



# Senate

General Assembly

**File No. 428**

February Session, 2016

Substitute Senate Bill No. 116

*Senate, April 4, 2016*

The Committee on Human Services reported through SEN. MOORE, M. of the 22nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING CAREGIVER AGREEMENT REQUIREMENTS FOR MEDICAID APPLICANTS OR RECIPIENTS.***

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

1 Section 1. (NEW) (*Effective from passage*) (a) For purposes of this  
2 section, "caregiver agreement" means a written agreement between a  
3 Medicaid applicant or recipient and a family member of such applicant  
4 or recipient in which the Medicaid applicant or recipient agrees to pay  
5 the family member for providing services to the applicant or recipient.  
6 The Department of Social Services shall not impose a penalty for  
7 improper transfer of assets on a Medicaid applicant or recipient for  
8 payments made to a family member pursuant to a caregiver  
9 agreement, provided the agreement satisfies the provisions of this  
10 section and the applicant or recipient establishes that the services  
11 avoid or delay the applicant's or recipient's (1) placement in a nursing  
12 home facility, or (2) need for home and community-based services  
13 provided under a Medicaid waiver. An applicant or recipient may  
14 satisfy the requirements of subdivision (1) or (2) of this subsection by

15 providing a signed statement from a health care professional licensed  
16 pursuant to section 20-94a, 20-12b or 20-13 of the general statutes. The  
17 statement shall identify the health needs of the applicant or recipient  
18 and how the care provided by a family member avoided or delayed  
19 placement of the applicant or recipient in a nursing home facility or a  
20 Medicaid waiver program for home and community-based services.

21 (b) For purposes of determining eligibility for Medicaid payment for  
22 long-term services, caregiver agreements executed on and after the  
23 effective date of this section shall:

24 (1) Be executed prior to the delivery of services;

25 (2) Be signed and dated by the applicant or recipient and the family  
26 member who provides the services with at least one signature  
27 acknowledged before a notary public;

28 (3) Include the frequency, location and duration of services that will  
29 be provided;

30 (4) Provide for payment to the provider of services on a daily,  
31 weekly, biweekly or monthly basis for services received and prohibit  
32 prepayment for the provision of such services;

33 (5) Provide for payment for services at rates (A) not more than the  
34 average private pay rates for home and community-based services  
35 determined and published annually by Connecticut's Partnership for  
36 Long-Term Care through the Office of Policy and Management, and  
37 (B) for those services for which no rate is so published and posted, not  
38 more than twice the state minimum wage at the time the services are  
39 provided;

40 (6) Allow for modification of the agreement only by mutual written  
41 agreement of the parties;

42 (7) Allow for termination of the agreement by either party at any  
43 time and only in writing;

44 (8) Include only those services that are not duplicative of services  
 45 provided by others, including, but not limited to, services provided by  
 46 a paid family member during the same time period services are  
 47 provided by a paid employee of an agency or a volunteer; and

48 (9) Not provide payment for (A) social activities or companionship,  
 49 (B) services provided while the applicant or recipient is in a nursing  
 50 home or other health care facility, or (C) travel by the provider of  
 51 services to or from the residence of the applicant or recipient, provided  
 52 travel from an applicant's or recipient's home to medical and other  
 53 appointments may be reimbursed at standard mileage rates for  
 54 business travel pursuant to federal tax law.

55 (c) In determining eligibility for Medicaid, the department may  
 56 require an applicant or recipient to provide, in addition to other  
 57 documentation, documentation establishing that the applicant or  
 58 recipient of services has complied with state and federal tax  
 59 requirements governing payments made to a provider of services  
 60 pursuant to a caregiver agreement.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section

**HS**      *Joint Favorable Subst.*

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:**

Agency Affected	Fund-Effect	FY 17 \$	FY 18 \$
Social Services, Dept.	GF - Potential Savings	See Below	See Below

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill establishes standards for caregiver agreements for purposes of Medicaid eligibility. To the extent the bill's provisions prevent Medicaid payments for improper transfers, Medicaid could experience a savings associated with such reduced payments. The actual savings are dependent on the number of Medicaid applicants with caregiver agreements, the cost of allowable services, and associated Medicaid payments, which are unknown.

