



House of Representatives

General Assembly

File No. 574

January Session, 2013

Substitute House Bill No. 6413

House of Representatives, April 18, 2013

The Committee on Human Services reported through REP. ABERCROMBIE of the 83rd Dist., Chairperson of the Committee on the part of the House, 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 Section 17b-261 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2013*):

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

14 for the purpose of establishing eligibility for benefits or assistance
15 under this section. Any such disposition shall be treated in accordance
16 with Section 1917(c) of the Social Security Act, 42 USC 1396p(c). Any
17 disposition of property made on behalf of an applicant or recipient or
18 the spouse of an applicant or recipient by a guardian, conservator,
19 person authorized to make such disposition pursuant to a power of
20 attorney or other person so authorized by law shall be attributed to
21 such applicant, recipient or spouse. A disposition of property ordered
22 by a court shall be evaluated in accordance with the standards applied
23 to any other such disposition for the purpose of determining eligibility.
24 The commissioner shall establish the standards for eligibility for
25 medical assistance at one hundred forty-three per cent of the benefit
26 amount paid to a family unit of equal size with no income under the
27 temporary family assistance program in the appropriate region of
28 residence. In determining eligibility, the commissioner shall not
29 consider as income Aid and Attendance pension benefits granted to a
30 veteran, as defined in section 27-103, or the surviving spouse of such
31 veteran. Except as provided in section 17b-277, the medical assistance
32 program shall provide coverage to persons under the age of nineteen
33 with family income up to one hundred eighty-five per cent of the
34 federal poverty level without an asset limit and to persons under the
35 age of nineteen and their parents and needy caretaker relatives, who
36 qualify for coverage under Section 1931 of the Social Security Act, with
37 family income up to one hundred eighty-five per cent of the federal
38 poverty level without an asset limit. Such levels shall be based on the
39 regional differences in such benefit amount, if applicable, unless such
40 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 under 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 [(j)] (k) A veteran, as defined in section 27-103, and any member of
137 his or her family, who applies for or receives assistance under the
138 Medicaid program, shall apply for all benefits for which he or she may
139 be eligible through the Veterans' Administration or the United States
140 Department of Defense.

141 Sec. 2. Subsection (b) of section 17b-261a of the general statutes is
142 repealed and the following is substituted in lieu thereof (*Effective*
143 *October 1, 2013*):

144 (b) Any transfer or assignment of assets resulting in the
145 establishment or imposition of a penalty period shall create a debt, as
146 defined in section 36a-645, that shall be due and owing by the
147 transferor or transferee to (1) the Department of Social Services in an

148 amount equal to the amount of the medical assistance provided by the
149 department to or on behalf of the transferor on or after the date of the
150 transfer of assets, [but said] or (2) a nursing facility in an amount equal
151 to the unpaid cost of care provided by the facility to the transferor
152 during a penalty period. The amount of the debt established shall not
153 exceed the fair market value of the transferred assets at the time of
154 transfer that are the subject of the penalty period. The Commissioner
155 of Social Services, the Commissioner of Administrative Services and
156 the Attorney General shall have the power or authority to seek
157 administrative, legal or equitable relief as provided by other statutes or
158 by common law to obtain payment of the debt. If a court of competent
159 jurisdiction determines that assets were wilfully transferred for the
160 purpose of obtaining or maintaining eligibility for medical assistance,
161 the court may assess court costs and attorneys' fees in addition to the
162 amount of the debt against the transferor and any transferee who had
163 knowledge of such purpose. Such transferor and transferee shall share
164 joint and several liability.

165 Sec. 3. (NEW) (*Effective October 1, 2013*) (a) A nursing facility that has
166 provided services to the transferor of an asset during the penalty
167 period, as described in section 17b-261a of the general statutes, as
168 amended by this act, may bring an action to collect a debt for
169 unreimbursed care against the transferor, the transferee and any
170 person authorized under law to be in control of the transferor's income
171 and assets, provided such person had knowledge that the transfer was
172 made for the purpose of obtaining or maintaining eligibility for
173 medical assistance.

