



Senate

General Assembly

File No. 756

January Session, 2009

Substitute Senate Bill No. 455

Senate, April 21, 2009

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE NURSING HOME BILL OF RIGHTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (b) of section 19a-550 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2009*):

4 (b) There is established a patients' bill of rights for any person
5 admitted as a patient to any nursing home facility or chronic disease
6 hospital. The patients' bill of rights shall be implemented in accordance
7 with the provisions of Sections 1919(b), 1919(c), 1919(c)(2),
8 1919(c)(2)(D) and 1919(c)(2)(E) of the Social Security Act. The patients'
9 bill of rights shall provide that each such patient: (1) Is fully informed,
10 as evidenced by the patient's written acknowledgment, prior to or at
11 the time of admission and during the patient's stay, of the rights set
12 forth in this section and of all rules and regulations governing patient
13 conduct and responsibilities; (2) is fully informed, prior to or at the
14 time of admission and during the patient's stay, of services available in
15 the facility, and of related charges including any charges for services

16 not covered under Titles XVIII or XIX of the Social Security Act, or not
17 covered by basic per diem rate; (3) is entitled to choose the patient's
18 own physician and is fully informed, by a physician, of the patient's
19 medical condition unless medically contraindicated, as documented by
20 the physician in the patient's medical record, and is afforded the
21 opportunity to participate in the planning of the patient's medical
22 treatment and to refuse to participate in experimental research; (4) in a
23 residential care home or a chronic disease hospital is transferred from
24 one room to another within the facility only for medical reasons, or for
25 the patient's welfare or that of other patients, as documented in the
26 patient's medical record and such record shall include documentation
27 of action taken to minimize any disruptive effects of such transfer,
28 except a patient who is a Medicaid recipient may be transferred from a
29 private room to a nonprivate room, provided no patient may be
30 involuntarily transferred from one room to another within the facility
31 if (A) it is medically established that the move will subject the patient
32 to a reasonable likelihood of serious physical injury or harm, or (B) the
33 patient has a prior established medical history of psychiatric problems
34 and there is psychiatric testimony that as a consequence of the
35 proposed move there will be exacerbation of the psychiatric problem
36 which would last over a significant period of time and require
37 psychiatric intervention; and in the case of an involuntary transfer
38 from one room to another within the facility, the patient and, if known,
39 the patient's legally liable relative, guardian or conservator or a person
40 designated by the patient in accordance with section 1-56r, is given at
41 least thirty days' and no more than sixty days' written notice to ensure
42 orderly transfer from one room to another within the facility, except
43 where the health, safety or welfare of other patients is endangered or
44 where immediate transfer from one room to another within the facility
45 is necessitated by urgent medical need of the patient or where a patient
46 has resided in the facility for less than thirty days, in which case notice
47 shall be given as many days before the transfer as practicable; (5) is
48 encouraged and assisted, throughout the patient's period of stay, to
49 exercise the patient's rights as a patient and as a citizen, and to this
50 end, has the right to be fully informed about patients' rights by state or

51 federally funded patient advocacy programs, and may voice
52 grievances and recommend changes in policies and services to facility
53 staff or to outside representatives of the patient's choice, free from
54 restraint, interference, coercion, discrimination or reprisal; (6) shall
55 have prompt efforts made by the facility to resolve grievances the
56 patient may have, including those with respect to the behavior of other
57 patients; (7) may manage the patient's personal financial affairs, and is
58 given a quarterly accounting of financial transactions made on the
59 patient's behalf; (8) is free from mental and physical abuse, corporal
60 punishment, involuntary seclusion and any physical or chemical
61 restraints imposed for purposes of discipline or convenience and not
62 required to treat the patient's medical symptoms. Physical or chemical
63 restraints may be imposed only to ensure the physical safety of the
64 patient or other patients and only upon the written order of a
65 physician that specifies the type of restraint and the duration and
66 circumstances under which the restraints are to be used, except in
67 emergencies until a specific order can be obtained; (9) is assured
68 confidential treatment of the patient's personal and medical records,
69 and may approve or refuse their release to any individual outside the
70 facility, except in case of the patient's transfer to another health care
71 institution or as required by law or third-party payment contract; (10)
72 receives quality care and services with reasonable accommodation of
73 individual needs and preferences, except where the health or safety of
74 the individual would be endangered, and is treated with
75 consideration, respect, and full recognition of the patient's dignity and
76 individuality, including privacy in treatment and in care for the
77 patient's personal needs; (11) is not required to perform services for the
78 facility that are not included for therapeutic purposes in the patient's
79 plan of care; (12) may associate and communicate privately with
80 persons of the patient's choice, including other patients, send and
81 receive the patient's personal mail unopened and make and receive
82 telephone calls privately, unless medically contraindicated, as
83 documented by the patient's physician in the patient's medical record,
84 and receives adequate notice before the patient's room or roommate in
85 the facility is changed; (13) is entitled to organize and participate in

