Act Number:	09-168	
Bill Number:	455	
Senate Pages:	3860-3898, 4108-4111	**42**
House Pages:	9558-9574	**17**
Committee:	Aging: 41, 43-44, 65, 68-70, 99-101, 107, 119-122, 129, 145-153, 198, 200-201, 203-211, 213-216, 237-238, 255-264, 273-274	**56**
	Page Total:	**115**

S – 588

CONNECTICUT
GENERAL ASSEMBLY
SENATE

PROCEEDINGS
2009

VOL. 52
PART 12
3634 – 3983

would you like to speak?

SENATOR LOONEY:

Yes, Mr. President, if we might mark a couple of other items also pass temporarily. And that is Calendar page 37, Calendar 516 should be marked pass temporarily.

Calendar page 37, Calendar 518 should be marked passed temporarily. Calendar page 37, Calendar 520 should be marked pass temporarily as well, Mr. President.

THE CHAIR:

Without objection, so ordered, sir.

SENATOR LOONEY:

Yes, Mr. President, if the Clerk might call as the next item calendar page 37, Calendar Number 511.

THE CHAIR:

Mr. Clerk.

THE CLERK:

Calendar page 37, Calendar Number 511, File Number 756, Substitute for Senate Bill 455, AN ACT CONCERNING THE NURSING HOME BILL OF RIGHTS, favorable report of the Committees on Aging, Judiciary, and Public Health. Clerk is in possession of amendments.

THE CHAIR:

Senator Prague.

SENATOR PRAGUE:

Mr. President, would the Chamber just stand at ease for one minute till I get my file out here, thank you.

THE CHAIR:

Sure.

The chamber will stand at ease.

(Senate at ease.)

SENATOR PRAGUE:

Mr. President, all set, thank you.

THE CHAIR:

The chamber will come back to order.

Senator Prague.

SENATOR PRAGUE:

Thank you very much. I move the Joint Committee's favorable report and passage of the bill.

THE CHAIR:

Acting on acceptance and approve the bill, ma'am, will you remark further?

SENATOR PRAGUE:

Yes, Mr. President. The bill makes changes to

the Nursing Home Patients' Bill of Rights. Specifically, it prohibits a nursing home or chronic disease hospital from charging or asking for or accepting or receiving a third party guarantee as a condition of admission. Actually, Mr. President, this puts us in compliance with federal regulations.

The Nursing Home Patients' Bill of Rights gives patients entitled to receive Medicaid the specific right to not have the nursing home ask for, accept, or receive any gift or money in donation in addition to Medicaid payments. The bill adds to this prohibition third-party payment guarantees, and extends this right to all patients, not just those entitled to receive Medicaid.

Currently there is a bill of rights for nursing home patients, what this bill does is just put us in compliance with federal law. And it prohibits the nursing homes from requiring patients to give a third-party payment guarantee as a condition of admission or continued stay at the facility.

Mr. President, the Clerk has an amendment, it's LCO 7007. Would he please call and I be allowed to summarize.

THE CHAIR:

(Inaudible).

THE CLERK:

LCO 7007, which will be designated Senate Schedule A, is offered by Senator Prague of the 19th District.

THE CHAIR:

The Senator wishes to summarize, is there any objection?

Seeing none -- Senator Prague.

SENATOR PRAGUE:

In Line 164 --

THE CHAIR:

You move adoption, ma'am?

SENATOR PRAGUE:

Yes, I do move adoption. Thank you, Mr. President.

THE CHAIR:

Please proceed, ma'am.

SENATOR PRAGUE:

In Line 164 there is a blank, and instead of the blank we want to insert $2,500, as the extent of this amendment.

THE CHAIR:

Thank you, Senator Prague.

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Mr. President. Questions through you to the proponent of the amendment.

THE CHAIR:

Senator Prague.

SENATOR KISSEL:

Thank you very much, Mr. President. I'm just wondering so that we can put this in context, not only for our colleagues here in the circle who may not have this particular amendment right before them, but the folks that might be watching on CT-N. When it says $2,500, my guess is that's some sort of penalty provision, but I'm just wondering what the exact context of that sum is, through you, Mr. President.

THE CHAIR:

Senator Prague.

SENATOR PRAGUE:

Through you, Mr. President, to Senator Kissel, I'll read to you what exactly the penalty would be imposed -- when it will be imposed. Any nursing home or chronic disease hospital that deprives a patient of any of the rights or benefits specified in Subsection B or D -- and those rights are for instance, you can't

be moved from one room to another without discussing this with the patient or the family, you cannot abuse or neglect any of the patients in your facility -- shall be liable to such patient in a private cause of action for any actual damage sustained by such patient as a result of such deprivation, additional damages of not less than $1,000 or more than $2,500. That's what the amendment does, is puts in the $2,500 in that blank, per violation of deprivation.

In addition, when the deprivation is found to have been willful or in reckless disregard of the rights of patients, punitive damages may be assessed. I can tell you, Senator Kissel, that recently I was in a nursing home and it is more important than ever to have this nursing home bill of rights passed through this chamber and through this legislature. If you don't have a family member, your rights as a patient in a facility must be protected, and this legislation will do that.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Mr. President. And I'm hopeful to read into those comments by Senator Prague

that she wasn't in a nursing home as a client or a recipient of health care, but merely has been there visiting loved ones.

And I've been in nursing homes many, many times, and clearly, I think that what we want is the best care possible for our frail elderly, that's at the outset.

And second, just from the reading of that particular amendment in context, it strikes me that there's any number of things that are delineated in this proposed Nursing Home Bill of Rights that if there were violations or if the nursing home did not provide those services, my guess is that we already have ample statutes for many of these, probably not all, but many of these. For example, maltreatment, lack of turning them so that they might get bed sores or any number of things like that. I think that those nursing homes would open themselves up to all sorts of not only private litigation, but probably some actions on behalf of the State of Connecticut as well.

So -- but in another instance, areas that heretofore I don't believe are covered, such as moving an individual from one room to another, I'm not so sure that that's covered in statute right now. This

bill probably would do that, it would say every time you do something like that the maximum penalty per occurrence would be $2,500. And knowing that that's the context of this particular amendment, I'm happy to support the amendment. Thank you very much, Mr. President.

THE CHAIR:

Thank you, sir.

Will you remark further on Senate Amendment A? Will you remark further?

If not, let me try your minds. All those in favor please signify by saying, aye.

VOICES:

Aye.

THE CHAIR:

Opposed, nay.

The ayes have it, Senate A is adopted.

Will you remark further on the bill as amended by Senate A?

Senator Debicella.

SENATOR DEBICELLA:

Thank you, Mr. President. Mr. President, through you, some questions to the proponent of the bill.

THE CHAIR:

Senator Prague.

SENATOR DEBICELLA:

Mr. President, through you, in looking at this bill of rights, there are some clauses of it, which I think are very specifically written, especially those around abuse and physical abuse. But there are some that are very vague, and for purposes of legislative intent, I want to understand what the proponent means by them since we are opening up a whole slew of potential litigation.

In Line 72 of the bill, it says that one of the rights is to, "receives quality care and services with reasonable accommodation of individual needs and preferences." Mr. President, a couple questions; what defines either in statute or elsewhere, "quality care and services," what defines "reasonable accommodation," and what defines "individual needs and preferences"? So kind of an A, B, and C part to my question, through you, Mr. President.

THE CHAIR:

Senator Prague.

SENATOR PRAGUE:

Through you, Mr. President, to Senator Debicella; Senator Debicella, it says what it means, that every

patient should receive quality care and services with reasonable accommodation of individual needs; if somebody happens to be very heavy, for instance, they would have to have accommodations made for that. When somebody goes into a nursing home, if they are for instance, hard of hearing, there needs to be an accommodation made for that. Every -- through you, Mr. President, every patient has the right to have his own doctor, and whatever the doctor orders for that patient, those needs should be met.

People who are in nursing homes would much rather be at home, believe me, but if they are in a nursing home, then whatever they need, whatever is reasonable, whatever protects them, is what the nursing home is paid to give them. And people should be treated with dignity, people should be treated with consideration, just because they're in a nursing home doesn't mean they're any less a person than you or I.

THE CHAIR:

Senator Debicella.

SENATOR DEBICELLA:

Thank you, Mr. President. Mr. President, first off, I don't think anyone in this circle would say that people in nursing homes are less people than

anyone in the circle. And I think everyone would agree they deserve to be treated with dignity and respect, that had nothing to do with my question.

My question, which the Senator failed to answer, is what is the legal meaning of "quality care and services," "reasonable accommodation," and "needs and preferences"? Because when she says, it is what it says, what this bill does is it allows people to sue nursing homes if anyone of those things is violated. And if the Senator cannot answer what those mean, she is setting up through this bill a huge, huge loophole for people to sue if they don't get a room with a window, because that's my preference; or if I don't have HBO, because that's my preference.

And what I'm asking, Mr. President, is do we have a legal definition in statute for those three terms -- and I'm just picking out one area of this bill -- in Line 72, "quality care and services"; in Line 72, "reasonable accommodation"; and in Line 73, "individual needs and preferences." Through you, Mr. President.

THE CHAIR:

Senator Prague.

SENATOR PRAGUE:

Through you, Mr. President, to Senator Debicella, if somebody develops bed sores, if somebody develops dehydration, if somebody develops malnutrition, these accommodations that are not being met. Through you, Mr. President, to Senator Debicella, I hope that answers his question, if not, I will continue.

THE CHAIR:

Senator Debicella.

SENATOR DEBICELLA:

Thank you, Mr. President. So am I to understand from Senator Prague that somewhere in statute the legal definition of "reasonable accommodation" is -- and forgive me if I don't remember -- it was dehydration, bed sores, and I believe she mentioned one other. And just for clarification, is that the legal definition of "reasonable accommodation" and the intent of the author of this bill to go into law? That those are the three specific things that may be sued for under the private action clause in Section 2, as it relates to Line 72? Through you, Mr. Chairman -- Mr. President, excuse me.

THE CHAIR:

Senator Prague.

SENATOR PRAGUE:

Through you, Mr. President, there are other items in here that would fall into -- Senator Debicella, excuse me, you know, the patient must be free from mental and physical abuse, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the patient's medical symptoms, those issues are also in the Patients' Bill of Rights. And if that doesn't satisfy Senator Debicella, I'll try again.

THE CHAIR:

Senator Debicella.

SENATOR DEBICELLA:

Thank you, Mr. President. And Mr. President, I appreciate the Senator reading the other sections of the bill. I'm trying to clarify in Line 72 the meaning of "reasonable accommodation." And Mr. President, the intent behind this is that I -- I'll just ask the question and then I'll talk about the intent. Mr. President, through you, once again, are the three items that Senator Prague listed out the intent behind Line 72 of this bill, when she means the phrase "reasonable accommodation"? Through you, Mr. Prague.

THE CHAIR:

Senator Prague.

SENATOR PRAGUE:

Through you, Mr. President, the entire bill, the listing of all of the abuses, all of the neglect, all of the things that could happen in a nursing home, are part of the "quality care and services" that could be subject to a lawsuit if patients do not receive the kind of quality care and services that they require. When you admit somebody into your facility, you are responsible for them. And under the Patients' Bill of Rights, there are certain things that you must do, there are certain things that are required, and if you don't do that, then you could be subject to a lawsuit.

THE CHAIR:

Senator Debicella.

SENATOR DEBICELLA:

Thank you, Mr. President.

And I thank Senator Prague for the answers to those questions.

Mr. President, I could go on, I don't want to take up the circle's time. There are literally a dozen of these examples in this so-called "Patients' Bill of Rights," that are drafted in such a nebulous

way as to say that a patient has a right to sue a nursing home for anything. This is not a narrowly-crafted patients' bill of rights, which you would expect to address the things Senator Prague originally talked about, because we do want to treat everybody in a nursing home with dignity and respect, we want to prevent physical abuse of the very specific type that she talked about and some of the examples that she gave.

However, Mr. President, that is not what this bill in front of us says. As I think it is evident from one single clause that the proponent engaged me on, where there are no definitions for "quality care," "reasonable accommodations," or "individual needs and preferences." Just think about that one word, "preferences," that you could sue a nursing home because you don't get something you prefer. Now I think the intent behind this bill is admirable. But the actual drafting of it, for lack of a better word, Mr. President, is sloppy. And because of that, this is going to have unintended consequences that the proponent, I don't think, wants to happen. Which is frivolous lawsuits against nursing homes for things that any rational person would look at and say, that's

not an abuse.

So I think Senator Prague, through bringing this amendment, has identified an issue that I think everyone can agree with, that we want to protect people in our nursing homes from abuse and neglect, to make sure that they have the proper treatment. But to create a so-called "bill of rights" that includes 14 clauses, 12 of which are exceedingly vague, is only creating massive amounts of lawsuits in our judicial system that are going to be frivolous and unnecessary.

I would encourage us to reject this bill today, Mr. President. And I would hope that we could come up with a more rational bill of rights that actually addresses the underlying issues that Senator Prague has mentioned, and not create a whole new way to clog our judiciary system with unnecessary lawsuits. Thank you, Mr. President.

THE CHAIR:

Senator Caligiuri.

SENATOR CALIGIURI:

Thank you, Mr. President. Mr. President, I rise with a few questions, if I may, through you to Senator Prague.

THE CHAIR:

Senator Prague.

SENATOR PRAGUE:

Yes, Mr. President.

SENATOR CALIGIURI:

Thank you. Let me begin by saying that it was my pleasure a few years ago as the Ranking Member on the Aging Committee to work with Senator Prague, Senator Doyle, Representative Serra, and Representative (inaudible) on an earlier version of this Patients' Bill of Rights. And so I was very happy to support it at that time, but as I look at the language before us I see a few changes that give me concern. And before I make a final decision on how I'm going to vote on this bill, I wanted to ask Senator Prague about the two issues that concern me.

The first, through you, Mr. President, relates to the use of the language "inalienable." In the new language in Section 2 of the bill, which says that rights conferred in Subsections B and D are, quote, inalienable. What concerns me about that is that when I think about the notion of an inalienable right, I think about it in constitutional terms. And so my question for Senator Prague is, is it the intention of the language to have the rights in the bill rise to

the level of something that would be like a constitutional right, through you, Mr. President.

THE CHAIR:

Senator Prague.

SENATOR PRAGUE:

Mr. President, we have a second amendment on this bill that I have not had a chance yet to call that will take care of Senator Caligiuri's concerns. His concern -- through you, Mr. President -- Senator Caligiuri, your concern is legitimate. And I will call the next amendment, hopefully that will address your concern. If not, we can proceed to try and answer your question.

THE CHAIR:

Senator Caligiuri.

SENATOR CALIGIURI:

Thank you, Mr. President. I thank Senator Prague for that, and I will wait on that issue until I see that amendment. In the event that the amendment does not address my second concern, if I may, through you, I have one other question for Senator Prague.

THE CHAIR:

Please proceed, sir.

SENATOR CALIGIURI:

Thank you, Mr. President. I noticed that also in Section 2, one of the changes that we make is the original language that was enacted a few years ago conferred a private right of action for any negligent deprivation of a right under the bill. The new language says that "any deprivation of a right," and it removes the notion of "negligent deprivation of right," and my question, through you, Mr. President, is why eliminate the notion of "negligent"? And I ask that in part because of my concern that this will lower even further the bar for bringing a lawsuit.

And does Senator Prague, through you, have a view on why we eliminate the notion of a "negligent deprivation of the right" and simply have it be "any deprivation of a right"? Through you, Mr. President.

THE CHAIR:

Senator Prague.

SENATOR PRAGUE:

Again, Mr. President, the amendment that I'm going to call, I think, will answer Senator Caligiuri's concerns. But I want to make it very clear that if the amendment doesn't, I want you to please ask those questions again, so that we can clarify your concerns. I know you're sensitivity to

the needs of the elderly, if you have something that is not addressed in the second amendment that we should be addressing, I'd like to hear that. Thank you.

SENATOR CALIGIURI:

Thank you. Mr. President, I can't ask for any better than that. I thank Senator Prague for her very, very gracious response. Thank you.

THE CHAIR:

Thank you, sir.

Will you remark further, Senator Prague?

SENATOR PRAGUE:

Mr. President, the Clerk has LCO 7683, would he please call the amendment.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO 7683, which will be designated Senate Amendment Schedule B, it is offered by Senator Prague of the 19th District, et al.

THE CHAIR:

Senator Prague.

SENATOR PRAGUE:

Mr. President, the amendment is offered by

Senator Harris --

THE CHAIR:

Senator Prague, do you move adoption?

SENATOR PRAGUE:

I do, I move adoption.

THE CHAIR:

Thank you. Please proceed.

SENATOR PRAGUE:

The amendment is offered by Senator Harris and myself. And I would like to yield to Senator Harris to explain this amendment.

THE CHAIR:

Senator Harris, do you accept the yield, sir?

SENATOR HARRIS:

I do, Mr. President. Thank you.

THE CHAIR:

Please proceed.

SENATOR HARRIS:

Senator Prague, thank you very much for the yield and thank you for your work on this bill and all of your work to protect the elderly and people with disabilities in our state.

This amendment actually, I think, addresses a lot of the concerns that were raised here in the circle

today. The bill is well-intended, again, to protect nursing home residents. This amendment, LCO 7683, actually strikes Section 2 in its entirety. And what it does is try to address that balance, I think, that Senator Debicella's questions were getting to. Of course, we want to protect the elderly and people with disabilities, but we want to do so in a way that's balanced, that doesn't overly burden nursing homes, chronic care homes; doesn't lead to more litigation at needless expense, which doesn't provide the protection that all of us here are trying to work for.

