Connecticut Department of Social Services
Making a Difference

Written Testimony before the Aging Committee
Submitted by the Department of Social Services
February 7, 2017

S.B. No. 759 (RAISED) - AN ACT CONCERNING A COMMUNITY SPOUSE'S ALLOWABLE ASSETS

This bill proposes to allow the spouse of an institutionalized person who is applying for Medicaid (referred to hereafter as the "community spouse") to retain marital assets up to the maximum allowed under federal law. Effective January 1, 2017, this amount is $120,900.

This proposal intends to increase the amount of assets the community spouse is allowed to keep. Under current statute, community spouses of long-term care Medicaid recipients are allowed to keep one-half of the couple's countable assets up to the federal maximum of $120,900. If the total of the assets are under $24,180, the minimum allowed by federal law, the community spouse may keep all of the assets. The couple's home and one car are excluded from the assessment of spousal assets. The federal amounts are adjusted annually based on increases in the Consumer Price Index.

The Department continues to maintain that the current policy, which has been in place since 1989 (with the exception of FY 2011), is fair and reasonable and supports the original intent of the 1988 Medicare Catastrophic Coverage Act, which sought to prevent the impoverishment of spouses of those applying for Medicaid coverage for long-term care. Furthermore, the department's current policy is in line with most other states.

We have opposed increases in the amount of assets protected for community spouses in past years because it will result in a significant fiscal impact to the state. With the challenging budget environment that exists today, we cannot support increasing the minimum Community Spouse Protected Amount as it will have a negative fiscal impact on the Medicaid account.

H.B. No. 6983 (RAISED) - AN ACT CONCERNING MEDICAID ELIGIBILITY FOR HOME-CARE SERVICES

This bill would provide retroactive eligibility coverage for applicants for the Connecticut Home Care Program for Elders (CHCPE) and align the effective date of eligibility for home and community-based services under a Medicaid waiver with the effective date of eligibility of Medicaid eligibility for institutional care when an improper transfer of assets has occurred.

Although the Department shares the desire for individuals to obtain prompt access to home care services, we do not believe this proposal can be operationalized given the current allocation of resources and processes for determining eligibility. Furthermore, we believe this will require additional financial, administrative and staff resources.

Federal law requires the imposition of a penalty when individuals transfer assets for less than fair market value for the purpose of obtaining Medicaid payment of long-term services and supports. Long-term services and supports include home and community-based services under a Medicaid waiver, as well as services provided in an institutional setting. The penalty period begins on the date when Medicaid would otherwise pay for long-term services and supports had the improper transfer not occurred. Medicaid does not pay for long-term services and supports during the penalty period as the individual could have paid for his or her care had the improper transfer not occurred.

For waiver applications, services cannot begin until the application is processed. Retroactive eligibility is not permissible under the structure of our waiver programs. There are provisions in the waiver for the requirement of the completion of a criminal background check for providers under the waiver and monthly monitoring by the Access Agency. If retroactive payment were possible, there could be no assurance that these CMS requirements were met. In addition, there are specific rates and approved providers in a waiver. Private services that clients/families arrange prior to the determination of financial eligibility may be provided by a non-Medicaid provider at any range of rates. Neither of these would be permissible under a waiver program.

In contrast, the Department would like to note that clients who are active participants on the state-funded Connecticut Home Care Program for Elders and who become Medicaid active with a retroactive effective date, are able to have their services retroactively billed to Medicaid. This is feasible because they have met all of the waiver's programmatic requirements.

Most importantly, waivers such as the Connecticut Home Care Program for Elders, include assurances to CMS that clients are provided a choice of providers and that they receive care management services that include ongoing monthly monitoring of the clients' status and the effectiveness of the person-centered plan. This standard cannot be met retroactively. As transfer of asset penalties cannot begin until Medicaid would otherwise pay for waiver services and since waiver services cannot begin until the application is processed, transfer of asset penalties cannot begin until the application is processed.

Because federal law does not support the changes sought by this proposal, the department cannot support this bill.

H.B. No. 6985 (RAISED) – AN ACT CONCERNING A CONSERVED PERSON'S RIGHT TO INTERACT WITH OTHERS

This bill creates two new sections in the Connecticut General Statutes pertaining to conservatorships and the rights of conserved persons to interact with family members and loved ones.

The Department of Social Services and its Social Work Services division administer three programs directly impacted by these changes. The Protective Services for the Elderly (PSE), Conservator of Person (COP) and Conservator of Estate (COE) programs all deal with individuals and situations that will be handled differently based on these changes. The Department has concerns with how these new changes would alter the administration of these programs and impact client safety.

Section 1of this bill restricts the conservator's ability to limit a conserved person's right to interact with others, including but not limited to the conserved person's siblings, parents, and friends. The Department is concerned that this section may actually limit the conservator's ability to ensure the conserved person's safety.

Sadly, in many cases where a conservator has been appointed due to abuse, the perpetrator of the abuse is a family member or acquaintance. Allowing a conservator the discretion to prohibit the alleged abuser from having contact with the conserved person may be critical to the conserved person's safety and well-being. The Department's primary concern is in regards to the amount of time the client is left vulnerable by requiring the conservator to obtain an order from the probate court prohibiting an individual from having contact with the conserved person. During this time, the elder could still be in a vulnerable position and prone to continued abuse. Section 45a-656(b) CGS provides that the conservator of person is responsible for providing for the conserved person's "care, comfort and maintenance". Without some discretion the conservator cannot fulfill their duty to protect the client from further harm.

