STATE OF CONNECTICUT

DEPARTMENT OF SOCIAL SERVICES

LONG TERM CARE OMBUDSMAN PROGRAM
25 SIGOURNEY STREET • HARTFORD, CONNECTICUT 06106-5033
Telephone Number: (860) 424-5200 Fax Number: (860) 424-4966

450
451
452
453
454
456
529.7
5312

2009 LEGISLATIVE TESTIMONY

Good morning, Senator Prague, Representative Serra, Senator Gaffey, Representative Bye and members of the Select Committee on Aging. My name is Nancy Shaffer. I am the State Long Term Care Ombudsman. I am here to testify in support of legislation before you today.

S.B. No. 450 (Raised) AN ACT CONCERNING NURSING HOME OVERSIGHT.

In Connecticut in 2008, we experienced the catastrophe known as "Haven Health". The fiscal deterioration of the fifteen Haven Healthcare skilled nursing facilities was the direct result of mismanagement of Medicare, Medicaid and private funds earmarked to care for residents, but sadly, spent for the personal aggrandizement of the corporate head. These homes, as we know, went into bankruptcy and left residents, families, staff and the citizens of Connecticut wondering how did this happen. Today we must ask how can we keep this from happening again? The solution begins, I believe, with responsible ownership of nursing facilities.

The human tragedy of the Haven fiasco continues. As recently as December of 2008, the Haven home in Waterford shut down operations as a skilled nursing facility-causing the disruption of the lives of about fifty frail and vulnerable individuals. By early December, 2008, most of the residents transferred to other homes in the general vicinity while a few were able to transfer to community living arrangements. Just two weeks ago, another one of the original fifteen Haven homes filed a letter of intent to close. Astonishingly, seven of the residents transferred from Waterford to the Jewett City/Griswold Haven home and will now probably be uprooted once again, after only a few short months of adjusting to their new "home". These are real people-mothers, fathers, grandparents, loved ones. It could be one of our own loved ones.

Connecticut must have clear expectations for quality care for the most vulnerable and frail members of our society. Both the government-who pays for the majority of care and the consumer-who requires the care, have the right to know who is providing that care as well as transparency related to fiscal solvency. When the entity who owns the actual physical asset of the nursing home has virtually no responsibility or accountability for finances or the adequacy of the care provided the system for expecting and providing quality care is broken. When the top priority for owners and investors is profit, rather than providing staffing and resources necessary to ensure quality care for our loved ones we must implement appropriate safeguards.

It is therefore essential for Connecticut to provide greater nursing facility oversight. We must know about facility ownership, nursing management services and financial solvency. Greater oversight of nursing home facilities may be the single most effective approach to ensuring that another Haven Healthcare catastrophe is not repeated. As State Ombudsman I fully support legislation that will ensure the examination of financial solvency of our nursing homes on an ongoing basis.

S.B. No. 454 (Raised) AN ACT CONCERNING NURSING HOME STAFFING LEVELS.

Every year, representatives of Resident Councils throughout Connecticut share systemic concerns on behalf of their long term care consumer members at the Statewide VOICES Forum. Nursing home staffing levels is an issue which is consistently raised. Last year, Ms. Toby Edelman, Senior Policy Attorney for the Center for Medicare Advocacy, Inc. spoke to Connecticut legislators about staffing issues. She stated, staffing is **"the single most important predictor of quality of care in nursing homes."** Research on the topic substantiates this statement-better quality of care and quality of life is provided to residents when there is sufficient staff.

The Connecticut requirement for nursing home staffing levels is 1.9 hours per patient per day, one of the lowest in the country. Data collected during the 2008 Legislative Session showed that many of Connecticut's nursing homes are staffing at closer to 3.4 hours per patient per day. Even with these higher staffing levels at many of our homes the Ombudsman Program receives complaints about substandard care and unmet needs of residents. Of the approximate 1700 complaints the Ombudsman Program received during the past Federal Fiscal Year, almost half were related to care issues. Complaints concern timeliness of care and needs not being met, to name a few.

