



March 13, 2024

Testimony of the Connecticut Association of Health Care Facilities / Connecticut Center For Assisted Living (CAHCF/CCAL):

On behalf of the Connecticut Association of Health Care Facilities / Connecticut Center For Assisted Living (CAHCF/CCAL), a trade association of skilled nursing facilities and assisted living communities, my name is Matthew Barrett, the association's President and CEO. Thank for this opportunity to present testimony in opposition to S.B. No. 273 AN ACT CONCERNING NURSING HOME STAFFING.

S.B. 273 defines "direct care" as hands-on care provided by a registered nurse, licensed practical nurse, or a nurse's aide, to residents of nursing homes, including, but not limited to, assistance with feeding, bathing, toileting, dressing, lifting and moving, administering medication, promoting socialization and personal care services, but does not include food preparation, housekeeping, laundry services, maintenance of the physical environment of the nursing home or performance of administrative tasks.

The bill requires the Department of Public Health by October 1, 2024, to establish minimum staffing level requirements for nursing homes of three hours of direct care per resident per day, including fifty-five hundredths of an hour of care by a registered nurse (RN- .55), twenty-nine hundredths of an hour of care by a licensed practical nurse (LPN - .29), and two and sixteen hundredths hours of care by a nurse's aide (CNA – 2.16).

The bill further requires DPH to modify staffing level requirements for social work and recreational staff of nursing homes such that the requirements (A) for social work, a number of hours that is based on one full-time social worker per sixty residents and that shall vary proportionally based on the number of residents in the nursing home, and (B) for recreational staff are higher than the current requirements, as deemed appropriate by the Commissioner of Public

Health.

Finally, the bill prohibits any direct care provided by the following persons from counting toward the minimum staffing level requirements as follows: (1) In a nursing home with more than sixty-one beds, the director of nurses; (2) in a nursing home with more than one hundred twenty-one beds, the assistant director of nurses; (3) a registered nurse, licensed practical nurse or nurse's aide who has not completed or is in the process of completing any of the nursing home's orientation or training.

Existing law requires DPH to adopt regulations in accordance with Connecticut's Uniform Administrative Procedures Act (chapter 54) to implement the provisions of the bill, and it authorizes, but doesn't require, DHP to implement policies and procedures necessary to administer the provisions of this section while in the process of adopting such policies and procedures as regulations, provided notice of intent to adopt regulations is published on the eRegulations System not later than twenty days after the date of implementation. The existing law provides that policies and procedures implemented pursuant to this section shall be valid until the time final regulations are adopted.

A review of the proposed bill indicates SB 273 aligns with the total direct care minimum staffing requirement of 3.0 hours mandated in PA 21-185 and with the total hours in the amended DPH policies and procedure and proposed regulations, *however, it differs significantly* by delineating the LPN requirement at .29 hours separate from the existing licensed staffing requirement, which under current DPH policies and procedures is .84 total combined RN and LPN. S.B. No. 273 also delineates the RN at .55 hours in addition to the proposed .29 for LPN.

Further, S.B. No. 273 *also differs significantly* by increasing the CNA minimum staffing requirement to 2.16 hours from the existing public health code requirement of 1.26 hours. This presents an 80% increase in the CNA minimum requirement because the total 2.16 standard, as proposed, must be in the CNA category alone, whereas the existing public health codes rule allows the additional 2.16 minimum direct care staffing compliance to be achieved with a combination of LPN and CNA hours. Similarly, the existing rule allows the .84 licensed personnel requirements to be achieved by a combination of RN and LPN. In this sense, the existing rule allows the LPN hours to be counted in the total .84 licensed staffing requirement, or as part of the 2.16 remainder

direct care requirement, but these counts may not be duplicated in both categories. The existing rule is clear that staffing for the RN, LPN and CNA cannot be duplicated---in short, staff cannot be double-counted under any circumstances.

As background, Connecticut nursing home director care staffing minimums were recently increased under amended DPH policies and procedures issued on January 8, 2024 in alignment with the minimum direct care staffing increase of 1.9 hours to 3.0 hours in a twenty-four-hour period adopted in PA 21-185. A DPH proposed regulation mirroring the amended policies and procedures is moving forward in our state's regulations review process under the state Uniform Administrative Procedures Act (UAPA).

- Connecticut nursing homes continue to be required to provide twenty-four-hour RN staffing in the facility.
- Connecticut nursing homes must also adhere to strict state and federal law requiring staffing that is sufficient to meet the care need of the facility's resident population. Staffing violations are strictly enforced by DPH and includes significant penalties.

