CAHCF/CCAL
Connecticut Association of Health Care Facilities
Connecticut Center for Assisted Living

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Testimony of Matt Barrett, President and CEO of the Connecticut Association of Health Care Facilities / Connecticut Center For Assisted Living (CAHCF/CCAL).

Good afternoon Senator Lesser, Senator Hochadel, Representative Gilchrest and Representative Garibay and to the distinguished members of the Human Services Committee and Aging Committee. My name is Matt Barrett. I am President and CEO of the Connecticut Association of Health Care Facilities / Connecticut Center For Assisted Living (CAHCF/CCAL). CAHCF/CCAL is a one hundred and fifty member trade association of skilled nursing facilities and assisted living communities. Thank you for this opportunity to testify on several bills at today's public hearing.

H.B. No. 6627 (RAISED) AN ACT CONCERNING THE OFFICE OF THE ATTORNEY GENERAL'S PROPOSED REMEDIES FOR DEFICIENT LONG-TERM CARE.

This proposed bill authorizes the Connecticut Attorney General to bring civil actions against skilled nursing facilities after state of federal regulators have already cited and penalized providers for violating health care standards under state and federal law, noting that severe penalties are now routinely imposed by the Connecticut Department of Public Health and the Centers for Medicare and Medicaid Services (CMS) for violations, including existing state and federal authorities that have closed several nursing homes recently. We ask that the committee also give careful consideration before advancing the bill to the existing and significant Medicaid fraud and recovery authorities and remedies now available to the Department of Social Services and the Office of the Attorney General before authorizing additional measures of this magnitude.

H.B. No. 6386 (COMM) AN ACT CONCERNING SAFEGUARDING THE RIGHTS, HEALTH, FINANCES AND QUALITY OF LIFE OF NURSING HOME RESIDENTS.

We understand that is common practice not to take any action to recover costs from a Medicaid applicant until a final decision has been rendered by the Department of Social Services on such applicant's Medicaid eligibility, however, it would be unreasonable to elongate the period to allow for exhaustion of all appeal rights, which could be a number of years that the facility

would go without payment or recoupment.

H.B. No. 6575 (RAISED) AN ACT ENCOURAGING SOCIALIZATION FOR NURSING HOME RESIDENTS BY PROVIDING TRANSPORTATION FOR VISITS WITH FAMILY and Section 4 of proposed S.B. No. 989.

Thank you for this opportunity to testify in support of H.B. No. 6575. This proposed bill would allow nursing homes, with available vehicles equipped to transport non-ambulatory residents, to provide nonemergency transportation of non-ambulatory residents to the homes of family members. The bill further provides that the transportation could be prior authorized within five days of the visit, when the family visits are in the same municipality as the nursing home, and when the transportation is approved by a physician, physician assistant or advanced practice registered nurse. This provision is also included in Section 4 of proposed S.B. No. 989.

The proposed legislation also appropriately establishes a funding mechanism in the form of a state grant program under the Department of Social Services for any nursing home wishing to provide nonemergency transportation for family visits of this nature. As background, there are no limitations under the law or practices governing nursing homes that today would cause a nursing home to prevent family visits of residents when arranged by family members and where the costs are addressed by the family or the resident. Such family visits are routinely provided today. Payment is arranged between the transportation provider and the family or resident in the current practice. In addition, we see such visits as fully consistent with a nursing home resident's right as a member of the nursing home community. The proposed grant program in the legislation is an important provision given that transportation unrelated to a medical issue is not part of the reimbursement structures now in place for nursing homes under the various payer sources, such as Medicare, Medicaid, or private insurance. Families must now arrange and privately pay for such visits. By establishing a grant program, this bill may provide new opportunities for families to arrange these important home visits.

H.B. No. 6578 (RAISED) AN ACT CONCERNING AIR CONDITIONING IN NURSING HOMES.

This proposed legislation would require, on and after July 1, 2024, that all Connecticut skilled nursing facilities must have an air conditioning system in all resident rooms. The bill also provides that not later than January 1, 2024, the facilities must submit a report to the Department of Public Health attesting to its compliance with this new air conditioning requirement or its plan to comply with the requirements of this subsection. This same provision is included in Section 1 of proposed S.B. 989.

As background, federal or state law not require a nursing home to have air conditioning, however, federal regulations require that all nursing homes maintain a temperature range of 71-81 degrees for all areas and therefore all nursing homes do have air conditioning in certain areas toward achieving compliance and creating a comfortable environment for residents. When this matter was under consideration several years ago, the Connecticut Department of Public Health

reported the results of a survey concerning the incidence of air conditioning in Connecticut nursing homes. In summary, the DPH found that all Connecticut nursing homes have some measure of central air conditioning and that many nursing homes have central air conditioning either throughout the home, or at least in common areas such as dining areas and hallways, and that the majority of nursing homes have air conditioning in resident rooms.

