

Human Services Committee JOINT FAVORABLE REPORT

Bill No.: HB-5332

AN ACT PROHIBITING HOME CARE AGENCY CONTRACTS THAT PENALIZE

Title: CLIENTS FOR DIRECTLY HIRING AGENCY STAFF.

Vote Date: 3/17/2022

Vote Action: Joint Favorable Substitute

PH Date: 3/8/2022

File No.:

***Disclaimer:** The following JOINT FAVORABLE Report is prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and does not represent the intent of the General Assembly or either chamber thereof for any purpose.*

SPONSORS OF BILL:

Human Services Committee

REASONS FOR BILL:

Committee Bill No. 5332 will prohibit home care agencies from applying financial penalties to clients who choose to directly hire an employee that also works for the home care agency. Clients will be free to hire any caregiver of their choice. It will prohibit home care contracts that impose financial penalties on clients for directly hiring home care agency staff. It defines "no-hire clause" as a provision of a contract between a homemaker-companion agency or a home health agency and a client of the agency that imposes a financial penalty on the client for directly hiring an agency employee.

SUBSTITUTE LANGUAGE:

The substitute language will declare void agency contract provisions calling for legal or other fees or creating grounds for breach of contract or injunctive relief.

RESPONSE FROM ADMINISTRATION/AGENCY:

Deidre S. Gifford, Commissioner of the Department of Social Services (DSS): The Department urges passage of this bill because it will allow clients of a home health agency the freedom to hire caregivers with whom they have developed a relationship. This bill would make void and unenforceable any contract between a homemaker-companion agency or home health agency and a client of such agency that seeks to impose a financial penalty against that client for directly hiring an employee of such agency. The bill would ensure that no client who wishes to hire their caregiver directly will be forced to pay a penalty or fee or fear litigation. According to DSS, the current practices limit economic opportunities for

personal care assistants and caregivers to remain and grow in the home care field, further straining our shortage of direct care workers. Caregivers should have the right to accept employment opportunities, including from their current clients, without being forced out of the industry to increase their wages and career advancement.

Amy Porter, Commissioner, Department of Aging and Disability Services: ADS strongly urges the passage of this bill because it strengthens consumer rights, allows for free choice in the vital area of home care services and strengthen Connecticut's home- and community-based service system. This bill would prohibit home care businesses from using financial penalties to punish their customers who choose to directly hire an employee of that home care agency. ADS believes that these penalties inhibit choices for individuals trying to make decisions for themselves or their family members.

Michelle Seagull, Commissioner, Department of Consumer Protection (DCP): For DCP, this legislative proposal would clarify that "no hire" provisions are not permitted in contracts between home care industry entities and their clients. The Public Act 19-117 in 2019 protected a worker's right to enter a direct contract with a consumer, but it did not expressly protect a consumer's right to enter that same contract without the threat of a fee. DCP supports closing this loophole to protect consumers and appreciates the leadership of this Committee's willingness to bring this issue to the forefront

Mairead Painter, State Long Term-Care Ombudsman Department of Aging and Disability Service: The Department supports this bill because it would prohibit home care agencies from applying financial penalties to individuals who choose to directly hire an employee that also works for the home care agency. ADS argues that with the current penalties, the agencies' overall goal is to ensure their business needs are met and this can often result in the company moving a staff person around from one client to another and this has a significant impact on the client receiving care, yet clients have little to no control over when it happens. Giving the client the ability to hire staff directly without the fear of being penalized would allow greater continuity in their care and stability in the community. Continuity and choice are important to people of all socioeconomic backgrounds.

Commission on Women, Children, Seniors, Equity and Opportunity: The Commission supports the bill because it addresses the shifting penalties that have been imposed by home care agencies, from the employee to the client/consumer-employer, by prohibiting penalties for directly hiring homecare workers. This bill ensures the legislative intent of the established law and protects freedom of choice for workers and clients alike, to work closely together, free from fear of expensive financial penalties.

