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 February 21, 2008

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 and the need for improvements in Michigan's oversight of nursing home care.

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, the sale to 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.

The public health code should also be amended to include notification and change of ownership approval through licensing and certificate of need when stock is sold. Stock transfers do not currently trigger such a review by the Department, and I propose that any

transfer of any significant percentage or more of the stock in a nursing home business should be reviewed as a change in ownership. Transferring stock in a company is a significant enough ownership interest to influence the conduct, management decisions and quality in the nursing homes owned by that company. Even though a stock transfer is a financial transaction, and the current and future stock owners may declare that the same management team will run the facilities, the bottom line will be who controls the money? We must do more to first know about ownership, and to hold owners accountable for the good care or the substandard care that people get in their facilities.

Nursing home quality work also needs to be strengthened. The MDCH Bureau of Health Systems should have increased funding and positions to hire at least 10 more surveyors to conduct standard surveys and complaint investigations. The current survey staff is stretched to its limit to meet deadlines and carry out this highly technical and important work protecting residents. There are currently 80 surveyors on the job and the current average length of time for a complaint investigation is 92 days, including the most serious types of allegations of death, abuse and harm to residents. In 2002, the average timing was 11 days. In 2003 there were 107 surveyors and the average was around 19 days. In 2006 there were 93 surveyors, and the average timing was 42 days per complaint. In 2007 there were 20 times as many facility reported incidents compared to 2002 data. Clearly the nursing home survey unit cannot meet its deadlines for complaint investigations and keep up with standard surveys with only 80 surveyors. One possible source of revenue to pay for new surveyors is to increase nursing home licensing fees.

Another part of strong quality assurance in nursing homes is a strong Long Term Care Ombudsman Program. Ombudsmen work with residents and their loved ones to resolve complaints, often through non-regulatory channels. Ombudsmen make both routine and complaint related visits to long term care facilities to advocate for residents, provide information to residents and facility staff on resident rights, and often mediate conflicts to work toward the highest possible quality of care and life for nursing home residents. The Michigan legislature appropriated $478,000 in 1987 through the Office of Services to the Aging budget to pay for local ombudsman services across the state. This amount has been renewed each year, but never increased. The local ombudsman staff, like the surveyors, is stretched beyond their capacity to meet the advocacy needs of consumers in long term care facilities. The federal Institute of Medicine issued a report in 1995 identifying a recommended ratio of 1 paid local ombudsman for each 2,000 long term care residents. In Michigan, the ombudsmen are responsible for advocacy in nursing homes, homes for the aged and adult foster care homes, a population of about 97,000 residents. The Ombudsman program carries out these advocacy duties with 18 full time employees a ratio of 1:5,388. We need to more than double Ombudsman staffing just to reach the minimum staffing recommended by the Institute of Medicine.

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.