

# 2016 LEGISLATIVE SESSION AND BUDGET REPORT

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## Introduction

Connecticut State Government remains in a period of ongoing fiscal instability with the adoption of the SFY 2016 Midterm Budget Adjustment (Special Session P.A. 16-1) last month. In the final analysis, the \$19.7 billion budget revision includes nearly \$1 billion in funding reductions while forecasters continue to signal a SFY 2018 budget deficit once more approaching \$1 billion. The Long Term Services and Support (LTSS) and related health care sectors were not immune from budget measures enacted to close the current and ongoing budget gap. Here are the budget and legislative highlights from the 2016 Session of the Connecticut General Assembly of concern to LTSS providers.

STATE EMPLOYEES---the budget reduces state agency salary accounts by \$250 million while the Malloy administration is authorized to reduce “general employee” expenditures by an additional \$69 million. Thousands of state employee layoffs are a possibility. The extent of employee layoffs at agencies interfacing with LTSS (DSS, DPH, Housing, OPM, etc.) is not known at this time.

FUNDING REDUCTIONS AT THE DEPARTMENT OF SOCIAL SERVICES (DSS)---a range of funding reductions in the area of LTSS were included in PA 16-1:

- Reduce Dept. of Social Services Funding for Agency Operations Account by 5.75%
- Other reductions in DSS include (state savings which does not include federal funding losses):
  - Reduce Supplemental Hospital Payments- \$ 43.42 million savings
  - Reduce Medicaid Dental Rates by 5%- \$2.67 million savings
  - Expedite Transitions under Money Follows the Person- \$2.5 million savings
  - Reduce Funding for Cash Assistance Programs by 1%- \$2.15 million savings
  - Reduce Medicaid nursing home appropriation \$1 million
  - Reduce Home Health Medication Administration Rate \$15%
  - Cut homecare rates for \$400,000 savings
  - Reduce DSS Administrative Service Organization (ASO) Performance Payments under Medicaid to 5%- \$260,000 savings

## LONG TERM SERVICES AND SUPPORTS LEGISLATION<sup>1</sup>

### **NURSING HOME LEGISLATION**

#### NOTIFICATION TO PROSPECTIVE NURSING HOME OWNERS

- **P.A. 16-6 (SB 161)- AN ACT CONCERNING NOTIFICATION OF PENALTIES FOR ABUSE AND NEGLECT OF NURSING HOME RESIDENTS** requires DPH to include a statement in their application to prospective nursing home licensees or owners notifying the potential licensee or owner that they may be held civilly or criminally liable for abuse or neglect of a resident by a nursing home employee.

#### PATIENT CAREGIVERS IN NURSING HOMES

- **P.A. 16-59 (SB 166)- AN ACT EXPANDING UTILIZATION OF PATIENT-DESIGNATED CAREGIVERS** extends to nursing homes existing requirements for hospitals regarding the designation of patient caregivers at the time of a patient's discharge.
- Specifically, the bill requires a nursing home, when discharging a resident to his or her home to:
  1. allow the resident or his or her representative to designate a caregiver at, or before, the time the resident receives a written copy of his or her discharge plan;
  2. document the designated caregiver in the resident's discharge plan;
  3. attempt to notify the designated caregiver of the resident's discharge; and
  4. instruct the caregiver on post-discharge tasks with which he or she will assist the resident at home.
- The bill specifies that it does not create a private right of action against a nursing home or its employees, contractors, or consultants. It prohibits these entities and people from being held liable for services a caregiver provides or fails to provide to the patient in his or her home.

#### RESIDENT ADMISSION AGREEMENTS

- **P.A. 16-209 (SB 266)- AN ACT CONCERNING NURSING HOME RESIDENT ADMISSION AGREEMENTS** requires a nursing home to include in any resident admission agreement, notice of the duties, responsibilities, and liabilities of the person who signs the agreement and circumstances in which (a) the responsible party will be held legally liable and (b) his or her personal assets may be pursued for payment to the nursing home.
- Under the bill, the notice must be in 14-point font, bold type, and initialed by the responsible party. If the nursing home fails to include the notice and obtain the responsible party's initials, the resident admission agreement is unenforceable with regard to the responsible party.

