



House of Representatives

General Assembly

File No. 495

January Session, 2011

Substitute House Bill No. 6552

House of Representatives, April 7, 2011

The Committee on Human Services reported through REP. TERCYAK of the 26th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE TRANSFER AND DISCHARGE OF NURSING FACILITY RESIDENTS.

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

1 Section 1. Section 19a-535 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) For the purposes of this section: (1) "Facility" means [the] an
4 entity certified as a nursing facility under the Medicaid program or
5 [the] an entity certified as a skilled nursing facility under the Medicare
6 program or with respect to facilities that do not participate in the
7 Medicaid or Medicare programs, a chronic and convalescent nursing
8 home or a rest home with nursing supervision as defined in section
9 19a-521; (2) ["Medicare distinct part" means an entity certified as a
10 skilled nursing facility under the Medicare program within a facility]
11 "Continuing care facility which guarantees life care for its residents"
12 has the same meaning as provided in section 17b-354; (3) "transfer"
13 means the [transfer] movement of a resident from [a] one facility to [a
14 separate facility, including a transfer into or out of a Medicare distinct

15 part, but does not include the transfer of a resident from one bed to
16 another bed within the same facility] another facility or institution,
17 including, but not limited to, a hospital emergency department, if the
18 resident is admitted to the facility or institution or is under the care of
19 the facility or institution for more than twenty-four hours; (4)
20 "discharge" means the [discharge] movement of a resident from a
21 facility to [another institution or] a noninstitutional setting; (5) "self-
22 pay resident" means a resident who is not receiving state or municipal
23 assistance to pay for the cost of care at a facility, but shall not include a
24 resident who has filed an application with the Department of Social
25 Services for Medicaid coverage for facility care but has not received an
26 eligibility determination from the department on such application,
27 provided the resident has timely responded to requests by the
28 department for information that is necessary to make such
29 determination; and (6) "emergency" means a failure to effect an
30 immediate transfer or discharge of the resident that would endanger
31 the health, safety or welfare of the resident or other residents.

32 (b) A facility shall not transfer or discharge a [patient] resident from
33 the facility except to meet the welfare of the [patient] resident which
34 cannot be met in the facility, or unless the [patient] resident no longer
35 needs the services of the facility due to improved health, the facility is
36 required to transfer the resident pursuant to section 17b-359 or section
37 17b-360, or the health or safety of individuals in the facility is
38 endangered, or in the case of a self-pay [patient] resident, for [his] the
39 resident's nonpayment or arrearage of more than fifteen days of the
40 per diem facility room rate, or the facility ceases to operate. In each
41 case the basis for transfer or discharge shall be documented in the
42 [patient's] resident's medical record by a physician. In each case where
43 the welfare, health or safety of the [patient] resident is concerned the
44 documentation shall be by the [patient's] resident's physician. A
45 facility which is part of a continuing care facility which guarantees life
46 care for its residents [, as defined in subsection (b) of section 17b-354,]
47 may transfer or discharge (1) a [resident] self-pay [patient] resident
48 who is a member of the continuing care community and who has
49 intentionally transferred assets in a sum which will render the [patient]

50 resident unable to pay the costs of facility care in accordance with the
51 contract between the resident and the facility, or (2) a [nonresident]
52 self-pay [patient] resident who is not a member of the continuing care
53 community and who has intentionally transferred assets in a sum
54 which will render the [patient] resident unable to pay the costs of a
55 total of forty-two months of facility care from the date of initial
56 admission to the facility.

57 (c) (1) Before effecting [a] any transfer or discharge of a [patient]
58 resident from the facility, the facility shall notify, in writing, the
59 [patient] resident and the [patient's] resident's guardian or conservator,
60 if any, or legally liable relative or other responsible party if known, of
61 the proposed transfer or discharge, the reasons therefor, the effective
62 date of the proposed transfer or discharge, the location to which the
63 [patient] resident is to be transferred or discharged, the right to appeal
64 the proposed transfer or discharge and the procedures for initiating
65 such an appeal as determined by the Department of Social Services, the
66 date by which an appeal must be initiated in order to preserve the
67 resident's right to an appeal hearing and the date by which an appeal
68 must be initiated in order to stay the proposed transfer or discharge [,
69 which date shall be ten days from the receipt of the notice from the
70 facility] and the possibility of an exception to the date by which an
71 appeal must be initiated in order to stay the proposed transfer or
72 discharge for good cause, that the [patient] resident may represent
73 himself or herself or be represented by legal counsel, a relative, a
74 friend or other [spokesman] spokesperson, and information as to bed
75 hold and [hospital] nursing home readmission policy when
76 [appropriate] required in accordance with section 19a-537, as amended
77 by this act. The notice shall also include the name, mailing address and
78 telephone number of the State Long-Term Care Ombudsman. If the
79 [patient] resident is, or the facility alleges a [patient] resident is,
80 mentally ill or developmentally disabled, the notice shall include the
81 name, mailing address and telephone number of the Office of
82 Protection and Advocacy for Persons with Disabilities. The notice shall
83 be given at least thirty days and no more than sixty days prior to the
84 [patient's] resident's proposed transfer or discharge, except where the

85 health or safety of individuals in the facility are endangered, or where
86 the [patient's] resident's health improves sufficiently to allow a more
87 immediate transfer or discharge, or where immediate transfer or
88 discharge is necessitated by urgent medical needs or where a [patient]
89 resident has not resided in the facility for thirty days, in which cases
90 notice shall be given as many days before the transfer or discharge as
91 practicable.

