



*Written Testimony before the
Judiciary Committee
February 28, 2011*

IN OPPOSITION TO S.B. 1058, AAC THE APPLICABILITY OF PROBATE COURT ORDERS TO STATE AGENCIES

Section 1 of the bill requires state agencies to “recognize and enforce any order, denial or decree of a court of probate that is applicable to the operations of the state agency”. In addition, this section requires that a state agency that has been aggrieved by an order denial or decree of a court of probate must appeal to Superior Court.

The Department of Social Services (DSS) opposes section 1 of this bill because (1) it conflicts with federal and state law; (2) it would result in DSS being bound by probate court orders without having participated in the probate court proceedings; (3) it would place an undue burden on the Superior Courts and the Attorney General’s office, which would represent DSS in its appeals; and (4) its passage would place an extraordinary financial burden upon Connecticut taxpayers.

Under federal law, the Medicaid State plan must “provide for the establishment or designation of a single State agency to administer or supervise the administration of the plan.” 42 U.S.C. 1396a(a)(5). In Connecticut, DSS has been designated as the single State agency for Medicaid.

As the single State agency, DSS “must not delegate to, other than its own officials, authority to - - (i) Exercise administrative discretion in the administration or supervision of the plan, or (ii) issue policies, rules, and regulations on program matters.” 42 C.F.R. 431.10(e)(1). Moreover, “[t]he authority of the agency must not be impaired if any of its rules, regulations, or decisions are subject to review, clearance, or similar action by other offices or agencies of the State,” and if other offices perform services for the Medicaid agency, they “must not have the authority to change or disapprove any administrative decision of that agency or otherwise substitute their judgment for that of the Medicaid agency with respect to the application of policies, rules, and regulations issued by the Medicaid agency.” 42 C.F.R. 431.10(e)(3).

Federal law also provides that the single state agency must treat the inability of an individual to access funds as a result of court order made at an individual's request as a transfer. 42 U.S.C. 1396p(c)(1); 42 U.S.C. 1396p(h)(1)(C).

Section 1 of the proposed bill appears to violate the federal statutory requirement that the single state agency determine Medicaid eligibility.

Similarly, pursuant to state statute, DSS is specifically designated as the "sole agency to determine eligibility for assistance and services." Conn. Gen. Stat. 17b-261b(a). In addition, state statute provides that "[a] disposition of property ordered by a court shall be evaluated in accordance with the standards applied to any other such disposition for the purpose of determining eligibility." Conn. Gen. Stat. 17b-261(a). Finally, state law makes it clear that "the availability of funds in a trust or similar instrument funded in whole or in part by the applicant or the applicant's spouse shall be determined pursuant to the Omnibus Budget Reconciliation Act of 1993, 42 USC 1396p." Conn. Gen. Stat. 17b-261(c).

Experience shows that applicants utilize the probate courts to obtain decrees that render assets unavailable for purposes of determining Medicaid eligibility. For instance, that a trust is not "available" to an applicant; that "fair consideration" was provided in return for a transfer; that the applicant retained sufficient funds to meet foreseeable needs; or that a family member lived with and provided services that avoided institutionalization.

These are all examples of the types of determinations that DSS is required to make in eligibility decision making. As stated above, both state and federal law provide that DSS is the sole entity that may make such decisions in accordance with state and federal Medicaid law. The proposed bill, however, appears to conflict with such laws by requiring the Department to recognize and enforce orders made by probate courts.

Second, this is problematic because DSS does not receive notice in all cases of the probate court proceedings that result in court orders and decrees. Individuals often petition the probate court before they have even applied for Medicaid. To require DSS to be bound by an order when it has not had the opportunity to participate in the proceeding is contrary to established case law in the state. Even in those cases where DSS receives notice, it is not provided with a copy of the probate application or any supporting documentation that is the subject of the hearing. Often, the person involved may not have applied for assistance and DSS would have no clear reason to participate. Moreover, DSS may have inadequate information about the individual's assets, which would undoubtedly be relevant at the hearing.

In cases where DSS is not made aware of the probate court proceeding, the 45-day appeal period could easily expire before the individual applied for Medicaid, leaving DSS with no option to appeal the probate court decision.

Third, this will have a significant fiscal impact if passed. Individuals with sizable assets could utilize the probate court in anticipation of applying for public assistance to render those assets unavailable for purposes of Medicaid eligibility. We would be forced to appeal this decision, rather than to make our own determination as the single state agency as to the availability of the assets. Although the case may ultimately be appealed, it would be after an administrative hearing decision that was made in accordance with state and federal Medicaid law.

Furthermore, this would create additional burdens on the Attorney General's Office, which would be responsible for representing DSS at probate hearings and appeals.

For all the reasons stated above the department is opposed to section 1 of S.B. 1058.