SENATE FILE NO. SF0089

Long term care choices.

Sponsored by: Joint Labor, Health and Social Services Interim Committee

A BILL

for

AN ACT relating to long term care and the Wyoming Medical Assistance and Services Act (Medicaid); modifying the Medicaid reimbursement formulas for nursing homes and other long term care facilities; modifying limitations on new nursing home construction; expanding the Medicaid home and community based waiver program; regulating the entry of people into long term care; providing consultation to help individuals and their families understand their long term care options; authorizing application to the federal government for Medicaid program long term care waivers; authorizing and regulating an adult foster home care system; authorizing an alternative eldercare long term care pilot program; encouraging expanded use of hospice care; granting rulemaking authority; providing appropriations; authorizing positions; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 42-6-101 through 42-6-119 are created to read:

CHAPTER 6

LONG TERM CARE CHOICES PROGRAM

42-6-101. Short title.

This act shall be known and may be cited as the "Wyoming Long Term Care Choices Act".

42-6-102. Definitions.

(a) As used in this act:

(i) "Adult foster care" means care in a home licensed as an adult foster home pursuant to this act and Wyoming Statutes, article 9, chapter 2, title 35 and care provided to a resident of the home while temporarily away from the adult foster home;

(ii) "Adult foster home" means any family home or facility in which residential care is provided in a homelike environment for five (5) or fewer adults. The homes shall be regulated in accordance with Wyoming Statutes, article 9, chapter 2, title 35 and this act which shall govern in case of conflict;

(iii) "Alternative eldercare home" means a facility and program which:

(A) Provides housing to no more than ten (10) residents per house at the same time;

(B) Provides services and care at the highest level required by a resident and as permitted under the applicable facility;

(C) Shall be licensed as a health care facility pursuant to W.S. 35-2-901(a)(x);

(D) Creates communities that allow long-term residents to develop lasting relationships with other residents and staff;

(E) Maintains residences as units independent from each other and from other facilities such that there is no physical connection or shared roof structures between houses;

(F) Provides, at a minimum, a private bedroom and full bath for each resident;

(G) Provides services to Medicaid supported residents at the Medicaid reimbursement rates;

(H) Provides a secured exterior patio or garden with covered seating for each house accessible by all residents including those with wheelchairs and assistive devices;

(J) Maintains all common spaces within the house, including secured exterior space, accessible and open to all residents during waking hours;

(K) Provides for locked storage of hazardous materials and control of kitchen access during high traffic periods of meal preparation and clean-up;

(M) Provides an office within each house for use as a nurses' station;

(N) Provides a common area in each house including a seating area;

(O) Provides a den in each house to accommodate television viewing and limited overnight guests;

(P) Provides public and staff bathroom facilities;

(Q) Creates a residential home environment in all aspects, using residential materials and designs appropriate to the style of the community;

(R) Implements a self-managed work team approach to in-house and clinical support staffing. Each house shall have its own core in-house staffing that is specific and dedicated to a single house;

(S) Uses a home base facility for the clinical support team members that is outside and separate from the house;

(T) Is fully committed to a restraint free environment;

(U) Maintains a lift free environment by providing ceiling lifts in each resident's bedroom and bathroom;

(W) Implements a culture of learning and participation by the residents and honors the elder hood stage of life.

(iv) "Assisted living facility" means as defined in W.S. 35-2-901(a)(xxii);

(v) "Caregiver" means any person who provides residential care in an adult foster home and who is licensed as a certified nursing assistant and who has successfully completed any additional training required by department rules and regulations;

(vi) "Department" means the department of health;

(vii) "Home medical testing" means medical testing designed to be done in the home of the person being tested by a person who is not a licensed health care professional and includes but is not limited to testing done using a home blood pressure monitor or a home diabetes management blood sugar monitor;

(viii) "Long term care assessment" means a form and an assessment process conforming with relevant federal regulations and designed to measure the abilities and disabilities of a person in the activities of daily living to determine the person's need for long term care. As of January 1, 2007 the department of health form LT-101 entitled "Assessment of Medical Necessity for Long Term Care" and the assessment needed to complete it shall be the long term care assessment;

(ix) "Medicaid" means the program administered by the state pursuant to the Wyoming Medical Assistance and Services Act and this act and partly funded by the federal

government pursuant to Title XIX of the federal Social Security Act;

(x) "Nursing home" means a nursing care facility as defined in W.S. 35-2-901(a)(xvi) and licensed pursuant to Wyoming Statutes, article 9, chapter 2, title 35;

(xi) "Residential care" means the provision of room and board and services that assist the resident in activities of daily living including but not limited to bathing, dressing, grooming, eating, medication management, incontinence care, home medical testing, money management or recreation;

(xii) "This act" means W.S. 42-6-101 through 42-6-119.

