

Legislative History for Connecticut Act

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SB107

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**CONNECTICUT
GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
2016**

**VOL. 59
PART 3
679 – 1032**

cf
SENATE

252
April 20, 2016

Seeing no objections, so ordered sir.

SENATOR DUFF (25TH):

On calendar page 10, Calendar 297, Senate Bill 372,
I'd like to place that item on our Consent Calendar.

THE CHAIR:

Seeing no objections, so ordered sir.

SENATOR DUFF (25TH):

On calendar page 11, Calendar 309, Senate Bill 398,
I'd like to place that item on our Consent Calendar.

THE CHAIR:

Seeing no objections, so ordered sir.

SENATOR DUFF (25TH):

On calendar page 28, Calendar 87, Senate Bill 107,
I'd like to place that item on our Consent Calendar.

THE CHAIR:

Seeing no objections, so ordered sir.

SENATOR DUFF (25TH):

Madam President, did I mention calendar page 11,
Calendar 309, Senate Bill 398?

THE CHAIR:

Yes, sir.

cf
SENATE

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April 20, 2016

SENATOR DUFF (25TH):

Thank you, and that, I believe is the end of our Consent Calendar. If the clerk can now call the items on the Consent Calendar, followed by a vote on our Consent Calendar today.

THE CHAIR:

Mr. Clerk. We gotta' wait two seconds to get this on, up and running, and then we will start getting the list called for you, sir.

Mr. Clerk, please call the Consent Calendar.

THE CLERK:

On page 2, Calendar 131, Senate Bill 204. Page 3, Calendar 133, Senate Bill 207. Page 3, Calendar 145, Senate Bill 132. Page 4, 180 -- Calendar 183, Senate Bill 236. Page 5, Calendar 192, Senate Bill 230. Page 6, Calendar 232, Senate Bill 254. Page 7, Calendar 243, Senate Bill 364. Page 8, Calendar 261, Senate Bill 233. Also on page 8, Calendar 254, Senate Bill 178. Page 8, Calendar 263, Senate Bill 252. Page 9, Calendar 274, Senate Bill 244. Page 9, Calendar 283, Senate Bill 306. Page 10, Calendar 294, Senate Bill 283. Also on page 10, Calendar 297, Senate Bill 372. Page 11, Calendar 302, Senate Bill 436. Page 11, Calendar 309, Senate Bill 398. Page 12, Calendar 314, Senate Bill 103. On page 23, Calendar 420, House Bill 5350. Page 27, Calendar 70, Senate Bill 72. Page 28, Calendar 87, Senate Bill 107. Page 29, Calendar 126. Senate Bill 197. Page 30, Calendar 150, Senate Bill 161. Page 32, Calendar 199, Senate Bill 20. And page 35, Calendar 270, Senate Bill 288.

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SENATE

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April 20, 2016

THE CHAIR:

Mr. Clerk, will you please call a roll call vote on the Consent Calendar? The machine will be open.

THE CLERK:

Immediate Roll Call has been ordered in the Senate.
Immediate Roll Call on today's Consent Calendar has been ordered in the Senate.

THE CHAIR:

Senator Fonfara.

All members have voted, all members have voted. The machine will be closed. Mr. Clerk, will you please call the tally on the Consent Calendar?

THE CLERK:

On Today's Consent Calendar.

Total number voting	35
Necessary for Adoption	18
Those voting Yea	35
Those voting Nay	0
Those absent and not voting	1

THE CHAIR:

The Consent Calendar passes. Senator Duff.

SENATOR DUFF (25TH):

Thank you, Madam President. Madam President, does the clerk have Senate Agenda Number 2 on his desk?

**JOINT
STANDING
COMMITTEE
HEARINGS**

**HUMAN SERVICES
PART 1
1 – 632**

**2016
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HUMAN SERVICES COMMITTEE

February 23, 2016
1:00 P.M.

CHAIRPERSONS:

Senator Moore
Representative Abercrombie

SENATORS:

Markley, Slossberg

REPRESENTATIVES:

Buck-Taylor, Butler, Byron,
Case, Cook, Ferrero, McGee,
Morris, Porter, Randall,
Santiago, Stallworth, Wood,
Zupkus

REP. ABERCROMBIE (83RD): Good afternoon, everyone. I'd like to welcome everybody to the Human Services public hearing for today, Tuesday, February 23rd. I'm Co-Chairwoman Representative Abercrombie, and I'd like to welcome you here today.

Any comments from ranking Members? Then we're going to get started.

The first hour is dedicated to the commissioners and public officials, and then after that we go into the public, and there's a three-minute timeline.

So with that, I'd like Commissioner Bremby to come up please, sir. Good afternoon.

COMMISSIONER BREMBY: Good afternoon, Representative Abercrombie; distinguished Members of the Committee. My name is Rod Bremby, and I am the Commissioner of the Department of Social Services, and I'm pleased to be here to testify before you today on -- and ask for your support on ten agency bills. In addition, I'll

SB105 SB106
SB107 SB109
SB116 SB135
HB5250 HB5253
HB5254 HB5256
SB114 SB115
SB108

related to establishing a supplemental pool to provide payments to offset losses incurred by publicly operated acute care hospitals and acute care children's hospitals as a result of -- as a result of the implementation of the APC system.

Due to the intricacy of this classification methodology, it's easiest to implement the same rate for every hospital and then supplement those payments for those complex acute care hospitals identified previously.

The department does not anticipate that this proposal will incur fiscal impact, as the system was designed to be revenue neutral. We ask for your support of this bill.

S.B. 107 is an administrative simplification. It's AN ACT CONCERNING THE TREATMENT OF THE CASH VALUE OF LIFE INSURANCE POLICIES WHEN EVALUATING MEDICAID ELIGIBILITY. This bill aims to expedite the receipt of Medicaid long-term services and supports by applicants who own a life insurance policy or policies with aggregate cash surrender value of \$10,000 or less. It clarifies that an applicant shall not be determined ineligible for Medicaid because he or she owns such a policy.

