Connecticut Department of Social Services
Making a Difference

Testimony before the Human Services Committee
Commissioner Deidre S. Gifford, MD, MPH
March 1, 2022

Good morning, Senator Moore, Representative Abercrombie and distinguished members of the Human Services Committee. My name is Deidre S. Gifford, and I am the Commissioner of the Department of Social Services (DSS).

HB 5040 - AN ACT CONCERNING THE GOVERNOR'S BUDGET RECOMMENDATIONS FOR HUMAN SERVICES.

HB 5040 implements various provisions related to the implementation of the Governor's recommended budget adjustments. I would like to take this opportunity to speak on the sections of the bill which affect DSS' budget.

Sections 2 and 3 of the bill transfer the Community Health Worker grant program, established under DPH and supported by Coronavirus State Fiscal Recovery Funds (CSFRF) in the 2021 session, to DSS for administrative purposes. DSS has existing contracts with the state's network of community action agencies (CAAs) across multiple programs and is better positioned to develop and administer this program, which will support the inclusion of community health workers in the CAAs' service delivery model.

It will also allow for the full investment of funds, as originally envisioned by the legislature, by shifting the cap on the amount of funds that can be issued to each of the state's nine CAAs to a cap on the amount of funds issued per community health worker. A maximum of $30,000 could be issued annually to each CAA without this change, leaving a significant portion of the original funds ($2.7 million in FY 2022 and FY 2023) unspent. (Note: Pursuant to guidance from the U.S. Treasury Department, agencies have until December 31, 2024 to obligate these funds and until December 31, 2026 to expend these funds.)

This section expands the information that CAAs applying for the program must provide to include strategies for how they will integrate community health workers into an individual's care delivery team, including the capacity to address both health care and social services needs. This will ensure that the program is meeting its intended goal to provide better linkages between the CAA network and the health care system.

There is no financial impact resulting from this change as this reflects a transfer of an existing allocation of CSFRF funding from DPH to DSS.

Section 4 broadens the use of the $10 million allocated in the enacted budget under CSFRF for nursing home assistance. As originally written, the funding was identified to provide temporary

financial relief to nursing homes, with such financial relief based on the percent difference between a nursing home's issued and calculated reimbursement rate. These financial relief grants were to be prorated given the limited amount of funding allocated.

In the fall of 2021, the Administration announced a phased-in transition to an acuity-based reimbursement system over three years, beginning July 1, 2022. When fully implemented and annualized over the three-year period, the state will be investing $45 million ($90 million total including federal share) to rebase rates and support the transition, giving nursing homes more predictability regarding their reimbursement, while also allowing for necessary adjustments to their business models. The Governor's budget includes funding of $12.8 million ($25.6 million total including federal share) in FY 2023 to support the first year of implementation, during which nursing homes can receive additional funding to provide care to those with the highest level of needs, and a guarantee that no nursing home will receive a decrease in their rate because of acuity during that first year.

Given this new funding, this bill reallocates the $10 million in CSFRF funding to extend the current temporary rate increase of 10% for an additional month. (The enacted budget includes funding to support a temporary 10% rate increase for the nine-month period from July 1, 2021, through March 31, 2022.) By using Medicaid funds to support the extension of the 10% temporary rate increases for April and May 2022 and this $10 million in CSFRF funding to cover the costs for June 2022, nursing homes will receive over $29 million to support staffing costs and other expenses related to the public health emergency over the course of this three-month extension.

As this section reallocates existing CSFRF funding, there is no fiscal impact.

Section 5 clarifies that the minimum rate of $501 for intermediate care facilities (ICFs) is tied to the pandemic. The enacted budget included state funding of $1.6 million in each year to establish a minimum per diem, per bed rate of $501 for FY 2022 and FY 2023. The expectation at the time was that this temporary increase for ICFs would be federally reimbursed. However, because this provision would result in payments to ICFs that are in excess of their actual costs, the state is unable to claim federal reimbursement on these costs as the state would be exceeding the federal upper payment limit. Recognizing that the purpose of the temporary increase was to provide pandemic-related support to those facilities that were being reimbursed at lower levels, funding for this initiative in FY 2023 (estimated at $2.8 million) is being shifted to CSFRF. Under this bill, section 325 of Public Act 21-2, June special session, is amended to clarify that the purpose of the dollars is to provide pandemic-related support.

By shifting $2.8 million in costs from the General Fund to CSFRF, Medicaid requirements in FY 2023 are reduced by a corresponding amount.

