

# Legislative History for Connecticut Act

**PA 16-209**

SB266

Senate	2667-2670, 2746-2747	6
Aging	271, 273-276, 283-285, 289-291, 302-303, 321- 322, 333-334	17

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**Transcripts from the Joint Standing Committee Public  
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**CONNECTICUT  
GENERAL ASSEMBLY  
SENATE**

**PROCEEDINGS  
2016**

**VOL. 59  
PART 8  
2400 – 2750**

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I'm sorry, Madam President. I was told the bill was on the floor.

THE CHAIR:

Just a moment.

Senator Flexer. Will the clerk please call calendar 169, Senate Bill 266.

THE CLERK:

On page 36, Calendar 169, Substitute for Senate Bill Number 266, AN ACT CONCERNING A RIGHT TO RESCIND A NURSING HOME CONTRACT. There are amendments.

THE CHAIR:

Thank you, Mr. Clerk. Senator Flexer, you have the floor, Madam.

SENATOR FLEXER (29TH):

Thank you, Madam President. I move for acceptance of the Joint Committee's favorable report and passage of the bill.

THE CHAIR:

Motion is acceptance and passage. Madam, will you remark?

SENATOR FLEXER (29TH):

Yes. Thank you, Madam President. Madam President, the clerk is in possession of an Amendment LCO Number 5473. I would ask the clerk please call the

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Amendment and that I be granted leave of the chamber to summarize.

THE CHAIR:

The clerk is in possession of LCO 5473. Will the clerk please call and Senator Flexer has asked leave to summarize.

THE CLERK:

LCO Number 5473, Senate "A" offered by Senators Flexer, Kelley, et al.

THE CHAIR:

Senator Flexer, you have the floor.

SENATOR FLEXER (29TH):

Thank you, Madam President. Madam President, the Amendment before us the strike-all amendment. It -- it -- the amendment before us will become the bill and the amendment before us is a product of the good work of the ranking member of the Aging Committee, Senator Kevin Kelly, and I'd like to yield to Senator Kelly.

THE CHAIR:

Madam -- Senator, would you move adoption, Madam?

SENATOR FLEXER (29TH):

I move adoption.

THE CHAIR:

Motion is adoption. Will you remark and accept the yield, Senator Kelly?

SENATOR KELLY (21ST):

Thank you very much, Madam President, and yes, I will accept the yield. I would like to thank the Chairman of the Aging Committee, Senator Flexer, for her leadership on this issue.

What the bill does, is it basically is a good bill to protect families at the time of admission to a nursing home and entering into the contract, which can be very stressful and what this is going to do is provide notice to those families so that they understand what their roles and responsibilities as well as the liability and that they're gonna' be given a conspicuous notice. It's in 14 point type and it's something that they're going to have to initial next to that notice. I think this is a good bill. It goes a long way to protecting the families. A consumer protection perspective as well as the nursing homes. This is a product of getting both the nursing home industry and the Connecticut Department on Aging and the long term care ombudsman on board. It's a collaborative effort and I do appreciate Senator Flexer's leadership in this issue. So I certainly support the bill. Thank you.

THE CHAIR:

Thank you, Senator Kelly. Will you remark? Will you remark further? If not, I will try your minds. All those in favor of Senate Amendment "A" please indicated by saying "aye".

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SENATORS:

Aye.

THE CHAIR:

Nay. Those opposed nay. The ayes have it. The Amendment is adopted. Will you remark further on the bill as amended? Senator Flexer.

SENATOR FLEXER (29TH):

Thank you, Madam President. If there's no objection, I move that we place this item on our Consent Calendar.

THE CHAIR:

Seeing no objection, so ordered. Thank you. Senator Duff, you have the floor, sir.

SENATOR DUFF (25TH):

Thank you, Madam President. Madam President, we have come to the moment where we are going to take a recess for the purposes of caucuses and we will probably come back in about an hour-ish.

THE CHAIR:

Thank you, Senator Duff. So ordered. The chamber will stand in recess.

