



General Assembly

**Amendment**

January Session, 2013

LCO No. 8191

**\*HB0660708191HDO\***

Offered by:

REP. ABERCROMBIE, 83<sup>rd</sup> Dist.

SEN. SLOSSBERG, 14<sup>th</sup> Dist.

To: Subst. House Bill No. 6607

File No. 552

Cal. No. 351

**"AN ACT CONCERNING NURSING HOMES."**

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

3 "Section 1. Section 17b-261 of the general statutes is repealed and the  
4 following is substituted in lieu thereof (*Effective October 1, 2013*):

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

16 for the purpose of establishing eligibility for benefits or assistance  
17 under this section. Any such disposition shall be treated in accordance  
18 with Section 1917(c) of the Social Security Act, 42 USC 1396p(c). Any  
19 disposition of property made on behalf of an applicant or recipient or  
20 the spouse of an applicant or recipient by a guardian, conservator,  
21 person authorized to make such disposition pursuant to a power of  
22 attorney or other person so authorized by law shall be attributed to  
23 such applicant, recipient or spouse. A disposition of property ordered  
24 by a court shall be evaluated in accordance with the standards applied  
25 to any other such disposition for the purpose of determining eligibility.  
26 The commissioner shall establish the standards for eligibility for  
27 medical assistance at one hundred forty-three per cent of the benefit  
28 amount paid to a family unit of equal size with no income under the  
29 temporary family assistance program in the appropriate region of  
30 residence. In determining eligibility, the commissioner shall not  
31 consider as income Aid and Attendance pension benefits granted to a  
32 veteran, as defined in section 27-103, or the surviving spouse of such  
33 veteran. Except as provided in section 17b-277, the medical assistance  
34 program shall provide coverage to persons under the age of nineteen  
35 with family income up to one hundred eighty-five per cent of the  
36 federal poverty level without an asset limit and to persons under the  
37 age of nineteen and their parents and needy caretaker relatives, who  
38 qualify for coverage under Section 1931 of the Social Security Act, with  
39 family income up to one hundred eighty-five per cent of the federal  
40 poverty level without an asset limit. Such levels shall be based on the  
41 regional differences in such benefit amount, if applicable, unless such  
42 levels based on regional differences are not in conformance with  
43 federal law. Any income in excess of the applicable amounts shall be  
44 applied as may be required by said federal law, and assistance shall be  
45 granted for the balance of the cost of authorized medical assistance.  
46 The Commissioner of Social Services shall provide applicants for  
47 assistance under this section, at the time of application, with a written  
48 statement advising them of (1) the effect of an assignment or transfer  
49 or other disposition of property on eligibility for benefits or assistance,  
50 (2) the effect that having income that exceeds the limits prescribed in

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

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

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

84 purposes of determining whether the beneficiary is disabled.

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

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

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

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

115       (h) To the extent permissible under federal law, an institutionalized  
116 individual, as defined in Section 1917 of the Social Security Act, 42  
117 USC 1396p(h)(3), shall not be determined ineligible for Medicaid solely  
118 on the basis of the cash value of a life insurance policy worth less than  
119 ten thousand dollars provided (1) the individual is pursuing the  
120 surrender of the policy, and (2) upon surrendering such policy all  
121 proceeds of the policy are used to pay for the institutionalized  
122 individual's long-term care.

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

135       [(i)] (j) The Commissioner of Social Services shall provide Early and  
136 Periodic Screening, Diagnostic and Treatment program services, as  
137 required and defined as of December 31, 2005, by 42 USC 1396a(a)(43),  
138 42 USC 1396d(r) and 42 USC 1396d(a)(4)(B) and applicable federal  
139 regulations, to all persons who are under the age of twenty-one and  
140 otherwise eligible for medical assistance under this section.

141       [(j)] (k) A veteran, as defined in section 27-103, and any member of  
142 his or her family, who applies for or receives assistance under the  
143 Medicaid program, shall apply for all benefits for which he or she may  
144 be eligible through the Veterans' Administration or the United States  
145 Department of Defense.

146       Sec. 2. (NEW) (*Effective October 1, 2013*) (a) For purposes of this

147 section and sections 3 and 4 of this act, (1) "nursing home facility"  
148 means a chronic and convalescent nursing home and a rest home with  
149 nursing supervision, and (2) "penalty period" means the period of  
150 Medicaid ineligibility imposed pursuant to 42 USC 1396p(c), as  
151 amended from time to time, on a person whose assets have been  
152 transferred for less than fair market value for the purposes of obtaining  
153 or maintaining Medicaid eligibility.

154 (b) Any transfer or assignment of assets resulting in the  
155 establishment or imposition of a penalty period shall create a debt, as  
156 defined in section 36a-645 of the general statutes, that shall be due and  
157 owing to a nursing home facility for the unpaid cost of care provided  
158 during the penalty period to a nursing home facility resident who has  
159 been subject to the penalty period. The amount of the debt established  
160 shall not exceed the fair market value of the transferred assets at the  
161 time of transfer that are the subject of the penalty period.

