Senate

General Assembly **File No. 19**

January Session, 2013 Substitute Senate Bill No. 523

Senate, March 4, 2013

The Committee on Aging reported through SEN. AYALA, A. of the 23rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

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

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

Section 1. Subsection (d) of section 17b-261a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2013*):

(d) (1) For purposes of this subsection, an "institutionalized individual" means an individual who has applied for or is receiving (A) services from a long-term care facility, (B) services from a medical institution that are equivalent to those services provided in a long-term care facility, or (C) home and community-based services under a Medicaid waiver.

[(d)**]** (2) An institutionalized individual shall not be penalized for the transfer of an asset if the entire amount of the transferred asset is returned to the institutionalized individual. **[**The partial return of a transferred asset shall not result in a reduced penalty period.**]** A transferee may return any portion of a transferred asset to the transferor. If any transferred asset is returned to the transferor, the Department of Social Services shall adjust the penalty period to the extent permitted by federal law, provided the ending date of the penalty period as originally determined by the department shall not change. The department shall consider the entire amount of the returned asset to be available to the transferor only from the date of return of the transferred asset, and shall not determine the transferor to be ineligible in the month the transferred asset is returned, provided the transferor reduced the returned asset in accordance with federal law.

[(1)] (3) If there are multiple transfers of assets to the same or different transferees, a return of anything less than the total amount of the transferred assets from all of the separate transferees shall not constitute a return of the entire amount of the transferred assets and shall represent a partial return.

[(2) If the circumstances surrounding the transfer of an asset and return of the entire amount of the asset to the institutionalized individual indicates to the Department of Social Services that such individual, such individual's spouse or such individual's authorized representative intended, from the time the asset was transferred, that the transferee would subsequently return the asset to such individual, such individual's spouse or such individual's authorized representative for the purpose of altering the start of the penalty period or shifting nursing facility costs, that may have been borne by such individual, to the Medicaid program, the entire amount of the returned asset shall be considered available to such individual from the date of transfer. If such individual demonstrates to the department that the purpose of the transfer and its subsequent return was not to alter the penalty period or qualify such individual for Medicaid eligibility, the entire amount of the returned asset is considered available to the individual from the date of the return of the transferred asset.]

[(3)**]** (4) The conveyance and subsequent return of an asset for the purpose of shifting costs to the Medicaid program shall be regarded as a trust-like device. Such asset shall be considered available for the purpose of determining Medicaid eligibility. The conveyance and subsequent return of an asset made exclusively for a purpose other than to qualify for the payment of long-term care services under the Medicaid program shall not be regarded as a trust-like device.

[(4) For purposes of this section, an "institutionalized individual" means an individual who is receiving (A) services from a long-term care facility, (B) services from a medical institution which are equivalent to those services provided in a long-term care facility, or (C) home and community-based services under a Medicaid waiver.**]**

This act shall take effect as follows and shall amend the following sections:		
Section 1	*July 1, 2013*	17b-261a(d)

Statement of Legislative Commissioners:
In the last sentence of Section 1 (d)(2), "transferee" and "institutionalized individual" were changed to "transferor" for accuracy.

AGE *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

The bill is not anticipated to result in a fiscal impact to the state. It requires the Department of Social Services (DSS) to adjust a penalty period if any transferred asset is returned to the transferor; however, it prohibits changing the end date of a penalty period. Penalty period refers to the time during which a person is ineligible for Medicaid based on the uncompensated value of a transferred asset.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis
sSB 523

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) on institutionalized individuals who 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 (1) applies only when such transactions occur within five years before a person applies for Medicaid long-term care and (2) generally is not imposed if the entire amount of the transferred asset is returned to the institutionalized individual. Institutionalized individuals are applicants or recipients of long-term care facility or Medicaid waiver home- and community-based services.

The bill requires the commissioner, to the extent permitted by federal law, to reduce the penalty period if (1) part of the transferred assets are returned to the individual and (2) the penalty period's original end date does not change. DSS must consider the entire amount of the returned asset to be available to the transferor from the date it was returned. It cannot determine the transferor to be ineligible for Medicaid in the month the transferred asset is returned as long as the individual reduced the returned asset in accordance with federal law (e.g., did not make the transfer to shift care costs to the Medicaid program).

By law, 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. The bill specifies that this does not apply to a conveyance and return of an asset made exclusively for a

purpose other than qualifying for Medicaid long-term care services.

The bill also repeals a provision requiring DSS to penalize a nursing home resident for an improper asset transfer (as determined by the department) in which the entire amount is returned.

Lastly, the bill makes technical changes.

EFFECTIVE DATE: July 1, 2013

COMPLETE ASSET RETURNS

The bill eliminates a provision requiring DSS, based on the circumstances surrounding the transaction, to penalize a nursing home resident to whom the entire amount of a transferred asset is returned.

Under the repealed provision, DSS must penalize the resident if it determines that these circumstances indicate that the individual, 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. Under the eliminated provision, unless the individual can prove otherwise by clear and convincing evidence, the entire amount of the returned asset is available from the transfer date. If the individual prevails, the asset is deemed available from the date of its return.

COMMITTEE ACTION

Aging Committee

Joint Favorable
Yea 11 Nay 0 (02/14/2013)