#### NOTICE WHEN CLOSING BEDS

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<sup>1</sup>Excerpted from "CONNECTICUT ASSOCIATION OF HEALTH CARE FACILITIES 2016 Legislative Session Report." Przybysz and Associates, June 2016, found at [www.CAHCF.org/legislative/public-acts/](http://www.CAHCF.org/legislative/public-acts/)

- **P.A. 16-8 (SB 280)- AN ACT CONCERNING THE LONG-TERM CARE OMBUDSMAN'S NOTICE TO NURSING HOME RESIDENTS** requires residential care homes and other long term care facilities to add an informational letter on patients' rights and available services to the written notice that facilities must provide to patients and other parties when planning to terminate a service or substantially decrease bed capacity.
- When planning to terminate a service or reduce beds, nursing homes, rest homes, residential care homes, and intermediate care facilities for individuals with intellectual disabilities must submit a letter of intent to DSS as part of the certificate of need (CON) process.
- The notice must include:
  - a statement that no patient shall be involuntarily transferred or discharged within or from a facility under state and federal law because of the CON application;
  - a statement that all patients have the right to appeal any proposed transfer or discharge; and
  - the name, mailing address, and telephone number of the Office of Long-Term Care Ombudsman and the local legal aid office.

#### AIDS BED MORATORIUM EXEMPTION

- **P.A. 16-47 (HB 5252)- AN ACT CONCERNING NURSING HOME BEDS FOR AIDS PATIENTS** adds beds for AIDS patients to the types of beds exempted from the nursing home bed moratorium.
  - By law, DSS cannot accept or approve any nursing home requests for a certificate of need to add new beds, with certain exceptions.
  - Other types of beds exempted from the nursing home bed moratorium include (1) beds for patients requiring neurological rehabilitation, (2) beds associated with a continuing care facility that guarantees life care for its residents, (3) certain Medicaid-certified beds relocated from one licensed nursing facility to another, and (4) certain Medicaid-certified beds relocated from one licensed nursing facility a new licensed facility..

#### NURSING HOME DEFINITION

- **P.A. 16-66 (HB 5537)- AN ACT CONCERNING VARIOUS REVISIONS TO THE PUBLIC HEALTH STATUTES** amends the definition of a nursing homes.
- The bill creates a definition for "nursing home facility" for institutional licensing purposes, defining it the same way as statutes related to nursing home oversight. Under this definition, a nursing home facility is a chronic and convalescent nursing home (CCNH) or rest home with nursing supervision that provides 24-hour nursing supervision under a medical director or CCNH that provides skilled nursing care under medical supervision and direction to carry out nonsurgical treatment and dietary procedures for chronic or acute diseases, convalescent stages, or injuries.

#### METHADONE IN NURSING HOMES

- **P.A. 16-66 (HB 5537)- AN ACT CONCERNING VARIOUS REVISIONS TO THE PUBLIC HEALTH STATUTES** includes language that allows licensed substance abuse treatment facilities providing

medication assisted treatment for opioid addiction to provide methadone and related substance abuse treatment services to patients in licensed nursing home facilities.

- Substance abuse treatment facilities seeking to do this must request permission from the DPH commissioner, in a form and manner he prescribes. DPH may grant the request if it is determined that it would not endanger the health, safety, or welfare of any patient. Current law generally requires nursing home patients receiving methadone treatment for opioid addiction to receive that treatment at the substance abuse treatment facility rather than in the nursing home.
- If the commissioner approves the request, DPH may impose conditions to ensure patients' health, safety, or welfare. Approval may be revoked if it is found that any patient's health, safety, or welfare has been jeopardized.

## HEALTHCARE LEGISLATION

### VETERANS RECORDS

- **P.A. 16-109 (HB 5356)- AN ACT CONCERNING VETERANS' HEALTH RECORDS** prohibits health care providers and institutions from charging their patients, or the patients' attorneys or authorized representatives, for copies of all or parts of medical records necessary for supporting a claim or appeal relating to any of the provisions authorized under the federal and state veterans statutes.
  - The request for records must include documentation of the claim or appeal. The bill requires these providers and institutions to furnish such records within 30 days of the written request.

