House
Legislative
Analysis
Section

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MEDICAID BUY-IN FOR WORKERS WITH DISABILITIES

House Bill 4270 (Substitute H-3)
First Analysis (4-30-03)

Sponsor: Rep. Stephen Ehardt
Committee: Health Policy

THE APPARENT PROBLEM:

Title XIX of the (federal) Social Security Act governs the Medicaid program. As described by the Center for the Study and Advancement of Disability Policy, "Medicaid is the Nation's major public financing program for providing health and long-term services and supports . . . to low-income persons. Medicaid is a means-tested entitlement program financed by the states and Federal government out of general revenues." States create their own Medicaid programs within federal guidelines. Among other allowable restrictions, individual states may create income and asset caps which 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.

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. Unless they are independently wealthy--very wealthy, given the high price of health care--people with disabilities need some type of health plan that pays for prescription drugs, personal assistance, durable medical equipment, and other medically necessary goods and services. Not all employers offer health insurance, and those who do may not offer plans that include all the benefits that people with disabilities require. As exciting and rewarding as a particular job prospect may initially seem, once a person with a disability begins to think through the details, she may conclude that the benefits of working would be far outweighed by the health care costs she would have to cover out-of-pocket once she started receiving a paycheck and ceased receiving Medicaid benefits. According to 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", 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 currently are working but 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. Legislation has been introduced to direct the Department of Community Health to establish a Medicaid "buy-in" program for Michiganians with disabilities.

THE CONTENT OF THE BILL:

The bill would add a new section to the Social Welfare Act—to be known and cited as the "Michigan Freedom to Work for Individuals with Disabilities Law"—to require the Department of Community Health 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. The 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. The program would have to be implemented on or before January 1, 2004.

Eligibility criteria. The bill would require the DCH to establish a program 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 gainfully 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.

Allowances. An individual who qualified for and was enrolled under the program could do all of the following: accumulate personal savings and assets of $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 his or her 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.

Asset "limit" for Medicaid program. The bill would also raise the (standard) asset "limit" for "family independence program related individuals" receiving Medicaid benefits. 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.

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.

MCL 400.106 and 400.106a

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill 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. The bill 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 of the similar H-2 version dated 4-29-03)

ARGUMENTS:

For:

The bill 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 and paying a premium for Medicaid enhance 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 bill allows for the possibility that people's disabilities and related medical conditions may force them to take a leave of absence from their jobs and allows 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 whom 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 Disabilities* (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 bill is 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 bill 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.

POSITIONS:

The Department of Community Health supports the bill. (4-29-03)

The MiJob Coalition supports the bill. (4-29-03)

The Michigan Association of Centers for Independent Living supports the bill. (4-29-03)

The Blue Water Center for Independent Living supports the bill. (4-29-03)

The Michigan Statewide Independent Living Council supports the bill. (4-29-03)

A representative of the ARC of Michigan indicated support for the bill. (4-29-03)

Analyst: J. Caver

■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.