

Act Number: 09-073
Bill Number: 957
Senate Pages: 1790-1793, 1819-1821 7
House Pages: 4538-4542 5
Committee: *Human Services:* 703, 909-910, 1011-1018, 1094, 1098, 1124-1133 23

Page Total: 35

S - 582

**CONNECTICUT
GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
2009**

**VOL. 52
PART 6
1667 - 2005**

THE CLERK:

Calendar page 23, Calendar Number 222, File Number 252, substitute for Senate bill 957, AN ACT CONCERNING THE ELIGIBILITY OF PERSONS LIVING IN RESIDENTIAL CARE HOMES FOR STATE SUPPLEMENT ASSISTANCE, favorable report of the Committees on Public Health and Human Services. Clerk is in possession of an amendment.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Thank you, Mr. President. I move acceptance of the joint committee's favorable report and passage of the bill.

THE CHAIR:

The question is acceptance and passage. Will you remark further.

SENATOR DOYLE:

Yes. Thank you, Mr. President. This bill deals with our state supplemental the program, which really provides assistance to our citizens that have certain disabilities. In order to qualify for this program, of course, there's a two-year period, a window before they can apply

that they can -- they can prohibit from making certain grants and disclosures of their assets.

What this bill does is it creates an exception that allows these citizens to transfer some of their excess income into, what they call, a special needs trust. And what -- why in -- it allows them to make these grants within two-year window and then still qualify. And the significance is the focus of the special needs trust is really to provide additional assistance to these people. And ultimately, these trusts at the end of a citizen's life, the balance of the proceeds will go to the State. So it's good planning for the State and ultimately save money because it can keep people out of nursing homes.

And Mr. President, the Clerk does have an amendment, LCO 6246. May the Clerk please call and I be allowed to summarize?

THE CHAIR:

Would the Clerk please call LCO 6246 to be designated Senate A.

THE CLERK: LCO 6246, which has been designated Senate Amendment Schedule A. It's offered by Senator Doyle of the 9th district et al.

rgd
SENATE

126
April 30, 2009

THE CHAIR:

The gentleman has requested leave to summarize. Is there objection? Is there objection? Seeing none, please proceed, Senator Doyle.

SENATOR DOYLE:

Thank you, Mr. President. What this amendment does is it clarifies -- our OLR staff pointed out an inconsistency or an unclarity in the bill. This just clarifies that the DSS Commissioner shall disregard the excess income put into these trusts, so it just makes sense and ties up the bill to make it crystal clear. And I urge the circle's adopt -- to adopt this amendment. Thank you, Mr. President.

THE CHAIR:

The question before the chamber is the adoption of Senate A. Will you remark further? Will you remark further? If not, the Chair will try the minds of the Senators. All in favor, please say, aye.

SENATORS:

Aye.

THE CHAIR:

All those opposed say, nay.

The ayes have it. Senate A is adopted.

Will you remark further on the bill as amended? Will you remark further on the bill as amended? Senator Doyle.

SENATOR DOYLE:

Thank you, Mr. President. If there's no objection I urge -- I move adoption of this bill to the consent calendar.

THE CHAIR:

Is there objection to placing this item on consent? Is there objection? Seeing none, so ordered.

Are there any announcements or points of personal privilege? Senator McLaughlin.

SENATOR McLACHLAN:

Thank you, Mr. President. I rise to welcome some important people from Danbury. I have behind me and joining us here in the Senate chambers today, Mrs. Pam Winzig, who is the club adviser to the Danbury High School Young Republicans. And with her is the club President, Michael Ferguson. And also along, the next member of the University of Connecticut student body is Sophia Walker who

rgd
SENATE

153
April 30, 2009

Senator Looney.

SENATOR LOONEY:

Yes. Mr. President, that item might be marked passed, retaining its place on the calendar.

THE CHAIR:

Without objection, so ordered, sir. Senator Looney.

SENATOR LOONEY:

Yes. Mr. President, if the remaining items that we had marked earlier, Calendar page 28, Calendar 367; Calendar page 29, Calendar 415; might also be marked passed, retaining their place on the calendar. And if the Clerk might proceed to vote on the consent calendar.

THE CHAIR:

Mr. Clerk, please call consent calendar.

THE CLERK:

Roll call has been ordered in the Senate on the consent calendar. Will all senators please return to the chamber. Roll call has been ordered in the Senate on the consent calendar. Will all senators please return to the chamber.

Mr. President, before voting on the consent calendar, those items placed on the consent

rgd
SENATE

154
April 30, 2009

calendar began on calendar page 3, Calendar Number 165, substitute for Senate Bill 781; Calendar page 4, Calendar 208, substitute for Senate Bill 881; Calendar 244, House Bill 6263; Calendar page 7, Calendar 394, substitute for House Bill 5834; Calendar page 17, Calendar Number 102, substitute for Senate Bill 710; Calendar page 19, Calendar 145, Senate Bill 974; Calendar page 20, Calendar 155, substitute for Senate Bill 451; Calendar page 22, Calendar 198, Senate Bill 989; Calendar page 23, Calendar 222, substitute for Senate Bill 957; Calendar page 28, Calendar Number 354, substitute for Senate Bill 499. Mr. President, I believe that completes those items previously placed on the consent calendar.

THE CHAIR:

Okay. The Clerk, please call the consent calendar for a roll call. The machine will be open.

THE CLERK:

Immediate roll call has been ordered in the Senate on the consent calendar. Will all senators please return to the chamber. Immediate roll call

⋮

rgd
SENATE

155
April 30, 2009

has been ordered in the Senate on the consent calendar. Will all senators please return to the chamber.

