

Connecticut Nonprofit Human Services Cabinet

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February 27, 2007

Testimony to the Labor and Public Employees Committee

By Nora Duncan, Project Director

Bill Number 1294: AN ACT CONCERNING FAIR WAGES FOR HUMAN SERVICES PROVIDERS CONTRACTING WITH THE STATE

and

Bill Number 1290: AN ACT CONCERNING ACCOUNTABILITY IN CONTRACTING WITH STATE AGENCIES

Honored members of the Committee, my name are Nora Duncan and I am the Project Director for the Connecticut Nonprofit Human Services Cabinet. The Cabinet is a statewide coalition representing approximately 1,000 nonprofit human service providers. Its mission is to advance a strong and unified nonprofit human services system to most effectively meet community needs.

I am here today to testify on two bills, numbers 1290 and 1294.

Bill Number 1294: AN ACT CONCERNING FAIR WAGES FOR HUMAN SERVICES PROVIDERS CONTRACTING WITH THE STATE

Just yesterday a group of nonprofit organizations met with representatives from organized labor for the first time on this concept, with the Chairs of the GA&E Committee. There is an effort underway to come to some agreement on what it seems we all say we want: better wages and benefits for hard working nonprofit human services staff.

I am not going to get into any depth in this testimony, except to say that there are some very complicated issues that need to be worked through and this language alone does not address them. One of the most important issues is that this is an extremely large ticket budget item with no funding mechanism in this bill. It is not enough to assume that the money will follow if this bill passes. Without guaranteed and safe-guarded funding, programs and the clients they serve are in peril and this is unacceptable.

Bill Number 1290: AN ACT CONCERNING ACCOUNTABILITY IN CONTRACTING WITH STATE AGENCIES

I testified in opposition to a nearly identical bill (#7147) last week in the GA&E Committee. The meeting of organized labor and nonprofits yesterday was a step toward working together on the wage issue. I realize that this bill is a top priority of organized labor and I feel that there is likely room for some compromise on contracting bills this session. However, since that compromise has yet to be discussed and the language in this bill remains objectionable, I am submitting nearly identical testimony to this Committee as I submitted last week because it is important to be on the record. There is certainly a willingness to have further discussions. Please see page two for that testimony.

Your time and consideration is appreciated. Thank you.

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RE: Bill #1290 (and #7147 in the GA&E Committee on 2/21/07)

The opposition is two-fold, related mostly to redundancy of reporting and subcontractor reporting.

Redundancy of Reporting: As you can see in the packet attached to my testimony, which was also delivered to the GA&E Committee as well, nonprofit organizations report a large amount of information to the state and federal government through a variety of redundant, time consuming and sometimes wasteful mechanisms. This bill advocates for additional redundancy and allows each state agency to determine its own manner of collecting information, adding more unnecessary and administratively burdensome requirements. More bureaucracy is very rarely the right answer to any question.

The proposed language in this bill calls for salary and other information to be reported to the state. To be clear, making salary information public is NOT the concern because much of it is public already. The Federal 990 Forms, which is completed by every nonprofit in the country with gross receipts over \$25,000 annually, includes compensation reporting of all chief management and administrative officials. It also includes reporting of the additional five highest paid staff and contractors, over \$50,000 annually and supplemental information on all employees compensated over \$50,000 annually. The Federal Form 990 is submitted to the CT Department of Consumer Protection by each filing nonprofit in the State. So, you see, this information is reported to the State of CT and each 990 filed in the U.S. is available at www.guidestar.org.

It seems that there is concern by some that the information is not easy enough to track down. Rather than putting the burden of additional reporting on under-resourced nonprofits, it seems that we could work together to find a way for the State to centralize the information it already collects in a user-friendly and searchable format.

