

March 17, 2010

**Written Testimony of Matthew V. Barrett, Executive Vice President of the Connecticut Association of Health Care Facilities (CAHCF) before the Public Health Committee**

Good morning Senator Harris, Representative Ritter and to the members of the Public Health Committee. My name is Matthew Barrett and I am Executive Vice President of the Connecticut Association of Health Care Facilities (CAHCF), our state's 110 member trade association of proprietary and nonprofit nursing homes. I am pleased to have this opportunity to submit testimony on **S. B. No. 428 (RAISED) AN ACT CONCERNING REVISIONS TO THE PUBLIC HEALTH RELATED STATUTES**

This legislation adds new requirements and authorities to the already substantial authorities of the Department of Public Health and the Department of Social Services. In the overall interests of moving the nursing home oversight dialogue forward in a positive manner, CAHCF offers no objections to most of the numerous additional nursing home oversight provisions that are proposed in this SB 428 in the areas of requirements for nursing home management companies and in the granting of specific subpoena powers for the Departments of Public Health and Social Services. There are some provisions in the bill, however, that are duplicative, unfair, unnecessary and unwarranted.

**CAHCF recommends that Section 6(d) be deleted as the provisions are duplicative, unnecessary and an unwarranted expansion of DSS authority**

Section 6(d) expands the authority that the Department of Social Services (DSS) already has for nursing homes to the Nursing Home Financial Advisory Committee. This is unnecessary and duplicative, as the Advisory Committee can simply request the Department to conduct an audit. In addition, CAHCF is concerned about whether audit authority should be given to quasi-governmental advisory structure with limited accountability to the Legislative and Executive Branches.

Section 6(d) also allows the Department of Social Services (and the Advisory Committee) to audit the financial records of nursing home management companies. This provision is an unnecessary and unwarranted expansion beyond DSS's federal and state responsibilities for the administration of the Medicaid program. To the extent that nursing homes are reimbursed for nursing home management company fees by Medicaid, the Department of Social Services already has the authority to audit such records to the extent that they are part of a cost-based reimbursement system. Since there is no Medicaid reimbursement for any other management company costs, additional audits and additional audit authority are unnecessary.

**CAHCF recommends substitute language for Section 8 to implement a fairer standard for licensure denials**

Section 8 of the Bill states that a nursing home license may be denied by the Department of Public Health if the owner has had any state citations within the past two years or has had civil monetary penalties of \$10,000 or more imposed under the Medicare/Medicaid programs. If either of these situations is present, then the Department may issue a license only for "good cause shown." With respect to citations, the Department issues several hundred citations every year -- so the odds are good that a nursing home will have at least one citation within two years. In addition, Medicare/Medicaid civil penalties in excess of \$10,000 are not unusual. Thus, the average applicant for a license will have the application denied and be totally dependent on the Department's discretion and good will as to whether the license can be issued "for good cause shown." These standards are far too restrictive. CAHCF suggests a standard of four state citations within the past two years or Medicare/Medicaid civil penalties in excess of \$50,000 in the past two years.

**Suggested Substitute language:**

lines 282 - 288 revise as follows:

"such potential nursing home licensee or owner (1) has had more than four civil penalties imposed through final order of the commissioner in accordance with the provisions of sections 19a-524 to 19a-528, inclusive, or civil penalties imposed pursuant to the statutes or regulations of another state, during the two-year period preceding the application; (2) has had in any state sanctions, other than civil penalties of less than fifty thousand dollars, imposed through"

**CAHCF recommends that Section 9(h) be deleted**

Section 9(h) of the Bill allows the Department of Public Health to impose a citation of up to \$15,000 against a nursing home management company. First, this attempt to fine management companies is entirely inconsistent with the Department's often-stated position that the nursing home licensee must be solely responsible for the quality of resident care in the nursing home. Second, the law already allows (and is interpreted by the Department to require) imposition of citations of up to \$5000 (Class A) or \$3000 (Class B) against nursing home licensees. So Section 9 results in (a) imposition of a fine against an entity that is not legally responsible for the problem; and (b) fining of both the nursing home licensee and the management company. This section should be deleted.

Section 9(h) also allows the Department of Public Health to revoke a management company's certificate if the company "is not in good standing" in another state.

Most states do not license or certify management companies. Those that do, do not issue "certificates of good standing." While there may be adequate and appropriate grounds for revocation of a management company certificate, vague terminology about not being "in good standing" in another state does not rise to this level. This provision also should be deleted.

**CAHCF recommends Section 19 be deleted because it's unfair and violates due process**

Lastly, CAHCF opposes Section 19 of this Bill. This section does not involve nursing home oversight, but instead involves simple fairness and due process for individual health care professionals. Section 19 would require the Department to refuse to issue a license to any individual professional applicant "against whom professional disciplinary action is pending or who is the subject of an unresolved complaint" in any other jurisdiction. The result is that an unfounded complaint that hasn't been "resolved" or just the fact that disciplinary action is pending -- whether it is justified or not -- will result in the denial of a professional license in Connecticut. This is plainly unfair, unjust and unconstitutional and should be deleted.

Please do not hesitate to contact me at (860) 290-9424 or at [mbarrett@cahcf.com](mailto:mbarrett@cahcf.com) for additional information concerning this testimony.