The bill also eliminates the requirement that the proceeds received from surrendering such policy be used for the -- to pay for the individual's institutional cost of care.

We ask for your support of this bill.

S.B. 109 is similar to a bill that was introduced

REP. FERRARO (117TH): Thank you, Madam Chair, and good afternoon, Commissioner.

COMMISSIONER BREMBY: Good afternoon.

REP. FERRARO (117TH): I'd like to speak to you about S.B. 107; it allows the life insurance policies to be taken, the requirement of the proceeds from the life insurance to go towards the cost of some of the institutionalized care.

And Commissioner, I have a copy of the -- of the application that is given to -- the Medicare-eligibility application, and on the application I noticed that Question Number 3, it says to list life insurance death benefits, including group policies, yes or no. And that's the extent of the question in the identification process regarding life insurance policies that are in force.

So my question would be, is -- there -- there is no question that would identify if any of these policies have been transferred from one person to -- the applicant to a family member or somebody else within the five-year lookback period. And there's no question regarding -- and there's no way to track that, and no way to track it or if policies that are out there which may amount to millions and millions and millions of dollars.

So my question is do you have any intention of modifying this -- this application so that we can properly identify the -- those type of assets?

COMMISSIONER BREMBY: So the question on the

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HUMAN SERVICES COMMITTEE

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application begins the process. We have a -- a form that's called a 1348 that follows up asking for additional information to support that application. And in that process we ask for additional information, such as what you just listed; what are the values of the policy? Name all the policies that are in place.

REP. FERRARO (117TH): Thank you, Commissioner, for that answer. But again, specifically does it ask for whether or not there have been transfers of life insurance within the five-year lookback period?

COMMISSIONER BREMBY: So yes, in that process that's triggered by 1348, which is a -- a supplemental request information, we do ask about all transfers that have occurred in the five-year lookback period.

REP. FERRARO (117TH): Okay, I -- I do appreciate that, because quite frankly, you are dependent on Medicare applicants' recollection of the policies that they have in place. You know, by the way the question is on the application itself, a yes-or-no answer, a person would feel completely justified by saying no, that I don't have an insurance policy, if they already transferred it over to somebody else three years earlier.

So the other question I would have then is there some sort of report that you would receive, DSS would receive, that would list all the insurance policies that are in force, or any of the annuities that might be in force, for the Medicaid recipient?

COMMISSIONER BREMBY: There -- I wouldn't say there's a report we receive, but staff will proceed to secure all information -- any and all information related to

financial accounts or life insurance policies that exist.

REP. FERRARO (117TH): Okay. There is going to be a speaker that comes on later on in the testimony whose going to testify in opposition to S.B. 107, and he says in his testimony that there's no way for the department to know if there's been any transfers of life insurance policies within the five-year lookback, or the -- there's no way of being able to recapture all the policies that might be out there on this -- on this person.

So I'm going to look forward to his testimony and -- and see if we can't flush out the -- why he believes there's -- the state doesn't have an ability to -- to recover that information. So thank you.

REP. ABERCROMBIE (83RD): Thank you, Representative. Further questions? Representative Wood.

REP. WOOD (141ST): Thank you, Madam Chair. Good afternoon, Commissioner, thank you, always, for your testimony and your thoughts.

SB114

Question on the presumptive eligibility, which is round how many for this?

COMMISSIONER BREMBY: I lose count.

REP. WOOD (141ST): My question is how is the -- where is it --

COMMISSIONER BREMBY: In this pack.

REP. WOOD (141ST): How is the pilot program going

But I thank you for coming and testifying on it.

JACK REARDON: Thank you.

SENATOR MOORE (22ND): Anyone else? Thank you.

Next is S.B. 107, Matthew Barrett.

MATTHEW BARRETT: Good afternoon Senator Moore and distinguished Members of the Human Services Committee. My name is Matt Barrett, I'm the Executive Vice President of the Connecticut Association of Health Care Facilities, and I'm grateful for this opportunity to offer testimony in support of S.B. No. 107, AN ACT CONCERNING THE TREATMENT OF THE CASH VALUE OF LIFE INSURANCE POLICIES WHEN EVALUATING MEDICAID ELIGIBILITY.

By way of background, I've submitted -- submitted written testimony to the Committee, but the initial version of this legislation was adopted -- it's actually Human Services Committee legislation adopted in 2013, Public Act 13-324, and it's now codified under Section 17b-261.

Let me begin by saying that I'm grateful to Commissioner Bremby and the Department of Social Services for advancing this sort of technical fix of the bill.

As DSS moved to implement the Public Act by way of a state plan amendment, apparently it was signaled by the Centers for Medicare and Medicaid Services that they found the underlying statute to be technically flawed because it directed that the proceeds, upon

surrendering of the life insurance, had to go to the cost of care in a -- principally a skilled nursing facility, whereas the federal law provides that you may not direct the proceeds in any direction. It has to sort of revert to the individual and then the individual must properly spend it down to the point where they become eligible for Medicaid.

So, while the commissioner described that language as a technical fix, and I agree, it is a technical fix; nevertheless, I'm very grateful to him for moving the language forward because we're sort of at a standstill in -- in terms of implementing the policy that the Human Services Committee desired back in 2013, where the statute is sort of defective in that regard.

And so I guess I would refer to my written testimony. I offer my strong support for the legislation, and I'd be happy to answer any questions that you -- you may have.

SENATOR MOORE (22ND): Representative Ferraro.

REP. FERRARO (117TH): Good afternoon, Mr. Barrett, how are you?

MATTHEW BARRETT: Good to see you, Representative.

REP. FERRARO (117TH): Thank you, Madam Chair.

You probably heard so many questions were asked earlier, and I have a couple more questions for you and your -- after reading your testimony.

You have these policies that are sold through the

nursing homes now that are life settlement policies, is that correct basically? They're a -- they're an arrangement which the -- the person applying for Medicare, for long-term care in the institutionalized care, can sign the policy over to the nursing home, is that correct?

