



House of Representatives

File No. 810

General Assembly

January Session, 2005

(Reprint of File No. 690)

Substitute House Bill No. 6688
As Amended by House Amendment
Schedules "A" and "C"

Approved by the Legislative Commissioner
May 27, 2005

**AN ACT IMPLEMENTING CERTAIN GOVERNOR'S BUDGET
RECOMMENDATIONS WITH RESPECT TO SOCIAL SERVICES
PROGRAMS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 17b-261d of the general statutes is repealed and
2 the following is substituted in lieu thereof (*Effective July 1, 2005*):

3 The Commissioner of Social Services [shall] may design and
4 implement a care enhancement and disease management initiative,
5 [which] if such initiative is determined to be cost effective by the
6 commissioner. The initiative shall provide for an integrated and
7 systematic approach for managing the health care needs of high cost
8 Medicaid recipients. Notwithstanding any provision of the general
9 statutes, the commissioner may contract with an entity to effectuate the
10 purposes of this section, provided such entity has an established and
11 demonstrated capability in the design and implementation of a disease
12 management initiative. [The] If implemented, the commissioner shall
13 report annually on the status of the care enhancement and disease
14 management initiative to the joint standing committees of the General

15 Assembly having cognizance of matters relating to appropriations and
16 the budgets of state agencies and human services.

17 Sec. 2. (NEW) (*Effective July 1, 2005*) The Commissioner of Social
18 Services shall establish prior authorization procedures under the
19 Medicaid program for admissions and lengths of stay in chronic
20 disease hospitals. The Commissioner of Social Services may contract
21 with an entity for administration of any aspect of such prior
22 authorization or may expand the scope of an existing contract with an
23 entity that performs utilization review services on behalf of the
24 Department of Social Services. The commissioner, pursuant to section
25 17b-10 of the general statutes, may implement policies and procedures
26 necessary to administer the provisions of this section while in the
27 process of adopting such policies and procedures as regulation,
28 provided the commissioner prints notice of intent to adopt regulations
29 in the Connecticut Law Journal not later than twenty days after the
30 date of implementation. Policies and procedures implemented
31 pursuant to this section shall be valid until the time final regulations
32 are adopted.

33 Sec. 3. Section 17b-342a of the general statutes is repealed and the
34 following is substituted in lieu thereof (*Effective from passage*):

35 (a) [Until June 30, 2006, the] The Commissioner of Social Services
36 shall, within available appropriations, establish and operate a state-
37 funded pilot program to allow no more than one hundred fifty persons
38 who are sixty-five years of age or older and meet the eligibility
39 requirements of the Connecticut home-care program for the elderly
40 established under section 17b-342 to receive personal care assistance
41 [as an alternative covered service to home health services in order to
42 avoid institutionalization, provided the average annual cost to the
43 state per recipient of personal care assistance under the pilot program
44 does not exceed the average annual cost to the state per recipient of
45 home health services under the home-care program] provided such
46 services are cost effective as determined by the Commissioner of Social
47 Services. Persons who receive personal care assistance services

48 pursuant to the pilot program established by section 47 of public act
49 00-2 of the June special session shall be included as participants of the
50 pilot program established pursuant to this section. Personal care
51 assistance under the program may be provided by nonspousal family
52 members of the recipient of services under the program.

53 (b) In conducting the pilot program, the commissioner or the
54 commissioner's agent (1) may require as a condition of participation
55 that participants in the pilot program disclose if a personal care
56 assistant is a nonspousal family member, (2) shall monitor the
57 provision of services under the pilot program, and (3) shall ensure the
58 cost-effectiveness of the pilot program.

59 (c) The commissioner shall establish the maximum allowable rate to
60 be paid for such services under the pilot program and may set a
61 separate lower rate for nonspousal family members providing services
62 as personal care assistants in the pilot program if deemed necessary by
63 the commissioner to ensure cost effectiveness of the pilot program and
64 to conduct the pilot program within available appropriations.

65 (d) Not later than January 1, [2006] 2007, the Commissioner of Social
66 Services shall submit a report on the pilot program to the joint
67 standing committees of the General Assembly having cognizance of
68 matters relating to appropriations and human services and to the select
69 committee of the General Assembly having cognizance of matters
70 relating to aging. The report shall include information on the quality of
71 services provided under the pilot program and shall be submitted in
72 accordance with section 11-4a.

