Department of Planning and Budget
2005 Fiscal Impact Statement

1. **Bill Number** HB2601

   House of Origin ☐ Introduced ☐ Substitute ☐ Engrossed

   Second House ☒ In Committee ☐ Substitute ☐ Enrolled

2. **Patron:** Landes

3. **Committee:** Education and Health

4. **Title:** Waiver Regarding Asset Transfer Limits and Medicaid eligibility

5. **Summary/Purpose:** This bill allows the Department of Medical Assistance Services (DMAS) to seek a waiver pursuant to §1115 of the Social Security Act (42 U.S.C. §1315) from the Centers for Medicare and Medicaid Services (CMS) to:

   (i.) Extend asset transfer prohibitions to cover all assets.
   (ii.) Extend the coverage of the penalty period for asset transfers to all Medicaid services.
   (iii.) Extend the look-back period to investigate asset transfers from 36 to 72 months.
   (iv.) Synchronize the onset of the penalty period with the later of the application date, eligibility date, and transfer discovery date.
   (v.) Synchronize the onset of the penalty period for transfers executed by current recipients with the date DMAS discovers the transfer or the month following the end of an immediately precedent period of ineligibility.
   (vi.) Establish the duration of the penalty period as the multiple of the DMAS average nursing facility payment that equals the value of the prohibited transfer.
   (vii.) Prohibit the transfer of real property from institutionalized persons to non-resident relatives.
   (viii.) Limit asset transfers to spouses for less than fair market value to the amounts established by the spousal impoverishment rules.
   (ix.) Limit asset transfers to disabled children to the maintenance of trusts for the child's sole benefit that will revert to the Commonwealth after the child's death to recover medical assistance payments made on behalf of the child, benefactor, or both.
   (x.) Prohibit transfers to trusts that are designated as invalid by the Commonwealth under §1917 (c) or (d) of the Social Security Act.

   This bill authorizes DMAS to submit, after reporting to the Chairmen of the House Committees on Appropriations and Health, Welfare, and Institutions and the Senate Committees on Finance and Education and Health, a waiver to the federal government to put in place transfer of asset limits that are more restrictive than currently allowed under federal law. This legislation will have no policy impact unless the waiver is approved. Three states have already submitted waiver requests for similar policy changes. None of the waiver requests have been approved.

6. **Fiscal Impact Estimates are:** Final.

6a. Expenditure Impact:

Fiscal Year	*Dollars*	*Positions*	*Fund*
2004-05	N/A	0.0	GF
2004-05	N/A	0.0	NGF
2005-06	($4,323,748)	0.0	GF
2005-06	($4,323,748)	0.0	NGF
2006-07	($6,645,448)	0.0	GF
2006-07	($6,645,448)	0.0	NGF
2007-08	($7,134,451)	0.0	GF
2007-08	($7,134,451)	0.0	NGF
2008-09	($7,660,287)	0.0	GF
2008-09	($7,660,287)	0.0	NGF
2009-10	($8,230,001)	0.0	GF
2009-10	($8,230,001)	0.0	NGF
2010-11	($8,843,230)	0.0	GF
2010-11	($8,843,230)	0.0	NGF

7. **Budget amendment necessary:** No. The figures above show estimated savings for FY 2006, it is highly unlikely that a waiver can be developed that would meet with CMS approval in a time frame that would result in budget savings in FY 2006.

8. **Fiscal implications:** The bill authorizes the Commonwealth of Virginia to seek and secure a federal waiver to implement its provisions. As stated above, preliminary research with CMS indicates that the likelihood of the State receiving the required waiver is minimal.

   Without the waiver, Virginia would not be able to implement key provisions of the bill and capture the savings estimated below.

