



Senate

General Assembly

File No. 23

February Session, 2010

Substitute Senate Bill No. 68

Senate, March 11, 2010

The Committee on Human Services reported through SEN. DOYLE of the 9th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE DEPARTMENT OF SOCIAL SERVICES' RECOMMENDED CHANGES TO THE MEDICAL ASSISTANCE AND PHARMACY STATUTES.

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

1 Section 1. Section 17b-221b of the general statutes is repealed and
2 the following is substituted in lieu thereof (*Effective from passage*):

3 For the fiscal year ending June 30, 2002, and each fiscal year
4 thereafter, all federal matching funds received by the Department of
5 Social Services for special-education-related services rendered in
6 schools pursuant to section 10-76d, exclusive of any enhanced federal
7 medical assistance percentages used in calculating the federal portion
8 of Medicaid claims processed for Medicaid eligible special education
9 and related services provided to Medicaid eligible students in the
10 school district, shall be deposited in the General Fund and credited to a
11 nonlapsing account in the Department of Social Services. Sixty per cent
12 of such funds shall be expended by the Department of Social Services
13 for payment of grants to towns pursuant to subdivision (3) of

14 subsection (a) of section 10-76d and the remaining funds shall be
15 available for expenditure by the Department of Social Services for the
16 payment of Medicaid claims.

17 Sec. 2. Section 17b-274 of the general statutes is repealed and the
18 following is substituted in lieu thereof (*Effective from passage*):

19 (a) The Division of Criminal Justice shall periodically investigate
20 pharmacies to ensure that the state is not billed for a brand name drug
21 product when a less expensive generic substitute drug product is
22 dispensed to a Medicaid recipient. The Commissioner of Social
23 Services shall cooperate and provide information as requested by such
24 division.

25 (b) A licensed medical practitioner may specify in writing or by a
26 telephonic or electronic communication that there shall be no
27 substitution for the specified brand name drug product in any
28 prescription for a [Medicaid, state-administered general assistance, or
29 ConnPACE] recipient of benefits under a medical assistance program
30 administered by the Department of Social Services, provided (1) the
31 practitioner specifies the basis on which the brand name drug product
32 and dosage form is medically necessary in comparison to a chemically
33 equivalent generic drug product substitution, and (2) the phrase
34 "brand medically necessary" shall be in the practitioner's handwriting
35 on the prescription form or, if the prohibition was communicated by
36 telephonic communication, in the pharmacist's handwriting on such
37 form, and shall not be preprinted or stamped or initialed on such form.
38 If the practitioner specifies by telephonic communication that there
39 shall be no substitution for the specified brand name drug product in
40 any prescription for a [Medicaid, state-administered general assistance,
41 or ConnPACE] recipient of benefits under a medical assistance
42 program administered by the Department of Social Services, written
43 certification in the practitioner's handwriting bearing the phrase
44 "brand medically necessary" shall be sent to the dispensing pharmacy
45 within ten days. A pharmacist shall dispense a generically equivalent
46 drug product for any drug listed in accordance with the Code of

47 Federal Regulations Title 42 Part 447.332 for a drug prescribed for a
48 [Medicaid, state-administered general assistance, or ConnPACE]
49 recipient of benefits under a medical assistance program administered
50 by the Department of Social Services unless the phrase "brand
51 medically necessary" is ordered in accordance with this subsection and
52 such pharmacist has received approval to dispense the brand name
53 drug product in accordance with subsection (c) of this section.

