



General Assembly

Substitute Bill No. 32

February Session, 2008

* _____SB00032PH_____042308_____*

AN ACT CONCERNING THE FINANCIAL CONDITION OF NURSING HOMES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 17b-352 of the 2008 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective from passage*):

4 (a) For the purposes of this section and section 17b-353 of the 2008
5 supplement to the general statutes, "facility" means a residential
6 facility for the mentally retarded licensed pursuant to section 17a-277
7 of the 2008 supplement to the general statutes and certified to
8 participate in the Title XIX Medicaid program as an intermediate care
9 facility for the mentally retarded, a nursing home, rest home or
10 residential care home, as defined in section 19a-490 of the 2008
11 supplement to the general statutes.

12 (b) Any facility [which] that intends to (1) transfer all or part of its
13 ownership or control; [prior to being initially licensed;] (2) introduce
14 any additional function or service into its program of care or expand
15 an existing function or service; or (3) terminate a service or decrease
16 substantially its total bed capacity, shall submit a complete request for
17 permission to implement such transfer, addition, expansion, increase,
18 termination or decrease with such information as the department
19 requires to the Department of Social Services, provided no permission

20 or request for permission to close a facility is required when a facility
21 in receivership is closed by order of the Superior Court pursuant to
22 section 19a-545 of the 2008 supplement to the general statutes. The
23 Office of the Long-Term Care Ombudsman pursuant to section 17b-400
24 shall be notified by the facility of any proposed actions pursuant to this
25 subsection at the same time the request for permission is submitted to
26 the department and when a facility in receivership is closed by order of
27 the Superior Court pursuant to section 19a-545 of the 2008 supplement
28 to the general statutes.

29 (c) An applicant, prior to submitting a certificate of need
30 application, shall request, in writing, application forms and
31 instructions from the department. The request shall include [:(1) The]
32 the name of the applicant or applicants [; (2)] and a statement
33 indicating whether the application is for [(A)] (1) a transfer of
34 ownership or control, (2) a new, additional, expanded or replacement
35 facility, service or function, [(B)] (3) a termination or reduction in a
36 presently authorized service or bed capacity, or [(C)] (4) any new,
37 additional or terminated beds and their type. [; (3)] Applications, other
38 than those seeking transfer of ownership or control, shall include (A)
39 the estimated capital cost; [(4)] (B) the town where the project is or will
40 be located; and [(5)] (C) a brief description of the proposed project.
41 Such request shall be deemed a letter of intent. No certificate of need
42 application shall be considered submitted to the department unless a
43 current letter of intent, specific to the proposal and in accordance with
44 the provisions of this subsection, has been on file with the department
45 for not less than ten business days. For purposes of this subsection, "a
46 current letter of intent" means a letter of intent on file with the
47 department for not more than one hundred eighty days. A certificate
48 of need application shall be deemed withdrawn by the department, if a
49 department completeness letter is not responded to within one
50 hundred eighty days. The Office of the Long-Term Care Ombudsman
51 shall be notified by the facility at the same time as the letter of intent is
52 submitted to the department.

53 (d) Any facility acting pursuant to subdivision (3) of subsection (b)

54 of this section shall provide written notice, at the same time it submits
55 its letter of intent, to all patients, guardians or conservators, if any, or
56 legally liable relatives or other responsible parties, if known, and shall
57 post such notice in a conspicuous location at the facility. The notice
58 shall state the following: [(A)] (1) The projected date the facility will be
59 submitting its certificate of need application, [(B)] (2) that only the
60 department has the authority to either grant, modify or deny the
61 application, [(C)] (3) that the department has up to ninety days to
62 grant, modify or deny the certificate of need application, [(D)] (4) a
63 brief description of the reason or reasons for submitting a request for
64 permission, [(E)] (5) that no patient shall be involuntarily transferred
65 or discharged within or from a facility pursuant to state and federal
66 law because of the filing of the certificate of need application, [(F)] (6)
67 that all patients have a right to appeal any proposed transfer or
68 discharge, and [(G)] (7) the name, mailing address and telephone
69 number of the Office of the Long-Term Care Ombudsman and local
70 legal aid office.

71 (e) The department shall review a request made pursuant to
72 subsection (b) of this section to the extent it deems necessary,
73 including, but not limited to, in the case of a proposed transfer of
74 ownership or control, [prior to initial licensure] the financial viability
75 of the applicant, the impact on the facility rate and the financial
76 condition of the applicant, the financial responsibility and business
77 interests of the transferee and the ability of the facility to continue to
78 provide needed services, or in the case of the addition or expansion of
79 a function or service, ascertaining the availability of the function or
80 service at other facilities within the area to be served, the need for the
81 service or function within the area and any other factors the
82 department deems relevant to a determination of whether the facility
83 is justified in adding or expanding the function or service. The
84 commissioner shall grant, modify or deny the request within ninety
85 days of receipt thereof, except as otherwise provided in this section.
86 Upon the request of the applicant, the review period may be extended
87 for an additional fifteen days if the department has requested

88 additional information subsequent to the commencement of the
89 commissioner's review period. The director of the office of certificate of
90 need and rate setting may extend the review period for a maximum of
91 thirty days if the applicant has not filed in a timely manner
92 information deemed necessary by the department. The applicant may
93 request and shall receive a hearing in accordance with section 4-177 if
94 aggrieved by a decision of the commissioner.

