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Testimony of Attorney Linnea Levine
The Elder Law Section
Connecticut Bar Association

IN SUPPORT OF

HB5287, An Act Concerning Medicaid Eligibility
For Home Care Services

Aging Committee
Tuesday March 1, 2016

I am speaking to you on behalf of the Elder Law Section of the Connecticut Bar Association non-profit association whose mission is to provide legal advocacy, information and education to attorneys, who deal with the many specialized issues involving the elderly and individuals with special needs. The Elder Law Section of the Connecticut Bar Association presents this written and oral testimony in support of the RAISED BILL HB 5287.

HB 5287 repeals Section (h) of CGS 17b-342 and requires that the Commissioner provide Medicaid payments for home care retroactively for not more than three months from the date the Medicaid application was filed in accordance with 42 CFR 435.915

HB 5287 also addresses the beginning date of a transfer penalty:
In accordance with 42 USC 1396p (c)(1)(D)(ii) a transfer penalty shall begin on the **later of**

1. the first day of the month during or after the date of the transfer that resulted in the penalty period, or
2. the date the otherwise eligible applicant applied for Medicaid assistance and would have been receiving such assistance but for the imposition of the penalty period. "penalty period" has the same meaning as in section 17b-261q.

BACKGROUND

In the real world, individuals experience life threatening illnesses and injuries that must be dealt with first before attention can be focused on the Medicaid application process. The Medicaid application is onerous as the applicant must produce financial documents going back five years, proof of all sources and amounts of gross income, proof of U.S. Citizenship or Medicaid qualified legal alien status. This takes time, but even more time for a person who is ill or incapacitated.



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Recognizing unavoidable delays in filing for Medicaid, the federal government, as a condition of participation in the Medicaid program, requires Medicaid payments for services and care provided for up to three months directly preceding the filing date of the Medicaid application, 42 U.S.C. 1396a(a)(34) and 42 CFR 435.915. Further, optional Medicaid programs such as Connecticut's Home Care Medicaid Waiver program must provide retroactive payments for up to three months prior to the application filing date, because retroactive Medicaid payments are not included in the exclusive waivable requirements listed in 42 U.S.C. §1396n(c)(3), *Arc of California*, 757 F. 3d at 985-986.

For nursing home residents applying for Medicaid, the Connecticut Department of Social Services "DSS" follows 42 CFR 435.915 by starting payment for nursing home care for three months directly prior to the Medicaid application date as long as the applicant had less than \$1,600.00 in assets.

For nursing home residents applying for Medicaid who have gifted away assets that create a penalty period, DSS follows federal law 42 U.S.C 1396 (c)(1)(D)(ii) and starts the transfer penalty period on the later of the Medicaid application filing date or when the Medicaid applicant is eligible, but for the transfer penalty. If DSS determines a six month penalty for an uncompensated transfer, the six month penalty begins on the filing date if the applicant has less than \$1,600.00 in assets on the filing date.

However, for home care applicants, the Department of Social Services, in direct violation of federal law, will not pay for services or start any applicable penalty period until the date the Medicaid application is approved. Approval of a Medicaid application can take many months or even a year due to Department staffing issues or the applicant's difficulty in obtaining financial documentation from third parties. This delay leaves the applicant in a dangerous situation without necessary health care as the applicant is too impoverished to pay for care while the application is pending.

If DSS determines a six month penalty for an uncompensated transfer, and the application is approved three months after the application is filed, the six month transfer penalty becomes nine months. This occurs, because DSS starts the penalty period on the date the Medicaid application is approved instead of the on the date the application was filed.

The inequitable result of the current DSS policy is twofold:

1. Home care Medicaid applicants who have not made uncompensated transfers are denied the three months of retroactive eligibility.
2. Home care Medicaid applicants who have made uncompensated transfers have their penalty periods increased by the number of months it takes DSS to review and approve the home care Medicaid application.



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DSS's refusal to approve home care Medicaid for up to three retroactive months before the filing date, and DSS's regulation, CT U.P.M 3039.05E, which begins transfer penalties on the date the Medicaid application is approved gives the applicant and his or her spouse the dismal choices while the Medicaid application is pending:

- The applicant is admitted to a nursing home which for which DSS will pay the three month retroactive Medicaid. Nursing home Medicaid is generally more expensive than Medicaid home care. The state loses money.
- The applicant's home care is paid by a relative who has no legal duty to pay the applicant's expensive home care costs.
- The well spouse uses some or all of her protected community spouse protected amount of assets "CSPA" allocated for her support pursuant to federal law to pay for her spouse's home care.
- The applicant foregoes care and is subjected to possible harm or death.
- Transfer penalties are wrongfully expanded in include the months during which the Medicaid application is pending.

HB 5287 ends discrimination between nursing home Medicaid applicants and home care applicants by applying the same rules regarding retroactive benefits and start dates of transfer penalties for both programs.

CONCLUSION

Passage of HB 5287 will create safe environments for ill or incapacitated home care waiver applicants, will save the state money since home care waiver applicants will not require nursing home care, and will treat nursing home and home care Medicaid applicants equally.

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.