



House of Representatives

General Assembly

File No. 562

February Session, 2000

House Bill No. 5778

House of Representatives, April 12, 2000

The Committee on Appropriations reported through REP. DYSON of the 94th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

An Act Providing Work Incentives For Persons With Disabilities.

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

1 Section 1. (NEW) (a) The Department of Social Services shall
2 establish and implement a working persons with disabilities program
3 to provide medical assistance to persons who are disabled, as defined
4 in 42 USC 1382c, and are regularly employed.

5 (b) The Commissioner of Social Services shall amend the Medicaid
6 state plan to allow persons specified in subsection (a) of this section to
7 qualify for medical assistance. The amendment shall include the
8 following requirements: (1) That the person be engaged in a work
9 effort that meets the substantial and reasonable threshold criteria for
10 hours of work or wages and have a gross income of no more than
11 seventy-five thousand dollars per year; (2) a disregard of all countable
12 income up to two hundred per cent of the federal poverty level; (3) a
13 disregard of the first fifteen thousand dollars of assets which would
14 otherwise be counted under the Medicaid program; (4) a disregard of

15 any retirement and medical savings accounts established pursuant to
16 26 USC 220; (5) a disregard of any moneys in accounts designated by
17 the person for the purpose of purchasing goods or services that will
18 increase the employability of such person, subject to approval by the
19 Commissioner of Social Services; (6) a disregard of spousal income
20 solely for purposes of determination of eligibility; and (7) a
21 contribution of any countable income which exceeds two hundred per
22 cent of the federal poverty level equal to ten per cent of the excess
23 minus any premiums paid from income for health insurance by any
24 family member.

25 (c) The Commissioner of Social Services shall implement the policies
26 and procedures necessary to carry out the provisions of this section
27 while in the process of adopting such policies and procedures in
28 regulation form, provided notice of intent to adopt the regulations is
29 published in the Connecticut Law Journal within twenty days after
30 implementation. The commissioner shall define "countable income"
31 for purposes of subsection (b) of this section which shall take into
32 account impairment-related work expenses, as defined in the Social
33 Security Act. Such policies and procedures shall be valid until the time
34 final regulations are effective.

35 Sec. 2. Section 17b-605 of the general statutes is repealed and the
36 following is substituted in lieu thereof:

37 (a) The Commissioner of Social Services shall develop and
38 implement a personal care assistance program for persons with severe
39 physical disabilities who are employed or are likely to become
40 employed within six months. For the purposes of this section, "a
41 person with a severe physical disability" means a person who has a
42 record of a severe physical impairment, either congenital or acquired,
43 which is expected to continue indefinitely and limits one or more
44 major life activities, including self care, and who is able to supervise a
45 personal care assistant; and "personal care assistance" means services

46 necessary for self care which a person is unable to perform, including,
47 but not limited to, assistance with bathing, bowel or bladder care,
48 dressing, personal grooming, moving in and out of bed, preparation
49 and consumption of food, and other services defined by regulations
50 adopted pursuant to subsection (c).

51 (b) Subsidies shall be made, within available appropriations, to
52 persons determined eligible, for the purpose of employing personal
53 care assistants, except that persons eligible for benefits under section 1
54 of this act shall not be eligible for such subsidies unless such persons
55 are currently receiving services under the personal care assistance
56 waiver established by subsection (a) of section 17b-605a, as amended
57 by this act, and the commissioner has not received approval of the
58 amendment to such waiver required under subsection (b) of said
59 section. An eligible person shall receive up to a maximum of fifteen
60 thousand dollars per year.

61 (c) The commissioner shall adopt regulations in accordance with
62 chapter 54 to implement the program. The regulations shall establish
63 financial and other eligibility standards for participation in the
64 program, including family income eligibility standards, and shall
65 establish criteria for funding. Any person needing personal care
66 assistance who is (1) employed at the time of application for personal
67 care assistance or (2) likely to become employed within six months,
68 and demonstrates a need for personal care assistance services, shall be
69 eligible for participation in the program, but an unemployed person
70 described in subdivision (2) of this subsection may not receive
71 personal care assistance for more than six months in a consecutive
72 three-year period.

