STATEMENT OF THE ILLINOIS HOSPITAL ASSOCIATION ON NURSING HOMES AND MENTAL HEALTH SERVICES

November 5, 2009

On behalf of our 200 member hospitals and health systems across the state, the Illinois Hospital Association welcomes the opportunity to present this statement on an issue of critical concern – the impact of the state's crumbling mental health system on Illinois' nursing home residents and what can be done to address the problem.

Our Broken Mental Health System

The recent *Chicago Tribune* series about young mentally ill nursing home residents preying upon elderly residents illustrate the lack of a cohesive, coordinated system of mental health services in which a patient/resident receives the appropriate services in the most appropriate setting for his or her condition. Nursing homes are generally not equipped and were never designed to care for young, mentally ill residents. When these residents live in supportive housing in their own communities, and also receive the appropriate type of treatment and other services they need, they will have a much better chance of recovery. Instead, we have failed to adequately fund the availability of acute psychiatric care and outpatient community mental health and substance abuse services. And, we have failed to implement the types of policies that will ensure a person with serious mental illness has the opportunity to live a productive and satisfying life.

Illinois has lost significant acute care capacity in both the public and private systems of mental health care without providing community-based alternatives. In the past, many Illinoisans with mental illnesses now residing in nursing homes would have been treated in a state psychiatric hospital. But over the past several decades, the state's mental health system has been deteriorating on a massive scale. While Illinois had 2,797 inpatient psychiatric beds in 1990, it now has only 1,400 state-operated psychiatric beds. When state-operated hospitals were closed or reduced in size, the state promised that resources used for these facilities would be transferred to the communities in which the patients resided. This promise has not been kept.

Over the years, the state also has imposed many funding cutbacks on the mental health system. Just recently, one critical source of state funds that was supposed to be moved to the community for inpatient services, the Community Hospital Inpatient Psychiatric Services (CHIPS) program, has been eliminated from this year's Division of Mental Health budget. This added barrier to care is on top of the already diminished number of acute care options available in the private sector. Private hospital psychiatric beds have decreased from 7,174 in 1991 to the current 3,986, in large part because of inadequate funding, a shortage of psychiatrists, and a complex legal and regulatory environment.

As a direct result of the cutbacks in and fragmentation of the mental health system, nursing homes have become an inappropriate substitute for inpatient and community-based psychiatric care. Because the state lacks sufficient acute inpatient care and community based resources for the mentally ill, the care for these patients has been inappropriately shifted to hospital emergency departments, inpatient medical beds, and nursing facilities.

Aggravating the problem is the fact that the loss of state-operated and private psychiatric beds has been not evenly distributed. Many rural communities simply do not have access to any acute or crisis psychiatric facilities; and people living in rural Illinois must travel great distances to access acute care. Many of our rural hospitals are admitting patients to medical or intensive care beds in order to keep patients safe until a more suitable setting can be identified.

The loss of acute, inpatient services would not be as serious if there were sufficient community services to support a person living in the community. The state's budget for publicly funded mental health services is 10% less this year than last year when a previous round of cuts was imposed. These cuts compound years of flat budgets resulting in crippling financial situations for community agencies. And substance abuse services were cut 20% this year, also on top of previous cuts. In some parts of our state, there simply are no substance abuse services available.

The most telling consequence of the lack of adequate acute resources is the growing number of people with behavioral health disorders presenting in hospital emergency departments. Many patients come to the ED in crisis because treatment was not available to them sooner and in a more appropriate setting. In the first six months of 2009, Illinois hospitals treated 63,449 patients in emergency departments with a primary behavioral health diagnosis, and 233,880 (or more than 11% of all ED patients) patients with behavioral health as a partial diagnosis.

Unfortunately, the lack of acute care resources means these patients wait a very long time for an appropriate and available setting to be identified. Patients needing to be transferred from the ED to a state psychiatric hospital wait longer than any of these patients. In a survey this summer of select Chicago-area hospitals with high volume EDs, patients were waiting between 17 and 22 hours in EDs for admission to a state psychiatric hospital—several more hours than they waited just a few months earlier. And the challenges don't stop at the ED. The lack of community resources means it is very difficult to find appropriate post-discharge services for persons with mental illnesses. The nursing facility by default is filling in some of these services gaps.

Illinois serves as many as 15,000 persons with mental illness in Institution for Mental Disease (IMD) nursing facilities or in traditional nursing facilities. But IMD nursing facilities may not be the most appropriate facilities for persons with mental illness for clinical and financial reasons.

