



Office of The Attorney General
State of Connecticut

**TESTIMONY OF
ATTORNEY GENERAL RICHARD BLUMENTHAL
BEFORE THE HUMAN SERVICES COMMITTEE
FEBRUARY 26, 2008**

I appreciate the opportunity to speak on Senate Bill 32, An Act Concerning the Financial Condition of Nursing Homes.

Haven Health has become the poster child for failure of state regulation of nursing homes. Despite state oversight by the Department of Social Services and the Department of Public Health, the head of Haven Health allegedly drained critical nursing home financial resources -- including taxpayer funds -- for improper private purposes. As mega-corporations and private equity firms purchase ever-increasing numbers of nursing homes, we must modernize state regulatory oversight, giving more powers to regulators, providing independent auditing of nursing homes by the State Comptroller and allowing a court to appoint a receiver when nursing home finances are in disarray.

Senate Bill 32 does not adequately address these critical needs. I urge the committee's favorable consideration of the attached legislation which provides a comprehensive improvement of state oversight of nursing homes. This proposed legislation:

1. **Provides State Comptroller monitoring of nursing home finances.** The State Comptroller would conduct regular financial forensic audits of nursing home operator finances to detect financial mismanagement and to ensure that state funds are being used appropriately for patient care. The State Comptroller could subpoena records, obtain testimony and review financial information of nursing home operators and their affiliates. A report containing fiscal findings and recommendations for action would be issued for each audit. In addition, if there is gross financial mismanagement, the State Comptroller may recommend the Department of Social Services apply for a receiver.
2. **Allows for a court appointed receiver upon a finding of gross financial mismanagement.** The state could seek a receiver for a nursing home operator if there is a finding of gross financial mismanagement which will be defined through regulation but includes having more than 35% of accounts overdue by more than 120 days or failing to pay required pension fund and health insurance contributions for more than 60 days. Currently, a receiver may only be appointed if financial mismanagement threatens patient care.

3. **Prevents corporate bleeding of nursing home finances by establishing a statutory cap on management fees, rental payments and loan payments by the nursing home to related entities for calculating Medicaid reimbursement rates and prohibiting the use of nursing home assets as a guaranty for loans unrelated to the nursing home operation.** Too often financial conglomerates have their nursing home affiliate enter into contracts with related management companies or landlord companies at higher than normal rates as well as exceeding those rates recognized by the Medicaid program. These excessive costs weaken the financial stability of the nursing home company such that receivership is necessary. A statutory cap on management fees and rental payments conforming to costs allowed by Medicaid, with DSS authority to assess a different amount based on audited finances of the company, will prevent conglomerates from viewing nursing homes as nothing more than cash cows. Further, state law should prohibit the use of nursing home assets for loans or security for loans unrelated to the nursing home operations.
4. **Extends current regulation of nursing home owners to the management company that operates the facility and the landlord of the facility.** Landlords of nursing homes would be required to obtain a certificate after a Department of Public Health (DPH) background check and inspection of the nursing home physical plant. Management companies are already required to obtain a permit. Further, DPH would have the authority to (a) suspend the management company or landlord certificate at any time for failure to maintain adequate services, (b) assess the management company or landlord civil fines of up to \$15,000/violation, (c) offset assessed civil fines directly from any Medicaid payments for management services claimed by the nursing home served by the management company, (d) subpoena documents and depose witnesses as part of management company or landlord investigations; and (e) impose a receivership on the management company, landlord and other related entities involved in the operations of the nursing home.
5. **Establishes a statutory minimum insurance coverage for nursing home owners and management companies for malpractice and liability.** While DPH requires proof of coverage for liability and malpractice insurance, state law does not require a specific minimum amount of insurance coverage. Legislation should require at least \$2 million per incident with DPH discretion to require additional coverage if it is in the best interests of the patients, families and health care providers.
6. **Clarifies the current requirement of DPH approval of any change of 10% beneficial ownership of the stock of a nursing home operator to any 10% change in beneficial ownership regardless of form of ownership.** Often control of a nursing home operator is dispersed legally through numerous limited liability corporations, affiliates, subsidiaries and wholly owned partnerships. These corporate mazes prevent DPH from adequately evaluating the true owners of a nursing home. Expanding the ownership definition will ensure that DPH has

to approve any change that results in a new owner of at least 10% control of the nursing home regardless of how far along the corporate chain such control shifted or whether entities other than corporations are involved.

