



March 22, 2021

RE: **SB 1029 – AN ACT CONCERNING CAUSES OF ACTION AGAINST LICENSED NURSING HOME FACILITIES FOR FAILURE TO MEET STANDARDS OF CARE RELATED TO COVID-19.**

Dear members of the Judiciary Committee:

I am Joy Avallone, General Counsel of the Insurance Association of Connecticut (IAC), a state-based trade association for Connecticut's insurance industry. Thank you for the opportunity to provide comments in strong opposition to SB 1029 – AN ACT CONCERNING CAUSES OF ACTION AGAINST LICENSED NURSING HOME FACILITIES FOR FAILURE TO MEET STANDARDS OF CARE RELATED TO COVID-19.

We respectfully submit that this proposal is both unreasonable and unnecessary. Causes of action exist and may be asserted against nursing homes under current law for claims arising from negligence or professional malpractice (medical malpractice), among others. There is no need to establish a new COVID-19 specific cause of action because COVID-19 related claims may already be pursued. This proposal would open the litigation floodgates and be problematic and costly for nursing homes, the court system, and insurers.

Medical malpractice claims are some of the more costly claims to defend and litigate. In recognizing the potential for frivolous lawsuits, our legislature has enacted certain safeguards. In regard to medical malpractice claims, the party filing the lawsuit and alleging medical malpractice must certify that he or she has made a reasonable inquiry into the facts of the case and has a good faith belief that negligence has occurred. In order to accomplish this, Connecticut law requires that the complaint must be accompanied by a "certificate of good faith", a written statement of a medical professional of the same or similar practice area to that of the alleged negligent party saying that in his or her opinion there is reason to believe there was a breach of the standard of care owed to the patient. That statement must contain a detailed explanation of how that conclusion was reached, and the person giving such a written statement must be qualified under the same rules used to qualify expert witnesses at malpractice trials. Under current law, a claim may not be pursued without that certificate.¹ This proposal would likely eliminate that safeguard.

Under SB 1029, a nursing home would be held to a strict liability standard, with automatic liability to any person for any loss arising from exposure to COVID-19 due to the failure to comply with guidance. It may also be found to be negligent per se, for negligence in complying with any standard of care specified in guidance issued by the Department of Public Health ("DPH") or the National Centers for Disease Control and Prevention ("CDC"). It is important to note that DPH and CDC guidelines (including personal protective equipment

¹ C.G.S. Sec. 52-190a

guidelines, return to work guidelines, testing requirements and others) were continuously changing throughout the pandemic, and at times the guidelines differed or conflicted. SB 1029 is problematic because a nursing home may be liable for damages in instances where they fully complied with one set of guidelines, but not the other. Nursing homes would also be liable regardless of whether non-compliance was due to no fault of their own.

This proposal is extremely broad in nature. As drafted, “any” person may bring a claim for “any” loss, damage, injury or death arising from “exposure” to or transmission of COVID-19 at a nursing home, due to the failure of such nursing home to comply with any standard of care of the CDC or DPH. As such, this gives individuals far removed from the person who was actually exposed to COVID-19 standing to bring suit. For example, any friend, relative, co-worker, or neighbor of someone who was “exposed” to COVID-19 may bring suit for their own emotional distress stemming from that other person’s exposure.

To the extent that this proposal may have retroactive implications, this would be extremely problematic for insurers and insureds because these losses were never contemplated and therefore, are not reflected in premiums. As such, this would result in tremendous unfunded liability.

For the aforementioned reasons, the IAC urges you not to advance this bill.

Thank you.

Joy Avallone
General Counsel
Insurance Association of Connecticut