

PA13-249

SB1060

House	10697-10701	5
Judiciary	1946-1950, 2012-2016	10
Senate	2824-2836, 2936	14
		29

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**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2013**

**VETO
SESSION**

**VOL.56
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10451 - 10795**

THE CLERK:

In concurrence with the Senate, S.B. 1142.

Total Number Voting	146
Necessary for Adoption	74
Those voting aye	146
Those voting nay	0
Absent and not voting	4

SPEAKER SHARKEY:

The bill passes in concurrence with the Senate.

Will the Clerk please call Calendar 643.

THE CLERK:

On page 28, Calendar 643 favorable report of the joint standing Committee on Insurance and Real Estate, Senate Bill 1060, AN ACT CONCERNING THE MAINTENANCE OF PROFESSIONAL LIABILITY INSURANCE BY NURSING HOMES, HOME HEALTHCARE AGENCIES AND HOMEMAKER-HOME HEALTH AIDE AGENCIES.

SPEAKER SHARKEY:

Representative Jerry Fox.

REP. FOX (146th):

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

SPEAKER SHARKEY:

The question is acceptance of the joint committee's favorable report and passage of the bill in concurrence with the Senate. Will you remark. Sir?

REP. FOX (146th):

Thank you, Mr. Speaker. As the title suggests this bill will require these organizations to maintain liability insurance. It will ensure that our most elderly and infirm have health insurance available to -- or liability insurance available to them and I urge passage.

SPEAKER SHARKEY:

Thank you, Sir. Would you care to remark? Would you care to remark further on the bill that's before us? Representative Perillo of the 113th.

REP. PERILLO (113th):

Mr. Speaker, good evening. Thank you very much. If I may through you a question for the proponent.

SPEAKER SHARKEY:

Please proceed, Sir.

REP. PERILLO (113th):

Through you, Mr. Speaker. I see that the numbers out of there are one million and three million. I'm wondering how we came to those numbers. What led us

to that conclusion that was the right number in this instance? Through you.

SPEAKER SHARKEY:

Representative Fox.

REP. FOX (146th):

Thank you, Mr. Speaker. My recollection is that those numbers are consistent or even on the low end of what most of these facilities currently would maintain. I should also point out that most facilities do have this type of insurance. This would only require it to make sure that all have this type of insurance.

SPEAKER SHARKEY:

Representative Perillo.

REP. PERILLO (113th):

Thank you very much. And I was asking because I was hoping the answer was consistency. And I appreciate that very much. Thank you, Sir.

SPEAKER SHARKEY:

Thank you, Sir. Would you care to remark further on the bill that's before us? Representative Rebimbas.

REP. REBIMBAS (70th):

Thank you, Mr. Speaker. And I do rise in support

of the bill that's before us. Certainly some people may have had some hesitation to vote in support of it thinking that it would be a mandate on our home healthcare agencies and nursing home but the fact is, Mr. Speaker, that most of these responsible nursing homes and healthcare agencies already have professional liability insurance. And we also want to make sure that those that are staying in these facilities or being treated by these facilities are properly cared for in case that something were to happen.

So I think it would -- in an ideal society most of them would have it but we know that there's been one or two incidents at least in the State of Connecticut that did not have the professional liability insurance so I do rise in support of the bill that's before us.

SPEAKER SHARKEY:

Thank you, Madam. Would you care to remark further on the bill that's before us? Would you care to remark further on the bill that's before us? If not, staff and guests 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.

The House of Representatives is voting by roll. Will members please return to the Chamber immediately.

SPEAKER SHARKEY:

Have all members voted? Have all members voted? Will members please check the board to make sure your vote is properly cast. If all the members have voted the machine will be locked and the Clerk will take a tally. Clerk, please announce the tally.

THE CLERK:

In concurrence with the Senate, S.B. 1060.

Total Number Voting	146
Necessary for Adoption	74
Those voting aye	141
Those voting nay	5
Absent and not voting	4

SPEAKER SHARKEY:

The bill passes in concurrence with the Senate.