7. **Establishes DPH authority to require property owners that rent facilities to nursing homes to be responsible for physical plant repairs and maintenance.**

As part of their certificate (see recommendation #4), landlords of nursing homes should be responsible for physical plant repairs and maintenance and be subject to DPH orders to correct physical plant problems and to provide needed maintenance. DPH should also be authorized to have a building monitor appointed with authority to get repairs done and divert rent to pay for necessary repairs.

I urge the committee's favorable consideration of this proposal in lieu of the provisions in Senate Bill 32.

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**OFFICE OF THE ATTORNEY GENERAL
2008 GENERAL ASSEMBLY SESSION**

TITLE: An Act Concerning Nursing Home Oversight

Sec. 1. (NEW) (*Effective October 1, 2008*) The Comptroller or designee of the Comptroller shall have the authority to examine and audit the financial and other records related to the operation of any nursing home facility as defined in Section 19a-521 of the general statutes, or any nursing facility management service as defined in Section 19a-561 of the general statutes. All financial and other records of a nursing home or nursing facility management service shall be kept at such place and shall be preserved for such time as the Comptroller or designee of the Comptroller may by regulation or order specify. The financial and other records of a nursing home or nursing facility management service shall be made available to the Comptroller or designee of the Comptroller at all reasonable times, in connection with any examination and audit. The Comptroller shall have the authority to shall have power to summon witnesses, require the production of any necessary books, papers or other documents and administer oaths to witnesses, where necessary, for the purpose of an examination and audit pursuant to this section.. The Comptroller may request the Attorney General to petition the Superior Court for such order as may be appropriate to enforce the provisions of this section. The Comptroller shall issue a report regarding the findings and any recommendations regarding actions that should be taken arising from an audit or examination conducted under this section. The Comptroller may recommend to the Commissioner of Social Services to seek the appointment of a receiver under section 19a-543 of the general statutes.

Sec. 2. (NEW) (*Effective October 1, 2008*) (a) Any person having knowledge of any matter involving violation of state laws or regulations, mismanagement or gross waste of funds or danger to patient safety as a result of such violation, mismanagement or gross waste of funds occurring in any nursing home facility, as defined in section 19a-521 of the general statutes, or any nursing facility management service as defined in section 19a-561 of the general statutes, may transmit all facts and information in such person's possession concerning such matter to the Comptroller or an employee or designee of the Comptroller. The Comptroller shall make such investigation as the Comptroller deems proper regarding such report and any other information that may be reasonably derived from such report. The Comptroller shall have power to summon witnesses, require the production of any necessary books, papers or other documents and

administer oaths to witnesses, where necessary, for the purpose of an investigation pursuant to this section. Upon the conclusion of the investigation, the Comptroller shall where necessary, report any findings to the Commissioner of Social Services or the Commissioner of Public Health, as applicable, or to the Chief State's Attorney in matters involving criminal activity. The Comptroller shall not, after receipt of any information from a person under the provisions of this section, disclose the identity of such person without such person's consent unless such disclosure is unavoidable, and may withhold records of such investigation, during the pendency of the investigation.

(b) (1) No officer or employee of a nursing home facility, as defined in section 19a-521 of the general statutes, or of any nursing facility management service as defined in section 19a-561 of the general statutes, shall take or threaten to take any personnel action against any employee in retaliation for such employee's or officer's disclosure of information to the Comptroller or an employee or designee of the Comptroller under the provisions of subsection (a) of this section.