92 (2) The resident may initiate an appeal pursuant to this section by
93 submitting a written request to the Commissioner of Social Services
94 not later than sixty calendar days after the facility issues the notice of
95 the proposed transfer or discharge, except as provided in subsection
96 (h) of this section. In order to stay a proposed transfer or discharge, the
97 resident must initiate an appeal not later than ten days after the date
98 the resident receives the notice of the proposed transfer or discharge
99 from the facility unless the resident demonstrates good cause for
100 failing to initiate such appeal within the ten-day period.

101 (d) No [patient] resident shall be transferred or discharged from any
102 facility as a result of a change in [his] the resident's status from self-pay
103 or Medicare to Medicaid provided the facility offers services to both
104 categories of [patients] residents. Any such [patient] resident who
105 wishes to be transferred to another facility which has agreed to accept
106 [him] the resident may do so upon giving at least fifteen days written
107 notice to the administrator of the facility from which [he] the resident
108 is to be transferred and a copy thereof to the appropriate advocate of
109 such [patient] resident. The [patients'] resident's advocate may help the
110 [patient] resident complete all administrative procedures relating to a
111 transfer. [As used in this section "self-pay" patient means a patient who
112 is not receiving state or municipal assistance to pay for the cost of
113 care.]

114 (e) Except [(1)] in an emergency [, (2)] or in the case of transfer to a
115 hospital, [or (3) in the case of transfer into or out of a Medicare distinct
116 part within the same institution, no patient] no resident shall be
117 transferred or discharged from a facility unless a discharge plan has

118 been developed by the personal physician of the [patient] resident or
119 the medical director in conjunction with the nursing director, social
120 worker or other health care provider. To minimize the disruptive
121 effects of the transfer or discharge on the [patient] resident, the person
122 responsible for developing the plan shall consider the feasibility of
123 placement near the [patient's] resident's relatives, the acceptability of
124 the placement to the [patient] resident and [his] the resident's guardian
125 or conservator, if any, or [his] the resident's legally liable relative or
126 other responsible party, if known, and any other relevant factors which
127 affect the [patient's] resident's adjustment to the move. The plan shall
128 contain a written evaluation of the effects of the transfer or discharge
129 on the [patient] resident and a statement of the action taken to
130 minimize such effects. In addition, the plan shall outline the care and
131 kinds of services which the [patient] resident shall receive upon
132 transfer or discharge. Not less than thirty days prior to an involuntary
133 transfer or discharge, a copy of the discharge plan shall be provided to
134 the [patient's] resident's personal physician if the discharge plan was
135 prepared by the medical director, to the [patient and his] resident and
136 the resident's guardian or conservator, if any, or [his] legally liable
137 relative or other responsible party, if known.

138 (f) No [patient] resident shall be involuntarily transferred or
139 discharged from a facility if such transfer or discharge is medically
140 contraindicated.

141 (g) The facility shall be responsible for assisting the [patient]
142 resident in finding appropriate placement.

143 (h) (1) Except in the case of an emergency, as provided in
144 subdivision (4) of this subsection, upon receipt of a request for a
145 hearing to appeal any proposed transfer or discharge, the
146 Commissioner of Social Services or [his] the commissioner's designee
147 shall hold a hearing to determine whether the transfer or discharge is
148 being effected in accordance with this section. A hearing shall be
149 convened not less than ten, but not more than thirty days from the date
150 of receipt of such request and a written decision made by the

151 commissioner or [his] the commissioner's designee [within sixty days
152 of the] not later than thirty days after the date of termination of the
153 hearing or [within ninety days of] not later than sixty days after the
154 date of the hearing request, whichever occurs sooner. The hearing shall
155 be conducted in accordance with chapter 54. In each case the facility
156 shall prove by a preponderance of the evidence that it has complied
157 with the provisions of this section. Except in the case of an emergency
158 or in circumstances when the resident is not physically present in the
159 facility, whenever the Commissioner of Social Services receives a
160 request for a hearing in response to a notice of proposed transfer or
161 discharge and such notice does not meet the requirements of
162 subsection (c) of this section, the commissioner shall, not later than ten
163 business days after the date of receipt of such notice from the resident
164 or the facility, order the transfer or discharge stayed and return such
165 notice to the facility. Upon receipt of such returned notice, the facility
166 shall issue a revised notice that meets the requirements of subsection
167 (c) of this section.

168 (2) The [patient, his] resident, the resident's guardian, conservator,
169 legally liable relative or other responsible party shall have an
170 opportunity to examine, during regular business hours at least three
171 business days prior to a hearing conducted pursuant to this section,
172 the contents of the [patient's] resident's file maintained by the facility
173 and all documents and records to be used by the commissioner or [his]
174 the commissioner's designee or the facility at the hearing. The facility
175 shall have an opportunity to examine during regular business hours at
176 least three business days prior to such a hearing, all documents and
177 records to be used by the [patient] resident at the hearing.

178 (3) If a hearing conducted pursuant to this section involves medical
179 issues, the commissioner or [his] the commissioner's designee may
180 order an independent medical assessment of the [patient] resident at
181 the expense of the Department of Social Services which shall be made
182 part of the hearing record.