MATTHEW BARRETT: Yeah. I'm not -- I'm not in complete aware of the full extent to which that occurs, but insofar as a life insurance policy, it does have value, and it has future value as well.

Under certain circumstances I think some individuals find it in their interest to actually transfer or sell the policy to -- to a company that -- that purchases them. They get less than full value for it, but they find it in their interest to do so, yes.

REP. FERRARO (117TH): And that company often is the nursing home itself, right?

MATTHEW BARRETT: You know, I have to tell you, you've got me stuck on that. I'm not aware of a particular nursing home that does that. Having said that, I'd -- I'd have to research that question, whether the nursing home is actually the purchaser.

REP. FERRARO (117TH): All right, well in any case, the -- the money, the cash value that's in that policy, would be paid down in accordance to the cost of the care, until it was brought to zero, and then that person would be put on Medicare -- or Medicaid anyways, right?

MATTHEW BARRETT: It -- it would be common asset and

it would be available for spenddown. It wouldn't have to be brought down to zero. It would have to be brought down below the \$1,600 asset rule that currently governs the Medicaid program.

REP. FERRARO (117TH): Okay. Okay. So in a sense then, this bill would say that anything with a cash value of \$10,000 or less would then qualify. The person would not be disqualified from Medicare or Medicaid application, is that correct?

MATTHEW BARRETT: Right, the -- the -- the current rule is actually \$1,500 as it relates to the cash surrender value --

REP. FERRARO (117TH): That's the current rule, yes.

MATTHEW BARRETT: -- of the life insurance policy, and this would effectively increase it to \$10,000 with the proviso that the applicant, or recipient, were spending the asset -- were making arrangements to dispose of it, or surrender the -- the -- the -- the -- the -- the cash value.

They would become the recipient of the cash proceeds, and then they would have to probably dispose of those proceeds. Many -- many folks probably do use the proceeds towards the cost of their care. The federal rule is that you can't direct it towards the cost of the care, but I certainly wouldn't want to leave the -- the impressions that the applicants or recipients don't use the money towards the cost of the care.

But there are many other permissible uses for the money rather than the cost of the care that are

allowed.

REP. FERRARO (117TH): So, when these policies are put in force and signed over, does DSS have any prior knowledge, or are they notified that these policies are being transferred? That the ownership is being.

MATTHEW BARRETT: You know, I wouldn't want to be the spokesperson for the agency on what -- what they knew or didn't know at the time of the application.

There is a question on the -- on the application regarding significant inquiry concerning the assets, and transfer of assets, and some questions, frankly as you pointed out in your earlier questioning regarding life insurance. But the initial sort of, you know, take on what assets are available is upon the applicant to present to the agency. And so to the extent to which the applicant does present that information, it would become known that way.

I'm also aware that there are other cross-matches related to other financial institutions, and I think including life insurance companies, that the agency does -- does cross-check on, and they -- and those assets become known in that way.

REP. FERRARO (117TH): And what -- would you happen to know what percentage of those policies are life settlement contracts?

MATTHEW BARRETT: No, I -- I wouldn't, but I -- I -- my guess is it's a small percentage, but I -- I really would not know.

REP. FERRARO (117TH): Okay. And I guess what I'm

trying to -- to find out is, what benefit does this bill -- does this 107 have to DSS, to the taxpayer? I mean, what's the benefit?

MATTHEW BARRETT: I think the benefit is initially, frankly, to the applicant or recipient. And here's the problem. That in many instances these -- I call them minorers (phonetic). The cash surrender value is actually a very minor amount as compared to the overall value of the -- of the life insurance.

That in many situations -- and we've seen -- seen these details over the years, that they are just either unknown to the applicant or -- or they're -- they just haven't taken the time to dispose of the asset. And so while we have a very strict \$1,600 asset rule in the Medicaid program, what we found is that when it becomes known later that these life insurance policies exist, and that the cash surrender value is marginally over the \$1,600, then we have -- and under the Medicaid rules, you're over the asset limit, and -- and you are effectively ineligible for the entire period you're over the asset limit.

And so if this undisclosed asset, minor as it may be, nevertheless over the \$1,600 asset limit is unknown for six months, there's six months of ineligibility for that individual.

Related to that is the provider of Medicaid services for that individual. If it -- if the applicant or recipient is actually in -- a resident in a nursing home, that is six months of ineligibility for a Medicaid, and no payer for six months of nursing home care. So now you -- you see the interest of the caregiver -- Association of Health Care Facilities in

the bill. But initially the benefit is -- is absolutely to the individual.

REP. FERRARO (117TH): Well, Mr. Barrett, it seems that when we're talking about the cash value of somewhere between \$10,000 and \$1,500, we're talking about a cash value that at the private -- the current price of a week of institutionalized health care costs in a nursing home, that that won't last very long. And then once that -- that cash value is paid down, then they're going on Medicaid or Medicare anyway, correct?

MATTHEW BARRETT: Correct.

REP. FERRARO (117TH): So, wouldn't it be to the benefit of the state and DSS to acquire the face value of the policy, as opposed to the cash value of the policy? Isn't there a tremendous disparity between the two of those?

MATTHEW BARRETT: I guess I would agree, there is a tremendous disparity. For -- for example, if there were a mechanism to gain access, not to the cash surrender value, but to the face value of the life insurance policy, which may be say \$100,000.

REP. FERRARO (117TH): M-hum.

MATTHEW BARRETT: Then that money -- again, I -- I think it would have to become available to the applicant or -- I don't think there's any way to swoop in and take it from some other purpose. But as soon as it becomes the -- the -- in the possession of the applicant or recipient, they must spend it down in some way in order to be eligible for Medicaid.

So, the benefit to the taxpayers in the fact pattern that you just outlined, would be that there would be a far longer period of time where they actually would not be eligible for Medicaid, and the taxpayers would not be footing the bill.

My only hope in that situation would be while they would not be required to use that money to pay for the cost of their skilled nursing facility care -- and again, as I said before, they -- it can be used for other purposes. But my hope would be they -- they would do that.