One concern that is not specifically redundant, but potentially misleading, is the request for the percentage of personnel receiving health care coverage. The reporting of this information does not take into account the quality of the coverage or the percentage of personnel that opt out of the coverage in favor of a plan carried by a spouse, among other critical information that tells the full story. I am not in any way advocating to report all of this information because it is not the concern of the organization or the state to get into the details, for instance, of why an individual would opt out.

The General Assembly and the Executive Branch continually pressure state-funded nonprofits to reduce administration related expenses and fail to support the existing infrastructure costs of the nonprofits that serve our most vulnerable citizens. Please do not simultaneously pass bills that unnecessarily add to their administrative burden.

Subcontractor Reporting: The inclusion of reporting ALL subcontractor salaries is not just overly burdensome, it is also likely to have unintended consequences that could be very damaging to the human services infrastructure. This language would require reporting on salaries of private clinicians, home health aids, nurses, doctors and other private practice professionals who are in such high demand that they would potentially give up nonprofit contracts to avoid the intrusiveness of this requirement. The same could be true of large companies, such as food service vendors, that supply nonprofit organizations with the food for residential programs.

Last Legislative Session I surveyed nonprofits that contract with the state on this very issue. Large organizations reported hundreds of subcontracts. Even the smallest organizations reported dozens of subcontracts. Most felt it was likely that some subcontractors would refuse to provide information and discontinue their work if necessary, stating that service disruptions and the loss of negotiated prices exclusive to nonprofits would be the result.

The can of worms that this could open up is large and unpredictable. Even if this bill became law and there was across-the-board compliance, it seems inevitable that the information would be lost in the existing State bureaucracy. Again, it is important to remember that the five highest paid contractor compensations are reported, as are conflict of interest policies, in the Federal Form 990 and this information is readily available to the public.

At this time I respectfully request that the Committee reconsider this approach. While transparency may be the goal, this Bill fails to acknowledge the existing redundancy in reporting and transparency that exists and that I have listed, in part, in the attached documents. The Nonprofit Cabinet members have been available to the Chairs of the GA&E Committee, meeting as recently as yesterday, and will be available to this Committee as well. We welcome an opportunity to discuss options that reduce the administrative burden and make the information already provided more user-friendly.

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DATE: February 12, 2007

TO: Members of the Government Administration and Elections (GAE) Committee

FROM: Nora Duncan, Project Director

RE: Nonprofit Accountability and Transparency in Contracting

The Connecticut Nonprofit Human Services Cabinet is a statewide coalition representing approximately 1,000 nonprofit human service providers. Its mission is to advance a strong and unified nonprofit human services system to most effectively meet community needs.

The Cabinet focuses on overarching issues impacting the state's human services delivery system, both at the state and federal level. The Cabinet has worked with state agencies on critical contracting issues and business practices that impact the 1,600 Purchase of Service Contracts valued at \$1.5 billion annually. At the same time, Cabinet members work daily to improve delivery of crucial human services throughout Connecticut, as well as advocate for unmet needs.

The GAE Committee's agenda for 2007 includes bills that deal with state contracting standards. The Cabinet's concerns with previous bills included redundancy in reporting information to the state, increased administrative burden and the resulting reduced resources for programming.

Cabinet members are interested in working with the General Assembly and the State Contracting Standards Board for equitable and ethical contracting policies and standards that allow the nonprofit human services sector to maximize its ability to provide services.

Enclosed you will find two documents that demonstrate the level of accountability and transparency that state-funded nonprofits work with every day, often submitting redundant information to multiple state agencies in a manner that increases administrative burden for all parties:

1. A spread sheet containing most of the major reporting requirements for state-funded nonprofit organizations, including federal requirements and voluntary accreditations.
2. A more detailed listing of the information provided through major reporting forms, including the Federal Form 990, which contains the bulk of the information sought in previous bills and applies to all nonprofit organizations with gross receipts of \$25,000 or more.

I hope you find these to be a helpful reference when discussing issues related to contracting. Of course, you should also feel free to contact me with questions or comments as well.

