

PA13-293

HB6514

House	1906-1929	24
Program Review	21-31, 52-59	19
Senate	5342, 5400-5401	3
		46

H – 1155

**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2013**

**VOL.56
PART 6
1695 – 2023**

pat/gbr
HOUSE OF REPRESENTATIVES

232
April 24, 2013

The bill is passed.

Will the Clerk please call Calendar Number 249.

THE CLERK:

House Calendar 249, Favorable Report of the Joint Standing Committee on Human Services, Substitute House Bill 6514 AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE CONCERNING MEDICAID PAYMENT INTEGRITY.

SPEAKER SHARKEY:

Representative Mushinsky, Dean of the House.

REP. MUSHINSKY (85th):

Thank you, Mr. Speaker. I move acceptance of the Joint Committee's Favorable Report and passage of the bill.

SPEAKER SHARKEY:

The question is on acceptance of the Joint Committee's Favorable Report and passage of the bill.

Will you remark, madam?

REP. MUSHINSKY (85th):

Thank you, Mr. Speaker. The Clerk has an amendment, LCO 6150. Would the Clerk please call and may I be allowed to summarize.

SPEAKER SHARKEY:

pat/gbr
HOUSE OF REPRESENTATIVES

233
April 24, 2013

Will the Clerk please call LCO 6150, which will be designated House Amendment "A".

THE CLERK:

House "A", LCO 65, I'm sorry, 6150, represented by, offered by Representatives Mushinsky and Carpino.

SPEAKER SHARKEY:

The Representative seeks leave of the Chamber to summarize. Is there objection? Is there objection? Representative Mushinsky.

REP. MUSHINSKY (85th):

Thank you, Mr. Speaker. The Amendment makes several changes to accommodate many of the concerns of the Department of Social Services without damaging the purpose of the bill, which is to create a baseline of data to help us determine how to reduce the amount of Medicaid overpayments over time.

The Amendment extends the reporting requirement to January 1, 2015 and simplifies the report in Section 2 while specifying the Department look at the possible use of contingency based contractors.

I move adoption of the Amendment.

SPEAKER SHARKEY:

pat/gbr
HOUSE OF REPRESENTATIVES

234
April 24, 2013

Thank you, madam. Would you care to remark further on the Amendment before us? Representative Carpino.

REP. CARPINO (32nd)

Thank you, Mr. Speaker. Just two questions to the proponent of the Amendment, if I may.

SPEAKER SHARKEY:

Please proceed, madam.

REP. CARPINO (32nd):

Through you, Mr. Speaker, if the proponent of the Amendment can just explain the rationale behind the changes in Lines 1 and 68.

SPEAKER SHARKEY:

Representative Mushinsky.

REP. MUSHINSKY (85th):

I'll get my file copy, Mr. Speaker. Sixty-eight is a change from five to three year period. What was the second line change?

SPEAKER SHARKEY:

That question is directed to Representative Carpino?

REP. MUSHINSKY (85th):

Through you, Mr. Speaker?

SPEAKER SHARKEY:

pat/gbr
HOUSE OF REPRESENTATIVES

235
April 24, 2013

Representative Carpino, could you repeat the other question?

REP. CARPINO (32nd):

Sure, Mr. Speaker. If the good Representative can just explain the six-month delay in Line 1, please, sir, through you.

SPEAKER SHARKEY:

Representative Mushinsky.

REP. MUSHINSKY (85th):

Through you, Mr. Speaker, we worked with both the Department and with the outside contractor who does the data analysis for the Department and based on their belief when they could have the project completed, we changed the dates accordingly, and they both feel that we can meet this new deadline. Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Carpino.

REP. CARPINO (32nd)

Thank you, Mr. Speaker. I thank her for her answer and I urge my colleagues to support this. This is an important change. This is one that we want to do well and if the initial time is going to enable it to do it well, I urge support.

pat/gbr
HOUSE OF REPRESENTATIVES

236
April 24, 2013

SPEAKER SHARKEY:

Thank you, madam. Will you remark? Will you remark further on the Amendment before us?

Representative Miner of the 66th.

REP. MINER (66th):

Thank you, Mr. Speaker. I think based on what I'm reading in the Amendment, it actually provides the Department, the Commissioner of Social Services another year to provide the detailed report on fraud, abuse and errors. Is that correct? Through you, Mr. Speaker, to the proponent of the bill.

SPEAKER SHARKEY:

Representative Mushinsky.

REP. MUSHINSKY (85th):

Through you, Mr. Speaker, it's another six months.

SPEAKER SHARKEY:

Representative Miner.

REP. MINER (66th):

Thank you, Mr. Speaker. I guess I would just offer up the suggestion that some of the estimates that have been in the budget in years of late have been in the tens of millions of dollars, and so I can only imagine that another six months to get a handle

pat/gbr
HOUSE OF REPRESENTATIVES

237
April 24, 2013

on this type of fraud and abuse is going to cost the taxpayers even more money.

I'm not sure why we would support an extended period of time to try to get a handle on fraud, Medicaid abuse and errors. If the gentle lady could explain why the six months is necessary? Through you, please.

SPEAKER SHARKEY:

Representative Mushinsky.

REP. MUSHINSKY (85th):

Mr. Speaker, the six months is for part of the study which deals with the data analysis. It's done by an outside contractor and that is the time period needed for the analysis.

There is another report coming to Appropriations and Human Services that will be in by January 1, 2014, so as you're preparing the budget for next year, you will already have some information from the Department to do the budget revisions for next year. Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Miner.

REP. MINER (66th):

pat/gbr
HOUSE OF REPRESENTATIVES

238
April 24, 2013

Thank you. And so, if I could through you, Mr. Speaker, to the gentle lady, so as part of this report, there will be an indication in that report as to how much fraud and duplication of accounting and so on has been determined? Through you.

SPEAKER SHARKEY:

Representative Mushinsky.

REP. MUSHINSKY (85th):

Through you, Mr. Speaker, the first report that comes in assesses the feasibility of expanding the Medicaid Audit Program and analyzes the recovery of Medicaid dollars through the third party liability contractors to determine if the procedures are maximizing collection efforts, and that report comes in first, January 1st.

Starting January 1, 2015, the Agency is coordinating with the Chief State's Attorney and the Attorney General to annually submit a report that gives us the data for the previous year, the previous fiscal year.