Will the Clerk please call Calendar 584.

THE CLERK:

Calendar 584, disagreeing action, favorable report of the joint standing Committee on Government, Administration and Elections, substitute Senate Bill 928, AN ACT CONCERNING PRECIOUS METALS OR STONE

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We are dealing with very important information that should remain confidential unless there's a overriding governmental need to share that information amongst important governmental interests to try to effectuate our overriding public policy interests. Which ultimately not only are in the best interests of we as a society, but are also in the best interests of the individuals that are being, hopefully helped through our governmental agencies and oversight, whether it's Department of Children and Families or Court Support Services Division or the Probate Courts or some other state agency.

And so for that reason, Madam President, I urge support of the bill going forward. Thank you.

THE CHAIR:

Will you remark further? Will you remark further?
Senator Coleman.

SENATOR COLEMAN:

Madam President, if there is no objection I would move that this item be placed on our Consent Calendar.

THE CHAIR:

Seeing no objection, so ordered, sir. Mr. Clerk.

THE CLERK:

On Calendar page 46, Number 474, Senate Bill Number 1060,
AN ACT CONCERNING THE MAINTENANCE OF PROFESSIONAL
LIABILITY INSURANCE BY NURSING HOMES, HOME HEALTH CARE
AGENCIES, AND HOMEMAKER HOME HEALTH AID AGENCIES,
Favorable Report of the Judicial Committee.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Madam President. Madam President, I move acceptance of the Joint Committee's Favorable Report and passage of the bill.

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THE CHAIR:

Motion is on acceptance and passage. Will you remark, sir?

SENATOR COLEMAN:

Thank you again, Madam President. This bill very simply would require nursing homes, home health care agencies, and homemaker health aid agencies to carry liability insurance. And liability insurance in the amount of \$1 million per occurrence and \$3 million in the aggregate.

It is felt by many that this bill is necessary because there have been some occurrences of claims being made against nursing homes, which nursing homes have declared bankruptcy and there are people who have been injured and in fact people with wrongful death claims, which were unable to be satisfied, in fact, were not able to be pursued because of the bankruptcy of the agency in question.

And so consequently, Madam President, I would urge my colleagues to support this bill. Thank you.

THE CHAIR:

Will you remark? Senator Kissel.

SENATOR KISSEL:

Thank you very much, Madam President. The only criticism I heard regarding the underlying bill is that nearly every institution carries as much as of insurance regarding these matters as the bill would require, so that the argument was the bill may not be necessary. But whenever I hear an argument like that, I say well then there shouldn't be too much opposition to the bill if everybody is following these requirements. For those few outliers, though, perhaps the statute would be very helpful, and as a practical matter by making this statutory requirement, we make sure that everybody is at least on the same page going forward regarding these institutions. And for that reason I'm happy to support the bill going forward. Thank you, Madam President.

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Thank you. Will you remark? Senator McLachlan.

SENATOR MCLACHLAN:

Thank you, Madam President. I stand for purpose of question to the proponent of the bill.

THE CHAIR:

Please proceed, sir.

SENATOR MCLACHLAN:

Thank you, Madam President. Senator, thank you for bringing this bill forward. I had submitted a bill to the Judiciary Committee, which seems to have been incorporated in -- in this bill, and so I'm grateful for the idea. My concern from a constituent was liability of home health care companies. And specifically, the challenge that was experienced by my constituent was that the -- the employee, though not an employee, the person sent by the home health care company to the constituent's home for service, was claimed not to be an employee, but a subcontractor. And was paid on a 1099. And when there was a challenge and a claim for liability, in this particular case, it was a claim for theft.

The home health care company said this is not our employee, therefore, we are not responsible for the loss of theft by this particular individual that they had sent to the person's home. So my question is, do you think we're addressing that issue here? And if not, what can we do to address that issue? Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you very much, Madam President, and through you to Senator McLachlan, I think that the bill does address that particular situation. I understand the claim that the individual that was sent to your constituent's home was an independent contractor, but I do believe that the requirement would be that the liability insurance policy

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cover any decisions that the insured entity make with respect to servicing people like your constituents. Through you, Madam President.