However, achieving compliance with the mandate proposed in the bill would be a significant financial challenge for a facility that does not currently have an air conditioning system in every resident room. Currently Medicaid rate setting rules do not specifically provide reimbursement for these mandated costs. For these reasons, the proposed legislation should include additional provisions to assure full compliance with the new requirements and to provide reimbursement to facilities when increased costs are experienced. Specifically, the bill should include provisions for Medicaid reimbursement for all the cost associated with necessary upgrades to air conditioning, including any infrastructure and capital improvement renovations that may be required. Unallocated American Rescue Plan Act (ARPA) funding should additionally be set aside in the form of grants to facilities for this purpose.

S.B. No. 930 (RAISED) AN ACT REQUIRING NOTICE OF A PROPOSED TRANSFER OR DISCHARGE OF A NURSING HOME FACILITY RESIDENT TO THE STATE OMBUDSMAN.

This bill would require skilled nursing facilities to, on the date that the facility provides notice of a proposed transfer or discharge of a resident from the facility the facility to notify the State Ombudsman of proposed transfer or discharge. The bill also indicates that the failure of the facility to provide this notice to the ombudsman would invalidate any notice of the proposed transfer or discharge of a resident. A similar provision, but limited to involuntary transfers is included in Section 3 of proposed S.B. 989. Moreover, the Connecticut General Assembly in the 2022 session expanded this protection under PA 22-57 PA-57 by requiring these notices be provided to the ombudsman. This provision is now codified under subsection (k) of Section 19a-535 (reprinted below).

Because these resident protections in the area of transfer and discharges are already in place under both state and federal law, we are urging the committees to take no action on proposed S.B. No. 930 and Section 3 of proposed S.B. 989.

As background, there is already well-established and longstanding state law found at C.G.S. 19a-535 (c) requiring the facility to notify, in writing, the resident and the resident's guardian or conservator, if any, or legally liable relative or other responsible party if known, of the proposed transfers or discharges, including the reasons therefor, the effective date of the proposed transfer or discharge, the location to which the resident is to be transferred or discharged, the right to appeal the proposed transfer or discharge and the procedures for initiating such an appeal as determined by the Department of Social Services, the date by which an appeal must be initiated in order to preserve the resident's right to an appeal hearing and the date by which an appeal must be initiated in order to stay the proposed transfer or discharge and the possibility of an exception to the date by which an appeal must be initiated in order to stay the proposed transfer or discharge for good

cause, that the resident may represent himself or herself or be represented by legal counsel, a relative, a friend or other spokesperson, and information as to bed hold and nursing home readmission policy when required.

This existing notice must also include the name, mailing address and telephone number of the State Long-Term Care Ombudsman. The existing law further requires that, if the resident is, or the facility alleges a resident is, mentally ill or developmentally disabled, the notice must also include the name, mailing address and telephone number of the nonprofit entity designated by the Governor in accordance with section 46a-10b to serve as the Connecticut protection and advocacy system.

The existing notice must be given at least thirty days and no more than sixty days prior to the resident's proposed transfer or discharge, except where the health or safety of individuals in the facility are endangered, or where the resident's health improves sufficiently to allow a more immediate transfer or discharge, or where immediate transfer or discharge is necessitated by urgent medical needs or where a resident has not resided in the facility for thirty days, in which cases notice shall be given as many days before the transfer or discharge as practicable.

Once more, this strong existing law provides that resident may initiate an appeal of the transfer or discharge by submitting a written request to the Commissioner of Social Services not later than sixty calendar days after the facility issues the notice of the proposed transfer or discharge. In order to stay a proposed transfer or discharge, the resident must initiate an appeal not later than twenty days after the date the resident receives the notice of the proposed transfer or discharge from the facility unless the resident demonstrates good cause for failing to initiate such appeal within the twenty-day period. Moreover, the Connecticut General Assembly in the 2022 session expanded these protections under PA 22-57 PA-57 by requiring these notices be provided to the ombudsman. This provision is now codified under subsection (k) of Section 19a-535:

(k) A facility shall electronically report each involuntary transfer or discharge to the State Ombudsman, appointed pursuant to section 17a-405, (1) in a manner prescribed by the State Ombudsman, and (2) on an Internet web site portal maintained by the State Ombudsman in accordance with patient privacy provisions of the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191,2 as amended from time to time. In addition, there is a federal regulation that requires that the facility provide a copy of any notice of transfer or discharge given to a resident to the Ombudsman. (42 CFR 483.15(c)(3)).