42-6-103. Rulemaking; guidance.

The department is authorized to promulgate rules and regulations to implement this act. The rules and regulations shall seek to implement the objectives of this act by changing the long term care system to one

emphasizing home, home like and community based care alternatives and one driven by meaningful consumer choice.

42-6-104. Consultative services; legislative finding.

(a) The department shall contract with one (1) or more entities to provide consultative services for persons in need of long term care or at risk of being in need of long term care. The consultative services shall:

(i) Be available to any person in need of long term care in Wyoming and the person's family, guardian and any person authorized to make medical decisions on the person's behalf. A person in need of long term care who is of sound mind may designate who may receive consultative services concerning the person's long term care needs;

(ii) Set forth the alternatives for long term care that are available to the person;

(iii) Advise the person on the least restrictive alternatives for long term care that are available and practical;

(iv) Advise the person on the relative costs of options and the public assistance available;

(v) Respect and seek to implement to the extent possible the wishes of the person; and

(vi) Assist the person in making arrangements for long term care.

(b) Consultative services described in subsection (a) of this section shall be available free of charge to anyone entering or at risk of entering the long term care system and, on an as needed basis, to anyone in the long term care system.

(c) Except for stays of one hundred (100) days or less for rehabilitation purposes or respite care, no person shall be admitted to a nursing home or an assisted living facility until consultative services have been offered as provided in this section.

(d) Any public health nurse performing a long term care assessment evaluation on a person potentially in need of long term care shall refer that person to an appropriate

consultative service contractor and shall, unless prohibited by the person, furnish the consultative service contractor with a copy of the completed long term care assessment form. Any hospital planning to discharge a patient who is at risk of needing long term care shall refer the patient to an appropriate consultative service contractor.

(e) Any appropriate private for profit entity, private nonprofit entity, political subdivision, senior citizens center or organization affiliated with the University of Wyoming or a community college may receive a contract from the department to provide consultative services under this section. Consultative service contracts shall not exceed five (5) years in length and shall be subject to termination for cause and for lack of legislative appropriations. The contracts may cover specified geographic areas and may cover people with particular characteristics or affiliations. The department may elect to let contracts to multiple organizations who will compete for business. The department shall seek to have in each county at least one (1) contractor with a local preference.

(f) When a person is at immediate risk of having to move to a more restrictive form of long term care, consultative services contractors shall seek to have an initial meeting and preliminary consultation with the person within two (2) working days of receiving a request for consultation or a referral. The contract with the consultative services contractor shall provide that repeated unjustified failure to meet this standard shall be cause to terminate the contract.

(g) Consultative services shall be funded to the extent possible through the Medicaid program, but may be funded with state funds to the extent federal Medicaid funding is not available or if federal regulations or constraints make the program ineffective or unable to conform with the requirements and objectives of this act. Consistent with approved budgets, the department shall make available a pool of state funds to meet transitional needs of clients moving from a more restrictive to a less restrictive environment in circumstances where Medicaid funds are not available due to federal restrictions. If sufficient funds are available these state funds may also be used to meet short term needs of clients seeking to avoid placements in more restrictive environments. The

department shall govern the expenditure of these funds though contracts, policies and rules and regulations as needed.

(h) The legislature finds that a sufficiently large percentage of the people in nursing homes are funded at least in part through the Medicaid program and that the consultative service provided by this section is needed to reduce state expenditures for this necessary support of the poor.

42-6-105. Long term care assessment evaluation required.

(a) No person shall be admitted to a nursing home, except for a stay of one hundred (100) days or less for rehabilitation purposes or respite care, unless a public health nurse has performed a long term care assessment evaluation and the score on that evaluation is sufficient to permit the person to be admitted to the nursing home with the Medicaid program paying the costs if other eligibility criteria are met.

(b) The legislature finds that the requirement of subsection (a) of this section is necessary because, even if a person can pay for nursing home care upon admission, a person admitted before nursing home care is necessary is likely to exhaust available funds and prematurely become a client of the Medicaid program.

42-6-106. Alternative eldercare home pilot program authorized.

(a) The legislature finds that a public good is served by the development of housing and care facilities that serve members of the elder population who are unable to care for themselves in their own homes and who wish to live with dignity and enjoyment and a level of care necessary to support their needs.