(The Senate recessed. Upon reconvening, Senator Osten in the chair)

THE CHAIR:

Senate Bill 351, on page 2, Calendar 157, Senate Bill 69. Page 4, Calendar 341, Senate Bill 328, page 5, Calendar 375, House Bill 5296, page 6, Calendar 384, House Bill 5393. Also on page 6, Calendar 383, House Bill 5430. On page 7, Calendar 385, House Bill 5254. Page 8, Calendar 393, House Bill 5255, page 11, Calendar 440, House Bill 5252. On page 14, Calendar 475, House Bill 5627, Page 15, Calendar 477, House Bill 5072. Page 18, Calendar 498, House Bill 5513, Page 19, Calendar 502, House Bill 5526. Page 20, Calendar 504, House Bill 5403. Page 22, Calendar 516, House Bill 3 -- I'm sorry -- 5358. Page 22, Calendar 519, House Bill 5053. On page 24, Calendar 533, House Bill 5605, Calendar 532, House Bill 5335, Calendar 530, House Bill 5498, and Calendar 534, House Bill 5621. On page 27, Calendar 549, House Bill 5416. Also on page 27, Calendar 546, House Bill 5571. Page 28, Calendar 552, House Bill 5180. On page 30, Calendar 563, House Bill 5412. Page 31, Calendar 567, House Bill 5537. Page 31, Calendar 569, House Bill 5620. On page 32, Calendar 571, House Bill 5435. Page 34, Calendar 583, House Bill 5400. On page 35, Calendar 586, House Bill 5521. Page 36, Calendar 169, Senate Bill 266. Page 37, Calendar 207, Senate Bill 327. Page 39, Calendar 361, Senate Bill 15. Page 41, Calendar 246, Senate Bill 88. Also on page 41, Calendar 464, House Joint Resolution Number 38. Calendar 465, House Joint Resolution 43. On page 42, Calendar 466, House Joint Resolution 99. Page 42, Calendar 467, House Joint Resolution 121. Also on page 42, Calendar 468, House Joint Resolution Number 133, and on page 43, Calendar 470, House Joint Resolution Number 136.

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Okay. The clerk shall announce pendency of a roll call vote on the Consent Calendar. The machine is open. Please cast your vote.

THE CLERK:

Immediate Roll Call has been ordered in the Senate. Immediate Roll Call on today's Consent Calendar has been ordered in the Senate.

THE CHAIR:

Have all members have voted? Have members have voted? Please check to see that your votes have been properly recorded. If so, the machine shall be closed and the clerk shall announce the tally.

THE CLERK:

On today's Consent Calendar.

Total number voting	36
Necessary for Adoption	19
Those voting Yea	36
Those voting Nay	0
Those absent and not voting	0

THE CHAIR:

Consent Calendar is done. Senator Duff, for what reason do you rise?

SENATOR DUFF (25TH):

Many reasons, Madam President, thank you. Madam President, I move that all items that require action



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government. I just hope that you will participate with us where ever this moves on, whether it winds up in the judiciary committee in a referral. Ok and thank you for your testimony.

JUDGE KNIERIM: (inaudible) certainly happy to participate in. Of course the main objective on our part would be to integrate with the existing statutory framework.

REP. SERRA (33RD): Absolutely.

JUDGE KNIERIM: That is a very good conservator law.

REP. SERRA (33RD): Absolutely. That's probably our job. I tell people many, many times we make very little new law up here. We modify existing law. Not sure if my colleagues know that but that's basically what we do up here, and that's what this is all about. Modifying existing law to make it better for the citizens here in Connecticut. And thank you for our testimony.

JUDGE KNIERIM: Thank you very much.

REP. SERRA (33RD): Any other questions from the committee? Thank you Judge. Next is the commissioner Ritter, she's not. Is she coming? Oh she's here. Ok well how about lets have Nancy Shaffer come up so that the commissioner can get everything put together before she comes up in her mind. Good morning Nancy.