So first we will be setting up the procedure to collect the data, the baseline data, and you'll get that first, and then starting January 1, 2015, you'll get the previous year's data on an annual basis.

pat/gbr
HOUSE OF REPRESENTATIVES

239
April 24, 2013

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Miner.

REP. MINER (66th):

Thank you, Mr. Speaker. And so if we were to support this change through the Amendment and then the underlying bill, it almost seems premature to anticipate that there would be any savings as a result of fraud control, perhaps abuses or errors within the Medicaid system. Is that correct? Through you.

SPEAKER SHARKEY:

Representative Mushinsky.

REP. MUSHINSKY (85th):

Through you, Mr. Speaker, I don't want to say that because the Department on its own is working on developing a state-of-the-art fraud waste and abuse system with the ability to perform predictive and analytics to identify inappropriate claim payments.

Now what our Committee found in our investigation is that a reasonable job is being done but it's not where we want it to be. We had 21 recommendations for better data analysis. They agreed with our recommendations and said they would incorporate them, but they are doing, they are already setting up a

pat/gbr
HOUSE OF REPRESENTATIVES

240
April 24, 2013

system with the ability to perform predictive analytics incorporating longitudinal analysis, clinical algorithms and statistical predictive analysis models.

So we're trying to find out where the errors are chronically happening, perhaps for code, incorrect code entries, for example, where is this chronically happening and then we can fix it and achieve savings for the State of Connecticut. Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Miner.

REP. MINER (66th):

Thank you, Mr. Speaker, and I thank the gentle lady for her response with regard to coding errors. Is the same true with regard to fraud? Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Mushinsky.

REP. MUSHINSKY (85th):

Through you, Mr. Speaker, our communications from the Department is that they are working on state-of-the-art fraud waste and abuse system. We're just pushing them to add specific analytical tools and to

pat/gbr
HOUSE OF REPRESENTATIVES

241
April 24, 2013

work in cooperation with the other two agencies to make sure we have a good, solid baseline data.

And we also wanted to check from year to year, are we improving? Are we improving reducing our error rate? That's what we want to see in the PRI Committee.

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Miner.

REP. MINER (66th):

Thank you, Mr. Speaker, and I do thank the gentle lady for her answers. I remain concerned. I think the budgets in the past have continuously reflected dollars that anticipate collection under the hearing of fraud, certainly, but I think it probably does include many of the other items that are in this bill and in the underlying Amendment.

I'm not sure extending the time is going to benefit the State of Connecticut, but I do appreciate the fact that they've had a dialogue with all the parties of interest. Thank you.

SPEAKER SHARKEY:

pat/gbr
HOUSE OF REPRESENTATIVES

242
April 24, 2013

Thank you, sir. Will you remark further on the Amendment before us? Will you remark further on House Amendment "A"?

If not, let me try your minds. All those in favor of the Amendment, please signify by saying Aye.

REPRESENTATIVES:

Aye.

SPEAKER SHARKEY:

Those opposed, Nay. The Ayes have it. The Amendment is adopted.

Will you remark further on the bill that's before us as amended.

REP. MUSHINSKY (85th):

Mr. Speaker.

SPEAKER SHARKEY:

Representative Mushinsky.

REP. MUSHINSKY (85th):

Thank you. I just want to sum up and thank the PRI staff, Representative Carpino and the Department of Social Services for working cooperatively to make this a good bill.

We are seeking to provide, this is a bill that emerged from our report of last December, and we are seeking to provide transparency in Medicaid spending.

pat/gbr
HOUSE OF REPRESENTATIVES

243
April 24, 2013

It's a significant part of the budget as was already remarked by Representative Miner, and we are trying to maximize Medicaid recover amounts while, and produce the greatest savings for the taxpayer while still serving the needy clients who depend on Medicaid.

So I hope I have everyone's support in here for this bipartisan bill. Thank you, Mr. Speaker.

SPEAKER SHARKEY:

Thank you, madam. Will you remark further on the bill as amended? Representative Carpino of the 32nd.

REP. CARPINO (32nd):

Thank you, Mr. Speaker, a question for legislative intent, through you to the proponent.

SPEAKER SHARKEY:

Please prepare yourself, Representative Mushinsky. Representative Carpino, you have the floor.

REP. CARPINO (34th):

Thank you, sir. If the proponent could explain the written analysis, essentially the report we're hoping to accumulate in Section 2b so that we have a clear record as to what we hope to accomplish.

SPEAKER SHARKEY:

Representative Mushinsky.

pat/gbr
HOUSE OF REPRESENTATIVES

244
April 24, 2013

REP. MUSHINSKY (85th):

2b, through you, Mr. Speaker, is a written analysis of the recovery of Medicaid dollars through the third party liability contractors. The Department does outsource this function to the third party contractors. We have already met with them. They are part of the proposed solution and as the contracts are written with these third parties, they will include the goals of the Department and of the Legislature. Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Carpino.

REP. CARPINO (34th):

Thank you, Mr. Speaker. I urge support for this bill. We are well aware of the millions upon millions of dollars that are being lost in this state to fraud, abuse and errors. It is an unfortunate reality but one we need to race. This is a step in the right direction. It is not, by any means an end all, be all, but it is one which we need to do.

I do also want to encourage my colleagues to take a look, we're also exploring something a bit out of the box and we're looking at contingency contractors

pat/gbr
HOUSE OF REPRESENTATIVES

245
April 24, 2013

as well in hopes that we get quicker and more accurate results, so I urge support.

SPEAKER SHARKEY:

Thank you, madam. Would you remark further on the bill as amended? The distinguished Minority Leader Representative Cafero.

REP. CAFERO (142nd):

Thank you, Mr. Speaker. Mr. Speaker, a few questions, through you, to the proponent of the bill.

SPEAKER SHARKEY:

Please proceed, sir.

REP. CAFERO (142nd):

Thank you, and through you, Mr. Speaker, I want to apologize in advance to both the Chamber and Representative Mushinsky if I'm asking questions that have already been asked and answered. I missed a portion of the debate, but I think it's important because I'll start off by saying there is no doubt that I certainly, and I think many Members of my Caucus, stand in strong support of the bill that's before us, its concept, because I think we all agree that when it comes to Medicaid, the people who are frankly, in need the most of our services and

pat/gbr
HOUSE OF REPRESENTATIVES

246
April 24, 2013

government help, there is no room for waste and certainly no excuse or tolerance for fraud.

I guess my first question, through you would be, and I realize that the Amendment just passed that extended the time wherein the Department of Social Services would start their coordination efforts with regard to fraud detection and prevention from June 30th to January 1, 2015.