Additionally, the Department often seeks the appointment of a conservator for the purpose of ensuring the elder's safety. For example, the Department has filed for the appointment of a conservator to prohibit contact with the client during an on-going investigation of abuse. In these instances, while the application for the appointment of a conservator is pending, the Department has had to intervene and convince the hospitals, nursing homes, and assisted living facilities not to permit certain individuals because of their involvement in the alleged abuse until a conservator is appointed to make a decision on the conserved person's behalf.

Overall, the Department is concerned that the unintended consequence of taking away the conservator's discretion in this area could make management of cases more difficult for conservators, and leave clients vulnerable to abuse while waiting for a court order.

Section 2 of this bill mandates that parties are to be notified when the conserved person's residence has changed, when the conserved person is staying at a location other than the conserved person's residence, if there are changes in the health status of the conserved person, and if the conserved person passes away.

The requirement that a conservator provide notification when the conserved person's residence changed is already addressed in the probate statute. Subsection (b) of section 45a-656b, CGS already requires a hearing take place in order to change the residence of a conserved person. Relevant parties are notified of the hearing. Adding this requirement is redundant as the existing law already provides for such notice and, furthermore, places an unnecessary burden on the conservator.

The requirement to notify family members when the conserved person is staying at a location other than the conserved person's residence needs more clarification. For example, would notification be required for any stay outside the conserved person's home or only for stays that are long-term or permanent? In addition, on rare occasions, the Protective Services Program may place a conserved person in a domestic violence shelter temporarily for the person's safety. The person's location is kept confidential. Requiring notification of the conserved person's location to any family member may jeopardize the Department's ability to maintain the conserved person's well-being.

Furthermore, mandating notifications on changes of health status and face-to-face notifications of a conserved person's passing would prove to be administratively burdensome, and strain the Department's already limited staff resources.

For these reasons, the Department does not offer its support for this legislation.

H.B. No. 6988 (RAISED) – AN ACT INCREASING FINANCIAL ASSISTANCE FOR GRANDPARENTS AND OTHER NONPARENT RELATIVES WHO ARE RAISING CHILDREN

This bill would increase the payment standard for child only assistance units in the Temporary Family Assistance (TFA) program to seventy-five percent of the foster care rate paid by the Department of Children and Families.

While the Department appreciates the goal of achieving equity in these benefits, based on SFY 16 data, we estimate the cost of such a change to be approximately $14.4 million. Therefore, we must oppose the bill due to the significant costs associated with providing such a benefit increase.

H.B. No. 6991 (RAISED) – AN ACT CONCERNING A STUDY OF COST SAVINGS FROM THE UTILIZATION OF MOBILITY SYSTEMS

This bill requires the Department, in consultation with the State Department on Aging, to conduct a study and report on the potential cost savings to the state from the use of technology, including mobility systems that assist in transferring immobile or semi-ambulatory individuals. The departments are to report on cost savings associated with reducing injuries to recipients of state-funded assistance and the staff that assist those individuals, as well as the reduction in the need for hospital and nursing home admissions due to the use of mobility technology.

The Department is already required and is currently covering this type of technology when a Medicaid member's individual assessment deems such equipment as medically necessary. Since the Department already provides this technology when necessary, there is no control group that the Department can use to conduct this study. Furthermore, the Department does not have the resources or ability to create one.

In addition, the Department could not obtain the information necessary to conduct such a study without obtaining a written authorization for the disclosure of medical records from the individuals in the target population, as required by federal and state law.

Lastly, this study would have no impact on Medicaid recipients or costs and would be unnecessary since the services are already provided and any such cost savings attributed to this are already occurring. Therefore, the Department must oppose this legislation.

H.B. No. 6993 (RAISED) – AN ACT INCREASING FUNDING FOR ELDERLY NUTRITION

This bill would increase the rate to providers of home-delivered meals who participate in the Connecticut Home Care Program for Elders.

While the Department certainly values the work community providers deliver to beneficiaries of our programs, there are multiple services and hundreds of providers participating in not only the Connecticut Home Care program but other waiver and community-based services programs. The Department believes singling out one provider type at the exclusion of the others is inequitable and cannot be supported. If the Department increased the rates for all DSS waiver services by even 1%, it would cost an additional $7.3 million.

Additionally, given the fiscal climate, it is not anticipated that there will be funds included in the Governor's recommended budget to support this addition; therefore, the department must oppose it.

H.B. No. 5821 (RAISED) - AN ACT CONCERNING TRANSPORTATION FOR NURSING HOME RESIDENTS

This bill amends title 17b of the general statutes to expand nonemergency transportation of nonambulatory nursing home residents to now include travel to the homes of family members that live within the same municipality as the nursing home.

In its current form, the bill is unclear and does not detail the type of transportation provided, by whom such transportation would be provided, and if this service would be for all nursing home residents or just residents receiving Medicaid. The Department's Medicaid Non-Emergency Medical Transportation (NEMT) program pays for transportation services for eligible Medicaid members to travel to medically necessary services covered under the CT Medicaid program only. Federal requirements regarding NEMT services are described in 42 CFR S 440.170(a)(4). Transportation to visit family members, as described in this bill, are not coverable per federal requirements. If the intent of the bill is to include these services under the Medicaid NEMT program, then all costs would be state funded, as the services would not be federally reimbursable under Medicaid.

The Department also would like to note that, based on common industry practices, many nursing homes have transportation vans for their residents and may already be providing this type of service to their residents.

For these reasons, the Department cannot support this bill.