REP. FERRARO (117TH): And so I -- I guess then -- I -- I'm basing a lot of my questions on testimony that's coming up. I've read the testimony and it's intriguing to me that he -- this individual apparently has a mechanism in which that this can be done.

My last question to you is, in reading the bill, it talks about institutionalized care, but I didn't see any mention of home care and hospice care. So that -- that -- that bill would not cover individuals in that -- in those situations?

MATTHEW BARRETT: I -- my understanding is that Medicaid rules governing long-term services and support really are the same in terms of assets and the treatment of assets. Both for -- I don't prefer the term institutional care to describe skilled nursing facilities, but I get your point.

But they -- they are governing both nursing facility care and home care and related community-based services governed under the Medicaid program,

under the category of long-term services and supports. So they're both covered there.

REP. FERRARO (117TH): Mr. Barrett, thank you very much for your patience and your answers. And thank you, Madam Chair.

MATTHEW BARRETT: You're welcome, Representative.

SENATOR MOORE (22ND): Anyone else? Thank you so much. Mag Morelli.

MAG MORELLI: Hi, good afternoon Senator Moore, Members of the Committee.

SENATOR MOORE (22ND): Good afternoon.

MAG MORELLI: My name is Mag Morelli and I am the President of LeadingAge Connecticut, a membership association of not-for-profit organizations representing the entire field of aging services and senior housing.

LeadingAge Connecticut has submitted testimony on five separate bills, but I really wanted to speak to - to S.B. 107. We are really, really pleased to be supporting this proposal, and we wanted to thank the Department of Social Services for their perseverance on this issue.

As Mr. Barrett said before me, in 2013 we worked very closely with this Committee and with the Department of Social Services on a much larger bill, having to do with transferred assets and other issues dealing with the long-term care eligibility process. And one of the pieces of that bill was something that

everybody agreed to, it was very common sense, and that was this idea of small life insurance policies that were hampering people's eligibility for Medicaid.

I was -- and particularly people in skilled nursing facilities; it was holding up their eligibility process and it was causing the nursing homes to go sometimes months without payment, just for a small life insurance policy that they were either having trouble surrendering, finding difficulty having, you know -- going through the process that might have taken months and months and months to contact the company, all that time they'd be over assets.

Or often, as Mr. Barrett said, it would be found later or it would be discovered later and it was a small policy that then would go right to -- act to cause them to be ineligible for those months.

So, because CMS didn't accept the language we had in the statute, three years later the department's coming back and still trying to correct that language so that we can move forward with that, which is really a benefit to many of my members, field nursing facility members; and so we thank them for their perseverance in working with CMS to try to work this out to the benefit of everyone involved. So, we really strongly support this bill, and hope that the Committee would support it also. Thank you.

UNIDENTIFIED SPEAKER: You're there --

MAG MORELLI: Oh, okay, well. I have submitted testimony on some of the other bills here before you, and I'd be glad to answer any questions on that --

that testimony either.

SENATOR MOORE (22ND): Any questions? The -- the bell went off a little soon, I said that's not three minutes.

MAG MORELLI: That's okay, all right.

SENATOR MOORE (22ND): Thank you very much.

MAG MORELLI: Thank you.

SENATOR MOORE (22ND): Matthew Stillman.

MATTHEW STILLMAN: Hello, Senator Moore and Members of the Committee. Thank you for hearing our testimony today. I'm not going to reiterate all the written testimony that I provided. My name is Matthew Stillman. I'm an elder law attorney. I practice in Guilford. I've been an elder law attorney for 15 years.

I'm also the legislative director for the National Academy of Elder Law Attorneys, Connecticut Chapter, known as Connecticut NAELA; which is an organization of 150 attorneys across the state of Connecticut who represent thousands of elderly clients.

Both my organization and elderly attorneys across the state, and I support Bill 107, which deems the cash value of insurance as an inaccessible asset while the insured is pursuing the surrender of the policy.

I will simply cite, what Mr. Barrett talked about, where I actually had a client basically who was

deemed ineligible for Medicaid because she had \$1,000 in a bank account, and had a cash value of her life insurance policy for \$2,400. She was deemed ineligible for Medicaid for four months for skilled nursing care basically, which cost in excess of \$56,000, because she had a \$2,400 policy that the insurance policy would simply -- the insurance company would not process the liquidation of the policy.

Other issues that also bring -- come to mind basically are people who try to liquidate insurance policies to pay for funerals; which are an acceptable transfer of insurance policies.

It takes -- you're dealing with coordination in those cases between funeral homes and family members and individuals; sometimes the power of attorney, and then the insurance company, and it takes months to get the liquidation of these policies completed.

All during that entire time, if the individual's policy has a cash value, and it's worth more than \$1,600 of assets, between that and their other assets, they are deemed ineligible for skilled care, which ends up costing in excess of 13 to \$14,000 a month. Assets that the individual does not have, and assets basically which there is no other way to recoup.

My organization and I and other attorneys across the state strongly support this bill and ask for its passage. I'll take any questions.

SENATOR MOORE (22ND): Thank you. Any questions?
Thank you for your testimony.

MATTHEW STILLMAN: Thank you, Senator.

SENATOR MOORE (22ND): Terry Gilbert.

TERRANCE GILBERT: Good afternoon distinguished Chairs of the Human Services Committee, Senator Marilyn Moore, Representative Catherine Abercrombie and ranking Members Joe Markley and Representative Terrie Wood. I want to thank you for the opportunity to testify today in opposition to S.B. 107.

My name is Terrance Gilbert, CEO of Medicaid Recovery Investigations. I've also been in the life insurance business since 1968, which is 48 years.

I'm here to voice concerns about the intent of this bill. In 1993 Congress enacted the Omnibus Act Section 13612; Medicaid recoveries which mandate to seek recoveries.

Connecticut has a five-year lookback policy on assets, as we know. My concern is how will the state determine if the policies in question have been transferred within the lookback period. With a deficit of over \$20 million, my concern is why does the state of Connecticut want to take money away from a system which is already in financial troubles?

