

Legal Assistance Resource Center

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**Testimony before the Human Services Committee
in opposition to RB 1161,
An Act Concerning the Department of Social Services' Implementation of
Policies and Procedures Relating to the Patient Protection and Affordable Care Act and
the Health Care and Reconciliation Act**

by Jane McNichol, Executive Director
March 17, 2011

I am Jane McNichol, Executive Director of the Legal Assistance Resource Center of Connecticut, the advocacy and support center for legal services programs in the state. We represent the interests of very low income residents of Connecticut.

I am here to voice strong opposition to RB 1161, which would apparently give the Commissioner of Social Services authority to implement all of federal health care reform without legislative action approving changes in Connecticut's health care policy and with minimal notice to legislators and the public.

The legislature has routinely given the Department of Social Services authority to implement policy changes **which the legislature has approved** while DSS is developing and adopting regulations. One rationale for this policy is the perceived need to allow DSS to implement quickly policy changes that are required in order to meet state budget projections. But this authority has been limited to policy changes that have been approved by the legislature.

This bill would go far beyond that and authorize DSS to implement policies and procedures "necessary to carry out mandatory *or optional* provisions of" the Affordable Care Act while in the process of adopting regulations, with ten days notice to relevant legislative committees prior to implementation and twenty days public notice after implementation.

Historically, public health care policy, including state Medicaid policy, has been determined by the legislature and the Governor through the legislative process. Requests for waivers to Medicaid policy and significant state plan amendments have generally not been filed without at least a broad authorization from the legislature.

The Commissioner already has broad authority to take actions to comply with federal law and to apply for federal funds. It is unclear what provisions in the Affordable Care Act have prompted this proposal to expand the Commissioner's authority to set state health care policy.

As we take steps to implement federal health care reform, we should not make the process of setting health care policy less open and transparent. Many policy decisions need to be made over the next two to three years and these decisions should not be made by the Commissioner of Social Services in isolation.

The language below is suggested as a way to provide the Commissioner with the flexibility he seeks while retaining appropriate legislative and public involvement in health care decisions.

(NEW) The Commissioner of Social Services may implement policies and procedures necessary to carry out mandatory or optional provisions of Public Law 111-148, The Patient Protection and Affordable Care Act, and the Health Care and Education Reconciliation Act of 2010, P.L. 111-148 provided such optional provisions have been authorized by Connecticut statute. The Commissioner shall provide notice of implementation of such policies and procedures and intention to adopt regulations in the Connecticut Law Journal within twenty days of implementation. Such policies and procedures shall be valid until the time final regulations are effective.

Thank you for your attention to this issue.