



# Senate

General Assembly

**File No. 338**

February Session, 2012

Substitute Senate Bill No. 394

*Senate, April 10, 2012*

The Committee on Human Services reported through SEN. MUSTO of the 22nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING MEDICAID ELIGIBILITY AND THE IDENTIFICATION AND RECOVERY OF ASSETS.***

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

1 Section 1. Section 17b-261 of the 2012 supplement to the general  
2 statutes is repealed and the following is substituted in lieu thereof  
3 (*Effective July 1, 2012*):

4 (a) Medical assistance shall be provided for any otherwise eligible  
5 person whose income, including any available support from legally  
6 liable relatives and the income of the person's spouse or dependent  
7 child, is not more than one hundred forty-three per cent, pending  
8 approval of a federal waiver applied for pursuant to subsection (e) of  
9 this section, of the benefit amount paid to a person with no income  
10 under the temporary family assistance program in the appropriate  
11 region of residence and if such person is an institutionalized  
12 individual as defined in Section [1917(c)] 1917 of the Social Security  
13 Act, 42 USC [1396p(c)] 1396p(h)(3), and has not made an assignment or  
14 transfer or other disposition of property for less than fair market value

15 for the purpose of establishing eligibility for benefits or assistance  
16 under this section. Any such disposition shall be treated in accordance  
17 with Section 1917(c) of the Social Security Act, 42 USC 1396p(c). Any  
18 disposition of property made on behalf of an applicant or recipient or  
19 the spouse of an applicant or recipient by a guardian, conservator,  
20 person authorized to make such disposition pursuant to a power of  
21 attorney or other person so authorized by law shall be attributed to  
22 such applicant, recipient or spouse. A disposition of property ordered  
23 by a court shall be evaluated in accordance with the standards applied  
24 to any other such disposition for the purpose of determining eligibility.  
25 The commissioner shall establish the standards for eligibility for  
26 medical assistance at one hundred forty-three per cent of the benefit  
27 amount paid to a family unit of equal size with no income under the  
28 temporary family assistance program in the appropriate region of  
29 residence. Except as provided in section 17b-277, the medical  
30 assistance program shall provide coverage to persons under the age of  
31 nineteen with family income up to one hundred eighty-five per cent of  
32 the federal poverty level without an asset limit and to persons under  
33 the age of nineteen and their parents and needy caretaker relatives,  
34 who qualify for coverage under Section 1931 of the Social Security Act,  
35 with family income up to one hundred eighty-five per cent of the  
36 federal poverty level without an asset limit. Such levels shall be based  
37 on the regional differences in such benefit amount, if applicable, unless  
38 such levels based on regional differences are not in conformance with  
39 federal law. Any income in excess of the applicable amounts shall be  
40 applied as may be required by said federal law, and assistance shall be  
41 granted for the balance of the cost of authorized medical assistance.  
42 The Commissioner of Social Services shall provide applicants for  
43 assistance under this section, at the time of application, with a written  
44 statement advising them of (1) the effect of an assignment or transfer  
45 or other disposition of property on eligibility for benefits or assistance,  
46 (2) the effect that having income that exceeds the limits prescribed in  
47 this subsection will have with respect to program eligibility, and (3)  
48 the availability of, and eligibility for, services provided by the  
49 Nurturing Families Network established pursuant to section 17b-751b.

50 Persons who are determined ineligible for assistance pursuant to this  
51 section shall be provided a written statement notifying such persons of  
52 their ineligibility and advising such persons of the availability of  
53 HUSKY Plan, Part B health insurance benefits.

54 (b) For the purposes of the Medicaid program, the Commissioner of  
55 Social Services shall consider parental income and resources as  
56 available to a child under eighteen years of age who is living with his  
57 or her parents and is blind or disabled for purposes of the Medicaid  
58 program, or to any other child under twenty-one years of age who is  
59 living with his or her parents.

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

81 (d) The transfer of an asset in exchange for other valuable  
82 consideration shall be allowable to the extent the value of the other

83 valuable consideration is equal to or greater than the value of the asset  
84 transferred.

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

89 (f) To the extent permitted by federal law, Medicaid eligibility shall  
90 be extended for one year to a family that becomes ineligible for  
91 medical assistance under Section 1931 of the Social Security Act due to  
92 income from employment by one of its members who is a caretaker  
93 relative or due to receipt of child support income. A family receiving  
94 extended benefits on July 1, 2005, shall receive the balance of such  
95 extended benefits, provided no such family shall receive more than  
96 twelve additional months of such benefits.

