

PA 11-176

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**JOINT
STANDING
COMMITTEE
HEARINGS**

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REP. TALLARITA: But overall in general, I mean winter to winter, I mean this year being, you know, unprecedented in the amount of snow that we did get. It's really -- is has not been an issue for -- for people in your area. I mean basically people tend to pitch in, help out, I mean I know that you guys are pretty good about being able to remove the snow and that the town is great at helping whenever they can.

I know that we have a great partnership, excuse me, between the town and the housing authorities. So, again I thank you very much for -- for coming forward and talking with us and hopefully we'll -- we'll be very cautious in where we go with this legislation.

Thanks, Scott.

SCOTT BERTRAND: Thank you.

REP. SERRA: Any other questions?

Thank you.

SCOTT BERTRAND: Thank you for this opportunity.

REP. SERRA: Next up is Kevin Brophy followed by Kevin Nelson.

Good morning.

KEVIN BROPHY: Good morning. I am the Director of Elder Law for Connecticut Legal Services. We're a non-profit legal aid agency. And I'm here representing the positions of the -- of the legal aid programs in Connecticut. And my testimony, obviously is submitted on behalf of the low income clients that we represent to legal aid agencies.

Specifically I'm here to support the concept

SB973

raised in Senate Bill 973, AN ACT CONCERNING THE DETERMINATIONS OF UNDUE HARDSHIP FOR PURPOSES OF MEDICAID ELIGIBILITY. But we are going to be offering substitute language that more closely reflects the product of lengthy negotiations between the interested parties. It is crucial that the concepts raised in Senate Bill 973 are passed this session.

The Deficit Reduction Act was passed in 2005 and under that Deficit Reduction Act, the federal government required all states to have an undue hardship provision. And what an undue hardship provision is -- is for folks, frail folks, that need long term care services, whether in a nursing home or home care services that if the State Medicaid Agency, the Department of Social Services imposes a penalty that there be allowed an exception to that penalty so that Medicaid -- there could be Medicaid coverage if the person's life or health would be in danger.

What had happened was the Department of Social Services did promulgate regulations that they submitted in 2009, June 2009, to the Legislative Review Committee. And the Legislative Review Committee rejected those regulations. And the reason they rejected them is because they didn't feel that they had complied with the Deficit Reduction Act.

And specifically the Legislative Commissioners Office had problems with the Undue Hardship Provision that was promulgated by the Department of Social Services. So what happened was the Co-chairs of the regulations review committee got all the important stakeholders together in the summer of 2009, after they had rejected the regulations. And that included the legal services community. The other lost section of the bar association,

the Connecticut Association of not-for-profit providers to the aging, the Alzheimer's Association, and the Department of Social Services.

And essentially asked those stakeholders in the department to sit down and see if they could work out their differences. So, that began a process that went on for about six or seven months. And out of -- and at the end of that we reached -- there were 11 provisions that were in disagreement. And we reached an agreement on seven of them. And one of the provisions we reached an agreement on was on the undue hardship.

So, the substitute language that we are submitting today better reflects the undue hardship agreement that was reached by all the stakeholders including the Department of Social Services. We have been communicating also, just for your information, with the Legislative Commissioners Office regarding this substitute language. And we'll continue to confer with them to reach a final version.

We believe this effort will result in a proposal that mirrors the outcome of the months in negotiations between the parties that was mentioned above. And again, the -- this language, the substitute language we propose took months of negotiations between the department and all the important stakeholders around this undue hardship provision which is a better protection for frail folks who need long term care services.

And in addition to that provides better protection for people with dementia and cognitive impairment. Thank you.

REP. SERRA: Any questions?

Senator Prague.

SENATOR PRAGUE: Thank you very much Kevin for coming in and testifying.

KEVIN BROPHY: You're welcome.

SENATOR PRAGUE: The other day when we talked in the course of discussion, you said something about the Department of Social Services not being willing to accept -- if the person receives the transfer for instance, came back and said I have half of the -- I used half of my college tuition, but I have half left. I will give it back. That the Department won't accept any part -- any partial payment of the assets that were transferred.

Are you dealing with that issue in your language?

KEVIN BROPHY: No. As I had mentioned before, there were 11 provisions that major stakeholders in the department disagreed upon. Of those 11, seven of them we reached an agreement on. As far as language and one of those provisions is the undue hardship. Which is what our bill focuses on.

Again we support the concept of 973, but we think the substitute language that legal services is offering better reflects the agreement between all the parties. In regard to your question about the partial return, that was one of the regulations that there was not an agreement on. And so it -- our bill does not deal specifically with that.

SENATOR PRAGUE: Okay. Okay. Thank you. And thank you for the language. I'm sure that Amy will be consulting with you.

KEVIN BROPHY: Absolutely. And we're going to be soliciting her input, the legislative Commissioner's Office input. Again, this is a very -- I know this is -- it's complicated, this particular issue. But it's critically important for seniors and individuals with disabilities that need long term care services.

The current undue hardship proposal is unacceptable and really doesn't -- in our -- and doesn't reflect the spirit of the deficit reduction act. This compromised language does.

SENATOR PRAGUE: Thank you.

KEVIN BROPHY: You're welcome.

REP. SERRA: Any other questions?

Next up is Kevin Nelson.

KEVIN NELSON: Good morning members of the committee.

REP. SERRA: Good morning sir.

KEVIN NELSON: My name is Kevin Nelson. I'm the Executive Director of the Stratford Housing Authority in Stratford Connecticut. I'm not going to keep your time any more than I have to. I just want to echo my opposition to Senate Bill 139. I do support everything that my colleague, Scott, said about it and the first speaker.

I have 300 elderly tenants who didn't have a problem with snow removal. They tend to take these things as personal property. And they get it done on their own. If there is an emergency we would certainly facilitate and help out. And that being said, in regard to

Because why wouldn't that go to you first, and then you come to us, and then we go to the Board and they go to the tenant. And then we play the same game going back the other way. Where there is a grievance procedure in the housing authority that says you can go to management. If you don't agree with what they tell you, you go to the Executive Director. If you don't agree with them, you can go to the Board. And if you don't agree with them you can go anywhere you wish.

But you would negate that policy by saying you can go directly to the Senator, the Representative anywhere you want and you just cut our legs out as far as a grievance procedure.

REP. SERRA: Any questions from the Committee?

Thank you.

HARRY WISE: You're welcome.

REP. SERRA: Next up is Marie Allen followed by Mag Morelli.

MARIE ALLEN: Good morning Representative Serra members of the Committee. My name is Marie Allen. I'm here representing the Southwestern Connecticut Agency on Aging and our partner Area Agency on Aging. In the interest of time I am just going to ask that my support for Senate Bill 973 be noted. I agree with Kevin Brophy's earlier testimony. And completely support the fact that we do need an undue hardship provision as part of the eligibility process.

I'm also here in support of Senate Bill 620. 620 really does take a -- puts some pressure on

Bill 620 in a way forces the Department's hand to really come back to the table, bring all the key stakeholders to the table and push through a process that really benefits the citizens of Connecticut.

SENATOR PRAGUE: Thank you.

MARIE ALLEN: You're welcome.

REP. SERRA: Thank you.

Any others?

Thank you.

Next up is Mag Morelli followed by Joan Bowley.

Good morning.

MAG MORELLI: Good morning, Representative Serra, Senator Prague, members of the Committee. My name is Mag Morelli and I'm the President of the Connecticut Association of Not-for-Profit Providers for the Aging, or CANPFA. On behalf.. of CANPFA I'd like to submit testimony in support for the bills that are before you today.

As you know CANPFA represents a not-for-profit providers of aging including non-profit nursing homes and affordable senior housing sites. So on the first bill, Senate Bill 2, AN ACT CONCERNING AIR CONDITIONING IN NURSING HOMES, the Department of Public Health recently conducted a survey of the state's nursing homes and found out that all Connecticut nursing homes have some level of air conditioning in their facilities.

These findings are very positive especially when you consider the age of most of our

SB139 SB1620
SB913 _____

individuals private personal vehicles. We understand the records of snow fall this winter has raised concern for all -- for all seniors, not just those in the housing authorities.

But there needs to be a standard of reasonableness in our response to these concerns. And housing providers work every day with their residents on issues such as snow removal. In the extreme events that cause concern, we should address those events as they happen and look to reasonable solutions to address them. But enacting this major unfunded mandate on the affordable senior housing providers and their tenants is not something that we can support at this time.

On Senate Bill 620, and I apologize, I -- I miss wrote the number in my testimony, AN ACT CONCERNING A PLAN TO ENCOURAGE AGING IN PLACE. We do support this bill and we did hear the Commission on Aging's testimony. But we saw this -- when we read it we actually saw it as a little bit different study.

And looking at how our communities can support aging in place before people are actually accessing long term care services, things like transportation, real estate, property tax, issues for aging adults in the community who are not yet accessing health care services. So we think that that would be a wonderful complement to all of our long term care planning and -- and we support that.

And then finally on Senate Bill 973, I don't want to repeat the previous testimony because we were part of that coalition that worked on this compromised language and we support the Connecticut Legal Services substitute language. A lot of time and effort was put into looking into working on a hardship proposal that

everyone could agree on. And -- and we strongly support that. And we support their substitute language. We'd be willing to work with the Committee as you move along on working on this bill.

Separate from that coalition, I do want to speak for the members of the CANPFA who are the nursing home members. And we have included additional suggested language that would allow a nursing home itself to apply for an undue hardship when the resident is not applying for it. And that would be under certain circumstances if there's an extended period of time when they're caring for a resident that has no payer source because they're in a penalty period due to a transfer of assets.

But as I said, I'm speaking from CANPFA alone on that piece of my testimony. Thank you.

REP. SERRA: Senator Prague.

SENATOR PRAGUE: Thank you, Mag, for coming in and testifying. The issue of cost for air conditioning of the nursing homes -- would you just for my own information explain to me how you are reimbursed by the Department of Social Services for capitol costs? Because this would be a capitol cost.

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MAG MORELLI: Sure.

