



*Testimony before the Human Services Committee  
Roderick L. Bremby, Commissioner  
March 12, 2015*

Good afternoon, Senator Moore, Representative Abercrombie and distinguished members of the Human Services Committee. My name is Roderick Bremby and I am the Commissioner of the Department of Social Services. I am pleased to be before you today to testify on two bills raised on behalf of the Department. In addition, I offer remarks on one other bill on today's agenda that impacts the Department.

**Bill Raised on Behalf of DSS:**

**S.B. No. 1043 (RAISED) AN ACT CONCERNING CONTINUING CARE COMMUNITIES**

This bill changes reporting requirements for continuing-care facilities (CCFs) and requires such communities to allow residents to form a council.

Current statute requires multiple filings from the CCF, including a financial filing as well as a disclosure filing. This proposal would require each CCF to submit at least one disclosure statement to DSS each year, including audited financial statements and cash flow statements. This updated process would not only streamline the filing procedures within the Department but it would also provide for greater transparency within a single filing.

In addition, the proposal allows residents to create a council. This council will give residents the ability to communicate with the provider directly. It is important to note that this proposal also requires providers to notify all residents when a disclosure statement has been filed. Disclosure statements will be available to any and all residents interested in viewing the financial records of the facility.

We ask for your support of this proposal.

**H.B. No. 6946 (RAISED) AN ACT CONCERNING HUSKY PROGRAMS**

This legislation makes a number of technical changes to the "HUSKY and HUSKY Plus Act," which was enacted in 1997 and reflected the managed care model of providing services to HUSKY A and HUSKY B/CHIP beneficiaries. The Department's service model for HUSKY beneficiaries has evolved considerably since that time, most notably with the implementation in 2012 of a self-insured, managed fee-for-service approach for the provision of services to all HUSKY beneficiaries (HUSKY A, B, C and D). This legislation also makes changes to reflect

Affordable Care Act (ACA) requirements to use a Modified Adjusted Gross Income (MAGI) methodology for most eligibility determinations. The MAGI methodology applies primarily to all CHIP and most Medicaid groups, except those whose eligibility is tied to being elderly, with disabilities, or in need of long-term services and supports (HUSKY C).

Sections 1 - 16, 18, 19, 22- 24, 28, 30, 32 - 45 – These sections of the bill propose to change the terms “HUSKY Plan, Part A and HUSKY Plan Part B” to the current and more comprehensive, “HUSKY Health program.” These sections also include language to reflect the recent statutory change to move regulations public notices to an online system.

Section 17 - This section updates the terminology for the eligibility groups from “family unit” to “household” as the MAGI rules use (with some important exceptions) a household composition definition based upon the taxpayer and his or her tax dependents. It also reflects the “converted” MAGI income limits and references the federal MAGI rules. The MAGI methodology differs in several ways from the methodology related to the Aid to Families with Dependent Children (AFDC) program that states used for many years to determine Medicaid and CHIP eligibility for most children and non-disabled/non-elderly adults. The AFDC-related methodology includes significant disregards of income, whereas MAGI uses an income calculation based on modified adjusted gross income as defined in tax regulations and a flat disregard of an amount equivalent to a 5 percentage point increase of the applicable income limit expressed as a percentage of the Federal Poverty Level (FPL). Because the MAGI rules eliminated certain disregards, states were required to undertake a process of converting their pre-2014 income limits to MAGI levels. The conversion process was intended to account for the loss of the disregards, not to create a net increase in the eligibility levels. The higher HUSKY A and HUSKY B income limits in this section represent these converted levels. As stated in this section, beneficiaries found not eligible for HUSKY are considered for eligibility for one of the programs available to help (in the form of a premium tax credit or cost sharing reductions) with the purchase of a Qualified Health Plan through Access Health CT.

Section 20 - This section updates a number of definitions to reflect current usage. It also incorporates the Department’s regulatory definition of durable medical equipment and defines the constituent parts (A, B, C and D) of the HUSKY Health program. It also adds reference to the electronic application process for HUSKY. The ACA requires a single streamlined application process for all insurance affordability programs (Medicaid, CHIP and the subsidies available through the state’s health insurance marketplace, Access Health CT), including online application.

Section 25 - The Affordable Care Act allows hospitals to perform presumptive eligibility for the MAGI eligibility groups (HUSKY A, B and D). Presumptive eligibility allows entities to make on-the-spot, temporary eligibility decisions (based on an assessment of gross household income). Usually the Department designates the entities that may perform presumptive eligibility, but the ACA permits hospitals to choose whether to perform eligibility.