THE CHAIR:

Have all senators voted? If all senators have voted, please check your vote. The machine will be locked. The Clerk will call the tally.

THE CLERK:

Motion is on adoption of Consent Calendar Number 1.

| | |
|-----------------------------|----|
| Total Number Voting | 35 |
| Those voting Yea | 35 |
| Those voting Nay | 0 |
| Those absent and not voting | 1 |

THE CHAIR:

The consent calendar passes.

Senator Looney.

SENATOR LOONEY:

Yes. Thank you, Mr. President.

Mr. President, I believe the Clerk is in possession of Senate Agendas 1 and 2.

THE CHAIR:

Mr. Clerk.

THE CLERK:

H – 1050

**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2009**

**VOL.52
PART 14
4255 – 4577**

hal/md/pat
HOUSE OF REPRESENTATIVES

341
May 14, 2009

Those voting Nay 0
Those absent and not voting 10

DEPUTY SPEAKER ALTOBELLO:

The bill passes in concurrence with the Senate.

And would the Clerk please call Calendar Number
597.

THE CLERK:

On Page 24, Calendar Number 597, Substitute for
Senate bill Number 957 AN ACT CONCERNING THE
ELIGIBILITY OF PERSONS LIVING IN RESIDENTIAL CARE
HOMES FOR STATE SUPPLEMENT ASSISTANCE. Favorable
Report of the Committee on Public Health.

DEPUTY SPEAKER ALTOBELLO:

Representative Cook of the 56th District, you
have the floor, Madam.

REP. COOK (56th):

Mr. Speaker. Mr. Speaker, I move acceptance of
the Joint Committee's Favorable Report and passage of
the bill.

DEPUTY SPEAKER ALTOBELLO:

The question before the Chamber is acceptance of
the Joint Committee's Favorable Report and passage of
the bill. Please proceed, Madam.

REP. COOK (56th):

hal/md/pat
HOUSE OF REPRESENTATIVES

342
May 14, 2009

Mr. Speaker, the Clerk has an Amendment, LCO Number 6246. I would ask the Clerk to please call the amendment and that I be granted leave of the Chamber to summarize.

DEPUTY SPEAKER ALTOBELLO:

Would the Clerk please call LCO Number 6246, which previously was designated Senate A, I believe.

THE CLERK:

LCO Number 6246, Senate A, offered by Senator Williams, et al.

DEPUTY SPEAKER ALTOBELLO:

Representative Cook, will you remark?

REP. COOK (56th):

Mr. Speaker, this Amendment already adopted by the Senate requires that DSS ignore excess income deposited into the trust in determining eligibility.

The underlying bill does not specify this requirement, and this Amendment seeks to clarify the original aim of the bill.

I move for adoption.

DEPUTY SPEAKER ALTOBELLO:

Thank you. Further on Senate A? Further on Senate A. Representative Gibbons of the 150th, you have the floor, Madam.

hal/md/pat
HOUSE OF REPRESENTATIVES

343
May 14, 2009

REP. GIBBONS (150th):

Thank you, Mr. Speaker. Through you, may I please just ask for clarification on the amendment to the proponent of the amendment, please.

DEPUTY SPEAKER ALTOBELLO:

You may, Madam.

REP. GIBBONS (150th):

Thank you. Through you, I wasn't aware that we were going to have an amendment on this, and as I read it, it says the Commissioner shall disregard all excess income.

Through you, Mr. Speaker, is this what is necessary to go and clarify the underlying bill?

DEPUTY SPEAKER ALTOBELLO:

Representative Cook.

REP. COOK (56th):

Yes, it is, through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Gibbons.

REP. GIBBONS (150th):

Thank you, Mr. Chairman, Mr. Speaker. I support the amendment. Thank you.

DEPUTY SPEAKER ALTOBELLO:

Thank you, Madam. Further on Senate A? Further

hal/md/pat
HOUSE OF REPRESENTATIVES

344
May 14, 2009

on Senate A?

If not, I'll try your minds. All those in favor please signify by saying Aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER ALTOBELLO:

Opposed? The Ayes have it. The amendment is adopted.

Further on the bill as amended? Further on the bill as amended? If not, oops, wait a minute, Representative Gibbons. You have the floor, Madam.

REP. GIBBONS (150th):

Thank you, Mr. Speaker, just to clarify that this bill was actually in the Governor's budget, and this is sort of excepted out of the Governor's budget. It makes it much easier for these individuals to stay in certain residential homes, so I urge passage of the bill.

Thank you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Thank you, Representative Gibbons. Further on the bill as amended? Further on the bill as amended?

If not, staff and guests retire to the Well of the House. Members take your seats. The machine will

hal/md/pat
HOUSE OF REPRESENTATIVES

345
May 14, 2009

be opened.

THE CLERK:

The House of Representatives is voting by Roll
Call. Members to the Chamber.

Members to the Chamber. The House is voting by
Roll Call.

DEPUTY SPEAKER ALTOBELLO:

Have all Members voted? If all Members have
voted, please check the board to make sure your vote
is properly cast.

If all Members have voted, the machine will be
locked. Would the Clerk please take a tally.

Would the Clerk please announce the tally.

THE CLERK:

Senate Bill Number 957 as amended by Senate A in
Concurrence with the Senate.

| | |
|-----------------------------|-----|
| Total Number Voting | 142 |
| Necessary for Passage | 72 |
| Those voting Yea | 142 |
| Those voting Nay | 0 |
| Those absent and not voting | 9 |

DEPUTY SPEAKER ALTOBELLO:

The bill passes in concurrence with the Senate.

