



House Bill 6100, An Act Concerning Department of Consumer Protection Licensing and Enforcement.

General Law Committee

February 18, 2021

Home Care Association of America Connecticut advocates for employer-based home care agencies that employ, train, monitor and supervise caregivers; create a plan of care for the client; and work toward a safe and secure environment for the person at home. HCAOA Connecticut members employ several thousand caregivers providing quality care to thousands of elderly consumers, persons who are disabled, and veterans across the state. HCAOA Connecticut members-agency owners are registered with and regulated by the Department of Consumer Protection.

HCAOA Connecticut offers the following comments and concerns regarding House Bill 6100, by topic and section number, and a proposed amendment below.

State and national criminal background checks

Section 26 of the bill requires home care agencies, prior to hiring a prospective employee, to require the applicant to submit to a state and national (currently it is comprehensive only) criminal background check. This would require a FBI check and fingerprinting of caregivers.

HCAOA Connecticut supports comprehensive background checks as an effective, efficient means of identifying persons who should not be serving as caregivers to vulnerable seniors and persons who are disabled. However, fingerprints are unnecessary to conduct a thorough and comprehensive background check. A prospective employee's name, date of birth, Social Security number and prior addresses suffice to conduct comprehensive background checks.

The FBI database was not designed for employment-related screening and does not reflect any independent investigation or verification by the FBI. A 2015 study by the U.S. Government Accountability Office cited significant inaccuracies in the FBI database.

There is no single national database containing complete and up-to-date records of all criminal arrests and convictions in the U.S. The FBI fingerprint background check depends on data reported by state and county governments, which is not uniform, all-inclusive, or necessarily current and accurate. Different jurisdictions have different standards for fingerprinting: lower-level offenses and misdemeanors, including larceny, assault, prostitution, breach of peace, and other crimes that should disqualify a person from working in home care, may not be picked up by the fingerprint check.

The background check industry in the United States is a multi-billion dollar, well managed industry. National background check companies, such as Sterling or CHKR, conduct tens of thousands of criminal background checks on a daily basis. These background checks are arguably more comprehensive than those proposed in HB 6100. Basic background checks offered by national companies such as Sterling search City, County, State, and nationally.

The comprehensive nature of the current criminal background checks ensures an effective, multi-level investigation into an applicant's history and qualifications for employment with a home care agency. There is no evidence that a properly-conducted comprehensive background check is an ineffective tool for evaluating a prospective employee's suitability, nor is there reason to believe that requiring a fingerprint-based criminal background check will result in reduced instances of elder abuse.

Requiring applicants, many of whom do not have a driver's license or own a car, to travel to a State Police barracks, pay more than \$100 in fees, and wait weeks for a result creates a serious barrier to employment in a fast-growing industry. Currently, an applicant for a caregiver position can be screened and placed with a client within hours of selection. Requiring otherwise-qualified prospective caregivers to undergo fingerprint checks would unduly delay their entry into the workplace.

Additionally, this delay would put at risk seniors discharged from hospitals or nursing facilities with little notice to families. To serve seniors in immediate need, home care agencies must hire, staff and place caregivers quickly. Fortunately, private vendors can provide same-day turnaround on background checks; such responsiveness in emergencies would be impossible if agencies had to wait weeks or even months for the results of FBI background checks.

Finally, HB 6100 will place a significant unnecessary cost on the home care industry. The checks required under Conn. Gen. Stat. sec. 29-17a, according to the State Police criminal records unit, cost approximately \$90 each, plus an additional \$50 for an expedited search. National company comprehensive background checks

cost approximately \$30. Due to the high turnover rates in the industry (averaging 100%+), a home care agency with 100 caregivers company will spend approximately \$7,500 more.

National background check companies such as Sterling allow agencies to search in every state where an employee has lived. The background checks required under HB 6100 will limit the search to Connecticut and then nationally in a general search. Many caregivers working in Connecticut come from nearby states, including New York, Massachusetts, or Rhode Island.

National background check companies allow clients to perform motor vehicle checks on caregivers in every state they have lived. Driver's record checks are critical because many caregivers transport seniors during their activities of daily living.

