



February 19, 2013

To: Human Services Committee  
Re: Opposition to HB 6413

Sen. Slossberg, Rep. Abercormbie, Sen. Coleman, Rep. Stallworth, Sen. Markley, Rep. Wood and other distinguished members of the Human Services Committee:

I write to you on behalf of the more than 130 members of the Connecticut chapter of the National Academy of Elder Law Attorneys. We respectfully urge you to take no action on HB6413.

This bill would amend Subsection (b) of Section 17b-261a of the general statutes to provide enormous new powers whenever the Department of Social services assesses a penalty period (i.e. a period of Medicaid ineligibility) on account of a transfer of assets within 5 years of a person's applying for Medicaid.

It provides that the Department shall hire private debt collectors to collect the charges the applicant accrued at the nursing home during the period of ineligibility, and pay them over to the nursing home. This bill puts nursing homes in a special protected class making the State (and thus the taxpayers) the nursing homes' personal collection agency.

It authorizes the State to impose a penalty of double the charges, in addition to collecting the debt itself. Moreover, both the transferor and the transferee may be held "jointly and severally liable" for this debt and for the double penalty. The penalty may be imposed if the Commissioner "determines" "based on sufficient evidence" (i.e. *not even a preponderance of the evidence*) that assets were "willfully transferred for the purpose of obtaining or maintaining eligibility" for Medicaid.

Finally, the bill adds new sections 3 and 4 to 17b-261a. It establishes a brand new legal action in court for nursing homes to go after persons (e.g. family members) who had legal authority to control the applicant's income, or who received transfers from the applicant. The court may impose a penalty of double the damages on these people. The nursing homes merely need to show that the person had knowledge that a purpose of the transfer was to obtain or maintain eligibility for medical assistance, or that there was a material omission concerning such assets (regardless of intent), or that the person willfully failed to pay or withheld applied income due the nursing home.

Our organization is sympathetic to the nursing homes' concerns. But, their difficulties with the Medicaid system arise out of an eligibility processing system that has been rigidly administered, punitively enforced and pitifully understaffed. Applications are often pending for a year or more, and the slightest amount of excess assets during this prolonged period -- even a dollar -- can result in hundreds of thousands of dollars of unpaid nursing home bills. The solution lies with improving the system, not making it Machiavellian.

- 1. **HB 6413 INAPPROPRIATELY MIXES STATE AUTHORITY AND PRIVATE BUSINESS INTERESTS AND DELEGATES STATE AUTHORITY TO PRIVATE DEBT COLLECTORS.** The nursing home industry, consisting of substantial for-profit and not-for-profit institutions with access to both legal counsel and to the full range of contractual and other remedies under the law, stands to gain the protection of the State that no other industry has. In these difficult times the State has a hard enough time meeting its actual governmental responsibilities without imposing on it a requirement that it use tax dollars to administer a collection process for private businesses.  
  
To contract out the enforcement of any State-imposed penalties to private collection agencies will be to give a State imprimatur to the overbearing intimidation tactics that are well-known in the debt collection industry.
- 2. **THE PENALTIES UNDER HB 6413 EXCEED THOSE ALLOWED UNDER FEDERAL LAW.** Federal law strictly controls the states' abilities to recover moneys paid as part of the Medicaid program while the Medicaid beneficiary is alive. This provision's imposition of a monetary double penalty on a Medicaid recipient would constitute a direct violation of these "anti-lien" provisions under 42 USC 1396p and would thus violate Federal law. Failure to comply with Federal law could eventually lead to loss of Federal funds.
- 3. **HB 6413's WILL INTIMIDATE MIDDLE CLASS FAMILIES BY NOT ESTABLISHING A FAIR PUBLIC HEARING** The message that this proposal sends is simple -- seniors in Connecticut must be wary of the omnipotent reach of the government and shall not have the freedom to use their money as they see fit, since every penny has to be saved for possible future nursing home costs. It would ban seniors from helping family members in trouble or in need. This legislation's threats of double penalties assessed with no prior hearing and no due process is intimidation, pure and simple.
- 4. **HB 6413 CREATES CRIPPLING FINANCIAL PENALTIES FOR POOR, WORKING AND MIDDLE-CLASS FAMILIES BASED ON A PURELY ADMINISTRATIVE DETERMINATION.** This statute would vest in the Department of Social Services power to impose penalties of \$22,000 or more for each month of ineligibility, with no prior hearing and without right to counsel. This is all the more disturbing when one recognizes that the persons subjected to this power are the elderly and disabled with the least means and ability to effectively defend themselves. If the senior does succeed in getting a hearing, it will be in front of a Department of

Social Services Hearing Officer, advised by the very same lawyers that would be representing the Department at the hearing.

- 5. **HB 6413 IS UNCONSTITUTIONAL AND DENIES TRANSFEREES DUE PROCESS OF LAW IN THE IMPOSITION OF PENALTIES.** The Medicaid application process is a proceeding between the Medicaid applicant and the Department of Social Services. Transferees have no standing, no rights, and do not even receive notice at any stage of the process. Nor does this law require any hearing prior to the imposition of such a penalty on the transferee. Such a punishment without due process of law is directly contrary to Amendment V of the U.S. Constitution, and Article XXIX of the Amendments to the Connecticut Constitution.
- 6. **HB 6413 WILL CAUSE ACTUAL AND SIGNIFICANT HARM TO SENIORS IN NEED OF ASSISTANCE.** Consider a senior who is living independently and has limited means and normal health problems consistent with old age. Her child is facing foreclosure, or medical emergency, or her grandchild needs assistance to pay for college and she wishes to give him \$20,000. She knows that by giving him \$20,000, this money will not be available if she ever needs nursing-home care and has to apply for Medicaid. But let us assume that within 5 years of the transfer she finds herself in need of institutional care and Medicaid assistance.

She now faces a choice - apply for Medicaid, get the care she needs and bring financial ruin in the form of a double penalty on the child or grandchild she had tried to help, or forego the badly needed Medicaid assistance. The State should not force this choice upon any senior.

Let there be no doubt -- if this legislation is passed, there will be seniors who will be harmed for lack of adequate care, because they refuse to apply for Medicaid for fear of these penalties. This legislation in its intent and its effect is directly contrary to the mission of the Department of Social Services. It is a punitive and mean-spirited barrier that will deter many frail and ailing elderly from getting the help they need, and it deserves no place in our law.

- 7. **HB 6413 IS SO PUNITIVE AND OVERBEARING THAT IT MAY BACKFIRE**  
Consider the example above. But this time, the person enters the nursing home and has significant assets at the time but runs out before the 5 year look back. If she applies for Medicaid, she will bring penalties tumbling down upon herself and the child or grandchild. Will the family resist applying for Medicaid to prevent this Machiavellian result? Won't the nursing home charges accumulate further and put the nursing home in a worse position?

This Bill is unconstitutional, unjust, harmful to our most fragile citizens, absurdly punitive, mean-spirited and would be counter-productive. It is a bad fix to an important problem. We respectfully request that the committee take no action on this bill.



Thank you.

CT NAELA by

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*Chair, Public Policy Committee  
and Member, Board of Directors*