



STATE OF CONNECTICUT  
OFFICE OF POLICY AND MANAGEMENT

*Testimony of Secretary Benjamin Barnes*

*Before the Human Services, Insurance and Real Estate, and Public Health Committees*

*February 14, 2011*

*On House Bill 6305*

*An Act Concerning Implementation of the Sustinet Plan*

Senators Musto, Crisco, and Stillman, Representatives Tercyak, Megna, and Ritter, and distinguished members of the Human Services, Insurance and Real Estate, and Public Health Committees, thank you for the opportunity to submit written testimony on House Bill 6305 - An Act Concerning Implementation of the Sustinet Plan.

The Malloy administration fully supports the goals of Sustinet -- to promote access to high-quality health care that is effective, efficient, safe, timely, patient-centered and equitable -- and we applaud your efforts in crafting such an ambitious and far-reaching bill. Governor Malloy is committed to working with the legislature and taking action to improve the health care delivery system for all Connecticut residents. The Governor has moved ahead on a number of health care reform policy fronts and, just last week, announced a major restructuring of the health care delivery system under the Department of Social Services (DSS) which is designed to increase cost-effectiveness and enhance health outcomes for approximately 600,000 Connecticut residents. I believe that the administration is working and will continue to work to achieve the same outcomes that this legislation is intended to accomplish. I sincerely hope that we can coordinate our efforts to ensure the best possible outcome for Connecticut's residents.

House Bill 6305 seeks to implement Sustinet's goal of using the state's purchasing power and market presence related to the state employee and retiree health plan, Medicaid, and other state-administered health plans to achieve procurement savings and to promote health system delivery reforms. As you deliberate the proposal before you today, I would like to raise some concerns for your consideration regarding the

likely or potential impact of the bill on implementation of federal health care reform provisions in Connecticut. I also would like to offer some cautions with respect to the executive branch's authority and ability to carry out essential governing responsibilities, including managing the state budget.

Since 2009, when the SustiNet legislation passed, the health care landscape in Connecticut and the rest of the nation has changed significantly with the enactment of the federal Patient Protection and Affordable Care Act (PPACA) in March 2010. As you know, Governor Malloy is a strong supporter of implementing the provisions of PPACA in Connecticut and his administration is working through and analyzing the numerous policy issues that we must address to ensure our success in that regard. We are also implementing various provisions, grants, and innovative new projects that will advance our shared goals.

The most essential component of federal health care reform is the establishment of the state's health insurance exchange. The federal government is looking to Connecticut, and other states, to carefully analyze our health insurance markets and assess how plans offered both in and out of the exchange will affect the number of uninsured and costs to individuals and families. To this end, the Office of Policy and Management (OPM) is implementing a federal planning grant which, in part, involves undertaking market analysis regarding how health insurance plans offered through the exchange can improve access, enhance quality, and lower costs for Connecticut's families, individuals, and businesses. OPM is in the process of issuing a Request for Proposals (RFP) under this federal grant to obtain outside actuarial and economic expertise to undertake this critical analytical work for Connecticut. This complex analysis will review issues such as adverse selection, impacts on premiums, projected responses of individuals and businesses to reform measures, the impact of the state potentially creating a Basic Health Plan for those between 133-200% of the federal poverty level, merging the individual and group markets, and other issues related to the implementation of the PPACA. Consistent with the requirements of this federal grant, OPM is planning to reach out to a broad array of stakeholders, including your committees, as this work proceeds and future policy and legislative proposals are developed. The results of this planning effort will provide policy-makers with the data and research necessary to make informed decisions regarding the structure, scope, and nature of our state's health insurance exchange.

