CONNECTICUT VOICES FOR CHILDREN

Testimony Regarding
House Bill 6417: An Act Concerning Medicaid Administration and Services
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Before the Public Health, Insurance and Real Estate, and Human Services Committees
March 2, 2009

Distinguished Members of the Public Health, Insurance and Real Estate, and Human Services Committees:

I am testifying today on behalf of Connecticut Voices for Children, a research-based public education and advocacy organization that works statewide to promote the well-being of Connecticut's children, youth, and families. My colleague, Dr. Mary Alice is a member of the Medicaid Managed Care Council and I am a member of the Connecticut Behavioral Health Partnership Oversight Council.

I therefore submit this testimony from our vantage point on these important collaborative bodies involved in advising the Department of Social Services (DSS) concerning the HUSKY managed care program, and the carve-out of behavioral health services from HUSKY managed care.

We support the concept a Medicaid Commission or oversight body to improve the quality of services provided to *all* Medicaid recipients, but with the following qualifications. (Sec. 1) Such a commission should not be restricted to only investigating ways to improve services for recipients of Medicaid under waivers, e.g., children with special health care needs (Katie Beckett waiver), adults with traumatic brain injuries, and others served under Medicaid waivers. The legislation needs to specify whether the Commission will be time-limited or on-going. If time-limited, the bill should specify how often it will meet, whether it will issue a report, to whom the report will be issued, and by what date. If it is meant to be a body that meets on an on-going basis then such a Commission should work in tandem with the advisory council on Medicaid managed care, established through 17b-28 and known as the Medicaid Managed Care Council.

We would urge the legislature to build upon the success of the Medicaid Managed Care Council and therefore to broaden its charge to include other aspects of the state's publicly funded or subsidized health care coverage programs, e.g., Charter Oak, that interrelate with the HUSKY program. Since 1995, when the Medicaid program was converted from fee-for-service to managed care for children, parents and pregnant women, the Connecticut General Assembly created the Medicaid Managed Care Council and charged it with oversight of the program (now known as HUSKY). This multi-disciplinary body has met monthly for over 12 years with full participation and cooperation of the DSS Medicaid director, HUSKY program staff and many other stakeholders. The Council's deliberations are informed by data and policy analyses conducted by DSS, its contracted HUSKY enrollment broker, Connecticut Voices for Children (independent program and health plan performance monitoring), and others. In the past dozen years, the HUSKY program has grown from serving 150,000 to 345,000 members due to eligibility expansions, successful outreach efforts, and simplification of the application process. Recently, the implementation of the Charter Oak Health Plan, has had a profound effect on provider networks, application processing and eligibility determinations.

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We wholeheartedly **support**:

- Requiring the Department of Social Services to provide quarterly reports about its new initiatives to the Appropriations and Human Services Committees, as well as to the legislature's Office of Fiscal Analysis
- Requiring the Department of Social Services to comply with the Uniform Administrative Procedures Act in promulgating regulations
- Requiring the Department of Social Services (and the Department of Children and Families) to submit proposed regulations related to Medicaid and HUSKY to the Medicaid Managed Care Council and the Behavioral Health Oversight Council for their approval prior to implementation of the regulations

Requiring DSS to report quarterly on new and pending initiatives will help all stakeholders be better informed (Sec. 2)

As you are well aware, the Department of Social Services is responsible for hundreds of programs, has a budget of almost $5 billion, and each year is asked to take on more and more "initiatives", many at the behest of this legislative body. The Department must by necessity prioritize each new program and it is hard for all of us to keep track of which "initiatives" have been implemented, which have been put on the back burner – sometimes by necessity-- and which have fallen off everyone's radar screen, notwithstanding implementing legislation.

In 2007, there were a whole host of HUSKY related initiatives that have yet to be implemented, including: 1) centralization of HUSKY A and HUSKY B eligibility processes (DSS has instituted regionalization of HUSKY A applications, although that initiative doesn't conform to the mandates of the legislation), and 2) the establishment by DSS of an interagency effort to improve the quality of child health in the HUSKY program (17b-306a). To date, this work has not begun. It is time to ask the Department for a report on its strategy for improving child health, including this interagency collaboration and coordination of this effort with the work of the Medicaid Managed Care Council.