THE CHAIR:

Senator McLachlan.

SENATOR MCLACHLAN:

Thank you, Madam President. That -- that is good news, and just for further clarification, it was my understanding that the arm's length arrangement between the home health care agency and the individual who was actually providing the service was this subcontractor status. And so that that was a wall that separated the liability between the front line home health care companion, in this case, and the agency, who is acting like a personnel agency. So if I'm correct in hearing you believe that this liability coverage will cover that situation, I believe that's good news for the residents of Connecticut. Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Again I'll reiterate, I do believe that the bill would provide coverage in the scenario that the Senator describes. Through you, Madam President.

THE CHAIR:

Senator McLachlan.

SENATOR MCLACHLAN:

Thank you, Madam President. I'll be supportive of this bill, and I'd like to thank Senator Coleman for bringing it forward. Thank you.

THE CHAIR:

Thank you. Will you remark further? Will you remark further? Senator Welch.

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SENATOR WELCH:

Thank you, Madam President. Thank you, Senator Coleman for bringing this bill forward. It seems ironic that we have a bill that I think plaintiffs' lawyers and insurance companies actually like, and that's a rare thing. I do have a question, though, and it's a little bit of a concern. My understanding of professional liability policies, which is what this bill seems to require, is that those policies are claims made in reported policies. And claims made in reported policies are very different than current policies which is what you find usually in the general liability world.

And so as I read this -- as I read this bill, it seems to me that we're requiring a professional liability policy to be written on an occurrence basis, and I don't know to what extent the market actually exists for that. And so if I may, through you, Madam President, inquire of Senator Coleman as to whether or not there was any discussion about that during the public hearing. Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Madam President. Through you to Senator Welch, I don't recall any discussion or other input during public hearing or the committee process in general regarding that issue or any commentary on the distinction between claims made in policies and occurrence policies or the availability in the market of either. Through you, Madam President.

THE CHAIR:

Senator Welch.

SENATOR WELCH:

Thank you, Madam President. Thank you, Senator Coleman

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for answering that question. My confidence in the market is that if -- if there's a demand then they'll come up with a product. I get a little bit nervous about the distinction we're talking about here, because conceivably the price of occurrence product for professional -- for professional liability can be very expensive. Because in the professional liability world they -- there's this great inertia to understand when a risk begins and when a risk ends, which is very different than an occurrence world where there's kind of a willingness to let things go on and on and on. And as a result you tend to find that occurrence-based policies in the professional liability world are -- are rather expensive and tend to price themselves out of the market. But maybe that's a discussion we can continue to think about. Thank you, Madam President.

THE CHAIR:

Thank you. Will you remark? Will you remark? Senator Kelly.

SENATOR KELLY:

Thank you, Madam President. I have a couple of questions through you to the proponent of the bill.

THE CHAIR:

Please proceed, sir.

SENATOR KELLY:

Thank you, Madam President. With regards to, I'm going to say the first part that extends the professional liability to nursing homes, this bill itself doesn't define nursing home. How are we using that term in the context of this bill? Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Madam President, I'm sure that somewhere in our statute nursing homes is defined. And I think it would be accurate

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to say that in this bill nursing homes -- the reference nursing homes carries with it is plain meaning. Through you, Madam President.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

Thank you, Senator. They also note in lines 73 through 35 -- or 73 through 75, that the requirements of this subsection, meaning the requirement to maintain professional liability insurance, "shall not apply to any person who establishes, conducts, operates, or maintains a residential care home." So residential care homes have been excluded from this bill, correct? Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Madam President, that would be my reading of that line, yes.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

Okay. Now turning to, I'm going to say Section 2, that deals with the home health care agency or homemaker home health agency, what -- what are those? I don't see those definitions here. What would be a home health care agency? Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you very much, Madam President. To the best of my

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knowledge, the home health care agency would be an agency that dispatches employees to the homes of people who are in need of the care and assistance that a home health care agency would provide. Through you, Madam President.

