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House Bill 7173

***“AN ACT CONCERNING TRANSFER OR ASSIGNMENT OF ASSETS WITH
RESPECT TO ELIGIBILITY FOR MEDICAID PROGRAM”***

**Human Services Committee
Public Hearing
March 8, 2007**

Senator Harris, Representative Villano and members of the Human Services Committee, thank you for the opportunity to appear before the committee to comment on House Bill 7173, “An Act Concerning Transfer or Assignment of Assets With Respect to Eligibility for Medicaid Program”.

We are attorneys in private practice, former officers and present members of the Connecticut Bar Association Elder Law Section. The Section strongly **supports House Bill 7173**, which, if enacted, would rescind subsections (a) and (b) and modify subsection (c) of Connecticut General Statutes §17b-261a. Those subsections are generally referred to as “transferee liability.” The statute creates a debt between the recipient of a gift and the State of Connecticut if the person who made the gift later applies for Medicaid benefits. The concept that an innocent gift constitutes a debt is in conflict with federal Medicaid law and Connecticut creditor-debtor law.

Unless the subsections creating “transferee liability” are repealed, individuals and

organizations that innocently receive gifts may be subject to debt collection by the State of Connecticut if the person providing the gift applies for Medicaid benefits at a later date. Such recipients can include churches that receive donations from their members, charities that receive contributions in support of their missions or educational institutions that receive payments from the grandparents of their students. There is no provision in the “transferee liability” law that protects such innocent recipients of gifts from the enforcement of a debt created by this law.

The plain effect of the “transferee liability” statute is to permit recovery of assistance paid to an individual receiving Medicaid benefits who has made a prior gift. Any such recovery action, however, must comply with the federal Medicaid law (42 U.S.C. 1396p (b)). That law permits recovery of assistance properly paid to recipients only after the recipient has died. Recovery is permitted during the lifetime of a recipient only when the assistance has been improperly granted, such as when the recipient has committed fraud.

The “transferee liability” statute goes beyond the limits of the federal law because it allows recovery of assistance that has been properly granted while the recipient is alive. There is no need for “transferee liability” in order to recover assistance improperly granted, because federal and state law already allow such recovery in cases of fraud.

Legislators will be familiar with an act of Congress last year that changed several Medicaid eligibility rules. This was the Deficit Reduction Act of 2005 (DRA). The DRA changed Medicaid eligibility rules with respect to certain issues regarding transfers of assets. However, it made no change in the federal law regarding recovery of assistance. The DRA is not an excuse to maintain “transferee liability.” This state law is inconsistent with controlling federal law, and therefore illegal.

In summary “transferee liability” should be repealed because it:

1. Punishes innocent Connecticut citizens, seniors, their families and recipients of legitimate gifts, such as charitable organizations, churches, colleges, nonprofit organizations and even political campaigns.
2. Casts doubt on the legality of legitimate transfers, including lawful conveyances of real estate, and therefore imposes an unreasonable burden on legitimate transactions; it is inconsistent with Connecticut public policy that promotes the lawful transfer of property including real estate.
3. Unfairly presumes that an elderly person makes a gift solely for the purpose of obtaining Medicaid eligibility and thereby applies a stigma to Connecticut’s senior citizens.
4. Establishes a standard that is virtually impossible to overcome. The existing law imposes a standard of clear and convincing evidence to reverse the presumption that a gift is made to qualify for Medicaid. This standard is typically associated with severe sanctions just short of criminal penalties. This imposes an unfair burden on the recipient of the gift as well, since that person or institution is then required to prove the intent of the person who gave the property. The state is excused from having to produce any evidence of the intent of the person who has made the gift and may, by mere fiat, treat the person making the gift as one having an unlawful intent.
5. Is a trap for the innocent and unwary. A person who receives a gift becomes a debtor to the State of Connecticut under this existing statute and is then subject to the onerous consequences of the law which includes being divested of the

property for a transaction that was made properly and in the ordinary course.

6. Will cost the taxpayers of this state. If implemented, this law will result in a marked increase in administrative hearings that must be conducted by the Department of Social Services for the purpose of allowing a person to overcome the presumption that a gift was made for illegal purposes. Such hearings will require substantial amounts of additional staff time and will increase, rather than decrease, the cost of administration of the Medicaid program.

Subsections (a), (b) and (c) of C.G. S. §17b-261a are holdovers from a proposal by the Rowland Administration. It was originally enacted in 2003 as part of the Administration's effort to obtain approval by the Federal Center for Medicare and Medicaid Services to alter basic Medicaid policy concerning transfers of assets.

Governor Rell withdrew the proposal from the federal agency in May 2005 and also promised to work with the Legislature to repeal state laws that the former Administration promoted to support its proposal.

In previous years, the Legislature began the process of completing the withdrawal of that proposal. However, "transferee liability", which had been an integral part of the original proposal, remains intact. Now the Legislature can complete the work.

The Elder Law Section supports the repeal of "transferee liability" and asks this committee to report this bill favorably. We would be pleased to submit additional information if you have any questions about this proposal.