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**TESTIMONY OF
ATTORNEY GENERAL RICHARD BLUMENTHAL
BEFORE THE SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS OF THE
HOUSE COMMITTEE ON ENERGY AND COMMERCE
MAY 15, 2008**

I appreciate the opportunity to speak at the Subcommittee's hearing entitled "In the Hands of Strangers: Are Nursing Home Safeguards Working?"

Connecticut's frustrating and frightening experience with Haven Health and other nursing home failures is symptomatic of a crisis spreading across the nation -- a clear, clarion call for reform. We need greatly enhanced federal-state coordination and collaboration -- a real paradigm shift. Our present system of scrutiny is ineffective and inconsistent. Even as nursing home populations rise -- with baby boomers expected to increase them exponentially -- standards and practices are sinking, and becoming as bankrupt as some of the facilities. Our regulatory system -- mired in the past when nursing homes were owned by small local companies -- is inadequate to address the problems and challenges posed by mammoth multi-state corporations, LLC's and private equity firms that dominate the industry.

Connecticut's recent rescue of financially failed nursing home chains -- particularly Haven Health -- dramatizes the problems caused by consolidation of small, single owners into large labyrinthian chains. Such firms often place profits ahead of patients, emphasizing short-term financial goals instead of long-term health care quality. Haven Health also highlights the need for improvements in federal and state government oversight of nursing homes -- increasingly nationally owned and managed by multi-state corporations or private equity partners.

Haven Health is in fact a poster child for the perils of concentrated ownership and power. Consolidation of financial control and accumulation of nursing home assets endanger accountability and integrity. The larger the chain, the greater the perils of abuse if expenses and liabilities are shared or shifted among entities. Complex webs of interlocking corporate relationships may delay and deter effective scrutiny. Nursing home financial arrangements include making private loans using nursing home assets as collateral and creating inter-connected limited liability companies to conceal the true owners and real costs. I am attaching to my testimony an organizational chart of Haven Health which clearly depicts a complex constellation of companies, impeding state regulation and oversight.

The battle against nursing home fraud and mismanagement should be two-pronged. One front should be at the federal level -- a strike force to investigate corruption or self-dealing, and

other measures combining state and federal authority to raise standards and practices. Second, at the state level, the federal government should reward or require stronger oversight mechanisms, including official state monitoring and scrutiny of nursing home finances, appointment of state court receivers for nursing homes in situations of gross financial mismanagement, bans on financial bleeding and self-dealing, mandatory levels of insurance coverage, and regulation of management companies and landlords.

Congress should:

- ❖ Establish a Patient Protection and Financial Integrity Strike Force to rapidly investigate corruption and self-dealing and rescue nursing homes by replacing management and even ownership. The Strike Force, within the Department of Justice, would stringently scrutinize records and reported wrongdoing, and take swift corrective action in federal or state courts. Cost recoveries and damages would be equally divided between state and federal governments. We have worked closely with the Department of Health and Human Services' Office of Inspector General on the Haven Health matter. Yet, such close coordination is lacking in many instances. A Strike Force would provide a forum for coordination of law enforcement between the federal and state governments. Each state regulates nursing homes differently and has diverse anti-fraud statutes. This task force would help break through bureaucratic or legal barriers and develop joint strategies.
- ❖ Create a national clearinghouse of nursing home information including all state and local citations, for use by state oversight agencies. Multi-state nursing home corporations present obstacles to state regulations because of difficulties in quickly obtaining information from other states concerning citations, investigations, license denials or discipline and other regulatory actions. A federal clearinghouse would provide states with a central source of critical data on nursing home owners and operators. This information would assist states in determining whether to heighten oversight of an existing owner or operator or deny a license or certificate to a new owner or operator.
- ❖ Mandate simple, strict, straightforward scrutiny and safeguards -- as preconditions for enhanced federal funding -- that ensure and enable strong financial state oversight. These would include mandatory financial monitoring by a single state official, court-appointed receivers to stop financial mismanagement, minimum insurance coverage, bars to bleeding of corporate assets, and scrutiny of nursing home management companies as well as owners.
- ❖ Establish a Nursing Home Policy Unit, devoted to developing and requiring better standards and practices. This unit, within the United States Department of Health and Human Services, would work with officials from each state on nursing home policy issues. One specific goal would be improved long-term financial oversight and management, and constraints on consolidation or accumulation of assets.

Consolidation and accumulation of assets raises the risks of financial abuse -- spreading a culture of non-accountability. Haven Health has finally been held accountable, but only because of our formal claims in court. Haven Health, known legally as Haven Eldercare, LLC comprises 44 separate entities, a financially failed corporate construct operating 15 Connecticut nursing homes, including Haven Health Centers in Cromwell, Danielson, East Hartford, Farmington, Jewett City, Litchfield Hills, New Haven, Norwich, Rocky Hill, Soundview, South Windsor, Waterbury, Waterford, Windham and West Hartford. It owned and operated 10 other nursing homes in New England. The corporation has allegedly grossly mismanaged millions of dollars intended for patient care, diverting federal and state money intended for patient services to improper investments in a record company and personal real estate. Severe mismanagement jeopardized the health and safety of residents at all Haven Eldercare nursing homes -- nearly 2,000 vulnerable individuals in Connecticut.