174 (b) If a court of competent jurisdiction determines, based upon a fair
175 preponderance of the evidence, that a defendant incurred a debt to a
176 nursing facility by (1) wilfully transferring assets of a nursing facility
177 resident for the purpose of obtaining or maintaining eligibility for
178 medical assistance, (2) receiving such assets with knowledge of such
179 purpose, or (3) making a material misrepresentation or omission
180 concerning such assets, the court may award actual damages, court
181 costs and attorneys' fees. Any court, including a probate court, may

182 also order that such assets or proceeds from the transfer of such assets
183 be held in constructive trust to satisfy such debt.

184 Sec. 4. (NEW) (*Effective October 1, 2013*) (a) For purposes of this
185 section, "applied income" means the income of a recipient of medical
186 assistance, pursuant to section 17b-261 of the general statutes, as
187 amended by this act, that the Department of Social Services deems is
188 required, after the exhaustion of all appeals and in accordance with
189 state and federal law, to be paid to a nursing home, as defined in
190 section 19a-537 of the general statutes, for the cost of care and services.

191 (b) In determining the amount of applied income, the department
192 shall take into consideration any modification to the applied income
193 due to revisions in a medical assistance recipient's community spouse
194 minimum monthly needs allowance, as described in Section 1924 of
195 the Social Security Act, and any other modification to applied income
196 allowed by state or federal law.

197 (c) A nursing home shall provide written notice to a recipient of
198 medical assistance and any person authorized under law to be in
199 control of such recipient's applied income (1) of the amount of applied
200 income due pursuant to subsections (a) and (b) of this section, (2) of
201 the recipient's legal obligation to pay such applied income to the
202 nursing home, and (3) that the recipient's failure to pay applied income
203 due to a nursing home not later than ninety days after receiving such
204 notice from the nursing home may result in a civil action in accordance
205 with this section.

206 (d) Pursuant to the notice provisions of subsections (c) and (e) of
207 this section, a nursing home that is owed applied income may, in
208 addition to any other remedy authorized by law, bring a civil action to
209 recover the applied income due from (1) a medical assistance recipient
210 who owes the applied income, or (2) a person with legal access to such
211 recipient's applied income who acted with the intent to (A) deprive
212 such recipient of the applied income, or (B) appropriate the applied
213 income for himself, herself or a third person. If a court of competent
214 jurisdiction determines, based upon a fair preponderance of the

215 evidence, that such recipient or person wilfully failed to pay or
 216 withheld applied income due and owing to a nursing home for more
 217 than ninety days after receiving notice pursuant to subsection (c) of
 218 this section, the court may award the amount of the debt owed, court
 219 costs and attorneys' fees to the nursing home.

220 (e) A nursing home shall not file any action under this section until
 221 (1) thirty days after it has given written notice of such action to any
 222 person who received notice pursuant to subsection (c) of this section,
 223 or (2) ninety days after it has given written notice of such action and
 224 the information required by subsection (c) of this section to any person
 225 who has not received notice pursuant to subsection (c) of this section.

226 Sec. 5. (NEW) (*Effective October 1, 2013*) Upon commencement of any
 227 action brought under section 3 or 4 of this act, a nursing home shall
 228 mail a copy of the complaint to the Attorney General and the
 229 Commissioner of Social Services and, upon entry of any judgment or
 230 decree in the action, shall mail a copy of such judgment or decree to
 231 the Attorney General and the Commissioner of Social Services.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2013</i>	17b-261
Sec. 2	<i>October 1, 2013</i>	17b-261a(b)
Sec. 3	<i>October 1, 2013</i>	New section
Sec. 4	<i>October 1, 2013</i>	New section
Sec. 5	<i>October 1, 2013</i>	New section

Statement of Legislative Commissioners:

In section 4(e), the word "suit" was changed to "action" for consistency with sections 3 and 5 of this act.

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 14 \$	FY 15 \$
Department of Social Services	GF - Cost	Potential	Potential

Municipal Impact: None

Explanation

The bill could result in a cost to the Department of Social Services (DSS) associated with individuals attaining Medicaid eligibility sooner due to exempting life insurance policies with cash values of less than \$10,000. Currently, to be eligible for Medicaid long term care services, an applicant cannot have more than \$1,600 in liquid assets. Liquid assets include the cash value of most insurance policies. Eligibility is not granted until the policy is surrendered and the proceeds are spent and the \$1,600 liquid asset threshold is reached.