THE CHAIR:

Senator Kelly.

SENATOR COLEMAN:

Thank you, Madam President. In introducing the bill, you had indicated that one of the reasons for this bill were nursing homes that went bankrupt. And in the process, when people had claims against those nursing homes, without the insurance, their claims were basically meaningless because those industry weren't maintaining the insurance. Is there any evidence of bankruptcies in the home health care agency? Or why are we extending it to home health agencies when nursing homes were the issue? Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

I think the rationale behind the bill is that any of the agencies, whether they be nursing homes, home health care agencies or homemaker health care aides have the potential of exposure to liability, and because of that potential exposure, there should be some insurance coverage. Through you, Madam President.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

Through you, Madam President, in what context would there be that type of liability? Because in the nursing home context I can understand, because you're going to have an individual who is a resident of the facility. And they're going to be in the facility 24/7. But in the context of a home health agency, you're bringing that agency into the

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patient's home, and then leaving. And they might only be with them for one or two hours. Could you explain how the -- the exposure is as great or greater than that of a nursing home. Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Madam President, first, I didn't make any comparison between the exposure -- at least the severity of the exposure between nursing home and home health care agency. My comment was that both have some exposure to liability. And, you know, there are a number of ways that I suppose that injury could be caused through the negligence of a home health care aide, not the least of which is the scenario which Senator McLachlan described, and that is a home health care aide that was dispatched to his constituent's home, was engaged in theft, and you know, a loss occurred to that client that should be compensated for. Through you, Madam President.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

Thank you, Madam President. Would the home health agency also contemplate those agencies that are providing palliative and hospice care in the community? Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Madam President, I am not aware that the bill extends that far. Through you, Madam President.

THE CHAIR:

Senator Kelly.

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SENATOR KELLY:

Well, if a -- a community-based hospice care provider were using, you know, a home health care agency, I mean, what's the difference? Somebody bringing care into a home between that of a home care agency and a hospice. Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Madam President, I suppose a court might respond to your question by merely saying that if the General Assembly had intended the provisions of this bill to apply to a hospice it would and could very well have just as easily said that. Through you, Madam President.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

Okay, so through what we just discussed, it's reasonable to believe and state that the hospice and palliative care providers in the community are not encompassed by this bill. Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Madam President, and through you to the good Senator, that would be my understanding.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

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Okay. In dealing with the fiscal note, it indicates that there is a cost to the general fund because the bill could result in a cost to DSS associated with increased Medicaid rates. In the current budget that I know is pending, but also since I've been here, Medicaid rates have remained frozen. Is there any way to compensate these providers who haven't been increased for years, that while we put this mandate on them that we're also going to give them an increase in the cost of the services that they provide. Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Madam President, I'm not sure that I would have any meaningful answer for the Senator's question on the fiscal implications to the nursing home.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

Okay. My next question was, once again dealing with the fiscal note, was that such costs could be included in this facility's Medicaid rate when the rate increases are provided or when rebasing occurs. And I was just going to ask what or what is that or how does that happen? I mean, how can we provide the financial response that we're mandating -- basically if we're going to mandate this coverage, how would the facilities go about getting, I'm going to say the increase that they deserve through the Medicaid reimbursement rates. Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Madam President. Again, I apologize, that's not a question that I can answer.

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THE CHAIR:

Senator Kelly.

SENATOR KELLY:

Thank you very much, Senator, for your questions. And thank you, Madam President. I have no further questions at this time.

THE CHAIR:

Thank you. Will you remark? Will you remark? Seeing none, Senator Coleman.

SENATOR COLEMAN:

Madam President, if there is no objection I would ask that the matter be placed on the Consent Calendar.

THE CHAIR:

There is an objection at this point. So at this point I will call for a roll call vote, Mr. Clerk, and I will open the machine.

