

*Testimony before the Aging Committee
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Good morning, Senator Flexer, Representative Serra and distinguished members of the Aging Committee. My name is Roderick Bremby and I am the Commissioner of the Department of Social Services. I am pleased to be before you today to testify on several bills on today's agenda that impact the Department.

S.B. No. 1003 (RAISED) AN ACT CONCERNING NURSING HOME CARE & H.B. 6894 (RAISED) AN ACT CONCERNING A STUDY OF LONG-TERM CARE

The Department of Social Services commends the Committee for its attention to the need for strategic planning for Medicaid long-term care services. This is a critical need given the strong preferences of older adults and individuals with disabilities to live in home and community-based settings, the state's interest in controlling escalating costs, and support for town-level tailoring of strategies to meet local needs. DSS respectfully suggests to the Committee, however, that the studies that are being proposed by S.B. 1003 and H.B. 6894 are not needed. In keeping with the legislation enacted by the General Assembly, Governor Malloy, the Office of Policy and Management, and DSS released the Strategic Plan to Rebalance Long-Term Services and Supports, which already captures the data and planning strategies that are contemplated by these bills. Also, section 17b-337, CGS, requires the Connecticut Long-Term Care Planning Committee to prepare a long-term care plan every three years based on the fundamental principle that individuals with long-term care needs have the option to choose and receive long-term care and support in the least restrictive, appropriate setting. The most recent plan, entitled *Balancing the System: Working Toward Real Choice for Long-Term Services and Supports in Connecticut*, was released in January 2013.

In support of the RFP for nursing facility diversification, the Department contracted with Mercer to make town-level projections of need for nursing home beds and associated workforce for all cities and towns in Connecticut. Mercer recently released updated projections for 2014.

The plans can be accessed at www.ct.gov/dss/rebal and http://www.ct.gov/opm/lib/opm/hhs/ltc_planning_committee/ltc_plan_-_2013.pdf

S.B. No. 1005 (RAISED) AN ACT PROTECTING ELDERLY PERSONS FROM EXPLOITATION

This proposal addresses a rapidly increasing problem in our community – financial exploitation of elderly persons.

In 2014, the Department referred close to 100 cases of financial exploitation to the Office of the Chief State's Attorney for criminal investigation, which is significantly greater than in previous years. Reports of financial exploitation account for approximately 25% of the reports the Department receives. In 2012, there were 880 reports of financial exploitation, and the number of such reports rose to 1300 in 2014, a significant increase. Also, it should be noted that, many times, once an investigation of abuse or neglect is initiated, the Department discovers that there is also financial exploitation. This is not reflected in these numbers.

These cases are quite disturbing. The Department has seen numerous situations where an elderly person's once-trusted friend, or designated power of attorney, or even family member, has depleted the elderly person's life savings, sometimes to the tune of hundreds of thousands of dollars. Incredibly, these once wealthy individuals who saved for their care and comfort in their later years become eligible for Medicaid, which prematurely shifts the cost of caring for these individuals to the state.

Actual examples of such cases include:

- Protective Services received a report of neglect and financial exploitation. The elderly person, who suffered from dementia, was about to be evicted from her apartment, where she received assisted living services, for non-payment. Her son, who was her POA, had paid the initial deposit and failed to pay anything further on her behalf after her admission. In addition, the elderly person's income was being sent directly to the POA and he did not provide any money to the elderly person so that she could pay her expenses. The POA did not respond to the telephone calls and letters from the facility, or to the notice of eviction proceedings.

The Department learned through its investigation that the son used his POA to sell the elderly person's home, retain the assets from the sale of her home, and had her monthly income directed to him. He depleted her assets to such a degree that she became eligible for Medicaid, shifting the cost of her care to the state.

- Protective Services received a report of possible financial exploitation when a State Marshal served an elderly person living in a nursing facility with an eviction notice for an apartment she had not resided in for several months. The elderly person reported that her daughter, her POA, paid all of her bills. In addition, the POA failed to follow through with the elderly person's Medicaid application, and the nursing facility was not being paid for her care.

The Department tried, without success, to work with the POA for several months to help her complete the Medicaid application. Ultimately, the Department had to file a petition for the appointment of a conservator of estate, which was granted. The Conservator discovered that the POA had not terminated the elderly person's lease, and had failed to pay the rent or utilities related to the apartment. The POA was, using her mother's funds to pay her own bills. It was later discovered that the POA several judgments against her.