It is not known how many of the approximately 10,800 long term care applications granted annually are delayed due to the existence of a life insurance policy with a cash value less than \$10,000. Medicaid pays an average of approximately \$6,100 per person, per month for nursing home care.

It should be noted that the bill does not require the life insurance policy to be surrendered and spent towards the cost of care. Therefore, DSS will incur additional costs for instances in which the individual decides to maintain the policy, as Medicaid funds would be used to pay for the cost of care rather than funds available after liquidating the policy.

The bill has several measures that allow nursing homes to seek restitution when assets are improperly transferred and a resident is therefore ineligible for Medicaid. As this concerns transactions between private entities and individuals, there is no state fiscal impact.

The Out Years

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

Sources: Department of Social Services Caseload Information

OLR Bill Analysis**sHB 6413*****AN ACT CONCERNING MEDICAID ELIGIBILITY AND THE IDENTIFICATION AND RECOVERY OF ASSETS.*****SUMMARY:**

This bill changes how the law treats the (1) assets of Medicaid long-term care applicants and beneficiaries and (2) amount of income Medicaid nursing home residents must apply to their care costs (applied income).

By law, Medicaid long-term care applicants who transfer assets for less than fair market value within five years of applying for coverage are presumed to have done so solely to qualify for Medicaid. People who cannot successfully rebut this presumption face a penalty period (period of Medicaid ineligibility). The value of the transferred asset is considered a debt owed to the Department of Social Services (DSS).

The bill:

1. creates a second debt owed to nursing homes that serve these residents without payment during a penalty period and allows homes to sue to collect this debt;
2. allows the court to award damages and associated court fees for cases brought by the state or nursing homes regarding improper Medicaid asset transfers;
3. allows a court, including a probate court, to order assets or proceeds associated with an improper transfer to be held in a constructive trust to satisfy a debt owed to a nursing home;
4. requires DSS to make certain considerations when determining a Medicaid nursing home resident's applied income amount;

5. requires nursing homes to provide written notice of applied income obligations and potential consequences for nonpayment to the resident and any person controlling the resident's income;
6. allows nursing homes to sue to collect applied income it is owed and courts to award both the amount due and associated legal fees;
7. requires nursing homes, when filing an applied income or improper asset transfer suit and after a court issues a related judgment or decree, to mail copies of the complaint and court issuance to the attorney general and DSS commissioner; and
8. prohibits DSS, to the extent federal law allows, from rendering a Medicaid long-term care applicant ineligible for assistance solely based on owning a life insurance policy with a surrender value of less than \$10,000.

EFFECTIVE DATE: October 1, 2013

MEDICAID LONG-TERM CARE ASSET TRANSFERS

Transfers that Create a Debt

By law, when an asset transfer results in a penalty period, such transfer creates a debt owed to DSS by the person transferring the asset or the transferee. The amount of the debt equals the amount of Medicaid services provided to the transferor beginning on the date the assets are transferred.

During a penalty period, DSS does not make Medicaid payments for the transferor's care. Thus, DSS does not incur a debt. The bill creates a second statutory debt, due to the nursing home, in an amount equaling the unpaid cost of care the facility provides during the penalty period.

The bill further allows a court, if it determines that assets were willfully transferred to obtain or maintain Medicaid eligibility, to assess court costs and attorneys' fees in addition to the debt amount against the transferor and any transferee who knew of the transferor's

purpose. Both the transferor and transferee are jointly and severally liable.

By law, the commissioners of DSS and administrative services and the attorney general may seek administrative, legal, or equitable relief.

Lawsuits

The bill authorizes nursing homes that provided services to transferors during a penalty period to sue to collect the debt for any unreimbursed care. The suit may be brought against the transferor, transferee, or anyone the law authorizes to be in control of the transferor's income and assets (e.g., conservator), provided that the individual person had knowledge that the transfer was made for the purpose of obtaining or maintaining Medicaid eligibility.

