



Griffin Health Services Corporation

**Griffin Hospital**

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**TESTIMONY OF  
GRIFFIN HOSPITAL  
SUBMITTED TO THE  
JUDICIARY COMMITTEE  
Friday, March 4, 2011**

**HB 6487, An Act Concerning Certificates Of Merit**

Griffin Hospital appreciates the opportunity to submit testimony concerning HB 6487, An Act Concerning Certificates of Merit. Griffin Hospital opposes this bill.

Griffin Hospital is a full service acute care community hospital serving a primary service area that includes Ansonia, Beacon Falls, Derby, Oxford, Seymour and Shelton with a combined population of 105,000. Griffin employs 1,357 with 282 active and courtesy members of its medical staff. In the 2010 fiscal year Griffin served 7,719 inpatients and close to 40,000 Emergency Department patients.

Griffin Hospital is a subsidiary of Griffin Health Services Corporation (GHSC). Healthcare Alliance Insurance Company, LTD is also a subsidiary of Griffin Health Services Corporation. It is a Cayman Islands based captive insurance company owned jointly by GHSC, Milford Health and Medical Inc., and the Greater Waterbury Health Network, Inc. Healthcare Alliance Insurance Company was created to offer professional malpractice and general liability insurance coverage to Griffin Hospital, Milford Hospital, Waterbury Hospital and members of their respective medical staffs.

Under Connecticut law, tort cases that involve technical or scientific fields require expert testimony. For medical liability cases, Connecticut has developed a statutory framework to ensure that the experts used are sufficiently qualified. As part of this system, Connecticut law also contains a requirement that a party, or the party's lawyer, perform and certify a pre-suit analysis to ensure that the claim is filed in good faith. This pre-suit process is documented by a "good faith certificate," along with a brief written explanation of the expert's review stating that the expert believes that there appears to be evidence of medical negligence. Failure to include a good faith certificate with a complaint makes the claim subject to possible dismissal.

One of the most pervasive issues with the current tort system is the prevalence of lawsuits with no sound basis for a claim. The medical malpractice reform bill passed in 2005 by the Connecticut State Legislature helped remedy this issue by ensuring medical malpractice actions filed have a good faith basis. The cost of defending a medical malpractice claim - even those with no merit - is considerable. For hospitals like Griffin that largely self-insure their professional liability coverage, defending meritless claims saps limited resources that could otherwise be directed toward replacing facilities, nursing care, and other programs to serve the community.

H.B. 6487 seeks to significantly weaken the good faith certificate process. The bill would dramatically expand the types of professionals permitted to give pre-suit expert opinion to include any person who might be deemed an expert at the time of trial, not experts who, as similar healthcare providers, necessarily have the same specialty or training as the defendant. Such a change would roll back important decisions that this legislative body made in 2005; decisions that created objective criteria for expert qualifications currently used for pre-suit good faith letters. This bill would replace a well reasoned and balanced system with one that, instead, depends on the plaintiff's attorney's subjective assessment of who is a qualified expert.

As the Connecticut Supreme Court recently clarified in *Bennett vs. New Milford Hospital*, the 2005 changes to the good faith certificate – which require that a pre-suit evaluation be performed by a similar healthcare provider – were purposefully made. The goal of the 2005 changes, as the Supreme Court noted from the legislative history, was to reduce ongoing problems “caused by plaintiffs misrepresenting or misunderstanding physicians’ opinions as to the merits of their action” and to “ensure that there is a reasonable basis for filing a medical malpractice case under the circumstances” and “eliminate some of the more questionable or meritless cases” filed under the standard that existed prior to 2005.

In addition, HB 6487 would remove the objective standards regarding qualified experts, but it also would remove the penalty of possible dismissal – a penalty that essentially assures compliance – for failure to obtain a good faith certificate. The bill, instead, would merely require those caught in non-compliance to submit the certificate within 30 days after filing suit. A pre-suit obligation that can be performed after the suit is filed is meaningless, and makes the process discretionary.

Additionally, the bill seeks to alter the rules of trial evidence, limit the right of cross examination of expert witnesses, and remove defense arguments, evidence, and motions directed at the plaintiff's case if the plaintiff changes his theory, allegations, or expert opinion. These changes would be a stunning departure from current practice and will result in an unlevel playing field for litigants. Due process, evidentiary rights, and essential elements of trial such as cross-examination, cannot be stacked in favor of one side only, or the civil justice system risks being thrown out of balance.

The changes that were made in 2005 were made after deliberate examination and consideration of the issues by both houses of the Connecticut General Assembly. They created a more balanced playing field and have served us well. It would be a mistake to reverse those changes now.

Griffin Hospital urges you to oppose HB 6487.  
Thank you for your consideration of our position.