

TO: Senator Ayers, Chair, Senate Committee on Health and Welfare

FROM: Ashley Berliner, Director of Healthcare Policy, Dept. of Vermont Health Access

DATE: February 16, 2018

SUBJECT: S.262, An act relating to miscellaneous changes to the Medicaid program and the Department of Vermont Health Access

This memorandum is in follow-up to testimony given on February 15th regarding Section 5 of S.262, which would require banks to furnish information to the Department of Vermont Health Access (DVHA) when requested for the purpose of verifying Medicaid eligibility. The memorandum is broken into six parts: 1) Proposed Change, 2) Purpose of Statutory Change, 3) Background, 4) What is an Asset Verification System (AVS), and 5) DVHA Responses to Requests from the Vermont Banking Association.

1. Proposed Change

The proposed change in Section 5 of S.262 would amend statute to grant DVHA authority to verify asset information with financial institutions. This authority would mirror the authority already granted to the Department for Children and Families (DCF) under state statute.

2. Purpose of Statutory Change

This change is to comply with the federal requirements that Medicaid verify income information and use an Asset Verification System (AVS).

3. Background

Federal law has always required the verification of assets to determine eligibility for Medicaid Long Term Care (LTC) and Medicaid for the Aged, Blind, and Disabled (MABD). Existing statute provides authority for DCF to verify bank information, but that authority was erroneously not replicated when Medicaid eligibility determinations were moved from DCF to DVHA in 2016. As a result, DVHA does not have explicit authority under state statute to verify asset information with financial institutions.

In addition to the long-standing requirement that Medicaid programs verify assets for certain Medicaid populations, new federal regulations require that states now use AVS for Medicaid LTC and MABD applicants (42 U.S.C. § 1396w). The law specifies that federal matching payments for expenditures for Medicaid for the Aged, Blind, and Disabled be withheld should states fail to implement the required asset verification system, and DVHA has concerns about its ability to successfully comply with the law in absence of this proposed statutory change.

4. What is an Asset Verification System?

To help ensure the accuracy of eligibility determinations for the aged and disabled population in Medicaid, Congress passed legislation that required States to implement electronic asset verification systems to verify the assets of aged, blind, or disabled applicants for Medicaid. These populations must



have assets below established standards to qualify for Medicaid coverage.

AVS is a program integrity tool to provide States with an electronic mechanism to contact financial institutions, including those not reported by an applicant, to determine if an applicant has, or had, an account and the value of any existing accounts. These systems provide States with independent data on applicant's financial accounts, which can be used to assess applicants' assets at the time of application.

Additionally, AVS has the potential to greatly reduce the administrative burden of the Medicaid applicant, state Medicaid staff, and financial institutions through the use of an electronic system.

AVS in Vermont

Vermont Medicaid uses Accuity Asset Verification Services Inc. as its AVS vendor. Accuity is the only Section 1940 and CMS compliant AVS provided federally and in state agencies in the country. The following laws and regulations apply to and affect the AVS Service:

- Privacy Act of 1974;
- The Computer Security Act of 1987;
- OMB Circular A-130;
- The Financial Modernization Act of 1999 (Gramm-Leach Bliley Act);
- Right to Financial Privacy Act of 1978.

Accuity offers all financial institutions full automation at no charge to allow them to securely and efficiently respond to asset verification requests. Even if banks do not elect a fully automated approach, AVS eliminates the need for time-consuming manual record duplication, faxing, and/or physical mailings.

5. DVHA Responses to Requests from the Vermont Banking Association

I. Vermont Banking Association Request

The legislature include language in S.262 directing the Agency of Human Services to standardize all financial information requests sent to financial institutions from that Agency.

DVHA Response

Though DVHA is sympathetic to this concern, it is not supportive of the Vermont Banking Associations Request. The Agency of Human Services (AHS) operates separate programs under differing regulatory frameworks, each with their own distinct requirements. Any effort to standardize requests across all AHS programs would require an evaluation of feasibility to ensure individual program needs could all be met. This could have the unanticipated effect of generating broader requests from individual programs in order to satisfy the requirements across all programs.

Additionally, DVHA and DCF are already actively engaged in work to understand the feasibility of using AVS to meet the needs of the Office of Child Support and Reach Up and Food Stamp programs. While the business need is slightly different, it does appear that the AVS tool could be leveraged, and efforts will be made to standardize where optimal.

