

March 10, 2015

Members of the Labor and Public Employees Committee

Thank you for the opportunity to present our testimony to your committee on Thursday regarding SB 990.

We would like to address certain statements and concerns discussed at the meeting.

SB 990 is another attempt to undermine the registry model

Registry Testimony –

- Addressing the issue as to whose employee the caregiver is (consumer or registry), the argument goes to “removing choices for people and forcing them to use a more costly option...”
- That this is a “Turf Battle” between the registry and agency model
- Shutting down their (agencies) competitors
- Registry is a lower priced alternative.
 - *HCAoA Comment – All of the above are not the purview of the Labor and Public Employees Committee – Choices and cost (See analysis at end of the report).*

Registries are not opposed to Consumer Protection for seniors’

- When the CT DOL and this Committee raised the issue of consumers needing protection in case an independent contractor caregiver had an accident in a consumers home, I spent over a year researching and arranging for Occupational Accident Insurance, which is similar, though not as comprehensive as workers comp. These policies have been now been adopted by certain other registries.
 - *HCAoA Comment – Workers’ Compensation coverage is a requirement by state law for all employers to participate in for the benefit of their employees. Occupational accident insurance (OAI) is for truckers who are independent contractors to the trucking companies they serve. The scope of coverage is not inclusive of what workers comp provides. That OAI is available to independent contractors is contrary to the classification of the home care worker who by all definition and acknowledgement by the registries is the employee of someone, whether the recipient of service or the registry. This is not an acceptable replacement for traditional workers comp.*

SB 990 exempts consumers from liability for workers compensation, unemployment coverage AND WAGES

Registry Testimony –

- “Inclusion of wages in these exemptions completely undermines the registry concept”
 - *HCAoA Comment – Wages being the only objection by the registries accepts that responsibility for unemployment insurance and workers compensation should not be the responsibility of the consumer. However conceding to those also requires that the registries pay the wages as they are integral.*
- “Exemptions would be in conflict with, and not supersede, the Federal FLSA”
 - *HCAoA Comment – FLSA does not seem to address who must pay workers compensation or unemployment insurance. They being requirements of an employer would then seem that only employers would pay. As to the requirement (proposed by SB 990 as amended) for someone other than a consumer to pay wages and other associated costs, the US Department of Labor (USDOL) may determine that state law would become more favorable to the employee and would therefore default to the state.*

- “Only clients of registries would be affected by these exemptions, and it makes no sense to exempt wages, because anyone hiring a caregiver through a Registry is doing so with the specific knowledge that the consumer is directly paying the caregiver
 - *HCAoA Comment – This statement assumes that the consumer only knows they are responsible for making an actual physical payment to the caregiver. It does not acknowledge or indicate that the consumer understands and accepts that they are in fact the employer. This would bring into question how compliant the registries are in providing required notice and receiving written consent as required by Section 20-679a.*
- If CT had a robust independent contractor statute, as do some other states such as Florida, then caregivers electing to be independent contractors could effectively waive unemployment benefits (in exchange for higher pay), and consumers could be statutorily protected from unemployment liability.
 - *HCAoA Comment – As Connecticut has formed a joint task force to address employee misclassification and entered into cooperative agreements with USDOL, it would seem counterintuitive to entertain creating a “robust independent contractor statute”. That both state and federal treasuries would benefit from more wages paid as payroll versus to an independent contractor status, such a statute may actually work against public policy.*
- If CT had a better developed workers’ comp insurance market for individual purchasers, more individuals would be willing to make their caregivers employees and provide workers’ comp coverage
 - *HCAoA Comment –The consumer seeks care for themselves or a family member. Few wish to become ensnarled in the responsibility of being an employer. To remove the consumer from that burden and instead insure that a professional employer be responsible eliminates any notion of creating a “better developed workers’ compensation market”.*

Registries are the lower cost alternative

- *HCAoA Comment – As agencies provide many more services to enhance the quality of service and to protect both the consumer and the caregiver, they operate at least a 30% cost disadvantage to registries. However, if the REAL cost of caregiving is addressed, where the consumer is actually responsible for the costs of being an employer, the gap narrows or disappears. Based on the following, the argument of being the lower cost alternative may in fact become MOOT.*

Cost of Total Tax & Reporting Compliance by Consumer

Additions to the cost paid to the caregiver.

Fee to registry	25.00%
Social Security & Medicare matching payment	7.65%
Federal Unemployment Insurance	.06%
State Unemployment Insurance	3.20%
Workers Compensation	6.00%
Administrative Cost	3.00%
Total Additional Cost to Consumer	44.91%

Summary

HCAoA does not believe that it is the purpose of government to perpetuate a business concept if that concept is not in keeping with public policy and is not protective of its’ citizenry. If a business is unsustainable without the benefit of working in the shadows then such a business is unsustainable. The intent of this bill is to protect consumers, not to stifle competition which the purview of the marketplace.

We encourage you to vote to support SB 990 as amended.