

1-1 By: Zaffirini S.B. No. 1866  
1-2 (In the Senate - Filed March 9, 2007; March 22, 2007, read  
1-3 first time and referred to Committee on Health and Human Services;  
1-4 May 4, 2007, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 8, Nays 0; May 4, 2007,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1866 By: Zaffirini

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to an exemption from cost limits specified for certain  
1-11 medical assistance waiver programs administered by the Department  
1-12 of Aging and Disability Services.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 32.058, Human Resources Code, is amended  
1-15 to read as follows:

1-16 Sec. 32.058. LIMITATION ON MEDICAL ASSISTANCE IN CERTAIN  
1-17 ALTERNATIVE COMMUNITY-BASED CARE SETTINGS. (a) In this section,  
1-18 "medical assistance waiver program" means a program administered by  
1-19 the Department of Aging and Disability Services, other than the  
1-20 Texas home living program, that provides services under a waiver  
1-21 granted in accordance with 42 U.S.C. Section 1396n(c) [+

1-22 ~~[(1) "Institution" means a nursing facility or an~~  
1-23 ~~ICF-MR facility.~~

1-24 ~~[(2) "Medical assistance waiver program" means:~~

1-25 ~~[(A) the community-based alternatives program;~~

1-26 ~~[(B) the community living assistance and support~~  
1-27 ~~services program;~~

1-28 ~~[(C) the deaf-blind/multiple disabilities~~  
1-29 ~~program;~~

1-30 ~~[(D) the consolidated waiver pilot program; or~~

1-31 ~~[(E) the medically dependent children program].~~

1-32 (b) Except as provided by Subsection (c), ~~[or]~~ (d), (e), or  
1-33 (f), the department may not provide services under a medical  
1-34 assistance waiver program to a person ~~[receiving medical~~  
1-35 ~~assistance]~~ if the projected cost of providing those services over  
1-36 a 12-month period exceeds the individual cost limit specified in  
1-37 the medical assistance waiver program.

1-38 (c) The department shall continue to provide services under  
1-39 a medical assistance waiver program to a person who was ~~[is]~~  
1-40 receiving those services on September 1, 2005, at a cost that  
1-41 exceeded ~~[exceeds]~~ the individual cost limit specified in the  
1-42 medical assistance waiver program, if continuation of those  
1-43 services:

1-44 (1) is necessary for the person to live in the most  
1-45 integrated setting appropriate to the needs of the person; and

1-46 (2) does not affect the department's compliance with  
1-47 the federal average per capita expenditure requirement  
1-48 ~~[cost-effectiveness and efficiency requirements]~~ of the medical  
1-49 assistance waiver program under 42 U.S.C. Section ~~[Sections~~  
1-50 ~~1396n(b) and]~~ 1396n(c)(2)(D).

1-51 (d) The department may continue to provide services under a  
1-52 medical assistance waiver program, other than the home and  
1-53 community-based services program, to a person who is ineligible to  
1-54 receive those services under Subsection (b) and to whom Subsection  
1-55 (c) does not apply if:

1-56 (1) the projected cost of providing those services to  
1-57 the person under the medical assistance waiver program over a  
1-58 12-month period does not exceed 133.3 percent of the individual  
1-59 cost limit specified in the medical assistance waiver program; and

1-60 (2) continuation of those services does not affect the  
1-61 department's compliance with the federal average per capita  
1-62 expenditure requirement ~~[cost-effectiveness and efficiency~~  
1-63 ~~requirements]~~ of the medical assistance waiver program under 42

U.S.C. Section [~~Sections 1396n(b) and~~] 1396n(c)(2)(D).

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

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

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

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

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

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

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

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

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

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

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

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

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