54 (c) The Commissioner of Social Services shall implement a
55 procedure by which a pharmacist shall obtain approval from an
56 independent pharmacy consultant acting on behalf of the Department
57 of Social Services, under an administrative services only contract,
58 whenever the pharmacist dispenses a brand name drug product to a
59 [Medicaid, state-administered general assistance, or ConnPACE]
60 recipient of benefits under a medical assistance program administered
61 by the Department of Social Services and a chemically equivalent
62 generic drug product substitution is available. The length of
63 authorization for brand name drugs shall be in accordance with section
64 17b-491a. In cases where the brand name drug is less costly than the
65 chemically equivalent generic drug when factoring in manufacturers'
66 rebates, the pharmacist shall dispense the brand name drug. If such
67 approval is not granted or denied within two hours of receipt by the
68 commissioner of the request for approval, it shall be deemed granted.
69 Notwithstanding any provision of this section, a pharmacist shall not
70 dispense any initial maintenance drug prescription for which there is a
71 chemically equivalent generic substitution that is for less than fifteen
72 days without the department's granting of prior authorization,
73 provided prior authorization shall not otherwise be required for
74 atypical antipsychotic drugs if the individual is currently taking such
75 drug at the time the pharmacist receives the prescription. The
76 pharmacist may appeal a denial of reimbursement to the department
77 based on the failure of such pharmacist to substitute a generic drug
78 product in accordance with this section.

79 (d) A licensed medical practitioner shall disclose to the Department
80 of Social Services or such consultant, upon request, the basis on which

81 the brand name drug product and dosage form is medically necessary
82 in comparison to a chemically equivalent generic drug product
83 substitution. The Commissioner of Social Services shall establish a
84 procedure by which such a practitioner may appeal a determination
85 that a chemically equivalent generic drug product substitution is
86 required for a [Medicaid, state-administered general assistance, or
87 ConnPACE] recipient of benefits under a medical assistance program
88 administered by the Department of Social Services.

89 Sec. 3. Section 17b-274a of the general statutes is repealed and the
90 following is substituted in lieu thereof (*Effective from passage*):

91 The Commissioner of Social Services may establish maximum
92 allowable costs to be paid under [the Medicaid, state-administered
93 general assistance, ConnPACE and Connecticut AIDS drug assistance]
94 medical assistance programs administered by the Department of Social
95 Services for generic prescription drugs based on, but not limited to,
96 actual acquisition costs. The department shall implement and maintain
97 a procedure to review and update the maximum allowable cost list at
98 least annually, and shall report annually to the joint standing
99 committee of the General Assembly having cognizance of matters
100 relating to appropriations and the budgets of state agencies on its
101 activities pursuant to this section.

102 Sec. 4. Section 17b-274c of the general statutes is repealed and the
103 following is substituted in lieu thereof (*Effective from passage*):

104 (a) The Commissioner of Social Services may establish a voluntary
105 mail order option for any maintenance prescription drug covered
106 under [the Medicaid, state-administered general assistance,
107 ConnPACE or Connecticut AIDS drug assistance programs] a medical
108 assistance program administered by the Department of Social Services.

109 (b) Notwithstanding any provision of the general statutes or
110 regulations adopted pursuant thereto, the Commissioner of Social
111 Services may provide a voluntary mail order option, regardless of a
112 mail order pharmacy's location, for any prescription drug covered

113 under the Medicare Part D program established pursuant to Public
114 Law 108-173, the Medicare Prescription Drug, Improvement, and
115 Modernization Act of 2003.

116 Sec. 5. Section 17b-274d of the 2010 supplement to the general
117 statutes is repealed and the following is substituted in lieu thereof
118 (*Effective from passage*):

119 (a) Pursuant to 42 USC 1396r-8, there is established a
120 Pharmaceutical and Therapeutics Committee within the Department of
121 Social Services.

