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Senator Toni Harp  
Senator Paul Doyle  
Legislative Office Building  
Hartford, CT 06106

House Speaker Chris Donovan  
Rep. John Geragosian  
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Hartford, CT 06106

December 3, 2009

**Re: DSS's Proposed Harmful Changes to Medicaid Medical Necessity Definition in Violation of Substantive and Procedural Requirements of New State Law**

Dear Legislative Leaders:

We are a diverse group of forty consumer, disability, disease, provider and advocacy organizations, all of which share one critically important goal, which we believe is shared by each of you: to prevent any harmful changes to the Medicaid definition of medical necessity which has served this program so well for many years. We write to you because, at the November 13, 2009 meeting of the Medicaid Managed Care Council, Department of Social Services officials stated unequivocally that, as of January 1, 2010, they intend to replace this long-standing definition with the problematic SAGA definition of medical necessity, for both the approximately 90,000 fee for service Medicaid recipients and the nearly 360,000 HUSKY A enrollees. This is even though the legislature, in the special session: (1) **rejected** that proposed harmful definition, (2) expressly prohibited any changes to the current Medicaid definition which would "reduc[e] the quality of care provided to Medicaid beneficiaries," and (3) required that

any proposed changes to this definition by DSS first be presented to a newly-created committee so that it can advise DSS **before** they are implemented.

As explained below, DSS's stated action will unquestionably violate both the substantive and procedural requirements of new legislation dually passed this special session, placing government and HMO bureaucrats between Medicaid patients and their doctors, and putting 450,000 low-income Connecticut residents in peril as a result. We therefore urge you to intercede to prevent DSS from adopting the SAGA definition of medical necessity in Medicaid and from making any changes to the current Medicaid definition without first submitting those proposed changes to the Medical Inefficiency Committee for review.

### **Brief History of the Legislation Being Violated**

For the last four years, Governor M. Jodi Rell has sought to adopt the far more limited medical necessity definition applied in the limited-benefit SAGA program to the Medicaid program which covers about 450,000 low income Connecticut residents, over half of whom are children and many of whom are totally and permanently disabled adults and seniors with chronic medical conditions. Each year, DSS would claim that the SAGA definition would simply "update" the Medicaid definition, which had been adopted as one of several major restrictions on that state-funded program. And each year, consumers, advocates and providers presented concrete examples of people who would be directly harmed if the new crabbed definition were applied to the much larger and more vulnerable Medicaid population. As a result, each year the legislature rejected this proposal put forth by the Governor.

This year, after the Governor again put forth the same proposal, 41 organizations signed on to a May 21 letter to all legislators providing many illustrations of precisely the harm that adopting the SAGA definition for the Medicaid population would cause. See Letter at [http://www.ctaidscoalition.org/mn\\_letter2.doc](http://www.ctaidscoalition.org/mn_letter2.doc) In addition, the Connecticut Bar Association presented compelling information about how applying the SAGA definition to the Medicaid population would violate federal Medicaid law. See CBA "Dear Legislator" Letter at [http://www.ctaidscoalition.org/mn\\_letter1.pdf](http://www.ctaidscoalition.org/mn_letter1.pdf)

As a result of these examples and concerns, and many others set forth in letters and in testimony before legislative committees, the legislature, in its budget bill passed in late June, **rejected** the SAGA medical necessity definition, and refused to make any changes to the Medicaid medical necessity definition. After the Governor vetoed that bill, further discussions were held between the two branches of state government, with the Governor again pressing for the SAGA definition to be adopted. But the legislature again **rejected** that proposal.

In its final budget passed in late August, which the Governor allowed to go into effect without her signature, the legislature instead adopted a requirement that DSS amend the definition "[n]ot later than *July 1, 2010*," but "by reducing inefficiencies in the administration of the program *while not reducing the quality of care provided to Medicaid beneficiaries*." PA 09-03, Section 81(a)(1)(emphasis added). The legislature did not specify exactly what those changes to the definition should be and instead created a Medical Necessity Oversight

Committee (subsequently named the Medical Inefficiency Committee in the General Government Implementer Bill), whose specific charge was:

*“To advise the Department of Social Services on the amended definition and the implementation of the amended definition required under subsection (a) of this section, and to provide feedback to the department and the General Assembly on the impact of the amended definition.”*

P.A. 09-03, Section 81(b), as amended by P.A. 09-07, Section 107 (emphasis added).

