House
Legislative
Analysis
Section

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MEDICAID BUY-IN FOR DISABLED WORKERS

House Bill 4270 as enrolled
Public Act 33 of 2003
Sponsor: Rep. Stephen R. Ehardt
House Committee: Health Policy
Senate Committee: Appropriations

Senate Bill 22 as enrolled
Public Act 32 of 2003
Sponsor: Sen. Shirley Johnson
1st House Committee: Family and Children Services
2nd House Committee: Health Policy
1st Senate Committee: Family and Human Services
2nd Senate Committee: Appropriations

Second Analysis (7-24-03)

THE APPARENT PROBLEM:

Many disabled persons are eligible to receive health care services through their state's Medicaid program. States create their own Medicaid programs within federal guidelines. Among other allowable restrictions, individual states may create income and asset caps that Medicaid beneficiaries may not exceed if they wish to retain their Medicaid coverage. In Michigan, these income and asset limits are set forth in the Social Welfare Act's (Public Act 280 of 1939) definition of "medically indigent individuals" -- a term that includes, among others, Medicaid applicants who, because of a *disability*, receive Supplemental Security Income (SSI). Determining that an individual has a "disability" for SSI purposes involves determining that he or she lacks the ability "to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months" (20 CFR 404.1505). While the definition of "disability" is linked to the ability to engage in *substantial gainful activity*, federal law does not prohibit a person who receives SSI or Social Security Disability Income (SSDI) benefits from working.

The problem lies in a person being able to keep health insurance through the Medicaid program even if he or she returns to work. Since Medicaid recipients must maintain an income and asset level below statutorily-set limits in order to continue in the program, these low levels of allowable income or assets (e.g., saving accounts) act as a disincentive for seeking employment, especially for those persons with a disability. Not all potential employers offer health insurance as a benefit, and for those that do, the health plan offered may be inferior to the benefits offered by the Medicaid program. Without health insurance, or a health plan with comparable benefits, a person with a disability returning to work may incur many more out-of-pocket expenses, which, if too high, may place the person in a worse economic situation.

According to committee testimony, many people with disabilities believe the income and asset limits for the state's Medicaid program force them to choose between keeping their Medicaid benefits and pursuing careers and other employment opportunities. A survey conducted by the MiJob Coalition, which describes itself as "a statewide alliance for the removal of barriers to the employment of persons with disabilities", revealed that nearly four out of five Michigan citizens with disabilities who are not working would work if they could retain access to health care. Other Michiganians with disabilities report that though they are currently working, they have refused promotions and increases in the number of hours they work

because they do not want to exceed the Medicaid program's income and asset caps.

As mentioned above, federal law allows states to establish income and asset limits for their Medicaid programs; however, federal law also allows states to create certain opportunities for people with disabilities who want to work and earn income and acquire assets in excess of the standard state limits but want to retain Medicaid coverage. Specifically, the federal Balanced Budget Act of 1997 allowed states to provide Medicaid coverage to working people with disabilities, as long as they otherwise meet SSI eligibility criteria and have net income of not more than 250 percent of the federal poverty guidelines ($8,980 for 2003). And the federal Ticket to Work and Work Incentives Improvement Act (TWWIIA) of 1999 expanded possibilities for working people with disabilities, by allowing states to extend Medicaid coverage to working people with disabilities whose incomes exceed 250 percent of the federal poverty guidelines ($22,450 for 2003). Under TWWIIA, states may permit workers with disabilities whose annual incomes exceed 250 percent of the federal poverty guidelines but do not exceed $75,000 to "buy into" Medicaid, by paying a premium.