The proposed changes to the protective services and criminal statutes, and the addition of a "Connecticut Uniform Power of Attorney Act" would go a long way toward deterring financial exploitation of elderly persons and creating meaningful consequences for those who are convicted of such exploitation. They add important changes to current law relating to oversight of individuals who have power of attorney. These revisions would reduce the financial burden imposed on the state as a result of the misuse of authority by powers of attorney.

For example, subsection (h) of section 22 allows the probate court to order and the elderly services division of the Department to ask a power of attorney to disclose receipts, disbursements or transactions conducted on behalf of the principal. The power of attorney must comply with the Department's request within 30 days, with extensions possible. This will allow the Department to have necessary access to information about an elderly person's finances, so that, if there is exploitation, which is thoroughly defined in subdivision (5) of section 1 of the bill, the Department will be able to move more quickly to stop it.

Subsection (a) of section 24 of Raised Bill 1005 provides that various categories of persons, including the Division of Protective Services for the Elderly within the Department, may petition the probate court to construe a power of attorney or review the agent's conduct and grant appropriate relief. This increase in oversight by the probate court of individuals will lead to more timely resolution of protective services cases, obviating the need for the Department to petition the probate court for a conservator of the estate in order to address issues related to the agent's conduct under a power of attorney, which is what has to happen now.

Subdivision (6) of subsection (b) of section 28 allows the Department to put the elderly person's bank on notice if a report has been made to the Department that there is a good-faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation or abandonment by the power of attorney or a person acting for or with the power of attorney, and allows the bank to reject the acknowledged power of attorney presented to it by the power of attorney. This is important because, currently, the only way for the Department to get an elderly person's bank account frozen is to apply for a conservatorship, and then send a notice of pending application to the bank. But sometimes a conservatorship is not necessary, and freezing the account places burdens on the elderly person's ability to access the account himself or herself. This is a much more efficient and narrowly tailored way to ensure that the bank may assist in protecting the elderly person's assets.

Subdivision (5) of section 1 of Raised Bill 1005 also expands the definition of "exploitation" by giving examples of different types of misconduct that are included within the definition, and includes "a breach of a fiduciary relationship, such as the misuse of a power of attorney," which is critical. Also important and beneficial to elderly persons is that section 2 makes "financial agents," defined in section 1 as officers or employees of a financial institution defined in section 32-50 of the general statutes, mandated reporters. As such, if they have reasonable cause to suspect or believe that an elderly person has been abused, neglected, exploited or abandoned, or is in a condition that is the result of such abuse, neglect, exploitation or abandonment, or in need of protective services, they are required to report to the Department within 72 hours of such suspicion or belief. Bank employees often have long-term relationships with elderly persons, and are often in a good position to observe changes in the elderly person, such as a decline in the

elderly person's physical or mental health, and to identify suspicious changes in the elderly person's banking activity.

Finally, and also importantly, section 5 gives an elderly person who has been abused, neglected or exploited or his or her conservator or other person acting on behalf of the elderly person with the consent of the elderly person a cause of action against any perpetrator and allows for recovery of actual and punitive damages, together with costs and reasonable attorney's fees. This is an important way to empower those whose lives have been adversely affected by others' misuse of their authority. This, in addition to the section 4 amendment of larceny in the second degree, to include exploitation, may also act as deterrents and result in a decrease in cases of exploitation.

For these reasons, the Department supports this proposal.

H.B. No. 6893 (RAISED) AN ACT INCREASING THE PERSONAL NEEDS ALLOWANCE FOR RESIDENTS OF LONG-TERM CARE FACILITIES

This bill proposes to increase the personal needs allowance of residents of long-term care facilities from \$60 to \$65. It also would restore annual cost-of-living increases.

Residents of nursing facilities pay their Social Security and other unearned income towards their cost of care with the exception of a monthly personal needs allowance (PNA).

In 1998, Connecticut increased the PNA from the federal minimum of \$30 to \$50 per month and provided for July 1 annual updates equal to the inflation adjustment in Social Security. As a result of the indexing to Social Security increases, the state's PNA was \$69 per month in FY 10. PA 11-44 reduced this amount to \$60 and eliminated the indexing.

The federal minimum for the personal need allowance is \$30 per month. Neighboring states, Rhode Island and New York have a current PNA level of \$50 per month.

The Governor's budget reduces the PNA to \$50, which results in anticipated state savings of \$1.0 million in FY 2016 and \$1.1 million in FY 2017. For this reason the Department is unable to support increasing the PNA and reinstating the annual cost-of-living increases.