



**Testimony to the Human Services Committee
Regarding**

**Senate Bill 32, An Act Concerning the Financial Condition of Nursing
Homes**

**Senate Bill 34, An Act Implementing the Governor's Recommendations with
Respect to Social Services Programs**

**House Bill 5072, An Act Concerning Appropriations to Improve Nurse
Staffing Ratios**

**Presented by Mag Morelli, President
The Connecticut Association of Not-for-profit Providers For the Aging**

February 26, 2008

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

Good morning Senator Harris, Representative Villano, and Members of the Human Services Committee. My name is Mag Morelli and I am the president of the Connecticut Association of Not-for-profit Providers for the Aging (CANPFA), an organization of over 130 non-profit providers of aging services representing the full continuum of long term care. Thank you for this opportunity to comment on three bills before you today; Senate Bill 32, An Act Concerning the Financial Condition of Nursing Homes, Senate Bill 34, An Act Implementing the Governor's Recommendations with Respect to Social Services Programs, and House Bill 5072, An Act Concerning Appropriations to Improve Nurse Staffing Ratios.

I have submitted written testimony with additional information and therefore I will just summarize my testimony for you this morning.

Senate Bill 34

Medicaid Hospice Benefit

CANPFA supports the establishment of a Medicaid hospice benefit that will help to ensure the delivery of quality end of life care for all older adults.

Residential Care Home Issues

Reimbursement

CANPFA opposes the proposed rate cap for residential care homes. Residential care homes provide a unique combination of housing and personalized supportive services that are funded through supplemental state income sources. They are an affordable, community based option for many older adults who may need some assistance with activities of daily living. Unfortunately, residential care homes are at risk due to the rising cost of operations and years of limited reimbursement from the state. Without these homes, many residents would have to move to a much more expensive nursing home. It would be foolish for the state to lose this valuable level of care because of inadequate rates.

Mandatory Medication Administration Certification

CANPFA represents several not-for-profit residential care homes. We supported the creation of the medication administration certification program, but **we oppose mandating it.** The certified medication program was never intended to be a substitute for home care nursing as it is not appropriate for every type of medication or resident condition. Practically speaking, there are simply not enough certified personnel and it is difficult and expensive for residential care home employees to access the training. It should also be noted that the Department of Public Health is currently working on revising the regulations to make the certification training even more rigorous and the program even more restrictive. Finally, many homes, and particularly the smaller homes, are not able to assume the liability associated with the program. Therefore we must strongly oppose this proposal.

Special Needs Trust

CANPFA strongly supports the use of the Special Needs Trust to allow residential care home residents who are or become slightly over income for the State Supplement Program to be placed or remain in a residential care home rather than being forced to seek placement in a nursing home. CANPFA has long sought a solution to this problem and we are very pleased to see the utilization of the special needs trust being proposed for this purpose.

Nursing Home Reimbursement

It is unfortunate that the Governor's p does not include a rate increase for nursing home care. There are many homes facing financial distress due to inadequate Medicaid funding. A zero increase in the Medicaid reimbursement rate this fiscal year would be a devastating blow. If the rates remain stagnant, we will find many nursing homes facing desperate financial situations.

The current Medicaid rates do not cover the costs of providing nursing home care. **For CANPFA member homes alone, their Medicaid rates in total fall over \$17 million short of the actual calculated rates based on allowable**

cost. These millions of dollars in costs must be shifted to other sources, but because Medicaid is such a large part of the payer mix for most homes, the opportunity to cost shift is limited and the system is severely strained. And when the strain becomes too much - providers will teeter on bankruptcy and quality providers will be forced to leave the field.

We propose that the state allow the statutory rate setting formula to work as intended and allow for the rebasing of nursing home rates on an annual basis. And in recognition of the rising cost of doing business in this state, we also propose that the current rate setting formula be reviewed to raise the cost center caps to more realistic levels. We have attached a detailed explanation of the rate setting system and our proposal to raise the cost center caps.