Further, skilled nursing facilities are already subject to significant penalties for failing to follow existing regulatory requirements governing transfers and discharges. These include fines that can range from $245-$23,989 PER DAY or $5735-$23989 per instance, depending on the scope and severity as well as reduction of 5 star ratings, denial of payment for new admissions and other penalties.

Finally, there are already significant restrictions on when a facility can transfer or discharge a resident. This can only occur when:

i. Health or safety of individuals in the facility is endangered;
ii. The resident has failed, after appropriate notice, to pay for his/her stay;
iii. The resident's health has improved such that he/she no longer requires nursing home services,
iv. The facility ceases to operate; or
v. The resident's needs cannot be met in the facility.

The well-established process and significant protections expressed above would be improperly invalidated under these proposed measures. Therefore, because there are already significant and existing protections in place for residents that were significantly expanded less than a year ago by action of the Connecticut General Assembly, and very severe existing penalties under the law now, we are urging the committees to take no action on proposed S.B. No. 930 and Section 3 of proposed S.B. 989.

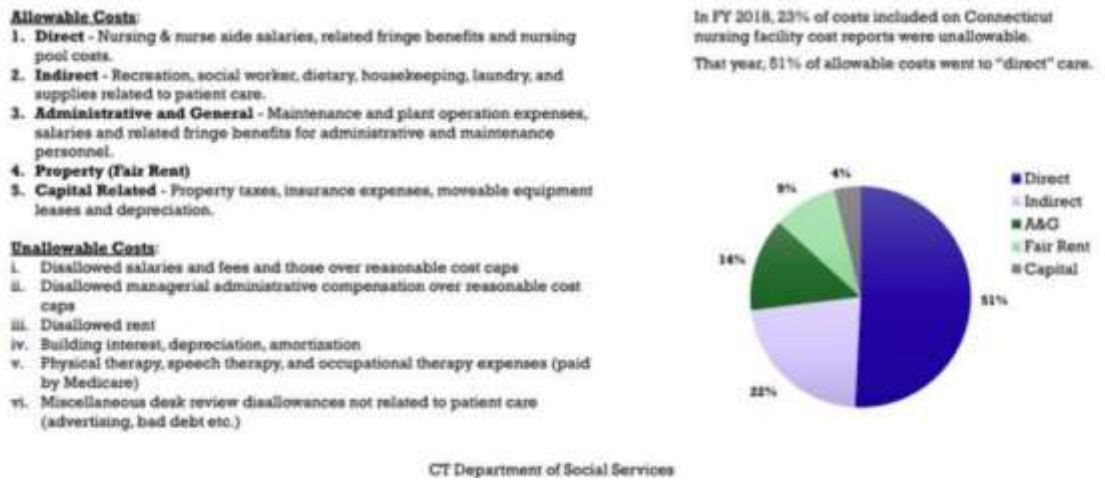
S.B. No. 989 (RAISED) AN ACT CONCERNING NURSING HOMES.

Section 6.

This provision, beginning with the cost report year ending on September 30, 2023, would require annual nursing homes submit summaries of nursing facility Medicaid expenditures in addition to the annual cost reports requirements. The summaries must include the percentage of Medicaid funding allocated to the five cost components of rate allowable costs and include expenditures for each allowable cost component by the nursing home and any related party.

The bill also requires the Commissioner of Social Services to post in a conspicuous area on the department's Internet web site a link to (1) the annual cost reports and the summaries provided by each nursing home facility, (2) comparisons between individual nursing homes by expenditures, and (3) a summary of the average reported expenditures by facility for each category. Further, the bill requires cost report forms utilized by the department to include a glossary and explanation of the terms used and a description of the categories being reported on, including, but not limited to, plain language explanation of formulas used to determine maximum costs for the five allowable cost components in the rates. Violations of these requirements include a fine of not more than ten thousand dollars for each incident of noncompliance.

The information from which the summaries and comparisons that would be required in this bill is now being reported and maintained at DSS and is summarized and presented in the chart below from a DSS presentation to the Medical Assistance Program Oversight Council (MAPOC) October 2023 meeting and also included in the Leading Age Connecticut and CAHCF/CCAL presentation on Nursing Home Medicaid Reimbursement presentation dated February 10, 2023 to the Appropriations and Human Services Committee.