183 (4) In an emergency the notice required pursuant to subsection (c) of

184 this section shall be provided as soon as practicable. [For the purposes
185 of this section "emergency" means that a failure to effect an immediate
186 transfer or discharge would endanger the health, safety or welfare of
187 the patient or other patients. A patient] A resident who is transferred
188 or discharged on an emergency basis or a [patient] resident who
189 receives notice of such a transfer or discharge may contest the action
190 by requesting a hearing [in writing within] not later than ten days [of]
191 after the date of receipt of notice or [within] not later than ten days [of]
192 after the date of transfer or discharge, whichever is later, unless the
193 resident demonstrates good cause for failing to request a hearing
194 within the ten-day period. A hearing shall be held in accordance with
195 the requirements of this subsection [within seven] not later than fifteen
196 business days [of] after the date of receipt of the request. The
197 commissioner, or the commissioner's designee, shall issue a decision
198 not later than thirty days after the date on which the hearing record is
199 closed.

200 (5) Except in the case of a transfer or discharge effected pursuant to
201 subdivision (4) of this subsection, (A) an involuntary transfer or
202 discharge shall be stayed pending a decision by the commissioner or
203 [his] the commissioner's designee, and (B) if the commissioner or [his]
204 the commissioner's designee determines the transfer or discharge is
205 being effected in accordance with this section, the facility may not
206 transfer or discharge the [patient] resident prior to fifteen days from
207 the date of receipt of the decision by the [patient] resident and [his] the
208 resident's guardian or conservator, if any, or [his] the resident's legally
209 liable relative or other responsible party if known.

210 (6) If the commissioner, or the commissioner's designee, determines
211 after a hearing held in accordance with this section that the facility has
212 transferred or discharged a resident in violation of this section, the
213 commissioner, or the commissioner's designee, may require the facility
214 to readmit the resident to a bed in a semiprivate room or in a private
215 room, if a private room is medically necessary, regardless of whether
216 or not the resident has accepted placement in another facility pending
217 the issuance of a hearing decision or is awaiting the availability of a

218 bed in the facility from which the resident was transferred or
219 discharged.

220 ~~[(6)]~~ (7) A copy of a decision of the commissioner or [his] the
221 commissioner's designee shall be sent to the facility and to the resident,
222 the resident's guardian, conservator, if any, legally liable relative or
223 other responsible party, if known. The decision shall be deemed to
224 have been received [within five days of] not later than five days after
225 the date it was mailed, unless the [patient or his] facility, the resident
226 or the resident's guardian, conservator, legally liable relative or other
227 responsible party proves otherwise by a preponderance of the
228 evidence. The Superior Court shall consider an appeal from a decision
229 of the Department of Social Services pursuant to this section as a
230 privileged case in order to dispose of the case with the least possible
231 delay.

232 (i) A resident who receives notice from the Department of Social
233 Services or its agent that the resident is no longer in need of the level of
234 care provided by a facility and that, consequently, the resident's
235 coverage for facility care will end, may request a hearing by the
236 Commissioner of Social Services in accordance with the provisions of
237 section 17b-60. If the resident requests a hearing prior to the date that
238 Medicaid coverage for facility care is to end, Medicaid coverage shall
239 continue pending the outcome of the hearing. If the resident receives a
240 notice of denial of Medicaid coverage from the department or its agent
241 and also receives a notice of discharge from the facility pursuant to
242 subsection (c) of this section and the resident requests a hearing to
243 contest each proposed action, the department shall schedule one
244 hearing at which the resident may contest both actions.

245 Sec. 2. Section 19a-537 of the general statutes is repealed and the
246 following is substituted in lieu thereof (*Effective from passage*):

247 (a) As used in this section and section 19a-537a:

248 (1) "Vacancy" means a bed that is available for an admission;

249 (2) "Nursing home" means any chronic and convalescent facility or
250 any rest home with nursing supervision, as defined in section 19a-521;

251 (3) "Hospital" means a general short-term hospital licensed by the
252 Department of Public Health or a hospital for mental illness, as defined
253 in section 17a-495, or a chronic disease hospital, as defined in section
254 19-13-D1(a) of the Public Health Code.

255 (b) A nursing home shall:

256 (1) Reserve the bed of a self-pay resident of such facility who is
257 absent from the facility due to hospitalization whenever payment is
258 available to reserve the bed;

259 (2) Inform the self-pay resident and such resident's relatives or other
260 responsible persons, upon admission of a person to the facility and
261 upon transfer of a resident to a hospital, that the bed of a resident will
262 be reserved as long as payment is available to the facility to reserve the
263 bed and that if payment is not made, the resident will be admitted to
264 the next available bed in accordance with subsection (e) of this section;

265 (3) Reserve the bed of a resident who is a recipient of medical
266 assistance when the resident is absent from the facility for home leave
267 days authorized under the Medicaid program;

268 (4) Inform the resident who is a recipient of medical assistance and
269 such resident's relatives or other responsible persons, upon admission
270 of a person to the nursing home and upon transfer of a resident to a
271 hospital of the conditions under which [the Department of Social
272 Services requires] the nursing home is required to reserve the bed of a
273 resident and that if the home is not required to reserve the bed, the
274 resident will be admitted to the next available bed in accordance with
275 subsection (e) of this section; and

276 (5) Not make the bed reserved for a hospitalized resident available
277 for use by any other person unless the nursing home records in such
278 resident's medical record the medical reasons justifying the change in
279 such resident's bed, and the necessity of making the change before the