(b) Five (5) regional pilot program grants are authorized to study and verify the feasibility of long term care through alternative eldercare homes as defined in W.S. 42-6-102. Each grant shall be awarded by the department to communities which wish to survey their area for needs and develop a plan for providing alternative eldercare in the area. The department shall distribute grants among the

applicants in a manner which will best determine in a timely manner the effectiveness of the alternative eldercare approach to long term care of the elderly.

(c) Each grant proposal shall include plans for a local match of twenty-five percent (25%) of the grant amount.

(d) For communities that have completed a needs study, the grant funding may be used for design and development of the facility and the organization which will operate it.

(e) The department is directed to work with local communities in the development of rules and regulations which are compatible with the culture of the homes and which will assure appropriate licensure for the care provided and the needs of the elder residents.

(f) The department shall distribute grants among the grantees in a manner which will best facilitate the pilots and determine the effectiveness of this approach to elder care in a timely manner.

(g) As a condition of receiving the grants, each grantee shall agree to provide training and reports to other parties in the state interested in the alternative eldercare concept.

42-6-107. Adult foster care homes; licensure; suspension or revocation.

(a) The department shall license adult foster care homes subject to the following:

(i) The applicant shall pay a one-time fee of one hundred dollars ($100.00) which shall be deposited in the general fund;

(ii) The department, a public health nurse or other employee of a local department of health shall complete an inspection of the proposed adult foster care home;

(iii) The proposed home shall comply with all state and local building, sanitation, utility, fire and zoning codes applicable to single family dwellings;

(iv) The home shall have the ability to evacuate all residents within three (3) minutes in case of emergency;

(v) The home shall provide a private room with a handicapped accessible bathroom for all resident clients. Spouses occupying the same room by mutual consent shall be deemed to have a private room.

(b) The department may, after notice and opportunity for hearing, revoke or suspend any license issued pursuant to this section, may prohibit a facility from accepting new resident clients, may place conditions on the continuation of a license, or may require a facility to take specified remedial actions within a specified time, if:

(i) There is a threat to the health, safety or welfare of any client;

(ii) There is credible evidence of abuse, neglect or exploitation of any resident;

(iii) The facility is not operated in compliance with this act or any rules and regulations promulgated pursuant to this act.

(c) If, in the professional judgment of the state health officer, there is a clear and present threat to the health or safety of a resident, the state health officer may close an adult foster home and transfer the residents to another place. The department shall also initiate proceedings pursuant to subsection (b) of this section within three (3) working days.

(d) The department shall complete a criminal records check on any individual employed by adult foster homes and on any individual, other than a resident or a resident's spouse, who at the time of licensure is expected to live in the adult foster home or who, after licensure, lives or comes to live in the adult foster home. The department may refuse to license a facility or prohibit the individual from living in the facility if he has been convicted of a crime substantially related to the provision of health care and which would prohibit licensure of an individual pursuant to this section.

(e) The department shall promulgate rules and regulations consistent with this act to govern a pilot project in the provision of adult foster care. In developing the rules and regulations, the department shall consider the regulations governing similar programs in other states including but not limited to Oregon.

42-6-115. Home and community based waiver program expanded; requirements.

(a) The department is authorized to seek from the federal government expansion of the number of slots in the home and community based waiver program from one thousand one hundred fifty (1,150) to one thousand four hundred fifty (1,450). Additional expansions may be authorized from time to time through the biennial budget.

(b) The department is authorized to increase the provider reimbursement levels by three dollars ($3.00) per hour above that prevailing as of December 1, 2006. The department shall report to the joint labor, health and social services interim committee by November 1, 2007 the extent to which reimbursement improvements and any other changes made have improved the availability of home health

care services and any additional remedies that may be needed. The length of the report shall not exceed one thousand (1,000) words plus any appropriate charts and graphs. Additional reports may be made from time to time as the need arises. In constructing standard budgets for biennial budgets the department and the department of administration and information shall include additional increases in provider reimbursement as needed to compensate for inflation including increases in the cost of living in Wyoming and wage inflation in Wyoming. The budget documentation shall explicitly identify these provider reimbursement inflation adjustments and their total cost.

(c) The department shall arrange for home and community based waiver providers to furnish clients with electronic devices for monitoring medical conditions and summoning help in case of need. The devices furnished shall be tailored to the specific needs of individual clients and the department may set appropriate priorities based on the budget available and the needs of the clients. The department shall use Medicaid funds if possible, but may operate a state funds only program if federal cost sharing is not available or the federal regulations are unreasonably restrictive.

(d) The department shall set goals for expanding the number of Medicaid home and community based clients in self directed budget options and shall report progress toward those goals to the joint labor, health and social services interim committee no later than November 1, 2007, November 1, 2008 and November 1, 2009. The department shall allow these options to be managed by persons designated to do so in advanced health care directives.

