



Senate

General Assembly

File No. 257

February Session, 2010

Senate Bill No. 369

Senate, April 1, 2010

The Committee on Human Services reported through SEN. DOYLE of the 9th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CONCERNING THE ENFORCEMENT OF SURETY CONTRACTS BY NURSING HOMES.

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

1 Section 1. Section 19a-539 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2010*):

3 (a) Each nursing home facility shall disclose in writing to all
4 prospective patients a complete and accurate list of all additional costs
5 which may be incurred by them and such nursing home facility shall
6 display or cause to be displayed copies of such list in conspicuous
7 places therein.

8 (b) Nursing home facilities, as defined in section 19a-521, shall be
9 prohibited from enforcing a surety contract on behalf of an applicant
10 required as a condition of admission unless: (1) The guarantor under
11 such contract or his spouse or his children or his grandchildren has
12 received an assignment or transfer or other disposition of property for
13 less than fair market value, pursuant to section 17b-261, from the

14 applicant; [or (2) the applicant fails to return a properly completed
 15 application for Title XIX benefits to the Department of Social Services
 16 in accordance with its regulations;] and [(3)] (2) such contract contains
 17 a clause which states the contract is enforceable against the guarantor
 18 or his spouse or his children or his grandchildren if such guarantor or
 19 his spouse or his children or his grandchildren have received an
 20 assignment or transfer or other disposition of property for less than
 21 fair market value, pursuant to section 17b-261, from the applicant. [or
 22 if said applicant fails to return a properly completed application for
 23 Title XIX benefits to the Department of Social Services in accordance
 24 with its regulations.]

25 (c) Nothing in this section shall be interpreted as prohibiting the
 26 acceptance of a voluntary surety contract.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2010	19a-539

HS *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***

The bill prohibits nursing homes from enforcing a third party to pay for services, under a surety contract, due to failure to properly apply for Medicaid. This has no fiscal impact to the state.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**SB 369*****AN ACT CONCERNING THE ENFORCEMENT OF SURETY CONTRACTS BY NURSING HOMES.*****SUMMARY:**

This bill removes a nursing home's ability to enforce payment against a third party under the terms of a surety contract because a resident failed to apply properly for Medicaid. State and federal law prohibit a nursing home from requiring a third party to personally guarantee payment as a condition for someone's admission or continued stay in the facility. But federal law permits a home to require an individual who has legal access to an applicant or resident's assets to sign a contract requiring that person to use those assets to pay for services the home renders.

Current state law permits a home to enforce a surety contract that contains a clause making it enforceable against a guarantor if (1) a guarantor or his or her family member has received an asset transferred by the resident for less than market value within five years of the resident applying for Medicaid or (2) the resident fails to apply properly for Medicaid. The bill eliminates the latter condition.

The bill applies to contracts with nursing homes, residential care homes, rest homes with nursing supervision, and chronic and convalescent nursing homes.

EFFECTIVE DATE: July 1, 2010

BACKGROUND***Federal and State Prohibitions Against Third Party Guarantors***

Federal law prohibits a skilled nursing facility from requiring a

third party to guarantee payment to the facility as a condition of an individual's admission or continued stay in the facility. However, it states that this prohibition is not to be construed to prevent a facility from requiring someone who has legal access to a resident's income or resources available to pay for care in the facility, to sign a contract (without incurring personal financial liability) to use that income and resources to pay for the resident's care (42 USC 1395i-3(c)(5)(A) & (B)).

Connecticut's nursing home bill of rights states that patients are not required to give a third party guarantee of payment to the facility as a condition of admission to, or continued stay in, a facility (CGS § 19a-550 (b)(26)).

Case Law

Two Connecticut courts have upheld suits against "responsible parties" (people with legal access to a resident's assets). In one, the Superior Court held that a responsible party's failure to ensure that his institutionalized relative qualified for Medicaid constituted breach of contract, negligence, and promissory estoppel (*Glastonbury Healthcare Center V. Esposito* (2008 Conn. Sup. 10497, 45 CLR 671)).

In another, the Appellate Court held that (1) a nursing home contract that obligated a responsible party to use a resident's assets to pay the home did not violate federal or state law and (2) the responsible party must use the resident's assets to pay the home, not for other, non-home services (*Sunrise Healthcare Corp. V. Azarigian* (76 Conn. App. 800 (2003))).

COMMITTEE ACTION

Human Services Committee

Joint Favorable

Yea 19 Nay 0 (03/18/2010)