280 resident's return to the facility, provided no resident's bed shall be
281 changed if (A) such a change is medically contraindicated as defined in
282 subsection (a) of section 19a-550; or (B) if the resident does not consent
283 to the change, except when the change is made (i) to protect the
284 resident or others from physical harm; (ii) to control the spread of an
285 infectious disease; or (iii) to respond to a physical plant or
286 environmental emergency that threatens the resident's health or safety.
287 In the case of such an involuntary change of a resident's bed,
288 disruption of residents shall be minimized, notice shall be provided to
289 the resident or representative [within] not later than twenty-four hours
290 after the change and, if practicable, the resident, if he or she wishes,
291 shall be returned to his or her room when the threat to health or safety
292 which prompted the transfer has been eliminated. When a resident's
293 bed is changed without his or her consent to protect the resident or
294 others from physical harm, a consultative process shall be established
295 on the first business day following the resident's return to the facility.
296 The consultative process shall include the participation of the
297 attending physician, a registered nurse with responsibility for the
298 resident, other appropriate staff in disciplines as determined by the
299 resident's needs and the participation of the resident, such resident's
300 family or other representative. The consultative process shall
301 determine what caused the change in bed, whether the cause can be
302 removed and, if not, whether the facility has attempted alternatives to
303 the change. The resident shall be informed of the risks and benefits of
304 the change in bed and of any alternatives.

305 (c) A nursing home shall reserve, for at least fifteen days, the bed of
306 a resident who is a recipient of medical assistance and who is absent
307 from such home due to hospitalization unless the nursing home
308 documents that it has objective information from the hospital
309 confirming that the [patient] resident will not return to the nursing
310 home within fifteen days of the hospital admission including the day
311 of hospitalization.

312 (d) The Department of Social Services shall reimburse a nursing
313 home at the per diem Medicaid rate of the facility for each day that the

314 facility reserves the bed of a resident who is a recipient of medical
315 assistance in accordance with the following conditions:

316 (1) A facility shall be reimbursed for reserving the bed of a resident
317 who is hospitalized for a maximum of seven days including the
318 admission date of hospitalization, if on such date the nursing home
319 documents that (A) it has a vacancy rate of not more than three beds or
320 three per cent of licensed capacity, whichever is greater, and (B) it
321 contacted the hospital and the hospital failed to provide objective
322 information confirming that the person would be unable to return to
323 the nursing home within fifteen days of the date of hospitalization.

324 (2) The nursing home shall be reimbursed for a maximum of eight
325 additional days provided:

326 (A) On the seventh day of the person's hospital stay, the nursing
327 home has a vacancy rate that is not more than three beds or three per
328 cent of licensed capacity, whichever is greater; and

329 (B) [Within seven days of the] Not later than seven days after the
330 date of hospitalization of a resident who is a recipient of medical
331 assistance, the nursing home has contacted the hospital for an update
332 on the person's status and the nursing home documents such contact
333 in the person's file and that the information obtained through the
334 contact does not indicate that the person will be unable to return to the
335 nursing home [within fifteen days of] not later than fifteen days after
336 the date of hospitalization.

337 (3) A facility shall be reimbursed for reserving the bed of a resident
338 who is absent for up to twenty-one days of home leave as authorized
339 under the Medicaid program if on the day of such an absence the
340 facility documents that it has a vacancy rate of not more than four beds
341 or four per cent of licensed capacity, whichever is greater. No facility
342 shall require or request a resident who is a recipient of medical
343 assistance to provide payment for such authorized home leave days,
344 whether or not such payment is available from the department.

345 (e) If a resident's hospitalization exceeds the period of time that a
346 nursing home is required to reserve the resident's bed or the nursing
347 home is not required to reserve the resident's bed under this section,
348 the nursing home:

349 (1) Shall, upon receipt of notification from the hospital that a
350 resident is medically ready for discharge, provide the resident with the
351 first bed available [at the time the nursing home receives notice of the
352 resident's discharge from the hospital] in a semiprivate room or a
353 private room, if a private room is medically necessary;

354 (2) Shall grant the resident priority of admission over applicants for
355 first admission to the nursing home;

356 (3) May charge a fee to reserve the bed, not exceeding the facility's
357 self-pay rate for the unit in which that resident resided, or not
358 exceeding the per diem Medicaid rate for recipients of medical
359 assistance, whichever charge is applicable, for the number of days
360 which the resident is absent from the facility.

361 (f) When the Commissioner of Social Services, or the commissioner's
362 designee, makes a finding that a resident has been refused readmission
363 to a nursing home in violation of this section, the resident shall retain
364 the right to be readmitted to the transferring nursing home pursuant to
365 subsection (e) of this section regardless of whether or not the resident
366 has accepted placement in another nursing home while awaiting the
367 availability of a bed in the facility from which the resident was
368 transferred.

369 (g) Whenever a nursing home has concerns about the readmission
370 of a resident, as required by subsection (e) of this section, based on
371 whether the nursing home has the ability to meet the resident's care
372 needs or the resident presents a danger to himself or herself or to other
373 persons, not later than twenty-four hours after receipt of notification
374 from a hospital that a resident is medically ready for discharge, a
375 nursing home shall request a consultation with the hospital and the
376 resident or the resident's representative. The purpose of the

377 consultation shall be to develop an appropriate care plan to safely
378 meet the resident's nursing home care needs, including a
379 determination of the date for readmission that best meets such needs.
380 The resident's wishes and the hospital's recommendations shall be
381 considered as part of the consultation process. The nursing home shall
382 reserve the resident's bed until completion of the consultation process.
383 The consultation process shall begin as soon as practicable and shall be
384 completed not later than three business days after the date of the
385 nursing home's request for a consultation. The hospital shall
386 participate in the consultation, grant the nursing home access to the
387 resident in the hospital and permit the nursing home to review the
388 resident's hospital records.