**The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to applicable Medicaid payments.

**OLR Bill Analysis****sSB 116****AN ACT CONCERNING CAREGIVER AGREEMENT REQUIREMENTS FOR MEDICAID APPLICANTS OR RECIPIENTS.****SUMMARY:**

This bill establishes conditions concerning caregiver agreements and Medicaid eligibility. It prohibits the Department of Social Services (DSS) from imposing a penalty for improper asset transfer (see BACKGROUND) on a Medicaid applicant or recipient for payments to a family member under a caregiver agreement, as long as the (1) applicant or recipient establishes that the provided services allowed him or her to avoid or delay the need for (a) placement in a nursing home facility or (b) home- and community-based services provided under a Medicaid waiver and (2) caregiver agreement meets the bill's requirements.

Current state law is largely silent on the effect of caregiver agreements on Medicaid eligibility and asset transfer penalties. Currently, for those applicants who, in accordance with a legally enforceable agreement, transfer assets to someone to provide services, DSS generally determines the dollar value of those services at the (1) current state minimum hourly wage for all services normally rendered by a homemaker or home health aide and (2) actual cost for all other services (Uniform Policy Manual (UPM) 3029.30).

EFFECTIVE DATE: Upon passage

**CAREGIVER AGREEMENT REQUIREMENTS*****Execution***

Under the bill, caregiver agreements must be executed before the family member delivers services. The agreements must be signed and dated by the Medicaid applicant or recipient and the family member

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who will provide services. At least one signature must be notarized.

### **Services**

Under the bill, caregiver agreements must include the frequency, location, and duration of services that the family member will provide. The bill prohibits agreements from including services that duplicate services provided by others, a paid family member who provides services during the same time as a paid agency employee or volunteer. The bill also prohibits agreements from providing payment for (1) social activities or companionship and (2) services provided while the Medicaid applicant or recipient is in a nursing home or other health care facility.

### **Rates and Other Payment Provisions**

The bill limits payment rates for services provided under a caregiver agreement to (1) not more than the average pay rates for home- and community-based services determined and published annually by Connecticut's Partnership for Long-Term Care through the Office of Policy and Management or (2) for services without such a published rate, not more than twice the state minimum wage at the time the family member provided the service.

Under the bill, caregiver agreements must provide for payment on a daily, weekly, biweekly or monthly basis to the family member providing services. Caregiver agreements must also prohibit prepayment for providing services.

The bill also prohibits caregiver agreements from providing payment for provider travel to or from the Medicaid applicant or recipient's residence but allows payment for provider travel from the Medicaid applicant or recipient's home to medical and other appointment rates at standard mileage rates for business travel pursuant to federal tax law.

### **Modification and Termination of Agreements**

Under the bill, caregiver agreements can only be modified by mutual written agreement of the parties and can only be terminated in

writing. The bill allows either party to terminate the agreement at any time.

## **ADDITIONAL DOCUMENTATION**

### ***Avoiding or Delaying the Need for Other Care***

Under the bill, Medicaid applicants and recipients must establish that services provided under a caregiver agreement delayed the need for other care provided by DSS. This can be accomplished with a statement identifying the person's needs and how the care provided by a family member allowed the person to avoid or delay nursing home placement or home- and community-based services under a Medicaid waiver. The statement must be signed by one of the following licensed health care professionals: (1) an advanced practice registered nurse, (2) a physician assistant, or (3) a person qualified to practice medicine and surgery.

### ***Tax Requirements***

As part of a Medicaid eligibility determination, the bill allows DSS to require a Medicaid applicant or recipient to provide documentation establishing that he or she has complied with state and federal tax requirements governing payments made to a service provider under a caregiver agreement.

## **BACKGROUND**

### ***Improper Asset Transfer***

Federal law requires states to review asset transfers made by a person up to five years before he or she applies for long term care services under Medicaid. The law presumes that any such transfer was made to qualify for Medicaid, but the presumption can be rebutted.

Applicants who make such transfers are subject to a penalty period (i.e., period before an applicant may receive assistance). The penalty period is calculated by dividing (1) the value of all assets transferred within the 60 months before application by (2) the average monthly cost to a private patient of nursing facility services.

**COMMITTEE ACTION**

Human Services Committee

Joint Favorable Substitute

Yea 10 Nay 7 (03/17/2016)