OLR Bill Analysis

sSB 286 (File 183, as amended by Senate "A")*

AN ACT CONCERNING DEADLINES FOR MANDATORY REPORTING OF SUSPECTED ELDER ABUSE AND PENALTIES FOR FAILURE TO REPORT.

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*Senate Amendment "A" adds the provisions on (1) Temporary Family Assistance (TFA) employment requirements, (2) DSS eligibility workers administering oaths, (3) the opening or setting aside of a

parentage judgment, (4) penalties for unauthorized use of nursing home staff wage increases, and (5) certificates of need for long-term care facilities.

§ 1 — SHORTENED REPORTING DEADLINE FOR SUSPECTED ELDER ABUSE

Reduces, from 72 hours to 24 hours, mandated reporting timeframes for elderly protective services, adds a training requirement for violators, and eliminates related fines for first-time offenses

The bill reduces, from 72 hours to 24 hours, mandated reporting timeframes for elderly protective services.

Under current law, mandated reporters who fail to timely report to the Department of Social Services (DSS) when they have reasonable cause to suspect that an elderly person needs protective services or has been abused, neglected, exploited, or abandoned, are subject to a fine of up to $500. The bill eliminates the fine for a first-time failure and instead requires someone who fails to report within the required 24-hour timeframe for the first time to retake the mandatory elder abuse training and provide the DSS commissioner with proof of successful training completion. It requires repeat violators to (1) retake the training and provide the proof of successful training completion and (2) be fined up to $500.

Under existing law, unchanged by the bill, intentional failure to report is a class C misdemeanor for the first offense, punishable by up to three months in prison, a fine of up to $500, or both. Subsequent offenses are a class A misdemeanor, punishable by up to 364 days in prison, a fine of up to $2,000, or both.

EFFECTIVE DATE: July 1, 2022

§ 501 — TFA EMPLOYMENT REQUIREMENTS

Makes various changes to timelines and penalties for TFA's employment services program

By law, Temporary Family Assistance (TFA) applicants who are subject to work requirements through the employment services program must attend an assessment interview with the Department of Labor (DOL) and participate in developing an employment plan before

the Department of Social Services (DSS) may grant them cash assistance under TFA. The bill starts the 10-day time frame for DSS to schedule an assessment interview on the day DSS completes an application interview, rather than on the day the application is made. It also changes the way DSS calculates penalties for a TFA participant's failure to comply with work requirements.

The bill also eliminates provisions under current law requiring DSS to terminate TFA benefits awarded to a family under certain circumstances. Specifically, the department must terminate these benefits when a family member who is not exempt from the program's 21-month time limit fails, without good cause, to do either of the following:

1. attend any scheduled assessment appointment or interview related to establishing an employment services plan, unless he or she attends a subsequently scheduled appointment or interview within 30 days after receiving DSS's notice that benefits are terminated, or

2. comply with a work requirement during a six-month extension of benefits.

EFFECTIVE DATE: July 1, 2022

Application Process and Interviews

The bill requires DSS to promptly conduct an application interview with a TFA applicant to determine whether he or she is exempt from work requirements under DOL's employment services program. Under the bill, if DSS determines the applicant is not exempt, the department must schedule the initial employment services interview with DOL within 10 business days after the application interview. If DSS fails to do so within that timeframe, the bill prohibits DSS from delaying TFA benefits to an applicant who is otherwise eligible.

Additionally, the bill eliminates a provision prohibiting DSS from delaying TFA benefits to an applicant when the department schedules the initial employment services assessment interview more than 10

business days after the applicant submits the application.

Existing law also prohibits DSS from delaying benefits when DOL does not complete the applicant's employment services plan within 10 business days after the applicant's employment services assessment interview.

Penalty Calculations

Under current law, DSS must reduce TFA benefits awarded to a family when a family member fails to comply with a work requirement without good cause, as follows:

1. for the first instance, a 25% reduction in benefits for three consecutive months;
2. for the second instance, a 35% reduction in benefits for three consecutive months; and
3. for third and subsequent instances, termination of benefits for three consecutive months.

The bill instead requires DSS to reduce benefits for failure to comply with work requirements by excluding the noncompliant family member from the household when calculating the family's monthly benefit. (TFA benefits are based, in part, on household size. Generally, reducing the number of people in the household reduces the household's benefit amount.) Under the bill, DSS must exclude the noncompliant family member until he or she (1) begins to comply with work requirements, (2) becomes exempt from work requirements, or (3) demonstrates good cause for failing to comply.

If only one family member is eligible for TFA and he or she fails to comply with a work requirement, current law requires DSS to terminate the family's benefits for three consecutive months. Under the bill, DSS must instead reduce the family's benefit by 25% for each month the person fails to comply, and only if the failure to comply is without good cause.