389 (h) A nursing home shall not refuse to readmit a resident unless: (1)
390 The resident's needs cannot be met in the facility; (2) the resident no
391 longer needs the services of the nursing home due to improved health;
392 or (3) the health and safety of individuals in the nursing home would
393 be endangered by readmission of the resident. If a nursing home
394 decides to refuse to readmit a resident either without requesting a
395 consultation or following a consultation conducted in accordance with
396 subsection (g) of this section, the nursing home shall, not later than
397 twenty-four hours after making such decision, notify the hospital, the
398 resident and the resident's guardian or conservator, if any, the
399 resident's legally liable relative or other responsible party, if known, in
400 writing of the following: (A) The determination to refuse to readmit
401 the resident; (B) the reasons for the refusal to readmit the resident; (C)
402 the resident's right to appeal the decision to refuse to readmit the
403 resident; (D) the procedures for initiating such an appeal, as
404 determined by the Commissioner of Social Services; (E) the resident
405 has ten days from the date of receipt of the notice from the facility to
406 initiate an appeal; (F) the possibility of an extension of the timeframe
407 for initiating an appeal for good cause; (G) the contact information,
408 including the name, mailing address and telephone number, for the
409 Long-Term Care Ombudsman; and (H) the resident's right to represent
410 himself or herself at the appeal hearing or to be represented by legal
411 counsel, a relative, a friend or other spokesperson. If a resident is, or

412 the nursing home alleges a resident is, mentally ill or developmentally
413 disabled, the nursing home shall include in the notice to the resident
414 the contact information, including the name, mailing address and
415 telephone number of the Office of Protection and Advocacy for
416 Persons with Disabilities. The Commissioner of Social Services, or the
417 commissioner's designee, shall hold a hearing in accordance with
418 chapter 54 to determine whether the nursing home has violated the
419 provisions of this section. The commissioner, or the commissioner's
420 designee, shall convene such hearing not later than fifteen days after
421 the date of receipt of the request. The commissioner, or the
422 commissioner's designee, shall issue a decision not later than thirty
423 days after the date on which the hearing record is closed. The
424 commissioner, or the commissioner's designee, may require the
425 nursing home to readmit the resident to a semiprivate room or a
426 private room, if a private room is medically necessary. The Superior
427 Court shall consider an appeal from a decision of the commissioner
428 pursuant to this section as a privileged case in order to dispose of the
429 case with the least possible delay.

430 (i) If, following a consultation convened pursuant to subsection (g)
431 of this section, a nursing home does not readmit a resident, the
432 resident may file a complaint with the Commissioner of Social Services
433 pursuant to section 19a-537a. If the resident has requested a hearing
434 pursuant to subsection (h) of this section, the commissioner shall stay
435 an investigation of such complaint until the issuance of a
436 determination following the hearing. Each day a nursing home fails to
437 readmit a resident in violation of this section may be considered a
438 separate violation for the purpose of determining a penalty pursuant
439 to section 19a-537a, except no penalty shall accrue during the period of
440 time beginning with the date a consultation is requested until the date
441 a hearing decision is issued, if a hearing is requested, provided the
442 commissioner, or the commissioner's designee, finds the nursing home
443 has acted in good faith in refusing to readmit the resident. If the
444 resident does not request a hearing and the resident files a complaint
445 with the commissioner pursuant to section 19a-537a no penalty shall
446 accrue during the time an investigation is conducted, provided the

447 commissioner finds the facility acted in good faith in refusing to
448 readmit the resident.

449 Sec. 3. Section 19a-545 of the general statutes is repealed and the
450 following is substituted in lieu thereof (*Effective from passage*):

451 (a) A receiver appointed pursuant to the provisions of sections 19a-
452 541 to 19a-549, inclusive, in operating such facility, shall have the same
453 powers as a receiver of a corporation under section 52-507, except as
454 provided in subsection (c) of this section and shall exercise such
455 powers to remedy the conditions which constituted grounds for the
456 imposition of receivership, assure adequate health care for the
457 [patients] residents and preserve the assets and property of the owner.
458 If a facility is placed in receivership it shall be the duty of the receiver
459 to notify [patients and family, except where medically contraindicated]
460 each resident and each resident's guardian or conservator, if any, or
461 legally liable relative or other responsible party, if known. Such
462 receiver may correct or eliminate any deficiency in the structure or
463 furnishings of the facility which endangers the safety or health of the
464 residents while they remain in the facility, provided the total cost of
465 correction does not exceed three thousand dollars. The court may
466 order expenditures for this purpose in excess of three thousand dollars
467 on application from such receiver. If any resident is transferred or
468 discharged such receiver shall provide for: (1) Transportation of the
469 resident and such resident's belongings and medical records to the
470 place where such resident is being transferred or discharged; (2) aid in
471 locating an alternative placement and discharge planning in
472 accordance with section 19a-535, as amended by this act; (3)
473 preparation for transfer to mitigate transfer trauma, including but not
474 limited to, participation by the resident or the resident's guardian in
475 the selection of the resident's alternative placement, explanation of
476 alternative placements and orientation concerning the placement
477 chosen by the resident or the resident's guardian; and (4) custodial care
478 of all property or assets of residents which are in the possession of an
479 owner of the facility. The receiver shall preserve all property, assets
480 and records of residents which the receiver has custody of and shall

481 provide for the prompt transfer of the property, assets and records to
482 the alternative placement of any transferred resident. In no event may
483 the receiver transfer all residents and close a facility without a court
484 order and without [preparing a] complying with the notice and
485 discharge plan requirements for each resident in accordance with
486 section 19a-535, as amended by this act.

