

Indiana Home Care Task Force
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Testimony Regarding the CHOICE In-Home Services Program

By John Cardwell, Chair, Indiana Home Care Task Force and Executive Director, United Senior Action, February 7, 2011

Thank you Chairman Espich, Vice Chair Crouch, Chairman Emeritus Crawford, and all of the distinguished Members of the House Ways and Means Committee for this opportunity to testify on the state budget bill, HB 1001, regarding the CHOICE In-Home Services Program.

Introduction and the Legislative History of CHOICE

The Community and Home Options to Institutional Care for the Elderly and Disabled Act was passed by both houses of the 1987 General Assembly with only one dissenting vote. As a point of history, the act was HEA 1094 authored by Representative Jeff Espich. Mr. Espich offered his bill as a vehicle for CHOICE in the closing days of the legislature when the original legislation died procedurally on third reading in the Senate. The author of the original version of the law, John Thomas (R-Brazil), passed away just a few months ago.

That act of unselfish statesmanship by Rep. Espich was the most fortunate act for senior citizens and other Hoosiers with disabilities in the history of the General Assembly. Through the private sector services funded by the CHOICE program and administered by the area agencies on aging, tens of thousands of our fellow citizens were given the chance to finish their lives in freedom and independence with their family members and loved ones in their own homes. Through the wise provisions of the CHOICE act our most vulnerable citizens were not forced by the heavy hand of government into nursing homes against their will. In fact, the clarity and wisdom of the CHOICE act has saved, and continues to save, Hoosier taxpayers and the state of Indiana hundreds of millions of dollars.

How CHOICE Saves Hoosiers Hundreds of Millions of Dollars

Let me repeat the above statement: **CHOICE continues to save Hoosier taxpayers and the state of Indiana hundreds of millions of dollars.**

According to the state Division of Aging, which is a division of the Indiana Family and Social Services Administration, **CHOICE served 11,477 people in SFY 2010 at an average yearly cost of \$3,939.36 per person vs. an average yearly cost of \$42,612.54 per person for Medicaid funded services in a nursing home.** By law, a CHOICE client must be unable to perform 2 or more activities of daily living (ADLs) and have an impairment that places the individual at risk of losing the individual's independence.

(See IC 12-10-10.) In other words, **every person on the CHOICE program must be at risk of being forced into an institution without some level of home care assistance.**

Past studies by Indiana University concluded that at least 70 percent of all persons receiving CHOICE services would have to have nursing home care without the program. Multiply 11,477 by \$42,612.54. The answer is almost \$490 million. Multiply 11,477 by 70 percent and then by \$42,612.54. The answer is over \$342 million. Since the bulk of CHOICE clients are barely above the Medicaid income eligibility level, or are below the Medicaid income eligibility level but otherwise do not qualify for the Medicaid aged and disabled waiver, it is clear that once they are placed in a nursing home within days or weeks they will spend their merger resources and be permanently placed on Medicaid.

Whether or not the straight forward and simple mathematics presented above would play out in one year or two years or a bit longer, this much is clear: the mathematics presented above do become reality sooner or later if the affected human beings cannot get the home and community based care they need. This results in taxpayers paying for two things: (1) grossly inflated long term care costs as people are forced into institutions over time, and (2) a system of long term care that uses forced institutionalization or death as a means for managing people who need home and community based services. One Indiana area agency on aging conducted a tracking study a few years ago of the seniors and persons with disabilities who were on the agency's waiting list for home care. That agency discovered the two leading means for getting off the waiting list were death and nursing home placement. Such outcomes are simply unacceptable by any civilized standard.

FSSA's False Claims Regarding the Cost of CHOICE vs. Medicaid Waiver

Recently, FSSA claimed before the Ways and Means Committee that CHOICE costs \$7,100 per year per client. As noted above, the real yearly cost of an individual on the CHOICE program is only \$3,939.36.

FSSA also claimed before the committee the average yearly cost of an individual on the Medicaid aged and disabled waiver costs of only \$3,359. The real cost is \$33,480 per year because persons on the waiver use Medicaid state plan services.

