

**PA10-073**

**SB370**

House	5478-5479, 5497-5499	5
Human Serv.	1394-1395, 1405-1407, 1447-1449, 1468-1473, 1512-1516, 1528-1530, 1653-1654, 1657-1668	36
Senate	3084-3106	23
		64

**H – 1089**

**CONNECTICUT  
GENERAL ASSEMBLY  
HOUSE**

**PROCEEDINGS  
2010**

**VOL.53  
PART 17  
5315 – 5590**

rgd/md/gbr  
HOUSE OF REPRESENTATIVES

430  
May 5, 2010

Thank you, sir. The question is on adoption of Senate Amendment Schedule "A."

Let me try your minds. All those in favor signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER GODFREY:

Opposed, nay. The ayes have it. The amendment is adopted.

REP. GUERRERA (29th):

Without any objection, I move this to the consent calendar, thank you. a.

DEPUTY SPEAKER GODFREY:

Is there objection? Is there objection? This item is moved to the consent calendar.

510, Mr. Clerk.

THE CLERK:

On page 28, Calendar 510, substitute for Senate Bill Number 370, AN ACT CONCERNING MEDICAID LONG TERM CARE COVERAGE FOR MARRIED COUPLES, favorable reported, the Committee on Appropriations.

DEPUTY SPEAKER GODFREY:

Representative Abercrombie.

REP. ABERCROMBIE (83rd):

rgd/md/gbr  
HOUSE OF REPRESENTATIVES

431  
May 5, 2010

Thank you, Mr. Speaker. Mr. Speaker, I move for the acceptance of the joint committee's favorable report and passage of the bill in concurrence with the Senate.

DEPUTY SPEAKER GODFREY:

Question is on passage.

Representative Abercrombie.

REP. ABERCROMBIE (83rd):

Thank you, Mr. Speaker. I move for consent.

DEPUTY SPEAKER GODFREY:

Is there objection? Is there objection? So  
ordered.

Mr. Clerk, 155.

THE CLERK:

On page 35, Calendar 155, House Bill Number 5420, AN ACT CONCERNING THE TRANSITION FROM THE TEN MIL PROGRAM IN 2011, favorable reported, the Committee on Planning and Development.

DEPUTY SPEAKER GODFREY:

Honorable Chairman of the Rural Caucus,  
Representative Hurlburt.

REP. HURLBURT (53rd):

Thank you, Mr. Speaker. Mr. Speaker, we'll do this one the right way. I move for acceptance and

rgd/md/gbr  
HOUSE OF REPRESENTATIVES

449  
May 5, 2010

Representative Roy.

REP. ROY (119th):

Mr. Speaker, without objection, can I move this to consent?

DEPUTY SPEAKER GODFREY:

Without objection, this item is moved to the consent calendar.

Ladies and gentlemen, I'm going to call on Representative Olson to call today's consent calendar.

Representative Olson.

REP. OLSON (46th):

Thank you, Mr. Speaker. We are about to vote on SB108 SB302 today's lengthy consent calendar. The items we have SB250 HB5398 moved to consent are: SB153 SB175

Calendar Numbers 499, 487, 180, 507, 430, 396, SB412 SB428 535, 497, 522, 517, 510, 155, 466 and 489. Thank you, SB121 SB427 Mr. Speaker. SB370 HB5420 SB354 SB272

DEPUTY SPEAKER GODFREY:

Thank you, madam. And as soon as we get this up on the board.

Representative Olson.

REP. OLSON (46th):

Thank you, Mr. Speaker. Actually, we have already voted on item 430. I want to thank

rgd/md/gbr  
HOUSE OF REPRESENTATIVES

450  
May 5, 2010

Representative Hamzy for being so diligent and watching the calendar. I make a motion to remove Item 4370 from the consent calendar. Thank you, Mr. SB153 Speaker.

DEPUTY SPEAKER GODFREY:

I believe we have corrected the error.

As you can see, the consent calendar is on the board. Representative Olson has moved passage of the bills on the consent calendar.

Staff and guests, please come to the well of the house. Members, take your seats, the machine will be opened.

THE CLERK:

The House of Representatives is voting by roll call. Members to the Chamber. The House is voting today's consent calendar by roll call. Members to the Chamber.

SPEAKER DONOVAN:

Have all the members voted? Have all the members voted? Please check the roll call board and make sure your votes were properly cast. If all the members have voted, the machine will be locked. Clerk, please announce the tally. Clerk, please announce the tally.

rgd/md/gbr  
HOUSE OF REPRESENTATIVES

451  
May 5, 2010

THE CLERK:

On today's consent calendar.

Total Number Voting	150
Necessary for Adoption	76
Those voting Yea	150
Those voting Nay	0
Those absent and not voting	1

SPEAKER DONOVAN:

The consent calendar passes.

Representative Olson.

REP. OLSON (46th):

Thank you, Mr. Speaker. I move to -- I move for the immediate transmission of all times acted upon that require further action in the Senate. Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Motion for immediate transmittal to the Senate of all items acted upon needing further action. Any objection? Hearing none, the bills and items are immediately transmitted.

Will the Clerk please call Calendar 430 --

Will the Clerk please call Calendar 422.

THE CLERK:

On page 19, Calendar 422, Senate Bill Number 430,

**S - 607**

**CONNECTICUT  
GENERAL ASSEMBLY  
SENATE**

**PROCEEDINGS  
2010**

**VOL. 53  
PART 10  
2913 - 3250**

djp/ch/gbr  
SENATE

369  
May 3, 2010

Thank you, Mr. President.

THE CHAIR:

Mr. Clerk.

THE CLERK:

Senate Calendar page 31, Calendar Number 211, File 301, Substitute for Senate Bill 370, AN ACT CONCERNING MEDICAID LONG-TERM CARE COVERAGE FOR MARRIED COUPLES, favorable report of the committees on Human Services and Appropriations.

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:

Acting on approval and passage, sir, would you like to remark further?

SENATOR DOYLE:

Yes, thank you, Mr. President.

What this bill -- is a bill that was sent to -- originated in the Human Services Committee and it does two things. It -- it orders the commissioner of Social Services to amend the Medicaid

djp/ch/gbr  
SENATE

370  
May 3, 2010

state plan to require the spouse of an institutionalized person who is on Title 19 to permit or to -- to permit the non-in -- non-institutionalized spouse the maximum community spouse protected amount. That's the first component.

The second component is to order the commissioner of Social Services to amend the Medicaid state plan again to permit the -- any proceeds received by the non-institutional spouse in the home through a reverse mortgage or -- or annuity, commonly known annuity, that they will not be treated as income for the assets. And this change -- the -- the home is already excluded so this section really is not a change, it would just permit the -- the non-institutionalized spouse to access the equity in the home and use it for home care or what -- or what the like and I think it's a good bill and the chamber should support it.

Thank you, Mr. President.

THE CHAIR:

Thank you, sir.

Will you remark further?

Senator Prague.

SENATOR PRAGUE:

djp/ch/gbr  
SENATE

371  
May 3, 2010

Thank you, Mr. President.

Mr. President, I want to thank Senator Doyle for bringing this bill up before us. This is going to make a very big difference in the lives of elderly people. When a spouse goes into a nursing home and the community spouse can keep \$109,000 instead of having to only have one half of the assets this is going to make a big difference in the community spouse's life.

This is a -- really a wonderful thing that we're doing. With the growing elderly population this is a tremendous consideration and I just want to add my support to this good piece of legislation.

THE CHAIR:

Thank you, ma'am.

Will you remark further on Senate Bill 370?

Senator Kane.

SENATOR KANE:

Thank you, Mr. President.

Through you, a couple of questions to the proponent of the bill.

THE CHAIR:

Senator Doyle.

SENATOR KANE:

djp/ch/gbr  
SENATE

372  
May 3, 2010

Through you, Mr. President, Medicaid is an entitlement, correct?

Through you, Mr. President.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Through you, Mr. President, yes it's a -- it's a government program that's funded half by the state and half by the federal government as an entitlement program.

Through you, Mr. President.

THE CHAIR:

Senator Kane.

SENATOR KANE:

Thank you.

And Medicaid was created for those individuals with lower means than others, correct?

Through you, Mr. President.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Yeah there was certain -- there are statutory -- or guidelines that do tend to focus on the people with less income.

Through you, Mr. President.

djp/ch/gbr  
SENATE

373  
May 3, 2010

THE CHAIR:

Senator Kane.

SENATOR KANE:

Thank you, Mr. President.

So if both of those hold true, then if we increase the limits through this program, then will not more people be eligible for Medicaid?

Through you, Mr. President.

THE CHAIR:

Senator Doyle

SENATOR DOYLE:

Through you, Mr. President, this is a complicated area and I'll try to explain -- you could argue more people may be -- there's two sides to the argument. Senator Kane's point is more people could qualify earlier which some people profess to -- to believe but then the other side of the argument is if the community spouse, the non-institutionalized person is able to keep more money, that person is not -- is -- is going to go -- herself get into -- her -- herself or himself get -- go into a nursing home later. These extra monies can be used by -- for home care or -- or nursing -- you know, out-of-pocket nursing home care.

djp/ch/gbr  
SENATE

374  
May 3, 2010

So while his point is valid, the other side which a lot of others profess delaying the entrance of the community spouse into poverty and having to go to the government til -- actually will save money. So there's really two sides to the story.

