



**Testimony on
HB 1952 – Care Facility Carbon Monoxide Detector Act**

**House Aging and Older Adult Services Committee
May 6, 2008**

Administration Panel

ML Wernecke

Director, Office of Policy Development, Department of Public Welfare

Neil Cashman

Director, Office of Legislative Affairs, Department of Labor and Industry

Brent Ennis

Director, Office of Legislative Affairs, Department of Health

Tom Fidler

*Deputy Secretary for Waste, Air and Radiation Management,
Department of Environmental Protection*

Good morning Representative Mundy, Representative Hennessey, committee members and staff. My name is ML Wernecke and I am the Policy Director at the Department of Public Welfare. Sitting here with me today are:

- Neil Cashman, Director, Office of Legislative Affairs, Department of Labor and Industry;
- Brent Ennis, Director, Office of Legislative Affairs, Department of Health; and
- Tom Fidler, Deputy Secretary for Waste, Air and Radiation Management, Department of Environmental Protection

We are here as a panel because House Bill 1952, the "Care Facility Carbon Monoxide Detector Act," directly or indirectly affects each of our agencies. We have jointly prepared this testimony and are prepared to answer you questions and they pertain to our individual agencies.

All of the state agencies represented on this panel are committed to ensuring the health and safety of residents of nursing homes, personal care homes, and assisted living facilities and are supportive of the intent of House Bill 1952. For obvious reasons, we all would like to eliminate illness or death related to carbon monoxide poisoning. The question before us is how can we most effectively achieve this goal?

House Bill 1952 requires assisted living residences, personal care homes and nursing homes to have carbon monoxide detectors. The number and placement of the detectors shall be determined by the Departments of Health and Public Welfare in their respective facilities and made enforceable through regulations promulgated by those agencies. The bill also allows that the Departments of Health and Public Welfare can grant exceptions if they determine that no potential carbon monoxide hazard exists in individual facilities.

The Department of Health and the Department of Public Welfare are responsible for inspecting and licensing the facilities covered by House Bill 1952. The Department of Health is responsible for licensing, inspections and regulations relevant to the health

and safety of all Pennsylvania nursing facilities. All Pennsylvania nursing facilities must comply with Department of Health's health and safety standards. Current regulations do not require nursing facilities to be equipped with carbon monoxide detectors.

Personal care homes are licensed and inspected by the Department of Public Welfare. Current DPW regulations at 55 PA Code Chapter 2600 governing personal care homes contain no requirements regarding carbon monoxide detectors.

Assisted Living Regulations are under development. Act 56 of July 25, 2007 gave the DPW authority to promulgate regulations and establish requirements for the licensing and inspection of Assisted Living Residences. A work group has been meeting for the better part of a year and draft regulations, and a preliminary draft will be released in the coming weeks.

If House Bill 1952 becomes law, the Department of Health and the Department of Public Welfare would add carbon monoxide detectors to their regular inspections and licensing visits. Inspection and enforcement is not at issue. Both agencies do have an issue, however, with their ability to establish appropriate standards for the use and placement of carbon monoxide detectors. While we all can agree that we don't want people to be overcome by carbon monoxide fumes, the fact of the matter is that there are no commonly accepted standards governing the use of carbon monoxide detectors.

Minimum requirements for the use of safety equipment such as carbon monoxide detectors are typically found in governing building codes. The administration and enforcement of the Uniform Construction Code (UCC) falls almost exclusively with municipalities, with 91 percent of Pennsylvania's 2,563 municipalities having this responsibility. The other 9 percent of municipalities have the Department of Labor and Industry administer and enforce the code. By regulation, the code requirements currently adopted for use are those found in the 2006 family of codes published by the International Code Council (ICC). New ICC Codes are published every three years.

The current codes do not require the installation of carbon monoxide detectors in any buildings or structures, new or existing. In May 2007, the ICC considered adding a requirement for the installation of carbon monoxide detectors in all one- and two-family dwellings where fuel-burning appliances are used. Consistent with past ICC findings, the mandate was voted down, primarily because of concerns about the reliability of the detectors and conflicting views about their placement.

The effect of this latest decision is that -- at the very earliest -- the UCC will not have any carbon monoxide detector requirement in place before 2013. In order to meet this date, the ICC would have to propose, approve and incorporate such a requirement in the year 2012 family of codes. Given the latest ICC actions on carbon monoxide detectors, there will not be a specific national code requirements for the detectors to serve as a guide.