Senate Bill 32

Nursing Home Financial Oversight and Distress

CANPFA members understand the current concern regarding the financial oversight of nursing home operations. We would be more than happy to work with the Committee, the Legislature, the Administration, and any other interested party to identify an efficient and effective method of monitoring the financial health of our nursing homes. We have attached to this testimony detailed comments regarding the financial oversight proposed in Senate Bill 32, *An Act Concerning the Financial Condition of Nursing Homes*. These comments are meant to be constructive and again, we offer our expertise and assistance to the Committee as you review this particular bill.

As an example of our comments, I would like to raise one of our concerns with the bill and that is the proposed method of financial monitoring that would require all 240 nursing homes to submit on a quarterly basis a listing of all their accounts payable by vendor and by days outstanding. Such reports would be voluminous as each home's report would contain thousands of vendors. We suggest that this may not be the most efficient way to monitor a nursing home's financial health and we believe it would be a misuse of the additional staffing resources that are being proposed for the Department. It also would add an unnecessary burden to all nursing homes.

We recommend that the state consider utilizing the information and reporting that is already provided to the state as the starting point for increased oversight. For example, information such as payables and receivables can be obtained from the annual nursing home cost reports and trended year by year. Trending can be very helpful in identifying a home that may be undergoing an adverse change in their financial condition. In addition, failure to pay the nursing home provider tax is an event that can be immediately communicated to Department. And, since the majority of receivables owed to nursing homes are from the state itself in the form of Medicaid payments, the

Department should be able to monitor the level of pending Medicaid payments that are outstanding by facility.

There is, in fact, an increasing level of financial distress that could be alleviated by expediting the Medicaid application process. It takes on average 6 to 9 months for a resident to be granted Medicaid eligibility and it can take much longer if there is a problem with the application. There are additional interruptions in payment when a resident returns from a Medicare qualifying hospital stay and Medicaid eligibility must be reestablished once the Medicare benefit is exhausted. The wait for payment on these pending Medicaid issues can be devastating to a facility. There are some CANPFA nursing homes that are currently waiting for hundreds of thousands of dollars in pending Medicaid payments. Providing additional resources to assist in the Department of Social Services' eligibility process would be a very effective way to positively influencing the financial health of nursing homes.

House Bill 5072

Appropriations to Improve Nurse Staffing Ratios

CANPFA supports the underlying goal of this proposal which is to raise the current minimum mandatory staffing levels to more appropriate levels. We appreciate the recognition that there will be a need to provide additional funding to support an increase in staffing levels. While on an average the state's nursing homes staff very well, there may be homes that will need to add additional staff and others that may need to increase wages to stay competitive and retain their current staff.

We would also like to seek clarification on the proposal that "all future funding for nursing homes be targeted to improve staffing ratios and patient care." The current statutory rate setting structure contains established criteria for what is to be considered an allowable cost for the purpose of calculating a reimbursement rate. These defined allowable costs are all related to providing resident care and we would like to reserve the right to comment on any specific changes that statutory rate setting structure that might be proposed.

In closing, I would like to express CANPFA's commitment to work with this Committee, the Legislature, and any other interested parties on the issues of ensuring integrity and quality in our system of nursing home care.

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

CANPFA, 1340 Worthington Ridge, Berlin, CT 06037 (860)828-2903 mmorelli@canpfa.org

Specific Comments on Bill No. 32 AAC The Financial Condition of Nursing Homes

Section 1: CON Requirement for Transfer of Ownership or Control

This provision establishes a CON requirement for any transfer of all or part of a nursing home's ownership or control. In considering a CON application involving a proposed change in ownership or control, the Department of Social Services must consider "the financial viability of the applicant, the impact on the facility rate and the financial condition of the applicant."