(2) If an employee of a nursing home facility, as defined in section 19a-521 of the general statutes or any nursing facility management service as defined in section 19a-561 of the general statutes alleges that a personnel action has been threatened or taken in violation of subdivision (1) of this subsection, the employee may notify the Comptroller, who shall investigate pursuant to subsection (a) of this section.

(3) (A) Not later than thirty days after learning of the specific incident giving rise to a claim that a personnel action has been threatened or has occurred in violation of subdivision (1) of this subsection, an employee of a nursing home facility, as defined in section 19a-521 of the general statutes or any nursing facility management service as defined in section 19a-561 of the general statutes, alleging that such action has been threatened or taken may, after exhausting all available administrative remedies, bring a civil action in accordance with the provisions of subsection (c) of section 31-51m.

(4) In any proceeding under subdivision (3) of this subsection concerning a personnel action taken or threatened against any employee of a nursing home facility, as defined in section 19a-521 of the general statutes or any nursing facility management service as defined in section 19a-561 of the general statutes, which personnel action occurs not later than one year after the employee first transmits facts and information concerning a matter under subsection (a) of this section to the Comptroller, there shall be a rebuttable presumption that the personnel action is in retaliation for the action taken by the employee under subsection (a) of this section.

(5) Each nursing home facility, as defined in section 19a-521 of the general statutes or any nursing facility management service as defined in section 19a-561 of the general statutes shall post a notice of the provisions of this section in a conspicuous place which is readily available for viewing by the employees of the nursing home facility, as defined in section 19a-521 of the general statutes or any nursing facility management service as defined in section 19a-561 of the general statutes.

(6) No person who, in good faith, discloses information to the Comptroller in accordance with this section shall be liable for any civil damages resulting from such good faith disclosure.

Sec. 3. (NEW) (*Effective October 1, 2008*) If the owner of real property or any improvements thereon, on which a nursing home facility is located is a related party to the owner of the nursing home facility, the rent or any payments for the use of such real property or improvements shall not be in excess of an amount established by the Department of Social Services as fair rent in the proceeding pursuant to section 17b-340. As used in this section, "related party" shall mean persons or organizations related through an ability to control, ownership, family relationship or business association, and includes persons related through marriage. Any violation of this section shall constitute a substantial failure to comply with the requirements established under chapter 368v for purposes of disciplinary action pursuant to section 19a-494. In addition to any action under such section, the Commissioner of Public Health may impose a civil penalty not exceeding twenty-five thousand dollars for each violation.

Sec. 4. (NEW) (*Effective October 1, 2008*) The proceeds of any loan in which the owner of a nursing home has pledged, granted a lien or otherwise encumbered the assets of such nursing home shall be used solely for the purpose of operating such nursing home or providing improvements to the nursing home facility. Any violation of this section shall constituted a substantial failure to comply with the requirements established under chapter 368v for purposes of disciplinary action pursuant to section 19a-494. In addition to any action under such section, the Commissioner of Public Health may impose a civil penalty not exceeding twenty-five thousand dollars for each violation.

Sec. 5. (NEW) (*Effective October 1, 2008*) The owner of a nursing home facility shall maintain insurance liability coverage in amount no less than: (1) for

damages by reason of personal injury to, or the death of, a person because of negligence or medical malpractice, in an amount of two million dollars and in the amount of ten million dollars per accident or event; and (2) for damage to property in an amount of fifty thousand dollars per accident or event. A certificate of proof of such insurance coverage shall be filed with the Commissioner of Public Health. The Commissioner of Public Health shall adopt regulations, in accordance with the provisions of chapter 54, to establish any additional insurance requirements and may increase the minimum amounts provided for in this section as necessary to protect public safety and welfare.