97 (g) An institutionalized spouse applying for Medicaid and having a  
98 spouse living in the community shall be required, to the maximum  
99 extent permitted by law, to divert income to such community spouse  
100 in order to raise the community spouse's income to the level of the  
101 minimum monthly needs allowance, as described in Section 1924 of  
102 the Social Security Act. Such diversion of income shall occur before the  
103 community spouse is allowed to retain assets in excess of the  
104 community spouse protected amount described in Section 1924 of the  
105 Social Security Act. The Commissioner of Social Services, pursuant to  
106 section 17b-10, may implement the provisions of this subsection while  
107 in the process of adopting regulations, provided the commissioner  
108 prints notice of intent to adopt the regulations in the Connecticut Law  
109 Journal within twenty days of adopting such policy. Such policy shall  
110 be valid until the time final regulations are effective.

111 (h) To the extent permissible by federal law, an institutionalized  
112 individual, as defined in Section 1917 of the Social Security Act, 42  
113 USC 1396p(h)(3), shall not be determined ineligible for Medicaid solely  
114 on the basis of a disqualifying asset. As used in this subsection,  
115 "disqualifying asset" means a single, noncash asset that causes the

116 assets of an institutionalized individual who is otherwise eligible for  
117 Medicaid to exceed the permissible threshold. If the individual is  
118 eligible for Medicaid except for the disqualifying asset, the  
119 Commissioner of Social Services shall forthwith notify the individual,  
120 or the individual's guardian or conservator, if any, or legally liable  
121 relative or other responsible party, if known, and the facility where  
122 such individual is institutionalized. The individual shall have forty-  
123 five days from receipt of the notice to expend or liquidate the  
124 disqualifying asset. If the individual has not done so in such time, the  
125 department shall grant the individual's application for Medicaid,  
126 provided the state of Connecticut shall have a lien against the  
127 disqualifying asset, which shall have priority over all other unsecured  
128 claims and unrecorded encumbrances in accordance with the  
129 provisions of section 17b-93.

130 [(h)] (i) Medical assistance shall be provided, in accordance with the  
131 provisions of subsection (e) of section 17a-6, to any child under the  
132 supervision of the Commissioner of Children and Families who is not  
133 receiving Medicaid benefits, has not yet qualified for Medicaid benefits  
134 or is otherwise ineligible for such benefits. Medical assistance shall also  
135 be provided to any child in the voluntary services program operated  
136 by the Department of Developmental Services who is not receiving  
137 Medicaid benefits, has not yet qualified for Medicaid benefits or is  
138 otherwise ineligible for benefits. To the extent practicable, the  
139 Commissioner of Children and Families and the Commissioner of  
140 Developmental Services shall apply for, or assist such child in  
141 qualifying for, the Medicaid program.

142 [(i)] (j) The Commissioner of Social Services shall provide Early and  
143 Periodic Screening, Diagnostic and Treatment program services, as  
144 required and defined as of December 31, 2005, by 42 USC 1396a(a)(43),  
145 42 USC 1396d(r) and 42 USC 1396d(a)(4)(B) and applicable federal  
146 regulations, to all persons who are under the age of twenty-one and  
147 otherwise eligible for medical assistance under this section.

148 Sec. 2. Section 17b-261a of the 2012 supplement to the general

149 statutes is repealed and the following is substituted in lieu thereof  
150 (*Effective July 1, 2012*):

151 (a) Any transfer or assignment of assets resulting in the imposition  
152 of a penalty period shall be presumed to be made with the intent, on  
153 the part of the transferor or the transferee, to enable the transferor to  
154 obtain or maintain eligibility for medical assistance. This presumption  
155 may be rebutted only by clear and convincing evidence that the  
156 transferor's eligibility or potential eligibility for medical assistance was  
157 not a basis for the transfer or assignment.

158 (b) Any transfer or assignment of assets resulting in the  
159 establishment or imposition of a penalty period shall create a debt, as  
160 defined in section 36a-645, that shall be due and owing by the  
161 transferor or transferee to the Department of Social Services in an  
162 amount equal to [the amount of the medical assistance] any payments  
163 for the cost of medical care provided to [or on behalf of] the transferor  
164 during the penalty period on or after the date of the transfer of assets [,  
165 but said amount shall not exceed] or the fair market value of the assets  
166 at the time of transfer, whichever is higher, plus penalties. The  
167 Commissioner of Social Services, the Commissioner of Administrative  
168 Services and the Attorney General shall have the power or authority to  
169 seek administrative, legal or equitable relief as provided by other  
170 statutes or by common law to recover any payments made to or on  
171 behalf of the transferor during the penalty period. If assets were  
172 intentionally transferred to obtain or maintain eligibility for medical  
173 assistance, the Commissioner of Social Services may assess a monetary  
174 penalty up to double the amount of the debt. Not later than January 1,  
175 2013, the commissioner shall issue a request for proposals from private  
176 entities to manage debt collection related to nursing home care. The  
177 commissioner may contract with a private entity to maximize debt  
178 collection efforts and minimize costs for the state.