Through you, Mr. President.

THE CHAIR:

Senator Kane.

SENATOR KANE:

Well thank you, Mr. President.

If we are raising that limit and more people are eligible, then are we really delaying people into poverty or allowing more wealthier people or middle class individuals, what -- whatever term you want to use, into an entitlement system?

Through you, Mr. President.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Through you, Mr. President, the practical function of this program is the differential between where we are today, 50 percent of the, you know, the 109 versus up to a full 109. The real world today is it's permissible for the community spouse to get down to that level. They

djp/ch/gbr  
SENATE

375  
May 3, 2010

immediately spend the money to buy a new car, do work that's really maybe unnecessarily and that's all legal. This simply eliminates the need for the community spouse to immediately spend that money on day one because the -- the -- her -- the community spouse's -- spouse has to go into the nursing home.

So really it's not -- it's -- it's -- in the long run it's pre -- avoiding these rushed purchases, preserving assets for the community spouse and letting the community spouse continue to stay in the community, use these funds for home care, which ultimately could save the state money because the community spouse is not going on Title 19.

Through you, Mr. President.

THE CHAIR:

Senator Kane.

SENATOR KANE:

Thank you, Mr. President.

I -- I appreciate Senator Doyle for his answers. I think we will agree to disagree on this one because again I believe, and -- and as we stated, that Medicaid is an entitlement program. It was created to -- for the people with less means of lower incomes. What we're doing is

djp/ch/gbr  
SENATE

376  
May 3, 2010

raising this threshold and we're allowing more individuals to get on the plan.

So, in addition to that, I -- I -- right now the average marital asset, typically in the State of Connecticut, liquid market asset, is about 150,000. I think that's been stated by DSS through the public hearing process or through the committee process.

At our current formula using 50 percent of that, that would be a dollar amount of 75,000. If, as -- as you spoke, we move that figure up the ladder to 109,000, there is a \$34,000 difference that we are now eligible for.

So that means that -- that is more money for the Medicaid program, is it not?

Through you, Mr. President.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Through you, Mr. President, that 34 -- 34,000 or so differential you're talking about, as a practical matter, is not going to the state. It's really used to purchase vehicles for the existing community -- a new vehicle that the person may not need or other expenses. The truth of the matter is, and I think DSS generally appreciates,

djp/ch/gbr  
SENATE

377  
May 3, 2010

that this money, this differential money, is not going to the state.

And the point of this bill is that money, rather than going to the state, you know, by purchases of vehicles and non-essential items, is staying with the community spouse which could be used more effectively for care down the road.

Through you, Mr. President.

THE CHAIR:

Senator Kane.

SENATOR KANE:

Right.

Thank you, Mr. President.

But if the individual is able to keep that extra 34,000, that means that the Medicaid program will kick in earlier, correct?

Through you, Mr. President.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Through you, Mr. President, no, I think the answer is no because either way if they can keep the money it will sit in the bank account for future expenses like I've been arguing healthcare and the like. If -- if

djp/ch/gbr  
SENATE

378  
May 3, 2010

under current law they can't keep that money there, that money is immediately spent on legal purchases and then, at that point, they're -- they're going on the Medicaid list at the same time.

It's just -- the real question here is -- is are -- is the community spouse making legitimate purchases for the cars and the home and stuff versus putting it in the bank account for home care expenses in the future.

Through you, Mr. President.

THE CHAIR:

Senator Kane.

SENATOR KANE:

Thank you, Mr. President.

Well you know DSS testified that that extra 34,000 could be used to pay for those long-term care expenses rather than a television set or a new car or -- or whatever else they -- people want to spent their money on. So I think it would be greater to use for long-term care expenses.

With -- using those figures, I -- I don't agree with the OFA note because I think it -- we have to project that going forward and that could be money used towards those long-term care expenses.

djp/ch/gbr  
SENATE

379  
May 3, 2010

I appreciate Senator Doyle for his answers and I -- I thank you but I would ask the chamber to vote in opposition of this bill because I do believe this is going to incur a great cost to the State of Connecticut, to our Medicaid program, to our entitlement program. We're going to be allowing people who don't necessarily qualify for the program to be allowed to qualify for the program. We are going -- it is going to cost us more money. Once you put me -- more people on the program, it has to cost us more money.

I think the -- DSS has spoken against it. A number of others have spoken against it so I urge my colleagues to vote against it as well.

THE CHAIR:

Thank you, sir.

Will you remark further on Senate Bill 370? Will you remark further on Senate Bill 370?

Senator Fasano.

SENATOR FASANO:

Thank you, Mr. President.

Mr. President, I support this bill and let me tell you why. First let me say that it is true that we are changing the amount of money. But a couple of things that I think we have to think about. One, in the

djp/ch/gbr  
SENATE

380  
May 3, 2010

northeast it's very expensive to live. Number two, especially the elderly in the northeast have additional expenses that we don't find in other places in this country and we need to take that into play.

But, Mr. President, the assumption is when DSS takes the view that this is going to cost the state money, is that the differential amount is going to the nursing home. The pay down, if you would, is going to the nursing home. Any CPA, any tax lawyer will tell you, or anybody who advises in elderly services, will tell you, you take that money and you put it in the assets that are protected. You put it in your house.

Doesn't matter how much money you have in your house, we exempt it. Buy a new car. Put it in any asset that is exempted and that's how you protect the money. And the truth of the matter is, in the real world, that's what happens. That's what happens.

Before I go on to further explain that, I'd -- in all fairness to Commissioner Starkowski who is against this bill and he remains in opposition to this bill because it is the department's position that the bill results in earlier findings of Medicaid eligibility thus increasing Medicaid costs to the state.

djp/ch/gbr  
SENATE

381  
May 3, 2010

The Medicaid program is intended for the generally poor with the exception that the spouse and the community can retain the home and 50 percent of the couple's assets when other spouse goes into Medicaid long-term care. By allowing the diversion of additional assets, it is the department's belief that more people will utilize the mechanism to become eligible for Medicaid which is already experiencing a deficiency.

And I kind of purposely read that to the circle because I think it's fair the Commissioner gets his point across. And I understand what he's saying from a theoretical practice, but in actuality it doesn't happen. Now how do we know it doesn't happen? We know it doesn't happen because I said okay I hear that, give me the figures that demonstrate that loss. Somewhere there's got to be a spreadsheet coming out of some computer that shows here are the number of Medicaid people and this is what the state lost.

And will all due respect to his theory, I never received anything. And I asked the question more and more. OFA, who we listen to in this circle, says there's no real cost to the state. Now what Commissioner Starkowski does is take the exact same thing that Senator Kane did times the number of people and came up the

djp/ch/gbr  
SENATE

382  
May 3, 2010

figure of \$64 million and just says assume \$34 million of it comes to the nursing homes. That's a huge assumption which apparently is not true because there's no verification for it. And the reason why there's no verification for it is because with all candor it just doesn't happen.

I know as a practicing lawyer my partner does this stuff. He advises long-term people this is what you do. This is where you've got to be. There are some people -- you know you've got to take the long-term care because your assets are your assets but the other people you spend-down. And you put it in an area like your house that you can draw the money out either on a reverse mortgage or line of credit or what have you sort of after the fact, but that money is disposable, it's there.

Now the argument that some may advance is well even if that's true Senator Fasano, these people go into the nursing home, their surviving spouse goes into the nursing home earlier because they dumped off the cash and I would say no, the house is the bank. The house is the bank.

So it isn't true that they go in there earlier. It is estate planning. It is tax planning and what this bill purports to do is recognize the reality of the

djp/ch/gbr  
SENATE

383  
May 3, 2010

situation that they're faced with and what this bill purports to do is to say we recognize it. We don't need to put these people into bankruptcy, number one, but number two we can't because the tools are out there to avoid it. OFA backs up that reasoning by saying we can't find an expense to the state.

If I had some evidence before me, and I looked at this for the past ten days, where it was shown clearly where this money was going and the state was losing \$34 million, I would be of concern. And, in fact, a year from now, all of a sudden we see that there's a problem because of this bill, I would be the first one to submit a bill to correct that problem but I don't see it because the real world operates different than the walls in which we do our legislative business. That's why you see a CPA. That's why you see a tax lawyer. That's why you see elderly specialists who specialize in elderly issues.

So, Mr. President, I appreciate the comments by -- by Commissioner Starkowski and I think it's important that they are on the record for the purposes of his position and he has a voice but I would humbly disagree based upon what I see out there on everyday and basically I also disagree because of the OFA analysis is such that we have come in the circle to recognize that is the final

djp/ch/gbr  
SENATE

384  
May 3, 2010

word with respect to costs. Therefore, Mr. President, I would be proud to look forward to this bill being passed.

Thank you, Mr. President.

THE CHAIR:

Thank you, Senator.

Will you remark further?

Senator McKinney.

SENATOR MCKINNEY:

Thank you, Mr. President.

If I could briefly for my own edification ask a question through to the proponent of the bill before us.