In the statute, on any improvement to your -- to your -- in capitol cost -- any improvement to your building, new roof, new furnace, air conditioning used to be in statute reimbursed to you proportionate to your Medicaid case load. So, if you're 80% Medicaid, 80% of those costs would be reimbursed to you in your rate over the lifetime of the capitol improvement.

REP. SERRA: Well, we thank you for your compassion in all that. And hopefully this Legislature will become more compassionate. And make the changes that we need to make. And thank you.

ROBIN HOSSAIN: Thank you very much.

REP. SERRA: Let's see. Sharon Pope. I guess we saved the -- absolutely. Good afternoon.

SHARON POPE: Good afternoon. Attorney Sharon Pope. I am the Chairwoman of the Elder Law Section of the Connecticut Bar Association. I'm here to support Senate Bill 973. Senator Prague has stepped out of the room but she's aware of the bill as we've spoken with her about it as well. Representative Serra and Committee members, thank you for hearing us today.

Earlier today, you did hear, I believe, Attorney Kevin Brophy from legal services speak on the bill. Which has to do with determining hardship exception, an undue hardship exception under the deficit reduction act. And the bill is to submit into statute what did not get approved -- yes, as a regulation.

You're probably aware from the written materials and what I'm going to say today that this particular bill is a slice of some negotiations that were brought about through federal law requiring in 2005 -- requiring under the Deficit Reduction Act which made tremendous changes to Medicaid. That -- that every state adopt an undue hardship exception if there were transfers made. And that the transfers made disqualified that -- that senior from getting services.

And so there was a work on the part of the Department of Social Services, they submitted

regulations in 2007, temporary regulations. There was some debate and discussion about those. In fact, they -- they went then to the Legislators Regulations Review Committee. There were about 11 points of regulations that were still in debate and discussion.

All but four of the seven had been resolved -- all four but eleven had been resolved through negotiations actually, through the urging of the Regulations Review Committee. The Department of Social Services, Legal Services, other organizations involved or advocates, Alzheimer's Association, the Connecticut Association for Non-Profits, Legal Services as I mentioned in Connecticut, National Academy of Elder Law Attorneys and the Bar.

In other words, there was a group of advocates who met with DSS to work out the language that would be appropriate for undue hardship. At this point however, a number of other issues have come up and DSS has refused to submit the one that we all agreed on, which was the undue hardship language. Until all of the regulations could be approved.

Legal Services felt, and we still we supported it along with the other advocates I mentioned, support it coming in a statutory form. We cannot wait any longer for undue hardship exceptions. And so that's why the Legal Services Bill was brought forward as a statute. There's a substitute bill which we support and that has been submitted.

And so we're here to support Legal Services Substitute Bill and the work that's been done on it. And we hope that the Committee will agree with us and move this along. So I am open for questions. You may have had them already for Kevin Brophy and they've been

answered. I'm here too.

REP. SERRA: Any questions from the Committee?

Thank you.

SHARON POPE: Thank you very much.

REP. SERRA: Last up and I guess save the best for last, Matt Barrett.

Good afternoon.

MATTHEW BARRETT: Good afternoon, Representative Serra. By the way it doesn't get any better than that for me. And 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. And I'm pleased to be here this afternoon to testify on two bills on the Committee's agenda.

First is Senate Bill Number 2, AN ACT CONCERNING AIR CONDITIONING IN NURSING HOMES. Our association of 115 members, is pleased to support Senate Bill Number 2. Nursing homes residents and their families should have the benefit of a state wide policy, an acceptable temperatures in nursing homes. There should be a common expectation for all nursing homes across the state in this regard.

Several months ago the Connecticut Department of Public Health reported the results of a survey concerning the incidents of air conditioning in Connecticut nursing homes. In summary DPH found that all Connecticut Nursing Homes have some measure of central air conditioning and many nursing homes have central air conditioning either throughout the home or at least in common areas such as dining



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DEPARTMENT OF SOCIAL SERVICES

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AGING COMMITTEE

Public Hearing

February 24, 2011

Good morning Senator Prague, Representative Serra and honorable members of the Aging Committee. My name is Nancy Shaffer. I am the State Long Term Care Ombudsman. I appreciate this opportunity to provide written testimony on some of the many important issues before you today. As you know the Long Term Care Ombudsman Program is mandated by the Older American's Act and by Connecticut General Statute 17b-400 to protect the health, safety, welfare and rights of residents of long term care facilities. I represent the approximate 35,000 residents living in Connecticut's skilled nursing facilities, residential care homes and assisted living facilities.

S.B. No. 2 (COMM) AN ACT CONCERNING AIR CONDITIONING IN NURSING HOMES. (AGE)

On behalf of Connecticut's skilled nursing residents, I appreciate the Aging Committee raising this bill and boldly addressing the issues of health, safety and specifically in this bill the temperature and comfort levels in nursing homes. During our state's most recent heat wave in July, 2010, the Ombudsman Program received complaints from both residents and families regarding excessively high indoor temperatures in their nursing homes. One specific call stands out in my mind. The caller asked to remain anonymous and stated that he/she was a resident of a skilled nursing facility and that "the heat is killing us, please help us." The individual pleaded for someone to come and help all of the residents. The caller stated there were no fans, the air conditioner was not working and the ice machines were not working. When I entered the facility shortly after receiving the call I found conditions exactly as the caller described. To my amazement, management staff had already left for the day, leaving the home, its residents and staff to cope with a deplorable situation. Subsequent discussion with management staff revealed they learned the week before that the air conditioning system was in need of repair and had made arrangements for replacement parts and repairs. However, the parts I was told, were coming from Canada and would not be available for weeks. I immediately contacted the Department of Public Health for their assessment of the situation. I am glad to say that due to that anonymous caller and the Ombudsman Program's immediate intervention, the facility secured rental air conditioners the next day and the comfort and safety of the residents was secured.

Connecticut law does not currently require air conditioning of nursing homes. The Public Health Code (Residential Care Home section) states that "a safe, sanitary, and comfortable environment is a basic requirement for residents in the facility." In 2003, the General Assembly passed legislation requiring the Department of Public Health to "adopt

SB973
 SB620

S.B. No. 973 (RAISED) AN ACT CONCERNING THE DETERMINATION OF
UNDUE HARDSHIP FOR PURPOSES OF MEDICAID ELIGIBILITY.

The Long Term Care Ombudsman Program advocates on behalf of residents and their families at all steps along the continuum of their experience with long term care, including the process of Medicaid eligibility determination. This proposed legislation provides the consumer with protections regarding the Department of Social Services determination of undue hardship for purposes of Medicaid eligibility. The language provides for a notice to the consumer if the Department of Social Services intends to impose a penalty period as the result of a transfer or assignment of assets. The notice outlined in the legislation also provides for a period of time in which the applicant or recipient may make a rebuttal or a claim of undue hardship. The legislation gives discretion to the Commissioner of Social Services that he/she may waive the imposition of a penalty period if such imposition would create an undue hardship. The proposed legislation is good for the consumer and the Long Term Care Ombudsman Program supports its passage.

S.B. No. 620 (COMM) AN ACT CONCERNING A PLAN TO ENCOURAGE
"AGING IN PLACE".

As both a professional in the field of aging and personally, as one of those infamous Baby Boomers, I am grateful to learn this Committee is promoting healthy, creative and viable opportunities for Connecticut citizens to age in place. We know intuitively, but also from research such as the Long Term Care Needs Assessment, that the vast majority of individuals wish to remain in their own homes as they age and they want to live as independently as possible. Connecticut is currently in the national forefront for its commitment to the Money Follows the Person Program, a program which enables residents of nursing homes who receive Medicaid for that care, to return to community living. If we promote an environment in Connecticut that emphasizes and supports aging in place, many individuals will be able to forego admission to a nursing home altogether.

Developing infrastructure and transportation improvements will be good for the Connecticut economy while at the same time promoting the concept of aging in place. There is a program in neighboring Massachusetts called Beacon Hill Village. To learn more about the concept you can go to beaconhillvillage.org. The philosophy of Beacon Hill Village is to "build a community for people to live vibrantly as they grow older in their own homes". What a great concept! Neighbors helping neighbors is a wonderful, old fashioned idea and not terribly high-tech! For a fee, currently \$640 per year for an individual and \$890 per year for a household (per the website information), members are provided grocery shopping, some transportation, and referrals on an as needed basis and walking and exercise groups as well as social groups as desired. Everyone who pays their annual membership does not require services so the success of the concept is built on wellness.

I commend the Aging Committee for taking this positive approach to promoting a Connecticut environment that embraces aging in place.

canpfa

The Connecticut Association of Not-for-profit Providers For the Aging

Testimony to the Aging Committee

Presented by Mag Morelli, President

February 24, 2011

Regarding

- **Senate Bill 2, An Act Concerning Air Conditioning in Nursing Homes**
- **Senate Bill 139, An Act Concerning Persons Residing in Elderly Housing and Members of Senior Centers**
- **Senate Bill 366, An Act Concerning a Plan to Encourage Aging in Place** SB420
- **Senate Bill 973, An Act Concerning the Determination of Undue Hardship for Purposes of Medicaid Eligibility**

Good morning Senator Prague, Representative Serra, and members of the Committee. My name is Mag Morelli and I am the president of the Connecticut Association of Not-for-profit Providers for the Aging (CANPFA). On behalf of CANPFA, I would like to submit testimony on four of the bills that are before you today.

CANPFA is a membership organization representing over 130 mission-driven and not-for-profit provider organizations serving elderly and disabled individuals across the continuum of care including nursing homes, residential care homes, housing for the elderly, continuing care retirement communities, adult day centers, home care and assisted living agencies. CANPFA members are sponsored by religious, fraternal, community, and governmental organizations that are committed to providing quality care and services to their residents and clients. Our member organizations, many of which have served their communities for generations, are dedicated to providing the services that people need, when they need them, in the place they call home.

Senate Bill 2, An Act Concerning Air Conditioning in Nursing Homes

The Department of Public Health recently conducted a survey of the state's nursing homes and found that all Connecticut nursing homes have some level of air conditioning in their facilities. These findings are very positive, especially when you consider the age of most of our nursing homes. The bill before you today proposes installing an air conditioning system in all resident rooms. Reviewing the Department's survey results, it appears that this proposal would have a significant fiscal impact on at least seventy-four nursing homes.

