TESTIMONY OF TOM FALIK, ON BEHALF OF
THE CONNECTICUT ASSOCIATION OF HOME CARE REGISTRIES
REGARDING SB-393 AAC DOMESTIC WORKERS &
IN OPPOSITION TO HB-5368
AAC HOMEMAKER SERVICES AND HOMEMAKER COMPANION AGENCIES

Good afternoon Senator Gomes, Representative Tercyak and the other members of the Labor & Public Employees Committee. Thank you for the time to testify on these important issues. My name is Tom Falik. I am Chief Operating Officer of Euro-American Connections, LLC, and Euro-American Homecare, LLC, and I am here today representing the CT Association of Home Care Registries (CAHCR) **regarding SB-393 and in opposition to HB-5368.**

Don't Allow HB-5368 to Kill the Registry Model

HB-5368 is plain and simply an attempt to **kill the Registry business model in CT,** by creating the **fiction that Registries are employers of the caregivers that they place for purposes of Workers Comp, Unemployment and WAGES!.** This would be a terrible result for CT seniors and the State. Registries serve a critical role in provided **affordable in-home care** by screened and professional caregivers, and **keeping CT's elderly off of Title XIX and out of State-funded care facilities.** For many speakers testifying on this Bill today, this is primarily a **"turf battle"** between employee-based homecare Agencies and Registries, because Registries can provide care at a much lower cost. We believe that CT's elderly should have choices.

FLSA Minimum Wage and Overtime Regulations

This year is the exact wrong time to raise this legislation. As of October, 2015, new Federal Fair Labor Standards Act **(FLSA) Regulations eliminated** the **Companionship Exemption** and the **Live-in Domestic Service Exemption** from **minimum wage and overtime** for "third-party employers" such as employee-based homecare Agencies. This has significantly increased the cost of homecare through Agencies, especially for 24/7 live-in care. It has also caused many Agencies to distort their staffing procedures in an effort to avoid overtime, such as **rotating 3 different live-in caregivers** to provide 7-day live-in care to one client. This is a **terrible care plan for an elderly client**, and leaves each caregivers with much less income than they previously earned.

However, **certain FLSA overtime exemptions are still available to individual consumers** and their families, and the Preamble to the new **FLSA Regulations specifically recognizes Referral Registries** and indicates that, if properly structured, the Referral Registry would likely not be considered the employer of an independent caregiver. I know homecare Agencies that have formed or are looking into forming sister Registries for exactly this reason.

The fiction created by HB-5368 would make the Registry the "joint employer" of the caregiver for FLSA purposes, making the Registry liable for overtime, even if the Client was not. This would **kill the last viable avenue for CT consumers to obtain screened caregivers,** subject to criminal background checks, **while still avoiding the new FLSA minimum wage and overtime Regulations.**

Protecting Consumers From Injury Claims By Statute and Insurance

One of the main rationales put forth by this Committee and the DOL for this and similar legislation in recent years, has been to **protect consumers from potential personal injury claims** by independent caregivers working in their homes. We agree that this is an appropriate avenue of

inquiry, but we believe that **adequate protection can be achieved without killing the Registry business model.**

For individual CT consumers, Workers Compensation Insurance is less than ideal. It can only be obtained through the Assigned Risk Pool, and it is more expensive for individuals than it is for homecare Agencies. Since independent caregivers engaged by individuals are typically sole proprietors of their caregiving businesses, under current CT statutes, even if the caregivers are treated employees of the consumers for tax purposes, **sole proprietor caregivers are not covered by Workers Compensation**, unless they elect to be so covered.

In response to this DOL concern, two years ago our Registry, after extensive research, began offering Occupational Accident Insurance, which is widely used in many states, to **provide coverage to a caregiver** for an **accident while working in a consumer's home**. This insurance program has been **approved by the CT Insurance Dept.,** and is similar to, though not quite as robust as, Workers Comp, but it **costs the consumer only a fraction** of what the consumer would have to pay for Workers Comp. Several Registries now offer this insurance, and our Association would not oppose making this a requirement for all caregivers not covered by Workers Comp.

SB-393 - Domestic Workers

For the past year-and-a-half, the Domestic Worker's Task Force has been studying important issues and attempting to address historic discrimination against domestic workers in CT. SB-393 contains many laudable recommendations and protections, especially in the areas of wages, discrimination, privacy and safety. However, many of the provisions of this Bill are overreaching, imposing upon individuals and families employer obligations that go well beyond similar requirements imposed on small businesses.

In particular, SB-393 would deem that, for workers comp, unemployment and wage purposes, Registries are **"joint employers"** of caregivers that they place. Adoption of this recommendation would prevent Registries from assisting CT families, because, as "joint employers" under the FLSA, the **Registries would be liable for overtime** to the caregivers that they placed, **even in cases where the family was exempt from overtime**. In attempting to protect caregivers, this provision of SB-393 **would severely injure CT's seniors and people with disabilities, and impose huge costs on the State.**

Availability of Caregivers and the Underground Economy.

Elimination of the Referral Registry business model would **NOT** eliminate independent caregivers in CT. What it would do is:

1. Force many independent **caregivers to go underground,** bypassing the current background check and other protections provided by Registries under DCP supervision;
2. **Reduce compliance** with Federal and State **Income Tax Laws,** since many of these underground transactions would be for cash; and
3. Cause many independent caregivers to leave the market entirely, rather than work for an Agency or go underground, thereby **reducing the availability of caregivers**, at a time when the demand for caregivers is rapidly expanding.

Retention of the Registry Model guarantees greater availability of caregivers and choices for seniors, and holds down the Sate's cost to care for the elderly and people with disabilities.