THE CHAIR:

You may proceed.

SENATOR MCKINNEY:

Thank you, Mr. President.

Senator Doyle, I've listened to the conversation between Senator Kane, yourself and Senator Fasano. In my own experience I have seen with a family member the spend-down and -- and agree that what happens in the real world is that individuals are told about the rules, do spend-down and so it's not money that we're going to see in our system.

What I'm having a hard time though understanding is that as you raise the threshold and raise the amount, it

djp/ch/gbr  
SENATE

385  
May 3, 2010

would seem somewhat intuitively that it would be quicker for some to spend-down and, therefore, would become eligible sooner -- would be on -- if they're eligible sooner then it would be an additional cost to the state because they will be eligible sooner than they normally would be under the old rules.

Through you, Mr. President, can you explain why someone will not be eligible sooner and therefore wouldn't cost more money that way?

Through you, Mr. President.

THE CHAIR:

Senator Doyle if you care to respond.

SENATOR DOYLE:

Yes, through you, Mr. President.

Well to try to make it simple, the person is -- is nearing close to the margin where they qualify for Title 19. They're either going to qualify under the current requirements and spend the cash on -- on the expenses that we discussed or if -- if this law passes, they won't have to do that new investment in the home as Senator Fasano said or the new car. They can hold the money.

So either way they're either going to -- on the current law they're going to spend this money to get in. If this law passes, they won't do that rush spending so

djp/ch/gbr  
SENATE

386  
May 3, 2010

one -- up to one o' nine, nine forty -- I'm sorry, one o' nine five sixty. They can stop at that point, that will stay in the bank. That can be used for other more essential purchases rather than a purchase for a car or investments of the home and I would argue on the other side the fact that a person can keep more money, that's more money for home care down the road, that's more -- that's keeping people off -- the community spouse off of the Title 19 rules earlier.

So the simple statement is they're going to either - - they're going to get in whether they -- they're advised to spend-down to 50 percent or they'll stop at 109.

Through you, Mr. President.

THE CHAIR:

Senator McKinney.

SENATOR MCKINNEY:

Thank you, Mr. President.

So and -- and -- I -- I guess I agree with the latter part, they are going to be advised down -- to spend-down to 50 percent and they will do that. I guess in -- intuitively though if that number goes from say \$75,000 to \$109,000, spending down to 50 percent is going to be easier, happen quick -- quicker, therefore, eligibility will happen sooner.

djp/ch/gbr  
SENATE

387  
May 3, 2010

I guess, through you, Mr. President, but is -- is that not going to happen in practice?

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Through you, Mr. President, no because I think the - the community spouse is going to meet with the -- the long-term -- the -- the attorney advisor, you know, well before we get to these lower thresholds. So they're -- they're going to sit in a room and say okay this where you're at. Your obligation, you know, to pay private care go to a certain level. They're going to say it -- if the new law is passed at 109, you can hold that, you can preserve that.

If your -- if -- if this law remains, they're going to say you have legitimate expenses, you'll spend-down to -- to 75. So it's a question -- they will be advised not when they're super close in theory. In a practical matter they're going to be, you know, it will be earlier -- earlier stayed than right at 109 or right at 75 and a wise estate lawyer will advise them ahead of time.

Through you, Mr. President.

THE CHAIR:

Senator McKinney.

djp/ch/gbr  
SENATE

388  
May 3, 2010

SENATOR MCKINNEY:

Thank you.

I guess my last question is how -- how often are expenditures made, you know, in an attempt to spend-down to get to eligibility? How often are they challenged?

Through you, Mr. President.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Through you, Mr. President, the challenge at the DSS level, by DSS?

Through you, Mr. President.

THE CHAIR:

Senator McKinney.

SENATOR MCKINNEY:

Yes, yes, through you, Mr. President.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Through you, Mr. President, I don't think the spend-downs are challenged as much as I -- I've done Title 19 applications. The real crux of challenges are what the assets, whose name their in. It's not really as much what's being spent down because it's pretty clear what's

djp/ch/gbr  
SENATE

389  
May 3, 2010

legitimate and legal expenses. It's more ownership of assets and they thoroughly challenge those and take months to resolve it.

For instance if it's a joint asset or it's a gift, that's really where prevention of going on Title 19 is. The spend-down purchases aren't challenged because it's a pretty clear purchase. They ask for evidence and they see all the evidence in the purchases.

Through you, Mr. President.

THE CHAIR:

Senator McKinney.

SENATOR MCKINNEY:

Thank you, Mr. President.

I -- so that obviously has no impact on this bill but those challenges will be the same regardless. I appreciate the good Senator's answers.

Thank you, Mr. President.

THE CHAIR:

Thank you, sir.

Would you care to remark further? Would you care to remark further?

If there are no further remarks to be made, the Chair would ask the Clerk to announce that a roll call vote is in progress in the Senate.

djp/ch/gbr  
SENATE

390  
May 3, 2010

THE CLERK:

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

THE CHAIR:

The machine is open.

Members please check the board to make certain that  
your vote has been properly recorded. If all members  
have voted and if all votes are properly recorded, the  
machine will be locked and the Clerk may announce the  
tally.

THE CLERK:

Motion is on passage of

Senate Bill 370.

Total Number Voting

35

Those Voting Yea

34

Those Voting Nay

1

djp/ch/gbr  
SENATE

391  
May 3, 2010

Those Absent, Not Voting

1

THE CHAIR: . . . .

The bill is passed.

Mr. Clerk.

THE CLERK:

Calendar page 32, Calendar Number 230, File 344,  
Senate Bill 283, AN ACT CONCERNING AUDITS BY THE  
DEPARTMENT OF SOCIAL SERVICES, favorable report of the  
committees on Human Services and Judiciary.

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:

Question before the chamber is  
acceptance and passage. Do you care to remark  
further?

SENATOR DOYLE:

Yes, thank you, Mr. President.

What this bill does it deals with an issue that the  
Human Services Committee spent a lot of time on this

**JOINT  
STANDING  
COMMITTEE  
HEARINGS**

**HUMAN  
SERVICES  
PART 4  
1072 – 1435**

**2010**

Any other questions from committee members?

Thank you very much, Representative.

REP. HWANG: Thank you.

SENATOR DOYLE: The next speaker is Commissioner Starkowski, and then Deb Polun, hopefully. It depends. It depends. I may ask you to go to public, who knows.

COMMISSIONER MICHAEL STARKOWSKI: Good afternoon, Senator Doyle, Representative Walker and members of the Human Services Committee.

My name is Michael Starkowski. I'm the Commissioner of the Department of Social Services.

I submitted some lengthy testimony on a number of bills. I'll try to be as brief as possible to go over what my testimony says.

Bill Number 370, AN ACT CONCERNING MEDICAID LONG-TERM CARE COVERAGE FOR MARRIED COUPLES. Section 1 would change the disregard to the maximum allowed by federal law, which is \$109,560. We already have a disregard where we disregard one-half of a married couple's assets for the benefit of the noninstitutional spouse of a long-term care Medicaid applicant.

That does go up to the maximum of \$109,560, but, of course, that's the maximum, so people could have a disregard that's less than that. If we automatically move up to the \$109,560, that change in a disregard would mean that people would be able to divert funds that are presently used to pay for long-term care services. If they do that, it would result in earlier findings of Medicaid eligibility and

SB391  
HB5296  
HB5398  
HB5399  
HB5411  
HB5412  
HB5431  
SB282

increase the Medicaid costs to the state. For those reasons, we're opposed to that section.

Section 2 would exclude funds derived from equity in the home property through a reverse annuity mortgage loan or other home equity conversion loan in determining Medicaid eligibility. We actually are -- are supportive of that section.

We feel that it could actually help people that are applying for the home- and community-based waiver and allow them to have more dollars available at their discretion to keep their loved ones in the community instead of going into institutionalization and on Medicaid as -- as a Medicaid recipient in a still nursing facility, although we do think there's one technical change.

The technical change is it shouldn't be disregarded as income, it should be disregarded as assets, because after the first month, if there's any dollars left on that reverse mortgage, they're considered assets, and that's what impacts the eligibility for the Medicaid recipient.

S.B. 391, AN ACT CONCERNING CHILD CARE SUBSIDIES FOR THE UNEMPLOYED UNDER THE CARE 4 KIDS PROGRAM. This act would require that we make an eligibility determination within 30 days of any application that comes in in the Care 4 Kids Program. The way the program operates now, that's our goal: to try to make sure that those applicants are determined either eligible or ineligible within the 30 days.

Understand that the applicants have to provide quite a few -- quite a few pieces of information -- a birth certificate for their

So we're really trying not to risk that, and we oppose the bill like DDS opposes the bill that's here. And with that, I'll answer any questions if people have questions.

SENATOR DOYLE: Thank you, Commissioner.

I just have a quick question about the Senate Bill 370. This is kind of a technical acid test. This is introduced by, I think, the Connecticut Bar Association.

Is it your position that both of these changes would cost the state significant monies, I mean, you know, all (inaudible) will eventually tell us if the bill will survive, but is it your position it would cost the state significant money or is it limited? What do you think, if he's --

COMMISSIONER MICHAEL STARKOWSKI: No, I don't think so. I -- I mean, I think the first change has the -- could have the impact of costing the state significant money, and that would be Section 1.