Unfortunately we cannot support this bill unless it includes financial assistance for the nursing homes that will need to install the enhanced air conditioning systems.

Finally, regarding the garden mandate proposal, we would suggest that language be added to recognize that policies regarding the gardens can be established by the housing site and that the residents' have a responsibility to maintain their gardens in an attractive, safe and healthy manner.

Senate Bill 366, An Act Concerning a Plan to Encourage Aging in Place

CANPFA promotes a vision in which every community offers an integrated and coordinated continuum of high quality and affordable long term health care, housing and community based services – including services and supports beyond the health care continuum. So we support the concept of this task force which will broaden our understanding of the needs of our older population as they strive to maintain their independence and “age in place.” Hopefully a better understanding will help us to meet those needs within our communities. SB 366 20

Senate Bill 973, An Act Concerning the Determination of Undue Hardship for Purposes of Medicaid Eligibility

CANPFA has long supported an undue hardship exception for Medicaid applicants and/or recipients subject to penalties for transfer of assets. In 2009, the Department of Social Services (“Department”) proposed regulations to implement new federal Medicaid eligibility rules including the new five year look back and changes to the enforcement of eligibility penalty periods. Part of those proposed regulations included revising sections of the Department’s Uniform Policy Manual that addressed undue hardship for Medicaid applicants and recipients subject to transfer of assets penalties. CANPFA and several other parties objected to the Department’s proposed regulations before the Legislative Regulatory Review Committee. As a result, all parties involved, including the Department, convened to discuss the potential for compromise language.

In late 2009 and early 2010, CANPFA worked closely with this group, consisting of the Department, the CBA’s Elder Law Section, Connecticut Legal Services and other elder law advocates, to develop undue hardship language that would address the concerns raised by various parties. Through lengthy negotiations, the parties developed compromise language setting forth the undue hardship waiver process, consistent with federal law. We concluded these negotiations in March 2010, and our expectation was that the Department would move forward to complete the regulation process.

For various reasons unrelated to the undue hardship language, the Department has not moved forward to implement the agreed undue hardship revisions, and therefore, as we understand it, Connecticut Legal Services has drafted proposed legislation to implement the compromise language developed with the Department. The Connecticut Legal Services’ draft proposal is generally consistent with, but more comprehensive than, the provisions proposed in Senate Bill 973, the bill before you today.

The Connecticut Legal Services’ draft proposal (and the compromise language that it mirrors) is preferable to CANPFA because it includes provisions pertaining to nursing home residents who apply for undue hardship. Their proposal would allow a nursing home resident to give permission to a long-term care facility to file a claim for undue hardship on the individual’s behalf. In addition, if the nursing home resident is incapacitated and has no legally authorized representative, family member or friend to

act on his or her behalf, the compromise language would permit the long-term care facility to request, on the nursing home resident's behalf, an extension of time to file a claim for undue hardship so that someone can be appointed to represent the resident's interests. Finally, the proposal would permit a long-term care facility, with the consent of a nursing home resident or his/her legally appointed or authorized representative, to present information on the resident's behalf and represent the resident throughout the undue hardship claim process.

CANPFA therefore supports creation of an undue hardship claims process in statute and urges the Committee to substitute the compromise language set forth in the Connecticut Legal Services proposal.

There is one additional legislative revision that CANPFA urges the Committee to make. In some cases, a nursing home resident will not qualify for undue hardship relief. Typically, the resident has no source of payment, however, and the nursing home has no choice but to continue providing services to the resident without payment. CANPFA proposes that the Committee add the following language in any revision to the statutes providing for undue hardship relief for nursing homes under these circumstances.

The Commissioner of Social Services, upon the request of a nursing facility, may grant financial relief to the nursing facility if the nursing facility establishes that (1) it is experiencing severe financial hardship due to imposition of a transfer of assets penalty on a resident who did not apply or qualify for undue hardship relief; (2) it has made every effort permissible under state and federal law to recover funds that are due to it for caring for the individual; and (3) the individual who is the subject to the penalty period has resided in the nursing facility for at least ninety days with no payment having been made on the resident's account during that time period.

This proposed amendment is based on language previously set forth Conn. Gen. Stat. § 17b-261a(d) as a result of Public Act 03-3 when the State of Connecticut filed a State Plan Amendment with the Centers for Medicare and Medicaid Services to impose stricter transfer of asset penalties. The General Assembly deleted this language one year later through Public Act 04-16, since the State did not pursue the State Plan Amendment. However, Congress imposed the current tougher transfer of asset penalties in 2006 as a matter of federal law. If the proposed language is reinstated, the Department will have the ability to pursue claims against those who illegally transferred assets under Conn. Gen. Stat. § 17b-261a(b).

Thank you for this opportunity to provide this testimony and I would be happy to answer any questions.

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Written Testimony before the Aging Committee

February 24, 2011

SB 620 AN ACT CONCERNING A PLAN TO ENCOURAGE "AGING IN PLACE"

SB 620 proposes to establish a task force that appears would duplicate the mission of the current Long-Term Care Planning Committee (LTCP), established in 1998 by the legislature. The LTCP Committee is composed of executive agency representatives and chairmen and ranking members of several legislative committees. The legislature further put in place the Long Term Care Advisory Council to advise the Planning Committee, composed of a mix of two independent state agencies (the Commission on Aging and the Long-Term Care Ombudsman's Office) and various long-term care industry, labor, and elderly interest groups. Over the years, both entities have added members, so that now the Planning Committee has 23 members and the Advisory Council 27.

The Planning Committee's original charge was to create a long-term care plan for the elderly and study various elderly-related issues, which was later expanded to include all disabled people. The Committee has produced a number of plans as required, to address at least three of the components of the long-term care system: home and community-based services, supportive housing, and nursing facilities and oversaw the development of an extensive and comprehensive study of these issues. Therefore, if additional specific issues need to be addressed, they should come under the cognizance of the Long-Term Care Planning Committee.

Further, the time constraints in the proposed legislation are unreasonable given the massive efforts required in research and preparation not only by the administrative staff assigned, but also of the staffs of the departments under whose cognizance the specific areas of inquiry fall.

SB 973 AN ACT CONCERNING THE DETERMINATION OF UNDUE HARDSHIP FOR PURPOSES OF MEDICAID ELIGIBILITY

The department opposes SB 973 as written because it does not reflect language that was agreed upon by the department and attorneys representing elderly clients and nursing homes.

While the language in subsection (c) of this bill largely mirrors the language in federal law, without further interpretive language, this bill leaves the state open to funding

HB 6348

nursing home costs for individuals who deliberately impoverish themselves to avoid paying for their long-term care costs.

The Centers for Medicare & Medicaid Services (CMS), the federal oversight agency for Medicaid, allows the states flexibility in their interpretations of the federal law. Accordingly, it is imperative that the state be able to enforce the federal transfer of asset penalties for transfers of assets that are made for the purpose of qualifying for Medicaid. The bill as written does not contain any limits on the ability of applicants to utilize the exception therefore transfer of asset penalties are rendered meaningless. Nursing facility costs accrued by wealthy people who have given away all of their money to their children will consequently be improperly shifted to the state. Given the condition of the state's fiscal climate we cannot support shifting costs to the state's general fund.

The attached substitute language we are proposing reflects an agreement reached between DSS staff and attorneys representing elderly clients and nursing homes. This language is the result of several months of discussion aimed at balancing two competing interests: the needs of elderly individuals who may legitimately qualify for the exception and the state's need to ensure that transfer of asset penalties can be applied when appropriate. We urge you to accept this substitute language in place of the language in this bill.

You will note that, in our attached proposed substitute language, there are provisions that are very important to the financial health of nursing facilities. Currently, nursing facilities are unable to file undue hardship requests on behalf of incapacitated residents because they are unable to consent. When residents are subject to a penalty period and the residents don't have any funds, the nursing facilities don't get paid. Language in the alternative bill requires DSS, upon the request of a nursing facility, to grant an extension of time to request an undue hardship waiver to allow a representative to be authorized or legally appointed to act on behalf of the individual. The Department's substitute language also assists elderly individuals who need additional time to file their claims for undue hardship under certain circumstances.

We urge you to accept our proposed substitute language and welcome the opportunity to discuss the proposal further with members of the committee.

HB 6348 AN ACT CONCERNING GRANDPARENTS' RIGHTS

This bill would increase the payment standard for child only assistance units in the Temporary Family Assistance (TFA) program to the foster care rate paid by the Department of Children and Families.

The department had previously estimated that the cost would be approximately \$33 million. Therefore we must oppose the bill due to the significant costs associated with providing such a benefit increase.



Written Testimony before the Aging Committee

February 24, 2011

SB 620 AN ACT CONCERNING A PLAN TO ENCOURAGE "AGING IN PLACE"

SB 620 proposes to establish a task force that appears would duplicate the mission of the current Long-Term Care Planning Committee (LTCP), established in 1998 by the legislature. The LTCP Committee is composed of executive agency representatives and chairmen and ranking members of several legislative committees. The legislature further put in place the Long Term Care Advisory Council to advise the Planning Committee, composed of a mix of two independent state agencies (the Commission on Aging and the Long-Term Care Ombudsman's Office) and various long-term care industry, labor, and elderly interest groups. Over the years, both entities have added members, so that now the Planning Committee has 23 members and the Advisory Council 27.

The Planning Committee's original charge was to create a long-term care plan for the elderly and study various elderly-related issues, which was later expanded to include all disabled people. The Committee has produced a number of plans as required, to address at least three of the components of the long-term care system: home and community-based services, supportive housing, and nursing facilities and oversaw the development of an extensive and comprehensive study of these issues. Therefore, if additional specific issues need to be addressed, they should come under the cognizance of the Long-Term Care Planning Committee.

Further, the time constraints in the proposed legislation are unreasonable given the massive efforts required in research and preparation not only by the administrative staff assigned, but also of the staffs of the departments under whose cognizance the specific areas of inquiry fall.

SB 973 AN ACT CONCERNING THE DETERMINATION OF UNDUE HARDSHIP FOR PURPOSES OF MEDICAID ELIGIBILITY

The department opposes SB 973 as written because it does not reflect language that was agreed upon by the department and attorneys representing elderly clients and nursing homes.

