

CONNECTICUT ASSOCIATION OF HEALTH CARE FACILITIES, INC.

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H.B. No. 7087 (RAISED) AN ACT CONCERNING THE DEPARTMENT OF PUBLIC HEALTH'S RECOMMENDATIONS REGARDING THE PROTECTION OF RESIDENTS IN NURSING HOMES

S.B. No. 901 (RAISED) AN ACT CONCERNING THE DEPARTMENT OF PUBLIC HEALTH'S RECOMMENDATION REGARDING ADOPTION OF A MODEL FOOD CODE.

S.B. No. 843 (RAISED) AN ACT CONCERNING THE DEPARTMENT OF PUBLIC HEALTH'S RECOMMENDATIONS REGARDING REVISIONS TO THE PROCESS FOR CITATIONS OF CHRONIC AND CONVALESCENT NURSING HOMES.

S.B. No. 904 (RAISED) AN ACT CONCERNING THE DEPARTMENT OF PUBLIC HEALTH'S RECOMMENDATIONS REGARDING FACILITIES GUIDELINES FOR TECHNICAL REVIEW OF FACILITY CONSTRUCTION AND RENOVATION.

Good afternoon Senator Gerratana, Senator Somers, Representative Steinberg and to the members of the Public Health Committee. My name is Matthew V. Barrett, President and CEO of the Connecticut Association of Health Care Facilities (CAHCF), our state's one hundred and sixty- member trade association of skilled nursing facilities and rehabilitation centers. Thank you for this opportunity to offer testimony on several bills this afternoon.

H.B. No. 7087 (RAISED) AN ACT CONCERNING THE DEPARTMENT OF PUBLIC HEALTH'S RECOMMENDATIONS REGARDING THE PROTECTION OF RESIDENTS IN NURSING HOMES

Sec. 1

The proposed additions to 19a-511 of concern seek to expand a licensed nursing home administrator's (LNHA) responsibility beyond the reasonable limits of his/her license.

Conn. Agencies Reg. §19-13-D8t(f)(3) already comprehensively address the responsibilities of a nursing home administrator. That regulation states that the LNHA is "responsible for the overall management of the facility" and then enumerates eleven

(11) specific powers and responsibilities relating to management and operation of a nursing home.

The new proposed language seeks to make LNHA responsible for the following: “(1) Planning, organizing, directing and managing of operations of a nursing home, (2) implementing the policies of the nursing home, including, but not limited to, making operating decisions, (3) ensuring the fiscal responsibility of the nursing home, and (4) conducting ongoing evaluations of the provision of care and services to ensure the health and safety of residents of the nursing home.”

Proposed responsibility (1) is duplicative of existing regulations which already impose “overall management” responsibility and the eleven specifically identified powers and responsibilities. The remaining proposed responsibilities expand administrator responsibilities beyond the reasonable limits of his/her license and scope of authority within the nursing facility. Proposed responsibility (3), “ensuring the fiscal responsibility” improperly imposes the responsibility of the owner/licensee upon the licensed individual charged with the day-to-day management of the facility. A LNHA is an employee with no independent authority to control finances of the facility absent approval of the owner/licensee.

Proposed responsibilities (2) and (4) make no distinction between clinical and non-clinical services and essentially make a LNHA, who is not a trained clinician, responsible for implementing clinical policies and ensuring the quality of clinical care. Imposing such clinical obligations on a non-clinical professional jeopardizes clinical care and directly conflicts with the existing regulatory obligations of the Medical Director, Medical Staff and Director of Nurses, who properly are charged with ensuring clinical care. Conn. Agencies Reg. §19-13-D8t(h), (i), (j). Existing regulatory language already requires administrators to be responsible for the overall management of the facility, including enforcement of all state and federal regulations. Adding the proposed responsibilities, and specifically those enumerated in (2) through (4), improperly expands the responsibilities of an administrator beyond the reasonable limits of his/her license.

Sec. 2

This legislation also proposes to change the language in 19a-517, which is the section used to revoke or suspend the license of a LNHA. The Department seeks to subject LHNAs to disciplinary or license revocation/suspension proceedings for the improperly expanded responsibilities detailed above. Such disciplinary action includes a civil penalty of up to \$25,000. In other words, a LHNA could be heavily fined or have his or her license revoked or suspended for inadequate or non-existing clinical policies regardless of the fact that the LNHA is not a clinician or for inadequate funding to meet facility obligations regardless of the fact that the LNHA is not an owner and has no

financial obligation to the facility. In effect, the LNHA would be strictly liable for clinical issues or financial issues that are well outside the scope of a LNHA's duties.

It is unjust and unreasonable to impose such requirements on the LNHA. For this reason we urge no action on this bill.

S.B. No. 843 (RAISED) AN ACT CONCERNING THE DEPARTMENT OF PUBLIC HEALTH'S RECOMMENDATIONS REGARDING REVISIONS TO THE PROCESS FOR CITATIONS OF CHRONIC AND CONVALESCENT NURSING HOMES.

Sec. 1

Section 1 proposes to limit the defenses a nursing facility or residential care home may offer as a defense when a citation is issued by the Department alleging failure to comply with certain statutes and regulations. Specifically, the Department is proposing to specifically prohibit such provider from even arguing in their defense the fact that the violation was committed by an employee or contractor. Such a restriction on a provider's rights to defend themselves defies basic fundamental principles of due process and is utterly without merit or justification. The Department is free to reject any argument raised by a provider in defending itself against a violation. There is simply no basis for restricting the arguments such a provider may wish to offer in its own defense.

Sec. 2

CAHCF agrees with the proposed changes in this section except the provision to remove the requirements at lines 40-41 and lines 52-55 requiring the Department to adhere to certain time limits in scheduling an informal conference or hearing. The imposition of citations can result in significant fines and under current Connecticut law, providers who receive 3 or more citations in a two year period are prohibited from purchasing additional nursing homes in Connecticut. In addition, all citations were are final are subject to disclosure pursuant to a standing freedom of information request from a certain media outlet and are made public in area newspapers. Given the significant repercussions to providers who are issued citations, there is no basis for removing the requirement that the Department hold an office conference or informal hearing within 5 days unless both parties agree to waive that timeframe.

Sec. 3

Section 3 of the proposed bill adds to the actions that may be taken by the Commissioner of Public Health the appointment of a temporary manager pursuant to 42 CFR 488.415. Appointment of a temporary manager removes from the licensee the authority to operate a facility and requires that the cost of the temporary manager be

paid by the licensee. Connecticut law already provides authority to the Commissioner to impose a receivership where a nursing facility's license has been suspended or revoked, where the nursing facility has sustained a serious financial loss or failure which jeopardizes the health, safety and welfare of the patient or where there is a reasonable likelihood of such financial loss or failure or for a substantial violation of the Public Health Code or any other applicable state or federal statutes or regulations. This proposed addition is accordingly duplicative and unnecessary. Furthermore, the language of the proposed addition is far broader nature than that permitted under the federal regulations as it allows the Department to impose the remedy "for a period of time to be determined by the commissioner." Under the federal regulations, the imposition of a temporary manager has a defined time period after which the temporary manager may be removed. The proposed bill contains no such controls or limits on the period of time the temporary manager may be imposed and accordingly the Association opposes this addition.

Sec. 4

The Department is proposing to add language allowing it to impose disciplinary action (including fines and citations) upon a nursing facility for "any violation committed by any of its employees or contractors of the regulations" without regard to whether such liability by the nursing facility would be justified under the facts or even the plain language of the regulation and without any hearing or other due process. We urge rejection of this over-reaching an unjustified overly-broad authority.

S.B. No. 904 (RAISED) AN ACT CONCERNING THE DEPARTMENT OF PUBLIC HEALTH'S RECOMMENDATIONS REGARDING FACILITIES GUIDELINES FOR TECHNICAL REVIEW OF FACILITY CONSTRUCTION AND RENOVATION.

This section proposes to require review by the Department of Public Health of plans for any "project for construction, building, alteration or renovation." CAHCF asks that the committee take no action on this bill as it is also overly broad and will pose a significant burden on the state's 225 nursing facilities. The proposed requirement applies to any alteration or renovation regardless of the scope or cost. Connecticut nursing facilities are home to thousands of Connecticut residents and as such, frequent updates are required in order to maintain a safe and homelike environment. The proposed legislation would require DPH approval of such minor alterations and new wallpaper or flooring that may have no impact on the residents' day to day activities. Further, it places no time limit for DPH to approve such plans, which poses a significant potential for undue delays on needed repairs and improvements.

S.B. No. 901 (RAISED) AN ACT CONCERNING THE DEPARTMENT OF PUBLIC HEALTH'S RECOMMENDATION REGARDING ADOPTION OF A MODEL FOOD CODE.

Sec. 4 (d)

This section provides that a class s 4 food establishment, which includes a nursing home, must employ a certified food protection manager, and that the certified food protection manager must satisfactorily passed a test as part of a food protection manager certification program that is evaluated and approved by an accrediting agency recognized by the Conference for Food Protection as conforming to its standards for accreditation of food protection manager certification programs.

We are concerned about these new requirements and how they reconcile with existing and similar food service requirements, and with new federal Requirements of Participation rules concerning a Director of Food Service in this nursing home environment CFR (Section 483.60). We recommend further study of this matter so that nursing homes can have the opportunity to evaluate any new training and personnel costs associated with implementation of this section before moving forward with adoption.

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