Sec. 6. Subsection (a) of section 19a-490 of the general statutes, as amended by section 12 of public act 07-252, is repealed and the following is substituted in lieu thereof (*Effective October 1, 2008*):

As used in this chapter and sections 17b-261e, 38a-498b and 38a-525b:

(a) "Institution" means a hospital, residential care home, health care facility for the handicapped, nursing home, rest home, nursing facility management service as defined in section 19a-561, home health care agency, homemaker-home health aide agency, mental health facility, assisted living services agency, substance abuse treatment facility, outpatient surgical facility, an infirmary operated by an educational institution for the care of students enrolled in, and faculty and employees of, such institution; a facility engaged in providing services for the prevention, diagnosis, treatment or care of human health conditions, including facilities operated and maintained by any state agency, except facilities for the care or treatment of mentally ill persons or persons with substance abuse problems; and a residential facility for the mentally retarded licensed pursuant to section 17a-227 and certified to participate in the Title XIX Medicaid program as an intermediate care facility for the mentally retarded.

Sec. 7. Subsections (a) and (b) of section 19a-491 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2008*):

(a) No person acting individually or jointly with any other person shall establish, conduct, operate or maintain an institution in this state without a license as required by this chapter. Application for such license shall be made to the Department of Public Health upon forms provided by it and shall contain such information as the department requires, which may include affirmative evidence of ability to comply with reasonable standards and regulations prescribed under the provisions of this chapter. The commissioner may require as a condition of

licensure that an applicant sign a consent order providing reasonable assurances of compliance with the Public Health Code. In the case of a nursing home facility as defined in section 19a-521 of the general statutes, no license shall be issued unless such facility is in compliance with (1) the provisions of the Public Health Code related to the maintenance and repair of all buildings and structures within which such an institution is established, conducted or operated or (2), if applicable, the provisions of a consent order under subsection (b) of this section. The commissioner may issue more than one chronic disease hospital license to a single institution until such time as the state offers a rehabilitation hospital license.

(b) [If any] No person acting individually or jointly with any other person shall own real property or any improvements thereon, upon or within which an institution, as defined in subsection (c) of section 19a-490, is established, conducted, operated or maintained and is not the licensee of the institution, [such person shall submit a copy of the lease agreement to the department at the time of any change of ownership and with each license renewal application. The lease agreement shall, at a minimum, identify the person or entity responsible for] without a certificate that such real property or improvements are in compliance with those provisions of the Public Health Code relating to the maintenance and repair of all buildings and structures within which such an institution is established, conducted or operated. Such person shall apply biennially to the Commissioner of Public Health for such certificate. The application shall contain such information as the commissioner requires. The commissioner shall conduct an inspection and investigation and shall issue a certificate if such premises meet the requirements for such certificate. If a violation is found as a result of an inspection or investigation, the commissioner may require the owner to sign a consent order providing assurances that repairs or improvements necessary for compliance with the provisions of the Public Health Code shall be completed within a specified period of time. Such order shall include a civil penalty of not more than one thousand dollars for each day that such owner is in violation of the provisions of such order. The order may also include a provision for the establishment of a temporary manager of such real property or improvements who shall have the authority to complete any repairs or improvements required by such order. The Department of Social Services may, upon request of such manager, advance funds from Title XIX payments to the facility to pay for the cost of such repairs or improvements pursuant to section 119 of public act 07-01 of the June special session. Upon request of the Commissioner, the Attorney General may petition the superior court for such equitable and injunctive relief as such court deems appropriate to ensure compliance with the provisions of the consent order. The provisions of this subsection shall not apply to any property or improvements owned by a person licensed in accordance with the provisions of subsection (a) of this section

to establish, conduct, operate or maintain an institution on or within such property or improvements.