MS. SHAFFER: Good morning Representative Serra. The commissioner was kind enough to drop me off and she's been circling, and took a walk I think. So I appreciate, I appreciate that. Good morning Senator

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that because I think that what we would do is certainly hopefully intervene before the court would have to be moved to have further discussion with the conservator, if the conservator deems it not appropriate for that interaction. We understand that sometimes it's certainly not in the best interest of the conserved person to have that interaction but still we try to honor as best we can their right to have that choice of some type of interaction, in some negotiable-safe setting in some circumstances. I'd also like to talk with you today about senate bill number 266 raised and act concerning a right to rescind a nursing home contract. It appears to me in having had discussion with the legal counsel for the ombudsman program that having that opportunity to rescind and agreement is a good consumer protection. And for that reason we appreciate the proponent of this proposal, having raised it. As you can imagine admitting one's self or a loved one to a nursing home is a monumental decision and is often times done at a time when the individual may be in the hospital or having medical challenges. Often times it has to be made very quickly. And so when the individual is in the nursing home and the resident and or the family determine that this isn't the proper setting for them, that right to rescind the agreement is good. I just have a number of questions about that. What happens under the circumstances and I don't think the proposal address those things. And firstly I'm not sure what the status of the resident is going to be at the time that the contract is rescinded. Is the resident immediately discharged with a plan of care and services? Will the nursing facilitate a transfer to a home without contract? Is the resident or the family responsible for developing a care plan in facilitating its own discharge? Will the nursing home provide care

until the person leave the home to insure that their needs are met? And can parts of the contract remain valid after the contract is rescinded? Admission agreements generally have a clause that's part of a multi-page agreement that states that the resident family will give fifteen days' notice if they are going to discharge. I'm not sure what happens with that fifteen day notice either, how that would play into rescinding the agreement. I, while I, I agree with the concept of the rescinding the agreement as for consumer protection, I, I think that our office at this point is not supportive of the proposal until we kind of take a look at some of those health and safety possible ramifications for the residents. Thank you, if you have any questions I'm happy to answer.

REP. SERRA (33rd): Any questions from members of the committee? I do have a question Nancy, some of your concerns, this is something all of us sitting here, members of this committee want to make these bills better, want to protect our most vulnerable population, can you meet with our staff and let them know exactly what your concerns are?

MS. SHAFFER: Sure.

REP. SERRA (33RD): Maybe we can make some modifications and make this bill better.

MS. SHAFFER: Certainly.

REP. SERRA (33RD): For everybody

MS. SHAFFER: Certainly and I'd be happy to meet with the representatives of the provider association so maybe some of my concerns have already been discussed

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on their end and they've already got responses to that, and so collaborating with them would also be helpful I think.

REP. SERRA (33RD): Once those recommendations are made, make sure that the committee's aware of what the changes are.

MS. SHAFFER: Sure. I'll do that

REP. SERRA (33RD): Any other questions from the members of the committee? Thank you Nancy.

MS. SHAFFER: Thank you.

REP. SERRA (33RD): Commissioner Ritter are you all set? Good morning Commissioner.

MS RITTER: Good morning Representative Serra, Senator Flexer, Representative Bolinsky, distinguished members of the aging committee. I appreciate the opportunity to be here to testify today and I want to thank you all for going ahead and raising House Bill 5379, an Act Concerning the Removal of Obsolete Provisions from the Choices Health Insurance Assistance Programs statutes. The bill proposes to amend the current choices statute, which I'll remind you is Connecticut's program for health insurance assistance, outreach, information and referral, counseling and eligibility screening by eliminating sections that have become obsolete, and are no longer applicable to the choices program. These sections were put in place when there were a great number of Medicare managed care plans, most of which no longer exist and they have been replaced with the Medicare Advantage plan. The Federal Government currently provides Federal

oversight over those plans. Current statutes state that the commissioner of insurance may require each Medicare organization to annually file reports with beneficiary plan data and other specified information. A Medicare organization can be fined for failure to file these annual reports however the Department of Insurance does not require these organizations to file the reports, and consequently fines are imposed and no reports regarding the lack of filings by these Medicare organizations are provided to the General Assembly by the health care advocates. For these reasons we propose elimination of the designated statutes. I would like to add that previous to submission of this bill, it has been seen by both the commissioner of the Department of Insurance, as well as the health care advocate and they concur. Thank you for your time.

REP. SERRA (33RD): Thank you commissioner. Any questions from the members of the committee? Thank you commissioner.

MS. RITTER: You're welcome, and thank you for your forbearance with the schedule.

REP. SERRA (33RD): Next is John Sayour from --. Good morning, would you please state your name for the record.