What's the benefit to the state, and most importantly to the taxpayers that support the Medicaid system? By considering some policies worthy for its cash values and other as exempt, I believe this will create a dual eligibility, which is unfair to the Medicaid recipient.

The bill also refers to institutionalized individuals but makes no mention of the community and

home-based programs, which I believe Mr. Barrett expounded on, which is fine.

Under the current basic eligibility for elderly and blind and disabled, life insurance, as we know, cash value of life insurance is excluded at the face value of all such policies less than \$1,500. If the face value exceeds \$1,500, the cash value surrender of the policy is counted towards the asset limit and term insurance is not included.

If some people are allowed to keep their -- their policies based on cash value -- and by the way, the average life insurance policy as of this year -- last year rather, was \$168,000.

The beneficiaries of those policies will benefit from the face amount and not the taxpayer, who supports the Medicaid system. The actual application of eligibility will have to be changed to reflect the changes in this bill.

Since there is no synergism or bridge used by the state of Connecticut in any way, shape or form, to the 1,800 insurance companies that are licensed to do business in the United States, to identify all policies in force on a Medicaid recipient, it is not clear how this bill will be enforced.

How will this bill apply to the Connecticut Fraud Statutes? If one person reports their policy on that application that they have, and the other people do not, how do you -- how does one enforce it if there's -- there's no interaction between DSS and the insurance industry? So we're relying strictly on those individuals and their appointed representatives,

who may or may not know about any particular policy that may be in force, because it may have been 40 years ago. It just doesn't apply in this situation.

Other considerations have to be given to policies that have been issued for the long-term care rider, in order to accelerate a death benefit. This is something that's already in place. The long-term care benefit rider on life insurance policies, if you take the cash value out of the policy, you're going to lose the benefit of the long-term care rider.

Connecticut happens to be part of the -- the partnership with several other states with respect to the long-term care and -- and the respective laws with respect to long-term care.

SENATOR MOORE (22ND): I'll need you to wrap up, please.

TERRANCE GILBERT: Okay. Well, I -- I urge the Committee not to support S.B. 107. I thank you for your comments and proposed changes, and I'm available to answer any questions that you might have.

SENATOR MOORE (22ND): Representative Ferraro.

REP. FERRARO (117TH): Thank you, Madam Chair.

I actually was looking forward to this testimony, because I found it to be interesting, and that's why I've been questioning this particular bill from the get-go.

Mr. Gilbert, you've heard the questions today? You were here in the room --

TERRANCE GILBERT: Yes.

REP. FERRARO (117TH): -- and heard those questions?

Some of the questions that I -- I posed had to do with the way the word estate is defined in the state of Connecticut. It's currently, as you know, is the -- is the narrow definition, and we're looking to about 29 states or so that have the broad definition.

Could you expound a little bit as to how the broad definition would benefit the state of Connecticut and the taxpayer?

TERRANCE GILBERT: The definition of estate was established under Omnibus Act in 1993, which allowed states to either adopt the narrow definition of estate, which are assets that are probatable, or the broad definition, which are assets that are probatable and anything that's outside of probate. Life insurance and annuities, of course, are outside of probate. So they really don't fall into the jurisdiction of the narrow definition.

So what -- what this bill is proposing is cutting up a life insurance policy that they really don't have, you know, the jurisdiction under -- under the, you know, definition; which is why I think they ran into problems -- the commissioner ran into problems with this before.

I mean I can tell you that, for example, one of the states that I do deal with, Oregon, has the full definition. I won't read the whole thing, but it does say that under a similar arrangement, the state can

pursue recovery against an annuity, which was brought up before, and life insurance of -- of property of the deceased Medicaid beneficiary.

This is the end amount to millions and millions and millions of dollars to the state of Connecticut, and not trying to cancel these policies for small cash values.

And again, I think it -- it creates a dual eligibility. If I have a -- a universal life insurance contract, or a variable life insurance contract, which involves the SEC, that might have a greater impact and a lower face value than a -- another policy that has a big face value -- I'm sorry, a smaller cash value, and a bigger value, which would be a universal life type of contract.

So I don't see where the state can even -- even govern any of these policies. They'd have to create a whole division within the DSS department in order to monitor these things. And there's -- there -- again, there's no bridge or synergism between DSS and all 1,800 insurance companies doing business here in the state of Connecticut.

So, I -- I -- I don't see how it's -- it's viable as a bill. I don't think it's enforceable and I don't think that you can keep control of it, and I think it's only going to add to an existing unruly system as it is. I think it's going to create more problems than -- than it's going to transfer.

REP. FERRARO (117TH): Going to the intent of the bill, it seems that the intent of the bill is to eliminate a problem that people who are applying for

Medicaid have had that in the time it takes to get rid of a small insurance asset, they're not eligible for Medicaid.

In your opinion, if we -- if the bill didn't pass, how would -- how would that situation be mitigated?

TERRANCE GILBERT: I think the -- I think the examples that were given here today are the exception, and not the rule. The -- the life insurance industry is -- is governed by certain mandates, and they have to respond to these policies within a specified period of time. There may be times through certain bureaucracies that -- that the insurance companies, because it got shuffled under there, there is a four-month delay.

But the -- the -- the rules are that these insurance companies have to respond to these in a -- in a specified and timely manner; both as a death claim and as a -- as a -- if you were taking out a loan on it, or you were cashing it out. I believe it's ten days.

REP. FERRARO (117TH): And that --

TERRANCE GILBERT: So that -- these four-month things are -- these are definitely the exceptions, and not the rules. It does happen.

REP. FERRARO (117TH): Mr. Barrett testified that -- that there were, in his testimony had said that there's no mechanism currently to recover the cash -- the face amount versus the cash value; acknowledging that there's a huge disparity between the two, and that the difference in recoverable assets to the state

of Connecticut would be significant.

He said there was no current mechanism which -- to -- to do that. Do you -- would you shed some light on that?

TERRANCE GILBERT: No, Mr. Barrett is correct on that. Again, going back to the 1993 Omnibus Act, it gave the states the -- the option of -- of adopting the narrow definition, or the broad definition. The broad definition would include non-probatable assets, which are annuities -- which include annuities and life insurance.

