



Testimony Before the Public Health Committee

March 6, 2009

Good Morning Senator Harris, Representative Ritter and members of the Public Health Committee. My name is Gary Richter. I am the Director of Certificate of Need and Rate Setting at the Department of Social Services. I am pleased to be here today to testify on a bill raised at the request of Governor Rell.

S. B. No. 845 AN ACT CONCERNING OVERSIGHT OF NURSING HOMES.

This bill implements the Governor's nursing facility financial oversight initiative. As you know, the Governor proposed similar legislation last year in response to the disturbing bankruptcy filing by the operator of fifteen nursing facilities in the state. The proposed legislation was fine-tuned during the session through a work group comprised of DSS, OPM and DPH staff, legislators and legislative staff and representatives from the Office of the Attorney General. Unfortunately, that legislation was not adopted in 2008.

This bill is complex and has twenty sections but its purpose is simple- increase oversight of nursing home finances to avoid bankruptcies and state receiverships that cause uncertainty and stress for the elderly and disabled residents and staff of affected facilities.

Currently, ten nursing facilities are under the supervision of a State Superior Court- appointed receiver and six facilities are operated under Federal bankruptcy protection. That is too many. While Medicaid rate increases over the past several years have been limited due to state budget constraints and competing funding priorities, we believe that a significant factor that led to the financial distress of a number of facilities was irresponsible financial management.

Bill 845 puts in place a nursing home oversight program that should help avoid future financial meltdowns with four main components:

- Nursing Home Financial Oversight Committee
- Review ownership changes through CON process
- Limit management company and rent/debt expense
- Additional financial reporting by homes

Sections 1 (DPH Web link) and 2 (Nursing Home Bed Shortage/Surplus review) of the bill are identical to sections added to the oversight bill that was considered last year.

Review of Ownership Changes

Section 3 of the bill requires that nursing homes seeking to either transfer ownership or change control submit a certificate of need (CON) application to the Department for approval. Presently, DSS is not involved with prospective new owners unless the buyer is requesting a Medicaid interim rate increase and/or seeking a waiver of prior owner liabilities. While all new owners are subject to DPH review criteria, a financial viability review is not conducted. Facility sales would be evaluated under CON review criteria relating to the purchaser's fiscal condition including financial viability, the impact on the facility's rate and property leases/debt and management service costs. This additional review and approval process will help guard against the ownership of facilities by companies not financially capable of maintaining services on a long-term basis.

Nursing Home Financial Oversight Committee

Section 4 establishes a Nursing Home Financial Advisory Committee as an executive branch committee to focus on financial solvency and quality of care issues. The Committee would be chaired by Commissioners of DSS and DPH and include as members the Long-Term Care Ombudsman and representatives from OPM and CHEFA.

The Financial Advisory Committee established in the 1990's included nursing home owner representation. It is not appropriate for competitors or representatives of facilities to participate in government financial oversight functions of other nursing facilities. The Committee is expected to consult and seek input from nursing home owners and representatives on general financial oversight topics but matters involving specific facilities should not be shared with individuals with business interests.

DSS would be responsible for reporting to the Committee on Medicaid interim rate increase requests it receives from nursing facilities. The Committee would report annually to the legislative committees of cognizance beginning on January 1, 2010 and meets quarterly with legislative committee chairman beginning by no later than October 1, 2009.

Financial Reporting by Homes

Section 5 of the bill requires that nursing homes submit quarterly reports of accounts payable to DSS. Unpaid bills are a key indicator of financial health. The section also requires submission of annual audited financial statements and provides that in situations of financial distress DSS may obtain additional information including debt agreements and interim financial statements. This section also provides authority to DSS to review the financial condition of management companies having facility ownership in other states in addition to its Connecticut facilities. Under this bill, if DSS identifies an adverse change in the financial condition of a facility, it will notify DPH and the Nursing Home Financial Oversight Committee. DSS would have the ability to require a facility to provide monthly reports on its cash availability, status of vendor payments and employee payrolls. If DSS determines that a nursing home facility is in financial distress that may lead to the facility having insufficient resources to meet its operating costs, DSS will issue a report of findings to the Nursing Home Financial Oversight Committee.

Limit Management Company and Rent/Debt Expenses

Section 6 of the bill establishes annual cost reporting for nursing facility management companies. Presently, Medicaid cost reports do not include comprehensive cost information for management companies. In addition, the bill requires that management company payments be limited to amounts allowed for Medicaid reimbursement purposes unless approved by DSS. The purpose of this provision is to limit management company charges to affordable levels that will not have a negative impact on direct services.

Section 7 deletes language relating to the former Nursing Home Advisory Committee.

A number of nursing homes have experienced financial difficulties as a result of over borrowing. Section 8 requires that DSS, in consultation with the Banking Commissioner and the Connecticut Health and Educational Facilities Authority (CHEFA), establish reasonable rates of indebtedness and real property lease payments for nursing facilities and it requires that established limits not be exceeded without DSS approval. The section also provides that debt proceeds, unless approved by DSS, be applied solely for the benefit of the nursing facility and establishes financial penalties for non-compliance.

Other Provisions

Section 9 requires that nursing facilities report on their liability and property insurance coverage to DSS. The Department is required to report to legislative committees of cognizance by January 1, 2010. The purpose of this section is to assess current insurance levels and to assess whether specified minimum coverage amounts should be required of facilities.

Sections 10 through 14 strengthen DPH oversight and enforcement capabilities related to approval of prospective nursing home owners, required physical plant improvements and management companies.

The provisions of sections 16 and 17 pertain to state receiverships. Section 16 requires that, for nursing homes in receivership, any court ordered rent or mortgage payments can not exceed amounts allowed under Medicaid rate setting regulations. This proposed change is necessary to ensure that any new court ordered payments do not adversely affect funding available for resident care. Section 17 reverses a 2003 statutory change that required that receivers be licensed nursing home administrators by allowing courts to appoint individuals deemed qualified based on experience and education. Prior to the 2003 law change, receivers that were not licensed administrators but having substantial health care and/or legal experience effectively carried out receivership responsibilities.

As you know, there are several other oversight bills under consideration in the Aging and Human Services committees including Bill 6400 submitted by the Office of the Attorney General. Bill 845 is almost identical to Bill 6400. Last month we met with the Office of the Attorney General and marked-up a combined/edited oversight bill that we both agree on. We will submit that new draft to you later today or Monday. Thank you for your consideration of this important legislation.