Section 2 -- I actually think it has the potential to avoid -- it would be a cost avoidance mechanism, so individuals that are applying for like our home- and community-based waiver will have the ability to take the dollars that they get in that reverse mortgage -- the dollars that they're going to get either in a lump sum or on a regular basis, take those dollars and -- and maintain themselves and their -- or their spouse in the community.

So that has the potential to actually reduce some of our expenditures and reduce some of the institutionalization. I think if we automatically say that an individual is

allowed for \$109,000 disregard, I think you're going to then come to the point where individuals that have -- they may have \$120,000 in assets, and if we start taking the 109 instead of -- we would probably take about a half of that normally -- that means that the individual would be determined eligible for Medicaid a lot quicker, even if they spend down that other 15 to \$20,000.

SENATOR DOYLE: Okay. Thank you.

Any other questions from committee members?

Representative Orange.

REP. ORANGE: Good afternoon, Commissioner Mike.

COMMISSIONER MICHAEL STARKOWSKI: Good afternoon.

REP. ORANGE: It's good to see you.

COMMISSIONER MICHAEL STARKOWSKI: Same here.

REP. ORANGE: So you're saying that you're in agreement with the reverse mortgage and the -- and that not being touched for spend down?

COMMISSIONER MICHAEL STARKOWSKI: Yes, that's right. I'm -- I'm in agreement with the changes that you have in legislation for the reverse mortgage. The only change, and it has to be a technical change, and it has to say "assets" instead of "income," because what happens is an individual may --

REP. ORANGE: Well, if -- if you stop there, you get a gold star for the day for -- for the reverse mortgage.

COMMISSIONER MICHAEL STARKOWSKI: I'll stop. I'll stop. I like gold stars. Those are nice.

REP. ORANGE: Right. Section 1 -- is the state of Connecticut meeting the guidelines of the federal government?

COMMISSIONER MICHAEL STARKOWSKI: Yes, we are.  
Yes.

REP. ORANGE: You're sure?

COMMISSIONER MICHAEL STARKOWSKI: Yes.

REP. ORANGE: Then you don't get a gold star for that one, but you do get a gold star for the reverse mortgage, Mike.

COMMISSIONER MICHAEL STARKOWSKI: Okay, thank you.

SENATOR DOYLE: Thank you.

Representative Abercrombie.

REP. ABERCROMBIE: Thank you, Mr. Chair.

Good afternoon, Commissioner. Thank you for being here. I actually have three questions.

COMMISSIONER MICHAEL STARKOWSKI: Okay.

REP. ABERCROMBIE: My first question has to do with the Care 4 Kids Program. SB391

COMMISSIONER MICHAEL STARKOWSKI: Yes.

REP. ABERCROMBIE: Can you explain the process and why it takes longer than 30 days, because one of the things that we're hearing from the providers is that they help the recipients with the application so that you would think that they'd be a little bit fluent in what they're doing.

**JOINT  
STANDING  
COMMITTEE  
HEARINGS**

**HUMAN  
SERVICES  
PART 5  
1436 – 1781**

**2010**

So I've included in my testimony specific changes to H.B. 5296 that are necessary in order for it to reflect the committee's final recommendation which you heard earlier today has been supported by the Department of Social Services.

So thank you for your time, and I'm happy to answer any questions that you may have on this issue.

REP. ABERCROMBIE: Thank you, Alicia.

Any questions from committee members?

Thank you very much. We appreciate it.

Matt Barrett, followed by Sheldon.

MATTHEW BARRETT: Good afternoon, members of the committee.

For the record, my name is Matthew Barrett. I'm the Executive Vice President of the Connecticut Association of Health Care Facilities, our state's 110-member trade association of proprietary and nonprofit nursing homes. I am pleased to have this opportunity to testify on several bills on today's public hearing agenda.

SB370  
HB5398

First, Senate Bill 369, AN ACT CONCERNING THE ENFORCEMENT OF SURETY CONTRACTS BY NURSING HOMES. Our association is opposed to this legislation as the legislation appears intended to weaken the existing responsibilities of family members and legal representatives in the long-term care Medicaid application process. The consequences of lowering these expectations will be very harmful to Connecticut nursing homes.

Almost all nursing home bad debts result from the failure of a family member or the resident's legal representative to apply and obtain approval for Medicaid assistance in a timely manner or when property or money has been given away by the resident.

Nursing homes are at the mercy of the family members or legal representative to take the appropriate steps to obtain Medicaid assistance. The nursing home simply does not have and could not possibly have access to the extensive, detailed personal financial information required to complete an application for Medicaid assistance.

Other bad debts occur when the resident has given away money or property during the five-year look-back period and is therefore ineligible for Medicaid assistance for a period of time, triggering a transfer of assets penalty period.

Nursing home bad debts caused by failure to file or incomplete Medicaid applications and transfer of assets cost Connecticut providers hundreds of thousands if not millions of dollars every year. These harmful losses are avoidable with the cooperation of a family member or a resident's legal representative. There is no doubt that this situation will worsen significantly if this bill were to pass.

Very briefly, on Senate Bill 370, AN ACT CONCERNING MEDICAID LONG-TERM CARE COVERAGE FOR MARRIED COUPLES. As we understand the effect of this legislation, a portion of the Medicaid recipient's resources now available to help offset the cost of nursing home care will be diverted in greater amounts to spouses

who reside in the community. While this may be permitted under federal law, it wrongly shifts a greater percentage of the cost of expensive nursing home care to the government. For this reason, we're opposed to Section 1 of the bill.

And finally, I'm very pleased to lend our association's support for House Bill 5398, AN ACT CONCERNING A PILOT PROGRAM TO TRANSFER HOSPITAL PATIENTS WHO RECEIVE MEDICAID BENEFITS TO NURSING HOMES IN A TIMELY MANNER.

I believe you'll be hearing specifically from the proponent of that legislation, Anne Virginie Grimes Health Center associated with the Saint Raphael's community, and so I'll just simply indicate that this is a -- a -- I think a good opportunity to test and explore opportunities to achieve savings and address the health care needs of this population in a more efficient manner.

Thank you. I would be happy to answer any questions you may have.

REP. ABERCROMBIE: Thank you, Matt.

Any questions from committee members?

Senator Coleman.

SENATOR COLEMAN: Thank you, Madam Chair.

First, Matt, let me thank you for the conversation which we've had regarding this bill. I think you understand that I'm not trying to add by this bill to the bad debt portfolio of nursing homes, but my interest is in protecting some of the volunteer family members or even conservators who are acting in behalf of prospective nursing home residents.

SB369

REP. ABERCROMBIE: So we need like those protections in there.

MAGGIE ADAIR: Yes, absolutely.

REP. ABERCROMBIE: Okay, great. Thank you.

Thank you, Mr. Chair.

SENATOR DOYLE: Thank you.

Any other questions from committee members?

Seeing none, thank you.

MAGGIE ADAIR: Thank you.

SENATOR DOYLE: The next speaker is Sharon Pope and Evelyn Barnum, Randi Mezzy and Erin Jones.

Attorney Pope.

SHARON POPE: Good afternoon, Senator Doyle, Representative Walker, and committee members.

My name is Sharon Pope, and I'm here on behalf of the Connecticut Bar Association, the Elder Law Section, in support of Senate Bill 370.

There are two components, Section 1 and Section 2, which have been spoken about today. Section 2 is the proceeds from loan or reverse mortgage. We all seem to be in agreement that's a good idea. Commissioner Starkowski agrees also.

The only change we recommend he mentioned briefly and that is, I believe, on line 13 where it mentions income and asks -- we recommended the language be "income and assets," because in a home equity loan or a

reverse mortgage, you could have a monthly amount that comes to you.

And if you're on a Medicaid home care waiver program, that income amount could cause you a problem, so we want it to say "income and assets," so whether it's received in that month or it's held over to the month after, we'd like in both cases -- as long as it follows the rest of that section, it's kept in a separate account and so forth -- we're fine with that, so we'd just like to make that one recommendation.

Section 1 has some more aspects to it that I'd like to reveal this afternoon. Although it's been seen in light of nursing homes, it's not necessarily the case where a community spouse and an institutionalized spouse -- or the well -- the well spouse versus the ill spouse -- is necessarily an ill spouse that is in an institution.

That person could be on home care services under a Medicaid waiver, so that if you look at the community spouse, or the well spouse, who has less than \$109,560 -- and I've given an example in my written testimony.

Let's say you have a -- a married couple with \$60,000 between the two of them. The current rule is that the well -- that -- that the assets are split in half and that the well spouse gets to keep half, or \$30,000, and the ill spouse has no more than \$1600, so that the -- they have to spend down that money, and they oftentimes end up spending it down on things they really don't need.

They might buy a new car because it's an exempt item. Maybe they buy some new appliances, but they'd really rather have the

money in order to stay home and keep up the expenses of the home. It could be that both of them are living at home under a Medicaid waiver. The community spouse could be in an assisted living situation. This money is going to help him or her stay there longer and thus avoid nursing home level care.