If the state of Connecticut did in fact adopt the broad-form definition, which I believe they should, there are many, many more assets that are available to the program, and to the state of Connecticut, and subsequently relief to the taxpayers of the state of Connecticut; and I'm talking millions and millions and millions of dollars.

REP. FERRARO (117TH): What exactly would be the -- the -- how many words are -- what exactly are we talking about with regards to adapting the broad definition versus the narrow?

TERRANCE GILBERT: Simply -- I'm going to give you state of Washington, what they did under their definition of estate. A client, in their case after 1997, that are non-probatable assets; it's a one sentence.

REP. FERRARO (117TH): Just one sentence?

TERRANCE GILBERT: Right. Because the -- the narrow

definition means basically anything that goes through probate can be recovered. Anything -- under the broad definition -- definition, is anything that goes through probate, plus any -- anything outside of probate. And these assets that I'm talking about, the life insurance and the annuities, which were brought up today, are outside of probate; they're not probatable assets. But they are recoverable under a broad-form definition of the estate plan, under Title 19 of the Social Security Act.

REP. FERRARO (117TH): And my last question has to do with the orphan policies that you often hear about that are out there. Could you shed some light on an orphan policy and -- and how it might be lost -- how it could be a recoverable assets and how it might be lost?

TERRANCE GILBERT: Well, under the -- under the broad -- under the narrow definition, there's no way to find -- find out, because again, there's no bridge or communications between DSS and the insurance companies.

There is a way that the -- we break it down into three areas; the -- the known policies, which are the ones that are put on the Medicaid application; the manipulated policy, which is one where there's a transfer of ownership which is -- is the legal loophole that we're talking about here. It allows people to transfer ownership of a policy. If I'm going into a nursing home, I can transfer that policy to my son, and legally I can say, when I'm asked on the expanded 1348, do I own life insurance, I can legally say no. That's a manipulated policy.

And the other policies are -- the insurance industry has -- has got billions and billions of dollars of what they call orphan policies, or unclaimed policies. Every year the state of Connecticut, as well as all the other states, puts out -- puts out unclaimed properties. Within there are bank accounts, annuities, life insurance policies, and so on and so forth.

REP. FERRARO (117TH): Okay.

TERRANCE GILBERT: If we had the broad definition here in Connecticut, we could then identify directly with the insurance companies to recover those assets.

REP. FERRARO (117TH): Thank you, Mr. Gilbert. And thank you, Madam Chair.

SENATOR MOORE (22ND): Any other questions? Thank you.

TERRANCE GILBERT: Thank you.

SENATOR MOORE (22ND): So, next is S.B. 116. Mag Morelli.

MAG MORELLI: Senator Moore and Members of the Committee, thank you again. I'm Mag Morelli.

I did sign up on several bills, and on 116, the -- I'm from LeadingAge Connecticut, a membership organization of not-for-profit providers of aging services.

On 116 we just wanted to comment. We're not really opposing or promoting this bill, but it

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***Testimony before the Human Services Committee
Roderick L. Bremby, Commissioner
February 23, 2016***

Good afternoon Senator Moore, Representative Abercrombie and distinguished members of the Human Services Committee. My name is Roderick Bremby, and I am the Commissioner of the Department of Social Services.

I am pleased to appear before you today and respectfully request your support of the following ten agency bills –

1. S.B. No. 105 (RAISED) - AN ACT CONCERNING THE PAYMENT OF FUNERAL AND BURIAL EXPENSES BY THE DEPARTMENT OF SOCIAL SERVICES
2. S.B. No. 106 (RAISED) - AN ACT CONCERNING A MEDICAID AMBULATORY PAYMENT CLASSIFICATION SYSTEM FOR CERTAIN HOSPITAL SERVICES
3. S.B. No. 107 (RAISED) - AN ACT CONCERNING THE TREATMENT OF THE CASH VALUE OF LIFE INSURANCE POLICIES WHEN EVALUATING MEDICAID ELIGIBILITY
4. S.B. No. 109 (RAISED) - AN ACT RENAMING THE BUREAU OF CHILD SUPPORT ENFORCEMENT TO THE OFFICE OF CHILD SUPPORT SERVICES
5. S.B. No. 116 (RAISED) - AN ACT CONCERNING CAREGIVER AGREEMENT REQUIREMENTS FOR MEDICAID APPLICANTS OR RECIPIENTS
6. S.B. No. 135 (RAISED) - AN ACT CONCERNING REVISIONS TO HUSKY PLUS
7. H.B. No. 5250 (RAISED) - AN ACT CONCERNING CONTRIBUTIONS FROM SPOUSES OF INSTITUTIONALIZED MEDICAID RECIPIENTS
8. H.B. No. 5253 (RAISED) - AN ACT CONCERNING IMPROVEMENTS TO INCOME WITHHOLDING FOR CHILD SUPPORT
9. H.B. No. 5254 (RAISED) - AN ACT EXPANDING THE COMMISSION FOR CHILD SUPPORT GUIDELINES
10. H.B. No. 5256 (RAISED) AN ACT EXPEDITING CHILD SUPPORT MODIFICATION ORDERS FOR INCARCERATED OR INSTITUTIONALIZED OBLIGORS

In addition, I will offer remarks on several other bills on the agenda.

SB114 SB115 SB108

reimbursement methodology that is fully aligned with those behavioral health services that are provided outside of the outpatient hospital setting.

The bill also includes additional language related to establishing a supplemental pool to provide payments to offset losses incurred by publically operated acute care hospitals and acute care children's hospitals as a result of the implementation of the ambulatory payment classification system. Due to the intricacy of this classification methodology, it is easiest to implement the same rates for every hospital and then supplement these payments for those complex acute care hospitals identified above.

The Department does not anticipate that this proposal will incur a fiscal impact as this system was designed to be revenue-neutral.

We ask for your support of this bill.