And I'm wondering, once again and again apologize if you've answered this, why do we have to wait so long to start the first step toward eradicating fraud?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Mushinsky.

REP. MUSHINSKY (85th):

We don't. Through you, Mr. Speaker, we do not. The first report is coming in January 1, 2014 and this is the Department coming back to us assessing the feasibility of expanding the audits, analyzing the recovery of Medicaid dollars through the third party liability contractors and reporting its findings to the Human Services and Appropriations Committees. So that comes in before our next fiscal year, before our next Legislative Session, January 1st.

pat/gbr
HOUSE OF REPRESENTATIVES

247
April 24, 2013

Then, the next report that comes in is a data based analytical report that looks at the previous year, so obviously since we're just setting this up now, you won't have the previous year's data until January 1, 2015, the statistical analysis that we need.

This is actually a lot more math than I'm comfortable with, Mr. Speaker. It's algorithms and some heavy duty analysis, but that's what we want to see. We want to actually hone in on exactly where the errors, fraud or whatever abuse of the system is happening, and we want to do it in a scientific manner so we can correct it.

So to look at the previous year's data, and we're just setting this up now, we won't get the previous year's data until January 1, 2015. The vendor, the outside vendor has assured us they will meet that deadline.

SPEAKER SHARKEY:

Representative Cafero.

REP. CAFERO (142nd):

Thank you, Mr. Speaker. Ladies and gentlemen of the Chamber, this side of the aisle has been long concerned with Medicaid fraud, and I personally had an

pat/gbr
HOUSE OF REPRESENTATIVES

248
April 24, 2013

opportunity to meet with the gentleman who heads up our Medicaid Fraud Division of our Criminal Justice Department in a meeting in my office with several of my Republican colleagues.

I wanted to understand how it worked, and if you will, how much each individual who's a part of the Medicaid Fraud Unit was responsible for preventing or discovering.

The gentleman indicated to me in that meeting that each person is responsible or has been attributed in finding or preventing \$7 million per person of Medicaid fraud. I believe that the amount of people they currently had when I was having conversations with the gentlemen was nine. There were nine people.

And I found another interesting fact, that for every person, in fact for every dollar that we expend as a state toward Medicaid fraud prevention, we are reimbursed by the federal government 75 percent. Not 50. Seventy-five percent.

And when I further inquired about that, I was told that not only does that pertain to personnel and their benefits and their salaries, but also applies to supplies and equipment. So for every dollar we as a

pat/gbr
HOUSE OF REPRESENTATIVES

249
April 24, 2013

state spend toward the discovery and prevention of Medicaid fraud, we receive 75 percent in return.

As a result of that information, in our last budget that we as the House Republicans put forth as an alternative to the one put forth by the majority party, we called for the hiring of 20 additional people in the Medicaid Fraud Division, 20 additional people.

You could do the math. If each person, according to the Director of that Medicaid Fraud Unit would be able to capture \$7 million worth of fraud, 20 more people would be 20 times 7 million, a substantial amount, and in fact, that amount was in several hundred millions of dollars in fraud that we would be able to capture by the hiring of these 20 people whose salaries, costs and benefits would be reimbursed to us at the rate of 75 percent.

Unfortunately, that part of our budget proposal was not adopted and we went forth. In the deficit mitigation plan that we negotiated in December, along with Democrats from both the House and the Senate and certainly the Governor's office, it was felt that \$7 million was too ambitious a figure and that truth be told, that with each additional staff person that

pat/gbr
HOUSE OF REPRESENTATIVES

250
April 24, 2013

maybe we could get \$700,000 more in fraud detection and not in fact, \$7 million.

It struck us as odd because it was the very gentleman who had reported the \$7 million to us that was then reporting the \$700,000 to the Office of Policy and Management.

Nonetheless, we did include in our deficit mitigation plan, some additional fraud recovery in the area of earned income tax credit.

That being said, just the other the Finance and Appropriations Committee came out with their budgets out of Committee, and in the Appropriations Committee budget, there was an estimate of \$100 million more in fraud, Medicaid fraud recovery.

And I guess I'm curious, because in the budget it indicated that with the use of technology, we would be able to realize an additional \$100 million in Medicaid fraud savings that would be applied to the biennium budget in both, that starts in June.

So I guess I'm wondering as it pertains to this bill that's before us, what technology, if any, what expenditures, if any, what has been discovered, if anything, that would allow us to realize \$100 million worth of Medicaid fraud savings in the biennium coming

pat/gbr
HOUSE OF REPRESENTATIVES

251
April 24, 2013

up as contrasted with this bill, which seems to work on Medicaid fraud far beyond the biennium.

In fact, it would seem as if some of the methodology and data, and hopefully improved collection, we would not realize until well after the biennium.

And I'm wondering, through you, Mr. Speaker, if the good Chairwoman, if she could, try to justify that or explain that? Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Mushinsky.

REP. MUSHINSKY (85th):

Through you, Mr. Speaker, I think that question is better addressed to the Chair of Appropriations. I am not a Member of Appropriations and cannot address the Appropriations expenditures on Medicaid fraud.

I can only tell you that the Department is already under way with the analysis, and our Committee, which is both Democratic and Republican Committee, is interested in a data driven system to find out exactly where the leaks are in Medicaid and to plug them. It's as simple as that.

We have the analysis done. We can make the corrections. They're going to be using longitudinal

pat/gbr
HOUSE OF REPRESENTATIVES

252
April 24, 2013

analysis, clinical algorithms and statistical predictive analysis models that forensically look at the claims and provide information that identifies potential fraud waste and abuse.

And the solution is done both pre-pay and post-pay. With pre-pay we're using, the Department is using multi-layer analytics to extend edits to stop an inappropriate claim payment.

With post-pay, the analytics target providers and claims for audits based on historical behavior. So it is an analytical system and a data driven system.

Your question on the expenditure for staff, I really can't answer. That's best directed to the Appropriations Committee. Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Cafero.

REP. CAFERO (142nd):

Thank you, Mr. Speaker, and I appreciate the gentle woman's answer. Ladies and gentlemen, yes, I stand in support of this. Who here would not? I mean, do we want to prevent Medicaid fraud and make sure our Medicaid dollars go to the right people for the right purposes? Of course we do.

pat/gbr
HOUSE OF REPRESENTATIVES

253
April 24, 2013

But we have to realize, and here's a classic example of how in one bill we'll talk about a subject matter that's totally disconnected to the reality of another bill.

