



**Testimony to the  
Judiciary Committee  
Regarding**

**Senate Bill 419, An Act Concerning Responsible Party Agreements and the Maintenance of Professional Liability Insurance by Nursing Homes, Home Health Care Agencies and Homemaker-Home Health Aide Agencies**

**Presented by Mag Morelli, President of LeadingAge Connecticut**

**March 19, 2012**

Good afternoon Senator Coleman, Representative Fox and members of the Judiciary Committee. My name is Mag Morelli and I am the President of LeadingAge Connecticut, a membership association of over 130 mission-driven and not-for-profit provider organizations serving older adults across the entire continuum of long term care including forty-six nursing homes. (*LeadingAge Connecticut was formerly known as the Connecticut Association of Not-for-profit Providers for the Aging or CANPFA.*) LeadingAge Connecticut members are sponsored by religious, fraternal, community and municipal organizations and are dedicated to expanding the world of possibilities for aging.

On behalf of LeadingAge Connecticut would like to testify on **Senate Bill 419, An Act Concerning Responsible Party Agreements and the Maintenance of Professional Liability Insurance by Nursing Homes, Home Health Care Agencies and Homemaker-Home Health Aide Agencies**

In previous sessions, LeadingAge Connecticut has presented testimony and raised concerns with bills similar to the one before you today. As a result of that testimony, we were given the opportunity to work with the proponent of the bill in an attempt to address our concerns. The bill before you today reflects the work that was done in those previous sessions and we are grateful for the acknowledgement of that effort.

It is vitally important that Connecticut nursing homes maintain the ability to hold responsible those individuals with legal access to a nursing home resident's income or resources. This is critical in the effort to obtain payment *from* the resident and to eventually complete the Medicaid application process *for* the resident when their personal resources are depleted.

A nursing home must be diligent at the time of admission. This is the only opportunity that a nursing home has to ensure that the resident's financial information is accurate and that there will be a source of payment for the long term stay, whether it be from the resident's personal resources, a private insurance policy, or state Medicaid assistance.

Most nursing home residents are not admitted to the facility as Medicaid recipients. The typical resident spends down their assets paying for their nursing home care before applying for

Medicaid. Once their personal resources are exhausted, the resident's Medicaid application must be completed and verified before benefits are granted. If there is a delay in processing or completing the application, the nursing home *must provide* care and services to the resident without payment until such time as the Medicaid application is granted. That is one reason why we are supportive of the proposal in this bill to allow the nursing home, with the resident's permission, to prepare and submit the resident's Medicaid application.

The Medicaid eligibility process is not simple and in the last several years the delays in the process at the Department of Social Services have grown to an intolerable level. And pending Medicaid eligibility claims are not the only concern regarding potential non-payment for nursing home stays. Intentionally transferred assets that result in Medicaid penalty periods and the non-payment of a resident's applied income are also Medicaid related receivable issues that will negatively affect nursing homes.

A nursing home resident's Medicaid application is often one of the most difficult applications for a state eligibility worker to process. The look back period is five years long and the spend down process may involve multiple bank accounts, investments, insurance policies and other assets that the resident has accumulated over decades. *This is why it is crucial to have a responsible party, one who has legal access to a resident's income or resources, assist the resident and the nursing home in this process.* Without this assistance, the process can be delayed for months and even years. If there is a problem with the application or if assets or income is misappropriated, the nursing home is often left without payment for extended periods of time.

These financial issues are not always urgent for families because a private pay nursing home resident needs only to *apply for* Medicaid coverage to garner the statutory protections that prevent a nursing home from discharging or transferring due to non-payment. The resident does not need to complete an application, but to simply submit one - and simply submitting an application does not grant someone Medicaid benefits. If one is submitted but never completed, the resident becomes yet another pending Medicaid case, protected from discharge or transfer, but with no other payer source. **If a third party is not held responsible in some manner for completing that Medicaid application, it may never get done. That is why the nursing home must maintain the ability to put some level of responsibility on an individual that has legal access to a nursing home resident's income or resources.**

We thank you for taking our concerns into consideration in this bill. One suggestion that could be added to this bill is a requirement that the Department of Social Services provide consumers with more comprehensive, understandable information about the Medicaid eligibility process.

***Suggested language:*** *The Commissioner of Social Services shall reorganize its web site to ensure that (1) information about the Medicaid application process is accessible, complete and understandable for consumers and (2) such information includes links to additional resources for the Medicaid application process. All written and electronic information published by the department about the Medicaid eligibility process shall include notification that institutionalized individuals determined eligible for Medicaid may be required, as part of the eligibility determination, to pay social security income, pension payments and other such applied income to the facility.*

**We would also ask that you make the effective date of this legislation October 1, 2012** to provide nursing homes time to implement requirements in their admissions agreements and policies and also to make it clear that the new requirements only apply to contracts entered into on or after the effective date. The bill already will create a financial burden for nursing homes as

they will need to amend the language of their admissions agreements which will require legal assistance and staff training. If the nursing homes are required to apply the new law retroactively, it would cause an unreasonable financial burden.

***Suggested language:*** *This Act shall not apply to any contract with a third party guarantor or any admissions agreement, as described in Section 1(b), that is entered into before October 1, 2012.*

Thank you for this opportunity to testify and I would be glad to answer any questions.

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## **Examples that Illustrate the Nursing Homes' Financial Concerns Regarding Nursing Home Resident Applications**

### Resident A Example

Resident admitted to SNF in May 2010. Family members refused to sign the admission agreement. Financial disclosure revealed that the resident owned a home which had been moved into a trust controlled by three siblings. Bills were paid until September 2011 when a T-19 application was submitted.

The first application was denied for failure to provide information. A second application was submitted in January 2012 and subsequently denied. More than \$233,000 has been gifted to the three siblings each of whom is a POA.

The current balance due the facility is \$95,527. The home is for sale. No payments are being made to the facility. If and when the home is sold, a penalty will be assessed for the transfer after the proceeds from the sale are used for care. Eligibility for T-19 is unlikely. Legal fees to date are \$5290.

### Resident B Example

POA applied for T-19 in February 2006. Resident remained over the asset limit until 7/1/2007 when the POA finally cashed in stocks and sent the proceeds to the facility.

The period of ineligibility due to failure to reduce assets was from 4/2006 through 12/2006. The balance due the facility for the cost of care was \$85,381.

The facility was then allowed an income diversion for the remaining balance. The period from 1/12007 through 6/1/2007 in the amount of \$62,791 would be paid with her monthly Applied Income. It was finally paid off in September 2010.

The cost to litigate the period of ineligibility was in excess of \$80,000 as the defendant decided on a jury trial. It was settled in February 2011 for \$42,000.

### Resident C Example

Resident was admitted in March 1999. Daughter had control of all assets and would not pay bills until coerced by an attorney.

The balance due in June 2011 was \$110,718. An application was filed and requests for information ignored. Another attorney for the resident was engaged. The application was finally granted in March 2012 with a penalty of \$46,792 due to transferred assets.

Additionally there was an income diversion for the period 10/2010 through 2/2011 in the amount of \$42,720. It is anticipated that it will be paid over the next 24 months. The resident is 95 years old.

The daughter agreed to settle the penalty for \$35,000 but refused to take any responsibility for the income diversion should her mother be unable to complete payments.

Legal fees to date on this account are \$13,498.

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