

**HUMAN SERVICES COMMITTEE**  
**March 15, 2011**

**Testimony of Joelen J. Gates**

**H.B. 6552 An Act Concerning the Transfer and Discharge of Nursing Home Residents**

**Recommended Action: Support bill with suggested changes and corrections**

My name is Joelen Gates and I am an attorney for Connecticut Legal Services, Inc. in Willimantic, Connecticut where I represent and advise elderly clients 60 years of age and older. As part of my work, I represent nursing home residents who face involuntary transfers and discharges in hearings before the Department of Social Services (DSS).

In March 2010, Brenda Parrella, Legal Counsel for DSS, convened a working group comprised of six people to review and revise the state nursing home transfer and discharge statute and the bedhold statute. The working group consisted of two representatives from state agencies (DSS and the Department of Public Health (DPH)), two attorneys who represent nursing facilities and two advocates for nursing facility residents --the Long Term Care Ombudsman and myself. Over the next eight months, we met to discuss problems and questions we have had over the years in interpreting the current statute and worked to draft a statute that addressed those issues. The bill before you, H. B. 6552, is the fruit of those efforts to reach consensus on most of the issues we discussed.

Legal Services urges you to support H. B. 6552 because the proposed legislation is more comprehensive and provides much needed clarity over the current law. However, Legal Services believes the proposed bill does not adequately protect nursing home residents with respect to the timeframe for appeal and the resident's right to be readmitted from a hospital to the next available bed in the nursing home. We ask you to consider making two important substantive changes to address these concerns.

**Timeframe for Resident's Right to Appeal**

First, H. B. 6552 provides that a resident who disagrees with a proposed transfer or discharge from the nursing home must file an appeal within ten days of receiving the notice of the nursing home's intent to discharge in order to stay the discharge until DSS renders a decision. The proposed legislation allows for the possibility that the resident may be granted an extension of time for good cause shown. However, we do not believe ten days is sufficient time for a vulnerable nursing home resident to initiate an appeal and protect his or her right to stay in the nursing home during the appeal.

Federal law requires states to provide a "reasonable time, not to exceed 90 days from the date that notice of action is mailed, to request a hearing" for both nursing home discharges and Medicaid terminations. 42 C.F.R. §431.221. Connecticut provides a 60-day deadline for Medicaid appeals and H.B. 6552 clarifies that nursing home residents may appeal a transfer or discharge up to 60 days after receiving a notice of proposed discharge. The majority of states

allow the resident to stay in the nursing home while the appeal is pending as long as the resident files an appeal before the proposed date for transfer or discharge. Connecticut is in the minority of states that allow a nursing home to discharge the resident before an appeal is heard, if the resident files the appeal more than ten days after receiving the notice. Legal Services would like Connecticut to grant nursing home residents the right to stay in the nursing home as long as they file an appeal before the proposed transfer or discharge date.

### **Resident's Right to Return to First Bed Available in the Nursing Home After a Hospital Stay**

Second, **H.B. 6552** weakens current state law governing the nursing home resident's right to return to the facility after a hospital stay. Current law requires a nursing home to reserve a resident's bed for up to 15 days, when the resident is hospitalized, if the resident is a Medicaid recipient. After that time, if the resident is ready to return to the nursing home, the facility is obligated to give the resident the "first bed available." Conn. Gen. Stat. 19a-537(e)(1). Under current law the "first bed available" could be in a private room, but the proposed legislation changes that to "the first bed available in a semi-private room or private room, if a private room is medically necessary." In other words, if a facility has private room available, but no semi-private rooms, the facility would not have to readmit the resident to the private room, unless the private room was a medical necessity.

This change is significant because if the nursing home which sent the resident to the hospital does not have a semi-private room available, the resident may have to stay in the hospital longer at greater expense to the state while the hospital searches for a different nursing home to which the resident can be discharged. The resident is placed at greater risk of contracting an infection such as MRSA while remaining in the hospital longer than necessary, and the resident and resident's family face the added stress of moving to a different nursing home for the sole purpose of waiting for a room to become available in the home facility. The resident will be subjected to two transfers instead of one. If the resident were readmitted to a private room in the home facility, the facility could move the resident to a semi-private room when one became available. It would be less stressful for the resident to move from a private room to a semi-private room within the home facility, rather than moving from the hospital to an unfamiliar facility and the back to the home facility.

### **Drafting Errors**

There are a few drafting errors in H. B. 6552 which should be corrected.

Line 54 [patient] should be changed to resident.

Line 65 – add back in "the date by which an appeal must be initiated  
(There are two appeal deadlines: one is 60 days and the other is 10 days to stay the discharge.)

Line 90 to the [facility] Commissioner of Social Services