Yes, you can go to a fair hearing and try to get all that you're entitled to to help the community spouse and make -- get the exceptions to that, but fair hearings, as we -- our experience tells us, take a long time.

Right now, applications, it's no surprise, are taking months and months and months to grant. You go to a fair hearing, you add a few more months. Meanwhile, the nursing home is not getting paid for any of that until it gets granted. So there's a lot of problems that we think would be solved by -- if you have less than the maximum, just let the -- let the spouses keep it.

DSS people wouldn't have to screen as much. They should be relieved of going through with these item by item. That would help out, and we wouldn't have to use fair hearing officers to go through a fair hearing every time you want to keep more than half if it's under that 109,000.

So those are the examples I wanted to share with you I don't think had been mentioned today, and I am open and available for questioning. Thank you.

SENATOR DOYLE: Thank you, Attorney Pope. If you'll remember, the DSS Commissioner Starkowski suggested we eliminate the word

"income" and put "assets," and you're suggesting "and --

SHARON POPE: I'm suggesting both, because I'm not sure that at the time it occurred to the department that this could be somebody in home care. In other words, the Medicaid is not only -- we have not only nursing home Medicaid long-term care, but we have Medicaid waivers in home, and that's a Medicaid program as well.

And if you're the applicant or the recipient of the Medicaid home care waiver, any additional income coming to you every month -- because there is an income cap on that program -- could jeopardize that particular home care program.

So I -- well, we could work it out, but I understand the definitions of "income" and "asset" and how it's treated, and I think you need both so you don't run into the problem that we're all trying to avoid.

SENATOR DOYLE: Okay, and I'm sure you recognize the difficult fiscal constraints we're under here.

SHARON POPE: Yes.

SENATOR DOYLE: What do you think of the -- the Commissioner's point is if we adopted -- if we accepted Section 1 --

SHARON POPE: Uh-huh.

SENATOR DOYLE: -- it would be significant cost to the state. What are your -- what's your take on that? Maybe -- I don't know if you can answer it or not but --

SHARON POPE: Oh, I can guess.

SENATOR DOYLE: Okay.

SHARON POPE: Well, I don't know, and I'm not sure the commissioner knows. It seems to me that it doesn't cost the state any additional funds, because in most cases, the community spouse isn't using -- you know, I had a client the other day, there was \$60,000 left between himself and his spouse.

He's in his early eighties in pretty good shape and living at home. She, unfortunately, is an Alzheimer's dementia patient and will need long-term care for some time. He has to spend down -- he either has to -- he has to spend down money to get Medicaid now.

So he's either going to spend it down on things he doesn't need and now he's only left with 30,000. How much longer can he stay home with that kind of money or are we going to end up institutionalizing him sooner than we need to?

So our concern overall with both of these cases is looking at trying to keep people out of nursing homes, be it the community spouse or the individual -- the community spouse -- the loan could be the individual. There doesn't have to be a spouse involved in that -- that section.

And so the goal is to try to keep everyone at home in community-based services. And it seems to me that there's all kinds of fact patterns for the community spouse living in the home, and we'll take the fact pattern where the institutionalized spouse is actually in a nursing home, that -- the funds could keep that community spouse outside.

You get a Money Follows the Person person, you're in the nursing home for six months, you come back out, you spend half of that \$100,000 and now you have 50,000 left. How are you going to help that Money Follows the Person person stay home as well with the expenses that you would have keeping them home?

So there's a lot of -- there's a lot of issues I see and fact patterns that aren't always -- they're not nursing home driven necessarily.

SENATOR DOYLE: Thank you.

SHARON POPE: So -- so that didn't answer your question, right?

SENATOR DOYLE: Well, no. You made it -- you made it a little cloudier.

SHARON POPE: They're just examples.

SENATOR DOYLE: It's -- it's -- I think that your just proving it's difficult to ascertain what the true cost would be if we adopted Section 1.

SHARON POPE: Right. Right.

SENATOR DOYLE: Thank you.

Any other questions from committee members?

Senator Coleman.

SENATOR COLEMAN: Sharon, I just wanted to say hello --

SHARON POPE: Hello, Senator Coleman. How are you?

SENATOR DOYLE: Thank you for coming today.

ALFRED VAGNINI: Yes.

SENATOR DOYLE: The next speaker is Amy Todisco and Paul Czepiga, then Kate Walton, then Lesley Simone and Julia Wilcox. And I'll just point out, the fact that these two individuals are coming up together is a good thing, so if anybody else has, you know, a person as common testimony and you want to come up together to try to expedite, that would be welcome to the committee, so thank you.

AMY TODISCO: Senator Doyle, good afternoon, members of the Human Services Committee.

My name is Amy Todisco. I'm an elder law attorney in Fairfield. I'm here today as President of the Connecticut Chapter of the National Academy of Elder Law Attorneys. We are the proponents of S.B. 370, AN ACT CONCERNING MEDICAID LONG-TERM CARE COVERAGE FOR MARRIED COUPLES.

And I'm going to speak to Part 2 of the bill, having to do with the loan proceeds, and I won't -- we're very pleased, by the way, that DSS has agreed and -- so I'm not going to belabor that point.

I just want to clarify for the committee that this has been a longstanding policy of DSS, and when DSS promulgated certain regulations pursuant to the Deficit Reduction Act in 2007 in going through -- this is according to DSS, now -- in going through these various sections of the Uniform Policy Manual, they realized that they didn't have federal authority for the policy that they'd had all these years to exclude loan proceeds.

They recognize also now that it would be a tremendous hardship on those individuals who have relied on that entire policy, and we're very pleased that they will not -- that they do support the legislation. And I do agree with our colleague, Sharon Pope, who you heard from earlier from the Connecticut Bar Association, that the amendment to the bill should include both asset and income for the reasons that she had explained because of the nature of the home health care program when people apply that income is counted toward that program. I'd like to turn over the mike now to Attorney Paul Czepiga.

PAUL CZEPIGA: And I am Attorney Paul Czepiga. I'm a lawyer for 25 years. I'm also a Board of Directors member for the Connecticut Chapter of the National Academy of Elder Law Attorneys as well. You've got my written testimony, and thank you for allowing me to speak for a few moments.

By way of example, and this has to do with married couples applying for Medicaid and this thing called the Community Spouse Protected Amount, this \$109,560 number. Section 1 of the bill, thank you.

By way of example, and I've got the examples in the testimony, but to -- to make it sort of realistic, and this is going to be a -- a -- an amendment that would benefit primarily those married couples who have limited amount of assets. When a married couple applies for -- a married couple applies for Medicaid, and they've got assets that are nonexempt of \$50,000, and the lesser of one half, or 109,000, is deemed protected, the rest is deemed to be available for the ill spouse.

So 50,000 of assets -- the wife, so-to-speak, if she's the well spouse, is allowed to keep 25,000 and the state says, well, you've got to spend the other 25,000 to make your husband eligible in the nursing facility. And it's the state's hope that that \$25,000 will be spent by the wife on her husband's care at the nursing home.

In reality, that doesn't happen. It never does. I've dealt with hundreds, probably over 1,000 cases of this type. In reality, that money, that \$25,000, the wife is going to spend on herself. She has meager means as it is. Why would she spend it on her husband at the nursing facility if she's allowed, which she is, to spend it on herself.

And you've got a couple of low -- low assets of that type -- 25, 50,000 -- there's probably deferred maintenance on the house, the funeral is not paid for, the kitchen appliances are the same ones from when they bought the house in 1962. There are unmet needs that that spouse has.

If you make that number larger, and this is again in my written testimony, let's say the assets are 125,000. The state, again, will say that the wife is allowed to keep half of that, or 62,500. The other \$62,500 has to be spent before the husband qualifies for Medicaid. It's easy to spend \$62,500, and the wife will spend it on herself. The state is not going to see this money.

Our neighboring states -- New York, Massachusetts and down in Florida -- they already have a provision that says, look, if the assets are 109,550, you get it automatically. There's no need to go through this what is essentially foolish spend down on

either necessary or perhaps unnecessary items as well.

So in terms of the impact on the state budget, and this is going to cost the state money, I think minimally, minimally, it's budget neutral because that money is not going to be spent on the husband's care at the nursing home. It's going to be spent on the wife. The state's going to have to pay for the husband from day one.

It's not going to delay the -- the eligibility date to Medicaid, so minimally, it's budget neutral, and in my view, it will save the state money, because right now, at least what I have seen with DSS on the intake level for the nursing home units for all the various DSS offices throughout the state, their ranks are decimated and applications are clogged up and delayed because of all the processing paperwork, and I'm sure you've heard this from the nursing home side as well.

By not forcing a community spouse to spend down and go through all the paperwork to show the money was spent down -- where it was spent, how it was spent, when it was spent -- it will free up, in my -- in my view, intake worker time so they can be reassigned to other tasks within the department or -- or at least be moved over to a department if they've got that free time.

In addition, it will cut down the number of fair hearings, because oftentimes we have limited budget -- limited asset cases. You don't need to spend down. Oftentimes the full amount is protected for the wife, but the only way to get to that point is to go through a fair hearing, which again, clogs up the system, the intake worker and now the fair

hearing officer's time. So I think it will reduce the staff needs.