And would the Clerk please call Calendar Number

**JOINT
STANDING
COMMITTEE
HEARINGS**

**HUMAN
SERVICES
PART 3
667 - 1008**

2009

family planning in the state.

REP. WALKER: So that -- but, we, currently, are not we -- we have not implemented the family planning waiver?

SUSAN YOLEN: No. This would be an expansion to a group of women. I mean, right now the only women getting Medicaid services are women who are already eligible, i.e., they've a child or they are pregnant, so this would be a different group of women who are not currently eligible but are at risk. If they become pregnant, they will go on Medicaid, and, after that, all of their health care, the pregnancy and delivery, and so forth, will be --

REP. WALKER: So the State of Connecticut would not have to expend any additional dollars? These would be -- these are existing programs that are already there that we would join?

SUSAN YOLEN: Well, they would have to spend the money on the services and then be reimbursed 90 cents on every dollar that they spend.

REP. WALKER: Well, that's my question. Are we spending --

SUSAN YOLEN: But then they will save -- reap the benefits later of the pregnancies averted.

REP. WALKER: Okay. But, currently, we are not expending any dollars for this service?

SUSAN YOLEN: Not for this group of women.

REP. WALKER: Okay, okay. Thank you.

SUSAN YOLEN: You're welcome.

for HUSKY A adults as well as the Governor and the Legislature's adoption of the Charter Oak plan actually make this legislation unnecessary. Both HUSKY A and Charter Oak cover family planning services.

So the vast majority of the population that I believe this bill is intended to reach already has options for coverage of family planning services. So we would recommend against adoption of this bill.

I would like to comment on Senate Bill 957, An Act Concerning Medicaid Eligibility for Persons Living in Residential Care Homes. This bill would allow certain disabled individuals to use specific types of trusts to qualify for payment of -- continue to qualify for payment of residential care homes or New Horizons Village through the state supplement program.

Federal Medicaid law allows disabled people to transfer income and assets into certain types of trusts. These are pooled trusts without affecting their eligibility for assistance. This comes into play when people are in a residential care home and they go over the income limit for the state supplement program. At that point, they really have no option, because we can no longer continue to provide state supplement assistance to them. Their real only option is to go into a nursing facility, which is not cost-effective; it's not consistent with the state's goals of trying to keep people in the least restrictive setting possible; it's not consistent with any of the federal direction that's been coming in terms of moving people out of long-term care institutions and so on.

This bill is extremely similar to the

Governor's own -- to a section in the Governor's own bill, I believe it's Section 61 of the Governor's bill 8 -- yes, it is Section 61 of the Governor's Bill 843. We -- we would support this legislation. We would obviously recommend passage of the Governor's bill. But if Senate Bill 957 continues to move forward as a separate bill, I would ask that you make a technical modification to it. The title of the bill is somewhat confusing. It refers to Medicaid eligibility. And in reality this bill deals with amending the eligibility for state supplements. So I think that's a technical issue. I'm looking over the table there.

I would like to comment on House Bill 6443, An Act Concerning Direct Billing for Home Care Nursing Services Provided to Medicaid Recipients. If I understand this bill correctly, under -- I believe this bill is seeking to, perhaps, expand the circumstances under which an APRN can be allowed to bill the Medicaid program. Currently, APRNs can bill the Medicaid program. They are -- they can bill as independent providers. They are issued Medicaid provider numbers. They are paid off the physician fee schedule. So we believe that if that is the purpose of the bill, we believe that the bill is unnecessary because they are already able to bill for services.

If, however, the purpose of the bill is, as its title may suggest, to enable APRNs to directly bill for homecare nursing services, such as those provided by home health care agencies, we -- we oppose this bill. Allowing APRNs to independently bill for these services would allow the prescriber of the services to also be the provider of the services, which we think is a bad idea.

**JOINT
STANDING
COMMITTEE
HEARINGS**

**HUMAN
SERVICES
PART 4
1009 - 1353**

2009

activities related to the program or programs that the state has entrusted to the various managed care organizations. In this way, the public can determine, among other things, how well and how fairly the program or programs are being run. An optimal amount of information should be available to the public, and the public's right to know out to be preserved rather than restrained in any way. The FOI Commission urges rejection of this bill as currently drafted.

Thank you. And I'd like -- I'd be glad to answer any questions that you may have.

SENATOR DOYLE: Thank you.

Any questions from Committee members?

Seeing none, thank you very much.

ERIC TURNER: Thank you.

SENATOR DOYLE: Next speaker is Sharon Pope, then Deb Polun, then Kate McEvoy.

SHARON POPE: Good afternoon. Thank you for the opportunity to speak with you this afternoon. I have presented written testimony which you would have. My name is Sharon Pope. I'm an attorney who specializes in home- and community-based services, but today I'm here representing the Elder Law section of the Connecticut Bar Association. We have around 500 attorneys in that section, and our executive committee unanimously voted to support Senate Bill 957, which deals with use of Special Needs Trusts for persons who are in residential care facilities or in New Horizons or similar kinds of facilities.

Earlier, the Deputy Commissioner of DSS did

mention this bill and their support of it, and the reason it's supported is because it's a way to keep people home and in the community. Many of our programs have -- most of our programs, in fact, have asset limits and often income limits as well. And so, if you're a penny over the income limit for that home care program, you don't get any services, and that sends another person to a nursing home who did not want to be there or need to be there.

