

# canpfa

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

## Testimony to the Aging Committee

Presented by Mag Morelli, President

February 24, 2011

### Regarding

- **Senate Bill 2, An Act Concerning Air Conditioning in Nursing Homes**
- **Senate Bill 139, An Act Concerning Persons Residing in Elderly Housing and Members of Senior Centers**
- **Senate Bill 366, An Act Concerning a Plan to Encourage Aging in Place**
- **Senate Bill 973, An Act Concerning the Determination of Undue Hardship for Purposes of Medicaid Eligibility**

Good morning Senator Prague, Representative Serra, 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). On behalf of CANPFA, I would like to submit testimony on four of the bills that are before you today.

CANPFA is a membership organization representing over 130 mission-driven and not-for-profit provider organizations serving elderly and disabled individuals across the continuum of care including nursing homes, residential care homes, housing for the elderly, continuing care retirement communities, adult day centers, home care and assisted living agencies. CANPFA members are sponsored by religious, fraternal, community, and governmental organizations that are committed to providing quality care and services to their residents and clients. Our member organizations, many of which have served their communities for generations, are dedicated to providing the services that people need, when they need them, in the place they call home.

### **Senate Bill 2, An Act Concerning Air Conditioning in Nursing Homes**

The Department of Public Health recently conducted a survey of the state's nursing homes and found that all Connecticut nursing homes have some level of air conditioning in their facilities. These findings are very positive, especially when you consider the age of most of our nursing homes. The bill before you today proposes installing an air conditioning system in all resident rooms. Reviewing the Department's survey results, it appears that this proposal would have a significant fiscal impact on at least seventy-four nursing homes.

Unfortunately we cannot support this bill unless it includes financial assistance for the nursing homes that will need to install the enhanced air conditioning systems.

The reports of heat emergencies in isolated nursing homes last year should not be ignored. We agree that nursing homes should plan for extreme weather conditions, such as the recent summer's extreme heat wave, as they do for other emergency scenarios and we believe that most nursing homes do have such a plan. In addition, the Department of Public Health is very diligent about sending out recommendations for management of nursing home residents during hot weather. These recommendations are routinely incorporated into nursing homes' emergency operations plans. We would support enhancing the planning requirements so that all such plans are submitted annually to the Department of Public Health on a date specific and prior to the months of potential hot weather and we would welcome and encourage a dialogue with the Department on other ways nursing homes can prepare for weather related emergencies in a proactive manner.

### **Senate Bill 139, An Act Concerning Persons Residing in Elderly Housing and Members of Senior Centers**

CANPFA represents many non-profit affordable senior housing sites throughout the state. These housing sites offer seniors the opportunity to live independently in their own apartments at an affordable level of rent. While residents may have the option of receiving home care or assisted living services in their place of residence, these housing sites are rental units, not health care facilities.

The bill's first proposal is to establish a bill of rights for the housing residents. While we do not object to the provisions outlined in the bill of rights, this concept may cause confusion with the current landlord tenant law and elderly housing statutory requirements that regulate the housing sites and protect tenants.

The bill's second proposal is one that would require the management to remove snow from the cars owned by the tenants. *We find this proposal to be unreasonable.* It is an unfunded mandate that would require the provision of a costly service for a select number of residents who choose to own and maintain a personal vehicle. The added cost of arranging to have the snow removed from personal vehicles every time there is a snow fall would substantially increase the operating budget of the entire housing site which would result in a rent increase for all residents. There is also the additional cost incurred as a result of the potential liability of damaging a resident's vehicle during the snow removal process. There is also the questions of how far does this mandate go? Would management be responsible for removing snow from the entire vehicle every time there is a snow fall? If not, then how much snow must fall before the removal process is required? How soon must it be removed? All of these questions and scenarios can build up to a significant unfunded mandate on these non-profit housing sites.

We understand the record setting snow fall this winter has raised concern for all seniors, but there needs to be a standard of reasonableness in our response to these concerns. Housing providers work everyday with their residents on issues such as snow removal, and if there are extreme events that cause concern, we should address those events as they happen and look to reasonable solutions to address them. But enacting a major unfunded mandate on the affordable senior housing providers and their tenants is not something that we can support.

Finally, regarding the garden mandate proposal, we would suggest that language be added to recognize that policies regarding the gardens can be established by the housing site and that the residents' have a responsibility to maintain their gardens in an attractive, safe and healthy manner.