As a solution, many advocate for the creation of a Medicaid buy-in program whereby the state's Medicaid recipients with disabilities can continue in the program even after returning to work, up to a certain income level. In addition, the recommendation has been made to amend current law to raise the allowable asset level for Medicaid participants

THE CONTENT OF THE BILLS:

The bills, which are tie-barred to each other, would amend the Social Welfare Act. Senate Bill 22 would add a new section — to be known and cited as the "Michigan Freedom to Work for Individuals with Disabilities Law" — to require the Department of Community Health (DCH) to establish a program to provide Medicaid assistance to eligible working persons with disabilities whose income and assets exceed the Medicaid program's standard limits. House Bill 4270 would increase the allowable asset limit for Medicaid eligibility. Specifically, the bills would do the following:

Senate Bill 22. The bill would amend the Social Welfare Act (MCL 400.106a) to require the DCH to establish a program, to be implemented on or before January 1, 2004, to provide medical assistance to individuals who had "earned income" (see below) and who met all of the following criteria:

- had been found to be "disabled" under the federal Supplemental Security Income (SSI) program or the Social Security Disability Income (SSDI) program or would be found to be disabled except for earnings in excess of the substantial gainful activity level as established by the U.S. Social Security Administration;

- was at least 16 but under 65 years of age;

- had an unearned income level of not more than 100 percent of the current federal poverty level ($8,980 for 2003);

- was a current medical assistance recipient under the standard Medicaid program or met income, asset, and eligibility requirements for that program; and

- was employed on a regular and continuing basis.

"Earned" and "unearned" income would be defined as they are used by the Family Independence Agency in determining eligibility for Medicaid.

The Medicaid assistance program could provide only those medical assistance services that are made available to recipients under the state Medicaid program, and the bill would specify that the program could not provide personal assistance services in the workplace.

Allowances. An individual who qualified for and was enrolled under the program could do all of the following: accumulate personal savings and assets not to exceed $75,000; accumulate unlimited retirement and individual retirement accounts; have temporary breaks (i.e., up to 24 months) in employment if the breaks were the result of an involuntary layoff or were medically necessary; and work and have income that exceeded the amount permitted under the general Medicaid program as long as the unearned income did not exceed 100 percent of the federal poverty guidelines.

Premium. The DCH would have to establish a premium based on program participants' annualized earned income above 250 percent of the current federal poverty level for a family of one. (Based on the 2003 federal poverty guidelines, an otherwise eligible single person would have to pay a premium if his or her qualifying income exceeded $22,450 to receive medical assistance under the new program.) Individuals with an earned income of between 250

percent of the federal poverty level for a family of one and $75,000 would pay a sliding fee scale premium starting at $600 annually and increasing to 100 percent of the average medical assistance recipient cost as determined by the DCH for individuals with annual income of $75,000 or more. The premium sliding fee scale could have not more than five tiers. The premium would "generally be assessed" on an annual basis based on the annual return required to be filed under the Internal Revenue Code or on other evidence of earned income, and would be payable on a monthly basis. The premium would be adjusted during the year whenever a change in an enrolled individual's rate of annual income moved him or her to a different premium tier.

"Affirmative duty" to report earned income change. A participant would have an affirmative duty to report to the DCH within 30 days any earned income changes that would result in a different premium.

Report. The DCH would be required to report to the governor and the legislature within two years of the effective date of the proposed act regarding all of the following: the effectiveness of the program in achieving its purposes; the number of individuals enrolled in the program; the program's costs and benefits; the opportunities and projected costs of expanding the program to working individuals with disabilities who were not currently eligible for the program; and additional services that should be covered under the program to assist working individuals with disabilities in obtaining and maintaining employment.

DCH waiver in case of conflict with federal requirements. The bill would state that if the terms of the Michigan Freedom to Work for Individuals with Disabilities Law governing eligibility requirements, allowances, and premiums were inconsistent with federal regulations governing federal financial participation in the medical assistance program, the DCH could "to the extent necessary" waive the state requirements.

House Bill 4270. The bill would amend the Social Welfare Act (MCL 400.106) to raise the (standard) asset "limit" for "family independence program related individuals" receiving Medicaid benefits.