The hiring demands of the home care industry are extremely time sensitive. A senior being discharged from a hospital or rehabilitation facility often requires the same day and almost always within 48 hours. National background check companies provide search results in hours, not days or weeks. Searches required under HB 6100 could take weeks.

The background checks required under HB 6100 will provide another hurdle to achieving gainful employment for home care workers. Most home care workers already work multiple jobs. It takes real effort for them to come to the office for the application and interview process. HB 6100 would require that they take more time off and spend the better part of a second day getting finger-printed. This is not fair to caregivers or a reasonable expectation. In addition, a significant percentage of home care workers don't drive, which further complicates the logistics of this entire process.

Not all states share data with the FBI which is of interest to the Home Care industry and in protection of a vulnerable population. Further we understand that not all crimes are uploaded to the FBI and most of those affecting the interests of the Home Care industry are probably excluded.

Neither the bill nor Conn. Gen. Stat. sec. 29-17a make any mention of the list of excluded persons maintained by the Office of Inspector General. As that list is maintained outside of state and national criminal databases it reflects people who have violated Medicare and Medicaid rules paralleling the interests of the public and the home care industry. These people are not eligible for hire under federal law.

While the objective of the Department of Consumer Protection is understandable, there is no need to reinvent the wheel as it relates to background checks. DCP should perform due diligence on several national background check companies and their offerings and allow home care agencies to select among a number of companies and search types.

Terms used in business names and advertising

Section 24 would prohibit home care agencies (1) applying for a new registration from using any words in their business name that suggest they provide any services beyond the scope of their registration, including words related to medical or health care licensure; or (2) from advertising any such terms.

Thus, an agency indicating that it specializes in Alzheimer's disease, dementia care or memory care or support would be required to obtain a license from the Department of Public Health. This despite the fact that caregivers provide safety and support in the home for people who suffer from memory loss or dementia-related impairment that is not health care related, such as communication and reminders around appliances in the home that may pose a danger to such persons, such as stoves and hot surfaces.

Caregivers are trained to provide certain nonmedical tasks precisely to “*ensure* the well-being and safety of a person” in her home, in accordance with Conn. Gen. Stat. sec. 20-670(3). (emphasis added) It is clear the legislature intended that the role of a caregiver providing companion services includes services such as memory support that ensure a safe and healthy environment in the person's home. Nonmedical home care agencies are not claiming they diagnose, treat or cure disease, but they should be able to reasonably provide accurate information to consumers that offers to protect them and state that they offer various services that may be related, such as memory support.

In order to balance the Department's interests in informing and protecting consumers while requiring a license for home health services with the home care industry's interests in protecting consumers while allowing agencies to reasonably communicate with families, meet consumer demand and participate in a competitive marketplace, HCAOA Connecticut proposes that the following substitute for sec. 24(g) of HB 6100: (g) It shall not be a violation of this section for a homemaker-companion agency to include in its business name or advertising any words that accurately describe nonmedical, supportive services that ensure a safe and healthy environment for a person who may have memory challenges in such person's home.

Insurance policy as alternative to a surety bond

Section 23 of the bill allows an applicant for a homemaker-companion agency registration to certify that it maintains an insurance policy of at least \$10,000, as an alternative to a surety bond. This offers flexibility for many home care agencies and the Department of Consumer Protection while adequately ensuring protection for consumers. The section also makes a technical amendment in the amount of the registration fee.

Power of attorney

Section 25 of the bill prohibits homemaker-companion agency owners or caregivers from also serving as power of attorney for a person receiving services. It also permits the person receiving homemaker or companion services to petition the Commissioner of Consumer Protection for an exception to the prohibition.

HCAOA Connecticut does not object to the provision as long as an immediate family member would be able to act as agent under a power of attorney for a related person who contracts with the agency to receive home care services. For example, a son who owns an agency that also provides services to his mother should also be able to serve in the role of power of attorney for her. The public policy of the state should, however, help prevent any undue influence that may result when a caregiver has authority over the finances of an unrelated person receiving home care services.

Please contact Mark McGoldrick, Chairman, HCAOA Connecticut, (203) 924-4949, with any questions or for additional information, or visit www.hcaoa.org.