



Judiciary Committee

Connecticut Raised Bill 6687 An Act Concerning Certificates of Merit

April 1, 2013

This statement regarding Raised Bill 6687 is submitted by ProSelect Insurance Company (“ProSelect”), a subsidiary company of Medical Professional Mutual Insurance Company (“ProMutual”), and a Coverys member company. ProSelect began writing medical professional liability insurance in Connecticut in 1997, and as of December 31, 2012 provides coverage to over 3,167 physicians, certified nurse midwives and other health care providers including 21 facilities in the state. For 2012, ProSelect had approximately \$44.3 million in direct written premium in Connecticut. Medical Professional Mutual Insurance Company, ProSelect’s parent company, and ProSelect, hold an A (Excellent) rating from A.M. Best. ProSelect is directed by a Board comprised of a majority of physicians.

We submit these comments in opposition to Raised Bill 6687, which is essentially a re-file of 2010’s House Bill 5537, 2011’s House Bill 6487, and 2012’s Senate Bill 243 for the same reasons that we opposed the previous renditions: the bill seeks to destroy the good work achieved by the 2005 amendment to the Certificate of Merit law enacted by this very body in Public Act 05-275.

Background

Raised Bill 6687 seeks to amend Connecticut’s Good Faith Statute, CT Gen. Stat. Section 52-190a, to eliminate essential Certificate of Merit requirements enacted by Public Act 05-275 (“An Act Concerning Medical Malpractice”) in 2005. The 2005 amendment gave the statute much-needed teeth by requiring that every medical professional liability complaint must be accompanied by a written opinion of a similar health care provider setting forth a detailed basis for the belief that medical malpractice has occurred, and mandating dismissal if a plaintiff fails to provide the required written opinion prior to filing suit.

The current statute has been effective in reducing the filing of non-meritorious claims before they can result in years of costly and emotionally draining litigation and has been upheld by the state’s Appellate Court and the Supreme Court. Raised Bill 6687 will reverse these positive changes.

Specific Concerns with Raised Bill 6687

- Section 52-190a (2) currently provides that no civil action or complaint may be filed unless the claimant or claimant’s attorney has obtained a written and signed opinion of a similar health care provider which “includes a detailed basis for the formation of such opinion.” Raised Bill 6687 removes the requirement and provides instead that such opinion “identifies one or more breaches of the prevailing professional standard of care.”

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Thus, under Raised Bill 6687, all a complainant need do is submit a list of unsupported counts, rather than provide an explanation for the allegation of medical malpractice.

- Under Section 52-190a(2)(c) as currently written, a complainant's failure to obtain and file the written opinion of a similar health care provider constitutes grounds for dismissal of the action. Somewhat perversely, Raised Bill 6687 proposes to qualify this by saying that no action will be dismissed for such failure unless the plaintiff fails to remedy the failure "not later than sixty days after being ordered to do so by the court." Thus, in addition to prolonging the process, under this change the current lynchpin requirement becomes essentially discretionary at every meaningful level, effectively removing the law's teeth.
- Under current law, expert opinions must be provided by "similar health care providers." Raised Bill 6687 waters down the definition of "similar health care provider" to mean any health care provider who may testify as an expert pursuant to subsection (d) of Section 52-184c. We agree with current law that a complaint involving medical treatment rendered in, for example, an obstetric case should require the expert opinion of a physician trained and licensed to practice in that particular field. By this amendment, the bill fatally lowers the definitional standard so as to be practically meaningless.

In conclusion, the changes to the Good Faith Statute sought by Raised Bill 6687 will render the Certificate of Merit requirements ineffective for all practical purposes, and will only undo the benefits of the 2005 legislation by encouraging the filing of frivolous lawsuits, prolonging the judicial process and adding to the cost of insurance through the defense of non-meritorious claims. As such the bill represents a substantive disservice to the citizens of Connecticut and accordingly, we respectfully urge lawmakers to either ameliorate or reject the legislation.

Thank you for your consideration of our comments. As always, ProSelect is available to work with you and is ready to provide any additional information as you deliberate on this matter.