



Senate

General Assembly

File No. 146

February Session, 2022

Substitute Senate Bill No. 264

Senate, March 28, 2022

The Committee on Aging reported through SEN. MILLER of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING A QUALIFIED DEDUCTION FROM MEDICAID APPLIED INCOME FOR CONSERVATOR COSTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) (a) On or before December
2 31, 2022, the Commissioner of Social Services shall amend the Medicaid
3 state plan provisions governing the calculation of applied income, as
4 defined in section 17b-261r of the general statutes, to permit a qualified
5 deduction pursuant to 42 USC 1396a(r)(1)(A)(ii), as amended from time
6 to time, for the following expenses related to representation of a
7 Medicaid applicant or recipient: (1) Compensation of a conservator in
8 the amount approved by the Probate Court or a minimum of ninety
9 dollars a month, whichever amount is higher; (2) Probate Court filing
10 fees and expenses under subdivision (7) of subsection (b) of section 45a-
11 106a and sections 45a-108a and 45a-109 of the general statutes; (3)
12 premiums for any probate bond required by the Probate Court; and (4)
13 any other fiduciary expenses approved by the Probate Court, provided
14 such deductions are permissible under federal law.

15 (b) The provisions of this section shall be applied to conservator
16 expenses incurred on or after October 1, 2022, or the approval date of
17 the Medicaid state plan amendment, whichever is later.

18 (c) On or before December 31, 2023, and annually thereafter, the
19 Commissioner of Social Services shall calculate the total amount
20 deducted from the applied income of Medicaid applicants and
21 recipients under subsection (a) of this section during the preceding fiscal
22 year and inform the Probate Court Administrator, in writing, of the
23 amount. Not later than thirty days after receipt of the commissioner's
24 calculation, the Probate Court Administrator shall transfer funds from
25 the Probate Court Administration Fund to the Department of Social
26 Services equal to one-half of such amount for that year.

27 Sec. 2. Subsection (d) of section 17b-261 of the 2022 supplement to the
28 general statutes is repealed and the following is substituted in lieu
29 thereof (*Effective from passage*):

30 (d) The transfer of an asset in exchange for other valuable
31 consideration shall be allowable to the extent the value of the other
32 valuable consideration is equal to or greater than the value of the asset
33 transferred. The Commissioner of Social Services shall not treat any
34 conservator compensation, fiduciary fee or expense approved by the
35 Probate Court that is paid by a Medicaid applicant or recipient for
36 services rendered by a conservator as an improper transfer of assets for
37 the purpose of obtaining Medicaid eligibility, provided such applicant
38 or recipient provides documentation of (1) fiduciary fee or expense
39 payment, and (2) services rendered by such conservator in accordance
40 with Probate Court regulations.

41 Sec. 3. Subsection (a) of section 45a-594 of the general statutes is
42 repealed and the following is substituted in lieu thereof (*Effective from*
43 *passage*):

44 (a) Compensation payable to the conservator or guardian of any
45 person who is supported wholly or in part by the state in any humane
46 institution, or who is receiving benefits under any of the state's

47 programs of public assistance, shall be based upon services rendered
 48 and shall not exceed five per cent of the gross income to the estate
 49 during the period covered by any account. The conservator or guardian
 50 shall be entitled to compensation of not less than [fifty] ninety dollars
 51 for any accounting period continuing for at least a year. If extraordinary
 52 services are rendered by any conservator or guardian, the court of
 53 probate, upon petition and hearing, may authorize reasonable
 54 additional compensation. A copy of the petition and notice of hearing
 55 shall be lodged in the office of the Commissioner of Administrative
 56 Services in Hartford at least ten days before the hearing. No commission
 57 or compensation shall be allowed on any moneys or other assets
 58 received from a prior guardian or conservator nor upon any amount
 59 received from liquidation of loans or other investments.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	17b-261(d)
Sec. 3	<i>from passage</i>	45a-594(a)

Statement of Legislative Commissioners:

In Section 2(d), "Probate Court-approved conservator or fiduciary fee" was changed to "conservator compensation, fiduciary fee or expense approved by the Probate Court that is", "services rendered" was changed to "services rendered by a conservator" and "fiduciary fee payment" was changed to "fiduciary fee or expense payment" for consistency.

AGE *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 23 \$	FY 24 \$
Social Services, Dept.	GF - Cost	1,175,000	675,000
Social Services, Dept.	GF - Revenue Gain	375,000	
Probate Court	PCAF - Savings	900,000	1,125,000

Note: GF=General Fund; PCAF=Probate Court Administration Fund

Municipal Impact: None

Explanation

The bill results in the impact described below due to requiring the state to deduct certain conservatorship expenses when calculating the amount of income an institutionalized Medicaid enrollee must contribute towards his or her care, to the extent allowed under federal law.

The bill results in increased state Medicaid costs of approximately \$675,000 in FY 23 and \$1,350,000 in FY 24 (\$675,000 in FY 24 after a transfer from the Probate Court Administration Fund) by requiring the Department of Social Services (DSS) to deduct certain conservator expenses when calculating a Medicaid-eligible nursing home resident's applied income. This assumes a start date of January 1, 2023. In addition, DSS will incur one-time Other Expenses costs of approximately \$500,000 in FY 23 to enhance the state's eligibility system in order to implement the applied income deductions specified in the bill. The system enhancement costs are anticipated to result in a federal grants revenue gain of \$375,000, which reflects federal reimbursement for such costs under Medicaid.

