

STATE OF NEW YORK

833

2021-2022 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. GOTTFRIED, BARRON, CUSICK, CYMBROWITZ, DINOWITZ, ENGLEBRIGHT, GALEF, KIM, LUPARDO, McMAHON, OTIS, SEAWRIGHT, SIMON, THIELE, STECK, CARROLL, HEVESI, ABINANTI, GOODELL -- read once and referred to the Committee on Health

AN ACT to amend the social services law, in relation to the determination of eligibility for medical assistance benefits

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Clause (vi) of subparagraph 1 of paragraph (e) of subdivi-
2 sion 5 of section 366 of the social services law, as amended by section
3 13 of part MM of chapter 56 of the laws of 2020, is amended to read as
4 follows:

5 (vi) "look-back period" means the sixty-month period immediately
6 preceding the date that an institutionalized individual is both institu-
7 tionalized and has applied for medical assistance, or in the case of a
8 non-institutionalized individual, subject to federal approval, for
9 transfers made on or after October first, two thousand twenty, the thir-
10 ty-month period immediately preceding the date that such non-institu-
11 tionalized individual applies for medical assistance coverage of long
12 term care services. Nothing herein precludes a review of eligibility for
13 retroactive authorization for medical expenses incurred during the three
14 months prior to the month of application for medical assistance.

15 § 2. Clauses (iii) and (iv) of subparagraph 4 of paragraph (e) of
16 subdivision 5 of section 366 of the social services law, as added by
17 section 26-a of part C of chapter 109 of the laws of 2006, are amended
18 and a new clause (v) is added to read as follows:

19 (iii) a satisfactory showing is made that: (A) the individual or the
20 individual's spouse intended to dispose of the assets either at fair
21 market value, or for other valuable consideration; or (B) the assets
22 were transferred exclusively for a purpose other than to qualify for

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 medical assistance; or (C) all assets transferred for less than fair
2 market value have been returned to the individual or used on the indi-
3 vidual's behalf; or

4 (iv) denial of eligibility would cause an undue hardship, such that
5 application of the transfer of assets provision would deprive the indi-
6 vidual of medical care such that the individual's health or life would
7 be endangered, or would deprive the individual of food, clothing, shel-
8 ter, or other necessities of life. The commissioner of health shall
9 develop a hardship waiver process which shall include a timely process
10 for determining whether an undue hardship waiver will be granted and a
11 timely process under which an adverse determination can be appealed. The
12 commissioner of health shall provide notice of the hardship waiver proc-
13 ess in writing to those individuals who are required to comply with the
14 transfer of assets provision under this section. If such an individual
15 is an institutionalized individual, the facility in which he or she is
16 residing shall be permitted to file an undue hardship waiver application
17 on behalf of such individual with the consent of the individual or the
18 personal representative of the individual[-]; or

19 (v) the transfer was to a family member or informal caregiver before
20 the current period of institutional status, or before the application
21 for Medicaid for non-institutional long-term care services, and all the
22 following conditions are met:

23 (A) the transfer is in exchange for care services the family member or
24 informal caregiver provided to the client or the client's spouse;

25 (B) the client or the client's spouse had a documented need for the
26 care services provided by the family member or informal caregiver;

27 (C) the fair market value of the asset transferred is comparable to
28 the fair market value of the care services provided; and

29 (D) the time for which care services are claimed is reasonable based
30 on the kind of services provided.

31 § 3. Subparagraph 5 of paragraph (e) of subdivision 5 of section 366
32 of the social services law, as added by section 26-a of part C of chap-
33 ter 109 of the laws of 2006, is amended to read as follows:

34 (5) Any transfer made by an individual or the individual's spouse
35 under subparagraph three of this paragraph shall cause the person to be
36 ineligible for services for a period equal to the total, cumulative
37 uncompensated value of all assets transferred during or after the look-
38 back period, divided by the average monthly costs of nursing facility
39 services provided to a private patient for a given period of time at the
40 time of application, as determined pursuant to the regulations of the
41 department. For purposes of this subparagraph, the average monthly costs
42 of nursing facility services to a private patient for a given period of
43 time at the time of application shall be presumed to be one hundred
44 twenty percent of the average medical assistance rate of payment as of
45 the first day of January of each year for nursing facilities within the
46 region where the applicant resides, as established pursuant to paragraph
47 (b) of subdivision sixteen of section twenty-eight hundred seven-c of
48 the public health law. The period of ineligibility shall begin the first
49 day of a month during or after which assets have been transferred for
50 less than fair market value, or, (i) for institutionalized individuals,
51 the first day the otherwise eligible individual is receiving services
52 for which medical assistance coverage would be available based on an
53 approved application for such care but for the provisions of subpara-
54 graph three of this paragraph, whichever is later, and which does not
55 occur in any other periods of ineligibility under this paragraph, or
56 (ii) for non-institutionalized individuals, the first day the otherwise

1 eligible individual is functionally eligible for services for which
2 medical assistance would be available based on an approved application
3 for such care but for the provisions of subparagraph three of this para-
4 graph, whichever is later, and which does not occur in any other periods
5 of ineligibility under this paragraph.

6 § 4. Subdivision 12 of section 366-a of the social services law, as
7 added by section 36-c of part B of chapter 57 of the laws of 2015, is
8 amended to read as follows:

9 12. The commissioner shall develop expedited procedures for determin-
10 ing medical assistance eligibility for any medical assistance applicant
11 with an immediate need for personal care or consumer directed personal
12 assistance services pursuant to paragraph (e) of subdivision two of
13 section three hundred sixty-five-a of this title or section three
14 hundred sixty-five-f of this title, respectively. Such procedures shall
15 require that a final eligibility determination be made within seven days
16 of the date of a [~~complete~~] medical assistance application that shall be
17 complete, except that a non-institutionalized individual applicant may
18 attest that no transfers of assets were made within the look-back period
19 under subdivision five of section three hundred sixty-six of this title;
20 provided the non-institutionalized individual applicant shall submit
21 complete documentation of assets during the look-back period within
22 thirty days of the date the application was filed.

23 § 5. This act shall take effect immediately; provided, however, that
24 if the amendments made to clause (vi) of subparagraph 1 of paragraph (e)
25 of subdivision 5 of section 366 of the social services law by section 13
26 of part MM of chapter 56 of the laws of 2020 shall not have taken effect
27 on or before such date then section one of this act shall take effect on
28 the same date and in the same manner as such chapter of the laws of 2020
29 takes effect.