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Testimony of Alison E. Hirschel, Counsel to the Michigan Campaign for Quality Care, to the House Health Policy Committee and the House Senior Health, Security and Retirement Committee

December 6, 2007

Good morning, Reps. Angerer and Jones and members of the committees. Thank you for the opportunity to testify today. I am here on behalf of the Michigan Advocacy Project and the Michigan Campaign for Quality Care, a statewide consumer group that seeks better care, better quality of life and better choices for Michigan's long term care consumers. I am an elder law attorney and I have spent my career advocating on behalf of low income long term care consumers. Currently, I am the President of NCCNHR—the National Consumer Voice for Quality Long Term Care, a national advocacy group in Washington, D.C. that has been a crucial advocate for nursing home reform for more than 30 years. I also serve as the elder law attorney at the Michigan Poverty Law Program and a Public Interest Fellow and adjunct faculty member at the University of Michigan Law School.

We are deeply grateful for your concern about the proposed buyout of HCR Manor Care by the private equity firm, the Carlyle Group. We believe that the buyout will imperil hundreds of vulnerable residents in Michigan nursing homes. We have outlined our concerns below and ask you to take a bold stand to protect these fragile Michiganians.

1. **The consistent experience of other nursing home chains purchased by private investors suggests that that quality of care is likely to decline markedly if HCR Manor Care is purchased by the Carlyle Group**

Our grave concerns about the potential for reduced staffing, declining quality of care, and increased violations of state and federal standards if the change of ownership occurs arise from the carefully documented experiences of other facilities when they have been purchased by private equity firms like the Carlyle Group. As you know, on September 23rd, *The New York Times* ran a front page story entitled, "At Many Homes, More Profits and Less Nursing." This meticulously researched investigative report demonstrated that:

- Private equity firms over the last six years have acquired nursing homes and then routinely cut costs by reducing staffing and budgets for supplies and resident activities;

- According to data collected by government agencies, residents at homes acquired by large private investors generally suffer more often from depression, loss of mobility,

and loss of ability to engage in activities of daily living than residents of other nursing homes;

- Many homes that performed above the national average on issues like skin breakdown, preventable infections, and restraint usage before their acquisition by private investors scored below the national average after their acquisition;

- At 60 percent of the homes acquired by private equity firms between 2000 and 2006, clinical registered nurses were cut, sometimes below levels required by law. Moreover, on average, homes owned by private investors offered residents 35% fewer hours of care by registered nurses than the national average;

- Serious quality of care deficiencies rose at *every* large nursing home chain after it was acquired by a private investment group from 2000-2006 even though the average number of citations declined at many other homes and chains. The typical number of serious health deficiencies at homes owned by large investment companies was almost 20 percent higher than at other nursing homes.

While I understand the Carlyle Group suggests that it won't follow the same alarming patterns, the legislature and the Department must obtain more than mere promises to assure the safety of Manor Care residents.

2. **When private equity investors purchase nursing home chains, the complex corporate structures make it more difficult for regulators to enforce requirements, collect fees, and detect fraud. Similarly, these corporate structures serve as a significant obstacle to residents obtaining civil justice when they are abused or neglected in homes owned by private investors**.

When private equity firms buy nursing homes, corporate ownership and responsibility becomes increasingly obscure. As a result:

- It is harder to trace payments to related corporations, thus both increasing investors' profits and regulators' difficulty in determining if providers are artificially inflating their costs for reimbursement purposes;

- Regulators in other states have experienced greater difficulty collecting civil monetary penalties since the new corporations are organized to drain assets from the nursing home licensees.

- Abused and neglected residents have faced increasing difficulty obtaining representation and justice in civil suits seeking damages for the harm they have suffered in homes owned by private equity companies. Plaintiffs in these cases may be forced to sue a dozen or more different entities, if they can even identify them, and often find the entity deemed responsible for the harm is curiously devoid of assets or adequate liability insurance. Indeed, we understand that a key motivation

for selling chains to private equity companies with complex structures is to avoid civil liability for abuse and neglect.

3. The Carlyle Group buy-out may make HCR Manor Care more financially fragile, decrease HCR Manor Care's tax liability, and result in windfalls for Manor Care executives and advisors, not residents.