Sec. 8. Subdivision (2) of subsection (b) of section 19a-493 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2008*):

(2) Any change in the ownership of a facility or institution, as defined in subsection (c) of section 19a-490, owned by an individual, partnership or association or the change in ownership or beneficial ownership of ten per cent or more of the stock of a corporation which owns, conducts, operates or maintains such facility or institution, shall be subject to prior approval of the department after a scheduled inspection of such facility or institution is conducted by the department, provided such approval shall be conditioned upon a showing by such facility or institution to the commissioner that it has complied with all requirements of this chapter, the regulations relating to licensure and all applicable requirements of the Public Health Code. Any such change in ownership or beneficial ownership resulting in a transfer to a person related by blood or marriage to such an owner or beneficial owner shall not be subject to prior approval of the department unless: (A) Ownership or beneficial ownership of ten per cent or more of the stock of a corporation, partnership or association which owns, conducts, operates or maintains more than one facility or institution is transferred; (B) ownership or beneficial ownership is transferred in more than one facility or institution; or (C) the facility or institution is the subject of a pending complaint, investigation or licensure action. If the facility or institution is not in compliance, the commissioner may require the new owner to sign a consent order providing reasonable assurances that the violations shall be corrected within a specified period of time. Notice of any such proposed change of ownership shall be given to the department at least ninety days prior to the effective date of such proposed change. For the purposes of this subdivision, "a person related by blood or marriage" means a parent, spouse, child, brother, sister, aunt, uncle, niece or nephew. For the purposes of this subdivision, a change in the legal form of the ownership entity, including, but not limited to, changes from a corporation to a limited liability company, a partnership to a limited liability partnership, a sole proprietorship to a corporation and similar changes, shall not be considered a change of ownership if the beneficial ownership remains unchanged and the owner provides such information regarding the change to the department as may be required by the department in order to properly identify the current status of ownership and beneficial ownership of the facility or institution. For the purposes of this subdivision, a public offering of the stock of any corporation that owns, conducts, operates or

maintains any such facility or institution shall not be considered a change in ownership or beneficial ownership of such facility or institution if the licensee and the officers and directors of such corporation remain unchanged, such public offering cannot result in an individual or entity owning ten per cent or more of the stock of such corporation, and the owner provides such information to the department as may be required by the department in order to properly identify the current status of ownership and beneficial ownership of the facility or institution. For purposes of this subdivision, beneficial ownership shall include ownership through any level or relationship of parent and subsidiary corporations and partnerships. To the extent required by this subdivision, the licensee of such facility or institution shall provide to the department the identities of, and any other information required by the department regarding the individual shareholders, partners or members that through these mechanisms have a beneficial ownership interest in the facility or institution, as defined in subsection (c) of section 19a-490.

Sec. 9. Section 19a-498 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2008*):

(a) Subject to the provisions of section 19a-493, the Department of Public Health shall make or cause to be made a biennial licensure inspection of all institutions and such other inspections and investigations of institutions and examination of their records as the department deems necessary.

(b) The commissioner, or an agent authorized by the commissioner to conduct any inquiry, investigation or hearing under the provisions of this chapter, shall have power to inspect the premises of an institution, issue subpoenas, order the production of books, records or documents, administer oaths and take testimony under oath relative to the matter of such inquiry, [or] investigation or hearing. At any hearing ordered by the department, the commissioner or such agent may subpoena witnesses and require the production of records, papers and documents pertinent to such inquiry. If any person disobeys such subpoena or, having appeared in obedience thereto, refuses to answer any pertinent question put to such person by the commissioner or such agent or to produce any records and papers pursuant to the subpoena, the commissioner or such agent may apply to the superior court for the judicial district of Hartford or for the judicial district wherein the person resides or wherein the business has been conducted, setting forth such disobedience or refusal, and said court shall cite such person to appear before said court to answer such question or to produce such records and papers.

(c) The Department of Mental Health and Addiction Services, with respect to

any mental health facility or alcohol or drug treatment facility, shall be authorized, either upon the request of the Commissioner of Public Health or at such other times as they deem necessary, to enter such facility for the purpose of inspecting programs conducted at such facility. A written report of the findings of any such inspection shall be forwarded to the Commissioner of Public Health and a copy shall be maintained in such facility's licensure file.

