



House of Representatives

General Assembly

File No. 297

January Session, 2007

House Bill No. 7173

House of Representatives, April 3, 2007

The Committee on Human Services reported through REP. VILLANO of the 91st Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING TRANSFER OR ASSIGNMENT OF ASSETS WITH RESPECT TO ELIGIBILITY FOR MEDICAID PROGRAM.

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

1 Section 1. Section 17b-261a of the general statutes is repealed and
2 the following is substituted in lieu thereof (*Effective July 1, 2007*):

3 [(a) Any transfer or assignment of assets resulting in the imposition
4 of a penalty period shall be presumed to be made with the intent, on
5 the part of the transferor or the transferee, to enable the transferor to
6 obtain or maintain eligibility for medical assistance. This presumption
7 may be rebutted only by clear and convincing evidence that the
8 transferor's eligibility or potential eligibility for medical assistance was
9 not a basis for the transfer or assignment.

10 (b) Any transfer or assignment of assets resulting in the
11 establishment or imposition of a penalty period shall create a debt, as
12 defined in section 36a-645, that shall be due and owing by the
13 transferor or transferee to the Department of Social Services in an

14 amount equal to the amount of the medical assistance provided to or
 15 on behalf of the transferor on or after the date of the transfer of assets,
 16 but said amount shall not exceed the fair market value of the assets at
 17 the time of transfer. The Commissioner of Social Services, the
 18 Commissioner of Administrative Services and the Attorney General
 19 shall have the power or authority to seek administrative, legal or
 20 equitable relief as provided by other statutes or by common law.]

21 [(c) The] (a) To the extent permitted by federal law, the
 22 Commissioner of Social Services may waive the imposition of [a] any
 23 penalty period relating to the transfer or assignment of assets when the
 24 transferor (1) in accordance with the provisions of section 3025.25 of
 25 the department's Uniform Policy Manual, suffers from dementia at the
 26 time of application for medical assistance and cannot explain transfers
 27 that would otherwise result in the imposition of a penalty period; or
 28 (2) suffered from dementia at the time of the transfer; or (3) was
 29 exploited into making such a transfer due to dementia. [Waiver of the
 30 imposition of a penalty period does not prohibit the establishment of a
 31 debt in accordance with subsection (b) of this section.]

32 [(d)] (b) The Commissioner of Social Services, pursuant to section
 33 17b-10, shall implement the policies and procedures necessary to carry
 34 out the provisions of this section while in the process of adopting such
 35 policies and procedures in regulation form, provided notice of intent to
 36 adopt regulations is published in the Connecticut Law Journal not later
 37 than twenty days after implementation. Such policies and procedures
 38 shall be valid until the time final regulations are effective.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2007	17b-261a

HS *Joint Favorable*

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 chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Department of Social Services	GF - Revenue Loss	Indeterminate	Indeterminate

Municipal Impact: None

Explanation

The bill eliminates provisions of the Medicaid transfer of assets policy concerning the recovery of debt. This change does not have an immediate fiscal impact as the state has rarely, if ever, recovered any such debts. To the extent that the changes in this bill preclude the state from recovering such debts in the future, an indeterminate revenue loss may result.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**HB 7173*****AN ACT CONCERNING TRANSFER OR ASSIGNMENT OF ASSETS WITH RESPECT TO ELIGIBILITY FOR MEDICAID PROGRAM.*****SUMMARY:**

This bill repeals two statutory provisions and modifies a third dealing with Medicaid transfer of assets rules for people who need long-term care, such as in a nursing home. It eliminates:

1. the presumption that asset transfers that result in a penalty of denial of long-term care for a period are made with the intent to enable the person transferring the assets to qualify for Medicaid - a presumption which, under the statute, can be rebutted only by clear and convincing evidence that such eligibility was not a basis for the transfer and
2. (a) creation of a debt the transferor or transferee owes to the Department of Social Services (DSS) equal to the amount of medical assistance provided to or on behalf of the transferor on or after the transfer date, up to the assets' fair market value on the transfer date and (b) the authority of the DSS and Department of Administrative Services commissioners and the attorney general to seek administrative, legal, or equitable relief on the debt.

The law also allows the DSS commissioner to waive imposing this penalty period on transferors who suffer from dementia when they apply for Medicaid or transfer assets, or are exploited into making the transfer because of dementia. The bill specifies that the commissioner may do so only to the extent permitted by federal law and that the penalty period referred to is the one relating to the transfer of assets.

EFFECTIVE DATE: July 1, 2007

BACKGROUND

History of Transfer of Assets Rules and Penalty Period

When a person applies for Medicaid in a nursing home, DSS looks back for a set number of years to see if the person has made any inappropriately transferred assets for less than fair market value. If this occurred and the transfers were not exempt, DSS imposes a penalty of denial of Medicaid services for a period of time equal to the nursing home services the transferred amount would have paid for. Previously, the penalty period started on the transfer date, so it often expired and did not apply by the time the person applied for Medicaid.

In 2001, the legislature required DSS to submit a Medicaid waiver that would shift the start date of the penalty period from the transfer date to the application date (PA 01-2, June Special Session). This change would result in more people being subjected to the penalty. DSS submitted the waiver request to the Federal Centers for Medicare and Medicaid Services (CMS) in 2002. Besides the shift in the start date of the penalty, it also proposed a change in the look-back period to five years for transfers of real estate only and several other changes (the look back for other transfers would have remained at three years and trusts were already five years).

PA 03-3, June Special Session, added the provisions concerning the presumption that a transfer is made to qualify for Medicaid and the creation of a debt on the part of the transferor or transferee, which this bill deletes, and several others.

CMS never approved the waiver and Governor Rell eventually withdrew it in 2005. PA 05-209 then repealed the 2001 law that directed the DSS commissioner to seek the federal waiver and it repealed certain other provisions related to the waiver. But it left the two provisions this bill deletes.

New Federal Law

Soon after Connecticut abandoned its waiver application, Congress passed The Deficit Reduction Act of 2005 (PL 109-171), which made a number of changes in the transfer of assets law for Medicaid long-term care eligibility. Notably, it created the same penalty start-date change as Connecticut had contemplated, and increased the look-back period from five years for trusts and three years for other transfers to five years for all transfers. These changes apply to Connecticut beginning with transfers made on or after February 8, 2006.

COMMITTEE ACTION

Human Services Committee

Joint Favorable

Yea 12 Nay 5 (03/20/2007)