



Rhode Island Association for
JUSTICE

Jeffrey A. Mega, President

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Via E-mail to: rep-mcentee@rilegislature.gov

Chairperson Carol Hagan McEntee
House Judiciary Committee
Rhode Island House of Representatives
State House
82 Smith Street
Providence, RI 02903

Re: H7488-Correcting the definition of neglect to protect Rhode Island Seniors

Dear Chairperson McEntee and the Honorable Members of the House Judiciary Committee:

Rhode Island Association for Justice (RIAJ) submits this written testimony in support of H7488 the proposed amendments to R.I. Gen. Laws § 23-17.8-1 and § 42-66-4.1. The proposed amendments will bring Rhode Island's definition of neglect of seniors in line with the federal definition of neglect for seniors. It will also bring the definition of neglect in line with over 40 other states that define neglect and place the seniors on equal ground with the developmentally disabled population of Rhode Island to protect them from being neglected.

SUMMARY

Rhode Island currently has a more limited definition of neglect that is contrary to federal law and inconsistent with most New England states.

Rhode Island has a more protective definition of neglect for the developmentally disabled than for seniors. Both vulnerable classes of people should have the same protection under the law.

Rhode Island's definition of neglect places seniors at greater danger of harm.

STATUTES TO AMEND

R.I.G.L. § 23-17.8-1-Delete intentional or willful from the definition of abuse & neglect

R.I.G.L. § 42-66-4.1-Delete intentional or willful from the definition of abuse & neglect & re-number accordingly.

FEDERAL DEFINITION OF NEGLECT

Federal Law. The United States Code defines neglect as the:

(38) The term "neglect" means-

(A) the failure of a caregiver (as defined in paragraph (18)(B))¹ or fiduciary to provide the goods or services that are necessary to maintain the health or safety of an older individual

42 .S.C. §3002(38)(A).

Additionally, the Centers for Medicare & Medicaid Services (CMS) defines neglect as “the failure of the facility, its employees or service providers to provide goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish, or emotional distress. 42 C.F.R. §483.5.

All Rhode Island nursing homes already must follow this federal law. The proposed amendment to the definition of neglect does not require any greater standard or level of care to Rhode Island nursing home residents.

RHODE ISLAND’S VARIOUS NEGLECT DEFINITIONS

Elderly. R.I. Gen. Laws §42-66-4.1(5) of The Rhode Island Elderly Affairs Department defines neglect as:

“the *willful failure* by a caregiver or other person with a duty of care to provide goods or services necessary to avoid physical harm, mental harm or mental illness to an *elderly person*, including, but not limited to, ‘abandonment’ (withdrawal of necessary assistance) and denial of food or health related services. Subsection (8) defines “willful” as “intentional, conscious and directed toward achieving a purpose.”

R.I. Gen. Laws §§ 42-66-4.1 indicates that its definition of neglect applies to an elderly person (defined as “any person sixty (60) years of age or older”).

Abuse in Health Care Facilities. Rhode Island Title 23 Health and Safety: Abuse in Health Care Facilities’ definition, which states:

¹ 42 USC 3002 (18)(B) In subparagraph (A), the term "caregiver" means an individual who has the responsibility for the care of an older individual, either voluntarily, by contract, by receipt of payment for care, or as a result of the operation of law and means a family member or other individual who provides (on behalf of such individual or of a public or private agency, organization, or institution) compensated or uncompensated care to an older individual.

“neglect means the *intentional* failure to provide treatment, care, goods, and services necessary to maintain the health and safety of the patient or resident, or the *intentional* failure to carry out a plan of treatment or care prescribed by the physician of the patient or resident or the intentional failure to report . . . or the *intentional* lack of attention to the physical needs of a patient or resident including, but not limited to toileting, bathing, meals, and safety. No person shall be considered to be neglected for the sole reason that the person relies on or is being furnished treatment in accordance with the tenets and teachings of a well-recognized church or denomination by a duly-accredited practitioner of a well-recognized church or denomination.”

RI Gen. Laws §23-17.8-1.

Developmentally Disabled. R.I. Gen. Laws §40.1-27-1(c) defines neglect of a developmentally disabled individual (in a program) as:

“the failure to provide treatment, care, goods, and services necessary to maintain the health and safety of the participant, or the failure to carry out a plan of treatment or care prescribed by the physician of the participant; provided, however, no person shall be considered to be neglected for the sole reason that he or she relies on or is being furnished treatment in accordance with the tenets and teachings of a well-recognized church or denomination by a duly accredited practitioner thereof.”

Neglect is defined differently for the developmentally disabled vs. seniors in Rhode Island.

NEW ENGLAND STATES' DEFINITION OF NEGLECT

Massachusetts. Under the Massachusetts Department of Elder Affairs, neglect is defined as “[t]he failure or refusal by a Caretaker to provide one or more of the necessities essential for physical well-being...” and neglect is then determined by four factors centering on the elder’s independence, decision capacity, and the expectation to continue receiving care. 651 Mass. Code Regs. 5.02, (<https://www.mass.gov/doc/651-cmr-5-elder-abuse-reporting-and-protective-services-program/download>).

This definition generally matches the definition of neglect within the Massachusetts General Laws §265-13k (defining neglect to mean “the failure to provide treatment or services necessary to maintain health and safety and which either harms or creates a substantial likelihood of harm”).

Connecticut. Connecticut defines neglect as “the failure or inability of an elderly person to provide for himself or herself the services which are necessary to maintain physical and mental health or the failure to provide or arrange for provision of such necessary services by a caregiver.” Conn. Gen. Stat. §17b-450.

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Maine. Maine defines neglect as “a threat to an adult’s health or welfare by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these”. Me. Rev. Stat. tit. 22 § 3472(11).

New Hampshire. New Hampshire defines neglect as “the failure or omission on the part of the caregiver to provide the care, supervision, and services which he or she has voluntarily, or by contract, or by order of the court agreed to provide and which are necessary to maintain the health of an elderly, disabled, or impaired adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, that a prudent person would consider necessary for the well-being of an elderly, disabled, or impaired adult.” N.H. Rev. Stat. Ann. § 631:8(I)(f).

Rhode Island Association for Justice respectfully asks that the House Judiciary Committee recommend passage of H7488.

Very truly yours,



Jeffrey A. Mega
President, Rhode Island Association for Justice



Anthony R. Leone, II
Past-President, Rhode Island Association for Justice