



CONNECTICUT LEGAL SERVICES

A PRIVATE NONPROFIT CORPORATION

872 MAIN STREET P.O. BOX 258 WILLIMANTIC, CT 06226-258

TELEPHONE (860) 456-1761 OR 1-800-413-7796 (CLIENT TOLL-FREE LINE)

FAX (860) 456-7420

E-MAIL WILLIMANTIC@CONNLEGALESERVICES.ORG

JOELEN J. GATES
MANAGING ATTORNEY – OFFICE

SHIRLEY BERGERT
MANAGING ATTORNEY –
PUBLIC BENEFITS UNIT

ANNE LOUISE BLANCHARD
LITIGATION DIRECTOR

CATHERINE CUSHMAN
CHERYL DIANE FEUERMAN
BET GAILOR
REBECCA LOOS
SAMUEL T.D. NEVES, JR.
ROYAL STARK
WENDY W. WANCHAK
ATTORNEYS AT LAW

CAROLE MASTERS
VOLUNTEER ATTORNEY

LAUREL J. FREEMAN
PARALEGAL

THOMAS W. CRATTY, JR.
VOLUNTEER PARALEGAL

MINERVA CRUZ
HEROILDA RIOS
LEGAL ASSISTANTS

ADMINISTRATIVE OFFICE
62 WASHINGTON STREET
MIDDLETOWN, CT 06457
(860) 344-0447

RICHARD F. ORR
BOARD CHAIR

STEVEN D. EPPLER-EPSTEIN
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LAW OFFICES

211 STATE STREET
BRIDGEPORT, CT 06604

16 MAIN STREET
NEW BRITAIN, CT 06051

153 WILLIAMS STREET
NEW LONDON, CT 06320

20 SUMMER STREET
STAMFORD, CT 06901

85 CENTRAL AVENUE
WATERBURY, CT 06702

872 MAIN STREET
WILLIMANTIC, CT 06226

SATELLITE OFFICES

2 WEST STREET
DANBURY, CT 06810

5 COLONY STREET
MERIDEN, CT 06451

98 SOUTH MAIN STREET
SOUTH NORWALK, CT 06854

29 NAEK ROAD, SUITE 5A
VERNON, CT 06066

JUDICIARY COMMITTEE

MARCH 19, 2012

Testimony of Joelen Gates and Jean Mills Aranha

S.B. 419 :

An Act Concerning Responsible Party Agreements and the Maintenance of Professional Liability Insurance by Nursing Homes, Home Health Care Agencies and Homemaker-Home Health Aide Agencies

Recommended Action: Delete paragraph (c)

Good afternoon, my name is Joelen Gates. I am an attorney with Connecticut Legal Services, Inc. in Willimantic where I represent elderly people who have legal problems involving their medical care. I am submitting this testimony in opposition to one part of Senate Bill 419, on behalf of the Legal Services programs in Connecticut and the low income individuals we serve.

Senate Bill 419 makes several changes to Section 19a-539 of the general statutes. We oppose the addition of a new section (c), which provides:

(c) A nursing home facility may prepare and submit an application for Title XIX benefits to the Department of Social Services on behalf of a person residing in or seeking admission to the nursing home facility, provided such person or such person's authorized representative authorizes, in writing, the nursing home facility to prepare and submit an application for Title XIX benefits on such person's behalf.



One of our priorities at Connecticut Legal Services is enforcing the rights of nursing home residents. These individuals are some of our most vulnerable citizens; they are elderly, ill, injured or disabled. We believe that this new subsection to the statute is not in the best interests of Connecticut nursing home residents, for several reasons.

The completion of an application for Title XIX involves a great deal more than just filling in the blanks on a form. It requires investigation into the assets of an individual, providing documents to the Department of Social Services (DSS), and often requires legal advice about how to qualify, which nursing facilities are not qualified to give.

The addition of this provision may in practice be detrimental to nursing home residents or applicants. There is no such provision authorizing the many other categories of individuals or organizations that routinely assist with the preparation of Title XIX applications. These include attorneys, social service agencies and family members and friends. By singling out nursing facilities by statute, applicants for Title XIX may be led to believe that nursing facilities have special expertise in the preparation of these applications, and applicants may not carefully review their options for other assistance for their applications.

This could be detrimental since nursing facilities do not have any such special expertise, and others may have superior factual or legal knowledge which could be valuable to the applicant.

The statute does not state which individuals at a nursing facility may assist an applicant. It does not require that the facility provide someone with training or education. Furthermore, it does not impose accountability or liability on the nursing facility in the event that errors are made in the application process and the applicant is harmed by either having Title XIX coverage denied or delayed.

Furthermore, the nursing facility, as a potential creditor of the resident, may have an actual or potential conflict of interest with respect to the Title XIX application. In order to submit a complete application, detailed information about the applicant's financial affairs must be submitted to DSS. If the nursing home is or

becomes a creditor of the applicant, it could use this confidential information to its advantage in pursuing its debt against the applicant.

Finally, there is no necessity for this provision to be added to the statute, and to do so may only cause unnecessary confusion. The application for Title XIX benefits which must be submitted to DSS already provides for someone to assist a nursing home resident (or prospective resident) with the application. In fact, the application already requires anyone assisting an applicant to be identified on the application and to sign it. Nothing prevents a nursing facility resident or prospective resident from asking for assistance from someone at the facility in completing a Title XIX application – should the resident decide that such person is best qualified to provide such assistance. Currently, many applications for Title XIX are completed with the assistance of the staff of a nursing facility. The change to the statute, therefore, is unnecessary.

Contact Information:

Joelen Gates
Connecticut Legal Services, Inc.
P.O. Box 258
Willimantic, CT 06226
(860)456-1761 ext 112
jgates@connlegalservices.org

Jean Mills Aranha
Connecticut Legal Services, Inc.
20 Summer St.
Stamford, CT 06903
(203) 348-9216 ext. 4505
jaranha@connlegalservices.org