MR. SAYOUR: Good morning, chairman and the members of the Committee. My name is John A Sayour. I'm representing here today NAIFA, that's the National Association of Insurance and Financial Advisors. I'm here to discuss SB 265, an Act Concerning the Protection of Consumers who Receive Investment Advice from Financial Advisors. I'm a thirty year

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going to be a cost savings. The ability to keep people mobile and not develop the medical conditions, just in, you know, not to go into great detail with you but if an individual is not being moved properly on on-going basis and they develop a pressure ulcer, the readmission for that into a hospital, can be in the area of \$40,000+. Not to say everything else that goes along with it so we do believe that mobility will drive out cost.

REP. SERRA (33RD): Any other questions from members of the committee? Thank you

MR. CURATOLO: Thank you very much.

REP. SERRA (33RD): Next is Mag Morelli and followed by Lucy Noland.

MS. MORELLI: Good morning Representative Serra, Members of the Aging Committee. My name is Mag Morelli and I'm the president of LeadingAge Connecticut, a membership association representing not for profit provider organizations serving older adults across the fields of aging services and senior housing. I'm here today to testify on Senate Bill 266 an Act Concerning a Right to Rescind a Nursing Home Contract. LeadingAge Connecticut cannot support this bill as proposed. The current law and regulations regarding nursing home admissions transfers and discharges would make a three day right to rescind a nursing home admissions agreement highly troublesome for nursing homes, and particularly with regard to sub-acute admissions. The admissions contract provides the nursing home with a source of payment and/or obligation for the resident or responsible

party to arrange for payment through private or public resources. If a resident or the responsible party is provided the opportunity to sign an admissions contract and they accept admission into the nursing home, but then rescind their signature once admitted, it would be extremely difficult for the nursing home to then discharge or transfer the resident assuming the resident chooses to stay. Without a signed contract there would be no reliable pay source for that residents nursing home stay. The bill calls for a three day right of rescission for a plan long stay admission the nursing home may choose to wait for three days after the contract has been signed to actually admit the resident and avoid this concern. However sub-acute admissions are often arranged quickly so as to facilitate a proper discharge and transfer from a sub-acute, from an acute setting. Waiting three days for a sub-acute admission would be highly disruptive to the health care system and it would require a patient to wait for three days in the hospital before being transferred to a sub-acute setting for short term rehab. You can see how this would be un-workable. While we do not support the bill as proposed, we realize that there must be an underlying concern that is prompting the request, and would be more than willing to discuss any such concerns with the committee. Thank you for the opportunity to present this testimony.

REP. SERRA (33RD): Any questions from members of the committee? Thank you Mag. What I think maybe you should do is talk to some of our staff, because you know we're all in agreement to make this bill better. I think in law there is in certain areas, there is a three day rescission, and certain areas not this one but I just would want some consistency in some of our



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other state law that govern other aspects of what we have out there.

MS. MORELLI: And our concern isn't necessarily with the contract, and a consumers right to rescind a contract, it's the fact that the transfer and discharge laws that govern a nursing home once someone is admitted sort of but up against that and put us into peril if someone decides to purposely do this.

REP. SERRA (33rd): I think this committee is looking to make things better.

MS. MORELLI: Right

REP. SERRA (33RD): So with that in mind, if you would provide some of our staff with your expertise in this area.

MS. MORELLI: Absolutely.

REP. SERRA (33RD): We'd be happy for that.

MS. MORELLI: Be happy to.

REP. SERRA (33RD): Thank you. Any questions? Thank you.

MS. MORELLI: Thank you very much.

REP. SERRA (33RD): Lucy Noland please. Followed by Kathy Flaherty

MS. NOLAND: Good morning Representative Serra, members of the Aging Committee, my name is Lucy Nolan.

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REP. SERRA (33RD): Thank you. Any questions from members of the committee? I guess, what you just stated with the other four states I think I mentioned, that have done something with this. We're not looking to rewrite that whole statute, but if what you say is correct, our attorneys and people who review this will let us know whether Connecticut already takes care of this issue that was pointed out to us by Peter Falk's granddaughter. So with that, any questions from the committee? Thank you

MS. FLAHERTY: Thank you.

REP. SERRA (33RD): I don't see Matt Barrett. Joelen Gates. Good morning.