95 (f) The Commissioner of Social Services shall not approve any
96 requests for beds in residential facilities for the mentally retarded
97 which are licensed pursuant to section 17a-227 of the 2008 supplement
98 to the general statutes and are certified to participate in the Title XIX
99 Medicaid Program as intermediate care facilities for the mentally
100 retarded, except those beds necessary to implement the residential
101 placement goals of the Department of Developmental Services which
102 are within available appropriations.

103 (g) The Commissioner of Social Services shall adopt regulations, in
104 accordance with chapter 54, to implement the provisions of this
105 section. The commissioner shall implement the standards and
106 procedures of the Office of Health Care Access concerning certificates
107 of need established pursuant to section 19a-643, as appropriate for the
108 purposes of this section, until the time final regulations are adopted in
109 accordance with said chapter 54.

110 Sec. 2. Section 17b-339 of the general statutes is repealed and the
111 following is substituted in lieu thereof (*Effective from passage*):

112 (a) There is established a Nursing Home Financial Advisory
113 Committee to examine the financial solvency of nursing homes on an
114 ongoing basis and to support the Departments of Social Services and
115 Public Health in their mission to provide oversight to the nursing
116 home industry [which promotes] on issues concerning the financial
117 solvency of and quality of care provided by nursing homes. The
118 committee shall consist of [seven members: The] the Commissioner of
119 Social Services, or his designee; the Commissioner of Public Health, or

120 his designee; the Secretary of the Office of Policy and Management, or
121 his designee; [the director of the Office of Fiscal Analysis, or his
122 designee;] and the executive director of the Connecticut Health and
123 Education Facilities Authority, or his designee. [; and one
124 representative of nonprofit nursing homes and one representative of
125 for-profit nursing homes appointed by the Governor.]

126 [(b)] The Commissioner of Social Services and the Commissioner of
127 Public Health shall be the chairpersons of the committee. [Any vacancy
128 shall be filled by the appointing authority.]

129 [(c)] (b) The committee, upon receipt of a report relative to the
130 financial solvency of and quality of care provided by nursing homes in
131 the state, shall recommend appropriate action [for improving the
132 financial condition of any nursing home that is in financial distress] to
133 the Commissioner of Social Services and the Commissioner of Public
134 Health.

135 [(d)] (c) Not later than January 1, [1999] 2010, and annually
136 thereafter, the committee shall submit a report on its activities to the
137 joint standing committees of the General Assembly having cognizance
138 of matters relating to appropriations, human services and public health
139 and to the select committee of the General Assembly having
140 cognizance of matters relating to aging, in accordance with the
141 provisions of section 11-4a.

142 Sec. 3. (NEW) (*Effective from passage*) (a) Each nursing home facility,
143 as defined in section 19a-521 of the general statutes, shall submit
144 quarterly reports of accounts payable by vendor and by days
145 outstanding to the Commissioner of Social Services in a format
146 prescribed by the commissioner. If such reports indicate a facility may
147 be experiencing financial distress, the commissioner shall require the
148 nursing home facility to submit annual audited financial statements
149 and may require a nursing home facility to report specific financial
150 information, including, but not limited to, debt agreements and
151 interim financial statements. In the case of a nursing home facility that

152 is owned or managed by an entity that owns or manages multiple
153 nursing home facilities, the commissioner may require the entity to
154 report information concerning the financial condition of any such
155 nursing home facility in a format prescribed by the commissioner.

156 (b) If the Commissioner of Social Services determines, based on a
157 review of the information provided pursuant to subsection (a) of this
158 section, that a nursing home facility has undergone an adverse change
159 in financial condition, the commissioner shall notify the Commissioner
160 of Public Health and shall require the nursing home facility to report
161 monthly its cash availability and the status of vendor payments and
162 employee payrolls. The Commissioner of Social Services may require
163 the reporting of other financial information to assist in measuring the
164 financial condition of the nursing home facility.

165 (c) The Commissioner of Social Services shall promptly provide to
166 the State Comptroller copies of all the information received from
167 nursing home facilities or other entities pursuant to subsections (a) and
168 (b) of this section and a copy of any notices sent to the Commissioner
169 of Public Health.

170 (d) The criteria to be used by the Commissioner of Social Services
171 pursuant to subsection (b) of this section to determine whether a
172 nursing home facility has undergone an adverse change in financial
173 condition shall include, but not be limited to, (1) the frequency of
174 Medicaid advances granted in accordance with section 119 of public
175 act 07-1 of the June special session; (2) unfavorable working capital
176 ratios of assets to liabilities; (3) a high proportion of accounts
177 receivable more than ninety days old; (4) a high proportion of accounts
178 payable more than ninety days old; (5) significant increases in accounts
179 payable, unpaid state or municipal taxes, state user fees or payroll-
180 related costs; (6) minimal equity or reserves or decreasing equity or
181 reserves; (7) high levels of debt and high borrowing costs; (8)
182 significant increases in the level of debts and borrowing costs; and (9)
183 significant operating losses for two or more consecutive years.

184 (e) If the Commissioner of Social Services determines that a nursing

185 home facility is in financial distress that may lead to the facility having
186 insufficient resources to meet its operating costs, the commissioner
187 shall issue a report of such findings to the Nursing Home Financial
188 Advisory Committee, established pursuant to section 17b-339 of the
189 general statutes, as amended by this act.