Section 6 strikes a provision added to the statute governing DSS' Temporary Family Assistance (TFA) program at the close of the 2021 session. The provision requires DSS, beginning in FY 2024, to provide a cost-of-living adjustment (COLA) whenever funds appropriated for TFA lapse at the close of the fiscal year, under the following conditions: (1) the adjustment has not already been included in the budget; and (2) the increase would not create a budget deficiency in succeeding years.

This change results in potentially one-time lapsing funds being repurposed to support the ongoing permanent cost of COLAs. It is also unnecessary as section 17b-104 of the general statutes already provides for automatic COLA increases without limiting administrative flexibility by conditioning increases upon a lapse. Legislative action is required for these COLAs to *not* occur – by amending section 17b-104. Thus, if the legislative intent is to preserve COLA adjustments, then the optimal manner to handle this would be to ensure that section 17b-104 has not been modified to remove the COLA for the year in question.

H.B. 5225 - AN ACT PROHIBITING CLAWBACK OF CERTAIN FUNDS RETAINED BY NONPROFIT PROVIDERS OF HUMAN SERVICES UNDER CONTRACT WITH STATE AGENCIES.

DSS supports a strong network of private nonprofit providers to deliver necessary human services for the many people who depend on state human services programs.

Unfortunately, as written, this bill may expose the state to federal audit and disallowance risk for Medicaid and other federal programs and remove the state's ability to craft contracts to maximize quality and value for recipients and taxpayers. Specifically, section 1 of this bill would require any state agency that contracts with a private nonprofit provider that provides human services to establish an incentive program to "retain any savings realized by such nonprofit organization from the contracted cost for services". This bill would further prohibit any state agency from recovering or offsetting funds unless the provider failed to meet its contractual obligations or failed to report on the reinvestment of such funds.

As the single state Medicaid agency, DSS claims for federal Medicaid matching funds for both services paid to providers directly by DSS and for covered services paid by other state agencies, including the Department of Developmental Services (DDS), Department of Mental Health and Addiction Services (DMHAS), Department of Children and Families (DCF), and other state agency partners. A notable portion of those services are provided by private nonprofit providers using a cost-based payment methodology, in which the state pays an estimated amount of the provider's costs as an interim rate that is subsequently reconciled to the provider's actual documented costs.

Federal approval for matching funds for those payments is specifically contingent on the state's ultimate reconciliation of costs. As currently written, however, this bill would prohibit the state from reconciling those costs and would therefore subject the state to substantial risk of federal audit and disallowance, not only for Medicaid but for any other federal program in which the cost-based system of interim payment and reconciliation to actual cost is part of the federal approval.

DSS looks forward to further discussion with all impacted stakeholders to both continue support for nonprofit providers while ensuring compliance with federal requirements and maintaining the state's ability to ensure maximum value in its contracts.

HB 5226 - AN ACT LIMITING STATE RECOVERY OF PUBLIC ASSISTANCE PAYMENTS.

While DSS supports the intent of this proposal, primarily seeking to amend the state's public assistance benefit recovery policy to eliminate state liens and recoveries on cash assistance provided to parents of dependent children under the Aid to Families with Dependent Children (AFDC), Temporary Family Assistance (TFA) and State Administered General Assistance (SAGA) programs, the costs of this proposal are not included in the Governor's recommended budget adjustments.

Legislation passed last year, in both Public Act 21-3 and Sections 456 through 458 of Public Act 21-2 of the June 2021 Special Session, eliminated real property liens and other types of liens and claims against many public assistance recipients, but did not eliminate the use of liens and claims to recover the cost of cash assistance paid to families with dependent children. Accordingly, last year's legislation did not eliminate statutory requirements for needy families who had received cash assistance to repay such assistance under certain circumstances, such as accident settlements or litigation awards from causes of action. As a result, there has been confusion raised by clients, advocates, legal counsel, and program administrators regarding the continued viability of such claims and recoveries in state law.

As evidenced by last year's legislative amendments, such claims and recoveries involve a detailed review and cross-reference to several statutory provisions. DSS understands and appreciates the intent of this proposal to harmonize pertinent statutory provisions. However, due to the estimated $8.5 million fiscal impact, which is not incorporated in the Governor's recommended adjustments for SFY 2023, the Department cannot support this bill at this time but remains amenable to working with all stakeholders regarding a comprehensive assessment of all pertinent statutory provisions that may be affected by further legislative amendments.

H.B. 5227 - AN ACT ESTABLISHING THE COMMUNITY OMBUDSMAN PROGRAM FOR HOME CARE.

