Proposed change Connecticut General Statutes, §52-225c, known as the “Anti-subrogation statute”, which bars the provider of a collateral source benefit from seeking recovery from the defendant in a personal injury action, would not apply to self insured towns or municipalities.

C.G.S.A. § 52-225c

## § 52-225c. Recovery of collateral source benefits prohibited

Unless otherwise provided by law, no insurer or any other person providing collateral source benefits as defined in section 52-225b shall be entitled to recover the amount of any such benefits from the defendant or any other person or entity as a result of any claim or action for damages for personal injury or wrongful death regardless of whether such claim or action is resolved by settlement or judgment. The provisions of this section shall apply to insurance contracts issued, reissued or renewed on or after October 1, **1986** ***but shall not apply to self funded health plans provided by a town or municipality within the state of Connecticut. (Added text)***

## List of Self-Insured Municipalities in CT:

Bloomfield
Bristol
Colchester
East Hartford
Danbury
East Hartford
East Haven
Enfield
Essex
Farmington
Glastonbury
Granby
Groton
Guilford
Hartford
Ledyard
Litchfield
Madison
Middletown
Milford
Montville
New Haven
Newington
Newtown
Norwalk
Portland
Putnam
Southington
South Windsor
Stonington
Stanford
Tolland
Torrington
Vernon
Wallingford
Waterbury
Waterford
West Haven
Westport

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February 22, 2017

RE: HB 6221 An Act Concerning Recovery of Municipal Health Care Pan Funds

Under current state law, recovery of collateral source benefits – expenses for medical /health/ dental treatment paid by another, are not recoverable against the person that caused the harm necessitating the medical treatment.

The Connecticut Workers Compensation Act specifically allows the recovery of such costs if the expenses were incurred under these statutory provisions. Conn. Gen. Stat. §38a-470(b). Additionally, federal law authorizes recovery of the health costs if paid pursuant to a health plan that conforms to the Employee Retirement Income Security Act of 1974 (ERISA).

As a result of the absence of Connecticut statutory authority, commercial health insurers that provide medical/ dental or pharmaceutical insurance in compliance with federal statutes (ERISA) are allowed to recover, or "subrogate" medical costs from the person causing the harm.

The proposed concept legislation would permit a self-insured municipality, such as Waterbury and other self-insured towns and municipalities, to subrogate and recover health benefits paid consistent with the authority under federal law afforded to commercial insurance carriers and authorized under the Connecticut Worker's Compensation Act.

By way of example, if a City employee was involved in a car accident or other circumstance that caused injury to the employee, the City will be responsible for the employee's medical expenses under the employee's health/ medical and pharmaceutical group health coverage. Should the employee later recover against the responsible party causing the injury and medical need, the responsible party is not be obligated to reimburse the City for the medical expenses paid because the City is self-insured. If the City maintained a health benefit plan under federal law, the City would be authorized to recover its paid medical expenses under ERISA. If the employee was

injured during the course of employment, the expenses would be recoverable under the Workers Compensation Act.

In this example, the only party that has benefited from the absence of statutory authority is the responsible party. This responsible party often has coverage to reimburse the City for its paid medical expenses under the State's mandatory minimum automobile insurance coverage limits.

As the result of the absence of statutory authority, the taxpayers of a self-insured municipality or town pay the medical expenses of injured employees when the wrongful conduct of another has caused injury. The City or Town would have a right to recover the expense if it was insured through a commercial policy under federal law. The proposed legislation would allow the City to recover medical expenses when another party is responsible for the injury.

Previous estimates from the City's third party health benefits administrator indicate that potential recovery of 1% of the City's annual paid medical benefits is not collected as a result of the absence of authorizing state legislation. This estimate is based upon its experience in other states that authorize subrogation. The City of Waterbury would potentially recover one million dollars per year ($1,000,000) based upon its annual expenditure on employee health benefit claims.

Again, by way of analogy and to indicate potential similar recovery, in the first 6 months of the current fiscal year, the City has collected over $202,292, pursuant to its right of subrogation authorized under Connecticut Workers Compensation Act. This collection effort represents 10% of medical expenses the City paid this fiscal year in workers' compensation claims.

The recovery of benefits would occur only when another party is liable for the medical costs. The City would continue to provide the medical benefits upfront, and recovery of funds, as is appropriate would be pursued against the responsible party.

Thank you for the opportunity to address you concerning proposed HB 6221. I attach the proposed amendment to Connecticut General Statutes, §52-225c authorizing the recovery as proposed.

Sincerely,

Linda T. Wihbey, Esq.