While the language in subsection (c) of this bill largely mirrors the language in federal law, without further interpretive language, this bill leaves the state open to funding

HB6348

nursing home costs for individuals who deliberately impoverish themselves to avoid paying for their long-term care costs.

The Centers for Medicare & Medicaid Services (CMS), the federal oversight agency for Medicaid, allows the states flexibility in their interpretations of the federal law. Accordingly, it is imperative that the state be able to enforce the federal transfer of asset penalties for transfers of assets that are made for the purpose of qualifying for Medicaid. The bill as written does not contain any limits on the ability of applicants to utilize the exception therefore transfer of asset penalties are rendered meaningless. Nursing facility costs accrued by wealthy people who have given away all of their money to their children will consequently be improperly shifted to the state. Given the condition of the state's fiscal climate we cannot support shifting costs to the state's general fund.

The attached substitute language we are proposing reflects an agreement reached between DSS staff and attorneys representing elderly clients and nursing homes. This language is the result of several months of discussion aimed at balancing two competing interests: the needs of elderly individuals who may legitimately qualify for the exception and the state's need to ensure that transfer of asset penalties can be applied when appropriate. We urge you to accept this substitute language in place of the language in this bill.

You will note that, in our attached proposed substitute language, there are provisions that are very important to the financial health of nursing facilities. Currently, nursing facilities are unable to file undue hardship requests on behalf of incapacitated residents because they are unable to consent. When residents are subject to a penalty period and the residents don't have any funds, the nursing facilities don't get paid. Language in the alternative bill requires DSS, upon the request of a nursing facility, to grant an extension of time to request an undue hardship waiver to allow a representative to be authorized or legally appointed to act on behalf of the individual. The Department's substitute language also assists elderly individuals who need additional time to file their claims for undue hardship under certain circumstances.

We urge you to accept our proposed substitute language and welcome the opportunity to discuss the proposal further with members of the committee.

HB 6348 AN ACT CONCERNING GRANDPARENTS' RIGHTS

This bill would increase the payment standard for child only assistance units in the Temporary Family Assistance (TFA) program to the foster care rate paid by the Department of Children and Families.

The department had previously estimated that the cost would be approximately \$33 million. Therefore we must oppose the bill due to the significant costs associated with providing such a benefit increase.

DSS Proposed Substitute Language:**SB 973 AN ACT CONCERNING THE DETERMINATION OF UNDUE HARDSHIP FOR PURPOSES OF MEDICAID ELIGIBILITY.**

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

Section 1. Section 17b-261a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2011*):

(a) Any transfer or assignment of assets resulting in the imposition of a penalty period shall be presumed to be made with the intent, on the part of the transferor or the transferee, to enable the transferor to obtain or maintain eligibility for medical assistance. This presumption may be rebutted only by clear and convincing evidence that the transferor's eligibility or potential eligibility for medical assistance was not a basis for the transfer or assignment.

(b) Any transfer or assignment of assets resulting in the establishment or imposition of a penalty period shall create a debt, as defined in section 36a-645, that shall be due and owing by the transferor or transferee to the Department of Social Services in an amount equal to the amount of the medical assistance provided to or on behalf of the transferor on or after the date of the transfer of assets, but said amount shall not exceed the fair market value of the assets at the time of transfer. The Commissioner of Social Services, the Commissioner of Administrative Services and the Attorney General shall have the power or authority to seek administrative, legal or equitable relief as provided by other statutes or by common law.

[(c) The Commissioner of Social Services may waive the imposition of a penalty period when the transferor (1) in accordance with the provisions of section 3025.25 of the department's Uniform Policy Manual, suffers from dementia at the time of application for medical assistance and cannot explain transfers that would otherwise result in the imposition of a penalty period; or (2) suffered from dementia at the time of the transfer; or (3) was exploited into making such a transfer due to dementia. Waiver of the imposition of a penalty period does not prohibit the establishment of a debt in accordance with subsection (b) of this section.]

(c) (1) The Department shall notify individuals applying for long-term care services about the possibility of obtaining an undue hardship exception. This notification shall be part of the preliminary decision notice that the Department sends to the individual when it determines that he or she has made an improper transfer of assets resulting in a penalty period.

(2) The individual has 15 days from the date of the notice described in subdivision (1) of this subsection to claim undue hardship or to otherwise rebut the Department's decision to impose a penalty period. The Department shall grant an extension if the individual so requests, and shall grant subsequent requests if such requests are reasonable.

(3) If the individual or the individual's authorized representative claims undue hardship or rebuts the Department's preliminary decision to impose a penalty period, the Department has ten days from the receipt of such claim or rebuttal to send an interim decision notice to the individual stating that it is either upholding or reversing its preliminary decision. This notice shall inform the individual that the Department is either reversing its preliminary decision and is not imposing a penalty period with respect to long-term care services or upholding its preliminary decision and a penalty period is being established during which Medicaid will not pay for long-term care services.

(4) If the individual does not claim undue hardship or rebut the Department's preliminary decision to impose a penalty period, the Department sends the individual a final decision notice regarding the penalty period and the undue hardship determination at the time of the disposition of the Medicaid application. This notice contains all the elements of the preliminary notice, and a description of the individual's appeal rights. An individual who requests an administrative hearing as part of the appeals rights following a final decision regarding a penalty period may present a claim for undue hardship as part of such request, and such claim for undue hardship shall be accepted for review by the hearing officer.

(5) In addition to the procedures for claiming undue hardship set forth in this subsection, and notwithstanding the time limitations contained therein, an individual may file a claim for undue hardship within 60 days after the individual receives a notice as described in paragraphs (A), (B) or (C) of subdivision (1), subsection (d) of this section, which may establish that the individual would be deprived of medical care such that his or her health or life would be endangered or deprived of food, clothing, shelter or other necessities of life if the penalty were not waived.

(d) An individual, as described in subdivision (1) of this subsection, is not penalized based on a transfer of assets made by the individual or his or her spouse if denial or discontinuance of payment for services would create an undue hardship, which exists if the individual would be deprived of medical care, such that his or her health or life would be endangered; or food, clothing, shelter or other necessities of life. Waiver of the imposition of a penalty period does not prohibit the establishment of a debt in accordance with subsection (b) of this section.

(1) When an individual would be in danger of losing or being denied payment for long-term care facility or equivalent services, solely because of the imposition of a penalty period, the Department does not impose such penalty under the following conditions, which may establish that the individual would be deprived of medical care such that his or her health or life would be endangered or deprived of food, clothing, shelter or other necessities of life if the penalty were not waived:

(A) The long-term care facility or medical institution has notified the individual of its intent to initiate the individual's discharge due to non-payment; or

(B) The individual is receiving long-term care home and community-based services being provided under a Medicaid waiver and the medical provider has notified the individual of its intent to

terminate such home and community-based services due to the imposition of a penalty period resulting from a transfer of assets; or

(C) The individual needs long-term care services and, due to a transfer of assets resulting in the imposition of a penalty period, either (i) a long-term care facility has refused to accept the individual, or (ii) the home and community-based services provider has refused to accept the individual as a client; and

(D) There is no family member or other individual or organization able and willing to provide care to the institutionalized individual.

(2) Notwithstanding subdivision (1) of this subsection, undue hardship shall not be found when:

(A) the transferor deliberately impoverished himself or herself to avoid paying for long-term care costs;

(B) a transfer that resulted in a transfer-of-asset penalty was made by the individual's legal representative; or

(C) a transfer that resulted in a transfer-of-asset penalty was made by the record owner of a jointly-held asset

(3) Notwithstanding subdivision (2) of this subsection, undue hardship may be found if the transferor

(A) suffered from dementia or other cognitive impairment at the time of application for medical assistance and cannot explain transfers that would otherwise result in the imposition of a penalty period; or

(B) suffered from dementia or other cognitive impairment at the time of the transfers; or

(C) was exploited into making the transfers, due to the dementia or other cognitive impairment; or

(D) was exploited by the transferor's legal representative or by the record owner of a jointly-held asset who made unauthorized transfers.

(e) The individual or the individual's authorized representative may give permission for the long-term care facility in which he or she is residing to file a claim for undue hardship on behalf of the individual.

(1) If the long-term care facility certifies, and the Department agrees, that the individual is incapacitated and has no authorized or legally-appointed representative, family member or friend to act on his or her behalf, the long-term care facility may request, on behalf of the individual, an extension of time to file a claim for undue hardship. In such cases, the Department shall grant such extension to allow a representative to be authorized or legally appointed to act on behalf of the individual.

(2) In addition to filing an undue hardship claim on behalf of the individual, the long-term care facility may, with the consent of the individual or the

individual's legally-appointed or authorized representative, present information on behalf of the individual and represent the individual throughout the undue hardship claim process.

([d]f) The Commissioner of Social Services, pursuant to section 17b-10, shall implement the policies and procedures necessary to carry out the provisions of this section while in the process of adopting such policies and procedures in regulation form, provided notice of intent to adopt regulations is published in the Connecticut Law Journal not later than twenty days after implementation. Such policies and procedures shall be valid until the time final regulations are effective.



Testimony of AARP on

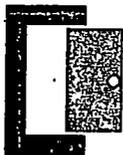
S.B. 973— AAC the Determination of Undue Hardship for Purposes of Medicaid Eligibility
February 24, 2011

AARP is a nonprofit, non-partisan organization with nearly 600,000 Connecticut members. AARP helps people 50+ have independence, choice and control in ways that are beneficial and affordable to them and society as a whole. On behalf of Connecticut members and adults 50+, we are pleased to offer the following written comments on S.B. 973.

S.B. 973 attempts to codify an undue hardship exception for people who might be denied needed Medicaid long-term care coverage because of transfer asset rules implemented under the federal Deficit Reduction Act of 2005. Since new rules took effect, AARP has been concerned that honest people would be hurt by punitive steps that hit the wrong target in trying to prevent asset transfer abuses. Specifically, asset transfer rules can operate to deny Americans Medicaid coverage for nursing home care if they have helped a family member with expenses or assisted their church or other charities within the last five years, even if they had no intention of doing this to qualify for Medicaid.

