



**Testimony of Eric Brown**  
**Counsel for Environmental, Energy and Regulatory Policy**  
**Connecticut Business & Industry Association**  
before the  
**Commerce Committee**  
**March 1, 2016**

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**RE: Raised Bill No. 302 AN ACT CONCERNING THE IMPACT OF PROPOSED LEGISLATION AND PROPOSED REGULATIONS ON BUSINESSES**

**CBIA supports this bill.**

Good afternoon. My name is Eric Brown and I serve as counsel on environmental, energy and regulatory policy for the Connecticut Business & Industry Association (“CBIA”). CBIA is proud to represent thousands of small and large businesses throughout Connecticut, employing hundreds of thousands of Connecticut citizens. Many of those businesses speak to us regularly about the regulatory challenges they face and its impact on their ability to grow, prosper and compete in a global economy.

When proposing to adopt a regulation, agencies are currently required to prepare a Fiscal Note that includes an estimate of the costs or of the revenue impacts on small businesses in the state. Also required is an estimate of the number of small businesses subject to the proposed regulation and the projected costs to those businesses including costs associated with reporting, recordkeeping and administrative requirements (C.G.S. 4-168).

Additionally, agencies are required to prepare a Regulatory Flexibility Analysis intended to identify regulatory methods the agency may use “to accomplish the objectives of applicable statutes while minimizing adverse impact on small businesses.” (C.G.S 4-168a).

With respect to the Regulatory Flexibility Analysis, state agencies are using a one-page form entitled “Small Business Impact Statement”. An example is attached to this testimony. This form prompts the agency to check 1 of 4 boxes (paraphrasing):

- a. The regulation does not affect small businesses
- b. The regulation will affect small businesses, but not adversely
- c. The regulations may have an adverse impact on small businesses but there are not alternatives that would be effective and mitigate the burden to small businesses
- d. The regulations will have an adverse effect on small businesses that can not be minimized in a manner that is consistent with public health, safety and welfare.

Accordingly, by its very design, the form provides no opportunity for an agency to indicate that

it successfully identified and incorporated alternative compliance methods to minimize the impact on small businesses into its proposed regulation.

Effectively, the form and the “thinking” it encourages, is useless.

Fortunately, our neighboring states to the north and east are using substantive and useful forms that are nearly identical to each other (example of Rhode Island’s form is attached).

Section 3(b) of this Raised Bill No. 301 provides specific input to state agencies regarding the questions that should be asked and answered in a practical and meaningful small business impact analysis.

Importantly, these measures do not require an economic or cost-benefit analysis. Rather, these are practical and reasonable questions that anyone charged with drafting regulations affecting small businesses should feel a responsibility to determine in advance of finalizing a proposal, and should be able to do so relatively easily.

Thank you for this opportunity to provide comment and for your consideration of our testimony.



## SMALL BUSINESS IMPACT STATEMENT

Prior to adopting a new section or amendment, section 4-168a of the Connecticut General Statutes (CGS) requires that each state agency consider the effect of such action on small businesses as defined in CGS section 4-168a. When such regulatory action may have an adverse effect on small businesses, CGS section 4-168a directs the agency to consider regulatory requirements that will minimize the adverse impacts on small businesses if the addition of such requirements (1) will not interfere with the intended objectives of the regulatory action and (2) will allow the new section or amendment to remain consistent with public health, safety and welfare.

State Agency Submitting Proposed Amendment: Connecticut Department of  
Energy & Environmental Protection (DEEP)

Subject of Regulation; State Parks – Parking Fees

Contact person: Tom Tyler (860-424-3099)

In accordance with CGS section 4-168a, staff analyzed the effect on small businesses of the proposed regulations and determined the following:

Check all appropriate boxes:

- The regulatory action will not have an effect on small businesses.
- The regulatory action will have an effect on small businesses, but will not have an adverse effect on such small businesses.
- The regulatory action may have an adverse effect on small businesses, and no alternative considered would be both as effective in achieving the purpose of the action and less burdensome to potentially affected small business. Alternatives considered include the following:
- (1) The establishment of less stringent compliance or reporting requirements for small businesses;
  - (2) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
  - (3) The consolidation or simplification of compliance or reporting requirements for small businesses;
  - (4) The establishment of performance standards for small businesses to replace design or operational standards required in the new section or amendment; and
  - (5) The exemption of small businesses from all or any part of the requirements contained in the new section or amendment.
- The regulatory action will have an adverse effect on small businesses that cannot be minimized in a manner that is consistent with public health, safety and welfare.

**SMALL BUSINESS IMPACT STATEMENT**

*In order to accurately predict the impact the adoption, amendment, or repeal of a regulation will have on small businesses, the promulgating authority must conduct a thorough analysis that not only considers the potential effects of the action but also quantifies the costs, if any, associated with each. The questions below are designed to aid promulgating authorities in conducting their analysis.*

**Agency submitting regulations:** Executive Office of Health & Human Services (EOHHS)

**Subject matter of regulations:**

Rhode Island Medicaid Code of Administrative Rules  
Section 1318: Presumptive Eligibility for Medicaid as Determined by Rhode Island Hospitals

**ERLID Number:** 7736

**Statutory authority:** Rhode Island General Laws Chapter 40-8 (Medical Assistance), including Public Law 13-144; Title XIX of the Social Security Act; Patient Protection and Affordable Care Act (ACA) of 2010 (U.S. Public Law 111-148); Health Care and Education Reconciliation Act of 2010 (U.S. Public Law 111-15); Rhode Island Executive Order 11-09; Code of Federal Regulations 42 CFR Parts 435 *et. seq.*

