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BILL ANALYSIS

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Senate Bill 266 (as passed by the Senate)
Sponsor: Senator Kevin Hertel
Committee: Housing and Human Services

Date Completed: 9-23-25

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] In 2005, the Federal government added a provision about written care contracts to the Deficit Reduction Act. As enforced by the Department of Health and Human Services (DHHS), if an elderly individual pays another individual to provide in-home care, those services must be recorded in a care contract. Without the care contract, the services are automatically treated as a divestment of assets and may trigger a penalty period for long-term care services under Medicaid. According to testimony before the Senate Committee on Housing and Human Services, the rules that the 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.

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.

Generally, under Federal Law, if an individual gives away or sells 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.

Under the bill, the DHHS could not presume that services provided to an individual under a personal services agreement by a member of the individual's same household, a family member or other relative of the individual, or any other person were gratuitous and could not apply a divestment penalty for payments that were made under an affirmed personal services agreement, a qualified personal services agreement, or a personal services agreement that met the requirements of those agreements described below.

Specifically, the bill would allow an individual or individual's legally authorized representative and a member of the individual's same household, a family member or other relative of the individual, or any other person to make a qualified personal services agreement and an affirmed personal services agreement for the provision of services to that individual.

[1] 42 USC 1396p(c)

"Personal services agreement" would mean an agreement in any form between an individual or the individual's legally authorized representative and another person in which the individual or the individual's legally authorized representative agrees to pay the other person for providing services to the individual. Services could include home maintenance and repairs, house cleaning, meal preparation, grocery or other shopping, assisting with daily living activities, travel, transportation, including travel to medical appointments, social activities, financial management, and other similar services.

"Qualified personal services agreement" would mean a personal services agreement between an individual or the individual's legally authorized representative and a person that met all the following requirements:

- The agreement for the provision of services to the individual was made in writing and was signed and dated on or before the date services covered under the agreement are rendered or provided.
- The agreement described the type, frequency, and duration of the services to be provided to the individual.
- Payment for the services and any reimbursement for costs incurred under the agreement could be made before, at, or after the actual time the services are rendered or provided.
- The payment amount under the agreement was at or below the current rate charged by providers of similar services in the individual's local community.

"Affirmed personal services agreement" would mean a personal services agreement between an individual or the individual's legally authorized representative and a person that met all the following requirements:

- The agreement for the provision of services to the individual, whether entirely oral or partially oral and partially written, was made before the date the services covered by the agreement are rendered or provided.
- The agreement described the type, frequency, and duration of the services to be provided to the individual.
- Payment for services and any reimbursement for costs under the agreement could be made before, at, or after the actual time the services are rendered or provided.
- The payment amount under the agreement was at or below the current rate charged by providers of similar services in the individual's local community.
- A person with firsthand knowledge of the agreement offers a statement, affirmed under penalty of perjury, that described the agreement's terms or presents other documentary evidence that clarifies the agreement and its terms.

"Other documentary evidence" would include invoices for services rendered, service logs or other writings that describe the services provided, and canceled checks or other financial records showing the amount paid for services.

Payments for services under a qualified personal services agreement or affirmed personal services agreement would not be considered divestments if the payments under that agreement for those services were not for less than fair market value. Payments for services under a personal services agreement that was not a qualified personal services agreement or an affirmed personal services agreement would not be divestments if the individual who applied for assistance under the Medicaid Program demonstrated by a preponderance of the evidence at least one of the following:

- The individual intended to dispose of assets either at fair market value or for other valuable consideration.
- The individual transferred the assets exclusively for a purpose other than to qualify for medical assistance.

MCL 400.112l

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

The bill is a reintroduction of Senate Bill 739 of the 2023-2024 Legislative Session.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

According to testimony, many individuals do not know that they should enter into written care contracts when receiving care services to avoid a DHHS-imposed divestment penalty and delay of long-term care services under Medicaid. Many individuals also have difficulty understanding this requirement. As a result, without the bill, elderly individuals likely will continue to make the mistake of not entering a written care contract, leading to more divestment penalties and delay of long-term care services for elderly individuals under Medicaid. This ultimately could lead to poor health outcomes for elderly individuals in Michigan. Elderly individuals who receive care services from their relatives and do not interact with a governmental authority should not be penalized for not knowing about DHHS-required care contracts. Expanding what constitutes a care contract would be more intuitive for elderly individuals and their caretakers and could lead to better health outcomes for elderly residents.

Legislative Analyst: Abby Schneider

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. 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

Fiscal Analyst: John P. Maxwell

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