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Testimony of  
The Elder Law Section  
Connecticut Bar Association  
in OPPOSITION to  
SB233  
AN ACT CONCERNING THE DISCHARGE OF PATIENTS  
FOR NONPAYMENT OF APPLIED INCOME

Select Committee on Aging  
March 9, 2010

*Federal statutes prohibit discharge from nursing homes except in very specific situations and the lack of payment of applied income is not one of these exceptions. Furthermore, there are effective remedies already available under law.*

WHAT IS APPLIED INCOME

The Applied Income portion of nursing home payments comprises the income that individual receives and is required to pay to the nursing home as their share of the cost of care. A number of deductions are allowed from the income. The State of Connecticut covers that part of the person's care that is not paid for by the applied income. If the person fails to make their applied income payment the state's portion/financial obligation does not increase.

FEDERAL LAW:

The reasons allowed for discharge of a nursing home resident are few and are to be strictly construed. They are found in the provisions of federal law enacted in October of 1990, OBRA 97, 42 U.S.C. Section 1395i-3 (Medicare), 42 U.S.C. Section 1396r (Medicaid), 42 C.F.R. Part 483 to protect nursing home residents. This federal law requires all nursing facilities that are Medicare and Medicaid certified to provide care to residents in a way that attains or maintains the highest level of functioning through the use of the assessment and care planning process and to discharge resident's only under the narrowly allowed exceptions. 42 U.S.C. Section 1396r(c), 42 C.F.R. 438.10

**LEGAL REMEDIES ARE CURRENTLY AVAILABLE:**

The change proposed in this bill is not necessary and is an extreme remedy. The nursing home already has a remedy under law. If a resident has been granted or is pending Title 19, but this resident or the resident's legal representative is not paying the applied income then the nursing home has a remedy: the home can take legal action against the T19 resident or legal representative by filing a petition for a Conservator of the Estate to handle the finances of an incapable person who is a resident. This action also works if the resident's agent is failing to pay the applied income. If the resident's agent or legal representative fails to pay the applied income then the nursing home can act to remove the agent and appoint a Conservator in the agent's place.

Attachment:

**Federal Statute Related to Transfer and Discharge Rights**

**Sec. 1919. Social Security Act [42 U.S.C. 1396r]**

**Sec. 1819. Social Security Act [42 U.S.C. 1395i-3]**

# ATTACHMENT

Testimony of  
The Elder Law Section  
Connecticut Bar Association

## SB233

### *AN ACT CONCERNING THE DISCHARGE OF PATIENTS FOR NONPAYMENT OF APPLIED INCOME*

#### FEDERAL LAW RELATED TO TRANSFER AND DISCHARGE RIGHTS

Sec. 1919. Social Security Act [42 U.S.C. 1396r]

(c) Requirements Relating to Residents' Rights.—

(2) Transfer and discharge rights.—

(A) In general.—A nursing facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless—

(i) the transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility;

(ii) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(iii) the safety of individuals in the facility is endangered;

(iv) the health of individuals in the facility would otherwise be endangered;

(v) the resident has failed, after reasonable and appropriate notice, to pay (or to have paid under this title or title XVIII on the resident's behalf) for a stay at the facility; or

(vi) the facility ceases to operate.

In each of the cases described in clauses (i) through (iv), the basis for the transfer or discharge must be documented in the resident's clinical record. In the cases described in clauses (i) and (ii), the documentation must be made by the resident's physician, and in the case described in clause (iv) the documentation must be made by a physician. For purposes of clause (v), in the case of a resident who becomes eligible for assistance under this title after admission to the facility, only charges which may be imposed under this title shall be considered to be allowable.

Sec. 1819. Social Security Act [42 U.S.C. 1395i-3]

(c) Requirements Relating to Residents' Rights.—

(2) Transfer and discharge rights.—

(A) In general.—A skilled nursing facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless—

(i) the transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility;

(ii) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(iii) the safety of individuals in the facility is endangered;

(iv) the health of individuals in the facility would otherwise be endangered;

(v) the resident has failed, after reasonable and appropriate notice, to pay (or to have paid under this title or title XIX on the resident's behalf) for a stay at the facility; or

(vi) the facility ceases to operate.

In each of the cases described in clauses (i) through (v), the basis for the transfer or discharge must be documented in the resident's clinical record. In the cases described in clauses (i) and (ii), the documentation must be made by the resident's physician, and in the cases described in clauses (iii) and (iv) the documentation must be made by a physician.