179 (c) The Commissioner of Social Services may waive the imposition  
180 of a penalty period when the transferor (1) in accordance with the  
181 provisions of section 3025.25 of the department's Uniform Policy

182 Manual, suffers from dementia at the time of application for medical  
183 assistance and cannot explain transfers that would otherwise result in  
184 the imposition of a penalty period; or (2) suffered from dementia at the  
185 time of the transfer; or (3) was exploited into making such a transfer  
186 due to dementia. Waiver of the imposition of a penalty period does not  
187 prohibit the establishment of a debt in accordance with subsection (b)  
188 of this section.

189 (d) An institutionalized individual shall not be penalized for the  
190 transfer of an asset if the entire amount of the transferred asset is  
191 returned to the institutionalized individual. The partial return of a  
192 transferred asset shall not result in a reduced penalty period.

193 (1) If there are multiple transfers of assets to the same or different  
194 transferees, a return of anything less than the total amount of the  
195 transferred assets from all of the separate transferees shall not  
196 constitute a return of the entire amount of the transferred assets.

197 (2) If the circumstances surrounding the transfer of an asset and  
198 return of the entire amount of the asset to the institutionalized  
199 individual indicates to the Department of Social Services that such  
200 individual, such individual's spouse or such individual's authorized  
201 representative intended, from the time the asset was transferred, that  
202 the transferee would subsequently return the asset to such individual,  
203 such individual's spouse or such individual's authorized  
204 representative for the purpose of altering the start of the penalty  
205 period or shifting nursing facility costs, that may have been borne by  
206 such individual, to the Medicaid program, the entire amount of the  
207 returned asset shall be considered available to such individual from  
208 the date of transfer. If such individual demonstrates to the department  
209 that the purpose of the transfer and its subsequent return was not to  
210 alter the penalty period or qualify such individual for Medicaid  
211 eligibility, the entire amount of the returned asset is considered  
212 available to the individual from the date of the return of the  
213 transferred asset.

214 (3) The conveyance and subsequent return of an asset for the

215 purpose of shifting costs to the Medicaid program shall be regarded as  
 216 a trust-like device. Such asset shall be considered available for the  
 217 purpose of determining Medicaid eligibility.

218 (4) For purposes of this section, an "institutionalized individual"  
 219 means an individual who is receiving (A) services from a long-term  
 220 care facility, (B) services from a medical institution which are  
 221 equivalent to those services provided in a long-term care facility, or (C)  
 222 home and community-based services under a Medicaid waiver.

223 (e) The Commissioner of Social Services may, upon the request of a  
 224 nursing facility, provide financial relief in the form of retroactive and  
 225 continued Medicaid payments, as applicable, to a facility for any  
 226 resident subject to the transfer of assets penalty if the nursing home  
 227 establishes that: (1) The resident did not apply or qualify for an undue  
 228 hardship waiver pursuant to section 17b-261, as amended by this act;  
 229 (2) the resident has resided in the nursing facility for at least ninety  
 230 days with no payment made on the resident's account for such time  
 231 period; and (3) the nursing facility has made every practicable effort  
 232 that is permissible under state and federal law to recover such funds  
 233 due. Any Medicaid payments made to a nursing facility pursuant to  
 234 this subsection shall constitute a debt under subsection (b) of this  
 235 section.

236 [(e)] (f) The Commissioner of Social Services, pursuant to section  
 237 17b-10, shall implement the policies and procedures necessary to carry  
 238 out the provisions of this section while in the process of adopting such  
 239 policies and procedures in regulation form, provided notice of intent to  
 240 adopt regulations is published in the Connecticut Law Journal not later  
 241 than twenty days after implementation. Such policies and procedures  
 242 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, 2012 | 17b-261  |
| Sec. 2    | July 1, 2012 | 17b-261a |

**Statement of Legislative Commissioners:**

In section 1(h) language was added after "facility" for clarity and in section 2(b) "party" was changed to "entity" for internal consistency.

**HS**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

| Agency Affected        | Fund-Effect            | FY 13 \$  | FY 14 \$  |
|------------------------|------------------------|-----------|-----------|
| Social Services, Dept. | GF - Cost/Revenue Gain | See Below | See Below |

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

**Section 1** of the bill could result in a cost to the Department of Social Services (DSS) associated with granting Medicaid eligibility to individuals with a disqualifying asset, provided the state has a lien against such asset. A cost would result if the state is unable to collect such debt. It is not currently known how many individuals are deemed ineligible solely on the basis of a disqualifying asset.

**Section 2** could result in a revenue gain as it allows the DSS Commissioner to assess a monetary penalty of up to double the amount of debt incurred from the intentional transfer of assets during a penalty period. This section also requires DSS to issue a request for proposal to manage debt collection, which could result in a cost if DSS contracts with an entity to pursue debt collection. The net revenue gained through collection efforts and penalties is unknown.

