Testimony to the Human Services Committee

Presented by Mag Morelli, President of LeadingAge Connecticut

March 25, 2021

Senate Bill 1057, An Act Concerning the Nursing Homes

House Bill 6634, An Act Concerning Essential Support Persons and a State-wide Visitation Policy for Residents of Long-Term Care Facilities

House Bill 6636, An Act Concerning Covid-19 and Enhanced Federal Medicaid Funding

Good morning Senator Moore, Representative Abercrombie, and members of the Human Services Committee. My name is Mag Morelli and I am the President of LeadingAge Connecticut, a statewide membership association representing 130 not-for-profit provider organizations serving older adults across the continuum of aging services. Our members are all governed by community boards and they provide care, services and housing for approximately 12,000 older adults each day.

Thank you for this opportunity to testify on the *Senate Bill 1057, An Act Concerning the Nursing Homes* and *House Bill 6634, An Act Concerning Essential Support Persons and a State-wide Visitation Policy for Residents of Long-Term Care Facilities*. We have submitted written testimony that I will just briefly summarize.

The Impact of the Covid-19 Pandemic

Over the past year, the aging services field has been at the center of the global Covid-19 pandemic. Covid-19 is a virus that has targeted the very people we serve. As such, our member organizations have been uniquely impacted by the pandemic, unlike any other health care provider sector. And we are proud of our efforts. LeadingAge Connecticut members have faced this pandemic head on and continue to do so as we protect and compassionately care for the most vulnerable older adults in our state.

The bills before you today reflect many of the recommendations that came out of the Nursing Home and Assisted Living Oversight Working Group (NHALOWG). The NHALOWG was formed to make recommendations on proposed legislation for the 2021 session addressing lessons learned from COVID-19, based upon the Mathematica final report (A Study of the COVID-19 Outbreak and Response in Connecticut Long-Term Care Facilities) and other related information, concerning structural challenges in the operation and infrastructure of nursing homes and assisted living facilities; and changes needed to meet the demands of any future pandemic.

LeadingAge Connecticut was represented on NHALOWG and actively participated in the four subcommittees. While we support many of the recommendations that resulted from the valuable

work done by NHALOWG, we do disagree with elements of some of them. Today's hearing provides us the opportunity to present our perspective, opinion and alternative language for those sections of the bill and allows us to offer our assistance to the Committee as you work on this and other bills related to aging services.

Senate Bill 1057, An Act Concerning the Nursing Homes

LeadingAge Connecticut understands the interest in raising the minimum nursing home staffing requirements that are currently listed in the Public Health Code for licensed and certified nursing staff. We do, however, want to reassure the Committee that both the Public Health Code and federal oversight regulations currently require nursing homes **to staff at a level that meets the needs of residents**. These same regulations authorize the Department of Public Health to assess penalties in certain cases when facilities fall short of staffing requirements and fail to employ sufficient staff to meet resident needs.

This bill proposes 4.1 hours of direct care per resident day minimum, but it also proposes specific ratios per licensure category within that overall staffing level minimum and we cannot support those specific ratios (Lines 9 -14). To mandate specific ratios of CNA, RN and LPN within an overall minimum staffing level goes against the concept of flexing your staffing to meet the needs of the resident and flies in the face of our new acuity-based reimbursement system which is expected to be implemented later this year. These specific ratios are based on a 20-year-old national study that does not recognize the increased acuity of many current nursing home residents; this states' 24 hour registered nurse requirement nor our strong use of the LPN in our nursing homes.

Nursing care is important. The direct care provided to a nursing home resident is not just personal care. Residents also receive direct nursing care such as medication administration and treatments as well as nursing assessments. Nursing care must be provided by a registered nurse (RN) or licensed practical nurse (LPN). In fact, only a registered nurse is authorized to perform the actual nursing assessment; an LPN can examine the resident and provide information to the registered nurse, but the actual assessment must be done by the registered nurse. Nursing assessments are important, and required, components of the resident's overall care. Assessments determine the individualized care plan and must be conducted whenever there is a significant change of condition, and when required to be updated under state and federal requirements. Some nursing homes have chosen to staff nursing positions with more highly qualified registered nurses. Nursing homes that provide a strong level of direct registered nursing care are to be commended, not discounted, and we strongly object to any minimum staffing levels that disregard the importance of direct resident care that is provided by a registered nurse.

A very important issue that must be addressed is the Medicaid reimbursement with regard to nursing home staffing. Quality nursing home providers staff to meet the needs of their residents and many homes are staffing near or above the proposed 4.1 hours of direct care per resident day, but the Medicaid reimbursement rate does not cover the cost of this higher staffing. The vast majority of nursing homes that show high levels of staffing are also showing significant differentials between what the state Medicaid system is supposed to pay them according to their costs – and what the Medicaid system is actually paying them. **Very simply, they are not being reimbursed for their staffing costs.** As a result, we have a reimbursement system that is vastly underfunding the cost of staffing – at a time when the State is planning to transition to a staffing dependent acuity-based rate

system – and without a plan to increase the funding. **We therefore urge the Committee to insist that any legislation implemented to raise the minimum staffing levels also must address the need to fully fund the reimbursement system.**

We would also be remiss if we did not raise our concern regarding the ability to recruit and retain an aging services workforce that can meet the needs and demands of our aging population. We ask that the Committee support efforts to enhance the long-term services and supports workforce through expanded training opportunities, increased funding for reimbursement rates, and other efforts aimed at attracting and retaining workforce talent within the field of aging services. Workforce competition has intensified with the increase in the minimum wage, and recruitment efforts in the field of aging services have been dramatically impacted by the pandemic. We need a long-term investment in aging services provider rates to assist providers with recruitment and retention of a strong and skilled workforce that is urgently needed as our state rapidly ages.

