March 5, 2013

Written testimony of Matthew V. Barrett, Executive Vice President, Connecticut Association of Health Care Facilities (CAHCF):

S.B. No. 1025 (RAISED) AN ACT CONCERNING ADVANCE PAYMENTS TO NURSING FACILITIES FOR UNCOMPENSATED CARE;

S.B. No. 1022 (RAISED) AN ACT CONCERNING PROVIDING INCENTIVES TO MEET LONG-TERM CARE GOALS;

H.B. No. 6543 (RAISED) AN ACT AMELIORATING THE DEBT OWED TO NURSING FACILITIES.

Good afternoon Senator Slossberg, Representative Abercrombie and to the members of the Human Services Committee. My name is Matthew V. Barrett, Executive Vice President of the Connecticut Association of Health Care Facilities (CAHCF), our state's one hundred and sixty-six (166) member trade association of skilled nursing facilities and rehabilitation centers. Thank you for this opportunity to offer testimony this afternoon in support of three bills being advanced by the Connecticut Association of Health Care Facilities (CAHCF). At the outset, I would like to thank the leadership of the committee for raising these bills and for giving our members the opportunity to speak to the merits of the proposals this afternoon.

H.B. No. 6543 (RAISED) AN ACT AMELIORATING THE DEBT OWED TO NURSING FACILITIES.

Section 1 of this legislation addresses the difficult situations that arise when a nursing facility resident or designated responsible party fails to pay their required share of the cost of nursing home care, commonly referred to as "applied income. Typically this amount is available to the resident from monthly social security, retirement benefits, and other income sources, and is required to be paid to the nursing home. Specifically, this proposal will allow nursing home facilities to transfer or discharge nursing home residents who fail to pay applied income to the facility for more than sixty days. At the outset, I want to state that it's our nursing homes' strong desire to never get to this point. We so much favor collecting these amounts than ever getting to the point where we are considering transfer and discharge.

While it is the responsibility and legal obligation of the resident to remit monthly the calculated applied income amount, too often the resident or designated responsible party fails to meet his or her obligations to the nursing home. Medicaid payments to nursing homes assume the collection of applied income amounts without respect to whether they are actually paid. In the most egregious cases, family members regrettably receive and dispose of the proceeds of the monthly income amounts intended for the nursing home.

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When this happens, nursing homes are significantly harmed because they are forced to provide care that is unreimbursed. Effectively, nursing homes end up providing "free care." As a result, nursing homes must resort to costly collection efforts, which are not reimbursable by the state. Most often, such activities are not worthwhile because social security amounts may not be attached as a means to satisfy a court ordered judgment for the repayment of debt. Even more costly and difficult to prove are the cases of fraud, where a family member or other person with fiduciary duties has stolen the funds intended for nursing home care. In most cases, only the resident can bring the action for recovery, but they are most reluctant to do so against family members.

Finally, we endorse and appreciate the leadership of the Human Services Committee Chairs, Senator Slossberg and Representative Abercrombie, in addressing similar Applied Income issues in related legislation, **H.B. No. 6413, AN ACT CONCERNING MEDICAID ELIGIBILITY AND THE IDENTIFICATION AND RECOVERY OF ASSETS.**

Section 2 of the legislation adds nursing homes to the current list of providers whose expenses it is the joint duty of spouses to pay. Section 46b-37 currently obligates spouses to support one another and their family and makes them jointly liable for, among other things, the reasonable and necessary services of physicians, dentists and hospitals, but does not require such joint duty and obligation for payment of services provided to the spouse by nursing homes. There is no reasonable basis to exclude nursing homes from the spousal support obligation and, in the aftermath of the Connecticut Supreme Court's decision in *Wilton Meadows v. Coratola, 299 Conn. 819, 14 A.3d 982 (2011)*, the prospect of a spouse unfairly refusing to provide support for the care their spouses received in a skilled nursing home or rehabilitation center will be a common event unless the state legislature makes clear under Connecticut law, as proposed here, that spouses have a joint duty and liability to provide support for nursing home expenses.

S.B. No. 1025 (RAISED) AN ACT CONCERNING ADVANCE PAYMENTS TO NURSING FACILITIES FOR UNCOMPENSATED CARE;

This legislation is needed to address the persistent and worsening problem of excessive delays in the long term care Medicaid eligibility determination process at the Connecticut Department of Social Services (DSS) for skilled nursing facilities. Connecticut skilled nursing facilities and their residents are harmed by excessive delays in the eligibility determination process. As Medicaid applicants residing in nursing facilities await final disposition of their requests for state help, Connecticut nursing homes are simultaneously providing uncompensated care for periods of time often exceeding federal standard of promptness rules. This bill addresses this situation by requiring advanced for the money owed by the state. The bill also addresses the fundamental unfairness of requiring nursing facilities to pay provider taxes, penalties, interest and fees for care provided to Medicaid applicants and recipients, when no payment is being received from Medicaid for providing care due to excessive delays. Moreover, the bill modifies provider tax payment deadlines warranted by the Medicaid payment delays. Finally, the legislation also requires reimbursement for interest charges

nursing homes experience when they provided uncompensated care or when the Department of Social Services fails to make timely payments to nursing facilities.