We as a State Legislature have been aware of the fact that there's hundreds of millions of dollars of Medicaid fraud going on every year in the State of Connecticut, hundreds and millions of dollars that because of that fraud is being diverted from the very people who could benefit from it, or the entire state by spending less for a service that is being fraudulently used.

And yet, we do little about it unless it's to fill a budget hole or a budget number or to make things work.

If we're truly serious about Medicaid fraud and the eradication thereof, yes, we should pass this bill. But there are steps that we could take immediately, real concrete steps that because of the federal reimbursement would not be a fiscal burden to this state and would far, far benefit us and the benefits, monetary benefits, would far exceed the small expenditure.

pat/gbr
HOUSE OF REPRESENTATIVES

254
April 24, 2013

Those are the kinds of Medicaid actions that we have to start to take and take seriously and immediately.

Thank you, Mr. Speaker.

SPEAKER SHARKEY:

Thank you very much, sir. Would you remark? Will you remark further on the bill as amended?

If not, staff and guests to the Well of the House. Members take your seats. The machine will be opened.

THE CLERK:

The House of Representatives is voting by Roll.

The House of Representatives is voting by Roll.

Will Members please return to the Chamber immediately.

SPEAKER SHARKEY:

Have all the Members voted? Have all the Members voted? Will the Members please check the board to make sure your votes are properly cast.

If all the Members have voted, the machine will be locked and the Clerk will take a tally. The Clerk please announce the tally.

THE CLERK:

pat/gbr
HOUSE OF REPRESENTATIVES

255
April 24, 2013

Mr. Speaker, Bill Number 6514 as amended by House
"A".

Total Number Voting	142
Necessary for Passage	72
Those voting Yea	142
Those voting Nay	0
Those absent and not voting	8

SPEAKER SHARKEY:

The bill as amended is passed.

Are there any announcements or introductions?

Representative Piscopo.

REP. PISCOPO (76th):

Thank you, Mr. Speaker. For a Journal notation.

SPEAKER SHARKEY:

Please proceed, sir.

REP. PISCOPO (76th):

Thank you, Mr. Speaker. Will the Journal please
note that Representative Frey missed votes due to
legislative business in his district.

Representative Molgano missed votes due to
illness.

Will the Transcript please note that
Representatives Curtis, Giuliano and Noujaim missed

**CONNECTICUT
GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
2013**

**VETO
SESSION**

**VOL. 56
PART 17
5161 - 5482**

Total Number Voting	34
Those voting Yea	32
Those voting Nay	2
Those absent and not voting	2

THE CHAIR:

The bill passes.

The Senate will stand at ease.

(Chamber at ease.)

THE CHAIR:

The Senate will come back to order.

Senator Looney.

SENATOR LOONEY:

Thank you, Mr. President.

Mr. President, I have some additional items to place on the Consent Calendar at this time.

THE CHAIR:

Please proceed, sir.

SENATOR LOONEY:

Yes, thank you, Mr. President.

Mr. President, the first item to be added at this time are on, first, calendar page 4, Calendar 467, House Bill Number 6514, move that item to the consent calendar.

THE CHAIR:

Without objection, so ordered.

SENATOR LOONEY:

THE CLERK:

-- House Bill 6685.

On page 4, Calendar 467, House Bill 6514.

On page 7, Calendar 57, House Bill 6515.

And on page 12, Calendar 669, House Bill 6610.

On page 13, Calendar 679, House Bill 5423.

On page 14, Calendar 688, House Bill 6477.

On page 15, Calendar 698, House Bill 6518; Calendar
699, House Bill 6389.

And on page 21, Calendar 630, House Joint Resolution
Number 45.

THE CHAIR:

Okay. Mr. Clerk, will you please call for roll call
vote. The machine will be open for Consent Calendar
1.

THE CLERK:

Immediate roll call has been ordered in the Senate.
Senators return to the chamber please. Immediate roll
call on Consent Calendar Number 1 has been ordered in
the Senate.

THE CHAIR:

All members have voted? All members have voted, the
machine will be closed.

Mr. Clerk, will you call the tally.

THE CLERK:

On Consent Calendar Number 1

Total Number Voting	35
Those voting Yea	35

Those voting Nay 0

Those absent and not voting 1

THE CHAIR:

The consent Calendar is passed.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, some additional items to mark go at this time.

THE CHAIR:

Please proceed, sir.

SENATOR LOONEY:

Thank you, Madam President.

On Calendar page 4, Calendar 464, House Bill 5601 should be marked go.

Also Calendar page 4, Calendar 465, House Bill Number 6630 should be marked go.

Calendar page 10, Calendar 644, House Bill Number 6363 should be marked go.

Also, Madam President, Calendar page 8, Calendar 601, House Bill Number 6490 should be marked go.

And, Madam President, Calendar page 18, Calendar 239, Senate Bill Number 190 should be marked go at this time.

Thank you, Madam President.

THE CHAIR:

Thank you.

**JOINT
STANDING
COMMITTEE
HEARINGS**

**PROGRAM
REVIEW AND
INVESTIGATIONS
1 - 186**

**2013
INDEX**

REP. MUSHINSKY: Next witness, Kevin Kane, chief state's attorney, who will be followed by Lisa Bassani.

CHEIF STATE'S ATTORNEY KEVIN T. KANE: Good afternoon, Representative Mushinsky and members of the committee. I am Kevin Kane. I'm the chief state's attorney. With me at the table here is Attorney Christopher Godialis. Chris is the -- is a senior assistant state's attorney. He's a supervisor and director of our Medicaid Fraud Control Unit, which has been a unit that has been a part of the chief state's attorney's office since about 1974-'75. I can remember when it began but I can't remember exactly like that year. It might have been '76, but I think it was '74 and '75.

We're here to testify concerning Raised Bill No. 6514. We've submitted written testimony concerning it. The testimony's fairly direct and short and we thought people might have questions about it and it might need some explanation as to our concern.

The purpose of the bill is very well intentioned. It's to give the General Assembly information about the efforts made to prevent fraud and control fraud and abuse and errors in the Medicaid payment system and to recover Medicaid overpayments. Part of that, obviously, is the Department's Social Services and the Attorney General's Office, who have a large role in preventing fraud and controlling fraud and recovering payments.