THE CLERK:

Immediate roll call has been ordered in the Senate. Senators, please return to the Chamber. Immediate roll call has been ordered in the Senate.

THE CHAIR:

Senator Meyer. Senator Meyer. Will you please vote?
Thank you.

All members voted, all members voted. The machine will be closed. Mr. Clerk, will you please call the tally.

THE CLERK:

Senate Bill 1060.

Total Number Voting 36
Those voting Yea 28

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Those voting Nay 8
Absent not voting 0

THE CHAIR:

The bill passes.

The Senate will stand at ease.

(Chamber at ease.)

THE CHAIR:

The Senate will come back to order. Senator Looney.

SENATOR LOONEY:

Yes, thank you, Madam President. Madam President, I may believe that in consultation with the minority that there may be a budget-related issue here. So I would move that the item as amended be referred to the Appropriations Committee.

THE CHAIR:

Seeing no objections, so ordered sir.

SENATOR LOONEY:

Thank you, Madam President.

THE CHAIR:

Senator --

SENATOR LOONEY:

Madam President --

THE CHAIR:

Hold on a minute, sir. The bill will now be sent to the Appropriation -- referred to the Appropriations Committee. Senator Looney.

SENATOR LOONEY:

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provides the resources for the extraordinary maintenance that is required at these facilities." So I think you have a Director of Our State Parks who is saying that no way is he going to allow the Commissioner to let these funds go in any other place.

THE CHAIR:

Excuse me, Senator Welch. Senator Looney.

SENATOR LOONEY:

Madam President, thank you, and thank you to Senator Meyer. I would ask that this item be passed temporarily. Madam President.

THE CHAIR:

Seeing no objection, so ordered, sir.

SENATOR LOONEY:

Thank you, Madam President. And Madam President, before calling for a vote on the Consent Calendar and listing the items on that Calendar, I just wanted to return to an item that had been voted on earlier. It was Calendar page 36, Calendar 474, Senate Bill 1060. That item, I believe, had been voted on affirmatively in the Chamber. At that point I made a motion to refer to Appropriations, but I believe the item had already passed at this point at that point. So I would withdraw that motion, I believe, and just let the item proceed to the House of Representatives, if there's no objection.

THE CHAIR:

Seeing no objections, so ordered sir.

SENATOR LOONEY:

Thank you, Madam President. And thanks to Senator McKinney and the minority party for cooperation on that. And Madam President, if at this point, if the Clerk would read the items on the Consent Calendar, and then if we might proceed to a vote on the Consent Calendar.

THE CHAIR:

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sense that property is grabbed by the -- by the government or -- or the tent that's there is -- is knocked down.

You're not -- in supporting this bill, how do you -- do -- do you see any problem with it where there's -- the fact of those occupying incidents we've had?

SLOANE SANDLER: I -- I believe that an obstruction of space -- if it's a public space I think that it -- it would -- it would try to equalize the treatment of everybody. If I try to sit down in the park and somebody steals my things, or anyway damages my personal belongings I would hope that it would be handled in the same way that it would one of my homeless allies, so if something is stolen or damaged that it be treated as -- as such, so yeah.

SENATOR COLEMAN: Are there other questions?

Seeing none, thank you, Ms. Sandler.

SLOANE SANDLER: Thank you.

SENATOR COLEMAN: Jonathan Spodnick.

JONATHAN SPODNICK: Good afternoon, Chairman Coleman, Chairman Fox, and members of the Judiciary Committee.

My name is Jonathan Spodnick and I'm here today on behalf of the Connecticut Trial Lawyers to speak in -- in support of Raised Bill 1060. This bill came to my attention -- this idea came to my attention because I represent families and people who are injured by nursing home neglect.

In the course of my representation these families and these persons, I discovered that

there is no law in our state that requires these nursing homes to have liability insurance and I was shocked by that fact. And there is no law that requires them to maintain liability insurance and this bill responds to recent bankruptcy filings by nursing homes.