122 (b) The Pharmaceutical and Therapeutics Committee shall be
123 comprised as specified in 42 USC 1396r-8 and shall consist of
124 [fourteen] sixteen members appointed by the Governor. [Five] Six
125 members shall be physicians licensed pursuant to chapter 370,
126 including one general practitioner, one pediatrician, one geriatrician,
127 one psychiatrist who primarily treats adults, one child and adolescent
128 psychiatrist and one specialist in family planning, four members shall
129 be pharmacists licensed pursuant to chapter 400j, two members shall
130 be visiting nurses, one specializing in adult care and one specializing
131 in psychiatric care, one member shall be a clinician designated by the
132 Commissioner of Mental Health and Addiction Services, one member
133 shall be a clinician designated by the Commissioner of Children and
134 Families, one member shall be a representative of pharmaceutical
135 manufacturers and one member shall be a consumer representative.
136 The committee may, on an ad hoc basis, seek the participation of other
137 state agencies or other interested parties in its deliberations. The
138 members shall serve for terms of two years from the date of their
139 appointment. Members may be appointed to more than one term. The
140 Commissioner of Social Services, or the commissioner's designee, shall
141 convene the committee following the Governor's designation of
142 appointments. The administrative staff of the Department of Social
143 Services shall serve as staff for said committee and assist with all
144 ministerial duties. The Governor shall ensure that the committee
145 membership includes Medicaid participating physicians and

146 pharmacists, with experience serving recipients of benefits under
147 medical assistance programs administered by the Department of Social
148 Services.

149 (c) Committee members shall select a chairperson and vice-
150 chairperson from the committee membership on an annual basis.

151 (d) The committee shall meet at least quarterly, and may meet at
152 other times at the discretion of the chairperson and committee
153 membership. The committee shall comply with all regulations adopted
154 by the department, including notice of any meeting of the committee,
155 pursuant to the requirements of chapter 54.

156 (e) The Department of Social Services, in consultation with the
157 Pharmaceutical and Therapeutics Committee, may adopt preferred
158 drug lists for use in [the Medicaid, state-administered general
159 assistance and ConnPACE] medical assistance programs administered
160 by the Department of Social Services. The Department of Social
161 Services, upon entering into a contract for the provision of prescription
162 drug coverage to medical assistance recipients receiving services in a
163 managed care setting as provided by section 17b-266a, shall in
164 consultation with the Pharmaceutical and Therapeutics Committee,
165 expand the preferred drug list for use in the HUSKY Plan, Part A and
166 Part B. To the extent feasible, the department shall review all drugs
167 included on the preferred drug lists at least every twelve months, and
168 may recommend additions to, and deletions from, the preferred drug
169 lists, to ensure that the preferred drug lists provide for medically
170 appropriate drug therapies for [Medicaid, state-administered general
171 assistance and ConnPACE patients] recipients of benefits under
172 medical assistance programs administered by the Department of Social
173 Services. [For the fiscal year ending June 30, 2004, such drug lists shall
174 be limited to use in the Medicaid and ConnPACE programs and cover
175 three classes of drugs, including proton pump inhibitors and two other
176 classes of drugs determined by the Commissioner of Social Services.
177 Not later than June 30, 2005, the Department of Social Services, in
178 consultation with the Pharmaceutical and Therapeutic Committee shall

179 expand such drug lists to include other classes of drugs, except as
180 provided in subsection (f) of this section, in order to achieve savings
181 reflected in the amounts appropriated to the department, for the
182 various components of the program, in the state budget act.]

183 (f) Nonpreferred drugs in the classes of drugs included on the
184 preferred drug lists shall be subject to prior authorization. Prior
185 authorization is not required for any mental-health-related drug that
186 has been filled or refilled, in any dosage, at least one time in the one-
187 year period prior to the date the individual presents a prescription for
188 the drug at a pharmacy. If prior authorization is granted for a drug not
189 included on a preferred drug list, the authorization shall be valid for
190 one year from the date the prescription is first filled. Antiretroviral
191 classes of drugs shall not be included on the preferred drug lists.

192 (g) The Department of Social Services shall publish and disseminate
193 the preferred drug lists to all [Medicaid] providers in the state that
194 participate in medical assistance programs administered by the
195 department.

