

[MI COMMITTEE LETTERHEAD]

DRAFT

Richard Blumenthal
Attorney General
Office of the Attorney General
55 Elm Street
Hartford, CT 06106

January , 2010

Re: Authority of DSS to Change Medicaid Medical Appropriateness Definition

Dear Attorney General Blumenthal:

The Medical Inefficiency Committee, of which we were appointed as co-chairs, was established in last year's special session, under P.A. 09-03, Section 81(b) and P.A. 09-07, Section 107(b), 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." The "amended definition" referred to in this section is contained in Section 107 (a)(1) of P.A. 09-07, which provides: "Not later than July 1, 2010, the Department of Social Services shall amend by regulation the definition of 'medically necessary' services utilized in the administration of Medicaid..." We write to ask whether this language extends to DSS changing the long-standing Medicaid regulatory definition of "medical appropriateness" and thus to our Committee advising DSS with respect to any changes to that definition proposed to be made by it.

As you may be aware, Governor M. Jodi Rell and DSS sought to replace the current Medicaid definitions of both medical necessity and medical appropriateness¹ in the regular session of the legislature last year. They proposed legislation providing for the replacement of those two definitions with a unified definition of medical necessity which has been used for several years in the smaller SAGA medical program, which covers low-income adults who are

¹ The current definitions are contained in various state regulations and read:

MEDICAID MEDICAL NECESSITY DEFINITION:

"Medical Necessity or Medically Necessary" means health care provided to correct or diminish the adverse effects of a medical condition or mental illness; to assist an individual in *attaining or maintaining an optimal level of health*; to diagnose a condition; or prevent a medical condition from occurring.

MEDICAID MEDICAL APPROPRIATENESS DEFINITION:

"Medical Appropriateness or Medically Appropriate" means health care that is *provided in a timely manner* and meets professionally recognized standards of acceptable medical care; is delivered in the appropriate medical setting; and is the least costly of multiple, *equally-effective* alternative treatments or diagnostic modalities.

neither elderly nor disabled and who are not parents of minor children, and which is run primarily through the non-profit community health centers.² As explained in the section of the Governor's early 2009 budget document proposing this change, which is entitled "Update Medical Necessity and Appropriateness Definition under Medicaid," the proposed "revised medical necessity definition combines the concepts of medical necessity and appropriateness..." (excerpt, page 520, attached).

The legislature did not adopt this proposal. Rather, in its final budget passed in August and allowed to go into effect by Governor Rell, it provided that DSS "shall amend by regulation the definition of 'medically necessary' services utilized in the administration of Medicaid to reflect savings in the current biennial budget by reducing inefficiencies in the administration of the program while not reducing the quality of care provided to Medicaid beneficiaries."

In light of the absence of any reference in this legislation to the definition of "medical appropriateness" or to changing that definition, though DSS had proposed legislation specifically authorizing it to do so, a concern has been raised in our Committee that DSS may not have authority under this statutory provision to change the definition of medical appropriateness. This would then impact our jurisdiction to make recommendations with respect to any changes by DSS to that definition particularly.

Accordingly, it has been suggested that we should ask for guidance from you before expending any effort in addressing any proposed changes to the current Medicaid definition of medical appropriateness (as opposed to the current Medicaid definition of medical necessity, which must be changed by July 1, 2010).

We therefore ask these two questions:

- (1) Does DSS have authority under P.A. 09-07, Section 107 to change the current Medicaid definition of medical **appropriateness**?
- (2) If not, must any changes to the current Medicaid definition of medical **necessity** made pursuant to Section 107(a)(1) be consistent with the current Medicaid definition of medical appropriateness?

² The unified definition replacing the medical necessity and medical appropriateness definitions, which DSS had proposed during the regular session, reads:

"Medically necessary services" means those health services required to prevent, identify, diagnose, treat, rehabilitate or ameliorate a health problem or its effects, or to maintain health and functioning, provided such services are:

- a) consistent with generally accepted standards of medical practice
 - b) clinically appropriate in terms of type, frequency, timing, site and duration;
 - c) *demonstrated through scientific evidence* to be safe and effective and the least costly among *similarly effective* alternatives, where adequate scientific evidence exists;
 - d) efficient in regard to the avoidance of waste and refraining from provision of services that, *on the basis of the best available scientific evidence*, are not likely to produce benefit.
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DSS advised us at our first meeting that it does not intend to make any changes to either definition until it has an opportunity to make a presentation to our committee concerning its proposed changes and to hear our recommendations with regard to those proposals. Also, our next meeting has been scheduled for January 21st. It would be helpful to our work to know the answer to the above questions sometime in the next two weeks.

On behalf of the Medical Inefficiency Committee, we thank you for your attention to this matter.

Respectfully yours,

Dr. Kevin Kinsella
Co-Chair

Alicia Woodsby
Co-Chair

cc: Commissioner Michael Starkowski
Mark Schaefer, Ph.D.
Robert Zavoski, M.D.