Protecting Families with Disabilities Act

Senators Franken and Klobuchar

A provision in the Affordable Care Act expanded financial protections to families in which one person receives services through Home and Community Based Services (HCBS) Waivers. However, Minnesota has long had financial protections in place for these families and uses different and more generous financial eligibility criteria than those applied under the Affordable Care Act. In order to comply with these rules, the Centers for Medicare and Medicaid Services (CMS) are requiring that Minnesota impose these more restrictive financial eligibility rules on married persons under age 65 who receive long-term care services under HCBS waivers by June 1, 2016. This bill will help families that are harshly affected by the imposition of these rules and will allow them continue to receive the protections previously available to them

Background. Spousal impoverishment rules are used when determining financial eligibility for married couples when one spouse is applying for coverage of long-term-care services by Medicaid. <u>The rules determine the amount of a married couple's assets that they may keep so that the spouse requesting long-term-care services is financially eligible for Medicaid. Any excess assets held by married couples must be spent-down prior to eligibility.</u>

Minnesota uses different rules for those families that are affected by a catastrophic health event (in which one spouse is affected by a brain or spinal cord injury or diagnosis with progressive MS) but are younger, working and may have children at home. Minnesota allows these younger families to keep their assets in order to earn and save for their children, pay for their home, or save for the unassisted spouse's later years. Minnesota is the only state with more favorable financial eligibility rules for working age families affected by a spouses' disability.

The provision in the ACA, which expires at the end of 2018, sought to improve spousal impoverishment protections for the 6 to 8 states that did not have any financial protections in place for people receiving services under HCBS waivers. It was never intended to restrict access to services.

Because Minnesota's HCBS waivers are up for renewal with CMS, CMS is now requiring that the state impose the stricter financial eligibility criteria for families receiving services under these waivers in order to maintain federal funding. This change will affect 2400 families. The state estimates that 200-480 of them, in order to continue to receive Medicaid, will lose tens of thousands of dollars in children's college savings or the unassisted spouse's retirement savings or obtain an unwanted divorce.

Solution. The Protecting Families with Disabilities Act amends the Affordable Care Act to clarify that if a state disregarded the income and assets of the Medicaid beneficiary's unassisted spouse prior to January 1, 2014 under an existing HCBS Waiver they should be able to continue to do so under current law. This would enable Minnesota to continue providing services to working-age families while allowing them to meet the financial needs of their families.