

105TH CONGRESS
1ST SESSION

H. R. 2020

To amend title XIX of the Social Security Act to provide for coverage of community attendant services under the Medicaid program.

IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 1997

Mr. GINGRICH introduced the following bill; which was referred to the Committee on Commerce

A BILL

To amend title XIX of the Social Security Act to provide for coverage of community attendant services under the Medicaid program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medicaid Community
5 Attendant Services Act of 1997”.

6 **SEC. 2. COVERAGE OF COMMUNITY-BASED ATTENDANT**
7 **SERVICES UNDER THE MEDICAID PROGRAM.**

8 (a) REQUIRING COVERAGE FOR INDIVIDUALS ENTI-
9 TLED TO NURSING FACILITY SERVICES OR INTERMEDI-
10 ATE CARE FACILITY SERVICES FOR THE MENTALLY RE-

1 TARDED.—Section 1902(a)(10)(D) of the Social Security
2 Act (42 U.S.C. 1396a(a)(10)(D)) is amended—

3 (1) by inserting “(i)” after “(D)”, and

4 (2) by adding at the end the following:

5 “(ii) subject to section 1932(b), for the in-
6 clusion of qualified community-based attendant
7 services for any individual who, under the State
8 plan, is entitled to nursing facility services or
9 intermediate care facility services for the men-
10 tally retarded and who requires such services
11 based on functional need (and without regard to
12 age or disability);”.

13 (b) MEDICAID COVERAGE OF COMMUNITY-BASED
14 ATTENDANT SERVICES.—

15 (1) IN GENERAL.—Title XIX of the Social Se-
16 curity Act, as amended by section 114(a) of the Per-
17 sonal Responsibility and Work Opportunity Rec-
18 onciliation Act of 1996, is amended—

19 (A) by redesignating section 1932 as sec-
20 tion 1933, and

21 (B) by inserting after section 1931 the fol-
22 lowing new section:

23 “COVERAGE OF QUALIFIED COMMUNITY-BASED
24 ATTENDANT SERVICES

25 “SEC. 1932. (a) QUALIFIED COMMUNITY-BASED AT-
26 TENDANT SERVICES DEFINED.—

1 “(1) IN GENERAL.—In this title, the term
2 ‘qualified community-based attendant services’
3 means attendant services (as defined by the Sec-
4 retary) furnished to an individual—

5 “(A) on an as-needed basis under a plan of
6 service that is based on an assessment of func-
7 tional need and that is agreed to by the individ-
8 ual;

9 “(B) in a home or community-based set-
10 ting, which may include a school, workplace, or
11 recreation or religious facility, but does not in-
12 clude a nursing facility, an intermediate care
13 facility for the mentally retarded, or other insti-
14 tutional facility;

15 “(C) under either an agency-provider
16 model or other model (as defined in subsection
17 (c)); and

18 “(D) the furnishing of which is selected,
19 managed, controlled by the individual (as de-
20 fined by the Secretary).

21 “(2) SERVICES INCLUDED.—Such term in-
22 cludes—

23 “(A) backup and emergency attendant
24 services;

1 “(B) voluntary training on how to select,
2 manage, and dismiss attendants; and

3 “(C) health-related tasks (as defined by
4 the Secretary) that are assigned to, delegated
5 to, or performed by, unlicensed personal attend-
6 ants.

7 “(3) EXCLUDED SERVICES.—Subject to para-
8 graph (4), such term does not include—

9 “(A) provision of room and board, and

10 “(B) prevocational, vocational, and sup-
11 ported employment.

12 “(4) FLEXIBILITY IN TRANSITION TO HOME
13 SETTING.—Under regulations of the Secretary, such
14 term may include expenditures for transitional costs,
15 such as rent and utility deposits, first months’s rent
16 and utilities, bedding, basic kitchen supplies, and
17 other necessities required for an individual to make
18 the transition from a nursing facility or intermediate
19 care facility for the mentally retarded to a home set-
20 ting.

21 “(b) LIMITATION ON AMOUNTS OF EXPENDITURES
22 AS MEDICAL ASSISTANCE.—

23 “(1) IN GENERAL.—In carrying out section
24 1902(a)(10)(D)(ii), a State shall permit an individ-
25 ual who is entitled to medical assistance with respect

1 to nursing facility services or intermediate care facil-
 2 ity services for the mentally retarded and who quali-
 3 fies for the receipt of such services to choose to re-
 4 ceive medical assistance for qualified community-
 5 based attendant services (rather than medical assist-
 6 ance for such institutional services), in the most in-
 7 tegrated setting appropriate to the needs of the indi-
 8 vidual, so long as the aggregate amount of the Fed-
 9 eral expenditures for such individuals in a fiscal year
 10 does not exceed the total that would have been ex-
 11 pended for such individuals to receive such institu-
 12 tional services in the year plus, subject to subsection
 13 (e), the transitional allotment to the State for the
 14 fiscal year involved, as determined under paragraph
 15 (2)(B).