73 (d) If personal care subsidies cannot be provided to all eligible
74 persons because of insufficient appropriations, the commissioner shall:
75 (1) Promptly notify the Governor, the General Assembly and the Office
76 of Protection and Advocacy for Persons with Disabilities, (2) provide

77 subsidies to employed persons first.

78 (e) The commissioner shall establish a subcommittee of the
79 [Consumer Advisory Council on Disability Services] Connecticut
80 Council for Persons with Disabilities for the personal care assistance
81 program. The majority of the members of the subcommittee shall be
82 persons who use personal care assistance services. The subcommittee
83 shall meet regularly to: (1) Assess the personal care assistance needs of
84 physically disabled persons in the state, including the progress and
85 accomplishments of the personal care assistance program in meeting
86 such needs, (2) advise the commissioner on the operation of the
87 personal care assistance program, and (3) recommend to the
88 commissioner an annual budget request and recommend to the
89 commissioner, the Governor and the General Assembly legislation to
90 improve personal care assistance services to persons with severe
91 physical disabilities.

92 Sec. 3. Section 17b-605a of the general statutes is repealed and the
93 following is substituted in lieu thereof:

94 (a) The Commissioner of Social Services shall seek a waiver from
95 federal law to establish a personal care assistance program for persons
96 ages eighteen through sixty-four with disabilities funded under the
97 Medicaid program. Such a program shall be limited to a specified
98 number of slots available for eligible program recipients and shall be
99 operated by the Department of Social Services within available
100 appropriations. Such a waiver shall be submitted to the joint standing
101 committees [with] of the General Assembly having cognizance of
102 matters relating to appropriations and the budgets of state agencies
103 and human services in accordance with section 17b-8 no later than
104 January 1, 1996.

105 (b) The Commissioner of Social Services shall amend the waiver
106 specified in subsection (a) of this section to enable persons eligible for
107 or receiving medical assistance under section 1 of this act to receive

108 personal care assistance. Such amendment shall be submitted to the
109 joint standing committees of the General Assembly having cognizance
110 of matters relating to appropriations and the budgets of state agencies
111 and human services in accordance with section 17b-8 not later than
112 October 1, 2000.

113 Sec. 4. (NEW) The Commissioner of Social Services shall seek a
114 waiver from federal law to permit a person participating in the
115 program established under section 1 of this act to remain eligible for
116 medical assistance under the Medicaid program in the event such
117 person is unable to maintain a work effort for involuntary reasons. No
118 such person shall be required to make another application to
119 determine continued eligibility for medical assistance under the
120 Medicaid program. In order to remain eligible for such medical
121 assistance, such person shall request that such assistance be continued
122 not later than twelve months after failure to maintain a work effort and
123 shall meet the eligibility criteria for the Medicaid program, except that
124 the commissioner shall disregard any assets specified in subdivisions
125 (4) and (5) of subsection (b) of section 1 of this act.

126 Sec. 5. (NEW) The Commissioner of Social Services shall seek
127 waivers from federal law from the Social Security Administration to
128 establish demonstration projects (1) under which payments to
129 beneficiaries of Social Security disability insurance would be reduced
130 by one dollar for every two dollars of beneficiary earnings above a
131 level determined by the Commissioner of the Social Security
132 Administration, (2) to provide that any month during which a person
133 receives medical assistance under section 1 of this act shall not be
134 counted toward the extended period of eligibility for Social Security
135 disability insurance for such person, and (3) to provide that any month
136 during which a person receives supplemental security income and
137 medical assistance under section 1 of this act shall not be counted
138 toward the twelve-month period of suspension during which such
139 person may be reinstated to the federal Supplemental Security Income

140 Program without making another application.

141 Sec. 6. (NEW) (a) The Commissioner of Social Services, within
142 available appropriations, may establish and operate a community-
143 based services program for persons with disabilities (1) who are
144 between the ages of eighteen and sixty-four years, and (2) whose
145 income is not more than one hundred forty-three per cent of the
146 benefit amount paid to a person with no income under the temporary
147 family assistance program in the appropriate region of residence. Such
148 income requirement shall not apply to persons eligible for medical
149 assistance under section 1 of this act who were receiving community-
150 based services prior to July 1, 2000.

