CT ASSOCIATION OF HOME CARE REGISTRIES
Program Review and Investigations Committee
Public Hearing September 21, 2016

Senator Fonfara, Representative Carpino and other members of the Program Review and Investigations Committee (PRI). My name is Tom Falik, and I am here today in my capacity as President of the CT Association of Home Care Registries (CAHCR) to submit comments on the scope of the PRI study of Factors Influencing Receipt of Long-Term Care Services and Supports in Home and Community Settings (the "Study Scope").

As pointed out in the Study Scope, in CT in 2015, 60% of persons needing long-term services and supports (LTSS) received them in home and community settings. The goal is to increase this percentage to 75% by 2025, in order to save money and provide recipients with their preferred method of care.

Home Care Registries are an Integral Part of the Continuum of Care in CT

Home Care Registries provide an important choice to CT's elderly and people with disabilities. They act as matchmakers between independent caregivers and families looking for affordable home care. Registries have existed for over 80 years in CT, and they arrange more affordable care at home for seniors and people with disabilities by companions, homemakers, PCA's, HHA's and CNA's,. Caregivers placed by Registries work for the person needing care or their family, not for the Registry. Historically, Registries primarily placed their caregivers as independent contractors, but today there are various Registry models, including the Household Employer (HHE) model, where the caregiver is an employee of the family, not an IC (see IRS Publication 926).

Registries in CT must be registered with, and are regulated by, the Dept. of Consumer Protection. They have various statutory requirements, including doing background checks, having written agreements with families and providing disclosures as to the nature of the relationship. Registries historically have been a less expensive alternative to obtaining care from employee-based home care Agencies.

New Federal Fair Labor Standards Act (FLSA) Regs. have Devastated Home Care Agencies

Historically, most home care workers were exempt from minimum wage and overtime requirements of the FLSA, but in 2013, new FLSA Regulations removed those exemptions for most home care workers. After protracted litigation, these new Regulations became effective in October, 2015. The new Regulations provide that any caregiver working for a "third party employer", such as an employee-based Agency, must be paid minimum wage and overtime. However, individuals and families can still take advantage of FLSA exemptions, including a "live-in domestic services exemption", and a limited "companionship exemption" for caregivers not spending more than 20% of their time providing "care" (defined as activities of daily living (ADL's) and instrumental ADL's).

Registries Can Provide More Affordable Live-in Care

Registries are the only remaining entities that can help families find screened, qualified caregivers, and allow the family to take advantage of the FLSA overtime exemptions.

An Agency 7-day live-in caregiver working 16 hours a day (with 8 hours off for sleep time) must be paid a minimum of $202.97/day ($74,084/year), increasing in 2017 to $213.54/day ($77,943/year). Adding employer burden, overhead and profit to this cost, Agencies typically charge about $300/day for this service. However, DSS pays a maximum of $236.47/day for this service. CT DOL/DSS Guidelines provide that Agencies can reduce the amount paid to caregivers if the number of paid hours is reduced, by excluding certain meal time and free personal time (which is allowed by FLSA) and by taking a credit against minimum wage for room and board provided to the caregiver (but recent US DOL audits of Agencies largely deny this credit, because the room and board is primarily to benefit the consumer, not the caregiver. See US DOL Field Assistance Bulletin 2015-1). Elimination of this credit makes it very difficult for Agencies to legally provide a 7-day caregiver for $236.47/day, forcing Agencies to split live-in assignments among 2 or 3 caregivers to minimize overtime. This is a terrible result for both the senior care recipient and the caregivers.

On the other hand, if a Registry places a 7-day live-in caregiver who is employed by a family, the caregiver is exempt from overtime under the FLSA. This reduces the cost for a 16-hour-per-day caregiver to $153.60/day ($56,064/year), and 161.60/day ($58,984/year) in 2017, still a very good wage. Adding the family's employer burden and a Registry's typical overhead and profit results in a total cost that would be within DSS's $236.47 maximum (if DSS would utilize Registries).

<u>CT State Departments Should Embrace and Enhance the Registry Home Care Model</u>

Historically, CT Registries have been criticized primarily on three points; (1) that independent contractors didn't pay their taxes, (2) failure of IC caregivers to be covered by Workers Comp put clients at risk, and (3) less expensive Registries have an unfair price advantage. Competitors of Registries have proposed legislation in the last five Legislative Sessions to kill the Registry business model by "deeming" Registries to be the employer of all caregivers that they place, but none of those efforts have succeeded. Nevertheless, DSS has not previously been willing to fully compensate families utilizing the Registry model to obtain affordable home care.

In response to the first two criticisms, (1) many registries are embracing the Household Employer (HHE) model, where the caregiver has taxes withheld, and (2) Registries are helping families to obtain either Workers Comp (at a price higher than Agencies pay), or Occupational Accident Insurance, to protect Clients. At the same time, due to the FLSA changes, the amount of money that Registries can save CT families, especially on live-in caregivers, has increased dramatically. It is time to bolster the Registry model, and for DSS to embrace the Registry model in order to attract sufficient caregivers for their programs for elders, at a price that the State can afford.

<u>Proposed Next Steps to be Considered in the PRI Study</u>

CAHCR recommends that the PRI Study consider the following issues:

1. How the Registry model can be solidified (similar to FL, CA and PA statutes) and no longer susceptible to attempts of competitors to destroy the model for competitive reasons.
2. How DSS can utilize Registries and establish reasonable requirements that would allow the full cost of Registry provided caregivers to be paid in DSS' seniors programs.
3. How the Dept. of Insurance can create a fund or mechanism to limit the cost of Workers Comp Insurance for families to amounts paid by home care Agencies for similar coverage.

We stand ready to assist in any way that would be helpful on these important CT issues.