3. S.B. No. 107 - AN ACT CONCERNING THE TREATMENT OF THE CASH VALUE OF LIFE INSURANCE POLICIES WHEN EVALUATING MEDICAID ELIGIBILITY

This bill aims to expedite the receipt of Medicaid long-term services and supports by applicants who own a life insurance policy or policies with aggregate cash surrender value of ten thousand dollars or less. It clarifies that an applicant shall not be determined ineligible for Medicaid because he or she owns such a policy. The bill also eliminates the requirement that the proceeds received from surrendering such policy be used to pay for the individual's institutional cost of care.

We ask for your support of this bill.

4. S.B. No. 109 - AN ACT RENAMING THE BUREAU OF CHILD SUPPORT ENFORCEMENT TO THE OFFICE OF CHILD SUPPORT SERVICES

This proposal changes each statutory reference from "Bureau of Child Support Enforcement" to "Office of Child Support Services."

In recent years, consistent with direction from the federal Administration for Children and Families, the bureau's mission has evolved to include a family-centered approach to encourage fathers and noncustodial parents to participate more fully in the lives of their children. Such parental engagement may result in improved family relationships, increased economic stability, and enhanced overall child support collections.

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CONNECTICUT ASSOCIATION OF HEALTH CARE FACILITIES, INC.

February 23, 2016

Written testimony of Matthew V. Barrett, Executive Vice President of the Connecticut Association of Health Care Facilities (CAHCF) IN SUPPORT OF S.B. No. 107 (RAISED) AN ACT CONCERNING THE TREATMENT OF THE CASH VALUE OF LIFE INSURANCE POLICIES WHEN EVALUATING MEDICAID ELIGIBILITY.

Good afternoon Senator Moore, Representative Abercrombie and to the members of the Human Services Committee. My name is Matthew V. Barrett, Executive Vice President of the Connecticut Association of Health Care Facilities (CAHCF), our state's one hundred and sixty (160) member trade association of skilled nursing facilities and rehabilitation centers (SNFs). Thank you for this opportunity to offer testimony in support of S.B. No. 107 (RAISED) AN ACT CONCERNING THE TREATMENT OF THE CASH VALUE OF LIFE INSURANCE POLICIES WHEN EVALUATING MEDICAID ELIGIBILITY.

S.B. 107 is important legislation as it provides a remedy to the unjust situations where the cash surrender value of undisclosed and minor life insurance can be responsible for long periods of Medicaid eligibility. When this happens, a recipient or applicant of Medicaid long term services and supports (LTSS) is left without coverage because there has been no effort to spend down the unknown asset to below the \$1600 asset limit. Consequently, LTSS providers (skilled nursing homes, home care and hospice) have often provided care that is unreimbursed by Medicaid. The bill effectively increases the life insurance cash surrender value from \$1,500 to \$10,000.

As background, Human Services Committee legislation for this specific purpose was adopted in 2013 (PA 13-324 now codified under 17b-261(h)), however, the federal Center for Medicaid and Medicare Services (CMS) has signaled their disapproval of the wording of the 2013 statute because it improperly directs the life insurance proceeds to the cost of the individual's health care. Apparently, federal rules required the proceeds be returned to the Medicaid applicant or recipient initially, and then properly spent down. This has prevented implementation of the desired policy in Connecticut.

S.B. 107 addresses the CMS concern by amending Section 17b-261(h) of the Connecticut General Statutes as adopted by PA 13-234 to remove the wording that requires the use of proceeds from a cash surrender of a life insurance policy that has a cash value of ten thousand dollars or less to be used for the individual's institutionalized cost of care.

S.B. 107 will allow implementation of the 2013 public act as intended. CAHCF is grateful to the Department of Social Services for putting forward this proposal and to the Human Services Committee for scheduling today's public hearing. We urge adoption.

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

For additional information, contact: Matthew V. Barrett, Connecticut Association of Health Care Facilities, (cell) 860-373-4365 or mbarrett@cahcf.org

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page 8**Testimony in Opposition of SB No. 107****Committee on Human Services****AN ACT CONCERNING THE TREATMENT OF CASH VALUE OF LIFE INSURANCE
POLICIES WHEN EVALUATING MEDICAID ELIGIBILITY**

Good afternoon distinguished chairs of the Human Services Committee: Senator Marilyn Moore and Representative Catherine Abercrombie and Ranking Members Senator Joe Markley and Representative Terrie Wood. I want to thank you for the opportunity to testify today in **opposition of SB 107, An Act Concerning the Treatment of Cash Value of Life Insurance Policies when evaluating Medicaid Eligibility.**

My name is Terrance Gilbert, CEO of Medicaid Recovery Investigations (MRI). I have also been in the Life Insurance business since 1968, 48 years.

I am here today to voice concerns about the intent of this bill. In 1993 Congress enacted the OMNIBUS ACT, SEC. 13612. Medicaid Recoveries which is a Mandate To Seek Recoveries. Connecticut has a Five Year look Back policy on assets. How will the State determine if the policies in question have been transferred within the look back period? With a deficit of some 20 million dollars, my main concern is "Why does the state of Ct want to take money away from a system which already has financial troubles." What is the benefit to the State and most importantly the TAXPAYERS that support Medicaid. By considering some policies worthy for it's cash value and others as exempt. I believe this will create a dual eligibility which is unfair to the Medicaid recipient. The bill also refers to "Institutionalized individual" but makes no mention of Community and Home Based Programs.

Currently under the Basic Eligibility for the Elderly, Blind and Disabled:

Life Insurance

The cash surrender value of life insurance is excluded if the face value of all such policies is less than \$1500.00. If the face value exceeds the \$1500.00 limit, the cash surrender value of the policy is counted toward the asset limit. Term insurance is not counted.

If some people are allowed to keep their policies based on a cash value, the beneficiaries of those life policies will benefit by the face amount and not the taxpayer who supports Medicaid.

The actual application to apply for eligibly will have to be changed to reflect the changes by this bill.

