



STATE OF CONNECTICUT
OFFICE OF POLICY AND MANAGEMENT

TESTIMONY PRESENTED TO THE HUMAN SERVICES COMMITTEE

February 27, 2007

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Testimony Supporting SB 1128

AN ACT IMPLEMENTING THE GOVERNOR'S BUDGET RECOMMENDATIONS WITH RESPECT
TO SOCIAL SERVICES PROGRAMS

Senator Harris, Representative Villano and distinguished members of the Human Services Committee, thank you for the opportunity to offer testimony on Senate Bill 1128, An Act Implementing The Governor's Budget Recommendations With Respect To Social Services Programs. This bill makes the following changes within the Department of Social Services:

Section 1. Modify Nursing Home User Fee. The user fee (also called the nursing home "provider tax") is set in accordance with a federal ceiling that was recently revised, by federal law, to a percentage not to exceed 5.5% effective January 1, 2008. Accordingly, this bill caps the percentage that the Department of Social Services may assess for the nursing home user fee from the existing 6.0% to no more than 5.5% to comply with the new federal law. As a result of this required change to the user fee percentage, the budget does not assume any change in the amount of revenue collected by the Department of Revenue Services nor any change in the user fee assessment due to the fact that the current user fees result in an effective tax rate of just under 5.5%.

Sections 2 and 3. Defer Cost of Living Adjustments for Clients on Public Assistance. Although current statute provides recipients and applicants of Temporary Family Assistance, State Administered General Assistance (SAGA) and the Aid to the Aged, Blind and Disabled (AABD) programs a state-funded cost of living adjustment based on the percentage increase in the Consumer Price Index – Urban on July 1 of each year, no such increases have been provided since July 1, 1990. This bill maintains the existing assistance levels and does not provide the cost of living adjustment estimated at 3.2% in FY 08 and 1.8% in FY 09. Savings of \$6.1 million in FY 08 and \$10.2 million in FY 09 are anticipated.

Section 3. Apply Annual Social Security Increases to Offset Costs under AABD. In past years, any cost of living adjustments (COLA) received as part of an AABD client's Social Security benefit were considered an increase in income and applied to the client's cost of care. Recent legislation, however, allows AABD clients to retain (by increasing the unearned income disregard) their Social Security COLA without a concurrent reduction in their state benefit. This proposal will return to the previous policy of applying any federal COLA to offset the cost per case. Savings of \$1.2 million in FY 08 and \$2.3 million in FY 09 are anticipated.

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Section 4. Update Definition of Medical Necessity under Medicaid. This bill updates the definition of medically necessary services under Medicaid to mirror the definition in use under the SAGA program. The current definition under Medicaid sets the benchmark at attaining or maintaining an “optimal level of health” as opposed to providing those services that are consistent with generally accepted standards of medical practice and determined to be clinically appropriate. In addition to being consistent with the SAGA standard, the proposed definition is consistent with the definition used by most commercial plans, as well as many states under their Medicaid programs. Savings of \$4.0 million in FY 08 and \$8.0 million in FY 09 are anticipated.

Section 5. Modify Medicare Part D Non-Formulary Language. This bill amends existing language to reflect current program operations and to clarify that the Medicare Part D Supplemental Needs Fund will cover those drugs determined to be medically necessary. The bill also clarifies that all expenditures for non-formulary drugs under Medicare Part D will be charged to this account, which is to be operated within the \$5,000,000 appropriated, consistent with the amount originally appropriated in FY 06. Without adhering to this interpretation, costs are anticipated to reach \$16.8 million in FY 08 and \$18.4 million in FY 09.

Section 6. Require Certification for Medication Administration. Current statute allows for personnel to obtain certification for the administration of medication from the Department of Public Health. This bill requires that residential care homes and boarding homes have an appropriate number of staff certified to administer medication to their residents, similar to the process used by the Department of Mental Retardation. Nurses will still be required to administer all injections. While the Medicaid program will realize savings due to reduced reliance on nurse administration of medications, funds are provided to residential care homes to meet their costs associated with their staff administering the medications. Net savings of \$1.4 million in FY 08 and \$2.9 million in FY 09 are anticipated.

Section 7. Allow Additional Clients to Transition to the Community under the Money Follows the Person Rebalancing Demonstration. Current legislation allows for the transition of 100 clients from an institutionalized setting to the community under the federal demonstration grant. This bill expands the number of clients to up to 700 clients over the five year grant period, consistent with the federal approval received in January 2007. The Governor’s budget includes \$1.7 million in FY 09 to transition 125 clients in FY 09. These costs are in addition to the \$2.7 million in FY 08 and \$3.7 million in FY 09 included in the Current Services budget to transition the 100 clients, as allowed under existing statute.

Section 8. Restructure Medicaid Eligibility Requirements in Response to the Morenz Decision. Federal Medicaid rules prohibit states from counting the assets of the community spouse if the institutionalized spouse assigns his or her support rights to the state. In *Morenz v. Wilson-Coker*, the Court determined that the state’s statutes do not preclude institutionalized Medicaid applicants from voluntarily assigning their spousal support rights to DSS. As a result, institutionalized Medicaid applicants are now able to

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transfer all spousal assets to their community spouses, assign their rights of spousal support to DSS and qualify for Medicaid without regard to any assets now belonging to the community spouse. Thus, the community spouse is keeping spousal assets that would otherwise have been spent on long term care expenses, which hastens the onset of Medicaid eligibility. Since the Morenz ruling, there are already 32 cases to date with assets valued at over \$7 million transferred into the name of the community spouse with an assignment of support rights to the state made by the nursing home spouse. Under normal Medicaid spousal assessment rules over \$5.2 million of these transferred assets would have remained available to the institutionalized spouse to pay for his or her care privately before Medicaid would begin payment. Without legislative change, these numbers will only increase. Under this proposal, DSS would limit the circumstances in which institutionalized Medicaid applicants could assign their spousal support rights to DSS. Institutionalized Medicaid applicants would no longer be able to shelter assets in the name of the community spouse, in excess of those already protected under the law. (In Connecticut and nationwide, up to \$101,640 can be protected for the community spouse, excluding the spouse's home or car.) Savings of \$1.4 million in FY 08 and \$3.6 million in FY 09 are anticipated.