Thank you.

CT Nonprofit Human Services Cabinet
Contractor Accountability and Transparency Highlights
February 2007

<u>document/ practice</u>	<u>agency requiring</u>	<u>description</u>	<u>comments</u>
contract documents	contracting state agencies	financial/ programmatic	requirements specific to individual state agencies/ include positions, salaries, fringe, budgets - not uniform in format or collected information
licensing of community residences	DCF	licensure	
licensing of psychiatric clinics for children	DCF	licensure	
licensing of residential treatment facilities	DCF	licensure	
licensing of community residences	DMHAS/ DPH	licensure	
Consolidated Operating Report	DMR	financial	annual expenditure report
OP Plan	DMR	financial	annual budget filing
licensing of community residences	DMR	licensure	
DMR Self Assessment	DMR	programmatic	annual self-assessment
Continuous Improvement Plan	DMR	programmatic	based on self-assessment
Long Term Care Reports	DSS/ DMR	financial	ICF-MR group homes
licensing of outpatient mental health clinics	DSS/ DPH	licensure	
Quarterly Financial Reports	DSS	financial	quarterly reprotting of all categories of variance between budgeted and actual expenditures
8 and 12 month financial reports	DMHAS, DOC, CSSD of the Judicial Branch, DCF	financial	all categories of variance between budgeted and actual expenditures in the 8th and 12th month of the contract
Annual Equipment Reprt	CSSD of the Judicial Branch	financial	equipment variance between budgeted and actual expenditures
Quarterly Personnel Vacancy Report and Expense Narrative	CSSD of the Judicial Branch	financial	match personnel expenditures to individual positions paid, including detail of name, salary, vacation, comp. time, etc.
Monthly Census Report	CSSD of the Judicial Branch	programmatic	monthly intake/discharges
Monthly Client Progress Reports	CSSD of the Judicial Branch	programmatic	monthly individual updates to referral source (probation, court, parole)
Private Special Ed Program Reporting	SDE	licensure, health and safety	
Core Human Services Contract	State of CT	legal	required of all human service contractors/ multiple health, safety, financial, compliance requirements
State Single Audit	State of CT	financial	all contractors with over \$100,000 in state funding
OPM Uniform Cost Standards	State of CT	financial	implementation begins with contracts 1/1/07 and 7/1/07
Election Enforcement Commission	State of CT	legal	applies to contractors with contracts > \$50,000
State Ethics Code	State of CT	legal	applies to contractors and lobbyists

CT Nonprofit Human Services Cabinet
 Contractor Accountability and Transparency Highlights
 February 2007

Federal Single Audit	federal government	financial	all contractors with over \$300,000 in federal funding
Federal Form 990	federal government, State of CT	financial	nonprofit organizations with gross receipts > \$25,000 annually
Joint Commission on Accreditation of Healthcare Facilities (JCAHO)	voluntary	accreditation	
CARF Commission on Accreditation of Rehabilitation Facilities (CARF)	voluntary	accreditation	
Council on Accreditation (COA)	voluntary	accreditation	
American Correctional Association Commission on Accreditation for Corrections (ACA/CAC)	voluntary	accreditation	

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Nonprofit Organizations Areas of Accountability and Transparency Legislative Session 2007

Nonprofit human service providers welcome a high level of accountability. As a sector, providers are required to respond to multiple levels of scrutiny and strict standards for all aspects of operations from a variety of state and national perspectives. Some of those are highlighted below.

Synopsis of important transparency/accountability information included in Federal Form 990

990s are required for organizations with gross receipts normally over \$25,000 annually. CT requires submission (as do 34 other states) of the 990 to the state. All 990s are available at www.Guidestar.org and with the Department of Consumer Protection (attached to annual report face sheet).

Identity and Tax Status:

The basics of name, address and fiscal year.

The paragraph of section 501(c) the filer is exempt under.

