



Testimony to the Aging Committee

Presented by Mag Morelli, President, LeadingAge Connecticut

March 8, 2018

Regarding

- **SB 257, AN ACT CONCERNING THE OFFICE OF THE LONG-TERM CARE OMBUDSMAN**
- **SB 309, AN ACT ALIGNING THE OFFICE OF THE LONG-TERM CARE OMBUDSMAN WITH THE OLDER AMERICANS ACT**
- **HB 5243, AN ACT INCREASING FUNDING FOR AGING IN PLACE INITIATIVES**
- **HB 5245, AN ACT ESTABLISHING A TASK FORCE TO STUDY BEST PRACTICES TO PROVIDE TRANSPORTATION FOR DISABLED PERSONS, SENIOR CITIZENS AND VETERANS**
- **HB 5272, AN ACT CONCERNING VISITS BY NONAMBULATORY NURSING HOME RESIDENTS TO THE HOMES OF THEIR FAMILIES**
- **HB 5322, AN ACT CONCERNING REGISTRATION OF HOME CARE WORKERS AND REGULATIONS GOVERNING THE PROVISION OF HOME CARE**
- **HB 5395, AN ACT CONCERNING TRAINING AND EXPERIENCE REQUIREMENTS FOR PROVIDERS OF SERVICES TO SENIOR CITIZENS**
- **SB 258, AAC THE EXEMPTION OF PROBATE-COURT APPROVED CONSERVATOR AND FIDUCIARY FEES FROM MEDICAID INCOME ELIGIBILITY AND ASSET TRANSFER DETERMINATIONS**

[LeadingAge Connecticut](#) is a statewide membership organization representing not-for-profit provider organizations serving older adults across the continuum of aging services, including not-for-profit skilled nursing facilities, residential care homes, home health care agencies, hospice agencies, adult day centers, assisted living communities, senior housing and life plan communities. On behalf of LeadingAge Connecticut I am pleased to provide testimony on several of the bills before you today.

SB 257, AN ACT CONCERNING THE OFFICE OF THE LONG-TERM CARE OMBUDSMAN

The work of the independent Office of the Long-Term Care Ombudsman is extremely valuable to nursing home residents and we support the concept of expanding the role of the Office to reflect the rebalancing of the long-term care field. We are concerned however that the definition of "home and community-based services" contained in this bill is extremely broad and potentially overwhelming. The Committee might consider a phased in expansion of duties for the Ombudsman such as for example, starting with home and community-based services provided by licensed and certified providers, or home and community-based services funded through state and federal programs. Refining the definition of home and community-based services, at least initially, would serve to clarify the expectation and responsibility of the Office. The statute might also want to reference some distinction between the duties of the Ombudsman and the Office of Elderly Protective Services with regard to the investigations involving persons residing in the community.

SB 309, AN ACT ALIGNING THE OFFICE OF THE LONG-TERM CARE OMBUDSMAN WITH THE OLDER AMERICANS ACT

We support this bill that makes technical revisions and aligns the Office of the LTC Ombudsman with the Older Americans Act. We do raise one question and that is regarding the proposed new duty of the Ombudsman added in lines 185-188. It requires the Ombudsman to *develop policies and procedures regarding the communication and documentation of informed consent in the case of resident complaints, including, but not limited to, the use of auxiliary aides and services or the use of a resident representative.* We would just seek clarification as to what is meant by “informed consent for resident complaints.”

HB 5243, AN ACT INCREASING FUNDING FOR AGING IN PLACE INITIATIVES

LeadingAge Connecticut is supportive of all the Committee’s efforts to increase the funding for the state funded and administered programs that provide home and community-based services for older adults and their families.

HB 5245, AN ACT ESTABLISHING A TASK FORCE TO STUDY BEST PRACTICES TO PROVIDE TRANSPORTATION FOR DISABLED PERSONS, SENIOR CITIZENS AND VETERANS

Transportation is a critical factor in determining whether an older adult will be able to remain in their home and active in their community. LeadingAge Connecticut would be happy to serve such a task force through our active participation and assistance.

HB 5272 AN ACT CONCERNING VISITS BY NONAMBULATORY NURSING HOME RESIDENTS TO THE HOMES OF THEIR FAMILIES

We appreciate the intent of this proposal which is to find additional means to help non-ambulatory residents visit their families. As always, we would be pleased to discuss ways to enhance the lives of nursing home residents, including enhancing their ability to engage with their families. We cannot, however, support the mandate proposed by this bill as we are concerned that it will evolve into an unfunded mandate on the nursing home. This would be a great concern to us. While the bill allows for the nursing home to charge for the cost of providing the mandated transportation, there is no guarantee of payment. The bill is also silent on the cost of providing the nursing assistants to accompany the resident on the visit, as well as the number and frequency of mandated trips that can be requested.