**Other agencies affected:** Department of Human Services

**Other regulations that may duplicate or conflict with the regulation:** None known

**Describe the scope and objectives of the regulation:**

Under the implementing regulations for the federal Affordable Care Act at 42 Code of Federal Regulations (CFR) 435.110, states must offer Medicaid coverage to individuals who are not already Medicaid members for a limited time period. This form of “presumptive eligibility” is only available in certain circumstances when a qualified hospital determines, on the basis of preliminary information, that an individual has the characteristics for Medicaid eligibility in a certain coverage group. Such individuals are “presumed eligible” for Medicaid until the end of the following month or the date full eligibility is determined, whichever comes first.

The EOHHS is adopting these rules to ensure the state’s presumptive eligibility program both complies fully with recently-adopted pertinent federal regulations and procedures and to ensure that the health, safety, and welfare of Rhode Islanders are well-served.

**What was the rationale for establishing this regulation?** These regulations are promulgated for the purpose of: 1/ complying with all of the aforementioned federal and state statutes/regulations; and 2/ for stipulating provisions related to a Medicaid presumptive eligibility program in Rhode Island hospitals.

**Does the rationale still exist?** YES

**Is the rationale still relevant?** YES

**Business industry (s) affected by the regulation:** This Medicaid regulation contains requirements for those Rhode Island hospitals that wish to be deemed qualified to participate in the Medicaid hospital presumptive eligibility program. Currently, all Rhode Island hospitals are non-profit entities, with the exception of one (Landmark Medical Center in Woonsocket). As such, these entities are subject to the economic impact analysis exclusion contained in Rhode Island General Laws section 42-35.1-3 (c)(6). Landmark Medical Center has greater than 500 employees and therefore does not meet the definition of a “small business.”

**Types of businesses included in the industry (s):** Hospitals



Total number of small businesses included in the regulated industry (s) (Please see the attached guidance documents for assistance determining the total number of small businesses) **N/A**

Number of small businesses potentially subject to the proposed regulation: **N/A**

How often do small businesses contact your agency for assistance with clarification of the regulation and/or receive assistance with compliance issues?

Assistance with compliance issues is provided by state agency staff (Department of Human Services field offices and EOHHS administrators).

What is the cost to your agency of establishing and enforcing this regulation?

Costs are incurred to the state related to the implementation of these regulations and, generally, to the administration of the Medicaid Program. These costs may include, but not be limited to, personnel and contractor expenses for eligibility determination, benefit administration, and purchase of new technology. However, these regulations are promulgated pursuant to both state and federal statutes (noted above). Costs incurred are the result of the implementation of a Program required by federal law.

What would the consequences be if the regulations did not exist?

The statutes noted above would not be given full force and effect. Additionally, these rules are promulgated in order to prevent wrongful denial, discontinuance, or interruption of benefits for Medicaid applicants and beneficiaries.

Effective date used in cost estimate: **N/A**

For each question below, please answer "yes" or "no" and offer a brief explanation. Please describe any facts, data, views, arguments, or other input from small businesses, organizations or any other sources that were used to quantify the impacts outlined below.

1.	Yes	No	<b>Do small businesses have to create, file, or issue additional reports?</b>
		<b>XX</b>	
2.	Yes	No	<b>Do small businesses have to implement additional recordkeeping procedures?</b>
		<b>XX</b>	
3.	Yes	No	<b>Do small businesses have to provide additional administrative oversight?</b>
		<b>XX</b>	
4.	Yes	No	<b>Do small businesses have to hire additional employees in order to comply with the proposed regulation?</b>
		<b>XX</b>	
5.	Yes	No	<b>Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)?</b>
		<b>XX</b>	

6.	Yes	No <b>XX</b>	Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation?
7.	Yes	No <b>N/A</b>	Are performance standards more appropriate than design standards?
8.	Yes	No <b>XX</b>	Does the regulation require small businesses to cooperate with audits, inspections, or other regulatory enforcement activities?
9.	Yes	No <b>XX</b>	Does the regulation have the effect of creating additional taxes and/or fees for small businesses?
10.	Yes	No <b>XX</b>	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements?
11.	Yes	No <b>XX</b>	Is the regulation likely to <i>deter</i> the formation of small businesses in RI?
12.	Yes	No <b>N/A</b>	Is the regulation likely to <i>encourage</i> the formation of small businesses in RI?
13.	Yes	No <b>XX</b>	Can the regulations provide for less stringent compliance or reporting requirements for small businesses?
14.	Yes	No <b>XX</b>	Can the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses?
15.	Yes	No <b>N/A</b>	Can the compliance or reporting requirements be consolidated or simplified for small businesses?
16.	Yes	No <b>XX</b>	Can performance standards for small businesses replace design or operational standards?
17.	Yes	No <b>XX</b>	Are there alternative regulatory methods that would minimize the adverse impact on small businesses?

18.	Yes <b>XX</b>	No	<b>Have any small businesses or small business organizations been contacted during the preparation of this document? If so, please describe.</b>  These regulations are circulated to a list of “interested persons” prior to promulgation that may include members of the small business community. Additionally, all proposed rules are posted on the Secretary of State’s website for public review and comment: <a href="http://www.sos.ri.gov">www.sos.ri.gov</a>
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