I am here today to speak on behalf of the Association of Connecticut Homecare Agencies regarding HB 7040, An Act Implementing the Governor’s Budget Recommendations for Human Services Programs which is before the committee. Specifically, ACHA is in support of the concept of the provision in Section 23 regarding non-compete agreements, however we are concerned the language as presented is too broad and may result in unintended consequences.

First, I would like to share with you how a non-compete contract has affected two of my caregivers:

In April of 2015, my office was contacted by a Care Manager for the Connecticut Home Care Program (CHP).

It was explained to me that they had a client who really liked her caregiver (let’s call her Helen) but wished to change agencies as the client was not happy with her current agency.

The care manager wanted to know if I would take on the client and would I be willing to hire Helen as well?

I agreed.

During the hiring process, Helen explained to me that she had signed a “non-compete” contract with her now-former employer and wanted to know if I thought she would be in any “trouble” if she took the job.

I told her I would be very surprised if there would be any fallout as the agency change was the choice of the client. The hiring process was completed and Helen was assigned to the case as requested.

Shortly thereafter Helen was served by the court.

At about the same time this was happening, I received a telephone call from the conservator of a local man receiving services under the Home Care Program. (I happen to know the conservator personally.) He asked me if a certain caregiver (let’s call her Connie) was in my employ. I said that she was.

He explained to me that his ward was currently receiving services through an agency for which Connie worked but that he was not pleased with the agency. If the client was transferred to my agency, would I be willing to give the hours to Connie? I agreed and took the case, assigning it to Connie as requested.

Shortly thereafter Connie, who had also signed a “non-compete” contract with this same agency, was served by the court.

So what happened?
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Helen chose not to hire an attorney, hoping the judge would understand that she was not trying to make trouble for her former employer...that she only had the client’s best interest at heart. The employer asked for summary judgment and Helen lost her case.

She is currently reimbursing her former employer $35 dollars a week until she pays back a total of $14,902.17 (one year loss of profit, attorney fees and court costs).

Connie hired an attorney with the help of a loan from my agency. Her case is scheduled to go to trial on March 24.

In our industry, many if not most direct care employees are foreign-born, working hard to make a life in this country. Many of those who have signed non-compete agreements did so without understanding the potential impact to their future earnings.

Non-competes for direct care employees in our industry are blatantly unfair and unnecessary. These employees do not possess any "trade secrets". To limit their ability to work for multiple employers disallows them to earn a living in many cases. In the home care industry, it is common for an employee to suddenly lose due to hospitalization or death, or an employee may not have enough hours to fill their schedule at one agency. In these cases, it is commonplace that the individual will often work for multiple agencies simultaneously. In fact, if an agency does not have enough work for an employee they may refer their employee to another reputable agency rather than see their employee underemployed or out of work.

Finally, the home care industry is built upon the “temporary” nature of direct care staff. Without the ability for these workers to work for multiple agencies, the delivery of home care to seniors becomes compromised by stymied flow of eligible staff.

ACHA supports the rights of our employees to work whenever and wherever they are able. Should MacDonald’s be able to tell John he can’t work for Burger King or Hartford Hospital tell Jane she can’t work for St. Francis?

Additionally, our organization believes these non-compete agreements are detrimental to the continuum of care for our clients. However we are concerned about the potential for unintended consequences as non-competes can be effective tools for protecting agencies from losing private pay clients to “under-the-table” resources.

We would suggest rather than eliminating non-compete agreements as a whole, simply disallow such agreements for caregivers providing for CHP clients, thus eliminating the possibility of a repeat of the scenario that prompted this provision in the first place.
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I thank you for this opportunity to address the Human Services Committee and for your consideration and support.

The Association of Connecticut Homecare Agencies (ACHA) was formed as the result of a grassroots effort to advocate on behalf of agencies that provide non-medical support services to individuals in their homes. We are dedicated to assisting the agencies that help our aging population stay in their homes, and strive to promote professionalism and quality of service in our industry.

Please contact Monique Allard, Web Manager for the Association of Connecticut Homecare Agencies at info@achagencies.org or (860) 564-5319 with any questions or for additional information.