73 Sec. 4. Section 17b-261a of the general statutes is repealed and the
74 following is substituted in lieu thereof (*Effective from passage*):

75 [(a) The Commissioner of Social Services shall seek a waiver of
76 federal law for the purpose of establishing that the penalty period
77 during which an applicant for or recipient of assistance for long-term
78 care under the Medicaid program is ineligible for Medicaid-funded
79 services due to a transfer of assets for less than fair market value shall

80 begin in the month the applicant is found otherwise eligible for
81 Medicaid coverage of services rather than in the month of the transfer
82 of assets. This section shall only apply to transfers that occur on or
83 after the effective date of the waiver. The provisions of section 17b-8
84 shall apply to this section.]

85 [(b)] (a) Any transfer or assignment of assets resulting in the
86 imposition of a penalty period shall be presumed to be made with the
87 intent, on the part of the transferor or the transferee, to enable the
88 transferor to obtain or maintain eligibility for medical assistance. This
89 presumption may be rebutted only by clear and convincing evidence
90 that the transferor's eligibility or potential eligibility for medical
91 assistance was not a basis for the transfer or assignment.

92 [(c)] (b) Any transfer or assignment of assets resulting in the
93 establishment or imposition of a penalty period shall create a debt, as
94 defined in section 36a-645, that shall be due and owing by the
95 transferor or transferee to the Department of Social Services in an
96 amount equal to the amount of the medical assistance provided to or
97 on behalf of the transferor on or after the date of the transfer of assets,
98 but said amount shall not exceed the fair market value of the assets at
99 the time of transfer. The Commissioner of Social Services, the
100 Commissioner of Administrative Services and the Attorney General
101 shall have the power or authority to seek administrative, legal or
102 equitable relief as provided by other statutes or by common law.

103 [(d) The Commissioner of Social Services, upon the request of a
104 nursing facility, may grant financial relief to a nursing facility if the
105 nursing facility establishes that (1) it is experiencing severe financial
106 hardship due to the transfer of asset penalty period beginning in the
107 month the applicant is found otherwise eligible for Medicaid coverage
108 of services rather than in the month of the transfer of assets; and (2) it
109 has made every effort permissible under state and federal law to
110 recover the funds that are due to it for caring for the individual. No
111 request for financial relief may be made by a nursing facility unless the
112 individual who is the subject of the imposition of the penalty period

113 has resided in the nursing facility for at least ninety days with no
114 payment having been made on the individual's behalf during that
115 period. If the department agrees to grant financial relief to the nursing
116 facility in the form of providing Medicaid payment to the facility, the
117 department shall seek recoupment of said payment from the
118 individual and the transferee by pursuing all means available to it
119 under state and federal law.

120 (e) The Commissioner of Social Services may waive the imposition
121 of a penalty period when the transferor (1) suffers from dementia at
122 the time of application for medical assistance and cannot explain
123 transfers that would otherwise result in the imposition of a penalty
124 period; or (2) suffered from dementia at the time of the transfer; or (3)
125 was exploited into making such a transfer. Waiver of the imposition of
126 a penalty period does not prohibit the establishment of a debt in
127 accordance with subsection (c) of this section.

128 (f) In reviewing transfers of assets for purposes of determining
129 eligibility for medical assistance, the department shall consider those
130 transfers of assets involving real property that occurred within sixty
131 months preceding the date on which an institutionalized individual
132 has applied for medical assistance under the Medicaid state plan,
133 except transfers of real property that are exempt under department
134 regulations. Transfers of assets that do not involve real property
135 remain subject to the look-back provisions contained in federal law.

136 (g) The Commissioner of Social Services may establish threshold
137 limits, which shall be the cumulative amount of transfers that may be
138 made within any year of the look-back period without resulting in the
139 imposition of a transfer of assets penalty.]

140 [(h)] (c) The Commissioner of Social Services, pursuant to section
141 17b-10, shall implement the policies and procedures necessary to carry
142 out the provisions of this section while in the process of adopting such
143 policies and procedures in regulation form, provided notice of intent to
144 adopt regulations is published in the Connecticut Law Journal not later

145 than twenty days after implementation. Such policies and procedures
146 shall be valid until the time final regulations are effective.