In addition, amended direct care minimum staffing policies and procedures were issued on January 8, 2024, These policies and procedures have the force and effect of law while final adoption of corresponding proposed regulation by the Legislative Regulations Review Committee (LRRC) is pending. These policies and procedures, and proposed regulations increase the minimum staffing requirements from 1.9 hours to 3.0 hours in alignment with PA 21-185 as follows:

The amended policies and procedures, which became effective January 5, 2024, require nursing homes to provide a minimum of 3.0 hours of *total nursing and nurse aide care* while also adhering to the minimum requirements established in the following schedules:

7 a.m. to 9 p.m.	2.17 hours
9 p.m. to 7 a.m.	0.83 hours

Nursing homes must ensure that 0.84 hours of care in the ratio above is provided by licensed nursing personnel as follows:

7 a.m. to 9 p.m.	0.57 hours
9 p.m. to 7 a.m.	0.27 hours

The amended policies and procedures preserve the 3.0 minimum staffing ratio for direct care services but leave to the nursing home’s discretion the allocation of nursing and nurse aide services. It is important to note that this staffing ratio is a minimum and that *federal and state law require nursing homes to staff appropriately to meet the needs of each resident.*

In summary, the rule issued by DPH on January 8, 2024 provides for .83 licensed staff (RN and LPN) and 2.17 additional direct care staffing from combined additional (non-duplicated) licensed staff and nurse aide personnel at 2.17 hours, and equals 3.0 hours of direct care as required by PA 21-185.

It should be noted that on-line CMS reported staffing averages for Connecticut nursing homes, derived from nursing home payroll based journal reports uploaded to CMS, indicate the following averages for RN, LPN and CNA hours in a twenty-four hour period:

Registered Nurse hours per resident per day ↑ Higher numbers are better	24 minutes National average: 39 minutes Connecticut average: 43 minutes
LPN/LVN hours per resident per day ↑ Higher numbers are better	43 minutes National average: 53 minutes Connecticut average: 50 minutes
Nurse aide hours per resident per day ↑ Higher numbers are better	1 hour and 46 minutes National average: 2 hours and 16 minutes Connecticut average: 2 hours and 11 minutes

Source: <https://www.medicare.gov/care-compare/> dated March 10, 2024.

These reports signal that a significant number of Connecticut nursing homes would fail to meet the delineated standards prescribed by S.B. No. 275. A more detailed review of Q3 CMS PBJ reports shows that overwhelmingly Connecticut nursing homes would be below what is being proposed in S.B. No. 273, even as the reports indicate the facilities may largely be in compliance with the overall 3.0 hours standard mandated by PA 21-185 and the recently promulgated DPH January 8, 2024 amended policies and procedures.

Total Providers	197
Total Provider Days in QTR	18124

Short				
Total Providers	196 (Only 1 Provider Currently 100% Complies)			
	RN	LPN	CNA	Total
Total Provider Days	12,990	609	10,180	
% Days Short	72%	3%	56%	
Hours Short	389,002	3,437	286,845	679,284
FTEs Short	997.44	8.81	735.50	1,741.75
Providers Short	188	44	186	
% Providers Short	95%	22%	94%	
Est Impact	\$ 104,563,813	\$ 769,969	\$ 40,158,250	\$ 145,492,031

Uses Q32023 Payroll Based Journal Data
Assumes Base Wage Rate of \$48/\$40/\$25 for RN, LPN, CNA Wage Rate Plus Benefits

In the above CAHCF preliminary analysis, it should be noted the some 22% of the facilities would be below the .29 LPN standard, 95% below the RN category and 94% below the CNA standard during the twenty-four-hour period.

As a matter of public health policy, dictating these detailed percentages of care in each of the direct care categories, in CAHCF's view, undermines quality of care by eliminating the flexibility that the licensed nursing home professionals have under current law to assign staff in the percentages they have determined to meet the care needs of their resident population. CAHCF cautions that delineating the LPN standard at .29 hours undermines the value of the LPN as many nursing homes may inevitably have to reduced LPN hours (78% are over the proposed .29 standard) in order to attempt compliance with the .55 RN requirement where 95% of nursing homes are below the proposed standard. CAHCF also cautions that because of the ongoing staffing shortages in the section, nursing homes will inevitably need to unsatisfactorily rely, in increasing frequency, on temporary nursing staffing agencies in an attempt to comply with these highly prescriptive standards. Once more, Connecticut nursing homes under current federal and state law must provide sufficient staffing to meet the care needs of the residents with significant

consequences in the existing DPH regulatory survey and certification process.

Finally, as indicated in the above CAHCF preliminary analysis, S.B. No. 275 reflects an estimated gross \$145.5 million in unfunded state mandated Medicaid cost increase for Connecticut nursing homes, which would require an increased appropriations in the pending SFY 2025 midterm budget adjustment now under consideration in the Appropriations Committee. Assuming a 50% federal Medicaid match, the net state costs are estimated to be approximately \$72.75 million.

For these reasons, CAHCF is opposed to S.B. No. 275.

For additional information on this testimony, please contact Matthew Barrett, President and CEO of CAHCF/CCAL, at mbarrett@cahcf.org.