Whether the 501(c)(3) nonprofit is a private foundation or non-private foundation (different restrictions on donations, lobbying, etc.)

The accounting method used (cash, accrual or other).

Income Received and From What Sources:

Reports on Revenue (including 11 subcategories of sources such as contributions, grants, fee for services, dividends, direct & indirect public support, unrelated business activity, etc.) Expenses and Net Assets (restricted and unrestricted) - reflective at the end of an excess or deficit for the year.

General information (details given to the IRS, but not public record) regarding receipt of \$5,000 or more (in money or property) from any one contributor in the year.

Total Expenses Breakdown:

Total expenses are the sum of program expenses (the activities that these expenses support are usually the basis of the organization's tax exemption/mission), management expenses (those incurred in connection with providing overall administration to an organization - such things as preparing for and holding board meetings, working on office management and personnel problems, and accounting and investment activities), and fundraising expenses (total expenses incurred in soliciting contributions, gifts, grants, etc.), which are all broken out separately.

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Program Purpose and Expenses:

There must be reporting on the organization's primary purpose and inclusion of more detail for each program's primary purpose (including stating the outputs of the program, such as number of clients served, publications issued, and students taught) and total expenses.

Compensation for Top Staff and Board Members, including relationships, voting and conflicts, etc.

Names, addresses and compensation packages are listed for current and former Officers, Directors, Trustees, and Key Employees and Former Officers, Directors, Trustees, and Key Employees.

In vast majority of cases, nonprofit board members are not compensated.

Key employees are defined by the IRS Instructions as including a filer's "chief management and administration officials" including the filer's "chief financial officer and the officer in charge of administration or program operations ... if they have authority to control the organization's activities, its finances or both."

The five highest paid employees who are paid more than \$50,000 and that are not listed as "key employees" is also required, as well as the number of staff paid more than \$50,000 annually.

The five highest paid independent contractors for professional services (e.g.: attorneys, accountants, auditors and professional fundraisers) and the five highest paid contractors for services other than professional, who receive more than \$50,000 for the year being reported on.

Even if a top employee or board member receives some of its compensation package an organization other than the filer, such info is provided.

The number of directors permitted to vote at board meetings.

Whether any directors or key employees listed are related to each other through family or business relationships and, if so, an explanation is required.

Whether the organization has a conflict of interest policy

Self-Dealing Transactions

Reporting on transactions referred to as "self-dealing" to assure that those who control the interests of nonprofits are not doing so to benefit themselves (e.g.: sale by a board member of property to the organization in excess of its fair market value). A series of questions related to this type of transaction are asked. It's important to note that these transactions are not necessarily improper because many benefit the organization (e.g.: board member sells a property to the organization at below fair market value).

Lobbying

Report whether the organization engages in lobbying (national, state and/or local) and, if so, expenses incurred.

Sampling of State documents that must be filed by POS Contractors and Applicable Laws

Note that each individual state agency also has its own specific requirements related to clients, facility licenses (occasionally by multiple agencies such as DPH, DCF, DOE and DMR,), budgets, operations, etc. One example of many is DMR, where contractors must also supply items such as:

- *Consolidated Operating Reports (annual reporting of actual results)*
- *OPPLAN (annual budget filing)*
- *Long-Term Care Reports (annual results for ICF/MR filed with and audited by DSS)*
- *DOE Private Special Education Program Reporting that is highly detailed and regulated (including licensure, fire/health codes, etc)*

Note that the Judicial Branch has completely separate requirements and those nonprofits with Executive and Judicial Branch contracts may be subject to all items listed below and separate Judicial Branch requirements that cover the same issues.