In the aggregate, nursing homes across our state are owed nearly sixty million dollars while they provide uncompensated care. Our nursing home is harmed by these excessive Medicaid eligibility and payment delays.

CAHCF applauds and encourages the DSS efforts to modernize its eligibility systems and for their commitment to hire badly-needed eligibility staff to address delays across the entire public and medical assistance spectrum. However, the state's initiatives are still well into the future, but our nursing homes need assistance today. Legislation requiring DSS to advance payment to nursing homes is warranted given the current circumstances. CAHCF's recommended legislation is fairly drafted to only require an advance payment is situations where the delay exceeds ninety-days. The nursing home will be under an obligation to repay the state for the advance payment within thirty days of the granting of Medicaid. The draft bill calls for only fifty percent in the amount due the nursing home as the advance payment to conservatively account for periods of estimated ineligibility and actual eligibility denials. The state is made whole upon the final eligibility determination with guaranteed recoupment provisions. The authority for payments has a sunset provision by requiring requests for advance payments be made by January 1, 2014.

S.B. No. 1022 (RAISED) AN ACT CONCERNING PROVIDING INCENTIVES TO MEET LONG-TERM CARE GOALS

Connecticut should implement financial incentives for nursing facilities to achieve reductions in total nursing home licensed bed capacity that will have a measurable impact on the state's goals to "rebalance" the long term care system. Specifically, the proposal will require DSS to provide cost-effective rate increases whenever a nursing home voluntarily reduces licensed bed capacity, either permanently or temporarily. This will complement the full range of programs and policies in place, such as Money Follows the Person and other home and community based services initiatives, to further the state's goals to reduce the supply of nursing facility beds.

In January this year, Governor Malloy announced the Strategic Plan to Rebalance Long-Term Services and Supports. The Plan will use census and demographic data to develop town-by-town projections for long-term care needs. The analysis will help focus services in specific areas, enlist local planning, and help nursing home operators adapt to meeting anticipated demand. The plan reflects the state's ongoing effort to incent and encourage home and community based services options. The state's goals are to shift from 56 percent of long-term care clients living in the community to 75% by 2025. The plan furthers the goals of the state's Money Follows the Person program, and the state's anticipated $13 million nursing home diversification grants. It does so with additional features, such as increasing the number of transitions of long-term nursing home residents to the community; closing service gaps, improving existing services, and identifying new services; ensuring quality of care; building capacity in the community workforce to sustain rebalancing goals focusing on housing and transportation supports;

and helping transform nursing facilities into community-based continuing care providers serving a range of needs. Further, the Governor has proposed an additional $20 million over the biennial budget period for additional nursing home diversification projects.

However, no feature of the rebalancing plan adequately addresses the relationship of nursing home rates and rightsizing. This should be addressed because correctly incenting nursing home beds reductions, and thereby reducing the future supply of nursing home beds, will save the state dollars and accelerate achieving rebalancing goals.

In addition, incentive in SB 1022 is required to offset the loss of value stemming from the reduction in the facility's licensed bed capacity. Typically, a facility's value is based, in part, upon the number of its licensed beds. A reduction in the facility's licensed beds will likely have an adverse affect on its value and therefore, its ability to use the value as collateral for debt financing. Commercial mortgages are not fixed. Every five years or so banks want borrowers to refinance. If the facility reduces its bed capacity, it effectively reduces the lender's collateral, making it more difficult and costly to refinance the facility's loan. The incentive, in the form of a cost-effective rate increase, would defray the facility's loss.

In closing, Connecticut nursing homes remain in a period of ongoing financial distress. Medicare reductions in 2012 were as high as 16% in many Connecticut nursing homes and additional federal cuts are proposed this year. A 2% Medicare sequestration cut, unfortunately, is now set for April 1, 2013. On average, providers are paid today $14.73 per patient day less than what it costs to care for our residents. For the typical nursing facility, this represents over $400,000 per year in unfunded costs. There has been no rate increase in the system since 2007, except for increases made possible by increasing the user fees paid by nursing homes themselves (these increase are proposed for reduction in this budget). More challenges are ahead as the state continues its efforts to rightsize and rebalance Connecticut's long term care system. The three bills recommended by CAHCF are measured and badly-need to assist nursing homes will the issues they face in this challenging environment.

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