196 (h) The department may negotiate supplemental rebate agreements
197 with manufacturers that are in addition to those required under Title
198 XIX of the Social Security Act. The committee shall ensure that the
199 pharmaceutical manufacturers agreeing to provide a supplemental
200 rebate pursuant to 42 USC 1396r-8(c) have an opportunity to present
201 evidence supporting inclusion of a product on the preferred drug lists
202 unless a court of competent jurisdiction, in a final decision, determines
203 that the Secretary of Health and Human Services does not have
204 authority to allow such supplemental rebates, provided the inability to
205 utilize supplemental rebates pursuant to this subsection shall not
206 impair the committee's authority to maintain preferred drug lists.
207 Upon timely notice, the department shall ensure that any drug that has
208 been approved, or had any of its particular uses approved, by the
209 United States Food and Drug Administration under a priority review
210 classification, will be reviewed by the Pharmaceutical and
211 Therapeutics Committee at the next regularly scheduled meeting. To

212 the extent feasible, upon notice by a pharmaceutical manufacturer, the
213 department shall also schedule a product review for any new product
214 at the next regularly scheduled meeting of the Pharmaceutical and
215 Therapeutics Committee.

216 (i) Factors considered by the department and the Pharmaceutical
217 and Therapeutics Committee in developing the preferred drug lists
218 shall include, but not be limited to, clinical efficacy, safety and cost
219 effectiveness of a product.

220 (j) The Pharmaceutical and Therapeutics Committee may also make
221 recommendations to the department regarding the prior authorization
222 of any prescribed drug.

223 (k) A recipient who is denied a nonpreferred drug may request an
224 administrative hearing in accordance with section 17b-60.

225 (l) The Commissioner of Social Services may contract with a
226 pharmacy benefits organization or a single entity qualified to negotiate
227 with pharmaceutical manufacturers for supplemental rebates,
228 available pursuant to 42 USC 1396r-8(c), for the purchase of drugs
229 listed on the preferred drug lists established pursuant to subsection (e)
230 of this section.

231 Sec. 6. Section 17b-274e of the general statutes is repealed and the
232 following is substituted in lieu thereof (*Effective from passage*):

233 A pharmacist, when filling a prescription under [the Medicaid,
234 ConnPACE, Connecticut AIDS drug assistance or the state-
235 administered general assistance programs] a medical assistance
236 program administered by the Department of Social Services, shall fill
237 such prescription utilizing the most cost-efficient dosage, consistent
238 with the prescription of a prescribing practitioner as defined in section
239 20-571, unless such pharmacist receives permission to do otherwise
240 pursuant to the prior authorization requirements set forth in sections
241 17b-274, as amended by this act, and 17b-491a.

242 Sec. 7. Section 17b-280 of the 2010 supplement to the general statutes

243 is repealed and the following is substituted in lieu thereof (*Effective*
244 *from passage*):

245 (a) The state shall reimburse for all legend drugs provided under
246 [the Medicaid, state-administered general assistance, ConnPACE and
247 Connecticut AIDS drug] medical assistance programs administered by
248 the Department of Social Services at the lower of (1) the rate
249 established by the Centers for Medicare and Medicaid Services as the
250 federal acquisition cost, (2) the average wholesale price minus fourteen
251 per cent, or (3) an equivalent percentage as established under the
252 Medicaid state plan. The commissioner shall also establish a
253 professional fee of two dollars and sixty-five cents for each
254 prescription to be paid to licensed pharmacies for dispensing drugs to
255 [Medicaid, state-administered general assistance, ConnPACE and
256 Connecticut AIDS drug assistance] recipients of benefits under medical
257 assistance programs administered by the Department of Social Services
258 in accordance with federal regulations; and on and after September 4,
259 1991, payment for legend and nonlegend drugs provided to Medicaid
260 recipients shall be based upon the actual package size dispensed.
261 Effective October 1, 1991, reimbursement for over-the-counter drugs
262 for such recipients shall be limited to those over-the-counter drugs and
263 products published in the Connecticut Formulary, or the cross
264 reference list, issued by the commissioner. The cost of all over-the-
265 counter drugs and products provided to residents of nursing facilities,
266 chronic disease hospitals, and intermediate care facilities for the
267 mentally retarded shall be included in the facilities' per diem rate.
268 Notwithstanding the provisions of this subsection, no dispensing fee
269 shall be issued for a prescription drug dispensed to a ConnPACE or
270 Medicaid recipient who is a Medicare Part D beneficiary when the
271 prescription drug is a Medicare Part D drug, as defined in Public Law
272 108-173, the Medicare Prescription Drug, Improvement, and
273 Modernization Act of 2003.

