

By: Zaffirini

S.B. No. 1866

A BILL TO BE ENTITLED

1 AN ACT

2 relating to an exemption from cost limits specified for certain  
3 medical assistance waiver programs administered by the Department  
4 of Aging and Disability Services.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 32.058, Human Resources Code, is amended  
7 to read as follows:

8 Sec. 32.058. LIMITATION ON MEDICAL ASSISTANCE IN CERTAIN  
9 ALTERNATIVE COMMUNITY-BASED CARE SETTINGS. (a) In this section,  
10 "medical assistance waiver program" means a program administered by  
11 the Department of Aging and Disability Services, other than the  
12 Texas home living program, that provides services under a waiver  
13 granted in accordance with 42 U.S.C. Section 1396n(c) [+

14 ~~[(1) "Institution" means a nursing facility or an~~  
15 ~~ICF-MR facility.~~

16 ~~[(2) "Medical assistance waiver program" means:~~

17 ~~[(A) the community-based alternatives program,~~

18 ~~[(B) the community living assistance and support~~  
19 ~~services program,~~

20 ~~[(C) the deaf-blind/multiple disabilities~~  
21 ~~program,~~

22 ~~[(D) the consolidated waiver pilot program, or~~

23 ~~[(E) the medically dependent children program].~~

24 (b) Except as provided by Subsection (c), ~~[or]~~ (d), (e), or

1 (f), the department may not provide services under a medical  
2 assistance waiver program to a person [~~receiving medical~~  
3 ~~assistance~~] if the projected cost of providing those services over  
4 a 12-month period exceeds the individual cost limit specified in  
5 the medical assistance waiver program.

6 (c) The department shall continue to provide services under  
7 a medical assistance waiver program to a person who was [~~is~~]  
8 receiving those services on September 1, 2005, at a cost that  
9 exceeded [~~exceeds~~] the individual cost limit specified in the  
10 medical assistance waiver program, if continuation of those  
11 services:

12 (1) is necessary for the person to live in the most  
13 integrated setting appropriate to the needs of the person; and

14 (2) does not affect the department's compliance with  
15 the federal average per capita expenditure requirement  
16 [~~cost-effectiveness and efficiency requirements~~] of the medical  
17 assistance waiver program under 42 U.S.C. Section [~~Sections~~  
18 ~~1396n(b) and~~] 1396n(c)(2)(D).

19 (d) The department may continue to provide services under a  
20 medical assistance waiver program, other than the home and  
21 community-based services program, to a person who is ineligible to  
22 receive those services under Subsection (b) and to whom Subsection  
23 (c) does not apply if:

24 (1) the projected cost of providing those services to  
25 the person under the medical assistance waiver program over a  
26 12-month period does not exceed 133.3 percent of the individual  
27 cost limit specified in the medical assistance waiver program; and

1           (2) continuation of those services does not affect the  
2 department's compliance with the federal average per capita  
3 expenditure requirement [~~cost-effectiveness and efficiency~~  
4 ~~requirements~~] of the medical assistance waiver program under 42  
5 U.S.C. Section [~~Sections 1396n(b) and~~] 1396n(c)(2)(D).

6           (e) The department may exempt a person from the cost limit  
7 established under Subsection (d)(1) for a medical assistance waiver  
8 program if the department determines that:

9                 (1) the person's health and safety cannot be protected  
10 by the services provided within the cost limit established for the  
11 program under that subdivision; and

12                 (2) there is no available living arrangement, other  
13 than one provided through the program or another medical assistance  
14 waiver program, in which the person's health and safety can be  
15 protected, as evidenced by:

16                         (A) an assessment conducted by clinical staff of  
17 the department; and

18                         (B) supporting documentation, including the  
19 person's medical and service records.

20           (f) The department may continue to provide services under  
21 the home and community-based services program to a person who is  
22 ineligible to receive those services under Subsection (b) and to  
23 whom Subsection (c) does not apply if the department makes, with  
24 regard to the person's receipt of services under the home and  
25 community-based services program, the same determinations required  
26 by Subsections (e)(1) and (2) in the same manner provided by  
27 Subsection (e) and determines that continuation of those services

1 does not affect:

2 (1) the department's compliance with the federal  
3 average per capita expenditure requirement of the home and  
4 community-based services program under 42 U.S.C. Section  
5 1396n(c)(2)(D); and

6 (2) any cost-effectiveness requirements provided by  
7 the General Appropriations Act that limit expenditures for the home  
8 and community-based services program.

9 (g) The executive commissioner of the Health and Human  
10 Services Commission may adopt rules to implement Subsections (d),  
11 (e), and (f) [~~under which the department may exempt a person from~~  
12 ~~the cost limit established under Subsection (d)(1)].~~

13 (h) If a federal agency determines that compliance with any  
14 provision in this section would make this state ineligible to  
15 receive federal funds to administer a program to which this section  
16 applies, a state agency may, but is not required to, implement that  
17 provision.

18 SECTION 2. The changes in law made by this Act apply only to  
19 a person receiving medical assistance on or after the effective  
20 date of this Act, regardless of when eligibility for that  
21 assistance was determined.

22 SECTION 3. This Act takes effect September 1, 2007.