So what this amendment specifically does, Mr. President, is it actually deletes that language that Senator Caligiuri talked about, which brought the current bill of rights which we're talking about -- that's current law, by the way, that's not new in this bill -- but the current bill of rights to be protected by a strict liability standard. So under this amendment, the negligence standard that is current law would remain.

The second part about this amendment is it simplifies and deals with the issue that Senator Caligiuri raised. But it simplifies the language which would preclude a nursing home from having a

potential resident or their family, in contracting for those services, to waive the rights under the bill of rights. And it's true, there were some words like "inalienable," which I thought I was going to wearing a powdered wig when I came on the floor to talk about those -- but it keeps the basic intent that people, in particular, when they're going into nursing homes, people when they're at their most vulnerable ofttimes, should not be forced to in any way contract away, to waive these rights that we put in current law to protect them.

So that is exactly what this does, I think it's a cleaned up language that maintains the underlying intent of the bill.

THE CHAIR:

Thank you, sir.

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Mr. President. A few questions, through you, to the proponent of the amendment -- actually, to Senator Harris.

THE CHAIR:

Senator Harris.

SENATOR KISSEL:

I got the nod from Senator Prague, so there we go.

First of all, I want to continue to commend the proponents of the underlying legislation and these amendments. Clearly, as someone who has been associated with the Select Committee on Aging for -- since it was first started back in the mid 1990s, and then for a few years was happy to hand off that responsibility to Senator Caligiuri, who did an outstanding job there as well.

But my first question, through you, Mr. President, is the term "inalienable." that's one where it's a storied past in our nation's history. My understanding of "inalienable" -- just by way of clarification, because I know Senator Harris brought a lot of these points out already. But again, just to underscore them -- is that an individual cannot give up those rights, we're drawing analogies to historic American documents. But why the choice of "inalienable," and is that a legally recognized term of ours? Through you, Mr. President.

THE CHAIR:

Senator Harris.

SENATOR HARRIS:

Through you, Mr. President, I think that that word reflected the passion of the proponents of this bill, what they were trying to get to. But it didn't seem to be appropriate in this context, in statute, really it is more of a constitutional concept. But the bill does address the fundamental idea behind inalienability, in that it protects someone, again, entering a nursing home ofttimes at their most vulnerable, from being forced to waive those rights through contract.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Mr. President. And another question, through you to Senator Harris. As I had indicated in my colloquy with Senator Prague, it struck me that many of the rights delineated in this bill of rights are already covered in certain areas of statute. For example, if someone who is left in a bed and developed bed sores or was maltreated, not only to my mind would that nursing home facility risk exposure to civil liability by the family or loved ones of that particular patient or client, but also, I think that they risk exposure to criminal actions brought forward

by the state's attorneys office that pays attention to these matters and is charged with enforcing -- making sure that our -- and they're not always seniors, they could be folks that are younger with mental debilitating diseases such as the onset of Alzheimer's or something.

But directly to the question at hand, even if we pass this amendment, what additional rights are delineated in the bill of rights that may not be covered already in some aspect of statute, if the proponent knows. I know that changing the room without notification to the client and/or, slash, patient, but is there anything else that maybe is an expansion of areas that are currently covered?

THE CHAIR:

Senator Harris.

SENATOR HARRIS:

Thank you, Mr. President. Through you, I believe the only expansion, change to the underlying bill of rights, which is current law, is the third-party guarantee issue, which I believe, Senator Prague touched on it, perhaps she can answer some more specific questions about that. But I do believe that the Ranking Member of Aging is correct, that a lot of

the elements that are in the bill of rights are actionable through a civil action, just on a negligence standard for violation of the duty of care and they are probably found in other areas of the statutes.

What the bill of rights does, and what I think Senator Prague is trying to emphasize here, is to neatly lay out in one place a series of rights in a clear, conspicuous, and comprehensive manner so that people are aware of the rights that they have, again, often at the most vulnerable time in their lives. And in that way, again, it's an important thing, we have a bill of rights -- we have a Victims' Bill of Rights, we have a Voters' Bill of Rights, we have a Taxpayers' Bill of Rights, we have a Patients' Bill of Rights, we have a Residents' Bill of Rights for managed residential care communities, and we actually even have a Defense Workers' Bill of Rights.

So this is a common thing that we've done under Connecticut law. As a matter of fact, this idea of not being able to waive one's rights by contracts actually was inspired by and came from the Fair Debt Collections Practices Act, which is a federal law, but nonetheless is a model for when we look to keeping

consumers' rights, maintaining those rights, through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. I have no further questions for Senator Harris. I think the amendment brought forward before us right now, Senate Amendment B, makes a good bill that much better.

And I think for folks that may have some kind of concern regarding this being a bill of rights, I think the historical comparisons are exactly apt. I think having all of these things delineated in one area so that lay people can open up a statute book or, indeed, advocacy groups might be able to print this and have it handy for folks. My guess is with our new technology this can all be in one simple spot on a web site -- these are the Nursing Home Bill of Rights, this is what you can expect for your loved one, and so I think excellent, excellent amendment.

Regarding the third-party guarantees, I understand that Senator Prague articulated the grounds for that earlier, so I don't think there's a need to get into that either.

I'm happy to support this amendment and again, wanted to thank the proponents of this legislation for taking some of the concerns that I had heard from folks and really working on that and making this good bill that much better. Thank you very much, Mr. President.

THE CHAIR:

Thank you, Senator Kissel.

Senator Debicella.

SENATOR DEBICELLA:

Thank you, Mr. President. And Mr. President, may it never be said that I don't change my mind on things when new facts come to light. This is a very interesting amendment and I want to understand it because I might vote for the bill with this amendment on it. So through you, Mr. President, a question to the proponent.

THE CHAIR:

Senator Harris.

SENATOR DEBICELLA:

And so forgive me if this is repetitive with Senator Kissel, but not being a trained lawyer I want to make sure I understand it in layman's terms exactly what this does. Mr. President, through you to the

proponent, what will change in terms of an individual's right to sue a nursing home with this amendment in place? Through you, Mr. President.

THE CHAIR:

Senator Harris.

SENATOR HARRIS:

Through you, Mr. President, nothing will change with respect to an individual's right to sue, because that right is still there and we're still maintaining the negligence standard -- under this amendment -- that is now in current law. What will change, however, is on the front end. That now, by law, a resident, a potential resident, would not be allowed to waive any of the rights under the bill of rights by contract when they're entering the nursing home.

So conceivably if you're under the theory that people at their most vulnerable time might have given up some of those rights, perhaps some grounds of suit would have been taken away. However, as Senator Kissel correctly pointed out, this is not the only basis in law for a civil cause of action against a nursing home.

THE CHAIR:

Senator Debicella.

SENATOR DEBICELLA:

Thank you, Mr. President. I thank Senator Harris for those answers, and thank both Senator Harris and Senator Prague for bringing this amendment forward. This alleviates the concerns that I had before in terms of opening a whole slew of new lawsuits against nursing homes; the previous Section 2, I believe, was written in such a way that it could have done that.

Whereas there are still issues with Section 1 of the bill, with a lot of loose language, by not changing the actual standard by which people may bring suit against nursing homes, I don't believe this will have the ill effect that I had mentioned before I knew this amendment was in place.

So given that, Mr. President, I will be supporting the amendment. And should it pass, will also be supporting the underlying bill.

So again, thank you Senator Harris and Senator Prague.

And thank you, Mr. President.

THE CHAIR:

Thank you, sir.

Senator Caligiuri.

SENATOR CALIGIURI:

Thank you, Mr. President. Just for the sake of having a complete record, I wanted to state that amendment does do what Senator Prague thought it would -- address my concerns foursquare by eliminating the notion of an "inalienable right," and by returning the language of the bill to the original and current standard of "negligent deprivation of rights." I think we've addressed concerns that may very well have led me to vote against it, even though I very much wanted to support it. I think the amendment makes the bill better and I look forward to supporting the bill and the amendment. Thank you, Mr. President.

THE CHAIR:

Thank you, sir.

Senator Frantz.

SENATOR FRANTZ:

Thank you, Mr. President. Just to comment on the amendment; the real value of this amendment and ultimately the bill is that you now have or will have, hopefully, a new standard, a way of communicating with the public, those members of society who will ultimately be going into a nursing home and those who are family members of the person going into the nursing home.

Senator Harris is right, in many other industries they do have bills of rights. I wish it was called maybe something else, it does occasionally set up a false set of expectations, and perhaps a little bit of righteousness in some cases.

However, it has worked pretty well in the airline business, mainly because it hasn't been enforced. It has not had to have been enforced, because it raises the employees' awareness and managers' awareness of what the standards are and what the expectations are currently in that particular marketplace. So that I see as the real value.

I do have one question, through you, Mr. President, of Senator Harris.

THE CHAIR:

Senator Harris.

SENATOR FRANTZ:

Thank you. Through you, Mr. President, you mentioned in here that those liable for various violations could be subject to punitive damages. Will those punitive damages likely mirror, in your mind, those that would be heard in court under normal circumstances?

THE CHAIR:

Senator Harris.

SENATOR HARRIS:

Thank you, Mr. President. Through you, I believe that the amendment actually gets rid of that concern, because by striking Section 2 -- and you're correct, Senator Frantz, that punitive damages were addressed in Senator Prague's initial description of the bill -- but the amendment, Amendment B, gets rid of that punitive damage language. So it would purely be a negligent standard with compensatory damages that someone would be liable for, if they deprived someone's rights.

THE CHAIR:

Senator Frantz.

SENATOR FRANTZ:

Okay. Thank you. Just so we're clear, it looks like the second to last -- third to last line, "In addition, where the deprivation of any such right or benefit is found to have been willful or in reckless disregard of the rights of the patient, punitive damages may be assessed."

THE CHAIR:

Senator Harris.

SENATOR HARRIS:

Through you, Mr. President, I was mistaken, it was back in this iteration of the bill. So yes, if you could repeat the question, through you, Mr. President, then I will respond to it.

THE CHAIR:

Senator Frantz.

SENATOR FRANTZ:

Thank you, Mr. President. Through you, the question that I have for you, Senator, is the punitive damages that you had in mind under these kind of circumstances for a violation, would they mirror the same kind of punitive damages -- the same range of punitive damages in an ordinary court case having to do with punitive damages?

THE CHAIR:

Senator Harris.

SENATOR HARRIS:

Through you, Mr. President, yes, if there was willful or reckless disregard of the rights of a patient, then punitive damages in the discretion of the court could be assessed.

THE CHAIR:

Senator Frantz.

SENATOR FRANTZ:

Thank you, that answers that question. It is a great amendment and a good bill. Thank you very much.

THE CHAIR:

Thank you.

Will you remark?

Senator McLachlan.

SENATOR MCLACHLAN:

Thank you, Mr. President. I rise in support of the amendment. I reluctantly voted against this bill in the Judiciary Committee, because of concerns for frivolous lawsuits.

I applaud Senator Harris and Senator Prague for your action on this bill, in trying to make it so that it is more palatable and certainly, looking out for the seniors of the state of Connecticut. I thank you for your work on this and I will support the bill. Thank you.

THE CHAIR:

Thank you, sir.

Will you remark? Will you remark further on Senate B?

If not, let me try your minds. All those in favor please signify by saying, aye.

VOICES:

Aye.

THE CHAIR:

Opposed, nay.

The ayes have it, Senate B is adopted.

Will you remark further on the bill as amended?

Senator Prague.

SENATOR PRAGUE:

Mr. President, I want to thank the members of this chamber for their concern and their sensitivity to our most frail people in nursing homes. There clearly is a consensus of opinion in this chamber from both sides of the aisle that people who are in nursing homes must be well cared for.

If there are no other comments and there's no objection, I'd like to put this on the Consent Calendar.

THE CHAIR:

Senator Doyle, do you wish to speak on the bill as amended?

SENATOR DOYLE:

Yes.

THE CHAIR:

Please proceed, sir.

SENATOR DOYLE:

Thank you, Mr. President. I'd like to make a few comments.

THE CHAIR:

Please proceed.

SENATOR DOYLE:

Thank you. I apologize to the Senate Chair I didn't speak up earlier. I just want to briefly thank the Chair, for last year -- last term I was privileged to be Chair of the Aging Committee, we worked on this bill -- Senator Prague was the Vice Chair -- we worked hard. Unfortunately, last year it wasn't passed because of the fiscal situation. And I'm glad to say that Senator Prague and others, Representative Serra, pushed hard to complete it, to get us to this point today.

Also I'd like to thank Senator Harris, because I do think this is a good bill for all of our constituents.

And I do, again, just want to thank Senator Prague for her leadership. And I look forward to helping all our individuals -- constituents in nursing homes. Thank you, Mr. President.

THE CHAIR:

Thank you, sir.

Will you remark? Will you remark further?

I'd like to remind everyone that the use of cellular telephones in the chamber is not allowed.

There's a motion on the floor to place this item on Consent if there's no further discussion.

Without objection, so ordered.

SENATOR PRAGUE:

Thank you.

THE CHAIR:

Mr. Clerk.

THE CLERK:

Calendar page 40, Disagreeing Actions, Calendar Number 558, File Number 849, Substitute for Senate Bill 1063, AN ACT CONCERNING ELIGIBILITY FOR BENEFITS FOR VETERANS IN SERVICE IN TIME OF WAR, as amended by House Amendment Schedules A and B; favorable report of the Committee on Veterans, Finance, Revenue, and Bonding, and Appropriations.

THE CHAIR:

Senator Maynard.

SENATOR MAYNARD:

Thank you, Mr. President. I move the Joint Committee's favorable report and passage of the bill in concurrence with the House.

S – 589

CONNECTICUT
GENERAL ASSEMBLY
SENATE

PROCEEDINGS
2009

VOL. 52
PART 13
3984 – 4323

calendar.

THE CHAIR:

Motion is to remove item from the foot and put on pass retain.

Seeing no objection, so ordered, sir.

SENATOR LOONEY:

Thanks, Mr. President. Mr. President, if we might call the items on the Consent Calendar at this time.

THE CHAIR:

Mr. Clerk, please call for the Consent Calendar.

THE CLERK:

Immediate roll call has been ordered in the Senate on the Consent Calendar, will all Senators please return to the chamber. Immediate roll call has been ordered in the Senate on the Consent Calendar, will all Senators please return to the chamber.

Mr. President, those items placed on the Consent Calendar begin on calendar page 2, Calendar Number 278, Senate Bill 795.

Calendar page 5 -- correction, calendar page 23, Calendar Number 115, Substitute for Senate Bill 80.

Calendar page 26, Calendar Number 260, Substitute for Senate Bill 823.

Calendar page 29, Calendar 310, Substitute for Senate Bill 887.

Calendar page 30, Calendar 332, Substitute for Senate Bill 1086.

Calendar page 33, Calendar 428, Substitute for Senate Bill 850.

Calendar page 34, Calendar 449, Senate Bill 1110.

Calendar page 35, Calendar 470, Substitute for Senate Bill 1126.

Calendar page 36, Calendar 497, Substitute for Senate Bill 1090.

Calendar page 37, Calendar 511, Substitute for Senate Bill 455; calendar 516, Substitute for Senate Bill 838; and Calendar page 40, Calendar 558, Substitute for Senate Bill 1063.

Mr. President, that completes those items placed on the Consent Calendar, but there may be a correction.

THE CHAIR:

The machine is open if you'd like to vote.

THE CLERK:

Mr. President, there are two other items to be placed on the calendar.

THE CHAIR:

Please stand by.

THE CLERK:

On calendar page 2, Calendar 129, Senate Bill 775, and Calendar 159, Senate Bill 938.

Mr. President, I believe that completes the items to be placed (inaudible).

THE CHAIR:

Please call for a roll call vote.

The machine is open.

THE CLERK:

The Senate is now voting by roll call on the Consent Calendar, will all Senators please return to the chamber. The Senate is now voting by roll call on the Consent Calendar, will all Senators please return to the chamber.

THE CHAIR:

Have all Senators voted?

Senator Prague? Senator Prague?

If all Senators have voted, please check your vote. The machine will be locked. The Clerk will call the tally.

THE CLERK:

Motion is on adoption of Consent Calendar Number 1.

Total Number Voting	36
Those Voting Yea	36
Those Voting Nay	0
Those Absent/Not Voting	0

THE CHAIR:

Consent Calendar 1 passes.

Senator Looney.

SENATOR LOONEY:

Yes, Mr. President. Thank you, Mr. President. Another item to mark as go from the list of items previously marked passed temporarily. It's on calendar page 31, Calendar 380, Senate Bill 1050.

THE CHAIR:

Thank you, sir.

Mr. Clerk.

THE CLERK:

Turning to calendar page 31, Calendar Number 380, Substitute for Senate Bill 1050, AN ACT CONCERNING THE ESTABLISHMENT OF AN ACADEMIC DETAILING PROGRAM, favorable report of the Committee on Public Health and Higher Education. Clerk is in possession of amendments.

Senator Coleman of the 2nd in the Chair.

H – 1066

CONNECTICUT
GENERAL ASSEMBLY
HOUSE

PROCEEDINGS
2009

VOL.52
PART 30
9491 – 9840

will take a tally please. And will the Clerk please announce the tally.

THE CLERK:

House Bill number 6529 as amended by House A and B

Total number voting	147
Necessary for passage	74
Those voting Yea	147
Those voting Nay	0
Those absent and not voting	4

DEPUTY SPEAKER ORANGE:

The bill as amended passes. Will the Clerk please call Calendar number 671.

