

Texas Elder Law FaxLetter

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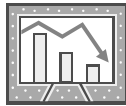
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A FREE BUSINESS AND LEGAL UPDATE OF CURRENT EVENTS AFFECTING THE ELDERLY ♦ MARCH 2003 EDITION

MEDI- MINUTES

State Legislature Proposes 12.5% Budget Cut to DHS, HHSC, and Other State Agencies

As a result of general revenue being lower than originally forecast for 2002-2003 and as a result current tax laws combined with a forecast of even less revenues anticipated for 2004-2005, the Texas legislature is proposing a 12.5% budget cut for the Department of Human Services (DHS), the Health & Human Services Commission (HHSC), Mental Health and Mental Retardation (MHMR), and the Department of Health (TDH).



Since this FaxLetter is designed to primarily give information on issues concerning long-term care, this article will only address issues concerning a couple of the many cuts proposed at DHS and a couple of the other significant proposed cuts. The proposed cut to the DHS budget means that people in community care settings (living at home, etc.) may be forced into more expensive nursing homes. The Community Care entitlement programs provide assistance with bathing, dressing, toileting, food preparation, housekeeping, etc. The number of hours per week of assistance varies according to the Medicaid caseworker's determination based on assessment form filled out from responses provided by the client or the client's representative. It is anticipated with the budget cut that about 60,000 fewer clients will receive this assistance program by 2005, including approximately 24,000 clients cut through the elimination of the Frail Elderly program.

There will also be less allotted (about 25% fewer clients) to the Community Care waiver programs, such as the Community Based Alternative (CBA) program, which is a program that gives personal care services at home or in a licensed Personal Care Home. Some medical benefits, including prescription medications, are included under the existing program.

Prescription drug coverage (under HHSC) would be cut for 476,000 elderly and disabled adults and 145,000 low-income adults. One of the biggest cuts is to the Children's Health Insurance Program in which it is anticipated that coverage will be eliminated for 252,000 children by 2005, and the child Medicaid caseloads would drop by 400,000.

LEGAL LINES

Key Change to Statute Concerning Power of Attorney Proposed

Rep. Senfronia Thompson has proposed HB 710 that would make significant changes to the statutory durable power of attorney form and to the laws governing powers of attorney. The proposed bill has an absolute prohibition against self-dealing (the agent could not make transfers to himself or herself) and would require 2 witnesses among other changes.

This would appear to prohibit gifts to the agent, even if he/she were receiving his/her share of annual exclusion gifts (permitted by the Internal Revenue Code). Shared living expenses would be prohibited if the principal (the one who makes the power of attorney) lives with the agent. Also, payment of allowance to the agent for recurring items and reimbursement to the agent for purchase of things for the principal would be prohibited if this bill passes. Stay tuned – this is important in planning.

NATIONAL NOTES

Battle Looming Over Medicaid



In a recent letter to President Bush and HHS Secretary Thompson, the governors of three states called for the nation's Medicaid laws to be "fundamentally rewritten." Governors Jeb Bush of Florida, John Rowland of Connecticut, and Bill Owens of Colorado cited budget concerns and rapidly ballooning Medicaid costs as reason to modernize the 35-year-old program.

"The Medicaid program has now surpassed Medicare as the single largest health insurance program in the nation. . . . The program consumes more than 20 percent of state budgets and represents a growing and significant portion of the federal budget. Medicaid enrollment is growing at annual rates of more than six percent, and spending is increasing nationally at a rate in excess of 13 percent."

According to the governors, the federal and state governments should work together to

"reassess [Medicaid's] purpose, re-establish a set of principles for providing coverage for lower income Americans, and test new models that lead to a sustainable and affordable program in the decades ahead." The letter also makes a number of suggestions, most notably:

- ♦ "Modernize Medicare, including a prescription drug benefit, which would provide an essential step in advancing Medicaid reform."
- ♦ "Enable better integration and collaboration between Medicare and Medicaid programs for common populations and break down the distinct walls between acute and long-term care."
- ♦ "Provide greater flexibility to states in determining Medicaid program designs, eliminating restrictions to allow states to address the needs of their own unique populations."
- ♦ "Recognize state and federal funding limits and move away from entitlement without responsibility."

These last two in particular have Medicaid planners and seniors advocates worried. As Families USA's Health Action Network recently observed, "There can be no clearer call for an end to 'Medicaid as we know it.'"

HHS Secretary Tommy Thompson mentioned the governors' letter in a statement released January 31. Thompson stated he was consulting with governors in developing a new plan, which would be optional for states, would provide \$12.7 billion in extra funding over seven years, and would give states expanded flexibility while still preserving benefits for "mandatory" groups. It is still unclear what this might mean for Medicaid long-term care beneficiaries, but with pressure building on both state and federal levels, a battle over reform appears imminent.

Sources: HHS 1-31-03
Families USA's Health Action Network 1-30-03

ANNOUNCEMENT

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As mentioned in last month's issue, this FaxLetter is now available (usually a couple of days after the actual FaxLetter is sent out) on our web site dallaselderlawyer.com.