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Written Testimony of Megan McLeod, Connecticut Legal Services, in Opposition to H.B. 5911 For Public Hearing of the Human Services Committee 3/11/08, 10:30 AM

My name is Megan McLeod. I am a staff attorney with Connecticut Legal Services, a non-profit agency representing poor people. We are writing to express our deep concern regarding House Bill 5911 – *An Act Limiting Eligibility for the State-Administered Medical Assistance Program to Individuals Not Categorically Eligible for Medicaid*. This legislation, if approved, would severely and unconstitutionally limit access to critical health care for thousands of lawful permanent residents. The policy would also have the effect of denying state health care to aged, blind and disabled individuals, and all children, parents and caretaker relatives who are categorically eligible for federal Medicaid but who are waiting to receive it. We urge you to reject this proposal.

DSS has proposed this bill because they wish to begin sponsor deeming in the federal Medicaid program, a policy which will result in many immigrants losing or never getting their Medicaid benefit.

What is Sponsor Deeming?

Sponsor deeming is a policy where DSS adds the income of the individual's sponsor to total actual household income of the immigrant to determine whether lawful permanent residents are benefits-eligible, regardless of whether the sponsor is living with the immigrant or actually providing financial support. In many cases, deeming will raise the immigrant's income above the eligibility income limits for government programs, resulting in the denial or loss of badly-needed benefits. DSS is not currently engaged in sponsor deeming in federal medicaid, but may have plans to do so.

The enactment of this new policy is paving the path for the thousands of lawful permanent residents to lose ALL insurance - because they would lose it in the federal program due to deeming, and then be excluded from SAGA Medical, the only safety net available to them.

HB 5911 would constitute a reversal of a clear and established policy of Connecticut's legislature to protect legal immigrants who lose their eligibility for federal programs due to changes in federal law which restrict



immigrant access to federal benefits. For instance, in 1996, Congress eliminated eligibility for Medicaid, food stamps and other programs for lawful permanent residents and other legal immigrants who had been here for less than 5 years. Connecticut responded by creating SMANC (State Funded Medical Assistance for Non-Citizens) and state-funded food stamps - a safety net for this vulnerable group. This legislation would undo that work.

Not only is it bad policy to deny access to health care for legal immigrants, but the proposed legislation also constitutes discrimination by the state against a constitutionally protected class, legal non-citizen residents, by effectively having a disproportionate impact on lawful permanent residents. In 1994, the Connecticut Supreme Court invalidated sponsor deeming by DSS in the general assistance program, stating: "state law classifications regarding eligibility for welfare benefits based on alienage are unconstitutional because the law effectively constituted invidious discrimination against a "suspect class - legal permanent residents. *Barannikova v. Town of Greenwich*, 643 A.2d 251, 261 (Conn. 1994). See also *Graham v. Richardson*, 403 U.S. 365 (1971); *Aliessa v. Novello*, 96 NY2d 418 (2001); *Ehrlich v. Perez*, 908 A.2d 1220 (Md. 2006). Lawful permanent residents are entitled to protection under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and while the federal government can discriminate through a uniformly enforced federal policy, a state provision which discriminates against this group, even if *authorized* by the federal government, is invalid unless the state demonstrates a compelling state need to discriminate, which DSS is unable to do in this case.¹

DSS' expressly stated animus for this bill is to deny the safety net of state medical assistance to disabled, aged and children non-citizens who cannot receive Medicaid due to their immigration status. Currently, as DSS properly states, "individuals who are ineligible for the [federal] Medicaid program because of deemed income from a sponsor will qualify for these state-funded programs. But DSS also recognizes that "potential legal interpretations regarding the *state's* ability to deem income from sponsors of non-citizens may mean the state will not be able to deem sponsor income in the state programs. (See attached DSS legislative proposal). Because they cannot outright deem sponsor income in the state-funded program, they wish to write this population out of SAGA medical through legislation. DSS proposes to eliminate this coverage for these legal immigrants by modifying the language of the SAGA Medical statute. The result will be that a highly vulnerable population - immigrants who are disabled, aged, or immigrant children and their parents or caretaker relatives - will lose ALL health coverage.

Not only is this discriminatory, but the consequences of limiting or terminating immigrants' access to health care are costly and burden entire families, communities and

¹ Connecticut's Attorney General has opined that the state's desire to save the public fisc does not constitute a compelling state interest: "a State's desire to preserve limited welfare benefits for its own citizens is inadequate to justify... making noncitizens ineligible for public assistance." *Opinion No. 2004-002, (2/24/2004)*, page 4, citing *Graham*, 403 U.S. at 374. Stated otherwise, "[t]he saving of welfare costs cannot justify an otherwise invidious classification." *AG Opinion* at 3, citing *Graham*. at 375.

health care systems. People who are uninsured receive less preventive care than the insured, are diagnosed at more advanced stages of disease, and are more likely to use emergency rooms as their regular source of care, resulting in emergency department overcrowding that adversely affects the quality of care for all patients. Uninsured individuals are more likely to delay seeking treatment for potentially serious conditions, ultimately receiving care that is more costly and less effective, resulting in higher premiums for everyone.²

Furthermore, this legislative proposal would also deny critical health care to numerous individuals who, while categorically eligible for federal Medicaid, may not yet be able to receive these benefits. Some examples of these individuals are:

-Individuals who were receiving SAGA Medical assistance pending a determination that they are disabled under the Medicaid standard, have now received a determination of disability by Social Security, but are waiting to be placed on the Medicaid rolls

-Citizens who have been unable to supply documentation verifying their citizenship as required under federal Medicaid and are eligible to receive state medical assistance while they seek to supply the requested documentation.

Because this bill will unconstitutionally deny access to health care for immigrants legally in this country who are otherwise eligible for these programs, and because it also denies all health care coverage to a group of highly disabled citizens and citizen families, we urge you not to pass HB 5911.

Prepared by:

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² *Sicker and Poorer: Consequence of Being Uninsured*, Kaiser Commission on Medicaid and Uninsured (2002); *No Health Insurance? It's Enough to Make You Sick: Latino Community at Risk*, American College of Physicians/American Society of Internal Medicine (March 2000); Institute of Medicine, *A Shared Destiny: Community Effects of Uninsurance*, The National Academies Press (2003).