CONNECTICUT TRIAL LAWYERS ASSOCIATION

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TO: **MEMBERS OF THE HUMAN SERVICES, PUBLIC HEALTH AND INSURANCE AND REAL ESTATE COMMITTEES**
FROM: **CONNECTICUT TRIAL LAWYERS ASSOCIATION**
DATE: **FEBRUARY 14, 2011**

RE: **OPPOSITION - SEC. 13 RB6305 AAC IMPLEMENTATION OF THE SUSTINET PLAN**

The CTLA respectfully opposes Section 13 of Raised Bill 6305, AAC Implementation of the SustiNet Plan, and contends the bill should be amended by removing that section.

Section 13 would put patients who receive care through the SustiNet plan at a distinct disadvantage, as the doors of the courts would be closed to them, even if they were seriously harmed by a health care provider, simply because the harm was caused compliant with clinical care guidelines!

Every other patient who receives care through any other plan, or pays for it themselves, would have full access to the courts with no such limit!!

Clinical practice guidelines should never be the legal basis for determining whether or not patient harm was the result of negligence. Allowing use of guidelines, written by the clinicians, as a shield against compensating those they harm, is fundamentally unfair.

Practice Guidelines should not create a "Safe Harbor" for negligence.

- Giving doctor's the right to harm patients without compensating them simply because they complied with guidelines is an idea at odds with the fundamental principle of practice guidelines. That has always been to improve patient quality by giving doctors some type of guidance when making decisions based on sound medical expert research. Practice guidelines were never intended to be stringent, inflexible rules for doctors to follow in exchange for not having to compensate those they harm.

Some States Have Tried "Safe Harbor" Laws

Only a few states have ever attempted to develop and use certain guidelines as legal standards. The limited experiences, which began and ended in the 1990's, provide little support for adoption of guidelines as policy.

- **Maine:** In the 1990's Maine established a program that allowed doctors in four specialties: anesthesiology, emergency medicine, obstetrics/gynecology and radiology, to participate in a program that allowed guidelines as exculpatory evidence in lawsuits.

Other specialties were also encouraged to participate but did not. The program eventually expired and prompted the Maine Bureau of Insurance to conclude, "the medical demonstration project had no measureable on medical professional liability claims, claim settlement costs, or malpractice premiums."

- **Other States:** In 1996, Florida also began a demonstration project for cesarean deliveries, but reportedly "garnered relatively little support among physicians – only 20% of physicians eligible to participate chose to do so and the project ended in 1998...Three other states (Kentucky, Maryland, and Minnesota) adopted test projects in the 1990's, though none of the projects is fully operational today (the Maine and Minnesota projects have fully expired)."
- **AMA:** Because of questions about confidence in guidelines in the past, The American Medical Association has opposed the use of guidelines as a legal standard even when they are only allowed for exculpatory purposes, urging instead "that they be used as evidence of the customarily observed professional standard of practice and that their degree of authority be dependent upon the degree of their acceptance among medical practitioners."

Specialties where Practice Guidelines prove Inadequate/dangerous

- **Diabetes:** In 2008, a national guideline-setting group abruptly withdrew a controversial diabetes standard it adopted in 2006 that called for aggressive control of blood sugar, or glucose. The change came after a large federal study indicated lowering glucose too quickly or too much in some patients could harm or kill them.
- **Breast Cancer Screening:** An independent federal task force, the U.S. Preventative Services Task Force, has recommended that women ages 40- 49 who do not have family histories of breast cancer should no longer routinely receive mammograms. Nor should women be encouraged to perform breast self-exams. This is a reversal of the guidance issued by the task force in 2002. The American Cancer Society looked at the same data used by the Task Force and reached the opposite conclusion, that the benefits of lives saved outweighed the risk of false positives.

Some problems associated with allowing uncompensated harm in exchange for following guidelines:

- Who decides which guideline is followed?
- Who decides how frequently the guideline is updated?
- Who decides which guideline applies when-respected organizations disagree with the guideline?
- What happens to doctors who believe that their patient should not be covered by the guideline?
- Are those doctors going to be dissuaded from exercising independent medical judgment or can they use their medical judgment to provide patients with the best possible care?

WE RESPECTFULLY URGE YOU TO REMOVE SECTION 13 FROM RB6305