OLR Bill Analysis
SB 1065 (File 551, as amended by Senate "A")*

AN ACT CONCERNING LONG-TERM CARE SERVICES.

SUMMARY

This bill requires the Department of Social Services (DSS) commissioner to amend the Medicaid state plan by December 31, 2019, 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).

The bill also:

1. requires the DSS commissioner to annually notify the probate court administrator of the total conservatorship expenses deducted from applied income in the preceding fiscal year;

2. requires the probate court administrator to annually transfer from the Probate Court Administration Fund to DSS, an amount equal to half the conservatorship expenses for that year;

3. requires the DSS commissioner to deduct a baseline of $125 in conservatorship expenses from a nursing home resident's applied income and approve deductions that exceed this amount under certain conditions; and

4. prohibits DSS from treating any probate court-approved conservator or fiduciary fees as an improper asset transfer for purposes of imposing a penalty period.

Additionally, the bill requires the DSS commissioner to conduct a study of the state's long-term care needs to determine the sufficiency of existing programs and strategies. It requires the commissioner to report the study results and any recommendations to the Aging and
Human Services committees by July 1, 2020.

“Senate Amendment “A” adds the provisions on (1) obtaining federal approval for the Medicaid state plan amendment, (2) notifying the probate court administrator of annual conservatorship deductions, (3) transferring funds to DSS to cover half of these deductions, and (4) establishing minimum deduction amounts.

EFFECTIVE DATE: Upon passage

**APPLIED INCOME**

**Medicaid State Plan Amendment**

Under the bill, the DSS commissioner must amend the Medicaid state plan by December 31, 2019, to allow the deduction of the following conservatorship expenses:

1. compensation for the individual's conservator, in amounts approved by the probate court;

2. probate court filing fees and expenses, including conservatorship fees, fiduciary accounting fees, and miscellaneous fees (see BACKGROUND);

3. premiums for any bond the probate court requires; and

4. any other fiduciary expenses the probate court approved that are permissible under federal law.

The commissioner must seek approval from the federal Centers for Medicare and Medicaid Services (CMS) for the state plan amendment. The bill applies to conservator expenses incurred on or after October 1, 2019, or the date CMS approves the state plan amendment, whichever is later.

**Notification and Transfer of Funds**

The bill requires the DSS commissioner, by December 31, 2020, and annually thereafter, to calculate the total conservatorship expenses deducted from a nursing home resident's applied income in the
preceding fiscal year and inform the Probate Court Administrator in writing of the amount.

Within 30 days after receiving the commissioner's calculation, the probate court administrator must transfer from the Probate Court Administration fund to DSS, funds equal to half of the conservatorship expenses for that year.

**Deduction Amount**

Under the bill, DSS must deduct from a conserved nursing home resident's applied income a baseline of $125 per month in conservatorship expenses. The DSS commissioner must approve deductions above this amount if they are approved by the probate court when (1) the conserved nursing home resident is initially granted Medicaid benefits and (2) upon eligibility redeterminations.

**PENALTY PERIOD**

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.

**LONG-TERM CARE STUDY**

The bill requires the study to include the following:

1. for calendar years 2013 through 2018, (a) the number of residents moved from institutionalized settings to home and community-based settings under the Money Follows the Person demonstration project (MFP) and (b) state savings on long-term care related to MFP;
2. for calendar year 2018, the number of state residents (a) who were age 65 or older and (b) with disabilities who required long-term care; and

3. for calendar year 2022, the projected number of (a) state residents who will be age 65 or older, (b) state residents with disabilities who will require long-term care, and (c) persons who will require long-term care.

It requires the commissioner, by July 1, 2020, to report the study results to the Aging and Human Services committees, including his recommendations for addressing identified gaps in long-term care provision and improving access to such care.

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

Human Services Committee

Joint Favorable
Yea 13  Nay 5  (03/21/2019)