162 (c) The provisions of this section shall not affect other rights or  
163 remedies of the parties. A nursing home facility may bring an action to  
164 collect a debt for unpaid care given to a resident who has been subject  
165 to a penalty period, provided (1) the debt recovery does not exceed the  
166 fair market value of the transferred asset at the time of transfer, and (2)  
167 the asset transfer that triggered the penalty period took place not  
168 earlier than two years prior to the date of the resident's Medicaid  
169 application. The nursing home facility may bring such action against  
170 (A) the transferor, or (B) the transferee.

171 (d) In actions brought under subsection (c) of this section, a court of  
172 competent jurisdiction may award actual damages, court costs and  
173 reasonable attorneys' fees to a nursing home facility if such court  
174 determines, based upon clear and convincing evidence, that a  
175 defendant incurred a debt to a nursing home facility by (1) wilfully  
176 transferring assets that are the subject of a penalty period, (2) receiving  
177 such assets with knowledge of such purpose, or (3) making a material  
178 misrepresentation or omission concerning such assets. Court costs and  
179 reasonable attorneys' fees shall be awarded as a matter of law to a

180 defendant who successfully defends an action or a counterclaim  
181 brought pursuant to this section. Any court, including a probate court  
182 acting under subdivision (3) of subsection (a) of section 45a-98 of the  
183 general statutes or section 45a-364 of the general statutes, may also  
184 order that such assets or proceeds from the transfer of such assets be  
185 held in constructive trust to satisfy such debt.

186 (e) The provisions of this section shall not apply to a conservator  
187 who transfers income or principal with the approval of the Probate  
188 Court under subsection (d) or (e) of section 45a-655 of the general  
189 statutes.

190 Sec. 3. (NEW) (*Effective October 1, 2013*) (a) For purposes of this  
191 section, "applied income" means the income of a recipient of medical  
192 assistance, pursuant to section 17b-261 of the general statutes, as  
193 amended by this act, that is required, after the exhaustion of all  
194 appeals and in accordance with state and federal law, to be paid to a  
195 nursing home facility for the cost of care and services.

196 (b) In determining the amount of applied income, the Department of  
197 Social Services shall take into consideration any modification to the  
198 applied income due to revisions in a medical assistance recipient's  
199 community spouse minimum monthly needs allowance, as described  
200 in Section 1924 of the Social Security Act, and any other modification  
201 to applied income allowed by state or federal law.

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

211 (d) Pursuant to the notice provisions of subsections (c) and (f) of this  
212 section, a nursing home facility that is owed applied income may, in  
213 addition to all other remedies authorized under statutory and common  
214 law, bring a civil action to recover the applied income, provided the  
215 nursing home facility shall not commence such action against a  
216 recipient of medical assistance who has asserted that the applied  
217 income is needed to increase the minimum monthly needs allowance  
218 of the recipient's community spouse, pursuant to 42 USC 1396r-  
219 5(e)(2)(B). In such case, the nursing home facility may not commence  
220 such action until the recipient, the recipient's community spouse or the  
221 legal representative of either has exhausted their appeal rights before  
222 the Department of Social Services and in court. A nursing home facility  
223 may bring such action against (1) a medical assistance recipient who  
224 owes the applied income, or (2) a person with legal access to such  
225 recipient's applied income who acted with the intent to (A) deprive  
226 such recipient of the applied income, or (B) appropriate the applied  
227 income for himself, herself or a third person.

228 (e) If a court of competent jurisdiction determines, based upon clear  
229 and convincing evidence, that a defendant wilfully failed to pay or  
230 withheld applied income due and owing to a nursing home facility for  
231 more than ninety days after receiving notice pursuant to subsection (c)  
232 of this section, the court may award the amount of the debt owed,  
233 court costs and reasonable attorneys' fees to the nursing home facility.  
234 Court costs and reasonable attorneys' fees shall be awarded as a matter  
235 of law to a defendant who successfully defends an action or a  
236 counterclaim brought pursuant to this section. The provisions of this  
237 section shall not apply to a conservator who transfers income or  
238 principal with the approval of the Probate Court under subsection (d)  
239 or (e) of section 45a-655 of the general statutes.

240 (f) A nursing home facility shall not file any action under this  
241 section until (1) thirty days after it has given written notice of such  
242 action to any person who received notice pursuant to subsection (c) of  
243 this section, or (2) ninety-one days after it has given written notice of

244 such action and the information required by subsection (c) of this  
 245 section to any person who has not received notice pursuant to  
 246 subsection (c) of this section.

247 Sec. 4. (NEW) (*Effective October 1, 2013*) Upon commencement of any  
 248 action brought under section 2 or 3 of this act, a nursing home facility  
 249 shall mail a copy of the complaint to the Attorney General and the  
 250 Commissioner of Social Services and, upon entry of any judgment or  
 251 decree in the action, shall mail a copy of such judgment or decree to  
 252 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>	New section
Sec. 3	<i>October 1, 2013</i>	New section
Sec. 4	<i>October 1, 2013</i>	New section