



General Assembly

January Session, 2011

**Raised Bill No. 973**

LCO No. 2881

\*02881\_\_\_\_\_AGE\*

Referred to Committee on Aging

Introduced by:  
(AGE)

***AN ACT CONCERNING THE DETERMINATION OF UNDUE HARDSHIP  
FOR PURPOSES OF MEDICAID ELIGIBILITY.***

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 Section 17b-261a of the general statutes is repealed and  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, 2011*):

3 (a) (1) Any transfer or assignment of assets resulting in the  
4 imposition of a penalty period shall be presumed to be made with the  
5 intent, on the part of the transferor or the transferee, to enable the  
6 transferor to obtain or maintain eligibility for medical assistance. This  
7 presumption may be rebutted only by clear and convincing evidence  
8 that the transferor's eligibility or potential eligibility for medical  
9 assistance was not a basis for the transfer or assignment.

10 (2) If the Department of Social Services intends to impose a penalty  
11 period as a result of a transfer or assignment of assets, the department  
12 shall provide a preliminary notice to the applicant for or recipient of  
13 medical assistance under section 17b-261. Such notice shall include a  
14 statement that the applicant or recipient can rebut the presumption  
15 resulting in the imposition of a penalty period pursuant to subdivision

16 (1) of this subsection or claim undue hardship pursuant to subsection  
17 (c) of this section. The applicant or recipient shall make such rebuttal  
18 or claim undue hardship not later than fifteen days after the date on  
19 which the preliminary notice is postmarked. The department shall  
20 grant a thirty-day extension of time to make such rebuttal or claim  
21 undue hardship if requested by the applicant or recipient and may  
22 grant additional extensions of time if reasonable. Failure to claim  
23 undue hardship under this subdivision does not prohibit an applicant  
24 or recipient from making a claim of undue hardship at an  
25 administrative hearing.

26 (b) Any transfer or assignment of assets resulting in the  
27 establishment or imposition of a penalty period shall create a debt, as  
28 defined in section 36a-645, that shall be due and owing by the  
29 transferor or transferee to the Department of Social Services in an  
30 amount equal to the amount of the medical assistance provided to or  
31 on behalf of the transferor on or after the date of the transfer of assets,  
32 but said amount shall not exceed the fair market value of the assets at  
33 the time of transfer. The Commissioner of Social Services, the  
34 Commissioner of Administrative Services and the Attorney General  
35 shall have the power or authority to seek administrative, legal or  
36 equitable relief as provided by other statutes or by common law.

37 (c) (1) (A) The Commissioner of Social Services shall waive the  
38 imposition of a penalty period if such imposition would create an  
39 undue hardship.

40 (B) For purposes of this subsection, "undue hardship" exists when (i)  
41 the life of a transferor would be endangered by the deprivation of  
42 medical care, or the transferor would be deprived of food, clothing,  
43 shelter or other necessities of life, (ii) the transferor is otherwise eligible  
44 for medical assistance under section 17b-261 but for the imposition of  
45 the penalty period, (iii) if the transferor is receiving medical assistance  
46 at the time of the imposition of a penalty period, the provider of  
47 medical assistance has notified the transferor that such provider

48 intends to discontinue providing medical assistance to the transferor  
49 because of nonpayment, and (iv) no other person or organization is  
50 willing and able to provide medical assistance to the transferor.

51 (2) The Commissioner of Social Services may waive the imposition  
52 of a penalty period when the transferor (1) in accordance with the  
53 provisions of section 3025.25 of the department's Uniform Policy  
54 Manual, suffers from dementia at the time of application for medical  
55 assistance and cannot explain transfers that would otherwise result in  
56 the imposition of a penalty period; or (2) suffered from dementia at the  
57 time of the transfer; or (3) was exploited into making such a transfer  
58 due to dementia. Waiver of the imposition of a penalty period does not  
59 prohibit the establishment of a debt in accordance with subsection (b)  
60 of this section.

61 (d) The Commissioner of Social Services, pursuant to section 17b-10,  
62 shall implement the policies and procedures necessary to carry out the  
63 provisions of this section while in the process of adopting such policies  
64 and procedures in regulation form, provided notice of intent to adopt  
65 regulations is published in the Connecticut Law Journal not later than  
66 twenty days after implementation. Such policies and procedures shall  
67 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, 2011	17b-261a

**Statement of Purpose:**

To provide guidelines and standards for the Department of Social Services' determination of undue hardship for purposes of Medicaid eligibility.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*