I recently followed up with the family member of a resident of a Connecticut nursing facility. She stated to me "my mother was cared for by the state", meaning Medicaid paid for her care. I want to tell you how the "state" cared for her mother: her mother, bedbound and requiring total care, somehow fell out of her bed in the middle of the night and her foot became lodged in the heating element of the radiator next to her bed. She was not discovered and attended to for approximately forty-five minutes. By the time help arrived she suffered severe burns on her foot and spent three weeks in the burn unit of a major hospital, her foot had to be amputated. When returned from the hospital to the same nursing home, her daughter reported that despite her ordeal her mother was in fairly good physical health. She was eating and drinking, alert and aware of her surroundings. After only thirteen days back at the home, the resident was readmitted to the hospital dehydrated and malnourished. She passed away that day in the hospital. The daughter was told by a staff member of the nursing home "what do you expect, we're understaffed". The home received multiple citations by the Department of Public Health for care-related issues.

As I stated in testimony last year, if you ask a nursing home resident, what does quality of care mean to them they will tell you it means having someone to take them to the bathroom when they need to go to the bathroom...someone to offer them a fresh drink of water on a regular basis...someone to open their creamers, help them eat their hot meal when they're not able to do so on their own.

I am fearful that the dire financial times in Connecticut may create "a perfect storm" for problems for our long term care residents: reductions in Medicaid reimbursement will surely have significant ramifications: cuts in staff (again, technically 1.9 hours per patient per day is the minimum requirement though the obligation is to "staff to meet the needs of the patients") and services, stressed staff and many administrative challenges. I respectfully urge the General Assembly to give careful consideration to Connecticut's Medicaid reimbursement structure along the long term care continuum and the consequences for consumers if cuts are made.

Supervision and management of staff is also a key component of quality care and services and is an issue Connecticut long term care residents want to see addressed.

S.B. No. 455 (Raised) AN ACT CONCERNING THE NURSING HOME BILL OF RIGHTS.

The Long Term Care Ombudsman Program fully endorses strengthening the Resident Bill of Rights.

History shows that certain rights of residents are undermined by contract. For example, the Ombudsman Program receives frequent complaints that a resident's personal items have been lost. In particular, lost dentures are a significant issue. When a resident is admitted to a nursing home, it should be the nursing home's responsibility to develop a care plan that ensures the safety of the dentures. Nursing homes nearly always refer to the admissions agreement which states, "the facility will not be responsible for any personal effects, valuables, or money left in the possession of the resident". Per the home, this contract negates their responsibility for the dentures. It is disturbing to me that a facility is not held accountable for lost/missing items, particularly when an item is essential to an individual's health and well-being. Dentures are not simply a missing item, they are necessary to the health and well-being of the individual, as well as to his/her quality of life.

Some other examples of admissions agreements in Connecticut which waive and/or diminish residents' rights include:

-allowing transfer or discharge at the facility's discretion;
-allowing "disruptive or challenging behaviors" to be the basis for a transfer or discharge.

I know during these incredibly challenging fiscal times difficult decisions and choices must be made. Proposals before you may in fact raise questions about financial costs. I hope that the long term benefits and cost savings of some of the bills before you will help to inform and guide you during the legislative session.

The Long Term Care Ombudsman Program also supports the following proposals:

S.B. No. 451 (Raised) AN ACT ESTABISHING A SILVER ALERT SYSTEM.

In theory, a Silver Alert System is beneficial to Connecticut elders and their families. We have had instances in our state of elders with dementia or otherwise ill who have wandered from their homes and been at risk. The cost to the State for a Silver Alert System is not known. Hopefully, there is some ability to "piggy back" a Silver Alert System with our Amber Alert System.

