

Attorney Kathleen D. Hayes  
 The Law Office of Kathleen D. Hayes  
 145 New London Turnpike, PO Box 475  
 Glastonbury, Connecticut  
 EM: Kathleen@kdhayeslaw.com; PH: (860) 266-7724

Testimony Submitted by Kathleen D. Hayes on February 9, 2021  
 before the Committee on Aging  
 on behalf of the Connecticut Bar Association Elder Law Section and the Connecticut Chapter of the  
 National Academy of Elder Law Attorneys

**In SUPPORT of  
 Senate Bill 818**

**AN ACT PERMITTING THE COMMUNITY SPOUSE OF AN INSTITUTIONALIZED  
 MEDICAID RECIPIENT TO RETAIN THE MAXIMUM AMOUNT OF ALLOWABLE ASSETS**

My name is Kathleen D. Hayes, and I am an elder law attorney practicing in Glastonbury, Connecticut. I have the distinct privilege of submitting this testimony on behalf of the Elder Law Section of the Connecticut Bar Association and the Connecticut Chapter of the National Academy of Elder Law Attorneys (CT NAELA), in **support** of Senate Bill 818: An Act Permitting the Community Spouse of an Institutionalized Medicaid Recipient to Retain the Maximum Amount of Allowable Assets. This bill enables the spouse of an individual requiring long-term care (“Community Spouse”) to avoid financial impoverishment by retaining the maximum level of assets permitted by law. This bill aims to treat all Medicaid applicants fairly and equally, shifting the current schematic that favors upper middle class families.

**Overview of Community Spouse Protected Amount and Case Studies:** When an individual requires long-term care, the Connecticut Department of Social Services follows the steps set forth below in determining financial eligibility for Medicaid. The Case Studies, set forth in the middle and righthand columns, demonstrate the inequity between middle and upper middle class families under our current laws:

<b>Medicaid Financial Eligibility Determination Rules (Married Couple)</b>	<b>Case Study A: Middle Class Family</b> <i>Harold and Mary are a married couple. Harold is the ill spouse applying for Medicaid. Mary is the Community Spouse.</i>	<b>Case Study B: Upper Middle Class Family</b> <i>Harold and Mary are a married couple. Harold is the ill spouse applying for Medicaid. Mary is the Community Spouse.</i>
1. DSS determines the couple’s countable assets on the date the ill spouse first needed care, known as the Date of Institutionalization or “DOI.”	Harold first needed skilled care on February 1, 2021 (DOI). On the DOI, his and Mary’s assets were \$100,000.	Harold first needed skilled care on February 1, 2021 (DOI). On the DOI, his and Mary’s assets were \$300,000.
2. DSS divides the couple’s countable assets in half, as of the DOI.	Harold is allocated \$50,000. Mary is allocated \$50,000.	Harold is allocated \$150,000. Mary is allocated \$150,000.
3. The Community Spouse can retain a <u>minimum</u> of \$27,328 and a <u>maximum</u> of \$130,380. The amount that the Community Spouse is permitted to keep is known as the Community Spouse Protected Amount (“CSPA”). The ill spouse can retain \$1,600.	Harold can keep \$1,600. Mary can only keep \$50,000.  <b>Under the proposed bill, Mary would be permitted to keep the full \$100,000 of assets, because the couple’s assets do not exceed the maximum CSPA of \$130,380.</b>	Harold can keep \$1,600. Mary can keep the maximum amount of \$138,380.  <b>The proposed bill does not change this outcome.</b>

As exemplified in Case Study A, even if one-half of a middle class couple's assets is less than the maximum allowable amount of \$130,380, the Community Spouse is not permitted to retain the maximum amount. The effect of the current law is assaultive to middle class families encountering illness and disability. Instead of worrying solely for the health and wellbeing of the ill spouse, couples are forced to contend with a slew of additional fears—losing their lifelong home; making ends meet; and—in this era of early onset illnesses—caring for minor children; and much more.

