

# CONNECTICUT ASSOCIATION OF HEALTH CARE FACILITIES, INC.

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March 2, 2017

Written testimony of Matthew V. Barrett, President and CEO of the Connecticut Association of Health Care Facilities (CAHCF) concerning:

**H.B. No. 7040 AN ACT IMPLEMENTING THE GOVERNOR'S BUDGET RECOMMENDATIONS FOR HUMAN SERVICES PROGRAMS.**

**H.B. No. 7122 AN ACT CONCERNING FAIR RENT FOR NURSING HOMES.**

**S.B. No. 874 AN ACT REQUIRING ELECTRONIC NOTIFICATION BY THE DEPARTMENT OF SOCIAL SERVICES.**

**S.B. No. 875 (RAISED) AN ACT CONCERNING RIGHT-SIZING, REBALANCING AND REPURPOSING NURSING FACILITIES FOR THE TWENTY-FIRST CENTURY**

**Proposed H.B. No. 6885 AN ACT CONCERNING MEDICAID REIMBURSEMENT LEVELS FOR PROVIDERS.**

Good afternoon Senator Moore, Senator Markley, Representative Abercrombie, and to the distinguished members of the Human Services Committee. My name is Matthew V. Barrett. I am President and CEO of the Connecticut Association of Health Care Facilities (CAHCF). Thank you for this opportunity to offer testimony on several bills today.

**H.B. No. 7040 AN ACT IMPLEMENTING THE GOVERNOR'S BUDGET RECOMMENDATIONS FOR HUMAN SERVICES PROGRAMS.**

## **Section 21 and 22**

We are opposed to limiting or wholesale repealing the appeal rights Connecticut skilled nursing facilities as proposed here. These state law rights are especially in light of a harmful 2015 United States Supreme Court decision (*Armstrong v. Exceptional Child Center, Inc.*, 135 S.Ct 1378) that shuts off the right of beneficiaries or providers to sue the and force state compliance when violations of federal Medicaid law have occurred.

## **Section 27**

CAHCF is very mindful and understanding of Connecticut's fiscal challenges. However, we think it remains critically important to let the Human Services Committee know that investment in our state's skilled nursing facilities must be a priority.

Yet year after year---now going on ten years---the adopted budget removes all statutory and regulatory inflationary increases for nursing homes. The cost-based rate-setting system implemented in 1991 in state statute (17b-340) is not able to function because of ongoing state budget deficits. This year, as provided in Section 27 of HB 7040, is no exception. The Governor's proposed budget lines out these increases in the amount \$144 million during the biennial budget period.

Further, the proposed language in Section 27 has uncertainties for nursing facility operators. Depending on the facilities facts and circumstances, several scenarios are potential outcomes: (1) a rate freeze; (2) a marginal rate increase if new fair rent or moveable equipment exceeds decreases in fair rent on expired assets; (3) a rate decrease if fair rent decreases on expired assets exceed new fair rent or moveable equipment increases; or (5) a potentially significant rate decrease if the rates as calculated by the non-functioning system is less than the current rate because the proposed legislation does not include a customary stop loss. Because of these uncertainties, CAHCF is requesting that additional information on the impact of the rates be provided as the Appropriations Act and budget implementation legislation is developed further so that the specific impact can be better understood and the appropriately measures, included the customary stop loss, or other mechanism be put in place to assure a fair and equitable outcome in the implementation of the rates. The Leadership of our CAHCF is eager to participate in this critical process as the process moves forward.

**H.B. No. 7122 (RAISED) AN ACT CONCERNING FAIR RENT FOR NURSING HOMES.**

This important bill reverses the implementation of unexpected reductions to the fair rent component of the Medicaid rates to Connecticut's skilled nursing homes and rehabilitation centers effective January 1, 2017. CAHCF learned of the funding reduction in an email sent by the Department of Social Services ("Department") Friday afternoon, December 30, 2016.

This policy should be reversed because it isolates the fair rent component of the Medicaid rates when rate-setting components that would otherwise lead to increases in the nursing facility rates are totally ignored. Connecticut has now experienced ten years of flat nursing home rates while the rate-setting system has been all but ignored. Fair rent adjustments have, in fact, been taken from the calculated nursing home rate when fully amortized since the establishment of the current rate setting program in 1991. However, as indicated in my testimony on HB 7040, the budget document has since 1991 determined a "legislatively determined rate" based on the legislatively determined available appropriations. In the upcoming biennial budget, nursing facilities will be shorted \$144 million from the system's calculated cost based rate, and instead receive the legislatively determined rate that is in stark contrast to what the facilities would have been paid in the statutorily-required cost based reimbursement system. Because of this well-known annual payment shortfall, the state's policy has been to appropriately take fair rent adjustments from the calculated rate. It would be unfair and wrong to take the rate reduction for budgetary purposes off a legislatively determined rate when it has no relationship to the calculated cost based reimbursement system.

State officials do not dispute that nursing home providers have for many years been paid far less than the cost of delivering care under the Medicaid program. In addition, there are many examples of unrecognized costs in the rate setting system, most notably, the very significant costs of providing resident furniture and other patient-centered equipment to improve quality care. There can be no justification for cutting fair rent when valued against these ongoing Medicaid shortfalls and unrecognized costs.

Implementation of this unexpected, ill-advised and poorly timed policy has unfair and discriminatory outcomes for skilled nursing homes across Connecticut. While the implementation of the policy has nominal impact for some facilities, other nursing facilities are seeing dramatic funding reductions in amounts high as \$500,000 annually. We do not believe these wide disparities were fully evaluated before implementation of the reductions. Nursing facilities that appropriately made significant improvements to improve the resident care experience and new homes built in the 1990s with modern resident-centered amenities are now clearly known to be disproportionately cut.

Moreover, with the strong support and significant financial commitment, Connecticut nursing homes have recently, in partnership with the Department, incurred approximately thirty (30%) of the costs associated with Connecticut's successful nursing home wage enhancement program since each provider funds the non-Medicaid portion of the overall costs. Connecticut nursing homes embraced the wage enhancement program in the final analysis as a very wise public policy initiative to substantially increase the wages of our hardworking employees while improving quality of care by furthering staffing stability. It would also be unjust to reduce payments to Connecticut nursing homes right on the heels of these very significantly unfunded nursing home wage enhancement expenditures.

Reducing Medicaid payments to nursing homes at this time will jeopardize the provision of quality of care and undermine employment in the sector. It will exacerbate the financial instability being experienced in the sector at a time when supporting the skilled nursing facility sector to meet the needs of Connecticut's dramatically aging population should be the state's policy. These reductions will severely challenge the ability of nursing home operators to address the ongoing need to not only sustain, and also increase with new funds, the wages and benefits of nursing home workers across the state.

Further, Connecticut will incur a federal Medicaid revenue loss of 50% associated with reducing fair rent payments as proposed by the Department.

Finally, the Department is not required to reduce fair rent payments under the law and should not do so at this time. The Department relies on a statutory provision adopted in the 2015 June Special Session ((PA 15-5, JSS). This is a provision that was adopted without the benefit of a public hearing or the benefit of deliberation in the Human Services Committee. The language, on its face is innocuous in that it simply directs the Department to issue a lower rate to a nursing home in situations where the fair rent adjustments result in a payment above the facilities computed Medicaid rate, which is existing state policy. This imprecise language, when read together with the Commissioner of Social Services' broad rate-setting discretion under 17b-340 of the general statutes provides the needed authority to reverse the fair reductions today. We have asked the Department to reverse this policy now, however, the committee should adopt H.B. 7122 to remove this ambiguity from the general statutes to assure that in succeeding years fair rent will be fairly adjusted in the rates.

**S.B. No. 874 (RAISED) AN ACT REQUIRING ELECTRONIC NOTIFICATION BY THE DEPARTMENT OF SOCIAL SERVICES.** See attached.

**S.B. No. 875 (RAISED) AN ACT CONCERNING RIGHT-SIZING, REBALANCING AND REPURPOSING NURSING FACILITIES FOR THE TWENTY-FIRST CENTURY**

This legislation includes several components with a common theme to accelerate the rebalancing and repurposing of our system of long term care services and supports.

Section 1 of this bill will continue to move our state toward an acuity based payment system policy for Connecticut nursing homes, but no earlier than July 1, 2019. Connecticut initially this policy direction 2015. The provision is now codified under Section 17b-340d of the supplement to the general statutes.

Acuity based payment systems are often called “case mix” systems. They measure the intensity of care and services required for each individual in the nursing home and translate those measures into groupings. In short, acuity is the commonly used term used to describe the measurable amount of nursing care required for a nursing facility resident. These groupings form the basis of the nursing home Medicaid payments. The groupings have a payment hierarchy where the groupings representing the highest level of care and services appropriately receive the highest payment. Accordingly, as the services and care are less intense in lower acuity groupings, the reimbursement is less.

Thirty-five states include an acuity adjustment in their nursing facility Medicaid rates, including all the New England states and neighboring New York. An acuity based payment system will advance Connecticut’s goal of rebalancing in the area long term services and supports. A 2010 Rhode Island Department of Human Services report to the Rhode Island state legislature provides that when paying a flat per diem rate without an acuity factor, “there is no incentive for nursing homes to seek or to serve more costly (higher acuity) residents and that moving in this policy direction “should also facilitate the placement of lower acuity patients in home and community based settings” (Acuity Adjusted Rates for Rhode Island Nursing Facilities: A Report to the Rhode Island State Legislature. Department of Human Services, June 23, 2010).

This payment policy is consistent with the state’s policy goals in the area of long term services and supports. As our state continues to build a stronger system of home and community based supports for persons with less complex care needs, the result will be that older and higher acuity individuals will be served in greater numbers in Connecticut nursing homes. Nursing homes report that this is now being experienced. However, the Medicaid rate-setting system is not responsive to this dynamic. Connecticut should implement an acuity based payment system to address this issue.

Section 2 of the bill permits the Commissioners of Social Services and Developmental Services to contract with a nursing home provider for the establishment of services and supports for individuals who (1) require the level of care provided in a nursing home, and (2) are eligible to receive services from the Department of Developmental Services. As Connecticut policy makers continue to deliberate on the future of Southbury Training School and on issues related to the DDS wait list for services to persons with developmental disabilities, Connecticut skilled nursing facilities would like to participate in being part of the solution to these pressing policy

issues. We believe that a model can be developed, with the input of all stakeholders, which provides integrated and cost-effective care as one component of the solution.

Section 3 offers Connecticut a reasoned and planned approach to the voluntary reduction of licensed SNF beds. This would allow a nursing facility to, on a temporary basis, voluntarily de-license a sufficient number of beds, including occupied beds, to cause the facility to achieve a higher occupancy rate. Residents in de-licensed occupied beds would, if they chose, transition to another nursing facility within a 15 mile radius or to MFP.

Efforts to transition Medicaid recipients out of more costly SNF settings and into more affordable home and community based environments in such programs as the state's hallmark Money Follows the Person (MFP) could be considerably enhanced with a voluntary bed reduction initiative. Among other factors, MFP's success has been challenged an excess supply of licensed nursing facility beds. However, nursing facilities have been reluctant to de-licensed beds. The reluctance stems from the justifiable notion that if facilities reduce their licensed capacity, the reduction would cause a permanent reduction in the facilities' value. However, CAHCF wants to be very clear. This is not an argument against the value and importance of the MFP program. This is an argument for the need of a responsible voluntary bed reduction program.

Adoption of this provision would allow a nursing facility to, on a temporary basis, voluntary de-license a sufficient number of beds, including occupied beds, to cause the facility to achieve a higher occupancy rate. Residents in de-licensed occupied beds would, if they chose, transition to another nursing facility within a 15 mile radius or to MFP.

According to DSS calculations, the net cost to the state for care in a nursing facility is approximately \$2,650 per month, whereas the net cost to the state under MFP is only \$963. Therefore, with regard to the residents who transition under MFP, the state would realize savings. While not every nursing facility would agree to reduce its capacity, many others might agree to a reduction in an amount that could cause more than five residents per facility to opt for MFP. Moreover, with the anticipated change to an acuity-based reimbursement system, the incentive to reduce capacity would be even greater and the savings potential would increase as well.

The public policy reasons for advancing a long term care rebalancing strategy are well known. There are 1 million baby boomers in Connecticut. There are 600,000 residents in Connecticut over the age of 60. Connecticut's aging population is among the oldest in the Nation, with over 160,000 Connecticut citizens over the age of 80 according to a December 2012 report issued by the U.S. Census Bureau. Much is being asked of our nursing facilities today, and more will be asked in the future given the dramatic aging of our population. As the state continues in the direction of long term care rebalancing and rightsizing, these changes will mean that the acuity and numbers of nursing facility residents will continue to rise measurably as our population ages, even as more residents choose home and community based environments to receive their care.

A responsible voluntary SNF bed reduction program can help advance these goals.

**Proposed H.B. No. 6885 AN ACT CONCERNING MEDICAID REIMBURSEMENT LEVELS FOR PROVIDERS.**

CAHCF applauds this important legislation introduced by State Representative Hilga Santiago of the 84<sup>th</sup> District. The bill would require that title 17b of the general statutes be amended to require the Commissioner of Social Services to allocate available funding so that provider reimbursement rates are sufficient to ensure an adequate pool of providers to meet the needs of Medicaid recipients.

This proposal is similar in its intent to the “access prong” of the longstanding Social Security Act requirement that Medicaid state plan payment rates be consistent with efficiency, economy, and quality of care and *sufficient to enlist providers to assure sufficient beneficiary access to covered care and services* (emphasis added) comparable to the care and services available to the general population in the geographic area (Section 1902 (a)(30)(A)).

Representative Santiago’s proposed bill is especially important in light of a harmful 2015 United States Supreme Court decision (*Armstrong v. Exceptional Child Center, Inc.*, 135 S.Ct 1378) that shuts off the right of beneficiaries or providers to sue the state to assure beneficiary access to covered services when Medicaid rates are cut. Moreover, a state law protecting access to covered services is equally important given the uncertainty of how beneficiary and provider rights will be protected under a federal Medicaid block grant or per capita growth cap scenario under consideration in Washington, DC.

For these reason we urge the bill’s adoption by the Human Services Committee.

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

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CONNECTICUT ASSOCIATION FOR  
HEALTHCARE AT HOME™



**TESTIMONY SUBMITTED  
TO THE  
HUMAN SERVICES COMMITTEE  
Thursday, March 2, 2017**

**SB 874 AN ACT REQUIRING ELECTRONIC NOTIFICATION BY THE DEPARTMENT OF SOCIAL SERVICES.**

We, the Connecticut Hospital Association, the Connecticut Association for Healthcare at Home, the Connecticut Association of Health Care Facilities, the Connecticut State Medical Society, and LeadingAge Connecticut, appreciate the opportunity to submit written testimony in support of S.B. No. 874 (RAISED) AN ACT REQUIRING ELECTRONIC NOTIFICATION BY THE DEPARTMENT OF SOCIAL SERVICES.

SB 874 is a similar bill to SB 773, AAC ADVANCE NOTICE BY THE DEPARTMENT OF SOCIAL SERVICES OF GUIDELINES AND BULLETINS, which was heard earlier this session in the committee. Both bills are supported by our associations, however SB 773 has less scope in that the bill only requires the Department of Social Services to disseminate program guidelines or bulletins at least sixty days in advance to the Human Services Committee.

SB 874 is distinguished from SB 773 in that it includes additional and important provisions to assure the opportunity for the provider community and the interested general public the benefit of advance notice and release of information. Specifically, SB 874 requires the release of information on guidelines and also changes in law or regulations at least sixty days prior to implementation. It has broader provisions to assure electronic requests from the general public for early notice are accommodated.

Both SB 874 and SB 773 will improve policy and implementation outcomes by improving public notice and input of impending changes in state policy. In the interest of efficiency, we urge reconciling the minor differences in the bills into a single bill for the favorable report of the committee.

Thank you.