



Companions & Homemakers™

Home Care for Older Adults

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February 21, 2013
Committee on General Law
Testimony Regarding Proposed Bill No. 5345
"An Act Concerning Homemaker Companion Agencies and Consumer Protection."

DEAR MEMBERS OF THE COMMITTEE:

My name is Martin Acevedo. I am the General Counsel of Companions & Homemakers, Inc., a 22-year old, employment-based homemaker-companion services provider registered with the Department of Consumer Protection. With ten offices throughout the State of Connecticut, our company cares for over 2,700 elderly consumers in their homes or places of residence and employs approximately 2,500 caregivers. Thank you for the opportunity to submit comments regarding Bill 5345.

It is always our pleasure to work with the General Assembly in matters concerning the welfare of consumers of non-medical, custodial home care services. In 2006, we helped pass the first statute regulating homemaker-companion agencies. In 2011, we came back in support of key legislation that defined the meaning of "comprehensive background check" under the existing statute, and which required homemaker-companion "registries" (entities who—wrongly—treat caregivers as "independent contractors") to disclose to consumers, in writing, the potential legal and tax liabilities associated with hiring caregivers from such registries.

Proposed Bill 5345 seeks to modify Chapter 400o of the Connecticut General Statutes (meaning the statute that regulates homemaker-companion agencies) in 7 substantive ways. We believe that, while there is merit in some of the proposed changes, the proposed bill should be carefully re-examined as, in our opinion, some of these provisions are either legally redundant, unworkable, or inconsistent with the nature of the custodial, non-medical model of (Consumer Protection-regulated) homemaker-companion agencies. What follows is a point by point commentary concerning each of the 7 sections in the proposed bill, for your consideration.

"(1) Such agencies inform a client of the results of background checks on agency employees before such employees are sent to a client's home;" **COMMENT** : This violates an employee's legal right to privacy and violates the Connecticut personnel file statute. (See Conn. Gen. Stat. § 31-128a, et seq.) Agencies already have to conduct comprehensive background checks under law. Agencies should be allowed to make a determination as to a candidate's suitability or fitness for the job as, under common law, they could be liable for negligent hiring. The non-medical, custodial home care model is a dynamic one and is, in large part, driven by clients' often immediate need for care such that communication of this information is likely to delay placement of a caregiver to the consumer's detriment.

"(2) section 20-678 of the general statutes contain a more clear definition of "comprehensive background check;" **COMMENT**: The statute already contains a detailed, 8-prong definition of what constitutes a "comprehensive background check" (see Conn. Gen. Stat. § 20-670(5)).

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"(3) services and levels of care be clearly defined by such agencies and validated by a third-party, primary care provider;" **COMMENT** : Current law requires services to be described (Conn. Regs. § 20-670-3). Furthermore, the specific "validation" requirement is anathema to the non-medical, custodial home care model whose mission is to provide home care to people who cannot do so by themselves, or whose families (the primary caretakers) are in need of additional help. Non-medical, custodial care is not "prescribed" by health care providers.

"(4) a client pay only for services rendered and cannot be billed for excess costs when such agency provides a higher-skilled individual than needed;" **COMMENT**: Under current law, agencies can only charge consumers for the specific, agreed-upon services—this agreement is memorialized in an Individualized Service Agreement (ISA)/Service Plan required by law. (See Conn. Gen. Stat. § 26-670(9) and Conn. Regs. § 20-670-3). Item 4 of this proposal appears more suited to medical home care agencies where, for example, such agency could attempt to bill a client for a service that could have been provided by a CNA instead of a nurse (these situations do not present themselves in the non-medical, custodial home care model).

"(5) contracts between such agencies and clients not be enforceable if they do not comply with all requirements provided in section 20-679 of the general statutes;" **COMMENT**: Section 20-670-3 of the Regulations of State Agencies already provides that "[t]he agency shall not enforce the written contract or service unless it is signed by both the agency and client." (See also Conn. Gen. Stat. § 20-679.) The governing statute and regulations' constant use of the term "shall" when referring to an agency's compliance with statutory and regulatory requirements makes it evident that non-compliance with such requirements (particularly in view of the principle that these contracts are generally to be construed against the drafter) entitles the consumer to assert non-compliance as a defense in the event of an agency's attempt to enforce the agreement.

"(6) contracts contain a conspicuous, boldface notice from such agency that it cannot guarantee the extent to which services will be covered under insurance plans;" **COMMENT**: To require contracts to include a clause that the consumer remains responsible for any portion of the bill for services not covered by insurance (i.e., long term care insurance) is a sensible idea. (Our contract, for instance, contains that provision.)

And, lastly, section (7) which provides that "a client has a right to cancel at any time in the absence of a stated period of duration and must be clearly so informed by such agencies." **COMMENT**: Section 20-679 of the Connecticut General Statutes already states that the consumer has the right to "request changes to, or review of the contract or service plan[.]"(emphasis added). This, of course, includes the right to terminate services at any time (our contract contains that provision.)

THANK YOU FOR CONSIDERING THESE COMMENTS.