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OLR ACTS AFFECTING

SENIORS



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TO THE READER

This report provides highlights of new laws (Public Acts and Special Acts) affecting seniors enacted during the 2011 regular legislative session. At the end of each summary we indicate the Public Act (PA) or Special Act (SA) number and the date the legislation takes effect.

Not all provisions of the acts are included here. Complete summaries of all 2011 Public Acts will be available on OLR's webpage:

www.cga.ct.gov/olr/OLRPASums.asp.

Readers are encouraged to obtain the full text of acts that interest them from the Connecticut State Library, the House Clerk's Office, or the General Assembly's website (www.cga.ct.gov/)

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ELDER ABUSE

A new law makes it a class A misdemeanor, punishable by imprisonment for up to one year, a fine of up to \$2,000, or both, to present fraudulent or malicious information in an elder abuse report to, or investigation by, the Department of Social Services (DSS). And DSS cannot interview an elder abuse victim alone if a physician who examined the victim in the 30 days before DSS gets an abuse report provides a letter stating that he or she believes that interviewing the person alone is medically inadvisable. The new law also eliminates an exception from immunity for bad faith and malicious elder abuse reports, thereby immunizing people who make such reports from civil liability (**PA 11-224**, effective October 1, 2011).

MEDICAID AND MEDICARE

Elimination of State Drug Subsidies for People Eligible for Medicare Part D

A new law eliminates the state drug subsidy (ConnPACE) for people eligible for Medicare Part D. ConnPACE traditionally has provided prescription drug assistance to people age 65 and older and younger people with disabilities, many of whom are Medicare Part D recipients.

Previously, for people eligible for Medicare, ConnPACE paid any Medicare Part D prescription

co-payments over ConnPACE's \$16.25 and any Part D plan's premiums and deductibles. It also paid for prescriptions needed when a person reached the initial coverage limit and had to pay all prescription drug costs until he or she reached a catastrophic coverage threshold.

A new law eliminates these payments but continues to offer drug assistance to people (primarily younger adults with disabilities) who do not qualify for Medicaid or Medicare.

Most people eligible for ConnPACE and Medicare qualify for the Medicare Savings Program (see below), which makes them eligible for the federal Low-Income Subsidy (LIS) program. LIS offers Part D recipients significant premium and co-payment subsidies, and pays for the donut hole (which starts when annual drug costs reach \$2,840 and continues until they reach \$6,448) (**PA 11-44 §§ 88-90**, effective July 1, 2011).

Medicare Savings Program (MSP)

The MSP provides Medicaid-funded help with Medicare cost sharing to lower-income individuals who are eligible for Medicare Part A and B. In 2009, eligibility for the program was expanded to enable most ConnPACE recipients to qualify. An individual who qualifies for the MSP is automatically eligible for the Medicare Part D low-income subsidy, which helps

with Part D cost sharing, including payments during the coverage gap.

DSS is required to increase the income disregards used to determine MSP eligibility in an amount that equalizes the income limit with the ConnPACE program. A new law requires DSS to also equalize any deductions allowed under the MSP (**PA 11-44 § 91**, effective July 1, 2011).

Establishment of Uniform Medicaid Outpatient Fee Schedule

A new law authorizes DSS to set a uniform fee schedule for Medicaid-covered outpatient hospital services. Its current payment formula results in different hospitals being paid different rates for the same services (**PA 11-44 § 92**, effective July 1, 2011).

Medicaid Personal Needs Allowance Decreased

A new law reduces the personal needs allowance for long-term care facility residents on Medicaid. Such residents generally must spend all of their monthly income (e.g., Social Security) on the cost of their care, but may keep a small portion called a personal needs allowance to pay for incidentals. The allowance is increased annually based on any increase in Social Security benefits (COLA). The new law decreases this allowance from \$69 to \$60

and eliminates the COLA indexing (**PA 11-44 §§ 78 & 79**, effective July 1, 2011).

Asset Transfers to Qualify for Medicaid

To conform to federal law, a new state law establishes circumstances in which DSS may not impose a penalty period on someone who presumably transferred assets to qualify for Medicaid when the penalty will create an undue hardship for him or her. It also establishes a process for appealing penalties when they are imposed. During a penalty period, a person is ineligible for Medicaid based on the uncompensated value of the transferred assets (**PA 11-176**, effective July 1, 2011).

