



**Testimony of the Connecticut Association of Not-for-profit Providers
For the Aging**

To the Human Services Committee

**Regarding
House Bill 7173, An Act Concerning Transfer or Assignment of Assets with
Respect to
Eligibility for Medicaid Program**

**Presented by Mag Morelli, President
March 8, 2007**

CANPFA members serve thousands of people every day through mission-driven, not-for-profit organizations dedicated to providing the services people need, when they need them, in the place they call home. Our members offer the continuum of aging services: assisted living residences, continuing care retirement communities, residential care homes, nursing homes, home and community based services, and senior housing facilities.

Good morning Senator Harris, Representative Villano, and members of the Human Services Committee. My name is Mag Morelli and I am the President of CANPFA, the Connecticut Association of Not-for-profit Providers For the Aging. CANPFA represents over 130 mission-driven providers of care and services for the aging, including over fifty skilled nursing facilities.

I am here today to speak on House Bill 7173, *An Act Concerning Transfer of Assignment of Assets with Respect to Eligibility for the Medicaid Program*, which proposes to eliminate the establishment of a debt due and owed to the state when a transfer of assets is made for the intended purpose of qualifying for Medicaid.

CANPFA members understand the reality that there are people who intentionally transfer assets to qualify for Medicaid. The federal government understands this too and they recently strengthened the penalty for doing so in an effort to discourage the practice. Through the Federal Deficit Reduction Act of 2005, they implemented a new Medicaid penalty period for persons who are found to have intentionally transferred their assets. From now on, the federal government will withhold Medicaid benefits for a penalty period that will be equal to the amount of Medicaid covered services that your transferred assets would have been able to purchase. For instance, if you transferred \$100,000, your penalty period will run until you utilize \$100,000 worth of services.

For a nursing home, this new penalty period is alarming and potentially devastating. Unlike other providers, when a nursing home resident is assessed a penalty period – it is the nursing home that is financially penalized, not the resident. This is because the "penalized" resident will be able to stay in the nursing home and be cared for while the federal government withholds Medicaid payments that would have paid for the nursing home care. The nursing home will be expected and required to provide that resident with a level of uncompensated care equal to the amount of the transferred asset. The financial consequences are potentially devastating for the facility and that is why CANPFA is requesting that the state enact legislation that will allow a nursing home to request and receive hardship payments from the state during a resident's prolonged penalty period.

I reference this issue in relation to House Bill 7173, because the history of the "establishment of debt" provision that this bill is proposing to remove originated with Connecticut's effort several years ago to implement through the Medicaid waiver process, these very same transfer of asset rules and penalties. When Connecticut was seeking this famous "transfer of asset waiver," the Legislature recognized the potential financial risk for nursing homes that I just described and as a result, they enacted a provision that allowed nursing homes to apply for hardship payments during prolonged penalty periods. The establishment of the debt provision was put into place in part as a way for the state to recoup the hardship payments made to nursing homes. When the state withdrew their transfer of asset waiver request, the Legislature repealed most of the state statute regarding that waiver, including the nursing home hardship provision, but kept in the establishment of debt provision. The federal government then incorporated the state's transfer of asset ideas into the Deficit Reduction Act of 2005, which leaves us where we are today.

Now CANPFA does not have a strong position on whether or not you should take out the establishment of debt provision as is proposed in this bill, but we definitely need you to put back into state statute the nursing home hardship provision. Nursing homes are very much at risk now that the new federal rules are in place and they need this statutory protection. We have provided proposed language with this testimony that mimics the original statutory language that Connecticut had enacted, but repealed. I have also provided additional information regarding some misunderstandings about the effects of the new federal law – including the fact that there is no federal hardship provision for nursing homes and the fact that the effects of the new rules are immediate, not three years away.

Thank you for your consideration of this testimony – I would be happy to answer any questions.

Mag Morelli, President

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Common misconceptions:

*"This bill is not needed because federal law allows nursing homes to seek hardship payments." **False***

- ✓ The federal Deficit Reduction Act law only allows nursing homes to seek hardship payments on behalf of the resident and only based upon the resident's hardship status. (This would include a hardship status such as dementia.) **The federal law does not permit nursing homes to seek hardship payments on behalf of the nursing home or based upon the nursing home's financial hardship.** (This would include the scenario of an extended penalty period due to a competent resident's intentional transfer of assets.)