For example, if an individual helped out a grandchild with college tuition or gave a charitable gift to a local church or non-profit long before an unexpected health care crisis consumed their resources and required nursing home care, they could be denied Medicaid long-term care coverage. To mitigate the potential hardship to Medicaid beneficiaries, DRA 2005 mandated that every state must have an undue hardship exception. The initial DSS proposal for an undue hardship was narrow and did not comply with the spirit and intent of the Deficit Reduction Act requirement.

Our understanding is that key stakeholders from the legal and aging community have negotiated appropriate language creating an undue hardship exception. It is also our understanding that Connecticut Legal Services is requesting changes to S.B. 973 intended to further protect Connecticut residents, who inadvertently made a gift or transfer, but now unexpectedly need long-term care supports. AARP supports the process of further clarifying and strengthening the undue hardship provision with amendments suggested by Legal Services and consumer advocates. Ultimately, transfer asset rules should not limit innocent individuals from accessing long-term care supports simply because they tried to do the right thing in giving to a family member or charity before an unexpected health care crisis.


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TO: Members of the Committee on Aging
 FROM: Kevin Brophy, Director of Elder Law for CT Legal Services
 RE: **S.B. 973, An Act Concerning the Determination of Undue Hardship for Purposes of Medicaid Eligibility**
 DATE: February 24, 2011

I am the Director of Elder Law for Connecticut Legal Services, a non-profit legal aid agency and am here today representing the position of CT's Legal Services Programs. My testimony is submitted on behalf of CT's low income elderly & disabled clients, who need Medicaid to cover long term care services.

We support the concepts raised in SB 973, but are offering substitute language that more closely reflects the product of lengthy negotiations between the interested parties. It is crucial that the concepts raised in SB 973 are passed this session.

CT is required by federal law to have an undue hardship exception. This exception can apply when the state Medicaid agency imposes a penalty delaying eligibility for Medicaid long term care based on a transfer of assets deemed to be for the sole purpose of obtaining Medicaid eligibility. The adoption of an undue hardship exception provides protections for the elderly and disabled whose health or life is at risk without long term care. SB 973 also adds the existence of dementia or other cognitive impairment to the situations when waiving a penalty should be considered.

The Regulations and Review Committee rejected the Department of Social Services' (DSS) proposed regulations containing an undue hardship exception in June 2009. At that time, the Legislative Commissioner's Office stated that DSS's "undue hardship" proposal ... appears to be inconsistent with the undue hardship provisions of the federal DRA. In August of 2009, the chairs of the Regulations and Review Committee convened a meeting with representatives of DSS and other stakeholders, including Legal Services, the Elder Law Section of the CBA, the CT Association of Not for Profit Providers, and the Alzheimers's Association and requested that we meet to resolve our differences over the proposed regulations.

Attached is substitute language that better reflects the undue hardship agreement that was reached by all the stakeholders, including DSS. We have been communicating with LCO regarding this substitute language and will continue to confer with them to reach a final version. We believe that this effort will result in a proposal that mirrors the outcome of the months of negotiations between the parties mentioned above.

FACTS about **Medicaid Eligibility and the Undue Hardship Exception**

The federal Deficit Reduction Act (DRA) of 2005 required states to promulgate an undue hardship exception when determining Medicaid eligibility for long term care. This exception allows the state to not impose a penalty period for a disqualifying transfer of assets in certain situations.

Elders are currently subject to a "look back" period (as of February, 2011 it reaches 5 years) during which any gifts or transfer of assets can be considered made in order to become eligible for long term care coverage under Medicaid. The penalty imposed is ineligibility for Medicaid assistance for a certain period of time.

CT responded by implementing interim regulations that are so punitive that proving undue hardship is next to impossible and arguably in violation of the spirit of the law.

In June of 2009, the Regulations Review Committee rejected without prejudice, DSS' proposed regulations (the interim regulations already in use) to implement the DRA. At the request of the Committee chairs, DSS, Legal Services, the CBA Elder Law Section, NAELA and representatives from the nursing home associations, started negotiations on the package of regulations. Those negotiations were ongoing until March of 2010 when agreement on 7 out of the 11 proposed regulations in question was reached. **Among the regulations where agreement was reached was the undue hardship exception.**

However, DSS withdrew the package of proposed regulations on September 30, pending a decision on an unsettled question of law concerning the treatment of annuities. Despite the fact that the annuities question only has implications for one section of the regulations, all of the regulations were withdrawn including those that had been agreed to.

We are proposing that the language that was agreed to regarding the undue hardship exception become statutory in an effort to expedite the implementation of this crucial provision.

Adding to the urgency to adopt these changes are cases where an individual is unable to determine or defend the intent of a transfer due to dementia or

FACTS about Medicaid Eligibility and the Undue Hardship Exception

Alzheimer's. In that situation, verifying the circumstances surrounding a transfer that occurred five years ago can be next to impossible.

The revised language would:

- Add specific protections to those being deprived of medical care such that their **health** would be endangered. Without this language an exception is only given if deprivation of medical care actually threatens one's life.
- Allows for an exception when long term care is needed but services are being denied by a facility or community-based provider because of the imposition of a penalty.
- Adds the existence of "dementia" or other "cognitive impairment" at the time of the Medicaid application, or at the time of the transfer, or exploitation of someone with a cognitive impairment that resulted in a transfer, to the situations where a penalty can be waived.

Without this proposed language, that was painstakingly negotiated and agreed to by all parties involved, low income clients will continue to be denied essential long term care services.

Proposed Substitute Language for SB 973

AAC the Determination of Undue Hardship for Purposes of Medicaid Eligibility

An Act Concerning The Determination Of Undue Hardship For Purposes Of Medicaid Eligibility

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

(Effective from passage)(NEW) Conn. Gen. Stat. Section 17b-261 is amended by adding new subsections (j) to (q) as follows:

(j) The Department of Social Services shall waive the imposition of a penalty period arising as a result of an assignment or transfer of property or assets either pursuant to subsection (a) of this section or subsection (a) of 17b-261a if the imposition of a penalty would create an undue hardship pursuant to 42 USC Section 1396p(c)(2)(D).

(k) For purposes of this section, "undue hardship" exists if the individual would be deprived of medical care such that his or her health or life would be endangered, or would be deprived of food, clothing, shelter or other necessities of life.

(l) The Department of Social Services shall not impose a penalty period based on a transfer of assets made by an individual or his or her spouse, if denial or discontinuance of payment for services would create an undue hardship, if the penalty period was not waived, under the following conditions:

- (i) The long term care facility or medical institution has notified the individual of its intent to initiate the individual's discharge due to non-payment; or
- (ii) The individual is receiving long term care home and community-based services being provided under a Medicaid waiver and the medical provider has notified the individual of its intent to terminate such home and community-based services due to the imposition of a penalty period resulting from a transfer of assets; or
- (iii) The individual needs long term care services and, due to a transfer of assets resulting in the imposition of a penalty period, either (i) a long term care facility has refused to accept the individual, or (ii) the home and community-based services provider has refused to accept the individual as a client; and

(iv) There is no family member or other individual or organization able and willing to provide care to the individual.

(m) Notwithstanding paragraph (l) of this section, the Department of Social Services shall not find undue hardship when (i) the transferor deliberately impoverished himself or herself to avoid paying for long-term care costs, or (ii) a transfer that resulted in a transfer-of-asset penalty was made by the individual's legal representative, or (iii) a transfer that resulted in a transfer-of-asset penalty was made by the record owner of a jointly-held asset.

(n) Notwithstanding paragraph (m) of this section, the Department of Social Services may find an undue hardship if the transferor

(i) suffered from dementia or other cognitive impairment at the time of application for medical assistance and cannot explain transfers that would otherwise result in the imposition of a penalty period; or

(ii) suffered from dementia or other cognitive impairment at the time of the transfers; or

(iii) was exploited into making the transfers, due to the dementia or other cognitive impairment; or

(iv) was exploited by the transferor's legal representative or by the record owner of a jointly-held asset who made unauthorized transfers.

(o) The Department of Social Services shall notify individuals applying for long term care services about the possibility of obtaining an undue hardship exception. This notification may be part of the preliminary decision notice that the Department of Social Services sends to the individual when it determines that he or she has made an improper transfer of assets resulting in a penalty period.

(p) The individual has fifteen (15) days from the date of the notice described in subsection (o) to claim undue hardship or to otherwise rebut the Department of Social Services's decision to impose a penalty period. The Department of Social Service shall grant an extension if the individual so requests, and shall grant subsequent requests if such requests are reasonable.

(ii) If the individual or the individual's authorized representative claims undue hardship or rebuts the Department of Social Services's preliminary decision to impose a penalty period, the Department of Social Services shall within ten (10) days from the receipt of such claim or rebuttal to send an interim decision notice to the individual stating that it is either upholding or reversing its preliminary decision

(iii) The notification described in subsection (o) informs the individual that:

(aa) the Department of Social Services is reversing its preliminary decision, and is not imposing a penalty period with respect to long term care services; or

(bb) the Department of Social Services's preliminary decision is upheld, and a penalty period is being established, during which Medicaid will not pay for long term care services.

(iv) If the individual does not claim undue hardship or rebut the Department of Social Services's preliminary decision to impose a penalty period, the Department of Social Services sends the individual a final decision notice regarding the penalty period at the time of the disposition of the Medicaid application. This notice contains all the elements of the preliminary notice, and a description of the individual's appeal rights. An individual who requests an administrative hearing as part of the appeals rights following a final decision regarding a penalty period may present a claim for undue hardship as part of such request, and such claim for undue hardship shall be accepted for review by the hearing officer.

(v) The Department of Social Services sends a final decision notice regarding the undue hardship/rebuttal issue at the time of the mailing of the notice regarding the disposition of the Medicaid application.

(vi) In addition to the procedures for claiming undue hardship set forth in subparagraphs a - e above, and notwithstanding the time limitations set

forth in those sections, an individual may file a claim for undue hardship within sixty (60) days after the individual receives a notice as described in paragraph B.1 above that may establish that the individual would be deprived of medical care such that his or her health or life would be endangered or deprived of food, clothing, shelter or other necessities of life if the penalty were not waived.