Asset Transfers by Nursing Home Residents

The law prohibits people residing in nursing homes or similar facilities or receiving home- and community-based services under a Medicaid waiver from transferring or assigning their assets for less than fair market value to qualify for Medicaid. Penalties attach when such transactions occur less than five years before the nursing home resident applies for Medicaid. This new law sets different penalty trigger dates and penalty periods depending on the characteristics of the transaction. It also specifies that the partial return of a transferred

asset will not reduce the penalty period (**PA 11-44 § 104**, effective upon passage).

Asset Protection for Spouses of Long-Term Care Recipients

Last year, the legislature increased the amount of assets a community spouse could keep when his or her spouse applies for Medicaid-covered long-term care. Essentially, the community spouse could keep more than half of the couple's combined assets, as long as this amount did not exceed \$109,560. This year, the legislature repealed last year's change. Thus, the law reverted back to the old rule of allowing the community spouse to keep no more than half of the couple's assets, up to that amount (**PA 11-44 § 178**, effective July 1, 2011).

AIDS Medicaid Waiver

A new law reduces, from 100 to 50, the number of people eligible to participate in the Medicaid home- and community-based services waiver program for people with HIV or AIDS who would otherwise need institutional care (**PA 11-44 § 93**, effective July 1, 2011).

Payment Rates for Hospitals, Home Health and Home-Maker Home Health Care Aide Agencies, and Medical Services Providers

A new law modifies the DSS commissioner's method for setting payment rates for hospitals, home health and home-maker home health care aide agencies, and medical services providers (**PA 11-44 §§ 112-115**, effective July 1, 2011).

Restoring Medicaid Coverage of Podiatry Services

Nearly 10 years ago, the legislature authorized DSS to eliminate Medicaid coverage of podiatry services performed by independent practitioners. A 2011 law restores this coverage (**PA 11-44 § 85**, effective July 1, 2011).

Eyeglass Coverage Replacement Frequency Reduced

A new law reduces the frequency with which DSS will pay for eyeglasses from once per year to once every other year (**PA 11-44 § 94**, effective July 1, 2011).

Transportation

A new law affects reimbursements for emergency medical transportation for people eligible for both Medicaid and Medicare. The new law limits

reimbursement for Medicare coinsurance and deductibles to ensure that the combined Medicaid and Medicare provider payment does not exceed the maximum allowable under Medicaid plus an additional percentage (**PA 11-44 § 84**, effective July 1, 2011).

INSURANCE

Long-Term Care

A new law establishes a new rate-approval process for long-term care insurance, including a 30-day public comment period and up to five symposiums per year under certain conditions (**PA 11-170**, effective January 1, 2012).

Ostomy Surgery

By law, certain health insurance policies that cover ostomy surgery must also cover medically necessary ostomy appliances and supplies, including collection devices, irrigation equipment and supplies, and skin barriers and protectors. A new law increases the maximum annual coverage for ostomy appliances and supplies from \$1,000 to \$2,500 (**PA 11-204**, effective January 1, 2012).

Prostate Cancer Treatments

Prior law required certain individual and group health insurance plans to cover

laboratory and diagnostic tests to detect prostate cancer in men who are (1) symptomatic or in high-risk categories and (2) age 50 or older. A new law expands such coverage to include prostate cancer treatment if it is “medically necessary” and provided in accordance with guidelines established by (1) the National Comprehensive Cancer Network, (2) the American Cancer Society, or (3) the American Society of Clinical Oncology (**PA 11-225**, effective January 1, 2012).

Medical Coverage for Necessary Hospitalization Services and Off-Label Drugs

By law, individual and group health insurance policies and HMO contracts must cover (1) medically necessary hospitalization services and other routine patient care costs associated with cancer clinical trials and (2) off-label cancer prescription drugs. A new law expands the coverage requirements to include all disabling or life-threatening chronic diseases rather than cancer only (**PA 11-172**, effective January 1, 2012).

LONG-TERM CARE

Home Care Program for Elders

Under a new law, seniors will have to contribute more towards the cost of services they receive under the Connecticut Home

Care Program for Elders, which provides home- and community-based services to frail elders as an alternative to nursing home care. Beginning July 1, 2011, participants enrolled in the state-funded part of the program must pay 7% of care costs, a 1% increase. For participants with higher incomes, this charge is in addition to any income DSS applies toward the cost of their care (**PA 11-44 § 86**, effective July 1, 2011).

