Legislative Analysis

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POOLED TRUSTS FOR MEDICAID

House Bill 4013 (Proposed H-1)
Sponsor: Rep. Kurt Heise
Committee: Financial Liability Reform

Complete to 5-1-13

A REVISED SUMMARY OF HOUSE BILL 4013 PROPOSED H-1 SUBSTITUTE

The bill would amend the Social Welfare Act, which deals with the Medicaid program, to address pooled trusts.

["Pooled trusts," in the context of Medicaid, are typically described as trusts that pool the resources of many beneficiaries with disabilities, with the resources managed by a nonprofit association. Pooled trusts may be for beneficiaries of any age and may be created by the beneficiary. When the beneficiary dies, the state does not have to be repaid for Medicaid expenses on the beneficiary's behalf if the funds remain in the trust for the benefit of the other beneficiaries.]

The bill would do the following:

- Exclude income assigned to a pooled trust from the amount of annual income and amount of assets that determines whether a person qualifies for Medicaid (i.e., is a "medically indigent individual").

- Require the Department of Human Services to establish rules, regulations, and policies that are in compliance with, and not more restrictive than, existing federal rules, regulations, and polices with regard to the treatment of pooled trusts.

- Prohibit the department from imposing a penalty on an individual, or delay eligibility for medical assistance, for entering into a joinder agreement, transferring assets to a pooled trust, or both.

- Allow a joinder agreement (between a trustee and a beneficiary) to be entered into by any of the following:

  - A competent individual 65 years of age or older.
  - A competent disabled individual of any age.
  - On behalf of an individual 65 years of age or older or a disabled individual of any age, any of the following:
    --A parent or grandparent
    --A guardian.
    --A conservator.
    --A court.

--A person named as attorney-in-fact through a durable power of attorney that authorizes the attorney-in-fact to enter into a joinder agreement or similar agreement.

- Define a pooled trust to mean a trust that meets all of the following criteria:

  - The trustee maintains an account for each beneficiary.
  - The trustee pools accounts for management and investment purposes.
  - The trustee uses funds in the beneficiary's account for the sole benefit of the beneficiary.
  - Upon the death of the beneficiary, the trustee may retain assets that remain the beneficiary's account, without limit to dollar amount, in the pooled trust.
  - With respect to assets that remain in the beneficiary's account and that are not retained by the trust, the trustee must reimburse the state in an amount equal to the total amount of medical assistance paid by the state on behalf of the beneficiary before distributing those assets to other individuals or using those assets for another purpose.

MCL 400.106 et al.

FISCAL IMPACT:

The fiscal impact of House Bill 4013 on the Department of Community Health's State Medicaid program is indeterminate. There are not identifiable, solid numbers to support the assumptions necessary to project a potential cost to the State Medicaid program by expanding the use of pooled trusts to those 65 years of age or older and not disabled.

It could be assumed that by including individuals into pooled trusts, a larger number of people would be eligible for Medicaid given that a certain amount of assets would not be included in the Department of Human Services eligibility determination. An advocacy group estimated that this bill may affect 400 individuals, but there is no certainty that this would be the increase in the number of Medicaid eligibles.

Bill supporters have testified that funds in the pooled trust may be used to pay for services not covered by Medicaid, but would allow the individual to live independently, not in a nursing home, for a longer period of time. It is generally acknowledged that State support of independent, home-based care is less expensive than care delivered in nursing home facilities.

Also unknown is how much funding the State would receive (offsetting costs) from pooled trusts upon the death of the Medicaid-eligible client. The legislation indicates that the State would be the first recipient of any distribution but it is not mandatory that the distribution be made.

Whether the State will have additional Medicaid expenditures in the short or long-term depends on the choices consumers make in their health care behavior, which is difficult to predict.

The bill could have a minimal fiscal cost to the Department of Human Services to revise current policy and to update information technology systems.

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