(q)(i)The individual or the individual's authorized representative may give permission for the long term care facility in which he or she is residing to file a claim for undue hardship on behalf of the individual.

(ii)If the long term care facility certifies, and the Department of Social Services agrees, that the individual is incapacitated and has no authorized or legally-appointed representative, family member or friend to act on his or her behalf, the long term care facility may request, on behalf of the individual, an extension of time to file a claim for undue hardship. In such cases, the Department of Social Services shall grant such extension to allow a representative to be authorized or legally appointed to act on behalf of the individual.

(iii)In addition to filing an undue hardship claim based on paragraph (q)(i) and (ii) of this section, the long term care facility may, with the consent of the individual or the individual's legally-appointed or authorized representative, present information on behalf of the individual and represent the individual throughout the above-referenced undue hardship claim process.



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

In SUPPORT of

**SB 973
AN ACT CONCERNING THE DETERMINATION OF UNDUE HARDSHIP FOR
PURPOSES OF MEDICAID ELIGIBILITY**

**Aging Committee
February 24, 2011**

Good morning, members of the Committee on Aging. I am Sharon L. Pope, the Chair of the Connecticut Bar Association Elder Law Section. I am testifying in support of a bill to establish a rule required by federal law that is essential to vulnerable seniors and younger disabled individuals who have no access to critical health care due to a denial of Medicaid benefits.

In 2006, the United States Congress adopted sweeping changes to the Medicaid program known as the Deficit Reduction Act ("DRA"). One of those changes requires States to adopt regulations which allow a waiver of a denial of Medicaid benefits if that denial would result in a threat to an individual's health or life and therefore cause undue hardship.

The Department of Social Services published a notice of intent to adopt regulations to implement the DRA in April, 2007 and included a provision defining undue hardship. A broad coalition of elder law advocates objected to the DSS proposal because it defined undue hardship in very restrictive terms and inconsistent with federal law. The advocates included representatives of the Connecticut Alzheimer's Association, the Connecticut Association of Not for Profit Providers ("CANPFA"), Connecticut Legal Services organizations, the Connecticut chapter of the National Academy of Elder Law Attorneys and the members of our Connecticut Bar Association Elder Law Section.

This legislature's Regulations Review Committee, following advice from the Legislative Commissioner's office, rejected the DSS proposed DRA rules in June, 2009. The chairs of the Committee subsequently convened a meeting in August, 2009 among DSS policy staff and the coalition of the elder law advocates. At the request of the committee chairs, all the parties including the advocates and DSS policy staff agreed to meet to discuss the specific objections to the DSS proposals.

After six months of negotiations among the parties, all the groups agreed to language which addressed a majority of the objections to the DSS proposals, including the specific undue hardship rule. After a thoughtful, thorough and prolonged discussion of the issues and through compromises by all parties, the group collectively agreed to a rule on undue hardship which all accepted. We agree that it establishes, for the first time, a meaningful process to implement this significant federal requirement permitting an undue hardship waiver of a Medicaid denial.

To our disappointment, DSS then refused to refile the negotiated regulations. Now our colleagues at the Connecticut Legal Services organizations have proposed a bill establishing undue hardship which incorporates the specific rule all the parties, including DSS, accepted after our extensive negotiations.

The CBA Elder Law Section strongly endorses the proposal establishing an undue hardship waiver of a Medicaid denial as drafted by the Connecticut Legal Services organizations. It is long past the time when this rule should be adopted. The Congress created the sweeping changes in the Medicaid program more than five years ago. The undue hardship waiver is a fundamental requirement which is intended to protect our Connecticut citizens who are vulnerable and at risk of serious, even life threatening medical conditions because they do not have access to health care. This is particularly important for individuals who may be able to remain in their own homes if they receive home care services.

We urge this committee to accept the Connecticut Legal Services proposal as a substitute for SB 973.



In support of: S.B. 973

Raised Bill 973 strengthens the ability for a constituent to present the argument of undue hardship as a basis to waive the penalty period or prevent potential eligibility for Medical Assistance. Approximately 50% of individuals referred for assessment in the CT Home Care Program for Elders do not accept services. Many individuals do not understand how financial actions impact their access to long term care. Absent of the education needed to make responsible decisions about transferring assets, the State should provide prospective medical assistance enrollees every opportunity to present compelling arguments of hardship. During the denial or penalty period, potential enrollees may find their condition worsening to the point of hospital or skilled nursing facility care. These interventions can be much more costly than community Medicaid or Medicaid waiver programs.

The “undue hardship” definition prevents abuse of the argument. The suggested language preserves an individual’s dignity at a time when all other care options have been exhausted. The raised bill affords transparency and additional education to individuals who may have unknowingly jeopardized their eligibility in this critically important medical assistance program.

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**PROCEEDINGS
2011**

**VOL.54
PART 29
9635 – 9973**

pt/tj/lxe/gbr
HOUSE OF REPRESENTATIVES

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June 8, 2011

-- to its being placed on the Consent Calendar?

Representative Cafero, you have the floor, sir.

REP. CAFERO (142nd):

Mr. Speaker, given the time of day and the agreement between the parties, I have no objection, but I've got to tell you, at my prime with a title like this I could have done 20 minutes standing on my head. Thank you.

DEPUTY SPEAKER ALTOBELLO:

Seeing no objection, this will be placed on
Consent.

Would the Clerk please call Calendar 616.

THE CLERK:

On page 31, Calendar 616, substitute for Senate
Bill Number 973, AN ACT CONCERNING THE DETERMINATION
OF UNDUE HARDSHIP FOR PURPOSES OF MEDICAID
ELIGIBILITY. Favorable report of the Committee on
Human Services.

DEPUTY SPEAKER ALTOBELLO:

Representative Tercyak, you have the floor.

REP. TERCYAK (26th):

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

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the bill.

DEPUTY SPEAKER ALTOBELLO:

Question is acceptance and passage. Please proceed.

REP. TERCYAK (26th):

Mr. Speaker, the Clerk has an Amendment LCO 8088, Senate "A".

DEPUTY SPEAKER ALTOBELLO:

Would the Clerk please call LCO 8088.

THE CLERK:

LCO Number 8088, Senate "A", offered by Senator McKinney.

DEPUTY SPEAKER ALTOBELLO:

Representative Tercyak.

REP. TERCYAK (26th):

Thank you very much, sir. Senate -- Senate "A" is easy, it just adds the disability discrimination determination provision to the bill. I move for acceptance.

DEPUTY SPEAKER ALTOBELLO:

Question before the Chamber is adoption of Senate "A".

REP. TERCYAK (26th):

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Adoption.

DEPUTY SPEAKER ALTOBELLO:

Question before the Chamber is adoption of Senate "A". Further on Senate "A"? If not, I'll try your minds, all those in favor please signify by saying Aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER ALTOBELLO:

Those opposed? The Ayes have it. Senate "A" is adopted. Further on the bill? Representative Tercyak.

REP. TERCYAK (26th):

Thank you, Mr. Speaker. The Clerk has an amendment, LCO Number 8237, Senate Amendment "B".

DEPUTY SPEAKER ALTOBELLO:

Will the Clerk please call LCO 8237, previously designated Senate "B".

THE CLERK:

LCO Number 8237, Senate "B", offered by Senators Prague and McKinney.

DEPUTY SPEAKER ALTOBELLO:

Representative Tercyak.

REP. TERCYAK (26th):

pt/tj/lxe/gbr
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Thank you very much, sir. This amendment prohibits the DSS commissioner from imposing a penalty instead of previously requiring him to waive the penalty if such action would cause an undue hardship. Provides that undue hardship includes (inaudible) with nursing home residents are notified that the home intends to discharge them because of nonpayment of Medicaid during the penalty period and sets other conditions and makes technical clarifying changes, also adds to the disability determination provision. I move adoption, please.

DEPUTY SPEAKER ALTOBELLO:

Question before the Chamber is adoption of Senate "B". Adoption of Senate "B". Further on Senate "B". If not, I'll try your minds, all those in favor signify by saying Aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER ALTOBELLO:

Opposed? The Ayes have it. Senate "B" is
adopted. Representative Tercyak.

REP. TERCYAK (26th):

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Could this please be moved to the Consent
Calendar, sir?

DEPUTY SPEAKER ALTOBELLO:

We have a motion before us to move this to the
Consent. Seeing no objection, so ordered.

Would the Clerk please call Calendar 589.

THE CLERK:

On page 28, Calendar 589, substitute for Senate
Bill Number 396, AN ACT CONCERNING INSURANCE COVERAGE
FOR THE SCREENING AND TREATMENT OF PROSTATE CANCER.
Favorable report of the Committee on Appropriations.

DEPUTY SPEAKER ALTOBELLO:

Representative Megna, you have the floor.

REP. MEGNA (97th):

Thank you, Mr. Speaker. I move the Committee's
Joint Favorable Report and passage of the bill in
concurrence with the Senate.

DEPUTY SPEAKER ALTOBELLO:

The question is acceptance and passage. Please
proceed.

REP. MEGNA (97th):

Thank you, Mr. Speaker. The Clerk is in
possession of LCO 6677. I ask that it be called and I

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Thank you, Mr. Speaker. This represents our first Consent Calendar of the evening and I move its adoption.

DEPUTY SPEAKER ARESIMOWICZ:

Will the Clerk please read through the numbers on the Consent Calendar for the Chamber's edification, please.

THE CLERK:

Calendar 99, House Bill 6429. Calendar 331, Senate Bill 980. Calendar 399, Senate Bill 883. Calendar 439, House Bill 6632. Calendar 503, Senate Bill 1110. Calendar 585, Senate Bill 212. Calendar 586, Senate Bill 227. Calendar 491, Senate Bill 799. Calendar 535, Senate Bill 1116. Calendar 568, Senate Bill Number 1138. Calendar 637, Senate Bill 1160. Calendar 569, Senate Bill 1199. Calendar 616, Senate Bill 973. Calendar 583, Senate Bill 98. And Calendar 517, Senate Bil

SB1062

DEPUTY SPEAKER ARESIMOWICZ:

The question before us is on passage of the bills on today's -- Consent Calendar. Will you remark? If not, staff and guests please come to the Well of the House, members take your seats, the machine will be open.

