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Senate Bills 362 and 363 (as passed by the Senate)  
Sponsor: Senator Curtis Hertel, Jr. (S.B. 362)  
Senator Mike Shirkey (S.B. 363)  
Senate Committee: Health Policy and Human Services

Date Completed: 8-21-19

### **RATIONALE**

In a letter dated January 11, 2018, the Centers for Medicare and Medicaid Services (CMS) announced "a new policy designed to assist states in their efforts to improve Medicaid enrollee health and well-being through incentivizing work and community engagement among non-elderly, non-pregnant adult Medicaid beneficiaries who are eligible for Medicaid on a basis other than disability". The letter stated that CMS would support state demonstration projects under Section 1115 of the Social Security Act that require eligible adult beneficiaries to engage in work or community engagement activities (e.g., skills training, education, job search, caregiving, or volunteer service) in order to determine whether those requirements assist beneficiaries in obtaining sustainable employment or other community engagement, and whether sustained employment or other productive community engagement leads to improved health outcomes. As of August 9, 2019, the Kaiser Family Foundation reports that 16 states, including Michigan, have submitted a waiver under Section 1115 to CMS to implement a workforce engagement requirements program.

Under Public Act 208 of 2018, Michigan applied for and received a Federal waiver to include workforce engagement requirements as a requirement for Healthy Michigan Plan (HMP) recipients to receive benefits. When implemented by the Department of Health and Human Services (DHHS) by January 1, 2020, workforce engagement requirements will consist of 80 hours per month of qualifying activities, such as employment or community service. Public Act 208 of 2018 also granted DHHS the authority to enforce the workforce engagement requirements through a compliance review process in which a recipient verifies that he or she is meeting the workforce engagement requirement by the 10<sup>th</sup> of each month for the previous month's qualifying activities.

While Michigan has not yet implemented its workforce engagement requirements program, similar workforce engagement programs from other states reportedly have offered insight into the implementation process. For example, according to testimony before the Senate Committee on Health Policy and Human Services, Arkansas's workforce engagement program confronted difficulties with a high volume of recipients attempting to report workforce engagement requirements in a small window of time. Some people have concerns that this problem also could occur in Michigan during the 10 days that recipients will have to report workforce engagement compliance. Accordingly, it has been suggested that the Legislature expand the window of time that recipients have to report compliance with the workforce engagement requirements.

### **CONTENT**

**Senate Bill 362 would amend the Social Welfare Act to do the following:**

- Modify the date by which an able-bodied recipient would have to verify that he or she was meeting the Healthy Michigan Plan's workforce engagement**

**requirements, from the tenth of each month to the last day of each month, for the previous month's qualifying activities.**

**-- Allow a recipient to verify compliance with the workforce engagement requirements up to 60 days after the missed date for reporting.**

**Senate Bill 363 would amend the Social Welfare Act to provide an exemption from the reporting workforce engagement requirement if DHHS could verify a recipient's compliance through other data available to it.**

### **Senate Bill 362**

Under the Act, the DHHS must apply for a waiver under Section 1115 of the Social Security Act and submit subsequent waivers to prevent a lapse in the workforce engagement requirements as a condition of receiving medical assistance under HMP (Michigan's Medicaid-expansion program that provides health care benefits to low-income individuals who do not qualify for Medicaid). After the waiver requested is approved, the Department must include certain requirements in its implementation of the workforce engagement requirements, as described below.

(Section 1115 of the Social Security Act authorizes the Secretary of the U.S. Department of Health and Human Services to waive specific provisions of health and welfare programs, including Medicaid, for experimental, pilot, or demonstration programs in a state.)

The waiver must be a request to allow, among other things, a requirement that an able-bodied recipient verifies that he or she is meeting the workforce engagement requirements by the 10<sup>th</sup> of each month for the previous month's qualifying activities through MiBridges or any other subsequent system. Instead, under the bill, an able-bodied recipient would have to verify that he or she was meeting the workforce engagement requirements by the last day of each month for the previous month's qualifying activities.

The bill specifies that if a recipient did not verify that he or she was meeting the workforce engagement requirements by the last day of the month for the previous month, he or she could verify compliance with the workforce engagement requirements up to 60 days after the missed date for reporting. If the recipient verified compliance within this time period, the month would not be a noncompliance month.