THE CLERK:

On page 22, Calendar 671, substitute for Senate Bill number 455, AN ACT CONCERNING THE NURSING HOME BILL OF RIGHTS favorable report of the Committee on Public Health.

DEPUTY SPEAKER ORANGE:

Representative Joe Serra of Middletown, you have the floor, sir.

REP. SERRA (33rd):

Thank you, Madam Speaker. I move for the acceptance of the joint committee's favorable report and passage of the bill in concurrence with the Senate.

DEPUTY SPEAKER ORANGE:

The question is on the Committee's joint favorable report and passage of the bill in concurrence with the Senate.

Will you remark, Representative Serra.

REP. SERRA (33rd):

Thank you, Madam Speaker. Madam Speaker, what we have before us is the nursing home bill of rights. This is a bill that protects our valuable asset in our seniors who are in -- unfortunately in convalescent homes or chronic hospitals. And with that, Madam Speaker, I'd like to call LCO 7007. And I be allowed to summarize.

DEPUTY SPEAKER ORANGE:

Will the Clerk please call LCO 7007 previously designated Senate Amendment Schedule A.

THE CLERK:

LCO number 7007 Senate A offered by Senator Prague.

DEPUTY SPEAKER ORANGE:

The Representative seeks leave of the chamber to summarize. Is there objection to summarization? Is there objection?

Hearing none, Representative Serra.

REP. SERRA (33rd):

Thank you, Madam Speaker. What this does is strikes on line 164 of the bill it adds in there a fine of $2,500 and with that Madam Speaker, I ask for approval of the amendment.

DEPUTY SPEAKER ORANGE:

The question is on adoption.

REP. SERRA (33rd):

Adoption, ma'am.

DEPUTY SPEAKER ORANGE:

Will you remark on Senate Amendment Schedule A? Will you remark on Senate Amendment Schedule A? If not, let me try your minds. All those in favor signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER ORANGE:

All those opposed nay.

The ayes have it. The amendment is adopted. Will you care to remark further on the bill as amended? Representative Serra.

REP. SERRA (33rd):

Thank you, Madam Speaker. Again I ask that LCO 7683 be called and I be allowed to summarize.

DEPUTY SPEAKER ORANGE:

Will the Clerk please call LCO 7683 designated as Senate Amendment Schedule B.

THE CLERK:

LCO number 7683 Senate B offered by Senators Harris and Prague.

DEPUTY SPEAKER ORANGE:

The Representative seeks leave of the chamber to summarize. Is there objection? Is there objection?

Hearing none, Representative Serra.

REP. SERRA (33rd):

Thank you, Madam Speaker. What this is enumerates the rights of our seniors who are confined to nursing homes and chronic patient hospitals. And with that, Madam Speaker, I can enumerate but I would just like to say that this goes a long way to protecting our valuable assets which all of us, our mothers, fathers, and grandparents who unfortunately in nursing home and chronic ill hospitals. And with that, Madam Speaker, I move for adoption of the amendment.

DEPUTY SPEAKER ORANGE:

Thank you, Representative Serra. The question is on adoption. Will you remark further on Senate B? Will you remark further on Senate B?

Representative Hetherington on Senate B, sir.

REP. HETHERINGTON (125th):

Thank you, Madam Speaker. On the amendment, through you, if I may, a few questions to the proponent.

DEPUTY SPEAKER ORANGE:

Certainly. Please proceed.

REP. HETHERINGTON (125th):

Thank you. Through you, Madam Speaker, who makes the determination that a facility has negligently deprived a patient of any right or benefit and so forth? Is that by court or by an agency? Who makes that determination? Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Serra.

REP. SERRA (33rd):

Yes, Madam Chairman. Can he repeat that question? I couldn't hear him.

DEPUTY SPEAKER ORANGE:

Yes. Representative Hetherington, would you mind repeating your question, sir?

REP. HETHERINGTON (125th):

Yes. Thank you. Line 6 through 15 talk about a determination that the nursing home has been negligent and the amendment says that the rights or benefits can't be abrogated by contract. What I was wondering is who makes the initial

determination that there has been negligence in the providing of services? Through you, Madam Speaker.

REP. SERRA (33rd):

Through you, Madam Speaker --

DEPUTY SPEAKER ORANGE:

Representative Serra.

REP. SERRA (33rd):

Through you, Madam Speaker, the family or the person in charge or the loved one who happens to be in the convalescent home could make a complaint and it would be the Department of Public Health or the people who inspect the facilities and handle that type of situation.

DEPUTY SPEAKER ORANGE:

Representative Hetherington.

REP. HETHERINGTON (125th):

Thank you. So the Department of Public Health would make the initial determination that there was -- there was negligence that deprived the patient of a right. Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Serra.

REP. SERRA (33rd):

Through you, Madam Speaker, that is correct.

DEPUTY SPEAKER ORANGE:

Representative Hetherington.

REP. HETHERINGTON (125th):

Thank you. The lines 13 through 15 it says the rights or benefits may not be reduced, rescinded, or abrogated by contract. I assume that means they can't be waived in advance. I mean you could still -- this wouldn't preclude a settlement of some claim for damages on behalf of the -- of the patient. Is that correct? Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Serra.

REP. SERRA (33rd):

Through you, Madam Speaker, that is correct.

DEPUTY SPEAKER ORANGE:

Representative Hetherington.

REP. HETHERINGTON (125th):

Thank you. Now the punitive damages that are referred to in lines 17 and 18, through you, Madam Speaker, are those damages awarded by a court? Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Serra.

REP. SERRA (33rd):

Through you, Madam Speaker, that is correct.

DEPUTY SPEAKER ORANGE:

Representative Hetherington.

REP. HETHERINGTON (125th):

Then in the following lines, through you, Madam Speaker, 18 through 20 that speaks of a separate action at law, I assume to recover damages. Is that right? Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Serra.

REP. SERRA (33rd):

Through you, Madam Speaker, that's correct.

DEPUTY SPEAKER ORANGE:

Representative Hetherington.

REP. HETHERINGTON (125th):

Thank you, Madam Speaker. And they refer to the various kinds of remedies that may be sought ; injunctive and declaratory relief and I assume that an action for ordinary damages would also be available. Correct? Through you, Miss.

DEPUTY SPEAKER ORANGE:

Representative Serra.

REP. SERRA (33rd):

Through you, Madam Speaker, that is correct.

REP. HETHERINGTON (125th):

Yes. Okay.

DEPUTY SPEAKER ORANGE:

Representative Hetherington.

REP. HETHERINGTON (125th):

Thank you. Don't patients currently have a right to sue for abuse or injury that they receive in a nursing home? Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Serra.

REP. SERRA (33rd):

Through you, Madam Speaker, in certain incidents, yes they do.

DEPUTY SPEAKER ORANGE:

Representative Hetherington.

REP. HETHERINGTON (125th):

How would this expand that right? Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Serra.

REP. SERRA (33rd):

Through you, Madam Speaker, the microphone just shut down. Through you, Madam Speaker, can he repeat that question again; Representative Hetherington, please.

DEPUTY SPEAKER ORANGE:

Representative Hetherington, do you mind repeating your question, sir?

REP. HETHERINGTON (125th):

Alright. There we go. Through you, Madam Speaker, my question is -- deals with what rights this adds to recovery that don't already exist. I assume a patient who is injured already has the right to go to court and sue for personal injury. And does this add something to that? Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Serra.

REP. SERRA (33rd):

Through you, Madam Speaker, it says by law patients can pursue a private cause of action against a facility only upon a finding that the patient has been negligently deprived of any rights or benefits conferred in the patient's bill of rights. And two, suffering an injury as a result of deprivation, the court may then assess damages to compensate the person for such injuries.

DEPUTY SPEAKER ORANGE:

Representative Hetherington.

REP. HETHERINGTON (125th):

Thank you. Through you, Madam Speaker, so there would first have to be a determination by the Department of Social Services? Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Serra.

REP. SERRA (33rd):

Through you, Madam Speaker, that is correct.

DEPUTY SPEAKER ORANGE:

Representative Hetherington.

REP. HETHERINGTON (125th):

And -- okay. No, I won't pursue that. Alright. Thank you. I thank the proponent. Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Thank you, sir. Will you care to remark further on Senate Amendment B?

Representative Miller, on Senate B.

REP. MILLER (122nd):

Thank you, Madam Speaker. A couple of questions and maybe a comment or two.

DEPUTY SPEAKER ORANGE:

Please proceed, sir.

REP. MILLER (122nd):

And through you, Madam Speaker, I have a number of nursing homes in my district and I have on occasion gotten involved with complaints and I'll give you an example of some of them. An assisted living operation in my town -- I know that's not a chronic disease type of operation but just to give you an example of what a complaint could be.

A gentleman from New York called me his friend of 80 years old who's living in the assisted living facility. I get a complaint from this gentleman that they weren't doing their job. They weren't taking her out enough during the week; shopping and shows and visiting different historical spots. And he was complaining about the fact that they were negligent. They weren't doing their job.

Now, I'm sure that that is not a legitimate complaint because I don't think you can expect in a nursing home or an assisted living home to take somebody out every single day to some location. So that's one of the complaints I got. Again, that's not a chronic type of a nursing home. Another one, the patient -- the person living in the convalescent home injured herself. And the children blamed the convalescent home; claimed that they should have been more careful and that somebody should have been watching her closely. And again, you just can't watch these people 24 hours a day but sometimes they attempt to get up

at 2 or 3 o'clock in the morning in a room that is not really lit that well and they fall and hurt themselves. And then they again blame the convalescent home owner.

And lastly, some time ago we had a -- I forgot the union, but a convalescent home was having a problem with the workers and the workers they were a unionized group, did things to the patients that were not proper. Would the owner of that convalescent home be responsible for an incident such as that where a -- out of -- it wasn't their -- their fault but some disgruntled workers because they're negotiating for an increase of wages decided to do something to get that home owner a problem -- that home -- convalescent home owner a problem.

So would he be held liable in a case like that if there was an incident where a patient was injured or somehow rights were being trampled on by a union worker rather than the owner of the convalescent home? Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Serra, do you care to answer, sir?

REP. SERRA (33rd);

Through you, Madam Speaker, I think as the good Representative knows that once a patient is taken in and there's a contract signed, the facility is responsible to an overall degree. At that point there would be an internal investigation

by the nursing home and I'm assuming that for somehow or some reason the Department of Health -- Public Health would be notified if recourse wasn't done. And it follows a progressive step. So I'm not saying that the nursing home would be responsible but there would be an investigation by the various State departments.

And of course if it happened to be a patient, either the patient would complain or the next thing the patient would be complaining to the loved one who came into visit him and some action would be taken on the part of the nursing home. The nursing home overall is responsible because that's -- they're the owners of that facility. As to how it goes from there, it would be an investigation and some type of action definitely would be taken or a remedy of some sort.

REP. MILLER (122nd):

Thank you.

DEPUTY SPEAKER ORANGE:

Representative Miller.

REP. MILLER (122nd):

Thank you. Through you, Madam Speaker, the incidents I'm talking about were well publicized on television and radio throughout the area. So, those things can happen and certainly we want to protect the patients of any of these homes from being

injured or having their right violated. And I would just say it's a shame that -- we have, I think 15 convalescent homes of varying degrees.

I don't know whether they're chronic or what types but there's 15 nursing homes that are financially strapped and some of them may go under. They go under bankruptcies. So, it's a problem. And I think this bill will go a long way to protect the patients and that's what we're here for but I just thought I'd bring that out. I thank you, Madam Speaker and I thank the good Representative for having him listen to me. Thank you.

DEPUTY SPEAKER ORANGE:

Thank you for your comments, sir. Will you care to remark further on Senate Amendment Schedule B? Will you care to remark further on Senate B? If not, let me try your minds. All those in favor please signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER ORANGE:

All those opposed nay.

The ayes have it. The amendment is adopted.

Will you care to remark further on the bill as amended by Senate Amendments A and B? Will you care to remark further on the bill as amended? If not, staff and guests please come to

the well of the House. Members take your seats. The machine will be opened.

THE CLERK:

The House of Representatives is voting by roll call. Members to the chamber. The House is voting by roll call. Members to the chamber.

DEPUTY SPEAKER ORANGE:

Have all members voted?

REPRESENTATIVES:

No.

DEPUTY SPEAKER ORANGE:

Have all members voted? Have all members voted? Please check the board to determine if your vote has been properly cast. If so, the machine will be locked and the Clerk will take a tally please. Will the Clerk please announce the tally.

THE CLERK:

Senate Bill number 455 amended by Senate A and B in concurrence with the Senate.

Total number voting	146
Necessary for Passage	74
Those voting Yea	146
Those voting Nay	0
Those absent and not voting	5

DEPUTY SPEAKER ORANGE:

Thank you, Mr. Clerk. The bill passes in concurrence with the Senate.

Will the Clerk please call Calendar number 660.

THE CLERK:

On page 21, Calendar 660, substitute for Senate Bill 1009, AN ACT CONCERNING TECHNICAL CHANGES TO TITLE 29 TO INCORPORATE THE STATE FIRE PREVENTION CODE favorable report of the Committee on Judiciary.

DEPUTY SPEAKER ORANGE:

Representative Stevie Dargan, you have the floor, sir.

REP. DARGAN (115th):

Thank you very much, Madam Speaker. I move acceptance of the Committee's favorable report and passage of the bill in concurrence with the Senate.

DEPUTY SPEAKER ORANGE:

The question is on acceptance of the joint committee's favorable report and passage of the bill.

Will you remark further? Representative Dargan.

REP. DARGAN (115th):

Thank you very much, Madam Speaker. The bill makes changes in various statutes to incorporate provisions of the State fire prevention code many of which are technical in nature. The bill

JOINT
STANDING
COMMITTEE
HEARINGS

SELECT
COMMITTEE
ON AGING
PART 1
1 – 293

2009
INDEX

Attorney General, we're going to recess now. You're going to go off at eleven o'clock in, I think it's room 2D.

ATTY. GEN. RICHARD BLUMENTHAL: I think that's right.

SENATOR PRAGUE: Yeah. It is. 2D.

REP. SERRA: So, at this point, the committee stands recessed till, I think 20 -- you've got 20 minutes. You don't have a 20 minute speech, do you?

ATTY. GEN. RICHARD BLUMENTHAL: Twenty minutes will probably do it.

REP. SERRA: Okay. We'll reconvene at 11:20. We stand recessed.

(Committee in recess.)

REP. SERRA: What we're going to do -- I'm going to call a public official, and then we're going to alternate between the public officials and the public. But the first public official will be Deb, Deb Polun, please.

DEBRA POLUN: Good morning, Representative Serra. I hope you're not lonely up there.

REP. SERRA: Good morning. No, they're on their way in, so...

DEBRA POLUN: Good morning. My name is Deb Polun, for the record, I'm the legislative director of the Connecticut Commission on Aging. And as you know, the Connecticut Commission on Aging is a legislative branch agency that is dedicated to enhancing the lives of older adults of today and tomorrow.

SB451
SB452
SB455
HB5045
HB5291

to is Senate Bill 452, An Act Concerning Funding for Adult Day Care Centers. We believe that this is a smart investment in our home and community-based infrastructure. The needs assessment that was completed in 2007 and funded by the Legislature found that 80 percent of respondents wanted to age at home in their communities. Most people were able to do so with formal and informal care. And informal care includes that provided by spouses, by neighbors, by friends, children, other loved ones.

The amount of care that's provided informally is enormous. In fact, national estimates are that over 500,000 people in Connecticut are providing informal care to an adult. That's an economic value to our State of over $4.9 billion. Adult day centers provide needed respite for informal caregivers, and also valuable socialization and recreation for adults with long-term care needs. As they rely heavily on state Medicaid dollars for their continued success, we do support an increase to their funding.

Senate Bill 455, An Act Concerning the Nursing Home Bill of Rights is a bill which would provide needed protection for nursing home residents in our state, and we do support this bill. Existing laws do provide some protection for residents, but we feel that this bill will provide some teeth into the existing statutes.

What we've heard is that many nursing homes will ask prospective residents to agree to reduce or even waive their rights when signing a contract. And many people are forced to make decisions about nursing home care under duress or under time constraints. This is not something that individuals should have to face

as they're deciding whether or not to put their loved one into a nursing home. So we do support that bill.

House Bill 5045, An Act Concerning the Elderly Tax Freeze Program. I just wanted to point out that the commission last year, with this committee's support, did complete and publish a report entitled, "Property Tax Relief for Older Adults, A Profile of Connecticut's Local Programs." This report basically was an inventory of existing local property tax relief programs and a summary of the findings and came with six recommendations. All those recommendations were really geared towards greater information sharing and education about existing programs.

And we'd just like to remind the committee about this report and offer our assistance in crafting any legislation that might support the recommendations in that report. And I did bring some copies with me today.

And finally, House Bill 5297, An Act Concerning the Status of the Money Follows the Person Project. We, of course, support this bill and all efforts to provide greater transparency and information sharing between branches of government and with the public. Money Follows the Person is a much-anticipated program. We're all very excited about what it means as far as how we envision our long-term care system will work for consumers and their families.

And it is -- it's great to keep everybody in the loop. We would just recommend that if this bill goes forward, that the reporting requirement be expanded to include all the committees of cognizance, and that would most likely be Human Services, Public Health, and

Any other questions? Thank you, Dave.

DAVID EVANS: Thank you.

