OLR Bill Analysis

sSB 523

AN ACT CONCERNING THE RETURN OF A GIFT TO A PERSON IN NEED OF LONG-TERM CARE SERVICES.

SUMMARY:

By law, the Department of Social Services (DSS) commissioner must impose a penalty period (period of Medicaid ineligibility) on institutionalized individuals who transfer or assign their assets for less than they are worth in order to shift their care costs to the Medicaid program. The penalty period (1) applies only when such transactions occur within five years before a person applies for Medicaid long-term care and (2) generally is not imposed if the entire amount of the transferred asset is returned to the institutionalized individual. Institutionalized individuals are applicants or recipients of long-term care facility or Medicaid waiver home- and community-based services.

The bill requires the commissioner, to the extent permitted by federal law, to reduce the penalty period if (1) part of the transferred assets are returned to the individual and (2) the penalty period's original end date does not change. DSS must consider the entire amount of the returned asset to be available to the transferor from the date it was returned. It cannot determine the transferor to be ineligible for Medicaid in the month the transferred asset is returned as long as the individual reduced the returned asset in accordance with federal law (e.g., did not make the transfer to shift care costs to the Medicaid program).

By law, a conveyance and subsequent return of an asset for the purpose of shifting costs to the Medicaid program is deemed to be a trust-like device, and the asset is considered available for the purposes of determining Medicaid eligibility. The bill specifies that this does not apply to a conveyance and return of an asset made exclusively for a purpose other than qualifying for Medicaid long-term care services.

The bill also repeals a provision requiring DSS to penalize a nursing home resident for an improper asset transfer (as determined by the department) in which the entire amount is returned.

Lastly, the bill makes technical changes.

EFFECTIVE DATE: July 1, 2013

COMPLETE ASSET RETURNS

The bill eliminates a provision requiring DSS, based on the circumstances surrounding the transaction, to penalize a nursing home resident to whom the entire amount of a transferred asset is returned.

Under the repealed provision, DSS must penalize the resident if it determines that these circumstances indicate that the individual, or his or her spouse or authorized representative, intended from the time the asset was transferred to (1) change the start date of the penalty period or (2) shift long-term care facility costs to the Medicaid program. Under the eliminated provision, unless the individual can prove otherwise by clear and convincing evidence, the entire amount of the returned asset is available from the transfer date. If the individual prevails, the asset is deemed available from the date of its return.

COMMITTEE ACTION

Aging Committee

Joint Favorable
Yea 11 Nay 0 (02/14/2013)