147 Sec. 5. Section 17b-342b of the general statutes and section 47 of
148 public act 00-2 of the June special session are repealed. (*Effective from*
149 *passage*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2005</i>	17b-261d
Sec. 2	<i>July 1, 2005</i>	New section
Sec. 3	<i>from passage</i>	17b-342a
Sec. 4	<i>from passage</i>	17b-261a
Sec. 5	<i>from passage</i>	Repealer section

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect
Department of Social Services	GF - See Below

Municipal Impact: None

Explanation

This bill as amended makes the care enhancement and disease management initiative under the Department of Social Services (DSS) permissive contingent upon whether the program is cost effective. The bill also requires DSS to establish prior authorization procedures for admission and lengths of stay in chronic disease hospitals. It is estimated that these changes will save the Medicaid program \$403,000 in FY06 and \$806,000 in FY07.

The bill further consolidates the current two personal care assistant pilot programs and streamlines the administration of the programs. The consolidated program will provide these services to certain individuals who meet the eligibility requirements of the Connecticut Home Care program. As the provision of personal care assistant services in this pilot program is contingent upon a cost effectiveness determination by the Commissioner of Social Services, no additional costs are anticipated.

Finally, the bill eliminates the provision of statute that requires the Commissioner of Social Services to seek a transfer of assets waiver for the Medicaid program. This waiver allows the state to begin the penalty period for an improper asset transfer to start at the time of Medicaid eligibility, rather than at the time of the transfer. The waiver is expected to result in savings to the state as it will delay Medicaid

eligibility for individuals who have improperly transferred assets in order to become Medicaid eligible. Based on the waiver previously submitted to the federal government, this change is expected to save \$87.8 million within its first five years of implementation (see table below).

Year 1	Year 2	Year 3	Year 4	Year 5
\$7,090,000	\$15,180,000	\$20,328,000	\$21,799,000	\$23,396,000

The implementation of this bill would eliminate these savings under the Medicaid program. The actual year in which these lost savings would occur would be dependent upon both federal approval of the waiver and the actual implementation schedule.

It should be noted that on May 6, 2005 the Governor announced that a transfer of assets waiver application previously submitted to the federal government had been withdrawn.

House "A" added the provision concerning the personal care assistant pilot programs and had no fiscal impact.

House "C" repealed the transfer of assets waiver and eliminated the associated savings.

OLR Bill Analysis

sHB 6688 (as amended by House "A" and "C")*

AN ACT IMPLEMENTING CERTAIN GOVERNOR'S BUDGET RECOMMENDATIONS WITH RESPECT TO SOCIAL SERVICES PROGRAMS**SUMMARY:**

This bill requires the commissioner of the Department of Social Services (DSS) to establish prior authorization procedures for admissions and lengths of stay for Medicaid-eligible individuals who might require care in chronic disease hospitals. (She apparently must adopt regulations to do this.) The bill permits her to administer prior authorization or any part of it by (1) contracting with someone else or (2) expanding the scope of an existing contract her department has with a utilization review contractor. The bill allows the program to go forward before regulations are formally adopted.

The bill also increases, from 100 to 150, the number of people who may participate in the state-funded Personal Care Assistance (PCA) pilot program created in 2004 (but not yet implemented). And it repeals a 50-person pilot PCA program established in 2000 for people either (1) transitioning off the state's Medicaid-funded PCA program for younger adults with disabilities or (2) eligible for the Connecticut Home Care Program for Elders (CHCPE) but unable to access adequate home care services. Under the bill, people in the repealed pilot program (which the commissioner increased in 2004 to 100 people, as authorized by law) become part of the 150-person pilot program. As a corollary, the bill repeals a requirement that the DSS commissioner apply for a waiver to include the 2000 pilot in the Medicaid-funded portion of the CHCPE. The bill also extends the reporting deadline for the ongoing pilot.

The bill repeals a 2000 law that directed the DSS commissioner to seek a federal waiver to allow her to make the start date later for long-term care asset transfer penalties. And it repeals provisions related to the waiver. DSS submitted the waiver request in 2002 but it was never approved.

