

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

Testimony of the
Connecticut Association of Not-for-profit Providers For the Aging

6402
6400

Presented to the Human Services Committee

Regarding

House Bill 6402, An Act Concerning Maximization of Medicaid Reimbursement for the State of Connecticut and Federal Medical Assistance Percentages

House Bill 6400, An Act Concerning the Strengthening of Nursing Home Oversight

February 17, 2009

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 Doyle, Representative Walker, and members of the 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 150 non-profit providers of aging services.

I am pleased to be here today to speak in support of **House Bill 6402, An Act Concerning Maximization of Medicaid Reimbursement**, and to provide comment and additional written testimony on **House Bill 6400, An Act Concerning the Strengthening of Nursing Home Oversight**.

Regarding House Bill 6402, we believe that it is imperative that Connecticut act swiftly to identify and implement ways to maximize federal matching funds through the Medicaid program. Medicaid is an important and essential program and it is vital that we find the financial resources needed to maintain and strengthen the services that are provided through it. Toward that goal, we would request that the mandate of this bill specify that all additional federal funding received through maximizing the federal match be used to enhance the current Medicaid funding and not merely to replace the state's current share of funding.

Regarding House Bill 6400, CANPFA understands the concern regarding the financial condition of our state's nursing homes. In fact, we should all be concerned. Our state's nursing homes are struggling to maintain operations as they care for an increasingly high level of acuity resident with increasingly inadequate Medicaid rates of reimbursement.

As an association, CANPFA would like to be helpful in developing an effective method of monitoring the financial health of our nursing homes. We have listed below our recommendations on the principles that we recommend be incorporated into such a process. We have taken into consideration the need to avoid additional costs or financial burden to either the state or the nursing homes, and we believe that this can be done by using the financial data that is already being submitted to the state by the nursing homes.

We also have submitted specific comments on this particular bill below, and we are in the process of developing a more extensive legal memorandum on the financial oversight legislation that has been proposed this session. We will provide that memorandum to the committee as soon as it is completed.

In general our recommendations include the following principles:

- That the state utilize information that is already provided to the Department of Social Services and the Department of Public Health as the starting point for improving oversight. Much information is provided, but not all of it may currently be used for financial oversight.
- That state agencies be held accountable for the oversight functions they are expected to perform. Guidance from the Legislature on oversight priorities may be extremely helpful in improving the current oversight and accomplishing the Legislature's goals.
- That the Nursing Home Advisory Committee be activated and utilized to advise, guide and coordinate the oversight functions carried out by the various state agencies and that representatives from the nursing home field remain on the committee.
- That we not create an additional, unnecessary state audit. The Department of Social Services currently audits the cost reports of all nursing homes, but not in a timely fashion. We recommend that the cost report audit function be done on a more timely basis so as to identify both reporting errors and issues of concern much sooner.

Thank you for this opportunity to comment and please contact me if you have any questions regarding this testimony.

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CANPFA's COMMENTS on HB 6400 by Section

Section 1: Imposes CON approval requirement when a facility transfers "all or part of its ownership or control." In these cases, DSS must review the financial viability of the applicant, impact on facility rate and the applicant's financial condition.

The only objection we have to this proposed, additional CON requirement is a practical one. The requirement would add to transaction costs because facilities may need to engage legal counsel and/or consultants for the CON process. Moreover, it could delay transactions; currently, it often takes 4 to 6 months to secure CON approval, but such a delay could seriously hamper nursing home sales, which often must occur quickly, particularly in distressed situations.

A corporate restructuring could also trigger this new CON provision. For example, if a health care system that includes a non-profit nursing home went through a corporate reorganization that changes the sole member of the nursing home entity, then CON approval would be necessary.

- **RECOMMENDATION:** If this was not the intent, then we suggest that this provision be limited to facility sales, or that an expedited process be established for partial transfers of ownership due to restructuring.

Note of information: Nursing homes are currently required to obtain DPH approval of any change of ownership. This approval process involves a physical plant inspection, review of the proposed licensee's track record in Connecticut and other states and criminal background checks of owners.

Section 2: Amends current statute (17b-339) establishing Nursing Home Financial Advisory Committee by eliminating nursing home representatives and the director of OFA.

- **RECOMMENDATION:** We strongly recommend that the nursing home industry representation on this committee be maintained. We believe that the expertise brought to the committee by industry representatives would be extremely valuable to the work of the committee.

