



*Written Testimony before the Finance, Revenue and Bonding Committee
Submitted by the Department of Social Services
March 21, 2022*

SB 441 - AN ACT CONCERNING A CREDIT FOR AMBULATORY SURGICAL CENTERS.

As explained below, DSS opposes this bill because it violates federal Medicaid rules on health care-related taxes and would risk having federal penalties imposed on the state. This bill would establish a new, refundable tax credit against the ambulatory surgical center (ASC) tax established pursuant to section 12-263aaa of the Connecticut General Statutes. Specifically, this bill would enable ASCs to offset the amount of ASC tax by: (1) the ASC’s choice of either fifty percent of aggregate Medicaid payments received by the ASC during the applicable period or fifty percent of the difference between aggregate payments received by the ASC and the amount that would have been received by a hospital that performed the same services; and, additionally, (2) twenty-five percent of the payments received by the ASC from the state employee health plan.

Federal Medicaid law prohibits credits on health care-related taxes. Specifically, it is prohibited for a state to provide “(directly or indirectly) for any payment, offset, or waiver that guarantees to hold taxpayers harmless for any portion of the tax.” 42 U.S.C. § 1396b(w)(4)(C)(i). *See also* 42 C.F.R. § 433.68(f)(3). As this bill provides directly for an offset that would hold ASCs harmless from the tax, it would violate federal Medicaid statute and regulation.

In addition, by enabling ASCs to be effectively taxed at different rates based on different amounts of Medicaid and state employee health plan payment credits, this bill would also violate the federal Medicaid law mandating that health care-related taxes must be uniformly applied. *See* 42 U.S.C. § 1396b(w); 42 C.F.R. §§ 433.68(b)(2) and (c)(2). Notably, a tax will violate federal Medicaid law as not being uniformly applied if the “tax holds taxpayers harmless for the cost of the tax.”

The bill also raises concerns with federal Medicaid payment rules. Federal Medicaid regulations require the state to ensure that health care providers accept Medicaid payment as “payment in full.” 42 C.F.R. § 447.15. This bill may be interpreted to violate that provision by effectively increasing the state’s Medicaid payment by the amount of the credit calculated based on Medicaid payments.

If interpreted as violating federal Medicaid law, this bill could subject the state to federal Medicaid penalties, which could be up to approximately \$10 million per year.

Finally, this bill also would present technical challenges for DSS if DRS requested assistance in verifying an ASC's requested credit based on Medicaid payments. In practice, calculating the difference between what a hospital would be paid under Medicaid for a service compared to an ASC is not as straightforward as might be assumed. ASCs are paid on a fee schedule. Outpatient hospitals are paid using the ambulatory payment classification methodology, which involves certain services packaged into a larger payment using mathematical algorithms established using clinical and financial research data. As a result, it would be difficult to ascertain the "difference" in payment given the distinct payment processes involved.

For all these reasons, DSS must oppose this bill.