S.B. No. 452 (Raised) AN ACT CONCERNING FUNDING FOR ADULT DAY CARE CENTERS.

Our Long Term Care Needs Assessment should be our guide as we outline the future of long term care in Connecticut. We know intuitively, personally, and from the results of this study, that living at home with services is above all else the most preferred choice for Connecticut's residents. Adult Day Care Centers are a vital component of services for elders and their families and that model of care is in jeopardy if we don't commit ourselves to its funding. The cost-savings in terms of keeping an individual in a private home vs. a nursing home, lost wages of caregivers, the negative impact on the health and well being of caregivers are indicators of the benefits of ensuring that our Adult Day Care Centers remain open and viable.

S.B. No. 453 (Raised) AN ACT CONCERNING FINANCIAL ASSISTANCE TO THE STATE'S ASSISTED LIVING PILOT PROJECTS

The Assisted Living Pilot Project has proven beneficial to residents and a cost-saving for Connecticut. It makes good sense to increase the numbers of elders able to remain in a managed residential community rather than be admitted to a nursing home. The proposal increases the number from 75 to 150 individuals enrolled in the pilot program, beneficial to both consumer and state government.

H.B. No. 5297 (Raised) AN ACT CONCERNING THE STATUS OF THE MONEY FOLLOWS THE PERSON

A report to the General Assembly on the status of the Money Follows the Person demonstration project makes good sense, will keep the legislators informed of progress and maintain public awareness of the project.

H.B. No. 5312 (Raised) AN ACT CONCERNING CRIMINAL BACKGROUND CHECKS FOR EMPLOYEES OF HOMEMAKER-COMPANION AGENCIES

The Ombudsman Program fully supports criminal background checks for all who care for frail, vulnerable individuals along the entire long term care continuum.

RESIDENT ADMISSIONS AGREEMENT

This is an agreement between _____ (the "facility"), _____ (the "resident"), and _____ (the "responsible party"). In consideration of the mutual promises set forth in this agreement, the facility, the resident (if capable of managing his or her affairs) and the responsible party hereby agree as follows.

I. GENERAL PROVISIONS REGARDING RESIDENT CARE AND SERVICES

1. Alternate Physician or Professional Provider of Service: The resident and responsible party agree that if the physician or any other professional provider of service designated by the resident or responsible party is not available to serve the resident, fails to serve the resident, or fails to comply with any applicable provision of federal or state law, including but not limited to the provisions of the Connecticut Public Health Code, the facility is authorized to obtain the services of a substitute physician or professional provider of service. Payment for such services will be made in accordance with Section II of this agreement.

2. Transfer to Hospital: The facility will arrange for the transfer of the resident to a hospital or other health care facility when any such transfer is ordered by the attending physician or a substitute physician as specified in Section I, Paragraph 1 of this agreement. The facility is not responsible for payment for care and services rendered to the resident by any hospital or any other health care facility.

3. Pharmacy Services: Pharmacy services are available through the facility. Residents whose care is paid for by Medicare Part A must utilize the pharmacy specified by the facility. When payment is not made under Medicare Part A, the resident or responsible party may choose another pharmacy only if that pharmacy will sign an agreement with the facility to provide services in accordance with all applicable federal and state statutes and regulations and the requirements of the facility, including but not limited to 24-hour service and delivery, labelling, unit dose form, and monitoring. The facility is authorized to use generic name medications except as otherwise ordered, in writing, by the resident's physician. The facility's Director of Nursing Services and the Consultant Pharmacist are authorized to destroy any excess or undesired medications in accordance with applicable law.

4. Release of Information: (a) The facility is authorized to release medical or other information about the resident that is necessary to complete insurance claims, determine coverage or eligibility and obtain payment from governmental agencies, including but not limited to the Connecticut Department of Social Services and the federal Center for Medicare and Medicaid Services and its Fiscal Intermediaries, respond to inquiries from governmental agencies providing reimbursement for the resident's care, and/or complete medical records. This authorization remains in effect for as long as necessary for the facility to secure reimbursement on behalf of the resident.