274 (b) The Department of Social Services may provide an enhanced
275 dispensing fee to a pharmacy enrolled in the federal Office of
276 Pharmacy Affairs Section 340B drug discount program established

277 pursuant to 42 USC 256b or a pharmacy under contract to provide
278 services under said program.

279 Sec. 8. Section 17b-491b of the general statutes is repealed and the
280 following is substituted in lieu thereof (*Effective from passage*):

281 The maximum allowable cost paid for Factor VIII pharmaceuticals
282 under [the Medicaid, state-administered general assistance, and
283 ConnPACE] medical assistance programs administered by the
284 Department of Social Services shall be the actual acquisition cost plus
285 eight per cent. The Commissioner of Social Services may designate
286 specific suppliers of Factor VIII pharmaceuticals from which a
287 dispensing pharmacy shall order the prescription to be delivered to the
288 pharmacy and billed by the supplier to the Department of Social
289 Services. If the commissioner so designates specific suppliers of Factor
290 VIII pharmaceuticals, the department shall pay the dispensing
291 pharmacy a handling fee equal to eight per cent of the actual
292 acquisition cost for such prescription.

293 Sec. 9. Subsection (c) of section 20-619 of the general statutes is
294 repealed and the following is substituted in lieu thereof (*Effective from*
295 *passage*):

296 (c) A prescribing practitioner may specify in writing or by a
297 telephonic or other electronic communication that there shall be no
298 substitution for the specified brand name drug product in any
299 prescription, provided (1) in any prescription for a [Medicaid, state-
300 administered general assistance, or ConnPACE] recipient of benefits
301 under a medical assistance program administered by the Department
302 of Social Services, such practitioner specifies the basis on which the
303 brand name drug product and dosage form is medically necessary in
304 comparison to a chemically equivalent generic drug product
305 substitution, and (2) the phrase "BRAND MEDICALLY NECESSARY",
306 shall be in the practitioner's handwriting on the prescription form or
307 on an electronically-produced copy of the prescription form or, if the
308 prohibition was communicated by telephonic or other electronic
309 communication that did not reproduce the practitioner's handwriting,

310 a statement to that effect appears on the form. The phrase "BRAND
 311 MEDICALLY NECESSARY" shall not be preprinted or stamped or
 312 initialed on the form. If the practitioner specifies by telephonic or other
 313 electronic communication that did not reproduce the practitioner's
 314 handwriting that there shall be no substitution for the specified brand
 315 name drug product in any prescription for a [Medicaid, state-
 316 administered general assistance, or ConnPACE] recipient of benefits
 317 under a medical assistance program administered by the Department
 318 of Social Services, written certification in the practitioner's handwriting
 319 bearing the phrase "BRAND MEDICALLY NECESSARY" shall be sent
 320 to the dispensing pharmacy within ten days.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	17b-221b
Sec. 2	<i>from passage</i>	17b-274
Sec. 3	<i>from passage</i>	17b-274a
Sec. 4	<i>from passage</i>	17b-274c
Sec. 5	<i>from passage</i>	17b-274d
Sec. 6	<i>from passage</i>	17b-274e
Sec. 7	<i>from passage</i>	17b-280
Sec. 8	<i>from passage</i>	17b-491b
Sec. 9	<i>from passage</i>	20-619(c)

Statement of Legislative Commissioners:

The first occurrence of "and" in the bill title was removed for accuracy.

HS *Joint Favorable Subst.-LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

Section 1 of this bill clarifies that the current revenue sharing arrangement between the state and local education authorities is not affected by any enhanced Medicaid match that the state may receive from the federal government. This conforms CGS Sec. 17b-221b to CGS Sec 10-76d, which was likewise amended by P.A. 09-5 (SSS). As this change implements current practice, there is no associated impact.

