S T A T E O F N E W Y O R K

1163

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. GANTT -- read once and referred to the Committee on Health

AN ACT to amend the social services law, in relation to establishing resource level requirements for the family health plus program

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subparagraph (iii) of paragraph (a) of subdivision 2 of section 369-ee of the social services law, as added by chapter 1 of the laws of 1999 and as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

(iii) does not have equivalent health care coverage under insurance or equivalent mechanisms, as defined by the commissioner in consultation with the superintendent of financial services; AND FOR PURPOSES OF THIS SUBPARAGRAPH, MEDICARE PROVIDED PURSUANT TO PART A OF TITLE XVIII OF THE FEDERAL SOCIAL SECURITY ACT SHALL BE DEEMED TO NOT BE AN EQUIVALENT HEALTH CARE COVERAGE UNDER INSURANCE OR AN EQUIVALENT MECHANISM;

S 2. Subparagraph (iii) of paragraph (a) of subdivision 2 of section 369-ee of the social services law, as amended by section 68 of part C of chapter 58 of the laws of 2009 and as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

(iii) does not have equivalent health care coverage under insurance or equivalent mechanisms, as defined by the commissioner in consultation with the superintendent of financial services; AND FOR PURPOSES OF THIS SUBPARAGRAPH, MEDICARE PROVIDED PURSUANT TO PART A OF TITLE XVIII OF THE FEDERAL SOCIAL SECURITY ACT SHALL BE DEEMED TO NOT BE AN EQUIVALENT HEALTH CARE COVERAGE UNDER INSURANCE OR AN EQUIVALENT MECHANISM;

S 3. Paragraph (b) of subdivision 2 of section 369-ee of the social services law, as amended by section 45-d of part C of chapter 58 of the laws of 2008, and the opening paragraph as amended by section 59-c of part C of chapter 58 of the laws of 2009, is amended to read as follows:

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

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(b) Subject to the provisions of paragraph (d) of this subdivision, in order to establish eligibility under this subdivision, which shall ALSO be determined [without] WITH regard to resources, an individual shall provide such documentation as is necessary and sufficient to initially, and annually thereafter, determine an applicant's eligibility for coverage under this title. Such documentation shall include, but not be limited to the following, if needed to verify eligibility:

(i) paycheck stubs; or

(ii) written documentation of income from all employers; or

(iii) other documentation of income (earned or unearned) as determined by the commissioner, provided however, such documentation shall set forth the source of such income; and

(iv) proof of identity and residence as determined by the commissioner.

The commissioner of health may verify the accuracy of the information provided by the individual pursuant to this paragraph by matching it against information to which the commissioner of health has access including under subdivision eight of section three hundred sixty-six-a of this article.

S 4. Section 369-ee of the social services law is amended by adding two new subdivisions 2-c and 2-d to read as follows:

2-C. EXEMPT RESOURCES. (A) THE FOLLOWING RESOURCES SHALL BE EXEMPT AND SHALL NOT BE TAKEN INTO CONSIDERATION IN DETERMINING A PERSON'S ELIGIBILITY FOR MEDICAL CARE, SERVICES AND SUPPLIES AVAILABLE UNDER THIS TITLE:

(I) A HOMESTEAD WHICH IS ESSENTIAL AND APPROPRIATE TO THE NEEDS OF THE HOUSEHOLD;

(II) ESSENTIAL PERSONAL PROPERTY;

(III) A BURIAL FUND, TO THE EXTENT ALLOWED AS AN EXEMPT RESOURCE UNDER THE CASH ASSISTANCE PROGRAM TO WHICH THE APPLICANT IS MOST CLOSELY RELATED;

(IV) SAVINGS IN AMOUNTS EQUAL TO AT LEAST ONE-HALF OF THE INCOME AMOUNT PERMITTED UNDER SUBPARAGRAPH SEVEN OF PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION THREE HUNDRED SIXTY-SIX OF THIS ARTICLE, PROVIDED, HOWEVER, THAT THE AMOUNTS FOR ONE AND TWO PERSON HOUSEHOLDS SHALL NOT BE LESS THAN THE AMOUNTS PERMITTED TO BE RETAINED BY HOUSEHOLDS OF THE SAME SIZE IN ORDER TO QUALIFY FOR BENEFITS UNDER THE FEDERAL SUPPLEMENTAL SECURITY INCOME PROGRAM;

(V) HEALTH INSURANCE PREMIUMS.