190 Sec. 4. (NEW) (*Effective from passage*) Each nursing facility
191 management services agency, as defined in subsection (n) of section
192 19a-490 of the 2008 supplement to the general statutes, as amended by
193 this act, for which rates paid by the state are set pursuant to section
194 17b-340 of the 2008 supplement to the general statutes, shall annually
195 report its costs to the Commissioner of Social Services on a form
196 prescribed by the commissioner. Costs shall be reported on a fiscal
197 year basis ending on the thirtieth day of September and submitted on
198 or before the thirty-first day of December.

199 Sec. 5. Section 17b-4 of the general statutes is repealed and the
200 following is substituted in lieu thereof (*Effective from passage*):

201 (a) The Department of Social Services shall plan, develop,
202 administer, operate, evaluate and provide funding for services for
203 individuals and families served by the department who are in need of
204 personal or economic development. In cooperation with other social
205 service agencies and organizations, including community-based
206 agencies, the department shall work to develop and fund prevention,
207 intervention and treatment services for individuals and families. The
208 department shall: (1) Provide appropriate services to individuals and
209 families as needed through direct social work services rendered by the
210 department and contracted services from community-based
211 organizations funded by the department; (2) collect, interpret and
212 publish statistics relating to individuals and families serviced by the
213 department; (3) monitor, evaluate and review any program or service
214 which is developed, operated or funded by the department; (4)
215 supervise the establishment of pilot programs funded by the
216 department in local communities which assist and support individuals
217 and families in personal and economic development; (5) improve the

218 quality of services provided, operated and funded by the department
219 and increase the competency of its staff relative to the provision of
220 effective social services by establishing and supporting ongoing staff
221 development and training; and (6) encourage citizen participation in
222 the development of social service priorities and programs.

223 (b) The Department of Social Services shall study continuously the
224 conditions and needs of elderly and aging persons in this state in
225 relation to nutrition, transportation, home-care, housing, income,
226 employment, health, recreation and other matters. It shall be
227 responsible in cooperation with federal, state, local and area planning
228 agencies on aging for the overall planning, development and
229 administration of a comprehensive and integrated social service
230 delivery system for elderly persons and the aged. The department
231 shall: (1) Measure the need for services; (2) survey methods of
232 administration of programs for service delivery; (3) provide for
233 periodic evaluations of social services; (4) maintain technical,
234 information, consultation and referral services in cooperation with
235 other state agencies to local and area public and private agencies to the
236 fullest extent possible; (5) develop and coordinate educational
237 outreach programs for the purposes of informing the public and
238 elderly persons of available programs; (6) cooperate in the
239 development of performance standards for licensing of residential and
240 medical facilities with appropriate state agencies; (7) supervise the
241 establishment, in selected areas and local communities of the state, of
242 pilot programs for elderly persons; (8) coordinate with the Department
243 of Transportation to provide adequate transportation services related
244 to the needs of elderly persons; and (9) cooperate with other state
245 agencies to provide adequate and alternate housing for elderly
246 persons, including congregate housing, as defined in section 8-119e.

247 [(c) The Department of Social Services, in conjunction with the
248 Department of Public Health, may adopt regulations in accordance
249 with the provisions of chapter 54 to establish requirements with
250 respect to the submission of reports concerning financial solvency and
251 quality of care by nursing homes for the purpose of determining the

252 financial viability of such homes, identifying homes that appear to be
253 experiencing financial distress and examining the underlying reasons
254 for such distress. Such reports shall be submitted to the Nursing Home
255 Financial Advisory Committee established under section 17b-339.]

256 Sec. 6. (NEW) (*Effective October 1, 2008*) The State Comptroller, or the
257 Comptroller's designee, may examine and audit the financial and other
258 records related to the operation of any nursing home facility, as
259 defined in section 19a-521 of the general statutes, and any nursing
260 facility management services agency, as defined in subsection (n) of
261 section 19a-490 of the 2008 supplement to the general statutes, as
262 amended by this act. All financial and other records of a nursing home
263 facility and nursing facility management services agency shall be kept
264 at such place and shall be preserved for such time as the State
265 Comptroller, or the Comptroller's designee, may by regulation or
266 order specify. The financial and other records of a nursing home
267 facility and nursing facility management services agency shall be made
268 available to the State Comptroller, or the Comptroller's designee, at all
269 reasonable times, in connection with any examination and audit. The
270 State Comptroller may summon witnesses, require the production of
271 any necessary books, papers or other documents and administer oaths
272 to witnesses, where necessary, for the purpose of an examination and
273 audit pursuant to this section. The State Comptroller may request the
274 Attorney General to petition the Superior Court for such order as may
275 be appropriate to enforce the provisions of this section. The State
276 Comptroller shall issue a report regarding the findings and any
277 recommendations regarding actions that should be taken arising from
278 an audit or examination conducted under this section. The State
279 Comptroller may recommend that the Commissioner of Social Services
280 seek the appointment of a receiver under section 19a-543 of the general
281 statutes, as amended by this act.