It's really at the department -- minimally budget neutral and I think there'll be a cost savings, frankly, and you're not going to get this money anyway. The state will not.

So thank you for your -- allowing me and I'll answer any questions you may have.

SENATOR DOYLE: Thank you.

Any questions?

I think you answered my question about the issue really that DSS is saying there's a -- a significant cost, and you have a different angle, so we'll have to talk to them about that.

PAUL CZEPIGA: That is -- that is the case.

SENATOR DOYLE: Thank you.

Any other questions?

Thank you.

AMY TODISCO: Thank you.

SENATOR DOYLE: The next speaker is Kate Walton, then Lesley Simones, and Julia Wilcox and Tamara Kramer.

KATE WALTON: Good afternoon, members of the Human Services Committee.

My name is Kate Walton. I am the Programs Director of Connecticut Food Bank, the largest centralized source of donated emergency food in Connecticut. I'm here to speak about Bill

HB5341

going to go away, and so, I mean, the department has been really responsive.

Actually, my supervisor who normally works on this issue is at a Care 4 Kids advisory meeting that Peter Palomino from the department holds once every quarter, and so they do meet with the -- the providers, and I think there is a -- there is an atmosphere of, you know, understanding and working together, and I -- I'm really encouraged to hear the commissioner would -- would also like to meet with the provider, so --

REP. ABERCROMBIE: Thank you.

Thank you, Mr. Chair.

SENATOR DOYLE: Thank you.

Any other questions from committee members?

Seeing none, thank you very much.

TAMARA KRAMER: Thank you.

SENATOR DOYLE: The next speaker is Christine Ceccarelli, then Dawn Mays-Hardy, then James McCreath, and then Tina Varick.

CHRISTINE CECCARELLI: Good afternoon. I appreciate this opportunity to testify, and I appreciate you pronouncing -- anyway, I appreciate you pronouncing my name correctly. It doesn't happen that often.

I am here to testify in favor of Senate Bill 370, AN ACT CONCERNING MEDICAID LONG-TERM CARE COVERAGE FOR MARRIED COUPLES.

It's a little bit of a personal perspective to this issue, since I was a family caregiver for

my husband. I'm a nurse and a former spousal home caregiver for my late husband, David, who suffered from progressive multiple sclerosis for 12 years before his death in 2002.

Before I elected to quit my full-time job to care for him at home, he was cared for in a nursing facility for a short period of time, and so needless to say, we needed to spend down our savings so he could qualify for Medicaid. I was able to care for him full-time at home, because our house had been paid for in the spend-down process, and he received a pension from the Southern New England Telephone Company -- if you remember that company -- where he worked for many years.

And we were able to survive on his pension and the small amount that I earned doing some quality improvement work for the dialysis unit I once managed. We were more fortunate than other couples in this same situation who don't have any income once the breadwinner in the family becomes ill, and there is no other available source of support.

I feel passionately about this bill, because once the spend-down process is complete, the only major asset left for the community spouse is the home. I can imagine that in many circumstances, this asset must be tapped to support the spouse or if he or she is unable to work, cannot find work or has no other source of support.

And I must say, I didn't anticipate that DSS would support this portion of this bill. I'm very happy to hear it, because if these monies are treated as liquid assets, it would be disastrous. The only thing you have left is your home once you spend down to Medicaid, pretty much.

And if you're a younger well spouse, community spouse, as I am, you've lost pretty much most of your retirement income or savings that you've accumulated over the years, since it had to be spent down, and you're left with very little.

So I -- I'm -- I'm hopeful that you will support this bill and think of us community spouses who are left with very little except our home.

SENATOR DOYLE: Thank you very much for coming up and testifying.

Any questions from committee members?

Seeing none, thank you very much.

The next speaker is Dawn Mays-Hardy, then James McCreath, then Tina Varick and Tiffany Murasso.

DAWN MAYS-HARDY: Good afternoon, Senator Doyle and representatives of the Human Services Committee.

My name is Dawn Mays-Hardy, and I serve as the Connecticut Director for Health Promotion and Public Policy for the American Lung Association, and I'm here to seek your support on behalf of House Bill 5411, AN ACT CONCERNING MEDICAID, which provides the long overdue tobacco treatment for Medicaid coverage for -- for Medicaid coverage for -- for the recipients.

Connecticut should be proud of its consistently remaining as one of the top ten healthiest states with one of the lowest adult smoking cessation rates at 16 percent.

# CONNECTICUT ASSOCIATION OF HEALTH CARE FACILITIES, INC.

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March 11, 2010

**Testimony of Matthew V. Barrett, Executive Vice President of the Connecticut Association of Health Care Facilities before the Human Services Committee**

Good morning Senator Doyle, Representative Walker and to the members of the Human Services Committee. My name is Matthew Barrett and I am Executive Vice President of the Connecticut Association of Health Care Facilities (CAHCF), our state's 110 member trade association of proprietary and nonprofit nursing homes. I am pleased to have this opportunity to testify on several bill's on today's public hearing agenda.

**S. B. No. 369 (RAISED) AN ACT CONCERNING THE ENFORCEMENT OF SURETY CONTRACTS BY NURSING HOMES.**

CAHCF is opposed to SB 369. This legislation appears intended to weaken the existing responsibilities of family members and legal representatives in the long term care Medicaid application process. The consequences of lowering these expectations will be very harmful to Connecticut nursing homes.

Almost all nursing home bad debts result from the failure of a family member or the resident's legal representative to apply and obtain approval for Medicaid assistance in a timely manner or when property or money has been given away by the resident. Nursing homes are at the mercy of the family member or legal representative to take the appropriate steps to obtain Medicaid assistance. The nursing home simply does not, and could not possibly, have access to the extensive, detailed personal financial information required to complete an application for Medicaid assistance.

Other bad debts occur when the resident has given away money or property during the five-year look back period and is therefore ineligible for Medicaid assistance for a period of time, triggering a transfer of assets penalty period.

Nursing home bad debts caused by failure to file or incomplete Medicaid applications and transfers of assets cost Connecticut providers hundreds of thousands, if not millions of dollars every year. These harmful losses are avoidable with the cooperation of a family member or resident's legal representative. There is no doubt that this situation will worsen significantly if this bill were to pass.

HB5398

**S. B. No. 370 (RAISED) AN ACT CONCERNING MEDICAID LONG-TERM CARE COVERAGE FOR MARRIED COUPLES.**

As we understand the effect of this legislation, a portion of the Medicaid recipient's income, now available to help offset the cost of nursing home care, will be diverted in

greater amounts to spouses who reside in the community. While this may be permitted under federal law, it wrongly shifts a greater percentage of the cost of expensive nursing home care to the government. For this reason, we are opposed to Section 1 of the bill.

Under current law, the spouse in the community currently can retain the house and assets up to approximately \$110,000. In addition, if the community spouse needs more than his/her income to live on, the nursing home spouse's income is diverted to the community spouse and Medicaid pays the difference in payments to the nursing home. These are generous amounts and serve to implement a policy which allows a spouse to remain in the community when the other spouse becomes in need nursing home care.

However, increasing amounts paid to the community spouse under more liberalized rules as proposed here, will increase the pressure on the Medicaid budget at a time when the nursing home Medicaid system considerably underfunds resident care to nursing homes.

**H. B. No. 5398 (RAISED) AN ACT CONCERNING A PILOT PROGRAM TO TRANSFER HOSPITAL PATIENTS WHO RECEIVE MEDICAID BENEFITS TO NURSING HOMES IN A TIMELY MANNER.**

Finally, I am pleased to lend our association's support to the pilot concept put forward in HB 5398. This is a very important concept to explore and one that has a very great potential to incent skilled-nursing facilities to accept inpatient Medicaid patients with complex health needs and avoid unnecessary and prolonged hospital stays. Moreover, in this model, the patients will be cared for in the most appropriate setting to meet their healthcare needs. We urge your support.

I would be happy to answer any questions you may have.

Good afternoon. Thank you for the opportunity to testify in favor of Senate Bill 370, an Act Concerning Medicaid Long-Term Care Coverage for Married Couples.

My name is Christine Ceccarelli. I am a nurse and former spousal home caregiver for my late husband, David, who suffered from progressive multiple sclerosis for 12 years before his death in 2002. Before I elected to quit my full-time job in 1997, he was cared for in a nursing facility. Needless to say, we were not able to pay for his care out of our savings for very long, so we went through the Medicaid spend-down process so his long-term care bills would be covered. I was able to care for him full-time at home because our house had been paid off in the spend-down process, and he received a pension from the Southern New England Telephone Company where he had worked for many years. We were able to survive on this pension and the small amount I earned doing quality improvement reports for the dialysis unit I once managed. We were more fortunate than other couples in this same situation who do not have any income once the breadwinner in the family becomes ill, and there is no other available source of income.

I feel passionately about this bill because once the spend-down process is complete, the only major asset left for the community spouse is the home. I can imagine that in many circumstances, this asset must be tapped to support the spouse if he or she is unable to work, cannot find work, or has no other source of support. If a reverse mortgage must be used for this purpose, these monies should not be treated as liquid assets in Medicaid spend-down if they are needed for spousal support. I am sure that the regulations can be written in such a way as to provide adequate oversight for use of these funds.

