



General Assembly

Amendment

February Session, 2012

LCO No. 4779

SB0039404779SR0

Offered by:

SEN. KELLY, 21st Dist.
SEN. MUSTO, 22nd Dist.
SEN. MARKLEY, 16th Dist.
SEN. COLEMAN, 2nd Dist.

REP. TERCYAK, 26th Dist.
REP. MORRIS, 140th Dist.
REP. GIBBONS, 150th Dist.

To: Subst. Senate Bill No. 394

File No. 338

Cal. No. 261

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

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

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4 statutes is repealed and the following is substituted in lieu thereof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

6 (a) Medical assistance shall be provided for any otherwise eligible
7 person whose income, including any available support from legally
8 liable relatives and the income of the person's spouse or dependent
9 child, is not more than one hundred forty-three per cent, pending
10 approval of a federal waiver applied for pursuant to subsection (e) of
11 this section, of the benefit amount paid to a person with no income
12 under the temporary family assistance program in the appropriate

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

48 (2) the effect that having income that exceeds the limits prescribed in
49 this subsection will have with respect to program eligibility, and (3)
50 the availability of, and eligibility for, services provided by the
51 Nurturing Families Network established pursuant to section 17b-751b.
52 Persons who are determined ineligible for assistance pursuant to this
53 section shall be provided a written statement notifying such persons of
54 their ineligibility and advising such persons of the availability of
55 HUSKY Plan, Part B health insurance benefits.

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

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

82 purposes of determining whether the beneficiary is disabled.

83 (d) The transfer of an asset in exchange for other valuable
84 consideration shall be allowable to the extent the value of the other
85 valuable consideration is equal to or greater than the value of the asset
86 transferred.

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

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

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

113 (h) To the extent permissible by federal law, an institutionalized

114 individual, as defined in Section 1917 of the Social Security Act, 42
115 USC 1396p(h)(3), shall not be determined ineligible for Medicaid solely
116 on the basis of the cash value of a life insurance policy worth less than
117 ten thousand dollars.

118 [(h)] (i) Medical assistance shall be provided, in accordance with the
119 provisions of subsection (e) of section 17a-6, to any child under the
120 supervision of the Commissioner of Children and Families who is not
121 receiving Medicaid benefits, has not yet qualified for Medicaid benefits
122 or is otherwise ineligible for such benefits. Medical assistance shall also
123 be provided to any child in the voluntary services program operated
124 by the Department of Developmental Services who is not receiving
125 Medicaid benefits, has not yet qualified for Medicaid benefits or is
126 otherwise ineligible for benefits. To the extent practicable, the
127 Commissioner of Children and Families and the Commissioner of
128 Developmental Services shall apply for, or assist such child in
129 qualifying for, the Medicaid program.

130 [(i)] (j) The Commissioner of Social Services shall provide Early and
131 Periodic Screening, Diagnostic and Treatment program services, as
132 required and defined as of December 31, 2005, by 42 USC 1396a(a)(43),
133 42 USC 1396d(r) and 42 USC 1396d(a)(4)(B) and applicable federal
134 regulations, to all persons who are under the age of twenty-one and
135 otherwise eligible for medical assistance under this section.

136 Sec. 2. Subsection (b) of section 17b-261a of the 2012 supplement to
137 the general statutes is repealed and the following is substituted in lieu
138 thereof (*Effective October 1, 2012*):

139 (b) Any transfer or assignment of assets resulting in the
140 establishment or imposition of a penalty period shall create a debt, as
141 defined in section 36a-645, that shall be due and owing by the
142 transferor or transferee to (1) the Department of Social Services in an
143 amount equal to the amount of the medical assistance provided by the
144 department to or on behalf of the transferor on or after the date of the
145 transfer of assets, [but said] or (2) a nursing facility in an amount equal