The bill also adds two members to the Pharmaceutical and Therapeutics Committee and makes numerous changes in references to the Department of Social Services pharmaceutical assistance programs. There is no fiscal impact associated with these changes.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**sSB 68*****AN ACT CONCERNING THE DEPARTMENT OF SOCIAL SERVICES' RECOMMENDED CHANGES TO THE MEDICAL ASSISTANCE AND PHARMACY STATUTES.*****SUMMARY:**

This bill increases by two the membership of the Pharmaceutical and Therapeutics (P & T) Committee, which oversees the development and maintenance of the Department of Social Services (DSS)' preferred drug list (PDL).

The bill also conforms law to a provision in PA 09-5, September Special Session (SSS) that required DSS to exclude enhanced federal Medicaid matching funds when calculating the federal portion of Medicaid claims made under the School-Based Child Health Program (SBCH).

Wherever there are references to a pharmacy benefit within a specific DSS program or programs, the bill replaces the reference with a more general reference to all medical assistance programs DSS runs.

Finally, the bill removes obsolete language related to the PDL.

EFFECTIVE DATE: Upon passage

PHARMACEUTICAL AND THERAPEUTICS (P & T) COMMITTEE

The bill increases, from 14 to 16, the membership of the P & T Committee. Currently, the committee includes one psychiatrist. The bill requires two psychiatrists, one who primarily treats adults and another who treats children and adolescents. The other new member is a clinician whom the commissioner of the Department of Children and Families (DCF) designates. Federal law requires states to create committees when they establish drug formularies that limit the drugs

to which Medicaid recipients have access. The state's preferred drug list (PDL) is a type of formulary.

SCHOOL-BASED CHILD HEALTH PROGRAM

By law, DSS must deposit into a nonlapsing, General Fund account all federal matching funds it receives for special education-related Medicaid-eligible services under the SBCH program. In making this deposit, the bill requires DSS to exclude any enhanced federal matching Medicaid funds it receives for the SBCH. The 2009 federal stimulus increased the state's federal Medicaid match from 50% to 62% until December 31, 2010.

PA 09-5, SSS (§ 61) required DSS, beginning with FY 09, to exclude any enhanced federal matching funds in calculating the federal portion of the SBCH Medicaid claims.

DSS MEDICAL ASSISTANCE PROGRAM PHARMACY BENEFITS

Wherever there is a statutory reference to DSS pharmacy benefits, the bill substitutes the name of the individual medical assistance program or programs offering the benefit (e.g., Medicaid) with the phrase "benefits under a medical assistance program administered by DSS." Currently, DSS administers the following medical assistance programs that offer pharmacy benefits: HUSKY A (Medicaid for families), all other Medicaid, HUSKY B, Charter Oak, State-Administered General Assistance, ConnPACE, Connecticut AIDS Drug Assistance, and State Funded Medical Assistance for Noncitizens.

In practice, DSS rules regarding pharmacy benefits (e.g., prior authorization) apply across the board to all of its programs that offer the benefit.

The bill extends this to a provision that requires the governor to ensure that the P & T Committee membership include participating physicians and pharmacists with experience serving program recipients. But it leaves unchanged a requirement that the providers participate in Medicaid. This could have the effect of limiting which

providers could be members of the committee.

BACKGROUND

Related Bill

SB 281, favorably reported by the Human Services Committee, requires the P & T Committee to ensure public access to its meetings.

School-Based Child Health Program

Under the SBCH program, towns bill DSS for any Medicaid-covered services (e.g., durable medical equipment) that, by law, they must provide to children requiring special education. DSS bills the federal government for 100% of what the towns spend, keeps one half of the federal reimbursement, and passes the other half to the towns.

Federal law requires local education agencies to identify all children with disabilities who need special education and “related” services.

COMMITTEE ACTION

Human Services Committee

Joint Favorable

Yea 19 Nay 0 (02/25/2010)