PA 22-145—sSB 286
Human Services Committee

AN ACT CONCERNING ELDER ABUSE REPORTING DEADLINES, TEMPORARY FAMILY ASSISTANCE, CERTIFICATES OF NEED FOR LONG-TERM CARE FACILITIES AND CIVIL PENALTIES FOR NURSING HOMES THAT FAIL TO USE RATE INCREASES FOR EMPLOYEE WAGE ENHANCEMENTS

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§ 1 — SHORTENED REPORTING DEADLINE FOR SUSPECTED ELDER ABUSE

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

The act reduces, from 72 hours to 24 hours, the timeframe within which mandated reporters must 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.

Under prior law, all mandated reporters who failed to report to DSS within the specified timeframe were subject to a fine of up to $500. The act 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 act, 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

§ 2 — 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 DSS may grant them cash assistance under TFA. The act starts the 10-day timeframe for DSS to schedule an assessment interview on the day DSS completes an application interview, rather than on the day the application is made, as under prior law. It also changes the way DSS calculates penalties for a TFA participant's failure to comply with work requirements.

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

1. attend any scheduled assessment appointment or interview related to making an employment services plan, unless he or she attended a subsequently scheduled appointment or interview within 30 days after receiving DSS's notice that benefits were 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 act 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 act, 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 act prohibits DSS from delaying TFA benefits to an applicant who is otherwise eligible.

Additionally, the act 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 prior law, DSS was required to reduce a family's TFA benefits when a family member failed 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 act instead requires DSS to reduce benefits for failing 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 act, 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, prior law required DSS to terminate the family's benefits for three consecutive months. Under the act, 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.

§ 3 — 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 act 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 people 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

§ 4 — OPENING OR SETTING ASIDE 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 act establishes the circumstances under which the Superior Court or family support magistrate may open or set aside a judgement of parentage. Under the act, 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 act 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 act 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 act places the burden of proof on the person seeking to open or set aside the judgment. Under the act, after determining the person meets the burden of proof, the court or family support magistrate may set aside the judgment only if doing so is in the child's best interest, based on factors under the Connecticut Parentage Act.

EFFECTIVE DATE: July 1, 2022

§ 5 — 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 act 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 act requires DSS to complete a department audit in keeping with the nursing home's Medicaid provider enrollment agreements. The act 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 its sole discretion, to enter into 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 act applies to rate increases nursing homes received before the act'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 that 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)).

§§ 6-9 — CERTIFICATES OF NEED FOR LONG-TERM CARE FACILITIES

Makes various changes to the DSS certificate of need 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 act makes various changes to 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 act allows DSS to approve requests to build nontraditional, small-house style nursing homes under certain conditions and sets factors DSS must consider when deciding on these requests. It also broadens other exemptions to the general moratorium on nursing home beds.

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

The act 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 act requires her to notify the facility before issuing the decision and provide an opportunity for an

informal conference to discuss the modifications.

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

The act 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 more nursing home beds, with certain exceptions. The act 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 keeping with DSS's strategic plan for long-term care.

The act 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 act 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 act 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 more 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 act 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 keeping with the long-term care strategic plan.

Under the act, 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 act also requires that the proposal result in a closure of at least one currently licensed facility.

Additionally, the act 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 act, 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 act 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 act 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.

Existing 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 act 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 act 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 act allows DSS to hold an informal conference with the facility while it reviews the request to discuss the CON application. Under the act, if the DSS commissioner modifies the request, she must notify the facility before issuing the decision and give the applicant an opportunity for an informal conference to discuss the modifications.

The act 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 the larger of 5,000 square feet or 5% of the existing square footage.

Like the process for other types of CON requests described above, the DSS commissioner must grant, modify, or deny a capital expenditures CON request within 90 days, with certain exceptions. The act 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 act, 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 act 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 act 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 act, 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 the UAPA, 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 (1) a proposed final decision is served on the parties and (2) each has an opportunity to file exceptions and present briefs and oral argument to agency members who will render the final decision. Each proposed final decision 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. Prior law required her to do so within 30 days after receiving either a letter of intent or a CON application, whichever was received first. The act instead requires her to do so within 30 days after receiving a CON application.

Additionally, the act (1) decreases, from 14 to 10 days, the amount of advance notice DSS must give 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.