282 Sec. 7. (NEW) (*Effective October 1, 2008*) (a) Any person having
283 knowledge of any matter involving the violation of state laws or
284 regulations, mismanagement or gross waste of funds or danger to
285 patient safety as a result of such violation, mismanagement or gross

286 waste of funds occurring in any nursing home facility, as defined in
287 section 19a-521 of the general statutes, or by a nursing facility
288 management services agency, as defined in subsection (n) of section
289 19a-490 of the 2008 supplement to the general statutes, as amended by
290 this act, may transmit all facts and information in such person's
291 possession concerning such matter to the State Comptroller or an
292 employee or designee of the comptroller. The State Comptroller shall
293 make such investigation as the comptroller deems proper regarding
294 such report and any other information that may be reasonably derived
295 from such report. The State Comptroller may summon witnesses,
296 require the production of any necessary books, papers or other
297 documents and administer oaths to witnesses, where necessary, for the
298 purpose of an investigation pursuant to this section. Upon the
299 conclusion of the investigation, the State Comptroller shall, where
300 necessary, report any findings to the Commissioner of Social Services
301 or the Commissioner of Public Health, as applicable, or to the Chief
302 State's Attorney in matters involving criminal activity. The State
303 Comptroller shall not, after receipt of any information from a person
304 under the provisions of this section, disclose the identity of such
305 person without such person's consent unless such disclosure is
306 unavoidable, and may withhold records of such investigation, during
307 the pendency of the investigation.

308 (b) (1) No officer or employee of a nursing home facility, or of a
309 nursing facility management services agency, shall take or threaten to
310 take any personnel action against any employee in retaliation for such
311 employee's or officer's disclosure of information to the State
312 Comptroller or an employee or designee of the Comptroller under the
313 provisions of subsection (a) of this section.

314 (2) If an employee of a nursing home facility, or employee of a
315 nursing facility management services agency, alleges that a personnel
316 action has been threatened or taken in violation of subdivision (1) of
317 this subsection, the employee may notify the State Comptroller, who
318 shall make an investigation pursuant to subsection (a) of this section.

319 (3) Not later than thirty days after learning of the specific incident
320 giving rise to a claim that a personnel action has been threatened or
321 has occurred in violation of this subsection, an employee of a nursing
322 home facility, or employee of a nursing facility management services
323 agency, alleging that such action has been threatened or taken may,
324 after exhausting all available administrative remedies, bring a civil
325 action in accordance with the provisions of subsection (c) of section 31-
326 51m of the general statutes.

327 (4) In any proceeding under subdivision (3) of this subsection
328 concerning a personnel action taken or threatened against any
329 employee of a nursing home facility, or against any employee of a
330 nursing facility management services agency, which personnel action
331 occurs not later than one year after the employee first transmits facts
332 and information concerning a matter under subsection (a) of this
333 section to the State Comptroller, there shall be a rebuttable
334 presumption that the personnel action is in retaliation for the action
335 taken by the employee under subsection (a) of this section.

336 (5) Each nursing home facility and nursing facility management
337 services agency shall post a notice of the provisions of this section in a
338 conspicuous place which is readily available for viewing by the
339 employees of the nursing home facility and employees of a nursing
340 facility management services agency.

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

344 Sec. 8. (NEW) (*Effective October 1, 2008*) If the owner of real property
345 or any improvements thereon on which a nursing home facility, as
346 defined in section 19a-521 of the general statutes, is located is a related
347 party to the owner of the nursing home facility, the rent or any
348 payments for the use of such real property or improvements shall not
349 be in excess of an amount established by the Department of Social
350 Services as fair rent pursuant to section 17b-340 of the general statutes.

351 Any violation of this section shall constitute a substantial failure to
352 comply with the requirements established under chapter 368v for
353 purposes of disciplinary action pursuant to section 19a-494 of the
354 general statutes. In addition to any action under said section, the
355 Commissioner of Public Health may impose a civil penalty not
356 exceeding twenty-five thousand dollars for each violation. As used in
357 this section, "related party" means persons or organizations related
358 through an ability to control, ownership, family relationship or
359 business association, and includes persons related through marriage.

360 Sec. 9. (NEW) (*Effective October 1, 2008*) The proceeds of any loan in
361 which the owner of a nursing home facility, as defined in section 19a-
362 521 of the general statutes, has pledged, granted a lien or otherwise
363 encumbered the assets of such nursing home facility shall be used
364 solely for the purpose of operating such nursing home facility or
365 providing improvements to the nursing home facility. Any violation of
366 this section shall constitute a substantial failure to comply with the
367 requirements established under chapter 368v of the general statutes for
368 purposes of disciplinary action pursuant to section 19a-494 of the
369 general statutes. In addition to any action under said section, the
370 Commissioner of Public Health may impose a civil penalty not
371 exceeding twenty-five thousand dollars for each violation.

372 Sec. 10. (NEW) (*Effective October 1, 2008*) The owner of a nursing
373 home facility shall maintain insurance liability coverage in an amount
374 no less than: (1) For damages by reason of personal injury to, or the
375 death of, a person because of negligence or medical malpractice, in an
376 amount of two million dollars and in the amount of ten million dollars
377 per accident or event; and (2) for damages to property in an amount of
378 fifty thousand dollars per accident or event. A certificate of proof of
379 such insurance coverage shall be filed with the Commissioner of Public
380 Health. The Commissioner of Public Health shall adopt regulations, in
381 accordance with the provisions of chapter 54 of the general statutes, to
382 establish any additional insurance requirements and may increase the
383 minimum amounts provided for in this section as necessary to protect
384 public safety and welfare.

