

Testimony before the Human Services Committee – March 15, 2011

In support of various provision of:

***S.B. No. 1013 AN ACT IMPLEMENTING THE GOVERNOR'S
BUDGET RECOMMENDATIONS CONCERNING HUMAN
SERVICES.***

Good afternoon, Senator Musto, Representative Tercyak and to the members of the Human Services committee. My name is Matthew V. Barrett. I am Executive Vice President of the Connecticut Association of Health Care Facilities, Inc. (CAHCF). I am here on behalf of our association of 115 nursing homes in support of several provisions included in Governor Malloy's biennial budget recommendation, and included in legislation to implement these provisions before the Human Services Committee today.

Specifically, I would like to register our strong endorsement of **Section 40** and **Section 42** of SB 1013, both of which seek to curtail transfers of assets in the Medicaid program. The Governor's proposals put in very sharp focus the need to limit the enormous amounts of resources that are transferring through private hands at the expense of the Connecticut taxpayers. These policies lead to premature eligibility for Medicaid and the taxpayers paying a far greater share of the cost of long-term care.

Section 40 of the bill provides that (1) a partial return of a transferred asset does not result in a reduced penalty period and (2) a full return of a transferred asset, while negating the penalty period, will be regarded as an available asset if the transfer and subsequent return were done to shift costs to the Medicaid program. It is very important to adopt this reform as a means to halt these transfers in the first place and to assure that assets are available for consideration in the agency eligibility determination.

Section 42 is proposed to reverse a recent and ill-advised increase in the marital asset exemption for community spouses. To give the committee a scope of the magnitude of these transfers and their implications for the

Connecticut State Budget, please note that the Governor's budget is estimating SFY 12 savings of \$29,300,000 and SFY 13 savings of \$ 32,000,000.

As background, legislation from last session requires that the spouse of someone in an institution who remains in the community be allowed to receive the maximum amount of assets allowed by federal law. With this change, Connecticut became one of only 14 states that allows the community spouse to keep up to the federal maximum of \$109,560. Prior to the passage of PA 10-73, non-institutionalized spouses were allowed to keep the home, one car and one - half of the couple's assets (with a minimum amount of \$21,912) without effecting the institutionalized spouse's eligibility for long-term care Medicaid assistance. These asset levels are much higher than the vast majority of states, which use the federal minimum of \$21,912, with a few states using a slightly higher minimum. Under this proposal, the state's prior asset exemption of 50% of liquid marital assets, capped at \$109,560, would be reinstated.

Our association is also monitoring a Connecticut superior court case that has sanctioned a transfer in excess of \$100,000 which purchased an annuity for a spouse, which the court found unavailable for the purposes of the Medicaid program. The Department of Social Services is appropriately appealing the case.

This committee is well briefed on the notion that Connecticut must "rebalance" its system of providing long-term care to one that increases the amount of care provided in home and community based settings. This is the *number one* recommendation of the *2010 Long-term Care Plan*. What's less well known is that recommendation *number two* advances the idea that *Connecticut must also rebalance the ratio of public versus private resources* that are today absorbing the lion's share of long-term care expenditures. The *2010 Long Term Care Plan* reports that nationally Medicaid pays for 49 percent of long-term care costs. In Connecticut 70% of nursing home residents are on Medicaid. The report recommends: "In order to develop and sustain a long term care system that can provide real choice and quality services and supports to those in need, a better balance between public and provider resources must be achieved." Connecticut could take a major step in this direction by adopting these provisions.

I am also here in support of Governor Malloy's budget recommendation to *update and increase the nursing home provider* tax to the maximum permitted by federal law. This is a smart recommendation to maximize the amount of federal funds that Connecticut leverages from the tax nursing homes pay from the federal Medicaid program. In turn, these brand new revenues provide the ability to achieve badly-needed rate relief to achieve some measure of stability for Connecticut nursing homes. This is rare opportunity to provide help to nursing homes at no added cost to the state.

Specifically, Federal rules allow for user fees not to exceed 5.5% of provider revenue through September 30, 2011, increasing to 6.0% thereafter. Under the Governor's proposal, the existing nursing home user fee will be increased to maximize the amount of revenue to the state.

In addition, the nursing home industry will receive a substantial infusion of new funding through their Medicaid rates. The revenue gained from the user fee assessment will be returned to the nursing homes in the form of increased Medicaid rates as well as any federal dollars gained from that initial federal claiming. When fully annualized in FY 2013, nursing homes will be assessed an additional user fee of \$34.3 million while realizing a Medicaid rate increase of \$51.5 million. The Governor's proposal will result in a net gain to the state of \$8.5 million when fully annualized in FY 2013.

For the record, Connecticut nursing homes remain in a period of ongoing financial distress. There are remarkably five homes placed under state receivership since the beginning of the year and a new bankruptcy recently announced. This follows a sustained period of nursing home receiverships, bankruptcies, closures, and Medicaid hardship rate relief requests.

As background for the committee, there has been no increase in Medicaid rates to nursing home since 2007. Today, the Medicaid funding shortfall is \$21 below the cost of providing care to a Medicaid resident per day. The instability caused by this budget-driven policy has achieved a critical mass in Connecticut---creating job loss and staffing level reductions which undermine quality of care---and triggering a lawsuit against the State of Connecticut (*CAHCF v. Rell*).

Regrettably, the rate-setting policy that encourages quality improvements and facility upgrades (referred to as *Fair Rent*), remains frozen in the budget recommendation.

The beginning of a new direction is possible with Governor Malloy's nursing home provider tax proposal. Given the magnitude of Connecticut's budget deficit, we understand that these new revenues produced by the nursing home taxes, in part, are also recommended to benefit the state's general fund. While there is a strong argument that all these funds should benefit the nursing homes alone, Connecticut nursing homes understand that we must do our part to address the state's deficit in the hopes that additional help can be provided when our state is in a better financial position.

However, if we don't take advantage of this no-cost provider tax federal funding opportunity in this budget cycle, we will continue on the wrong path. Care will be jeopardized for thousands of frail and elderly residents. Care-giving will continue to be lost. The quality of care that our members are well-known for will be seriously undermined.

For these reasons, I urge you to adopt Governor Malloy's nursing home provider tax proposal and to work to restore quality fair rent rate relief in the budget.

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