NO OTHER RESOURCES, INCLUDING FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE, STATE DISABILITY INSURANCE OR OTHER PAYROLL DEDUCTIONS, WHETHER MANDATORY OR OPTIONAL, SHALL BE EXEMPT AND ALL OTHER RESOURCES SHALL BE TAKEN INTO CONSIDERATION AND REQUIRED TO BE APPLIED TOWARD THE PAYMENT OR PARTIAL PAYMENT OF THE COST OF MEDICAL CARE AND SERVICES AVAILABLE UNDER THIS SECTION, TO THE EXTENT PERMITTED BY FEDERAL LAW.

(B) (I) IN ESTABLISHING STANDARDS FOR DETERMINING ELIGIBILITY FOR AND AMOUNT OF SUCH ASSISTANCE, THE DEPARTMENT OF HEALTH SHALL TAKE INTO ACCOUNT ONLY SUCH RESOURCES, IN ACCORDANCE WITH FEDERAL REQUIREMENTS, AS ARE AVAILABLE TO THE APPLICANT OR RECIPIENT AND AS WOULD NOT BE REQUIRED TO BE DISREGARDED OR SET ASIDE FOR FUTURE NEEDS, AND THERE SHALL BE A REASONABLE EVALUATION OF ANY SUCH RESOURCES. THE DEPARTMENT OF HEALTH SHALL NOT CONSIDER THE AVAILABILITY OF AN OPTION FOR AN ACCELERATED PAYMENT OF DEATH BENEFITS OR SPECIAL SURRENDER VALUE PURSUANT TO PARAGRAPH ONE OF SUBSECTION (A) OF SECTION ONE THOUSAND ONE HUNDRED THIRTEEN OF THE INSURANCE LAW, OR AN OPTION TO ENTER INTO A VIATICAL SETTLEMENT PURSUANT TO THE PROVISIONS OF ARTICLE SEVENTY-EIGHT OF THE INSURANCE

LAW, AS AN AVAILABLE RESOURCE IN DETERMINING ELIGIBILITY FOR AN AMOUNT OF SUCH ASSISTANCE, PROVIDED, HOWEVER, THAT THE PAYMENT OF SUCH BENEFITS SHALL BE CONSIDERED IN DETERMINING ELIGIBILITY FOR AND AMOUNT OF SUCH ASSISTANCE. THERE SHALL NOT BE TAKEN INTO CONSIDERATION THE FINANCIAL RESPONSIBILITY OF ANY INDIVIDUAL FOR ANY APPLICANT OR RECIPIENT OF ASSISTANCE UNDER THIS SECTION UNLESS SUCH APPLICANT OR RECIPIENT IS SUCH INDIVIDUAL'S SPOUSE OR SUCH INDIVIDUAL'S CHILD WHO IS UNDER TWENTY-ONE YEARS OF AGE. IN DETERMINING THE ELIGIBILITY OF A CHILD WHO IS CATEGORICALLY ELIGIBLE AS BLIND OR DISABLED, AS DETERMINED UNDER REGULATIONS PRESCRIBED BY THE SOCIAL SECURITY ACT FOR MEDICAL ASSISTANCE, THE RESOURCES OF PARENTS OR SPOUSES OF PARENTS ARE NOT CONSIDERED AVAILABLE TO THAT CHILD IF HE OR SHE DOES NOT REGULARLY SHARE THE COMMON HOUSEHOLD EVEN IF THE CHILD RETURNS TO THE COMMON HOUSEHOLD FOR PERIODIC VISITS.