A court may award actual damages, court costs, and attorneys' fees if it determines, based on a fair preponderance of the evidence, that the defendant incurred a debt to a nursing home by (1) willfully transferring assets to obtain or maintain the resident's Medicaid eligibility, (2) receiving the assets knowing of this purpose, or (3) materially misrepresenting or omitting assets.

The bill further allows the court, including a probate court, to also order the assets or proceeds from the transfer to be held in constructive trust to satisfy the debt.

APPLIED INCOME

In general, nursing home residents determined Medicaid-eligible must spend any income they have, except for a monthly needs allowance, on their nursing home care. This is commonly referred to as "applied income," which means it is applied to the Medicaid recipient's care costs. If the resident's spouse is living elsewhere, some of the resident's monthly income may go to support that spouse (see below). Under the bill, applied income is also the amount required to be paid to the home after the exhaustion of all appeals and in accordance with federal and state law.

Notice of Applied Income Due

The bill requires DSS, when determining the amount of applied income, to take into consideration any modification to the applied income due to (1) revisions in the community spouse's minimum monthly needs allowance (see BACKGROUND) and (2) other modifications allowed by law.

Under the bill, nursing homes must provide written notice to Medicaid recipients and anyone the law authorizes to control the recipient's applied income. The notice must indicate (1) the amount of applied income due to the home and the recipient's obligation to pay it and (2) that the recipient's failure to pay it within 90 days of receiving the notice may result in a lawsuit.

Lawsuits

The bill authorizes a nursing home to sue to recover any applied income amount it is owed. The home can sue either (1) the Medicaid recipient who owes the money or (2) a person with legal access to the income who acted with the intent to deprive the recipient of the income or appropriate it for himself, herself, or a third person.

If, based on a fair preponderance of the evidence, a court finds in favor of the nursing home, it may award the home the amount of debt owed, court costs, and attorneys' fees.

A nursing home cannot sue to recover applied income until 30 days after providing the required applied income notice or, if the resident did not receive the notice, 90 days after providing the resident notice of the suit along with the information in the applied income notice.

LIFE INSURANCE POLICIES

The bill provides that, to the extent permitted under federal law, institutionalized individuals cannot be determined ineligible for Medicaid solely based on having a life insurance policy with a cash surrender value of less than \$10,000. In general, a Medicaid applicant may not have more than \$1,600 in liquid assets. (If the applicant is married, this is after the state performs a spousal assessment and gives

the community spouse a share of the combined assets.)

Currently, DSS counts the cash surrender value of any life insurance policy with a face value of more than \$1,500 towards the asset limit. DSS also excludes certain transfers of such policies to cover funerals. DSS will not grant eligibility until the policy is surrendered and the money is “spent down” to the asset limit on the individual’s care. (It is not clear if the bill’s prohibition applies only during the period in which the policy is being surrendered.)

BACKGROUND

Constructive Trust

A court can order a constructive trust against someone who, through wrongdoing, fraud, or other unconscionable act, obtains or holds legal property rights to which he or she is not entitled. It is often used to prevent undue enrichment. It can be used to order the person who would otherwise be unjustly enriched to transfer the property to the intended party.

Community Spouse Allowance and Monthly Needs Allowance

When one spouse is living in a nursing home and the other spouse lives elsewhere, the spouse who is not living in the nursing home (called the community spouse in Connecticut) is allowed by Medicaid to keep a portion of the institutionalized spouse’s income. This income, called the community spouse allowance, is determined by subtracting the community spouse’s monthly gross income from a minimum monthly needs allowance (MMNA). The MMNA amount will vary from case to case, but for 2013 the minimum is \$1,892; the maximum is \$2,898. The MMNA takes into account the community spouse’s housing costs (e.g., rent, utilities).

The minimum and maximum are set by federal law and the state must update the amounts each year. The maximum may only be exceeded if a DSS fair hearing orders it.

COMMITTEE ACTION

Human Services Committee

Joint Favorable Substitute

Yea 18 Nay 0 (04/02/2013)