(b) The facility is authorized to release resident discharge planning summaries and medical information to any other health care institution or provider to which the resident is transferred or from which the resident is receiving care, and as otherwise required or permitted by law, throughout the resident's stay at the facility and thereafter if required or permitted by law.

5. Resident Identification: During the resident's stay at the facility, the facility is authorized to require a standard method of resident identification, e.g., an identification bracelet or photographic print.

6. Resident's Personal Effects: The resident and responsible party agree that personal clothing and effects and personal spending money for the resident will be provided from the resident's own funds. Although the facility will work to see that misplaced belongings are recovered, the facility will not be responsible for any personal effects, valuables, or money left in the possession of the resident.

7. Leaves of Absence: The facility and its owners, directors, officers and employees assume no responsibility for any personal injury, illness, or deterioration in the resident's condition that may occur which the resident is temporarily absent from the facility with or without physician or facility approval. The resident and responsible party release the facility, its owners, directors, officers and employees from all liability for any personal injury, illness or deterioration in the resident's condition that may occur while the resident is temporarily absent from the facility.

8. Transfer or Discharge by Facility: In accordance with applicable law, the facility may transfer or discharge the resident from the facility when the transfer of discharge is necessary for the resident's welfare; when the resident's health has improved so that the resident no longer needs the services provided by the facility; when the health or safety of other individuals in the facility is endangered; when the resident's account is more than

fifteen days in arrears (unless the resident is eligible for Medicare or Medicaid); or if the facility ceases to operate. The resident or responsible party will be given thirty days' notice of any such transfer or discharge except in certain emergency circumstances as specified by law or when the resident has resided in the facility for less than thirty days; in such cases, the facility will provide as much notice as is practicable.

At the end of any applicable notice period, if the resident or responsible party has failed to make other appropriate arrangements for the resident's care, the resident and responsible party agree that the facility may discharge and deliver the resident to the care of the responsible party at the expense of the resident and/or responsible party.

9. Transfer or Discharge Requested by Resident: The resident and responsible party agree to give at least fifteen (15) days' advance written notice to the facility regarding any transfer or discharge requested by the resident. If such notice is not provided, the per diem rate then in effect may be charged by the facility for that period of time. Nothing in this agreement shall be construed as requiring the resident to remain in the facility against his or her will for any length of time.

10. Resident's Bill of Rights: The resident and/or responsible party acknowledges receipt of, prior to or at the time of admission, a copy of the Residents' Bill of Rights.

11. Compliance with Facility Rules and Regulations: The resident and responsible party agree to comply with all rules and regulations established by the facility and acknowledge receipt of a copy of current facility rules and regulations.

II. FINANCIAL AGREEMENTS

1. Basic Per Diem Charge: The facility agrees to provide room, board, and general nursing care to the resident for a basic per diem charge.

2. Ancillary Charges: Ancillary charges are made for services, materials, and equipment not included in the basic per diem rate.

Ancillary charges include physician's services, medications, pharmaceutical services, sundries, medical supplies, rental equipment, personal telephone, beauty and barber services, dry cleaning, laboratory services, x-ray services, oxygen services, and ambulance and other transportation services. Treatment ordered by the attending physician will be provided for residents in need of physical, occupational, speech and psychiatric therapy, as long as private payment or Medicaid or Medicare reimburse-

ment for such charges is available. Dental, podiatry, optometry and private duty nursing services are provided on request or as ordered by the attending or substitute physician. These services will be billed to the resident or responsible party.

3. Billing Practices: It is the policy of the facility to charge the basic per diem rate for the day of admission and the day of discharge except when prohibited by law. Account statements are mailed prior to the first of each month for that month's care. These statements are payable upon receipt. The resident or responsible party will be given thirty-day advance written notice prior to any private pay rate increase.

