Testimony of Matthew V. Barrett, Executive Vice President of the Connecticut Association of Health Care Facilities (CAHCF) before the Human Services Committee – March 13, 2012

Good evening Senator Musto, Representative Tercyak, and to the members of the Human Services Committee. My name is Matthew V. Barrett. Thank you for this opportunity to testify on behalf of the Connecticut Association of Health Care Facilities (CAHCF), our state's one hundred and forty-eight member trade association of post-acute, transitional and long term care nursing homes: *in opposition to H.B. No. 5451 (RAISED) AN ACT CONCERNING TRANSPARENCY IN NURSING HOME COST REPORTS; and, in support of S.B. No. 394 (RAISED) AN ACT CONCERNING MEDICAID ELIGIBILITY AND THE IDENTIFICATION AND RECOVERY OF ASSETS; and in support of S.B. No. 395 (RAISED) AN ACT INCREASING THE PERSONAL NEEDS ALLOWANCE FOR CERTAIN LONG-TERM CARE FACILITY RESIDENTS.*

H.B. No. 5451 (RAISED) AN ACT CONCERNING TRANSPARENCY IN NURSING HOME COST REPORTS

First, I am here to register our opposition to H.B. No. 5451 (RAISED) AN ACT CONCERNING TRANSPARENCY IN NURSING HOME COST REPORTS. The legislation will require only for-profit nursing homes to include in annual cost reports a profit and loss statement for each related party that the nursing home pays ten thousand dollars or more a year for goods, fees and services and a profit and loss statement for each nursing home transaction with such party. The bill defines "related party" to include, but is not limited to, companies related to such nursing homes through family associations, common ownership, control or business association with any of the owners, operators or officials of the facility. The bill further requires that the profit and loss statement must also include the actual cost of the goods and services, including a detailed account of the goods and services purchased and fees paid, and the mark-up, profit or administrative charges related to such purchase.

This legislation is harmful because it imposes burdensome requirements on all for-profit nursing homes without reason. The requirements are inexplicable. There is no apparent reason for these details to be disclosed. The information has no bearing on the settting of Medicaid rates or relevance to any other component of the rate-setting process, audit process or certificate of need process. The bill also inexplicably targets for-profits nursing homes while nonprofit nursing homes are similarly required to file annual cost reports,without being required to furnish related party financial information. Finally, the bill targets nursing homes when a full range of similarly situated health care and human service providers of services to DSS, DCF, DMHAS and DDS (hospitals, group homes, clinics) that have their payments determined in whole or in part based on cost report filings. Moreover, there are existing cost limitations and caps within the present rate-setting methodology designed to prevent costs unrelated to patient care from being reimbursed in the Medicaid rates.

111 Founders Plaza • Suite 1002 • East Hartford, CT 06108 • Telephone (860) 290-9424 • Fax (860) 290-9478

The longstanding current requirements of the law provide a level of satisfactory detail in this area. The annual cost report already requires disclosure of all payments to related entities and actual costs. Our association is not aware of any problem with proper reporting of related party payments. It should be noted that reports are filed subject to penalty of perjury. Current rules appropriately do not require information unrelated to the governmental purposes of reimbursement, audit or CON. Further, with no apparent reason for needing the disclosure of this information, we are left to speculate that the legislation is for the purpose of requiring private businesses to identify and utilize private resources for governmental purposes, perhaps for the purposes of either mitigating or fully funding the consequences of annual Medicaid funding shortfalls. In our view, such a governmental policy would constitute an unconstitutional taking of private property for governmental purposes without just compensation.

We urge no action on the bill for these reasons.

S.B. No. 394 (RAISED) AN ACT CONCERNING MEDICAID ELIGIBILITY AND THE IDENTIFICATION AND RECOVERY OF ASSETS.

This badly-need legislation provides a partial remedy to the harsh consequences nursing homes face when Medicaid applicants transfer assets and penalty periods are imposed and in the situations when eligibility is erroneously denied. It is far too often the case that Connecticut nursing homes, through no fault of their own, are left providing nursing home care without any payment from public or private sources when these circumstances arise. When this happens, nursing homes are significantly harmed because they are forced to provide care that is unreimbursed free care.

Specifically, the bill has three important objectives.

First, it provides that a nursing home resident shall not be determined ineligible for Medicaid solely on the basis of a disqualifying asset. The bill defines "disqualifying asset" as single asset that causes the assets of an institutionalized individual who is otherwise eligible for Medicaid to exceed the $1,600 permissible asset threshold for Medicaid eligibility. This is very important as a remedy to the unjust outcome nursing home's experience when excess assets, not initially disclosed or known, later become known in the Medicaid eligibility determination process, and therefore no effort has been made to properly spenddown the asset. As an example consider undisclosed bank account or cash value of a life insurance policy which places an applicant marginally over the asset limit. These assets, if identified, could easily go toward the cost of care and included in the spenddown. But for this inattention, there would be eligibility. Instead, there is no eligibility, even as liability to the nursing homes is accumulating. In the worse cases, and exacerbated when eligibility determinations are delayed at the DSS regional office. As well, there are too many cases, where applicants, or their family members, simply delay in permissibly spending down known assets in a timely manner and are found ineligible for these months. The harsh consequence is that being as little as $1.00 over the asset limit can mean tens of thousands of unreimbursed amounts to the nursing

home. When these circumstances arise, the bill sets forth a process where the case can be granted, the nursing home paid, less the disqualifying asset. This does not represent full reimbursement; however, this is much more just than the unjust extended periods of ineligibility now being experienced.

Second, the bill authorizes DSS to assess a monetary penalty equal to double the amount of the debt when transfers or assignment have resulted in the imposition of penalty period. This new authority for restitution is very important if DSS will be for the first time reimbursing nursing homes for uncompensated care when assets have been transferred.

Finally, the bill authorizes DSS to make retroactive and continued Medicaid payments to a nursing home when there is a penalty period if the nursing home establishes that: (1) The resident did not apply or qualify for an undue hardship (2) the resident has resided in the nursing facility for at least ninety days with no payment made on the resident's account for such time period; and (3) the nursing facility has made every practicable effort to recover the funds. The bill provides that these Medicaid payments create a debt by the transferor or transferee of the asset. Again, this is very important as the underlying law allowing recovery can't be triggered unless the payment is made and the debt created.

We urge passage of the bill for these reasons.

S.B. No. 395 (RAISED) AN ACT INCREASING THE PERSONAL NEEDS ALLOWANCE FOR CERTAIN LONG-TERM CARE FACILITY RESIDENTS.

We believe the harmful cut to resident personal fund allowance should be restored. In small ways, these funds go a long way toward enhancing the quality experience our resident have in our homes. I understand these cuts were made for financial reasons. However, there is a strong policy basis for their restoration. We urge the committee to advance this legislation.

Thank you. I would be happy to answer any questions you may have.