146 to the unpaid cost of care provided by the facility to the transferor
147 during a penalty period. The amount of the debt established shall not
148 exceed the fair market value of the transferred assets at the time of
149 transfer that are the subject of the imposition of the penalty period. The
150 Commissioner of Social Services, the Commissioner of Administrative
151 Services and the Attorney General shall have the power or authority to
152 seek administrative, legal or equitable relief as provided by other
153 statutes or by common law to obtain payment of the debt. If the
154 commissioner determines that assets were wilfully transferred for the
155 purpose of obtaining or maintaining eligibility for medical assistance,
156 the commissioner may assess a monetary penalty up to double the
157 amount of debt against the transferor and any transferee who had
158 knowledge of such purpose. Such transferor and transferee shall share
159 joint and several liability. The commissioner shall take into account
160 any payments made toward the debt when assessing such penalty. The
161 commissioner must have sufficient evidence to prove the transfer was
162 wilful and for purposes of obtaining or maintaining eligibility for
163 medical assistance. Not later than January 1, 2013, the commissioner
164 shall issue a request for information for debt collection services to
165 collect money owed to nursing facilities for debts established pursuant
166 to this subsection. Any money collected shall, after adjustment for
167 administrative costs and costs to pursue the debt, be paid directly to
168 the nursing facility to which it is due.

169 Sec. 3. (NEW) (*Effective October 1, 2012*) (a) A nursing facility that has
170 provided services to the transferor of an asset during the penalty
171 period, as described in section 17b-261a of the general statutes, as
172 amended by this act, may bring an action to collect a debt for
173 unreimbursed care against persons who had knowledge that the
174 transfer was made for the purpose of obtaining or maintaining
175 eligibility for medical assistance, including such transferor and any
176 person authorized under law to control the transferor's income and
177 any such transferee.

178 (b) If a court of competent jurisdiction determines, based upon a fair
179 preponderance of the evidence, that a defendant incurred a debt to a

180 nursing facility by (1) wilfully transferring assets of a nursing facility
181 resident for the purpose of obtaining or maintaining eligibility for
182 medical assistance, (2) receiving such assets with knowledge of such
183 purpose, or (3) making a material misrepresentation or omission
184 concerning such assets, the court shall award such nursing facility
185 double the amount of actual damages. Any court, including a probate
186 court, may also order that such assets or proceeds therefrom be held in
187 constructive trust to satisfy such debt.

188 Sec. 4. (NEW) (*Effective October 1, 2012*) (a) For purposes of this
189 section, "applied income" means the amount of a medical assistance
190 recipient's income that the Department of Social Services deems is
191 required, in accordance with state and federal laws, to be paid to a
192 health care provider to cover the cost of care and services, taking into
193 consideration modification to applied income due to revisions in such
194 recipient's community spouse's minimum monthly needs allowance.

195 (b) A nursing facility that is owed money in applied income
196 pursuant to this section may, in addition to any other remedy
197 authorized by law, bring a civil action to recover such debt. If a court
198 of competent jurisdiction determines, based upon a fair preponderance
199 of the evidence, that a defendant wilfully failed to pay or withheld
200 applied income due and owing to a nursing facility for more than
201 ninety days after the due date, the court shall award double the
202 amount of actual damages.

203 (c) A nursing facility shall provide written notice to recipients of
204 medical assistance under Title XIX of the Social Security Act that
205 failure to pay applied income due to a nursing facility not later than
206 ninety days after the due date may result in double civil penalties, in
207 accordance with subsection (b) of this section. A nursing facility shall
208 not file any suit under this section until thirty days after it has given
209 such written notice to both the recipient and any person authorized
210 under law to be in control of the applied income of the recipient. The
211 facility may give such notice at any time after the facility begins
212 providing services to the recipient."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2012</i>	17b-261
Sec. 2	<i>October 1, 2012</i>	17b-261a(b)
Sec. 3	<i>October 1, 2012</i>	New section
Sec. 4	<i>October 1, 2012</i>	New section