



General Assembly

January Session, 2005

**Raised Bill No. 1099**

LCO No. 3572

\* SB01099HS\_APP031505 \*

Referred to Committee on Human Services

Introduced by:  
(HS)

**AN ACT CONCERNING TREATMENT OF ASSETS WITH RESPECT TO PROGRAMS ADMINISTERED BY THE DEPARTMENT OF SOCIAL SERVICES.**

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

1 Section 1. Section 17b-95 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective July 1, 2005*):

3 (a) Subject to the provisions of subsection (b) of this section, upon  
4 the death of a parent of a child who has, at any time, been a beneficiary  
5 under the program of aid to families with dependent children, the  
6 temporary family assistance program or the state-administered general  
7 assistance program, or upon the death of any person who has at any  
8 time been a beneficiary of aid under the state supplement program,  
9 medical assistance program, aid to families with dependent children  
10 program, temporary family assistance program or state-administered  
11 general assistance program, except as provided in subsection (b) of  
12 section 17b-93, the state shall have a claim against such parent's or  
13 person's estate for all amounts paid on behalf of each such child or for  
14 the support of either parent or such child or such person under the  
15 state supplement program, medical assistance program, aid to families

16 with dependent children program, temporary family assistance  
17 program or state-administered general assistance program for which  
18 the state has not been reimbursed, to the extent that the amount which  
19 the surviving spouse, parent or dependent children of the decedent  
20 would otherwise take from such estate is not needed for their support.

21 (b) In the case of any person dying after October 1, 1959, the claim  
22 for medical payments, even though such payments were made prior  
23 thereto, shall be restricted to medical disbursements actually made for  
24 care of such deceased beneficiary.

25 (c) Claims pursuant to this section shall have priority over all  
26 unsecured claims against such estate, except (1) expenses of last  
27 sickness not to exceed three hundred seventy-five dollars, (2) funeral  
28 and burial expenses in accordance with section 17b-84, and (3)  
29 administrative expenses, including probate fees and taxes, and  
30 including fiduciary fees not exceeding the following commissions on  
31 the value of the whole estates accounted for by such fiduciaries: On the  
32 first two thousand dollars or portion thereof, five per cent; on the next  
33 eight thousand dollars or portion thereof, four per cent; on the excess  
34 over ten thousand dollars, three per cent. Upon petition by any  
35 fiduciary, the Probate Court, after a hearing thereon, may authorize  
36 compensation in excess of the above schedule for extraordinary  
37 services. Notice of any such petition and hearing shall be given to the  
38 Commissioner of Administrative Services in Hartford at least ten days  
39 in advance of such hearing. The allowable funeral and burial payment  
40 herein shall be reduced by the amount of any prepaid funeral  
41 arrangement. Any amount paid from the estate under this section to  
42 any person which exceeds the limits provided herein shall be repaid to  
43 the estate by such person, and such amount may be recovered in a civil  
44 action with interest at six per cent from the date of demand.

45 [(d) For purposes of this section, all sums due on or after July 1,  
46 2003, to any individual after the death of a public assistance  
47 beneficiary pursuant to the terms of an annuity contract purchased at

48 any time with assets of a public assistance beneficiary, shall be deemed  
49 to be part of the estate of the deceased beneficiary and shall be payable  
50 to the state by the recipient of such annuity payments to the extent  
51 necessary to achieve full reimbursement of any public assistance  
52 benefits paid to, or on behalf of, the deceased beneficiary irrespective  
53 of any provision of law. The recipient of beneficiary payments from  
54 any such annuity contract shall be solely liable to the state of  
55 Connecticut for reimbursement of public assistance benefits paid to, or  
56 on behalf of, the deceased beneficiary to the extent of any payments  
57 received by such recipient pursuant to the annuity contract.]

58 Sec. 2. Section 17b-261 of the general statutes is repealed and the  
59 following is substituted in lieu thereof (*Effective July 1, 2005*):

60 (a) Medical assistance shall be provided for any otherwise eligible  
61 person whose income, including any available support from legally  
62 liable relatives and the income of the person's spouse or dependent  
63 child, is not more than one hundred forty-three per cent, pending  
64 approval of a federal waiver applied for pursuant to subsection (d) of  
65 this section, of the benefit amount paid to a person with no income  
66 under the temporary family assistance program in the appropriate  
67 region of residence and if such person is an institutionalized  
68 individual as defined in Section 1917(c) of the Social Security Act, 42  
69 USC 1396p(c), and has not made an assignment or transfer or other  
70 disposition of property for less than fair market value for the purpose  
71 of establishing eligibility for benefits or assistance under this section.  
72 Any such disposition shall be treated in accordance with Section  
73 1917(c) of the Social Security Act, 42 USC 1396p(c). Any disposition of  
74 property made on behalf of an applicant or recipient or the spouse of  
75 an applicant or recipient by a guardian, conservator, person  
76 authorized to make such disposition pursuant to a power of attorney  
77 or other person so authorized by law shall be attributed to such  
78 applicant, recipient or spouse. A disposition of property ordered by a  
79 court shall be evaluated in accordance with the standards applied to  
80 any other such disposition for the purpose of determining eligibility.