Finally, the bill permits, instead of requires, the commissioner to design a care enhancement and disease management initiative and implement it if she determines that it will be cost effective. The commissioner has never implemented a program. The bill continues to require the commissioner to submit a status report on the program annually to the Appropriations and Human Services committees but only if she implements it.

*House Amendment "A" adds the PCA pilot provisions.

*House Amendment "C" adds the transfer of asset provisions.

EFFECTIVE DATE: July 1, 2005, except for the PCA pilot program and transfer of assets provisions, which are effective upon passage.

AUTHORITY TO IMPLEMENT PRIOR AUTHORIZATION BEFORE REGULATIONS ADOPTED

As she is often permitted by law to do, the bill permits the commissioner to implement policies and procedures needed to carry out the prior authorization while in the process of adopting regulations, provided she publishes notice of intent to adopt the regulations in the *Connecticut Law Journal* within 20 days after implementing the program. These policies and procedures are valid until final regulations are adopted.

STATE-FUNDED PCA PILOT

Under current law, people qualify for the 100-person pilot program's PCA services if (1) the services are an "alternative covered service to avoid institutionalization" (2) they are age 65 or older, (3) they meet the eligibility requirements for the CHCPE, and (4) the per-person cost of the PCA does not exceed the average annual per-person cost of home health services under the CHCPE. Under the bill, participants must still meet the age and CHCPE eligibility criteria but the PCA services do not have to be an "alternative covered service to avoid institutionalization" (By law, the CHCPE is a program specifically designed to prevent institutionalization.) And the bill requires only that the services be cost-effective, as the DSS commissioner determines.

The bill also extends the reporting deadline for the pilot from January

1, 2006 to January 1, 2007.

TRANSFER OF ASSETS WAIVER REPEAL

The bill repeals the requirement that the DSS commissioner submit a federal waiver request to delay the start date for the penalties she imposes when applicants for long-term care Medicaid transfer assets for less than fair market value solely to qualify for Medicaid do so within 36 months of applying. Under federal law, the penalty period (i.e., period of Medicaid ineligibility) starts from the date the asset is transferred. Under current state law, the penalty period would have started on the date the applicant was determined otherwise eligible for Medicaid if the waiver had been approved.

The bill also repeals language that would have provided financial relief to nursing homes that suffered losses as a result of the waiver going forward. These losses would have resulted because a home with a resident for whom a penalty of Medicaid ineligibility was imposed would not necessarily be able to discharge the resident immediately, yet would have no other source available to it to pay for the resident's care.

It also repeals language that would have allowed the commissioner to (1) increase the look-back period for home property transfers from three years to five years, (2) establish asset thresholds below which DSS would not scrutinize transfers, and (3) waive the imposition of the penalty if the resident making the transfer suffered from dementia or was exploited into making it.

It appears that most of these repealed policy changes would have required federal approval through a waiver. Under current law, repealed by the bill, none of these provisions would go forward until the waiver became effective.

The bill retains the law's presumption that transfers of assets resulting in penalty periods are made to obtain or maintain Medicaid eligibility and that the presumption can be rebutted only by clear and convincing evidence that the transfer was made for some other purpose. Although this language was part of the 2000 law, it is a codification of long-existing DSS regulations. The federal government has previously stated that this burden of proof is acceptable.

The bill retains language that makes transfers or assignments of assets that result in penalty periods debts that the transferor or transferee owes DSS in an amount equaling the amount of Medicaid provided to or on behalf of the transferor on or after the date the assets are transferred. This provision also gives the DSS and administrative services commissioners and the attorney general the authority to seek administrative, legal, or equitable relief as provided by other statutes or common law.

The bill also retains language authorizing the commissioner to implement policies and procedures necessary to carry out the remaining policy changes while in the process of adopting them in regulation.

BACKGROUND

Prior Review For Other Health Care Institutions

DSS staff already performs level-of-care reviews for all nursing home admissions. Staff assess whether the patient needs a nursing facility level of care.

In addition, DSS contracts with Qualidigm, Inc., which assesses whether Medicaid-eligible individuals should be admitted into acute care hospitals. The contractor assesses whether the procedures or diagnoses associated with the admission require a hospital level of care.

COMMITTEE ACTION

Human Services Committee

Joint Favorable Substitute Change of Reference

Yea 17 Nay 0

Appropriations Committee

Joint Favorable Report

Yea 50 Nay 0