### APRN AUTHORITY

- **P.A. 16-39 (SB67)- AN ACT CONCERNING THE AUTHORITY AND RESPONSIBILITIES OF ADVANCED PRACTICE REGISTERED NURSES** allows advanced practice registered nurses (APRNs) to certify, sign, or otherwise document medical information in several situations that currently require a physician's signature, certification, or documentation. Examples include:
  - certifying a patient for medical marijuana use (except for glaucoma),
  - issuing "do not resuscitate" orders,
  - certifying a disability to cancel a health club contract, and
  - certifying a disability or illness for continuing education waivers or extensions for various health professions.

### TELEHEALTH

- **P.A. 16-198 (SB298)- AN ACT CONCERNING TELEHEALTH SERVICES FOR MEDICAID RECIPIENTS** requires DSS to provide Medicaid coverage for telehealth services and requires the

commissioner to seek a federal waiver or amend the state Medicaid plan to obtain federal reimbursement for the cost of covering these services.

- It also requires the commissioner to report by January 1, 2018 to the Human Services and Public Health committees on providing telehealth services to Medicaid recipients.
- “Telehealth” means delivering health care services through information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's physical and mental health. It includes:
  1. interaction between a patient at an originating site and the telehealth provider at a distant site and
  2. synchronous (real-time) interactions, asynchronous store and forward transfers (transmitting medical information from the patient to the telehealth provider for review at a later time), or remote patient monitoring.
- Also proposed was SB 115- AN ACT CONCERNING MEDICAID COVERAGE OF TELEMONTORING SERVICES which did not pass but would have provided Medicaid coverage through the Money Follows the Person demonstration program for home telemonitoring services performed by a home health care agency for a Medicaid beneficiary in certain circumstances or with certain health conditions.

## OTHER LEGISLATION WITH MEDICAID IMPLICATIONS

### LIFE INSURANCE POLICIES

- **P.A. 16-12 (SB 107)- AN ACT CONCERNING THE TREATMENT OF THE CASH VALUE OF LIFE INSURANCE POLICIES WHEN EVALUATING MEDICAID ELIGIBILITY** eliminates the requirement that proceeds of a life insurance policy that are less than \$10,000 be used to pay for the individual's long term care.
  - Current law prohibits DSS from determining that an individual is ineligible for Medicaid solely based on having a life insurance policy with a cash value less than \$10,000, provided the individual is pursuing the policy's surrender and proceeds are used to pay for the individual's long-term care once the policy is surrendered.

### IRREVOCABLE FUNERAL SERVICE CONTRACTS

- **P.A. 16-20 (SB 189)- AN ACT CONCERNING IRREVOCABLE FUNERAL SERVICE CONTRACTS** increases, from \$5,400 to \$8,000, the maximum allowable amount of an irrevocable funeral service contract.
  - Compensation may be in the form of a payment of money, the delivery of securities, or the assignment of a death benefit under a life insurance policy. These contracts are sometimes referred to as “prepaid” or “preneed” funeral service contracts because the person is paying for services to be provided in the future.

#### SHORT TERM CARE INSURANCE

- **P.A. 16-63 - AN ACT CONCERNING SHORT TERM CARE INSURANCE** similar to long term care insurance, the bill establishes “short term care insurance” as a new type of insurance providing certain health benefits for 300 days or fewer.

#### SPECIAL NEEDS TRUST FAIRNESS ACT

- **P.A. 16-176 - AN ACT CONCERNING THE ADOPTION OF THE SPECIAL NEEDS TRUST FAIRNESS ACT IN CONNECTICUT UPON PASSAGE IN CONGRESS** enables implementation of the anticipated federal law upon passage and will allow nonelderly individuals with disabilities to establish a special needs trust on their own behalf.

#### COMMISSION ON WOMEN, CHILDREN AND SENIORS

- **Special Session PA 16-3, Section 129** repeals the Commission on Aging along with three other legislative commissions and creates a 63 member Commission on Women, Children and Seniors.

#### “BAN THE BOX”

- **P.A. 16-83 (HB 5237)- AN ACT CONCERNING FAIR CHANCE EMPLOYMENT** prohibits employers from asking about a prospective employee's prior arrests, criminal charges, or convictions on an *initial employment application* unless
  - (1) the employer must do so under state or federal law or
  - (2) the prospective employee is applying for a position for which the employer must obtain a security or fidelity bond or equivalent bond.
- The bill allows a prospective employee to file a complaint with the labor commissioner alleging a violation of this prohibition and subjects violators to a \$300 per violation civil penalty imposed by the Labor Department. It also allows someone to file a complaint with the commissioner alleging an employer's violation of existing law on employment-related criminal record checks.

