As Introduced

127th General Assembly
Regular Session **H. B. No. 106**
2007-2008

Representatives Peterson, Stewart, D.

Cosponsors: Representatives Stewart, J., Flowers, Carano, McGregor, J., Stebelton, Yuko, Seitz, Evans, Skindell, Chandler, Combs, Bacon, Hottinger, Setzer, White, Wagoner, Sykes, Strahorn, Wolpert

A B I L L

To amend sections 5111.011, 5111.0118, and 5111.851 and to enact sections 5111.182, 5111.70, 5111.701, 5111.702, 5111.703, 5111.704, 5111.705, 5111.706, 5111.707, 5111.708, 5111.709, and 5111.7010 of the Revised Code to establish the Medicaid Buy-In for Workers with Disabilities Program and a Medicaid program for individuals who exhaust benefits under a qualified long-term care insurance policy.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 5111.011, 5111.0118, and 5111.851 be amended and sections 5111.182, 5111.70, 5111.701, 5111.702, 5111.703, 5111.704, 5111.705, 5111.706, 5111.707, 5111.708, 5111.709, and 5111.7010 of the Revised Code be enacted to read as follows:

Sec. 5111.011. (A) The director of job and family services shall adopt rules establishing eligibility requirements for the medicaid program. The rules shall be adopted pursuant to section 111.15 of the Revised Code and shall be consistent with federal

and state law. The rules shall include rules that do all of the following:

(1) Establish standards consistent with federal law for allocating income and resources as income and resources of the spouse, children, parents, or stepparents of a recipient of or applicant for medicaid;

(2) Define the term "resources" as used in division (A)(1) of this section;

(3) Specify the number of months that is to be used for the purpose of the term "look-back date" used in section 5111.0116 of the Revised Code;

(4) Establish processes to be used to determine both of the following:

(a) The date an institutionalized individual's ineligibility for services under section 5111.0116 of the Revised Code is to begin;

(b) The number of months an institutionalized individual's ineligibility for such services is to continue.

(5) Establish exceptions to the period of ineligibility that an institutionalized individual would otherwise be subject to under section 5111.0116 of the Revised Code;

(6) Define the term "other medicaid-funded long-term care services" as used in sections 5111.0117 ~~and~~, 5111.0118, and 5111.182 of the Revised Code;

(7) For the purpose of division (C)(2)(c) of section 5111.0117 of the Revised Code, establish the process to determine whether the child of an aged, blind, or disabled individual is financially dependent on the individual for housing.

(B) Notwithstanding any provision of state law, including statutes, administrative rules, common law, and court rules,

regarding real or personal property or domestic relations, but excluding sections 5111.0118 and 5111.182 of the Revised Code, the standards established under rules adopted under division (A)(1) of this section shall be used to determine eligibility for medicaid.

Sec. 5111.0118. (A) Except as otherwise provided by this section, no individual shall qualify for nursing facility services or other medicaid-funded long-term care services if the individual's equity interest in the individual's home exceeds five hundred thousand dollars or, if the individual participates in the program established under section 5111.182 of the Revised Code, seven hundred fifty thousand dollars. The director of job and family services shall increase ~~this amount~~ these amounts effective January 1, 2011, and the first day of each year thereafter, by the percentage increase in the consumer price index for all urban consumers (all items; United States city average), rounded to the nearest one thousand dollars.

(B) This section does not apply to an individual if either of the following applies:

(1) Either of the following lawfully reside in the individual's home:

(a) The individual's spouse;

(b) The individual's child if the child is under twenty-one years of age or, under 42 U.S.C. 1382c, considered blind or disabled.

(2) The individual qualifies, pursuant to the process established under division (C) of this section, for a waiver of this section due to a demonstrated hardship.

(C) The director shall establish a process by which individuals may obtain a waiver of this section due to a demonstrated hardship. The process shall be consistent with the

process for such waivers established by the United States secretary of health and human services under 42 U.S.C. 1396p(f)(4).

(D) Nothing in this section shall be construed as preventing an individual from using a reverse mortgage or home equity loan to reduce the individual's total equity interest in the home.

Sec. 5111.182. (A) As used in this section:

(1) "Nursing facility services" means nursing facility services covered by the medicaid program that a nursing facility, as defined in section 5111.20 of the Revised Code, provides to a resident of the nursing facility who is a medicaid recipient eligible for medicaid-covered nursing facility services.

(2) "Other medicaid-funded long-term care services" has the meaning specified in rules adopted under section 5111.011 of the Revised Code.

(3) "Qualified long-term care insurance policy" means an insurance policy that meets both of the following requirements:

(a) The insurance policy provides coverage for long-term care services for at least three years that are comparable, as determined by the director of job and family services, to nursing facility services and other medicaid-funded long-term care services.