MS. GATES: Good morning. My name is Joelen Gates, I'm an attorney with Connecticut Legal Services and I practice Elder Law. I'm the managing attorney of Willimantic office and am here today to testify on House Bill 5361, and House Bill 266. Regarding House Bill 5361, an Act Concerning a Protected Person's Right to Interact With Others, it's stated that the goal is to protect the rights of protected persons to interact with family and friends, and furtherance of this goal the proposed statute would expand the jurisdiction of the probate court to authorize a conservator person to impose restrictions on the social interactions including phone, mail, and visits of the conserved person. The legal services community has experience with conservators taking action without authority to limit the right of conserved persons to freely associate. An individual's right of association is a fundamental right and should be protected. We therefore believe that it would be in interest of conserved persons to have a statute to

establish a procedure by which a probate court could carefully consider restrictions when they have been proven to be necessary to protect the conserved person. Without such an order the right of the conserved person to associate with friends and family should be unrestricted and under the conservatorship statutes a conserved person retains all rights and authority not expressly assigned to the conservator. As drafted House Bill 5361 is not consistent with existing conservatorship and other law. We are proposing substantial changes to House Bill 5361 to insure that proper procedural protections are in place, that the existing mandates of the conservatorship statute are followed, and that the provisions of the Patient's Bill of Rights are not abrogated. Our proposed changes are attached to my testimony and I, you can see that we have marked up the proposal there. The two things I just wanted to highlight are that the, the evidentiary standard in House Bill 5361 is good cause, and we would like to raise that standard to, clear and convincing evidence. That would conform with the other standard of proof in the current conservator statute. And then secondly that any restriction of a resident in a nursing home, residential care home or other facility covered by the Patient's Bill of Rights, should comport with requirements of existing law. Under the Patient's Bill of Rights, in nursing homes there has to be a documentation in the medical record that the visitors, that the patient or the resident should not have some visitor because it would be medically contra-indicated, so there would have to be medical evidence for that. Regarding House Bill 266 an Act Concerning a Right to Rescind a Nursing Home Contract, this would provide a consumer with a three day period to rescind a nursing home contract. We support this effort to

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protect individuals and their families from being pressured into contracts of adhesion with nursing homes. Nursing home admission is a time of crisis and emotion. The process occurs after either a medical emergency or when a family reluctantly decides it can no longer care for the family member, and there is pressure to find a nursing home placement and when people are signing nursing home contracts they are just under a lot of emotional stress and they sign things often times without having the time and to read carefully what every provision is. We believe there is considerable work to be done in the nursing home admission process to make it a fair one for consumers and ultimately we would like to see Connecticut develop a detailed requirement provisions for nursing home contracts or a standard nursing home contract. States like Maine and California have a standard uniform contract that everybody could see in advance and everybody would know what the contract says you wouldn't have a variation from one nursing home to another nursing home about various provisions in the contract that may be objectionable. So those are -- thank you very much for your time. Do you have any questions?

REP. SERRA (33RD): Thank you. Are there any questions from the committee? Thank you. Next person is I can't read the first name but it's Castro is the last name, and if you can state you first name. Good morning.

MS. CASTRO: Good morning. My name is Migdalia Castro, Senator Flexer, Representative Serra, and members of the Aging Committee, I'm Migdalia Castro, Director of Elderly Services for the city of New Haven. I'm here and testifying in support of Senate

SB241



**Testimony to the Aging Committee**

**Presented by Mag Morelli, President, LeadingAge Connecticut**

**March 3, 2016**

**Regarding**

**SB 242, An Act Concerning Nursing Home Care**  
**SB 266, An Act Concerning a Right to Rescind a Nursing Home Contract**

Good morning Senator Flexer, Representative Serra, and members of the Aging Committee. My name is Mag Morelli and I am the President of LeadingAge Connecticut, a membership association representing not-for-profit provider organizations serving older adults across the entire field of aging services and senior housing. On behalf of LeadingAge Connecticut, I would like to submit the following testimony on two of the bills that are before you today and offer the Committee our assistance as you consider these issues.

**SB 242, An Act Concerning Nursing Home Care**

LeadingAge Connecticut has no objection to this proposed bill and would be happy to assist the Committee with such a study.

**SB 266, An Act Concerning a Right to Rescind a Nursing Home Contract**

LeadingAge Connecticut cannot support this bill as proposed. The current laws and regulations regarding nursing home admissions, transfers and discharges would make a three day right to rescind a nursing home admission agreement highly troublesome for nursing homes and particularly with regard to subacute admissions.