(II) IN EVALUATING THE RESOURCES AVAILABLE TO AN APPLICANT FOR OR RECIPIENT OF MEDICAL ASSISTANCE, FOR PURPOSES OF DETERMINING ELIGIBILITY FOR AND THE AMOUNT OF SUCH ASSISTANCE, THE DEPARTMENT OF HEALTH MUST CONSIDER ASSETS HELD IN OR PAID FROM TRUSTS CREATED BY SUCH APPLICANT OR RECIPIENT, AS DETERMINED PURSUANT TO THE REGULATIONS OF THE DEPARTMENT OF HEALTH, IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBPARAGRAPH.

(A) IN THE CASE OF A REVOCABLE TRUST CREATED BY AN APPLICANT OR RECIPIENT, AS DETERMINED PURSUANT TO REGULATIONS OF THE DEPARTMENT OF HEALTH THE TRUST CORPUS MUST BE CONSIDERED TO BE AN AVAILABLE RESOURCE.

(B) IN THE CASE OF AN IRREVOCABLE TRUST CREATED BY AN APPLICANT OR RECIPIENT, AS DETERMINED PURSUANT TO REGULATIONS OF THE DEPARTMENT OF HEALTH ANY PORTION OF THE TRUST CORPUS, AND OF THE INCOME GENERATED BY THE TRUST CORPUS, FROM WHICH PAYMENT COULD BE MADE TO OR FOR THE BENEFIT OF SUCH APPLICANT OR RECIPIENT MUST BE CONSIDERED TO BE AN AVAILABLE RESOURCE.

(C) NOTWITHSTANDING THE PROVISIONS OF CLAUSES (A) AND (B) OF THIS SUBPARAGRAPH, IN THE CASE OF AN APPLICANT OR RECIPIENT WHO IS DISABLED, AS SUCH TERM IS DEFINED IN SECTION 1614(A)(3) OF THE FEDERAL SOCIAL SECURITY ACT, THE DEPARTMENT OF HEALTH MUST NOT CONSIDER AS AVAILABLE RESOURCES THE CORPUS OR INCOME OF THE FOLLOWING TRUSTS WHICH COMPLY WITH THE PROVISIONS OF THE REGULATIONS AUTHORIZED BY CLAUSE (D) OF THIS SUBPARAGRAPH:

(I) A TRUST CONTAINING THE ASSETS OF SUCH A DISABLED INDIVIDUAL WHICH WAS ESTABLISHED FOR THE BENEFIT OF THE DISABLED INDIVIDUAL WHILE SUCH INDIVIDUAL WAS UNDER SIXTY-FIVE YEARS OF AGE BY A PARENT, GRANDPARENT, LEGAL GUARDIAN, OR COURT OF COMPETENT JURISDICTION, IF UPON THE DEATH OF SUCH INDIVIDUAL THE STATE WILL RECEIVE ALL AMOUNTS REMAINING IN THE TRUST UP TO THE TOTAL VALUE OF ALL MEDICAL ASSISTANCE PAID ON BEHALF OF SUCH INDIVIDUAL; AND

(II) A TRUST CONTAINING THE ASSETS OF SUCH A DISABLED INDIVIDUAL ESTABLISHED AND MANAGED BY A NON-PROFIT ASSOCIATION WHICH MAINTAINS SEPARATE ACCOUNTS FOR THE BENEFIT OF DISABLED INDIVIDUALS, BUT, FOR PURPOSES OF INVESTMENT AND MANAGEMENT OF TRUST FUNDS, POOLS THE ACCOUNTS, PROVIDED THAT ACCOUNTS IN THE TRUST FUND ARE ESTABLISHED SOLELY FOR THE BENEFIT OF INDIVIDUALS WHO ARE DISABLED AS SUCH TERM IS DEFINED IN SECTION 1614(A)(3) OF THE FEDERAL SOCIAL SECURITY ACT BY SUCH DISABLED INDIVIDUAL, A PARENT, GRANDPARENT, LEGAL GUARDIAN, OR COURT OF COMPETENT JURISDICTION, AND TO THE EXTENT THAT AMOUNTS REMAINING IN THE INDIVIDUAL'S ACCOUNT ARE NOT RETAINED BY THE TRUST UPON THE DEATH OF THE INDIVIDUAL, THE STATE WILL RECEIVE ALL SUCH REMAINING AMOUNTS UP TO THE TOTAL VALUE OF ALL MEDICAL ASSISTANCE PAID ON BEHALF OF SUCH INDIVIDUAL. NOTWITHSTANDING ANY LAW TO THE CONTRARY, A NOT-FOR-PROFIT CORPORATION MAY, IN FURTHERANCE OF AND AS AN ADJUNCT TO ITS CORPORATE PURPOSES, ACT