(b) The insurance policy meets all the requirements that a long-term care insurance policy must meet for the qualified state long-term care insurance partnership program established under section 5111.18 of the Revised Code.

(4) "Resources" has the meaning established in rules adopted under section 5111.011 of the Revised Code.

(B) The director of job and family services shall establish a program that enables an individual who exhausts the benefits

payable under a qualified long-term care insurance policy to qualify for nursing facility services or other medicaid-funded long-term care services without regard, except as provided in section 5111.0118 of the Revised Code, to the value of the individual's resources if the individual meets all other eligibility requirements for, as applicable, nursing facility services or other medicaid-funded long-term care services. The program shall cover nursing facility services and other medicaid-funded long-term care services, but an individual participating in the program shall choose, subject to the individual's eligibility for the services and the availability of the other medicaid-funded long-term care services, whether to receive nursing facility services or other medicaid-funded long-term care services.

The director of job and family services may adopt rules in accordance with Chapter 119. of the Revised Code as necessary to implement this section.

Sec. 5111.70. (A) As used in sections 5111.70 to 5111.7010 of the Revised Code:

(1) "Applicant" means an individual who applies to participate in the medicaid buy-in for workers with disabilities program.

(2) "Earned income" has the meaning established by rules adopted under section 5111.707 of the Revised Code.

(3) "Employed individual with a medically improved disability" has the same meaning as in 42 U.S.C. 1396d(v).

(4) "Family" means an applicant or participant and the spouse and dependent children of the applicant or participant. If an applicant or participant is under eighteen years of age, "family" also means the parents of the applicant or participant.

(5) "Federal poverty guidelines" has the same meaning as in section 5101.46 of the Revised Code.

(6) "Income" means earned income and unearned income.

(7) "Participant" means an individual who has been determined eligible for the medicaid buy-in for workers with disabilities program and is participating in the program.

(8) "Supplemental security income program" means the program established under Title XVI of the "Social Security Act," 86 Stat. 1329 (1972), 42 U.S.C. 1381, as amended.

(9) "Medicaid buy-in for workers with disabilities program" means the component of the medicaid program established under sections 5111.70 to 5111.7010 of the Revised Code.

(10) "Unearned income" has the meaning established by rules adopted under section 5111.707 of the Revised Code.

(B) Not later than ninety days after the effective date of this section, the director of job and family services shall submit to the United States secretary of health and human services an amendment to the state medicaid plan and any federal waiver necessary to establish the medicaid buy-in for workers with disabilities program in accordance with 42 U.S.C. 1396a (10)(A)(ii)(XV) and (XVI) and sections 5111.70 to 5111.7010 of the Revised Code. The director shall implement sections 5111.701 to 5111.7010 of the Revised Code if the amendment and, if needed, federal waiver are approved.

Sec. 5111.701. Under the medicaid buy-in for workers with disabilities program, an individual who does all of the following in accordance with rules adopted under section 5111.707 of the Revised Code qualifies for medical assistance under the medicaid program:

(A) Applies for the medicaid buy-in for workers with

disabilities program;

(B) Provides satisfactory evidence of all of the following:

(1) That the individual is at least sixteen years of age and under sixty-five years of age;

(2) Except as provided in section 5111.706 of the Revised Code, that one of the following applies to the individual:

(a) The individual is considered disabled for the purpose of the supplemental security income program, regardless of whether the individual receives supplemental security income benefits.

(b) The individual is an employed individual with a medically improved disability.

(3) That the value of the assets of the individual's family, less assets and asset value disregarded pursuant to rules adopted under section 5111.707 of the Revised Code, does not exceed the amount provided for by section 5111.702 of the Revised Code;

(4) That the income of the individual's family, less amounts disregarded pursuant to section 5111.703 of the Revised Code, does not exceed two hundred fifty per cent of the federal poverty guidelines;

(5) That the individual meets the additional eligibility requirements for the medicaid buy-in for workers with disabilities program that the director of job and family services establishes in rules adopted under section 5111.707 of the Revised Code.

(C) To the extent required by section 5111.704 of the Revised Code, pays the premium established under that section.

Sec. 5111.702. (A) Except as provided in division (B) of this section, the maximum value of assets, less assets and asset value disregarded pursuant to rules adopted under section 5111.707 of the Revised Code, that an individual's family may have without the

individual exceeding the asset eligibility limit for the medicaid buy-in for workers with disabilities program shall not exceed ten thousand dollars.

(B) Each calendar year, the director of job and family services shall adjust the asset eligibility limit specified in division (A) of this section by the change in the consumer price index for all items for all urban consumers for the previous calendar year, as published by the United States bureau of labor statistics. The annual adjustment shall go into effect on the earliest date possible.