According to the National Alliance on Mental Illness (NAMI), the state spends approximately $300 million annually for this care, of which $170 million is spent on IMD care. IMD nursing is funded 100% with state funds because of the federal law prohibiting matching Medicaid funds for a facility of more than 16 persons in which more than 50% of the residents have a primary diagnosis of mental illness. Thus, Illinois is spending at least $85 million in state funds each year that otherwise could be matched with federal dollars if spent on appropriate mental health services in less expensive community alternatives.

Recommendations – Provide the Right Care at the Right Time in the Right Place

1. Organize the behavioral health system to focus on patients through **an integrated and coordinated system of care that provides the right care, at the right time, in the right place.** Through a task force or appropriate entity, develop a plan and a strategy to rationalize and organize our fragmented, uncoordinated amalgam of agencies and providers. As part of this plan, identify those community-based services that persons with a serious mental illness need, develop cost estimates, and begin the work of finding the resources necessary to implement a "system" of care organized around people not funding streams.

2. To maintain access to hospital acute psychiatric care formerly supported by the Community Hospital Inpatient Psychiatric Services (CHIPS), **restore CHIPS funding and improve inpatient psychiatric rates**.

3. **Develop the supports necessary to enable people to live safely in the community**. A person with mental illness needs all of the services and protections that are afforded by an inpatient facility, but he/she needs them in the community. These include **supportive housing, vocational and**

employment assistance, case management, medication assistance, medical care, and psychiatric/mental health care.

Supportive housing. For those mentally ill nursing home residents who can benefit from housing and other supports, we must accelerate their movement out of nursing homes into more appropriate settings, including **supportive housing**. An April 2009 study by the Illinois Supportive Housing Providers Association (SHPA) demonstrated a 39% cost savings to the state for services from pre- to post-supportive housing, or an average annual savings of $2,414 per resident. Importantly, residents reported improved quality of life and once in supportive housing, residents were unlikely to return to more restrictive settings such as nursing homes. According to SHPA, there are currently 5,466 units of permanent supportive housing in Illinois but nearly double this amount is needed.

Case management for people with serious mental illness in the community can provide the structure needed to keep a person on track and out of the emergency room or jail.

Medical care: Disease management models offer great promise for people with mental illness. The state should support innovative care models, including those that combine the primary care resources of Federally-Qualified Health Centers with the specialty mental health resources of a community agency or a psychiatrist. To support the integration of primary and specialty behavioral health services, the state should continue to develop a tele-psychiatry network that currently operates in a few rural communities. Many more communities are waiting for the resources to expand access to care through this technology.

Psychiatric care. Advances in pharmacology have enabled persons to live independently. And, psychiatric care is an essential component in the continuum of care that is needed by a person with serious mental illness. Psychiatrists are poorly paid across the board, especially by Medicaid. Also, because of the lack of young doctors going into the psychiatric profession, the state needs to address the workforce issue to ensure the future stability of this group of professionals.

4. **State laws may need to be revised** to ensure patients/residents are treated in the best setting for their condition and that entrance to a nursing facility is closely scrutinized. The state may also need to enact legislation that ensures the behavioral health system in Illinois is appropriately designed, organized and implemented to provide care in the most appropriate setting, at the most appropriate time, for persons with mental and substance use illnesses.

5. For those residents with cognitive and functional deficits requiring care provided in a nursing home, **ensure that the level of care provided is of a quality and intensity that truly meets the residents' needs**. Attention should be paid to strengthening the prescreening performed for every resident of a nursing facility to ensure the placement is necessary.

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 7, 2009

Via Facsimile Transmission and U.S. Mail

Damon T. Arnold, M.D., M.P.H.
Director
Illinois Department of Public Health
122 S. Michigan, 20th Floor
Chicago, Illinois 60603

Dear Director Arnold:

My office has long worked to protect vulnerable residents of Illinois nursing homes from felons, including sex offenders, who also reside in nursing homes. Unfortunately, this has been an unnecessarily difficult task, in part because of the unwillingness of the Department of Public Health ("IDPH") to recognize the vital role it plays in protecting the residents of facilities across Illinois.

I. PROTECTING VULNERABLE ADULTS

In April, 2005, my office initiated an investigation into Emerald Park Nursing Home, a mixed population facility in Evergreen Park, Illinois. The investigation immediately revealed the facility was grossly mismanaged, home to numerous felons, including eight sex offenders, one of whom had been proscribed Viagra after complaining to the facility about his sexual dysfunction. The Evergreen Park Police and Fire Departments were being called to the facility on a daily basis and the residents of the facility were terrified and at great risk. Our investigation resulted in the eventual closure of the facility in the summer of 2005.

The Emerald Park investigation exposed the harsh reality that Illinois nursing homes had become a dumping ground for felons and sex offenders and that drastic steps were necessary to protect vulnerable residents of these facilities.

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Despite strong opposition from IDPH[1] and the nursing home industry, the General Assembly enacted significant legislation to address this complex issue.

