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

Presented to the Human Services Committee

Regarding  
**House Bill 5059, An Act Concerning the Financial Condition of Nursing Homes**

February 5, 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 130 non-profit providers of aging services.

I am pleased to be here today to speak on **House Bill 5059, An Act Concerning the Financial Condition of Nursing Homes**

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 and toward that goal we have listed our recommendations on the principles that we recommend be incorporated into such a process. We have taken into consideration the need not to add 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. Again, these comments are meant to be constructive and mindful of our state's current fiscal crisis.

**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.
- That we not create an additional layer of state auditing. 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. In addition, the not-for-profit nursing homes undergo an annual independent financial audit. Rather than initiating a new audit function, it would be much more cost effective for the state to request information from these *audited financial statements* if there is a concern raised during the monitoring process.

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 5059 by Section

*Section 1: This section requires each nursing home facility to submit periodic reports of its financial condition to the Commissioner of Social Services.*

It is difficult to submit specific comments on this section because the concept of "periodic reports of financial condition" is undefined. **We do, however, remain concerned that this provision might result in all 238 nursing homes being required to submit voluminous reports periodically throughout the year.** 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 Department's staffing. It also would add an unnecessary staffing burden to all nursing homes.

- 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 could 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 and 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.* )
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*Section 2: This section permits the State comptroller to audit the financial records of any nursing home facility.*

We are very concerned about the new role of the Comptroller in this proposed substitute bill. The extent and purpose of the Comptroller's role is unclear to us. We do not understand what the Comptroller's relationship would be with DSS or who would have authority over the nursing home financial regulation. This authorizes the Comptroller to examine and audit financial records of "any nursing facility" so this implies that she could initiate an audit at any time, even when there is no determination made that a facility is in financial distress. It also is not clear to us why there are duplicate audits being established. As mentioned above, DSS is currently mandated to conduct a cost report audit. It does not appear to be an efficient use of state resources or the resources of the nursing home's financial, administrative, and clinical staff that will need to accommodate parallel and/or duplicative audits.

- This is the area where we would suggest that instead of creating an additional layer of state auditing, that the state rely on the cost report auditing function.

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*Section 3: This section permits any person having any knowledge of a violation of state laws or regulations or the mismanagement or gross waste of funds by a nursing home facility to inform the State Comptroller of such activity for an investigation of the matter.*

While we do not object in any manner to this concept, we do not see a pressing need for these new laws as Connecticut law already provides for whistleblower protection for reports of violations of state or federal law – see Conn. Gen. Stat. § 31-51m.

- In addition, the federal Deficit Reduction Act already mandates that nursing home providers and all other Medicaid providers provide a summary of existing whistleblower protections to all employees and contractors.

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*Section 4: This section limits the amount of rent that an owner of real property on which a nursing home facility is located may charge such facility.*

Our concern with this provision is that the limit is undefined and therefore we are unable to provide sufficient comment. However, one serious problem that we see with this section, as currently worded, is that it goes well beyond simply limiting Medicaid reimbursement for rental costs (which are already addressed through the fair rent system of reimbursement). It takes the unprecedented step of regulating rents that nursing facilities pay their landlords based on privately negotiated agreements.

- In addition, this provision is not limited to facilities participating in Medicaid and therefore it caps rents for non-Medicaid nursing homes.
  - There is also an argument that the rent cap would be an unconstitutional taking without due process violations of state and federal constitutions.
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*Section 5: This section restricts the use of any loan proceeds that encumbers the assets of a nursing home facility, although how it is restricted is not defined.*

This provision is also too vague to provide sufficient comment. **If it is too narrowly defined, however, it 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 could negatively affect this effort if it is defined to prohibit the member from spending loan proceeds on anything but the nursing home segment of their continuum.

- We would also be concerned if it were defined to preclude refinancing – use of loan proceeds to pay off a prior loan must be a permitted use.

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*Section 6: This section requires that the owner of a nursing facility maintain insurance liability coverage.*

We have no objection to the mandate to maintain insurance liability coverage, 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. There are no minimum coverage requirements, but facilities must prove they have insurance to receive and renew their licenses.

**We do have concerns if *minimum* coverage requirements are proposed:**

- There is a disparity in the size of facilities, and so coverage needs vary.
  - Nursing homes are currently carrying an average of \$1 million/\$3 million coverage, but that is only an average and the amount could vary.
  - If new required levels of insurance coverage increase current levels of coverage, this will increase non-reimbursed costs for nursing homes because they will need to pay higher premiums to obtain the required coverage. **Therefore we would ask that the legislature not impose minimum coverage limits.**
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