State of CT Core Human Services Contract: Used by all POS human services contractors, regardless of funding source, this uniform document includes:

- **Client Related Safeguards:** right of the state agency to enter the contractor's premises at any time; safeguarding of client confidentiality; mandatory reporting of abuse or neglect.
- **Contractor Obligations:** credit the state agency as funding source in materials related to contract; state agency right to all contract related data; provide a copy of the 990; provide the most recent annual report filed with the Secretary of State; conflict of interest prohibition; CT State Employee, Appointee or Elected Official gratuities ban; report of any "related party transactions"; insurance coverage requirements; contract compliance reporting; record keeping and access to that by the state agency, including direct and indirect costs; workforce analysis affirmative actions reporting; audit requirements; written notice of litigation related to the contract directly and indirectly; lobbying reporting and prohibition on use of state funds for lobbying.
- **Statutory and Regulatory Compliance:** compliance with local, federal and state law; compliance with state agency policies and procedures; compliance with requirements related to federal funding; compliance with all facility licensing, zoning and health/safety regulations; assurance that contractor and subcontractors are not subject to any suspension or debarment; nondiscrimination, affirmative action, ADA, Minority Business Enterprises, priority hiring for welfare recipients, no-smoking and FOI policy/law compliance; HIPAA; compliance with Executive Orders related to nondiscrimination, workplace violence prevention, state employment service listings and the state contracting standards board; business associate and covered entity agreements and termination.
- **Miscellaneous Provisions:** contract liaison appointment; detail of subcontractor info/identification; merger and acquisition reporting and consent; rights of the state agency to recoup equipment in contract termination; disputes and claims related to the contract.
- **Revisions, Reduction, Default and Cancellation:** agreement on contract amendments and revisions; budget reduction rights of the state; contractor default; client transition planning and requirements; program cancellation.

State Single Audit: For those with \$100,000 or more annually in state-funding, this is a private auditor's verification that the nonprofit spent state dollars on what it reported spending them on. Any finding otherwise must be reported to the state by the auditor. Elements of compliance include: allowed and un-allowed activities, eligibility, matching/level of effort/earmarking, reporting, sub-recipient monitoring and Special tests and provisions.

<http://www.opm.state.ct.us/igp/MUNFINSR/2006%20OPM%20Compliance%20Suppliment.pdf>

OPM Uniform Cost Standards (effective 1/1/07): The standards define and enumerate allowable and unallowable costs, including those that are administrative and general, and require documentation in a formal cost allocation plan. These do not match up identically with federal OMB A-122 (federal version of uniform cost standards).

State Elections Enforcement Commission State Contractor Contribution Ban (“campaign finance reform): Prohibits principals (and their spouse and dependent children) in most state contracts valued at \$50,000 or more from contributing to or soliciting contributions for political candidates, etc.

Office of State Ethics Code for State Contractors: This Code details contractor responsibilities and prohibited activities related to state employees and officials (e.g.: gifts, hiring, reimbursement, honorariums, lobbying and investments.)

Sampling of National Accreditations that POS contractors may/must attain, depending on scope of service

Joint Commission on Accreditation of Healthcare Facilities (JCAHO): Founded in 1951 with a mission to maintain and elevate the standards of healthcare delivery through evaluation and accreditation of healthcare organizations. All JCAHO surveys are unannounced.

Commission on Accreditation of Rehabilitation Facilities (CARF): Founded in 1966 with a mission to promote the quality, value, and optimal outcomes of services through a consultative accreditation process that centers on enhancing the lives of the persons served. CARF focuses on aging services, child and family services, behavioral health, DMEPOS, employment and community services and medical rehabilitation.

Council on Accreditation (COA): Founded in 1977 with a mission to partner with human service organizations worldwide to improve service delivery outcomes by developing, applying, and promoting accreditation standards.

American Correctional Association Commission on Accreditation for Corrections (ACA/CAC): Inclusive of organizations specializing in community supervision. ACA is the oldest (135 years) and largest international corrections association in the World. Accreditation is a system of verification that correctional agencies/facilities comply with national standards promulgated by the American Correctional Association. Accreditation is achieved through a series of reviews, evaluations, audits and hearings.

For More Information Contact:

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