THE CLERK:

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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.

DEPUTY SPEAKER ARESIMOWICZ:

Have all the members voted? Have all the members voted? If all the members have voted, please check the board to determine if your vote has been properly cast. If all the members have voted, the machine will be locked, Clerk will take a tally. Clerk, please announce the tally.

THE CLERK:

On today's Consent Calendar,

Total Number voting 148

Necessary for passage 75

Those voting Yea 148

Those voting Nay 0

Those absent and not voting 3

DEPUTY SPEAKER ARESIMOWICZ:

Consent Calendar is passed.

Representative Sharkey, you have the floor, sir.

Is there business on the Clerk's desk?

THE CLERK:

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Will you remark further on the bill?

Senator Meyer.

SENATOR MEYER:

Mr. President, if there's no objection, I'd
appreciate this going on the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

Senator Looney.

SENATOR LOONEY:

Thank you, Mr. President.

Mr. President, returning to an item marked
pass temporarily earlier and that is a matter
from the Aging Committee, Calendar page 5,
Calendar 222, Senate Bill 973.

THE CHAIR:

Mr. Clerk.

THE CLERK:

Calendar page 5, Calendar Number 222, File
Number 331, substitute for Senate Bill 973, AN
ACT CONCERNING DETERMINATION OF UNDUE HARDSHIP
FOR PURPOSES OF MEDICAID ELIGIBILITY, Favorable
Report of the Committee on Aging and Human
Services. Clerk is in possession of an
amendment.

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THE CHAIR:

Senator Prague.

SENATOR PRAGUE:

Thank you. Mr. President, thank you.

I'm -- we originally PT'd this bill. So I would like to move the Joint Committee's Favorable Report in passage of this bill.

THE CHAIR:

On acceptance and passage will you remark?

SENATOR PRAGUE:

Thank you.

THE CHAIR:

Senator.

SENATOR PRAGUE:

As stated previously, this bill is before us because of situations that arise in nursing homes that create a problem of undue hardship. Some elderly people, having transferred their assets, are in nursing homes and become very ill and disabled and desperately need the care that's offered in that nursing home. And in the process of transferring assets says, if it's done within the previous five years, there is then imposed a penalty period for the amount of assets that were

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transferred. But, under certain circumstances, if this person had a very disabling mental disorder and didn't realize when the assets were transferred and is not in a nursing home, needing to be cared for, this bill provides a system whereby the Commissioner of the Department of Social Services, can grant Medicaid eligibility, so that person would not be put out because of the penalty period.

With the activity that's going on, Madam President, thank you --

SENATOR WYMAN:

Sorry.

SENATOR PRAGUE:

That's fine. I would like to yield to Senator McKinney, who has an amendment on this bill. It's a friendly amendment and an important one. So having said that I'd like to yield to Senator McKinney.

(Senator Wyman, Lieutenant Governor, in the Chair.)

THE CHAIR:

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Senator McKinney, will you accept the yield,
sir?

SENATOR MCKINNEY:

I -- I will accept the yield and thank
Senator Prague for yielding and for working with
me on this very important issue.

Madam President, I believe the Clerk is in
possession of an amendment, LCO Number 8088. I
ask that he call the amendment and seek leave to
summarize.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO 8088, which will be designated Senate
Amendment Schedule "A", is offered by Senator
McKinney of the 28th District.

THE CHAIR:

Senator McKinney.

SENATOR MCKINNEY:

Thank you, Madam President.

I move adoption of the amendment.

THE CHAIR:

Questions on adoption? Will you remark
further, sir?

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SENATOR MCKINNEY:

Thank you.

Madam President, we are -- obviously are dealing with an underlying bill regarding undue hardship for Medicaid eligibility. And, obviously, this is an issue, which our nursing homes are struggling with and the underlying bill provides much needed help to our nursing homes.

It's also an issue that's not new to -- to any of us. And whether it's constituents, or friends, or family, there is a lot of confusion as to what happens with respect to transfer of assets and Medicaid eligibility.

I had a constituent who came forward to us, whose father had put his home in a special needs trust for her. That type of transfer is exempt and allowed, under Medicaid eligibility, if the transfer is to -- for someone who is disabled. The woman who was in receipt of the special needs trust had been diagnosed years earlier with multiple sclerosis, is disabled, according to a team of doctors and is unable to go back into the workforce, because of her disability. However, because she did not have work credits, it has

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been deemed by the Department of Social Services that she was not eligible for Social Security disability and, therefore, not disabled.

In looking at the federal law under, Social Security disability, Medicaid eligibility and our State law, I think there was confusion here. And this language, this amendment, clarifies that.

And it simply states that for purposes of this special needs trust transfer, if you haven't received disability determination from the Social Security Administration under federal law, our Commissioner of Social Services, or his designee, can make an independent determination on disability, and -- and; one, the Commissioner would not be allowed to require the beneficiary to apply for Social Security disability benefits.

Social Security disability benefits were never intended to be the determiner, whether or not you're disabled or not because there's a multi-prong test. One is your disability. The other is your work history, which allows you to be eligible for social security disability.

This constituent was not eligible for the work credits, because she had left the workforce

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for a period of years, to care for her kids and raise a family and then was struck with multiple sclerosis, which then prohibited her from going back into the workforce ever again.

So I think this is a clarifying amendment. I think it makes situation of these types of transfers easier -- not -- not easier, but easier to interpret under the law, will help many people in this situation.

And I want to thank Senator Prague for working with me. I broached this issue with her in the LLB, a couple of months ago. I came back to her recently. And today, we've discussed it with herself and Senator Kelly. And Senator Prague, we had a good conversation. She said, look, if you're right, we'll help you. And if you're wrong, we're not. And I'm glad she agrees that on this one, we're both right.

Thank you, Madam President,

THE CHAIR:

Thank you. Will you remark further?

Senator Prague.

SENATOR PRAGUE:

Thank you, Madam President.

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And through you, I want to thank Senator McKinney, for that really good amendment.

With that, I'd like to yield to Senator Kelly, who's done a lot of work as an elder law attorney.

THE CHAIR:

Senator Kelly, will you accept the yield, sir?

SENATOR KELLY:

Yes, Madam President.

THE CHAIR:

Thank you.

SENATOR KELLY:

Thank you, Senator Prague, not only for the yield, but also for your leadership and persistence on this issue.

It is an issue that came before the Aging Committee. And like I say, it was the leadership of Senator Prague, as well as my colleagues on the Aging Committee to bring this bill forward. However, it wasn't just us alone. It was also the Connecticut Bar Association, members of the LCO and people who were affected by this that all contributed in what turned out to be, a very

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cooperative and beneficial endeavor to create, what I believe, to be a very good piece of legislation.

As both Senator McKinney said with his amendment, there are situations where the definition of disability is important. And that amendment deals with that issue.

With regards to undue hardship, once again, this bill addresses that, helps keep people in nursing homes when, through no fault of their own, they're being penalized for transfers, allows nursing homes to get paid and then creates in the state a debt, so that we protect the tax payers. I believe this is a way that we can fashion legislation in a -- in a productive manner, so that there's a win, win, win.

And I would just like to thank both Senator McKinney for his amendment and Senator Prague for her leadership, in creating, what I believe, to be good legislation.

Thank you.

THE CHAIR:

Thank you.

Will you remark further? Will you remark

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further? I will try your minds. All those in
favor of the amendment, please say, aye.

SENATORS:

Aye.

THE CHAIR:

Opposed? The amendment has been adopted by
voice vote.

Will you remark further?

Senator Prague.

SENATOR PRAGUE:

Madam President, may we stand at ease for
just a moment, please?

THE CHAIR:

The Senate will stand at ease.

(Chamber was at ease.)

SENATOR PRAGUE:

Madam President --

THE CHAIR:

Senator Prague.

SENATOR PRAGUE:

Thank you.

THE CHAIR:

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Will the Senate come back to order?

Senator Prague.

SENATOR PRAGUE:

Thank you, Madam President.

If there is no objection, I'd like to place
this bill on Consent.

THE CHAIR:

Seeing -- seeing no objection, the bill is
now -- shall be ordered -- the bill is on
Consent.

SENATOR PRAGUE:

Thank you.

THE CHAIR:

Senator Looney. Good evening, sir.

SENATOR LOONEY:

Good evening, Madam President.

Madam President, if we might mark as the
next ready item, a bill from the Energy and
Technology Committee, Calendar page 29, Calendar
Number 41, Senate Bill 98. And then after that,
Madam President, a bill from the Public Safety
and Security Committee, on Calendar page 3,
Calendar 130, I believe it is. Yes. Calendar
130 will be the second item.

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Thank you, Madam President.

THE CHAIR:

And at this time, I'd ask if there's --
seeing no objection, the bill will be put on
Consent.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President. Good evening,
again, Madam President.

THE CHAIR:

Good evening, sir.

SENATOR LOONEY:

Madam President would like to have the Clerk
call the items on the Consent Calendar, so that
we might move to a vote on that Consent Calendar.

THE CHAIR:

Mr. Clerk.

THE CLERK:

An immediate roll call has been ordered in
the Senate on the First Consent Calendar. Will
all Senators please return to the Chamber?

Immediate roll call has been ordered in the
Senate on the Consent Calendar. Will all
Senators please return to the Chamber?