Section 26 - This section updates provisions related to HUSKY Plus. Among other changes, it eliminates references to the separate HUSKY Plus Behavioral Health program. This proposed change does not constitute a change or reduction in the scope of behavioral health services

offered to HUSKY B beneficiaries. Instead, behavioral health services were carved out of HUSKY in 2006 and, as a result, HUSKY Plus Behavioral Health services (intensive in-home psychiatric services) are now provided under the auspices of the Behavioral Health Partnership. The BHP ASO has been managing these services since the behavioral health carve-out in 2006. In contrast, HUSKY Plus Physical remains a distinct program from the medical ASO and is implemented through a separate contract with the Connecticut Children's Medical Center.

Section 27 - This section reflects the converted MAGI income limits for HUSKY B.

\*Additional note- The Department requests a technical correction: Section 31 of the bill, which amends section 17b-303, should be deleted and section 46 of the bill amended to include the repeal of section 17b-303, as the provisions of section 17b-303 are obsolete.

We ask for your support of this proposal.

### **Other Legislation Impacting the Department:**

#### **S.B. No. 1046 (RAISED) AN ACT PROHIBITING FELONS FROM MANAGING STATE ASSISTANCE FUNDS**

This bill prohibits the Department from hiring an individual with a felony conviction for a position that involves administering, managing or providing public assistance funds.

The bill raised would put DSS in the position of violating existing state law. Section 46a-80(a) of the Connecticut General Statutes states that "notwithstanding any other provisions of law to the contrary, a person shall not be disqualified from employment by the state or any of its agencies [...] solely because of a prior conviction of a crime." This Commission on Human Rights and Opportunities ("CHRO") statute further delimits the circumstances in which the criminal record of an applicant may be considered. A state agency may only inquire about a prior criminal conviction once an applicant has been deemed otherwise qualified and may only use criminal history as a basis for disqualifying an applicant after considering: (1) the nature of the crime and its relationship to the job for which the person has applied; (2) information pertaining to the degree of rehabilitation of the convicted person; and (3) the time elapsed since the conviction or release. Conn. Gen. Stat. § 46a(80)(b)-(c).

In compliance with Section 46a-80, DSS already has hiring practices in place that consider the criminal record of an applicant. Once an applicant is deemed to be otherwise eligible for the position sought, DSS uses the Department of Administrative Services' form HR-13, Addendum to the Application for Examination or Employment, Criminal Convictions, to have the applicant report all prior convictions for crimes, with the exception of minor traffic violations and juvenile convictions. DSS then considers the applicant's criminal record as related to the position being sought, the degree of rehabilitation, and the time elapsed since the crime. Thus, a mechanism already exists, in compliance with CHRO law, to screen applicants whose criminal history would directly bear upon the position being sought.

DSS could not conform to the more stringent requirements of the raised bill without violating the existing requirements of the CHRO statute. As the CHRO statute applies “notwithstanding any other provisions of law to the contrary,” the raised bill, if enacted, would not preempt the CHRO requirements. Therefore, if DSS were to prohibit the hiring of any applicant convicted of a felony within the last five years, as required by the raised bill, the agency would violate existing law and be exposed to unmitigated liability before the CHRO.

The requirements of the raised bill would also run counter to the published guidance of the federal Equal Employment Opportunity Commission (EEOC). See *Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964*, EEOC Enforcement Guidance Number 915.002, April 25, 2012, (available at [www.eeoc.gov/laws/guidance/upload/arrest\\_conviction.pdf](http://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf)). The EEOC has advised that “there is Title VII disparate impact liability where the evidence shows that a covered employer’s criminal record screening policy or practice disproportionately screens out a Title VII-protected group and the employer does not demonstrate that the policy or practice is job related for the positions in question and consistent with business necessity.” *Id.* at Part V. Furthermore, the EEOC believes that evidence supports a finding that policies excluding applicants on the basis of criminal convictions do, in fact, result in disparate impact based on race and national origin, specifically in the impact on African Americans and Hispanics, who are disproportionately subject to arrest and conviction. *Id.* at Part V.A.2. Thus, requiring a DSS policy to exclude applicants on the basis of criminal conviction, without consideration of the job requirements or business necessity, could result in Title VII liability for disparate impact discrimination.

Additionally, the EEOC does not consider the existence of a state or local law requiring exclusion on the basis of criminal conviction to be an adequate defense to Title VII liability. Specifically, the EEOC states that “if an employer’s exclusionary policy or practice is not job related and consistent with business necessity, the fact that it was adopted to comply with a state or local law or regulation does not shield the employer from Title VII liability.” *Id.* at Part. VII. (emphasis in original). Therefore, DSS could be liable for Title VII EEOC claims if, per the requirements of the raised bill, the agency excluded applicants on the basis of criminal conviction without regard to the needs of the job being sought or the business necessity of the practice.

Further, this bill would require the Department to run state and national criminal history record checks which would be a significant cost that is not recognized in the current budget.

For all of these reasons, the Department must oppose this bill.