487 (b) Not later than ninety days after the date of appointment as a
488 receiver, such receiver shall take all necessary steps to stabilize the
489 operation of the facility in order to ensure the health, safety and
490 welfare of the residents of such facility. In addition, within a
491 reasonable time period after the date of appointment, not to exceed six
492 months, the receiver shall: (1) Determine whether the facility can
493 continue to operate and provide adequate care to residents in
494 substantial compliance with applicable federal and state law within the
495 facility's state payments as established by the Commissioner of Social
496 Services pursuant to subsection (f) of section 17b-340, together with
497 income from self-pay residents, Medicare payments and other current
498 income and shall report such determination to the court; and (2) seek
499 facility purchase proposals. If the receiver determines that the facility
500 will be unable to continue to operate in compliance with said
501 requirements, the receiver shall promptly request an order of the court
502 to close the facility and make arrangements for the orderly transfer of
503 residents pursuant to subsection (a) of this section unless the receiver
504 determines that a transfer of the facility to a qualified purchaser is
505 expected during the six-month period commencing on the date of the
506 receiver's appointment. If a transfer is not completed within such
507 period and all purchase and sale proposal efforts have been exhausted,
508 the receiver shall request an immediate order of the court to close the
509 facility and make arrangements for the orderly transfer of residents
510 pursuant to subsection (a) of this section.

511 (c) The court may limit the powers of a receiver appointed pursuant
512 to the provisions of sections 19a-541 to 19a-549, inclusive, to those
513 necessary to solve a specific problem.

514 Sec. 4. Section 19a-504c of the general statutes is repealed and the
515 following is substituted in lieu thereof (*Effective from passage*):

516 [By October 1, 1989, the] The Department of Public Health shall
517 adopt regulations, in accordance with the provisions of chapter 54, to
518 set minimum standards for hospital discharge planning services. Such
519 standards shall include, but not necessarily be limited to, requirements
520 for (1) a written discharge plan prepared in consultation with the
521 patient, or [his] the patient's family or representative, and the patient's
522 physician, and (2) a procedure for advance notice to the patient of [his]
523 the patient's discharge and provision of a copy of the discharge plan to
524 the patient prior to discharge. Whenever a hospital refers a patient's
525 name to a nursing home as part of the hospital's discharge planning
526 process, or when a hospital patient requests such a referral, the
527 hospital shall make a copy of the patient's hospital record available to
528 the nursing home and shall allow the nursing home access to the
529 patient for purposes of care planning and consultation.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	19a-535
Sec. 2	<i>from passage</i>	19a-537
Sec. 3	<i>from passage</i>	19a-545
Sec. 4	<i>from passage</i>	19a-504c

Statement of Legislative Commissioners:

In section 1(c)(1), the phrase "such date" was changed to "the date by which an appeal must be initiated in order to stay the proposed transfer or discharge" for clarity. In section 2 (h)(3), the phrase "resident's legally liable" was changed to "resident's legally liable relative" to maintain consistency in the use of the phrase throughout the bill.

HS *Joint Favorable Subst.*

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

This bill changes and clarifies the processes related to nursing home discharges and bed reservations. The changes are not expected to result in any direct fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 6552*****AN ACT CONCERNING THE TRANSFER AND DISCHARGE OF NURSING FACILITY RESIDENTS.*****SUMMARY:**

This bill changes the process that the Department of Social Services (DSS), nursing homes, and their residents or their representatives must follow when nursing homes transfer or discharge residents, or when beds are reserved for residents when they are hospitalized.

With respect to transfers and discharges, the bill:

1. grants residents an explicit right to appeal these moves;
2. establishes the circumstances in which a move can be stayed;
3. reduces the time frame for the DSS commissioner to issue appeal hearing decisions for moves;
4. requires the home to readmit the resident when DSS determines that the move was done in a way that violates the law;
5. explicitly allows residents to request hearings when informed that they no longer need nursing home care, including residents with mental disabilities in homes that transfer or discharge them when the homes cannot provided needed services;
6. refines the definition of "self-pay" residents for purposes of applying the law to them; and
7. requires nursing homes in receivership to comply with its transfer and discharge notice requirements.

Regarding bed-holds, the bill establishes three criteria one of which

a home must meet in order to be able to refuse to readmit a resident. It also sets up a consultation process for homes and residents when the home is concerned about readmitting a resident because it cannot meet the resident's needs or the resident may be a danger to himself, herself, or others. It requires the home to provide notice when it decides not to readmit. The notice must include the resident's right to a hearing to appeal the refusal. The bill requires DSS to hold hearings related to possible bed-hold law violations and changes how homes are assessed penalties for violations.

The bill requires hospitals to provide nursing homes with patient records and access to the patients when the hospitals refer the patients to nursing homes or when the patient requests the referral.

Lastly, the bill makes technical changes.

EFFECTIVE DATE: Upon passage

§ 1 — RESIDENT TRANSFERS AND DISCHARGES

Notice and Appeal Rights

Under current law, nursing homes must notify residents or a responsible party when they intend to transfer them to another facility or discharge them to a noninstitutional setting. Under the bill, (1) the transfer can also be to an institution and (2) the facility or institution must admit or provide care to the resident for more than 24 hours. The facility or institution can include a hospital emergency room.

By law, the notice must include the (1) reasons for the move; (2) date the move is effective; (3) where the resident will be going; (4) resident's right to appeal, procedures for initiating an appeal, and the date by which the appeal must be initiated in order to stay the transfer or discharge (10 days from the notice date); (5) resident's right to representation at an appeal hearing; and (6) home's bed-hold and readmission policies, when appropriate.

