



General Assembly

**Substitute Bill No. 6413**

January Session, 2013



**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 Section 17b-261 of the general statutes is repealed and the  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.*