In one recent public incident Haven Health Nursing Home allegedly was deliberately under funding itself and improperly funneled money to launch a Nashville Recording Company for its CEO and owner, rather than use the money for running the nursing home, and as a result of that bankruptcy filing, numerous claims and lawsuits against the home become unsecured creditors and it was later uncovered there was no liability insurance in effect and numerous claims, some involving wrongful death were left unpaid and families of this state were left without justice or compensation for the loss of their loved ones, and notice was never given to those families when their elderly relatives were admitted to the nursing home that they did not have liability or malpractice insurance.

In another example, a severely neglected individual had unnecessary bed sore and died from the nursing home's neglect. And these cases were reviewed by top medical experts, who verified that the nursing home was responsible -- the negligence and for the -- the injuries suffered by the patients. Then that litigation commenced and again the nursing home filed bankruptcy and that family was left totally without redress.

This bill seeks to require nursing homes in the state of Connecticut to have mandatory liability insurance. Under our law in this state you cannot even operate a motor vehicle without \$20,000 of insurance. It seems shocking that we allow commercial nursing home

facilities to provide care to numerous infirm and elderly patients who are at risk and incapable of making long-term care selections, not to have liability insurance.

Also I would indicate that in many of these claims Medicare or Medicaid have legal liens that are placed on claims against nursing homes so they can recover the cost of the treatment they've given. Without that, essentially the public would be insuring these loses.

I also would indicate that I was initially involved in drafting this language on behalf of the Connecticut Trial Lawyers and the language is patterned almost identically and exactly from the bill -- or -- or the statute that requires mandatory liability insurance and malpractice insurance for physicians and other health practitioners. The language is almost identical.

And I fail to understand why we don't have liability and malpractice insurance for nursing homes, but we have for other healthcare professionals. I think it's a very serious issue and unfortunately last year it wasn't voted on. I hope that this year we can have this bill raised and passed and perhaps get some action, because it's very important I think to the citizens of our state.

I thank you for the time.

SENATOR COLEMAN: Are there questions for Attorney Spodnick?

Senator Meyer.

SENATOR MEYER: I saw a liability insurance policy once that -- that said that insurance covered terminated upon bankruptcy. Is that -- is that

common at all in Connecticut?

JONATHAN SPODNICK: I -- I haven't seen that, but a one concern -- so I haven't seen that to answer your question, but one thing I should point out I guess is that I have seen in a case where a nursing home did have insurance and then told us that there was some serious financial problems with the facility and that we should really consider settling the case very -- you know, much less than what was justice and they told us the reason why is that they had a million dollar liability insurance policy, but a million dollar deductible, so it was essentially no insurance, although they had a policy and I think that's a danger if we have that happen.

But I haven't seen it with the bankruptcy fund, usually it will apply if they have it.

SENATOR COLEMAN: Other members with questions?

JONATHAN SPODNICK: Thank you for your time.

SENATOR COLEMAN: Before you leave, I have one question, probably related, but sort of remotely related to this issue and -- in the example that you cited with the nursing home patient experiencing bed sores as a result of neglect of the nursing home, is the certificate of merit required in order to bring an action in that case?

JONATHAN SPODNICK: Absolutely.

SENATOR COLEMAN: Okay.

JONATHAN SPODNICK: Yes, all cases have to be reviewed just as any other malpractice claim -- medical malpractice claim by an expert and it has to be a written opinion and that written

opinion has to be appended to the complaint when the lawsuit is filed.

SENATOR COLEMAN: Okay. And what was that -- I think you made reference to a -- an expert -- I don't know if you said certifying, but basically --

JONATHAN SPODNICK: It was more than one expert in that case, but there was definitely an expert that certified it and the case went forward and was filed and there was another expert that supported the negligence and during the pendency of the action the nursing home filed bankruptcy and the family was left -- left without any redress at all.

SENATOR COLEMAN: Okay. Thank you again for your testimony.

JONATHAN SPODNICK: Thank you very much.

SENATOR COLEMAN: Tim Calnen.

