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Office of The Attorney General
State of Connecticut

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Dr. Kevin Kinsella
Ms. Alicia Woodsby
Co- Chairs, Medical Inefficiency Committee
Legislative Office Building
Hartford, CT 06106

Dear Dr. Kinsella and Ms. Woodsby:

I recently received your correspondence regarding the legislature's directive to the Department of Social Services (DSS) contained in P.A. 09-07, § 107, to "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." You inquire whether DSS has the authority under this statute to also change the Medicaid regulatory definition of "medical appropriateness," and if, not, must any changes in the definition of "medically necessary" be consistent with the current definition of "medical appropriateness".

With regard to the first question, we conclude that DSS does not have authority under P.A. 09-07, § 107 to amend the definition of medical appropriateness," but does have the authority under Conn. Gen. Stat. §17b-3(a)(2) to adopt regulations amending the definition of that term. With regard to your second question, we conclude that in complying with the legislature's mandate to amend the definition of "medically necessary," DSS has the statutory authority to define the terms "medically necessary" and "medical appropriateness" consistently, although it is not required by law to do so.

As noted in your letter, in P.A. 09-07, § 107, the General Assembly directed DSS to amend the definition of "medically necessary" and went so far as to authorize DSS to adopt policies and procedures utilizing the amended definition while in the process of adopting the definition in regulation form, "The process of statutory interpretation involves a reasoned search for the intention of the legislature." *State v. Courchesne*, 262 Conn. 537, 544 (2003), quoting *Bender v. Bender*, 258 Conn. 733, 741 (2001). "[T]he language of the statute is the most important factor to be considered." *Courchesne*, 262 Conn. at 563. See Conn. Gen. Stat. § 1-2z. Section 107 of the Act does not reference at all the definition of "medical appropriateness." Therefore, we conclude that the definition of "medical appropriateness" may not be amended under P.A. 09-07 §107.

However, DSS has full authority to amend the definition of "medical appropriateness" under Conn. Gen. Stat. §17b-3(a)(2): "The commissioner shall have the power and duty to ... (2)

adopt and enforce such regulations ... as are necessary to implement the purposes of the department as established by statute." DSS may redefine the term "medically necessary" to make it consistent with the current definition of "medical appropriateness" pursuant to P.A. 09-07, or may amend the definition of "medical appropriateness" to make it consistent with an amended definition of "medically necessary" through the adoption of regulations under Conn. Gen. Stat. § 17b-3(a)(2). This conclusion is consistent with the laudable goal of providing flexibility to DSS with the advice of your committee to achieve the requirements of the legislature set forth in P.A. 09-07.

While the primary obligation of DSS under P.A. 09-07 is to adopt a definition of the term "medically necessary" in accord with the legislative direction set forth in the Act, DSS has the statutory authority to give the terms "medically necessary" and "medical appropriateness" consistent definitions by using the authority set forth in P.A. 09-07, §107 and Conn. Gen. Stat. §17b-3(a)(2).

We trust that the foregoing responds to your concerns.

Very truly yours,



RICHARD BLUMENTHAL