Section 9. Implement a Premium Assistance Program for Clients Receiving HUSKY A Services. Under this bill, DSS may seek waiver authority to require HUSKY A clients to enroll in health plans offered by their employer when available. DSS will cover any additional costs such as premiums, deductibles, and co-pays and will provide any wraparound coverage needed to ensure their medical coverage is similar to the existing Medicaid benefit package. Administrative costs of \$500,000 in FY 08 and net savings of \$4.9 million in FY 09 are anticipated.

Section 10. Maintain Current Rates for Nursing Homes. This bill maintains existing rates for nursing homes rather than providing a 1% rate add for nursing homes as assumed in the Current Services budget. Savings of \$12.3 million in FY 08 and \$13.5 million in FY 09 are anticipated by maintaining current rates.

Section 11. Maintain Current Rates for ICF/MR’s. Because rates for intermediate care facilities for the mentally retarded (ICF/MR’s) were held constant in the Current Services budget, there is no fiscal impact associated with this section. This section of the bill is needed, however, to maintain rates at their current levels.

Sections 12 and 13. Increase Rates for RCH’s and Community Living Arrangements. This bill provides a 2.0% increase for residential care homes (RCH’s) and community living arrangements in each year of the biennium. Costs of \$2.0 million in FY 08 and \$4.2 million in FY 09 are anticipated.

Section 14. Defer SAGA Pilot over the Biennium. Under current statute, DSS is required to implement a two-year pilot program for 19-21 year olds with a mental health diagnosis and a chronic health condition, who are ineligible for SAGA due to parental income. The Current Services budget assumes the pilot will run for a two-year period through December 31, 2008. DSS has been unable to find individuals to enroll in the

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pilot who meet the criteria, because all have been eligible for Medicaid. As a result, this bill defers the pilot until July 1, 2009. Savings of \$500,000 in FY 08 and \$250,000 in FY 09 are anticipated.

Section 15. Provide Step Down from Chronic Disease Hospital Level of Care under SAGA. This proposal will allow the department, when cost effective, to provide home health services or skilled nursing facility coverage for SAGA recipients who are at a chronic disease hospital, but could use a lower level of rehabilitation services. By providing limited home care and skilled nursing facility coverage, delays in hospital discharges and long acute rehab stays will be reduced. Savings of \$500,000 are anticipated in each year of the biennium.

Section 16. Eliminate State Payment of SSI Attorneys Fees. The federal government sets reasonable caps on the amount an attorney may earn from representing a client in the appeal of a denial or termination of Supplemental Security Income (SSI) and/or Social Security (SSA) benefits. Although the Social Security Administration allows attorney fees to be deducted from an individual's successful appeal, DSS allows attorneys to be paid from the General Fund, rather than seek reimbursement from the client's retroactive benefit received from a successful appeal. This proposal will allow for an attorney representing a client appealing to the Social Security Administration to affirmatively seek an assignment from the individual's SSA/SSI benefit. Under this proposal, attorneys will need to avail themselves of the SSA program as DSS will no longer pay their fees. Savings of \$419,724 are anticipated in each year of the biennium.

Section 17. Implement Rate Equity for DSS State-Funded Non-Municipal Child Care Centers. Under this proposal, DSS' child day care center rates for non-municipal centers will be increased to the same level as the State Department of Education's School Readiness rates, consistent with the recommendations of the Early Childhood Research and Policy Council. To be eligible for this rate increase, this bill requires that these centers meet the staff qualifications required for the SDE School Readiness centers. Costs of \$2.2 million in FY 08 and \$4.5 million in FY 09 are anticipated.

Sections 18 thru 37. Revise Third Party Liability (TPL) and Fraud Provisions under Medicaid. The federal Deficit Reduction Act (DRA) requires states to amend their TPL statutes to ensure complete access to health insurers' TPL information and to make certain that Medicaid is the payer of last resort. The changes in the DRA will significantly improve recovery of Medicaid funds when TPL coverage was available and should have paid the claims, thus improving DSS' efforts in cost avoidance and claim recovery. The second part of this proposal, also provided for under the DRA, will authorize the state to bring a civil action against any individual or entity who engages in fraud against the state of Connecticut. This proposal includes 'qui tam' provisions allowing individuals to initiate claims and allowing the Attorney General to substitute the state of Connecticut for such individual's civil action. The federal government will provide financial incentives to states that adopt this qui tam law for purposes of recovering Medicaid funds in such actions. Savings of \$2.0 million in FY 08 and \$2.1 million in FY 09 are anticipated.

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Section 38. Clarify Third Party Liability Provisions under Pharmacy. This bill ensures that DSS is not charged for prescription drugs that should have been covered by other prescription drug insurance and makes clear the department’s ability to recoup payments from the pharmacy billing DSS when other insurance coverage is available, as well as the ability of DSS to take legal action if required. As an additional benefit, this language will help DSS live within the \$5 million appropriated to the Medicare Part D Supplemental Needs Fund.

I would like to again thank the committee for the opportunity to present this testimony. I respectfully request the Committee support this bill and I will be happy to answer any questions you may have.