II. Vermont Banking Association Request

In order for the banking industry to share information with an Agent of the Department, the following change needs to be made:

403. BANKS AND AGENCIES TO FURNISH INFORMATION (a) An officer of a financial institution, as described in 8 V.S.A. 11101(32); a credit union; or an independent trust company in this State, when requested by the Commissioner of Vermont Health Access, shall furnish to the Commissioner or the Department's Agent information in the possession of the bank or company

with reference to any person or his or her spouse who is applying for or is receiving assistance or benefits from the Department of Vermont Health Access.

DVHA Response

DVHA is amenable to this change.

III. Vermont Banking Association Request

The VBA requests the following language be included in the bill:

(a) Upon written request from the Commissioner of Vermont Health Access or the Department's Agent and provided the institution has the resources/technological capacity to perform a match, a financial institution shall perform a match of individuals applying for Medicaid assistance. The Department shall make its computerized information necessary for a match available in a form that is compatible with the technology used by the financial institution that will perform the search. A financial institution shall not be required to perform a match under this section more often than once every month.

(b) After completing a match requested under subsection (a) of this section, a financial institution shall notify the Department of Health Access or the Department's Agent. The notification shall contain the following information, if available to the financial institution through its matching procedure, for each account identified:

- (1) the full name, date of birth, and address of the individual;*
- (2) the Social Security number of the individual;*
- (3) the individual's account number; and*
- (4) the amount of deposits contained in the individuals account.*

(c) A financial institution shall send a match list compiled under this section to the Department or Agent at the address designated by the Department.

(d) The financial institution shall not provide notice in any form to a depositor contained in a match list submitted to the Department or Agent under subsection (c) of this section. Failure to provide notice to a depositor shall not constitute a violation of the financial institution's duty of good faith to its customers.

(e) A financial institution may charge the Department a fee for services provided under this section provided that the fee shall not exceed the actual costs incurred by the financial institution.

(f) The information provided by the Department or Agent to a financial institution under this section shall be confidential and shall be used only for the purpose of carrying out the requirements of this section.

DVHA Response

DVHA is concerned that this level of specificity would limit its ability to contemplate standardization across all AHS bank requests.

If the committee finds this level of specificity necessary, then the following revisions are needed:



(a) Upon written request from the Commissioner of Vermont Health Access or the Department's Agent ~~and provided the institution has the resources/technological capacity to perform a match~~, a financial institution shall perform a match of individuals applying for Medicaid assistance. ~~The Department shall make its computerized information necessary for a match available in a form that is compatible with the technology used by the financial institution that will perform the search. A financial institution shall not be required to perform a match under this section more often than once every month.~~

(b) After completing a match requested under subsection (a) of this section, a financial institution shall notify the Department of Health Access or the Department's Agent. The notification shall contain the following information, if available to the financial institution through its matching procedure, for each account identified:

(1) the full name, date of birth, and address of the individual;

(2) the Social Security number of the individual;

(3) the individual's account number; and

~~(4) the amount of deposits contained in the individuals account.~~

(4) the first minute of the month balance for each account held by the matched individual for up to 60 months, depending on the number of months requested.

(c) A financial institution shall send a match list compiled under this section to the Department or Agent at the address designated by the Department.

~~(d) The financial institution shall not provide notice in any form to a depositor contained in a match list submitted to the Department or Agent under subsection (c) of this section. Failure to provide notice to a depositor shall not constitute a violation of the financial institution's duty of good faith to its customers.~~

~~(e) A financial institution may charge the Department a fee for services provided under this section provided that the fee shall not exceed the actual costs incurred by the financial institution.~~

(f) The information provided by the Department or Agent to a financial institution under this section shall be confidential and shall be used only for the purpose of carrying out the requirements of this section.

IV. Vermont Banking Association Request

The Vermont Banking Association would like the applicant, on the same form, to authorize the financial institution to share information with the Department or Agent.

DVHA Response

It is not possible for DHVA's Medicaid application to contain authorizations for individual financial institutions to share information with DHVA; each institution necessarily holds this role in its agreements with its customers.

It is the responsibility of each financial institution to obtain authorization from its customers about the sharing of information, and DVHA would expect that such authorization would be included in the institution's agreements with its customers; it is not appropriate for that authorization to be stated in DHVA's Medicaid application.

It is through the signing of the Medicaid application that an applicant for Medicaid provides authorization for DVHA to obtain financial records from financial institutions.