

SELECT COMMITTEE ON AGING

P1-7

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 trampled 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 enumerated 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.