Nursing Home Waiting List

A new law allows a nursing home, without regard to its waiting list order, to admit an applicant who seeks a transfer (1) from a nursing home in which the applicant was placed following the closure of a home where he or she previously resided or (2) in the case of a nursing home placed in receivership, the anticipated closure of the home where the applicant previously resided. The transfer must occur within 60 days after the date that the applicant was transferred from the previous nursing home, and the applicant must have submitted an application to the nursing home to which he or she seeks admission at the time of the transfer from the previous nursing home (**PA 11- 242 § 52**, effective October 1, 2011; **PA 11-233 § 1**, effective upon passage).

Nursing Home Resident User Fee

A new law raises the cap on the nursing home resident user fee from 5.5% to the federally allowed maximum, which is 6% starting October 1, 2011 (**PA 11-6 § 150**, effective July 1, 2011).

Nursing Home Reimbursement Rates

A new law freezes for the next two fiscal years the Medicaid reimbursement to nursing homes. (By law and regulation, homes should be getting higher rates due to rate re-basing and adjustments for inflation.) The act permits the DSS commissioner, within available appropriations, to increase rates, despite the freeze (**PA 11-44 § 73**, effective July 1, 2011).

Residential Care Home Reimbursement Rates

Under a new law, Medicaid reimbursement rates for residential care homes are frozen at the FY 11 rate for FYs 12 and 13. But, during those fiscal years, DSS may pay fair rent increases to a facility that makes material changes and has an approved certificate of need (CON).

DSS may also increase residential care home rates for reasonable costs associated with initiating a program to certify unlicensed health care personnel to administer non-injectible

medication in FYs 12 and 13 (**PA 11-44 §§ 74 & 75**, effective July 1, 2011.)

Reimbursements for Outpatient Prescription Drugs Dispensed to DSS Medical Assistance Recipients

A new law reduces the reimbursement DSS pays pharmacists for dispensing most drugs to DSS medical assistance recipients. Previously, DSS paid the average wholesale price of the drug, minus 14%, plus a \$2.90 dispensing fee. Beginning July 1, the reimbursement falls to the average wholesale price, minus 16% plus a \$2 dispensing fee (**PA 11-44, § 76**, effective July 1, 2011).

Nursing Home Transfers and Discharges

A new law changes the process that DSS, nursing homes, and their residents or their representatives must follow when nursing homes transfer or discharge residents, or when they reserve beds for residents who are hospitalized.

With respect to transfers and discharges, the new law, among other things:

1. explicitly allows residents to appeal these moves and shortens the deadline for DSS to issue appeal hearing decisions for moves;
2. establishes the circumstances in which DSS must stay a move and requires the home to readmit the resident if DSS determines that the move violates the law;
3. explicitly allows residents to request hearings when informed that they no longer need nursing home care, including residents with mental disabilities in homes that transfer or discharge them when the homes cannot provide needed services;
4. refines the definition of “self-pay” residents for purposes of applying the law to them; and
5. requires nursing homes in receivership to comply with its transfer and discharge notice requirements.

The law sets up a consultation process for homes and residents when the home is concerned about readmitting a resident whose needs it cannot meet or who may be a danger to himself, herself, or others. It establishes three criteria, one of which a home must meet in order to refuse to readmit a resident, and it requires the home to provide notice when it decides not to readmit. It requires DSS to hold hearings on possible bed-hold law violations and changes how homes are assessed penalties for violations.

The new law requires hospitals to provide nursing homes with patient records and access to the patients when they refer patients to nursing homes or when a patient requests the referral (**PA 11-236**, effective upon passage).

Criminal History and Patient Abuse Background Check Program for Long-Term Care Facility Employees

Under a new law, long-term care facilities must ensure that prospective direct care staff undergo criminal history and patient abuse background checks before they are allowed direct access to patients or residents. The Department of Public Health (DPH), within available appropriations, must establish a program to facilitate the searches, receive search results, and notify facilities of people with disqualifying offenses (**PA 11-242 § 90**, effective January 1, 2012).

