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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 financial 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.