



*Testimony before the Human Services Committee
Roderick L. Bremby, Commissioner
March 20, 2018*

Good afternoon, Senator Markley, Senator Moore, Representative Abercrombie and distinguished members of the Human Services Committee. My name is Roderick L. Bremby, and I am the Commissioner of the Department of Social Services.

I am pleased to appear before you to offer remarks on several of the bills on today's agenda.

S.B. No. 242 (RAISED) AN ACT CONCERNING NOTICE OF REGULATORY, POLICY AND PROCEDURAL CHANGES FOR THE CONNECTICUT HOME-CARE PROGRAM FOR THE ELDERLY.

This legislation requires the Department of Social Services (DSS) to post regulations regarding the Connecticut Home Care Program for the Elderly (CHCPE) on the eRegulations system thirty days prior to implementing such regulations. Currently, this must be done twenty days prior to implementation. In addition, the legislation mandates that such proposed regulations be transmitted to the Legislative Regulations Review Committee (LRRC) for review no later than 180 days after posting such notice.

In some instances, the Department has the statutory authority to implement and operate under a new policy outlined in a proposed regulation, prior to formal adoption. Under current law, section 17b-342 allows DSS to implement and operate under a new policy concerning the CHCPE twenty days after a notice of intent (NOI) to amend or adopt a regulation is published in the Connecticut Law Journal. However, the proposed regulation must still go through the notice and comment rulemaking process.

As the current regulation process includes numerous levels of review, it can, and on occasion does, extend past 180 days. The Department is first required to publish an NOI on the eRegulations system. After the NOI is posted, DSS must give the public at least 30 days to submit comments in response to the proposed regulation. If comments are received, DSS must respond to these comments and in some circumstances hold a public hearing to solicit feedback. At this stage, the Department also has the flexibility to redraft the proposed regulation based on the comments received. Any revised version of the proposed regulation must be posted on the eRegulations system, along with the Department's responses to the comments received and a notice indicating that the agency is moving forward with the proposed regulation. Depending on the number and nature of comments received and the Department's ability to respond to such comments, this process can be lengthy. It is also important to note that, in a time of strained staffing resources, this complex process requires much staff time and dedication among numerous competing agency priorities.

Next, the Department must submit the proposed regulation to the Office of the Attorney General (OAG) for review. The OAG has 30 days to review the proposed regulation for legal sufficiency. The OAG may request that the Department make additional changes to the regulation before approving it. This can result in additional delays in submitting the proposed regulation to the LRRC as the Department is unable to submit the regulation without OAG approval. If the OAG does approve the proposed regulation, the Department can move forward with submitting such regulation to the LRRC.

Unless there is an extenuating circumstance (as described above), the Department provides all proposed regulations to the LRRC in a timely manner. To this end, the Department is concerned that this legislation will not provide the flexibility needed to complete the formal regulation process in all cases.

The Department is also unclear of the intent of lines 23-25 in this legislation, which could be read to allow a person “aggrieved by policies and procedures implemented” while the Department is in the process of adopting such policies and procedures in regulatory form to appeal directly to the Superior Court. If this provision is correctly read to allow individuals the right to directly appeal to the Superior Court without first exhausting administrative remedies through the fair hearing process before the Department, this would seem to violate the Administrative Procedures Act and Connecticut General Statutes 17b-60, et seq., as there would be no final agency decision prior to appeal. It is also unclear what the Superior Court would review in any such legal proceeding because the record on appeal is created during the fair hearing process at the Department. If there is no fair hearing that precedes the filing of an action with the Superior Court, there would be no record for the court to review on appeal.

For these reasons, the Department must oppose this bill.

S.B. No. 243 (RAISED) AN ACT CONCERNING AUDITS OF MEDICAL ASSISTANCE PROVIDERS.

This proposal expands the type of documentation the Department would be required to accept during an audit of providers for medical assistance.

The Department appreciates this bill and is willing to work with the Committee on language that provides flexibility for providers, but also provides the Department with the proper safeguards to preserve the integrity of our Medicaid auditing process. As the steward of federal and state taxpayer dollars, it is the Department’s responsibility to ensure such funding is being expended properly. To this end, the Department is requesting the following amendments to Senate Bill 243:

- In line 8, after “In conducting any audit pursuant to this subsection, the commissioner, or any entity with which the commissioner contracts to conduct such audit, shall accept (A) as sufficient proof of a written order: A photocopy, facsimile image, an electronically maintained document or original pen and ink document.” please add the following sentence: “The Department retains the right to view the original source document.”

- In line 14 after “and (B) as sufficient proof of delivery of a covered item or service: A receipt signed by the recipient of medical assistance or a nursing facility representative or, in the case of delivery of a covered item or service by a shipping or delivery service, a supplier's detailed shipping invoice and the delivery service tracking information substantiating delivery to the address of the medical assistance recipient” please add the following language: “and the electronic signature of the medical assistance recipient or designated representative. A designated recipient cannot be affiliated with the provider or the delivery service.”

With the addition of the above proposed amendments, the Department would have no concerns with this bill.

S.B. 437 (RAISED) AN ACT CONCERNING A TWO-GENERATIONAL INITIATIVE.

This bill allows the Department of Social Services to share data with the Office of Early Childhood regarding two generational academic achievement and workforce development.

The Department recognizes the importance of supporting two-generational efforts that assist families with reaching their full potential and has worked to integrate the two-generational model into program delivery as an effective way to increase the overall security and quality of life for families, children and communities.

To this end, the Department is supportive of sharing data with the Office of Early Childhood to expand the work of the two generational initiatives, pursuant to existing state and federal statutes.

H.B. No. 5255 (RAISED) AN ACT CONCERNING THE AUTISM SPECTRUM DISORDER ADVISORY COUNCIL

This proposal eliminates the planned termination of the Autism Spectrum Disorder Advisory Council.

The Department of Social Services is the lead agency on Autism Spectrum Disorder Services and serves as a co-chair on the Autism Spectrum Disorder Advisory Council.

As the Advisory Council is supportive of this legislation, the Department has no concerns with an ongoing commitment to continue this council's important work.

H.B. 5463 (RAISED) AN ACT CONCERNING A MEDICAID PUBLIC OPTION.

This bill creates a Medicaid public option plan known as “HUSKY E.” This option would be available to anyone not otherwise eligible for Medicaid, and would be funded through premium payments paid by individuals enrolled in such a plan.

The Department of Social Services would also be required to apply for any federal waivers to establish and implement this public buy-in option under CT Medicaid.

From an administrative perspective, the Department would need additional staffing and funding resources to apply for the federal waivers and subsequently implement and administer this option after federal approval is received.

The Department appreciates the discussion around this option and is open to participating in further conversations on this topic; however, without additional resources, this legislation would result in a significant strain on DSS’ staff and would come at a substantial cost to the Department and the state.