The bill explicitly grants residents the right to appeal these moves and gives them a 60 calendar-day deadline for doing so. To have the

discharge stayed, the bill continues to require an appeal to be initiated within 10 days from the date the resident receives the notice but allows this deadline to be extended if the resident demonstrates good cause for not meeting the deadline. The bill requires the notice to include both deadlines and the possibility of an extension of the 10-day deadline.

The bill also specifies that the notice's bed-hold and readmission information must be provided whenever a resident is transferred to a hospital, instead of "when appropriate."

Hearing Decision — Shorter Time for DSS Commissioner to Issue Decision

When transfers and discharges are appealed, the DSS commissioner must hold a hearing between 10 and 30 days from the date he receives the request. Under current law, he must issue a decision within 60 days from the end of the hearing or 90 days from the date the hearing is requested, whichever occurs sooner. The bill reduces these time frames to 30 days and 60 days, respectively.

Stays For Insufficient Notice

Except for an emergency or when the resident is not physically present in the nursing home, the bill requires the commissioner, when (1) he receives a transfer or discharge hearing request and (2) the home's notice does not comply with the law's requirements, to order a stay of the transfer or discharge within 10 days "after the date of receipt of the notice" (presumably, the date DSS receives the notice) and return the notice to the home. Once the home receives the notice, it must issue a revised notice that meets the law's requirements. Once it does, presumably, the stay is lifted.

Emergency Transfers and Discharges

By law, the transfer and discharge requirements are different when a home has to make an emergency transfer. For example, the home must provide the notice as soon as practicable, rather than 30 to 60 days before the move. Residents who are transferred on an emergency

basis or receive notice of such transfers can request a hearing to appeal the move. Currently, they must request the hearing within 10 days of the notice or action. The bill permits the appeal to be considered after the deadline if the residents can demonstrate that they failed to meet the deadline for good cause.

The bill also increases from seven to 15 the number of business days the commissioner has from the date he receives the hearing request to hold the hearing. And it requires the commissioner, or his designee, to issue a decision within 30 days from the date the hearing record is closed.

When a Home Moves a Resident in Violation of Law

Under the bill, if the DSS commissioner or his designee determines, after a hearing, that the home has transferred or discharged a resident in a way that violates the law or the bill, he can require the home to readmit the resident to a bed in a semi-private room, or a private room, if medically necessary. This can be done regardless of whether the resident (1) has already accepted placement in another home pending the hearing decision or (2) is awaiting availability of a bed in the home that transferred or discharged him or her.

Decisions

By law, the commissioner or his designee must send the nursing home a copy of its hearing decision. Under the bill, the commissioner must also send a copy to the resident; the resident's guardian or conservator, if any; legally liable relative; or other responsible party, if known.

Currently, the facility is deemed to have received the notice within five days from when it was mailed unless the resident or his or her guardian, conservator, legally liable relative, or other responsible party proves otherwise by a preponderance of evidence. The bill permits the facility to rebut this presumption by the same level of evidence.

Notice When Resident No Longer Needs Nursing Home Care

Under the bill, residents who receive notice from DSS or its agent

stating that they no longer need the level of care that the nursing home provides (medical necessity determination, see BACKGROUND) and as a result, the resident's coverage for facility care (presumably Medicaid) will stop, can request a hearing before the date Medicaid coverage is to end. Coverage must continue pending the hearing's outcome.

If the resident receives a separate notice of Medicaid denial for lack of medical necessity and of discharge from the home and requests a hearing to contest both actions, DSS must schedule one hearing for the resident to contest both.

Exemption When a Resident Has Mental Illness or a Developmental Disability

The bill also explicitly exempts from the general bar on transferring and discharging residents those facilities that by law must move residents with a diagnosis of mental illness or developmental disability who may require specialized services that the home cannot provide. Consequently, the bill applies all of the law's notice and hearing protections to these residents.

By law, nursing homes must notify the departments of Mental Health and Addiction Services and Developmental Services when a resident who is mentally ill or has a developmental disability, respectively, undergoes a change in condition that may require specialized services. When the home cannot provide those services, the law generally requires that the resident be transferred to a facility that can provide them or discharged when the resident does not require the services (CGS §§ 17b-359 & -360).

Self-Pay Residents

The bill refines the definition of "self-pay" residents for purposes of the transfer and discharge law. Currently, they are defined as residents who are not receiving state or municipal assistance to pay for their care. The bill excludes a resident who has (1) applied for Medicaid, (2) responded in a timely fashion to DSS requests for information that it needs to determine the resident's eligibility, and (3) not been

determined eligible for benefits.

The law generally allows nursing homes to discharge self-pay residents for nonpayment of the home's daily rate or an arrearage of more than 15 days.

§ 3 — When A Home is in Receivership

By law, a nursing home receiver may not transfer all of a home's residents and close the home without a court order and without preparing a discharge plan for its residents. The bill also requires the receiver to comply with its notice provisions before taking these actions.

It requires the receiver to notify each resident and resident's guardian or conservator, if any, legally liable relative, or other responsible party, if known, when a home is placed in receivership, regardless of whether it is medically contraindicated. Under current law, the receiver must notify the residents and family, except where medically contraindicated.