Background — Related Bill

SB 192 (File 215), favorably reported by the Human Services Committee, has identical provisions regarding TFA employment requirements.

§ 502 — DSS ELIGIBILITY WORKERS TO ADMINISTER OATHS

Allows DSS's eligibility workers, specialists, and supervisors to administer oaths when their assigned duties require witnessing the execution of an affirmation or acknowledgment of parentage

The bill allows DSS's eligibility workers, specialists, and supervisors to administer oaths for the sole purpose of witnessing the execution of an affirmation or acknowledgment of parentage when their assigned duties include doing so. In practice, establishing children's parentage is part of the cash assistance application process under DSS's TFA program.

Existing law authorizes various individuals to administer oaths, including House and Senate clerks, municipal chief elected officials, and investigators employed by DSS's Office of Child Support Services.

EFFECTIVE DATE: Upon passage.

Background — Related Bill

SB 193 (File 216), favorably reported by the Human Services Committee, has near identical provisions regarding DSS eligibility workers administering oaths.

§ 503 — OPENING OR SETTING ASIDE OF A PARENTAGE JUDGMENT

Establishes the circumstances under which the Superior Court or family support magistrate may open or set aside a judgement of parentage

The bill establishes the circumstances under which the Superior Court or family support magistrate may open or set aside a judgement of parentage. Under the bill, motions to open or set aside an existing judgment generally must be filed within four months after the date the court or family support magistrate entered the judgment. The bill allows the court or family support magistrate to open or set aside the judgment if (1) there is reasonable cause or (2) a valid defense to the petition

existed, in whole or in part, when the judgement was rendered, and a mistake, accident, or other reasonable cause prevented the person seeking to open or set aside the judgment from making a valid defense.

The bill allows the Superior Court or family support magistrate to consider a motion to open or set aside a parentage judgment filed more than four months after the judgment if the court or magistrate finds the judgment was entered due to fraud, duress, or a material mistake of fact. The bill places the burden of proof on the person seeking to open or set aside the judgment. Under the bill, after determining the person meets the burden of proof, the court or family support magistrate may only set aside the judgment if doing so is in the child's best interest, based on factors under the Connecticut Parentage Act.

EFFECTIVE DATE: July 1, 2022

Background — Adjudicating Parentage under the Connecticut Parentage Act

By law, in a proceeding to adjudicate competing parentage claims for a child by two or more persons, the court must adjudicate parentage in the child's best interest, based on the following:

1. the child's age,
2. the length of time during which each person assumed the role of the child's parent,
3. the nature of the relationship between the child and each person,
4. harm to the child if the relationship between the child and each person is not recognized,
5. the basis for each person's claim to parentage,
6. other equitable factors arising from disrupting the relationship between the child and each person or the likelihood of other harm to the child, and
7. any other factor the court deems relevant to the child's best

interests (CGS § 46b-475).

Background — Related Bill

sSB 199 (File 363), favorably reported by the Human Services and Judiciary committees, has identical provisions regarding the opening or setting aside of a parentage judgment.

§ 504 — PENALTIES FOR UNAUTHORIZED USE OF RATE INCREASES EARMARKED FOR NURSING HOME STAFF WAGE ENHANCEMENTS

Allows DSS to assess a civil penalty on a nursing home that receives a rate increase to enhance its employees' wages but fails to use it for that purpose

The bill allows DSS to assess a civil penalty on a nursing home that receives a rate increase to enhance its employees' wages but fails to use it for that purpose. The civil penalty is in addition to any applicable recoupment or rate decrease the law otherwise allows.

Before assessing a civil penalty, the bill requires DSS to complete a department audit in accordance with the nursing home's Medicaid provider enrollment agreements. The bill limits the civil penalty to half the total dollar amount of the rate increase the nursing home received but did not use to enhance employee wages. It authorizes DSS, in the department's sole discretion, to enter a recoupment schedule with a nursing home so as not to negatively impact patient care. Nursing homes subject to a civil penalty may request a rehearing under provisions in existing law (see BACKGROUND).

DSS's authorization to assess civil penalties under the bill applies to rate increases nursing homes receive before the bill's effective date under last year's budget (PA 21-2, June Special Session, § 323). That act required DSS to increase nursing home rates by 4.5% in both FY 22 and FY 23 to enhance wages for employees. Under the act, facilities that received a rate adjustment for wage enhancements but failed to provide them may be subject to a rate decrease in the same amount.