#### MANDATED RETIREMENT PLANS

- **P.A. 16- 29 (HB 5591)- AN ACT CREATING THE CONNECTICUT RETIREMENT SECURITY PROGRAM** which was amended by **Special Session P.A. 16-xx (SB 502)** creates the Connecticut Retirement Security Exchange to establish a program for individual retirement accounts for eligible private-sector employees, who are automatically enrolled in the plan unless they opt out, beginning in Fiscal Year 2018.
  - The authority is administered by the Connecticut Retirement Security Authority Board, which the act establishes as a quasi-public authority under state law.

#### **Who is Included:**

- The bill's requirements apply to all “qualified employers,” meaning all private sector employers that employ at least five people each of whom was paid at least \$5,000 in wages in the preceding calendar year. “Covered employees” are those who have worked for a qualified employer for a minimum of 120 days and are at least 19 years old.

- Qualified employers must automatically enroll each covered employee in the program no later than 60 days after the employer provides the employee with informational material on the program the act requires. If the employee does not affirmatively opt in the bill requires the employer to enroll the employee with a contribution of 3% of the employee's taxable wages (up to normal IRS limits). *A covered employee may opt out of the program by electing a contribution level of zero.*

***Who is Exempt:***

- A qualified employer that maintains a retirement plan recognized under the federal tax code or approved by the authority is exempt from the bill's requirements to provide the informational material and automatically enroll qualified employees. If the authority determines that an employer is not continuing to maintain its retirement plan recognized under the federal tax code then the employer is no longer exempt from the bill.

***Further Details:***

- The bill sets the default contribution rate at 3% of an employee's after tax wages when the employee does not select his or her own contribution rate. PA 16-29 allows the authority to determine a default rate up to 6%.
- The bill specifies that the guidelines offer retirement choices provided by multiple vendors the authority selects. It also requires them to include a cap on the total annual fees and provide participants with information regarding each retirement choice's investment performance history.
  - The bill requires (1) the authority to minimize total annual fees that can be charged to participants and, (2) beginning in year five of operation, limits annual fees to 0.75% of the value of total program assets.

HEALTH CARE STRUCTURES

***Special Act No. 16-5 AN ACT ESTABLISHING A TASK FORCE TO STUDY THE ZONING OF TEMPORARY HEALTH CARE STRUCTURES*** established a task force to study the zoning of temporary health care structures and to develop a model zoning ordinance for temporary health care structures.

**NO ACTION (BILLS NOT ADOPTED)**

- **SB 209- AN ACT CONCERNING THE DEPARTMENT OF PUBLIC HEALTH'S RECOMMENDATIONS REGARDING THE PROTECTION OF RESIDENTS IN HEALTH CARE INSTITUTIONS** would have increased civil penalties and changed the process for citations against nursing homes and residential care homes when there is a violation of a state statute or regulation.
- **SB 278** would have increased nursing home staffing requirements for nursing and social work staff to provide care to nursing home facility residents.
- **HB 5257- AN ACT CONCERNING MEDICAID PROVIDER AUDITS** did not pass due to DSS objections but would have made changes to how DSS reports to long term care facilities regarding cost disallowances or unreasonable costs found during audits.

- **HB 5589- AN ACT CONCERNING AN ACUITY-BASED SYSTEM FOR MEDICAID REIMBURSEMENT** would have established the components of an acuity-based Medicaid reimbursement system for nursing home services.
- **Nursing Home Personal Needs Allowance (PNA)** will remain at current level as proposals introduced to increase or decrease the allowance did not achieve final passage.

For additional information, contact Matthew V. Barrett at [mbarrett@cahcf.org](mailto:mbarrett@cahcf.org) or view the full CONNECTICUT ASSOCIATION OF HEALTH CARE FACILITIES 2016 Legislative Session Report." Przybysz and Associates, June 2016, found at [www.CAHCF.org/legislative/public-acts/](http://www.CAHCF.org/legislative/public-acts/)