The Vulnerable Adults Protection Act, P.A. 94-163 amended the Nursing Home Care Act and took effect on July 11, 2005. This law required the Department of Corrections and county probation departments to provide information regarding supervised felon residents of Illinois long term care facilities to the facilities and local law enforcement. The Act also required IDPH to promulgate administrative rules regarding the identification and management of felons in nursing homes ("identified offenders.") The Act also required IDPH to study the feasibility of segregating identified offenders from other residents of the facility and to report its findings to the Governor and General Assembly by January 11, 2006.

The General Assembly also passed P.A. 94-752 which amended the Nursing Home Care Act and took effect on May 10, 2006. This law requires background checks on all nursing home residents. If the background check identifies an individual as having a felony conviction or any conviction for a sex offense, the facility must immediately fax the background check results to IDPH. IDPH is then required, within 14 days, to conduct a comprehensive criminal history analysis of the offender and produce a report detailing what, if any, security measures are required as a result of the resident's criminal history.

The recent Chicago Tribune series *Compromised Care* exposed shocking and unconscionable gaps in IDPH's implementation of the law and a disregard for its role as chief regulator of Illinois' nursing homes. The Tribune series also revealed rampant non-compliance by IDPH and its contractors, VIP Security and Detective Services, Inc. ("VIP") and psychologist Daniel Cuneo ("Cuneo"), with provisions of the Nursing Home Care Act which proscribes the content and timing of the required criminal history analysis.

Until IDPH fulfills its statutory responsibility to aggressively regulate these facilities, residents will remain at risk.

In response to the Tribune series, Governor Quinn has convened a task force, including the IDPH, Illinois State Police ("ISP") and five other state agencies. The task force can and should address many broader issues concerning how the state cares for people with mental illness or physical disabilities. A task force should not be needed, however, to require IDPH to comply with and enforce the laws that are designed to protect nursing home residents.

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[1] *See March 21, 2006 letter to IDPH Director.*

II. IDPH MUST OVERHAUL ITS APPROACH TO PROTECTING VULNERABLE ADULTS

I request that IDPH immediately undertake the following steps to protect vulnerable adults who reside in Illinois nursing homes and to address the systemic gaps revealed by the Tribune series:

a. IDPH and Illinois State Police must launch a series of unannounced inspections into Medicaid facilities

IDPH must immediately convene inspection teams made up of IDPH surveyors and ISP Medicaid Fraud Control Unit investigators and conduct unannounced inspections of Illinois nursing homes. This year, the Illinois State Police ("ISP") received **$9.3 million dollars** to fund its Medicaid Fraud Control Unit. Currently, there are 61 MFCU investigators statewide charged with responding to allegations of fraud, abuse and neglect in Medicaid funded long term care facilities. These significant resources must be used to protect vulnerable nursing home residents.

b. IDPH should enjoin the operation of facilities that violate the Nursing Home Care Act.

Facilities operating in violation of the Nursing Home Care Act are "declared a public nuisance inimical to the public welfare" and their future operation may be enjoined. (210 ILCS 45/3-701) My office stands willing to immediately work with IDPH to enjoin the operation of any facility that fails to comply with the provisions of the Nursing Home Care Act.

c. IDPH Must Immediately Request the Assistance of the Illinois State Police to Prepare Revised Criminal History Analysis Reports for Every Identified Offender Resident.

Protecting vulnerable adults from high risk felon residents depends upon the integrity of the criminal history analysis process. The Tribune series has called every aspect of that process into question. IDPH must ensure that the process is comprehensive and timely. To remedy the clear deficiencies in this process, IDPH must undertake a process to review the criminal history analysis of every identified offender currently residing in an Illinois long term care facility. VIP must have no role in this process, and I urge you to seek the assistance of the Illinois State Police who can ensure that a comprehensive review of the offender's complete criminal history takes place.

d. IDPH must audit the contracts of VIP and Cuneo

It is clear that VIP and Cuneo have failed to comply with the basic requirements of their contracts with IDPH. The criminal history analysis and reports are untimely and incomplete and, as a result, are putting residents at risk. Incredibly, it appears that in the 5 years since the contracts were awarded, IDPH has never audited or spot checked their work. A comprehensive audit of these contracts should be undertaken immediately.

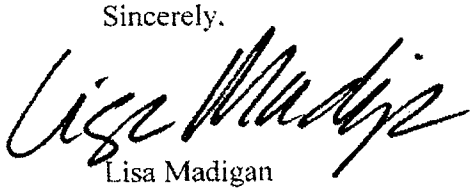
e. IDPH must require facilities to report all incidents

IDPH licensed facilities should be required to report all incidents involving residents to the IDPH for inclusion in a centralized database. The collection of this information is vitally important to the care, safety and quality of life for nursing home residents throughout Illinois.

