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BILL ANALYSIS

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Senate Fiscal Agency

Lansing, Michigan 48909

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MAR 15 1988

**Senate Bills 576 and 577**

Sponsor: Senator Fred Dillingham

Committee: Human Resources and Senior Citizens

Date Completed: 2-9-88

***SUMMARY OF SENATE BILLS 576 and 577 as introduced 12-1-87:***

The bills would allow married couples who applied for financial assistance for long-term nursing home care to divide their assets and income so that the noninstitutionalized spouse would not have to become impoverished before the institutionalized spouse could receive financial assistance from the government. The bills are tie-barred.

**Senate Bill 577**

The bill would amend the Social Welfare Act to allow married couples to divide their income and resources into "exempt" and "nonexempt" shares, so that only the nonexempt income and resources of the spouse applying for medical assistance would be considered in determining eligibility for medical assistance. If a married couple's income and resources were divided, the applicant's spouse could not be required to use his or her nonexempt income and resources to pay for the applicant's future medical care.

**Division of Resources**

The bill would define "resources" as cash or other liquid assets, including any real or personal property that could be converted to cash. Division of resources would have to be done through a written agreement between the spouses, and a notice of the spouses' intention to divide their resources would have to be filed with a local office of the Department of Social Services at the time one of the spouses applied for assistance in paying for long-term nursing home care. The division would apply to resources owned on the date the notice of intent was filed, and the division would be presumed to take place on that date if a copy of the spousal agreement and evidence of the completion of any transfers necessary to effect the division were filed within 90 days of the notice of intent. Once an applicant had divided resources with his or her spouse, the applicant could not divide resources again with a present or subsequent spouse.

Resources would be divided as follows: If the couple's nonexempt resources were less than \$25,000, the entire amount of the resources would be assigned to the applicant's spouse. If the resources were worth between \$25,000 and \$50,000, the applicant's spouse would be assigned \$25,000 of the resources. Resources worth more than \$50,000 would be divided equally between an applicant and his or her spouse.

**Division of Income**

Spouses could divide their income equally by written agreement, and would be required to file a notice of their intent with a local office of the Department of Social Services at the time one of the spouses applied for

assistance in paying for long-term nursing home care. The applicant's spouse would be responsible for future medical support to the applicant only if the spouse's annual income were to exceed \$15,000 and the cost of the support would not reduce the spouse's income to less than \$15,000.

**Department of Social Services Responsibilities**

The Department of Social Services would be required to furnish each applicant and his or her spouse or representative a clear and simple written statement explaining the provisions of the bill. In addition, the Department would be required to furnish copies of the statement to hospitals, homes for the aged, and nursing homes to be distributed to anyone over 50 years old who was admitted to or discharged from these institutions. Finally, within three years of the effective date of the bill, the Department would be required to report to the Legislature the number of people who divided their income and assets, the cost to the State, and the effectiveness of the program.

MCL 400.107 et al.

**Senate Bill 576**

The bill would amend the Public Health Code to require hospitals, homes for the aged, and nursing homes to distribute the Social Services Department's written statement describing spouses' right to divide their income and assets under Senate Bill 577, and provide the name, business address and phone number of at least one Department of Social Services employee responsible for administering the division of income and assets.

MCL 333.20201 and 333.21769

Legislative Analyst: L. Burghardt

***FISCAL IMPACT*****Senate Bill 577**

National statistics indicate that approximately 16% of the individuals in long-term care facilities (nursing homes) are married. If a 50,000-person base is assumed as the annual utilization of nursing home services, then about 8,000 of those individuals would be expected to be married. Some of these married persons would already be on Medicaid, and while an exact number is not available, a useful proxy would be to reduce this number by the percent of married elderly below poverty (6.4%) to give an adjusted base of 7,500 persons. While this number is the estimated size of the population that could be affected by the provisions of this bill, a certain proportion of these persons would still not qualify for eligibility even with the splitting of income and assets. An attempt to pare down this number on the

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basis of the level of assets is very difficult due to the lack of specific data. As an example, while 56% of the elderly have assets in excess of \$50,000, on average 41% of the net assets are in the value of a house, an already excludable asset. However, this figure represents the proportion of assets attributable to all households, not just households of the elderly. Therefore, the current nonexcludable asset base for the elderly could be higher or lower. If it is assumed that there is a definitive relationship between income and assets, then the distribution of income itself could be used to determine the size of the final affected population. Accepting this, and the fact that 70% of the elderly have a household income of \$20,000 or less with 38% having an income of \$10,000 or less, one would expect approximately 2,500 persons to be immediately eligible and an additional 2,500 persons would become eligible sometime during the first year of institutionalization. Given an average annual Medicaid nursing home cost of \$6,200 per recipient, the total annual cost of the bill would be between \$15,500,000 and \$31,000,000 Gross. If, in fact, the provisions of this bill met with Federal approval to the extent of obtaining Federal matching funds, the State cost would range from \$6,750,000 to \$13,500,000 GF/GP.

It should be noted that the provisions of this bill would result in a distinctly different methodology for determining available assets and income in regard to establishing eligibility for Medicaid than is used for any other group of potential applicants. As such, the Federal government might not be willing to provide matching funds for this initiative, which would result in the total cost being a State GF/GP liability. The following text from the 1985 Commerce Clearing House, Inc. Medicare and Medicaid Guide is informative in that respect:

#### Medically Needy Persons

"In general, states that provide Medicaid to the medically needy are required to use a single standard for income eligibility and a single standard for resource eligibility for all groups of medically needy. Also, in determining income and resource eligibility for the medically needy, states must use the same methodology that is used for determining income and resource eligibility in the most appropriate cash assistance program. Thus, in states in which the SSI program is in effect and that provide Medicaid to all SSI recipients, the methodology for determining the income and resources of the aged, blind, or disabled medically needy must be that of the SSI program. For other medically needy individuals, the methodology must be the same as would be employed in determining cash assistance eligibility under the most appropriate state plan to which the medically needy group is most closely categorically related. These requirements are explained in greater detail below.

The Omnibus Budget Reconciliation Act of 1981 made extensive changes in the eligibility requirements of the law for states choosing to cover the medically needy under their programs - for example, states are no longer required to cover all eligibility groups or to provide the same benefit package to each group they choose to cover (see 14,251) - but it did not make changes in the income and resource eligibility rules for the medically needy. As explained by the House Energy and Commerce Committee in its Report on the amendment made by Sec. 137(b)(8) of the Tax Equity and Fiscal Responsibility Act of 1982, which added Sec. 1902(1)(10)(C)(i)(III) to the Medicaid Act:

'Unfortunately, the Department, in its interim final rule of September 30, 1981, 46 Fed. Reg. 47976, assumed that the conferees [on the 1981 Act] had intended to give the states extensive flexibility in [the area of income and resource restrictions] as well. This is simply incorrect. When the Statement of Managers of the Conference committee report spoke of providing the states "with flexibility in establishing eligibility criteria and scope of services within the medically needy program to address the needs of difference population groups more appropriately" (H. Rep. 97-208, p. 971), it was referring to the service package and coverage group provisions, not inviting a wholesale rewriting of current income and resource standards and methodologies. This amendment makes clear that the Department had no authority to alter the rules that applied before September 30, 1981, with respect to medically needy income levels, medically needy resource standards, and the methodology for treating medically needy income and resources. The committee bill reaffirms the financial requirements previously in effect for the medically needy (42 C.F.R. Sec. 435.800-435.845).' "

#### Senate Bill 576

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: J. Walker

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.