

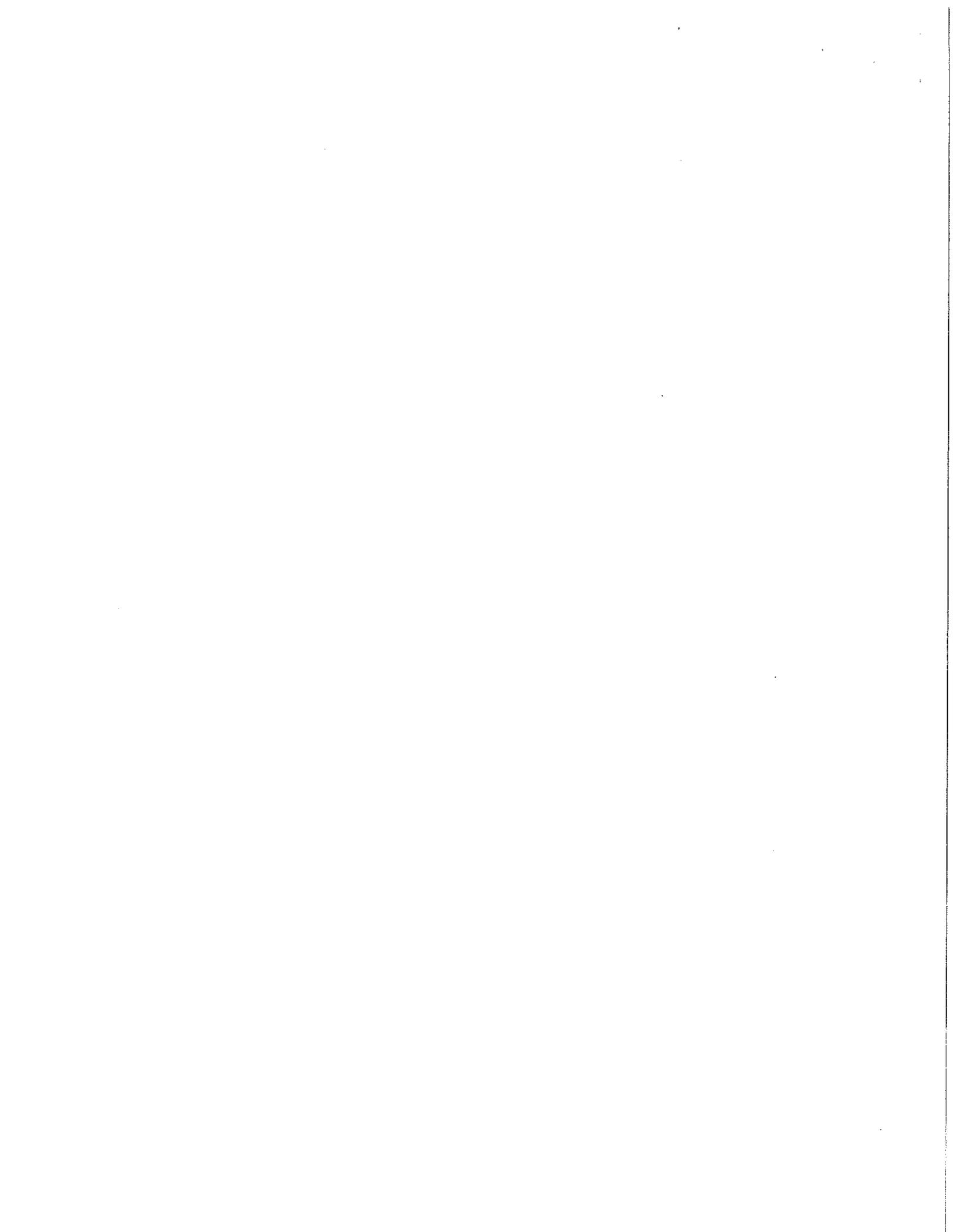
THE LEGISLATURE AND THE LABOR AND PUBLIC EMPLOYEES COMMITTEE SHOULD REJECT RAISED BILL NO. 1074: AN ACT CONCERNING WORKERS' COMPENSATION AND LIABILITY FOR HOSPITAL SERVICES

SUMMARY

The General Assembly should reject Raised Bill No. 1074. This proposed legislation will not assist injured workers or improve the business climate in Connecticut for employers. Instead, it is a blatant attempt by a Texas-based health care repricing company, Fairpay Solutions, Inc., to obtain a legislative bail out from their insurance clients' liability under existing Connecticut laws to reimburse hospitals fairly in several thousand pending workers' compensation cases for services provided to injured workers. By supporting this bill, the Legislature would be interfering with an ongoing legal process and overturning retroactively an important and well reasoned decision issued in September by a Workers' Compensation Commissioner. That decision rejected Fairpay's claims settlement practices in Connecticut and ordered it and its clients instead to follow longstanding requirements governing hospital reimbursement set forth in Section 19a-646 of the Connecticut General Statutes, which require hospitals to be reimbursed based on freely negotiated rate agreements or published charges.

