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**TESTIMONY OF SHELDON TOUBMAN BEFORE THE HUMAN SERVICES
COMMITTEE CONCERNING HB 5437**

Representative Abercrombie, Sen. Moore and members of the Human Services Committee:

My name is Sheldon Toubman and I am an attorney with New Haven Legal Assistance Association. I mostly represent Medicaid enrollees on issues related to access to health care services. I am here to speak concerning H.B. 5437 on behalf of our low income clients who must rely upon Non-Emergency Medical Transportation (NEMT) services administered by the Department of Social Services to get to appointments with primary care providers and specialists. Without NEMT services, access to medical care for many of them is as a practical matter not available.

First, I greatly appreciate that the Committee has raised a bill about access to NEMT, a major concern of our clients, particularly those with physical disabilities and health conditions limiting mobility, or who reside or have doctors in locations not serviced by public transportation. As anyone dealing with the Medicaid program knows, there have been serious performance issues with the Georgia-based contractor, LogistiCare, for some time.

Second, while we realize it is just a beginning, the particular language in the current draft of the bill would need to be substantially changed. As written, it would put off the need for DSS to even report on the problems for a year and a half, and instruct it to prepare a report relying upon defective complaint data from 2015. That data is particularly not useful, because, as now conceded by DSS, Logisticare has been systematically underreporting complaints, up to and including the beginning of this year, when it finally began to address at least a couple of the many problems with the contractor's performance identified in a June 2014 Mercer, Inc. report commissioned by DSS.

Third, we note the existence of this June 2014 report commissioned by DSS was concealed from the public and oversight bodies focusing on NEMT issues for 16 months – until advocates learned of its existence and obtained it through the FOIA. The withholding of this report is perhaps explained by the content. In addition to “systematic under-reporting” of complaints generally, discussed at pages 2, 11, and 14, this independent report found:

1. LogistiCare “does not appear to be consistently documenting client complaints of provider lateness, and as such is not systematically using this information to determine

whether a new transportation provider should be added to the network to reduce another provider's load." (page 14).

2. lack of access by DSS to various reports which, per its contract, DSS is to have ready access, including web access; six important contractually-required performance reports are not being provided to anyone at DSS. (pages 18, 20).
3. failure to activate a functional client appointment reminder system (which is required by the contract and standard practice among medical providers, and would almost certainly help address the problem of client no-shows)(page 2).
4. failure to affirmatively use complaints it does record to monitor provider performance. (page 16).
5. failure to develop and implement any coordinated system to affirmatively identify trends for improvement in NEMT systems and gaps in the provider network. (pages 3, 13, 14, 19).
6. non-compliance with call center call abandonment rate requirements. (page 10).

Fourth, most notably, the Mercer report found that the NEMT **contract itself was defective** in several material respects, and that enforcement is hampered by its inexact reporting requirements and meager sanction provisions.

Fifth, we believe that the starting point for attempting to address the systematic access problems under the contract is to require DSS to substantially amend the contract in several areas. Yesterday, Bonnie Roswig and I completed a detailed analysis of some of the most serious defects in the contract, including those identified by Mercer. The seven areas of concern addressed in this analysis are:

- 1) Excessive Client Wait Times for Livery Transportation/No Shows of Livery Transportation
- 2) Level of Service Determinations Not Being Properly Conducted
- 3) Providers' Judgment on Need for Urgent Care Not Being Respected
- 4) Recording of and Response to Complaints
- 5) Issuance of Notices of Action
- 6) Call Center Performance
- 7) Quality Assurance Committee

This was by no means a comprehensive analysis of the entire NEMT contract. We focused on the contract deficiencies in those performance areas where complaints are most common. Even limited to these deficiencies, however, substantial changes

are needed to the contract, as set forth in the attached, to significantly improve the poor quality of care which is now routinely being experienced by our clients.

We recognize that, theoretically, DSS could negotiate with the current contractor to adopt all of our suggested revisions to the contract. However, as a practical matter, DSS has limited bargaining power in a situation where the contractor knows that there is no competitor immediately available which could agree to the terms if the current contractor does not do so, as there would be in response to an even-handed, publicly-issued RFP. Ultimately, however, our concern is not with the identity of the particular contractor but rather that, whoever the contractor is, it is accountable for providing quality services to our clients.