4. Medicare/Medicaid. When services are paid by Medicare, Medicaid or private insurance, the resident or responsible party will pay any applicable co-pay, deductible, applied income and similar amounts to the facility in accordance with the requirements of the applicable payor.

5. Bed Hold Charges: The facility will reserve the bed of a private-pay resident who has been transferred to a hospital as long as payment is available at the applicable private pay rate to reserve the bed. The resident and responsible party agree that, in the event of such a transfer, the facility shall reserve the bed and that payment will be made for reserving the bed until such time as the facility is notified by the resident or responsible party that the bed should no longer be reserved.

In the case of a Medicaid-assisted resident, the facility will reserve the bed for up to seven days as long as the facility has not received information that the resident is not expected to return to the facility. The facility also will reserve the bed for up to an additional eight days as long as the facility has not received information that the resident is not expected to return to the facility. If a Medicaid-assisted resident wishes to reserve his or her bed during a period of hospitalization for any other or longer period of time, the bed will be reserved as long as payment is made by the resident or responsible party at the facility's usual Medicaid per diem rate.

The Medicare program does not pay for reserving a bed during hospitalization. The resident's underlying source of payment (private pay or Medicaid) will govern reserving a bed when a resident receiving Medicare Part A benefits is transferred to a hospital.

6. Late Charges: In the event that payment in full has not been received by the last day of the month in which the statement is dated, a service charge of one percent per month of the outstanding balance will be added to the bill. The resident and

responsible party agree to reimburse the facility for any bank charges arising from checks returned due to insufficient funds or for any other reason.

7. Refund Policy: The resident or responsible party making advance payment will be refunded the full amount for any applicable unused days in accordance with applicable law.

8. Medicare or Other Applicable Insurance: The resident and responsible party agree to apply promptly for, or assist the facility as necessary in establishing eligibility or otherwise applying for, any applicable Medicare or other insurance benefits. The resident and responsible party hereby request that payment of any authorized Medicare benefits be made on the resident's behalf to the facility or other provider of services or, when applicable, directly to the resident.

9. Medicaid Assistance: With respect to applying for and receiving Medicaid (Title XIX) assistance, the resident and responsible party agree as follows:

(1) At the time that the resident's assets approach ~~twenty~~ thirty thousand dollars (~~$20~~ $30,000.00), if the resident does not have monthly income sufficient to pay for the cost of care and services, the resident and responsible party agree to inform the facility of the status of the resident's assets and to make prompt application for Medicaid assistance to the Connecticut Department of Social Services.

(2) The resident and responsible party agree to provide all information that may be requested by the Connecticut Department of Social Services in connection with the application in accordance with any deadlines established by the Department.

(3) The resident and responsible party agree to inform the facility of the status and progress of application and, upon the request of the facility, to provide the facility with copies of any information and documentation supplied to the Connecticut Department of Social Services in connection with the application.

(4) The resident and responsible party agree to act promptly and expeditiously to establish and maintain eligibility for Medicaid assistance, including but not limited to taking any and all necessary action to ensure that the resident's assets are appropriately reduced to and remain within allowable limits for Medicaid assistance as established by the Connecticut Department of Social Services.

(5) If the responsible party has received a transfer of assets from the resident that results in the resident's ineligibility

for Medicaid assistance, the responsible party agrees that these assets, or an amount of the responsible party's funds at least equal to these assets, will be used to pay for the cost of care and services rendered to the resident until the resident is determined to be eligible for Medicaid assistance by the Connecticut Department of Social Services in accordance with applicable law.

(6) The filing of an application for Medicaid assistance does not excuse the resident or responsible party from continuing to make payment to the facility in accordance with the terms of this agreement and applicable law. If payment is made for any period during which the resident is later determined to be eligible for Medicaid assistance, a prompt refund will be made by the facility as required by law.