For example, our seniors who are 65 or better, if you're in a home care waiver program, your income limit has a cap on it. That cap, again, if you're one penny over that cap, you get no services, and your only choice then is go to a nursing home, or go without care. Now, currently in Connecticut, we use Special Needs Trusts for all kinds of programs, but the residential care facilities and New Horizons have been left out, and the state and many of us wish that through Senate Bill 957 will include those folks.

Who, currently, is using Special Needs Trusts and staying in the community? We have over 100 senior, currently, who are using the Special Needs Trust as a tool to put their excess income in so that they can stay home. We have over a hundred people under age 65 who are on PCA Waiver or the ABI Waiver, they're over income for that program, and they're putting their excess income into the Special Needs Trust, therefore, it's not counted, and they can stay in the community.

This is very powerful. I'll give you one example. Recently, this last year, a client of mine whose has given me permission to speak about his fact pattern, moved into New Horizons. My client was born with spina bifida, yet he was able to be gainfully

employed for many years until he had a number of back surgeries. These left him in a position of needing care pretty much 24 hours a day. He's a person under 65. His pension where he had worked suddenly decided to kick in, and he couldn't refuse it. That pension put him over the income limit for his housing, and he had two choices, to move out of New Horizons somewhere, knowing where, or move back in the State of New York, which was what he did.

His housing situation is not nearly as good, as when he was New Horizons, he was in Special Olympics, he was playing soccer, he was voted on the board, and had many friends. And now he's back by himself in a situation which is not very comfortable, as prior to this time, he had some issues with alcohol being alone. So this person could have stayed at New Horizons had we allowed the use of a Special Needs Trust.

We support it for all of our clients who want to stay home and in the community, and we hope you will support Senate Bill 957. Thank you for your opportunity to testify today.

SENATOR COLEMAN: Thank you.

Are there questions?

Representative Johnston.

REP. JOHNSTON: Thank you, Mr. Chairman.

Why was New Horizons not included in the past? And why, specifically, are we looking at language that spells out New Horizons? I would have had some assumption that some type of a waiver would have applied universally across the spectrum of Connecticut residents.

SHARON POPE: New Horizons is an exception. There is a law, but it's not the only one. What happens is, because Connecticut is what we call a 209(b) state, where Medicaid is separated from cash assistance, that some of our programs in Connecticut are a hundred percent funded by state money, Connecticut money, when they're -- and so those programs did not have to adopt the Medicaid laws under the 1993 change Congress made for Special Needs Trusts. So we have a lot of waivers that allow the use of Special Needs Trusts because they're Medicaid. And then we have a number of other programs, residential care facilities, New Horizons, that cash assistance from the state is used to pay for that. And we don't have any law in Connecticut that permits the cash assistance program to use a Special Needs Trust and not have it counted.

So that's how the problem is, in a handful, really, of facilities in this state that don't currently allow it.

REP. JOHNSON: And for those handful of communities in the state -- would we have to individually pass legislation that list each one of those communities, as we're doing today for New Horizons?

SHARON POPE: No, it looks -- looking over the statute, the Senate Bill 957, it appears that the state and that really, it was the Department of Social Services that's very supportive of this, used broad enough language to include all of those programs now. So whether you're in a residential care facility or home that's used in State Supplement, or you're in New Horizons, which is used in State Supplement money, all of those programs would now be included. So you don't have to deal

one by one. Correct.

REP. JOHNSON: Okay. So even though we do list them specifically in this, and I don't see any other names of the communities per se --

SHARON POPE: Right. Right.

REP. JOHNSON: -- our understanding through you and through DSS is that this would be universal and take care of anyone who finds himself in a similar situation as someone now residing in New Horizons.

SHARON POPE: That's correct.

REP. JOHNSON: Thank you. I appreciate the clarification. That helps me to understand the bill. Thank you.

SENATOR COLEMAN: Are there any other questions?

Representative Gibbons.

REP. GIBBONS: Thank you, Mr. Chairman.

Just so that I understand this, these are individuals who are already on a state supplemental program who are in residential homes.

SHARON POPE: That's correct.

REP. GIBBONS: And when they get excess income, is there a limit or cap on this excess income?

SHARON POPE: Yes, there is. The -- currently the Medicaid waiver programs have an income cap of \$2,022 a month gross. And if you're one penny over that, you do not get the services. That's true for the Medicaid Waiver for our seniors as well as the Acquired Brain Injury

and PCA Waiver, all those have the same income cap, and so does the New Horizons or residential care facilities.

REP. GIBBONS: I guess, I'm asking is there a cap, though, on what the excess income can be?

SHARON POPE: No. No, there's not a cap. The excess income, frankly, I've seen excess income from --

REP. GIBBONS: Is it access or excess?

SHARON POPE: Excess.

REP. GIBBONS: E-x.

SHARON POPE: Excess. Yes, e-x. The excess income can be as small as, I've seen 10 and 20 dollars a month over, and I've seen three and four hundred dollars a month over. So there isn't a cap, though, on how much of the excess can be put in a Special Needs Trust. It can -- like other people who are currently using these trusts, it could accumulate, for example, and build up to the point that, maybe if the resident needed some extra services, or wanted to travel someplace, the money in the trust then could be used for that purpose.

REP. GIBBONS: So if there is excess income, it must be put in a Special Needs Trust administered by the state.

SHARON POPE: The state does not administer the trust. The trust -- the individual would find a trustee, oftentimes it is a nonprofit trustee in Connecticut, which we have as a plan of Connecticut, so their ideal is a nonprofit.