- Currently, when a facility intends to undergo a change in ten percent or more of its beneficial ownership, it must first obtain permission from the Department of Public Health. The Department's change of ownership approval process involves submission of a formal application with information about ownership structures at all levels, a physical plant inspection and background reviews of the applicant, including criminal background checks of individuals in an ownership capacity.
- It is unclear how this proposed CON requirement relates to the current Department of Public Health change of ownership process described above. It is also unclear what is meant by transfer of "all or part" or a facility's ownership or control.
- Some facilities may undergo internal reorganizations that have no effect on their financial condition, management or the quality of care they provide. For example, religious organizations sometimes reorganize corporate structures, and this may affect technical ownership of their affiliated not-for-profit nursing homes. We suggest that these types of reorganizations should be exempted from this section. At the very least, the Commissioner of Social Services should have the authority to determine that such changes are technical in nature and do not require CON review.

Section 2: Single Entity Ownership of Real Estate and Nursing Home Business

This provision requires that a "single entity" own both the nursing home business and the real estate on which the nursing home is located in order to qualify for issuance or renewal of a nursing home license. It would apply effective July 1, 2008. The Commissioner of Public Health may issue or renew such a license if "necessary to protect the health and safety of nursing home residents."

- Many nursing homes in the state, including some not-for-profit nursing homes, are structured with separate ownership of the real estate and the licensed nursing home business. In some cases, the real estate and licensed operating entities are related affiliates; in other cases they are not. There are several serious and concerning aspects of this proposed legislation:
 - First and foremost, it is practically impossible to expect providers to restructure property and facility ownership in such an unreasonably short time frame. The

discretionary exception will swallow the rule because no facility will be able to restructure in short order, and, as discussed below, single ownership may not be an option for some facilities.

- Second, because the bill applies to existing arrangements, it would violate the state and federal constitutions and other laws by illegally interfering with existing contractual arrangements, not only between landlords and tenants, but also between these entities and other parties, including lenders. Moreover, many arrangements simply will not work under single ownership, and to the extent owners of real estate and nursing home business entities must close their facilities or sell assets at a loss, this requirement could result, among other things, in an unconstitutional taking of property without due process in violation of state and federal constitutions.
- Third, this provision would discourage and, effectively, prohibit quality providers that cannot afford to acquire nursing home real estate from applying for licensure.
- Finally, the term “single entity” is not defined, and therefore it is unclear whether separate ownership of the real estate and the nursing home business within one corporate family might be permitted. In addition, no distinction is made between ownership of land only versus ownership of the real estate, including both the land and the facility. Some facilities own their buildings but have entered into ground leases for the land on which the facility is situated.

Section 4: Nursing Home Advisory Committee

This section amends current law establishing a Nursing Home Financial Advisory Committee by eliminating representatives of the nursing home industry (one nonprofit and one for-profit representative) from the Committee membership. In addition, it authorizes the Committee to “recommend appropriate action” when it receives a report relating to nursing home financial solvency.

- The Nursing Home Financial Advisory Committee should include representatives of non-profit and for-profit nursing homes.
- The term “appropriate action” is vague and requires further definition. At the very least, any “appropriate action” should be consistent with applicable statutes and regulations, and only remedies specifically authorized by statute should be imposed.

Section 5 Nursing Home Financial Condition

This section requires that all nursing homes in the state submit quarterly reports of accounts payable by vendor and by days outstanding to the Commissioner of Social Services. If such reports indicate that a facility may be experiencing “financial distress,” the Commissioner must require the facility to submit annual audited financial statements and may require the facility to report specific financial information such as debt agreements and interim financial statements. If the Commissioner determines that the facility has undergone an “adverse change in financial condition,” based on certain criteria specified in the section, then the Commissioner must notify the Commissioner of Public Health and require the facility to make specified monthly reports on cash availability, vendor payment status and employee payrolls. If the Commissioner determines that a facility is in “financial distress” that “may lead to the facility having insufficient resources to meet its operating costs,” the Commissioner must issue a report of such findings to the Nursing Home Financial Advisory Committee.