(7) The resident and responsible party agree that, during the pendency of any application for Medicaid assistance, the resident's monthly income, less a personal needs allowance as established by the Connecticut Department of Social Services, will be paid to the facility on or before the tenth day of each month. The resident and responsible party further agree that, if the resident is determined by the Connecticut Department of Social Services to be eligible for Medicaid assistance, the amount of the resident's monthly income established by the Department as "applied income" will be paid monthly to the facility on or before the tenth day of each month.

10. Responsible Party Control of or Access to Resident's Funds: If the responsible party has control of or access to the resident's income and/or assets, the responsible party agrees that these funds shall be used for the resident's welfare, including but not limited to making prompt payment for care and services rendered to the resident in accordance with the terms of this agreement.

11. Financial Disclosure: The resident and responsible party agree to complete any financial disclosure documents that are required by the facility within fifteen days of the date of the resident's admission to the facility (if not completed prior to admission) and to provide updated financial information within fifteen days of the facility's request for same. The resident or responsible party who completes any financial disclosure documents required by the facility regarding the resident's income and assets represents that the information furnished thereon is true, complete and accurate.

III. OTHER TERMS OF AGREEMENT

1. If the resident is deemed eligible for Medicare benefits or Medicaid assistance, the laws and regulations governing those programs will control this agreement.

2. If this account is sent to an attorney for collection, the resident and responsible party agree to pay all costs and reasonable attorneys' fees associated with any collection action.

3. The parties agree that, should any provision of this agreement be declared invalid by any court of competent jurisdiction or rendered invalid by any statute or regulation, the remainder of this agreement will remain binding and in full force and effect.

4. If any party to this agreement at any time elects not to require compliance with a particular term of this agreement, this election shall not be construed as a waiver of that party's right to require compliance with that or any other provision at any future time.

5. No amendment or waiver of any provision of this agreement shall be valid unless in writing signed by all parties affected by the amendment or waiver.

6. All parties acknowledge that this agreement constitutes the complete understanding between the parties and that no oral representations not stated herein are relied upon.

7. The resident or responsible party may terminate this agreement upon fifteen (15) days' written notice. However, termination of this agreement by the resident or responsible party will become effective only upon removal of the resident from the facility. Termination of this agreement will not relieve the resident or responsible party from liability for any sums due and owing pursuant to this agreement.

8. The effective date of this agreement is the date of the resident's initial admission to the facility. This agreement will remain in effect during and following any temporary absence of the resident from the facility (including but not limited to absence due to hospitalization or home leave).

The initial daily rate is $_____ . This daily rate may be increased at any time in accordance with Section II, Paragraph 3, of this agreement.

IV. OBLIGATIONS OF THE PARTIES

1. The execution of this agreement will constitute an acceptance on the part of the facility, the resident and the responsible party to undertake faithfully all of the obligations of this agreement.

2. The responsible party does not personally guarantee or serve as surety for payment for the care provided to the resident by the facility. The responsible party acknowledges and agrees that he or she wants the resident to be admitted to and to receive the care and services provided by the facility; that he or she is making certain promises in this agreement; and that the facility is admitting the resident and providing care and services in reliance upon these promises. The responsible party is personally liable for any damages incurred by the facility due to the responsible party's failure to fulfill these promises.

THE UNDERSIGNED CERTIFY THAT THEY HAVE READ AND AGREE TO THE FOREGOING, TO THE WHOLE AND ENTIRE AGREEMENT BETWEEN THE PARTIES, AND THAT THEY HAVE RECEIVED A COPY OF THIS AGREEMENT.

Witness	Signature of Resident (if the resident is managing his or her affairs)	Date
Witness	Signature and Title of Party Acting for Resident (Conservator of Estate, power of attorney, or relative, if resident is not managing his or her affairs)	Date
Witness	Signature of Responsible Party	Date
Witness	Signature of Administrator or Designee	Date

Billing Address: