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MARCH 13, 2014
HUMAN SERVICES COMMITTEE

TESTIMONY OF COMPANIONS & HOMEMAKERS, INC. RE: BILL No. 5500 ***AN ACT CONCERNING PROVIDER AUDITS UNDER THE MEDICAID PROGRAM***

My name is J. Martin Acevedo and I am the General Counsel of Companions & Homemakers, Inc. (C&H), a homemaker-companion agency founded in 1990 and registered with the Department of Consumer Protection. C&H has 11 offices throughout the State of Connecticut. The company cares for over 3,000 older adults and employs over 3,000 caregivers. C&H provides services to clients of the Medicaid program. We are pleased to provide testimony concerning Bill No. 5500.

In 2010, this body passed Public Act 10-116, a law that amended section 17b-99(d) of the General Statutes to include certain protections to providers of Medicaid services during the course of audits. The statute, as amended, requires DSS to enact regulations to carry out the provisions of the statute and, chiefly, "to ensure the fairness of the [audit] process, including, but not limited to, the sampling methodologies associated with the process."

Four years later, we have no regulations in place. While DSS filed proposed regulations with the Regulations Review Committee last year, it included no tangible, substantive protections for service providers undergoing audits. *In other words, the regulations did nothing to comply with the statutory mandate for fairness.* The regulations were withdrawn in 2013 and a new version (containing a few technical amendments but leaving everything else intact) has been filed this year. Notwithstanding the lack of regulations, DSS continues to audit providers.

This is precisely why bills like this need to be brought forward. The bill would amend section 17b-99(d) to include protections for providers undergoing audits—protections which should have been included in the regulations but were not.

The bill, for instance:

- requires DSS to provide free training to providers on how to enter claims to avoid clerical errors.

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Comment: We recommend the bill be amended to require DSS to promulgate an audit provider manual and issue periodic bulletins online to update the manual. Since DSS has taken the position that "clerical errors" do not bar extrapolated disallowances, DSS should provide education on how to minimize exposure to extrapolated findings. The rationale is simple: Providers are entitled to know what the specific rules of the game are before being found at fault for breaking them. This is particularly true in light of the potentially devastating consequences of extrapolation.

■ requires that DSS, when deciding what provider to audit, first direct its efforts to providers with a higher compliance risk based on past audits or errors. **Comment:** We recommend that this section be amended to provide for a more definite set of parameters to be applied by DSS when determining which agency to audit. For example, Medicare law limits extrapolation to situations where there is "sustained or high level of payment error [on the part of the provider], or documented educational intervention [given to the provider] has failed to correct the payment error."

G&H respectfully suggests another amendment. While the audit statute provides for a right to appeal audit results in superior court, those appeals are highly technical and hinge upon the development of a proper *record* before the administrative agency (DSS). This record will, in turn, inform the judge's decision-making process when adjudicating an appeal. Currently, if the provider seeks *internal review* of the agency's findings, the review is conducted by an employee of DSS *appointed by the Commissioner*. Providers have no right to submit evidence to contest the findings, no right to submit witness testimony, no right of cross-examination, and no right to procedural due process in the form of internal review by an impartial administrative law judge. In other words, providers are severely limited in their ability to develop a proper record for review of DSS' audit findings by a superior court judge.

C&H, therefore, respectfully requests this bill be amended to provide for internal review of audit findings *by an impartial DSS hearing officer*. Internal review by a DSS hearing officer will enable providers to assemble a proper, meaningful record for appeal.

Thank you for considering our comments. I will be pleased to answer any questions.