### **Senate Bill 366, An Act Concerning a Plan to Encourage Aging in Place**

CANPFA promotes a vision in which every community offers an integrated and coordinated continuum of high quality and affordable long term health care, housing and community based services – including services and supports beyond the health care continuum. So we support the concept of this task force which will broaden our understanding of the needs of our older population as they strive to maintain their independence and “age in place.” Hopefully a better understanding will help us to meet those needs within our communities.

### **Senate Bill 973, An Act Concerning the Determination of Undue Hardship for Purposes of Medicaid Eligibility**

CANPFA has long supported an undue hardship exception for Medicaid applicants and/or recipients subject to penalties for transfer of assets. In 2009, the Department of Social Services (“Department”) proposed regulations to implement new federal Medicaid eligibility rules including the new five year look back and changes to the enforcement of eligibility penalty periods. Part of those proposed regulations included revising sections of the Department’s Uniform Policy Manual that addressed undue hardship for Medicaid applicants and recipients subject to transfer of assets penalties. CANPFA and several other parties objected to the Department’s proposed regulations before the Legislative Regulatory Review Committee. As a result, all parties involved, including the Department, convened to discuss the potential for compromise language.

In late 2009 and early 2010, CANPFA worked closely with this group, consisting of the Department, the CBA’s Elder Law Section, Connecticut Legal Services and other elder law advocates, to develop undue hardship language that would address the concerns raised by various parties. Through lengthy negotiations, the parties developed compromise language setting forth the undue hardship waiver process, consistent with federal law. We concluded these negotiations in March 2010, and our expectation was that the Department would move forward to complete the regulation process.

For various reasons unrelated to the undue hardship language, the Department has not moved forward to implement the agreed undue hardship revisions, and therefore, as we understand it, Connecticut Legal Services has drafted proposed legislation to implement the compromise language developed with the Department. The Connecticut Legal Services’ draft proposal is generally consistent with, but more comprehensive than, the provisions proposed in Senate Bill 973, the bill before you today.

The Connecticut Legal Services’ draft proposal (and the compromise language that it mirrors) is preferable to CANPFA because it includes provisions pertaining to nursing home residents who apply for undue hardship. Their proposal would allow a nursing home resident to give permission to a long-term care facility to file a claim for undue hardship on the individual’s behalf. In addition, if the nursing home resident is incapacitated and has no legally authorized representative, family member or friend to

act on his or her behalf, the compromise language would permit the long-term care facility to request, on the nursing home resident's behalf, an extension of time to file a claim for undue hardship so that someone can be appointed to represent the resident's interests. Finally, the proposal would permit a long-term care facility, with the consent of a nursing home resident or his/her legally appointed or authorized representative, to present information on the resident's behalf and represent the resident throughout the undue hardship claim process.

CANPFA therefore supports creation of an undue hardship claims process in statute and urges the Committee to substitute the compromise language set forth in the Connecticut Legal Services proposal.

There is one additional legislative revision that CANPFA urges the Committee to make. In some cases, a nursing home resident will not qualify for undue hardship relief. Typically, the resident has no source of payment, however, and the nursing home has no choice but to continue providing services to the resident without payment. CANPFA proposes that the Committee add the following language in any revision to the statutes providing for undue hardship relief for nursing homes under these circumstances.

*The Commissioner of Social Services, upon the request of a nursing facility, may grant financial relief to the nursing facility if the nursing facility establishes that (1) it is experiencing severe financial hardship due to imposition of a transfer of assets penalty on a resident who did not apply or qualify for undue hardship relief; (2) it has made every effort permissible under state and federal law to recover funds that are due to it for caring for the individual; and (3) the individual who is the subject to the penalty period has resided in the nursing facility for at least ninety days with no payment having been made on the resident's account during that time period.*

This proposed amendment is based on language previously set forth Conn. Gen. Stat. § 17b-261a(d) as a result of Public Act 03-3 when the State of Connecticut filed a State Plan Amendment with the Centers for Medicare and Medicaid Services to impose stricter transfer of asset penalties. The General Assembly deleted this language one year later through Public Act 04-16, since the State did not pursue the State Plan Amendment. However, Congress imposed the current tougher transfer of asset penalties in 2006 as a matter of federal law. If the proposed language is reinstated, the Department will have the ability to pursue claims against those who illegally transferred assets under Conn. Gen. Stat. § 17b-261a(b).

Thank you for this opportunity to provide this testimony and I would be happy to answer any questions.

**Mag Morelli, CANPFA, 1340 Worthington Ridge, Berlin, CT 06037 (860)828-2903  
mmorelli@canpfa.org**