REP. SERRA: Next up is Nancy Shaffer. Good afternoon.

NANCY SHAFFER: Good afternoon.

Good afternoon, Representative Serra, and Senator Prague, and members of the select committee on aging. For the record, my name is Nancy Shaffer, and I am the State Long-term Care Ombudsman. I've provided written testimony, but will spare you the reading of my testimony, and I apologize for my scratchy throat today.

I'd like to testify today in support of some of the legislation before you, in particular, Senate Bill 450, An Act Concerning Nursing Home Oversight.

SB454
SB455
[SB453]
[SB451]
[HB5297]

I'm pleased to have listened to some of the conversation this morning. It sounds like there's good dialogue going, and that an oversight bill is something that will be discussed very seriously amongst the Legislature and Department of Social Services and the various agencies.

I feel it's my job when I come before you to give you the face and the human story behind some of these things. And we all know there's been some discussion this morning about the -- what we call Haven Health, the catastrophe that happened last year. And as you probably know in December of 2008, the first Haven Health home closed its doors. They're were approximately 50 residents still residing in that home, and they all relocated. Some of them were able to go back into living in the

issues, and many of those care issues can be related very definitely to staffing issues. And so I would ask respectfully that you take those things into account as you look at that bill.

And then, importantly, I'd like to address Number 455, An Act Concerning the Nursing Home Bill of Rights. And what I did -- I don't know if it's still available. I had given our -- some copies of admission agreements, and I hope that you have those. I thought it might be helpful to you to just see what an admission agreement looks like.

And I also brought with me this stack of papers, it's what's expected of a family member and/or a resident when they're admitted to a nursing home. Generally, on the day of admission, if not before, the nursing home would like to see this -- this stack of papers read and signed. And so, I don't know about you, but it's pretty daunting. And included in that is the admission agreement.

History shows us that certain rights of residents are undermined by contract by this admission agreement. And one of those that I'd like to bring to your attention is the clause in here that says that the facility will not be responsible for lost or missing items. A large concern of consumers that we get calls on are regarding lost and missing items, in particular, something like dentures.

Dentures are an essential to the quality of life, to the health, nutrition, well being, dignity, so many factors in an elder's life. And we often are involved in cases where the facility has said, No, we are not going to be responsible. And that's kind of hard to understand when you have a resident who has

dementia, who, if proper care planning and monitoring and staffing are really focused on preventing that from happening and then, by contract, they're then responsible for replacing those dentures if they're lost.

Some of the other things that are included, I would say in the admission agreements that waive or diminish resident rights are allowing the transfer/discharge at the facility's discretion of a resident, and allowing disruptive or challenging behaviors.

As we know, a lot of residents who go into a nursing home do have behaviors that aren't the norm. A dementia-related behavior such as wandering or maybe some -- I don't want to say abusiveness, but some -- some challenges, can create problems for facilities. And that sometimes is a reason the facilities will say they must transfer out. Not all residents -- not all -- not everyone is appropriate for a nursing home, but facilities need to take responsibility.

And in closing, I just want to also add that there's a number of other proposals the ombudsman program fully supports. I understand that during these very difficult financial times things will be looked at very closely, but I hope that the long-term benefits and the cost savings of some of these issues before you, including the Assisted living Pilot Program in the adult day care centers, the Silver Alert system, and Money Follows the Person, will be included in your very serious conversations.

SB453
SB451
HB5297

Thank you.

REP. SERRA: Any questions from the committee?

Senator Prague.

SENATOR PRAGUE: Thank you, Nancy, for coming in today.

In the Patient's Bill of Rights, I was looking here to see where it says that family members will be responsible for the bills.

I've had complaints that a daughter is being held responsible for her mother's bills. I can't find it here. But that's one of the things that we're going to put in our bill. And would you agree with that, that family members should not be held responsible?

NANCY SHAFFER: Should not be held responsible.

SENATOR PRAGUE: Right.

NANCY SHAFFER: Most certainly.

SENATOR PRAGUE: Okay.

NANCY SHAFFER: Most certainly.

SENATOR PRAGUE: And let me ask you about stuff that's lost like dentures or a watch or something. Now, there is no responsibility by the facility for lost items?

NANCY SHAFFER: When that admission agreement is signed, there's a clause in there that says the facility will do its best to try to find an item, but won't be held responsible. We've recently had a case where a resident's diamond ring was taken from her finger, and it turned out that it probably had been stolen by a person who was hired by a temporary agency.

[HB5312]

And that's why I would fully support, you know, all the conversations around

PATRICIA ROCKWELL: Thank you.

REP. SERRA: Veronica Halpine.

VERONICA HALPINE: Good afternoon --

REP. SERRA: Good afternoon.

VERONICA HALPINE: -- Senator Prague, Representative Serra and other committee members. I'm here to first off, thank you for the very important work you do for the State of Connecticut, and then to ask for your support for Senate Bill 455, An Act Concerning the Nursing Home Bill of Rights.

I am an attorney at Greater Hartford Legal Aid, but I'm here today to represent all of legal services in Connecticut. And I pointed -- like to point out that Esther Rada, an attorney for -- an attorney with Connecticut Legal Services has submitted written testimony. She had very compelling testimony last year regarding her -- her experience admitting her father to a nursing home and, as a lawyer, how difficult it was to go through the admissions contract process and the -- essentially, extortion she experienced personally going through that admissions process because of the efforts to always bind family members personally for the uncovered potential expenses of -- of a loved one.

I'm going to tell you two obvious things about nursing homes. One is it's a person's home. It's where you're allowed to live in dignity and the Patient's Bill of Rights sets out a series, enumerates a series of rights which span the spectrum from civil rights to property rights, for which someone should be entitled to, as a matter of law, in their home. Those -- those are wonderful and

important rights, and they lie there enumerated and unenforceable.

We ask the committee's support today to introduce a penalty, statutory penalty per violation of any of those rights. You do it, you get a fine. Currently, those rights are unenforceable because to the extent that some of them are --

(Gap in tape.)

VERONICA HALPINE: -- article about how Haven Health, that exposed the abuses of Haven Health. I represented that lady in a civil lawsuit against Haven Health, and other nursing home residents.

But to the extent that you cannot prove damages because someone is old and frail and their dignity doesn't carry a price tag as much as a younger person with lost wages or, you know, property damage, there's no point in having those rights enumerated there because they remain unenforceable.

The second obvious thing about nursing homes, and I believe this to be almost a hundred percent true, is that people don't self-admit. You don't go and rent a room in a nursing home. You don't, yourself, check it out. It's in response to crisis. You're generally admitted with the assistance of a family member. Coercing family members to personally -- to be personally liable for helping you under those circumstances is disgraceful and unlawful.

I have been working with the committee for two years on this bill, and I have to confess that I noticed today that -- a drafting error. Because it has been our intent all along to

insist that there be a per-violation penalty. As drafted in this current legislation, it appears you would only be able to get a penalty for a contract that violated those rights.

It has been our clear intent, and our desire for you to, please, enact a statute that carries a penalty for both fraudulent or coercive contracts, as well as for actual violations of the people that are paying a lot of money to reside in a nursing facility.

Thank you very much.

REP. SERRA: Senator Prague.

SENATOR PRAGUE: Thank you, Mr. Chairman.

Veronica, will you get the language change to Amy LaChance who does -- who's our LCO?

VERONICA HALPINE: Absolutely. And we have it already.

SENATOR PRAGUE: Good. It's a very important issue because people in nursing homes are at the mercy of the administrators so --

VERONICA HALPINE: They're at -- horrible things happen to people in nursing homes. As you've heard people testify today, it is the place of last resort for anybody or anyone who loves that person. And they remain vulnerable now, because to the extent that no one can protect their rights, that these just -- abuses go unchecked, and they are outrageous. So, I really thank you for your support for this bill.

SENATOR PRAGUE: Thank you, Veronica.

REP. SERRA: Any questions from the committee?

Thank you.

SHIRLEY BERGERT: You're welcome.

REP. SERRA: Next is that Deb Chernoff. Good afternoon.

DEBORAH CHERNOFF: Good afternoon. For the record, my name is Deborah Chernoff. I'm the communications and research director for District 1199, the health care workers union. I also serve on the Long-Term Care Advisory Committee.

You have my written testimony. I just want to touch on a couple of points there. Something that's not in my written testimony, but which I feel compelled to speak to is the nursing home resident's Bill of Rights.

SB455
SB 454

This is, as a matter of good public policy, as a matter of equity, and as a matter of humanity, we think that it's very important that nursing home residents' rights be strengthened in the ways that have been suggested by this bill, and commented on by other people offering testimony today.

To speak -- I also want to speak on Senate Bill 450, which is the nursing home oversight bill. I'm not going to repeat the many eloquent things that Senator Prague had to say about it or Attorney General Blumenthal, but I do want to offer one, something in the -- on the order of a friendly amendment.

We think it's very important that our members, we represent some 7,000 nurse's aides and support staff who work in nursing homes, have a role to play on the committee that's going

employment laws, but they still provide services to seniors in their own home. And a lot of these registries do not perform any kind of screening, yet they say they do. Many of these applications are accepted through the mail.

I am willing to work and serve on any task force or committee that's designed to enhance the safety of seniors at home. I would also invite those interested to review our screening process and judge for themselves. Bill 5312 will cause reputable agencies already looking out for seniors to be less competitive in our industry. It will allow others not affected by this bill to take advantage of the situation and possibly have negative results on a situation that has been slowly improving over the past few years. Granted, more needs to be done, but Bill 5312 is not it.

Thank you.

REP. SERRA: Any questions from the committee?

Thank you.

DAN FISHER: Thank you.

REP. SERRA: Next up is Kathleen Mastri.

KATHLEEN MASTRI: Good afternoon. My name is Kathleen Mastri. I'm the former president, or one of the former presidents of the Connecticut Trial Lawyers Association. And I'm here today to simply let you know that CTLA supports Raised Bill Number 455, as well as the continuing efforts of the Legislature, this committee, and particularly, Senator Prague, to continue to protect individuals confined to nursing homes and chronic-care

hospitals.

CTLA also applauds the efforts of Veronica Halpine and her colleagues at the Legal Services of Connecticut for their work in putting some enforcement provisions into this very important bill.

We looked at the language of the bill this morning and realized that the enforcement provisions, which we hadn't intended to put into the bill, don't really do quite enough. And so, we have worked to fix that language, and I think it will do what the original intent of the bill was.

Thank you.

REP. SERRA: Senator Prague.

SENATOR PRAGUE: Thank you, Mr. Chairman.

Well, thank you for coming. Is what you're wanting in the bill what Veronica also wants?

KATHLEEN MASTRI: It's exactly the same, Senator.

SENATOR PRAGUE: Okay.

KATHLEEN MASTRI: The bill, as written, the bill -- the Raised Bill 455 provides for a fine to the homes only for requiring residents to waive those -- those rights, and the real goal of the bill is to fine the nursing homes when they violate those very important rights of these people at risk.

SENATOR PRAGUE: Okay. So --

KATHLEEN MASTRI: It's the same. Same -- we're on the same page.

SENATOR PRAGUE: That's good. So, when this bill, we have to send it to judiciary.

KATHLEEN MASTRI: Right.

SENATOR PRAGUE: I'm hoping that you will have the time to maybe speak to the chairs of the Judiciary Committee.

KATHLEEN MASTRI: I most certainly will, Senator.

SENATOR PRAGUE: Thank you very much.

KATHLEEN MASTRI: Thank you.

REP. SERRA: Any other -- Senator Kissel.

SENATOR KISSEL: Thank you.

Attorney Mastri, it's great to see you.

KATHLEEN MASTRI: It's nice to see you again, sir.

SENATOR KISSEL: I saw you quite a bit a few years ago when we had the big medical malpractice debate going back and forth. And I thought it was important to invite representatives of Connecticut Trial Lawyers Association to come to speak on this bill at this select committee stage, to make sure everybody is on the same page. And I will remember this.

I do encourage you to speak to Andrew or Michael, but I consider this testimony in support of the bill very important and positive. And I will share that with the cochairs and vice chairs of the Judiciary Committee, where I still serve as ranking senator.

KATHLEEN MASTRI: Thank you, Senator. Thank you, and I do want you to know that we -- the bill

is important to the trial lawyers for reasons beyond just, you know, being trial lawyers. It's an important, important effort that you all are making, and I'll do whatever I can do to make sure that the judiciary pays the right attention to it.

SENATOR KISSEL: I would never, ever think that the trial lawyers were just looking out for themselves.

KATHLEEN MASTRI: Thank you, Senator. It's nice to see you, as well.

REP. SERRA: Any other questions from the committee?

Thank you.

Next one up -- I can't read the last name, but it's Christy.

CHRISTY KOVEL: Kovel. Kovel.

REP. SERRA: Kovel.

CHRISTY KOVEL: Yes. Thank you.

REP. SERRA: Thank you. Good afternoon.

CHRISTY KOVEL: Good afternoon.

Good afternoon, Senator Prague, Representative Serra and distinguished members of the Select Committee on Aging, my name is Christy Kovel, and I'm the senior director of public policy and Communications for the Alzheimer's Association for the Connecticut Chapter. I'm here today to testify in support of Raised Bill Number 451, An Act Establishing a Silver Alert system.

CECILIA SULLIVAN: Good afternoon. My name is Cecilia Sullivan. I've provided you with testimony on Bills 454 and 455. I have listened to testimony of those that preceded me, and even though I was not addressing the Silver Alert, I want to support that wholeheartedly.

My husband of 58, was diagnosed with early onset Alzheimer's. We were in the Safe Return Program. I know it works. Not only did he have a silver bracelet, but I had one as well.

As a result of my having a bracelet, in a volunteer capacity, I was helping with food baskets for Thanksgiving a few years ago. And my bracelet came off and went into one of the baskets. Immediately, I was notified. So these things are so critically important.

Also adult day care, 452. My husband did attend the Ross Adult Day Care Center in Norwich, part of United Community and Family Services. It allowed me to work.

Unfortunately, as he declined -- he was big; he was strong; he was mobile -- the adult day center did not have the staff to allow him to stay there. I gave up working.

Thank you.

REP. SERRA: Any questions from the committee?

Thank you.

Nancy Smith, followed by Monique Allard.

NANCY TRAWICK-SMITH: Good afternoon. My name is Nancy Trawick-Smith. I'm the director of Community Companion and Homemaking Services. I'm a not-for-profit companion homemaker

HB 5312

Every single one of them -- well, for instance, Sunday we had 13 of them, four of them were repeats. They've been to the program, seen the program and come back and volunteered their time again.

SENATOR KISSEL: Well, I just think that, you know, tough times bring out the best in people, and certainly this public private partnership to get things up and running, you know, money can devil us a little bit, but sometimes we can work around it and get really good results. And I'm going to avail myself of the fact that this is being broadcast. If there's any Rotary Clubs up in north central Connecticut, any members that are watching this, let me know your read on this, as well, because I think it's a really great idea and we should be able to do everything that we can to help make this all happen. And as Chairman Serra indicated, I think the whole age restriction, we're not going to -- we're going to take that right out.

So thank you, Mr. Hicks.

HERBERT HICKS: Thank you. That's good.

REP. SERRA: Any other questions?

If not, the next up is Martin Sbriglio.

MARTIN SBRIGLIO: Senator Prague --

REP. SERRA: Good afternoon.

MARTIN SBRIGLIO: Good afternoon. Senator Prague, Representative Serra, thank you for allowing me to be here.

SB 450
SB 454
SB 455

I have submitted testimony. I would like to just -- not read it you -- and just briefly --

I heard so many things about skilled nursing facilities today. It was frankly quite upsetting because there is a misprint. We've been providing skilled nursing services in Connecticut, my family and I, for 59 years. And we have hundreds of dedicated, well-intentioned nurses, nurse's aides, that give their lives every day, 110 percent for their patients. And to listen to some of the testimony today, from people who have never worked in a skilled-nursing facility, who don't know the full intricacies of running and managing and taking care of patients, frankly, it's disingenuous of many of them to come up here and be critical as they have been.

For example, the admission package. I have 49 patients in our facilities right now who we're not getting paid for because there is no payer source. I have to cover a million dollar a week payroll, what do you suggest we do? We need someone, when you admit a patient, to take the responsibility to pay the bill. Those 49 patients are not eligible for Title 19 or Medicaid. DSS will not pay for those patients, because, unfortunately 90 percent of the time there has been an illegal, deemed by the state, an illegal transfer of some assets.

So, you know, someone can come here and suggest we care for the patients, and we try and do a better job, and we always do, but without money to pay staff and cover that payroll, something is going to break, and, in fact, the system is broken. How many facilities have closed or gone bankrupt in the last two years? Thirty-five. Do think every one of those facilities was mismanaged? I think it's disingenuous and dishonest to suggest that. So faced with the budget deficit that we have, I suggest that we look at those bankruptcies, those closures and

realize that 90 percent of the homes in the state right now are in front of Michael Starkowski's office begging for survival money. And to suggest, again, that the 1.4 billion being spent is adequate, it's -- there's probably a $250 million shortfall. That's a large number, but it's real.

We have embraced the Oregon Health Care plan. Unfortunately, the same thing that happened in Oregon is happening here. More people are eligible for adult day care, home health care, assisted living, but nobody is getting paid enough to provide the service. That's just what happened in Oregon. Oregon's budget was bust, and all the services became shortfunded.

That testimony you received last year from the UConn -- the million dollar study that was done, unfortunately the author of that admitted to me personally that she did not educate you on that component of the report, about the Oregon health care system, and we move headlong into embracing that plan.

