



ATTORNEY GENERAL WILLIAM TONG
STATE OF CONNECTICUT

*Testimony on Raised Bill No. 6627: An Act Concerning the Office of the
Attorney General's Proposed Remedies for Deficient Long-Term Care*

**Human Services Committee
Thursday, February 16th, 2023**

Like many Connecticut residents, I am deeply concerned that over the last couple of years Connecticut long-term care facilities have failed in some instances to deliver adequate care, and as a result residents have suffered serious harm. The state pays billions of dollars annually through Medicaid and other state programs for long-term care for our most vulnerable residents. Remarkably, the state does not have an adequate remedy to recover the monies it spends when the care it pays for results in harm to long-term care residents. This bill will permit my office to recover taxpayer funds spent on deficient long-term care that harms residents.

These egregious failures of care include an August 2020 case when a nurse came to work a double shift at a nursing home reporting that she was ill and her family members were sick and awaiting Covid test results. The nurse was permitted to work with vulnerable patients while unmasked. The Covid test she took during her shift later came back positive, as did the tests for her family. Five residents died of Covid and more than two dozen residents and staff were infected as a result of the Covid outbreak tied to the nursing home's failure to implement proper infection controls. DPH shut the facility and transferred its residents to other facilities.

In April 2021 another nursing home received a lab report showing that its water contained Legionella bacteria. The facility did nothing to remediate the problem. Three months later a resident, who had been sent to the hospital due to a fall, tested positive for Legionnaires' disease after also showing signs of pneumonia.

In February 2022 two residents died at a nursing home due to medication administration errors. One resident, who suffered from a seizure disorder, failed to receive their prescribed anti-seizure medication for six days prior to death. A second resident, who had diabetes, failed to receive insulin checks, and then insulin when needed, for seven days. The facility then sent the resident to the hospital in severe diabetic shock, where the resident died. When the Department of Public Health (DPH) followed up, it found a history of gross medication errors and a complete failure by the facility to address them to ensure that they did not continue to recur. DPH transferred the facility's patients to other facilities and closed it.

In all three of these cases, there was no mechanism for the state to recover Medicaid and other state funds spent on services that were not only deficient, but actually harmed the vulnerable residents for whom the nursing home was responsible for providing services.

While DPH has tools to enforce violations of state and federal laws and regulations concerning the care of residents in long-term care facilities, no state agency has the authority to seek restitution for the Medicaid and other state funding that long-term care facilities receive while providing inadequate care that harms or threatens to harm residents, nor for the state funds expended to treat residents



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who are harmed by such poor care.

Massachusetts has utilized similar laws to recover damages caused by egregious failures by long-term care facilities to provide adequate care to their residents. For example, Massachusetts recently reached a \$1.75 million settlement of its allegations that in order to increase their census, four nursing homes admitted residents with histories of substance use disorders despite a lack of staff that were properly trained and skilled to meet their special needs. Massachusetts contended that numerous drug overdoses occurred at the facilities, many of which the facilities failed to report as required.

Medicaid and other state healthcare programs should not bear the financial burden for poor long-term care that results in harm to residents. This bill would give the state authority to recover from long-term care facilities the money it spends on the poor care. It would also enable the state to recover from such facilities the money that we pay for the medical treatment that doctors, nurses, hospitals, and others must provide to residents after they have been harmed by the poor care.

This bill would empower my office to respond to long-term care facilities engaging in acts and practices of deficient care that harm or put residents at risk. Specifically, it would enable my office to:

- Conduct investigations based on final orders and determinations made by DPH that state or federal laws or regulations have been violated by a long-term care facility that we suspect has resulted in, or has the potential to result in bodily injury to a resident; these investigative powers would be the same powers we have to investigate suspected violations of the state's Antitrust Act;
- Bring civil actions when our investigations conclude that such violations have resulted in, or have the potential to result in, such harm;
- Recover up to three times the amount of the damages sustained by the state as a result of the illegal acts;
- Obtain civil penalties of from \$5,500 to \$11,000 for each instance of a violation;
- Obtain injunctive and declaratory relief tailored to each situation so that the violations do not continue or recur; and
- Recover the costs of our investigations.

This bill is not overly broad. It is reasonably tailored to achieve its ends. Here's what the bill does not do: This bill does not empower the state to seek damages to recover state money spent for all deficient care. The bill empowers us to recover state funds only when they have been spent on long-term care that is so deficient that it results in bodily injury to our most vulnerable citizens, or



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threatens such harm. In so doing, this bill will incentivize long-term care facilities not to provide deficient care that results in patient harm, and instead will incentivize them to provide quality care to their residents.

I recognize that long-term care facilities are working hard in a difficult environment to care for their residents. But when bad care harms or threatens to harm long-term care residents, the state must be able to recover the money it has paid for that care and for its harmful consequences.

I appreciate the Committee's consideration of this proposal. For additional information, please contact Cara Passaro, Chief of Staff to the Attorney General, at cara.passaro@ct.gov.