; the church supporter who donates personal assets to the church; the family farmer or small business owner who passes on the farm or business to the next generation; the caring sister who uses savings to help a needy sister remain in her home. Under the proposals to close transfer of asset rules, each of these individuals will be cut off Medicaid if they subsequently get sick and need long-term care. Another likely victim is the woman who had a stroke, is already in a nursing home having exhausted all her resources, and is denied Medicaid coverage because she helped a grandchild with college tuition four years earlier.

In 2002, Connecticut submitted a waiver proposal to the Centers for Medicare and Medicaid Services (CMS) that would have made these same rules changes. Almost all of the members of the Connecticut congressional delegation opposed the waiver request and it has since been withdrawn by Governor Rell based upon substantial concerns about the negative effect it would have on persons legitimately needing long-term care services under Medicaid.

Our opposition to these proposals arises from our concern about the likely negative effects on older Americans living out their lives with no intent to "game the system." Problems with the proposals include:

- All of those affected by this proposal will unquestionably need long-term nursing home or home health care, yet be unable to pay for that care, placing them in serious jeopardy.
- Those who need nursing home care would not be able to gain entry. State law often 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.
- The 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.
- Some incorrectly claim that these changes 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 proposal 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.).

These proposals will create unacceptable new obstacles to nursing home admission for vulnerable, frail elderly and disabled persons to get care, by requiring additional record keeping and documentation that is far beyond the normal practices of the elderly, especially poor and chronically ill elders and those with Alzheimer's disease. Therefore, low-income elders would be denied admission to a nursing home because of record keeping. Further, these proposals would unfairly penalize people by changing the rules in midstream to require recordkeeping for five years rather than the current three years.

The LCAO recognizes the need to make Medicaid and other federal programs as effective as possible. Therefore, we suggest that Congress consider alternate proposals to address concerns about "loopholes" and "aggressive Medicaid planning." However, for all the foregoing reasons, the LCAO respectfully requests that you reject the aforementioned proposals to change the penalty period start date and to increase the look back period from three to five years. Thank you very much for your consideration of these comments.

Sincerely,

AARP
AFL-CIO
AFSCME Retiree Program
Alliance for Retired Americans
Alzheimer's Association
American Association for International Aging
American Federation of Teacher Program on Retirement and Retirees
American Foundation for the Blind
American Geriatrics Society

American Society of Consultant Pharmacists
American Society on Aging
Asociacion Nacional Pro Personas Mayores
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 Center
Eldercare America, Inc.
Families USA
Gray Panthers
Military Officers Association of America
NARFE
National Academy of Elder Law Attorneys
National Association of Foster Grandparent Program Directors
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 Senior Companion Project Directors
National Association of Social Workers
National Association of State Long-Term Care Ombudsman Programs
National Caucus and Center on Black Aged, Inc
National Citizens' Coalition for Nursing Home Reform
National Committee to Preserve Social Security and Medicare
National Council on the Aging
National Hispanic Council on Aging
National Indian Council on Aging, Inc.
National Senior Citizens Law Center
OWL, the voice of midlife and older women
Service Employees International Union
United Auto Workers
United Jewish Communities