



# Senate

General Assembly

**File No. 131**

January Session, 2021

Substitute Senate Bill No. 913

*Senate, March 24, 2021*

The Committee on Human Services reported through SEN. MOORE of the 22nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT REQUIRING FAIRNESS FOR FAMILIES IN MEDICAID ELIGIBILITY AND REIMBURSEMENT DETERMINATIONS.***

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

1 Section 1. (NEW) (*Effective July 1, 2021*) To the extent permissible  
2 under federal law, payment rates for family caregivers authorized to  
3 receive compensation in programs administered by the Department of  
4 Social Services shall be equal to the rates set for nonfamily professional  
5 caregivers providing the same types of services to participants in such  
6 programs. The Commissioner of Social Services shall use the fair market  
7 value of services provided by a family caregiver in determining whether  
8 a Medicaid applicant who transferred assets to such caregiver as part of  
9 a legally enforceable compensation agreement for such services violated  
10 any provision of federal law regarding the transfer of assets.

11 Sec. 2. Subsection (h) of section 17b-342 of the general statutes is  
12 repealed and the following is substituted in lieu thereof (*Effective July 1,*  
13 *2021*):

14 (h) An individual who is otherwise eligible for services pursuant to  
15 this section shall, as a condition of participation in the program, apply  
16 for medical assistance benefits pursuant to section 17b-260 when  
17 requested to do so by the department and shall accept such benefits if  
18 determined eligible. The Commissioner of Social Services shall provide  
19 medical assistance payments for Medicaid-eligible home care services  
20 retroactive to not more than three months before the date an eligible  
21 individual applied for Medicaid, to the extent permissible under 42 CFR  
22 435.915, as amended from time to time, provided such individual was  
23 otherwise eligible for Medicaid not more than three months before  
24 applying for Medicaid. Any Medicaid applicant who has transferred  
25 assets for less than fair market value for purposes of obtaining or  
26 maintaining Medicaid eligibility in the sixty months before applying for  
27 Medicaid shall not be eligible for retroactive medical assistance  
28 payments. If the applicant has made such a transfer, the commissioner  
29 shall impose a penalty period in accordance with 42 USC  
30 1396p(c)(1)(D)(ii), as amended from time to time.

31 Sec. 3. Section 17b-261 of the general statutes is repealed and the  
32 following is substituted in lieu thereof (*Effective July 1, 2021*):

33 (a) Medical assistance shall be provided for any otherwise eligible  
34 person whose income, including any available support from legally  
35 liable relatives and the income of the person's spouse or dependent  
36 child, is not more than one hundred forty-three per cent, pending  
37 approval of a federal waiver applied for pursuant to subsection (e) of  
38 this section, of the benefit amount paid to a person with no income  
39 under the temporary family assistance program in the appropriate  
40 region of residence and if such person is an institutionalized individual  
41 as defined in Section 1917 of the Social Security Act, 42 USC 1396p(h)(3),  
42 and has not made an assignment or transfer or other disposition of  
43 property for less than fair market value for the purpose of establishing  
44 eligibility for benefits or assistance under this section. Any such  
45 disposition shall be treated in accordance with Section 1917(c) of the  
46 Social Security Act, 42 USC 1396p(c). Any disposition of property made  
47 on behalf of an applicant or recipient or the spouse of an applicant or

48 recipient by a guardian, conservator, person authorized to make such  
49 disposition pursuant to a power of attorney or other person so  
50 authorized by law shall be attributed to such applicant, recipient or  
51 spouse. A disposition of property ordered by a court shall be evaluated  
52 in accordance with the standards applied to any other such disposition  
53 for the purpose of determining eligibility. The commissioner shall  
54 establish the standards for eligibility for medical assistance at one  
55 hundred forty-three per cent of the benefit amount paid to a household  
56 of equal size with no income under the temporary family assistance  
57 program in the appropriate region of residence. In determining  
58 eligibility, the commissioner shall not consider as income Aid and  
59 Attendance pension benefits granted to a veteran, as defined in section  
60 27-103, or the surviving spouse of such veteran. Except as provided in  
61 section 17b-277 and section 17b-292, the medical assistance program  
62 shall provide coverage to persons under the age of nineteen with  
63 household income up to one hundred ninety-six per cent of the federal  
64 poverty level without an asset limit and to persons under the age of  
65 nineteen, who qualify for coverage under Section 1931 of the Social  
66 Security Act, with household income not exceeding one hundred  
67 ninety-six per cent of the federal poverty level without an asset limit,  
68 and their parents and needy caretaker relatives, who qualify for  
69 coverage under Section 1931 of the Social Security Act, with household  
70 income not exceeding one hundred fifty-five per cent of the federal  
71 poverty level without an asset limit. Such levels shall be based on the  
72 regional differences in such benefit amount, if applicable, unless such  
73 levels based on regional differences are not in conformance with federal  
74 law. Any income in excess of the applicable amounts shall be applied as  
75 may be required by said federal law, and assistance shall be granted for  
76 the balance of the cost of authorized medical assistance. The  
77 Commissioner of Social Services shall provide applicants for assistance  
78 under this section, at the time of application, with a written statement  
79 advising them of (1) the effect of an assignment or transfer or other  
80 disposition of property on eligibility for benefits or assistance, (2) the  
81 effect that having income that exceeds the limits prescribed in this  
82 subsection will have with respect to program eligibility, and (3) the

