

Enclosure 3.b.
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MEMORANDUM

To: Joint Fiscal Committee
From: Senator Jane Kitchel Co-Chair
Representative Ann Pugh, Co-Chair ✱
Health Access Oversight Committee
Date: August 28, 2009
Subject: Recommendations on Renewal of Section 1115 Waivers

The Health Access Oversight Committee (HAOC) met on August 19, 2009 to consider its recommendations to the Joint Fiscal Committee (JFC) regarding the renewal of the Medicaid Section 1115 Global Commitment for Health and Choices for Care waivers pursuant to Section 16 of No. 3 of the Acts of the 2009 Special Session. It was the unanimous vote of the members present at the HAOC meeting to recommend to the JFC to approve both proposals for waiver extensions, but in doing so the members felt it important to express the HAOC's concerns over certain fiscal aspects of the waivers.

Choices for Care

The HAOC has concerns over the rescissions in the Choices for Care program and suggests that several additional issues be considered by the Choices for Care Subcommittee of the Joint Fiscal Committee, which was recently formed to review the Choices for Care allocation and expenditure of current year funding and issues relating to the PACE program. We recommend that the Subcommittee also review and consider whether the requirements of the enabling legislation and the Terms and Conditions of the waiver have been properly met, including for the reinvestment of savings and continued growth in waiver slots.

The legislation enabling the Department of Disabilities, Aging and Independent Living (DAAIL) to implement the Choices for Care waiver directs that "[a]ny savings realized due to the implementation of the long-term care Medicaid 1115 waiver shall be retained by the department and reinvested into providing home- and community-based services under the waiver." Sec. 1(g)(1) of No. 52 of the Acts of 2005, as amended by Sec. 112a of

No. 65 of the Acts of 2007 and Sec. 5.207 of No. 192 of the Acts of 2007 (Adj. Sess.). In addition, the Terms and Conditions of the Choices for Care waiver contain requirements relating to funding services under the waiver, including a maintenance of effort requirement, reserves for the Moderate Need group, and language relating to Home and Community Based 'slots.' (Assurances 14, 17, and 19)

The Choices for Care program is currently operating with a significant waiting list for services and the testimony to HAOC was that the budget for the program assumes a continuation of the waiting list and that \$731,372 appropriated to the Choices for Care program in SFY2009 was not expended in the last fiscal year and will not be carried forward into SFY2010. Base spending for Choices for Care in SFY 2010 remains at the same amount appropriated in the SFY2010 budget. The Subcommittee should look at the definitions of "savings" and "reinvestment" and review whether there has been a diversion of savings rather than reinvestment in the waiver services. The subcommittee should also consider whether the funding reductions have resulted in an erosion of the integrity of the program and if the appropriate financial base remains to meet the purposes of the waiver given that the budget assumes a continued waiting list and no growth in slots.

Catamount Health Expansion

At the HAOC meeting, an issue was raised concerning the effect of the JFC decision to rescind \$81,000 in Catamount funds appropriated this fiscal year to fund (1) an exception to the 12-month waiting period for Catamount Health for self-employed individuals who lost their insurance as a result of the loss of their business and are no longer able to work in the same field, and (2) the allowance of depreciation as a business expense when calculating income eligibility for Catamount Health Assistance, VHAP, and ESI. These provisions were provided for in Secs. 19 and 22 of No. 61 of the Acts of 2009. Neither provision goes into effect until at least February or April 2010 and only if the Centers on Medicare and Medicaid Services (CMS) approves an amendment to Vermont's Medicaid Section 1115 Global Commitment waiver. Sec. 22 of Act 61 requires the Secretary of Human Services to request a waiver amendment for these provisions no later than September 1, 2009. These administrative tasks were not funded by the \$81,000, but out of existing administrative resources. At the time of the HAOC meeting, OVHA, on behalf of the Agency of Human Services (AHS), was unclear as to how to proceed with the waiver amendment request given the JFC decision not to proceed with funding the program changes.

The HAOC voted to recommend that AHS comply with Sec. 22 of Act 61 and request the waiver amendment from CMS pending further legislative action on these issues. The Legislative Council's Office discussed the situation with OVHA and counsel for AHS and the parties agreed that AHS must comply with Sec. 22 of Act 61 and submit the letter of request to CMS. AHS submitted the request on August 25, 2009.