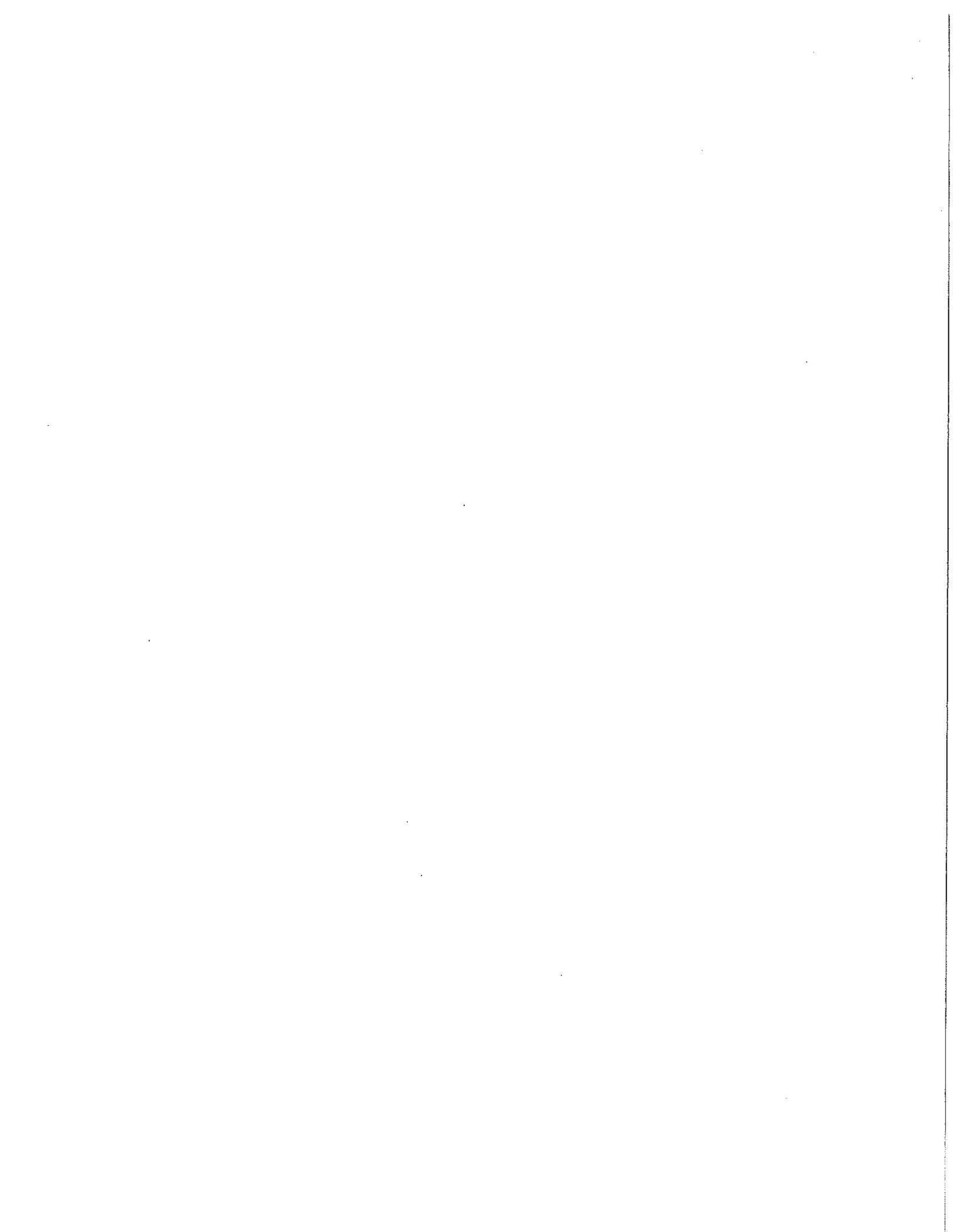
This Bill should be rejected for the following reasons:

- The Bill Would Interfere with a Pending Legal Case without Justification - The case which resolved these legal issues in favor of Connecticut's hospitals has been appealed to the Workers' Compensation Review Board and is already scheduled for oral argument next month. Further, the Chairman of the Commission is beginning a mediation process seeking to resolve these issues this month. All parties will therefore be provided with a fair opportunity to present their views to the agency with the expertise and statutory authority to resolve the dispute, and that decision will be subject to appeal to the Connecticut Appellate and Supreme Courts. There has been no justification provided by Fairpay as to why the state legislature should interfere with the normal process of adjudication other than that the Commission has ruled against its position.
- The Bill Would Overly Burden the Workers' Compensation Commission - The substance of the proposed bill is directly contrary to the general trend which the legislature has taken since mid-90s which is to deregulate hospital rates. For twenty years, the state has encouraged employers to negotiate contracts for discounts off Hospital charges before services are provided, or set up managed care plans which function on the basis of negotiated rates, just as health insurance companies have negotiated payment arrangements with hospitals and other providers. This bill would require the Workers' Compensation Commission instead to become a ratemaking agency and force the Commissioners to determine in thousands of individual cases from hospital to hospital and year to year, the "amount it actually costs the hospital to render the service." The bill provides no definition of that term or other guidance for the Commissioners. There is no basis to believe that the Commission has the desire, the staff or the expertise to perform the highly complex task of determining what it actually costs a hospital in each case to



treat an injured worker. That process necessarily would require the commissioners to consider the impact of substantial discounts against charges taken by Medicare and Medicaid, the vast amount of unpaid and uncompensated care hospitals provide to uninsured and underinsured patients, and overhead and capital expenditures required to operate a hospital and provide services to an individual patient. Fairpay claims that its methodology for allegedly determining "actual cost" is proprietary information which it has refused to disclose in proceedings in other states.

- Changing Retroactively the Standard for Setting Hospital Rates and Imposing a Statute of Limitations Would Be Unfair to Employees and Hospitals – The inherent unfairness of changing the rules midstream for numerous pending cases involving costly medical services is clear. The proposed bill would add to Section 31-294d a new and undefined "actual cost" standard for the reimbursement of hospital services that were already provided and charged to the insurer in the past. In addition, however, it would impose an arbitrary 18 month statute of limitations on claims for services provided before July 1, 2013. The impact of this provision would be to cut off hundreds if not thousands of existing claims before they could be resolved and in some instances before they were even filed. The bill overlooks the fact that the workers compensation statutes already contain a statute of limitations for employees to seek benefits, including reimbursement of hospital charges. The Worker's Compensation statutes already require an employee seeking benefits to provide written notice of a claim for compensation within one year from the date of the accident which caused the personal-injury or within three years from the first manifestation of a symptom of an occupational disease. Failure to provide the notice doesn't bar a claim if there's been a hearing request within a year from the date of the accident, if a voluntary agreement has been submitted, or if within the one year period the employee has been furnished medical or surgical care for the injury by the employer. As long as the employee has complied with the notice requirement or comes within one of the exceptions, the hospital has independent standing to seek recovery of its medical bill.
- Fairpay's Attempts to Underpay Hospitals are Arbitrary and Should Be Challenged – The legislative changes which Fairpay is asking the Connecticut legislature to make appear to be designed to require case-by-case review of hospital charges, presumably because that is the only manner in which Fairpay can continue to play a role in the process. If carriers and providers negotiate rates, or employers set up approved managed care plans, there is no need for individual review of bills by re-pricing company such as Fairpay Solutions. Instead of adopting Fairpay's proposals, the legislature should be investigating the tactics which the company has been using for years to underpay Connecticut hospitals for services. In many cases, the amounts which Fairpay determines should be paid to hospitals for services based on its evaluations are less than the amount which an uninsured person would pay to a Connecticut hospital pursuant to Section 19a-673 (the "Looney Law"). (It is informative to note that the Looney Law expressly excludes from the definition of an uninsured person anyone whose care is covered by the Workers' Compensation Act). In addition, until the recent Commission ruling against them, the company had used a variety of unusual tactics to stall or avoid any detailed analysis of the



payments made for services. Before Fairpay entered the Connecticut marketplace in 2006, hospitals collaborated with insurers and PPO's to negotiate payment agreements on a regular basis without any of these kinds of situations arising. The arbitrary claims' settlement methods of Fairpay should be examined by the Labor and Public Employees Committee or the Insurance Committee, not rewarded by special retroactive legislation.

- Finally, the bill sets up a dual payment system, under which the liability of employers and insurers to compensate hospitals for care provided to injured or ill workers differs from the general system utilized to determine rates of reimbursement for hospitals for treatment of every one else. This is inconsistent with the Supreme Court's interpretation of the "actual cost" language in Section 31-294d(d) in *Burge v. Stonington*, 219 Conn. 581 (1991). In *Burge*, the Court ruled that the purpose of the actual cost language was to ensure that workers compensation insurers and employers pay under the same system that applies to everyone else. That system is described in section 19a-646, the basis for the Trial Commissioner's ruling against Fairpay which it seeks to overturn by means of this bill.

The Labor and Public Employees Committee and the Legislature Should Reject Raised Bill No. 1074.