83 availability of, and eligibility for, services provided by the Nurturing  
84 Families Network established pursuant to section 17b-751b. For  
85 coverage dates on or after January 1, 2014, the department shall use the  
86 modified adjusted gross income financial eligibility rules set forth in  
87 Section 1902(e)(14) of the Social Security Act and the implementing  
88 regulations to determine eligibility for HUSKY A, HUSKY B and  
89 HUSKY D applicants, as defined in section 17b-290. Persons who are  
90 determined ineligible for assistance pursuant to this section shall be  
91 provided a written statement notifying such persons of their ineligibility  
92 and advising such persons of their potential eligibility for one of the  
93 other insurance affordability programs as defined in 42 CFR 435.4.

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

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

117 determination. The commissioner shall not require such beneficiary to  
118 apply for Social Security disability benefits or obtain a disability  
119 determination from the Social Security Administration for purposes of  
120 determining whether the beneficiary is disabled.

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

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

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

137 (g) An institutionalized spouse applying for Medicaid and having a  
138 spouse living in the community shall be required, to the maximum  
139 extent permitted by law, to divert income to such community spouse in  
140 order to raise the community spouse's income to the level of the  
141 minimum monthly needs allowance, as described in Section 1924 of the  
142 Social Security Act. Such diversion of income shall occur before the  
143 community spouse is allowed to retain assets in excess of the  
144 community spouse protected amount described in Section 1924 of the  
145 Social Security Act. The Commissioner of Social Services, pursuant to  
146 section 17b-10, may implement the provisions of this subsection while  
147 in the process of adopting regulations, provided the commissioner  
148 prints notice of intent to adopt the regulations [in the Connecticut Law  
149 Journal within] on the Internet web site of the Department of Social

150 Services and the eRegulations System not later than twenty days of  
151 adopting such policy. Such policy shall be valid until the time final  
152 regulations are effective.

153 (h) To the extent permissible under federal law, an institutionalized  
154 individual, as defined in Section 1917 of the Social Security Act, 42 USC  
155 1396p(h)(3), shall not be determined ineligible for Medicaid solely on  
156 the basis of the cash value of a life insurance policy worth less than ten  
157 thousand dollars provided the individual is pursuing the surrender of  
158 the policy.

159 (i) To the extent permissible under federal law, an individual who has  
160 applied for Medicaid shall not be determined ineligible solely on the  
161 basis of an asset discovered by such individual after the date of  
162 application, provided (1) the individual reports the discovery of the  
163 asset to the Commissioner of Social Services not later than ten days after  
164 the discovery, (2) the individual takes steps to liquidate such  
165 individual's interest in the asset and spend down the proceeds in  
166 accordance with Medicaid income and asset limits, and (3) in the event  
167 the individual is unable to gain access to the asset, the Department of  
168 Social Services provides assistance to the individual to gain access to the  
169 asset.

170 [(i)] (j) Medical assistance shall be provided, in accordance with the  
171 provisions of subsection (e) of section 17a-6, to any child under the  
172 supervision of the Commissioner of Children and Families who is not  
173 receiving Medicaid benefits, has not yet qualified for Medicaid benefits  
174 or is otherwise ineligible for such benefits. Medical assistance shall also  
175 be provided to any child in the behavioral services program operated  
176 by the Department of Developmental Services who is not receiving  
177 Medicaid benefits, has not yet qualified for Medicaid benefits or is  
178 otherwise ineligible for benefits. To the extent practicable, the  
179 Commissioner of Children and Families and the Commissioner of  
180 Developmental Services shall apply for, or assist such child in qualifying  
181 for, the Medicaid program.

182 [(j)] (k) The Commissioner of Social Services shall provide Early and

183 Periodic Screening, Diagnostic and Treatment program services, as  
 184 required and defined as of December 31, 2005, by 42 USC 1396a(a)(43),  
 185 42 USC 1396d(r) and 42 USC 1396d(a)(4)(B) and applicable federal  
 186 regulations, to all persons who are under the age of twenty-one and  
 187 otherwise eligible for medical assistance under this section.