I realize that measures must be taken to lessen the Medicaid burden for the state in these difficult economic times. However, further burdening a vulnerable spouse who has already lost so much is not the way to do it. For those of us who need to pick up our lives during or after a spouse's long-term illness and loss of almost all saved retirement income, the home asset is the only thing left.

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March 11, 2010.

To: Senator Paul Doyle, Representative Toni Walker,  
and Honorable Members of the Human Services Committee

RE: **SB 370**, An Act Concerning Medicaid Long-Term Care Coverage For Married  
Couples

From: Amy E. Todisco, President, Connecticut Chapter, NAELA

Dear Senator Doyle, and Representative Walker and members of the Human Services  
Committee:

My name is Amy E. Todisco, and I am an elder law attorney with the law firm of  
Braunstein and Todisco, P.C. in Fairfield, Connecticut.

I am President of the Connecticut Chapter of the National Academy of Elder Law  
Attorneys, Inc., a chapter of the National Academy of Elder Law Attorneys, Inc.  
("NAELA"). NAELA is a non-profit association whose mission is to provide legal  
advocacy, information and education to attorneys, bar associations and others who deal  
with the many specialized issues involving the elderly and individuals with special needs.

The Connecticut chapter of NAELA presents this written testimony in support of SB 370,  
An Act Concerning Medicaid Long-Term Care Coverage For Married Couples, with  
respect to funds which are derived from equity in home property through a reverse  
mortgage, home equity loan or other home equity conversion loan being excluded as  
assets or income for purposes of eligibility for the Medicaid program.

Until April 2007 when the Department of Social Services ("DSS") promulgated new  
regulations pursuant to the Deficit Reduction Act of 2005 (which the Regulations Review  
Committee rejected in June, 2009 without prejudice), DSS' long-standing regulation and  
policy on the issue of treatment of reverse mortgage proceeds or home equity loan

Senator Paul Doyle  
 Representative Toni Walker  
 March 11, 2010.  
 Page 2

proceeds for individuals applying to receive long term care home and community-based services under a Medicaid waiver was to exclude such proceeds from being counted as assets or income as long as those proceeds were kept separate from non-excluded assets. The Committee should note that there is no authority in the Deficit Reduction Act which requires the reversal of DSS' policy on the treatment of reverse mortgage or home equity loan proceeds.

It is DSS' position that there was no basis in federal law for the State to continue its prior policy of excluding loan proceeds from being counted as assets or income from home property for purposes of eligibility for the Medicaid program provided the proceeds were kept in a separate account. The result of such a reversal in policy is that the loan proceeds are now counted as assets and income, and individuals with such segregated bank accounts are no longer eligible to receive services under the Medicaid program. Under DSS' prior policy, individuals were able to use the loan proceeds to supplement the benefits received from the Medicaid program which enabled them to remain at home. Food, medication, real property taxes, and utilities, to mention a few items, were paid from the segregated loan proceeds. Now, under DSS' new regulation, since such segregated loan proceeds accounts will disqualify these individuals from being eligible to receive such benefits, they will be forced to spend-down all of the loan proceeds before they become eligible again to receive benefits under the Medicaid program. This will mean that they won't have enough money to pay for food, medication, taxes, or utilities and will be forced into nursing homes sooner.

The following is an example of how DSS' new regulation would effect a couple if one spouse required long-term care:

Example: Assume that a couple has the following assets on the date of institutionalization:

Bank account=	\$ 9,000.00
Cash value in life insurance policies=	7,500.00
Reverse mortgage proceeds	<u>20,000.00</u>
Total:	\$36,500.00

Under DSS' new regulation: The \$20,000.00 of reverse mortgage proceeds are counted as part of the couple's assets. Since the well spouse ("Community Spouse") gets to only keep \$21,912.00 of the \$36,500.00 (that is the minimum amount in assets the Community Spouse can keep in 2010), \$14,588.00 would be required to be spent down

Senator Paul Doyle  
Representative Toni Walker  
March 11, 2010.  
Page 3

before the institutionalized spouse would be eligible for benefits under the Medicaid program (the difference between \$36,500.00-21,912.00). Prior to this new regulation, if the \$20,000.00 was maintained in a segregated account, it was not counted as an available asset. The loan proceeds from home property represent equity from the home, which is also an excluded asset and one in which the Community Spouse is entitled to keep. It is not fair that the loan proceeds should be counted as assets when the very asset they come from, the home, is excluded as an asset.

DSS has acknowledged to the Connecticut chapter of NAELA and other elder law groups the hardship that its reversal of policy may have on individuals who relied on its former policy. It is also acknowledged the protections in place to protect against abuses which might occur if its former policy was reinstated. However, although DSS has been asked by the Connecticut chapter of NAELA and other elder law groups to pursue amending the State plan for the purpose of reinstating its former policy with regard to loan proceeds from home property, DSS has advised that it does not have the resources or staff to devote to such an endeavor; however, DSS indicated that if it was required to do so statutorily, it would not have a choice but to do so.

Accordingly, we strongly urge the members of the Human Services committee to act favorably with regard to SB 370.

Sincerely,  
Braunstein and Todisco, P.C.

Amy E. Todisco  
President, Connecticut Chapter, NAELA

**SB 370 - AN ACT CONCERNING MEDICAID LONG-TERM CARE COVERAGE FOR MARRIED COUPLES.**

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

Section 1. (NEW) (*Effective from passage*) Notwithstanding any provision of subsection (g) of section 17b-261 of the general statutes, the Commissioner of Social Services shall amend the Medicaid state plan to require that the spouse of an institutionalized person who is applying for Medicaid receives the maximum community spouse protected amount, as determined pursuant to 42 USC 1396r-5. The commissioner shall adopt regulations, in accordance with chapter 54 of the general statutes, to implement the provisions of this section.

Sec. 2. (NEW) (*Effective from passage*) The Commissioner of Social Services shall amend the Medicaid state plan to require that funds derived from equity in home property through a reverse annuity mortgage loan or other home equity conversion loan are not treated as income or assets for the purpose of qualifying for benefits under the Medicaid program, provided (1) such funds are held in an account that does not contain any other funds, and (2) the Medicaid recipient does not transfer such funds to another person for less than fair market value. The commissioner shall adopt regulations, in accordance with chapter 54 of the general statutes, to implement the provisions of this section.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	New section



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March 11, 2010

Senator Paul Doyle,  
Representative Toni Walker  
and the members of the Human Services Committee

Re: SB 370, An Act Concerning Medicaid Long-Term Care Coverage for Married  
Couples

## PROPOSED LEGISLATION TO ALLOW A COMMUNITY SPOUSE TO KEEP THE MAXIMUM AMOUNT OF FAMILY ASSETS

### I. Background

In Connecticut, when a married couple applies for nursing home benefits, the general rule is that the Community Spouse gets to keep the home residence plus the lesser of 50% of the couple's remaining assets, or \$109,560. This amount the community spouse can keep is called the "Community Spouse Protected Amount" ("CSPA"). The couple's remaining assets are deemed by the State to belong to the institutionalized spouse and must be spent down prior to the institutionalized spouse being eligible for nursing home benefits.

### II. Purpose of Proposed Legislation

It is our position that the Community Spouse in all cases should minimally be allowed to keep the full CSPA of \$109,560.

### III. Example of How Proposed Legislation Would Work

Let me give you two simple examples. We will assume in both examples that the husband is the institutionalized, or ill, spouse and the wife is the community, or well, spouse.

In Example #1, assume that a couple's assets on the date of institutionalization is \$50,000.00. Under current law, in this example, 50% of the assets is \$25,000.00. Because this is lesser than \$109,560.00, \$25,000 is all the wife is allowed to keep. The remaining

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<sup>\*</sup> Certified as an Elder Law Attorney by the National Elder Law Foundation as approved by the American Bar Association. Certification of this specialty is not recognized by the Rules Committee of the Connecticut Superior Court.

Senator Paul Doyle  
Representative Toni Walker  
March 11, 2010  
Page 2

\$25,000.00 is deemed by the State to belong to the husband and has to be spent down in some fashion before he can become eligible for Medicaid. The State is hoping that the wife will spend down the \$25,000 on her husband's care at the nursing home. But, although the \$25,000 is deemed to belong to the husband, his wife is allowed to spend the husband's deemed \$25,000 on her own needs. In reality, what happens in all cases of this type is that the wife will spend the \$25,000 on items that are necessary for her own well being, including home repairs or purchasing prepaid burial arrangements. This is, essentially, the proverbial rainy day and the wife will spend the funds on positioning herself to be as financially secure as possible for her future, given the scarce resources available. Under the proposed legislation, the wife should be allowed to keep the full \$50,000.00.