385 Sec. 11. Section 19a-490 of the 2008 supplement to the general
386 statutes is repealed and the following is substituted in lieu thereof
387 (*Effective October 1, 2008*):

388 As used in this chapter and sections 17b-261e of the 2008
389 supplement to the general statutes, 38a-498b of the 2008 supplement to
390 the general statutes and 38a-525b of the 2008 supplement to the general
391 statutes:

392 (a) "Institution" means a hospital, residential care home, health care
393 facility for the handicapped, nursing home, rest home, home health
394 care agency, homemaker-home health aide agency, mental health
395 facility, assisted living services agency, substance abuse treatment
396 facility, outpatient surgical facility, an infirmary operated by an
397 educational institution for the care of students enrolled in, and faculty
398 and employees of, such institution; a facility engaged in providing
399 services for the prevention, diagnosis, treatment or care of human
400 health conditions, including facilities operated and maintained by any
401 state agency, except facilities for the care or treatment of mentally ill
402 persons or persons with substance abuse problems; and a residential
403 facility for the mentally retarded licensed pursuant to section 17a-227
404 of the 2008 supplement to the general statutes and certified to
405 participate in the Title XIX Medicaid program as an intermediate care
406 facility for the mentally retarded;

407 (b) "Hospital" means an establishment for the lodging, care and
408 treatment of persons suffering from disease or other abnormal physical
409 or mental conditions and includes inpatient psychiatric services in
410 general hospitals;

411 (c) "Residential care home", "nursing home" or "rest home" means an
412 establishment which furnishes, in single or multiple facilities, food and
413 shelter to two or more persons unrelated to the proprietor and, in
414 addition, provides services which meet a need beyond the basic
415 provisions of food, shelter and laundry;

416 (d) "Home health care agency" means a public or private

417 organization, or a subdivision thereof, engaged in providing
418 professional nursing services and the following services, available
419 twenty-four hours per day, in the patient's home or a substantially
420 equivalent environment: Homemaker-home health aide services as
421 defined in this section, physical therapy, speech therapy, occupational
422 therapy or medical social services. The agency shall provide
423 professional nursing services and at least one additional service
424 directly and all others directly or through contract. An agency shall be
425 available to enroll new patients seven days a week, twenty-four hours
426 per day;

427 (e) "Homemaker-home health aide agency" means a public or
428 private organization, except a home health care agency, which
429 provides in the patient's home or a substantially equivalent
430 environment supportive services which may include, but are not
431 limited to, assistance with personal hygiene, dressing, feeding and
432 incidental household tasks essential to achieving adequate household
433 and family management. Such supportive services shall be provided
434 under the supervision of a registered nurse and, if such nurse
435 determines appropriate, shall be provided by a social worker, physical
436 therapist, speech therapist or occupational therapist. Such supervision
437 may be provided directly or through contract;

438 (f) "Homemaker-home health aide services" as defined in this
439 section shall not include services provided to assist individuals with
440 activities of daily living when such individuals have a disease or
441 condition that is chronic and stable as determined by a physician
442 licensed in the state of Connecticut;

443 (g) "Mental health facility" means any facility for the care or
444 treatment of mentally ill or emotionally disturbed persons, or any
445 mental health outpatient treatment facility that provides treatment to
446 persons sixteen years of age or older who are receiving services from
447 the Department of Mental Health and Addiction Services, but does not
448 include family care homes for the mentally ill;

449 (h) "Alcohol or drug treatment facility" means any facility for the
450 care or treatment of persons suffering from alcoholism or other drug
451 addiction;

452 (i) "Person" means any individual, firm, partnership, corporation,
453 limited liability company or association;

454 (j) "Commissioner" means the Commissioner of Public Health;

455 (k) "Home health agency" means an agency licensed as a home
456 health care agency or a homemaker-home health aide agency;

457 (l) "Assisted living services agency" means an agency that provides,
458 among other things, nursing services and assistance with activities of
459 daily living to a population that is chronic and stable; [and]

460 (m) "Mobile field hospital" means a modular, transportable facility
461 used intermittently, deployed at the discretion of the Governor, or the
462 Governor's designee, for the provision of medical services at a mass
463 gathering; for the purpose of training or in the event of a public health
464 or other emergency for isolation care purposes or triage and treatment
465 during a mass casualty event; or for providing surge capacity for a
466 hospital during a mass casualty event or infrastructure failure; and

467 (n) "Nursing facility management services agency" means any
468 person or entity that provides services in a nursing facility to manage
469 the operations of such facility, including the provision of care and
470 services.

471 Sec. 12. Subsections (a) and (b) of section 19a-491 of the general
472 statutes are repealed and the following is substituted in lieu thereof
473 (*Effective October 1, 2008*):

474 (a) No person acting individually or jointly with any other person
475 shall establish, conduct, operate or maintain an institution in this state
476 without a license as required by this chapter. Application for such
477 license shall be made to the Department of Public Health upon forms
478 provided by it and shall contain such information as the department

479 requires, which may include affirmative evidence of ability to comply
480 with reasonable standards and regulations prescribed under the
481 provisions of this chapter. The commissioner may require as a
482 condition of licensure that an applicant sign a consent order providing
483 reasonable assurances of compliance with the Public Health Code. In
484 the case of a nursing home facility as defined in section 19a-521, no
485 license shall be issued unless such facility is in compliance with (1) the
486 provisions of the Public Health Code related to the maintenance and
487 repair of all buildings and structures within which such an institution
488 is established, conducted or operated, or (2) if applicable, the
489 provisions of a consent order under subsection (b) of this section. The
490 commissioner may issue more than one chronic disease hospital
491 license to a single institution until such time as the state offers a
492 rehabilitation hospital license.