Section 3: This section requires each nursing home to obtain an annual financial audit and be subject to additional financial reporting requirements to DSS, including submission of quarterly reports on accounts payable if required by DSS. It also defines what would be considered an adverse change in financial condition and calls for such a change to be reported to the advisory committee.

The not-for-profit nursing homes undergo an annual independent financial audit and therefore this provision would not necessarily be onerous to these facilities. However, there are for-profit homes concerned about the added expense of an annual independent audit.

We have some concerns as to the extent that any additional financial reports would be subject to freedom of information statutes.

The criteria for determining an adverse change in financial condition is reasonable, but we must draw attention to the fact that the third condition, **“a high proportion of accounts receivable more than ninety days old,”** would most likely be due to the large portion of your Medicaid applications to the Department of Social Services that are held as pending. The increasing number of pending Medicaid applications is a source of great financial stress for all nursing homes and should be addressed by the Legislature.

- **RECOMMENDATION:** In order to facilitate a timely and efficient method of monitoring the financial health of nursing homes, we recommend that **the improved monitoring of financial health be done through an annual review of key indicators that can be derived from the Medicaid costs reports already submitted annually by each nursing home. Key indicators could include revenues, accounts receivable and accounts payable information that can be analyzed and trended on an annual basis. (NOTE: The annual cost reports currently submitted by each nursing home provide a wealth of information. We believe that the state needs only to require that DSS audit these cost reports in a more timely manner and instruct the DSS auditors to review the financial information that is provided in addition to cost information.)**

Section 4: This section caps on management fees for management companies that are related to the owner of the nursing home.

- This section imposes a cap on management fees paid by a related-party management company. DSS already limits the extent to which it will recognize management fees for purposes of Medicaid rates. However, this section goes well beyond caps on costs covered by Medicaid rates. It attempts to regulate private contracts through an overall cap on management fees that can be charged. While the section is limited to related party management contracts, it raises concerns as to whether it unlawfully interferes with contracts. Moreover, the definition of “related party” is overly broad, and as such would cover a wide range of relationships (including mere “business associations.”).

Section 6: This section requires that the Commissioner of Social Services, Banking Commissioner and CHEFA's executive director establish reasonable rates of indebtedness and reasonable lease payments and requires that the proceeds of any loan in which the owner of a nursing home has pledged, granted a lien or otherwise encumbered assets of the facility must be used solely for purposes of operating the facility or making improvements to the facility. Failure to comply can result in disciplinary action and/or civil monetary penalties up to \$25,000.

This provision's imposition of a cap on loans could negatively affect many CANPFA members that provide services along the continuum. It is possible that a non-profit organization with housing and/or other services might seek financing for general campus improvements or expansions that include the nursing home. This provision effectively would prohibit the member from spending loan proceeds on anything but the nursing home segment of the continuum, although it does provide some leeway by allowing for the Commissioner to grant exceptions.

- It may also preclude refinancing – use of loan proceeds to pay off a prior loan does not appear to be a permitted use.
- Moreover, it applies to all nursing homes, not just those that participate in Medicaid.

While most CANPFA members own their facilities and do not pay rent, some CANPFA members do make lease payments. CANPFA is therefore concerned about Section 6's imposition of a cap on rent paid by a nursing home. Both the rent cap and the loan cap extend beyond regulation of Medicaid costs. As with the related party management fee cap discussed above, these caps apply broadly to private contracts. As such, there is a question as to whether such regulation raises legal issues, both in the concept and design.

Section 7: This section requires that a nursing facility submit proof of insurance liability coverage annually to the Department of Social Services.

We have no objection to this mandate, but this provision is already addressed in regulation. Currently the Public Health Code, § 19-13-D8t(b)(2)(B) requires that "certificates of malpractice and public liability insurance" be submitted with any application for the grant or renewal of a license to operate a nursing home.

Section 13: This section defines the term "severe financial distress" and designates it as a cause for placing a nursing home into state receivership.

First, we believe that the definition of "severe financial distress" is much too broad, vague and subjective. It is also unclear as to whether all six criteria must be reached in order to be considered in distress or if just one will trigger the determination.

Second, we also object to the expansion of authority that empowers the state to appoint a receiver not only for the nursing home, but also for various other legal entities associated with that nursing home, including any owner of real property where the nursing home is located. This is of great concern because many non-profit nursing homes are affiliated with larger sponsoring entities such as churches, fraternal organizations, and trusts which would possibly be subject to state receivership based upon the financial condition of the nursing home.