REP. GIBBONS: I guess my concern is that you can

end up -- somebody is on the state supplemental program, which we the taxpayers in the state are paying for, and could end up with a very large amount of excess income, if they suddenly ended up with a pension or, I don't know, if Social Security might count toward this or not. I just wonder if there shouldn't be a cap on this excess income.

SHARON POPE: Sure. Well, keep in mind, and this is something that you wouldn't necessarily know, this is a special -- the type of Special Needs Trust that we're talking about is a pay-back trust to the State of Connecticut. So when the person passes away, if there's anything left in that trust, the State of Connecticut is first to get repaid for the services they provided.

REP. GIBBONS: Okay. And other states have this?

SHARON POPE: Oh, yes. In fact, in Connecticut, we have it right now, but we don't have it for the State Supp program --

REP. GIBBONS: Okay.

SHARON POPE: -- or New Horizon. Any other program, be it the Senior Program for Home Care, the Waiver, or the PCA Waiver, or the ABI Waiver, we all use that now for those programs, yes.

REP. GIBBON: Well, I can understand the concept, but I still just think maybe there should be a limit on how much an individual can earn in excess income and still be on these state programs or Medicaid programs.

SHARON POPE: Yes, I understand. I understand that concern as well.

REP. GIBBONS: Maybe it doesn't happen, but I'd be the first to know.

SHARON POPE: Right. In cases where they're already receiving services and living, you know, in a residential care home, or they're living at New Horizons, it's usually quite a surprise that they get some extra income. In other words, they'd qualified to get there in the first place. They're under the income limit. My particular client, which is a classic example, suddenly where he worked they started distributing a pension to him, I think it was \$800 a month, and it put the client over income by about two -- somewhere between 2 and 300 dollars a month over the income cap. And in that case, he had no choice but to leave, and he could go to an institution. Luckily, he had a family member, he was able to leave the state, but most of the time, that's not the case, they'll end up in an institution.

REP. GIBBONS: Thank you. Thank you, Mr. Chairman.

SENATOR COLEMAN: Thank you, Representative Gibbons.

SHARON POPE: Thank you.

SENATOR COLEMAN: Other members have questions?

Seeing none, thank you for your testimony.

SHARON POPE: Thank you.

SENATOR COLEMAN: Deb Polun is next, to be followed by Kate McEvoy.

DEB POLUN: Good afternoon. For the record, my name is Deb Polun. I'm the legislative director for the Connecticut Commission on

SB 927
SB 210

S. B. No. 957 (RAISED) AN ACT CONCERNING MEDICAID ELIGIBILITY FOR PERSONS LIVING IN RESIDENTIAL CARE HOMES.

This bill would allow certain disabled individuals to use specific types of trusts to qualify for payment of residential care homes or New Horizons Village through the State Supplement program.

Federal Medicaid law allows disabled individuals to transfer income and assets into certain types of trusts described in section 1917(d)(4) of the Social Security Act without affecting their eligibility for assistance. Any amounts transferred into these trusts, often referred to as "p(d)(4)" trusts, are not considered when determining Medicaid eligibility. As a result, individuals can effectively decrease their monthly income by transferring part of it into a p(d)(4) trust.

Disabled individuals with incomes in excess of Medicaid limits may transfer income into p(d)(4) trusts to qualify for assistance. The most common occurrence are individuals who need assistance from one of our Medicaid waiver programs, which currently have a monthly income limit of \$2,022. Individuals with incomes over \$2,022 can qualify for a Medicaid waiver program by transferring the amount of their monthly income in excess of \$2,022 into a p(d)(4) trust.

Currently, the use of p(d)(4) trusts does not extend to Connecticut's State Supplement program, which has an income limit of \$2,022 per month. Disabled individuals who transfer funds into these trusts are prohibited from receiving State Supplement assistance, even though these transfers are permitted under Medicaid law.

The combination of the State Supplement income limit and the prohibition on the use of p(d)(4) trusts results in the inability of disabled individuals with monthly incomes over \$2,022 to qualify for the State Supplement program. This becomes a problem for residents of residential care homes and New Horizons Village, which typically cost more than \$2,022 per month. Without assistance from the State Supplement program, disabled individuals often move to more costly nursing facilities, which are funded by Medicaid.

This bill would provide a way for disabled individuals to remain in less costly residential care homes and New Horizons Village. In addition to supporting disabled individuals in less costly community settings, the bill protects the state's financial interest by requiring repayment of assistance upon the death the individual.

This bill's language is virtually identical to the provision in Section 61 of Governor's Bill 843, An Act Implementing the Governor's Budget Recommendations Concerning Social Services. The Governor's budget includes this provision allowing such trusts as it results in a net cost savings to the state, in addition to permitting program recipients to live a less restrictive setting.



001124

T14

30 Bank Street
PO Box 350
New Britain, CT 06050-0350
06051 for 30 Bank Street
(860)223-4400
fax (860)223-4488

**Testimony of Attorney Sharon L. Pope
Connecticut Bar Association
Elder Law Section**

In Support of SB957

**An Act Concerning Medicaid Eligibility
For Persons Living In Residential Care Homes**

**Human Services Committee
February 24, 2009**

Thank you for the opportunity today to testify on a matter of importance to the Elder Law Section of the Connecticut Bar Association. There are approximately 500 members in our section and I am here to highlight the significance of SB 957.