493 (b) [If any] No person acting individually or jointly with any other
494 person shall own real property or any improvements thereon, upon or
495 within which an institution, as defined in subsection (c) of section 19a-
496 490 of the 2008 supplement to the general statutes, as amended by this
497 act, is established, conducted, operated or maintained [and] who is not
498 the licensee of the institution [, such person shall submit a copy of the
499 lease agreement to the department at the time of any change of
500 ownership and with each license renewal application. The lease
501 agreement shall, at a minimum, identify the person or entity
502 responsible for] without a certificate that such real property or
503 improvements are in compliance with those provisions of the Public
504 Health Code relating to the maintenance and repair of all buildings
505 and structures within which such an institution is established,
506 conducted or operated. Such person shall apply biennially to the
507 Commissioner of Public Health for such certificate. The application
508 shall contain such information as the commissioner requires. The
509 commissioner shall conduct an inspection and investigation and shall
510 issue a certificate if such premises meet the requirements for such
511 certificate. If a violation is found as a result of an inspection or
512 investigation, the commissioner may require the owner to sign a

513 consent order providing assurances that repairs or improvements
514 necessary for compliance with the provisions of the Public Health
515 Code shall be completed within a specified period of time. Such order
516 shall include a civil penalty of not more than one thousand dollars for
517 each day that such owner is in violation of the provisions of such
518 order. The order may also include a provision for the establishment of
519 a temporary manager of such real property or improvements who
520 shall have the authority to complete any repairs or improvements
521 required by such order. The Department of Social Services may, upon
522 request of such manager, advance funds from Title XIX payments to
523 the facility to pay for the cost of such repairs or improvements
524 pursuant to section 119 of public act 07-1 of the June special session.
525 Upon request of the Commissioner of Public Health, the Attorney
526 General may petition the Superior Court for such equitable and
527 injunctive relief as such court deems appropriate to ensure compliance
528 with the provisions of the consent order. The provisions of this
529 subsection shall not apply to any property or improvements owned by
530 a person licensed in accordance with the provisions of subsection (a) of
531 this section to establish, conduct, operate or maintain an institution on
532 or within such property or improvements.

533 Sec. 13. Subdivision (2) of subsection (b) of section 19a-493 of the
534 general statutes is repealed and the following is substituted in lieu
535 thereof (*Effective October 1, 2008*):

536 (2) Any change in the ownership of a facility or institution, as
537 defined in subsection (c) of section 19a-490 of the 2008 supplement to
538 the general statutes, as amended by this act, owned by an individual,
539 partnership or association or the change in ownership or beneficial
540 ownership of ten per cent or more of the stock of a corporation which
541 owns, conducts, operates or maintains such facility or institution, shall
542 be subject to prior approval of the department after a scheduled
543 inspection of such facility or institution is conducted by the
544 department, provided such approval shall be conditioned upon a
545 showing by such facility or institution to the commissioner that it has
546 complied with all requirements of this chapter, the regulations relating

547 to licensure and all applicable requirements of the Public Health Code.
548 Any such change in ownership or beneficial ownership resulting in a
549 transfer to a person related by blood or marriage to such an owner or
550 beneficial owner shall not be subject to prior approval of the
551 department unless: (A) Ownership or beneficial ownership of ten per
552 cent or more of the stock of a corporation, partnership or association
553 which owns, conducts, operates or maintains more than one facility or
554 institution is transferred; (B) ownership or beneficial ownership is
555 transferred in more than one facility or institution; or (C) the facility or
556 institution is the subject of a pending complaint, investigation or
557 licensure action. If the facility or institution is not in compliance, the
558 commissioner may require the new owner to sign a consent order
559 providing reasonable assurances that the violations shall be corrected
560 within a specified period of time. Notice of any such proposed change
561 of ownership shall be given to the department at least ninety days
562 prior to the effective date of such proposed change. For the purposes of
563 this subdivision, "a person related by blood or marriage" means a
564 parent, spouse, child, brother, sister, aunt, uncle, niece or nephew. For
565 the purposes of this subdivision, a change in the legal form of the
566 ownership entity, including, but not limited to, changes from a
567 corporation to a limited liability company, a partnership to a limited
568 liability partnership, a sole proprietorship to a corporation and similar
569 changes, shall not be considered a change of ownership if the
570 beneficial ownership remains unchanged and the owner provides such
571 information regarding the change to the department as may be
572 required by the department in order to properly identify the current
573 status of ownership and beneficial ownership of the facility or
574 institution. For the purposes of this subdivision, a public offering of
575 the stock of any corporation that owns, conducts, operates or
576 maintains any such facility or institution shall not be considered a
577 change in ownership or beneficial ownership of such facility or
578 institution if the licensee and the officers and directors of such
579 corporation remain unchanged, such public offering cannot result in
580 an individual or entity owning ten per cent or more of the stock of
581 such corporation, and the owner provides such information to the

582 department as may be required by the department in order to properly
583 identify the current status of ownership and beneficial ownership of
584 the facility or institution. For purposes of this subdivision, beneficial
585 ownership includes ownership through any level or relationship of
586 parent and subsidiary corporations and partnerships. To the extent
587 required by this subdivision, the licensee of such facility or institution
588 shall provide to the department the identities of, and any other
589 information required by the department regarding the individual
590 shareholders, partners or members that have a beneficial ownership
591 interest in the facility or institution, as defined in subsection (a) of
592 section 19a-490 of the 2008 supplement to the general statutes, as
593 amended by this act.

