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## **OLR Bill Analysis**

### **sHB 6413**

#### ***AN ACT CONCERNING MEDICAID ELIGIBILITY AND THE IDENTIFICATION AND RECOVERY OF ASSETS.***

#### **SUMMARY:**

This bill changes how the law treats the (1) assets of Medicaid long-term care applicants and beneficiaries and (2) amount of income Medicaid nursing home residents must apply to their care costs (applied income).

By law, Medicaid long-term care applicants who transfer assets for less than fair market value within five years of applying for coverage are presumed to have done so solely to qualify for Medicaid. People who cannot successfully rebut this presumption face a penalty period (period of Medicaid ineligibility). The value of the transferred asset is considered a debt owed to the Department of Social Services (DSS).

The bill:

1. creates a second debt owed to nursing homes that serve these residents without payment during a penalty period and allows homes to sue to collect this debt;
2. allows the court to award damages and associated court fees for cases brought by the state or nursing homes regarding improper Medicaid asset transfers;
3. allows a court, including a probate court, to order assets or proceeds associated with an improper transfer to be held in a constructive trust to satisfy a debt owed to a nursing home;
4. requires DSS to make certain considerations when determining a Medicaid nursing home resident's applied income amount;
5. requires nursing homes to provide written notice of applied

- income obligations and potential consequences for nonpayment to the resident and any person controlling the resident's income;
6. allows nursing homes to sue to collect applied income it is owed and courts to award both the amount due and associated legal fees;
  7. requires nursing homes, when filing an applied income or improper asset transfer suit and after a court issues a related judgment or decree, to mail copies of the complaint and court issuance to the attorney general and DSS commissioner; and
  8. prohibits DSS, to the extent federal law allows, from rendering a Medicaid long-term care applicant ineligible for assistance solely based on owning a life insurance policy with a surrender value of less than \$10,000.

EFFECTIVE DATE: October 1, 2013

## **MEDICAID LONG-TERM CARE ASSET TRANSFERS**

### ***Transfers that Create a Debt***

By law, when an asset transfer results in a penalty period, such transfer creates a debt owed to DSS by the person transferring the asset or the transferee. The amount of the debt equals the amount of Medicaid services provided to the transferor beginning on the date the assets are transferred.

During a penalty period, DSS does not make Medicaid payments for the transferor's care. Thus, DSS does not incur a debt. The bill creates a second statutory debt, due to the nursing home, in an amount equaling the unpaid cost of care the facility provides during the penalty period.

The bill further allows a court, if it determines that assets were willfully transferred to obtain or maintain Medicaid eligibility, to assess court costs and attorneys' fees in addition to the debt amount against the transferor and any transferee who knew of the transfer's purpose. Both the transferor and transferee are jointly and severally liable.

By law, the commissioners of DSS and administrative services and the attorney general may seek administrative, legal, or equitable relief.

### **Lawsuits**

The bill authorizes nursing homes that provided services to transferors during a penalty period to sue to collect the debt for any unreimbursed care. The suit may be brought against the transferor, transferee, or anyone the law authorizes to be in control of the transferor's income and assets (e.g., conservator), provided that the individual person had knowledge that the transfer was made for the purpose of obtaining or maintaining Medicaid eligibility.

A court may award actual damages, court costs, and attorneys' fees if it determines, based on a fair preponderance of the evidence, that the defendant incurred a debt to a nursing home by (1) willfully transferring assets to obtain or maintain the resident's Medicaid eligibility, (2) receiving the assets knowing of this purpose, or (3) materially misrepresenting or omitting assets.

The bill further allows the court, including a probate court, to also order the assets or proceeds from the transfer to be held in constructive trust to satisfy the debt.

### **APPLIED INCOME**

In general, nursing home residents determined Medicaid-eligible must spend any income they have, except for a monthly needs allowance, on their nursing home care. This is commonly referred to as "applied income," which means it is applied to the Medicaid recipient's care costs. If the resident's spouse is living elsewhere, some of the resident's monthly income may go to support that spouse (see below). Under the bill, applied income is also the amount required to be paid to the home after the exhaustion of all appeals and in accordance with federal and state law.

### ***Notice of Applied Income Due***

The bill requires DSS, when determining the amount of applied income, to take into consideration any modification to the applied

income due to (1) revisions in the community spouse's minimum monthly needs allowance (see BACKGROUND) and (2) other modifications allowed by law.

Under the bill, nursing homes must provide written notice to Medicaid recipients and anyone the law authorizes to control the recipient's applied income. The notice must indicate (1) the amount of applied income due to the home and the recipient's obligation to pay it and (2) that the recipient's failure to pay it within 90 days of receiving the notice may result in a lawsuit.

### **Lawsuits**

The bill authorizes a nursing home to sue to recover any applied income amount it is owed. The home can sue either (1) the Medicaid recipient who owes the money or (2) a person with legal access to the income who acted with the intent to deprive the recipient of the income or appropriate it for himself, herself, or a third person.

If, based on a fair preponderance of the evidence, a court finds in favor of the nursing home, it may award the home the amount of debt owed, court costs, and attorneys' fees.

A nursing home cannot sue to recover applied income until 30 days after providing the required applied income notice or, if the resident did not receive the notice, 90 days after providing the resident notice of the suit along with the information in the applied income notice.

### **LIFE INSURANCE POLICIES**

The bill provides that, to the extent permitted under federal law, institutionalized individuals cannot be determined ineligible for Medicaid solely based on having a life insurance policy with a cash surrender value of less than \$10,000. In general, a Medicaid applicant may not have more than \$1,600 in liquid assets. (If the applicant is married, this is after the state performs a spousal assessment and gives the community spouse a share of the combined assets.)

Currently, DSS counts the cash surrender value of any life insurance policy with a face value of more than \$1,500 towards the asset limit.

DSS also excludes certain transfers of such policies to cover funerals. DSS will not grant eligibility until the policy is surrendered and the money is “spent down” to the asset limit on the individual’s care. (It is not clear if the bill’s prohibition applies only during the period in which the policy is being surrendered.)

## **BACKGROUND**

### ***Constructive Trust***

A court can order a constructive trust against someone who, through wrongdoing, fraud, or other unconscionable act, obtains or holds legal property rights to which he or she is not entitled. It is often used to prevent undue enrichment. It can be used to order the person who would otherwise be unjustly enriched to transfer the property to the intended party.

### ***Community Spouse Allowance and Monthly Needs Allowance***

When one spouse is living in a nursing home and the other spouse lives elsewhere, the spouse who is not living in the nursing home (called the community spouse in Connecticut) is allowed by Medicaid to keep a portion of the institutionalized spouse’s income. This income, called the community spouse allowance, is determined by subtracting the community spouse’s monthly gross income from a minimum monthly needs allowance (MMNA). The MMNA amount will vary from case to case, but for 2013 the minimum is \$1,892; the maximum is \$2,898. The MMNA takes into account the community spouse’s housing costs (e.g., rent, utilities).

The minimum and maximum are set by federal law and the state must update the amounts each year. The maximum may only be exceeded if a DSS fair hearing orders it.

## **COMMITTEE ACTION**

Human Services Committee

Joint Favorable Substitute

Yea 18    Nay 0    (04/02/2013)