TIM CALNEN: Good afternoon, Senator Coleman, Representative Fox and members of the Judiciary Committee.

My name is Tim Calnen and I'm vice president of government affairs for the Connecticut Association of Realtors and speaking today in strong support of Senate Bill 1059, creating a modern method of foreclosure and the key is modern, because I -- I think Senator Musto probably grasped it quite well that the two existing processes, auction sale and strict foreclosure, are a product of the land of steady habits, but maybe our habits have been a little too steady because we are, as Mr. Wiese said, the slowest -- second slowest or maybe he said third slowest in the nation in terms of processing these foreclosures.

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Raised Bill 1060
Public Hearing: 3-13-13

TO: MEMBERS OF THE JUDICIARY COMMITTEE
FROM: CONNECTICUT TRIAL LAWYERS ASSOCIATION (CTLA)
DATE: March 13, 2013

RE: *SUPPORT OF RAISED BILL 1060, AN ACT CONCERNING THE
MAINTENANCE OF PROFESSIONAL LIABILITY INSURANCE BY
NURSING HOMES, HOME HEALTH CARE AGENCIES AND
HOMEMAKER-HOME HEALTH AIDE AGENCIES.*

The Connecticut Trial Lawyers Association respectfully urges the members of the Judiciary Committee to PASS RAISED BILL NO. 1060.

Raised Bill 1060 seeks to revise existing Connecticut General Statutes Section 19a-491a by requiring liability insurance for Nursing Homes. Under current law, a Nursing Home is not required to maintain liability insurance. This Raised Bill responds to recent bankruptcy filings by Nursing Homes. In one public incident, a home allegedly was deliberately underfunding itself, and funds were improperly funneled to launch a Nashville recording company for its CEO. As a result of the bankruptcy, numerous claims and lawsuits against the home became unsecured creditors, and it was later uncovered that no liability insurance was in effect. The claims, some involving wrongful death, were left unpaid, families left without justice or compensation for their losses. Notice was never given to families admitting their loved ones that the facility was uninsured for its mistakes.

In one recent example, a resident of a facility was severely neglected, suffered unnecessary bedsores, and ultimately died from neglect. The family had the circumstances investigated and top experts found severe neglect by the home, and such neglect was directly responsible for her death. Litigation commenced and during the litigation the home filed for bankruptcy, and notified the family's lawyer that there was no insurance, and the decedent's estate would be unpaid for the loss of her life.

As proposed, this Raised Bill seeks to amend Connecticut General Statutes § 19a-491a which governs the requirements for establishing and maintaining a Nursing Home in this State. These changes address the dangerous position families now face when their loved one is placed in a Connecticut Nursing Home

facility. Under our law, a motor vehicle cannot be driven on our streets without at least \$20,000 of liability insurance and it seems shocking that our current statutes do not require a commercial nursing facility, which provides medical care to numerous infirm and elderly patients (who are most at risk, and often incapable of informed long term care selections) to maintain liability insurance.

Additionally, Raised Bill 1060 will help to ensure that society does not end up being the ultimate insurer of these homes indirectly. Often Medicare and Medicaid have legal liens for tens of thousands of dollars in cases of neglect, and are reimbursed for medical expenses these programs paid as a result of neglect during the claims process. Without a source of claims resolution these essential government programs suffer the consequences as well.

For these reasons, CTLA urges members to PASS the Raised Bill.

Thank you.

WE RESPECTFULLY URGE YOU TO PASS RAISED BILL 1060



March 13, 2013
 Judiciary Committee
 Please Support Raised Bill 1060

My name is Jean Rexford and I am the Executive Director of the CT Center for Patient Safety. I am here in support of **RAISED BILL 1060 -- AN ACT CONCERNING THE MAINTENANCE OF PROFESSIONAL LIABILITY INSURANCE BY NURSING HOMES, HOME HEALTH CARE AGENCIES AND HOMEMAKER-HOME HEALTH AIDE AGENCIES.**

This bill simply requires Connecticut Nursing Homes and Home Healthcare Agencies to carry liability insurance.