Since there is NO synergism or bridge used by the State of Connecticut to the insurance industry to identify ALL policies in force on a Medicaid recipient, it is not clear how this bill could be enforced. How will this bill apply to the CT "Fraud Statute"? How does this effect "CT Probate Law" under Fed. 1917(b) (42 U.S.C. 1396p(b) SEC 4a and Non TEFRA Liens?

Other considerations must be given to those policies that have been issued with a LTC rider or an Accelerated death benefit. In addition there are policies marketed to sick and elderly people such as Senior Settlement and Life Settlement Policies, which DSS would have no way of knowing.

Connecticut currently has the "Narrow " definition of "Estate" . It is my recommendation that the State of Connecticut would benefit in all aspects of the DSS program by adopting the expansive "Broad Form" definition of the 1993 OMNIBUS ACT. This would allow for the recovery to DSS of the full face amount of the life insurance policy and not have to consider the cash values as an eligibility requirement and generate millions of dollars to the state.

WORDING to the definition of "Estate" For all nonprobate assets.

I urge this committee not to support SB 107.

Thank you for taking my comments and proposed changes . I'm available to answer any questions you may have at this time.

To: Connecticut General Assembly Human Services Committee

Comments re: Bill No 107: An Act Concerning the Treatment of the Cash Value of Life Insurance Policies when evaluating Medicaid Eligibility

From: Matthew T. Stillman, J.D., LL.M., (Elder Law and Estate Planning)
Stillman & Associates, LLC
23 Boston Street
Guilford, CT 06437

My name is Matthew Stillman. I am an Elder Law attorney, practicing in this field for over fifteen (15) years. I also am the legislative director for the National Academy of Elder Law Attorneys, CT Chapter (CTNAELA), an organization of 150 Elder Law attorneys, representing thousands of Elderly clients from across the State of Connecticut.

Both my organization and I support Bill #107, which deems the cash value of insurance as an inaccessible asset while the insured is pursuing the surrender of the policy.

Life insurance with a face value greater than \$1,500 counts towards one's Medicaid eligibility.

Unfortunately, the bureaucracies of large insurance companies cause lengthy delays when clients liquidate insurance policies. Liquidation and payment takes months to resolve, during which time the individual is considered "asset eligible" for Medicaid even though they have tendered all forms to liquidate said policies; there is nothing left that can be "done" by the applicant.

This problem is specifically addressed by Bill #107 which eliminates counting of insurance policies "cash value" as an asset when an insured is pursuing the surrender of the policy.

This has a great need in Connecticut. One client of mine who was considered "over asset" for Medicaid eligibility for four (4) months solely due to insurance proceeds. The client initiated/submitted forms to liquidate her policies in February, 2015; the process was not complete until May, 2015. No further action could be undertaken on her behalf and she was deemed "over asset" for four months, rendering her liable for \$56,000 in nursing home payments regardless that she had few assets to her name.

In both the initial case and the appeal, DSS overruled our attempts to claim the asset "inaccessible" regardless that the appropriate forms were tendered. Logic would tend one to believe this concern would be recognized; it was not. DSS' based its inability to consider the insurance as inaccessible because the statutes failed to state so; this statute corrects that "gap".

Again, the result of this 'gap' in the regulations is that my client (who had nothing else in her name) is/was liable for an additional \$70,000 of nursing home expenses from January through May 2015; funds that will never be recovered because there is/are no other parties to pay and she had no other assets. These funds were not given away, transferred unnecessarily, or subject to penalty; all my client's funds were spent on her care and she was deemed ineligible while she was attempting to liquidate her insurance.

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Unfortunately, this is not a unique situation; it is regularly repeated across the State.

The state's protections towards Medicaid eligibility are maintained in allowing passage of Bill #107. All other rules regarding asset accessibility, allowable transfers, penalties for gifts, etc... remain; Bill #107 simply defers Medicaid denials while an applicant pursues the surrender of any/all countable insurance policies; a protection that is good for the State, good for the nursing homes, and good for the applicants.

My organization, our attorneys and clients, and I recommend passage of Bill #107 which will consider life insurance with cash value less than \$10,000 as inaccessible once an individual pursues the surrender of the policy.



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**Testimony to the Human Services Committee
Presented by Mag Morelli, President of LeadingAge Connecticut**

February 23, 2016

Regarding

SB 107, An Act Concerning the Treatment of the Cash Value of Life Insurance Policies when Evaluating Medicaid Eligibility

SB 116, An Act Concerning Caregiver Agreement Requirements for Medicaid Applicants or Recipients

SB 114, An Act Concerning Presumptive Medicaid Eligibility for Home Care

SB 115, An Act Concerning Medicaid Coverage of Telemonitoring Services

HB 5252, An Act Concerning Nursing Home Beds for AIDS Patients

Good afternoon Senator Moore, Representative Abercrombie, and members of the Human Services Committee. My name is Mag Morelli and I am the President of LeadingAge Connecticut, a membership organization of 130 not-for-profit organizations representing the entire field of aging services and senior housing. On behalf of LeadingAge Connecticut, I would like to testify in support of several bills before you today that are related to long term services and supports and aging services.

SB 107, An Act Concerning the Treatment of the Cash Value of Life Insurance Policies when Evaluating Medicaid Eligibility

LeadingAge Connecticut is pleased to support this proposal and we would like to thank the Department of Social Services for their perseverance on this issue.

In 2013, we worked with this Committee and the Department of Social Services to pass legislation which addressed several issues of concern with the eligibility determination process for long term care, services and supports. One provision of that legislation addressed a concern regarding the existence of small (\$10,000 or less) insurance policies that hindered the eligibility process when there were delays or complications in surrendering such a policy.

This was a common sense provision that everyone was in agreement with, but which we later learned would not be approved by CMS because of the manner in which it was drafted. The bill before you today is an attempt to correct the statute so that it accomplishes the same goal, but in a manner that is acceptable to CMS. While this may seem small, it would be a great help to residents and nursing homes that are frustrated by this situation.

We support this bill and again want to thank the Department of Social Services for their perseverance on this issue and their willingness to find a solution that would be acceptable for CMS.