Testimony In Support Of

HB 5478

March 13, 2018

AN ACT CONCERNING TECHNICAL AND MINOR CHANGES TO THE LABOR DEPARTMENT STATUTES

Chairman Porter, Chairman Gomes, Chairman Miner, Representative Bocchino, Vice Chairs and distinguished members of the Labor and Public Employees Committee:

My name is William Geiger. I am the Chief Operating Officer of one of Connecticut's largest Homecare employers, Companions and Homemakers, Inc., and I thank you for this opportunity to voice support for HB 5478, AN ACT CONCERNING TECHNICAL AND MINOR CHANGES TO THE LABOR DEPARTMENT STATUTES, and request an amendment correcting a technical flaw created in the course of passage of PA 14-159 in 2014.

This change would implement the precise, word for word recommendation contained within the January 2016 report of the Legislative Domestic Worker Taskforce, Chaired by Senator Edwin Gomes. The recommendation was that Connecticut's 'sleeptime' law be changed. That is all this amendment seeks, that this technical change be made to correct a flaw in PA 14-159, and adopt the Taskforce recommendation. This correction was contained in section 167 in last session's original budget bill, but the shortened, bipartisan budget bill did not leave room for technical amendments, and section 167 was not in the final version.

The requested change is 'technical', only for the following reason: Connecticut attempted to pass a 'sleep time' law in 2014, but unintended error resulted in a law that passed, but could have no effect. Here's how that happened.

Live-in homecare workers live, work and sleep at the home of the elderly person they serve. They are entitled to breaks from work for meals, leisure time and sleep. In 2013, the United States Department of Labor, after careful study and under the policy direction of President Barack Obama, announced changes to homecare wage and hour laws. In 2014 the Connecticut General Assembly embraced those changes and proactively passed PA 14-159, adopting a 'sleep time' provision consistent with federal law and state regulatory practice. The universal 'sleep time' practice is that eight hours of sleep time for live-in homecare workers are not counted as work hours, *unless the sleep is interrupted and they are called to work.*

Connecticut passed PA 14-159 for obvious reasons: a homecare worker is not working while sleeping. PA 14-159 tied Connecticut's 'sleep time' law to a common live-in homecare service called companionship services. Unfortunately, in 2014 the Homecare industry overlooked a change in the Federal definition of 'companionship services' that removed companionship services from the umbrella of live-in care. The industry failed to alert the Connecticut

legislature of the new definition, and as a result, Connecticut passed a 'sleep time' law that only applied to a type of live-in homecare that no longer existed.

Existing DSS-funded live-in homecare programs are based on 'sleep time' and the premise that caregivers should get eight hours of sleep. The eight-hour standard reflects two things: First, every homecare worker should be paid for all hours they work. This amendment does not change that or prevent any worker, in any way, from receiving regular wages, and overtime, for each hour worked. But, no caregiver should have to work more than sixteen hours per day. Second, the Medicaid waiver cost cap for live-in homecare is maximized at sixteen hours of care per day. The DSS cannot reimburse live-in homecare for more than sixteen hours worked per day without exceeding the waiver cap.

The amendment furthers the intent of the PA 14-159 and will make it effective. Federal law, Connecticut regulatory practice and DSS waiver programs all provide for the eight-hour 'sleep time' provision. This amendment is simple: it changes a provision of Conn. Statute 31-76b(2)(D), substituting the applicable service definition, from the obsolete 'companionship services' to 'domestic service employment'. That change of term is fully consistent with, and mirrors, existing federal law and the regulations advanced under President Obama; and, the regulations the Domestic Worker Taskforce recommended that Connecticut adopt.

Without this change, employers could be subject to claims that time spent sleeping in a homecare setting is compensable time. If that happens, live-in homecare in our waiver programs would require reimbursement for every hour of every day of the week, exceed the cost cap, and end home and community based live-in homecare as we know it.

This amendment will make certain that the cost cap, and live-in homecare services, can be maintained, and I thank you for your consideration of this needed amendment. I have attached a written copy of the precise, proposed language to my written testimony to assist this committee.

Respectfully submitted by

William Geiger
Companions and Homemakers, Inc.

Standard format: underlined passages represent new language; bracketed passages are to be deleted.

Section 31b(2)(D) of the Connecticut General statutes shall be repealed and the following substituted in its place:

(D) Notwithstanding the provisions of this subdivision, when an individual employed by a third-party provider and performing domestic service employment [to provide "companionship services",] as defined in the regulations of the federal Fair Labor Standards Act, is required to be present at a worksite for a period of not less than twenty-four consecutive hours, such individual and his or her employer may agree in writing to exclude a regularly scheduled sleeping period of not more than eight hours from hours worked, provided (i) adequate on-site sleeping facilities are furnished to such individual, and (ii) such individual receives at least five hours of sleep time. If the scheduled sleeping period is more than eight hours, only eight hours will be excluded. If the scheduled sleeping period is interrupted by an assignment to work, the interruption shall be counted as hours worked. If such individual does not receive at least five hours of sleep time during the scheduled sleeping period, the entire sleeping period shall be considered hours worked. The provisions of this subparagraph shall be effective upon passage [on and after the effective date of the United States Department of Labor's Final Rule concerning the Application of the federal Fair Labor Standards Act to Domestic Service published in the Federal Register of October 1, 2013] .