This bill establishes a Community Ombudsman program to respond to complaints regarding care provided to recipients of home and community-based services administered by DSS. Pursuant to the requirements of Special Act 19-18, *An Act Concerning a Community Ombudsman*, the Office of the Long-Term Care Ombudsman and the Department of Social Services issued a January 1, 2020, report that outlined the staff, funding and resources that would be necessary to establish a Community Ombudsman program in Connecticut. While the Department appreciates the intent and purpose of this program, we are unable to support the bill as the Governor's budget does not include funding for the program.

By way of background, DSS administers numerous Medicaid and state-funded home and community-based services programs serving more than 25,000 individuals who are either at risk of institutionalization or meet nursing home level of care. These are individuals throughout the state residing in single family homes and apartments, where it can be difficult to navigate provider agencies when service issues arise.

The proposed Community Ombudsman program would provide services and advocacy for these individuals while also providing advocacy for long-term services and supports options and information on home and community-based services.

The Community Ombudsman program for home care would also expand the partnership that DSS already maintains with the Long-Term Care Ombudsman program for those individuals receiving home and community-based services in long-term care settings.

The Ombudsman program is funded in large part by the Older Americans Act and administered at a federal level. While initially the Biden Administration had a planned expansion of the Ombudsman program to include home and community-based services, no expansion is currently under discussion. As such, the bill would be supported solely by state funding. The Department commends the Committee for raising this bill and looks forward to continued collaboration in this effort, but we cannot support the bill because funding is not allocated in the Governor's recommended budget.

H.B. 5228 - AN ACT CONCERNING THE CHAIRPERSONS OF THE AUTISM SPECTRUM DISORDER ADVISORY COUNCIL

This proposal would change the structure of the chairs of the Autism Spectrum Disorder Advisory Council ("the Council"). Currently, the DSS Commissioner is assigned as one of the three chairs of the Council. The proposal would remove the Commissioner's designation in favor of a structure by which all chairs of the Council are elected by a vote of the Council members. DSS appreciates the intent of this proposal, seeking to encourage a better partnership within the Council.

DSS believes that this change will create an atmosphere of empowerment within the Council and its members to advocate for those with autism in the state as well as those who need autism waiver services or who are on the autism waiver waiting list. The restructuring of the Council will encourage members to be more effective advocates for this population.

While DSS supports passage of this bill, it is unclear how administrative tasks would be maintained.

S.B. 195 - AN ACT INCREASING THE MINIMUM AMOUNT OF ASSETS THAT MAY BE RETAINED BY THE SPOUSE OF AN INSTITUTIONALIZED MEDICAID RECIPIENT

This bill requires DSS to amend the Medicaid state plan to set the minimum community spouse resource allowance at $50,000 and to submit a report, by July 1, 2023, on the number of community spouses who were able to keep additional assets resulting from the increase, and the associated cost to the state.

Under current statute, community spouses of long-term care Medicaid recipients are allowed to keep one-half of the couple's countable assets up to the federal maximum of $137,400. If total assets are under $27,480, the minimum allowed by federal law, the community spouse may keep

all the assets. The couple's home and one car are excluded from the assessment of spousal assets. The federal amounts are adjusted annually based on increases in the Consumer Price Index.

The Department opposes increases to the amount of assets protected for community spouses because of the fiscal impact to the state. Earlier assessments of the fiscal impact to the state projected costs of approximately $4.5 million ($9.0 million after factoring in the federal share), with additional costs for system enhancements. These costs are not recognized in the Governor's budget.

In addition to the fiscal impact to the state, the Department maintains that the current policy, which is in line with most other states and has been in place since 1989 (with the exception of FY 2011), is fair and reasonable and supports the original intent of the 1988 Medicare Catastrophic Coverage Act, which sought to prevent the impoverishment of spouses of those applying for Medicaid coverage for long-term care. Additionally, it should be noted that the Department's current policy regarding spousal impoverishment is consistent across all long-term care settings, which includes community settings. Establishing a different impoverishment standard for individuals who are institutionalized versus those in the community would create an adverse institutional bias.

For these reasons, we cannot support this bill.

S.B. 196 AN ACT PROHIBITING DISCHARGES FROM NURSING HOMES AND RESIDENTIAL CARE HOMES TO TEMPORARY OR UNSTABLE HOUSING

The Department fully appreciates and shares in the concern that members of our community may be discharged from nursing facilities or residential care homes to temporary or unstable housing.

DSS acknowledges that individuals who do not have stable housing have historically experienced a very challenging cycle in which they require urgent emergency department or acute hospital care, are discharged for short-term stays to skilled nursing facilities (SNF), and then do not meet level of care requirements for longer-term residence in a SNF and are discharged to the community, without addressing their underlying housing needs. In 2019, DSS' hearings unit handled approximately ten nursing facility involuntary discharge cases that ultimately resulted in relocation to temporary or unstable housing (as a result of the COVID-19 pandemic, such involuntary discharges were suspended pursuant to executive order through June 30, 2021).