Our primary focus must be to ensure that the state's health insurance exchange is viable and functions optimally to provide adequate and affordable health insurance coverage for all Connecticut residents. Unfortunately, HB 6305 could have serious, but perhaps unforeseen and unintended, impacts on how the exchange will be able to succeed by impacting the insurance marketplace. By way of example, the bill appears to exempt SustiNet from licensure by the Department of Insurance (lines 490 and 501) and indicates that SustiNet intends to participate in and outside of the state's health insurance exchange. PPACA prohibits the state health insurance exchanges from offering plans that are not qualified health plans - which must be licensed by the state. Clearly, any plan to be offered through Connecticut's exchange must be licensed in a rigorous manner to ensure ongoing solvency for plan purchasers and limited exposure for the state related to premium levels established. In addition, under current statute, small employers are defined as those with fewer than 50 employees. Section 6(g)(2) of the bill allows the appointed SustiNet Authority to change that definition. While PPACA allows states to define small employers as those including fewer than 100 employees, part of our research grant is focused on an analysis of the implications of redefining "small employer" in Connecticut. This provision would presuppose an answer to that question without benefit of the research and data necessary to support that decision or its consequences. We believe that the definition of small employers must be made by the exchange, not SustiNet, and be based on careful market analysis and a detailed understanding of the functioning of the exchange.

Another concern for the administration is that some of the bill's provisions severely weaken the executive branch's authority and ability to manage major components of the state budget in a time of historic budget challenge - when executive leadership is critical to achieving success in implementing health care. For example, the bill provides broad authority to SustiNet over state employee benefits in Section 6(b) and (c). This provision negates the administration's existing and rightful authority to negotiate benefits and rules with our employees through SEBAC and effectively establishes SustiNet as the employer, not the administration, in collective bargaining. In addition, Section 7 creates a new coverage group with unknown fiscal impact and Section 12 requires that if state health expenditures come in under projections, the difference would be deposited to the SustiNet separate non-lapsing account for disbursement at SustiNet's discretion. These provisions could have a significant and dramatic impact on the state budget based on decisions made by a quasi-public agency, not the state itself, and would effectively tie the hands of the elected-and-accountable executive and legislative branches with regard to fiscal decision-making.

The bill also provides broad authority to Sustinet over Medicaid, which not only preempts the administration's existing authority, but also is contrary to federal law. In particular, subsection (d) of Section 6 is problematic in relation to the federal regulation outlining the legal authority of the single state agency, 42 CFR 431.10. Under this regulation, the state Medicaid plan must "specify a single state agency established or designated to administer or supervise the administration of the plan." In addition, in order for the agency to qualify as the Medicaid agency, "the agency must not delegate, to other than its own officials, authority to (i) Exercise administrative discretion in the administration or supervision of the plan, or (ii) Issue policies, rules, and regulations on program matters." Finally, and most importantly, the federal regulation provides that "the authority of the agency must not be impaired if any of its rules, regulations, or decisions are subject to review, clearance or similar action by other offices or agencies of the state." If other state agencies perform services for the Medicaid agency, "they must not have the authority to change or disapprove any administrative decision of that agency, or otherwise substitute their judgment for that of the Medicaid agency with respect to the application of policies, rules, and regulations issued by the Medicaid agency." While the language in Section 6(d) acknowledges that it applies "to the extent permitted by federal law," and specifies that DSS remains the single state agency, it then provides that DSS "shall immediately implement rules established by the Sustinet Plan Authority concerning the administration of such programs, including, but not limited to, rules concerning utilization management, health care coordination, disease management, health care delivery systems, provider payment methods, provider network management, provider credentialing..." This appears to be entirely inconsistent with the federal requirements for DSS as the single state Medicaid agency. Even if permissible, this provision would place any ability to implement cost control measures for Medicaid outside of state control, and place it with a quasi-public agency that is not directly controlled by the state. This could result in significantly higher costs based on future action by the Sustinet board.

In summary, this proposal is enormously complex in its impact on a variety of health care reform projects planned and underway in Connecticut. The Sustinet report recently issued indicates that feasibility studies and a risk assessment will be undertaken to ensure that the Sustinet plan is viable and adds value in the marketplace. The Malloy administration and my office are prepared to assist and work with you and others on this important analytical work. We believe that Connecticut is well positioned to be a leader in health care reform and that we will be successful by

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committing to the vision and types of system reforms included in PPACA, by reaching out to all those affected by reforms, and by acting on the best information we can obtain. As with any endeavor of this nature, success will be dependent upon strong and effective executive leadership - which Governor Malloy and his administration is committed to providing. We look forward to the opportunity to work with you to ensure that Connecticut is best positioned to move toward ensuring all residents have adequate and affordable health insurance coverage.

Thank you.