The Tribune series exposed systemic gaps in the systems designed to protect those who cannot protect themselves and revealed IDPH's continued wholesale disregard for the laws designed to protect vulnerable adults that reside within Illinois nursing homes. IDPH must immediately begin to comply with the law and to hold facilities responsible when they fail to care for residents whose lives are entrusted to them. IDPH must not further delay by waiting for direction from a task force.

The laws governing the identification, assessment and management of felons in nursing homes are clear. Vulnerable adults in facilities across Illinois, and their families, depend upon this state's commitment to them. The time to act is long overdue.

Sincerely,



Lisa Madigan

cc: Governor Pat Quinn
ISP Director Monken

For over 75 years, Life Services Network (LSN), a statewide association, has represented the leading providers of the complete continuum of services for older adults, including:

- Skilled Nursing Facilities (167 members with 15,193 units),
- Intermediate Care Facilities (60 members with 3,015 units),
- Sheltered Care Facilities (67 members with 3,440 units)
- Supportive Living Facilities (130 members with 9,511 units)
- Assisted Living Establishments (165 members with 8,412 units)
- Independent Living (171 members with 18,269 units)
- Federally-subsidized Senior Housing (75 members with 5,445 units)
- Home and Community Based Services Providers (35 members)

With a diverse membership now numbering over 540 providers, LSN is the largest eldercare association in Illinois that represents the complete continuum of care in aging services. And, as one of the largest and most respected trade associations of its type in the country, LSN is nationally recognized for its innovative programs, leadership and expertise on issues related to long term care and senior housing and services. Committed to the advancement of quality and innovation in older adult services, LSN is also the state affiliate of the American Association of Homes and Services for the Aging (AAHSA) and the Assisted Living Federation of America (ALFA).

LSN challenges our members to adjust to new roles, groundbreaking ways of thinking, interacting and developing core competencies. In a maturing and rapidly changing industry, LSN believes that knowledge-building and using up-to-date technology are critical to an organization's growth and success in serving the quality needs and services of older adults.

Additionally, discovering what organizations near and far are doing through networking and the development of best-practices will help providers in their journey to deliver the highest quality person-centered care and services for older adults.

The importance and focus of consumer satisfaction will continue to grow and gain recognition as a valid measurement of quality. LSN understands this and works to provide our members with innovative programs to help them achieve both their short and long-term goals. These programs include our Confidence Satisfaction surveys for residents, families and employees. LSN, through weekly newsletters, e-mails and alerts, disseminates the most current, relevant information to our members to assist them in

daily operations, benchmarking, quality improvement and strategic planning in an evolving industry.

LSN helps consumers to understand and respect the diverse services our members provide. Program's like LSN's ParentCare Solutions Eldercare Information and Referral Service helps employers, consumers and caregivers understand the aging process, while promoting and providing access to the providers and services that can help them.

LSN does not represent nursing facilities that have, as their primary mission, chosen programmatically to serve mixed populations and significant numbers of persons with mental illness as a primary diagnosis. We represent geriatric nursing facilities who share our vision for providing the highest quality of care and services for older adults in all healthcare settings. While our members are committed to meeting the mental health needs of those we serve and assuring their safety and that of our employees, it is our position that the steps taken to address the crisis that has developed in nursing facilities serving mixed populations, including large numbers of those with mental illness, must be viewed in context and not used as the rationale to impose new and onerous requirements on all providers of skilled nursing services.

It is our position that the solutions to the problems identified by the Chicago Tribune and studied by the Governors Nursing Home Safety Task Force have their roots in the lack of appropriate and adequately funded mental health services in Illinois. The state for years has been complicit in allowing persons with mental illness to be served in nursing homes. It is well known that Federal Medicaid regulations prohibit the payment of FMAP for Institutions for Mental Disease (IMD) for persons between the age of 22 and 65. By maintaining a population of persons with a primary psychiatric diagnosis below 50% of its occupancy, a nursing home is not considered an IMD and all of the Medicaid payments for individuals there are eligible for federal match.

To develop "solutions" to this crisis that merely impose greater regulatory oversight and sanctions on nursing home providers is to ignore the genesis of the problem. The state should make proper assessments of persons with chronic mental illness and determine if nursing homes are the appropriate setting as well as if there are other alternatives in the community. While the state's current fiscal condition makes the development and funding of services that truly meets the needs of these individuals and protects the safety of the community difficult, we urge the task force to focus on legislative and regulatory solutions that address the root problems and to avoid the imposition of "solutions" that have unintended consequences for our members who strive daily to meet the diverse needs of seniors in our nursing homes.

Life Services Network stands ready to work together with all the stakeholders to create housing and programming solutions for this population.

Respectfully submitted,