FSSA also claimed before the committee that two to three people could be served on the Medicaid waiver for each person served on the CHOICE program. Obviously, when total Medicaid aged and disabled waiver costs are several times higher than CHOICE the claim by FSSA that the waiver can serve more people is silly at best. Frankly, the false claims made by FSSA regarding the CHOICE program are pathetic and inappropriate for a state agency.

Whenever an individual goes on the Medicaid aged and disabled waiver by law that individual qualifies for Medicaid state plan services. According to the Division of Aging that cost is \$33,480 per year in state and federal taxes. If the matching rate is 2 to 1 then the state share is over \$11,000. If the matching rate is 3 to 1 then the state share is over

\$8,300. According to the Division of Aging, in state fiscal year 2010 Indiana spent \$123,415,219 on the Medicaid aged and disabled waiver and \$45,211,777 on CHOICE.

CHOICE Eligibility and Program Facts

So why are these statistics important?

As members of the House Ways and Means Committee you have the responsibility of constructing a two year budget for the state of Indiana. By law, agencies of state government must report to the General Assembly so the legislative branch can construct a budget that serves the best interests of the citizens of Indiana. This committee and the General Assembly as a whole cannot properly perform their constitutional duties if the agencies of state government do not tell the truth. Regarding the CHOICE In-Home Services program you have not been told the truth by the leadership of FSSA.

CHOICE is the lowest cost form of long term care in Indiana. No other form of long term care is even close. CHOICE is a low cost program designed to provide simple and necessary home and community based services...the ongoing services that people need to stay at home when they have been disabled by disease, accident, an inherited disorder, or the effects of aging. These services include help with feeding, house keeping, bathing, mobility, necessary transportation, simple home modifications (such as adjusting doors and bathrooms for wheelchair use), and respite care. CHOICE is designed and intended to support, but not to replace, the care provided by family members and friends, whenever they are available.

Anyone who is on the Medicaid waiver can also be eligible for CHOICE because eligibility for latter begins at zero income. There are no age limits on CHOICE and yes, you do qualify for CHOICE if you are unable to perform 2 ADLs, or 3, or 5, or even 10.

However, you do not qualify for Medicaid state plan services as a result of qualifying for CHOICE. That is why CHOICE costs are so low on average when compared to the average cost of the Medicaid aged and disabled waiver, other Medicaid waivers, and Medicaid funded nursing home care.

Can you be rich and be on the CHOICE program? Yes, but only if you pay the entire cost of your care. With the CHOICE program for every 2 points your income is above 150 percent of the federal poverty level (FPL) you must pay 1 percent of the cost of your services. Consequently, an individual with an income of 250 percent of poverty pays for 50 percent of the cost of CHOICE services, and a person with an income of 350 percent of poverty pays 100 percent of the cost of CHOICE services. It should be noted the CHOICE program has been remarkably free of corruption throughout its history. CHOICE only provides services. CHOICE does not provide cash assistance.

In Indiana, thousands of people need CHOICE, and thousands more need Medicaid aged and disabled waiver services because they also need Medicaid state plan medical services. It is in the best interests of Hoosier taxpayers and the state of

Indiana to fully fund CHOICE, and to separately fully fund the Medicaid aged and disabled waiver.

Recent Actions by FSSA that Harm Hoosiers Needing Home Care

Members of the Ways and Means Committee should also be aware of two other facts regarding CHOICE and the Medicaid aged and disabled waiver.

First, since July 2010 FSSA has withheld 15 percent of the CHOICE budget, or over \$7.3 million that were slated for CHOICE services. This arbitrary action by FSSA will distort the SFY 2011 data regarding the number of clients on the CHOICE program and make it falsely appear the demand for the services has fallen. In fact, nearly 5,000 Hoosiers are on waiting lists for CHOICE services.

Second, since the first week of December 2009 FSSA has frozen new enrollments into the Medicaid aged and disabled waiver. Over 5,000 Hoosiers are on waiting lists for this waiver. Recently, FSSA released 250 client service slots to the area agencies on aging that administer the aged and disabled waiver. That is a mere drop in the bucket and FSSA attached red tape to those slots making them hard to utilize.

