

Testimony Supporting

S. B. No. 233, An Act Concerning the Discharge of Patients for Nonpayment of Applied Income  
Testimony of David Peloquin<sup>1</sup>  
To the Select Committee on Aging  
March 9, 2010

Distinguished Members of the Select Committee on Aging,

My name is David Peloquin, and I am a student participating in the Small Business Legal Services Clinic of Yale Law School. Early in the academic year Leeway, a nonprofit skilled nursing facility specializing in the care of HIV/AIDS patients, approached our Clinic seeking help finding a way to collect Applied Income payments. Recognizing that an organization such as Leeway cannot survive indefinitely with growing uncompensated care costs, our Clinic agreed to help Leeway research the ways in which they could collect these payments.

Early in our conversations with Leeway, we discovered that the facility already works with residents to set up a system whereby a resident's monthly Social Security income, which constitutes a large portion of many residents' Applied Income amount for the month, is deposited directly with Leeway by the Social Security Administration. However, in many instances a resident is unwilling to set up such a plan, and statutory prohibitions on the assignment of Social Security income make it difficult for facilities to *require* that a resident assign Social Security payments to the facility upon admission.<sup>2</sup> Because Connecticut law currently provides that skilled nursing facilities may only discharge "self-pay patients" for nonpayment, facilities like Leeway cannot move to discharge a Medicaid resident who is delinquent on his or her Applied Income payments.<sup>3</sup>

In helping Leeway seek solutions to their problem, we turned to skilled nursing facilities in nearby states. We discovered that in both New York and New Jersey, skilled nursing facilities are able to move to discharge Medicaid residents for non-payment of the Applied Income amount,<sup>4</sup> because these states do not limit discharge for nonpayment to "self-pay patients." Skilled nursing facilities in these states can notify family members or friends of the resident (oftentimes the very parties who are receiving the Social Security income that should be remitted to the facility as Applied Income), that if the payments are not received, the facility will move to discharge the resident. Facilities in these states have discovered that the ability to merely mention the possibility of discharge can be a powerful tool in bringing residents and their families into compliance with the law.

Connecticut has a long history of protecting skilled nursing facility residents against abuses. The Bill before the commission today preserves this tradition by maintaining protections that exceed those required by federal law. While federal law allows a facility to provide a resident a thirty-day notice of

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<sup>1</sup> This testimony was prepared through the Yale Law School Community and Economic Development Clinic under the supervision of Stephen Hudspeth, Esq. and Robin Golden, Esq.

<sup>2</sup> See 42 U.S.C. § 407(a)

<sup>3</sup> Conn. Gen. Stat. § 19a-535(b)

<sup>4</sup> Applied Income is known by different names in different states. For example it is known as NAMI (Net Available Monthly Income) in New York.

discharge as soon as the resident falls behind on his or her payments,<sup>5</sup> the proposed Act provides that a Connecticut facility cannot even provide this thirty-day notice of proposed discharge to a Medicaid resident until the resident is sixty days in arrears on his or her payments. When combined with the thirty-day notice requirement, this means that the earliest a Medicaid resident could be discharged is ninety days past the date of nonpayment, affording the resident ample time to sort out his or her financial affairs and provide the Applied Income to the facility. All of the other rights Connecticut nursing facility residents currently have with regard to discharge, including notice, the right to appeal the discharge to the Department of Social Services and to have the discharge stayed pending the decision of the Commissioner, and the responsibility of the facility to aid the resident in finding appropriate post-discharge placement, remain in place.<sup>6</sup> The only change contemplated by this Act is allowing a facility to begin discharge proceedings against residents who fail to pay the Applied Income amount. Therefore, we are addressing the case of a resident who has been determined by the Department of Social Services to have income available which can be used as Applied Income, but who has chosen to divert that income to other purposes.

This legislation is critical to the long-term sustainability of nursing facilities that play a crucial role in the care of people facing very challenging nursing needs that require highly specialized care. If these services are not paid for, when the state is already specifically providing funds for the purpose, it means that continued provision of these services to all who need the care that these specialized facilities can provide will be compromised, and many will needlessly suffer. Thus, this proposed legislation is a carefully-crafted way to do justice by seeing that state-granted funds are paid as provided so that skilled nursing needs in this important area are met both now and for the future

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<sup>5</sup> 42 C.F.R. § 483.12(a)(5)(i)

<sup>6</sup> See Conn. Gen. Stat. § 19a-535.