Accordingly, I have attached to my testimony proposed substitute bill language for HB 5437 prepared by advocates which would require DSS to negotiate with the current contractor to make all of the needed changes to the contract by October 1, 2016, and, if this fails, require DSS to issue an RFP by December 1, 2016. The substitute bill also includes some mandatory reporting on LogistiCare performance so that both the legislative committees of cognizance and the two watchdog committees with oversight of NEMT services delivery can begin to get some reliable, meaningful data on that performance.

Thank you for the opportunity to speak with you today.

Proposed Substitute Language for HB 5437

Section 1: The Commissioner of Social Services shall enter into a revised contract for non-emergency medical transportation services with its existing contractor addressing deficiencies in the current contract in terms of contractual performance standards, reporting requirements and sanctions, by October 1, 2016. The areas that must be addressed in such revised contract shall include, but not be limited to: excessive client wait times for livery transportation and no shows of such transportation, level of service determinations not being properly conducted, providers' judgement on need for urgent care appointments with less than 48 hours notice not being respected, recording and responding to complaints, issuance of notices of action, performance by the contractor's call center, and requirements for the quality assurance committee.

Section 2: If no such revised contract is entered into by October 1, 2016, then a request for proposals for a new NEMT contractor shall be issued by December 1, 2016.

Section 3: By October 1, 2016, the Commissioner of Social Services shall report to the two standing legislative committees of cognizance regarding human services, and to the two oversight subcommittees of the Council on Medical Assistance Program Oversight and the Behavioral Health Partnership Oversight Council concerned with coordination of care and consumer access, monthly data collected from its current contractor for non-emergency medical transportation, for each of the months from January 1, 2015 to July 1, 2016, with respect to:

- (a) Percentage of all rides provided by the current NEMT contractor where the livery service was over 15 minutes late in picking up an enrollee to take him or her to a scheduled medical appointment, the total number of rides which were late in this fashion, and data on the industry standard(s) for permissible percentage of rides being late to this degree.
- (b) Percentage of all rides scheduled by enrollees with the NEMT contractor as to which no transportation provider arrived, total number of rides which did not arrive at all, and data on the industry standard(s) for the permissible percentages of such no show rides.
- (c) Percentage of all rides provided by the current NEMT contractor where the livery service arrived over 45 minutes past the time that a return trip from a medical appointment has been requested, total number of rides which were late in this fashion, and data on the industry standards for permissible percentage of return rides late to this degree.
- (d) Level of compliance by current NEMT contractor with the requirement of timely written notice when requested rides are denied, partially denied, terminated or reduced for any reason, including, but not limited to, situations where the contractor determines that public transportation is sufficient and denies livery

service, the contractor states that less than 48 hour advance notice has been provided, the contractor rejects a treating provider's judgement that a medical appointment is urgently needed and is therefore exempt from the 48 hour advance notice requirement, the contractor rejects transportation to a particular provider as not being the closest available provider.

- (e) Call center performance, in terms of average wait times when calling the center, longest wait time, average and maximum wait times before speaking with an in-person employee contractor, and average and maximum wait times before matters are resolved.
- (f) Detailed breakdown of complaints regarding NEMT services received by the current contractor for the Department and a report on what the NEMT contractor has done to address each category of complaint, including, but not limited to, complaints about (1) late arrival of transportation services; (2) no show of transportation services; (3) late arrival of return transportation services; (4) denials of transportation services where the contractor says the person did not call at least 48 hours in advance for livery services; (5) denials where the contractor refused to provide a ride to a medical appointment with less than 48 hours notice when the provider said this was urgently needed; (6) call center inaccessibility; (7) failure of the contractor to issue a written notice of action when requested services were denied, partially denied, terminated or reduced.
- (g) All actions the Department's current contractor has taken to address the problems of (1) untimely pick-ups and no shows among its contracted transportation providers, (2) failing to record complaints from enrollees and providers; (3) failing to issue written notices of action whenever transportation services are denied, in whole or in part, terminated or reduced, (4) failing to provide to the Department contractually required reports; (5) failing to respect medical providers' judgement about the urgent need for a medical appointment exempting an enrollee from providing 48 hours advance notice.