Criminal History Record Checks for Homemaker Companion Agency Registrants and Employees

Starting January 1, 2012, a new law requires an applicant for a homemaker-companion agency registration to undergo state and national criminal history record checks. Agencies must require prospective employees to undergo such checks before offering them a job or contract, and prospective

employees must complete a form indicating whether they were (1) convicted of a crime involving violence or dishonesty or (2) subject to any disciplinary action by a licensing agency. Providing a false written statement about prior criminal convictions or disciplinary action is a class A misdemeanor.

The new law applies to homemaker-companion agencies, including registries. It defines a “registry” as any person or entity in the business of supplying or referring an individual to, or placing an individual with, a consumer to provide homemaker or companion services when the individual providing the services is either (1) directly compensated, in whole or in part, by the consumer or (2) treated, referred to, or considered by the supplying person or entity as an independent contractor (**PA 11-242 §§ 91-94**, effective January 1, 2012).

Criminal Background Checks for Home Health Agencies

Starting January 1, 2012, a new law requires anyone getting a job or entering into a contract with a home health agency to undergo a comprehensive background check beforehand. Applicants must complete a form indicating whether they were subject to any disciplinary action by a licensing agency. Making a false written statement about prior disciplinary action with intent to mislead is a class A

misdemeanor (**PA 11-242 § 95**, effective January 1, 2012).

Residential Care Homes

Number of Attendants in Residence. Under this new law, when a residential care home and nursing home are located at the same facility, the residential care home may get DPH permission to meet DPH code requirements for attendants in residence from 10 p.m. to 7 a.m. through the use of shared personnel (**PA 11-242 § 56**, effective July 1, 2011).

Room Temperatures. A new law requires residential care homes to maintain a minimum temperature of 71 degrees Fahrenheit in residents' rooms and all other areas used by residents (**PA 11-242 § 56**, effective July 1, 2011).

Meal Times. Under a new law, residential care homes must ensure that the maximum time between a resident's evening meal and breakfast is 14 hours, unless the home offers substantial bedtime nourishment (**PA 11-242 § 56**, effective July 1, 2011).

Health Certificate.

Beginning July 1, 2011, DPH may no longer (1) require that a person seeking to get or renew a license to operate a residential care home must provide DPH with a certificate of physical and mental health, signed by a physician or (2) approve the schedule for regular meals and snacks in residential care homes (**PA 11-242 § 56**, effective July 1, 2011).

Small House Nursing Home Project

A new law allows, rather than requires, DSS, within available appropriations, to establish a small house nursing home pilot project. (These facilities are modeled after private homes and afford residents more privacy, increased support staff, and individualized care.) The new law limits the program to one facility with up to 280 beds. Prior law required the program to support the development of up to 10 such homes, and DSS could approve one project with up to 280 beds before June 30, 2011.

The new law also increases, from 10 to 14, the maximum occupancy for each unit. In doing so, it repeals provisions allowing nursing homes to develop and relocate beds to their small house nursing homes, thus reducing the number of institutional nursing facility beds in the state (**PA 11-44 § 95**, effective July 1, 2011).

Medical Homes

A new law allows DSS to establish medical homes as a model for delivering care to recipients of DSS-administered medical assistance programs. The model is for people eligible for Medicaid or a Medicaid waiver who have (1) two chronic conditions, (2) one chronic condition with a risk of developing a second, or (3) a serious and persistent mental health or substance abuse condition.

The new law also allows DSS to implement policies and procedures to carry out certain provisions of the federal Patient Protection and Affordable Care and Health Care and Education Reconciliation acts. This includes establishing a “Community First” option, which is an option for people who need an institutional level of care but want to remain at home or in a community-based setting (**PA 11-44 § 110**, effective upon passage).

Strategic Plan for Long-Term Care Rebalancing

A new law requires DSS to develop a strategic plan, consistent with the state’s long-term care plan, to rebalance Medicaid long-term care supports and services (i.e, reduce the number of people in institutions and increase the number served by home- and community-based services). In developing the plan, DSS must include providers

representing in-home, institutional, and community settings and may contract with nursing homes and home- and community-based providers to implement it.

The new law permits DSS to waive DPH codes regulating nursing homes, residential care homes, and assisted living service agencies if (1) a regulated provider requires such a waiver to carry out the strategic plan and (2) the DSS commissioner determines that the waiver will not endanger the provider’s residents’ or clients’ health or safety.

