

Greater Hartford Legal Aid, Inc.

March 20, 2006

Honorable M. Jodi Rell
Governor, State of Connecticut
State Capitol
Hartford, CT 06106

RE: Commissioner of Social Services' March 16, 2006 Letter re FOIA HUSKY A MCO matter

Dear Governor Rell:

We write to you in response to Commissioner Patricia Wilson-Coker's letter to you of March 16, 2006. Our efforts in this matter are limited to ensuring that there is accountability in the contracting of the \$700 million per year HUSKY A program to taxpayers and the over 300,000 recipients in the HUSKY A program.

Only through the Freedom of Information Act (FOIA) are documents pertaining to the MCOs' administration of the HUSKY A program available that measure MCOs' and DSS' compliance with Medicaid law. These documents will help advocates, not just legal aid lawyers, measure whether clients are getting access to services to which they are entitled. They also provide information as to whether there are areas in the HUSKY program that need to be addressed. The bottom line, however, is that these documents are public documents. The legal services organizations, on behalf of the HUSKY A population, are committed to ensuring that DSS and the MCOs comply with the order of the FOIC, which ruled that the MCOs are performing a governmental function and therefore are subject to the document disclosure rules of the FOIA.

We respectfully disagree with the Commissioner's statement that we "grossly misrepresented" the situation. While the Commissioner indicates that she believes DSS did all that was "reasonable to achieve the direction required by FOIC's decision," we disagree that "reasonableness" was all that was required of DSS in this matter; compliance with the order is mandatory. DSS could, and should, have done more, and it could have done so in a way that still "respected all parties."

The Commissioner also called our statements "false, inflammatory and irresponsible," and stated that our letter to you of March 16th "grossly and offensively mischaracterizes the department's actions in this matter." Rather than resort to this kind of subjective characterization to describe DSS' actions, we instead refer to the facts of this case which clearly support our position.

It is true that DSS sent contract amendments to the MCOs incorporating the language required by the FOIC's ruling on December 15th, but it took no further steps to assure the amendments were signed, accepting the collective positions of the MCOs that "it would not be appropriate for them to sign the contract amendment at this time." DSS' failure to insist upon



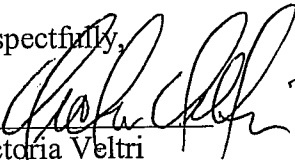
the signing of the amendments is unacceptable.¹ Indeed, not only did DSS take no action to get the FOIC-ordered contract amendments signed; it signed other contract amendments with the MCOs – including one each with Anthem Health Plans, Inc. and Community Health Network of Connecticut, Inc., which extended or amended their contracts with DSS to 2007 – which did not contain the FOIA language. This action was in clear violation of the FOIC decision of December 14, 2005, which mandated that the contracts be “amended forthwith”.

When you directed DSS to accept the recommended ruling of the FOIC hearing officer, you signaled that it is the official position of the State that the MCOs perform a governmental function. Accordingly, they must be accountable to the public with respect to how they spend the hundreds of millions of dollars of taxpayer dollars that the State gives them to administer the HUSKY A program for low income parents and children.² For this reason, it is critical that DSS, likewise, be held accountable for its actions to date and, at the very least, instructed to renegotiate the contracts with the MCOs to include the FOIC-mandated FOIA accountability language and to sign no further contract amendments with any of the MCOs, or agree to any rate increases for them, until they agree to the language mandated by state law and the FOIC decision.

It is not the purpose of our involvement in this matter to force the MCOs to leave the HUSKY A program or to create disruption in services suggested by the Commissioner. We spend our days trying to work within the MCO system to ensure that our clients’ rights are vindicated. We are deeply committed to ensuring the availability of health care services for our clients; this is in fact the reason critical information about the MCOs’ operation of the HUSKY A program must be available under FOIA. We have no intention in this case of engaging in a public policy debate about the delivery system for Medicaid.

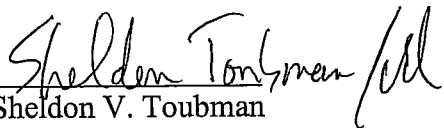
We strongly believe, however, that the issue of the MCOs’ accountability to the public and HUSKY recipients is of paramount importance. The FOIA is a critical mechanism to ensure that accountability of both DSS and the MCOs to the public, and we intend to ensure that mechanism is available. We will continue to work to ensure that the best interests of our clients are preserved, and we welcome the opportunity to work with you and DSS to achieve that goal.

Respectfully,


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¹ Notably, the MCO responses did not indicate an intent certain to appeal, only the possibility of appeal, which the MCOs did not do until the very end of the appeal period. Indeed at the time the contract amendments without the required language were signed, neither DSS nor the MCOs requested a delay of implementation of the order or a stay of the order. Even if the MCOs had timely filed a request for a stay, such a request does not relieve a party of the obligation to comply with a binding order.

² In fact, two other state agencies, the Office of the State Comptroller and the Office of the Healthcare Advocate, filed motions in Superior Court on March 17th, agreeing with the position that the MCOs perform a governmental function and that documents in their possession relating to the HUSKY A program are public documents.


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