Lines 1 - 8 of the bill include a definition of "nursing home" that we do not agree with and which seems to have been newly created. The reference should simply be: *A nursing home, as defined in section 19a-490 of the general statutes.*

Lines 20 – 22 contain a provision for the Commissioner of DPH, **in consultation with the Commissioner of DSS, to encourage nursing homes to adopt payment incentives for staff to work in a single nursing home.** If the Committee feels strongly about including this provision, we would prefer that this language be revised to state, "…to adopt [payment incentives for] policies and practices to incentivize staff to work in a single nursing home." We have found that pay is not the only incentive or arrangement that can be offered to encourage staff to work in one location. In fact, it is often difficult to single out one type of employee to provide a higher rate of pay; it would not be fair or equitable to provide increased payments to certain staff members simply because they have made a personal choice to supplement their income by working at another nursing home.

We are concerned about subsection (d), lines 26 – 29, which would require that the Commissioner of Social Services, in consultation with the Commissioner of Public Health, establish a minimum percentage of reimbursement to be spent on the provision of "direct care" to nursing home residents, without further knowledge of what would be defined as *direct care*. In at least one other state where this type of legislation has been adopted, there is still no final decision as to what would be considered direct care. The current definition of direct care in Connecticut statutes is very limited and specific to the staff costs accounting for in the annual nursing home Medicaid cost reports. However, we believe the intent of this section, as discussed in the NHALOWG, is to establish a broader accounting of all the care and services that go into the delivery of resident care and that is what is being referenced as "direct care" in the proposal.

We would argue that the current system of mandating the submission of nursing home cost reports annually, defining allowable and disallowable costs, and capping the total costs allowed by defined cost center, already places control on how the reimbursement rate is calculated and spent. Profit and loss statements of related parties must also be submitted. If this annual accounting of currently defined allowable costs is not sufficient, we would recommend a broad definition that would be inclusive of, but which would go well beyond staffing hours, and include but not be limited to physical

plant, moveable equipment, food, utilities and other elements of care and services that maintain and enhance the residents daily living environment and experience.

We also have concerns about this proposal because it would delegate responsibility to develop the percentage mandate to the Commissioner of Social Services. We do not believe that it is appropriate for the legislature to delegate such a responsibility to a state agency. As with any other substantive provision of law governing Medicaid rates, a directive on how nursing homes spend their Medicaid reimbursement dollars should be set forth in statute or the agency should be required to promulgate the provision through regulation with the opportunity for public notice and comment.

Finally, we would suggest that it would be prudent to allow the nursing home reimbursement to transition fully to the new acuity-based system before imposing this type of requirement.

House Bill 6634, An Act Concerning Essential Support Persons and a State-wide Visitation Policy for Residents of Long-Term Care Facilities

We have been supportive of the establishment of an essential support person program that can be activated during a public health emergency when visitation to a long-term care facility is restricted. We are therefore supportive of this bill, but we do have some comments.

First, we would ask that if this statute is to enable the essential support person to provide *assistance with activities of daily living* (line 9), that the language be modified with the addition of, "as reflected in the resident's person-centered care plan." We request this because we want to make sure that the essential support person is only providing assistance that everyone has agreed they can and are able to provide per the care plan.

Second, we just want to point out that Subparagraph (5) (lines 71-76) requires that the long-term care facility staff work with the resident and family to identify an essential support person for each resident. As a result, there is the potential that during an emergency, every resident would have an essential support person, which result in a high volume of persons able to enter and stay in a facility. This proposal also strays well beyond the concept of an essential support person that was originally discussed which was a person who had a "history of providing essential support to the resident."

House Bill 6636, An Act Concerning Covid-19 and Enhanced Federal Funding

We strongly support this bill which would require that the enhanced federal matching funds provided to the states for their Medicaid programs during the current pandemic be used to increase rates for Medicaid providers. Quality aging services – whether they are provided in the community or in the nursing home – cannot be sustained without rates of reimbursement that cover the cost of care.

Medicaid providers are struggling to serve the older adult Medicaid client under the current reimbursement system and many providers are finding it increasingly difficult to stay in the program altogether. To maintain a strong network of providers, the rates of reimbursement must be increased to sufficient levels. If not, we risk losing ground on the strides that have been made in transforming our Medicaid program and rebalancing our system of aging services and supports.

We would encourage the addition of a reference to the *10-point increase in federal match* for Medicaid home and community-based provider services that Connecticut will receive starting April 1. This is an estimated $194 million and the federal conditions do require it to be spent in the home and community-based arena. Here are the conditions:

- Supplement, Not Supplant: The State shall use the Federal funds attributable to the increase under to supplement, and not supplant, the level of State funds expended for home and community-based services for eligible individuals through programs in effect as of April 1, 2021.
- Required implementation of certain activities: The State shall implement, or supplement the implementation of, one or more activities to enhance, expand, or strengthen home and community-based services under the State Medicaid program.

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

Respectfully submitted,

Mag Morelli, President
LeadingAge Connecticut
110 Barnes Road, Wallingford, CT 06492
www.leadingagect.org
203-678-4477, mmorelli@leadingagect.org