594 Sec. 14. Section 19a-498 of the general statutes is repealed and the
595 following is substituted in lieu thereof (*Effective October 1, 2008*):

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

601 (b) The commissioner, or an agent authorized by the commissioner
602 to conduct any inquiry, investigation or hearing under the provisions
603 of this chapter, shall have power to inspect the premises of an
604 institution, issue subpoenas, order the production of books, records or
605 documents, administer oaths and take testimony under oath relative to
606 the matter of such inquiry, [or] investigation or hearing. At any
607 hearing ordered by the department, the commissioner or such agent
608 may subpoena witnesses and require the production of records, papers
609 and documents pertinent to such inquiry. If any person disobeys such
610 subpoena or, having appeared in obedience thereto, refuses to answer
611 any pertinent question put to such person by the commissioner or such
612 agent or to produce any records and papers pursuant to the subpoena,
613 the commissioner or such agent may apply to the superior court for the
614 judicial district of Hartford or for the judicial district wherein the

615 person resides or wherein the business has been conducted, setting
616 forth such disobedience or refusal, and said court shall cite such
617 person to appear before said court to answer such question or to
618 produce such records and papers.

619 (c) The Department of Mental Health and Addiction Services, with
620 respect to any mental health facility or alcohol or drug treatment
621 facility, shall be authorized, either upon the request of the
622 Commissioner of Public Health or at such other times as they deem
623 necessary, to enter such facility for the purpose of inspecting programs
624 conducted at such facility. A written report of the findings of any such
625 inspection shall be forwarded to the Commissioner of Public Health
626 and a copy shall be maintained in such facility's licensure file.

627 (d) In addition, the Commissioner of Social Services, or a designated
628 representative of the Commissioner of Social Services, at the request of
629 the Office of Health Care Access or when the Commissioner of Social
630 Services deems it necessary, may examine and audit the financial
631 records of any nursing home facility, as defined in section 19a-521, or
632 any nursing facility management services agency, as defined in
633 subsection (n) of section 19a-490 of the 2008 supplement to the general
634 statutes, as amended by this act. Each such nursing home facility shall
635 retain all financial information, data and records relating to the
636 operation of the nursing home facility or nursing facility management
637 services agency for a period of not less than ten years, and all financial
638 information, data and records relating to any real estate transactions
639 affecting such operation, for a period of not less than twenty-five
640 years, which financial information, data and records shall be made
641 available, upon request, to the Commissioner of Social Services or such
642 designated representative at all reasonable times. In connection with
643 any inquiry, examination or investigation, the commissioner or
644 authorized agent may issue subpoenas, order the production of books,
645 records and documents, administer oaths and take testimony under
646 oath. The Attorney General, upon request of said commissioner, may
647 apply to the Superior Court to enforce any such subpoena or order.

648 Sec. 15. Section 19a-503 of the general statutes is repealed and the
649 following is substituted in lieu thereof (*Effective October 1, 2008*):

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

658 Sec. 16. Section 19a-528a of the general statutes is repealed and the
659 following is substituted in lieu thereof (*Effective October 1, 2008*):

660 For any application of licensure for the acquisition of a nursing
661 home filed after July 1, 2004, any potential nursing home licensee or
662 owner must submit in writing, a change in ownership application with
663 respect to facility for which the change in ownership is sought. Such
664 application shall include such information as the Commissioner of
665 Public Health deems necessary and shall include whether such
666 potential nursing home licensee or owner (1) has had civil penalties
667 imposed through final order of the commissioner in accordance with
668 the provisions of sections 19a-524 to 19a-528, inclusive, or civil
669 penalties imposed pursuant to the statutes or regulations of another
670 state, during [a] the two-year period preceding the application, (2) has
671 had in any state [intermediate] sanctions, other than civil penalties less
672 than ten thousand dollars, imposed through final adjudication under
673 the Medicare or Medicaid program pursuant to Title XVIII or XIX of
674 the federal Social Security Act, 42 USC 301, as from time to time
675 amended, or (3) has had in any state such potential licensee's or
676 owner's Medicare or Medicaid provider agreement terminated or not
677 renewed. [.] The commissioner shall not approve such application to
678 acquire another nursing home in this state for a period of five years
679 from the date of final order on such civil penalties, final adjudication of
680 such [intermediate] sanctions, or termination or nonrenewal, except for

681 good cause shown. [Notwithstanding, the provisions of this section,
682 the Commissioner of Public Health, may for good cause shown, permit
683 a potential nursing home licensee or owner to acquire another nursing
684 home prior to the expiration of said five-year period.]

685 Sec. 17. Section 19a-543 of the general statutes is repealed and the
686 following is substituted in lieu thereof (*Effective October 1, 2008*):

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

703 (b) The court, upon a determination pursuant to subsection (a) of
704 this section that a receiver is appropriate, may, in addition to
705 appointing a receiver for the nursing home facility, appoint a receiver
706 for (1) any nursing facility management services agency, as defined in
707 subsection (n) of section 19a-490 of the 2008 supplement to the general
708 statutes, as amended by this act, to such facility; (2) any owner of real
709 property, or improvements thereon, on which such nursing home
710 facility is located; or (3) any legal entity owned or managed by a
711 related party to the nursing home facility owners. The court may issue
712 such orders as it deems necessary to any person that controls or
713 possesses assets necessary for the receiver to fulfill its duties as set

714 forth in section 19a-545. As used in this subsection, "related party"
715 means persons or organizations related through an ability to control,
716 ownership, family relationship or business association, and includes
717 persons related through marriage.

