

TESTIMONY SUBMITTED BY ATTORNEY LINNEA LEVINE, PRESIDENT OF
THE CONNECTICUT CHAPTER OF THE NATIONAL ACADEMY OF ELDER LAW ATTORNEYS
TUESDAY FEBRUARY 25, 2014
BEFORE THE AGING COMMITTEE IN SUPPORT OF

RAISED BILL No. 174- AN ACT CONCERNING FAIRNESS IN MEDICAID ELIGIBILITY
DETERMINATIONS FOR HOME CARE CLIENTS

PROPOSED LEGISLATION TO FAIRLY APPLY THE SAME MEDICAID ELIGIBILITY RULES TO
MEDICAID HOME CARE WAIVER APPLICANTS AS APPLIED TO MEDICAID NURSING HOME
APPLICANTS

I am speaking to you on behalf of the Connecticut Chapter of the National Academy of Elder Law Attorneys, Inc., a chapter of the National Academy of Elder Law Attorneys, Inc. ("NAELA"). NAELA is a non-profit association whose mission is to provide legal advocacy, information and education to attorneys, bar associations and others who deal with the many specialized issues involving the elderly and individuals with special needs. The Connecticut chapter of NAELA presents this written and oral testimony in support of the proposed BILL NO. 174.

Medicaid Waiver Programs are programs in the community, funded by Medicaid, that follow the Nursing Home Medicaid financial eligibility rules. As shown by the four examples below, Connecticut follows federal law in determining the Medicaid start date of Nursing Home Medicaid applicant as shown in EXAMPLES ONE and TWO. However, Connecticut varies from the federal Medicaid financial eligibility rules by delaying the date an applicant in the Connecticut Home Care Waiver Program receives Medicaid payment as shown in EXAMPLES THREE and FOUR below:

EXAMPLE ONE: MEDICAID NURSING HOME APPLICANT-NO GIFTS

Jane entered Great Care Nursing Home on October 1, 2013 with less than \$1,600.00 in assets. Her Medicaid application was submitted on December 31, 2013. Jane did not gift any funds in the five years directly before her Medicaid application filing date. CT DSS approved her application on April 1, 2014 with a Medicaid start date of October 1, 2013, because federal law allows Medicaid to be paid for up to three months before the date of the application if the applicant has less than \$1,600.00 in assets in those three prior months.

EXAMPLE TWO: MEDICAID NURSING HOME APPLICANT-GIFTS OF \$23,162.00

Jane entered Great Care Nursing Home on October 1, 2013 with less than \$1,600.00 in assets. Her Medicaid application was submitted on December 31, 2013. Jane gifted a total of \$23,162 in the five years directly before her Medicaid application filing date. CT DSS approved her application on April 1, 2014 with a Medicaid start date of March 1, 2014, because federal law mandates that the penalty period for uncompensated transfers be computed as follows:

1. Add up all gifts - \$23,162.00
2. Divide the total gifts by the average monthly cost of nursing home care - \$23,162 divided by \$11,581 equals 2 months penalty period
3. 2 month penalty begins on date Medicaid application is filed – December 31, 2013
4. 2 month penalty ends on February 28, 2014
5. Medicaid payment starts on March 1, 2014

EXAMPLE THREE: MEDICAID HOME CARE APPLICANT-NO GIFTS

Jane is financially eligible for the CT Home Care Waiver Program on October 1, 2013 with less than \$1,600.00 in assets. Her Medicaid application was submitted on December 31, 2013. Jane did not gift any funds in the five years directly before her Medicaid application filing date. CT DSS approved her application on April 1, 2014 with a Medicaid start date of April 1, 2014, *leaving Jane with no financial means to pay for home care from October 1, 2013 through March 31, 2014.*

EXAMPLE FOUR: MEDICAID HOME CARE APPLICANT-GIFTS OF \$24,000.00

Jane requires home care on October 1, 2013 with less than \$1,600.00 in assets. Her Medicaid application was submitted on December 31, 2013. Jane gifted a total of \$23,162 in the five years directly before her Medicaid application filing date. CT DSS approved her application on April 1, 2014. Jane's start date should be March 1, 2014, because federal law mandates that the penalty period for uncompensated transfers be computed as follows:

1. Add up all gifts - \$23,162.00
2. Divide the total gifts by the average monthly cost of nursing home care - \$23,162 divided by \$11,581 equals 2 months penalty period
3. 2 month penalty begins on date Medicaid application is filed – December 31, 2013
4. 2 month penalty ends on February 28, 2014
5. Medicaid payment starts on March 1, 2014

In EXAMPLE FOUR, CT DSS does not follow the federal law, because it begins the 2 month penalty period on April 1, 2014 with Jane finally receiving Medicaid on June 1, 2013 *three months after Jane should be receiving Medicaid pursuant to federal law.*

The gaps of several months of no payment source for *necessary and essential* home health care while the Medicaid applications are pending places the home applicants in dangerous situations which can result in harm, death and early nursing home admissions. Many Medicaid home care applicants have no choice but to enter a nursing home where the Medicaid coverage will start upon admission to the facility and then transition out to home care under the Medicaid Home Care Waiver Program when Medicaid home care payment is available.

Unnecessary nursing home admissions create excessive and unnecessary government cost and violate the Medicaid applicants' Constitutional liberty interests to "reside in the least restrictive, safe environment".

The Connecticut Chapter of the National Academy of Elder law Attorneys urges your strong support of Bill No. 174, so that the ill and poor population will be able to stay at home and timely receive the necessary Medicaid home care that they are entitled to pursuant to the same federal and state eligibility rules for Medicaid nursing home applications.

Thank you all for your service to our State and for your time and attention to meeting the pressing needs of our ill and impoverished citizens.

Sincerely,

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