The admissions contract provides the nursing home with a source of payment and/or an obligation for the resident or responsible party to arrange for payment through private or public resources. If a resident or their responsible party is provided the opportunity to sign an admissions contract and accept admission into the nursing home, but then rescind their signature once admitted, it would be extremely difficult for the nursing home to then discharge or transfer the resident, assuming the resident chooses to stay. However, without a signed contract, there would be no reliable payer source for that resident's nursing home stay.

The bill calls for a three day right of rescission. For a planned admission, the nursing home may choose to wait for three days after the contract has been signed to actually admit the resident and avoid this concern. However, subacute admissions are often arranged for in a prompt manner so as to facilitate a proper discharge and transfer from an acute care setting. Waiting three days for a subacute admission would be highly disruptive to the health care system as it would require a patient to wait for three days in the hospital before being transferred to a subacute setting for short term rehabilitation. You can see how this would be unworkable.

While we do not support this bill as proposed, we realize that there must be an underlying concern that is prompting the request and we would be more than willing to discuss any such concerns with the Committee.

Thank you for this opportunity to testify and I would be happy to answer any questions.

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## AGING COMMITTEE

Public Hearing

March 3, 2016

Written testimony of State Ombudsman, Nancy Shaffer

Good morning Co-Chairpersons, Senator Flexer and Representative Serra, Vice-Chairpersons, Senator Osten and Representative Rovero, Ranking Members, Senator Kelly and Representative Bolinsky and esteemed members of the Aging Committee. My name is Nancy Shaffer and I am the Connecticut State Long-Term Care Ombudsman. Per the Older American's Act and CT General Statutes 17a-405-422 inclusive, it is the duty of the State Ombudsman to provide services to protect the health safety, welfare and rights of individuals who reside in skilled nursing facilities, residential care homes and managed residential communities/assisted living facilities. It is the responsibility of the State Ombudsman to advocate for changes in laws and governmental policies and actions that affect the health, safety, welfare and rights of residents.

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I appreciate this opportunity to testify on behalf of the more than 30,000 individuals who reside in our long-term care institutions throughout Connecticut:

**S.B. No. 266 (RAISED) AN ACT CONCERNING A RIGHT TO RESCIND A NURSING HOME CONTRACT.**

S.B. 266 allows the resident to rescind a nursing home admission agreement not later than the third day after signing the agreement. The Long-Term Care Ombudsman Program believes the intent of this proposal is to provide an added safeguard for the consumer at the time of an admission to a skilled nursing facility. Importantly, the resident or resident's designee should always have the opportunity to carefully review the admission agreement before signing.

Admitting one's self or a loved one to a nursing home is an incredibly important and difficult decision. And these decisions are often made at a time of an acute illness or medical challenges. If the individual is in the hospital and transitioning to a nursing home for continued care, these decisions oftentimes must be made quickly. And on short notice nursing home choices may be limited. At the time of admission there is also a great deal of paperwork that must be done. And the agreement is but one piece of this large "stack" of information and papers. It is likely new information for the consumer and it can feel overwhelming to them to digest it all and sign.



There are a variety of concerns that are not addressed in this proposal that may have potential ramifications for the residents' health and safety:

Firstly, what is the status of the resident at the time the contract is rescinded? Is the resident immediately discharged with a plan of care and services? Will the nursing home facilitate a transfer to another home without contract? Or, is the resident/family responsible for developing a plan of care and facilitate its own discharge? Will the nursing home provide care until the person leaves the home to ensure their needs are met? Can parts of the contract remain valid after the contract is rescinded? Admission agreements generally have a clause that the resident will give fifteen day notice prior to discharge, will that clause be removed from the agreement? And finally, I suspect nursing home providers may ask about their own liability during this "limbo" period of time.

The right to rescind a contract within three days of signing is an excellent protection for the consumer. But the questions about how rescinding the contract may effect the resident's status and his or her health and safety are important issues to address. In a query to other State Ombudsmen across the country, about a dozen responded that they do not have a similar statutory provision for rescinding an admission agreement in their states. No one responded that there is such statutory provision in their state. So we do not have any known examples from which to learn how best to operationalize this concept.

While not opposed to the concept of rescinding an admission agreement, the Office of the State Ombudsman does not support the proposal without further clarification about the protections for the residents' health and safety.