86 patient groups in the facility and to participate in social, religious and
87 community activities that do not interfere with the rights of other
88 patients, unless medically contraindicated, as documented by the
89 patient's physician in the patient's medical records; (14) may retain and
90 use the patient's personal clothing and possessions unless to do so
91 would infringe upon rights of other patients or unless medically
92 contraindicated, as documented by the patient's physician in the
93 patient's medical record; (15) is assured privacy for visits by the
94 patient's spouse or a person designated by the patient in accordance
95 with section 1-56r and, if the patient is married and both the patient
96 and the patient's spouse are inpatients in the facility, they are
97 permitted to share a room, unless medically contraindicated, as
98 documented by the attending physician in the medical record; (16) is
99 fully informed of the availability of and may examine all current state,
100 local and federal inspection reports and plans of correction; (17) may
101 organize, maintain and participate in a patient-run resident council, as
102 a means of fostering communication among residents and between
103 residents and staff, encouraging resident independence and
104 addressing the basic rights of nursing home and chronic disease
105 hospital patients and residents, free from administrative interference
106 or reprisal; (18) is entitled to the opinion of two physicians concerning
107 the need for surgery, except in an emergency situation, prior to such
108 surgery being performed; (19) is entitled to have the patient's family or
109 a person designated by the patient in accordance with section 1-56r
110 meet in the facility with the families of other patients in the facility to
111 the extent the facility has existing meeting space available which meets
112 applicable building and fire codes; (20) is entitled to file a complaint
113 with the Department of Social Services and the Department of Public
114 Health regarding patient abuse, neglect or misappropriation of patient
115 property; (21) is entitled to have psychopharmacologic drugs
116 administered only on orders of a physician and only as part of a
117 written plan of care developed in accordance with Section 1919(b)(2) of
118 the Social Security Act and designed to eliminate or modify the
119 symptoms for which the drugs are prescribed and only if, at least
120 annually, an independent external consultant reviews the

121 appropriateness of the drug plan; (22) is entitled to be transferred or
122 discharged from the facility only pursuant to section 19a-535 or section
123 19a-535b, as applicable; (23) is entitled to be treated equally with other
124 patients with regard to transfer, discharge and the provision of all
125 services regardless of the source of payment; (24) shall not be required
126 to waive any rights to benefits under Medicare or Medicaid or to give
127 oral or written assurance that the patient is not eligible for, or will not
128 apply for benefits under Medicare or Medicaid; (25) is entitled to be
129 provided information by the facility as to how to apply for Medicare or
130 Medicaid benefits and how to receive refunds for previous payments
131 covered by such benefits; (26) on or after October 1, 1990, shall not be
132 required to give a third party guarantee of payment to the facility as a
133 condition of admission to, or continued stay in, the facility; (27) [in the
134 case of an individual who is entitled to medical assistance,] is entitled
135 to have the facility not charge, solicit, accept or receive [, in addition to
136 any amount otherwise required to be paid under Medicaid,] any gift,
137 money, donation, third-party guarantee or other consideration as a
138 precondition of admission or expediting the admission of the
139 individual to the facility or as a requirement for the individual's
140 continued stay in the facility; and (28) shall not be required to deposit
141 the patient's personal funds in the facility.

142 Sec. 2. Subsection (e) of section 19a-550 of the general statutes is
143 repealed and the following is substituted in lieu thereof (*Effective*
144 *October 1, 2009*):

145 (e) [Any facility that negligently deprives a patient of any right or
146 benefit created or established for the well-being of the patient by the
147 provisions of this section shall be liable to such patient in a private
148 cause of action for injuries suffered as a result of such deprivation.
149 Upon a finding that a patient has been deprived of such a right or
150 benefit, and that the patient has been injured as a result of such
151 deprivation, damages shall be assessed in the amount sufficient to
152 compensate such patient for such injury.] The rights or benefits
153 specified in subsections (b) to (d), inclusive, of this section are
154 inalienable and may not be reduced, rescinded or abrogated by

