



Senate

General Assembly

File No. 3

January Session, 2023

Substitute Senate Bill No. 58

Senate, February 28, 2023

The Committee on Human Services reported through SEN. LESSER of the 9th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING CONSERVATOR COMPENSATION BY
MEDICAID APPLICANTS AND RECIPIENTS.***

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

1 Section 1. (NEW) (*Effective October 1, 2023*) (a) On or before December
2 31, 2023, 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 one
9 hundred twenty-five dollars per month for any accounting period
10 continuing for at least a year, whichever amount is higher; (2) Probate
11 Court filing fees and expenses under subdivision (7) of subsection (b) of
12 section 45a-106a and sections 45a-108a and 45a-109 of the general
13 statutes; (3) premiums for any probate bond required by the Probate
14 Court; and (4) any other fiduciary expenses approved by the Probate

15 Court, provided such deductions are permissible under federal law and
16 are taken from applied income after all other deductions provided for
17 in the Medicaid state plan.

18 (b) The provisions of this section shall be applied to conservator
19 expenses incurred on or after October 1, 2023, or the approval date of
20 the Medicaid state plan amendment, whichever is later.

21 (c) Not later than December 31, 2024, and annually thereafter, the
22 Commissioner of Social Services shall calculate the total amount
23 deducted from the applied income of Medicaid applicants and
24 recipients under subsection (a) of this section during the preceding fiscal
25 year and inform the Probate Court Administrator, in writing, of the
26 amount deducted. Not later than thirty days after receipt of the
27 commissioner's calculation, the Probate Court Administrator shall
28 transfer funds from the Probate Court Administration Fund to the
29 Department of Social Services in an amount equal to one-half of the total
30 amount deducted during the preceding fiscal year.

31 Sec. 2. Subsection (d) of section 17b-261 of the general statutes is
32 repealed and the following is substituted in lieu thereof (*Effective July 1,*
33 *2023*):

34 (d) The transfer of an asset in exchange for other valuable
35 consideration shall be allowable to the extent the value of the other
36 valuable consideration is equal to or greater than the value of the asset
37 transferred. The Commissioner of Social Services shall not treat any
38 conservator compensation, fiduciary fee and expense approved by the
39 Probate Court that is paid by a Medicaid applicant or recipient for
40 services rendered by a conservator as an improper transfer of assets for
41 the purpose of obtaining Medicaid eligibility, provided the applicant or
42 recipient submits documentation to the commissioner demonstrating
43 the services rendered were in accordance with Probate Court
44 regulations and the compensation, fee and expense were for the fair
45 market value of the services rendered.

46 Sec. 3. Subsection (a) of section 45a-594 of the general statutes is

47 repealed and the following is substituted in lieu thereof (*Effective October*
48 *1, 2023*):

49 (a) Compensation payable to the conservator or guardian of any
50 person who is supported wholly or in part by the state in any humane
51 institution, or who is receiving benefits under any of the state's
52 programs of public assistance, shall be based upon services rendered
53 and shall not exceed five per cent of the gross income to the estate
54 during the period covered by any account. The conservator or guardian
55 shall be entitled to compensation of not less than [fifty] one hundred
56 twenty-five dollars for any accounting period continuing for at least a
57 year. If extraordinary services are rendered by any conservator or
58 guardian, the court of probate, upon petition and hearing, may
59 authorize reasonable additional compensation. A copy of the petition
60 and notice of hearing shall be lodged in the office of the Commissioner
61 of Administrative Services in Hartford at least ten days before the
62 hearing. No commission or compensation shall be allowed on any
63 moneys or other assets received from a prior guardian or conservator
64 nor upon any amount received from liquidation of loans or other
65 investments.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2023</i>	New section
Sec. 2	<i>July 1, 2023</i>	17b-261(d)
Sec. 3	<i>October 1, 2023</i>	45a-594(a)

HS *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 24 \$	FY 25 \$
Social Services, Dept.	GF - Cost	1,450,000	950,000
Social Services, Dept.	GF - Revenue Gain	375,000	
Probate Court	PCAF - Savings	950,000	950,000

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 \$950,000 in FY 24 and \$1.9 million in FY 25 (\$950,000 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, 2024. 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 approximately \$950,000 in FY 24 and FY 25 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 24. In FY 22, 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 24	FY 25	FY 26
Reduction in Conservator Reimbursement/Fee Waivers	950,000	1,900,000	1,900,000
Transfer to DSS		(950,000)	(1,900,000)
Net Impact to PCAF	950,000	950,000	-
DSS Medicaid \$			
	FY 24	FY 25	FY 26
Gross cost	1,900,000	3,800,000	3,800,000
State Share	950,000	1,900,000	1,900,000
Transfer from Probate	-	950,000	1,900,000
Net Impact to DSS	950,000	950,000	-
DSS Other Expense/Federal Grants \$			
	FY 24	FY 25	FY 26
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 that 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 58*****AN ACT CONCERNING CONSERVATOR COMPENSATION BY MEDICAID APPLICANTS AND RECIPIENTS.*****SUMMARY**

This bill requires the Department of Social Services (DSS) commissioner to amend the Medicaid state plan by December 31, 2023, to permit 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, minus certain allowances (i.e., applied income).

Additionally, the bill:

1. requires the DSS commissioner to apply deductions for conservator expenses incurred beginning October 1, 2023, or the date the Centers for Medicare and Medicaid Services approves Medicaid state plan amendment, whichever is later;
2. requires the DSS commissioner to annually notify the probate court administrator of the total conservatorship expenses deducted from applied income in the previous fiscal year;
3. requires the probate court administrator to annually transfer from the Probate Court Administration Fund to DSS, an amount equal to half the conservatorship expenses for that year;
4. prohibits DSS from treating any probate court-approved conservator or fiduciary fees as an improper asset transfer for purposes of imposing a penalty period; and
5. increases, from \$50 to \$125 per month, the minimum

compensation for conservators or guardians of people supported by the state (e.g., Medicaid recipients).

EFFECTIVE DATE: October 1, 2023, except the improper transfer provision is effective July 1, 2023.

APPLIED INCOME

Medicaid State Plan Amendment

Under the bill, the DSS commissioner must amend the Medicaid state plan by December 31, 2023, to allow the deduction of the following conservatorship expenses when calculating a resident's applied income:

1. \$125 per month in compensation for the resident's conservator or a higher amount approved by the probate court;
2. probate court filing fees and expenses, including conservatorship fees, fiduciary accounting fees, and miscellaneous fees (see BACKGROUND);
3. premiums for any probate bond required by the probate court; and
4. any other fiduciary expenses approved by the probate court that are permissible under federal law.

The bill requires these deductions to be taken from applied income after all other deductions under the Medicaid state plan.

Notification and Funds Transfer

The bill requires the DSS commissioner, by December 31, 2024, and each year after, to calculate the total conservatorship expenses deducted from a nursing home resident's applied income in the last 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 funds from the Probate Court Administration fund to DSS equal to half of the conservatorship expenses for that year.

PENALTY PERIOD

Under federal law, DSS must impose a penalty period when people 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, as long as the applicant or recipient submits documentation demonstrating that the services were rendered according to probate court regulations and the fees were for the fair market value of the services rendered.

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

By law, the general fee for most probate court matters related to conservatorship is \$250 (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 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

Human Services Committee

Joint Favorable Substitute

Yea 21 Nay 0 (02/14/2023)