By contrast, as exemplified in Case Study B, an upper middle class family is permitted to keep the maximum amount of assets under the law. Senate Bill 818 would simply guarantee the same asset protections to middle and upper middle class families.

**Arguments Supporting Passage of Senate Bill 818:** The Elder Law Section of the Connecticut Bar Association and CT NAELA submit the following arguments in support of Senate Bill 818.

- A. Senate Bill 818 Preserves the Congressional Intent of MCCA.** In 1988, Congress passed the Medicare Catastrophic Coverage Act ("MCCA"). The purpose of MCCA is to prevent the Community Spouse from becoming impoverished when his/her spouse requires long-term care. Under our current laws, the path to impoverishment is paved for middle class families. Countless middle class couples are forced to quickly expend their modest resources, often on items or services that are not otherwise needed for the couple's welfare. Senate Bill 818 provides a safety net to middle class families by allowing the Community Spouse to retain the couple's modest savings as a buffer against future lifetime expenses. In this way, our State will at last make good on the promise of MCCA.
- B. Senate Bill 818 Does Not Have a Fiscal Impact.** The proposed legislation would not impose any financial burden on the State. The funds which a Community Spouse is forced to "spend down" are not mandated to be spent on care, or otherwise paid to the State of Connecticut. Rather, the Community Spouse can spend the funds in any manner he/she chooses. Thus, under the current law, the Community Spouse is forced to spend for the sake of spending. Senate Bill 818 enables families to *save* for the sake of preserving their home and personal welfare. Whether the Community Spouse is allowed to keep the minimum amount of \$27,328, or the maximum amount of \$130,380, the State will begin paying for long-term care at the same point in time. Moreover, legislative history demonstrates that this bill would not bear a fiscal impact. In 2010, the Connecticut Legislature passed a bill identical to Senate Bill 818, codified in C.G.S. 17b-261k (PA 10-73). However, the life of such statute was short-lived, as it was rescinded through a Budget Implementer Bill in 2011. Despite DSS's attestations that the enacted statute cost millions of dollars, DSS never provided any documentation substantiating these claims. In fact, at a legislative hearing held on March 5, 2011 to repeal the Public Act, then-serving DSS Commissioner Starkowski stated that the alleged \$30 million impact was "intuitive" and based on "worker experience." In opposing this legislation, DSS continues to rely upon fictional fiscal impact based on faulty assumptions.
- C. Senate Bill 818 Will Save the State Money.** Senate Bill 818 will, in fact, accord cost savings to the State. This legislation will reduce Fair Hearings, which are often requested to increase the resources that a Community Spouse is permitted to keep, up to \$130,380. The reduction of Fair Hearings will save valuable time and resources. Moreover, by enabling the Community Spouse to keep the maximum allowable amount, he/she is better positioned to financially meet his/her personal needs without relying upon public resources, such as Medicaid, Food Assistance, Energy Assistance, or Long-Term Care services for him/herself.
- D. Senate Bill 818 Protects Middle Class Families.** Senate Bill 818 is not seeking special treatment for middle class families. Conversely, Senate Bill 818 aims to provide *equal* treatment

Attorney Kathleen D. Hayes  
The Law Office of Kathleen D. Hayes  
145 New London Turnpike, PO Box 475  
Glastonbury, Connecticut  
EM: Kathleen@kdhayeslaw.com; PH: (860) 266-7724

to middle class families by according the same protections enjoyed by more financially stable couples who are always permitted to keep the maximum allowable amount of \$130,380. Thus, this bill champions the cause of couples with joint countable assets that are less than \$260,760 (the maximum allowable amount, times two).

On behalf of the Elder Law Section of the Connecticut Bar Association and CT NAELA, I thank you for your time and consideration of this most important issue, and strongly urge the members of this Committee to act favorably with regard to Senate Bill 818.