Now everybody across the continuum is short-funded and going to get much worse, obviously, with our crisis that we're in.

So, I guess, my word here is caution. Be careful on some of the policies and some of the proposals that you are reviewing. There are two sides, probably a hundred sides to every story and we need strong admissions documents. Without that, there is not payer source. Without a payer source there is no skilled nursing facility.

Thank you.

Yes.

REP. SERRA: Senator Prague.

SENATOR PRAGUE: Thank you. Thank you for coming today.

MARTIN SBRIGLIO: Yes, ma'am.

SENATOR PRAGUE: When people are admitted to your facility, do you ask them anything about transfer of assets --

MARTIN SBRIGLIO: Yes.

SENATOR PRAGUE: -- and do you alert them --

MARTIN SBRIGLIO: Yes, absolutely.

SENATOR PRAGUE: -- that, you know, if they don't have enough money to pay that this is going to happen to them? I mean they're --

MARTIN SBRIGLIO: Absolutely. We have to our -- absolutely, yes, we do that.

SENATOR PRAGUE: -- (inaudible) now.

MARTIN SBRIGLIO: Well, that's why the --- the admissions packet -- that admissions packet that someone brought up here and showed you how thick it was, that wasn't developed by the facilities. That was developed through Washington during the Omnus Budget Reconciliation Act, I believe, of 1987, when President Regan signed in new laws, PPS and all these other things occurred. All -- a whole new set of requirements came up. Believe me, we'd rather have one page and be done with it.

We have to have staff remind families, review each page with them. It takes hours to sign a patient in.

SENATOR PRAGUE: So that's required?

MARTIN SBRIGLIO: Some of the documents -- most of the documents are required, yes. Yes. Because the Patient's Bill of Rights requires that we educate families on many of the things. We have what 80 or 90 Patient's Bill of Rights or more, so we have to educate families and patients on those things. Some of those documents in that pile refer to the Patient's Bill of Rights. It is in that package by law. There's many things in that package. That's just not all the document to say you have to pay. There's many other required nuances and things from the federal government and state government in those packages.

SENATOR PRAGUE: When you say the words "nursing homes," immediately there's a negative image.

MARTIN SBRIGLIO: For some.

SENATOR PRAGUE: Well, generally speaking, because there are some nursing homes, like Haven Health, that have done nursing homes a disservice and have created this whole feeling of distrust and that the administrators are a bunch of crooks, especially the out-of-state corporations that come in to Connecticut and buy up nursing homes. So if you have any suggestions as to how we can handle this problem, we'd be glad to listen.

MARTIN SBRIGLIO: Great.

SENATOR PRAGUE: We've got to do something. Nursing homes are costing us a lot of money. We don't seem to have a handle on how to control the cost and also get quality care. There's no indicator that tells us that a

particular facility is abusing the money that we're paying them until something explodes.

MARTIN SBRIGLIO: Senator Prague -- Senator Prague. I -- I respect that opinion but, I think Commissioner Starkowski talked about it earlier, everything that Haven Healthcare was doing, and in fact, everything that every skilled-nursing facility is doing with the money that they receive from the Medicaid program is public information. We submit detailed cost reports. We get audited every year through an office for a fraud audit, for lack of a better term. Every single invoice, canceled checks, this is part of the problem. There seems to be a lack of education and understanding by most -- by Representatives because it is so complex. And I'm not blaming you or anybody else.

The fact is the DSS knows everything that Haven Healthcare did in advance of the -- the issue that went on, the closure and the bankruptcies. They had -- they knew about the recording studio. They knew about all of those things. There was no surprises here. The only surprise is that The Hartford Courant made a very long and detailed expose on it, but Michael Starkowski and DSS knew everything. There was no surprise here.

SENATOR PRAGUE: Are you kidding?

MARTIN SBRIGLIO: No.

SENATOR PRAGUE: That they knew that they had brought --

MARTIN SBRIGLIO: It was disclosed and, in fact -- in fact, during rate negotiations when, in fact, Haven Healthcare -- and it's public information, even The Hartford Courant

published it was losing $8 million a year on their Medicaid patients. So they weren't being reimbursed for the cost of care on -- to the tune of 8 and 10 million annually.

The State knew that, so they were in for rate relief. In order to get rate relief they disclose everything, and the State knew about the recording studio.

SENATOR PRAGUE: And the yacht?

MARTIN SBRIGLIO: Yes. They knew about -- there were no -- there's really no secrets. That's why when I listen to some of the people giving testimony, my jaw is dropping. Do they really know the law? Are they familiar with reality, or am I in the twilight zone? Because they -- the State knows everything that goes on in skilled-nursing facilities today.

And for the additional oversight, I urge caution, because I have -- I didn't want to have more than one skilled nursing facility. As you know, as I said earlier, we've been doing this 59 years. But we can't afford to respond to this constant auditing and constant checks and balances without an amazing amount of support staff. You need dozens of people just to respond to state requests for information and filing cost reports, both federal and state. It's intense. So I -- we do know, Senator Prague, everything -- every nursing home in the state is doing already.

SENATOR PRAGUE: I'm speechless.

MARTIN SBRIGLIO: That's unusual.

SENATOR PRAGUE: Yes. Very. To think that DSS knew all about Haven Health and did nothing.

MARTIN SBRIGLIO: I didn't say they did nothing. I don't know what they did. I'm not Michael Starkowski or DSS, but I don't believe they got all the rate relief they requested. I would suggest they didn't. Those facilities that are closing, even the second owners that took over those Haven Homes realize that the Medicaid rates in those homes were so inadequate even they couldn't make a go of it.

SENATOR PRAGUE: Well, the rates couldn't have been that inadequate at that --

MARTIN SBRIGLIO: Yes, they are.

SENATOR PRAGUE: -- if that gentleman, I've forgotten his name, had enough money to skim off the top to buy this record company, to buy this yacht, to really --

MARTIN SBRIGLIO: Senator Prague, are you familiar with a home equity loan concept? Somebody that takes out a mortgage on their house --

SENATOR PRAGUE: Right.

MARTIN SBRIGLIO: -- and goes and buys a car or whatever the bank allows them to buy?

SENATOR PRAGUE: Yeah.

MARTIN SBRIGLIO: In essence, that's what Haven Healthcare did. There was no money in the company to buy anything. They took out a giant home equity loan and did other things.

SENATOR PRAGUE: Oh, my God.

MARTIN SBRIGLIO: There was no profits to speak of to do what we are talking about.

SENATOR PRAGUE: Well -- okay. How many homes do

you have?

MARTIN SBRIGLIO: Seven. Five lost money this year. Seven -- five out of the seven lost money. So, yes, Medicaid rates are horribly inadequate.

SENATOR PRAGUE: Tell me the name of your chain.

MARTIN SBRIGLIO: We're all from Connecticut, it's Ryders Health Management. And in your area I think -- I don't if your -- do you represent Waterford or Mystic or anything --

SENATOR PRAGUE: No. That's Senator Stillman.

MARTIN SBRIGLIO: No. Yes. We were with her the other day. Yes.

SENATOR PRAGUE: I'm the Willimantic --

MARTIN SBRIGLIO: Okay.

SENATOR PRAGUE: -- Hebron, Norwich.

MARTIN SBRIGLIO: Yeah.

SENATOR PRAGUE: Well, okay, thank you very much, Martin.

MARTIN SBRIGLIO: Well, thank you. Thank you. Hopefully we see you again soon.

SENATOR PRAGUE: I hope so.

MARTIN SBRIGLIO: All right.

REP. SERRA: That concludes, unless there's anybody who hasn't spoken before the committee who would like to speak?

If not, we'll adjourn and thank you.

STATE OF CONNECTICUT

DEPARTMENT OF SOCIAL SERVICES

LONG TERM CARE OMBUDSMAN PROGRAM
25 SIGOURNEY STREET • HARTFORD, CONNECTICUT 06106-5033
Telephone Number: (860) 424-5200 Fax Number: (860) 424-4966

2009 LEGISLATIVE TESTIMONY

Good morning, Senator Prague, Representative Serra, Senator Gaffey, Representative Bye and members of the Select Committee on Aging. My name is Nancy Shaffer. I am the State Long Term Care Ombudsman. I am here to testify in support of legislation before you today.

S.B. No. 450 (Raised) AN ACT CONCERNING NURSING HOME OVERSIGHT.

SB454
SB 455
SB 451
SB 452
SB 453
HB 5297
HB5312

In Connecticut in 2008, we experienced the catastrophe known as "Haven Health". The fiscal deterioration of the fifteen Haven Healthcare skilled nursing facilities was the direct result of mismanagement of Medicare, Medicaid and private funds earmarked to care for residents, but sadly, spent for the personal aggrandizement of the corporate head. These homes, as we know, went into bankruptcy and left residents, families, staff and the citizens of Connecticut wondering how did this happen. Today we must ask how can we keep this from happening again? The solution begins, I believe, with responsible ownership of nursing facilities.

The human tragedy of the Haven fiasco continues. As recently as December of 2008, the Haven home in Waterford shut down operations as a skilled nursing facility-causing the disruption of the lives of about fifty frail and vulnerable individuals. By early December, 2008, most of the residents transferred to other homes in the general vicinity while a few were able to transfer to community living arrangements. Just two weeks ago, another one of the original fifteen Haven homes filed a letter of intent to close. Astonishingly, seven of the residents transferred from Waterford to the Jewett City/Griswold Haven home and will now probably be uprooted once again, after only a few short months of adjusting to their new "home". These are real people-mothers, fathers, grandparents, loved ones. It could be one of our own loved ones.

Connecticut must have clear expectations for quality care for the most vulnerable and frail members of our society. Both the government-who pays for the majority of care and the consumer-who requires the care, have the right to know who is providing that care as well as transparency related to fiscal solvency. When the entity who owns the actual physical asset of the nursing home has virtually no responsibility or accountability for finances or the adequacy of the care provided the system for expecting and providing quality care is broken. When the top priority for owners and investors is profit, rather than providing staffing and resources necessary to ensure quality care for our loved ones we must implement appropriate safeguards.

An Equal Opportunity / Affirmative Action Employer
Printed on Recycled or Recovered Paper

As I stated in testimony last year, if you ask a nursing home resident, what does quality of care mean to them they will tell you it means having someone to take them to the bathroom when they need to go to the bathroom...someone to offer them a fresh drink of water on a regular basis...someone to open their creamers, help them eat their hot meal when they're not able to do so on their own.

I am fearful that the dire financial times in Connecticut may create "a perfect storm" for problems for our long term care residents: reductions in Medicaid reimbursement will surely have significant ramifications: cuts in staff (again, technically 1.9 hours per patient per day is the minimum requirement though the obligation is to "staff to meet the needs of the patients") and services, stressed staff and many administrative challenges. I respectfully urge the General Assembly to give careful consideration to Connecticut's Medicaid reimbursement structure along the long term care continuum and the consequences for consumers if cuts are made.

Supervision and management of staff is also a key component of quality care and services and is an issue Connecticut long term care residents want to see addressed.

S.B. No. 455 (Raised) AN ACT CONCERNING THE NURSING HOME BILL OF RIGHTS.

The Long Term Care Ombudsman Program fully endorses strengthening the Resident Bill of Rights.

History shows that certain rights of residents are undermined by contract. For example, the Ombudsman Program receives frequent complaints that a resident's personal items have been lost. In particular, lost dentures are a significant issue. When a resident is admitted to a nursing home, it should be the nursing home's responsibility to develop a care plan that ensures the safety of the dentures. Nursing homes nearly always refer to the admissions agreement which states, "the facility will not be responsible for any personal effects, valuables, or money left in the possession of the resident". Per the home, this contract negates their responsibility for the dentures. It is disturbing to me that a facility is not held accountable for lost/missing items, particularly when an item is essential to an individual's health and well-being. Dentures are not simply a missing item, they are necessary to the health and well-being of the individual, as well as to his/her quality of life.

Some other examples of admissions agreements in Connecticut which waive and/or diminish residents' rights include:

-allowing transfer or discharge at the facility's discretion;
-allowing "disruptive or challenging behaviors" to be the basis for a transfer or discharge.

I know during these incredibly challenging fiscal times difficult decisions and choices must be made. Proposals before you may in fact raise questions about financial costs. I hope that the long term benefits and cost savings of some of the bills before you will help to inform and guide you during the legislative session.

The Long Term Care Ombudsman Program also supports the following proposals:

S.B. No. 451 (Raised) AN ACT ESTABISHING A SILVER ALERT SYSTEM.

In theory, a Silver Alert System is beneficial to Connecticut elders and their families. We have had instances in our state of elders with dementia or otherwise ill who have wandered from their homes and been at risk. The cost to the State for a Silver Alert System is not known. Hopefully, there is some ability to "piggy back" a Silver Alert System with our Amber Alert System.

S.B. No. 452 (Raised) AN ACT CONCERNING FUNDING FOR ADULT DAY CARE CENTERS.

Our Long Term Care Needs Assessment should be our guide as we outline the future of long term care in Connecticut. We know intuitively, personally, and from the results of this study, that living at home with services is above all else the most preferred choice for Connecticut's residents. Adult Day Care Centers are a vital component of services for elders and their families and that model of care is in jeopardy if we don't commit ourselves to its funding. The cost-savings in terms of keeping an individual in a private home vs. a nursing home, lost wages of caregivers, the negative impact on the health and well being of caregivers are indicators of the benefits of ensuring that our Adult Day Care Centers remain open and viable.

S.B. No. 453 (Raised) AN ACT CONCERNING FINANCIAL ASSISTANCE TO THE STATE'S ASSISTED LIVING PILOT PROJECTS

The Assisted Living Pilot Project has proven beneficial to residents and a cost-saving for Connecticut. It makes good sense to increase the numbers of elders able to remain in a managed residential community rather than be admitted to a nursing home. The proposal increases the number from 75 to 150 individuals enrolled in the pilot program, beneficial to both consumer and state government.

H.B. No. 5297 (Raised) AN ACT CONCERNING THE STATUS OF THE MONEY FOLLOWS THE PERSON

A report to the General Assembly on the status of the Money Follows the Person demonstration project makes good sense, will keep the legislators informed of progress and maintain public awareness of the project.

T8

SB455

RESIDENT ADMISSIONS AGREEMENT

This is an agreement between _____ (the "facility"), _____ (the "resident"), and _____ (the "responsible party"). In consideration of the mutual promises set forth in this agreement, the facility, the resident (if capable of managing his or her affairs) and the responsible party hereby agree as follows.

I. GENERAL PROVISIONS REGARDING RESIDENT CARE AND SERVICES

1. Alternate Physician or Professional Provider of Service: The resident and responsible party agree that if the physician or any other professional provider of service designated by the resident or responsible party is not available to serve the resident, fails to serve the resident, or fails to comply with any applicable provision of federal or state law, including but not limited to the provisions of the Connecticut Public Health Code, the facility is authorized to obtain the services of a substitute physician or professional provider of service. Payment for such services will be made in accordance with Section II of this agreement.

2. Transfer to Hospital: The facility will arrange for the transfer of the resident to a hospital or other health care facility when any such transfer is ordered by the attending physician or a substitute physician as specified in Section I, Paragraph 1 of this agreement. The facility is not responsible for payment for care and services rendered to the resident by any hospital or any other health care facility.

3. Pharmacy Services: Pharmacy services are available through the facility. Residents whose care is paid for by Medicare Part A must utilize the pharmacy specified by the facility. When payment is not made under Medicare Part A, the resident or responsible party may choose another pharmacy only if that pharmacy will sign an agreement with the facility to provide services in accordance with all applicable federal and state statutes and regulations and the requirements of the facility, including but not limited to 24-hour service and delivery, labelling, unit dose form, and monitoring. The facility is authorized to use generic name medications except as otherwise ordered, in writing, by the resident's physician. The facility's Director of Nursing Services and the Consultant Pharmacist are authorized to destroy any excess or undesired medications in accordance with applicable law.

4. Release of Information: (a) The facility is authorized to release medical or other information about the resident that is necessary to complete insurance claims, determine coverage or eligibility and obtain payment from governmental agencies, including but not limited to the Connecticut Department of Social Services and the federal Center for Medicare and Medicaid Services and its Fiscal Intermediaries, respond to inquiries from governmental agencies providing reimbursement for the resident's care, and/or complete medical records. This authorization remains in effect for as long as necessary for the facility to secure reimbursement on behalf of the resident.

(b) The facility is authorized to release resident discharge planning summaries and medical information to any other health care institution or provider to which the resident is transferred or from which the resident is receiving care, and as otherwise required or permitted by law, throughout the resident's stay at the facility and thereafter if required or permitted by law.

5. Resident Identification: During the resident's stay at the facility, the facility is authorized to require a standard method of resident identification, e.g., an identification bracelet or photographic print.

6. Resident's Personal Effects: The resident and responsible party agree that personal clothing and effects and personal spending money for the resident will be provided from the resident's own funds. Although the facility will work to see that misplaced belongings are recovered, the facility will not be responsible for any personal effects, valuables, or money left in the possession of the resident.

7. Leaves of Absence: The facility and its owners, directors, officers and employees assume no responsibility for any personal injury, illness, or deterioration in the resident's condition that may occur which the resident is temporarily absent from the facility with or without physician or facility approval. The resident and responsible party release the facility, its owners, directors, officers and employees from all liability for any personal injury, illness or deterioration in the resident's condition that may occur while the resident is temporarily absent from the facility.