§ 2 — BED HOLDS WHEN NURSING HOME RESIDENT IS HOSPITALIZED

By law, nursing homes generally must reserve the bed of a nursing home resident when he or she must be hospitalized or goes home for a visit and expects to return to the home. The law establishes time frames for notice when this occurs and requires Medicaid to pay the homes that reserve the beds.

Bed Type For Residents Whose Hospitalization Period Exceeds Bed-Hold Period

Under current law, if a nursing home resident's hospitalization exceeds the period of time the home must hold his or her bed (generally, 15 days), or the home is otherwise not required to hold the same bed for the resident, the home must take certain actions. For example, the home must provide the resident with the first bed available when it receives notice that the hospital is discharging the resident. The bill instead requires the home to provide the discharged

resident with a semi-private or, if medically necessary, a private room. The home must do this once it receives notice from the hospital that the resident is “medically ready” for discharge.

The law, unchanged by the bill, also requires the home to grant the resident priority admission over a new applicant.

When a Home Refuses Readmission

The bill provides that, if the DSS commissioner or his designee finds that a resident has been refused readmission in violation of the bed hold law, the resident has the right to be readmitted to the transferring home, as described above, regardless of whether the resident has accepted placement in another facility while awaiting a bed in the original facility.

Consultation. If a home is concerned about a readmission based on its ability to meet the resident’s care needs or the resident presenting a danger to himself or others, the bill requires it to request a consultation with the hospital and the resident or the resident’s representative within 24 hours of receiving the hospital’s notice that the resident is medically ready to leave. The purpose of the consultation is to develop an appropriate care plan to safely meet the resident’s nursing home care needs, including determining a readmission date that best meets these needs.

The bill requires the resident’s wishes and the hospital’s recommendations to be considered as part of the consultation process. The home must reserve the bed until the consultation process is complete. The consultation must begin as soon as practicable and must be completed within three business days after the home requests it. The hospital must participate in the consultation, grant the nursing home access to the resident in the hospital, and permit the home to review the resident’s hospital records.

When a Home May Refuse to Readmit. The bill provides that a nursing home may not refuse to readmit a resident unless (1) it cannot meet the resident’s needs, (2) the resident no longer needs the home’s

services due to improved health, or (3) other residents' health and safety would be endangered if the home were to readmit the resident.

If a nursing home decides to refuse to readmit a resident either without requesting a consultation or following a consultation, it must notify the hospital; the resident; and the resident's guardian, conservator, legally liable relative, or other responsible party within 24 hours of making the decision. The notice, which must be written, must indicate the following:

1. the refusal and reasons for it;
2. the resident's right to appeal and procedures for initiating the appeal (as the DSS commissioner determines);
3. that the resident has 10 days from the date he or she receives the notice to initiate an appeal, which can be extended for good cause;
4. contact information, including the name, mailing address, and telephone number for the long-term care ombudsman; and
5. the resident's right to represent himself or herself or be represented by counsel, a relative, a friend, or other spokesperson.

If the resident is, or the nursing home alleges a resident is, mentally ill or developmentally disabled, the home must include in the notice the contact information, including the name, mailing address, and telephone number, of the Office of Protection and Advocacy for Persons with Disabilities.

Right to Hearing for Violation of Bed-Hold Law

The bill requires the commissioner to hold a hearing to determine whether the home has violated any part of the bed-hold law, apparently regardless of whether one is requested. The commissioner or his designee must (1) convene the hearing within 15 days from the date he receives the request and (2) issue a decision within 30 days of

the date the hearing record is closed.

The bill authorizes the commissioner or his designee (presumably only after a hearing is held) to require the home to readmit the resident to a semi-private room or, when medically necessary, a private one.

By law, these types of hearing decisions can be appealed to Superior Court. The bill requires the court to consider these appeals as privileged in order to dispose of them with the least possible delay (which the court must already do with appeals of transfers and discharges).

If a home does not readmit a resident after a consultation, the bill permits the resident to file a complaint with the DSS commissioner. If the resident has already requested a hearing under the bill, the commissioner must stay an investigation of the complaint until he issues a decision following the hearing.

Penalties

Under the bill, each day a nursing home fails to readmit a resident in violation of the bed-hold law is considered a separate violation for purposes of determining a penalty. When a resident who has been through a consultation requests a hearing, no penalty can accrue from the date a consultation is requested until the hearing decision is issued, if the commissioner or his designee finds that the nursing home has acted in good faith in refusing to readmit the resident.

If a resident files a complaint but does not request a hearing, no penalty can accrue while DSS conducts an investigation, provided the commissioner finds the home's refusal to readmit was done in good faith.

The current maximum penalty DSS may impose is \$8,500 per violation.

§ 4 — HOSPITAL REFERRALS TO NURSING HOMES

The bill requires a hospital to make copies of a patient's hospital

record available to a nursing home whenever it refers the patient to a home as part of their discharge planning process or when the patient requests such a referral. The hospital must also allow the home access to the patient for care planning and consultation purposes.

BACKGROUND

Preadmission Screening and Resident Reviews (PASSR)

Federal law prohibits a Medicaid-certified nursing home from admitting an applicant with serious mental illness or mental retardation (developmental disability) or a related condition unless the individual is properly screened, thoroughly evaluated, found to be appropriate for a nursing home placement, and will receive all specialized services necessary to meet his or her unique needs. Once admitted, these residents must be reviewed when there is a significant change in their physical or mental condition to determine if the home is still the most appropriate placement. Ascend Management Innovations, LLC. contracts with DSS to perform these reviews.

COMMITTEE ACTION

Human Services Committee

Joint Favorable Substitute

Yea 18 Nay 0 (03/22/2011)