Haven Eldercare was anything but a haven. The company was financially depleted by the owner, Ray Termini, who duplicitously directed nursing home assets to a record company and other self-serving improper purposes gravely jeopardizing patient care. Haven Eldercare allegedly bled its nursing homes to near death -- apparently siphoning money from patient care, defying decency and law. No healthcare institution can be permitted to shortchange patient care services while diverting Medicaid money -- funds intended solely for patient care -- for unconscionably unrelated expenses. Haven Eldercare's practices compromised some of our state's most fragile and needful citizens.

We are now in bankruptcy court, fighting to protect millions of dollars in state funds and the well-being of Haven Health residents. After a Herculean legal battle, we have succeeded in obtaining court orders establishing a restructuring officer and patient care services officer. The financial situation has been stabilized, and we hope to have a new owner very shortly.

The federal government and the states must be more proactive, monitoring nursing home finances and watching for financial red flags, to avoid another Haven Health. On the state level, I have proposed reforms in Connecticut's nursing home regulation and oversight-- a template for national requirements. Although the proposals failed to gain approval this session, I have called for the legislature to consider them in a special session.

Federal law should establish clear accountable management mandates for every state to implement by 2013. Initially, it should provide monetary incentives to encourage states to adopt them. By the end of the decade, it should require them. States can take the initiative even sooner, raising the bar.

1. **State official monitoring of nursing home finances.** The State Comptroller or comparable state official should conduct regular financial forensic audits of nursing home operator finances to detect mismanagement and ensure that state funds are being used appropriately for patient care. The State could subpoena records, obtain testimony and review financial information of nursing home operators and their affiliates, including assets in other states. Poor performance in another state may be an indicator of potential or existing problems. A report containing fiscal findings and recommendations for action would be issued for each audit. In addition, if there is

gross financial mismanagement, the State Comptroller or other state official may recommend the appointment of a receiver.

2. **State court appointed receiver upon a finding of gross financial mismanagement.** States should be authorized to seek a receiver for a nursing home operator if there is a finding of gross financial mismanagement -- defined to include having more than 35% of accounts overdue by more than 120 days or failing to pay required pension fund and health insurance contributions for more than 60 days. Currently, in many states, a receiver may be appointed only if financial mismanagement poses an imminent threat to patient care
3. **Bans on corporate bleeding of nursing home finances -- such as a statutory cap on management fees, rental payments and loan payments by the nursing home to related entities and prohibition on use of nursing home assets as a guaranty for loans unrelated to the nursing home operation.** Too often financial conglomerates arrange for their nursing home affiliates to enter contracts with related management companies or landlord companies at higher than normal rates -- exceeding levels recognized by the Medicaid program. These excessive costs undercut the financial stability of the nursing home company, leading to receivership. A statutory cap on management fees and rental payments conforming to costs allowed by Medicaid, with state authority to assess a different amount based on audited finances of the company, prevents conglomerates from viewing nursing homes as cash cows. Limits on loans secured by nursing home assets and restrictions on rent and management fees a nursing home pays to related companies enable greater state control over these byzantine corporate networks. Further, the law should prohibit the use of nursing home assets for loans, or security for loans, unrelated to the nursing home operations
4. **Require regulation of both nursing home owners and the management companies that operate the facilities and the landlords of facilities.** Landlords of nursing homes should be required to be certified, after a state agency background check and inspection of the physical plant. Management companies often are already required to obtain a permit but broader regulatory authority is critical. Further, states should have the authority to (a) suspend the management company or landlord certificate at any time for failure to maintain adequate services, (b) assess the management company or landlord civil fines of up to \$15,000/violation, (c) seize civil fines directly from any Medicaid payments for management services claimed by the nursing home, (d) subpoena documents and depose witnesses as part of management company or landlord investigations; and (e) impose a receivership on the management company, landlord and other related entities involved in the operations of the nursing home.
5. **Mandatory minimum insurance coverage for nursing home owners and management companies for malpractice and liability.** While many states may require proof of coverage for liability and malpractice insurance, state statutes generally do not require a specific minimum amount. Legislation should require at least \$2 million per incident with state agency discretion to require additional

coverage if it best serves the interests of the patients, families and health care providers.

6. **Expand state approval of any change of 10% beneficial ownership of the stock of a nursing home operator to any 10% change in any beneficial ownership regardless of form of ownership.** Often control of a nursing home is dispersed among numerous limited liability corporations, affiliates, subsidiaries and wholly owned partnerships. These corporate mazes prevent state agencies from adequately evaluating the real owners. Expanding the ownership definition will ensure that state agencies must approve any change that results in a new owner of at least 10% control of the nursing home regardless of how far along the corporate chain such control shifts or whether entities other than corporations are involved.
7. **Require property owners that rent facilities to nursing homes to be responsible for physical plant repairs and maintenance.** As part of their required certificate (see recommendation #4), landlords of nursing homes should be responsible for physical plant repairs and maintenance and be subject to state orders to correct physical plant problems and to provide needed maintenance. State agencies should also be authorized to appoint building monitors with authority to do repairs and use rent payments for necessary repairs.

Finally, more resources are needed for state enforcement efforts as well as federal inspector general and oversight offices. There are simply too few investigators to adequately pursue fraudulent nursing home practices. Federal incentives and grants would encourage and fund more state resources. Federal rewards for coordination of investigations and enforcement actions would ensure that billions of federal and state taxpayer dollars provide more effective and compassionate health care for some of our most deserving citizens.

I look forward to working with this committee in this effort.