151 (b) The Commissioner of Social Services shall implement the
152 policies and procedures necessary to carry out the provisions of
153 subsection (a) of this section while in the process of adopting such
154 policies and procedures in regulation form, provided notice of intent to
155 adopt the regulations is published in the Connecticut Law Journal
156 within twenty days after implementation. Such policies and
157 procedures shall be valid until the time final regulations are effective.

158 Sec. 7. This act shall take effect July 1, 2000.

HS Committee Vote: Yea 18 Nay 0 JF C/R APP

APP Committee Vote: Yea 47 Nay 0 JF

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Significant Cost

Affected Agencies: Department of Social Services

Municipal Impact: None

Explanation

State Impact:

This bill establishes a program that allows people with disabilities to obtain employment without losing their Medicaid health benefits. Under current policy, disabled individuals lose their Medicaid benefits upon exceeding certain income limits, thereby providing a disincentive for these individuals to return to the workplace. Under this bill, disabled individuals would be able to earn up to \$75,000 per year and still retain their Medicaid coverage. Such individuals would be required to contribute a share of their income that exceeds 200% of the federal poverty level to help defray state cost.

This program is expected to serve approximately 1,000 individuals, with an annualized cost to the Medicaid program of \$5.2 million. The state will receive \$2.6 million in increased revenue due to the 50% federal financial participation for the Medicaid program. The state may also receive increased revenue from the tax on the income of these individuals as they return to work. The amount of this increase cannot be quantified at this time. The House version of the Appropriations

Act provides \$3.4 million for this program, which assumes partial year implementation. The Senate version of the Appropriations Act contains no additional funding for this program.

Section 3 of this bill further requires that DSS seek an extension of the personal care assistance waiver to provide for personal care assistants for all those individuals enrolled in the work incentive program. The current personal care assistance waiver covers 200 individuals at a cost of \$3.2 million annually. Based on this experience, it is estimated that extending this benefit to all 1,000 individuals in this new program would cost approximately \$16 million at an average cost of \$15,000 per person. However, it is not known how many enrollees in the work incentive program would receive personal care assistance, although it can be assumed that there would be less than full participation. Therefore, the final cost for this section cannot be determined. Neither the House nor the Senate version of the Appropriation Act included funds for this waiver extension.

OLR Bill Analysis

HB 5778

AN ACT PROVIDING WORK INCENTIVES FOR PERSONS WITH DISABILITIES.**SUMMARY:**

This bill requires the Department of Social Services (DSS) to amend the state Medicaid plan to establish a “working persons with disabilities” or Medicaid “buy-in” program for people who meet a federal disability definition and are regularly employed. Individuals must contribute towards their care once their income reaches 200% of the federal poverty level (currently \$1,392 per month) and can accrue substantial assets without losing eligibility. The bill requires the DSS commissioner to seek a waiver of federal Medicaid law to permit individuals participating in the new program to continue to receive Medicaid if they involuntarily stop working.

The bill requires the DSS commissioner to amend the federal Personal Care Assistance (PCA) waiver to enable people qualifying for the buy-in program to keep their PCA benefits even though their incomes exceed the waiver’s limits. (PCAs provide assistance with activities of daily living.) It makes people currently in the state-funded PCA working person’s program eligible to participate in the PCA waiver if they are participating in the buy-in program. And it permits people who are receiving community-based services before July 1, 2000 to keep these benefits if they participate in the buy-in program. It also codifies this program, which currently exists only in regulation.

The bill also requires the DSS commissioner to seek waivers from the Social Security Administration (SSA) to establish demonstration projects that provide additional work incentives for people eligible for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) as allowed under federal law. (It is not clear whether the SSA can grant DSS such authority.)

The bill makes a technical change.

EFFECTIVE DATE: July 1, 2000

MEDICAID BUY IN PROVISIONS

Definition of Disabled

Under the bill, the Medicaid buy-in coverage is available only to people meeting the federal definition of disability for the SSI and SSDI programs. To meet this definition, an individual must have a medically determinable physical or mental impairment which results in marked and severe functional limitations and which can be expected to last at least 12 months or result in death. (The federal definition also provides that such individual must be unable to earn more than the "substantial gainful activity" level, which is currently \$700 per month. If such a criterion were part of the bill's definition, the higher income limits the bill allows for would not be allowed.)

