OLR Bill Analysis

sSB 282 (File 282, as amended by Senate "A")*

AN ACT CONCERNING THE RETURN OF A GIFT TO A PERSON IN NEED OF LONG-TERM CARE SERVICES.

SUMMARY:

By law, the Department of Social Services (DSS) commissioner must impose a penalty period (period of Medicaid ineligibility) if institutionalized individuals (e.g., long-term care facility residents or recipients of Medicaid-waiver home and community-based services) transfer or assign their assets for less than they are worth in order to shift their care costs to the Medicaid program. The penalty period applies when such transactions occur within five years before a person applies for Medicaid long-term care. A penalty period generally is not imposed if the entire amount of the transferred asset is returned to the institutionalized individual.

This bill requires the commissioner to reduce the penalty period if part of the transferred assets are returned to the individual. The reduction must equal the length of time attributed to the amount returned. However, current law, unchanged by the bill, prohibits the commissioner from making such a reduction (see COMMENT).

The bill also makes technical changes.

*Senate Amendment "A" adds the provision requiring the reduction in penalty periods for partial asset returns.

EFFECTIVE DATE: July 1, 2012

BACKGROUND

Medicaid Long-Term Care Asset Transfers

By law, a Medicaid long-term care beneficiary can be penalized for an asset transfer even if the entire amount is returned if DSS determines that the circumstances surrounding the transaction indicate that the Medicaid recipient or his or her spouse or authorized representative intended from the time the asset was transferred to (1) change the start date of the penalty period or (2) shift long-term care facility costs to the Medicaid program. Unless the transferor can prove otherwise by clear and convincing evidence, the entire amount of the returned asset is deemed available from the transfer date. If the transferor prevails, the asset is deemed available from the date of its return.

A conveyance and subsequent return of an asset for the purpose of shifting costs to the Medicaid program is deemed to be a trust-like device, and the asset is considered available for the purposes of determining Medicaid eligibility. Under current law, a partial return of a transferred asset cannot reduce the penalty period. This includes transfers to the same or different transferees.

COMMENT

Conflict With Existing Law

The bill requires the DSS commissioner to reduce the penalty period if part of the transferred assets are returned to the institutionalized individual. But, the bill retains the existing statutory provision that prohibits the commissioner from making such a reduction for partially returned assets (CGS § 17b-261a (d)).

COMMITTEE ACTION

Aging Committee

Joint Favorable Substitute
Yea 12 Nay 0 (03/15/2012)