After the waiver is approved, the DHHS must include in its implementation of the workforce engagement requirements, among other things, a requirement that an able-bodied recipient verifies that he or she is meeting the workforce engagement requirements by the 10<sup>th</sup> of each month for the previous month's qualifying activities through MiBridges or any other subsequent system.

Under the bill, instead, the DHHS would have to include in its implementation of the workforce engagement requirements a requirement that an able-bodied recipient verify that he or she was meeting the requirements by the last day of each month for the previous month's qualifying activities. If a recipient did not do so, he or she could verify compliance with the workforce engagement requirements at a date after the missed date for reporting. If the recipient verified compliance at a later date, the month would not be a noncompliance month.

(A recipient currently is allowed three months of noncompliance within a 12-month period. The recipient may use a noncompliance either by self-reporting that he or she is not in compliance that month or by the default method of not reporting compliance for that month. The DHHS must notify the recipient after each use of a noncompliance month, and, after a

recipient uses three noncompliance months in a 12-month period, the recipient loses coverage for at least one month until he or she complies.)

### **Senate Bill 363**

Under the Social Welfare Act, the Department must apply for a waiver under Section 1115 of the Social Security Act and submit subsequent waivers to prohibit and prevent a lapse in the workforce engagement requirements as a condition of receiving medical assistance under the HMP. After the waiver requested is approved, the Department must include certain requirements in its implementation of the workplace engagement requirements.

Among other things, the waiver must be a request to allow, and the Department must require in its implementation, the following:

- A requirement of 80 hours average per month of qualifying activities or a combination of any qualifying activities, to count toward the workforce engagement requirement.
- A requirement to allow certain substance use disorder treatment to count toward the workforce engagement requirements if the treatment impedes the ability to meet the workforce engagement requirements.
- A requirement that community service must be completed with a nonprofit organization that is exempt from taxation under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code.
- An exemption for a recipient who meets certain conditions, such as the caretaker of a family member who is under the age of six years, a recipient who currently receives temporary or permanent long-term disability, a recipient who is a student, among other things.

Under the bill, the waiver also would have to be a request to allow, and the Department would have to require in its implementation, an exemption from the reporting requirement if the Department could verify the recipient's compliance through other data available to it.

MCL 400.107b

### **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**

Medicaid workforce engagement requirements already have taken effect in some states across the United States. In Arkansas, a program similar to Michigan's began in June 2018, and at the end of the year, 18,164 Medicaid recipients lost coverage as a result of the workforce engagement requirements. Preliminary reports suggest that people who could comply with the workforce engagement requirements have failed to report because of confusion related to the law or challenges in the reporting process. For example, some Arkansas residents claimed that attempts to report their compliance through fax, phone, or mail failed because of difficulties with the appropriate department's communications, and the online system deterred them from reporting because of either a low technological literacy or the unavailability of quality access to the internet.<sup>1,2</sup> In addition, while Medicaid recipients can report hours through a variety of media, many of those avenues can become overwhelmed by the influx of recipients attempting to report.

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<sup>1</sup> Hardy, Benjamin. "Locked Out of Medicaid", *Arkansas Times*, November 19, 2018.

<sup>2</sup> Thompson, J. & Wilson, J., "Nation's First Medicaid Work Requirement Sheds Thousands from Rolls in Arkansas", *Health Affairs*, October 2, 2018.

Michigan could avoid these concerns by making workforce compliance reporting more streamlined and accessible. The bills would expand the window of time that Medicaid recipients could report compliance, which would distribute the high volume of calls to DHHS employees and the high volume of recipients using the MiBridges website across a larger period of time. In addition, allowing the DHHS to report compliance for recipients automatically with preexisting data available to it through Michigan New Hire reporting requirements for example, would decrease the demand on media used to report compliance. The bill would assist in the implementation of workforce engagement requirements to ensure that recipients who participate in qualifying activities continue to receive HMP benefits.

**Response:** Current law exempts certain HMP recipients from workforce compliance requirements: those who are pregnant, full-time students, those who are caretakers of a family member under the age of six or incapacitated individuals, and individuals with certain medical conditions, among others. In addition to expanding the window of time for reporting to ensure recipients do not lose coverage, the Legislature should expand these exemptions to include recipients over the age of 50 and recipients who are caretakers of a minor child, no matter the age of the child. Recipients over 50 could have difficulty fulfilling workforce engagement requirements as they compete against a younger, often less expensive workforce. A caretaker for a minor child could have difficulty finding affordable child care for a child. Expanding the window of time to report workforce engagement compliance would not ensure that these individuals maintained health coverage.