Regularly Employed

To be eligible for the program, an individual must be engaged in a work effort that meets the "substantial and reasonable threshold criteria" for hours of work or wages. (The bill does not define this phrase. It is used in federal law, but not for this particular buy-in provision. See BACKGROUND.)

Income Limits

The bill limits gross annual income to \$75,000. It requires DSS, when determining eligibility, to disregard all countable income up to 200% of the federal poverty level (FPL). Countable income must deduct impairment related work expenses (IRWE). Existing state regulations define "counted" income in the Medicaid program as total available income minus excluded income. The regulations likewise require DSS to deduct several types of expenses when determining countable income, including IRWEs. IRWEs are work expenses related to enabling individuals with disabilities to work, such as attendant services and prosthetics.

Under the bill, DSS must also disregard spousal income for purposes of initial eligibility.

Asset Limits

DSS must also disregard the first \$15,000 of assets that would otherwise be counted in the program. Currently, assets are limited to \$1,600 for single people, and \$2,000 for married couples in the Medicaid “medically needy” program for which most individuals affected by the bill are eligible. (It appears that this disregard would be on top of the existing limits. It is unclear whether the asset disregard would apply only to the Medicaid recipient or to both the recipient and his spouse. Current regulations require DSS to look at the assets of both individuals.)

In addition, DSS must disregard any retirement and medical savings accounts, and any money in accounts that the commissioner approves that are designated for purchasing goods or services that will increase the individual’s employabilitys.

Client Contribution

The bill requires participants to contribute towards the costs of care any countable income above 200% of the FPL. (In this instance, both the individual and his spouse’s income would apparently be counted.) The contribution is 10% of the excess less any premiums paid from income for health insurance coverage for any family member.

Implementation

The bill requires the DSS commissioner to implement policies and procedures necessary to carry out the program while in the process of adopting regulations, provided she publishes notice in the *Connecticut Law Journal* within 20 days of implementing the program.

PCA AND RELATED SERVICES

The bill requires the DSS commissioner to amend the PCA waiver to allow people participating in the buy-in program to also receive Medicaid-funded PCA services. Currently, to qualify for PCA waiver

services, a person's gross income may not exceed 300% of the federal Supplemental Security Income (SSI) limit (currently \$1,536 per month). DSS must submit the amendment to the Appropriations and Human Services committees by October 1, 2000. (This program has a limited number of slots.)

As a corollary, the bill makes people who are participating in the buy-in program ineligible for the state-funded PCA Working Person's program, which provides up to \$15,000 annually to purchase PCA services to people between the ages of 18 and 64 with severe physical disabilities who are working or likely to work. Annual income for this program is limited to \$30,000. Under the bill, eligibility for this program continues until the federal government approves the PCA waiver amendment. (The bill does not address people who participate in the buy-in program and do not receive PCA services, but who might need them.)

The bill codifies the existing Community-Based Services CBS program, a DSS program that, within available appropriations, offers services such as chore persons and homemakers to people with disabilities who (1) are between the ages of 18 and 64 (2) have income of no more than 143% of the benefit amount paid to someone with no income under the Temporary Family Assistance (TFA) program (currently \$476 for one person living in most parts of the state). The bill makes an exception to the income rule for people eligible for the buy-in program if they are receiving CBS services before July 1, 2000. (This would appear to make people who received CBS services any time before July 1, 2000 eligible to qualify for such services at the higher income level.)

The DSS commissioner may implement the program while in the process of adopting regulations, provided she publishes notice in the *Connecticut Law Journal* within 20 days of implementing the program. Since regulations already exist, it appears that only the higher income limit for buy-in clients would be subject to this provision.

MEDICAID WAIVER

The bill requires the DSS commissioner to seek a waiver of federal Medicaid rules to allow someone participating in the buy-in program

to keep his Medicaid eligibility if he has to stop working for involuntary reasons. He would not have to re-apply for Medicaid (these people would presumably fall into another coverage category). To remain eligible for Medicaid, the individual must request the continuance within 12 months after he fails to maintain the work effort and must otherwise meet the Medicaid eligibility criteria (presumably those for the medically needy program). Liquid assets would have to be spent down to the \$1,600 level. But any monies saved for retirement, medical savings, or employability accounts, as permitted by the bill, would be exempt assets.