My name is Sharon Pope and I am an attorney whose practice focuses on the elderly, i.e. persons 65 or better, and persons with disabilities. My strength is home and community-based programs.

**Allow the Use of Special Needs Trusts
to reduce the countable income in certain circumstances.**

The CBA's Elder Law Section supports legislation that would permit the transfer of excess income and assets into a special needs trust in the State Supplement cash assistance program (Aid to the Aged, Blind and Disabled).

The use of special needs trusts (SNT's) as a tool to help people stay home or in the community is not new in Connecticut. In 1993, Congress approved self-funded SNT's for persons with disabilities; likewise, Connecticut followed. These trusts allow the recipients of Medicaid and SSI (Supplemental Security Income) to retain these important benefits and at the same time fund SNT's with income and assets. Without the use of SNT's many of our residents would be institutionalized instead of enrolled in home care programs.

- Over 100 seniors currently are able to stay in their homes thanks to the SNT's. Since our Medicaid waiver programs have income caps for home care, in addition to the Medicaid asset limits, seniors whose income is even one penny over the cap will be refused services and the result is one more senior goes to an institution.
- Over 100 persons with disabilities enrolled in the ABI or PCA waivers, also with income caps, are able to stay home because the SNT holds some of their income or assets.

But here's an example of why we need this legislation. This past year I had a client who moved into a facility supported in part by state supplemental funds. He was born with Spina Bifida but worked many years until more surgeries forced him to discontinue his gainful employment. After he moved to this facility, he was doing well. He began engaging in Special Olympics, traveling and playing soccer, and he was on the Board; he inspired many of his colleagues.

Yet, there was bad news. His former employer mandated a pension and this pension put him over the income and asset limits for Medicaid. If he lived almost anywhere else in Connecticut, he could have put his income and assets into a Special Needs Trust like the other residents with disabilities have done in Connecticut for years. But he was forced out of his housing and left the State.

We support the use of Special Needs Trusts for all programs, whether funded by the State or funded through a Medicaid waiver. The result is keeping people in their homes and their communities and avoiding unnecessary institutionalization.

Thank you.

NEW HAVEN LEGAL ASSISTANCE ASSOCIATION, INC.

426 STATE STREET
NEW HAVEN, CONNECTICUT 06510-2018
TELEPHONE: (203) 946-4811
FAX (203) 498-9271

February 24, 2009

**Testimony of Sheldon Toubman before the Human Services Committee
In Opposition to SB 956, Which Would Undercut HUSKY HMO Accountability,
and in Support of SB 957**

Good Morning, Senator Doyle, Representative Walker and Members of the Human Services Committee. My name is Sheldon Toubman and I am a staff attorney with New Haven Legal Assistance Association, concentrating on access to health care issues. I am here today to speak in opposition to S.B. 956, which would severely undercut the successful effort to bring accountability to the huge state contracts totalling over \$600 million/year under the HUSKY program. I am also here in support of S.B. 957.

Opposition to S.B. 956

I am one of the attorneys who has been involved in the effort over many years to hold the HUSKY HMOs accountable to the taxpayers who pay them and to the low-income HUSKY recipients they have contracted with the state to serve. This accountability has been necessary because of the persistence of severe access problems under these plans, coupled with the perennial unwillingness of these companies to share basic information necessary to assess their performance under their state contracts.

The Freedom of Information Commission (FOIC), in December of 2006 and April of 2007, found that these state contractors, because they take over DSS's role in managing Medicaid benefits for the family and child Medicaid population, are performing a "governmental function" under the Freedom of Information Act (FOIA), Conn. Gen. Stat. §§ 1-200(11) and 1-218, and thus that all documents related to their performance under their state contracts are subject to public disclosure under FOIA. As a result of these rulings, and the general clamor for more accountability from these large state contractors, the Governor and the Department of Social Services are now firmly committed to the FOIA obligation as a condition of any HMO contracts under HUSKY.

Thus, there are now in place three signed contracts between DSS and HMOs in which each of the HMOs, two of which are for-profit companies, firmly commits to be bound by the FOIA. In fact, the Governor has demanded compliance with that obligation even when HUSKY contractors act as non-capitated administrative services organizations. While two HMOs departed the HUSKY program in April 2008, two others, including Anthem Health Plans, accepted the FOIA obligation and signed contract amendments agreeing to be bound by this basic accountability obligation as such non-risk contractors. There is no need for any legislation regarding this issue.

But S. 956 is not simply unnecessary. Worse, it would limit Medicaid HMOs to having to disclose only a very restricted set of governmental function documents, giving them a privileged status compared to all other state contractors performing this kind of function for over \$2.5 million/year, and rendering the FOIA disclosure obligation close to meaningless. It would also serve a bad precedent that other large state contractors would seek to exploit to obtain the same protection from public accountability.

Under the FOIC rulings now adopted as the DSS position in signed contracts with the three HMOs, **all** of the HMOs' documents related to the performance of their state contracts are subject to public disclosure, though the HMOs have the right to claim to DSS that some documents should remain confidential under specified statutory exemptions under the FOIA, with DSS serving as the ultimate arbiter.