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2021	New section
Sec. 2	July 1, 2021	17b-342(h)
Sec. 3	July 1, 2021	17b-261

**Statement of Legislative Commissioners:**

In Section 2, "before applying" was changed to "before applying for Medicaid" for clarity.

**HS**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 22 \$	FY 23 \$
Social Services, Dept.	GF - Potential Cost	See Below	See Below

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill could result in a cost to the Department of Social Services (DSS) associated with making retroactive Medicaid payments for enrollees in the Connecticut Home Care Program for Elders (CHCPE), for up to three months prior to applying for Medicaid.

For context, the average monthly gross cost per enrollee is \$2,800. Making retroactive payments for the three months prior to applying for Medicaid results in a state Medicaid cost of \$4,200 per client. This assumes the approval for such payments by the Centers for Medicare and Medicaid Services (CMS).

The bill makes other changes that could enable certain individuals to achieve Medicaid eligibility sooner to the extent they would otherwise be considered ineligible based solely on the discovery of certain assets. The actual cost to the state will depend on the number of applicable individuals and the disposition of certain assets.

**The Out Years**

The annualized ongoing fiscal impact identified above would



continue into the future subject to the number of eligible individuals, associated cost of care, and the disposition of certain assets.

*Sources: Department of Social Services Caseload and Utilization Information*

**OLR Bill Analysis****sSB 913*****AN ACT REQUIRING FAIRNESS FOR FAMILIES IN MEDICAID ELIGIBILITY AND REIMBURSEMENT DETERMINATIONS.*****SUMMARY**

This bill generally requires, to the extent permissible under federal Medicaid law, (1) payment parity for family caregivers, (2) retroactive coverage for home care services, and (3) a process for resolving undisclosed assets discovered during the application process.

Additionally, the bill replaces an obsolete reference to the Connecticut Law Journal with the Department of Social Services' (DSS) website and the eRegulations system for posting required notices of intention to adopt regulations. It also makes technical and conforming changes.

EFFECTIVE DATE: July 1, 2021

**§ 1 — FAMILY CAREGIVER PAYMENT RATES**

The bill requires, to the extent permissible under federal law, payment rates for authorized family caregivers in DSS-administered programs to equal the rates for non-family professional caregivers providing the same types of services to program participants. By law, the DSS commissioner must determine whether a Medicaid applicant transferred assets in violation of federal law. Under the bill, the commissioner must use the fair market value of the family caregiver's provided services when making this determination with regard to a legally enforceable compensation agreement for the services.

**§ 2 — RETROACTIVE MEDICAID BENEFITS**

The bill requires the DSS commissioner to provide, in accordance with federal regulations, retroactive benefits to applicants of the

Connecticut Home Care Program for Elders (CHCPE, see BACKGROUND) for up to three months before the date of their application, as long as they were otherwise eligible during that time period. In practice and under federal law, DSS already makes retroactive payments for certain other Medicaid services, including long-term care services.

Under federal law, DSS must impose a penalty period when individuals transfer assets for less than fair market value in the 60 months before applying for Medicaid coverage. The bill makes any CHCPE applicant who has made such a transfer ineligible for the retroactive Medicaid payments and requires the commissioner to impose a penalty period in accordance with federal regulations.

### **§ 3 — LATE-DISCOVERED ASSETS**

The bill prohibits, to the extent permissible under federal law, Medicaid coverage denial solely on the basis of an asset discovered by an applicant during the application process, as long as the applicant (1) reports the discovery to DSS within ten days of the discovery and (2) takes steps to liquidate it and spend-down the proceeds in accordance with Medicaid income and asset limits. The bill directs the department to assist these applicants to gain access to their assets if they are unable to do so.

## **BACKGROUND**

### ***Retroactive Medicaid Payments***

Under federal regulations, individuals are eligible for up to three months of retroactive Medicaid coverage, as long as they (1) received Medicaid services during that time and (2) would have been Medicaid eligible if they had applied (42 C.F.R. § 435.915).

### ***Asset Transfer Penalties***

Generally, the penalty period (in months) is calculated by dividing the value of all assets transferred for less than fair market value during the 60 months before application by the average monthly cost of private nursing home care in the state or community. Medicaid does not pay for

long-term care services and supports during the penalty period.

**Connecticut Home Care Program for Elders**

CHCPE is a Medicaid-waiver and a state-funded program that provides a range of home- and community-based services for eligible individuals age 65 or older who are at risk of inappropriate institutionalization (e.g., nursing home placement). To be eligible for CHCPE, individuals must meet income and asset limits.

**COMMITTEE ACTION**

Human Services Committee

Joint Favorable Substitute

Yea 19 Nay 0 (03/09/2021)