16 “(2) TRANSITIONAL ALLOTMENTS.—

17 “(A) TOTAL AMOUNT.—The total amount
 18 of the transitional allotments under this para-
 19 graph for—

20 “(i) fiscal year 1998 is \$580,000,000,

21 “(ii) fiscal year 1999 is \$480,000,000,

22 “(iii) fiscal year 2000 is
 23 \$380,000,000,

24 “(iv) fiscal year 2001 is
 25 \$280,000,000,

1 “(v) fiscal year 2002 is \$180,000,000

2 and

3 “(vi) fiscal year 2003 is

4 \$100,000,000.

5 “(B) STATE ALLOTMENTS.—The Secretary

6 shall provide a formula for the distribution of

7 the total amount of the transitional allotments

8 provided in each fiscal year under subparagraph

9 (A) among States. Such formula shall give pref-

10 erence to States that have a relatively higher

11 proportion of long-term care services furnished

12 to individuals in an institutional setting but

13 who have a plan under subsection (e) to signifi-

14 cantly reduce such proportion.

15 “(C) USE OF FUNDS.—Such funds allotted

16 to, but not expended in, a fiscal year to a State

17 are available for expenditure in the succeeding

18 fiscal year.

19 “(c) DELIVERY MODELS.—For purposes of this sec-

20 tion:

21 “(1) AGENCY-PROVIDER MODEL.—The term

22 ‘agency-provider model’ means, with respect to the

23 provision of community-based attendant services for

24 an individual, a method of providing such services

1 under which a single entity contracts for the provi-
2 sion of such services.

3 “(2) OTHER MODEL.—The term ‘other model’
4 means a method, other than an agency-provider
5 model, for provision of services. Such a model may
6 include the provision of vouchers, direct cash pay-
7 ments, or use of a fiscal agent to assist in obtaining
8 services.

9 “(d) QUALITY ASSURANCE.—

10 “(1) IN GENERAL.—No Federal financial par-
11 ticipation shall be available with respect to qualified
12 community-based attendant services furnished under
13 an agency-provider model or other model unless the
14 State establishes and maintains a quality assurance
15 program that is developed after public hearings, that
16 is based on consumer satisfaction, and that, in the
17 case of services furnished under the agency-provider
18 model, meets the following requirements:

19 “(A) SURVEY AND CERTIFICATION.—The
20 State periodically certifies and surveys such
21 provider-agencies. Such surveys are conducted
22 on an unannounced basis and average at least
23 1 a year for each agency-provider.

1 “(B) STANDARDS.—The State adopts
2 standards for survey and certification that in-
3 clude—

4 “(i) minimum qualifications and train-
5 ing requirements for provider staff;

6 “(ii) financial operating standards;
7 and

8 “(iii) a consumer grievance process.

9 “(C) MONITORING BOARDS.—The State
10 provides a system that allows for monitoring
11 boards consisting of providers, family members,
12 consumers, and neighbors to advise and assist
13 the State.

14 “(D) PUBLIC REPORTING.—The State es-
15 tablishes reporting procedures to make available
16 information to the public.

17 “(E) ONGOING MONITORING.—The State
18 provides ongoing monitoring of the delivery of
19 attendant services and the effect of those serv-
20 ices on the health and well-being of each recipi-
21 ent.

22 “(2) PROTECTION OF BENEFICIARIES.—

23 “(A) IN GENERAL.—The regulations pro-
24 mulgated under section 1930(h)(1) shall apply
25 with respect to the protection of the health,

1 safety, and welfare of individuals receiving
2 qualified community-based attendant services in
3 the same manner as they apply to individuals
4 receiving community supported living arrange-
5 ments services.

6 “(B) DEVELOPMENT OF ADDITIONAL REG-
7 ULATIONS.—The Secretary shall develop addi-
8 tional regulations to protect the health, safety,
9 and welfare for individuals receiving qualified
10 community-based attendant services other than
11 under an agency-provider model. Such regula-
12 tions shall be designed to maximize the consum-
13 ers’ independence and control.