81 The commissioner shall establish the standards for eligibility for  
82 medical assistance at one hundred forty-three per cent of the benefit  
83 amount paid to a family unit of equal size with no income under the  
84 temporary family assistance program in the appropriate region of  
85 residence, pending federal approval, except that the medical assistance  
86 program shall provide coverage to persons under the age of nineteen  
87 up to one hundred eighty-five per cent of the federal poverty level  
88 without an asset limit. Said medical assistance program shall also  
89 provide coverage to persons under the age of nineteen and their  
90 parents and needy caretaker relatives who qualify for coverage under  
91 Section 1931 of the Social Security Act with family income up to one  
92 hundred per cent of the federal poverty level without an asset limit,  
93 upon the request of such a person or upon a redetermination of  
94 eligibility. Such levels shall be based on the regional differences in  
95 such benefit amount, if applicable, unless such levels based on regional  
96 differences are not in conformance with federal law. Any income in  
97 excess of the applicable amounts shall be applied as may be required  
98 by said federal law, and assistance shall be granted for the balance of  
99 the cost of authorized medical assistance. All contracts entered into on  
100 and after July 1, 1997, pursuant to this section shall include provisions  
101 for collaboration of managed care organizations with the Healthy  
102 Families Connecticut Program established pursuant to section 17a-56.  
103 The Commissioner of Social Services shall provide applicants for  
104 assistance under this section, at the time of application, with a written  
105 statement advising them of the effect of an assignment or transfer or  
106 other disposition of property on eligibility for benefits or assistance.

107 (b) For the purposes of the Medicaid program, the Commissioner of  
108 Social Services shall consider parental income and resources as  
109 available to a child under eighteen years of age who is living with his  
110 or her parents and is blind or disabled for purposes of the Medicaid  
111 program, or to any other child under twenty-one years of age who is  
112 living with his or her parents.

113 (c) For the purposes of determining eligibility for the Medicaid

114 program, an available asset is one that is actually available to the  
115 applicant or one that the applicant has the legal right, authority or  
116 power to obtain or to have applied for the applicant's general or  
117 medical support. If the terms of a trust provide for the support of an  
118 applicant, the refusal of a trustee to make a distribution from the trust  
119 does not render the trust an unavailable asset. Notwithstanding the  
120 provisions of this subsection, the availability of funds in a trust or  
121 similar instrument funded in whole or in part by the applicant or the  
122 applicant's spouse shall be determined pursuant to the Omnibus  
123 Budget Reconciliation Act of 1993, 42 USC 1396p. The provisions of  
124 this subsection shall not apply to special needs trust, as defined in 42  
125 USC 1396p(d)(4)(A).

126 (d) The transfer of an asset in exchange for other valuable  
127 consideration shall be allowable to the extent the value of the other  
128 valuable consideration is equal to or greater than the value of the asset  
129 transferred.

130 (e) The Commissioner of Social Services shall seek a waiver from  
131 federal law to permit federal financial participation for Medicaid  
132 expenditures for families with incomes of one hundred forty-three per  
133 cent of the temporary family assistance program payment standard.

134 (f) Notwithstanding the provisions of subsection (a) of this section,  
135 on or after April 1, 2003, all parent and needy caretaker relatives with  
136 incomes exceeding one hundred per cent of the federal poverty level,  
137 who are receiving medical assistance pursuant to this section, shall be  
138 ineligible for such medical assistance. On and after February 28, 2003,  
139 the Department of Social Services shall not accept applications for  
140 medical assistance program coverage under Section 1931 of the Social  
141 Security Act from parent and needy caretaker relatives with incomes  
142 exceeding one hundred per cent of the federal poverty level until on or  
143 after July 1, 2005.

144 (g) To the extent permitted by federal law, Medicaid eligibility shall  
145 be extended for two years to a family that becomes ineligible for

146 medical assistance under Section 1931 of the Social Security Act while  
147 one of its members who is a caretaker relative is employed or due to  
148 receipt of child support income or a family with an adult who, within  
149 six months of becoming ineligible under Section 1931 of the Social  
150 Security Act becomes employed.

151 [(h) An institutionalized spouse applying for Medicaid and having a  
152 spouse living in the community shall be required, to the maximum  
153 extent permitted by law, to divert income to such community spouse  
154 in order to raise the community spouse's income to the level of the  
155 minimum monthly needs allowance, as described in Section 1924 of  
156 the Social Security Act. Such diversion of income shall occur before the  
157 community spouse is allowed to retain assets in excess of the  
158 community spouse protected amount described in Section 1924 of the  
159 Social Security Act. The Commissioner of Social Services, pursuant to  
160 section 17b-10, may implement the provisions of this subsection while  
161 in the process of adopting regulations, provided the commissioner  
162 prints notice of intent to adopt the regulations in the Connecticut Law  
163 Journal within twenty days of adopting such policy. Such policy shall  
164 be valid until the time final regulations are effective.]