NATURE AND SOURCES OF SUPPORT:

Anna Doroghazi, Policy and Outreach Director, AARP Connecticut: AARP states that according to a survey from Research in 2020, 81% of Connecticut residents would prefer to receive long-term supports and services (LTSS) in their own home rather than an assisted living facility or nursing home. This bill would allow LTSS recipients to directly hire home care aides that they used through a home care agency without facing penalties. It provides both care recipients and direct care workers with more flexibility. AARP CT argues that the work

involved in home care can be extremely personal, and it is important for care recipients to trust the workers who have access to their homes and bodies.

Christy Kovel, Director, Public Policy Alzheimer's Association Connecticut Chapter:

The Alzheimer's Association is in support of this legislation because it will strengthen consumer rights, empower our families' choice in selecting a caregiver who knows their loved one and will enrich Connecticut's home- and community-based service system. It is stated that the key to enriching the lives of people living with dementia – particularly those who are in the more advanced stages of the disease – is to surround them with people who know them well.

Carol Scully, Director of Advocacy, The Arc CT: The Arc CT supports legislation that positively impacts persons with Intellectual and Developmental Disabilities (IDD) who are self-directing their support services so they can live their best life in the community. The ability to choose the "right" companion and/or homemaker match is directly tied to quality-of-life issues for persons with IDD. Access to direct service staff is a high priority for the IDD community, now more than ever as the state is experiencing a shortage of direct service staff due in part to the low wages, inability to pay for health care and the competition for these workers across all direct service providers and other industries including retail and food services.

Mary Liz Williams, Connecticut Resident: claims her father, whose dementia has worsened over time has come to depend upon this caregiver feeling safe, secure and at peace with her managing his care. It is stated that the extremely high cost of this kind of care and how much is paid overtime, that the workers are free to come and go at will but the families are penalized because they have grown dependent on a person, and because the agencies could not indenture the caregiver.

NATURE AND SOURCES OF OPPOSITION:

Tracy Wodatch, President and CEO, Connecticut Association for Healthcare at Home:

opposes this bill because it will be a huge detriment to their business but most importantly to our clients most in need of care. As stated in the testimony, homecare agencies make substantial investments in finding and identifying qualified caregivers (companions and homemakers) who are appropriate for their clients. It involves a great deal of time and effort on behalf of the agency in interviewing, screening which include criminal background check and drug test, onboarding, and training them. Additionally, caregivers taken private by clients may be misclassified as independent contractors and are often working 'under the table'. Many clients do not pay taxes, unemployment insurance, or workers' compensation insurance, and many caregivers do not pay taxes on their income when hired privately. When a caregiver needs to take time off, often there is nobody to replace them while they are gone. Banning 'no hire provisions' in private contracts between owners and clients is unfair and overreaching and will likely cause many locally owned and operated small home care agencies in the state to go out of business. It will fundamentally alter home care agency's business practices by irreparably damaging their ability to retain their trained caregivers who provide reliable and quality care.

Neil Anand, Owner, ComForCare Home Care.

Lisa Brower, Owner, Seniors Helping Seniors.

Maria Cerino Owner/Manager, Seniors Helping Seniors, Mystic CT.
Mark McGoldrick, Chairman, HCAOA Connecticut.
Mark McGoldrick, Owner, Comfort Keepers.
Nicholas Miller, Owner, Comfort Keepers.
Marlene Chickerella B&M Homemaking and Companion Services, LLP.
CHOWDHURY, KC, President, CareAll LLC.
Attorney Neil P Connors, Center for Transitional Living, LLC.
Sandra Cook, Manager of Business Development and Care Coordination, Home
Helpers Home Care.
Timothy Francis.
Colman Gately Owner, Fairfield Family Homecare Inc.
Kelley Green, Chief Operating Officer, Visiting Angels.
Dave Harrison, Owner, Right at Home.
Steven B. Katz, President, Sterling Care.
Jim Keane, Owner, Visiting Angels of Stamford Living Assistance Home Care.
John J. Lajeunesse, Vice President, Always Best Care Senior Services.
Taylor C. Lajeunesse, Director of Operations, Always Best Care of Central Connecticut.
John Richards, Owner, FirstLight Home Care Of Western Ct.
Robert Scandura, Owner, Right at Home.
Tracy K. Weiss, Owner and President, Right at Home of Middle Connecticut.
Ann Wilson, Companions & Homemakers, Inc.

Reported by: Isaac Agyemang-Duah

Date: 03/24/2022