The Medicaid Fraud Unit was set up within the chief state's attorney's office to be the -- involved in the investigation and prosecution

of criminal aspects of it. Part of doing that obviously leads to recovery of assets as a criminal matter. We also have some role, a significant role, in recovery of assets.

We do have concerns about this bill because, A, of the nature of the relationship between the Medicaid Fraud Control Unit as required by federal statute and also as this bill would require the disclosure of information about criminal investigations which do not lead to arrests. We do have very serious concerns both ethically, as lawyers, and ethically and responsibly as prosecutors in a matter of public policy, could be very careful of the nature of information we disclose about people who are not arrested and prosecuted.

Obviously, we can have a -- can ruin people's reputations badly when there's no criminal case against them and we have to be careful of that.

I'd like to turn to Chris Godialis to explain in some detail the reasons for our concerns. He's been directly involved in this and he has worked with the staff, which has worked very hard, the staff of this committee which has worked very hard and has made a very productive and helpful report.

CHRISTOPHER GODIALIS: As the chief said, the program review staff was very professional and, indeed, very patient in trying to get its hands around subject matter that was extremely complex and involves at least three state agencies.

We appear before you here this morning as the only criminal investigative agency that is affected by this legislation, and our concerns specifically are not -- not at all with

respect to what -- what this raised bill intends to accomplish, because the goal is a good one. I think the final product by the program review staff is an excellent final product, and I couldn't find a single recommendation that I disagreed with.

So this -- this -- these objections that we raise this morning are really with respect to some information that we would be required to disclose under (3)(c) of the raised bill and that's specifically what I'm focusing in on. The numbers are not a problem. Where we run into trouble, for example, is where the bill requests a summary of the allocations because we would have to divide the cases at that point into those where we take an action, where giving a summary of the allegations would not be as troublesome, compared to those where we have not taken action and, indeed, in some cases have not even substantiated the allegations, and so you would be put in the position of reporting information on cases that we either are not prosecuting or allegations that we could not substantiate.

The other point there that we have trouble with is the final disposition of closed cases. Those would -- we would expect to be cases where we had prosecuted, but the problem that we run into there is that the final disposition of some cases, easy in some cases, not really legally final. And even when it is, the result is that the matter has resulted in an erasure of the record and we can't comment on it. So we're put in the tough position of having to tell you that we disposed of the case and then the question -- and this -- this came up, of course, in the program -- would be -- the question was: Well, how was it disclosed? And my answer

was, "Well, I can't tell you that because the records are erased."

And so we need to -- we need to be cognizant that there are some final dispositions that result in erasure or sealing of the record, such that we cannot report it or discuss it publicly. And finally, the last point that we have trouble with in (3)(c) is sub 6, which is the number of referrals declined and the reason. And I'll just -- I'll back up there and just sort of explicate that a little bit.

The Medical Fraud Control Unit operates by referral from other agencies. We don't get in the car and go out and look for Medicaid fraud; it is referred to us, in documentary form, typically by the Department of Social Services, but it can also come from other sources. And we review those referrals and we apply to those referrals a number of judgments, including an exercise of prosecutorial discretion as to whether we're going to open the case or whether we're going to prosecute the case, and that's based on a number of things that we do not discuss and do not disclose, and to do so would also require us in many instances to talk about the facts of the case, but again, we have decided not to prosecute.

So the summary of the allegations, the final disposition and the reason for the number of (inaudible) to find are areas that we would suggest require some rethinking and perhaps reworking so that we can find a way to provide you with the kind of information that it is you're looking for without running afoul of the disclosure rules that we have to live by.

REP. MUSHINSKY: Okay. I think we're all trying

to get to the same place. It's just a question of how to work the legislation. What we're trying to do is reduce the error rate and perhaps abuse of the public dollar here and, you know -- and many times it's just a question of mistakes made by the participants, and for us to hone in on the mistakes and avoid them in the future, we have to know statistics and which areas are most commonly found the errors.

So -- and staff can correct me if I'm wrong, but we don't need to know particular cases or identities. If I'm correct, we just need to know what areas are chronically full of errors. Correct? As (inaudible). So you don't -- I don't think you need to disclose. And if we can tinker with the bill to make that clear, I don't think you need to disclose particular allegations or against whom the allegations are directed or anything like that. We just need to know the category of Medicaid use that is commonly error prone, so that we can make more explicit directions from the agencies and reduce that error rate and save the taxpayer money. So that's where we're trying to go.

CHRISTOPHER GOADIALIS: And I -- and I think we can label it by category without any difficulty at all.

REP. MUSHINSKY: Okay.

CHRISTOPHER GOADIALIS: And I still think the only -- the only two of those, and with both of them we run up against other rules that are going to continue to cause us some problems, depending on how much information it is you're looking for would be the final disposition of both cases, because I don't see any way, in

light of the rules, that I can -- can talk about this disposition of closed cases that -- other than to tell you that they're closed, you know, that resulted in some erasure of the record or sealing of the record. I don't see any way to get-around that.

REP. MUSHINSKY: Okay. Well, we -- I think, meeting with the staff, we can find tune this a little bit and get to where we're trying to go and --

CHRISTOPHER GOADIALIS: Happy to hear that.

REP. MUSHINSKY: Using your best judgment too.

CHIEF STATES ATTORNEY KEVIN KANE: I can see a couple of either very curious or pained expressions that -- on faces as we try to explain something. One of the problems we have here with regard to a criminal case -- let's say we arrest somebody, (inaudible) prosecute them and for one reason or another the charges are dismissed. Maybe because it turns out there's no evidence, maybe because evidence is illegally obtained, maybe because the case falls apart because there are no witnesses.

The case is dismissed. Immediately the records of that case has to be -- are erased. Are erased, are sealed out to the public and we can't -- even though the public knows from the newspapers, we can't acknowledge or say anything. We're precluded by law from acknowledging that fact or saying anything about the case.

If it's -- not only is the case -- is technically pending but the records aren't dismissed -- aren't erased immediately, but

they are -- in a fairly short time they're erased, and we're again precluded by law from saying this.

There are other cases where we investigate. It's a criminal investigation but we investigate, and we've been very careful over the last several years about not disclosing criminal investigations because of the damage it would do to people's reputations if we say so-and-so is being criminally investigated. We can ruin people and...

Now when we -- we may investigate and determine not to arrest somebody; we may determine because there's no probable cause. That's fairly easy and -- if there's no probable cause. We may determine that there is probable cause but we can never prove this case beyond a reasonable doubt. The standard's different than what can be considered and the suit determination's different. There may be witnesses who are dead or unavailable and all of this probable cause on paper, we can't prove the case.

