Testimony of Sarah Slocum, State Long Term Care Ombudsman before the Joint Committee Hearing of the Michigan House Health Policy and the Senior Health, Security, & Retirement Committees Honorable Representative Kathy Angerer and Robert Jones, Chairs December 6, 2007

Honorable Chairpersons Angerer and Jones, members of the House Health Policy and the Senior Health, Security, & Retirement Committees:

Good morning. My name is Sarah Slocum and I am the State Long Term Care Ombudsman for Michigan.

I'm here today on behalf of residents of long term care facilities. The Long Term Care Ombudsman Program provides advocacy to individual residents of licensed long term care facilities and provides input on policies and laws that affect those residents. In this capacity, I must share my grave concerns about what the buyout of HCR Manor Care by the Carlyle Group could mean for the future of nursing home care in Michigan.

The Department of Community Health (DCH) has responsibility to oversee and regulate nursing home licensure. In that role, DCH must evaluate owners and potential owners to try to assure the health and safety of nursing home residents. I appreciate the efforts by many of you on the committees and by the department to look carefully at the proposed sale of HCR Manorcare to the Carlyle Group. I have seen many examples of nursing home quality improving or declining because of a change in leadership. The owner of a facility or chain sets the tone for care and day to day life in facilities. Their decisions about how to use the money available to their organization directly impacts resident care. While many facilities in Michigan are already owned by for-profit entities, and some by

out of state companies, such as HCR Manor Care, this proposed deal with Carlyle raises new issues.

Carlyle is not a health care company; their sole mission is to produce profits for investors. I have yet to see credible evidence that this mission or profit motive will not impact staffing levels, operating funds for facilities, and direct resident care. The oversight by DCH is critical in assuring that any sales or transfers of Michigan nursing facilities takes these risks to residents into account.

In 2005, the Governor's Medicaid Long Term Care Task Force reported the need for many changes in Michigan's long term care system. One is proposed legislation to strengthen DCH's authority to examine an applicant for nursing home ownership's financial viability and compliance and quality track record. The Public Health Code should include language instructing DCH to examine the financial solvency, current holdings, history of bankruptcy and other financial elements prior to granting a change of ownership or license transfer of a nursing home. DCH should also have specific authority to consider a license applicant's track record so that providers of high quality care are promoted, while those who have demonstrated a history of providing poor care are not. This legislative language is attached for your review.

Finally, I appreciate your two committees' interest in working to improve nursing home quality and the lives of nursing home residents. This population of older and disabled citizens often cannot speak for themselves, and they deserve all the protection and

oversight you, as lawmakers, and the department, as regulators can provide. Thank you for your time. I would be glad to address any questions.

MICHIGAN LONG TERM CARE CONSUMER CHOICE AND QUALITY IMPROVEMENT ACT

FEBRUARY 14, 2005

Discussion: This section was drafted to set standards for quality in all long term care settings, to establish processes for ensuring that services and supports are delivered in a manner that is consistent with quality, safety and the choices of the consumer, as expressed through his or her person-centered plan. It calls for the promulgation of rules that will allow the state to intervene with facilities that may not be viable over the long run, so as to prevent disruption in the lives of the residents of those facilities and to avoid placing any resident of any facility at risk of harm.

Sec. 7 Quality

1) The authority shall have a continuing responsibility to monitor state agencies' performance in responding to, investigating, and ensuring appropriate outcomes to complaints and in performing its survey and enforcement functions. The Long Term Care Authority shall issue regulations and policy bulletins, as appropriate, and take other appropriate action to improve performance or address serious deficiencies in state agencies' practices with regard to handling complaints and in performing survey and enforcement functions.

2) The authority shall establish a single toll free hotline to receive complaints from recipients of all Medicaid funded long term care services and settings. State employees responsible for this function shall:

(a) Staff the complaint line 24 hours a day, 7 days per week;

(b) Be trained and certified in information and referral skills;

(c) Conduct a brief intake;

(d) Provide information and referral services to callers including information about relevant advocacy organizations; and

(e) Route the call to the appropriate state agency or advocacy organization to record and respond to the consumer's concern. Relevant state agencies shall ensure on-call staff is available after hours to respond to any calls that are of an emergency nature. The authority shall ensure that hotline staff are consistently informed how to contact on-call staff at all relevant state agencies to which long term care complaints may be referred.

3) The authority shall also ensure that consumers can file complaints about any Medicaid funded long term care setting or service using a simple, web-based complaint form.

4) The authority shall publicize the availability of the 24 hour hotline and web based complaint system through appropriate public education efforts.

5) The authority shall form a workgroup to determine if state agencies' complaint protocols ensure a timely and complete response and to monitor for appropriate outcomes. The workgroup shall also address whether state agencies are performing their survey and enforcement functions in the most effective manner and if their practices promote quality and person-centered planning.

(a) The workgroup shall be comprised of a minimum of 50 percent consumers and/or consumer advocacy groups. The remainder of the workgroup shall include the State Long Term Care Ombudsman and/or his/her representative, long term care providers, a representative from the designated protection and advocacy system, and representatives from the departments that enforce the regulations in long term care facilities.

(b) The workgroup will be charged with examining the number of consumer complaints received, the timeliness of response to these complaints, the process used by state investigators for these complaints, and the resolutions of these concerns. The workgroup will utilize existing resources such as Auditor General reports on state agencies that regulate long term care facilities or services and any additional data it requires to perform its duties. Based on these findings, the workgroup will issue recommendations to the authority and to the director.

(c) The workgroup shall also be charged with a comprehensive review of state law and policy, including licensing laws and regulations, receivership provisions, and other mechanisms for regulating long term care services to determine whether these laws and policies should be deleted, amended, or modified to promote quality, efficiency, and person centered planning or to reflect changes in the long term care system. The workgroup shall issue recommendations to the authority and to the director.

6) The departments responsible for licensing of long term care settings shall, within twelve months of the date of enactment of this statute, promulgate rules to establish a process for identifying all licensed long term care settings which, absent intervention by the state, are likely to either close or in which care is likely to diminish or remain below acceptable standards. In promulgating these rules, the departments shall consider, but not be limited to, the facility's financial stability, administrative capability, physical plant, and regulatory history.

7) If a department has a reasonable suspicion that a licensed facility lacks administrative capability, financial stability, financial capability, or is not structurally sound, it shall have the right to request any and all relevant documentation including, but not limited to, independent audits of the facility, credit reports, physical plant inspections by appropriate professionals, and other relevant information. It may also investigate and consider factors such as whether the facility has filed for bankruptcy or whether foreclosure has been filed, consistently declining occupancy rates, chronic noncompliance, or other relevant information.

8) In the event a department identifies a facility to be nonviable, it shall take appropriate measures to protect the health and safety of the residents which may include the following:

(a) The prompt appointment of a temporary manager or receiver with authority to take all actions necessary for the purpose of stabilizing the facility and protecting the residents, including:

1. Making all improvements necessary to ensure residents receive services that meet or exceed minimum regulatory standards; or

2. If necessary and appropriate, arranging for the safe and orderly transfer of residents out of the facility consistent with their person centered plan and choices.

(b) Redistributing beds within the community to other facilities or making funding available in other long term care settings, including home and community based care.

9)The State shall ensure that relevant state agencies have sufficient staff to meet all statutory or regulatory time frames for the completion of their responsibilities; effectively and expediently monitor services, supports, and facilities; respond to complaints; and enforce existing state laws and regulations regarding minimum standards for long term care services, supports, and facilities.