14 “(C) SANCTIONS.—The provisions of sec-
15 tion 1930(h)(2) shall apply to violations of reg-
16 ulations described in subparagraph (A) or (B)
17 in the same manner as they apply to violations
18 of regulations described in section 1930(h)(1).

19 “(e) TRANSITION PLAN.—

20 “(1) IN GENERAL.—As a condition for receipt
21 of a transitional allotment under subsection (b)(2),
22 a State shall develop a long-term care services tran-
23 sition plan that establishes specific action steps and
24 specific timetables to increase the proportion of long-
25 term care services provided under the plan under

1 this title in home and community-based settings,
2 rather than institutional settings.

3 “(2) PARTICIPATION.—The plan under para-
4 graph (1) shall be developed with major participa-
5 tion by both the State Independent Living Council
6 and the State Developmental Disabilities Council, as
7 well as input from the Councils on Aging.

8 “(f) ELIGIBILITY.—Effective January 1, 1999, a
9 State may not exercise the option of coverage of individ-
10 uals under section 1902(a)(10)(A)(ii)(V) without provid-
11 ing coverage under section 1902(a)(10)(A)(ii)(VI).

12 “(g) REPORT ON IMPACT OF SECTION.—The Sec-
13 retary shall submit to Congress periodic reports on the
14 impact of this section on beneficiaries, States, and the
15 Federal Government.”.

16 (c) COVERAGE AS MEDICAL ASSISTANCE.—

17 (1) IN GENERAL.—Section 1905(a) of such Act
18 (42 U.S.C. 1396d) is amended—

19 (A) by striking “and” at the end of para-
20 graph (24),

21 (B) by redesignating paragraph (25) as
22 paragraph (26), and

23 (C) by inserting after paragraph (24) the
24 following new paragraph:

1 “(25) qualified community-based attendant
2 services (to the extent allowed and as defined in sec-
3 tion 1932); and”.

4 (2) ELIGIBILITY CLASSIFICATIONS.—Section
5 1902(a)(10)(A)(ii)(VI) (42 U.S.C.
6 1396a(a)(10)(A)(ii)(VI)) is amended by inserting
7 “or qualified community-based attendant services”
8 after “section 1915” each it appears.

9 (3) CONFORMING AMENDMENTS.—(A) Section
10 1902(j) of such Act (42 U.S.C. 1396a(j)) is amend-
11 ed by striking “(25)” and inserting “(26)”.

12 (B) Section 1902(a)(10)(C)(iv) of such Act (42
13 U.S.C. 1396a(a)(10)(C)(iv)) is amended by striking
14 “(24)” and inserting “(25)”.

15 (d) REVIEW OF, AND REPORT ON, REGULATIONS.—
16 The Secretary of Health and Human Services shall review
17 existing regulations under title XIX of the Social Security
18 Act insofar as they regulate the provision of home health
19 services and other services in home and community-based
20 settings. The Secretary shall submit to Congress a report
21 on how excessive utilization of medical services can be re-
22 duced under such title by using qualified community-based
23 attendant services.

24 (e) DEVELOPMENT OF FUNCTIONAL NEEDS ASSESS-
25 MENT INSTRUMENT.—The Secretary shall develop a func-

1 tional needs assessment instrument that assesses an indi-
 2 vidual's need for qualified community-based attendant
 3 services and that may be used in carrying out sections
 4 1902(a)(10)(D)(ii) and 1932 of the Social Security Act.

5 (f) TASK FORCE ON FINANCING OF LONG-TERM
 6 CARE SERVICES.—The Secretary shall establish a task
 7 force to examine appropriate methods for financing long-
 8 term care services. Such task force shall include signifi-
 9 cant representation of individuals (and representatives of
 10 individuals) who receive such services.

11 **SEC. 3. STATE OPTION FOR ELIGIBILITY FOR INDIVIDUALS.**

12 (a) IN GENERAL.—Section 1903(f) of the Social Se-
 13 curity Act (42 U.S.C. 1396b(f)) is amended—

14 (1) in paragraph (4)(C), by inserting “subject
 15 to paragraph (5),” after “does not exceed”, and

16 (2) by adding at the end the following:

17 “(5)(A) A State may waive the income limitation de-
 18 scribed in paragraph (4)(C) in such cases as the State
 19 finds the potential for employment opportunities would be
 20 enhanced through the provision of such services.

21 “(B) In the case of an individual who is made eligible
 22 for medical assistance because of subparagraph (A), not-
 23 withstanding section 1916(b), the State may impose a pre-
 24 mium based on a sliding scale relating to income.”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 subsection (a) shall apply to medical assistance provided
3 for items and services furnished on or after January 1,
4 1998.

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