Absent a national standard, we looked at other states to determine if there are any generally accepted practices already in place. The National Conference for State Legislatures conducted a survey of "Carbon Monoxide Detectors State Statutes". According to this survey -- which was last updated in 2007, a total of twelve states have some form of a state statute regarding carbon monoxide detectors. Most of these apply to single family residences although some have specific provisions covering apartment buildings, dormitories, and rooming houses.

The scope, standards and technical provisions of these statutes vary from state to state.

- One consideration is whether the standards should apply to new construction only or to all buildings. States have adopted different approaches. Connecticut requires the installation of carbon monoxide detectors in new residential buildings meant to be occupied by one or two families. Florida's statute covers new construction and buildings for which a building permit is issued. Other states

cover all buildings. The decision whether to limit the requirement to new construction or cover all building will affect the cost of implementation.

- Another key consideration is who should establish the standards for number and placement of detectors. Illinois established a specific standard in state law by requires that each dwelling unit shall be equipped with at least one approved carbon monoxide alarm in operating condition within 15 feet of every room used for sleeping purposes. New York, on the other hand, requires the New York Fire Prevention and Building Code to adopt standards for the installation of carbon monoxide detectors. Rhode Island requires “reasonable standards” to be incorporated in the Rhode Island Fire Safety Code. It is worth noting that no other state charges their state health and human services agencies with the responsibility for establishing technical standards for the installation and placement of carbon monoxide detectors.
- Finally, there is also no consensus around the minimum technical requirements needed to protect health and safety. Minnesota adopted a relatively high standard of one detector within ten fee of each room used for sleeping. Vermont requires one or more detector per building in accordance with the manufacturer’s instructions. As an aside, the Vermont statute does not require the owner or occupant of a single family dwelling unit to maintain a detector after installation.

If Pennsylvania joins these twelve states by adopting requirements for carbon monoxide detectors, we need to be sure we get them right. There will be pressures on both sides advocating either a tougher or more flexible standard. If we end up with a standard that is too weak, we will not achieve our goal of protecting residents of nursing facilities, personal care homes and assisted living residences. If, on the other hand, we adopt rules and standards that are unnecessarily stringent, the owners and operators of these facilities will bear the costs.

As currently written, House Bill 1952 requires the Departments of Public Welfare and Health to establish standards in is a technical area where there is no consensus in practice and where the International Construction Code committee has declined to adopt standards due to the uncertainty about the reliability of detectors and conflicting views about their placement. Neither Department has the technical expertise to establish standards in this relatively new area, and we recommend that the responsibility for establishing standards be removed from these Departments.

The Department of Health would like to further state that it is committed to ensuring the health and safety of nursing home residents within the 725 nursing care facilities in Pennsylvania, and is supportive of the intent of HB 1952. However, the current Life Safety Code for health care facilities enforced by the Department does not include carbon monoxide detectors. The Department would have to establish independent standards due to the lack of national standards in this area.

Health would also recommend amending House Bill 1952 to allow for nursing care enforcement through the powers and penalties established in the Health Care Facilities Act, as opposed to the specific administrative penalty defined in printer's number 2710. This would remove limitations on the Department's enforcement authority. Similarly, the Department of Public Welfare recommends that the penalties section refer back to the Public Welfare Code for compliance issues involving personal care homes and assisted living residents.

House Bill 1952 also requires the Department of Environmental Protection to test and approve carbon monoxide detectors as complying with the Underwriters Laboratories standard 2034 or its equivalent as approved by the department. The Department of Environmental Protection's Bureau of Air Quality evaluates and measures carbon monoxide from stationary and outdoor ambient sources using measurement devices approved by U.S. Environmental Protection Agency as Referenced Methods, which are established analytical procedures used to validate new proposed procedures. The

Department does not measure indoor air sources for contaminants levels or calibrate measurement devices used for such purposes.

UL (Underwriters Laboratories) Standard 2034 is a performance standard for the Carbon Monoxide detector and not a test measurement protocol. This standard stipulates for the monitor's manufacturer that the device must be able to measure defined levels of carbon monoxide that provide a warning when the gas concentration levels reach a point that would cause a physical response in humans.

Due to the unavailability of devices to make such measurements, and because there is not an EPA-approved referenced method to test indoor carbon monoxide concentrations, the Department of Environmental Protection would be unable to test indoor monitors. Further, for these reasons, the Department current does not have the technical expertise required to test or approve carbon monoxide detectors as being compliant with UL standard 2034 or an equivalent standard.

On behalf of all the individuals and departments represented at this table, I would like thank you for this opportunity to testify on House Bill 1952. Members of the panel would be happy to take your questions at this time.