### **Procedural Violations of State Law**

Although it is not clear if the new Medical Inefficiency Committee, which has not yet met, has the power to reject any specific proposal, at a minimum, the legislature certainly intended that there would be outside review by this officially-appointed committee before any changes to the Medicaid medical necessity definition were made. It did this because it recognized that input from at least **some** outside experts was warranted before any changes to this long-standing definition, which serves as a critical lifeline for 450,000 vulnerable Connecticut residents, were made by state officials primarily concerned with saving money.

But in presenting its position on November 13<sup>th</sup>, the Department described the Medical Inefficiency Committee as having the role of only monitoring the “implementation” of the amended definition it unilaterally chose to adopt, completing ignoring the first statutory role of “advis[ing DSS] on the amended definition” before it is implemented.

Some of the signatory organizations below have members who have been appointed to this committee. But whether or not they do, they all share the great concern with the manner in which DSS is proceeding with this change, as well as with the specific changes intended, which are in violation of P.A. 09-03 Section 81 and P.A. 09-07 Section 107. DSS’ stated intention to adopt the SAGA medical necessity definition, without any input from the committee set up by the legislature for this very purpose, is deeply troubling to all of us.

### **Substantive Violations of State Law**

There is a very good reason that the legislature this year again rejected DSS’ proposal to adopt the problematic SAGA medical necessity definition: it could not possibly meet the important standard of avoiding any “reduction of quality of care” for Medicaid recipients. DSS’s proposal to adopt this definition on January 1, 2010, for all 450,000 Medicaid enrollees, including those whose prior authorization requests are reviewed for medical necessity not by DSS employees but by HMO bureaucrats (HUSKY A enrollees not enrolled in HUSKY Primary Care), directly violates this protective language contained in the law it just passed.

For example, in our May 21<sup>st</sup> letter, we noted that the proposed SAGA definition, among many other harmful changes:

**1. Places the burden on treating providers to affirmatively prove that a requested treatment “is likely to produce benefit.”** Example of harm: A 52-year-old HUSKY parent with stage 2 breast cancer with lymph node involvement, for which “adjuvant therapy” (secondary treatment to kill any cancer cells which may have spread) is well accepted among cancer doctors because studies show it saves lives by reducing recurrences, could be denied this treatment. This is because it is successful in helping about 30% of women, so it would not be “likely to produce benefit” under the new definition. (There is no way to know in advance which women will benefit but, when successful, the treatment is life-saving.)

**2. Removes the current prohibition on a cheaper treatment being substituted for a treatment requested by the prescriber unless the substitution is the “least costly of multiple, equally-effective alternative treatments,” and requires only that the treatment be the “least costly among similarly effective alternatives.”** Example of harm: A 41-year-old woman with schizophrenia could be required to take a generic form of a medication like Clozapine, which reduced but did not eliminate the hearing of voices and paranoid thoughts when she last tried it -- instead of the somewhat more expensive name brand version of this medication, Clozaril, which eliminated these voices and delusions, enabled her to work in competitive employment and avoided the risk of institutionalization altogether.

Significantly, replacing the word “equally” with the term “similarly” from the SAGA definition would mean that low-income Medicaid recipients, who lack resources to pay for denied services on their own, will have even less protection than commercial HMO enrollees, as to whom state law prohibits substitution with a cheaper treatment unless the cheaper alternative is “equally” effective. Conn. Gen. Stat. § 38a-482a. Reducing protections to below this clear statutory standard cannot possibly be consistent with “not reducing the quality of care.”