Combined, the above actions by FSSA are making it very difficult for the area agencies on aging to enroll new clients into the CHOICE and Medicaid waiver programs. Combined, the above actions are driving Hoosiers into Medicaid funded nursing home care because that service is a legal entitlement once a person in a nursing home spends down his or her assets. **These actions by FSSA is exposing the state to the very real possibility of legal action by the U.S. Department of Justice for violating the rights of individuals under the U.S. Supreme Court's ruling in the Olmstead case.**

In that 1999 decision, the court ruled that a state must provide under the provisions of the Americans with Disabilities Act an individual with alternatives to institutional care, and if waiting lists exist there must be a reasonable opportunity for the individual to access the alternative services. The court also ruled in that case that a lack of funding could not be used by a state to deny non-institutional services to an individual. Recently, officials from the Dept. of Justice have been warning states of their intent to enforce the Olmstead ruling.

Self-Funding Home Care Within Indiana's Existing Medicaid Budget

In 2003, the General Assembly passed SEA 493. That law give the Indiana Family and Social Services Administration the authority to use the savings generated when publicly funded home and community based services pulled down the utilization of Medicaid funded nursing home care. That law provided the state with the legal tools it needs to self-fund the Medicaid aged and disabled waiver within the overall Medicaid budget. In fact, if that authority had been used by FSSA since the passage of SEA 493 Indiana could have cut by more than 50 percent its daily Medicaid nursing home census and freed up hundreds of millions of dollars in its budget to pay for all the home and community based

services that qualified Hoosiers need. Unfortunately, the self-funding mechanism that was placed in SEA 493 was optional and, therefore, has never been used.

The general assembly in the State of Washington adopted a mandatory Medicaid self-funding mechanism in 1995. That self funding mechanism has allowed Washington to dramatically reduce the use of Medicaid funded nursing home care, to dramatically expand the use of home care, to substantially upgrade the quality of care in the state's remaining nursing homes, to aid nursing home providers in transitioning to other forms of long term care, and to generate extra revenues which were used for public education in the late 1990s. Today, Washington has 6.6 million people. Today, Indiana has about 6.4 million people. In 2011, 10,500 people reside in nursing homes each day on the Medicaid program in Washington. In 2011, over 28,500 Hoosiers reside in nursing homes each day on the Medicaid program.

The Task Force Requests and Recommendations

On behalf of the Indiana Home Care Task Force, I am asking the Ways and Means Committee to do three things today.

One, fully fund CHOICE at its established level of \$48.8 million per year, keep the CHOICE dollars from reverting to the state's general fund, and restore the language to the budget act that requires detailed reporting by FSSA of the savings generated by CHOICE and related services.

Two, reject in its entirety FSSA's radical and irresponsible plan to cut CHOICE by over \$9.42 million per year, to allow any or all of the remaining CHOICE dollars to be used for Medicaid waiver match, and to remove the requirements that FSSA report on potential savings that can be generated by home and community based services. FSSA is asking the General Assembly to destroy the CHOICE program. The General Assembly should say no.

Three, consider placing in HB 1001 a Medicaid self-funding mechanism like the one used by the state of Washington to grow home and community based services, to downsize and improve nursing home care, and to save huge sums in the Medicaid budget.

Conclusions

If the above recommendations are adopted by the Ways and Means Committee, Indiana can still lay claim to having one of the best home care programs in the nation. Just over a decade ago the conservative **Hudson Institute** did a study of the CHOICE program and concluded it was a publicly funded program that truly worked well and should be used as a model across the nation. This General Assembly created the CHOICE program in a brilliant display of bipartisan wisdom in 1987. The program that Governor Orr signed into law continues to serve the citizens of Indiana very well.

Today, we are asking you to continue the wisdom of the General Assembly of one generation ago. Adopt these recommendations and keep this body's faith with the senior citizens, persons with disabilities, and families of Indiana that so desperately need the CHOICE program.