HB 5322, AN ACT CONCERNING REGISTRATION OF HOME CARE WORKERS AND REGULATIONS GOVERNING THE PROVISION OF HOME CARE

We are concerned with portions of this proposed bill. Section 2 of the bill appears to focus on homemakers. It requires those employed as such to obtain a certificate of registration with the Commissioner of Consumer Protection. In addition, Section 3 of the bill requires that homemaker-companion agencies applying to the Commissioner of Consumer Protection for the separate agency certification must certify that their employees, homemakers as well as companions, have CNA or home health aide training or two years of experience and annual physicals.

We question these requirements. Homemakers are not health care workers and so the requirement that they must obtain a certificate of registration seems unnecessary. Moreover, homemakers and companions do not provide any direct, hands on care and so the training requirements and requirements for an annual health assessment could limit opportunities for individuals to provide these services. We would recommend that the Department of Public Health be consulted on this proposal.

HB 5395, AN ACT CONCERNING TRAINING AND EXPERIENCE REQUIREMENTS FOR PROVIDERS OF SERVICES TO SENIOR CITIZENS

We strongly oppose Section 3 of this bill which would amend the current Nursing Home Residents' Bill of Rights by removing the nursing home or chronic disease hospital's obligation to provide information on how to apply for Medicare or Medicaid benefits and replace it with the mandate that a nursing home or chronic disease hospital provide every admission with a referral to a lawyer or legal services organization.

First, we oppose the removal within the Residents' Bill of Rights of the right to be provided information by the nursing home facility or chronic disease hospital as to how to apply for Medicare or Medicaid benefits as it would violate current federal requirements. CMS's federal Requirements of Participation for nursing homes, 42 C.F.R. § 483.10 Residents Rights, makes it clear that facilities are required to provide information to residents about Medicare and Medicaid eligibility, including information about how to apply for these benefits:

- Section 483.10(g)(4): *"The resident has the right to receive notices orally (meaning spoken) and in writing (including Braille) in a format and language he or she understands, including: (i) The facility must furnish to each resident a written description of legal rights which includes --- ... (B) A description of the requirements and procedures for establishing eligibility for Medicaid, including the right to request an assessment of resources under section 1924(c) of the Social Security Act.... (iii) Information regarding Medicare and Medicaid eligibility and coverage....."*
- Section 483.10 (g)(13): *"The facility must display in the facility written information, and provide to residents and applicants for admission, oral and written information about how to apply for and use Medicare and Medicaid benefits, and how to receive refunds for previous payments covered by such benefits."*

Second, we object to the mandate that nursing homes provide every resident with a referral to a legal services organization or attorney for the purpose of applying for Medicare or Medicaid benefits. Our objection is based on the following:

- This mandate implies to the resident and their family that an attorney is required to apply for Medicaid or Medicare benefits. This is not true. Many residents and families complete the Medicaid application process on their own, utilize other commercial entities that provide this service, or rely on the nursing home for assistance.
- The other sections of this bill appear to accept that there are other competent consultants, other than lawyers, who can provide "senior planning services or planning services related to Medicare or Medicaid." However, after reviewing the proposed requirement in section 3, we are concerned that the intent of the entire bill is to limit the provision of these services to just those in the legal profession. And indeed, there is another bill raised this session, SB 470, An Act Concerning the Unauthorized Practice of Elder Law, that proposes just that.
- With regard to Medicare benefits, CMS has a mandatory process in place for providers to inform beneficiaries of their financial liability and appeal rights and they can seek cost free assistance from the Beneficiary and Family Centered Care Quality Improvement Organization (BFCC-QIO). Residents are also often referred to the non-profit Center for Medicare Advocacy when there are coverage issues. Would the mandated information regarding the BFCC-QIO or a referral to the Center for Medicare Advocacy be acceptable for the purpose of this legislation?

- With regard to Medicaid, if we are telling residents that they need to hire a lawyer to complete a Medicaid application, what is the anticipated additional cost that will be incurred by the resident?
- How many names must be provided to residents? What is the nursing home's responsibility for vetting the names before referring them to the residents? What is the nursing home's liability if there is a case of legal malpractice? What is the lawyer's liability to the home if their handling of the eligibility case results in the imposition of a penalty period?
- If the eligibility process requires legal assistance, should the state be paying for this assistance?
- If we imply that every person needs a lawyer to complete the Medicaid long term services and supports application, does that also apply to persons entering the Connecticut Home Care Program?

In summary, we do not believe it is in the best interest of the resident or family *to mandate* that nursing homes provide a referral to a lawyer for the purpose of filling out a Medicaid application.

SB 258, AAC THE EXEMPTION OF PROBATE-COURT APPROVED CONSERVATOR AND FIDUCIARY FEES FROM MEDICAID INCOME ELIGIBILITY AND ASSET TRANSFER DETERMINATIONS

We do not support this bill and specifically section 3. The intent of the proposed drafted language is not at all clear and if the intent is in any way to reduce the debt that the facility can collect, we could not support it.

Thank you for this opportunity to provide these comments.

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

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