

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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WASHINGTON, DC 20515-6115

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MEMORANDUM

February 6, 2017

To: Democratic Members of the Health Subcommittee
Fr: Committee on Energy and Commerce Democratic Staff
Re: Subcommittee Markup on H.R. 829 and H.R. 181

On **Tuesday, February 7, 2017, at 10:00 a.m. in 2123 Rayburn House Office Building**, the Subcommittee on Health will meet to markup the following legislation:

- H.R. 829, To amend title XIX of the Social Security Act to clarify the treatment of lottery winnings and other lump sum income for purposes of income eligibility under the Medicaid program, and for other purposes; and
- H.R. 181, To amend title XIX of the Social Security Act to count portions of income from annuities of a community spouse as income available to institutionalized spouses for purposes of eligibility for medical assistance, and for other purposes.

Differing discussion draft versions of both pieces of legislation were considered in a legislative hearing on February 1, 2016. Prior versions of both bills were considered by the Energy and Commerce Committee's Subcommittee on Health in the 114th Congress on September 11, 2015.

The legislative language that the Subcommittee will mark up is to be taken from those bills that have been introduced in the 115th Congress.

- I. H.R. 829, TO AMEND TITLE XIX OF THE SOCIAL SECURITY ACT TO CLARIFY THE TREATMENT OF LOTTERY WINNINGS AND OTHER LUMP SUM INCOME FOR PURPOSES OF INCOME ELIGIBILITY UNDER THE MEDICAID PROGRAM, AND FOR OTHER PURPOSES**

A. Background

A lump sum payment is counted in Medicaid as income in the month in which it is received, and is not considered as an asset thereafter (with the exception of those Medicaid beneficiaries who remain subject to an asset test, such as most elderly and disabled beneficiaries). The lump-sum income that is taxable is included in a tax-filer's annual income level; states then re-determine Medicaid eligibility on an annual basis. This consideration of lump sum income aligns with the Affordable Care Act's (ACA) streamlined approach to determine eligibility for Medicaid and the Children's Health Insurance Program (CHIP) in addition to premium tax credits (PTCs) and cost-sharing subsidies (CSRs), which help individuals afford coverage. Prior to the ACA, states had widely varying rules regarding what income and assets were "countable" for purposes of eligibility for Medicaid, and what was not countable income ("disregards").

B. Summary of H.R. 829

H.R. 829, introduced by Rep. Fred Upton (R-MI), would change the way that states consider certain lump sum payments for purposes of determining eligibility for Medicaid and CHIP. This legislation would require states to count "lump sum income" above \$80,000 that an individual receives as though it were income that the individual is receiving for anywhere from two months to ten years, depending on the specific amount of the lump sum received. The version of the legislation introduced this Congress would also establish a hardship exemption, which would allow (but not require) states to continue providing Medicaid coverage for an individual if the denial of coverage would cause an undue medical or financial hardship as determined by the state on the basis of criteria established by the Secretary of Health and Human Services (HHS).

II. H.R. 181, TO AMEND TITLE XIX OF THE SOCIAL SECURITY ACT TO COUNT PORTIONS OF INCOME FROM ANNUITIES OF A COMMUNITY SPOUSE AS INCOME AVAILABLE TO INSTITUTIONALIZED SPOUSES FOR PURPOSES OF ELIGIBILITY FOR MEDICAL ASSISTANCE, AND FOR OTHER PURPOSES

A. Background

When one's spouse applies for coverage of nursing home care in the Medicaid program, certain Medicaid rules protect some types of income and assets for the at-home spouse, without affecting the nursing home spouse's eligibility for long-term care. Annuities are used as a vehicle for protecting community spouse assets while still qualifying for Medicaid coverage of long term services and supports (LTSS), particularly for couples in which one spouse remained in the community. By purchasing a single premium annuity, couples convert assets to an immediate income stream for the community spouse. Since Medicaid does not count a community spouse's income (within state-specific limits) in determining the institutionalized spouse's Medicaid eligibility, a couple can conserve more of their resources for the community spouse by converting assets to income via an annuity.

B. Summary of H.R. 181

H.R. 181, introduced by Rep. Markwayne Mullin (R-OK), would require that half of the income produced by Medicaid-compliant annuities above maximum spousal impoverishment protections be considered as available to the institutionalized spouse for purposes of eligibility of Medicaid long-term care. This would treat the income produced from annuities more like combined resources, rather than as income solely for the community spouse. This treatment would apply to an annuity created in the 60-month “lookback” period (the period of time before applying for Medicaid in which an individual’s or couple’s assets are reviewed) for purposes of determining the institutionalized spouse’s Medicaid eligibility for long-term care.