SSA WAIVERS

The bill requires the DSS commissioner to seek waivers from the SSA to establish three separate demonstration projects, all of which are permitted under PL 106-170 (see BACKGROUND). The first allows SSDI recipients to have their benefits reduced by \$1 for every \$2 earned once income reaches the SGA level, as the SSA commissioner determines. Currently, a recipient generally loses all SSDI cash assistance 12 months after his earnings reach this level.

The second provides that any month during which someone is receiving Medicaid under the buy-in program would not count toward the 36-month SSDI extended period of eligibility. During this period beneficiaries who lose their benefits due to high earnings may reapply for benefits without filing a new application and going through a disability determination.

The final project would help SSI recipients in a similar way. This provision provides that any month during which an individual is enrolled in the buy-in program and is ineligible for SSI because of excess income or assets will not count toward the 12-month suspension period during which an individual can be reinstated to SSI status without a new application.

BACKGROUND

SSDI, SSI, and Public Health Insurance

The two primary federal cash assistance programs for people with

disabilities are SSDI and SSI. Both use the same definition of disability. SSDI is available only to people who have worked, have contributed to the Social Security trust fund, and become disabled before retirement age. The benefit paid is based on the amount contributed.

SSI is a means-tested program providing monthly cash income to low-income people with limited resources on the basis of age and disability. To be eligible currently, countable monthly income cannot exceed just slightly more than \$500. Assets are limited to \$2,000 for single people and \$3,000 for married couples.

Medicare benefits (Part A and B) are available to SSDI recipients who have received such assistance for at least two years; SSI recipients with disabilities are not eligible for Medicare. Medicare benefits are available for several years after a recipient begins working above the SGA level. Medicare does not cover prescription drugs and PCA services.

Both SSDI and SSI recipients can qualify for Medicaid benefits (which cover prescription drugs and PCAs) but the pathways to eligibility are different, especially when one is working. For SSDI recipients, eligibility is basically limited to the “medically needy” category (people with severe disabilities who are not working at the SGA level). Anyone with income above the medically needy income limit (\$476 per month, after certain deductions are taken), must “spend-down” the excess on unpaid medical bills to qualify.

For SSI recipients the rules are a bit more liberal. Under 1980 work incentive amendments to the Social Security Act (Section 1619), SSI recipients whose earnings go above the SGA level but still qualify for SSI cash or state supplement benefits and those who lose eligibility for SSI due to earnings can retain their Medicaid eligibility without having to spend-down to the lower, medically needy income level. Instead, their income can go as high as \$28,000 annually with no client contribution.

FEDERAL TICKET TO WORK AND WORK INCENTIVES IMPROVEMENT ACT OF 1999

This federal legislation was enacted to provide health care and

employment preparation and placement services to individuals with disabilities to enable them to reduce their dependency on cash benefit programs. The Medicaid expansion provisions in the act include allowing states to offer buy-in programs to individuals who, except for excess earnings, would qualify for SSI with incomes above 250% of the FPL. It allows states to require participants to pay 100% of a premium if their income is above 250% of the FPL, but the premium cost can be no more than 7.5% of income for people whose incomes are between 250% and 450% of the FPL. States must require individuals with incomes above \$75,000 to pay 100% of the premium.

The act also extends Medicare coverage for these individuals.

The act defines “employed” as either working at least 40 hours per month at the minimum wage or being engaged in a work effort that meets the “substantial and reasonable threshold” for hours worked. But this definition only applies to a newly authorized Medicaid category for people with “medically improved” disabilities.

The act gives both specific (the \$1 for \$2 SSDI reduction) and general demonstration authority to the SSA commissioner to carry out demonstration projects which will liberalize the way the agency treats work activities performed by SSI and SSDI recipients.

COMMITTEE ACTION

Human Services Committee

Joint Favorable Change of Reference

Yea 18 Nay 0

Appropriations Committee

Joint Favorable Report

Yea 47 Nay 0