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Senate Bill 266 (as reported without amendment)

Sponsor: Senator Kevin Hertel

Committee: Housing and Human Services

CONTENT

The bill would amend the Social Welfare Act to allow an individual or person acting on behalf of that individual to make a personal services agreement with another individual to pay for certain support services such as cooking, cleaning, or transportation, among others, at fair market value without those payments being considered a disposal of assets to qualify for Medicaid assistance.

MCL 400.112I

BRIEF RATIONALE

Generally, under Federal Law, if an individual gives away or sells (divests) assets below market value within five years of applying for Medicaid, the State may impose a penalty period during which that individual is ineligible for Medicaid long term care services unless the individual can provide proof that the transfer was made for reasons other than to qualify for Medicaid.¹ According to testimony before the Senate Committee on Housing and Human Services, the rules that the Department of Health and Human Service (DHHS) uses in considering whether a service agreement qualifies as a divestment under Medicaid are unclear and inconsistently applied, creating confusion for those attempting to make good faith efforts to use such agreements to temporarily stay out of long term care. Some believe statutory language is necessary to provide clarity and structure for effective use of such agreements.

Legislative Analyst: Eleni Lionas

FISCAL IMPACT

The bill could have a significant but uncertain fiscal impact on the long-term care services, home- and community-based waiver services, home help services, and home health services within the State's Medicaid program operated by the DHHS. The bill would have no fiscal impact on local units of government.

Under current DHHS policy, divestment is a type of transfer of a resource that meets the following: is made within a specified period of time; is less than the fair market value of the resource; and is not otherwise exempted by Department policy. Divestment determinations under current DHHS policy require a Medicaid recipient to receive a penalty. Divestment penalties mean Medicaid will not pay recipients' costs for long-term care services, home- and community-based waiver services, home help services, and home health services.

As the bill would create statutory definitions for affirmed personal services agreements, personal services agreements, and qualified personal services agreements and exempt those types of agreements, made orally or in writing, from a divestment determination, there could be increased Medicaid costs as fewer personal care services would be deemed divestment.

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¹ 42 USC 1396p(c)

Under current DHHS policy, all personal care (activities of daily living) and home care (home-related activities such as repairs or maintenance) contracts or agreements, regardless of whether between a Medicaid recipient and a relative or a Medicaid recipient and a non-relative, must be considered and evaluated for divestment. Current DHHS policy considers any assistance or services provided by relatives as presumed to have been completed for love and affection and any compensation for past assistance or services to be considered a transfer for less than fair market value unless the relative presents evidence to the contrary

Date Completed: 6-5-25 Fiscal Analyst: John P. Maxwell

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