

NEW HAVEN LEGAL ASSISTANCE ASSOCIATION, INC.

426 STATE STREET
NEW HAVEN, CONNECTICUT 06510-2018
TELEPHONE: (203) 946-4811
FAX (203) 498-9271

February 27, 2007

Testimony of Sheldon Toubman before the Human Services Committee In Support of HB 5640 and in Opposition to HB 1128's Gutting of Medicaid's Medical Necessity Definition

Good morning, Members of the Human Services Committee. My name is Sheldon Toubman and I am a staff attorney with New Haven Legal Assistance Association, mostly working on matters of access to health care. I am here to testify about the severe problems with access to care for elderly/disabled individuals who can qualify for Medicaid only by spending down, and who therefore need the critical improvements under HB 5640. I am also here to testify in opposition to the provision in the Governor's bill, HB 1128, which would gut the Medicaid definition of medical necessity.

First, I should explain what spenddown means for my elderly and disabled clients who are modestly over the Medicaid income guidelines. They are told at the beginning of a given six month period what their spenddown amount, usually one or two thousand dollars, is. They then have to incur substantial medical bills, collect those medical bills from each of their providers, deliver them to their worker, who likely will be too busy to see them, and then wait to see if the worker says they have or have not met their spenddown. If not, they have to incur and collect still more bills, bring them to their worker, etc.

The process is tedious and difficult even if there is a diligent worker with the time to process the bills; much more so if the worker has a high caseload and is already far behind on their casework. If the individual succeeds in making it through this process, they have to start it all over again for the next six month period.

But what about getting through this process if the individual applying for Medicaid is cognitively impaired, mentally ill or has hearing problems? The process is confusing enough even for someone with a sharp mind, acute senses and an ability to follow through. But for the rest it is hopelessly bewildering. I have clients who bring me a mountain of medical bills, don't know which ones have been submitted and which have not been, and can't figure out if the bill was incurred during the appropriate spend-down period (necessary in order for a bill which has been paid to be used toward meeting the spenddown). They just give up trying to get on Medicaid.

While this is of course bad for them, it is bad for the rest of us too. Without insurance coverage for preventative care, they probably will go without. When they do, small medical problems which could have been addressed easily become major medical crises, which often require treatment in emergency departments and in-patient settings. The good news at that point is that the very high hospital bills will quickly satisfy the individual's spenddown; the bad news is that the taxpayers will then be paying for this far

more expensive treatment, which could have been avoided entirely if basic preventative care were covered under Medicaid.

For these reasons, I urge you to pass favorably on HB 5640, which will increase the income guidelines for these needy individuals and thus avoid their having to spenddown in order to be on Medicaid year-round. It would do this by allowing them to disregard more of their income, a permissible way under federal law to effectively increase income guidelines to those applied to the relatively healthy adults (parents) under the HUSKY A Medicaid program (currently 150% of the federal poverty level and proposed by many to be raised to 185%).

Second, I urge you to reject the Governor's proposal in HB 1128, Section 4, to gut the current Medicaid definition of medical necessity, by making it the same as the definition under the SAGA program. The thing everyone needs to understand is that the SAGA program was largely gutted over the last several years, under successive cuts by the Rowland administration, with more and more basic services taken away. The regulatory gutting of the medical necessity definition was the last bit of dismemberment of that program before the further cutting stopped.

Even worse, to adopt the restrictive SAGA definition would largely serve to enrich the poor-performing HMOs at the expense of poor children, since over three-fourths of the Medicaid population is enrolled in capitated managed care, and most of these enrollees are children. The HMOs have never been happy with the state's long-standing Medicaid definition of medical necessity because, unlike their restrictive commercial definitions of this term, it is based on broad federal law requirements specific to needy Medicaid recipients who lack independent resources to pay for health services.

The reason the HMOs would want this change is straight-forward: The HMOs have now admitted that they are using private medical necessity criteria in denying care, which they are withholding as "confidential," notwithstanding an explicit contractual requirement that both the HMOs and their subcontractors must use the official DSS regulatory definition of medical necessity in deciding requests for services. Presumably they want the Governor's proposed change, which allows them to invoke their "evidence-based" medical necessity definitions, as an endorsement of their current unauthorized practices. Please reject this harmful change.

Finally, I would like to point out that what is really needed is a full restoration of the SAGA medical program. The Governor's bill does one small thing for the good here: in section 15, it would provide a limited restoration of home health services, which had been completely taken away from this program years ago, by allowing for payment for these services when "cost-effective" for someone to be discharged from a hospital. But home health services should be fully restored and be required whenever they are medically necessary, under the stronger Medicaid definition of that term. The other eliminated services, like physical therapy and medical equipment, should also be fully restored.

Thank you for the opportunity to speak with you today.