Sec. 5111.703. For the purpose of determining whether an individual is within the eligibility limit for the medicaid buy-in for workers with disabilities program, all of the following apply:

(A) The first twenty thousand dollars of the individual's earned income shall be disregarded.

(B) No amount that an employer of a member of the individual's family pays to obtain health insurance for one or more members of the family, including any amount of a premium established under section 5111.704 of the Revised Code that the employer pays, shall be treated as the income of the individual's family.

(C) All other amounts disregarded pursuant to rules adopted under section 5111.707 of the Revised Code shall be applied to the income of the individual's family.

Sec. 5111.704. (A) An individual whose family's income exceeds one hundred fifty per cent of the federal poverty guidelines shall pay an annual premium as a condition of qualifying for the medicaid buy-in for workers with disabilities program. The amount of the premium shall be determined as follows:

(1) Subtract one hundred fifty per cent of the federal poverty guidelines, as applicable for a family size equal to the size of the individual's family, from the amount of the income of the individual's family;

(2) Subtract any amount a member of the individual's family pays, whether by payroll deduction or otherwise, for other health insurance for one or more members of the family from the difference determined under division (A)(1) of this section;

(3) Multiply the difference determined under division (A)(2) of this section by one tenth.

(B) No amount that an employer of a member of an individual's family pays to obtain health insurance for one or more members of the individual's family, including any amount of a premium established under this section that the employer pays, shall be treated as the income of the individual's family for the purpose of this section.

Sec. 5111.705. No individual shall be denied eligibility for the medicaid buy-in for workers with disabilities program on the basis that the individual receives services under a home and community-based services medicaid waiver component as defined in section 5111.851 of the Revised Code.

Sec. 5111.706. An individual who had been participating in the medicaid buy-in for workers with disabilities program as an employed individual with a medically improved disability may continue to participate in the program for up to six months even though the individual ceases to be an employed individual with a medically improved disability due to ceasing to be employed if the individual continues to meet all other eligibility requirements for the program.

Sec. 5111.707. The director of job and family services shall adopt rules in accordance with Chapter 119. of the Revised Code as necessary to implement the medicaid buy-in for workers with disabilities program. The rules shall do all of the following:

(A) Specify assets, asset values, and amounts to be disregarded in determining asset and income eligibility limits for the program;

(B) Establish meanings for the terms "earned income" and "unearned income";

(C) Establish additional eligibility requirements for the program that must be established for the United States secretary of health and human services to approve the program.

Sec. 5111.708. (A) There is hereby created the medicaid buy-in advisory council. The council shall consist of the following members:

(1) The executive director of assistive technology of Ohio or the executive director's designee;

(2) The director of the axis center for public awareness of people with disabilities or the director's designee;

(3) The executive director of the cerebral palsy association of Ohio or the executive director's designee;

(4) The chief executive officer of Ohio advocates for mental health or the chief executive officer's designee;

(5) The state director of the Ohio chapter of the American association of retired persons or the state director's designee;

(6) The director of the Ohio developmental disabilities council created under section 5123.35 of the Revised Code or the director's designee;

(7) The executive director of the governor's council on people with disabilities created under section 3303.41 of the Revised Code or the executive director's designee;

(8) The administrator of the legal rights service created under section 5123.60 of the Revised Code or the administrator's designee;

(9) The chairperson of the Ohio Olmstead task force or the chairperson's designee;

(10) The executive director of the Ohio statewide independent living council or the executive director's designee;

(11) The president of the Ohio chapter of the national multiple sclerosis society or the president's designee;

(12) The executive director of the arc of Ohio or the executive director's designee.

(B) All members of the medicaid buy-in advisory council shall serve without compensation or reimbursement, except as serving on the council is considered part of their usual job duties.

(C) The members of the medicaid buy-in advisory council shall elect one of the members of the council to serve as the council's chairperson for a two-year term. The chairperson may be re-elected to successive terms.

(D) The department of job and family services shall provide the Ohio medicaid buy-in advisory council with accommodations for the council to hold its meetings and shall provide the council with other administrative assistance the council needs to perform its duties.

Sec. 5111.709. The director of job and family services or the director's designee shall consult with the medicaid buy-in advisory council before adopting, amending, or rescinding any rules under section 5111.707 of the Revised Code governing the

medicaid buy-in for workers with disabilities program.

The director or designee shall meet quarterly with the council to discuss the program. At the meetings, the council may provide the director or designee with suggestions for improving the program and the director or designee shall provide the council with all of the following information:

(A) The number of individuals who participated in the program the previous quarter;

(B) The cost of the program the previous quarter;

(C) The amount of revenue generated the previous quarter by premiums that participants pay under section 5111.704 of the Revised Code;

(D) The average amount of earned income of participants' families;

(E) The average amount of time participants have participated in the program;

(F) The types of other health insurance participants have been able to obtain.

