



*Written Testimony before the Aging Committee
Submitted by the Department of Social Services
March 9, 2021*

S.B. 973 - AN ACT STRENGTHENING THE VOICE OF RESIDENTS AND FAMILY COUNCILS.

This bill mandates that the proponents of any legislative proposal, policy or regulation concerning living and care conditions at long-term care facilities seek formal input or testimony from residents and family councils preferably, when practicable, by remote participation via technology with audio or video capabilities.

While the Department of Social Services (DSS) supports the intent of the proposed legislation, which is to ensure that the voices and lived experience of people residing in long-term care facilities inform policies, law and regulation that have the potential to affect them, DSS is unable to support subsection (b) of this bill. Subsection (b) would require that any state agency or relevant legislative committee, within seven days after “introduction” of “any state-wide policy, legislative proposal or regulation” concerning living and care conditions at long-term care facilities, affirmatively seek input or testimony from residents councils and family councils concerning such policy, proposal or regulation. The bill requires that such input or testimony be obtained, when practicable, by remote participation by such councils via audio and/or video technology.

DSS is concerned that this language may be so broad as to encompass *any* agency policy or position that may impact long-term care, whether it be on the state or federal level. Given the volume of policy changes that are made on a typical basis by HUSKY Health, DSS does not believe that it would be practicable to conduct a formal written or video-based comment process on each policy change that is proposed. In addition, the State of Connecticut has an established formal regulatory process pursuant to the Uniform Administrative Procedures Act, Conn. Gen. Stat. §4-166 *et seq.*, through the state eRegulations system, for the consideration and adoption of state regulations, including a period for formal notice, public comment and public hearing. In fact, the eRegulations system allows members of the public and interested organizations to request automatic alerts whenever DSS or any other agency takes rule-making action. Similarly, the proposed legislation would potentially alter established procedures within the Connecticut General Assembly for noticing and holding public hearings on proposed legislation, in part by requiring legislative committees having cognizance of matters “concerning living and care conditions at long-term care facilities” (which might be broadly interpreted to include the Appropriations Committee, among others such as Aging, Human Services, Public Health and Regulation Review) to affirmatively seek the testimony of such residents and family councils, preferably through remote participation, to encourage the greatest participation.

Notably, DSS affirmatively engages, and will continue to engage, with resident long-term care advocates and representatives, in a number of meaningful ways to seek feedback on major policy and programmatic changes that affect residents of long-term care facilities, including, but not limited to: (1) DSS' long-standing Strategic Rebalancing Workgroup, which includes representation from members who receive long-term services and supports as well as the president of the association of nursing home resident councils; (2) DSS' established formal public comment processes on proposed regulations, waivers and Medicaid State Plan amendments; and (3) member input into the periodic releases of the state's Strategic Plan to Re-Balance Long-Term Services and Supports.

Lastly, the Department regularly works with the Long Term Care Ombudsman's office and receives regular feedback from families and residents through that office as well.

For all the foregoing reasons, DSS is unable to support this raised bill.

S.B. 974 - AN ACT CONCERNING HOMEMAKER AND COMPANION SERVICES.

Section 1 of this bill classifies individuals referred by homemaker-companion registries as employees of the registries. Section 3 states that a covenant not to compete does not include any private contract or agreement not to solicit or accept solicitation from any client, employee or vendor of such homemaker-companion agency, provided such contract shall be limited in duration to not more than six months.

Under current statute, any "covenant not to compete" related to homemaker, companion, or home health services is deemed to be against public policy and thus void and unenforceable. The raised bill would exclude from the definition of "covenant not to compete" any agreement that restricts the right of an individual to solicit from any client, employee or vendor of a homemaker-companion agency, provided such agreement is limited in duration to six months.

The Department opposes language that would exclude "non-solicitation" agreements from the definition of "covenant not to compete." The raised bill would potentially allow a homemaker-companion agency to prevent a caregiver from providing continued services for any client simply by including a "non-solicitation clause" in the contract with the caregiver. This would potentially limit a client's ability to make an informed selection as to preferred caregivers and disrupt continuity of care should a given caregiver intend to depart from a particular agency. Because the term "solicit" remains undefined in the raised bill, something as innocuous as a caregiver notifying a client that the caregiver will no longer be working for a particular homemaker-companion agency after a certain date (or that the caregiver will be transferring to a different agency) might be construed as a "solicitation" subject to penalties under a covenant not to compete. Such language may inhibit caregivers from notifying clients that they will no longer be working for a particular agency – for fear that it will be considered "solicitation." Ultimately, this would be detrimental to clients, who should be well-informed in advance of any anticipated change in the provision of necessary home health services.

For the foregoing reasons the Department opposes this bill.

S.B. 975 - AN ACT STRENGTHENING THE BILL OF RIGHTS FOR LONG-TERM CARE FACILITY RESIDENTS.

This bill adds to a nursing home facility patient's bill of rights, entitling a resident to treat the resident's living quarters as a home with "no fewer rights than any other resident of the state." The bill specifically allows a resident to associate and communicate privately with persons of their choice, and purchase and use technology of the person's choice, including technology that would facilitate virtual visitation with family and other persons.