S. B. 956 would effectively undo these important contractual provisions by very narrowly limiting the kinds of documents that HUSKY HMOs would have to produce. It would:

- Limit the documents subject to disclosure to those specifically "***created for the purpose*** of performing a governmental function". This weakens the current law and contract language which extends to all documents "related to" a governmental function regardless of the purpose for which the document was created. Thus, it includes documents initially created for the HMO's **other** business purposes that are then used directly to administer its HUSKY program. An example would be documents about a restrictive practice designed to discourage requests for prior authorization which was actually developed for a program other than HUSKY but which is now used **both** for that other program and HUSKY.
- Limit the documents subject to disclosure to specific areas of the HMOs' performance of their state contracts that are specifically determined (by an unidentified entity) to be a "governmental function," undercutting the current MCO contractual provisions acknowledging that the entire contract is about performing a governmental function.
- Declare that the obligation of disclosure "shall not, for any purpose, extend to documents related to other programs or functions of the managed care organization," thus making inaccessible relevant documents used in the HUSKY program which **also** are used under their Medicare or commercial lines of business. An example of this would be commercially-obtained Medical Necessity criteria used in all of an HMO's lines of business (note that these criteria used by Medicaid HMOs were recently ruled to be subject to full disclosure under federal Medicaid law, despite objection of a Medicaid HMO and its subcontractor, in Salazar v. District of Columbia, 2009 WL 281680 (D.D.C. Feb. 6, 2009)).
- Allow HUSKY HMOs to raise exemptions from disclosure directly, effectively barring public disclosure of any documents which the HMO contractor merely claims to be exempt from disclosure, even if DSS disagrees with the HMO's claim of exemption made to it or decides the document should otherwise be released because it is in the public interest to do so. Such a provision not only

removes from the state agency the authority to determine what documents are exempt from release, as has long been the position of the FOIC and the Attorney General, but it also undercuts the language in the current contracts.

- Allow HMOs to raise statutory exemptions from disclosure even beyond those set forth in the FOIA.

In sum, since the FOIC has ruled in favor of transparency and accountability under the FOIA for these large state contracts, the Governor and DSS have accepted this important open government ruling, and all three HUSKY HMOs have in fact signed contracts agreeing to this, there is no need to pass any legislation on this issue. As the move throughout the nation is to bring greater accountability in both health insurance and state contracting, this bill would actually take us in the wrong direction. I therefore urge you to protect transparency for these large state contracts and to vote "no" on SB 956.

Support for S.B. 957

Some seniors and individuals with disabilities who are or become over-income for the State Supplement (Aid to the Aged, Blind and Disabled) Program are being forced to live in a nursing home rather than remain in the community in a residential care home, a less restrictive setting. When the income of residents in residential care homes exceeds the 300% of SSI limit, due to cost of living increases in their pensions or Social Security benefits, even by a few dollars, their State Supplement benefits are terminated. Because the residential care home monthly private pay rate is well above their incomes, they find themselves without the means to pay for their care privately. Moreover, when they lose their State Supplement eligibility, they also lose their Medicaid coverage.

While the eligibility criteria for persons living in these homes includes a strict income cap, the eligibility for Medicaid in nursing homes does not, forcing these individuals into nursing homes to receive basic services. S.B. 957 would resolve this issue by allowing seniors slightly over-income to establish a special needs trust for this excess income, and from which trust the state will recover this amount after the death of the individual.

Thank you for the opportunity to speak with you today. I am happy to answer any questions you may have.

T 20

**Testimony of the Connecticut Association of Not-for-profit Providers for
the Aging**

To the Human Services Committee

February 24, 2009

Presented by Mag Morelli, President

**In Support of Senate Bill 957, An Act Concerning Medicaid Eligibility for
Persons Living In Residential Care Homes**

CANPFA members serve thousands of people every day through mission-driven, not-for-profit organizations dedicated to providing the services people need, when they need them, in the place they call home. Our members offer the continuum of aging services: assisted living residences, continuing care retirement communities, residential care homes, nursing homes, home and community based services, and senior housing.

Good morning Senator Doyle, Representative Walker, and Members of the Human Services Committee. My name is Mag Morelli and I am the president of the Connecticut Association of Not-for-profit Providers for the Aging (CANPFA), an organization of over 150 non-profit providers of aging services representing the full continuum of long term care. Thank you for this opportunity to testify in support of Senate Bill 957, An Act Concerning Medicaid Eligibility for Persons Living in Residential Care Homes.

CANPFA strongly supports this bill which would allow the use of Special Needs Trusts to help persons who are slightly over income, qualify for the State Supplement Program in order to remain in a residential care home (RCH) rather than move to a nursing home. CANPFA has long sought a solution to this problem and we are supportive of the concept contained in this bill which is being proposed by the Department of Social Services and which seems to be a reasonable solution.

Background

Residential care homes are licensed by the Department of Public Health and provide room, board and personal care services. RCHs can be the ideal residential setting for many lower income elderly or disabled individuals who are unable to live independently.

Funding for residents of RCHs is available through the State Supplement Program. Unfortunately the income eligibility for State Supplement is very strict and is set by the federal government at 300% of the maximum Supplement Security Income (SSI) benefit – a little over \$1,800 a month. To pay privately for staying in a residential care home can cost up to \$3,000 per month. Therefore if a residential care home resident's income becomes slightly higher than \$1,800,

but it is still too low to afford the RCH's private pay rate, they often are forced to request placement in a nursing home. Since residential care homes cost approximately half of the cost of nursing homes, the cost to the state of this unnecessary placement in nursing homes can be extensive.

In previous years we have submitted testimony about an RCH resident in Fairfield County who had been living at the home for three years and had done quite well. He was a former officer in the Army who suffered from major depression. He had been paying privately for his room, but, unfortunately, he had run out of savings. He had a monthly income of \$2,300 a month which put him over income for the State Supplemental Program, but did not give him enough to afford the private pay rate to remain at the home. There was nothing that could be done and his family was told that he would need to seek placement in a nursing home.

