House Bill No. 6705

Public Act No. 13-234

AN ACT IMPLEMENTING THE GOVERNOR'S BUDGET RECOMMENDATIONS FOR HOUSING, HUMAN SERVICES AND PUBLIC HEALTH.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Sec. 127. Section 17b-261 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2013*):

(a) Medical assistance shall be provided for any otherwise eligible person whose income, including any available support from legally liable relatives and the income of the person's spouse or dependent child, is not more than one hundred forty-three per cent, pending approval of a federal waiver applied for pursuant to subsection (e) of this section, of the benefit amount paid to a person with no income under the temporary family assistance program in the appropriate region of residence and if such person is an institutionalized individual as defined in Section **[**1917(c)**]** 1917 of the Social Security Act, 42 USC **[**1396p(c)**]** 1396p(h)(3), and has not made an assignment or transfer or other disposition of property for less than fair market value for the purpose of establishing eligibility for benefits or assistance under this section. Any such disposition shall be treated in accordance with Section 1917(c) of the Social Security Act, 42 USC 1396p(c). Any disposition of property made on behalf of an applicant or recipient or the spouse of an applicant or recipient by a guardian, conservator, person authorized to make such disposition pursuant to a power of attorney or other person so authorized by law shall be attributed to such applicant, recipient or spouse. A disposition of property ordered by a court shall be evaluated in accordance with the standards applied to any other such disposition for the purpose of determining eligibility. The commissioner shall establish the standards for eligibility for medical assistance at one hundred forty-three per cent of the benefit amount paid to a family unit of equal size with no income under the temporary family assistance program in the appropriate region of residence. In determining eligibility, the commissioner shall not consider as income Aid and Attendance pension benefits granted to a veteran, as defined in section 27-103, or the

surviving spouse of such veteran. Except as provided in section 17b-277, the medical assistance program shall provide coverage to persons under the age of nineteen with family income up to one hundred eighty-five per cent of the federal poverty level without an asset limit and to persons under the age of nineteen and their parents and needy caretaker relatives, who qualify for coverage under Section 1931 of the Social Security Act, with family income up to one hundred eighty-five per cent of the federal poverty level without an asset limit. Such levels shall be based on the regional differences in such benefit amount, if applicable, unless such levels based on regional differences are not in conformance with federal law. Any income in excess of the applicable amounts shall be applied as may be required by said federal law, and assistance shall be granted for the balance of the cost of authorized medical assistance. The Commissioner of Social Services shall provide applicants for assistance under this section, at the time of application, with a written statement advising them of (1) the effect of an assignment or transfer or other disposition of property on eligibility for benefits or assistance, (2) the effect that having income that exceeds the limits prescribed in this subsection will have with respect to program eligibility, and (3) the availability of, and eligibility for, services provided by the Nurturing Families Network established pursuant to section 17b-751b. Persons who are determined ineligible for assistance pursuant to this section shall be provided a written statement notifying such persons of their ineligibility and advising such persons of the availability of HUSKY Plan, Part B health insurance benefits.

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

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

determination from the Social Security Administration for purposes of determining whether the beneficiary is disabled.

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

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

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

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

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

[(h)**]** (i) Medical assistance shall be provided, in accordance with the provisions of subsection (e) of section 17a-6, to any child under the supervision of the Commissioner

of Children and Families who is not receiving Medicaid benefits, has not yet qualified for Medicaid benefits or is otherwise ineligible for such benefits. Medical assistance shall also be provided to any child in the voluntary services program operated by the Department of Developmental Services who is not receiving Medicaid benefits, has not yet qualified for Medicaid benefits or is otherwise ineligible for benefits. To the extent practicable, the Commissioner of Children and Families and the Commissioner of Developmental Services shall apply for, or assist such child in qualifying for, the Medicaid program.

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

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

Sec. 128. (NEW) (*Effective October 1, 2013*) (a) For purposes of this section and sections 129 and 130 of this act, (1) "nursing home facility" means a chronic and convalescent nursing home and a rest home with nursing supervision, and (2) "penalty period" means the period of Medicaid ineligibility imposed pursuant to 42 USC 1396p(c), as amended from time to time, on a person whose assets have been transferred for less than fair market value for the purposes of obtaining or maintaining Medicaid eligibility.

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

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

(d) In actions brought under subsection (c) of this section, a court of competent jurisdiction may award actual damages, court costs and reasonable attorneys' fees to a nursing home facility if such court determines, based upon clear and convincing evidence, that a defendant incurred a debt to a nursing home facility by (1) wilfully transferring assets that are the subject of a penalty period, (2) receiving such assets with knowledge of such purpose, or (3) making a material misrepresentation or omission concerning such assets. Court costs and reasonable attorneys' fees shall be awarded as a matter of law to a defendant who successfully defends an action or a counterclaim brought pursuant to this section. Any court, including a probate court acting under subdivision (3) of subsection (a) of section 45a-98 of the general statutes or section 45a-364 of the general statutes, may also order that such assets or proceeds from the transfer of such assets be held in constructive trust to satisfy such debt.

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

Sec. 129. (NEW) (*Effective October 1, 2013*) (a) For purposes of this section, "applied income" means the income of a recipient of medical assistance, pursuant to section 17b-261 of the general statutes, as amended by this act, that is required, after the exhaustion of all appeals and in accordance with state and federal law, to be paid to a nursing home facility for the cost of care and services.

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

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

(d) Pursuant to the notice provisions of subsections (c) and (f) of this section, a nursing home facility that is owed applied income may, in addition to all other remedies authorized under statutory and common law, bring a civil action to recover the applied income, provided the nursing home facility shall not commence such action against a recipient of medical assistance who has asserted that the applied income is needed to

increase the minimum monthly needs allowance of the recipient's community spouse, pursuant to 42 USC 1396r-5(e)(2)(B). In such case, the nursing home facility may not commence such action until the recipient, the recipient's community spouse or the legal representative of either has exhausted their appeal rights before the Department of Social Services and in court. A nursing home facility may bring such action against (1) a medical assistance recipient who owes the applied income, or (2) a person with legal access to such recipient's applied income who acted with the intent to (A) deprive such recipient of the applied income, or (B) appropriate the applied income for himself, herself or a third person.

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

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

Sec. 130. (NEW) (*Effective October 1, 2013*) Upon commencement of any action brought under section 128 or 129 of this act, a nursing home facility shall mail a copy of the complaint to the Attorney General and the Commissioner of Social Services and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the Attorney General and the Commissioner of Social Services.