We understand that the Carlyle Group buy-out of HCR Manor Care will significantly increase Manor Care's debt. Moreover, we are deeply troubled by information provided by SEIU that Manor Care executives and advisors may receive hundreds of thousands of dollars of windfalls, money that could better be used to increase staffing and quality of life and care at Manor Care facilities. Finally, SEIU suggests that the highly leveraged business model will significantly lower Manor Care's tax payments at a time when this state desperately needs more revenues to support Medicaid and other essential programs. The loss of tax revenue to support Medicaid is particularly distressing since Manor Care will continue to receive significant revenues from the Medicaid program.

We join in the request that these two committees work closely with the Department of Community Health to engage in a careful, thorough review of Manor Care's proposed new structure and operations; to take as much time as such an inquiry requires; and to deny the requests for changes of ownership and certificates of need if the proposed changes fail to serve the interests of vulnerable nursing home consumers. If the Department ultimately decides to approve the change of ownership despite the many concerns expressed, we ask that the legislature work with MDCH to impose the following additional safeguards:

1. No Manor Care facility in Michigan shall be permitted to reduce the ratio of direct care staff to residents in the categories of registered nurses, LPNs, or nursing assistants below the levels at those facilities as of October 1, 2007. This requirement should be monitored by the Department and audited based on payroll data.

2. All Manor Care facilities shall staff at a level of at least 4.1 hours of care per resident/day, the level recommended by a ten year federal study as the minimum required to meet residents' needs.

3. All Manor Care beds shall, within one year of the date of the buy-out, become dually certified for Medicaid and Medicare and no Manor Care facility shall be permitted in the future to voluntarily decertify beds from either program. This requirement will assure access for Medicaid recipients and meet the requirements of the Michigan Public Health Code.

4. No Manor Care facility shall be permitted to reduce the number or hours of in-service training, orientation, and other educational efforts it offers its staff. The Department should monitor facilities for compliance with this requirement.

5. All Manor Care facilities shall engage in sincere, significant, and meaningful efforts to promote culture change and shall hire consultants and take such other action as is

required to demonstrate to the Department that the facilities are progressing in achieving culture change.

6. All Manor Care facilities shall provide proof of adequate liability insurance to ensure fair compensation for residents who suffer neglect or abuse in the facility.

But we also have two additional recommendations that are crucial to all nursing home residents and may be especially important for the protection of residents of facilities that are purchased by private investors in the future.

First, the State Long Term Care Ombudsman program is dramatically underfunded. This essential program that provides advocacy for long term care consumers in licensed residential facilities has received no increase in funding for two decades, with the exception of some modest Medicaid matching funds that have recently been made available. While the national standard, developed after careful research, is that there should be one full time ombudsman for every 2,000 residents, there is only one Michigan ombudsman for every 5,000 residents. Thus, each Michigan ombudsman struggles to serve more than twice the recommended number of clients with serious concerns including allegations of abuse and neglect that may sometimes be life threatening.

Second, the Bureau of Health Systems in the Michigan Department of Community Health needs funding to hire a significant number of additional surveyors and complaint investigators. In the most recent data I obtained, BHS repeatedly failed to meet its own objectives for prompt investigation of complaints in both the immediate jeopardy and actual harm categories. In fact, in the first eight months of FY 2007, the period covered by the most recent data I saw, the Department failed to investigate promptly allegations of actual harm in almost 90 percent of the cases!! Moreover, while these complaints are supposed to be investigated on-site within ten working days, more than 45 percent of the actual harm complaints and incidents reported by providers were not investigated for more than 30 days, and we know of many complaints that took months to investigate. By the time surveyors arrived at the home, the resident may have died or left the facility, key staff might no longer be employed, records may have disappeared or been altered, and surveyors face huge obstacles in substantiating even the most egregious complaints. And if the resident was still there and the conditions that led to the complaint were still apparent, residents would have had to suffer under those conditions for months before BHS addressed the harm that had befallen them.

Thus, if these two committees seek to protect residents—in both Manor Care homes and throughout the state—it is absolutely crucial that additional funding be provided to both the key advocates for residents—the ombudsman program—and the state's key oversight and enforcement agency. On behalf of fragile residents across the state, I urge you to ensure potential providers, like the Carlyle group, are scrutinized with great care and that all residents have increased access to the vital advocacy and oversight services that can protect and empower them.

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