   <u>Medical Assistance Services (Medicaid)</u>
   The savings to DMAS presented above are based on projected nursing home expenditures, population growth figures, and percentages developed in *Medicaid Asset Transfers and Estate Recovery, A Report of the Joint Legislative Audit and Review Commission to the Governor and the General Assembly of Virginia,* Senate Document No. 10, 1993 (this is the most current data available). These data were used to generate the following analysis:

Expenditure Estimates	SFY 2006	SFY 2007	SFY 2008	SFY 2009	SFY 2010	SFY 2011
Projected average monthly nursing facility expenditures	$59,334,161	$63,569,265	$67,923,018	$72,574,953	$77,545,490	$82,856,452
Estimated number of unduplicated nursing facility recipients	*28,739*	*29,225*	*29,719*	*30,222*	*30,733*	*31,252*
Derived monthly nursing facility payments per recipient	$2,065	$2,175	$2,286	$2,401	$2,523	$2,651
Projected total nursing facility expenditures [a]	$712,009,936	$762,831,185	$815,076,221	$870,899,433	$930,545,883	$994,277,420
Projected average monthly acute care expenditures per nursing facility recipient	$430	$464	$501	$541	$585	$633
Approximate value of assets currently protected via transfers based on historical precedent [b]	$31,949,164	$34,229,604	$36,573,933	$39,078,821	$41,755,264	$44,615,012
Approximate number of recipients protecting assets through transfers [c]	*2,299*	*2,338*	*2,378*	*2,418*	*2,459*	*2,500*
Assets no longer protected due to impact of synchronizing commencement of penalty period with application date [*from parts (iv) & (v) of HB 2601*] [d]	$10,223,732	$10,953,473	$11,703,659	$12,505,223	$13,361,684	$14,276,804
Estimated assets no longer protected per recipient	$4,447	$4,685	$4,923	$5,172	$5,435	$5,710
Estimated average penalty period (in months)	2.15	2.15	2.15	2.15	2.15	2.15
Estimated savings to DMAS [e,f]	$(8,647,496)	$(13,290,896)	$(14,268,902)	$(15,320,573)	$(16,460,002)	$(17,686,459)
GF	$(4,323,748)	$(6,645,448)	$(7,134,451)	$(7,660,287)	$(8,230,001)	$(8,843,230)
NGF	$(4,323,748)	$(6,645,448)	$(7,134,451)	$(7,660,287)	$(8,230,001)	$(8,843,230)

Notes:

a. These figures are based on projections of the SFY 2005-2007 Official Medicaid Expenditure Forecast of nursing facility expenditures.

b. These were derived under the assumption that the ratio of protected assets to total nursing home expenditures would be relatively constant from the time of the 1993 JLARC study, a value of about 4.5%.

c. The number of recipients executing protective asset transfers was derived using the 8% proportion determined by JLARC in 1993.

d. The referenced study indicated that 32% of the observed asset transfers were a result of delayed applications in anticipation of the penalty period.

e. Part *(ii)* of HB 2601 specifies that the penalty period shall cover all Medicaid services. The penalty period was multiplied by the sum of nursing facility recipient monthly expenditures for acute care and facility use.

f. Savings projected for FY 2006 are reduced by 30% to reflect a transition period as training and operational procedures are updated.

The analysis above covers the impact of parts *(ii)*, *(iv)*, *(v)*, and *(vi)* of the bill. Data to estimate the full impact of parts *(i)*, *(vii)*, *(ix)*, and *(x)* were not available at the time of the development of the analysis. It can be surmised that each of these would generate additional savings above the estimates given here.

Part *(iii)* of the bill extends the look-back period from 36 to 72 months. Despite the savings implied by this additional scrutiny, the 1993 JLARC study revealed that approximately 84 percent of the known asset transfers were already occurring during a 30-month period prior to enrollment (*q.v.* p. 25). Consequently, the impact of this extension of the look-back period in combination with the other provisions of the bill, if any, is unknown.

As noted in the JLARC study, spousal impoverishment rules permitted about two percent of the observed protective asset transfers. Since part *(viii)* does not eliminate or diminish the scope of the existing asset provisions, it is assumed here that the previous percentage will continue to apply and no incremental savings will accrue due to this stipulation of the bill.

Administration and Support Services

While the analysis shows that there are potentially substantial savings to DMAS, there is the probability for some increased administrative costs at the Department of Social Services associated with the additional time, training, and manpower needed to process and investigate the financial and legal records of Medicaid applicants. Any increase in cost cannot be quantified at this time.

9. **Specific agency or political subdivisions affected:** Department of Medical Assistance Services, Office of the Attorney General, Department of Social Services, Office of the Executive Secretary to the Supreme Court, and the Trusts and Estates Section of the Virginia State Bar.

10. **Technical amendment necessary:** No.

11. **Other comments:** None.

Date: 2/15/2005 mst
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cc: Secretary of Health and Human Resources