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**TESTIMONY OF SHELDON TOUBMAN BEFORE THE COMMITTEE ON
AGING IN SUPPORT OF SB 813 (with proposed amendments)**

Good evening, Senator Slap, Representative Phipps and other members of the Committee on Aging.

My name is Sheldon Toubman and I am a staff attorney with New Haven Legal Assistance Association, in the benefits and elder law units, where I have been representing low income Medicaid enrollees and applicants for over 29 years. I am speaking to you today on behalf of low income seniors and people with disabilities with significant care needs who wish to avoid institutionalization at state expense. I support SB 813's provision for retroactive coverage for home care services where Medicaid eligibility is established, both because it is required by federal law and because it makes good economic sense for the state, while meeting our clients' needs. I also provide some suggested revisions to more fully accomplish the goals of this bill.

Under federal Medicaid regulations, at 42 C.F.R. § 435.915(a), retroactive eligibility for Medicaid is required for up to three months upon the granting of a Medicaid application, as long as the applicant was in fact eligible during that retroactive period. There is no exception from this requirement for any particular kind of services—it applies to **all** Medicaid-covered services. Connecticut in fact complies with this requirement in general, reimbursing pharmacies, physicians and other providers for goods and services provided to new Medicaid enrollees in the three month retroactive period, if they are eligible in that period. It also does this for long-term care when provided in a nursing home. But it improperly refuses to do this, uniquely, for home care services.

SB 813 fixes this long-standing illegality by assuring that payment will be available for home care services already rendered during that retroactive period, if the person did in fact meet all eligibility criteria during that period. This makes the provision of these services more likely during that critical period when a Medicaid application is pending (which often exceeds three months), because the provider will know there is at least some *possibility* of getting paid for providing services to someone without resources during that period, whereas currently they know retroactive Medicaid payment is completely unavailable.

This provision is very important for elderly and disabled people with a Medicaid application pending who immediately need extensive home care services. Without these services, they are likely to be forced to go into a nursing home (which under state law cannot refuse admission to individuals with a Medicaid application pending) while their Medicaid application is pending. Not only is this inherently

traumatic, but, statistically, it threatens to cause a *long-term* institutionalization, which could have been entirely avoided, due to the loss of community housing and/or the deterioration that often is related to the mere fact of institutionalization.

It also ultimately is harmful to the taxpayers, given the cost-effectiveness requirement: home care services provided under Medicaid must not cost more than it would cost to provide care in a nursing facility under Medicaid. But if the person is forced into a nursing facility while the Medicaid application is pending because no home care providers will provide services because they have no way of being paid even if the application is granted, that more cost-effective option will likely not be exercised. SB 813 should reduce the number of times this unfortunate, and unnecessary, result occurs.

However, we do suggest a few language revisions, shown in the attached, designed to further what we believe was the intent of this bill to bring CT into compliance with federal law and avoid unnecessary institutionalization:

1. Since Medicaid payment is not available unless a provider is actually an enrolled Medicaid provider, we include this limitation on a home care provider receiving payment for services provided in the retroactive period.
2. Because of the twin problems of home care services often being subject to prior authorization, while DSS will not review a request for PA if the individual is not enrolled in Medicaid, we propose adding a requirement that DSS must make an exception and consider and process requests for PA for home care services when an individual either is on Medicaid **or** has an application for Medicaid pending.
3. Under existing federal law, a penalty period if a Medicaid applicant has made an improper transfer for less than fair market value does not begin to run until they would otherwise begin to be eligible for Medicaid. The language in the current bill would not allow the penalty period to start at the beginning of the three-month retroactive period even if the person would otherwise be eligible for Medicaid on that date. We therefore propose to revise the language to implement the federal law requirement that the penalty period begins to apply whenever a person first would actually get onto Medicaid. In most cases this will not result in any receipt of Medicaid services during the retroactive period (in any case where the penalty period is for 3 months or more), but just begin the penalty period a little earlier.

Our proposed alternative language accomplishing these changes is attached.

Apart from these three proposed changes, we strongly endorse SB 813 as an important revision that will bring CT into compliance with federal Medicaid law while allowing many more individuals to stay at home and avoid costly institutionalization.

Thank you for the opportunity to speak with you today.

AN ACT CONCERNING RETROACTIVE MEDICAID ELIGIBILITY FOR HOME CARE SERVICES.

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

1 Section 1. Subsection (h) of section 17b-342 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective July 1,*
3 *2021*):

4 (h) An individual who is otherwise eligible for services pursuant to
5 this section shall, as a condition of participation in the program, apply
6 for medical assistance benefits pursuant to section 17b-260 when
7 requested to do so by the department and shall accept such benefits if
8 determined eligible. The Commissioner of Social Services shall provide
9 medical assistance payments for Medicaid-eligible home care services
10 provided by Medicaid-participating providers
11 retroactive to not more than three months before the date an eligible
12 individual applied for Medicaid, to the extent permissible under 42 CFR
13 435.915, as amended from time to time, . ~~Any Medicaid applicant who has~~
14 ~~transferred assets for less than fair market value for purposes of obtaining~~
15 ~~or maintaining Medicaid eligibility in the sixty months before applying~~
16 ~~shall not be eligible for retroactive medical assistance payments. If the~~
~~applicant has made such a transfer, the commissioner shall impose a~~

17 subject to any penalty period imposed in accordance with 42 USC
1396p(c)(1)(D)(ii), as amended

18 from time to time. The Commissioner of Social Services shall review and
timely process all requests for prior authorization for home care services
submitted on behalf of individuals who are on Medicaid or who have an
application for Medicaid pending.