



Senate

General Assembly

File No. 214

February Session, 2018

Substitute Senate Bill No. 258

Senate, April 4, 2018

The Committee on Human Services reported through SEN. MOORE, M. of the 22nd Dist. and SEN. MARKLEY, J. of the 16th Dist., Chairpersons of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE EXEMPTION OF PROBATE-COURT APPROVED CONSERVATOR AND FIDUCIARY FEES FROM MEDICAID APPLIED INCOME AND ASSET TRANSFER DETERMINATIONS.

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

1 Section 1. (NEW) (*Effective from passage*) On or before December 31,
2 2018, the Commissioner of Social Services shall amend the Medicaid
3 state plan provisions governing the calculation of applied income, as
4 defined in section 17b-261r of the general statutes, to permit a qualified
5 deduction pursuant to 42 USC 1396a(r)(1)(A)(ii) for the following
6 expenses related to representation of a Medicaid applicant or recipient:
7 (1) Compensation of a conservator in the amount approved by the
8 Probate Court; (2) Probate Court filing fees and expenses under
9 subdivision (6) of subsection (b) of section 45a-106a and sections 45a-
10 108a and 45a-109 of the general statutes; (3) premiums for any probate
11 bond required by the Probate Court; and (4) any other fiduciary
12 expenses approved by the Probate Court, provided such deductions

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 19 \$	FY 20 \$
Probate Court	PCAF - Savings	600,000	1.2 million
Social Services, Dept.	GF - Cost	At Least 300,000	At Least 600,000

Note: PCAF=Probate Court Administration Fund; GF=General Fund

Municipal Impact: None

Explanation

Section 1 of the bill will result in savings of approximately \$600,000 in FY 19 and \$1.2 million in FY 20 to the Probate Court Administration Fund (PCAF) by allowing the state to deduct certain conservatorship expenses when calculating the amount of income an institutionalized Medicaid enrollee must contribute towards his or her care to the extent allowed under federal law. Based on the most recent data from FY 16, there were 1,402 cases involving conserved persons who reside in nursing homes and are Title XIX recipients. In these cases, the PCAF reimburses the conservator compensation costs and waives the Probate Court fees. On average the cost for each case is approximately \$881.

In addition, section 1 of the bill will result in a cost to the state Medicaid program by further reducing a beneficiary's income currently put towards the cost of care. Based on FY 16 Probate Court fees, the increased cost to the state Medicaid program, assuming federal approval, will be \$300,000 in FY 19 and \$600,000 a year once annualized¹ (this assumes 50% federal reimbursement). The cost to the

¹ Total FY 16 Probate Court fees were \$1.2 million for 1,402 individuals.

state will depend on (1) the amount of the conservator expenses (including conservator compensation), Probate Court filing fees/expenses, and premiums for any Probate Court bonds counted as a deduction from a beneficiary's income and (2) the commiserate shift to the state for Medicaid costs which would have been paid by the beneficiary.

Lastly, **section 2** of the bill will result in a cost the state Medicaid program to the extent the penalty period that would have been imposed on an individual, making them temporarily ineligible for Medicaid long term care services, is either reduced or eliminated. The cost to the state Medicaid program will depend on the reduction or elimination of the penalty period which would have been imposed on the individual and the scope of services that otherwise would not be eligible for Medicaid coverage.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to (1) the amount of specified deductions claimed for Medicaid eligible beneficiaries and (2) any adjustment to penalty periods resulting from the provisions of the bill.

OLR Bill Analysis**sSB 258*****AN ACT CONCERNING THE EXEMPTION OF PROBATE-COURT APPROVED CONSERVATOR AND FIDUCIARY FEES FROM MEDICAID APPLIED INCOME AND ASSET TRANSFER DETERMINATIONS.*****SUMMARY**

This bill requires the Department of Social Services (DSS) commissioner to amend the Medicaid state plan by December 31, 2018, to permit the deduction of certain conservator expenses when calculating a Medicaid-eligible nursing home resident's applied income. In general, such residents must spend any income they have on their care except for certain allowances (i.e., applied income). Specifically, the plan must allow the deduction of the following conservatorship expenses:

1. compensation for the individual's conservator, in amounts established in probate court regulations;
2. probate court filing fees and expenses, including conservatorship fees, fiduciary accounting fees, and miscellaneous fees (see BACKGROUND);
3. premiums for any probate bond required by the probate court; and
4. any other fiduciary expenses approved by the probate court that are permissible under federal law.

Under federal law, DSS must impose a penalty period when individuals transfer assets for less than fair market value in the 60 months before applying for Medicaid coverage (i.e., improper asset transfer). The bill prohibits DSS from treating any probate court-

approved conservator or fiduciary fees as an improper asset transfer.

By law, the penalty period (in months) is generally calculated by dividing the value of all assets transferred during the 60 months before application by the average monthly cost to a private patient of nursing facility services in the state or community. Medicaid does not pay for long-term services and supports during the penalty period.

EFFECTIVE DATE: Upon passage

BACKGROUND

Probate Court Fees

By law, the general fee for most probate court matters related to conservatorship is \$225 (CGS § 45a-106a). This includes filing motions to (1) appoint a conservator, (2) change residence or placement in a long term care facility, and (3) terminate a conservatorship.

Under the law, the basic fee for a fiduciary to file an account in the probate court in any matter other than estate settlement is at least \$50 and up to \$500 per year, based on a formula (CGS § 45a-108a).

The law also allows the probate court to charge fees for miscellaneous expenses (i.e., filing or copying certain documents) (CGS § 45a-109).

The law allows an indigent petitioner or applicant to the probate court to apply for a fee waiver (CGS § 45a-111).

COMMITTEE ACTION

Aging Committee

Joint Favorable Substitute Change of Reference - HS
Yea 12 Nay 0 (03/15/2018)

Human Services Committee

Joint Favorable
Yea 19 Nay 0 (03/22/2018)