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To: Senator Edith Prague, Representative Joseph Serra and Honorable Members of the Aging Committee

Re: H.B. No.5338-- An Act Concerning Medicaid Long-Term Care Coverage for Married Couples

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 past-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 H.B. No.5338, An Act Concerning Medicaid Long-Term Coverage For Married Couples.

On May 27, 2010, P.A. 10-73 was signed into law (which was codified as Connecticut General Statutes Section 17b-261k). P.A. 10-73 was identical to H.B. No.5338 in that it allowed a Community Spouse to keep the maximum amount of assets under federal law when the other spouse required long term care.

P.A. 10-73 allowed the Community Spouse to keep the home residence, a car and all of the couple's non-exempt assets up to \$109,560.00 in 2011 (this is called the "Community Spouse Protected Amount) and the institutionalized spouse was immediately eligible for Medicaid (the maximum Community Spouse Protected Amount in 2012 is \$113,640.00). If the couple had non-exempt assets in excess of \$109,560.00 in 2011, those assets in excess of \$109,560.00 had to be spent-down in order for the institutionalized spouse to be eligible for Medicaid.

Last session P.A. 11-61 (biennial budget) repealed C.G.S. Section 17b-261k as of July 1, 2011. Currently, if a married couple's assets (excluding the home and one car) on the date one

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spouse becomes institutionalized are \$50,000.00, **the rule now in Connecticut is that the Community spouse can only keep the lesser of 50% of those assets, \$25,000.00, in this example.**

The remaining \$25,000.00 of assets in this example are deemed by the State to belong to the ill spouse and must be spent down before the ill spouse is eligible for Medicaid. The Department of Social Services ("DSS") asserts that the spend-down of the \$25,000.00 in this example, which is the amount deemed to the ill spouse, is achieved by paying it to the nursing home, thereby delaying eligibility for Medicaid. However, it is critical to understand that the spend-down of the \$25,000.00 is almost never accomplished by paying the nursing home; rather, the Community Spouse will purchase prepaid funeral contracts, make home repairs, and purchase such other personal property in order to spend down the money. Under current law, the Community Spouse is then left with only \$25,000.00 (in this example) in assets (other than the home and one car) and most often only a small social security amount each month with which to maintain and repair the home, pay real estate taxes and assessments and try to survive in the community. **If H.B. No.5338 became law, the Community spouse would be allowed to keep all of the couple's \$50,000.00 in this example, thereby allowing him/her to continue to live independently in the community for a longer period of time.**

P.A. 10-73 was repealed on July 1, 2011 based on claims by DSS that the law had cost the State in excess of \$30 million dollars per year. During this Committee's public hearing on March 15, 2011, when questioned by Senator Joseph Markley as to how the purported \$30 million/year cost to the State had been derived, then Acting Commissioner Starkowski testified that in fact, he did not have any data to support DSS' assertion that P.A. 10-73 had cost the State in excess of \$30 million or that it would result in such a cost to the State in each year going forward, but that the numbers were 1) "intuitive," 2) based on "worker experience," 3) "a difficult number to quantify," and 4) that "the Eligibility Unit doesn't track the numbers." After P.A. 10-73 was in effect for one year, neither the Office of Policy and Management nor DSS has been able to substantiate that the State has sustained any losses during the time the law was in effect. Conversely, neither OPM nor DSS has been able to document the savings to the State that they claimed would be realized from July 1, 2011, the date P.A. 10-73 was repealed, to date.

During his testimony on March 1, 2012 before the Human Services Committee, Commissioner Bremby testified that the annual cost of S.B. No. 229 (a bill identical to H.B. 5338) to the State would be \$31 million. As with D.S.S.' past assertions, Commissioner Bremby provided no data or documentation to support his testimony as to the cost of the proposed legislation.

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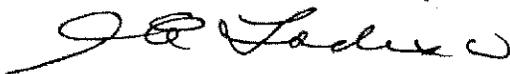
H.B. No.5338 would not accelerate eligibility for Medicaid/Title 19. The bill is budget neutral to the State of Connecticut because under current law, the State has to start paying for the ill spouse as soon as the spend-down is complete; the spend-down is almost never made to the nursing home so the State begins to pay for the ill spouse at the same time it would start to pay under H.B. No.5338 if the Community Spouse was allowed to keep the maximum assets under federal law.

Further, Governor Malloy sought to transition individuals currently in nursing homes out into the community as part of his budgetary priorities last year. The repeal of P.A. 10-73 had the exact opposite result: it accelerated eligibility for Medicaid/Title 19 for the Community spouse because if the Community spouse has to spend down assets, she/he won't have resources to remain in the community and the State will have to pay for other entitlements for the Community spouse to remain in the community.

Finally, H.B. No.5338 would save the State money and ease the burden of administering the Medicaid applications filed in the DSS offices. There are many instances under current law where a Community Spouse is entitled to keep more than the 50% of the married couple's assets as described above. However, in order to be able to keep such additional assets, a Fair Hearing must be held. An intake worker at DSS does not have authority to allow the Community spouse to keep the additional assets. The Medicaid application must still be processed to conclusion by the intake worker, and then the Community spouse can request the administrative Fair Hearing. The Fair Hearing is time consuming and expensive to the State. Under H.B. No.5338, a streamlined process which would allow a Community spouse to keep the maximum amount of the couple's assets under federal law (\$113,640.00 in 2012) would result in fewer administrative Fair Hearings, faster processing of Medicaid applications (where a spend-down would have otherwise been required) and the work load of DSS caseworkers would be alleviated.

Accordingly, we strongly urge the members of the Aging Committee to act favorably with regard to H.B. No.5338.

Sincerely,
Braunstein and Todisco, P.C.



Amy E. Todisco