AS TRUSTEE OF A TRUST FOR PERSONS WITH DISABILITIES ESTABLISHED PURSUANT TO THIS SUBCLAUSE, PROVIDED THAT A TRUST COMPANY, AS DEFINED IN SUBDIVISION SEVEN OF SECTION ONE HUNDRED-C OF THE BANKING LAW, ACTS AS CO-TRUSTEE.

(D) THE DEPARTMENT OF HEALTH SHALL PROMULGATE SUCH REGULATIONS AS MAY BE NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SUBPARAGRAPH. SUCH REGULATIONS SHALL INCLUDE PROVISIONS FOR: ASSURING THE FULFILLMENT OF FIDUCIARY OBLIGATIONS OF THE TRUSTEE WITH RESPECT TO THE REMAINDER INTEREST OF THE DEPARTMENT OF HEALTH OR STATE; MONITORING POOLED TRUSTS; APPLYING THIS SUBDIVISION TO LEGAL INSTRUMENTS AND OTHER DEVICES SIMILAR TO TRUSTS, IN ACCORDANCE WITH APPLICABLE FEDERAL RULES AND REGULATIONS; AND ESTABLISHING PROCEDURES UNDER WHICH THE APPLICATION OF THIS SUBDIVISION WILL BE WAIVED WITH RESPECT TO AN APPLICANT OR RECIPIENT WHO DEMONSTRATES THAT SUCH APPLICATION WOULD WORK AN UNDUE HARDSHIP ON HIM OR HER, IN ACCORDANCE WITH STANDARDS SPECIFIED BY THE SECRETARY OF THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES. SUCH REGULATIONS MAY REQUIRE NOTIFICATION OF THE DEPARTMENT OF THE CREATION OR FUNDING OF SUCH A TRUST FOR THE BENEFIT OF AN APPLICANT FOR OR RECIPIENT OF MEDICAL ASSISTANCE; NOTIFICATION OF THE DEPARTMENT OF HEALTH OF THE DEATH OF A BENEFICIARY OF SUCH A TRUST WHO IS A CURRENT OR FORMER RECIPIENT OF MEDICAL ASSISTANCE; IN THE CASE OF A TRUST, THE CORPUS OF WHICH EXCEEDS ONE HUNDRED THOUSAND DOLLARS, NOTIFICATION OF THE DEPARTMENT OF HEALTH OF TRANSACTIONS TENDING TO SUBSTANTIALLY DEPLETE THE TRUST CORPUS; NOTIFICATION OF THE DEPARTMENT OF HEALTH OF ANY TRANSACTIONS INVOLVING TRANSFERS FROM THE TRUST CORPUS FOR LESS THAN FAIR MARKET VALUE; THE BONDING OF THE TRUSTEE WHEN THE ASSETS OF SUCH A TRUST EQUAL OR EXCEED ONE MILLION DOLLARS, UNLESS A COURT OF COMPETENT JURISDICTION WAIVES SUCH REQUIREMENT; AND THE BONDING OF THE TRUSTEE WHEN THE ASSETS OF SUCH A TRUST ARE LESS THAN ONE MILLION DOLLARS, UPON ORDER OF A COURT OF COMPETENT JURISDICTION. THE DEPARTMENT OF HEALTH, TOGETHER WITH THE BANKING DEPARTMENT, SHALL PROMULGATE REGULATIONS GOVERNING THE ESTABLISHMENT, MANAGEMENT AND MONITORING OF TRUST ESTABLISHED PURSUANT TO SUBCLAUSE (II) OF CLAUSE (C) OF THIS SUBPARAGRAPH IN WHICH A NOT-FOR-PROFIT CORPORATION AND A TRUST COMPANY SERVE AS CO-TRUSTEES.