Now we certainly don't want to say, well, we investigated so-and-so, decided there was probable cause but -- this is classic -- because it's a dead witness. I've seen too many people's reputations being ruined over the years by that case and they don't have a chance to come into court and say, "Not guilty. I want my trial and either be vindicated or convicted." They're in the public, they're hurt and harmed.

So we have certain ethical reasons why we have to be very careful and disclose that. And if we're saying we didn't apply for this arrest warrant because there's no probable cause, we

didn't apply for this warrant because of some other reason, everybody thinks, oh, there was probable cause and they didn't do that. So these are very sensitive and concerned issues that we have to be careful and are careful that, quote, there's our ethical responsibility and for public safety. But that's -- I hope that answers some of the questions that I sense that some of you were feeling. I don't know if it does.

REP. MUSHINSKY: Representative Carpino and then Representative Becker.

REP. CARPINO: Thank you, Madam Chair, and mine was probably one of the pained faces you were referring to. And I appreciate both of your concerns and I think they're legitimate concerns. I'm just struggling with the concept that I think many of the members of the committee share as well, trying to get to the same place.

What's the best way to do this? Are there at the very basic levels or anything preventing you from telling us chiropractor dismissed or the allegation was erroneous though. Or physical therapist billed for services not rendered, settled. Personally I think even those very basic facts would be the start of collecting data, so that we can determine where we need to go from here, and I'm wondering what you think of -- in my opinion, those very basic allocations and facts don't trample on anybody's privacy, livelihood or reputation. That would be the first step in giving us some information to proceed.

CHRISTOPHER GOADIALIS: I'm a fan of doing this by way of generic labels, so we can -- you know, we can identify as a chiropractor. That's

certainly not a problem. We can identify it as a fraud case and we can probably even boil it down more and say that it was (inaudible) coding on the billing.

You know, the more allegations that we have to get into, 'cause there are plenty of cases where I don't have to tell you who it is we're talking about because it's been, you know, in the papers or whatever. You know, it's possible to see from the allegations exactly what is really -- we are talking about.

So generic labels are not something we have trouble with. I'm not entirely sure, as I sit here, that we can say dismissed in the case where the records weren't dismissed and erased. We can tell you the case is closed. And again, I say I'm not entirely sure about that; I'd be happy to look at it. But my best judgment, if you force me to answer the question at this point, would be I don't think we can talk at all about the result of the case that has been dismissed or erased, including that fact.

REP. CARPINO: Thank you. I would just be interested in hearing from you later what you think you could legitimately disclose, whether there's not prosecuted lack of probable cause, et cetera. I don't want to pigeonhole you but what categories you think you would be comfortable sharing with the committee.

CHRISTOPHER GOADIALIS: And let me, if I can, just reiterate that we're completely on board with reworking this in a way that we can give you meaningful information that's going to get us all where we want to go.

REP. MUSHINSKY: Right. We have -- I don't know if

this number is correct but from DSS we've got -- it was \$380 million in overpayments or third-party liabilities. You know, just for us to know -- million, yeah, 380 million.

Anyway it -- you know, just for our committee it's useful for us to try to break that down further. You know, it's four-fifths of that in one particular area, so that we're not doing a good job of -- of making sure the providers understand what they're supposed to be doing. So we're just trying to break down that 380 million into smaller bites that are flexible. That's our -- that's our mission. Representative Becker.

REP. BECKER: Thank you, Madam Chair. Representative Carpino more or less asked my questions. I guess I was just listening to you and I appreciate your testimony. I think it's important that you bring these issues before us.

Where I think we are headed is -- perhaps we can, you know, go into broad categories, label by broad categories, discuss the business in the aggregate. Those types of things, I think, is -- I'm seeing some heads nod in front of me, so I think that that may be a direction that we should taking us. So we'll look forward to your specific suggestions, unless you have some today. You just said you've been suggesting things. I don't know if you have anything that you want to suggest now beyond the discussion that's taken place thus far.

CHRISTOPHER GOADIALIS: No, I think it would be helpful if -- if we sat down with the staff and -- and we have sat with the staff and they've been very patient with us, I must add.

But if we sat with the staff again in light of the raised bill and just sort of double checked on our list exactly what it is, exactly what it is they want to know and then try to find a way to get that.

REP. BECKER: Terrific. Thank you very much. Thank you, Madam Chair.

REP. MUSHINSKY: Senator Cassano.

SENATOR CASSANO: Just briefly. First of all, I thought the staff has done a terrific job here. We had just too many people who've all been providing information and trying to consolidate it is significant. Not being an attorney but being in this building long enough, I know that you will be able to find ways to word this correctly to make sure that your issues are probably dealt with by working with the staff and that you can, in fact, provide the privacy you need and yet we can still get the answers we need. And so I think it's a very workable situation at this point and appreciate your efforts. Thank you.

REP. MUSHINSKY: Just for the transcript, could we have -- Chris, could you spell your last name for us?

CHRISTOPHER GOADIALIS: I am Christopher Godialis, G-o-d-i-a-l-i-s. I'm the director of the Medicaid Fraud Control Unit.

REP. MUSHINSKY: Okay. Thank you both. Appreciate it.

CHIEF STATES ATTORNEY KEVIN KANE: Thank you.

REP. MUSHINSKY: Our next speaker, Lisa Bassani from Working Lands Alliance, followed by Henry



Testimony to the Program Review and Investigations Committee

Submitted by Mag Morelli, President, LeadingAge Connecticut

March 5, 2013

Regarding

House Bill 6514, An Act Implementing the Recommendations of the Program and Investigations Committee Concerning Medicaid Payment Integrity

LeadingAge Connecticut is a statewide membership organization representing over 130 mission-driven and for-profit provider organizations serving older adults across the continuum of long term care. Our members sponsored by religious, fraternal, community, and municipal organizations that are committed to providing quality care and services to their residents and clients. Our member organizations, many of which have served their communities for generations, are dedicated to expanding the world of possibilities for aging.

On behalf of LeadingAge Connecticut, I would like to submit testimony on House Bill 6514, An Act Implementing the Recommendations of the Program and Investigations Committee Concerning Medicaid Payment Integrity.

Fraud and abuse have no place within the health care system and should never be tolerated within the Medicaid program. As Medicaid providers, the members of LeadingAge Connecticut understand, accept and support the need to protect the integrity of the program through state oversight and audits.

