

**NEW HAVEN LEGAL ASSISTANCE ASSOCIATION, INC.**

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

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**Testimony of Sheldon Toubman before the Human Services Committee  
in Support of SB 662 and HB 5910, in Partial Support of HB 5906 with Proposed  
Amendments, and In Opposition to HB 5911**

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 in support of SB 662, HB 5906, and HB 5910 with certain proposed amendments, and in opposition to HB 5911.

**SB 662**

This bill would, in Section 1, accomplish an important change in terms of greater access to Medicaid services by adopting presumptive eligibility for all Medicaid applicants, not just children and pregnant women. Given the urgency of getting on assistance in many cases, this would be a step in the right direction of ensuring needy individuals have coverage when they most need it. Of course, a full application will still have to be submitted to maintain coverage.

It would also increase access to medical transportation by ambulance, in Section 3, by prohibiting prior authorization for such services in certain non-emergency circumstances, namely, discharge from or admission to a hospital, nursing facility or psychiatric or rehabilitation facility, and where transportation services are needed to outpatient services and the individual relies upon oxygen only available in an ambulance, needs a stretcher for transport or has a medical condition requiring medical monitoring. In these situations, we should not be imposing any obstacles to essential transportation services via ambulance.

Finally, Section 16 would require a pilot program akin to the Money Follow the Person program but, unlike that program, would not require the individual to first be in a nursing facility for six months in order to qualify. Forcing severely disabled individuals to be churned through nursing homes in order to get essential home health services is not the way that people should be treated in a civilized society. We should be looking at the actual needs of the individual and make care decisions accordingly. This pilot program is a good step in that direction

**HB 5910**

I support this bill as a long-overdue reform to the manner in which DSS adopts regulations. Section 2 of the bill would require DSS to adopt regulations whenever it wishes to adopt new policies, something which DSS has routinely not done in the past.

In addition, it would require the submission of any such proposed regulations to the Human Services Committee and, where applicable, the Medicaid Managed Care Council, prior to approval, so that both may comment on the proposed regulation to the legislative regulation review committee.

Section 5 of the bill would require a study of the feasibility of transferring the Office of the Long-Term Care Ombudsman to the Office of the Healthcare Advocate. For far too long, this office has had its advocacy on behalf of individuals in long-term care facilities hampered because of its placement in DSS, which at times is in at least indirect conflict with that office's effective advocacy. Although federal law requires the independence of this office, the reality is that this has not been practical as long as it has been housed in DSS. The only real solution is to remove it from DSS entirely, and the Office of the Healthcare Advocate is a logical choice for its alternative placement. The study called for in this bill is a critical first step.

### **HB 5906**

This bill would bring technical revisions to certain statutes concerning the Medicaid and SAGA programs. However, while making minor revisions to certain provisions, the bill ignores the underlying problematic language in current law, as follows:

Section 2 would adjust language about providing home care services to SAGA recipients where "cost-effective" but leaves that basic requirement in place. Under no other health insurance program-- Medicare, Medicaid or even private insurance—are basic home health services conditioned upon those services being cost-effective; rather, the issue is whether they are medically *needed*. It is inappropriate to condition these services, where medically necessary, on whether they will save money, which, while often true, is also often very hard to **prove** in advance, because negative outcomes from the lack of home health services are hard to predict in individual cases.

Section 3 of this bill would make very minor changes to the language of the premium assistance authorization statute. But the passage of this authorization was essentially a mistake last session. Premium assistance for Medicaid recipients, which requires them to enroll in commercial insurance plans when available and determined by DSS to be "cost effective," is not workable, and DSS has not taken any steps toward implementing this problematic provision. This authorization should be removed entirely. Another bill pending before this committee, HB 5618, would accomplish this.

### **Opposition to HB 5911**

This bill would render anyone who meets the categorical eligibility requirements for Medicaid (elderly, disabled, blind, child, parent or caretaker relative of minor child, woman with breast or cervical cancer) ineligible for SAGA. DSS acknowledged at the time it first proposed this bill that the motivation for it is a desire to prevent individuals who are **disqualified** from getting Medicaid due to "sponsor deeming" from obtaining medical assistance under the SAGA program:

*"Potential legal interpretations regarding the state's ability to deem income from sponsors of non-citizens may result in additional costs to the state without this provision. If we are unable to deem from the sponsors of non-citizens in the SAGA or SMANC program, individuals who are ineligible for the Medicaid program because of deemed income from a sponsor will qualify for these state-funded programs." (emphasis added).*

Apart from the negative policy of throwing low-income individuals off of any state medical assistance, this statement reveals that the bill was targeted specifically to legally present non-citizens, the only group of individuals to which it would impose sponsor deeming.

The "legal interpretations" referred to include a 1994 decision of the Connecticut Supreme Court which expressly ruled that it is unconstitutional for a state to impose sponsor deeming on such non-citizens, because it effectively constitutes 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). Such individuals are entitled to protection under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and a discriminatory provision such as this (it is not applied to citizens) can only be allowed if the state demonstrates a compelling state need to discriminate, which DSS was unable to do in that case.

Thus, DSS apparently intends to bar individuals from accessing the SAGA medical assistance program precisely because they are non-citizens upon whom DSS has imposed sponsor deeming. Making the change requested by DSS would therefore be ascribing to its discriminatory intent.

However, there are other individuals who would be cut off from SAGA assistance under this bill, *besides* the intended non-citizens. Anyone who is categorically eligible for Medicaid, even if not actually able to get on Medicaid, would be disqualified from SAGA.

This would include **citizens** who meet all requirements for Medicaid but are unable to obtain original documents demonstrating citizenship, like an original birth certificate from a rural community in the South where an applicant was born over 80 years ago. Similarly, it would bar from SAGA individuals found to be disabled under Social Security guidelines, who thus are categorically eligible for Medicaid, even though there may be a three month wait before the individual has his or her application for Medicaid actually approved by DSS. In the meantime, individuals will go without essential treatment.

For all these reasons, HB 5911 should be rejected.

Thank you for the opportunity to speak with you today.