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Connecticut Attorney General's Office Press Release

STATE OF CONNECTICUT NEWS RELEASE

ATTORNEY GENERAL RICHARD BLUMENTHAL
COMPTROLLER NANCY WYMAN

Blumenthal, Wyman Announce Sweeping Reforms In Nursing Home Regulation

February 8, 2008

Attorney General Richard Blumenthal and Comptroller Nancy Wyman today proposed far-reaching reforms of the nursing home industry that would provide significantly stronger state financial oversight, enforcement and protection for some of Connecticut's most vulnerable citizens.

Recent financial catastrophes involving large nursing home conglomerates in Connecticut and elsewhere, including the Haven Healthcare bankruptcy, demand reforms to protect patients, as well as taxpayers, from the impacts of those financial failings, Blumenthal and Wyman said.

The legislative package includes authorization for the comptroller to conduct forensic audits of Connecticut nursing homes – another layer of oversight that is independent of state nursing home regulators.

The legislation would also provide broader means to seek court-appointed receiverships of financially troubled homes, and require certification of nursing home landlords.

Blumenthal said, "Massive nursing home conglomerates like Haven Healthcare are leaving mountains of financial ruin after squandering massive public funding, imperiling patient care and safety. The regulatory landscape of nursing homes in Connecticut must be reformed.

"Haven Healthcare shows the need for strong bans on borrowing or bleeding nursing home assets, betraying the trust for patient care. Proactive auditing with subpoena power and periodic reporting – combined with caps on management fees and rental payments, must be imposed on owners and operators to stop mismanagement or misuse of dollars that determine health care quality. Haven exemplifies the dark side of secret self dealing and diversion of scarce resources, leading to fiscal debacle and endangering patient well-being. Such improper practices must be prevented, not just punished. In Haven, we have fought to secure financial survival and protect patient care – a Herculean legal battle after Haven's manager sought bankruptcy to avoid state control," Blumenthal added.

"Troubled nursing homes need intensive care. Signs of fiscal crisis should put nursing

homes on a watch list with the same type of stringent monitoring and scrutiny as a patient in intensive care, and with prompt proactive state intervention when necessary.

Blumenthal said, "As Haven showed, when nursing homes are swallowed by corporate chains and conglomerates, the state must demand more financial disclosure and transparency, more promptly, to prevent self dealing or self-serving abuse of corporate assets. Interlocking multiple entities – like the 45 entities established by Haven's owners that are now in bankruptcy – discourage accountability and oversight. Before bankruptcy or insolvency, as happened to Haven, before public funds are squandered, the state must impose expanded auditing and reporting requirements, prohibitions on bleeding or abuse of resources, accountability of landlords, and other measures that safeguard dollars and cents, which are the lifeblood of patient care."

Wyman said, "Nursing homes should consider this proposal strong notice that their finances will be under scrutiny like never before. This legislation can be a powerful tool to prevent misuse of taxpayer dollars that are supposed to be spent on care for our loved ones in nursing homes. Giving my office the authority to perform forensic audits on these facilities will provide an independent set of eyes to detect financial mismanagement and allow for a faster response if such abuse is found."

Blumenthal and Wyman said state oversight must address the rising incidence of nursing home ownership by large conglomerates that simultaneously report record earnings, while their Connecticut nursing homes lack adequate care and financial resources. In some cases, these conglomerates are simply bleeding the nursing home operations for their own financial gain.

Blumenthal and Wyman's proposals would:

Provide state comptroller monitoring authority over nursing home finances. The state comptroller would conduct regular financial forensic audits of nursing home operator finances to detect financial mismanagement and to ensure that state funds are being used appropriately for patient care. The state comptroller could subpoena records, obtain testimony and review financial information of nursing home operators and their affiliates. A report containing fiscal findings and recommendations for action would be issued for each audit. If there is gross financial mismanagement, the state comptroller may recommend the Department of Social Services apply for a receiver.

Allow for a court-appointed receiver upon a finding of gross financial mismanagement. Currently, a receiver may only be appointed if financial mismanagement threatens patient care. Under this proposal, the state could seek a receiver for a nursing home operator if there is a finding of gross financial mismanagement, which will be defined through regulation, but includes having more than 35 percent of accounts overdue by more than 120 days or failed to pay required pension fund and health insurance contributions for more than 60 days.

Prevent corporate bleeding of nursing home finances by establishing a statutory cap on management fees and rental payments by the nursing home to related entities for calculating Medicaid reimbursement rates and prohibiting the use of nursing home assets as a guaranty for loans unrelated to the nursing home operation. Too often financial conglomerates have their nursing home affiliate enter into contracts with related management companies or landlord companies at higher than normal rates, often exceeding those rates recognized by the Medicaid program. These excessive costs weaken the financial stability of the nursing home company. A statutory cap on management fees and rental payments conforming to costs allowed by Medicaid with DSS authority to assess a different amount based on audited finances of the company will prevent conglomerates from viewing nursing homes as nothing more than a cash cow. Further, state law should prohibit the use of nursing home assets for loans or security for loans unrelated to the nursing home operations.

Establish a minimum insurance coverage for nursing home owners and management companies for malpractice and liability. While DPH requires proof of coverage for liability and malpractice insurance, state law does not require a specific minimum amount of insurance coverage. Legislation should require at least \$2 million per incident with DPH discretion to require additional coverage if it is in the best interests of the patients, families and health care providers.

Clarify the current requirement of DPH approval of any change of 10 percent beneficial ownership of the stock of a nursing home operator to any 10 percent change in beneficial ownership regardless of form of ownership. Often control of a nursing home operator is dispersed legally through numerous limited liability corporations, affiliates, subsidiaries and wholly owned partnerships. These corporate mazes prevent DPH from adequately evaluating the true owners of a nursing home. Expanding the ownership definition will ensure that DPH has to approve any change that results in a new owner of at least 10 percent control of the nursing home regardless of how far along the corporate chain such control shifted or whether entities other than corporations are involved.

Establish DPH authority to require property owners that rent facilities to nursing homes to be responsible for physical plant repairs and maintenance. As part of their certificate, nursing home landlords should be responsible for physical plant repairs and maintenance and be subject to DPH orders to correct physical plant problems and to provide needed maintenance. DPH should also be authorized to have a building monitor appointed with authority to get repairs done and divert rent to pay for necessary repairs.

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