Ned Lamont
GOVERNOR
STATE OF CONNECTICUT



July 13, 2021

The Honorable Denise W. Merrill
Secretary of the State
165 Capitol Avenue
Hartford, CT 06106

Dear Madam Secretary:

I hereby return, without my signature, Senate Bill 940, *An Act Concerning State Agency Compliance with Probate Court Orders*.

This bill requires state agencies to recognize, apply, and honor probate court decisions to which they were not a party. In effect, this means that probate court decisions would bind state agency eligibility determinations for various state assistance programs, including the Medicaid program. This requirement may violate federal and state law, pose a substantial risk of losing federal funds, violate a basic principle of law, and result in increased costs that were not included in the budget.

The Attorney General has previously testified that this legislation may violate federal and state laws and thus "poses a substantial threat of loss of billions of federal dollars to the State."[1] Federal law requires the State to designate one single agency that is responsible for administering the Medicaid program and for making eligibility determinations.[2] This single state agency requirement represents Congress's recognition that in managing Medicaid, states should enjoy both an administrative benefit, i.e., the ability to designate a single state agency to make final decisions in the interest of efficiency, but also a corresponding burden, i.e., an accountability regime in which that agency cannot evade federal requirements by deferring to the actions of other agencies.[3] In Connecticut, the Department of Social Services (DSS) is the designated agency.[4] This legislation, by requiring that a decision made in a different forum, under different rules be binding on DSS in its determination of Medicaid eligibility could lead the federal

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[1] *Testimony of Attorney General William Tong on SB 938*, March 6, 2019, a bill substantially similar to SB 940.
[2] 42 U.S.C. 1396a(a)(5).
[3] *See generally,* S. Rep. No. 404, 89th Cong., 1st Sess. (1965), *reprinted in* 1965 U.S. Code Cong. & Ad. News 1943, 2016-17 (suggesting that certain provisions of Medicaid bill were intended to achieve "simplicity of administration" and "assurance … that the States will not administer the provisions for services in a way which adversely affects the availability or the quality of care to be provided."; *See also*, *Hillburn v. Maher*, 795 F.2d 252, 261 (2d Cir. 1986) and *K.C.. v. Shipman*, 716 F.3d 107, 112 (4th Cir. 2013).
[4] Conn. Gen. Stat. § 17b-261b (a).

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government to conclude that Connecticut is not in compliance with the single administrator requirement.[5] Such a determination would allow the federal government to reduce or withhold federal matching funds.[6]

Testimony in support of this legislation has described the legislation as simply codifying a 2018 Connecticut Supreme Court decision, *Valliere v. Commissioner of Social Services*, 328 Conn. 294 (2018). That case, however, does not stand for the broad proposition that a probate court can bind DSS in determinations of Medicaid eligibility. *Valliere* applies to a limited factual and legal circumstance concerning community spouse assistance determinations as permitted by federal law. It was a federal statute,[7] in *Valliere*, that required DSS to follow an existing court order.

I do not see a good reason to take on this risk of a loss of federal funds to address an issue that is not clearly defined or a problem that may not exist.

We have a system in place that works. There is no need to change it. The probate court makes binding decisions for issues that are within its jurisdiction. State agencies do the same for benefit eligibility determinations. If an agency makes an arbitrary or capricious determination, there is an existing appeal right codified in the Uniform Administrative Procedures Act.[8]

This legislation binds an agency to factual findings made in a probate proceeding to which it was not a party. This situation goes against basic principles of law and, practically speaking, would require the agency to identify every probate proceeding where a factual finding may later be relevant to a matter that may come before the agency at some future date. The agency or the Attorney General's office would then have to send an attorney to every one of those probate proceedings. This process is unworkable and fiscally irresponsible. The Attorney General has previously testified "that this bill would result in hundreds of new probate cases per year based on Medicaid eligibility applications alone," and that the cost to the Attorney General's Office, state agencies, and the courts is "significant."[9] These significant costs were not included in the budget.

For these reasons, I disapprove of Senate Bill 940, *An Act Concerning State Agency Compliance with Probate Court Orders*. Pursuant to Section 15 of Article Fourth of the Constitution of the State of Connecticut, I am returning Senate Bill 940 without my signature.

Sincerely,

Ned Lamont

Ned Lamont
Governor

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[5] *Testimony of Attorney General William Tong on SB 938*, March 6, 2019.
[6] *Id. See also,* 42 U.S.C. 1396c.
[7] 42 U.S.C. § 1396r-5 (d) (5). *Valliere v. Commissioner of Social Services*, 328 Conn. 294, 302-04 (2018) ("Where a prior court order regarding a [community spouse allowance] has entered, however, the department is obliged to adopt that amount pursuant to [42 U.S.C.] § 1396r-5 (d) (5).")
[8] Conn. Gen. Stat. § 4-166 *et seq.*
[9] *Testimony of Attorney General William Tong on SB 938*, March 6, 2019.