(d) In addition, the Commissioner of Social Services, or a designated representative of the Commissioner of Social Services, at the request of the Office of Health Care Access or when the Commissioner of Social Services deems it necessary, may examine and audit the financial records of any nursing home facility, as defined in section 19a-521 or a nursing facility management service as defined in section 19a-561. Each such nursing home facility shall retain all financial information, data and records relating to the operation of the nursing home facility or nursing facility management service for a period of not less than ten years, and all financial information, data and records relating to any real estate transactions affecting such operation, for a period of not less than twenty-five years, which financial information, data and records shall be made available, upon request, to the Commissioner of Social Services or such designated representative at all reasonable times. In connection with any inquiry, examination or investigation, the commissioner or authorized agent may issue subpoenas, order the production of books, records and documents, administer oaths and take testimony under oath. The Attorney General, upon request of the commissioner, may apply to the superior court to enforce any such subpoena or order.

Sec. 10. Section 19a-503 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2008*):

Notwithstanding the existence or pursuit of any other remedy, the Department of Public Health may, in the manner provided by law and upon the advice of the Attorney General, conduct an investigation and maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of an institution, without a license or certificate under this chapter.

Sec. 11. Section 19a-528a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2008*):

For any application of licensure for the acquisition of a nursing home filed after July 1, 2004, any potential nursing home licensee or owner must submit in

writing, a change in ownership application with respect to facility for which the change in ownership is sought. Such application shall include such information as the Commissioner of Public Health deems necessary and shall include whether such potential nursing home licensee or owner (1) has had civil penalties imposed through final order of the commissioner in accordance with the provisions of sections 19a-524 to 19a-528, inclusive, or civil penalties imposed pursuant to the statutes or regulations of another state, during [a] the two-year period preceding the application, (2) has had in any state [intermediate] sanctions, other than civil penalties less than ten thousand dollars, imposed through final adjudication under the Medicare or Medicaid program pursuant to Title XVIII or XIX of the federal Social Security Act, 42 USC 301, as from time to time amended, or (3) has had in any state such potential licensee's or owner's Medicare or Medicaid provider agreement terminated or not renewed[.] The commissioner shall not approve such application to acquire another nursing home in this state for a period of five years from the date of final order on such civil penalties, final adjudication of such [intermediate] sanctions, or termination or nonrenewal, except for good cause shown. [Notwithstanding, the provisions of this section, the Commissioner of Public Health, may for good cause shown, permit a potential nursing home licensee or owner to acquire another nursing home prior to the expiration of said five-year period.]

Sec. 12. Section 19a-543 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2008*):

(a) The court shall grant an application for the appointment of a receiver for a nursing home facility upon a finding of any of the following: (1) Such facility is operating without a license issued pursuant to this chapter or such facility's license has been suspended or revoked pursuant to section 19a-494; (2) such facility intends to close and adequate arrangements for relocation of its residents have not been made at least thirty days prior to closing; (3) such facility has sustained a serious financial loss or failure which jeopardizes the health, safety and welfare of the patients or there is a reasonable likelihood of such loss or failure; [or](4) there exists in such facility a condition in substantial violation of the Public Health Code, or any other applicable state statutes, or Title XVIII or XIX of the federal Social Security Act, 42 USC 301, as amended, or any regulation adopted pursuant to such state or federal laws; or (5) there has been gross financial mismanagement of the facility.

(b) The court, upon a determination pursuant to subsection (a) that a receiver is appropriate, may, in addition to appointing a receiver for the nursing home facility, appoint a receiver for (1) any provider of nursing home facility management services, as defined in section 19a-561 of the general statutes, to

such facility; (2) any person or entity that is a related party to the owner of real property, or improvements thereon, on which such nursing home facility is located; or (3) any legal entity owned or managed by a related party to the nursing home facility owners. The court may issue such orders as it deems necessary to any person that controls or possess assets necessary for the receiver to fulfill its duties as set forth in section 19a-545 of the general statutes. As used in this subsection, "related party" shall have the same meaning as in section 3 of this act.