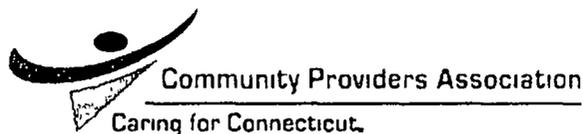
We encourage efforts to ensure that the oversight and audit processes used by state government are both fair and balanced and are designed so as not to add unnecessary expense to the health care field. Therefore we do not object to this proposal to provide a joint report regarding all of the state's efforts to prevent and control fraud, abuse and errors in the Medicaid payment system. This collaborative effort may help the state create a more efficient oversight system with oversight methods and audit practices that are fair, balanced and cost effective and which do not place unnecessary burdens on law abiding providers.

We also urge the state to make sure that the audit standards, which consist of state Medicaid payment regulations and policy provisions, are updated and clarified. While oversight is imperative to maintaining the integrity of the Medicaid program, it should not add unnecessary costs and burdens to the system. With limited resources, it is important that the state's audit efforts focus on areas and providers that pose a true risk of fraud, waste, abuse and errors.

Thank you for this opportunity to submit testimony on these bills and we would gladly answer any questions. We are willing to work with the Committee on these important issues.

Respectfully submitted,

Mag Morelli, President of LeadingAge Connecticut
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Program Review Committee

March 5, 2013

HB 6514 AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE
PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE CONCERNING
MEDICAID PAYMENT

Testimony of Mary Anne O'Neill

The Connecticut Community Providers Association is pleased to submit testimony in support of House Bill 6514, AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE CONCERNING MEDICAID PAYMENT. CCPA represents community-based nonprofit organizations who serve children, adults and families who are experiencing mental health or substance use disorders, as well as providers who serve those with intellectual and other disabilities. Our provider members are the heart of the safety net.

House Bill 6514 requires the Commissioner of Social Services, in consultation with the Chief State's Attorney and the Attorney General, to annually submit a report to the General Assembly on the State's efforts in the preceding year to prevent and control fraud and abuse in the Medicaid payment system. This bill results from a study performed by this committee last year on Medicaid Payment Integrity. CCPA and some of our member organizations worked with Program Review staff on this study.

We strongly support the department's efforts to identify fraud, abuse and processing errors and, as citizens and taxpayers, appreciate efforts to recover overpayments and avoid costs. In addition to the increased reporting, we urge the committee to strengthen the bill to better support providers' ability to avoid improper payments by increasing transparency and provider participation in development of enrollment procedures and audit guidelines and protocols.

CCPA appreciates the opportunity to comment on this important bill and we urge the committee to favorably report it.

CCPA

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March 5, 2013
**Program Review and Investigations Committee
Testimony Regarding Raised Bill No. 6514
"An Act Implementing the Recommendations of the Program Review and Investigations
Committee Concerning Medicaid Payment Integrity."**

DEAR SENATOR KISSEL AND REPRESENTATIVE MUSHINSKY AND MEMBERS OF THE COMMITTEE:

My name is Martin Acevedo. I am General Counsel of Companions & Homemakers, Inc., a 22-year old homemaker-companion services registered with the Department of Consumer Protection. C&H provides services to private pay clients as well as clients of the Medicaid-based Connecticut Home Care Program for Elders administered by DSS. I am writing in support of RB 6514. This bill would require DSS, among other things, to provide to this Committee on an annual basis a comprehensive accounting of "identified, ordered, collected and outstanding Medicaid recoveries from all sources."

For years, DSS has conducted hundreds—if not thousands—of audits of Medicaid providers like our agency. Audits are time-consuming, uncertain, and unduly stressful events. They are rife with uncertainty. Prior to 2010, Medicaid providers did not even have the right to appeal the results of their audits in court. Despite a 2010 statute requiring DSS to issue regulations to ensure the fairness of the audit process, no final regulations have been adopted yet. The failure to adopt regulations has not stopped DSS from conducting audits, even though the statute requires DSS to provide a copy of the regulations with its notice of audit to the provider—something which obviously cannot be done unless and until the final version of the regulations are actually adopted and approved.

COMPANIONS & HOMEMAKERS, INC.
OFFICE OF THE GENERAL COUNSEL
TESTIMONY CONCERNING BILL NO.6514
MARCH 5, 2013
PAGE 2 OF 2

Notwithstanding the potential for substantial financial assessments and fines, there is very little accountability in the process. For years, DSS has failed to disclose the manner in which it selects the providers for audit and the methodologies for assessing financial disallowances. Applying its powerful *extrapolation* tool, DSS has recovered millions of dollars from providers. However, to our knowledge, DSS has not ever reported, among other information, the number of audits conducted, the identity of the providers audited, the amounts recouped, and the number of instances of verified fraud.

Testimony from DSS officials indicate the Department has identified over 380 million dollars in "cost avoidance overpayments and third-party liabilities." (The amount in SFY 2011 was \$372 million.) It goes without saying that these are substantial sums of money. Detailed recordkeeping, reporting and disclosure are thus needed. This bill is a critical step to bring order and clearness to DSS' audit and recoupment processes and imposes no undue burden on the Department. The bill furthers the Connecticut legislature's duty of oversight and promotes transparency in government. *We request, however, that this annual report also be posted on the Department of Social Services' website.*

For all these reasons, we urge you to approve Bill 6514. Thank you for your consideration. I would be happy to answer any questions or provide additional information



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE

IN OPPOSITION TO:

**H.B. NO. 6514: AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE
LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE CONCERNING
MEDICAID PAYMENT INTEGRITY**

LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE
March 5, 2013

The Division of Criminal Justice respectfully recommends the committee take NO ACTION on H.B. No. 6514, An Act Concerning the Recommendations of the Legislative Program Review and Investigations Committee Concerning Medicaid Payment Integrity. While the Division appreciates and supports the worthwhile intentions behind this bill, the measure as now drafted raises serious legal and administrative concerns with regard to the information that is sought and the means through which it would be collected and reported.

The Division of Criminal Justice wishes to express its appreciation to the Legislative Program Review and Investigations Committee and to the committee's staff for the tremendous amount of time and effort devoted to the study of the Medicaid system. We welcome the input the Committee and its staff have provided to the Office of the Chief State's Attorney, and in particular the Medicaid Fraud Control Unit (MFCU) in the course of the program review study. We also wish to express at the outset our willingness to work with the Committee in an effort to resolve the concerns the Division has with H.B. No. 6514 in a fashion that will best serve all within the framework of the overall applicable state and federal laws and other requirements.

