



Office of The Attorney General
State of Connecticut

*TESTIMONY OF
ATTORNEY GENERAL RICHARD BLUMENTHAL
BEFORE THE SELECT COMMITTEE ON AGING
JANUARY 27, 2009*

I appreciate the opportunity to support the concept of Senate Bill 450, An Act Concerning Nursing Home Oversight and to urge the committee's consideration of an amendment to comprehensively strengthen the state's authority over this critical industry that provides vital health services to our seniors.

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

While Senate Bill 450 addresses one of these goals by reformulating the Nursing Home Finance Advisory Committee, there are numerous other critical changes in our statutes that need to be addressed. I have attached an amendment to Senate Bill 450 that strengthens state oversight of this industry by restricting the use of nursing home assets to fund other business ventures of the nursing home operator, requiring independent audits and increased financial reporting to the state, and increasing civil penalties and administrative investigatory powers. Specifically, the proposal:

1. requires the state to approve any transfer of ownership or control of a nursing home (section 1);
2. adds the Comptroller to the Nursing Home Advisory Committee and eliminates the two appointees from the industry. The Committee shall quarterly meet with legislative leaders on issues involving nursing home finances and oversight (section 2);
3. requires nursing homes to submit independent annual financial audits to the Commissioner of Social Services and authorizes the Commissioner of Social Services to require annual cost reports from nursing facility management services agencies or any person with a 10% ownership in such agency and quarterly financial

reports from nursing homes if there is concern about the financial stability of the nursing home (section 3);

4. limits fees that a nursing home pays to a nursing home management company to operate such nursing home if the management company is related to the owner of the nursing home (section 4);
5. eliminates redundant regulation-making authority and reporting language (section 5);
6. limits lease payments of a nursing home to a property owner is related to the nursing home owner to no higher than the reasonable rate established by the Commissioner of Social Services, unless such higher rate is approved by DSS (section 6);
7. requires that any loan proceeds secured by the nursing home facility assets must be used to pay for the nursing home operations or facility improvements unless approved by the Commissioner of Social Services (section 6);
8. imposes a civil penalty of up to \$25,000 per violation for exceeding approved limits on lease payments or use of loan proceeds (section 6);
9. requires annual reporting of nursing home proof of liability insurance for negligence, property damage or medical malpractice to DSS as part of the annual cost report. DSS shall report such insurance coverage information to the Human Services Committee and the Nursing Home Advisory Committee (section 7);
10. defines nursing home management services certificate holder. (section 8);
11. establishes civil penalties and appointment of a temporary receiver for any nursing home property owner who fails to repair or improve the facility in order to comply with the Public Health Code (section 9);
12. requires nursing home owners to provide DSS with the identities of all individuals and entities that have a beneficial ownership in such facility and clarified the definition of beneficial ownership (section 10);
13. expands subpoena authority of the Department of Public Health and the Department of Social Services relating to oversight of nursing homes and nursing home operators (section 11);
14. authorizes DPH to seek injunctive relief to prevent the management of a nursing home by an unlicensed nursing home services agency (section 12);
15. strengthens the Commissioner of DSS's authority to deny licensure to a nursing home owner who has been the subject of sanctions in the previous 5 years (section 13);

16. broadens the authority of a court appointed receiver to control assets related to the operations of the nursing home, including a receiver for nursing home management or property owner, or related entity providing goods or services to the nursing home, defines severe financial distress' under which a receivership may be established and allows DSS to provide further articulation of criteria that defines severe financial distress (section 14);
17. limits a court from authorizing a receiver to pay rental cost and other property related costs beyond the DSS fair rental allowance (section 15);
18. broadens the court's discretion in selecting a receiver for a nursing home and clarifying that state advance payment debts after a receiver is appointed constitutes a priority debt (section 16);
19. tightens DPH licensing requirements for nursing home management services by allowing the Commissioner to take into consideration the nursing home management company's experience in other states as part of the licensing process, including requiring a certificate of good standing from the regulating entity in states in which the management company operates, and imposes civil penalties of up to \$5,000 per class A and class B violations and civil penalties of up to \$1,000 per day for providing nursing home management services without a certificate (section 17).

I urge the committee's favorable consideration of this amendment. I look forward to working with the committee on this issue.