It would be more efficient and presented in a uniform format if the summaries, comparisons, and explanation of terms could be developed or programmed on the DSS website from the data and reports now in the DSS files and currently on the agency website, rather than individually prepared by each nursing home.

Section 7.

Section 7 of the bill would require under DPH licensure law that if a private equity fund owns any portion of the business, the name of the fund's investment advisor and a copy of the most recent quarterly statement provided to the private fund's investors, including information regarding fees, expenses and performance of the fund. Current licensure rules now require, among other things, disclosure of the name and business address of the owner and a statement of whether the owner is an individual, partnership, corporation or other legal entity; and the names of the officers, directors, trustees, or managing and general partners of the owner, the names of persons having a ten per cent or greater ownership interest in the owner, and a description of each such person's occupation with the owner; and if the owner is a corporation which is incorporated in another state, a certificate of good standing from the secretary of state of the state of incorporation. The bill would also require in this process audited and certified financial statements of the owner, including a balance sheet as of the end of the most recent fiscal year, and income statements for the most recent fiscal year of the owner or such shorter period of time as the owner shall have been in existence.

We are urging the committees to carefully evaluate the Biden Administration "Disclosure of Ownership and Additional Disclosable Parties Information for Skilled Nursing Facilities" proposed federal rules announced just this week, and the federal rule making comment period that could inform in much more detail the extent to which additional state rules should be needed. The proposed rules announced this week reflect a comprehensive federal ownership and private equity fund disclosures that follow the now implemented greater ownership transparency public reporting that began the September 2023 publicly posting of nursing home ownership data, including percentage of ownership on the ownership section of Care Compare on the Medicare.gov website: https://www.medicare.gov/care-compare/?providerType=NursingHome&redirect=true

This level of ownership detail is now available on the Medicare website, Connecticut's state level rules have been very progressive on ownership reporting for years with state nursing home licensure requirements already including detailed ownership information, such as whether the owner is an individual, partnership, corporation or other legal entity. Similar state level ownership reporting has longstanding been required under state Medicaid cost reporting rules.

Operators are open to improved transparency, but focus and attention should also be on the extraordinary strain and instability the now three-year's long COVID-19 public health emergency has caused on the staff, operators, and residents who work and live in Connecticut's 205 skilled nursing facilities. This nursing home community continues to face severe staffing shortages, ravaging inflation and higher costs requiring recognition and support from state policy makers." We are urging lawmakers to carefully consider the Connecticut specific transparency rules now on the books and to be cautious about passing more state level transparency requirements in advance of the comprehensive proposed federal rules just announced this week. Finally, noting that audited and certified financial statements are not currently required by the state or Medicare, CAHCF preliminarily estimates that these enhanced requires would additionally cost nursing homes between $15,000 and $30,000 per facility.

Section 9 and 10.

Providers are already doing everything they can to recruit and retain staff with the resources they have. Unfortunately, similar to concerns being expressed by providers across the nation, an expanded staffing mandate simply will not work because the workers are just not available for hire. The staffing shortage is even worse than it was in 2021 when Connecticut's state legislature directed new state regulations to significantly increase staffing minimums for direct care staff to 3.0 hours per patient per day. Today many nursing homes will have challenges even meeting the 3.0 requirement, let alone going to 4.1 as proposed this session. We would welcome the opportunity to assist in developing estimates on the number of new positions that would be needed for compliance and the associated costs.

Also, jobs reports show that nursing homes have lost more workers since the start of the pandemic and despite every effort to hire more staff, provider are making little progress at

recruiting new staff in the current environment. More fines or penalties for failing to meet a new and unachievable staffing mandate will simply further the financial instability that skilled nursing home are now experiencing.

Connecticut's skilled nursing facilities have the same goal as lawmakers have to increase in staff. Operators are urging Connecticut lawmakers to minimally await the findings of a national study and anticipated federal rules on nursing home staffing levels now being conducted by the Biden administration and expected to be released as early as May 2023 that could have the effect of superseding any state staffing minimums. Operators are also urging a more reasonable approach at both the state and federal levels to increasing staffing that includes a phase-in of any new requirements to a time when staff may be available, sufficient new Medicaid resources to pay for the staff, including the full range of staff that are providing direct care beyond RN, LPN and CNA positions and counting total nursing and nurse aid direct care hours from the licensed and certified staff providing direct care, and reasonable waiver provisions when government data indicates an insufficient supply of workers to meet the mandate.

Finally, the provision imposing fines within 7 days without the opportunity for appeal is improper.

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

For additional information, contact: Matthew V. Barrett, *mbarrett@cahcf.org* ***or 860-290-9424.***