42-6-116. Assisted living expansion; reimbursement increase.

The department shall seek federal approval to increase the number of allowed slots in the assisted living Medicaid waiver from one hundred forty-six (146) to one hundred seventy-seven (177) slots. The department shall increase the reimbursement for assisted living by twenty dollars ($20.00) per day.

42-6-117. Adult day care.

The department shall investigate why so many adult day care providers in Wyoming have gone out of business in the past

four (4) years and shall report its findings to the joint labor, health and social services interim committee and to the advisory commission on long term care. The report shall not exceed two thousand (2,000) words in length plus appropriate charts and graphs.

42-6-118. Promotion of hospice care.

The department is authorized to conduct a public education and awareness campaign to increase the acceptance of and use of hospice and hospice like care for people with terminal illnesses.

42-6-119. Nursing homes; phase in of private room standard; reimbursement formulas.

(a) The department shall seek federal approval via a state plan amendment or a waiver request to implement an incentive for nursing homes to move to private rooms for long term nursing home Medicaid clients. To the extent permitted by the federal government, the change from semi-private to private rooms shall be voluntary on the part of the nursing home and the client. The plan or waiver shall provide that, where a spouse is involved, the spouse shall retain the right

by mutual consent to share a semi-private room. The plan or waiver shall seek federal permission to allow a person who is not Medicaid eligible to share by mutual consent an otherwise private room with a spouse on a private pay basis.

(b) The department shall, in consultation with the nursing home industry, negotiate a Medicaid nursing home reimbursement formula for private rooms which shall provide:

(i) Recovery of the variable costs of serving a client;

(ii) Recovery of the fixed costs of serving a client at twice the level provided for a semi-private room; and

(iii) An incentive for private rooms which on a per client basis shall be approximately ten percent (10%) of the variable cost of serving a client.

(c) The department is authorized to expend funds from the Medicaid administrative budget to assist in developing the formula and to identify the fixed and variable costs of serving Medicaid clients.

(d) The formula shall provide that semi-private rooms temporarily with only one (1) occupant shall continue to be billed as semi-private rooms and shall provide a means for distinguishing between rooms converted to private status and rooms remaining semi-private.

(e) Nursing homes shall retain the right to convert private rooms back to semi-private. Nursing homes may not waive this right. The Medicaid semi-private room capacity shall continue to be used for calculating capacity for the purposes of W.S. 35-2-906.

(f) Semi-private rooms shall continue to be the standard for short stays for rehabilitation and respite care purposes.

(g) The department shall not implement the expansion of the assisted living program authorized by this section, expend Medicaid funds for greenhouse concept nursing homes, or expend Medicaid funds for adult foster care until the federal government has approved the waivers or state plan amendments necessary to implement this section.

Section 2. W.S. 9-2-1208(a) and (b)(i) through (v), 35-2-901(a)(x), by creating a new paragraph (xxiv) and by renumbering (xxiv) as (xxv), 35-2-906 by creating new subsections (f) and (g) and 42-4-101 are amended to read:

9-2-1208. Community based in-home services.

(a) The department of health shall administer a state program to provide community based in-home services for senior citizens. Priority shall be given to persons at risk of placement in nursing homes, assisted living or other institutional care settings and the program may serve persons who are not senior citizens if the program's services are needed as determined by consultation and assessment pursuant to the Wyoming Long Term Care Choices Act to avoid institutional placement.

(b) The program authorized by this section may include but is not limited to the following in-home services:

(i) Homemaking services, including services for Medicaid home and community based waiver clients that are

needed to avoid more restrictive placement but are not furnished by Medicaid due to federal restrictions;

(ii) Home health aid services, including services for Medicaid home and community based waiver clients that are needed to avoid more restrictive placement but are not furnished by Medicaid due to federal restrictions;

(iii) Respite care to relieve care givers, including stays in nursing homes which shall not exceed thirty (30) days in any calendar year, which shall be paid for at the Medicaid semi-private room rate and which may be further limited in length by the department for cost effectiveness and budgetary reasons;

(iv) Hospice care for individuals who are not able to pay for the care due to lack of income or assets and are not able to qualify for hospice services under the Medicaid program; and

(v) Adult day care, which may include adult day care for Medicaid clients in need of adult day care to

avoid more restrictive placement and who cannot obtain the care through the Medicaid program.

35-2-901. Definitions; applicability of provisions.

