



General Assembly

Amendment

January Session, 2013

LCO No. 6667

HB0660706667HDO

Offered by:

REP. ABERCROMBIE, 83rd Dist.

SEN. SLOSSBERG, 14th 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 Section 17b-261 of the general statutes is repealed and the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) the proceeds of the policy are used to
121 pay for the institutionalized individual's long-term care.

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

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

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

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146 repealed and the following is substituted in lieu thereof (*Effective*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

148 (b) Any transfer or assignment of assets resulting in the

149 establishment or imposition of a penalty period shall create a debt, as
150 defined in section 36a-645, that shall be due and owing by the
151 transferor or transferee to (1) the Department of Social Services in an
152 amount equal to the amount of the medical assistance provided by the
153 department to or on behalf of the transferor on or after the date of the
154 transfer of assets, [but said] or (2) a nursing facility in an amount equal
155 to the unpaid cost of care provided by the facility to the transferor
156 during a penalty period. The amount of the debt established shall not
157 exceed the fair market value of the transferred assets at the time of
158 transfer that are the subject of the penalty period. The Commissioner
159 of Social Services, the Commissioner of Administrative Services and
160 the Attorney General shall have the power or authority to seek
161 administrative, legal or equitable relief as provided by other statutes or
162 by common law to obtain payment of the debt. If a court of competent
163 jurisdiction determines that assets were wilfully transferred for the
164 purpose of obtaining or maintaining eligibility for medical assistance,
165 the court may assess court costs and attorneys' fees in addition to the
166 amount of the debt against the transferor and any transferee who had
167 knowledge of such purpose. Such transferor and transferee shall share
168 joint and several liability.

169 Sec. 3. (NEW) (*Effective October 1, 2013*) (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 the transferor, the transferee and any
174 person authorized under law to be in control of the transferor's income
175 and assets, provided such person had knowledge that the transfer was
176 made for the purpose of obtaining or maintaining eligibility for
177 medical assistance.

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 may award actual damages, court
185 costs and attorneys' fees. Any court, including a probate court, may
186 also order that such assets or proceeds from the transfer of such assets
187 be held in constructive trust to satisfy such debt.

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

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

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

210 (d) Pursuant to the notice provisions of subsections (c) and (e) of
211 this section, a nursing home that is owed applied income may, in
212 addition to any other remedy authorized by law, bring a civil action to
213 recover the applied income due from (1) a medical assistance recipient
214 who owes the applied income, or (2) a person with legal access to such

215 recipient's applied income who acted with the intent to (A) deprive
 216 such recipient of the applied income, or (B) appropriate the applied
 217 income for himself, herself or a third person. If a court of competent
 218 jurisdiction determines, based upon a fair preponderance of the
 219 evidence, that such recipient or person wilfully failed to pay or
 220 withheld applied income due and owing to a nursing home for more
 221 than ninety days after receiving notice pursuant to subsection (c) of
 222 this section, the court may award the amount of the debt owed, court
 223 costs and attorneys' fees to the nursing home.

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

230 Sec. 5. (NEW) (*Effective October 1, 2013*) Upon commencement of any
 231 action brought under section 3 or 4 of this act, a nursing home shall
 232 mail a copy of the complaint to the Attorney General and the
 233 Commissioner of Social Services and, upon entry of any judgment or
 234 decree in the action, shall mail a copy of such judgment or decree to
 235 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