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March 11, 2010.

To: Senator Paul Doyle, Representative Toni Walker,
and Honorable Members of the Human Services Committee

**RE: SB 370, An Act Concerning Medicaid Long-Term Care Coverage For Married
Couples**

From: Amy E. Todisco, President, Connecticut Chapter, NAELA

Dear Senator Doyle, and Representative Walker and members of the Human Services
Committee:

My name is Amy E. Todisco, and I am an elder law attorney with the law firm of
Braunstein and Todisco, P.C. in Fairfield, Connecticut.

I am President of the Connecticut Chapter of the National Academy of Elder Law
Attorneys, Inc., a chapter of the National Academy of Elder Law Attorneys, Inc.
("NAELA"). NAELA is a non-profit association whose mission is to provide legal
advocacy, information and education to attorneys, bar associations and others who deal
with the many specialized issues involving the elderly and individuals with special needs.

The Connecticut chapter of NAELA presents this written testimony in support of SB 370,
An Act Concerning Medicaid Long-Term Care Coverage For Married Couples, with
respect to funds which are derived from equity in home property through a reverse
mortgage, home equity loan or other home equity conversion loan being excluded as
assets or income for purposes of eligibility for the Medicaid program.

Until April 2007 when the Department of Social Services ("DSS") promulgated new
regulations pursuant to the Deficit Reduction Act of 2005 (which the Regulations Review
Committee rejected in June, 2009 without prejudice), DSS' long-standing regulation and
policy on the issue of treatment of reverse mortgage proceeds or home equity loan

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proceeds for individuals applying to receive long term care home and community-based services under a Medicaid waiver was to exclude such proceeds from being counted as assets or income as long as those proceeds were kept separate from non-excluded assets. The Committee should note that there is no authority in the Deficit Reduction Act which requires the reversal of DSS' policy on the treatment of reverse mortgage or home equity loan proceeds.

It is DSS' position that there was no basis in federal law for the State to continue its prior policy of excluding loan proceeds from being counted as assets or income from home property for purposes of eligibility for the Medicaid program provided the proceeds were kept in a separate account. The result of such a reversal in policy is that the loan proceeds are now counted as assets and income, and individuals with such segregated bank accounts are no longer eligible to receive services under the Medicaid program. Under DSS' prior policy, individuals were able to use the loan proceeds to supplement the benefits received from the Medicaid program which enabled them to remain at home. Food, medication, real property taxes, and utilities, to mention a few items, were paid from the segregated loan proceeds. Now, under DSS' new regulation, since such segregated loan proceeds accounts will disqualify these individuals from being eligible to receive such benefits, they will be forced to spend-down all of the loan proceeds before they become eligible again to receive benefits under the Medicaid program. This will mean that they won't have enough money to pay for food, medication, taxes, or utilities and will be forced into nursing homes sooner.

The following is an example of how DSS' new regulation would effect a couple if one spouse required long-term care:

Example: Assume that a couple has the following assets on the date of institutionalization:

Bank account=	\$ 9,000.00
Cash value in life insurance policies=	7,500.00
Reverse mortgage proceeds	<u>20,000.00</u>
Total:	\$36,500.00

Under DSS' new regulation: The \$20,000.00 of reverse mortgage proceeds are counted as part of the couple's assets. Since the well spouse ("Community Spouse") gets to only keep \$21,912.00 of the \$36,500.00 (that is the minimum amount in assets the Community Spouse can keep in 2010), \$14,588.00 would be required to be spent down

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before the institutionalized spouse would be eligible for benefits under the Medicaid program (the difference between \$36,500.00-21,912.00). Prior to this new regulation, if the \$20,000.00 was maintained in a segregated account, it was not counted as an available asset. The loan proceeds from home property represent equity from the home, which is also an excluded asset and one in which the Community Spouse is entitled to keep. It is not fair that the loan proceeds should be counted as assets when the very asset they come from, the home, is excluded as an asset.

DSS has acknowledged to the Connecticut chapter of NAELA and other elder law groups the hardship that its reversal of policy may have on individuals who relied on its former policy. It is also acknowledged the protections in place to protect against abuses which might occur if its former policy was reinstated. However, although DSS has been asked by the Connecticut chapter of NAELA and other elder law groups to pursue amending the State plan for the purpose of reinstating its former policy with regard to loan proceeds from home property, DSS has advised that it does not have the resources or staff to devote to such an endeavor; however, DSS indicated that if it was required to do so statutorily, it would not have a choice but to do so.

Accordingly, we strongly urge the members of the Human Services committee to act favorably with regard to SB 370.

Sincerely,
Braunstein and Todisco, P.C.

Amy E. Todisco
President, Connecticut Chapter, NAELA

SB 370 - AN ACT CONCERNING MEDICAID LONG-TERM CARE COVERAGE FOR MARRIED COUPLES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective from passage*) Notwithstanding any provision of subsection (g) of section 17b-261 of the general statutes, the Commissioner of Social Services shall amend the Medicaid state plan to require that the spouse of an institutionalized person who is applying for Medicaid receives the maximum community spouse protected amount, as determined pursuant to 42 USC 1396r-5. The commissioner shall adopt regulations, in accordance with chapter 54 of the general statutes, to implement the provisions of this section.

Sec. 2. (NEW) (*Effective from passage*) The Commissioner of Social Services shall amend the Medicaid state plan to require that funds derived from equity in home property through a reverse annuity mortgage loan or other home equity conversion loan are not treated as income or assets for the purpose of qualifying for benefits under the Medicaid program, provided (1) such funds are held in an account that does not contain any other funds, and (2) the Medicaid recipient does not transfer such funds to another person for less than fair market value. The commissioner shall adopt regulations, in accordance with chapter 54 of the general statutes, to implement the provisions of this section.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	New section