

CONNECTICUT ASSOCIATION OF HEALTH CARE FACILITIES, INC.

February 11, 2010

Testimony of Matthew Barrett, Executive Vice President of the Connecticut Association of Health Care Facilities (CAHCF), Inc., before the Appropriations Committee in Opposition to Governor Rell's SFY 2011 Midterm Budget Adjustment Recommendation

Good afternoon Senator Harp, Representative Geragosian and to the members of the Appropriations Committee. My name is Matthew Barrett. I am the Executive Vice President of the Connecticut Association of Health Care Facilities (CAHCF), our state's 110-member trade association of proprietary and-not-for profit skilled nursing facilities. Thank you for this opportunity to submit written testimony for today's public hearing record.

While the longstanding Medicaid budget shortfalls and inadequacy of Connecticut's Medicaid funding system for nursing homes remain the central area of concern, I will address my written remarks first to the Governor's recommended SFY 2011 Midterm Budget Adjustment, insofar as it proposes no changes to the underlying two-year budget in the area of nursing home Medicaid rates. As members of the Appropriations Committee know, the adopted SFY 2009-2011 Connecticut State Budget included almost \$300 million in reductions for Connecticut's nursing homes. Approximately, \$180 million in reductions will be experienced beginning July 1, 2010. There has been no rate increase since 2007.

These reductions to the appropriations are well-documented on pages 344 and 345 of the *Connecticut State Budget Book*, published by the General Assembly's Office of Fiscal Analysis.

Specifically, eliminating the statutorily-required rebasing of the rates amounts to a \$113.7 million reduction in FY 10 and \$127 million in FY 11. In addition, the adopted budget eliminates a required inflationary adjustment in the amount of \$49.6 million for FY 11, and the budget eliminates adjustments associated with property improvements, commonly referred to as "fair rent" adjustments, in the amount of \$2.1 million in FY 10 and \$4.2 million in FY 11. Finally, the adopted budget provides for deferral of one half of the anticipated June 2011 payment to nursing homes to achieve one-time savings in the amount of \$53 million in FY 11.

Last November, on the heels of the very deep cuts to Connecticut nursing homes, Governor Rell proposed an additional two-percent reduction in the last state budget deficit mitigation plan---this at a time when millions in Medicare cuts to Connecticut nursing homes were being experienced, and still further cuts proposed by Congress under the now-stalled federal healthcare reform legislation. For the quality of care that would be undermined, and for the further nursing homes jobs that would have been lost, the Connecticut General Assembly rejected these ill-advised additional cuts. But the underlying reductions in the adopted two-year budget still stand.

Connecticut nursing homes remain in a period of financial instability. One need to look no further than the well-publicized bankruptcies and receiverships for the evidence. Or perhaps to the five homes that have closed in the last two years. Or look to the dozens more at the

doorsteps of our state government seeking interim rate and hardship rate relief from the Medicaid program.

To protect our 110 member facilities, our residents and employees, CAHCF filed a lawsuit against the State of Connecticut on January 28, 2010 in federal court, charging that the state's system for paying Medicaid-participating nursing homes violates federal law. The annual Medicaid budget shortfalls and inadequacy of Connecticut's Medicaid funding system for nursing homes have been well-documented. With the filing of this lawsuit our association has said that the system is broken and unlawful.

Our lawsuit boils down to this: Connecticut's Medicaid rate-setting system violates very clear rules found in federal law. The federal law that Connecticut ignores requires that payments to Connecticut nursing facilities be consistent with efficiency, economy, quality and equality of access to care. However, by using payment methodologies that bear no relationship to the cost of care, Connecticut guarantees that the requirements of federal law will not be met. There is no evidence that Connecticut sets federally required payment rates to nursing facilities on an objective, reasonable and principled basis. Indeed, for years, various state-sponsored studies have found that the reimbursement system does not "adequately reflect the actual costs of wages, benefits and staffing." In addition, the state's payment system constitutes a taking of private property without just compensation in violation of the United States Constitution and the Connecticut Constitution.

Our member facilities have a fundamental right to be justly compensated for the quality services they provide. Once more, the longstanding Medicaid funding shortfall and its unfair consequences are well-documented as private payers, Medicare beneficiaries, and nursing homes have been forced to subsidize the state's failure to pay its legitimate fair share of these costs. In shifting the financial burden away from itself, Connecticut has achieved a considerable benefit by not paying the full costs, while imposing those costs, like a stealth tax, on a shrinking group of nursing home residents and their families, on our employees and on our facilities. Once again, this is not just our position. State-sponsored studies have come to the same conclusion for many years.

Our lawsuit exposes this policy as an unfair and unlawful tax on a few to subsidize Medicaid costs that ought to be, but are not, paid by the state. Once again, this policy is driven by budget considerations rather than the needs of our residents, our employees or our facilities.

Our lawsuit records this history in great detail, from the state's yearly decisions to override the requirements of the state's statutorily based rate system in favor of an inadequate and arbitrary formula tied solely to the annual appropriations bill and budget implementation legislation. A copy of the Complaint is attached to this testimony (or can be viewed at www.cahcf.org) along with a Frequently Asked Questions (FAQ) document.

As has recently occurred in California and Washington State, CAHCF has filed its lawsuit as a last resort to compel the state to comply with federal law so that Connecticut can have a system of nursing facility reimbursement that justly reconciles the cost of providing care to our state's most vulnerable and the rates Connecticut pays to provide that care. Though it is regrettable that we must resort to these means, it is clear to us that Connecticut is poised to continue on its unlawful path, unless the state is compelled to do the right, and lawful, thing by the United States District Court.

I thank the Appropriations Committee for its leadership on behalf of Connecticut's elderly and most vulnerable residents. CAHCF is committed to working with the Connecticut General Assembly during its upcoming session, as well as with Governor Reil, in an effort to fix the State's Medicaid payment system for nursing facilities. However, the filing of litigation was necessary to ensure that if these legislative efforts fail, CAHCF's members will receive the full protection afforded by federal law.