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BILL ANALYSIS

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Senate Bill 374 (as enrolled)
Sponsor: Senator Michael Switalski
Senate Committee: Appropriations
House Committee: Appropriations

Date Completed: 9-28-07

CONTENT

The bill would amend the Social Welfare Act to provide for the creation and implementation of the Michigan Estate Recovery Program, under which the State would collect assets from the estates of certain Medicaid recipients as required by the Social Security Act. The bill also would require the Department of Community Health (DCH) to work with the Federal government to develop a voluntary estate preservation program.

The bill would require the Department to establish and operate the Michigan Estate Recovery Program to comply with requirements of Title XIX (Medicaid) of the Social Security Act. The DCH would have to establish an estate recovery program and complete the following estate recovery activities:

- Tracking the assets held by Medicaid recipients that would be subject to estate recovery.
- Collecting the amounts subject to recovery from the estates of eligible recipients.
- Performing other actions necessary to administer the program effectively.

The DCH would be required to seek necessary State plan amendments and waivers from the Federal government to implement the estate recovery program. The Department would have to obtain Federal approval for each of the following program components:

- The Medicaid services subject to estate recovery under Title XIX.

- The Medicaid recipients subject to estate recovery under Title XIX.
- The parameters under which the program could recover from the estates of spouses of Medicaid recipients.
- Actions that could be taken to obtain funds from the estates of qualifying recipients.
- The circumstances under which the DCH could review requests for and provide exemptions from estate recovery.
- Assurance that implementing this program, as required under Title XIX, would not unreasonably harm the heirs of people eligible for estate recovery.
- Exemptions for Medicaid recipients from recovery because of hardship.

The portion of a person's estate that was equal to 50% of the average price of a home in the recipient's county on the date of his or her death would be exempt from recovery as would be the portion of a recipient's estate that was the primary income-producing asset of the recipient's heirs. The Department would presume that no hardship existed if the hardship resulted from estate planning methods that diverted assets in order to avoid recovery.

The DCH could not implement the program until approval from the Federal government was obtained.

The Department would be prohibited from seeking recovery from an eligible estate if the cost of recovery would exceed the amount of revenue collected, or if recovery were not in the State's best interest.

The DCH would not be permitted to recover assets from a home of a Medicaid recipient if one or more of the following were residing in the home:

- The Medicaid recipient's spouse.
- The Medicaid recipient's child, if the child were under the age of 21 or is blind or permanently disabled.
- The Medicaid recipient's relative, if the relative had lived in the home for the previous two years and provided care that permitted the recipient to reside at home.
- The Medicaid recipient's sibling who had an equity interest in the home and who had been residing in the home for at least one year prior to the date the recipient entered an institution.

The DCH would be required to provide written information describing the Michigan Medicaid Estate Recovery Program to individuals seeking eligibility for Medicaid long-term care services. The Department also would have to provide an annual report to the Senate and House of Representatives on the cost of operating the estate recovery program and the amount recovered.

The DCH could not charge interest on the balance of any Michigan Medicaid Estate Recovery payments. The Department also could not place a lien on property prior to a recipient's death.

Revenue from the estate recovery program would have to be used to support the Medicaid program.

Proposed MCL 400.112g-400.112j

FISCAL IMPACT

The Federal government (in the budget reconciliation of 1993) required states to establish estate recovery programs for Medicaid recipients who are age 55 or older and receive Medicaid long-term care services. Currently, Michigan is the only state that has not complied with this Federal requirement. Michigan's Federal Medicaid share (over \$5 billion annually) could be jeopardized if estate recovery is not implemented. The Federal government has communicated to the State its intention to begin making use of this sanction for FY 2007-08 if estate recovery is not enacted.

The Governor's FY 2007-08 budget recommendation assumes creation of an estate recovery program and estimates savings of \$10.0 million Gross/\$4.2 million GF/GP from this effort. Enactment of Enrolled Senate Bill 374 would create GF/GP savings for the Medicaid program in FY 2007-08 that could approach the Governor's estimate, but provisions included in the bill (such as language exempting half the average price of a home in a county) could make the full-year GF/GP savings target of \$4.2 million difficult to reach. Savings in future years would likely be driven by the number and size of estates subject to recovery through the program and the deterrent effect this program could have on individuals who currently structure their assets to make Medicaid eligibility easier to obtain.

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