

Memorandum

To: Hon. Martin Looney, Senate President Pro Tempore
Hon. Bob Duff, Senate Majority Leader
Hon. Leonard Fasano, Senate Republican Leader
Hon. Joseph Aresimowicz, Speaker of the House
Hon. Matthew D. Ritter, House Majority Leader
Hon. Themis Klarides, House Minority Leader

From: Mag Morelli, President, LeadingAge Connecticut
James Iacobellis, Vice President, Connecticut Hospital Association
Deborah Hoyt, President/CEO, Connecticut Association for Healthcare at Home
Ken Ferrucci, Senior VP of Government Affairs, Connecticut State Medical Society
Matthew Barrett, President/CEO, CAHCF/CCAL

CC: Hon. Catherine Osten, Senate Appropriations Committee Chair
Hon. Toni Walker, House Appropriations Committee Chair.
Hon. Paul Formica, Senate Appropriations Committee Ranking Member
Hon. Gail Lavielle, House Appropriations Committee Ranking Member

Date: April 1, 2019

Re: **Opposition to Section 14 and 15 of HB 7164, An Act Implementing The Governor's Budget Recommendations For Human Services**

We are writing to bring to your attention our collective opposition of the Connecticut Healthcare Association Collaborative to sections 14 and 15 in HB 7164, An Act Implementing The Governor's Budget Recommendations For Human Services, which would severely limit the opportunity to challenge certain critical actions of the Department of Social Services (DSS) at a time when the protection of provider appeals rights is of high importance. Specifically, the provisions of concern would outright eliminate the rights of certain types of providers to appeal decisions of DSS. Further, these provisions would significantly curtail the rights of providers who can appeal rates in the first instance. Connecticut law found at Section 17b-238(b) currently permits hospitals, nursing homes, residential care homes, home health care agencies, homemaker-home health aide agencies (as well as certain other institutions and agencies that receive Medicaid payments) to request a rehearing when the provider is aggrieved by "any decision of the commissioner."

HB 7164 first seeks to limit the types of providers that have appeal rights under Section 17b-238(b). Section 17b-238(b) identifies the types of providers with appeal rights by referencing statutes that authorize Medicaid payments to those providers. Included under Section 17b-238(b) and the revisions in Section 14 are hospitals, nursing homes, residential care homes, intermediate care facilities for individuals with intellectual disabilities ("ICF-IIDs") and residential facilities for individuals with intellectual disabilities. However, Section 14 has removed statutes governing payments to certain other types of providers, including home health care agencies, homemaker-home health aide agencies and other Medicaid waiver providers such as adult day centers and meals on wheels programs, as well as mental health and substance abuse treatment facilities.

In addition, Section 15 proposes to eliminate the specific additional appeal rights for home health care agencies and homemaker-home health aide agencies. As a result, home health care agencies and homemaker-home health aide agencies no longer have the right to appeal to the DSS Commissioner.

Next, the Governor proposes to limit the right to request a rehearing to only two narrow circumstances: (i) “provider-specific rates” and (ii) certain appeal rights required under federal law for nursing facilities and ICF-IIDs involving the denial or termination of the Medicaid provider agreement, or the imposition of civil monetary penalties for these types of facilities.

While providers have invoked appeal rights under Section 17b-238(b) primarily to challenge Medicaid rates and payments, they have also relied on this provision to challenge other DSS decisions, such as the DSS “integrity reviews” that have been conducted outside the procedures set forth in the statute governing Medicaid audits, Conn. Gen. Stat. § 17b-99. By limiting the appeal rights to “provider specific rates,” providers covered by Section 14 will no longer have the right to appeal decisions that are not related to Medicaid rates.

Yet even for Medicaid rate appeals, the HB 7164 would severely curtail provider appeal rights. Nursing homes, residential care homes, hospitals and the other providers covered by the statute will only be able to appeal “provider-specific rates.” Under the proposed definition of “provider-specific rate,” there would be no opportunity to challenge the overall payment methodology. Providers could only challenge rate issues specific to that provider, such as a calculation error or unique reimbursement rate. Section 14 defines a “provider-specific rate” as a “rate or other payment methodology that applies only to one provider and was set or revised by the department based on cost or other information specific to such provider.” (emphasis added). The proposed language then states that “provider-specific rate” “does not include any rate or payment methodology that applies to more than one provider or that applies statewide to any category of providers.” If Section 14 is enacted into law, hospitals, nursing homes and residential care homes will have no ability to file appeals and claim retrospective relief when they believe that DSS’s rate methodology violates state or federal laws, or when they are aggrieved by a decision of the DSS commissioner that does not involve rates. Moreover, under sections 14 and 15, home health care agencies, homemaker-home health aide agencies, adult day centers, meals on wheels programs and certain other providers will have no appeal rights at all.

Finally, under the U.S. Supreme Court’s decision two years ago in *Armstrong v. Exceptional Child Ctr., Inc.*, 135 S. Ct. 1378 (2015), Medicaid providers cannot sue state Medicaid agencies in federal courts for failing to comply with federal requirements that Medicaid payments be “consistent with efficiency, economy, and quality of care” and to enlist a sufficient number of providers to provide access to Medicaid services. 42 U.S.C. § 1396a(a)(30)(A) (“Section 30(A)”). Justice Breyer emphasized in his concurrence in *Armstrong* that providers could bring Section 30(A) claims in agency adjudications since “administrative agencies are far better suited to this task” due to their expertise. *Id.* at 1388. See also, *Douglas v. Independent Living Center of Southern California, Inc.*, 132 S. Ct. 1204, 1210 (2012) (Justice Breyer, writing for the majority, noted that a provider aggrieved by an agency’s failure to comply with Section 30(A) could first seek relief from the agency and then seek judicial review of the agency action). These passages stress the importance of state administrative appeal procedures for Medicaid providers. HB 7164 flies in the face of this guidance. It proposes to strip away the fundamental due process rights of providers under Section 17b-238(b) to such an extent that the provision will be virtually meaningless. It would leave providers with no viable alternatives for challenging Medicaid payments, and it would decimate an important vehicle for holding the State in check to ensure that Medicaid payment methodologies comply with applicable state and federal requirements.

The Connecticut Healthcare Association Collaborative is comprised of the Connecticut Hospital Association, LeadingAge Connecticut, the Connecticut Association for Healthcare at Home, the Connecticut State Medical Society and the Connecticut Association of Healthcare Facilities/Connecticut Center For Assisted Living.