This section could also result in a cost and revenue gain associated with making retroactive and continued Medicaid payments to nursing homes during a penalty period, under certain circumstances.<sup>1</sup> Any such payments would be considered debt, subject to a monetary

<sup>1</sup> Penalty period refers to the time during which a person is ineligible for Medicaid based on the uncompensated value of a transferred asset. Currently, DSS does not incur debt during a penalty period because Medicaid does not pay for services during such period.

penalty and recoverable by DSS.

As of November 2011, there were 230 nursing facilities with an average daily Medicaid rate of approximately \$200.<sup>2</sup> For purposes of an example, a 90 day retroactive payment would cost approximately \$18,000 per resident. The net fiscal impact to DSS would be based on the number of individuals:

- 1) from whom a nursing facility has made every practicable effort to recover funds;
- 2) who did not apply or qualify for an undue hardship; and
- 3) who reside in a nursing facility for 90 days or more without payment; as well as
- 4) the total amount of debt recovered.

### ***The Out Years***

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

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<sup>2</sup> Calculation based on chronic and convalescent homes data contained in the Department of Social Services Nursing Home 2012 budget file.

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**OLR Bill Analysis****sSB 394****AN ACT CONCERNING MEDICAID ELIGIBILITY AND THE IDENTIFICATION AND RECOVERY OF ASSETS.****SUMMARY:**

This bill :

1. allows institutionalized people to enroll in Medicaid in spite of having a “disqualifying asset” that puts them over the program’s threshold ( \$1,600 for a single person and \$2,400 for couples),
2. in some circumstances, doubles the financial penalty the Department of Social Services (DSS) can collect when a debt collection proceeding is initiated against a Medicaid recipient;
3. allows DSS to provide financial relief when a resident is subject to a transfer of assets penalty to (a) long-term care (LTC) facilities, (b) medical institutions that provide services equivalent to those provided in LTC facilities, or (c) home and community-based service programs under a Medicaid waiver; and
4. by January 1, 2013, directs the DSS commissioner to issue a request for proposals form and contract with private entities to manage nursing home debt collection in a manner that maximizes collection efforts and minimizes state costs.

EFFECTIVE DATE: July 1, 2012

**DISQUALIFYING ASSET**

Medicaid is a means-tested program in which eligibility is contingent on the amount of an applicant’s income and available assets. 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 his or her general or medical support (CGS § 17b-261). The bill defines a “disqualifying asset” to

mean one that makes the applicant ineligible for Medicaid because his or her assets exceed Medicaid's threshold.

When DSS determines that a single disqualifying asset makes an applicant ineligible for Medicaid, the bill requires the commissioner to notify the facility and applicant, any known guardian or conservator, legally liable relative, or other responsible party. The individual has 45 days from receipt of the notice to spend or liquidate the asset. If he or she does not, the bill requires DSS to grant his or her application. But the state then holds a lien against the asset that has priority over all other unsecured claims and encumbrances.

### **TRANSFER OF ASSET PENALTIES**

By law, the Medicaid program imposes disqualification penalties on applicants who have transferred assets for less than fair market value in the five-year period before they apply for coverage. In such cases, DSS may disqualify the applicant from receiving Medicaid benefits to which he or she would otherwise be entitled. The penalty period is deemed a debt owed to DSS and is currently calculated as the amount of Medicaid provided to the transferor on or after the transfer date. It cannot exceed the fair market value of the assets at the time of the transfer. By law, the length of the disqualification period is calculated by dividing the state's average private pay nursing home charge by the value of the asset improperly transferred.

Under the current formula, no debt accrues to DSS during a penalty period because Medicaid does not pay for any services during these periods. Under the bill, the debt owed to DSS is the higher of (1) any payments for the cost of medical care made during the penalty period or (2) the fair market value of the assets at the time of the transfer. The bill authorizes the DSS and administrative services commissioners and the attorney general to recover payments made to or on behalf of the transferor during the penalty period. The DSS commissioner may assess a monetary fine of up to twice the amount of the debt if the assets were intentionally transferred to obtain or maintain Medicaid coverage.

**FINANCIAL RELIEF TO NURSING FACILITIES**

Upon the request of a nursing facility, the bill allows the commissioner of DSS to provide financial relief in the form of retroactive or continued Medicaid payments to the facility for any resident subject to the transfer of assets penalty. The facility must establish that:

1. the resident did not apply or qualify for an undue hardship waiver,
2. he or she has lived in the nursing facility for at least 90 days and no payment has been made on his or her account in that time, and
3. the facility has made every practicable effort permissible under state and federal law to recover the amount due.

The bill makes any payments made to a nursing facility in this situation a debt owed to DSS. It is unclear whether these payments qualify for the 50% federal match.

**COMMITTEE ACTION**

Human Services Committee

Joint Favorable Substitute

Yea 15 Nay 1 (03/22/2012)