- This provision establishes an inefficient, unfocused and overly burdensome system for monitoring and analysis of nursing homes’ financial condition. It starts with an extremely broad net that would require that each nursing home submit quarterly reports listing every single vendor payable with days outstanding. For many facilities, this list could include thousands of vendors. Given that there are 240 nursing homes in the state, the state will face an overwhelming quantity of information to review and analyze – and nursing homes will face an overwhelming burden to provide it.
- The vast majority of facilities are financially sound and should not be subjected to this level of burden. While the Department expends time and resources sifting through quarterly payable reports, facilities that are truly financially impaired or jeopardized may escape scrutiny until it is too late.
- Notably, for many facilities, Medicaid payments are the largest and most aged receivable—often stretching out more than 90 days. There are often delays in Medicaid payments, which affect cash flow and, in turn, cause payables to age further.
- Moreover, the current Medicaid reimbursement system does not adequately reimburse nursing homes for their actual costs in providing care to residents. The system is designed with two tiers of caps; one tier imposes caps on direct, indirect and administrative and general costs. The other overall cap is imposed each year when the legislature passes the state budget. For CANPFA member facilities alone, imposition of these caps has resulted this year in \$26 million in disallowances of actual allowable costs incurred for resident care. With such significant shortfalls between reimbursement and costs, many nursing homes will experience financial distress. The best way to remedy this problem is by changing the nursing home Medicaid reimbursement system – not by collecting and poring through reams of payable information.

- In reviewing the volumes of payable information, the Department must cull out those facilities that “may be experiencing financial distress” and then take them to the next level of more heightened review. However, the bill contains no definition or criteria for what might constitute “financial distress.” Moreover, there is no opportunity for the facility to provide explanations for any issues that might be raised before being declared in “financial distress.” Perhaps it is assumed that the Department would contact facilities when it encounters potential payable issues, but there is no requirement that providers have a voice in the process.
- Once a facility is identified in “financial distress” that “may lead to the facility having insufficient resources to meet its operating costs,” then the Department must report the facility to the Nursing Home Financial Advisory Committee which, as discussed above under Section 4, may “recommend appropriate action.” The fact that “appropriate action” is left undefined and not limited by applicable law is further worsened by the failure of the bill to define what constitutes “financial distress.” Conceivably, a facility could be reported because the Department arbitrarily determines that it has certain payables on its quarterly report more than 90 days out, and then the Committee determines that appropriate action might be to prohibit new admissions until the debt is paid.
- The monitoring system should be designed to focus on key indicators that can be derived from information that is already readily available to the Department. Each year, nursing homes file Medicaid costs reports that include balance sheets. These filings contain information about revenues, accounts receivable and accounts payable that can be analyzed and trended.
- While the Department may claim that there is a time lag in relying on cost report filings for “key indicators” and trends, this information, coupled with other factors, such as Medicaid advance requests and records of unpaid taxes, could be used as an initial set of triggers for determining whether further review is warranted.
- It is worth noting that the Department of Social Services has not completed audits of nursing home Medicaid cost reports in a timely fashion. While these delays may be explainable due to staffing limitations, they must contribute, at least in some measure, the time lag in detecting and addressing concerns about nursing home financial conditions. Over the last few years, CANPFA has proposed legislation that would require the Department to complete Medicaid cost report audits in a timely fashion.
- In addition, the Department is aware of which nursing homes request Medicaid advances due to cash flow issues. It also has access to information on facilities that are delinquent in paying the nursing home user fee and other state taxes.
- Based on the trending analysis and other available information described above, the Department should be able to identify nursing homes with potential financial issues. The Department can then require submission of additional information and conduct

further reviews of a nursing home's financial condition. This review process should include formal opportunities for the facility to explain any questions or issues and to dispute any findings made before the matter is referred to other agencies or the Nursing Home Financial Advisory Committee for further action.

Section 6: Management Costs

This provision would require that entities managing nursing facilities report their "costs" annually to the Commissioner.