While the Department of Social Services (DSS) appreciates and supports the intent of the bill, certain aspects of the proposed legislation may require further clarification. The bill entitles patients admitted to any nursing home facility, residential care home or chronic disease hospital "to treat his or her living quarters as his or her home" and, as such, provides that such patients have "no fewer rights than any other resident of the state" with respect to such living quarters. Residents of nursing facilities, residential care homes and chronic disease hospitals are subject to various statutory provisions related to transfer or discharge. *See, e.g.*, Conn. Gen. Stat. §§ 19a-534, 19a-535, 19a-535a, 19a-535b. While section 1 of the bill continues to reference (under subsection (b)(23) as amended) that transfers and discharges of patients are subject to sections 19a-535, 19a-535a or 19a-535b of the general statutes, it is unclear whether conferring such patients with "no fewer rights than any other resident of the state" with respect to a residence may, unintendedly, impose certain aspects of landlord-tenant law upon all such patients and thereby impact current processes that relate to patient transfer or discharge, as well as any other protocols or contractual arrangements that facilities may maintain with residents. In addition, section 1, subsection (b)(6), of the raised bill provides patients with "access" to representatives of DSS (as well as the Department of Public Health or the Office of the Long-term Care Ombudsman). It is unclear whether the intent is that patients be unrestricted in access to agency representatives, or that patients should be affirmatively connected with agency staff when disputes might arise.

The Department appreciates the opportunity to comment on the raised bill.

H.B. 6552 - AN ACT CONCERNING THE RIGHTS OF RESIDENTS IN LONG-TERM CARE FACILITIES TO USE THE TECHNOLOGY OF THEIR CHOICE FOR VIRTUAL CONNECTIONS TO FAMILY, FRIENDS AND OTHER PERSONS.

The Department appreciates the intent of this bill, which provides residents of a long-term care facility with the right to use technology to communicate with family and friends. The bill mandates that long-term care facilities shall provide internet access and the ability for residents to use their chosen technology in such communications and that any cost associated with these upgrades shall be considered a capital improvement eligible for a higher rate of Medicaid reimbursement.

The Department is in support of the proposal in concept, but would like to clarify language as providers currently have the ability to report costs associated with internet upgrades and capital improvement on their annual cost report for reimbursement under Medicaid. Providers can report internet and IT upgrade costs, which are then reimbursed under the fair rent addition component

of the Medicaid rate. The monthly cost for internet services is also reimbursable and providers report this cost under the recreation expense portion of the cost report; this is often combined with cable services so this portion is reimbursed under the Medicaid rate as well.

The Department proposes the following clarifying language:

(c) (1) A long-term care facility shall provide Internet access, electricity and a power source for technology used for virtual monitoring or virtual visitation at no cost to a resident, provided (A) the cost associated with any necessary upgrades to Internet infrastructure to provide adequate Internet access for residents to use such technology shall ~~may~~ be considered a capital improvement for reimbursement purposes eligible for a higher rate of reimbursement for a nursing home facility under the provisions of subsection (f) of section 17b-340 of the general statutes, and (B) a long-term care facility may assess a pro-rated portion of the cost of any necessary Internet infrastructure upgrades for resident use of such technology to any resident privately paying for a residence in such facility and using such technology. A resident or resident representative may also procure his or her own Internet connectivity. A private paying resident who procures his or her own Internet connectivity shall not be charged for the cost of any necessary Internet infrastructure upgrades by the long-term care facility.

H.B. 6554 - AN ACT CONCERNING AGING AND COVID-19.

This bill mandates the Commissioner of the Department of Social Services (DSS), along with Commissioners of Public Health and Aging and Disability Services, to study the impact of the COVID-19 pandemic on the health, safety and welfare of senior citizens and the residents of nursing home facilities and jointly file a report with the General Assembly not later than November 1, 2021, on the impact of the COVID-19 pandemic on senior citizens and recommendations to “mitigate the impact of any future pandemic.”

The Department fully appreciates the intent of this bill. However, we respectfully submit that it would provide the Department the ability to conduct a more comprehensive investigation if the report date were modified to early in 2022. It is our belief that, while the state is making enormous strides against the COVID-19 pandemic and all its attendant consequences, much more needs to be done before we can consider the virus sufficiently contained to warrant this proposed study. Changing the due date of the report will allow us to examine the full impact of the public health emergency, as it relates to the work of the Department.

DSS shares the Committee’s interest and concern in examining the impact of the COVID-19 public health emergency on older adults and people with disabilities and looks forward to contributing to any further formal reviews and “after action reports” of the pandemic at an appropriate time.

To this end, over the course of the pandemic, DSS has been using the following tools and strategies, among many others, to assess and address the needs of vulnerable populations:

- The utilization of emergency Medicaid authorities to enable flexibility in provision of home and community-based services, authorize remote visits, and expand permissible service options, among other actions;
- Daily tracking by the HUSKY Health medical administrative services organization of admissions, discharge and transfer data, illustrating incidence of hospitalizations related to COVID-19 on a geo-mapped basis, and also stratified over time, by age, and by race and ethnicity;
- Weekly working meetings with key stakeholders, including the regional Access Agencies, the Association of Healthcare at Home and the Department of Public Health, to advance awareness and literacy on the needs of people who are supported in avoiding institutionalization through receipt of primarily non-licensed home and community-based services;
- Implementation of a statewide high-risk community testing program, in partnership with health centers and hospitals;
- Partnership with the Department of Public Health to establish COVID recovery facilities for people being discharged from hospitals who require transitional support before returning to their home of origin;
- Partnership with Department of Public Health to create and implement a vaccine roll-out strategy for both home and community-based providers and for Medicaid members who require administration of vaccine ‘in-home’.

The Department of Social Services appreciates the opportunity to provide testimony on this raised bill.