The new law exempts from the general CON moratorium on new nursing home beds those beds relocated to a new facility to meet a priority need identified in the strategic plan. By law, the moratorium expires on June 30, 2012 (**PA 11-242 §§ 83 & 84**, effective July 1, 2011).

Limited Services for Legal Immigrants Living in the U.S. for Less Than Five Years

The law allows certain elderly immigrants receiving long-term care services to continue to get this care. Under a new law, immigrant elders continue to get coverage if they are receiving (1) home care receive services that are equivalent to those provided under the Medicaid waiver portion of the Connecticut Home Care Program for Elders, rather than simply home care; (2) State

Medical Assistance for Noncitizens (SMANC)-funded nursing home care as of June 30, 2011; or (3) receiving care and applying for SMANC before June 1, 2011 (**PA 11-44 § 118**, effective upon passage).

OTHER HEALTH CARE

Health Care Provider Identification

Under a new law, a health care provider who provides direct patient care as an employee of or on behalf of a health care facility or institution must wear an employer-issued photo-identification badge during working hours. The badge must be worn in plain view and include the (1) facility's or institution's name; (2) provider's name; and (3) provider's license, certificate, or employment title. The new law applies to workers in (1) hospitals; (2) nursing and rest homes; (3) home health care agencies; (4) homemaker-home health aide agencies; (5) emergency medical service organizations; (6) assisted living service agencies; (7) outpatient surgical facilities; and (8) infirmaries operated by an educational institution for the care of its students, faculty, and employees (**PA 11-32**, effective October 1, 2011).

Therapy Nurse

A new law allows an intravenous (IV) therapy nurse employed or contracted by a nursing home that operates an IV therapy program to administer a peripherally inserted central catheter (PICC) as part of the home's IV therapy program. Under current DPH regulations, only physicians may perform this procedure. A PICC is a tube that is inserted into a peripheral vein, typically in the upper arm, and advanced until the catheter tip ends in a large vein in the chest near the heart to obtain intravenous access (**PA 11-40**, effective October 1, 2011).

MISCELLANEOUS

Estate and Gift Tax Threshold Lowered

A new law lowers the estate and gift tax threshold from \$3.5 million to \$2 million and extends the existing 7.2% rate to estates and gifts valued at between \$2 million and \$3.5 million (**PA 11-6 §§ 84, 87, & 119**, effective upon passage, and applicable to deaths occurring and gifts made on or after January 1, 2011).

Freeze in State Supplement Benefits

A new law freezes benefits in the State Supplement to Supplemental Security Income program for the next two fiscal

years (**PA 11-44 § 78**, effective July 1, 2011).

Photo Identification of Drivers Age 65 or Older

Under a new law, the Department of Motor Vehicles (DMV) will no longer be able to waive the requirement that a driver's license for people age 65 or older include a photograph. Prior law allowed the waiver if a license holder asked for it in writing and provided evidence of hardship, such as living too far from a DMV office. Federal law requires state-issued driver's licenses and ID cards to include the licensee's or card holder's photograph to be accepted for official purposes by a federal agency (**PA 11-213 § 17**, effective upon passage).

Grandparents Visitation Rights

A new law establishes a task force to study the issue of visitation rights for grandparents. The study must examine (1) the legal and social issues related to grandparents' "access to visitation," (2) the impact of the loss of contact on families, (3) social supports to promote the continuation of these relationships, and (4) legislative proposals consistent with the state constitution (**SA 11-12**, effective upon passage).

Department of Aging Reestablishment

A new law postpones the reestablishment of the state Department on Aging by two years, from July 1, 2011 to July 1, 2013 (**PA 11-44 §§ 145 & 146** January 1, 2011).

Retirement Status Occupational License

A new law allows anyone age 65 or older who needs to renew a Department of Consumer Protection-issued professional or occupational license under Title 20, to pay \$20 to obtain a retirement status license instead of paying the regular license renewal fee. The act bars a retirement status licensee from practicing or offering to practice the occupation or trade for which he or she was licensed. An applicant must submit his or her original license to DCP, along with a letter (1) requesting the retirement status, (2) expressing the licensee's current retirement status, and (3) agreeing not to actively engage in the practice of the occupation or trade for which he or she was originally licensed (**PA 11-117**, January 1, 2011).

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