The MFCU is a federally certified (and tightly controlled) health care oversight agency. The MFCU has responsibility for, among other things, reviewing the operations of the State Department of Social Services (DSS) concerning the Medicaid program (42 U.S.C. 1007.11). Moreover, the unit is expressly required to be a "single identifiable entity of the State government," (42 U.S. C. 1007.5) that is "separate and distinct" from DSS, which can have no authority over the MFCU. 42 U.S.C. 1007.9. Given these requirements established in federal law, the Division has serious concerns about the potential implications of the "consultation" mandated in H.B. No. 6514 between DSS, the MFCU (through the Chief State's Attorney) and the Attorney General, and the requirement for the production of a joint report.

The Division also must question section (3) (c) and the legal and practical concerns that it raises, specifically whether certain of the requested information can legally be made public and further whether to do so is appropriate. For example, the MFCU (as is the case

with any law enforcement agency) receives many unsubstantiated allegations as well as information in matters that do not result in criminal prosecution. It should be noted that much of the information that may be affected by this bill is currently exempt from disclosure pursuant to Section 1-201 of the Freedom of Information Act (Division of Criminal Justice deemed not be to public agency ...). It is difficult, if not impossible, to see how the MFCU would be able to summarize allegations that it cannot release or the release of which would be inappropriate.

The same concerns apply to the disclosure of final dispositions in matters acted upon by the MFCU. In some cases, the "final disposition" by the MFCU is not legally the final disposition of a matter. In other instances the final result of a MFCU investigation may be the dismissal of the criminal charges in which case all records of the case are erased pursuant to Section 54-142a et. seq.

Finally, the bill raises potential separation of powers issues with regard to the exercise of prosecutorial discretion. See *State v. Angel C.*, 245 Conn. 93, 119-20 (1998); *State v. Kinchen*, 243 Conn. 690, 699 (1998); *Massameno v. Statewide Grievance Committee*, 234 Conn. 539, 575 (1995). The intricacy of negotiating plea agreements and/or other dispositions and the charge and count considerations and fashioning of compromise dispositions is very case specific. It does not lend itself to easy explanation. The same concerns apply to the requirement in the bill for disclosure of "the number of referrals declined and reason."

As previously noted in this testimony, the MFCU is a tightly controlled health care oversight agency. As such the unit is constantly monitoring its operations and providing detailed reports documenting those activities to the appropriate federal agencies. The MFCU would suggest that much of the information that would be assembled pursuant to H.B. No. 6514 is already available to some extent through the existing federal reporting process. We would be happy to meet with the Committee to discuss a potential system for sharing the existing reports (or, as appropriate, portions thereof) that would achieve the same goals as those behind H.B. No. 6514.

In conclusion, the Division of Criminal Justice wishes to express its appreciation to the Committee for the opportunity to submit input on this issue. Thank you.



CONNECTICUT HOMEMAKER & COMPANION
ASSOCIATION

March 5, 2013

Senator Kissel and Representative Mushinsky and members of the Program Review and Investigations Committee, my name is Nancy Trawick-Smith and I am the Chairman of the Board of Directors of the Connecticut Homemakers and Companions Association. Our association represents over 50 Companion-Homemaker Agencies from all over the state. I am writing to support **House Bill 6514, An Act Implementing the Recommendations of the Program Review and Investigation Committee Concerning Medicaid Payment Integrity.**

At a recent public hearing DSS Commissioner Bremer testified that "in 2012 the Office of Quality Assurance identified over \$380 million in cost avoidance overpayments and third party liabilities". This bill would require DSS to provide an annual report to this committee detailing where these millions come from -the number of audits by provider type, the amount of overpayments identified and recovered due to such audits, and how many of these audits actually resulted in fraud investigations. This annual report would bring much needed transparency to the DSS investigations and audits that are currently taking place.

In 2010 the legislators passed legislation requiring the Department of Social Services to develop regulations to guide their audits of providers. These written regulations once developed were to accompany any notice to a provider that their records were to be audited by the Department of Social Services. Two years after this bill became law proposed regulations were finally published in the Connecticut Law Journal. Subsequent public hearing on the proposed regulations was held with the Office of Legal Counsel, Regulations and Administrative Hearings of the Department of Social Services. Providers representing the home health care, community provider, pharmaceutical, and homemaker-companion industries testified. The overall theme of these testimonies were that the audit process lacks transparency; there is a lack of clear regulations as to why providers are chosen for audit, the sampling method is unclear, and the amounts recouped from providers are so high that it risks the financial well of a provider.

This bill is simple. A report which basically gives the details behind this process must be presented to this committee on an annual basis. 380 million dollars is a deal of money and the members of this committee should know the detail behind the money. I want to thank the committee for allowing this testimony and welcome to contact me at any time.

Nancy Trawick-Smith
Chairman, Board of Directors
Connecticut Homemakers and Companions Association
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TESTIMONY OF
PETER M GIOIA
VP & ECONOMIST
CONNECTICUT BUSINESS AND INDUSTRY ASSOCIATION
SUBMITTED TO THE
LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE
MARCH 5, 2013
LEGISLATIVE OFFICE BUILDING
STATE CAPITOL
HARTFORD, CONNECTICUT

Good day My name is Peter Gioia. I am the VP and economist for the Connecticut Business and Industry Association (CBIA). CBIA represents about 10,000 firms, which employ about 700,000 women and men in Connecticut Our membership consists of firms of all sizes and types, the vast majority of which are small businesses employing fewer than 50 people

CBIA supports the following bills which ought to improve the state's fiscal performance HB 6515 An Act Establishing the Office for Maximizing Alternative Revenue, and HB 6514 An Act Implementing the Recommendations of the Program Review and Investigations Committee Concerning Medicaid Payment Integrity.

HB 6515 professionalizes a single point of grants administration and development in Connecticut This is needed to ensure Connecticut gets its fare share of grant, particularly Federal grant, and opportunities We would hope that the office would be assigned metrics for performance. Properly administered the office should pay for itself many times over each and every fiscal year

HB 6514 should shine a light and issue a report on department performance in preventing, tracking down and recovering Medicaid fraud. This is a huge budget area and unfortunately is one where fraud can exist. This should help strengthen efforts to root out such fraud.

Thank you for the opportunity to submit this testimony.