8. Transfer or Discharge by Facility: In accordance with applicable law, the facility may transfer or discharge the resident from the facility when the transfer of discharge is necessary for the resident's welfare; when the resident's health has improved so that the resident no longer needs the services provided by the facility; when the health or safety of other individuals in the facility is endangered; when the resident's account is more than

fifteen days in arrears (unless the resident is eligible for Medicare or Medicaid); or if the facility ceases to operate. The resident or responsible party will be given thirty days' notice of any such transfer or discharge except in certain emergency circumstances as specified by law or when the resident has resided in the facility for less than thirty days; in such cases, the facility will provide as much notice as is practicable.

At the end of any applicable notice period, if the resident or responsible party has failed to make other appropriate arrangements for the resident's care, the resident and responsible party agree that the facility may discharge and deliver the resident to the care of the responsible party at the expense of the resident and/or responsible party.

9. Transfer or Discharge Requested by Resident: The resident and responsible party agree to give at least fifteen (15) days' advance written notice to the facility regarding any transfer or discharge requested by the resident. If such notice is not provided, the per diem rate then in effect may be charged by the facility for that period of time. Nothing in this agreement shall be construed as requiring the resident to remain in the facility against his or her will for any length of time.

10. Resident's Bill of Rights: The resident and/or responsible party acknowledges receipt of, prior to or at the time of admission, a copy of the Residents' Bill of Rights.

11. Compliance with Facility Rules and Regulations: The resident and responsible party agree to comply with all rules and regulations established by the facility and acknowledge receipt of a copy of current facility rules and regulations.

II. FINANCIAL AGREEMENTS

1. Basic Per Diem Charge: The facility agrees to provide room, board, and general nursing care to the resident for a basic per diem charge.

2. Ancillary Charges: Ancillary charges are made for services, materials, and equipment not included in the basic per diem rate.

Ancillary charges include physician's services, medications, pharmaceutical services, sundries, medical supplies, rental equipment, personal telephone, beauty and barber services, dry cleaning, laboratory services, x-ray services, oxygen services, and ambulance and other transportation services. Treatment ordered by the attending physician will be provided for residents in need of physical, occupational, speech and psychiatric therapy, as long as private payment or Medicaid or Medicare reimburse-

ment for such charges is available. Dental, podiatry, optometry and private duty nursing services are provided on request or as ordered by the attending or substitute physician. These services will be billed to the resident or responsible party.

3. Billing Practices: It is the policy of the facility to charge the basic per diem rate for the day of admission and the day of discharge except when prohibited by law. Account statements are mailed prior to the first of each month for that month's care. These statements are payable upon receipt. The resident or responsible party will be given thirty-day advance written notice prior to any private pay rate increase.

4. Medicare/Medicaid. When services are paid by Medicare, Medicaid or private insurance, the resident or responsible party will pay any applicable co-pay, deductible, applied income and similar amounts to the facility in accordance with the requirements of the applicable payor.

5. Bed Hold Charges: The facility will reserve the bed of a private-pay resident who has been transferred to a hospital as long as payment is available at the applicable private pay rate to reserve the bed. The resident and responsible party agree that, in the event of such a transfer, the facility shall reserve the bed and that payment will be made for reserving the bed until such time as the facility is notified by the resident or responsible party that the bed should no longer be reserved.

In the case of a Medicaid-assisted resident, the facility will reserve the bed for up to seven days as long as the facility has not received information that the resident is not expected to return to the facility. The facility also will reserve the bed for up to an additional eight days as long as the facility has not received information that the resident is not expected to return to the facility. If a Medicaid-assisted resident wishes to reserve his or her bed during a period of hospitalization for any other or longer period of time, the bed will be reserved as long as payment is made by the resident or responsible party at the facility's usual Medicaid per diem rate.

The Medicare program does not pay for reserving a bed during hospitalization. The resident's underlying source of payment (private pay or Medicaid) will govern reserving a bed when a resident receiving Medicare Part A benefits is transferred to a hospital.

6. Late Charges: In the event that payment in full has not been received by the last day of the month in which the statement is dated, a service charge of one percent per month of the outstanding balance will be added to the bill. The resident and

responsible party agree to reimburse the facility for any bank charges arising from checks returned due to insufficient funds or for any other reason.

7. Refund Policy: The resident or responsible party making advance payment will be refunded the full amount for any applicable unused days in accordance with applicable law.

8. Medicare or Other Applicable Insurance: The resident and responsible party agree to apply promptly for, or assist the facility as necessary in establishing eligibility or otherwise applying for, any applicable Medicare or other insurance benefits. The resident and responsible party hereby request that payment of any authorized Medicare benefits be made on the resident's behalf to the facility or other provider of services or, when applicable, directly to the resident.

9. Medicaid Assistance: With respect to applying for and receiving Medicaid (Title XIX) assistance, the resident and responsible party agree as follows:

(1) At the time that the resident's assets approach ~~twenty~~ thirty thousand dollars (~~$20,000.00~~ $30,000), if the resident does not have monthly income sufficient to pay for the cost of care and services, the resident and responsible party agree to inform the facility of the status of the resident's assets and to make prompt application for Medicaid assistance to the Connecticut Department of Social Services.

(2) The resident and responsible party agree to provide all information that may be requested by the Connecticut Department of Social Services in connection with the application in accordance with any deadlines established by the Department.

(3) The resident and responsible party agree to inform the facility of the status and progress of application and, upon the request of the facility, to provide the facility with copies of any information and documentation supplied to the Connecticut Department of Social Services in connection with the application.

(4) The resident and responsible party agree to act promptly and expeditiously to establish and maintain eligibility for Medicaid assistance, including but not limited to taking any and all necessary action to ensure that the resident's assets are appropriately reduced to and remain within allowable limits for Medicaid assistance as established by the Connecticut Department of Social Services.

(5) If the responsible party has received a transfer of assets from the resident that results in the resident's ineligibility

for Medicaid assistance, the responsible party agrees that these assets, or an amount of the responsible party's funds at least equal to these assets, will be used to pay for the cost of care and services rendered to the resident until the resident is determined to be eligible for Medicaid assistance by the Connecticut Department of Social Services in accordance with applicable law.

(6) The filing of an application for Medicaid assistance does not excuse the resident or responsible party from continuing to make payment to the facility in accordance with the terms of this agreement and applicable law. If payment is made for any period during which the resident is later determined to be eligible for Medicaid assistance, a prompt refund will be made by the facility as required by law.

(7) The resident and responsible party agree that, during the pendency of any application for Medicaid assistance, the resident's monthly income, less a personal needs allowance as established by the Connecticut Department of Social Services, will be paid to the facility on or before the tenth day of each month. The resident and responsible party further agree that, if the resident is determined by the Connecticut Department of Social Services to be eligible for Medicaid assistance, the amount of the resident's monthly income established by the Department as "applied income" will be paid monthly to the facility on or before the tenth day of each month.

10. Responsible Party Control of or Access to Resident's Funds: If the responsible party has control of or access to the resident's income and/or assets, the responsible party agrees that these funds shall be used for the resident's welfare, including but not limited to making prompt payment for care and services rendered to the resident in accordance with the terms of this agreement.

11. Financial Disclosure: The resident and responsible party agree to complete any financial disclosure documents that are required by the facility within fifteen days of the date of the resident's admission to the facility (if not completed prior to admission) and to provide updated financial information within fifteen days of the facility's request for same. The resident or responsible party who completes any financial disclosure documents required by the facility regarding the resident's income and assets represents that the information furnished thereon is true, complete and accurate.

III. OTHER TERMS OF AGREEMENT

1. If the resident is deemed eligible for Medicare benefits or Medicaid assistance, the laws and regulations governing those programs will control this agreement.

2. If this account is sent to an attorney for collection, the resident and responsible party agree to pay all costs and reasonable attorneys' fees associated with any collection action.

3. The parties agree that, should any provision of this agreement be declared invalid by any court of competent jurisdiction or rendered invalid by any statute or regulation, the remainder of this agreement will remain binding and in full force and effect.

4. If any party to this agreement at any time elects not to require compliance with a particular term of this agreement, this election shall not be construed as a waiver of that party's right to require compliance with that or any other provision at any future time.

5. No amendment or waiver of any provision of this agreement shall be valid unless in writing signed by all parties affected by the amendment or waiver.

6. All parties acknowledge that this agreement constitutes the complete understanding between the parties and that no oral representations not stated herein are relied upon.

7. The resident or responsible party may terminate this agreement upon fifteen (15) days' written notice. However, termination of this agreement by the resident or responsible party will become effective only upon removal of the resident from the facility. Termination of this agreement will not relieve the resident or responsible party from liability for any sums due and owing pursuant to this agreement.

8. The effective date of this agreement is the date of the resident's initial admission to the facility. This agreement will remain in effect during and following any temporary absence of the resident from the facility (including but not limited to absence due to hospitalization or home leave).

The initial daily rate is $_____ . This daily rate may be increased at any time in accordance with Section II, Paragraph 3, of this agreement.

IV. OBLIGATIONS OF THE PARTIES

1. The execution of this agreement will constitute an acceptance on the part of the facility, the resident and the responsible party to undertake faithfully all of the obligations of this agreement.

2. The responsible party does not personally guarantee or serve as surety for payment for the care provided to the resident by the facility. The responsible party acknowledges and agrees that he or she wants the resident to be admitted to and to receive the care and services provided by the facility; that he or she is making certain promises in this agreement; and that the facility is admitting the resident and providing care and services in reliance upon these promises. The responsible party is personally liable for any damages incurred by the facility due to the responsible party's failure to fulfill these promises.

THE UNDERSIGNED CERTIFY THAT THEY HAVE READ AND AGREE TO THE FOREGOING, TO THE WHOLE AND ENTIRE AGREEMENT BETWEEN THE PARTIES, AND THAT THEY HAVE RECEIVED A COPY OF THIS AGREEMENT.

Witness	Signature of Resident (if the resident is managing his or her affairs)	Date
Witness	Signature and Title of Party Acting for Resident (Conservator of Estate, power of attorney, or relative, if resident is not managing his or her affairs)	Date
Witness	Signature of Responsible Party	Date
Witness	Signature of Administrator or Designee	Date

Billing Address:

Testimony of the
Connecticut Association of Not-for-profit Providers For the Aging

Submitted to the Select Committee on Aging
By Mag Morelli, President

January 27, 2009

Regarding

Senate Bill 450, An Act Concerning Nursing Home Oversight
Senate Bill 452, An Act Concerning Funding for Adult Day Care Centers
Senate Bill 453, An Act Concerning Financial Assistance to the State's Assisted Living Pilot Projects
Senate Bill 454, An Act Concerning Nursing Home Staffing Levels
Senate Bill 455, An Act Concerning the Nursing Home Bill of Rights
House Bill 5312, An Act Concerning Criminal Background Checks for Employees of Homemaker-Companion Agencies

The Connecticut Association of Not-for-profit Providers for the Aging (CANPFA), an organization of over 130 non-profit providers of aging services representing the full continuum of long-term care, submits the following testimony and regrets our inability to be present at today's hearing. CANPFA staff and members offer their assistance to the Committee as you consider the proposed bills before you today

Senate Bill 450, An Act Concerning Nursing Home Oversight

CANPFA members understand the concern regarding the financial oversight of nursing home operations. We would like to work with the Committee, the Legislature, the Administration, and any other interested party to identify an efficient and effective method of monitoring the financial health of our nursing homes

Regarding the specific recommendations of Senate Bill 450, we agree that the Nursing Home Advisory Committee should be activated to advise and guide the oversight function carried out by the various state agencies. However, we *strongly* believe that the Committee's role should remain *advisory* in nature The regulation, investigation, audit and enforcement functions should remain with the state agencies currently empowered to perform these functions. These agencies should be held accountable for these functions and unnecessary duplication of cost and effort should be avoided.

skilled level of care (SNF). The ICF level of care is specific to Connecticut's licensure statutes and an ICF unit cares for lower acuity level residents. It would make sense to adjust the staffing requirements to recognize this level of acuity.

The Committee must recognize that there will be a need to provide additional funding to support an increase in staffing levels. Funding must be provided for both the recruitment of new staff as well as the *retention of current staff.* While on an average the state's nursing homes staff very well, there will be homes that will need to add additional staff and this need to hire will require other nursing homes to increase wages and benefit levels to stay competitive and retain their current staff. We would appreciate all efforts to provide the funding necessary to recruit, retain, and continuously train direct care staff.

Senate Bill 455, An Act Concerning the Nursing Home Bill of Rights

Although this bill addresses some of the issues CANPFA raised in connection with a similar bill proposed last year, we still have concerns.

First, there is no need for the proposed amendment to the section concerning third party guarantees. The resident bill of rights (19a-550(b) (26)) and another Connecticut statute (19a-539) already address third party guarantees. These provisions are consistent with federal OBRA requirements prohibiting nursing facilities from requiring a third party guarantee as a condition of admission or continued stay at a facility.

Second, the first two lines in Section 2 stating that resident rights may not be abrogated by contract is also unnecessary since all facilities must comply with state and federal resident rights requirements in any event While CANPFA supports resident rights, we are concerned that a broad statement that rights may not be abrogated by contact could lead to confusion.

Finally, we strongly object to the institution of a $1,000 fine relating to admissions agreements Facilities are already subject to enforcement of state licensure and federal OBRA requirements that include review of facility compliance with resident bill of rights requirements. There is no need for this redundant measure

House Bill 5312, An Act Concerning Criminal Background Checks for Employees of Homemaker-Companion Agencies

While not objecting to the proposed requirement to conduct criminal background checks for employees of homemaker-companion agencies, we must object to the specific requirement to utilize the State Police Bureau of Identification as the sole resource for the checks. Experience tells us that the State Police Bureau takes an excessively long time to complete these background checks and this time lag makes the process extremely burdensome and hampers the hiring process. We would propose allowing agencies the option of using commercial background check companies that provide the same service in a more efficient and less expensive manner.

CONNECTICUT ASSOCIATION OF HEALTH CARE FACILITIES, INC.

Public Hearing Testimony of Toni M. Fatone, Executive Vice-President of the CT Association of Healthcare Facilities

Select Committee on Aging- January 27th 2009

Goodmorning Sen. Prague, Rep. And members of the Select Committee on Aging. I am Toni Fatone, the Executive Vice-President of the CT Association of Healthcare Facilities an organization representing skilled nursing facilities profit and not for profit statewide.

I am here today to testify on SB 450 AAC Nursing Home Oversight, SB 454 AAC Nursing Home Staffing Levels and SB 455 AAC Nursing Home Bill of Rights.

SB 450 was a major piece of legislation last year that was unable to be adopted by the General assembly because as drafted was rife with problems, not the least of which were a host of constitutional legal issues that were unresolved before the end of the legislative session. Unresolved, in spite of monumental efforts of the best and the brightest legislative, administrative and legal talent available. While this bill is far from being fleshed out I caution the committee that the bill from last year if that's the language you intend to use again is still rife with problems that must be resolved.

SB 454- we support nursing home staffing levels. I am here every year testifying in support of this initiative for more years than I would like to recall. And I am here again this year. But I must admit I am not confident in these dire financial circumstances that funding will be allocated to adopt such an initiative in spite of its importance. There is not a nursing home in the state that would not welcome the much needed funding to hire more staff. But after more than a year of record increases in costs and no Medicaid rate increase last year more nursing homes than not are on the financial brink. As of today the state's receiver is now the 5th " provider" in the State overseeing a dozen nursing homes in financial receivership. I regret to say she may move up to be the 2nd or 3rd largest "provider" by the end of this fiscal year if no funding is forth coming.

SB 455 AAC The Nursing Home Bill of Rights- this bill while laudable in its intent completely strips a nursing home of any protections it may have when dealing with dysfunctional families. Families who steal their mother's social security or pension checks that

Two Riverview Square • 99 East River Drive • East Hartford, CT 06108 • Telephone (860) 290-9424 • Fax (860) 290-9478

should be turned over to pay for her care. Families who abscond with funds to pay for their own needs and wants but have no authority to do so. Families who by these actions are committing Medicaid fraud and putting more unwarranted financial pressure on the facility that will not be paid for that care when the Medicaid system is expecting the individual to utilize whatever funds they may have to reduce the expenses on Medicaid. Yes Medicaid does require some level of personal responsibility to be carried out by the family member or responsible party that promises to turn over these funds. When they don't our only recourse is to file legal proceedings. We would welcome the opportunity to sit down with you and the proponent of the bill to work thru a sensible solution for all.

Thank you for your time today. I am happy to answer any questions.

Mongillo, Arthur

From: Linskey, Amy
Sent: Tuesday, January 27, 2009 4:12 PM
To: Mongillo, Arthur
Subject: Statement of Martin Sbriglio.doc

T25

Statement of Martin Sbriglio
on behalf of the
Connecticut Alliance for Subacute Care Facilities
January 27, 2009

Sen. Prague, Rep. Serra and members of the committee:

My name is Martin Sbriglio. I am CEO of Ryder's Health, which operates a number of small nursing homes in Connecticut. I also serve as president of the Connecticut Alliance of Subacute Care Facilities, an association incorporated here in the state with several affiliated members.

I would like to make one point in regard to three bills on your agenda today—Senate Bill 450, SB 454 and SB 455.

I understand the motiviation and arguments in favor of these bills.

My only point is one of "caution". All three bills will add costs to nursing homes. But, there is no assurance that we will be fairly reimbursed for these new mandates.

We will be happy to have higher staffing levels, for instance. Just reimburse us fairly for it..