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Madam President, the items placed on the First Consent Calendar begin on Calendar page 1, Calendar 571, House Joint Resolution Number 122; Calendar 593, Senate Joint Resolution Number 52; Calendar page 3, Calendar Number 130, substitute for Senate Bill 999; Calendar page 5, Calendar Number 221, substitute for Senate Bill 858; Calendar 222, substitute for Senate Bill 973; Calendar page 7, Calendar Number 270, substitute for Senate Bill 212; Calendar 299, substitute for Senate Bill 139; Calendar 304, substitute for Senate Bill 860; Calendar page 10, Calendar Number 439, substitute for Senate Bill 1216; Calendar page 11, Calendar 456, substitute for Senate Bill 927; Calendar page 29, Calendar Number 41, substitute for Senate Bill 98; Calendar page 31, Calendar Number 114, substitute for Senate Bill 881; Calendar page 32, Calendar 140, substitute for Senate Bill 863; Calendar page 34, Calendar Number 201, substitute for Senate Bill 1038; Calendar page 35, Calendar 215, Senate Bill 227; Calendar 236, Senate Bill 371; Calendar page 37, Calendar Number 271, substitute for Senate Bill 1111, Calendar page 38, Calendar

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293, substitute for Senate Bill 1103; Calendar page 39, Calendar 303, substitute for Senate Bill 764; Calendar page 40, Calendar 342, Senate Bill 843; Calendar page 41, Calendar 362, substitute for Senate Bill 1217; Calendar 368, substitute for Senate Bill 882; Calendar 369, substitute for Senate Bill 939; Calendar page 43, Calendar 382, substitute for Senate Bill 1224; Calendar page 44, Calendar 398, substitute for Senate Bill 1044; Calendar page 45, Calendar 410, House Bill 5021; Calendar page 46, Calendar 434, substitute for Senate Bill 1219.

Madam President, that completes the items placed on the First Consent Calendar.

THE CHAIR:

We'll wait a moment. Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, there is one item that we will need to remove from the Consent Calendar, because it needs to be amended and be reconsidered and then amended, and that is Calendar page 5, Calendar 222, Senate Bill 973. If that item might be removed from the Consent

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Calendar and called after the Consent Calendar,
so it can be corrected?

THE CHAIR:

The bill is removed from the Consent
Calendar. At this time, Mr. Clerk, will you re-
announce the roll call vote and 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 has been ordered in the Senate on the
Consent Calendar. Will all Senators please
return to the Chamber?

THE CHAIR:

All members voted? All members have noted.
The machine will be closed. Mr. Clerk, will you
call the tally?

THE CLERK:

Motions on adoption and Consent Calendar

Number 1:

Total number voting	36
Those voting Yea	36
Those voting Nay	0

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Those absent, not voting 0

THE CHAIR:

The Consent Calendar passed. Mr. Clerk, do you want to recall that bill? Senator Looney.

SENATOR LOONEY:

Yes. Thank you, Madam President.

Madam President, if that item might -- might be passed temporarily, I believe the amendment that would be a strike-all that we needed is not -- not here yet. So we will pass that item.

SB913

Madam President would yield the floor for Members for purposes of announcements or points of personal privilege.

THE CHAIR:

Are there any announcements or points of personal privilege? Any point of personal privilege or announcements? Seeing none.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, it's our intention to convene tomorrow at 11:00. Also, advise Members that you should make the weekend, especially Saturday, available for possible session, as

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THE CLERK:

Calendar page 4, Calendar Number 222, File Number 331, substitute for Senate Bill 973, AN ACT CONCERNING THE DETERMINATION OF UNDUE HARDSHIP FOR PURPOSES OF MEDICAID ELIGIBILITY, as amended by Senate Amendment Schedule "A," LCO 8088; Favorable Report of the Committee on Aging, and Human Services.

The Clerk is in possession of additional amendments.

THE CHAIR:

Senator Prague.

SENATOR PRAGUE:

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

THE CHAIR:

On acceptance and passage, will you remark?

SENATOR PRAGUE:

Mr. President, the Clerk has an amendment, LCO 8237. Would he please call and I be allowed to summarize.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO 8237, which is designated Senate Amendment Schedule "B." It's offered by Senator Prague, of the 19th District.

THE CHAIR:

Senator Prague.

SENATOR PRAGUE:

Mr. President, what this -- I move adoption.

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THE CHAIR:

Will you remark?

SENATOR PRAGUE:

What this amendment does is allow the Commissioner of the Department of Social Services to grant Medicaid to some folks who are in a penalty period but who are desperately in need of care. The penalty period would prevent them from getting Medicaid, and the penalty period is incurred when there has been a transfer of assets. But under this, under special circumstances where somebody is desperately ill, in need of care and has to stay in the nursing home where they're getting the care that keeps them alive, the commissioner of the department can grant an exception because of undue hardship and allow Medicaid coverage.

Mr. President, Senator McKinney had and has in part of this amendment -- and I'm going to yield to him to have him describe -- the disabled trust that can be set up if somebody is disabled and not eligible for Social Security Disability.

Through you, Mr. President.

THE CHAIR:

Senator McKinney, on the amendment, do you accept the yield?

SENATOR MCKINNEY:

I do accept the yield. Thank you, Mr. President.
And thank you, Senator Prague.

We -- we had this issue before us, and in my excitement of passing a good amendment, we did so

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before Senator Prague was able to amend the underlying bill. So I thank her for her continuing to work on this effort.

Just to remind colleagues in the Circle, there have been situations where special needs trusts have been established. The beneficiaries of those trusts have to be disabled, as an exemption from our Medicaid eligibility.

And a constituent of mine who came down with multiple sclerosis was someone who had worked but took time off to raise a family, then was -- came down with MS, was unable to back -- go back into the workforce. As such, she didn't have credits for Social Security Disability, but she met the test of disability. And this simply clarifies those situations where our department will not have to look at whether someone has filed for and received Social Security Disability but whether or not they are, in fact, disabled, as defined under law.

Thank you, Senator Prague, and I appreciate your help in -- in the good work that we're doing here today.

And -- and also, may I say, Mr. President, because I won't take the microphone again on this issue, the -- the remainder of this underlying bill is also very important and good. For too long, our nursing homes have been left in this position where they've been carrying the costs. And on good days, nursing homes struggle to make ends meet, and so this is very important to say to them that you're caring

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for our elderly, you shouldn't be carrying the costs that others should be paying for. And for that, I'm in complete support of the bill as well.

Thank you.

THE CHAIR:

Thank you, Senator.

Will you remark further on the amendment?

Senator Prague.

SENATOR PRAGUE:

Mr. -- Mr. President, first of all, thank you to Senator McKinney.

I would now like to yield to Senator Kelly.

THE CHAIR:

Senator Kelly, do you accept the yield?

SENATOR KELLY:

Yes, Mr. President.

I, too, rise in support of this amendment. It's the culmination of a lot of hard work on behalf of a lot of individuals. I'd like to thank Senator McKinney for his work on the definition of "disability," and I'd also like to thank the leadership and persistence of Senator Prague with regards to undue hardship.

We've brought together a number of parties in pursuit of this. We've brought together the Department of Social Services, legal aid, the nursing home industry, individuals affected by this, and it's really through your leadership and the hard work of the Aging Committee to get this bill to where it is today. So thank you, very much, Senator Prague.

mr/fs/jf/gbr
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Thank you very much, Senator McKinney.
And I would urge support of the legislation.
Thank you.

THE CHAIR:

Thank you.
Senator Prague, you still have the floor.

SENATOR PRAGUE:

Thank you, Mr. President.
Mr. President, this is a strike-all amendment.
Upon adoption, it becomes the bill. So if -- I'm
looking around. There aren't too many people in
here --

THE CHAIR:

Let us adopt the amendment.

SENATOR PRAGUE:

-- but we could be -- go for a voice vote. A
roll call -- voice vote? Let's have a voice vote.

THE CHAIR:

Thank you.

All those in favor after the amendment, please
signify by saying, aye.

SENATORS:

Aye.

THE CHAIR:

Opposed, nay?
The ayes have it. The amendment is adopted.
Senator Prague.

SENATOR PRAGUE:

Thank you, Mr. President.

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Mr. President, if there is no other comment or opposition, I'd like to put this on Consent.

THE CHAIR:

Without objection, so ordered.

SENATOR PRAGUE:

Thank you.

THE CHAIR:

The Senate will stand at ease.

(Chamber at ease.)

THE CHAIR:

Mr. Clerk.

THE CLERK:

Calendar page Number 39, Calendar Number 272, File Number 454, substitute for Senate Bill 1112, AN ACT CONCERNING BOATING UNDER THE INFLUENCE; Favorable Report of the Committee on Environment, and Judiciary.

The Clerk is in possession of amendments.

THE CHAIR:

Senator Meyer.

SENATOR MEYER:

Excuse me. Nice to see you, Mr. President.

THE CHAIR:

Thank you, sir.

SENATOR MEYER:

I move acceptance of the Committee's Joint and Favorable Report and move passage of this bill.

THE CHAIR:

On acceptance and passage, will you remark?

mr/fs/jf/gbr
SENATE

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June 3, 2011

If we might stand at ease for a moment,
Mr. President.

THE CHAIR:

The Senate will stand at ease.

(Chamber at ease.)

SENATOR LOONEY:

Mr. President?

THE CHAIR:

The Senate will come back to order.

Senator Looney.

SENATOR LOONEY:

Yes. Thank you, Mr. President.

If we might call the First Consent Calendar, at
this time.

THE CHAIR:

Mr. Clerk, please call the First Consent
Calendar.

THE CLERK:

Immediate roll call -- immediate roll call has
been ordered in the Senate on the Consent Calendar.
Will all Senators please return to the Chamber. An
immediate roll call has been ordered in the Senate on
the Consent Calendar. Will all Senators please return
to the Chamber.

Mr. President, the items that were placed on the
First Consent Calendar begin on Calendar page 4,
Calendar Number 222, substitute for Senate Bill 973;
Calendar page 13, Calendar Number 490, substitute for

mr/fs/jf/gbr
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Senate Bill 929; and, Calendar page 39, Calendar Number 272, substitute for Senate Bill 1112. In Calendar page 41, Calendar Number 322, substitute for the Senate Bill 970.

Mr. President, that completes the items placed on the First Consent Calendar.

THE CHAIR:

The machine will be open.

THE CLERK:

The Senate is voting by roll call on the Consent Calendar. Will all Senators please return to the Chamber. The Senate is voting by roll on the Consent Calendar. Will all Senators please return to the Chamber.

THE CHAIR:

Have all Senator voted? Have all Senators voted?

Please check the board to make sure your vote is accurately recorded. If all Senators voted, the machine will be closed.

And the Clerk will take the tally.

THE CLERK:

Motion is on adoption of Consent Calendar Number One.

Total number voting	36
Those voting Yea	36
Those voting Nay	0
Those absent and not voting	0

THE CHAIR:

The Consent Calendar passes.

The Senate will stand at ease.