(a) As used in this act:

(x) "Health care facility" means any ambulatory surgical center, assisted living facility, adult day care facility, adult foster care home, birthing center, boarding home, freestanding diagnostic testing center, home health agency, hospice, hospital, intermediate care facility for the mentally retarded, medical assistance facility, nursing care facility, rehabilitation facility and renal dialysis center;

(xxiv) "Adult foster care home" means a home where care is provided for up to five (5) people, except in special circumstances, in need of long term care in a home like atmosphere. Clients in the home shall have private rooms which may be shared with spouses and shall have individual handicapped accessible bathrooms. The homes shall be regulated in accordance with this act and with the

Wyoming Long Term Care Choices Act, which shall govern in case of conflict with this act.

~~(xxiv)~~(xxv) "This act" means W.S. 35-2-901 through 35-2-912.

35-2-906. Construction and expansion of facilities; exemption.

(f) Beds in adult foster care homes and beds in alternative eldercare homes constructed pursuant to the pilot program authorized in W.S. 42-6-105 shall not be considered as nursing care facility beds for the purposes of this section.

(g) Medicaid private room beds in nursing care facilities shall be counted as having the capacity of semi-private rooms as long as the nursing care facilities retain the practical ability to reconvert these rooms to semi-private status.

42-4-101. Short title.

This chapter may be cited as the "Wyoming Medical Assistance and Services Act". The program and services provided pursuant to this chapter and Title XIX of the federal Social Security Act may be cited as "Medicaid" or the "Medicaid program".

Section 3.

(a) For the consultative services program authorized by this act, there is appropriated to the department of health four hundred seventy thousand nine hundred dollars ($470,900.00) from the general fund and five hundred twenty-nine thousand one hundred dollars ($529,100.00) in federal funds for the fiscal biennium ending June 30, 2008.

(b) For transition services for persons leaving nursing homes or avoiding more restrictive placements, there is appropriated three hundred thousand dollars ($300,000.00) from the general fund to the department of health for the fiscal biennium ending June 30, 2008.

(c) For expansion of the long term care home and community based waiver program, there is appropriated to the department of health one million fifty-four thousand three

hundred seventy-seven dollars ($1,054,377.00) from the general fund and one million one hundred eighty-four thousand six hundred ninety-one dollars ($1,184,691.00) in federal funds for the fiscal biennium ending June 30, 2008.

(d) For electronic devices authorized for distribution through the home and community based waiver program, there is appropriated to the department of health ninety-four thousand one hundred eighty dollars ($94,180.00) from the general fund for the fiscal biennium ending June 30, 2008.

(e) For improvement of the reimbursement of long term care home and community based waiver program providers, there is appropriated to the department of health one million three hundred seventy-two thousand sixty-nine dollars ($1,372,069.00) from the general fund and one million five hundred forty-one thousand six hundred forty-seven dollars ($1,541,647.00) in federal funds for the fiscal biennium ending June 30, 2008.

(f) For public education and awareness concerning hospice care, there is appropriated to the department of health fifty thousand dollars ($50,000.00) from the general fund for the fiscal biennium ending June 30, 2008.

(g) For expansion of the assisted living waiver slots, there is appropriated to the department of health from the general fund two hundred thirty thousand four hundred forty-six dollars ($230,446.00) and two hundred fifty-eight thousand nine hundred twenty-seven dollars ($258,927.00) in federal funds for the fiscal biennium ending June 30, 2008.

(h) For improvement in the reimbursement for assisted living, there is appropriated to the department of health from the general fund six hundred eight thousand four hundred fifty dollars ($608,450.00) and six hundred eighty-three thousand six hundred fifty dollars ($683,650.00) in federal funds for the fiscal biennium ending June 30, 2008.

(j) For the expansion of the community based in-home program, two million dollars ($2,000,000.00) is appropriated to the department of health from the general fund for the fiscal biennium ending June 30, 2008.

(k) To administer the adult foster care program created by this act, for the fiscal biennium ending June 30, 2008 there is appropriated to the department of health from the general fund thirty-five thousand seven hundred

seventy-five dollars ($35,775.00) and one hundred seven thousand three hundred twenty-five dollars ($107,325.00) in federal funds.

(m) To administer the long term care assessment program created by this act, for the fiscal biennium ending June 30, 2008:

(i) There is appropriated to the department of health from the general fund six hundred twenty-seven thousand two hundred dollars ($627,200.00) and three hundred fifty-three thousand nine hundred forty dollars ($353,940.00) in federal funds; and

(ii) Eleven (11) additional full time positions are authorized to the department of health.

(n) For purposes of the alternative eldercare grant program created by this act, there is appropriated to the department of health from the general fund two hundred fifty thousand dollars ($250,000.00) for the fiscal biennium ending June 30, 2008.

Section 4. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)