(E) NOTWITHSTANDING ANY ACTS, OMISSIONS OR FAILURES TO ACT OF A TRUSTEE OF A TRUST WHICH THE DEPARTMENT OF HEALTH OR A LOCAL SOCIAL SERVICES OFFICIAL HAS DETERMINED COMPLIES WITH THE PROVISIONS OF CLAUSE (C) AND THE REGULATIONS AUTHORIZED BY CLAUSE (D) OF THIS SUBPARAGRAPH, THE DEPARTMENT MUST NOT CONSIDER THE CORPUS OR INCOME OF ANY SUCH TRUST AS AVAILABLE RESOURCES OF THE APPLICANT OR RECIPIENT WHO IS DISABLED, AS SUCH TERM IS DEFINED IN SECTION 1614(A)(3) OF THE FEDERAL SOCIAL SECURITY ACT. THE DEPARTMENT OF HEALTH'S REMEDY FOR REDRESS OF ANY ACTS, OMISSIONS OR FAILURES TO ACT BY SUCH A TRUSTEE WHOSE ACTS, OMISSIONS OR FAILURES ARE CONSIDERED BY THE DEPARTMENT OF HEALTH TO BE INCONSISTENT WITH THE TERMS OF THE TRUST, CONTRARY TO APPLICABLE LAWS AND REGULATIONS OF THE DEPARTMENT OF HEALTH, OR CONTRARY TO THE FIDUCIARY OBLIGATIONS OF THE TRUSTEE SHALL BE THE COMMENCEMENT OF AN ACTION OR PROCEEDING UNDER SUBDIVISION ONE OF SECTION SIXTY-THREE OF THE EXECUTIVE LAW TO SAFEGUARD OR ENFORCE THE STATE'S REMAINDER INTEREST IN THE TRUST, OR SUCH OTHER ACTION OR PROCEEDING AS MAY BE LAWFUL AND APPROPRIATE AS TO ASSURE COMPLIANCE BY THE TRUSTEE OR TO SAFEGUARD AND ENFORCE THE STATE'S REMAINDER INTEREST IN THE TRUST.

2-D. RESOURCE ELIGIBILITY REQUIREMENTS. (A) IN DETERMINING THE INITIAL OR CONTINUING ELIGIBILITY OF ANY PERSON FOR ASSISTANCE UNDER THIS SECTION, THERE SHALL BE INCLUDED IN THE AMOUNT OF RESOURCES CONSIDERED AVAILABLE TO SUCH PERSON THE UNCOMPENSATED VALUE OF ANY RESOURCE TRANS-

FERRED, AND SUCH PERSON SHALL BE INELIGIBLE FOR SUCH ASSISTANCE FOR SUCH PERIOD OR PERIODS AS SPECIFIED IN THIS SUBDIVISION.

(B) (I) A NONEXEMPT RESOURCE SHALL MEAN ANY RESOURCE WHICH IF RETAINED BY SUCH PERSON WOULD NOT BE EXEMPT FROM CONSIDERATION UNDER THE PROVISIONS OF SUBDIVISION TWO-C OF THIS SECTION;

(II) ANY TRANSFER OF A NONEXEMPT RESOURCE MADE WITHIN TWENTY-FOUR MONTHS PRIOR TO THE DATE OF A PERSON'S APPLICATION FOR MEDICAL ASSISTANCE SHALL BE PRESUMED TO HAVE BEEN MADE FOR THE PURPOSE OF QUALIFYING FOR SUCH ASSISTANCE; HOWEVER, IF SUCH PERSON FURNISHES EVIDENCE TO ESTABLISH THAT THE TRANSFER WAS EXCLUSIVELY FOR SOME OTHER PURPOSE, THE UNCOMPENSATED VALUE SHALL NOT BE CONSIDERED AVAILABLE TO SUCH PERSON IN DETERMINING HIS OR HER INITIAL OR CONTINUED ELIGIBILITY FOR MEDICAL ASSISTANCE;

