OLR Bill Analysis
sHB 6373

AN ACT PRESERVING THE INTERESTS OF PRIOR TITLE HOLDERS.

SUMMARY

This bill (1) adds requirements to the process by which the state places liens on the real property of someone who is the recipient of, or liable for, certain public assistance and (2) eliminates the pre-approval requirement for public assistance recipients to transfer real property.

The bill requires the Department of Social Services (DSS) commissioner to give notice and the opportunity for a hearing conducted under the Uniform Administrative Procedure Act (UAPA) before placing these liens. By law, as set by PA 21-3, these liens may only be placed to the extent required by federal law (see BACKGROUND). The bill makes the lien only effective when it is properly recorded and requires that a copy of the recorded certificate is sent to the property owner.

Existing law prohibits anyone who receives aid under a state aid program from selling, assigning, transferring, encumbering, or disposing of property without the DSS commissioner’s consent. Under the bill, title or interest in real property is not affected if the owner disposes of the property without her consent, regardless of when the disposition occurred (i.e., before, on, or after October 1, 2021). Thus, the bill prohibits DSS from invalidating such property transactions, which it may do under current law. But under the bill, the state remains able to recover assistance, assess penalties, and take legal action with respect to the property’s disposition.

Federal law requires states to enact laws that facilitate recovering Medicaid payments from liable third parties and from the estates of deceased Medicaid recipients. States must enact and enforce the laws
as a condition for participating in the Medicaid program and receiving federal funding. To the extent that the bill’s provisions prohibit such recoveries, it may conflict with the state’s obligations under federal law.

The bill also makes technical changes.

EFFECTIVE DATE: October 1, 2021

ADDITIONAL REQUIREMENTS AND LIMITS ON STATE LIENS

The bill requires a lien placement hearing to be conducted according to the UAPA’s contested case procedures. In current practice, DSS provides notice and the opportunity for an administrative hearing in cases required by Medicaid law.

Under the bill, the lien is only effective once it is recorded in the land records of the town where its subject property lies. It requires the recorded certificate to include the name of the property’s owner of record. The commissioner must send a copy of the certificate by first class mail to the owner within seven days after the lien is recorded. (The status of the lien is unclear if the certificate is not sent within this time period.)

Existing law gives priority to the state’s claim over all other unsecured claims and unrecorded encumbrances (CGS § 17b-93, as amended by PA 21-3). The bill provides that a previously recorded interest in real property does not lose its priority to an unrecorded or subsequently recorded state lien for repayment of assistance. It does so by stating that the state’s lien generally does not encumber or is not deemed superior to another interest that was properly recorded before the lien. However, the state’s lien encumbers and is deemed superior to previously recorded interests proven to be illegitimate by clear and convincing evidence.

BACKGROUND

Medicaid Recoveries Under Federal Law

When Medicaid began in 1965, states had the option to recover certain Medicaid costs spent on recipients age 65 or older after they
died. This changed in 1993 when Congress passed the Medicaid Estate Recovery Program as part of an omnibus budget bill (§ 5112). The program generally requires states to recover Medicaid long-term care and related costs (i.e., for nursing facility services, home and community-based services, and related hospital and prescription drug services) from the estates of deceased recipients who incurred these costs from the age of 55 and older. The 1993 federal law also gave states the option to recover all other Medicaid expenses provided to these individuals, except Medicare cost-sharing paid on behalf of Medicare Savings Program beneficiaries.

However, Congress kept the existing ban on estate recovery in cases where there is a surviving spouse, a child under the age of 21, or a child of any age who is blind or disabled (although the law allows recovery in some circumstances after the spouse dies or non-disabled child reaches age 21). In the cases of property, the law also carved out other exceptions for adult children who were caretakers in the homes of the deceased; property owned jointly by siblings; and income-producing property, such as farms.

States must also establish procedures for deferring or fully or partially waiving estate recovery when it would cause an undue hardship to the recipient’s heir or surviving relative.

**Related Act**

Unless required by federal law, Public Act 21-3 (§§ 2-4) (1) prohibits the state from recovering cash and medical assistance from liens placed on real property and (2) requires the state to deem any certificate or lien previously filed on such properties released.

**Related Bill**

HB 6319 (File 22), favorably reported by the Human Services Committee, requires the Department of Administrative Services to make a reasonable effort to inform the next of kin of someone supported or cared for by the state who dies and leaves only a small personal estate that it intends to become the estate’s legal representative to secure reimbursement.
COMMITTEE ACTION

Banking Committee

Joint Favorable Substitute
Yea 18  Nay 0  (02/23/2021)