EFFECTIVE DATE: Upon passage

Background — Rehearing a Rate Decision

State law allows nursing homes aggrieved by a DSS decision to apply for a rehearing within 10 days after the written notice of DSS's decision. Nursing homes must file a detailed written description of all items of aggrievement with DSS within 90 days after the written notice. DSS must issue a final decision within 60 days after the close of evidence or the date on which final briefs are filed, whichever is later. Items not resolved at the rehearing are submitted to binding arbitration (CGS § 17b-238(b)).

Background — Related Bill

SB 281 (File 151), favorably reported by the Human Services and Judiciary committees, has identical provisions on penalties for unauthorized use of rate increases earmarked for nursing home staff wage enhancements.

§§ 505-508 — CERTIFICATES OF NEED FOR LONG-TERM CARE FACILITIES

Makes various changes to the DSS certificate of need (CON) process for certain long-term care facilities, including allowing DSS to approve requests to build nontraditional, small-house style nursing homes under certain conditions

The bill makes various changes to the DSS's certificate of need (CON) process for certain long-term care facilities. By law, nursing homes, residential care homes, rest homes, and intermediate care facilities for people with intellectual disabilities must generally receive DSS approval when (1) introducing new services, (2) changing ownership, (3) relocating licensed beds or decreasing bed capacity, (4) terminating a service, or (5) incurring certain capital expenditures.

Among other things, the bill allows DSS to approve requests to build nontraditional, small-house style nursing homes under certain conditions and establishes factors DSS must consider when deciding on these requests. It also broadens other exemptions to the general moratorium on nursing home beds.

The bill adds additional criteria that DSS must consider when evaluating certain types of CON requests, including requests to relocate beds.

The bill allows the DSS commissioner to place conditions on any decision approving or modifying a CON request as she deems necessary. It also allows DSS to hold an informal conference with the facility when reviewing a request to discuss the CON application. If the commissioner modifies the request, the bill requires her to notify the facility before issuing the decision and provide an opportunity for an informal conference to discuss the modifications.

The bill subjects adverse CON decisions to provisions on proposed final decisions under the state's Uniform Administrative Procedures Act (UAPA).

The bill also makes minor changes to timing and notification requirements for public hearings and makes other technical and conforming changes.

By law, the DSS commissioner must adopt regulations to implement the CON process provisions and may adopt regulations on the nursing home bed moratorium provisions.

EFFECTIVE DATE: July 1, 2022

Nursing Home Bed Moratorium

Existing law establishes a nursing home bed moratorium that generally prohibits DSS from accepting or approving requests for additional nursing home beds, with certain exceptions. The bill adds a new exception that allows DSS to approve a proposal to build a nontraditional, small-house style nursing home designed to enhance the quality of life for residents as long as the facility agrees to reduce its total number of licensed beds by a percentage the DSS commissioner determines in accordance with DSS's strategic plan for long-term care.

The bill also broadens two existing exceptions. One exception allows DSS to approve beds associated with a continuing care facility that are not used in the Medicaid program. For this exception, the bill eliminates a requirement that the ratio of proposed nursing home beds to the continuing care facility's independent living units be within applicable industry standards. For these facilities, the bill also eliminates a

requirement that DSS only consider the need for beds for current and prospective continuing care facility residents when considering whether there is clear public need for additional nursing home beds.

Another exception allows DSS to approve licensed Medicaid nursing facility beds that will be relocated from existing facilities to a new facility under certain criteria (see below). The bill additionally allows DSS to approve facilities relocated to a replacement facility under this exception.

By law, the moratorium exception that allows DSS to approve relocation of nursing home beds only applies if:

1. no new Medicaid certified beds are added;
2. due to the relocation, at least one currently licensed facility is closed in the transaction;
3. the relocation is done within available appropriations;
4. the facility participates in the Money Follows the Person demonstration project;
5. the relocation will not adversely affect bed availability in the area of need;
6. the facility receives an approved CON and obtains associated capital expenditures; and
7. the facilities included in the bed relocation and closure are in accordance with the long-term care strategic plan.

Under the bill, as is generally the case under the moratorium, a proposal to relocate a nursing home bed from an existing facility to a new facility may not increase the number of Medicaid certified beds. The bill also requires that the proposal result in a closure of at least one currently licensed facility.

Additionally, the bill requires the DSS commissioner to consider the above criteria when evaluating a CON request to relocate licensed

nursing facility beds from an existing facility to another licensed facility or a new or replacement facility. Under the bill, she must also consider priority needs identified in the long-term care strategic plan.