- The bill does not define what is meant by "costs." However, a management company's "costs" are irrelevant in any event. Nursing homes employing management companies already provide information on cost reports relating to the cost of management contracts, and the Department caps reimbursement for management fees.

Section 7: Rates of Indebtedness

This section would require the Commissioner of Social Services to consult with the Banking Commissioner and the executive director of the Connecticut Health and Educational Facilities Authority to "establish reasonable rates of indebtedness" for nursing homes. Facilities may not increase their indebtedness beyond these levels without permission from the Commissioner of Social Services.

- The term "rates of indebtedness" is unclear, since it could refer to interest rates as opposed to levels of debt in proportion to available funds.
- If the state intends to determine appropriate levels of indebtedness for use in measuring the financial viability of nursing homes, then the system used must take into account differences between for-profit and not-for-profit entities. For-profit entities must include an allowance for taxes, for example, when calculating income available for debt service. In addition, it may not make sense, as a policy matter, to require that funds of non-profits be tied up to satisfy established debt ratios, when those funds could be spent in furtherance of the facility's non-profit mission.

Section 8: Basis for Receivership

This section amends the nursing home receivership statutes by adding an additional basis for court appointment of a receiver: "such facility has made inappropriate use of state or federal funds that may jeopardize the financial solvency of the facility, as determined by the Commissioner of Social Services."

- This standard is vague and overly broad. There is no guidance on what constitutes "inappropriate use of state or federal funds" or what "may" jeopardize financial solvency of the facility.

The Connecticut Association of Not-for-profit Providers for the Aging

Connecticut Skilled Nursing Facility Rate Setting

The impact of statutory cost center caps and budgetary rate caps on nursing home rates.

There are three components included in the Medicaid rate setting system by which facilities do not get reimbursed for actual costs incurred:

- A. Unallowable costs as defined in the statutory rate-setting structure.
- B. Costs disallowed by the application of cost center caps within the statutory rate setting structure.
- C. Costs in excess of the arbitrary annual rate increase imposed through the state budget legislation

A. Unallowable costs

Costs not allowed because of the nature of the cost, e.g. bad debts and marketing. Although these are legitimate business costs, they are excluded from the allowable costs which set the basis for the Medicaid rate.

B. Disallowed Costs

Costs that would be allowable, but which exceed legislatively mandated ceilings within three categories of cost centers in the rate-setting structure. Cost centers include:

Direct costs: nursing costs and related fringe benefits. Two caps apply to this cost center: one for Fairfield County facilities and one for the rest of the state. The caps are set at 135% of the median, and are rarely exceeded.

Indirect costs: All other "patient related" costs such as housekeeping, laundry, supplies related to patient care, recreation, social services, dietary, etc. There is one statewide cap set at 115% of the median. **This cap should be increased.**

The administrative and general cost center: Administrative, physical plant, maintenance, and utility costs. There is one cap, set at the median, which means that by definition, 50% of skilled nursing facilities do not get these costs fully reimbursed in their rates. **This cap should be raised to at least recognize increased utility costs.**

These cost center caps alone result in a disallowance of over \$19 million for CANPFA-member skilled nursing facilities.

C. Costs in Excess of the Overall Cap

After application of the statutory rate setting system, as described above, the State generally puts an **overall cap** on nursing home rate increases when a budget is passed.

Example: For the fiscal year beginning July 1, 2007, rates were capped at 2.9% of the previous year. If a facility's previous-year rate was \$200 and the statutory rate-setting system PRIOR TO IMPOSING THE OVERALL CAP would have generated a calculated rate of \$220, the rate allowed would only have been \$205.80 (prior year's rate of \$200 plus a 2.9% increase). The nursing home's Medicaid rate would be \$14.20 a resident day less than the calculated rate of allowable costs.

The overall cap on nursing home rate increases resulted in a further disallowance of over \$17 million for CANPFA members this year.

It should be noted that simply increasing the caps in (B) above will do no good unless that increase is passed through by lifting the overall cap (C) above.