While it is understandable that some programs take longer to implement then others, it would be very useful for DSS to issue quarterly reports. This will help DSS staff, as well as the many stakeholders keep abreast of what has already been implemented, and of course, what remains to be done. DSS can proudly take credit for implementing some of its initiatives quickly, including expansion of parent eligibility in HUSKY A. Such a report would allow DSS to highlight such accomplishments, as well as explain the hold-up of certain programs. As we have time and again pointed out, other initiatives from prior years continue to languish include the family planning waiver from 2005.[1] The state can obtain ***90%*** federal Medicaid matching funds for family planning services for individuals who do not qualify for Medicaid. Such programs save the state money. Another area where *both* DSS and the legislature have not followed through as of yet is the dual requirements that DSS submit a Medicaid state plan amendment to the federal government to make

[1] See, Gen. Stat., Sec. 17b-260c. Medicaid waiver to provide coverage for family planning services. P.A., 05-120, eff. July 1, 2005.

"smoking cessation" a covered service in Medicaid/HUSKY, and for the legislature to approve DSS's plan to cover smoking cessation in Medicaid/HUSKY.[2]

DSS should promulgate regulations in compliance with the state Uniform Administrative Procedures Act (UAPA); the Medicaid Managed Care Council and BHPOC should be given the opportunity to approve the regulations before they are enacted (Secs. 2, 3 and 4)

Section 2 would change the way in which DSS adopts many of its regulations, particularly those related to the Medicaid and HUSKY Programs. Currently, under authority of General Statutes, Sec. 17b-10, DSS operates under proposed regulations as soon as they are published in the Connecticut Law Journal, *but before the regulations are finalized*. The rationale set forth in 17b-10 is so that DSS can quickly come into conformance with federal mandates. While there are circumstances in which it makes sense for DSS to implement before finalization in order to comply with certain federal mandates, there needs to be more oversight and accountability by the legislature. The legislature should require regular reports from DSS as to whether the regulations have been implemented and if not the reasons for the hold-up.

The implementation of *proposed* rules has allowed the Department to operate without final regulations for months or even years. This is problematic for a couple of reasons. First, this means that the regulations are implemented before the public has had the opportunity to weigh in during the formal comment period contemplated by the UAPA. Second, some proposed regulations take years – or never – to become final regulations.

In the case of the HUSKY B program, its regulations did not see the light of day for 10 years. They remained in "draft" form for internal use only. Last year, DSS did publish proposed HUSKY B regulations – and is now operating the program under these proposed – but not finalized – regulations. It is not known when the HUSKY B regulations may be finalized, given all of the other competing priorities within the Department. The HUSKY B proposed regulations were not submitted to the Medicaid Managed Care Council, which oversees both HUSKY, Part A and Part B – prior to the regulations submission to the Connecticut Law Journal.

So too DSS published the Behavioral Health Partnership regulations as "proposed regulations," which are currently in operation; and without providing the Behavioral Health Partnership Oversight Council an opportunity to give its input regarding these regulations prior to publication, and therefore prior to implementation. Allowing the Medicaid Managed Care Council and Behavioral Health Partnership Oversight Council to comment on proposed regulations would ensure meaningful input and review by the individuals and organizations that know the most about these complicated programs.

In sum, Connecticut Voices for Children strongly urges this committee to support the revisions to 17b-10 which would require DSS to promulgate regulations in accordance with the state UAPA, and give the Medicaid Managed Care Council and the Behavioral Health Oversight Council meaningful input to the regulatory process.

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[2] See, Gen. Stat., Sec. 17b-278a. Coverage for treatment of smoking cessation. P.A. 99-250, S. 1; P.A. 02-4, S. 19. The DSS Commissioner did present the plan required by this law to the General Assembly. See, "Plan for Treating Tobacco Use and Dependence," CT Department of Social Services's report to Human Service and Appropriation Committees (March 2006).

We would also urge the legislature to require DSS to publish its agency regulations on its website. Some agencies already do this but many, such as DSS, do not. In addition, unlike most state agencies, DSS does not publish its Medicaid eligibility rules in the Regulations of Connecticut State Agencies, but rather in the *Uniform Policy Manual*, which is not accessible on the web. By statute, the UPM is made available to DSS offices, legal aid offices, town halls, and to the public by request. See, Gen. Stat., Sec. 17b-10(a). It is long past time for these rules to be accessible on the web and in easily downloadable format.

Thank you for this opportunity to testify in support of HB 6417. Please feel free to contact me if you have questions about my testimony or need further information.