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## OLR Bill Analysis

sSB 369 (File 428, as amended by Senate "A")\*

### ***AN ACT CONCERNING THE DEPARTMENT OF DEVELOPMENTAL SERVICES' RECOMMENDATIONS REGARDING VARIOUS REVISIONS TO DEVELOPMENTAL SERVICES STATUTES.***

#### **SUMMARY**

This bill makes various changes in Department of Developmental Services (DDS)-related statutes. Specifically, it does the following:

1. allows the DDS commissioner to require anyone applying for a job with an individual funded by DDS for self-directed services to submit to a check for substantiated complaints in the Department of Children and Families child abuse and neglect registry (§ 1);
2. specifies that the governor's physician appointee to the Council on Developmental Services must be a Connecticut-licensed physician or psychiatrist, rather than a physician generally, as under current law (§ 2);
3. specifically allows the DDS commissioner's designee, rather than just the commissioner, to perform various tasks related to the probate court process when someone files a court petition to place a person with DDS for services (§ 3);
4. requires DDS to encourage DDS-licensed residential facility owners to adopt standards and practices when building new residential facilities that (a) promote energy efficiency and (b) include environmentally friendly construction materials and techniques (§ 4);
5. allows DDS-licensed residential facilities to participate in specified energy use assessment programs, and requires the commissioner to report on the assessments' findings (§ 4);

6. repeals laws (a) requiring DDS to, among other things, coordinate family support services for children with disabilities and (b) establishing the Family Support Council (§§ 5, 6 & 12); and
7. increases, from \$101,000 to \$125,000, the cost allowance cap for executive director salaries in state agencies' calculations of grants to private agencies that provide employment opportunities, day services, or residential facility services (§§ 7, 8 & 13).

The bill requires funds invested in, contributed to, or distributed from an "Achieving a Better Life Experience" (ABLE) account to be disregarded when determining someone's eligibility for certain cash assistance programs (§ 9). The bill also makes minor and technical changes to the ABLE statutes, codifying recent changes to federal regulations (§§ 10 & 11).

The bill also makes other technical and conforming changes.

\*Senate Amendment "A" adds the provisions on (1) energy efficiency and related assessments, (2) family support services and the Family Support Council, (3) the cost allowable cap for certain executive director salaries, and (4) ABLE accounts.

EFFECTIVE DATE: July 1, 2022, except the provisions (1) on energy efficiency and related assessments and executive director salaries take effect upon passage, and (2) repealing certain family support services laws and the Family Support Council take effect October 1, 2022.

### **§ 3 — DDS COMMISSIONER DESIGNEE IN PROBATE COURT PROCESS**

By law, any interested party may file a probate court petition to place a person with intellectual disability with DDS in the least restrictive, appropriate setting subject to various conditions and procedural requirements. The bill specifically allows the DDS commissioner's designee, rather than just the commissioner, to perform various tasks related to this process and makes related changes. For example, the bill allows the commissioner to designate someone to (1) receive notice from the court on the required hearing, (2) appoint an interdisciplinary team

to evaluate the petition's subject and make related determinations, and (3) make specified determinations if the department receives a report that a person meets standards indicating they may need DDS services.

#### **§ 4 — ENERGY EFFICIENCY STANDARDS AND ASSESSMENTS**

The bill requires DDS to encourage DDS-licensed residential facility owners (i.e., community living arrangements or community companion homes) to adopt standards and practices when building new residential facilities that (a) promote energy efficiency and (b) include environmentally friendly construction materials and techniques.

The bill permits any DDS-licensed residential facility to participate in energy use assessment programs under the state's Conservation and Load Management Plan. And it requires the facility's owner or operator, or his or her designee, to give DDS a copy of any energy assessment report it receives no later than 10 days after receipt. The report copies provided to DDS are not subject to disclosure under the Freedom of Information Act.

The bill requires the DDS commissioner, by July 1, 2023, to report to the Public Health Committee on the (1) findings of the energy assessments done on these facilities and (2) their recommended energy efficiency improvements.

#### **§§ 5, 6 & 12 — FAMILY SUPPORT SERVICES**

The bill repeals laws requiring DDS to (1) coordinate family support services for children with disabilities (e.g., developmental disabilities or a moderate, severe, or profound educational disability); (2) within available appropriations, promote the statewide availability of these services; and (3) in coordination with other state, regional, and local agencies, help families access other sources of government funds before using funds appropriated for these services.

The bill also repeals the law establishing the Family Support Council, which current law charges with, among other things, providing specified assistance to DDS and other state agencies that administer or fund family support services. (In practice, the council has not met in

several years.)

The bill also makes conforming changes, including removing the Family Support Council president, or the president's designee, from the state's Long-Term Care Advisory Council (§ 6).