In January of 2012, the Office of Inspector General reported that their completed study showed that 130,000 Medicare beneficiaries experienced an adverse event **each month** in our nation's hospitals. I cannot even imagine what the same study would show in our nursing homes. And as a state we are trying to move patients from nursing homes to their own homes. We need to assure that these agencies – the home health agencies – have regulatory oversight and can be held accountable.

Nursing homes and home health agencies must be held liable for serious preventable adverse events.

The Department of Public Health fines are just the cost of doing business. Our families need protection. In this written testimony I have included all of the fines I could find for 2010.

The DPH simply does not have adequate staff to monitor this vulnerable population. And clearly the fines are just the cost of doing business.

In 2010 the following nursing homes were fined:

Cobalt Lodge Health Care and Rehab	\$510
Meriden Center	\$615
St. Joseph's Manor	\$605
Apple Rehab	\$510
Sister Anne Virginie Grimes Health Center	\$580
Bishop's Corner Skilled Nursing and Rehabilitation	\$3,000
Bickford HealthCare Center	\$510
Village Manor	\$500

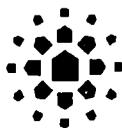
Edgehill Health Center	\$500
Village Manor	\$580
Edgehill Health Center	\$500
Apple Rehab Middletown	\$580
The Kent	\$615
Hilltop Health Center	\$510
Crossings East Campus	\$510
<hr/>	
Silver Springs	\$589
Bishops Corner Skilled Nursing and Rehab	\$690
Litchfield Woods Health care center	\$600
Montowese Health and Rehab	\$510
Connecticut Health of Greenwich	\$1,200
Maple View Manor	\$620
Water's Edge Center	\$110

While some nursing homes work toward improvement, others may think of these very small fines as the cost of doing business. The understaffed Department of Public Health cannot possibly provide the necessary regulation. Nursing homes must be held financially responsible and accountable when serious preventable harm happens. According to an investigative journalist's article, the Department does not even have the ability to fine home health care agencies.

Ensuring these businesses are carrying enough insurance to cover the cost of adverse events and make injured patients whole again is important.

The public, our families must be protected.

Jean Rexford
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CONNECTICUT ASSOCIATION FOR
HEALTHCARE AT HOME

TESTIMONY

Delivered by Deborah R. Hoyt, President and CEO
The Connecticut Association for Healthcare at Home

Before the Connecticut General Assembly Judiciary Committee

March 13, 2013

S.B. No. 1060 (RAISED)

**AN ACT CONCERNING THE MAINTENANCE OF PROFESSIONAL LIABILITY
INSURANCE BY NURSING HOMES, HOME HEALTH CARE AGENCIES AND
HOMEMAKER-HOME HEALTH AIDE AGENCIES.**

Honorable members of the Judiciary Committee, my name is Deborah Hoyt, President and CEO of the Connecticut Association for Healthcare at Home.

The Association represents 60 licensed and certified home health and hospice agencies as well as several homemaker-home health aide agencies that perform 5-million home health and community-based visits in our inner cities and rural Connecticut towns each year.

With a growing Connecticut workforce of 11,000 employees, we are the health providers that walk through the front doors of 14,000 state residents each day delivering cost-effective, person-centered care to Connecticut residents, including DSS's Medicaid clients.

While we agree that home health agencies should maintain professional liability insurance, we OPPOSE the need to mandate it through legislation.

The Association surveyed its member agencies last year and again this week to gather data about their liability coverage practices. 100 percent of the home care agencies responding to our survey, both large and small, indicated that they have consistently maintained liability insurance with coverage minimum of \$1-million and an aggregate of \$3-million.

As our home health care agencies have been prudent and responsible business owners and already maintain this level of insurance on a voluntary basis, the Association believes that mandating it through SB 1060 is unnecessary.

Please reach out to us as a resource for additional information at any time.

Thank you.