155 contract. Any contract that limits or abrogates any of the rights and
 156 benefits provided by this section shall be void in its entirety and
 157 unenforceable in a court of law. Any nursing home facility or chronic
 158 disease hospital subject to this section that deprives a patient of any of
 159 the rights or benefits specified in subsections (b) to (d), inclusive, of
 160 this section or in the federal Social Security Act, as amended from time
 161 to time, shall be liable to such patient in a private cause of action for (1)
 162 any actual damage sustained by such patient as a result of such
 163 deprivation, and (2) additional damages of not less than one thousand
 164 dollars or more than _____ per violation or deprivation. In addition,
 165 where the deprivation [of any such right or benefit] is found to have
 166 been wilful or in reckless disregard of the rights of the patient,
 167 punitive damages may be assessed. A patient may also maintain an
 168 action pursuant to this section for any other type of relief, including
 169 injunctive and declaratory relief, permitted by law. Exhaustion of any
 170 available administrative remedies shall not be required prior to
 171 commencement of suit under this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2009	19a-550(b)
Sec. 2	October 1, 2009	19a-550(e)

AGE *Joint Favorable Subst. C/R* JUD
JUD *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

This bill makes several changes to the nursing home bill of rights. These changes do not result in any direct fiscal impact to the state.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sSB 455*****AN ACT CONCERNING THE NURSING HOME BILL OF RIGHTS.*****SUMMARY:**

This bill makes changes to the nursing home patients' bill of rights. Specifically, it (1) prohibits a nursing home or chronic disease hospital from charging, asking for, accepting, or receiving a third-party guarantee as a condition of admission, expedited admission, or continued stay at the facility and (2) expands a patient's ability to pursue a private cause of action against a facility that deprives him or her of any rights or benefits conferred in the patient's bill of rights or federal Social Security Act.

EFFECTIVE DATE: October 1, 2009

THIRD-PARTY GUARANTEE

The state's nursing home patients' bill of rights gives patients entitled to receive Medicaid the specific right to not have the nursing home or chronic disease hospital charge, ask for, accept, or receive any gift, money, or donation in addition to Medicaid payment as a condition of admission, expedited admission, or continued stay at the facility. The bill adds to this prohibition third-party payment guarantees and extends this right to all patients, not just those entitled to receive Medicaid.

State law prohibits nursing homes and chronic disease hospitals from requiring patients to give a third-party payment guarantee as a condition of admission or continued stay at the facility. But, it does not specifically prohibit facilities from requiring such a guarantee directly from a third party (CGS § 19a-550 (26)).

PRIVATE CAUSE OF ACTION

Under the bill, the rights and benefits conferred in the patients' bill of rights are inalienable and may not be reduced, rescinded, or abrogated by contract. The bill specifies that any contract that limits or abrogates any of these rights is void and unenforceable in court.

The bill extends a patient's ability to pursue a private cause of action against a facility that deprives him or her of any rights or benefits to those conferred in the federal Social Security Act. The facility is liable to the patient for (1) any actual damages the patient sustains as a result of such deprivation and (2) additional damages of at least \$1,000 per violation or deprivation. (The bill does not establish a maximum amount.)

Under current law, patients can pursue a private cause of action against a facility only upon a finding that the patient (1) has been negligently deprived of any rights or benefits conferred in the patients' bill of rights and (2) suffered an injury as a result of this deprivation. The court may then assess damages to compensate the patient for such injury.

The bill retains the provision in existing law allowing a court to award punitive damages against facilities that willfully or in reckless disregard of the patient's rights, violate the patients' bill of rights. A patient may also seek injunctive, declaratory, or any other type of relief permitted by law.

BACKGROUND

Third-Party Guarantee Under Federal Law

Federal law prohibits a nursing home participating in Medicaid or Medicare from requiring a third-party guarantee of payment as a condition of admission, expedited admission, or continued stay at the facility. (This applies to Medicare, Medicaid, and private-pay residents.) If a third party has legal access to the resident's income and assets (i.e., a conservator or legal guardian), the nursing home can require the third-party to sign a contract agreeing to pay the nursing home out of the resident's income or resources (42 CFR § 483.12 (d)(2)).

COMMITTEE ACTION

Select Committee on Aging

Joint Favorable Substitute Change of Reference

Yea 10 Nay 0 (02/17/2009)

Judiciary Committee

Joint Favorable

Yea 31 Nay 11 (04/03/2009)