We understand you want more oversight over nursing himes. That's fine. It means I need more staff to implement the rules—please just make sure I am reimbursed fairly for these new costs.

We have been receiving "below inflation" rate increases from the state for several years now even as our costs go through the roof.

You've read about more nursing homes going into bankruptcy.

These bills, while well-intentioned, could have that same effect unless you ensure that the mandates are fully funded in new rates to us.

I am not some huge out-of-state conglomerate. My family has been in the business of caring for seniors in Connecticut for over 50 years. We pride outselves at the level of care we provide our residents.

We want the highest quality care for our residents. I know you do, too. But *please* help us. If you enact these three bills, then *please* make sure they are fully funded. Thank you.

Advocating for Older Adults of Today and Tomorrow

Testimony of

Debra Polun, Legislative Director
Connecticut Commission on Aging

Select Committee on Aging

January 27, 2009

T5

Good morning and thank you for this opportunity to comment on a number of bills before you today.

SB 452
SB 455
HB 5045
HB 5297

As you know, the Connecticut Commission on Aging is the independent state agency solely devoted to enhancing the lives of the present and future generations of our state's older adults. For fifteen years, the Commission has served as an effective leader in statewide efforts to promote choice, independence and dignity for Connecticut's older adults and persons with disabilities. I'd like to thank this committee for its ongoing leadership and collaboration in these efforts.

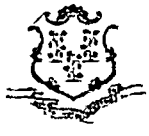
In these difficult budget times, research-based initiatives, statewide planning efforts, vision and creative thinking are all needed to ensure a continued commitment to services and supports for individuals in need. The Connecticut Commission on Aging stands ready to assist our state in finding solutions to our fiscal problems, while keeping commitments to critical programs and services.

SB 451: An Act Establishing a Silver Alert System

The Commission supports the concept of this bill to help identify and locate older adults who have been reported missing. Thirteen other states have "Silver Alert" systems for this purpose, similar to the Amber Alert system for missing children.

However, we do believe that the bill should be broadened to include all individuals who are missing and may be in danger. Not only would broadening the system help all other at-risk populations (**including those under age 65 afflicted with dementia-related disorders**), but a more integrated system would be easier for residents to understand and utilize.

State Capitol • 210 Capitol Avenue • Hartford, CT 06106
Phone: 860.240 5200 • Email: coa@cga.ct.gov
LTC website: www ct.gov/longtermcare
CoA website: www.cga.ct.gov/coa



Missouri's system can serve as a model to Connecticut. That state's Endangered Person Advisory Program includes any and all persons who are missing under unexplained, involuntary or suspicious circumstances and who may be in danger. Alternatively, the Commission would recommend expanding Connecticut's existing Amber Alert system, creating one integrated system for missing persons of all ages.

The Commission believes that ease of use and at a minimum cost is critical to the success of this program. We would be happy to work with the Committee this session to craft this legislation.

SB 452: An Act Concerning Funding for Adult Day Care Centers

The Connecticut Commission on Aging supports this bill as a smart investment in our home- and community-based infrastructure. Adult Day Centers are a critical component to "rebalancing," a movement that seeks to keep individuals in their homes and communities whenever possible.

Connecticut's Long-Term Care Needs Assessment, completed in 2007, found that 80% of respondents wanted to remain in their homes as they age. Many are able to do so with both "formal" and "informal" care. "Formal" care includes that provided by home care providers (sometimes through public programs, such as the CT Home Care Program for Elders), nutrition, transportation, visiting nurse care and other supports.

The bulk of care, however, is provided "informally," by spouses, neighbors, children and friends. In fact, National AARP estimates that over 500,000 Nutmeggers provide informal care to at least one adult, an economic value to our state of $4.9 billion. As rewarding as providing this care is, it is also physically and mentally exhausting.

Adult day centers provide needed respite for these informal caregivers, while also providing valuable socialization and recreation to adults with long-term care needs. Like other private providers, adult day centers rely heavily on state Medicaid dollars for their continued success. The Commission thanks the Committee for its support of adult day centers and other efforts to help provide choice, dignity and independence for older adults and persons with disabilities.

SB 455: An Act Concerning the Nursing Home Bill of Rights

The Commission on Aging supports this bill, which will protect nursing home residents and their families, by providing greater legal protection and clarifying their rights under state law.

Although existing laws provide some protection for residents, some facilities' contracts ask prospective residents to agree to reduce or, in some cases, even waive those rights. Many families make decisions about nursing home care under duress and time constraints; too often, they do not have the time and ability to read these contracts line by line. Individuals should not be forced to decide whether or not to waive their rights when faced with such difficult, life-changing decisions as those involving their own or their loved one's long-term care needs.

This bill is essential if Connecticut is to keep its commitment to quality care in nursing facilities. We ask for your support.

Cecelia Sullivan, MS Ed., HTPA
124 Connecticut Blvd , PO Box 167, Oakdale, CT 06370-0167
Phone. 860-859-1309; E-mail. carepartneradvocacy@yahoo.com

RAISED BILLS 454 AND 455

My husband, Joseph (Joe) E. Sullivan was a resident at the Connecticut Veterans' Hospital in Rocky Hill from February 2006 to August 2007. Joe had a diagnosis of sever dementia. Joe was non-verbal

Raised Bill 455: An Act Concerning the Nursing Home Bill of Rights

February 2006 Joe was on the Special Care Unit as a respite client when a long-term bed became available and he became a permanent resident. I was not given a Patient Bill of Rights.

July 6, 2007 Joe went into respiratory crisis. He was transferred to the Respiratory Unit. Staff attending him on this unit did not demonstrate dementia knowledge.

1) When I offered information about Joe, the reply was, "I/we have his chart". Joe was not a chart.
2) I was not considered an integral member of Joe's care team. My requests for information and notification of treatment were ignored.

July 29, 2007 Joe was left in the day room. He had a coagulated blood skin tear on his hand. Son, Mark, requested it be attended to.

July 31, 2007 Ann Kelly, PT and I, separately, alerted staff to a change in Joe's behavior. Our concerns were not addressed.

Raised Bill 454: An Act Concerning Nursing Home Staffing Levels

July 6 to August 20, 2007 Joe was tended to by men and women who may/may not have been credentialed.

August 3, 2007 I was notified Joe would be taken for an X-ray of his right hip.
Joe's right hip was fractured.
Joe was transferred to St. Francis Hospital for evaluation. From St. Francis I spoke, by phone, with Margaret Pantoja, Assistant Hospital Administrator. I updated her on Joe's health status. I asked her if I should be talking with a discharge planner. Ms. Pantoja assured me, "Mr. Sullivan can be cared for anywhere in the hospital". I said, "hospice".

Joe did not go to the Hospice Unit. He was returned to the Respiratory Unit. The same place he had his right hip fractured and cared for by staffs who were not only oblivious to his quality-of-life and end-of-life needs but did not tell me they were incapable of providing it.

A report from St. Francis Hospital and UCONN Health Care stated Joe's right hip was fractured 1 – 2 weeks prior to determination.

August 6, 2007 I spoke with Flora Drapeau, APRN, Special Care Unit I demanded Joe be transferred to the Hospice Unit. Ms. Drapeau arranged for me to speak with Deb Sutherland, APRN, Palliative/Hospice Unit Joe was transferred to the Hospice Unit.

Unfortunately, staff was not hospice certified.

When Joe entered the Connecticut Veterans Hospital:
1) I was not given a Patient Bill of Rights
2) I was not told Joe may not age-in-place
3) I was not told the facility lacked accreditation
4) I was not told staff may not be dementia and hospice credentialed
5) I was not told Joe would be denied the Medicare benefit of hospice

August 20, 2007 Joe passed into eternal peace.

Before Joe's death, and since, I have been requesting information about his care from staff at the Connecticut Veterans' Hospital. It has not been forthcoming.

For the period July 6 – August 20, 2007 I specifically asked for:
1) the identity of person(s) who determined Joe would be transferred from St. Francis to the Respiratory Unit instead of either the Special Care Unit or the Hospice Unit as I requested
2) the patient-staff ratio, all shifts, for the Respiratory and Hospice Units
3) the names and credential(s) of all staff who provided direct care and hands-on care; including veteran workers and/or volunteers

Joe did not get care that was appropriate and best for him.
Joe got care that was convenient for staff.

I am asking you to require every resident and/or advocate:
1) receive a Patient Bill of Rights
2) be included in every health care and quality-of-life decision; technology allows for constant/continuous communication
3) learn the names and credential(s) of all who provide direct/hands-on care
4) learn the daily patient to staff ratios
5) apply the same rules for state facilities that apply to profit and not-for-profit facilities
6) increase inspections of all Connecticut facilities
7) increase the number of RN, LPN and CNA hours per resident care; mindful that residents' need(s) may require accommodation as health status changes
8) provide residents' and/or advocates facility healthcare rating

It is not enough to have a facility promoted for type of care offered, the facility staff must be held accountable for providing appropriate and best care practices.

Enc.
Connecticut Cancer Partnership 2006, page 10
Home for the Heroes, Official Newsletter of the Connecticut Veterans' Home at Rocky Hill, May 2007 issue, "Serving Those Who Served...", page 6
Alzheimer's Association, Connecticut Chapter Newsletter, Winter 2007, column: In Safe Hands, "The Scourge of Elder Abuse" pages 10 and 11

Palliative and Hospice Care

Background

Few people are ready to make the hard choices that are needed at the end of life However, palliative and hospice care offer the best quality of life during the time that remains, by addressing physical, emotional, social, and spiritual needs They can ease the pain and improve life for those who are dying of cancer, and for their families and friends Palliative care relieves pain and suffering but does not treat or cure disease. Hospice care is a program of palliative care and support services for both people who are dying and their families

Connecticut is home to the nation's first inpatient hospice, and several organizations have begun working to improve palliative and hospice care. The availability and use of end-of-life care in Connecticut was surveyed in 2000, and strengths and challenges were identified. This information needs to be updated, and the use of services by underserved populations needs to be measured

Many patients don't know they have options for end-of-life care and thus don't ask for them. Others do not receive adequate palliative and hospice care services, even when the services are requested This is the result of several factors. First, the kind, quality, and amount of care received depend on where the patients reside (at home, long-term care or assisted-living facilities, hospitals, or prisons) Second, health care professionals often are not well trained in palliative or hospice care. Third, there are cost issues: Medicare and some insurance plans cover hospice care, but palliative care is often covered indirectly, if at all. In addition, cultural backgrounds, religious beliefs, income, and education can affect both the use and delivery of palliative and hospice care

Highlights of the information considered by the Palliative and Hospice Care Committee when it formulated priorities are·

- In 2000, only one quarter of one percent of primary care and primary care subspecialty physicians and half of one percent of full-time registered nurses in Connecticut were certified in palliative care
- Connecticut residents would like better communications with providers about death and dying, more prompt referrals to hospice and palliative care, better coordination of care, more counseling to dying patients, and more access to spiritual care.
- Racial, ethnic, and religious groups would like providers to have a better understanding of the cultural context (e.g., diet, language, and religion) of their patients. Minorities may be less informed about services due to language or cultural barriers.
- Low-income and medically underserved populations may have less access to palliative and hospice care services.
- Of Connecticut hospitals, only 33% self-report palliative care programs and 58% report hospice programs. Few hospice and palliative care services are available to residents of prisons and long-term care facilities

Priorities for Palliative & Hospice Care in Connecticut

Access and Availability

- Increase the number of health care professionals (physicians, nurses, social workers, and spiritual counselors) who are knowledgeable about palliative and hospice care
- Increase the number of health professionals who are board certified in palliative and hospice care
- Increase the number of health insurance programs that provide coverage for pain and palliative/hospice services
- Increase the proportion of facilities with palliative care programs
- Increase the number of hospitals and long-term care facilities that have contractual agreements with Medicare-certified hospice programs
- Improve end-of-life care in Connecticut State correctional facilities
- Improve end-of-life care services in the State Veterans Home
- Assess patient and family satisfaction with palliative and hospice services

Quality of Life

- Increase legislation and public policy supporting pain, palliative, and hospice care services
- Decrease the prevalence of pain among Connecticut nursing home residents
- Increase patient and family satisfaction with management of pain and symptoms

Awareness of, Preparation for, and Willingness to Seek Care

- Increase utilization of palliative and hospice care
- Increase the number of referrals to hospice and palliative care, especially among persons from minority and medically underserved populations

Palliative and hospice care offer the best quality of life during the time that remains, by addressing physical, emotional, social, and spiritual needs.

Serving Those Who Served...

By Margaret Concannon, M.Ed., NHA, CTRS,
Healthcare Services Administrator

It is an honor for us at the State Veterans' Home to serve the healthcare needs of those who served our nation. Our dedicated staff of nearly 160 staff members on three shifts care for the veterans by providing medical, nursing, rehabilitation therapy and recreation to 125 veterans in the chronic disease and long term healthcare facility and 380 residents in the domiciliary and veterans recovery program. Our colleagues include two Physicians, four Nurse Practitioners, around the clock nursing provided by registered nurses and nursing assistants, rehabilitation therapists, social workers, pharmacy, dietitians, laboratory technicians, and many other support staff. The Veterans' Recovery Program provides education, motivation and environmental support for veterans seeking recovery from the effects of substance abuse. We have a clinical psychologist and four Substance Abuse counselors assigned to this program and we are supported by a comprehensive Mental Health team consisting of two full time psychiatric nurse practitioners and part-time psychiatrist on staff from the Federal VA. The best results happen as we all work together to establish a comprehensive care plan that emphasizes collaborative relationships with the veterans, the families, and each of the healthcare professionals.

We integrate medical, health, wellness, recreation, rehabilitation, and social support to enhance our veteran's quality of life. By working closely with the Federal VA we coordinate the medical and health related services of our veterans which results in better health outcomes and continuity of care for our veterans. The Healthcare Facility treats veterans with chronic illnesses such as stroke, Parkinson's disease, pulmonary disease, and cancer. The Healthcare Facility which is equipped with its own pharmacy, radiology and dental departments also provides a variety of services such as podiatry, optometry and mental health support.

The DVA offers Hospice and Palliative care, a specialized Alzheimer's Care unit, Respiratory Care unit, and Respite Care Program. Our residents, depending on the nature and seriousness of their medical needs, are treated in the Healthcare Facility by our staff or at area hospitals. Times are changing for us, too. Not long ago most of our residents were World War II veterans, but today we are proud to serve an increasing number of Vietnam veterans in need of chronic care.

It was a grand day when we broke ground for the new, state of the art, 125-bed Healthcare Facility to be completed in January, 2008. The new facility will offer all the same services we now provide, but will also have up to date rehabilitation facilities for veterans to actively participate in physical and occupational therapy. It will boast a huge "family friendly" dining room with a fieldstone fireplace overlooking the Glastonbury hills and a large recreation room complete with aquarium, game tables, comfortable furniture, and movie screen for ongoing entertainment and enjoyment. The staff here are all anticipating this wonderful new facility, knowing that the quality, dedication and workmanship that we see going into our new home will improve the lives of our deserving Veterans.

Many family members send letters, praising the staff for the treatment, service and kindness they displayed in caring for their loved one here. They are living proof of our Home's motto, "Serving those who served."

In Safe Hands

In Safe Hands is a column which will address various safety issues for loved ones with dementia and their families as well as provide information for everyone as they prepare for aging.

The Scourge of Elder Abuse

by Denise Talbot, MA, Family Services Coordinator

In Safe Hands is a column which will address various safety issues for loved ones with dementia and their families as well as provide information for everyone as they prepare for aging.

The past two columns of In Safe Hands explored the potential physical dangers in the home and discussed how families can help make the environment friendlier for a loved one with dementia. This column's focus will be on the increasing problem of elder abuse.

What is elder abuse?
The National Center on Elder Abuse defines the term as "...any knowing, intentional, or negligent act by a caregiver or any other person that causes harm or a serious risk of harm to a vulnerable adult."

There are six types of abuse:

1. Physical Abuse - Causing pain or injury to an elder or threatening to do so. Withholding basic needs is also considered physical abuse.

2. Emotional Abuse - Causing anguish, anxiety, distress or mental pain, either through verbal or nonverbal communication.

3. Sexual Abuse - Sexual contact of any type which is non-consensual.

4. Neglect - Withholding or failing to provide food, shelter, health care or any other type of protection. Self neglect is also considered abuse.

5. Exploitation (financial or material) - Stealing, misappropriating or hiding money, property or other assets.

6. Abandonment - Desertion of the elder by a caregiver.

Cases of elder abuse are increasing, according to reports from studies and journals, but national numbers cannot be reported because no system exists to track data. Elder abuse still largely remains a hidden problem.

The National Center on Elder Abuse, a non-profit organization, cited a report from the National Elder Abuse Incidence Study which found that in 1996 500,000 or more Americans aged 60 and older were domestic violence victims. The Senate Special Committee on Aging estimated that 5 million elders may be abuse victims.

Elder abuse, like Alzheimer's disease, does not discriminate. Both men and women from different social strata and ethnicities are affected.

There are at least four factors which may make an elder vulnerable to abuse. These are social isolation, cognitive impairment, i.e., Alzheimer's disease or another type of dementia, living with someone else, or a previous history of domestic violence.

What are some signs of abuse?
Physical

- Black and blue marks, internal bleeding, welts, lacerations, or rope burns.
- Bone fractures.
- Open wounds or injuries which have been left untreated.
- Dislocations or sprains.
- Broken eyeglasses or assistive devices.
- Misuse of prescription drugs - overdose or under utilization.
- A change in the behavior of the elder or their own report of physical abuse.
- Isolation of the elder by the caregiver.