Additionally, a core principle of the law that authorizes Medicaid coverage is access to quality healthcare for individuals in need. When considering effective policies from other states for the implementation of Michigan's workforce engagement requirements, the Legislature should consider a policy similar to that of New Hampshire's implementation. Under that policy, the workforce engagement requirements would be eliminated if a certain number of people lost their health coverage. This would ensure that coverage remained available if the implementation of workforce engagement requirements failed to satisfy one of the underlying principles of Medicaid.

Legislative Analyst: Tyler VanHuysse

## **FISCAL IMPACT**

The bills would lead to both positive and negative fiscal impacts of indeterminate amounts.

The bills effectively would simplify the monthly reporting requirement in two ways. First, HMP recipients subject to the work engagement requirements would have more leeway to report; instead of having to report compliance by the 10th of each month, a recipient would have until the end of the month or could verify compliance for that month at a subsequent date. Second, if the DHHS could verify compliance through other means, such as income reporting for eligibility for other programs (such as the Family Independence Program or the Food Assistance Program), the recipient would be exempt from monthly reporting.

The DHHS estimates total annual HMP call center costs of \$11.0 million Gross, \$5.5 million General Fund/General Purpose (GF/GP) for numerous services (beyond work engagement compliance) related to the HMP. The changes in the bills would reduce the number of people who would have to check in each month and would spread out their phone calls to the entire month instead of having the calls come in during the first ten days of the month. These changes would reduce administrative costs by an indeterminate amount. For each cohort of 50,000 recipients who otherwise would phone in but now would be exempt from monthly reporting, there would be up to 600,000 fewer phone calls each year. If each of those calls took five minutes to process, that would equate to 50,000 fewer hours of staff time required or about 25.0 fewer FTEs needed. The cost of 25.0 FTEs would be in the range of \$1.0 million GF/GP given typical field staff wages, benefits, and Federal match funding. Spreading out the calls over the full month (instead of having to be during the first ten days) also would reduce administrative burden by an indeterminate amount; these staff would still have numerous

other responsibilities, but there would be less need for overtime for time sensitive responsibilities early in each month.

This administrative cost savings estimate is indeterminate because of the number of assumptions reflected above. It is not clear how long a typical call would take, whether there would be other nonphone ways to check in (such as via the Internet or an app), or how many people would be exempt because of the DHHS's ability to verify compliance in other ways.

The changes also likely would effectively reduce the number of people sanctioned due to there being more ways and a longer time period to verify compliance. This would abate any reduction in caseload and costs due to noncompliance and effectively would increase State expenditures as cases that otherwise would have been subject to sanction no longer would be sanctioned. The fiscal year 2019-20 Executive, Senate, and House Appropriations Committee budgets for DHHS assumed a reduction in HMP costs of \$50 million Gross as some of those subject to the HMP work requirement would lose HMP eligibility either due to increased income or sanctions. Due to the 90% Federal HMP match rate that will take effect on January 1, 2020 (the date the work engagement requirement takes effect), the GF/GP savings built into the budget would be \$5.0 million. Both the Gross and GF/GP amounts are extremely rough estimates; the number of noncompliant individuals under the original legislation is, at this point, impossible to estimate due to the lack of experience in Michigan or in other states. Similarly, the impact of Senate Bills 362 and 363 on reducing the number of people sanctioned is impossible to determine. It should be noted that each individual case sanctioned or not sanctioned accrues average HMP costs of \$6,000 Gross and \$600 GF/GP per year. As such, each cohort of 1,000 cases that are sanctioned or not sanctioned reflects approximate spending of \$6.0 million Gross and \$600,000 GF/GP, and if 1,000 people who would have been sanctioned under the original legislation were not sanctioned, GF/GP costs would increase by \$600,000.

The figures quoted above (\$1.0 million GF/GP for wages for each cohort of 50,000 people who phone in and \$600,000 GF/GP in HMP spending for each 1,000 cases that were sanctioned) are not meant to serve as estimates of the fiscal impact of these bills, but to illustrate the scale of the impact. The actual number of people who no longer would have to phone in under the legislation and the actual number of cases sanctioned are indeterminate and will remain so until there is some experience with the work engagement requirements. As such, the fiscal impact of these bills is indeterminate.

Fiscal Analyst: Steve Angelotti

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.