Factors Considered in CON Decisions

By law, when determining whether to grant, modify, or deny a CON application, the DSS commissioner must consider several factors, including:

1. the request's financial feasibility and impact on the applicant's rates and financial condition;

2. whether there is a clear public need for the request;

3. the relationship of any proposed change to the applicant's current utilization statistics;

4. the business interests and personal background of all owners, partners, associates, incorporators, directors, sponsors, stockholders, and operators; and

5. any other factor DSS deems relevant.

The bill requires DSS to consider how the request contributes to the quality, accessibility, and cost-effectiveness of long-term care delivery, rather than health care delivery. It additionally requires DSS to consider the proposal's effect on utilization statistics for other facilities in the applicant's service area. The bill eliminates requirements that DSS consider the request's relationship to the state health plan and include a written explanation in its decision when the decision conflicts with the plan.

Current law requires DSS, when determining whether there is a public need for a request to relocate beds, to consider whether there is a demonstrated bed need in the towns within a 15-mile radius of the town where the proposal would relocate beds. The bill specifies that this only applies to a request to relocate beds to a replacement facility, and additionally requires DSS to consider whether the proposal will

adversely affect bed availability in the applicant's service area.

For applications to establish a new or replacement nursing facility, the bill requires DSS to consider whether the proposed facility is a nontraditional, small-house style nursing facility and incorporates goals for nursing facilities under the long-term care strategic plan, including:

1. promoting person-centered care,
2. providing enhanced quality of care,
3. creating community space for residents, and
4. developing stronger connections between residents and the surrounding community.

Informal Conferences and Approval Conditions

By law, the DSS commissioner must grant, modify, or deny a CON request within 90 days after receiving it, with certain exceptions. The bill allows DSS to hold an informal conference with the facility while it reviews the request to discuss the CON application. Under the bill, if the DSS commissioner modifies the request, she must notify the facility before issuing the decision and provide the applicant with an opportunity for an informal conference to discuss the modifications.

The bill also allows the DSS commissioner to place conditions on any decision approving or modifying a CON request as she deems necessary, including project and Medicaid reimbursement details and applicant requirements for summary and audit purposes.

CON Process for Capital Expenditures

Existing law establishes a similar process for facilities to request a CON from DSS to incur capital expenditures over $2 million or over $1 million if the expenditure increases the facility's square footage by 5,000 square feet or 5% of the existing square footage, whichever is larger.

Like the process described above, the DSS commissioner must grant, modify, or deny a request within 90 days, with certain exceptions. The bill allows her to place conditions on any decision approving or

modifying a request as she deems necessary to address specified concerns, including project and Medicaid reimbursement details and applicant requirements for summary and audit purposes. However, existing law, unchanged by the bill, prohibits the commissioner, or her designee, from prescribing any condition not directly related to the capital program's scope and within the facility's control. The law explicitly prohibits any condition or limitation on the facility's indebtedness in connection with a bond issued, the principal amount of any bond issued, or any other details or particulars related to the capital expenditure's financing.

Additional DSS Stipulations

For CON applications, the bill allows the DSS commissioner to request that any applicant seeking to replace an existing facility reduce the number of beds in the new facility by a percentage consistent with the long-term care strategic plan. If the applicant owns or operates more than one nursing facility and seeks to replace an existing facility with a new facility, the bill allows the DSS commissioner to request that the applicant close two or more facilities before approving a proposal to build a new one.

Adverse Proposed Final Decisions

Under the bill, for all CON requests, if the DSS commissioner's designee recommends denying the request, the decision is subject to provisions on proposed final decisions under the state's Uniform Administrative Procedure Act (UAPA).

Under these UAPA provisions, if a majority of agency members who will render a final decision have not heard the matter or read the record, the decision, if adverse to the facility, may not be rendered until a proposed final decision is served on the parties and each has an opportunity to file exceptions and present briefs and oral argument to agency members who will render the final decision. These proposed final decisions must be in writing and include reasons for the decision, finding of facts, and a legal conclusion on each issue of fact or law necessary to the decision (CGS § 4-179).

Public Hearing Notice and Timing

For CON requests other than those to relocate beds, existing law requires that the DSS commissioner or her designee hold a public hearing. Current law requires her to do so within 30 days after receiving either a letter of intent or a CON application, whichever is received first. The bill instead requires her to do so within 30 days after receiving a CON application.

Additionally, the bill (1) decreases, from 14 to 10 days, the amount of advance notice DSS must provide the facility and the public before the hearing and (2) requires DSS to notify the facility by email or first-class mail rather than certified mail.

Background — Related Bill

sSB 290 (File 399), favorably reported by the Human Services Committee, has near identical provisions regarding certificates of need for long-term care facilities.

COMMITTEE ACTION

Human Services Committee

Joint Favorable Substitute
Yea 20 Nay 0 (03/17/2022)