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HOUSE BILL NO. 2601

Offered January 12, 2005

Prefiled January 12, 2005

A BILL to permit the Department of Medical Assistance Services to seek a waiver regarding limits on asset transfer, recovery of subsequent assets, and recovery from estates.

Patrons—Landes, Hamilton, O'Bannon, Purkey, Reid and Welch

Referred to Committee on Health, Welfare and Institutions

Whereas, the Virginia Medicaid program is the largest of the Commonwealth's health care programs for persons who are poor; and

Whereas, it is the policy of the Commonwealth that persons who participate in the Medicaid program use their own assets to pay their share of the total cost of their care during or after their enrollment in the program in accordance with state and federal law; and

Whereas, there is growing concern that a number of persons seeking Medicaid eligibility are using provisions in federal and state laws or regulations to transfer assets in order to gain access to the program's benefits, thus preserving resources for their heirs; and

Whereas, stricter rules governing the transfer of assets for less than fair market value will discourage and deter voluntary impoverishment or, alternatively, result in payment penalties for these activities, thereby reducing medical assistance expenditures, including those for long-term care; and

Whereas, more thorough pursuit of resources that become available subsequent to Medicaid eligibility and more aggressive recovery from estates of deceased Medicaid recipients will also result in reduced medical assistance expenditures; now therefore

Be it enacted by the General Assembly of Virginia:

1. § 1. Medical assistance services; asset transfer limit waiver.

The Department of Medical Assistance Services shall, when appropriate and practicable, seek a waiver pursuant to § 1115 of the Social Security Act (42 U.S.C. § 1315) from the Centers for Medicare and Medicaid Services to establish asset transfer limits that are more restrictive than those currently permitted under federal Medicaid law or regulations. This waiver application may provide, insofar as it is not already included in the state plan for medical assistance services pursuant to § 32.1-325, that (i) transfer prohibitions would affect the transfer of all assets, including certain excluded assets set forth in § 1613 of the Social Security Act (42 U.S.C. § 1382b), such as vehicles and valuable jewelry; (ii) eligibility for all medical assistance services shall be subject to penalty periods for a calculated period for transfers of assets for less than fair market value; (iii) all transfers of assets for less than fair market value be subject to a 72-month look-back period; (iv) the transfer penalty period for applicants shall commence at the beginning of the month in which a person applies for medical assistance services or is otherwise eligible, or when the Department of Medical Assistance Services becomes aware of the transfer, whichever is later; (v) the transfer penalty period for recipients shall commence at the beginning of the month in which the Department of Medical Assistance Services becomes aware of the transfer and can give proper notice, or the month following a period of ineligibility existing when the transfer was made; (vi) the divisor used to calculate a penalty period shall be the statewide average nursing facility payment made by the Department of Medical Assistance Service in effect at the time the penalty is determined and the penalty period begins, a figure that takes into consideration the income that would otherwise be applied to cost of care in the post-eligibility process; (vii) the transfer of the institutionalized person's interest in a homestead even to specified relatives be prohibited, except that the homestead may retain excluded status as long as the specified relatives continue to reside in the household; (viii) transfers to spouses for less than fair market value after eligibility for medical assistance services is established will be permitted only to an amount allowed under spousal impoverishment asset provisions, so that assets acquired by or made available to the institutionalized spouse after medical assistance services are obtained would first be spent on the institutionalized spouse's medical costs; (ix) permissible transfers of assets to a disabled child would be limited to transfers into a trust for the child's sole benefit that reverts to the Commonwealth after the death of the disabled child, to recover medical assistance services payments made on behalf of either the grantor or the beneficiary of the trust, or both; (x) transfers to trusts for people with a disability who are under age 65 and who are not the children, adopted children, or legal wards of the transferor would no longer be permitted without penalty; and (xi) the Commonwealth would have discretion to designate some trust purposes as invalid under § 1917 (c) or (d) of the Social Security Act, such as care for a pet.

INTRODUCED

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59 2. That, upon the approval by the Centers for Medicare and Medicaid Services of any application
60 for the asset transfer limit waiver that shall be submitted by the Department of Medical Assistance
61 Services pursuant to this act, expeditious implementation of any asset transfer limits shall be
62 deemed to be an emergency situation pursuant to § 2.2-4002 of the Administrative Process Act;
63 therefore, to meet this emergency situation, the Board shall adopt emergency regulations to
64 implement the provisions of this act.

65 3. That, in order to avoid the costs as much as possible during the regulatory process, the Board
66 of Medical Assistance Services shall, when in compliance with the Administrative Process Act
67 (§ 2.2-4000 et seq.), notify, distribute, and provide public access and opportunity for comment via
68 electronic media, including, but not limited to, posting documents to and receiving comments via
69 the Department's website, by e-mail and fax. The Board shall, however, continue to provide public
70 notice and participation to those persons who do not have access to the Internet or to other forms
71 of electronic media.