(c) As used in this section, "gross financial mismanagement" shall mean: (1) allowing more than thirty-five percent of the facility's vendor accounts to be overdue for payment by more than one hundred twenty days; (2) allowing the facility payment of required employee pension or health insurance contributions to be overdue by more than sixty days; (3) maintaining an unfavorable working capital ratio of assets to liabilities for more than one fiscal year; (4) maintaining minimal equity or reserves for more than one fiscal year; (5) incurring significant operating losses for more than one fiscal year; and (6) any other criteria which the Commissioner of Social Services may further define in regulations adopted pursuant to the provisions of chapter 54.

Sec. 13. Section 19a-547 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2008*):

(a) The court may appoint any responsible individual whose name is proposed by the Commissioner of Public Health and the Commissioner of Social Services to act as a receiver. Such individual shall be a nursing home administrator licensed in the state of Connecticut with substantial experience in operating Connecticut nursing homes or shall possess such other experience and education that the court deems satisfactory to appropriately and professionally implement such receivership. On or before July 1, 2004, the Commissioner of Social Services shall adopt regulations governing qualifications for proposed receivers consistent with this subsection. No state employee or owner, administrator or other person with a financial interest in the facility may serve as a receiver for that facility. No person appointed to act as a receiver shall be permitted to have a current financial interest in the facility; nor shall such person appointed as a receiver be permitted to have a financial interest in the facility for a period of five years from the date the receivership ceases.

(b) The court may remove such receiver in accordance with section 52-513. A nursing home receiver appointed pursuant to this section shall be entitled to a

reasonable receiver's fee as determined by the court. The receiver shall be liable only in his official capacity for injury to person and property by reason of the conditions of the nursing home. He shall not be personally liable, except for acts or omissions constituting gross, wilful or wanton negligence.

(c) The court, in its discretion, may require a bond of such receiver in accordance with section 52-506.

(d) The court may require the Commissioner of Public Health to provide for the payment of any receiver's fees authorized in subsection (a) of this section upon a showing by such receiver to the satisfaction of the court that (1) the assets of the nursing home facility are not sufficient to make such payment, and (2) no other source of payment is available, including the submission of claims in a bankruptcy proceeding. The state shall have a claim for any court-ordered fees and expenses of the receiver and any state advance payments to the nursing home facility after a receiver has been appointed which shall have priority over all other claims of secured and unsecured creditors and other persons whether or not the nursing home facility is in bankruptcy[, to the extent allowed under state or federal law].

Sec. 14. Section 19a-561 of the general statutes, as amended by section 14 of public act 07-252, is repealed and the following is substituted in lieu thereof (*Effective October 1, 2008*):

(a) As used in this section, "nursing facility management services" means services provided in a nursing facility to manage the operations of such facility, including the provision of care and services.

(b) On and after January 1, 2007, no person or entity shall provide nursing facility management services in this state without obtaining a certificate from the Department of Public Health.

(c) Any person or entity seeking a certificate to provide nursing facility management services shall apply to the department, in writing, on a form prescribed by the department. Such application shall include the following information:

(1) (A) The name and business address of the applicant and whether the applicant is an individual, partnership, corporation or other legal entity; (B) the names of the officers, directors, trustees, or managing and general partners of the applicant, the names of the persons having ten percent or greater beneficial ownership interest in the applicant, and a description of each such person's relationship to the applicant; and (C) if the applicant is a corporation

incorporated in another state, a certificate of good standing from the state agency with jurisdiction over corporations in such state.