Asset "limit" for Medicaid program. Generally speaking, medically indigent individuals receive either Family Independence Program benefits or receive SSI or state supplementation under Title XVI or the Social Security Act, which generally deals with grants to states for aid to the "aged, blind, and disabled". Those who receive SSI or state supplementation are subject to asset levels and property exemptions set forth in Title XVI. Individuals who live alone and receive Family Independence Program benefits may not have liquid or marketable assets of more than $1,500, and two-person families receiving such benefits may not have liquid or marketable assets of more than $2,000. Limits for larger family groups are established by the Family Independence Agency (FIA).

The bill would change the asset limits for individuals who receive Family Independence Program benefits to $2,000 for individuals who live alone and to $3,000 for two-person families. The FIA would continue to establish limits for families of more than two persons.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bills could increase Medicaid program costs in an indeterminate amount. It is not known how many additional working persons with disabilities would participate in the program or how much would be paid in premiums to offset all or part of the increased health care costs, but the potential increase is anticipated to be minimal. The bills could also increase state revenues, primarily through higher income tax collections, by encouraging persons with disabilities to obtain employment or work more hours to increase their earnings. The amount of any revenue increase is also unknown but is expected to be relatively minor. (HFA fiscal analysis dated 6-11-03)

ARGUMENTS:

For:

The bills would remove a solid barrier to work for people with disabilities by allowing those who are currently enrolled in or at least eligible for Medicaid coverage to earn income and acquire assets in excess of state caps without losing the vital health care safety net that Medicaid provides. Many people with disabilities who take the Medicaid support instead of actively looking for work, seeking to increase their workloads, or pursuing promotions feel they are leading impoverished lives--not just in the material sense, but also in a psychological and spiritual sense. They feel very strongly that they have much to offer employers, whether current or potential, but would like full recognition for their efforts. Advocates argue that earning more at work while paying a premium for Medicaid enhances the self-esteem of

workers with disabilities by acknowledging their capacity to be productive members of the economy and enabling them to better provide for themselves and their families. In addition to the increased income and asset limits, the bills allow for the possibility that people's disabilities and related medical conditions may force them to take a leave of absence from their jobs and so allow them to retain eligibility for the Medicaid Buy-In program.

The Department of Community Health estimates that approximately 140,000 individuals would be eligible for the Medicaid Buy-In program. Because the state currently provides Medicaid to most of these people, the state has little to lose by offering them the opportunity to work. More importantly, the state has much to gain. Many of the 6,000-20,000 people the DCH expects to buy into Medicaid in the first year of the program will pay premiums and thereby help offset the state's Medicaid costs. Also, people who earn higher incomes will pay more taxes.

Thus, the bill proposes a win-win situation. The DCH acknowledges that another 280,000 persons with disabilities will not qualify for the program (largely because they exceed the bill's unearned income limits), but the department and people with disabilities agree that the bill represents an important first step. The bill would require the DCH to report to the governor and the legislature within two years after taking effect, giving everyone involved an opportunity to learn from their experience with the program, and to consider possible expansions to allow more people with disabilities who are able and willing to work to buy into Medicaid.

Response:

According to the authors of *Ticket to Work: Medicaid Buy-In Options for Working People with Disabilitie*s (available through the National Conference of State Legislatures' web site: www.ncsl.org/programs/health/Forum/tickettowork.htm), Medicaid Buy-In programs are generally "designed as part of a broader package of initiatives that foster employment, including counseling, transportation, housing assistance and other supportive activities." While the bills are a strong first step, some supporters wish that the bill broke down more barriers to employment for people with disabilities. Specifically, some people wish that the bills would include personal assistance services for working people with disabilities, or at least not specifically exclude those services from the program. An additional, related concern is how the specific exclusion of personal assistance in the workplace could affect the state's eligibility for Medicaid Infrastructure Grants (MIGs), which require some level (whether in the present or in the future) of commitment to provide those services.

Reply:

Personal assistance services are relatively expensive, and as much as supporters would like to help people with disabilities who want to work, the state's current financial situation is severe enough that it is best to start with a modest program and to monitor its costs before considering possible future expansions. The DCH emphasizes that it could initiate experimental "pilot" programs and believes that the state could apply for a MIG if it had a plan to provide personal assistance services in the future, regardless of what current state law said.

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■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.