In example #2, if the couple's assets on the date of institutionalization were \$125,000, then, under current law, the CSPA would be \$62,500 and the "spend down" amount would be \$62,500 increasing from \$25,000 in example #1. Under the proposed legislation, the Community Spouse in example #2 would be able to keep the full \$109,560.00 out of the total assets of \$125,000.00 and only \$15,440.00 would have to be spent down (the difference between \$125,000.00 of total assets and \$109,560.00). Whether the "spend down" amount is \$25,000 or \$62,500, none of it will, in reality, be spent at the nursing home so why force the community spouse, who has meager savings to begin with, to spend down unnecessarily?

#### **IV. Proposed Legislation is Budget Neutral**

The proposed legislation would minimally be budget neutral to the State of Connecticut because no delay or deferral of payment to the nursing home by the State of Connecticut is achieved by forcing the community spouse to spend down paltry family resources. The spend down amount is not going to the nursing home—the community spouse will spend it on their own needs. Regardless of whether the well spouse is allowed to keep \$25,000, \$62,500, or \$109,560, the State will still begin to pay for the ill spouse's nursing home care at the same time because spend down is easily achieved by the purchase of modest items to benefit the community spouse and not by payment of the spend down amount to the nursing home.

#### **V. Proposed Legislation Will Save State Funds**

Not only is the proposed legislation budget neutral, but the State will save money: There are many instances under existing law where a Community Spouse is entitled by law to keep more than the CSPA amount derived from the 50% formula. However, the Department of Social Services intake worker has no authority to allow the Community Spouse to retain the additional assets; the Community Spouse must request a Fair Hearing and must demonstrate why he/she is entitled to receive the additional assets. A Fair Hearing absorbs the time of the intake worker and Hearing Officer. A streamlined

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Senator Paul Doyle  
Representative Toni Walker  
March 11, 2010  
Page 3

process whereby the Community Spouse is allowed to keep the maximum CSPA of \$109,560 will result in fewer administrative Fair Hearings being requested and will result in the faster processing of Medicaid applications where a spend down would otherwise be required. This will result in a savings to the State of all the costs associated with Fair Hearings and may allow intake workers to be reassigned to other duties within DSS rather than the State having to hire additional staff.

Thank you all for you time and attention to this pressing need of our senior citizens.

Very truly yours,

  
Paul T. Czepiga



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**Testimony of  
Elder Law Section  
Connecticut Bar Association**

**In Support of**

**SB 370**

**An Act Concerning Medicaid Long-term Care Coverage For Married Couples  
Human Services Committee  
March 11, 2010**

**Section 1.**

**Community Protected Spouse Amount**

**Background:** Currently, when a married person is applying for Medicaid to pay for long term care, his/her spouse in the community is allotted a portion of the couple's assets: the maximum amount is \$109,560, with a minimum amount of \$21,912.00. This is known as the community spouse protected amount. The amount the community spouse is able to keep is determined by allotting one-half, but no more than the maximum and no less than the minimum amounts.

**Example:** A couple with only \$50,000 would have to spend down assets to \$25,000.00 for the community spouse and \$1,600.00 for the ill spouse, falling far short of meeting the needs of the community spouse. Often the community spouse spends down on items not really needed as much as the money is needed, such as a new car, new appliances, and the like. Under the proposal, the couple could keep the entire \$50,000.00 for the needs of the well spouse. In these instances where the couple has less than the maximum \$109,560.00 allotment, the Department of Social Services would also save administrative costs, by not having to determine a particular share for the well spouse and monitoring a spend down.

**Importance of this issue:** This bill would help the community spouse stay in the community and avoid impoverishment. There is no additional cost to the State of Connecticut for this change and this change should actually allow streamlining the process for the Department of Social Services.

**Section 2.****Loan proceeds exempt**

Background: In proposed Medicaid regulations issued by the Department of Social Services in April 2007, D.S.S. eliminated a previous provision that excluded as a countable asset the proceeds of loans that were kept separate from other assets. In negotiations between advocates and D.S.S. concerning these regulations in recent months, D.S.S. has stated its willingness to continue to exclude proceeds of loans, but has indicated that we advocates should seek state legislation to secure this change, so that D.S.S. would be required to submit a state Medicaid plan amendment to the federal agency making this change. (D.S.S. believes it needs federal agency authority to continue to exclude loan proceeds.)

Importance of this issue: The prior policy excluding loans allowed individuals receiving home care services and married couples to borrow money or obtain an equity loan from their home as a way of supplementing their own income and assets to pay for such items as real estate taxes, homeowners insurance, home repairs, and sufficient services to live in their own home in the community and still be eligible to receive Medicaid benefits.

The elimination of this prior policy was a disincentive to individuals who wanted to stay home but could only afford to do so by obtaining a loan to supplement their income and assets to pay for adequate services and expenses. As a consequence of the elimination of this policy, individuals in need of long term care services will be forced out of their homes to enter nursing facilities prematurely at significantly greater expense to the State of Connecticut.

We are seeking a modification on line 13 of this bill: "income and assets."\*

\*the proposed addition is underlined.



*Testimony before the Human Services Committee*

*Michael P. Starkowski*

*Commissioner*

*March 11, 2010*

Good afternoon, Senator Doyle, Representative Walker and Members of the Human Services Committee. I am Michael Starkowski, Commissioner of the Department of Social Services. I am pleased to be here to present testimony on a number of bills on today's agenda.

**S.B. No. 370 (RAISED) AN ACT CONCERNING MEDICAID LONG-TERM CARE COVERAGE FOR MARRIED COUPLES.**

Section 1 requires that the department disregard the maximum amount of assets permitted under federal law for the benefit of a non-institutionalized spouse of an applicant for long-term care Medicaid assistance. Under this proposal, the department would automatically disregard all of the assets of a married couple up to \$109,560 for the benefit of the non-institutionalized spouse. Since 1989, Connecticut, under federal law, has disregarded one-half of a married couple's assets (excluding the home and one car) for the benefit of a non-institutionalized spouse of a long-term care Medicaid applicant, up to a maximum of \$109,560.

The department opposes this proposed change as the disregard of additional assets would divert funds that are presently used to pay for long-term care services, resulting in earlier findings of Medicaid eligibility and thus increasing Medicaid costs to the state. Under current regulations, non-institutionalized spouses keep the home, one car and one-half of the couple's assets (with a minimum amount of \$21,912) without affecting the institutionalized spouse's eligibility for long-term care Medicaid assistance. We believe that these assets are sufficient to support the needs of the non-institutionalized spouse and do not need to be increased at the expense of the Medicaid program.

Section 2 would exclude funds derived from equity in home property through a reverse annuity mortgage loan or other home equity conversion loan in determining Medicaid eligibility. Currently, such funds are not counted in the month in which they are received; however, any funds retained after the initial month of receipt are counted as assets, which could result in the loss of Medicaid eligibility. Excluding these funds could allow individuals to use these funds to support themselves in the community for greater amounts of time and avoid costly nursing facility care. The language as drafted, however, is inaccurate as it excludes these funds as "income." Instead, these funds should be excluded as "assets."

HB5296 HB5398  
 HB5399 HB5411  
 HB5412 HB5431  
 SB282

The department feels that section 2 of the bill has merit however, cannot support the legislation if it includes section 1 due to its costs.

**S.B. No. 391 (RAISED) AN ACT CONCERNING CHILD CARE SUBSIDIES FOR THE UNEMPLOYED UNDER THE CARE 4 KIDS PROGRAM.**

The bill would require the department to complete a C4K application within 30 days after receipt of such application. Our existing goal is to process all "properly completed applications" applications within 30 days. However, our data shows that this timeframe is very difficult to meet and is dependent on the client and the child care provider submitting the proper information. Often it can take up to 3 submissions to collect the proper information to complete an application. During our efforts to obtain the correct required information, we hold the original date of application as the start date, in the event that the client is determined eligible.

Because there is no statutory timeframe, we are able to keep the application in pending status. Should this provision be enacted, if the required information is not received from the applicant or provider within the 30-day timeframe, the department would deny the application for failure to comply. Therefore, applicants would be required to reapply and start the process all over. In this scenario if the applicant is denied, the provider may be out payments if they provided services while the initial application was pending.

**H.B. No. 5296 (RAISED) AN ACT CONCERNING THE DEFINITION OF MEDICAL NECESSITY.**

The bill before you is based on earlier draft language proposed by the Medical Inefficiency Committee established under PA 09-5. Although the Department does not support the bill as drafted, we have been working with the Medical Inefficiency Committee on amendments to the bill that would enable the Department to reduce medical inefficiency consistent with legislative intent. We would like to work with members of the committee to amend the language to the most current recommendation from the Medical Inefficiency Committee. The Department supports ongoing monitoring of the impact of a new definition with respect to its impact on inefficiency and quality of care.

**H.B. No. 5398 (RAISED) AN ACT CONCERNING A PILOT PROGRAM TO TRANSFER HOSPITAL PATIENTS WHO RECEIVE MEDICAID BENEFITS TO NURSING HOMES IN A TIMELY MANNER.**

This bill would create a pilot program to decrease the period of time that Medicaid recipients who require long-term care remain hospitalized before transfer to a long-term care facility. All Medicaid applicants who are seeking admission to a long-term care facility must be screened for the potential existence of mental illness or mental retardation, known as Pre-Admission Screening/Resident Review (PASRR), prior to being placed in a nursing facility. If there is evidence of mental illness or mental