



## WATERBURY HOSPITAL

**TESTIMONY OF  
WATERBURY HOSPITAL  
JAMES MOYLAN  
CHIEF FINANCIAL OFFICER**

**SUBMITTED TO THE  
LABOR AND PUBLIC EMPLOYEES COMMITTEE  
Tuesday, March 8, 2016**

Waterbury Hospital appreciates the opportunity to submit testimony supporting **HB 5506, AN ACT STUDYING THE LIABILITY OF EMPLOYERS FOR HOSPITAL SERVICES IN WORKERS' COMPENSATION CASES**. This proposed legislation would require the Labor Commissioner, in consultation with the chairman of the Workers' Compensation Commission, to conduct a study regarding the liability of employers for hospital services in Workers' Compensation cases. It would also help clarify the intent of section 459 of the implementer bill passed during the June 2015 special session.

It is particularly important that the Committee pass this bill in order to clarify that section 459 of the implementer bill does *not* apply to Workers' Compensation cases before April 1, 2015 when the new fee schedule became effective. Without clarification, payments will continue to be delayed; this would further exacerbate the already-challenging finances of Waterbury Hospital and hospitals across the state.

The issue of Workers' Compensation reimbursement has been debated for years. Both the Workers' Compensation Board and the Connecticut Supreme Court have made congruous decisions on the issue—yet controversy and delays continue.

Here is the background of how we got to where we are today and why the passage of this bill is so important.

Initially, the dispute over appropriate Workers' Compensation reimbursement began when we began to notice that a number of Workers' Compensation insurers and self-insured employers suddenly started to pay us for our services at alarmingly low rates—in many cases, less than we received from an uninsured patient. When we investigated these unusual cases further, we found that many of them involved a re-pricing company out of Texas, called Fair Pay Solutions, Inc. We tried repeatedly to discuss these cases with Fairpay and to negotiate acceptable levels of reimbursement, but Fairpay and its clients routinely ignored us.

As a result, we and other hospitals were forced to file claims before the Workers' Compensation Commission. During the litigation process, all parties involved—hospitals, insurers, and employers—reached an agreement on an approach to resolve the issue. We agreed that a number of cases would be treated as test cases and that the outcome of these cases would control the disposition of the majority of cases that were still awaiting resolution. Everyone saw this as the best way to avoid tying up the Worker's Compensation Commission for years, adjudicating

thousands of claims involving subject matter over which it had no special expertise. We all recognized that years of handling these claims would interfere with the Commission's main function of adjudicating injured workers' rights to benefits.

In September 2012, the Workers' Compensation Commissioner who heard these cases issued a very detailed ruling sustaining the position of the hospitals - that insurers and employers were required to pay Chargemaster charges unless they had negotiated a different rate of reimbursement before the services were provided.

In March 2015, the Connecticut Supreme Court unanimously affirmed Commissioner Schoolcraft's ruling, establishing that absent a negotiated rate, Workers' Compensation insurers and employers were required to pay the hospitals' Chargemaster charges. We anticipated that the thousands of claims could now finally be quickly resolved.

Part of the June 2015 budget implementer bill, section 459, has again called all this into question. Fairpay and others claim that this bill was intended to overturn the Supreme Court's ruling, and retroactively impose a one-year statute of limitations which they argue extinguishes many of the pending claims. If left unaddressed, the section will now require years more litigation before the Workers' Compensation Commission and ultimately the Supreme Court can determine whether it was intended to apply retroactively despite the fact that there is absolutely no legislative history supporting that conclusion, and, if so, whether it is unconstitutional.

It's important to note that this section of the bill was passed without any notice to, or input from, the hospital community or the Workers' Compensation Commission, and with no opportunity for public comment.

For these reasons, I urge you to pass legislation making clear that last year's implementer bill was not intended to have any impact upon cases arising before April 1, 2015 when the new fee schedule came into effect. Rather, those cases should be resolved under the standards articulated by the Supreme Court as all parties understood would be the case when they devoted years to the litigation culminating in that opinion.

I understand there is some concern that clarifying the bill as proposed would somehow result in reopening claims that were settled following the Supreme Court's opinion. That is not the case. Those cases are the subject of binding agreements containing releases of claims, and those agreements have been incorporated into final stipulations approved by the Chairman of the Workers' Compensation Commission. In short, those claims cannot be reopened. There also is no basis to fear a flood of new claims based on treatment before the fee schedule became effective. To address this possibility, the Legislature need only include a short statute of limitations limiting the time during which hospitals can assert new claims arising before the fee schedule became effective.

Hospitals are currently facing severe budgetary pressure on many fronts. It is simply unfair to impose upon us further delay and uncertainty regarding reimbursement for our Workers' Compensation cases, particularly in light of the unanimous Supreme Court ruling in our favor.

Thank you for your time and consideration of this important question.