



Substitute Senate Bill No. 973

Public Act No. 11-176

**AN ACT CONCERNING THE DETERMINATION OF UNDUE
HARDSHIP FOR PURPOSES OF MEDICAID ELIGIBILITY AND
DISABILITY DETERMINATIONS FOR BENEFICIARIES OF A
SPECIAL NEEDS TRUST.**

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

Section 1. (NEW) (*Effective July 1, 2011*) (a) Except as provided in subsection (c) of this section, the Commissioner of Social Services shall not impose a penalty period pursuant to subsection (a) of section 17b-261 of the general statutes or subsection (a) of section 17b-261a of the general statutes if such imposition would create an undue hardship.

(b) For purposes of this section, "undue hardship" exists when (1) the life or health of the applicant would be endangered by the deprivation of medical care, or the applicant would be deprived of food, clothing, shelter or other necessities of life, (2) the applicant is otherwise eligible for medical assistance under section 17b-261 of the general statutes, as amended by this act, but for the imposition of the penalty period, (3) if the applicant is receiving long-term care services at the time of the imposition of a penalty period, the provider of long-term care services has notified the applicant that such provider intends to discharge or discontinue providing long-term care services to the applicant due to nonpayment, (4) if the applicant is not receiving long-

Substitute Senate Bill No. 973

term care services at the time of the imposition of a penalty period, a provider of long-term care services has refused to provide long-term care services to the applicant due to the imposition of a penalty period, and (5) no other person or organization is willing and able to provide long-term care services to the applicant.

(c) The commissioner shall impose a penalty period pursuant to subsection (a) of section 17b-261 of the general statutes or subsection (a) of section 17b-261a of the general statutes if (1) the applicant made a transfer or assignment of assets to deliberately impoverish such applicant in order to obtain or maintain eligibility for medical assistance, or (2) the transfer or assignment of assets was made by the applicant's legal representative or the joint owner of the assets. The commissioner may waive the imposition of a penalty period pursuant to this subsection if (A) the applicant suffers from dementia or other cognitive impairment and cannot explain the transfer or assignment of assets, (B) the applicant suffered from dementia or other cognitive impairment at the time the transfer or assignment of assets was made, (C) the applicant was exploited into making the transfer or assignment of assets due to dementia or other cognitive impairment, or (D) the applicant's legal representative or the record owner of a jointly held asset made the transfer or assignment of assets without the authorization of the applicant.

Sec. 2. (NEW) (*Effective July 1, 2011*) (a) As used in this section and section 1 of this act, "applicant" means an applicant for or recipient of medical assistance pursuant to section 17b-261 of the general statutes, as amended by this act.

(b) If the Commissioner of Social Services, in determining an applicant's eligibility for medical assistance pursuant to section 17b-261 of the general statutes, as amended by this act, intends to impose a penalty period as a result of a transfer or assignment of assets pursuant to section 17-261 of the general statutes, as amended by this act, or

Substitute Senate Bill No. 973

section 17b-261a of the general statutes, the commissioner shall provide a preliminary notice to the applicant. Such notice shall include a statement that the applicant may contest the imposition of a penalty period by (1) filing a claim of undue hardship, as defined in section 1 of this act, or (2) providing evidence to rebut the presumption resulting in the imposition of a penalty period pursuant to subsection (a) of section 17b-261a of the general statutes. The applicant shall have fifteen days after the date on which the preliminary notice is postmarked to contest the imposition of a penalty period indicated in such preliminary notice. The commissioner shall grant one extension of time to file such claim or provide such evidence if requested by the applicant and shall grant additional extensions of time if reasonable. Failure to file a claim of undue hardship under this subsection shall not prohibit an applicant from making a claim of undue hardship at an administrative hearing.

(c) If the applicant contests the imposition of a penalty period pursuant to subsection (b) of this section, the commissioner shall provide an interim decision notice to the applicant not later than ten days after the applicant files a claim or provides evidence pursuant to subsection (b) of this section. The interim decision notice shall denote the commissioner's decision to either reverse or uphold the imposition of a penalty period indicated in the preliminary notice. If the commissioner decides to uphold the imposition of a penalty period, the interim decision notice shall specify the projected commencement and expiration dates of such penalty period.

(d) When the commissioner determines the eligibility of an applicant for medical assistance under section 17b-261 of the general statutes, as amended by this act, the commissioner shall provide a final decision notice to the applicant. Such final decision notice shall include (1) a statement confirming any determination the commissioner made with regard to the imposition of a penalty period pursuant to this

Substitute Senate Bill No. 973

section, and (2) a description of the applicant's appeal rights.

(e) If, during the course of a penalty period, an applicant receives notice from a provider of long-term care services that the provider intends to (1) discharge the applicant, (2) discontinue providing long-term care services to the applicant, or (3) refuses to provide long-term care services to the applicant because of the imposition of a penalty period against the applicant pursuant to subsection (a) of section 17b-261 of the general statutes or subsection (a) of section 17b-261a of the general statutes, the applicant shall have not more than sixty days after receiving such notice to file a claim of undue hardship with the commissioner. Not later than ten days after receiving such claim, the commissioner shall provide a final decision notice to the applicant. Such final decision notice shall inform the applicant whether or not (A) the commissioner has determined that undue hardship exists, and (B) the penalty period shall be waived.

(f) (1) A nursing home, on behalf of an applicant, may request an extension of time to claim undue hardship pursuant to subsections (b) and (e) of this section if (A) the applicant is receiving long-term care services in such nursing home, (B) the applicant has no legal representative, and (C) the nursing home provides certification from a physician that the applicant is incapable of caring for himself or herself, as defined in section 45a-644 of the general statutes, or incapable of managing his or her affairs, as defined in section 45a-644 of the general statutes. The commissioner shall grant such request to allow a legal representative to be appointed to act on behalf of the applicant.

(2) The commissioner shall accept any claim filed pursuant to subsection (b) of this section by a nursing home and allow the nursing home to represent the applicant with regard to such claim if the applicant or the legal representative of the applicant gives permission to the nursing home to file a claim pursuant to subsection (b) of this

Substitute Senate Bill No. 973

section.

Sec. 3. Subsection (c) of section 17b-261 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(c) For the purposes of determining eligibility for the Medicaid program, an available asset is one that is actually available to the applicant or one that the applicant has the legal right, authority or power to obtain or to have applied for the applicant's general or medical support. If the terms of a trust provide for the support of an applicant, the refusal of a trustee to make a distribution from the trust does not render the trust an unavailable asset. Notwithstanding the provisions of this subsection, the availability of funds in a trust or similar instrument funded in whole or in part by the applicant or the applicant's spouse shall be determined pursuant to the Omnibus Budget Reconciliation Act of 1993, 42 USC 1396p. The provisions of this subsection shall not apply to special needs trust, as defined in 42 USC 1396p(d)(4)(A). For purposes of determining whether a beneficiary under a special needs trust, who has not received a disability determination from the Social Security Administration, is disabled, as defined in 42 USC 1382c(a)(3), the Commissioner of Social Services, or the commissioner's designee, shall independently make such determination. The commissioner shall not require such beneficiary to apply for Social Security disability benefits or obtain a disability determination from the Social Security Administration for purposes of determining whether the beneficiary is disabled.

Approved July 13, 2011