*"There is no hurry because the effects of the new federal transfer of assets rules will not affect nursing homes for three years." **False***

- ✓ **While there is a three year look back provision (five years for real estate), any asset that is intentionally transferred from the effective date of February 8, 2006 forward is subject to these new rules.** Hypothetically, if a person enters into a nursing home today, transfers all of their assets tomorrow, and applies for Medicaid; their penalty period will begin on April 1, 2007 and will continue for the full amount of those assets. CANPFA has already been notified by eight nursing home members that they have been negatively affected by the new rules. Four of these members report asset transfers between \$20,000 and \$100,000.

*"These changes will hurt innocent people who did not intentionally transfer assets." **False***

- ✓ **The law specifically states that the penalties are for intentional transfers that are done "for the eligibility or potential eligibility for medical assistance."** There are provisions in the law to protect people who have unintentionally spent or transferred assets due to dementia or exploitation.

Proposed Language:

Section 17b-261a of the general statutes as amended by section 4 of public act 05-209 is repealed and the following is substituted in lieu thereof:

Sec. 17b-261a. Transfer or assignment of assets resulting in the imposition of a penalty period. Regulations. (a) Any transfer or assignment of assets resulting in the imposition of a penalty period shall be presumed to be made with the intent, on the part of the transferor or the transferee, to enable the transferor to obtain or maintain eligibility for medical assistance. This presumption may be rebutted only by clear and convincing evidence that the transferor's eligibility or potential eligibility for

medical assistance was not a basis for the transfer or assignment.

(b) Any transfer or assignment of assets resulting in the establishment or imposition of a penalty period shall create a debt, as defined in section 36a-645, that shall be due and owing by the transferor or transferee to the Department of Social Services in an amount equal to the amount of the medical assistance provided to or on behalf of the transferor on or after the date of the transfer of assets, but said amount shall not exceed the fair market value of the assets at the time of transfer. The Commissioner of Social Services, the Commissioner of Administrative Services and the Attorney General shall have the power or authority to seek administrative, legal or equitable relief as provided by other statutes or by common law.

(c) The Commissioner of Social Services may waive the imposition of a penalty period when the transferor (1) in accordance with the provisions of section 3025.25 of the department's Uniform Policy Manual, suffers from dementia at the time of application for medical assistance and cannot explain transfers that would otherwise result in the imposition of a penalty period; or (2) suffered from dementia at the time of the transfer; or (3) was exploited into making such a transfer due to dementia. Waiver of the imposition of a penalty period does not prohibit the establishment of a debt in accordance with subsection (b) of this section.

(d) The Commissioner of Social Services, pursuant to section 17b-10, shall implement the policies and procedures necessary to carry out the provisions of this section while in the process of adopting such policies and procedures in regulation form, provided notice of intent to adopt regulations is published in the Connecticut Law Journal not later than twenty days after implementation. Such policies and procedures shall be valid until the time final regulations are effective.

(e) IN ADDITION TO THE HARDSHIP WAIVER PROCESS THAT THE COMMISSIONER ESTABLISHES PURSUANT TO THE DEFICIT REDUCTION ACT OF 2005, S. 1932, 109TH CONG. (2006) THE COMMISSIONER, UPON THE REQUEST OF A NURSING FACILITY, MAY GRANT FINANCIAL RELIEF TO A NURSING FACILITY IF THE NURSING FACILITY ESTABLISHES THAT (1) IT IS EXPERIENCING FINANCIAL HARDSHIP DUE TO THE TRANSFER OF ASSET PENALTY PERIOD BEGINNING IN THE MONTH THE APPLICANT IS FOUND OTHERWISE ELIGIBLE FOR MEDICAID COVERAGE OF SERVICES RATHER THAN IN THE MONTH OF THE TRANSFER OF ASSETS; AND (2) IT HAS MADE EVERY EFFORT PERMISSIBLE UNDER STATE AND FEDERAL LAW TO RECOVER THE FUNDS THAT ARE DUE TO IT FOR CARING FOR THE INDIVIDUAL. IF THE DEPARTMENT AGREES TO GRANT FINANCIAL RELIEF TO THE

NURSING FACILITY IN THE FORM OF PROVIDING MEDICAID PAYMENT TO THE FACILITY, THE DEPARTMENT SHALL SEEK RECOUPMENT OF SAID PAYMENT FROM THE INDIVIDUAL AND THE TRANSFEREE BY PURSUING ALL MEANS AVAILABLE TO IT UNDER STATE AND FEDERAL LAW.

STATEMENT OF PURPOSE: To provide for hardship waivers for nursing facilities affected by Medicaid transfer of asset penalties under the federal Deficit Reduction Act of 2005, S. 1932, 109th Cong. (2006).