(2) A description of the applicant's nursing facility management experience;

(3) An affidavit signed by the applicant and any of the persons described in subdivision (1) of this subsection disclosing any matter in which the applicant or such person (A) has been convicted of an offense classified as a felony under section 53a-25 or pleaded nolo contendere to a felony charge, or (B) has been held liable or enjoined in a civil action by final judgment, if the felony or civil action involved fraud, embezzlement, fraudulent conversion or misappropriation of property, or (C) is subject to a currently effective injunction or restrictive or remedial order of a court of record at the time of application, or (D) within the past five years has had any state or federal license or permit suspended or revoked as a result of an action brought by a governmental agency or department, arising out of or relating to business activity or health care, including, but not limited to, actions affecting the operation of a nursing facility, residential care home or any facility subject to sections 17b-520 to 17b-535, inclusive, or a similar statute in another state or country; and

(4) The location and description of any nursing facility in this state or another state in which the applicant currently provides management services or has provided such services within the past five years.

(d) In addition to the information provided pursuant to subsection (c) of this section, the department may reasonably request to review the applicant's audited and certified financial statements, which shall remain the property of the applicant when used for either initial or renewal certification under this section.

(e) Each application for a certificate to provide nursing facility management services shall be accompanied by an application fee of three hundred dollars. The certificate shall list each location at which nursing facility management services may be provided by the holder of the certificate.

(f) The department shall base its decision on whether to issue or renew a certificate on the information presented to the department and on the compliance status of the managed entities. The department may deny certification to any applicant for the provision of nursing facility management services at any specific facility or facilities where there has been a substantial failure to comply with the Public Health Code or other laws and regulations applicable to the operation of such facility or facilities. If the department determines that a facility, located in another state, for which the applicant has provided nursing facility management services has substantially failed to comply with the laws

and regulations of such state applicable to the operation of such facility or facilities, the department may deny certification to such applicant for the provision of nursing facility management services in this state. The Department may limit or restrict the provision of nursing facility management services by any applicant or may limit the facilities for which it may provide such services.

(g) Renewal applications shall be made biennially after (1) submission of the information required by subsection (c) of this section and any other information required by the department pursuant to subsection (d) of this section, and (2) submission of evidence satisfactory to the department that any nursing facility at which the applicant provides nursing facility management services is in substantial compliance with the provisions of this chapter, the Public Health Code and licensing regulations or other laws and regulations applicable to the operation of such facility or facilities and if the applicant provides nursing facility management services in another state, evidence satisfactory to the department that such facilities substantially comply with the laws and regulations of such state applicable to the operation of such facility or facilities, and (3) payment of a three-hundred-dollar fee.

(h) In any case in which the Commissioner of Public Health finds that there has been a substantial failure to comply with the requirements established under this section or if the department determines that a facility, located in another state, for which the applicant has provided nursing facility management services has substantially failed to comply with the laws and regulations of such state applicable to the operation of such facility or facilities, the commissioner may initiate disciplinary action against a nursing facility management services certificate holder pursuant to section 19a-494. In addition to the remedies provided under section 19a-494, the Commissioner may also assess such holder a civil penalty not to exceed fifteen thousand dollars per violation for any class A or class B violation, as defined in section 19a-527 of the general statutes, that occur at a nursing facility for which such holder provides nursing facility management services. Failure to pay such penalties shall be subject to the remedies provided in section 19a-526 of the general statutes.

(i) The department may limit or restrict the provision of management services by any nursing facility management services certificate holder against whom disciplinary action has been initiated under subsection (h) of this section.

(j) The Department may, in implementing the provisions of this section, conduct any inquiry or investigation, in accordance with the provisions of section 19a-498 of the general statutes, regarding an applicant or certificate holder.

(k) No nursing facility management services certificate holder, which is a related party to the nursing home facility owner, shall be paid fees, including expenses from a nursing home for which it provides such services, in excess of the management fee permitted by the Department of Social Services in setting the Title XIX rate for such nursing home. As used in this section, "related party" shall have the same meaning as in section 3 of this act.