**§§ 7, 8 & 13 — COST ALLOWANCE CAP FOR EXECUTIVE DIRECTOR SALARIES**

The bill increases, from \$101,000 to \$125,000, the cost allowance cap for executive director salaries in the Department of Developmental Services', Department of Mental Health and Addiction Services', Department of Social Services', and other state agencies' calculations of grants to private agencies that provide employment opportunities, day services, or residential facility services. (The current cost allowance cap reflects a one-time, 1% cost of living adjustment.)

Beginning July 1, 2022, the bill allows the cap to increase annually, up to any percentage cost-of-living increase provided in the departments' contracts with these agencies.

**§§ 9-11 — ABLE ACCOUNTS**

The bill requires funds invested in, contributed to, or distributed from an ABLE account to be disregarded when determining someone's eligibility for the (1) state-administered general assistance program (SAGA) or (2) optional State Supplement Program (SSP). For SSP, the disregard only applies to the extent the funds could be disregarded under the federal Supplemental Security Income (SSI) program.

SAGA generally provides cash assistance to single or married childless individuals who have very low incomes, do not qualify for other cash assistance programs, and are considered "transitional" or "unemployable." SSP provides cash assistance to individuals who are aged, blind, and disabled and (1) receive federal SSI benefits or (2) would be eligible for SSI, but for excess income.

Existing law requires ABLE account funds to be disregarded when determining eligibility for certain other programs, including temporary family assistance.

The bill also makes minor and technical changes to the ABLE statutes, codifying recent changes to federal regulations, including the following: (1) establishing a hierarchy of individuals authorized to establish an ABLE account for an eligible individual and (2) allowing eligible individuals to self-certify their disability status when opening an ABLE account to the satisfaction of the U.S. Treasury secretary (26 CFR § 1.529A-2 (C)(1)).

By law, the ABLE program provides tax advantaged savings accounts to help individuals and their families save private funds to pay for certain expenses related to disability or blindness (see BACKGROUND).

### ***Opening an Account***

Under the bill, an eligible individual, or a person he or she selects, may open an ABLE account for that individual. If the eligible individual is unable to open an account (presumably due to mental or physical incapacity), the bill authorizes the following individuals to do so on the eligible individual's behalf, in the following order: (1) the individual's agent under a power of attorney; (2) a conservator or legal guardian; (3) a spouse, parent, sibling, grandparent; or (4) a representative payee appointed by the U.S. Social Security Administration.

Under prior federal regulations, only the eligible individual or his or her parent, guardian, or agent under a power of attorney could open an ABLE account.

### ***Disability Self-certifications***

The bill allows an eligible individual to self-certify, under penalty of perjury, his or her disability status when opening an ABLE account. Under the bill, the disability self-certification must do the following to the U.S. Treasury secretary's satisfaction:

1. certify that the individual is blind or has a medically determinable physical or mental impairment that (a) results in marked and severe functional limitations and (b) can be expected to result in death or will last for at least 12 months;
2. certify that the impairment or blindness occurred before age 26;

3. certify that the person establishing the account is the designated beneficiary or is authorized to establish the account; and
4. include the diagnostic code for the individual's impairment.

By law, perjury is a class D felony, which is punishable by up to five years in prison, up to \$5,000, or both (CGS § 53a-156).

## **BACKGROUND**

### ***Federal Law***

The federal ABLÉ Act (P. L. 113-295) allows states to establish and maintain qualified ABLÉ programs to do the following:

1. encourage and help individuals and families save private funds to support individuals with disabilities to maintain health, independence, and quality of life and
2. provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities that will supplement, but not replace, benefits provided through private insurance, Medicaid, Supplemental Security Income, employment, and other sources.

Generally, under federal law, qualified ABLÉ programs are exempt from federal taxation, and funds in ABLÉ accounts may not be considered when determining eligibility for benefits or assistance programs authorized by federal law unless the funds exceed \$100,000.

### ***Related Bills***

SB 372 (File 190), reported favorably by the Public Health Committee, contains substantially similar provisions on energy efficiency practices and energy use assessment programs for DDS-licensed residential facilities.

SB 373 (File 191), reported favorably by the Public Health Committee, contains identical provisions repealing (1) certain laws related to family support services and (2) the law establishing the Family Support Council.

sSB 374 (File 192), reported favorably by the Public Health Committee, contains substantially similar provisions increasing the cost allowance cap for executive director salaries in state agencies' calculations of grants to certain private agencies.

sSB 376 (File 153), reported favorably by the Public Health Committee, contains substantially similar provisions on ABLE accounts.

**COMMITTEE ACTION**

Public Health Committee

Joint Favorable Substitute

Yea 29 Nay 0 (03/25/2022)