CONNECTICUT HOSPITAL ASSOCIATION

TESTIMONY OF
CONNECTICUT HOSPITAL ASSOCIATION
SUBMITTED TO THE
JUDICIARY COMMITTEE
FRIDAY, MARCH 6, 2015

SB 1028, An Act Concerning The Tolling Of The Statute Of Limitations For A Negligence Action Brought By A Minor

The Connecticut Hospital Association (CHA) appreciates this opportunity to submit testimony concerning **SB 1028, An Act Concerning The Tolling Of The Statute Of Limitations For A Negligence Action Brought By A Minor**. CHA opposes the bill.

Before commenting on the bill, it's important to point out that Connecticut hospitals treat everyone who comes through their doors 24 hours a day, regardless of ability to pay.

This is a time of unprecedented change in healthcare, and Connecticut hospitals are leading the charge to transform the way care is provided. They are focused on providing safe, accessible, equitable, affordable, patient-centered care for all, and they are finding innovative solutions to integrate and coordinate care to better serve their patients and communities.

During this critical juncture in the evolution of healthcare in Connecticut, hospitals are contending with a lethal combination of proposed cuts to reimbursement and an expansion of taxes. These funding cuts and higher taxes on hospitals, coupled with the proposed funding cuts on community providers of healthcare and social services, will impede access to healthcare and derail the transformation of the healthcare delivery system. The General Assembly must weigh carefully the impact of any proposal to expand liability, risk, and cost to healthcare providers against the fragile state of the healthcare delivery system in Connecticut.

CHA also believes that there is a dire need for a broader discussion of reforms to our judicial system, and that the proposal embodied in SB 1028 should be considered with an array of other ideas as part of a comprehensive discussion of ways to improve the tort system for the benefit of litigants and to achieve efficiency in the administration of justice.

For minors only, SB 1028 would extend the current two-year statute of limitations to one year after a minor's eighteenth birthday, and would also extend the current three-year statute of repose to eight years. CHA strongly opposes the bill as unnecessary and disruptive to well-settled law.

Unlike many other states, in which minors' claims must be extended because of significantly different procedural hurdles and common law requirements that do not exist in Connecticut, Connecticut law has well-established means through which claims can be brought on behalf of minors, and such claims are brought routinely. There is no reason to change our approach to be more like other states; there is no flaw in our common law, and no evidence-based concern that would be solved by an extension under Connecticut law of either the statutes of limitations or repose for minors. Even if SB 1028 extended the statute of repose to eight years, any birth-related injury would still need to be brought by the parents or next friend of the minor, as it is now. An extension of the statute of limitations to age nineteen would be relevant only if the minor involved was older than eleven at the time of the event giving rise to the claim. The proposed extensions are not well-reasoned, and do not solve any actual problem with the current law and process; they are, instead, an undisguised effort to increase liability for medical providers.

The changes proposed by SB 1028 also open the door to disparate statutes of limitations for the same claim, and would have negative (if not dire) consequences on the court process and the viability of insurance coverages. For example, if a child's parent was injured during the same event giving rise to a civil action for the child, the parent's claim would need to be brought within the current two or three years, but the time to bring the child's claim (e.g., for filial consortium or emotional distress) would be extended for another eight years potentially. In other words, while there is only one lawsuit brought to resolve the related claims currently, under the changes contemplated in SB 1028, the same incident would result in two different lawsuits, two different trials, twice the weight on the system, twice the cost of prosecuting and defending a case, the potential for disparate outcomes, and the potential for no insurance coverage.

SB 1028 also creates significant confusion on at least three issues: (1) the circumstances in which a minor would be unable to bring an action (the apparent trigger in the bill); (2) whether a defendant's right to assert a counterclaim has been divested when the plaintiff is a minor; and (3) whether the statute of limitations has been truncated to extend only to the minor's nineteenth birthday if the minor is older than sixteen when the event giving rise to the action occurs. Each of these issues would be litigated for years in our courts, and would subject the system and the parties to an unacceptable degree of uncertainty. While these flaws in the bill – and the likely burden they would place on an already overtaxed legal system – should be enough to argue against its passage, there are more fundamental reasons that that SB 1028 should not pass.

Statutes of limitations and repose serve important balancing interests that are essential to sustaining a rational and civilized society while also addressing the needs of individuals. Statutes of limitations are designed to serve justice, ensure fairness, and maintain balance by taking into consideration several important factors. Our Supreme Court has outlined these factors appropriately and accurately on numerous occasions as follows. Most obvious is the effect of time on memories, witnesses, documentation, and physical evidence, which inevitably become lost, distorted, and unreliable as time passes. Memories fade, witnesses move away or otherwise become unavailable, documents are misplaced or destroyed, and physical evidence deteriorates or is unrecoverable. Statutes of limitations account appropriately for these

realities. In addition, as our highest court has explained in many well-reasoned cases, statutes of limitations prevent fraudulent, unexpected, or stale claims; provide a degree of certainty in planning; balance the rights and duties of competing interests; promote prompt resolution of the economic and legal affairs of adverse parties; eliminate unknown potential liabilities after a reasonable period of time has elapsed; and aid in the search for the truth. We would be happy to provide you with copies of the cases that include these reasoned positions.

We acknowledge fully that there are isolated cases in which removing these principled underpinnings of statutes of limitations may seem to promote fairness for an individual or family. But we ask you to take a broader view. In the long run, it is in our better interest to preserve this appropriate, long-standing structure that allows individuals, businesses, and society a degree of certainty in decision-making and predictability in their obligations and planning.

Thank you for your consideration of our position. For additional information, contact CHA Government Relations at (203) 294-7310.