**H.B. No. 5361 (RAISED) AN ACT CONCERNING A PROTECTED PERSON'S RIGHT TO INTERACT WITH OTHERS.**

I understand that this proposal affects all individuals who are protected under CT statute because they are deemed incapable of meeting essential requirements for personal needs or managing financial affairs. As State Ombudsman I will provide comment on this proposal specific to the populations served by the Connecticut Long-Term Care Ombudsman Program- those who reside in long-term care settings.

The foundation and practice of the Long-Term Care Ombudsman Program is always to act at the direction of the resident. This practice can be a bit more challenging when the resident is conserved. Under some circumstances the conservator may determine it is in the conserved person's best interest to restrict interaction with certain individuals. When the resident tells us they want to have continued interaction the role of the Ombudsman is to then help the




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Testimony of Joelen Gates before the Committee on Aging  
 March 3, 2016

**Conditional Support of H.B. 5361, An Act Concerning a Protected Person's Right to Interact with Others, Only If Appropriate Revisions are Made**

**Support of H.B. 266, An Act Concerning a Right to Rescind a Nursing Home Contracts**

My name is Joelen Gates and I am the managing attorney of the Willimantic office of Connecticut Legal Services, a private, non-profit law firm. I practice elder law.

**House Bill 5361, An Act Concerning a Protected Person's Right to Interact with Others** has the stated goal of "protect[ing] the rights of protected persons to interact with family and friends." In furtherance of this goal, the proposed statute would expand the jurisdiction of the Probate Court to authorize a conservator of the person to impose restrictions on the social interactions (including phone, mail and visits) of a conserved person. The legal services community has experience with conservators taking action without authority to limit the right of conserved persons to freely associate. An individual's right of association is a fundamental right and should be protected. We therefore believe that it could be in the interests of conserved persons to have a statute to establish a procedure by which a Probate Court could order carefully considered restrictions when they have been proven to be necessary to protect a conserved person. Without such an order, the right of a conserved person to associate with friends and family should be unrestricted; under the conservatorship statutes, a conserved person retains "all rights and authority not expressly assigned to the conservator." Section 45a-650(k).

As drafted, H.B. 5361 is not consistent with existing conservatorship and other law. We are proposing substantial changes to H.B. 5361 to ensure that proper procedural protections are in place, the existing mandates of the conservatorship statute are followed, and the provisions of the Patients' Bill of Rights are not abrogated. Our proposed changes are attached to my testimony.

I urge you to review all of our suggested changes. I would like to highlight two of the most important.



1. The evidentiary standard in H.B. 5361 is "good cause". The standard required to sanction the fundamental right of association should be "clear and convincing" evidence. This conforms to the standard of proof already required in our conservatorship statute to deprive an individual of important civil liberties. Section 45a-650(a).
2. Any restriction of a resident of a nursing home, residential care home or other facility covered by the Patients' Bill of Rights must comport with the requirements of existing law.

With these and the other changes we have proposed, we would support this bill.

Senate Bill 266, An Act Concerning A Right To Rescind A Nursing Home Contract, would provide a consumer with a three day period to rescind a nursing home contract. We support this effort to protect individuals and their families from being pressured into contracts of adhesion with nursing homes. Nursing home admission is a time of crisis and emotion. The process occurs either after a medical emergency, or when a family reluctantly decides that it can no longer care for a family member at home. There is pressure to find a nursing home placement. While the individual and his or her family are focused on finding the best possible health care, they are presented with a barrage of forms, including a lengthy and complicated contract. They may be told that it must be signed in order to gain admission. They often must sign immediately; they are not afforded an opportunity to have the contract reviewed by an attorney. We have seen nursing home contracts which contain provisions which are unfair to consumers, and some which are illegal. It is not unusual for a contract to contain provisions requiring the prospective resident to waive a variety of federally or state protected rights.

We believe there is considerable work to be done to make the nursing home admission process a fair one for consumers. Ultimately, we would like to see Connecticut develop detailed required provisions for nursing home contracts or a standard nursing home contract. States like Maine and California have such laws in place. Meanwhile, this bill is a good first step to protect vulnerable people in a time of crisis.

Thank you for your time and your attention to these important issues.

Attachment: Proposed Changes to H.B. 5361