We also testified about an RCH applicant who had been a teacher in his late 50s. He was disabled by a mental condition and sat for hours in his apartment, forgetting to eat, change his clothes and take his medications. Although he had the services of a home health aide four hours a day, he would still forget meals and medication and had limited socialization. Unfortunately, his pension and disability benefits totaled \$95 above the limit for the State Supplement program. His sons were unable to take him into either of their homes and they had to consider nursing home placement, which is unfortunate for someone who needs minimal assistance.

Seeking a solution to this dilemma has not been easy, but it is paramount if the state's goal is to provide individuals the opportunity to receive long-term care services in the least restrictive and most appropriate setting. And so CANPFA supports this bill that would allow individuals living in or choosing to live in residential care homes to transfer assets to a special needs trust for the purpose of qualifying for the State Supplement Program.

Thank you for your consideration of this testimony

CANPFA 1340 Worthington Ridge, Berlin, CT 06037 (860) 828-2903 mmorelli@canpfa.org

Senator Doyle, Representative Walker and Members of the Human Services Committee

Re: SB 957, AAC MEDICAID ELIGIBILITY FOR PERSONS LIVING IN
RESIDENTIAL CARE HOMES

I would like to let you know the importance of Bill # 957 that would allow residential care home residents who are over the State Supplement income limit to be allowed to remain in Residential Care by establishing a special needs trust.

As a Director of Residential Care and a Geriatric Social Worker, I consider myself an advocate for elderly people. On many occasions during my tenure as a Director, I have witnessed elderly people having to move from their homes in residential care to skilled nursing facilities for no other reason than not meeting income guidelines for the State Supplement program.

As legislators and lawmakers, I encourage you to look at this bill from a humanistic, but also financial perspective. It should be our goal as Americans to help care for our elderly in the least restrictive setting possible. Elderly people living in residential care are able to remain independent in home-like settings that promote independence.

Moving these people from an RCH to a SNF when their medical condition has not changed is disruptive to these people and traumatic for the individual and their families. Furthermore, the cost of skilled nursing care is astronomical. People in this situation can be cared for appropriately in a residential care home at a far less significant cost to the government. While I do not have exact figures, I imagine the cost of residential care is less than half the cost of skilled nursing.

Currently in The Mary Wade Home, I have a resident who has resided with us for about a year. She has dementia and is living happily in our home-like environment. Her family elected to move her into our home knowing that when she ran out of private funds she would not qualify for the State Supplement. They frequently check with me about this bill in the hopes that they will not have to move her to a nursing home when her funds run out.

Today I am asking for your assistance in helping to ensure this lady and others do not have to be moved from their homes and that you promote a bill that will allow elderly citizens and their families to have greater choice when trying to find a dignified setting to reside.

Tracy Gilbert, MSW
Director of Resident Services
The Mary Wade Home

To: Senator P. Doyle
Rep. T. Walker
Members of Human Service Committee

RE: SB 957, AAC MEDICAID ELIGIBILITY FOR PERSONS LIVING IN RESIDENTIAL CARE HOME.

From: T. H. Martland, Owner of Elton and Park City Residential Care Homes

I am very supportive of this bill and would like to give you examples of persons who were appropriate to reside in a residential care home but were placed in a nursing home because their incomes was slightly over the State Supplement level.

Case #1: "Yvonne"

In 2005, "Yvonne" was with the Elton Residential Care Home as a "private pay" resident until her assets were depleted; this required her transfer to a Nursing Home for income purposes only. She remains there and continues to be "healthy enough" for Residential Care.

2005 Income

| | | |
|---------------------------------------|------------------------|-----------------------|
| Retirement Payments @ | \$ 866.95/mo. | |
| Social Security @ | <u>\$ 1,385.20/mo.</u> | |
| | \$ 2,252.15/mo. or | |
| Annual | \$27,025.80 | |
| 2005 Title XIX Max Income | | @ \$ 1,737.00/mo. |
| 2005 Elton Residential Care Home rate | | @ \$ 2,233.19/mo. |
| 2005 Estimated Nursing Home rate | | @ \$ 4,870.00 +/-mo.* |

Case #2: Anita "G."

In 2000 and 2001, Anita "G." and her husband resided at the Elton Residential Care Home as Title XIX residents.

2001 Income as Couple

| | |
|------------------------------|------------------------|
| Anita "G." Social Security @ | \$ 439.00/mo. |
| Husband Social Security @ | \$ 295.00/mo. |
| Other Retirement Payments @ | <u>\$ 1,877.04/mo.</u> |
| | \$ 2,611.04/mo. |
| Annual @ | \$31,332.48 |

During 2001, Anita "G." became a widow and the recipient of a "survivor annuity" in the amount of \$ 1,065.00 per month, causing her to be placed in a Nursing Home for income purposes only. She remains to the best of my knowledge.

2001 Income as a Widow

| | |
|-----------------------------|------------------------|
| Anita "G" Social Security @ | \$ 439.00/mo. |
| Annuity @ | <u>\$ 1,065.00/mo.</u> |
| | \$ 1,504.00/mo. |
| Annual @ | \$18,048.00 |

| | |
|---------------------------------------|-----------------------|
| 2001 Title XIX Max Income | @ \$ 1,503.00/mo |
| 2001 Elton Residential Care Home rate | @ \$ 2,058.29/mo. |
| 2001 Estimated Nursing Home rate | @ \$ 4,563.00 +/-mo.* |