



Dannel P. Malloy

GOVERNOR
STATE OF CONNECTICUT

October 31, 2017

The Honorable Martin M. Looney
President Pro Tempore
Legislative Office Building, Room 3300

The Honorable Joe Aresimowicz
Speaker of the House
Legislative Office Building, Room 4105

The Honorable Bob Duff
Senate Majority Leader
Legislative Office Building, Room 3300

The Honorable Matt Ritter
House Majority Leader
Legislative Office Building, Room 4106

The Honorable Len Fasano
Senate Republican President Pro Tempore
Legislative Office Building, Room 3400

The Honorable Themis Klarides
House Minority Leader
Legislative Office Building, Room 4200

Dear Legislative Leaders:

Today, I signed your bipartisan budget into law. Connecticut families and businesses deserve to have a budget in place, and while we did not reach the final product together on a cooperative basis, I commend your hard work and long hours on behalf of our constituents.

As you know, I exercised my constitutional line-item veto authority to remove supplemental payments to hospitals, thereby undoing one of the hospital provisions in this budget. Let me be very clear: I am *not* opposed to a new, mutually beneficial relationship with hospitals that realizes additional federal dollars for the state of Connecticut. In fact, my administration has repeatedly offered workable language to that end – language developed by non-partisan, classified attorneys in the executive branch with considerable expertise in this specific area.

Unfortunately, that language was not used in the budget that was passed to my desk. In the weeks ahead, it is critical that we work together to correct some serious problems in the

implementing language in this budget. If we do not, the clear effect will be that taxpayers throughout Connecticut – our constituents – will be on the hook for hundreds of millions of dollars not accounted for in the current biennial budget, forcing their state government to either raise taxes or cut further into vital social programs or town aid.

First, the language in the budget makes federal approval of the provider taxes and the supplemental payments extremely unlikely in several ways:

- The language will result in a tax rate on inpatient services that may well exceed the federal safe harbor of 6%, which in turn will result in a disapproval of the entire arrangement because the inpatient tax cannot pass the statistical tests required of taxes above the safe-harbor rate.
- Next, the language creates an impermissible “hold-harmless” by directly making tax payments by hospitals contingent on supplemental payments. This is specifically barred by federal law.
- Finally, it provides statutory specificity mandating a particular and complex program with five separate supplemental pools. While my administration has agreed to this arrangement, we should expect and be prepared for some negotiation with CMS over the precise structure of our program in order to gain federal approval. This is a normal feature of state plan amendment approvals, but in this case we could not vary the structure without legislative action. The law should be amended to allow for some flexibility in order to maximize the state’s chances for success while still working in conjunction with the Connecticut Hospital Association (CHA).

Second, the budget compounds the state’s risks by omitting critical language – language that was included in the budget I vetoed in September – that makes supplemental payments contingent on federal approval. This bill exacerbates the problem by including language increasing hospital rates. As a result, if the supplemental or rate payments or the provider tax, or all, are not approved, the state would nevertheless be required to expend over \$671 million per year on supplemental and rate payments with no offsetting federal revenue or tax revenue from hospitals. Indeed, the provider tax portions of the budget could go from being a net positive to the state of about \$150 million, to being the cause of a billion dollar deficit in each year of the biennium.

Let me be clear: the deal my administration agreed to in September with the CHA included language that made state payments contingent on federal approval, as do virtually all of our agreements with Medicaid providers. The change reflected in the adopted budget language is a substantial change in that agreement, in favor of the hospitals and *with potentially dire consequences to state taxpayers* who will foot the bill if the Trump administration elects not to support our proposed expansion of Medicaid subsidies to Connecticut.

I ask and urge you to correct these problems. Please amend the law both to ensure that we maximize our chances of federal approval, and to protect Connecticut taxpayers. If you do nothing, we will very likely face a mid-year deficit of many hundreds of millions of dollars. If you correct the implementing language, but do not make supplemental and rate payments contingent on federal approval, you are still running a serious risk of such a fiscal catastrophe.

My administration has provided language we believe is workable and legal. We are available at your convenience to discuss it in further detail.

Sincerely,

A handwritten signature in black ink, appearing to read "Dannel P. Malloy". The signature is fluid and cursive, with a large initial "D" and "M".

Dannel P. Malloy

Governor