

STATE OF NEW YORK

2542

2021-2022 Regular Sessions

IN SENATE

January 21, 2021

Introduced by Sens. RIVERA, BIAGGI, GAUGHRAN, GOUNARDES, HOYLMAN, KAPLAN, KRUEGER, LIU, MAY, MYRIE -- read twice and ordered printed, and when printed to be committed 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 subdivision 5 of section 366 of the social services law, as amended by section 13 of part MM of chapter 56 of the laws of 2020, is amended to read as follows:

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

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

16 (iii) a satisfactory showing is made that: (A) the individual or the
17 individual's spouse intended to dispose of the assets either at fair
18 market value, or for other valuable consideration; or (B) the assets
19 were transferred exclusively for a purpose other than to qualify for
20 medical assistance; or (C) all assets transferred for less than fair
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EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 market value have been returned to the individual or used on the indi-
2 vidual's behalf; or

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

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

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

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

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

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

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

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

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

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

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

22 § 5. This act shall take effect October 1, 2021.