Emotional Abuse

- Upset or agitated behavior.
- Non communicative or non responsive behavior; extreme withdrawal.
- Behavior such as sucking, biting or rocking, when such behavior is not normally present, as may be the case with late-stage Alzheimer's disease.
- An elder's report of maltreatment.

Sexual Abuse

- Bruising of the breast or genital area.
- Unexplained venereal disease, genital infection, vaginal or anal bleeding.
- Underwear which is torn or bloody.
- An elder's report of rape or sexual assault.

Neglect (caregiver or self neglect)

- Living conditions which are unsafe or unsanitary, such as lice, fecal or urine smell.
- Inadequate clothing for the conditions.
- Dehydration, malnutrition or untreated health problems.
- An elder's report of mistreatment.
- Homelessness (self-neglect).

Exploitation

- Sudden changes in banking practices
- Withdrawal of large sums of money by elder or person with Power of Attorney.
- Checks made out to "cash."
- Newly formed joint accounts between the elder and another person.
- Strange explanations by the elder as to why money is needed.
- Financial or title transfer transactions using the elder's forged signature.
- Sudden revisions to a will.
- New signatories on the elder's ATM card.
- Transfer of assets to a family member, caregiver or neighbor.
- Unnecessary provision of services.
- Unpaid bills or care not provided despite adequate fund.
- The report of exploitation by the elder.

Abandonment

- Leaving the elder at a hospital, nursing facility, shopping center or other area.
- The report of abandonment by the elder.

Reporting elder abuse

If someone is in a life-threatening situation, call 911 immediately. If you suspect that abuse may be occurring, you can call adult protective services at 888-385-422, the long-term care ombudsman at 866-388-1888, or the general number for the police department in your area.

If you have been the victim of abuse, please tell a trusted friend or family member or your doctor. You can also call the Eldercare Locator help line at 1-800-677-1116, Monday through Friday, 9:00 am to 8:00 pm eastern time. Most states will not require that you identify yourself in order to take the report.

Who are the abusers?

Abusers come from all walks of life. Studies have shown that family members perpetrate the abuse and that adult children are generally more responsible for cases of abuse than are spouses. Anyone who is an abuser of an elder has most likely previously abused others of all ages.

Can elder abuse be prevented?

Educating professionals and the public on the warning signs plays a critical role in helping to stop abuse. Individuals should make an estate plan with an elder law attorney to help protect them and their family. Staying active as much as possible and avoiding isolation is also helpful. Try to visit individuals who are cognitively incapacitated and receiving home or facility care.

What is being done to help stop the problem?

The Elder Justice Act S. 333 was introduced on March 29, 2007 to provide resources to states to help prevent abuse. The Act also proposes to increase prosecution of elder abusers, provide assistance to victims and support for "at risk" older adults. The Elder Justice Coalition is responsible for helping to pass the Elder Justice Act. Log on to www.elderjusticecoalition.com/legislation.htm for more information about the legislation.

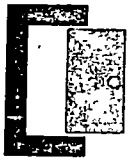
Support our Programs and Services
&
Receive a Tax Deduction

Donate your car, truck, RV, boat, jet ski or snowmobile

Call Donation Line LLC at 877-227-7487 ext 1207.
Or
visit www.donationline.com and complete the Vehicle Donation Form online.

Be sure to have your ***title in hand*** and ***select Alzheimer's Assocation, Connecticut Chapter*** from the ***dropdown list.***

THANK YOU!



CONNECTICUT LEGAL SERVICES
A PRIVATE NONPROFIT CORPORATION
85 CENTRAL AVE., WATERBURY, CT 06702
TELEPHONE (203) 756-8074 - 1-800-413-7797
FAX (203) 754-0504
E-MAIL WATERBURY@CONNLEGALSERVICES.ORG

KEVIN J. BROPHY
REGIONAL DIRECTOR

JULIA T. BRADLEY
MARY A. CONKLIN
MICHELLE FICA
THOMAS M. FORD
ROBERT S. HIRST
CHERYL S. KOHLER
RANDI FAITH MEZZY
ESTHER RADA
NIEKA THOMPSON
SANDRA A. TRIONFINI
ATTORNEYS AT LAW

SHARON GASTON
PARALEGAL

YARY CLEMENTE
SUSAN D. KRUSKO
LEGAL ASSISTANTS

ADMINISTRATIVE OFFICE
62 WASHINGTON STREET
MIDDLETOWN, CT 06457
(860) 344-0447

AARON BAYER
BOARD CHAIR

STEVEN D. EPPLER-EPSTEIN
EXECUTIVE DIRECTOR

LAW OFFICES

211 STATE STREET
BRIDGEPORT, CT 06604

587 MAIN STREET
NEW BRITAIN, CT 06051

153 WILLIAMS STREET
NEW LONDON, CT 06320

20 SUMMER STREET
STAMFORD, CT 06901

85 CENTRAL AVENUE
WATERBURY, CT 06702

872 MAIN STREET
WILLIMANTIC, CT 06226

SATELLITE OFFICES

5 COLONY STREET
MERIDEN, CT 06451

62 WASHINGTON STREET
MIDDLETOWN, CT 06457

98 SOUTH MAIN STREET
SOUTH NORWALK, CT 06854

564 PROSPECT STREET
TORRINGTON, CT 06790

155 WEST MAIN STREET
ROCKVILLE, CT 06066

Testimony of Esther Rada, Connecticut Legal Services For the Select Committee on Aging Supporting SB 455, AAC a Nursing Home Bill of Rights

January 27, 2009

Good Morning Chairs and Members of the Committee on Aging. My name is Esther Rada, I am an elder law attorney with Connecticut Legal Services. I am here to testify in support of SB 455, which provides greater legal protections for nursing home residents in facility admissions contracts. I am testifying from a personal as well as professional perspective. My father was admitted to two nursing homes before he died and in both cases it was one of the most wretched experiences I've encountered.

Nursing home admissions contracts contain confusing, contradicting and in some cases illegal clauses. There is no consistency between the various nursing home contracts. Most people DO NOT read or even understand what they sign. Family members and residents are upset, concerned about the basic issues of their loved ones and overwhelmed with the situation.

When a loved one enters a nursing home it usually occurs in a crisis situation and the discharge from a hospital to a nursing home happens rapidly. You can be at work and receive a phone call from the hospital informing you that your parent is being discharged to a nursing home. Next you get a call from the nursing home telling you that YOU, the adult child (not the resident) must sign all the papers. My father was mentally alert, and a retired IBM executive as well. During both admissions that we went through, neither nursing home administrator even asked or offered to give my father the admission contracts.

During the first admission, I was approached in the foyer by a NH employee asking me to sign a sheaf of papers with red signature markers in various places before I had a chance to even see my father. When I told them I would read them first, there was hesitancy on the part of the employee and her response was "no one reads them". I told her I'd read them with my father once he was settled. We did sign the documents but were concerned about some of the clauses especially the waiver of trial and the agreement to utilize arbitration instead.

The second admission process to another nursing home was even more traumatic. In that case, we asked the hospital social worker to place him

in this particular nursing home to be near my mother. The Administrator insisted I sign the admission papers before my father got to the nursing home. She kept insisting that this was a requirement. I asked that she fax the papers for my review. She did not do this. My father was admitted and less than 24 hours the nursing home sent him back to the hospital. I wonder if this was because we did not sign the contract. Subsequently, he went back to the nursing home and again we received several phone calls from the administrator insisting that the contract be signed. She faxed 35 pages. Can you imagine a distraught 80 year old spouse having to review 35 pages of legalese when she is being pressured by an administrator to sign immediately?

After reading the admission contract and because of knowledge I gained in my position as an elder law attorney, I struck out clauses that referred to "responsible party". Because there was much other questionable language, I had my dad sign because I was fearful of potential financially liability on my part. Although my dad was fully competent, he was weak and it was unconscionable to subject him to this. Because of contract language including the term *"responsible party"* and a sentence that said *that the responsible party is making voluntary promises in this agreement and is personally liable for any damages that the Facility incurs due to failure on the part of the acts of the "responsible party"*, and a current CT case decision, Sunrise Healthcare Corp v. Azarigain, 76 Conn App. 800, 821 A. 2d 835, (2003), I still might have subjected myself and my family to financial liability issues. The Sunrise Healthcare case has held that in some circumstances the legal representative could be held liable as third party guarantor in a nursing home admission contract.

Before I had a chance to complete the review, and while I was dealing with my father's medical issues, the nursing home administrator called every day insisting that I return the signed contract. She actually had the audacity to say, "It's the law to return it signed in 24 hours." I was flabbergasted. I do not know if she knew I was an attorney and I merely responded, "NO it's not". I'm sure most people in this situation would defer to a nursing home administrator and not even question this statement.

It is essential that people in CT can rely on their laws to protect them in this sensitive and emotionally difficult situation. After all, SB 455 merely reinforces the already existing rights of residents. I urge you to adopt this language that will prevent the abrogation of any patients' and residents' hard won rights whether advertently or inadvertently through admission contract language.

FACTS about SB 455, AAC a Nursing Home Bill of Rights

Admissions agreements in CT s nursing homes are currently not standardized and often contain provisions that effectively lower the expectations of residents and their families concerning such issues as quality of care.

Although such provisions are contrary to federal requirements and contradict the spirit and specific provisions outlined in CT s Patients Bill of Rights (CGS Section 19a-550), there is no specific language prohibiting the waiving of such rights in a facility agreement.

Advocates have identified illegal contract provisions contained in facility contracts from nursing homes across the state. Residents and their families are routinely being asked to sign contracts containing these provisions before acceptance to a facility. Examples of provisions that conflict with those in the Patients Bill of Rights include those:

- Placing the burden of inadequate care on the resident and family instead of the facility;
- Waiving to some extent, the facility's responsibility for a resident's personal injury;
- Waiving some of the facility's liability for a resident's lost or stolen property;
- Allowing transfer or discharge at the facility's discretion;
- Allowing things such as disruptive or difficult behavior to be the basis for a facility to transfer or discharge;
- Requiring financial guarantees from a family member or friend.

Although parties can sue over the nursing home contract itself, facilities currently can assert that by signing a contract containing the offending provisions, that the resident has waived their rights to sue.

Adding the language proposed in SB 455 will result in the enumerated provisions in the Patients Bill of Rights becoming inalienable and not just empty promises.

Legal Assistance Resource Center of CT, Inc.
44 Capitol Ave., Suite 301, Hartford, CT 06106
Tel: (860) 278-5688 ❖ Fax: (860) 278-2957
Jane McNichol, 860-278-5688 ext. 201; Sara Parker McKernan, ext. 207

SELECT COMMITTEE ON AGING

January 27, 2009

Testimony of Attorney Veronica Halpine in Support of
SB 455, An Act Concerning the Nursing Home Bill of Rights

Committee Chairs and Members of the Committee:

I am an attorney at Greater Hartford Legal Aid. I have represented nursing home residents in developing better care plans, defending against unnecessary restraints, stopping improper transfers, and discharge planning.

Nursing homes are first and foremost businesses with their eye on the bottom line, not necessarily the resident. All too often, the resident's rights, health and dignity are trammeled by generic claims that such abrogation is necessary for the individual's well being, the needs of other residents or the safety of the nursing home staff. Residents are often misinformed about their rights and can become ensnared in unlawful contracts. GHLA has dealt with nursing homes that have commandeered the resident's social security payments without even advising the resident. Some nursing homes have manipulated medical evidence in order to discredit residents or to undermine the residents' ability to self-direct their care. We've even dealt with nursing homes that have imposed artificial obstacles to residents' returning home so that the residents will have to sell their homes and pay the private rate instead of the Medicaid reimbursement rate.

Nursing home staffing levels in Connecticut are calculated to reward the squeaky wheel. While that might not be a bad deal for the squeaky wheel, it leads to neglect of the less aggressive and is an enticement for nursing homes to keep many 'able bodied' people institutionalized. Every nursing home resident needs an aggressive advocate. That role is usually performed by a loving family member, if it at all. Anyone who has assumed this responsibility for a parent will tell you it's a harrowing experience.

What nursing home residents really need is a Patient's Bill of Rights with teeth in it. The 'problem' with the PBOR as written is that it creates a new class of torts cognizable in a damages action to vindicate rights that do not generate any calculable damages. A plaintiff not only has to prove that the nursing home violated a protected right but that she was injured in some ascertainable way. A negligence action will allow a plaintiff to be made whole, but if the plaintiff has not lost wages or property what is the restitution? There are no "specials" to tally up and multiply by three. And, of course, these people are old and sick and are going to die anyway.

Senate Bill 455 will put teeth in the Patient's Bill of Rights. It is modeled after the fair debt collection practices act and allows a court to impose a $1,000 fine per violation in addition to any actual proven damages. Moreover, it allows the successful plaintiff to recover attorneys fees, thereby, making it easier for a nursing home resident to retain an attorney and more attractive for attorneys to practice in this area. It is a strict liability statute. The industry will finally be held accountable and will have some incentive to respect the rights enumerate therein. Senate Bill 455 will cost the state of Connecticut nothing. It is, nonetheless, the single most important bill this committee can pass to protect nursing home residents and their families.

Please pass S.B. 455 to secure enforcement of the worthy principles embodied in this law.

Testimony of AARP Connecticut on
H.B. 5311, S.B. 453, S.B. 455, H.B. 5297, & S.B. 451
Select Committee on Aging
January 27, 2008

AARP is a nonprofit, nonpartisan membership organization that helps people 50+ have independence, choice and control in ways that are beneficial and affordable to them and society as a whole. On behalf of our 630,000 AARP members in Connecticut, we express our support for H.B. 5311, which will increase the TFA child-only grants for relative caregivers to the prevailing foster care rates. We also support S.B. 453, S.B. 455, and H.B. 5297, which will benefit our members by increasing and improving long-term care options that provide choice and independence for people, in a setting that is least restrictive and most appropriate to their needs. AARP also offers recommendation on S.B. 451 that will ensure that the proposed "Silver Alert" system has appropriate safeguards to protect the privacy and independence of seniors.

H. B. 5311, An Act Increasing Temporary Family Assistance Benefits for Caretaker Relatives.

AARP strongly supports H.B. 5311, which will increase the TFA child only grants for grandparent and relative caregivers so they are equal to the prevailing foster care rates paid by DCF. Under current law grandparents or relative caregivers are given drastically different funding and support depending on whether their grandchild was first committed to DCF foster care. Those who qualify for the Subsidized Guardianship program through DCF will get roughly double the funding of other grandparents/relative caregivers, who only qualify for a child-only TFA grant.

Under DCF's Subsidized Guardianship Program relative care can receive $771.90 to $847.20 (per 30-day month, per child). However, relative caregivers that do not qualify for Subsidized Guardianship Program only get $354 to $427 for their first child under TFA and a small fraction of that for additional children.

Grandparents are often thrust into the role of parents under traumatic emotional circumstances without any notice. Whatever the circumstances—prison, drugs, abandonment, abuse, death, illness, divorce—they're never happy. And painful emotions get mixed in. Relative caregivers rarely have the luxury to consider all their options and determine what process for getting their grandchild would provide the most support for raising that child. Instead, grandparents and relatives first and foremost see their relative in need and step up to help—not knowing that their decisions will significantly impact the amount of support and benefit the state will give them

All children are equally in need of a stable home, food, and clothes, yet the state has determined that one set of relative caregivers are entitled to less than half of the foster care rate, simply because they obtained guardianship in a particular way.

AARP commends the Aging Committee for taking the lead on grandparent issues over the past several years and we ask for your support on H.B. 5311, which will create financial parity among relative caregivers so that our children have the basics they need to grow up and become responsible, contributing members of society. AARP strongly urges your support for H.B. 5311.

S. B. 453, An Act Concerning Financial Assistance to the State's Assisted Living Pilot Projects.

AARP supports S.B. 453 because it would double the number of individuals that can access the state assisted living pilot program from 75 to 150. AARP supports choices when it comes to long-term care—allowing people to maintain their independence in the most appropriate, least restrictive setting with expanded and affordable financing options.

Given reductions in retirement savings due to the worsening economy, it is even more important to ensure that low-income seniors get the support they need to remain in an appropriate, least restrictive setting of their choice. This prevents these individuals from having to use a more expensive nursing home placement simply because they can no longer afford the less expensive assisted living alternative.

AARP would also encourage the Committee to take this proposal a step further so there is no cap on the number that could utilize the program. We believe that if assisted living is an appropriate choice for an individual and they meet the income/asset criteria, they should be entitled to choose the less expensive assisted living pilot over the more expensive nursing home alternative.

S. B. 455, An Act Concerning the Nursing Home Bill of Rights

AARP supports S.B. 455. Too often people lose even the simplest rights when they become nursing home residents: Privacy when they sleep and bathe; Freedom to go wherever and whenever they want to visit with friends and relatives; Choice of what they eat or wear; Control of their money. The nursing home bill of rights was designed to help ensure people can keep their privacy and dignity, but some facilities have routinely asked their residents to waive or contract away the basic protections affording in the nursing facility bill of rights.

S.B. 455 will protect basic rights for residents of a nursing home or chronic care facility by prohibiting those rights from being rescinded, abrogated or reduced by contract. Any facility covered by the bill would face a fine of at least $1,000 per occurrence for promulgating admissions contracts that seek to abrogate or diminish the patient's rights under the bill or in the federal Social Security Act.