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Children, Families, Health, and Human Services Interim Committee
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Office of Research and
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MONTANA LEGISLATIVE
SERVICES DIVISION

HJR 50: SENIOR/LONG-TERM CARE CFC AND ASSISTED LIVING

BACKGROUND

During the November meeting of the Children, Families, Health, and Human Services Interim Committee, some speakers suggested that the state should make assisted living a service covered under the Community First Choice (CFC) program. Montana's Medicaid program currently pays for assisted living services only for individuals who are enrolled in the Big Sky Waiver, which has a capped enrollment.

Assisted living could be a covered service under the CFC program if:

- the assisted living facility meets requirements established in federal regulation;
- the state amends the Medicaid state plan to include assisted living as a covered service; and
- the Legislature appropriates money to pay the state's share of the costs.

ABOUT COMMUNITY FIRST CHOICE

The CFC program was established under the Patient Protection and Affordable Care Act, as an option for covering home and community-based services for the elderly and disabled under state Medicaid plans. Montana was among the states that opted to implement the program.

Because CFC is offered under the regular Medicaid program and not as part of a waiver program, it is open to anyone who meets the criteria for Medicaid coverage of long-term care services. There is no enrollment cap on the program.

The federal matching rate for CFC is 6% higher than the traditional Medicaid matching rate; the projected CFC matching rate for the current state fiscal year is 70.97%, compared to the Montana's regular match of 64.97% for this fiscal year.

CFC pays for services that assist people with various activities of daily living, such as bathing, dressing, and eating. Assisted living was not included as a CFC service when Montana first adopted the program because of uncertainty at the time about the standards that assisted living facilities would have to meet to qualify for Medicaid reimbursement under the program.

FEDERAL REQUIREMENTS

Federal law requires that CFC services and supports be provided in a home or community-based setting. The law specifically excludes coverage of services that are provided in a nursing home or an

institutional setting. Federal regulations for the CFC program also prohibited payment for services provided in a hospital that provides long-term care services or in any location that has the quality of an institutional setting.

The regulations also spelled out a number of requirements that a setting must meet to be considered a home and community-based setting. The setting must:

- be integrated into and support full access to the greater community;
- be chosen by a person from among a range of settings, based on the person's needs and preferences;
- ensure the person's rights of privacy, dignity, and respect, including freedom from coercion and restraint;
- optimize but not regiment individual initiative and independence in making life choices, including choices about daily activities;
- facilitate individual choice about services and supports and about who provides them; and
- for a provider-owned or controlled residential setting such as an assisted living facility, have living units that:
 - can be individually owned or rented;
 - provide privacy through lockable doors;
 - may be furnished and decorated as residents choose; and
 - are physically accessible.

The facility also must allow residents to choose their roommates and to have visitors of their choosing at any time.

A federal technical guide for the CFC program specifically lists assisted living facilities as a type of provider-owned or controlled setting that would be eligible for payment under the CFC program.

CONSIDERATIONS RELATED TO COVERING ASSISTED LIVING

If assisted living were covered as a CFC service, the state would receive a higher matching rate than it currently does for assisted living under the Big Sky Waiver. In addition, the state would not pay a case management fee for people who were served under the CFC program. That fee, paid for waiver participants right now, is \$4,000 per person per year. The state also could move people out of the waiver program into the CFC program, thus freeing up waiver slots for people who are on the waiting list.

The state also would have to develop a reimbursement rate for the service and consider whether other regulatory steps were needed. And the Legislature would need to appropriate money to cover the anticipated costs of providing the service through the regular Medicaid program, where enrollment and costs are not capped, rather than through the capped waiver program.

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Sources

- Community First Choice State Plan Option Technical Guide. *Centers for Medicare and Medicaid Services*.
- "ACA Section 2401, Community First Choice Option (Section 1915(k) of the Social Security Act); Montana State Plan Amendment Summary." Research Summary. *NORC at the University of Chicago*. Oct. 16, 2014.
- 42 CFR 441.530. Home and Community-Based Setting.
- Interview with Barb Smith, Administrator, DPHHS Senior and Long-Term Care Division. Dec. 4, 2019.