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

729 Sec. 18. Section 19a-547 of the general statutes is repealed and the
730 following is substituted in lieu thereof (*Effective October 1, 2008*):

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

747 (b) The court may remove such receiver in accordance with section
748 52-513. A nursing home receiver appointed pursuant to this section
749 shall be entitled to a reasonable receiver's fee as determined by the
750 court. The receiver shall be liable only in his official capacity for injury
751 to person and property by reason of the conditions of the nursing
752 home. He shall not be personally liable, except for acts or omissions
753 constituting gross, wilful or wanton negligence.

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

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

768 Sec. 19. Section 19a-561 of the 2008 supplement to the general
769 statutes is repealed and the following is substituted in lieu thereof
770 (*Effective October 1, 2008*):

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

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

777 (c) Any person or entity seeking a certificate to provide nursing

778 facility management services shall apply to the department, in writing,
779 on a form prescribed by the department. Such application shall include
780 the following information:

781 (1) (A) The name and business address of the applicant and whether
782 the applicant is an individual, partnership, corporation or other legal
783 entity; (B) the names of the officers, directors, trustees or managing
784 and general partners of the applicant, the names of the persons having
785 ten per cent or greater beneficial ownership interest in the applicant,
786 and a description of each such person's relationship to the applicant;
787 and (C) if the applicant is a corporation incorporated in another state, a
788 certificate of good standing from the state agency with jurisdiction
789 over corporations in such state;

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

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

808 (4) The location and description of any nursing facility in this state
809 or another state in which the applicant currently provides

810 management services or has provided such services within the past
811 five years.

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

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

822 (f) The department shall base its decision on whether to issue or
823 renew a certificate on the information presented to the department and
824 on the compliance status of the managed entities. The department may
825 deny certification to any applicant for the provision of nursing facility
826 management services at any specific facility or facilities where there
827 has been a substantial failure to comply with the Public Health Code
828 or other laws and regulations applicable to the operation of such
829 facility or facilities. If the department determines that a facility located
830 in another state for which the applicant has provided nursing facility
831 management services has substantially failed to comply with the laws
832 and regulations of such state applicable to the operation of such facility
833 or facilities, the department may deny certification to such applicant
834 for the provision of nursing facility management services in this state.
835 The department may limit or restrict the provision of nursing facility
836 management services by any applicant or may limit the facilities for
837 which it may provide such services.

838 (g) Renewal applications shall be made biennially after (1)
839 submission of the information required by subsection (c) of this section
840 and any other information required by the department pursuant to
841 subsection (d) of this section, and (2) submission of evidence

842 satisfactory to the department that any nursing facility at which the
843 applicant provides nursing facility management services is in
844 substantial compliance with the provisions of this chapter, the Public
845 Health Code and licensing regulations or other laws and regulations
846 applicable to the operation of such facility or facilities, and if the
847 applicant provides nursing facility management services in another
848 state, evidence satisfactory to the department that such facilities
849 substantially comply with the laws and regulations of such state
850 applicable to the operation of such facility or facilities, and (3) payment
851 of a three-hundred-dollar fee.

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

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

872 (j) The department may, in implementing the provisions of this
873 section, conduct any inquiry or investigation, in accordance with the
874 provisions of section 19a-498, as amended by this act, regarding an

875 applicant or certificate holder.

876 (k) No nursing facility management services certificate holder, who
 877 is a related party to the nursing facility owner, shall be paid fees,
 878 including expenses from a nursing facility for which it provides such
 879 services, in excess of the management fee permitted by the Department
 880 of Social Services in setting the Title XIX rate for such nursing facility.
 881 As used in this section, "related party" means persons or organizations
 882 related through an ability to control, ownership, family relationship or
 883 business association, and includes persons related through marriage.

884 (l) Any person or entity providing nursing facility management
 885 services without the certificate required under this section shall be
 886 subject to a civil penalty of not more than one thousand dollars for
 887 each day that the services are provided without a certificate.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	17b-352
Sec. 2	<i>from passage</i>	17b-339
Sec. 3	<i>from passage</i>	New section
Sec. 4	<i>from passage</i>	New section
Sec. 5	<i>from passage</i>	17b-4
Sec. 6	<i>October 1, 2008</i>	New section
Sec. 7	<i>October 1, 2008</i>	New section
Sec. 8	<i>October 1, 2008</i>	New section
Sec. 9	<i>October 1, 2008</i>	New section
Sec. 10	<i>October 1, 2008</i>	New section
Sec. 11	<i>October 1, 2008</i>	19a-490
Sec. 12	<i>October 1, 2008</i>	19a-491(a) and (b)
Sec. 13	<i>October 1, 2008</i>	19a-493(b)(2)
Sec. 14	<i>October 1, 2008</i>	19a-498
Sec. 15	<i>October 1, 2008</i>	19a-503
Sec. 16	<i>October 1, 2008</i>	19a-528a
Sec. 17	<i>October 1, 2008</i>	19a-543
Sec. 18	<i>October 1, 2008</i>	19a-547
Sec. 19	<i>October 1, 2008</i>	19a-561

HS	<i>Joint Favorable Subst. C/R</i>	APP
APP	<i>Joint Favorable</i>	
PH	<i>Joint Favorable</i>	