165 Sec. 3. Section 17b-261a of the general statutes is repealed and the  
166 following is substituted in lieu thereof (*Effective July 1, 2005*):

167 [(a)] The Commissioner of Social Services shall seek a waiver of  
168 federal law for the purpose of establishing that the penalty period  
169 during which an applicant for or recipient of assistance for long-term  
170 care under the Medicaid program is ineligible for Medicaid-funded  
171 services due to a transfer of assets for less than fair market value shall  
172 begin in the month the applicant is found otherwise eligible for  
173 Medicaid coverage of services rather than in the month of the transfer  
174 of assets. This section shall only apply to transfers that occur on or  
175 after the effective date of the waiver. The provisions of section 17b-8  
176 shall apply to this section.

177 [(b) Any transfer or assignment of assets resulting in the imposition

178 of a penalty period shall be presumed to be made with the intent, on  
179 the part of the transferor or the transferee, to enable the transferor to  
180 obtain or maintain eligibility for medical assistance. This presumption  
181 may be rebutted only by clear and convincing evidence that the  
182 transferor's eligibility or potential eligibility for medical assistance was  
183 not a basis for the transfer or assignment.

184 (c) Any transfer or assignment of assets resulting in the  
185 establishment or imposition of a penalty period shall create a debt, as  
186 defined in section 36a-645, that shall be due and owing by the  
187 transferor or transferee to the Department of Social Services in an  
188 amount equal to the amount of the medical assistance provided to or  
189 on behalf of the transferor on or after the date of the transfer of assets,  
190 but said amount shall not exceed the fair market value of the assets at  
191 the time of transfer. The Commissioner of Social Services, the  
192 Commissioner of Administrative Services and the Attorney General  
193 shall have the power or authority to seek administrative, legal or  
194 equitable relief as provided by other statutes or by common law.

195 (d) The Commissioner of Social Services, upon the request of a  
196 nursing facility, may grant financial relief to a nursing facility if the  
197 nursing facility establishes that (1) it is experiencing severe financial  
198 hardship due to the transfer of asset penalty period beginning in the  
199 month the applicant is found otherwise eligible for Medicaid coverage  
200 of services rather than in the month of the transfer of assets; and (2) it  
201 has made every effort permissible under state and federal law to  
202 recover the funds that are due to it for caring for the individual. No  
203 request for financial relief may be made by a nursing facility unless the  
204 individual who is the subject of the imposition of the penalty period  
205 has resided in the nursing facility for at least ninety days with no  
206 payment having been made on the individual's behalf during that  
207 period. If the department agrees to grant financial relief to the nursing  
208 facility in the form of providing Medicaid payment to the facility, the  
209 department shall seek recoupment of said payment from the  
210 individual and the transferee by pursuing all means available to it

211 under state and federal law.

212 (e) The Commissioner of Social Services may waive the imposition  
213 of a penalty period when the transferor (1) suffers from dementia at  
214 the time of application for medical assistance and cannot explain  
215 transfers that would otherwise result in the imposition of a penalty  
216 period; or (2) suffered from dementia at the time of the transfer; or (3)  
217 was exploited into making such a transfer. Waiver of the imposition of  
218 a penalty period does not prohibit the establishment of a debt in  
219 accordance with subsection (c) of this section.

220 (f) In reviewing transfers of assets for purposes of determining  
221 eligibility for medical assistance, the department shall consider those  
222 transfers of assets involving real property that occurred within sixty  
223 months preceding the date on which an institutionalized individual  
224 has applied for medical assistance under the Medicaid state plan,  
225 except transfers of real property that are exempt under department  
226 regulations. Transfers of assets that do not involve real property  
227 remain subject to the look-back provisions contained in federal law.

228 (g) The Commissioner of Social Services may establish threshold  
229 limits, which shall be the cumulative amount of transfers that may be  
230 made within any year of the look-back period without resulting in the  
231 imposition of a transfer of assets penalty.

232 (h) The Commissioner of Social Services, pursuant to section 17b-10,  
233 shall implement the policies and procedures necessary to carry out the  
234 provisions of this section while in the process of adopting such policies  
235 and procedures in regulation form, provided notice of intent to adopt  
236 regulations is published in the Connecticut Law Journal not later than  
237 twenty days after implementation. Such policies and procedures shall  
238 be valid until the time final regulations are effective.]

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>July 1, 2005</i>	17b-95
Sec. 2	<i>July 1, 2005</i>	17b-261
Sec. 3	<i>July 1, 2005</i>	17b-261a

**HS**

*Joint Favorable C/R*

APP