(III) THE UNCOMPENSATED VALUE OF ANY SUCH RESOURCE SHALL BE THE FAIR MARKET VALUE OF SUCH RESOURCE AT THE TIME OF TRANSFER, MINUS THE AMOUNT OF THE COMPENSATION RECEIVED BY THE PERSON IN EXCHANGE FOR THE RESOURCE;

(IV) EXCESS RESOURCES SHALL BE THE TOTAL OF A PERSON'S NONEXEMPT RESOURCES ABOVE TWENTY THOUSAND DOLLARS;

(V) ANY PERSON DETERMINED TO HAVE RESOURCES IN EXCESS OF TWENTY THOUSAND DOLLARS SHALL BE INELIGIBLE FOR ASSISTANCE UNDER THIS SECTION PURSUANT TO SUBPARAGRAPHS (VI) AND (VII) OF THIS PARAGRAPH;

(VI) ANY PERSON DETERMINED TO HAVE EXCESS RESOURCES OF FIFTEEN THOUSAND DOLLARS OR LESS BECAUSE OF THE APPLICATION OF THIS PARAGRAPH SHALL REMAIN INELIGIBLE FOR ASSISTANCE UNDER THIS TITLE FOR A PERIOD OF TWENTY-FOUR MONTHS FROM THE DATE OF THE TRANSFER, OR UNTIL SUCH PERSON CAN DEMONSTRATE THAT HE OR SHE HAS INCURRED MEDICAL EXPENSES AFTER THE DATE OF TRANSFER IN THE AMOUNT OF SUCH EXCESS ABOVE OTHERWISE ALLOWABLE RESOURCES, WHICHEVER PERIOD IS SHORTER;

(VII) ANY PERSON DETERMINED TO HAVE EXCESS RESOURCES OF MORE THAN FIFTEEN THOUSAND DOLLARS BECAUSE OF THE APPLICATION OF THIS PARAGRAPH SHALL REMAIN INELIGIBLE FOR ASSISTANCE UNDER THIS SECTION FOR A PERIOD WHICH EXCEEDS TWENTY-FOUR MONTHS, WHICH PERIOD SHALL BE DETERMINED BY ADDING AN ADDITIONAL MONTH OF INELIGIBILITY FOR EACH TWO THOUSAND DOLLARS IN EXCESS OF FIFTEEN THOUSAND DOLLARS, OR UNTIL SUCH PERSON CAN DEMONSTRATE THAT HE OR SHE HAS INCURRED MEDICAL EXPENSES AFTER THE DATE OF TRANSFER IN THE AMOUNT OF SUCH EXCESS ABOVE OTHERWISE ALLOWABLE RESOURCES, WHICHEVER PERIOD IS SHORTER.

(C) ANY TRANSFER OF A RESOURCE BY A PERSON OR SUCH PERSON'S SPOUSE FOR LESS THAN FAIR MARKET VALUE MADE WITHIN OR AFTER THE THIRTY MONTHS IMMEDIATELY PRECEDING THE DATE OF APPLICATION FOR MEDICAL ASSISTANCE UNDER THIS SECTION, SHALL RENDER THE PERSON INELIGIBLE FOR HEALTH CARE SERVICES FOR A PERIOD OF TWENTY-FOUR MONTHS FROM THE DATE OF TRANSFER, WHICH PERIOD SHALL BE DETERMINED BY ADDING AN ADDITIONAL MONTH OF INELIGIBILITY FOR EACH TWO THOUSAND DOLLARS IN EXCESS OF FIFTEEN THOUSAND DOLLARS, OR UNTIL SUCH PERSON CAN DEMONSTRATE THAT HE OR SHE HAS INCURRED MEDICAL EXPENSES AFTER THE DATE OF TRANSFER IN THE AMOUNT OF SUCH EXCESS ABOVE ALLOWABLE RESOURCES, WHICHEVER PERIOD IS SHORTER; HOWEVER, A PERSON SHALL NOT BE INELIGIBLE FOR HEALTH CARE SERVICES SOLELY BY REASON OF ANY SUCH TRANSFER TO THE EXTENT THAT:

(I) THE RESOURCE TRANSFERRED WAS A HOME AND TITLE TO THE HOME WAS TRANSFERRED TO:

(A) THE SPOUSE OF SUCH PERSON; OR

(B) A CHILD OF SUCH PERSON WHO IS UNDER THE AGE OF TWENTY-ONE YEARS OR CERTIFIED BLIND OR CERTIFIED PERMANENTLY AND TOTALLY DISABLED, AS DEFINED BY SECTION TWO HUNDRED EIGHT OF THIS ARTICLE; OR

(C) A SIBLING OF SUCH PERSON WHO HAS AN EQUITY INTEREST IN SUCH HOME AND WHO RESIDED IN SUCH HOME FOR A PERIOD OF AT LEAST ONE YEAR IMMEDIATELY BEFORE THE DATE THE PERSON APPLIED FOR MEDICAL ASSISTANCE PURSUANT TO THIS SECTION; OR

(D) A SON OR DAUGHTER OF SUCH PERSON WHO WAS RESIDING IN SUCH HOME FOR A PERIOD OF AT LEAST TWO YEARS IMMEDIATELY BEFORE THE DATE SUCH PERSON APPLIED FOR MEDICAL ASSISTANCE PURSUANT TO THIS SECTION, AND WHO PROVIDED CARE TO SUCH PERSON WHICH PERMITTED SUCH PERSON TO RESIDE AT HOME RATHER THAN IN AN INSTITUTION OR FACILITY; OR

(II) THE RESOURCE WAS TRANSFERRED TO OR FOR THE SOLE BENEFIT OF SUCH PERSON'S SPOUSE, OR FROM SUCH PERSON'S SPOUSE TO OR FOR THE SOLE BENEFIT OF SUCH PERSON, OR TO HIS OR HER CHILD WHO IS CERTIFIED BLIND OR CERTIFIED PERMANENTLY AND TOTALLY DISABLED; OR

(III) A SATISFACTORY SHOWING IS MADE THAT:

(A) THE PERSON OR SUCH PERSON'S SPOUSE INTENDED TO DISPOSE OF THE RESOURCE EITHER AT FAIR MARKET VALUE, OR FOR OTHER VALUABLE CONSIDERATION, OR

(B) THE RESOURCE WAS TRANSFERRED EXCLUSIVELY FOR A PURPOSE OTHER THAN TO QUALIFY FOR MEDICAL ASSISTANCE; OR

(IV) DENIAL OF ELIGIBILITY WOULD WORK AN UNDUE HARDSHIP, AS DEFINED BY THE COMMISSIONER WHICH DEFINITION SHALL INCLUDE THE INABILITY OF THE PERSON OR SUCH PERSON'S SPOUSE TO RETRIEVE THE RESOURCE OR TO OBTAIN FAIR MARKET VALUE THEREFOR DESPITE HIS OR HER BEST EFFORTS.

(D) THE COMMISSIONER SHALL PROMULGATE SUCH RULES AND REGULATIONS AS MAY BE NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SUBDIVISION.

S 5. This act shall take effect on the ninetieth day after it shall have become a law; provided however that section one of this act shall remain in effect until the approval of the commissioner of health pursuant to subdivision 4 of section 79 of part C of chapter 58 of the laws of 2005, when upon such date the provisions of section two of this act shall take effect; and provided further that the commissioner of health is authorized to promulgate any and all rules and regulations and take any other measures necessary to implement this act on its effective date on or before such date.