There are many more examples of harm from these and other changes which would result from adopting the SAGA definition. See May 21, 2009 Letter at [http://www.ctaidscoalition.org/mn\\_letter2.doc](http://www.ctaidscoalition.org/mn_letter2.doc) for some additional examples. Clearly, adopting that definition would cause a “reduction of quality of care” for Medicaid enrollees.

### **Application of Proposed Definition to HUSKYA Enrollees with No Savings to Taxpayers**

DSS has attempted to defend its intended actions in violation of state law on the basis that (1) some unidentified exceptions to the new crabbed definition will be applied; (2) DSS’ Medical Director will be reviewing the HUSKY HMOs’ denials under the new definition to prevent harm. Neither of these can excuse the substantive and procedural violations inherent in DSS adopting the SAGA medical necessity definition.

In addition, neither of these arguments can address the substantial harm that the change would cause HUSKY A enrollees who are required to receive most of their health services through capitated HMOs, which are given complete authority in deciding when to impose prior authorization for medical necessity and in actually making those decisions. Thus, even assuming a benevolent reviewer at DSS who is ready to make exceptions based on some unknown standard, the vast majority of Medicaid enrollees will have their requests reviewed and decided by employees of HMOs with a direct financial incentive to deny care, two of which are for-profit

entities. Moreover, collectively, the HMOs issue thousands of denials each month, such that it is ludicrous to think that DSS' overworked Medical Director could actually review all of them, including the underlying medical documentation in support of the requests, in order to prevent any harm.

DSS' intended incorporation of the SAGA medical necessity definition into the HUSKY contracts is particularly troubling because it is designed to produce more denials, and thus provide a windfall, for the HUSKY HMOs. The Governor's estimate of savings from changing the medical necessity definition was premised only upon changing it for the fee for service Medicaid population **not** enrolled in HMOs, such that the HMOs' capitated payments apparently will not be reduced along with this change in definition. This appears to be a way of funneling still more taxpayer money to the HMOs, as DSS delays making the \$50 million/year cut in their capitated payments which was separately required by the legislature in its final budget.

### **Conclusion**

It is troubling enough that DSS would propose a harmful change which will directly put government and HMO bureaucrats between low-income elderly, disabled, child and family Medicaid recipients and their doctors. It is an outrage that it would do this when the legislature specifically rejected the very changes it has proposed, and also made clear that **any** changes had to first be submitted for review by the newly-constituted committee.

For all of these reasons, we urge you to intercede to prevent DSS from adopting the SAGA definition of medical necessity for Medicaid and from making any changes to the current Medicaid definition without first submitting them for review by the Medical Inefficiency Committee.

Thank you for your attention to this very important matter.

Respectfully yours,

Arthritis Foundation  
CT State Independent Living Council  
American Cancer Society,  
New England Division  
CT Parent Power  
South Central Behavioral Health Network  
Connecticut Coalition on Aging  
Epilepsy Foundation of Connecticut  
Legal Assistance Resource Center of CT  
CT Disability Advocacy Collaborative  
CT Ass'n of Independent Living Centers  
Disabilities Network of Eastern CT  
Spinal Cord Injury Association of CT  
CT Psychiatric Society  
Office of the Child Advocate

NAMI-CT  
Mental Health Association of CT  
COHI  
FAVOR  
CT Family To Family Health Information Network  
CT Lifespan Respite Coalition  
Center for Medicare Advocacy  
CT Family Support Council  
New Haven Legal Assistance Association  
Advocacy for Patients with Chronic Illness  
CT Association of Agencies on Aging  
CT AIDS Resource Coalition  
AIDS LIFE Campaign  
Conn. Legal Rights Project  
CT VOICES for Children

Christian Community Action,  
Advocacy & Education Project

CT Legal Services

Center for Children's Advocacy

Nat'l Multiple Sclerosis Society-CT Chapter

Brain Injury Association of CT

CT Call to Action

Independence Northwest

Middlesex Coalition for Children

CT State Medical Society

Greater Hartford Legal Aid

AARP-CT

cc: Honorable M. Jodi Rell

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Mark Schaefer, Ph.D.

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Attorney General Richard Blumenthal