DSS observes, however, that retaining these individuals in SNF settings is not the most effective way to meet their needs, which, in general, are not primarily medical in nature. Further, federal requirements prohibit DSS, the Connecticut Medicaid agency, from using Medicaid funds to reimburse SNFs for people who do not meet the requirements for this level of care (these requirements were suspended during COVID-19). Thus, it may be necessary to consider a discharge, as the SNF would otherwise be forced to assume the full costs for care with no Medicaid reimbursement. For individuals who do not have stable housing but continue to meet the nursing facility level of care requirements, Money Follows the Person is a viable community discharge option that offers services and housing supports.

In addition, the broad nature of the bill's stipulations against all involuntary transfers or discharges can be problematic for both nursing homes and residential care homes in extreme situations. Providers rely on such transfers and discharges in an emergency when a resident might be highly disruptive or a risk to themselves or others. This bill limits the options that providers have at their disposal to ensure the safety of all patients and residents under their care.

To specifically address the concerns raised through this proposal, DSS has partnered with multiple state agencies to:

- Match Connecticut Medicaid claims data with statewide Homeless Management Information System data to identify people in need of both housing vouchers and Medicaid supportive housing services; and
- Develop a plan to implement such services under the Connecticut Medicaid State Plan, using resources appropriated by the General Assembly.

The Connecticut Housing Engagement and Support Services (CHESS) program is a new Medicaid supportive housing benefit developed by DSS in collaboration with the Department of Mental Health and Addiction Services (DMHAS), Department of Housing (DOH), Office of Policy and Management (OPM), Connecticut Housing Finance Authority (CHFA) and various organizations with expertise in housing and homelessness. CHESS builds on the success of the supportive housing program administered by DMHAS and provides Medicaid services focused on housing stability to eligible individuals currently experiencing homelessness or who experienced homelessness prior to institutionalization. These individuals are matched with available housing vouchers provided by DOH.

Services in CHESS include:

- Pre-tenancy supports to assist with finding and entering stable housing;
- Tenancy sustaining supports to assist with maintaining successful tenancy, including health care coordination, skill development and community integration;
- Transportation to increase access to community supports, as well as employment; and
- Housing subsidies, provided by DOH, to assist with affordability of housing.

The goal of CHESS is to improve quality of life and reduce unnecessary health care costs by providing specified supports, including housing subsidies. By assisting participants with obtaining and maintaining stable housing, CHESS is designed to help stabilize participants' health and prevent avoidable health expenditures. CHESS is expected to support approximately 750 participants in obtaining and maintaining stable housing in the first five years of operation.

DSS appreciates the opportunity to comment on this proposed bill. Given the concerns noted above and recognizing the availability of CHESS, the Department does not support this bill.

S.B. 197 - AN ACT CONCERNING TEMPORARY FAMILY ASSISTANCE

This bill proposes changes to the Temporary Family Assistance (TFA) program, which is the state's cash assistance program funded through the federal Temporary Assistance for Needy

Families (TANF) block grant. The Department appreciates the intent of this bill and is interested in working with the legislature to make constructive changes to the TFA program but is unable to support this bill because the Governor's budget does not allocate funding for such changes.

This bill increases the maximum length of time that a family subject to time limits can receive TFA benefits, from the current 21 months to 60 months (the federal maximum). The bill also removes the provisions that currently permit the Department to grant benefit extensions after month 21. This change would increase the possible number of months that currently enrolled families could receive benefits and would also allow those families who previously used fewer than 60 months to re-enroll in the program.

Currently, most families in Connecticut who are subject to and reach the 21-month limit become eligible for two 6-month extensions if they meet the stricter eligibility criteria that apply to extensions, effectively creating a 33-month state time limit (and under limited circumstances, extensions beyond 33 months).

Assuming that Connecticut's average benefit duration would rise to the national average over time, the Department calculated that this change would result in an additional annual cost in the range of $5 million initially. It should be noted that there are at least two major factors which led us to believe that this is at the very low end of any possible fiscal impact. First, we are at extremely low levels of enrollment from a historical perspective, and potential future enrollment increases will result in increasing costs associated with this change. Second, it is also likely that former clients who were discontinued at less than 60 months will now re-enter the program, resulting in additional costs. There would also be systems and operational costs to implement the new policy.

While the Department appreciates the intent of the policy changes identified in this bill, we cannot support them at this time due to the potential costs that have not been included in the Governor's budget. The Department would further like to recommend that the Department, legislature, and other program stakeholders work together to identify how best to reform the TFA program within available resources.