Sec. 5111.7010. Not less than once each year, the director of job and family services shall submit a report on the medicaid buy-in for workers with disabilities program to the governor, speaker and minority leader of the house of representatives, president and minority leader of the senate, and chairpersons of the house and senate committees to which the biennial operating budget bill is referred. The report shall include all of the following information:

(A) The number of individuals who participated in the medicaid buy-in for workers with disabilities program;

(B) The cost of the program;

(C) The amount of revenue generated by premiums that participants pay under section 5111.704 of the Revised Code;

(D) The average amount of earned income of participants' families;

(E) The average amount of time participants have participated in the program;

(F) The types of other health insurance participants have been able to obtain.

Sec. 5111.851. (A) As used in sections 5111.851 to 5111.855 of the Revised Code:

"Administrative agency" means, with respect to a home and community-based services medicaid waiver component, the department of job and family services or, if a state agency or political subdivision contracts with the department under section 5111.91 of the Revised Code to administer the component, that state agency or political subdivision.

"Home and community-based services medicaid waiver component" means a medicaid waiver component under which home and community-based services are provided as an alternative to hospital, nursing facility, or intermediate care facility for the mentally retarded services.

"Hospital" has the same meaning as in section 3727.01 of the Revised Code.

"Intermediate care facility for the mentally retarded" has the same meaning as in section 5111.20 of the Revised Code.

"Level of care determination" means a determination of whether an individual needs the level of care provided by a hospital, nursing facility, or intermediate care facility for the mentally retarded and whether the individual, if determined to need that level of care, would receive hospital, nursing facility,

or intermediate care facility for the mentally retarded services if not for a home and community-based services medicaid waiver component.

"Medicaid buy-in for workers with disabilities program" means the component of the medicaid program established under sections 5111.70 to 5111.7010 of the Revised Code.

"Nursing facility" has the same meaning as in section 5111.20 of the Revised Code.

"Patient liability" means the cost-sharing expenses for which an individual receiving services under a home and community-based services medicaid waiver component is responsible.

"Skilled nursing facility" means a facility certified as a skilled nursing facility under Title XVIII of the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C. 1395, as amended.

(B) The following requirements apply to each home and community-based services medicaid waiver component:

(1) Only an individual who qualifies for a component shall receive that component's services.

(2) A level of care determination shall be made as part of the process of determining whether an individual qualifies for a component and shall be made each year after the initial determination if, during such a subsequent year, the administrative agency determines there is a reasonable indication that the individual's needs have changed.

(3) A written plan of care or individual service plan based on an individual assessment of the services that an individual needs to avoid needing admission to a hospital, nursing facility, or intermediate care facility for the mentally retarded shall be created for each individual determined eligible for a component.

(4) Each individual determined eligible for a component shall

receive that component's services in accordance with the individual's level of care determination and written plan of care or individual service plan.

(5) No individual may receive services under a component while the individual is a hospital inpatient or resident of a skilled nursing facility, nursing facility, or intermediate care facility for the mentally retarded.

(6) No individual may receive prevocational, educational, or supported employment services under a component if the individual is eligible for such services that are funded with federal funds provided under 29 U.S.C. 730 or the "Individuals with Disabilities Education Act," 111 Stat. 37 (1997), 20 U.S.C. 1400, as amended.

(7) Safeguards shall be taken to protect the health and welfare of individuals receiving services under a component, including safeguards established in rules adopted under section 5111.85 of the Revised Code and safeguards established by licensing and certification requirements that are applicable to the providers of that component's services.

(8) No services may be provided under a component by a provider that is subject to standards that 42 U.S.C. 1382e(e)(1) requires be established if the provider fails to comply with the standards applicable to the provider.

(9) Individuals determined to be eligible for a component, or such individuals' representatives, shall be informed of that component's services, including any choices that the individual or representative may make regarding the component's services, and given the choice of either receiving services under that component or, as appropriate, hospital, nursing facility, or intermediate care facility for the mentally retarded services.

(10) No individual shall lose eligibility for services under a component on the basis that the individual also receives

services under the medicaid buy-in for workers with disabilities program.

(11) No individual shall lose eligibility for services under a component on the basis that the individual's income or assets increase to an amount above the eligibility limit for the component if the individual is participating in the medicaid buy-in for workers with disabilities program and the amount of the individual's income or assets does not exceed the eligibility limit for the medicaid buy-in for workers with disabilities program.

(12) No individual receiving services under a component shall have any patient liability for the services for any period during which the individual also participates in the medicaid buy-in for workers with disabilities program.

Section 2. That existing sections 5111.011, 5111.0118, and 5111.851 of the Revised Code are hereby repealed.

Section 3. The Director of Job and Family Services shall call the Medicaid Buy-In Advisory Council established under section 5111.708 of the Revised Code to meet for the first time not later than sixty days after the effective date of this section.