These provisions also result in a net savings to the Probate Court Administration Fund (PCAF) of \$900,000 in FY 23 and \$1,125,000 in FY 24 associated with requiring the Probate Court to transfer funds to DSS equal to one-half the amount deducted for conservator expenses in the prior fiscal year, beginning in FY 23. In FY 21, the Probate Court supported conservator expenses for approximately 2,500 Medicaid individuals in long-term care.

The estimated impact to the PCAF and DSS is detailed in the tables below.

Probate Court PCAF \$			
	FY 23	FY 24	FY 25
Reduction in Conservator Reimbursement/Fee Waivers	900,000	1,800,000	1,800,000
Transfer to DSS		(675,000)	(1,350,000)
Net Impact to PCAF	900,000	1,125,000	450,000
DSS Medicaid \$			
	FY 23	FY 24	FY 25
Gross Cost	1,350,000	2,700,000	2,700,000
State Share	675,000	1,350,000	1,350,000
Transfer from Probate	-	675,000	1,350,000
Net Impact to DSS	675,000	675,000	-
DSS Other Expense/Federal Grants \$			
	FY 23	FY 24	FY 25
Impact System Enhancements	500,000	-	-
Federal Grants Rev	375,000	-	-
Net Impact to State	125,000	-	-

The actual cost to DSS will depend on (1) the amount of the conservator expenses (including conservator compensation), Probate Court filing fees/expenses, and premiums for any Probate Court bonds counted as a deduction from a beneficiary’s income, and (2) the commensurate shift to the state for Medicaid costs which would have been paid by the beneficiary.

The bill will also result in a cost to the state Medicaid program to the

extent the penalty period that would have been imposed on an individual, making them temporarily ineligible for Medicaid long term care services, is either reduced or eliminated. The cost to the state Medicaid program will depend on the reduction or elimination of the penalty period which would have been imposed on the individual and the scope of services that otherwise would not be eligible for Medicaid coverage.

The Out Years

The annualized ongoing fiscal impact is detailed in the table above.

OLR Bill Analysis**sSB 264*****AN ACT CONCERNING A QUALIFIED DEDUCTION FROM MEDICAID APPLIED INCOME FOR CONSERVATOR COSTS.*****SUMMARY**

This bill requires the Department of Social Services (DSS) commissioner to amend the Medicaid state plan by December 31, 2022, to allow the deduction of certain conservator expenses when calculating a Medicaid eligible nursing home resident's applied income. In general, these residents must spend any income they have on their care, except for certain allowances (i.e., applied income).

In doing so, the bill requires the DSS commissioner, starting by December 31, 2023, to annually calculate the total conservatorship expenses deducted from a nursing home resident's applied income in the preceding fiscal year and inform the probate court administrator in writing of the amount.

Within 30 days after receiving the commissioner's calculation, the probate court administrator must transfer half of the conservatorship expenses for that year from the Probate Court Administration fund to DSS.

The bill also prohibits DSS from treating any probate court-approved conservator or fiduciary fees as an improper asset transfer for purposes of imposing a penalty period.

Lastly, the bill increases, from \$50 to \$90, the minimum monthly compensation for a conservator of a person receiving state assistance.

EFFECTIVE DATE: Upon passage

APPLIED INCOME

Medicaid State Plan Amendment

Under the bill, the DSS commissioner must amend the Medicaid state plan to allow the deduction from applied income of the following conservatorship expenses:

1. compensation for the individual's conservator, in an amount the probate court approves or \$90 per month, whichever is greater;
2. probate court filing fees and expenses, including conservatorship fees, fiduciary accounting fees, and miscellaneous fees (see BACKGROUND);
3. premiums for any probate bond the court requires; and
4. any other fiduciary expenses approved by the probate court that are allowed under federal law.

The commissioner must seek approval from the federal Centers for Medicare and Medicaid Services (CMS) for the state plan amendment. The bill applies to conservator expenses incurred on or after October 1, 2022, or the date CMS approves the state plan amendment, whichever is later.

PENALTY PERIOD

Under federal law, DSS must impose a penalty period when individuals transfer assets for less than fair market value in the 60 months before applying for Medicaid coverage (i.e., improper asset transfer). The bill prohibits DSS from treating any probate court-approved conservator or fiduciary fees as an improper asset transfer. To be exempt from the penalty (1) applicants must provide documentation of the fees and (2) the services must be provided according to existing court regulations.

By law, the penalty period (in months) is generally calculated by dividing the value of all assets transferred during the 60 months before application by the average monthly cost to a private patient of nursing facility services in the state or community. Medicaid does not pay for

long-term services and supports during the penalty period.

BACKGROUND

Probate Court Fees

By law, the general fee for most probate court matters related to conservatorship is \$225 (CGS § 45a-106a). This includes filing motions to (1) appoint a conservator, (2) change residence or placement in a long-term care facility, and (3) terminate a conservatorship. Under the law, the basic fee for a fiduciary to file an account in the probate court in any matter other than estate settlement is at least \$50 and up to \$500 per year, based on a statutory formula (CGS § 45a-108a).

The law also allows the probate court to charge fees for miscellaneous expenses (i.e., filing or copying certain documents) (CGS § 45a-109).

The law allows an indigent petitioner or applicant to the probate court to apply for a fee waiver (CGS § 45a-111).

COMMITTEE ACTION

Aging Committee

Joint Favorable Substitute

Yea 15 Nay 0 (03/10/2022)