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March 3, 2011
10:00 A.M.

pleased, I'm sure.

SENATOR PRAGUE: [Inaudible.]

KEVIN LYNCH: They get sticky about that, if you don't show up.

SENATOR PRAGUE: We'll give you a copy before you leave today, so that you will be sure to have it.

Any other questions from the Committee members?

Thank you very much, Kevin.

KEVIN LYNCH: Thank you very much.

SENATOR PRAGUE: Appreciate your testimony.

Next person is Martin Acevedo. [Inaudible.]

MARTIN ACEVEDO: Good morning, Madam Chair, members of the committee. My name is Martin Acevedo, and I'm the General Counsel of Companions and Home Makers, a 20-year old homemaker-companion services provider registered with the Department of Consumer Protection. With ten offices throughout the State of Connecticut, our company cares for 2700 elderly consumers in their homes or places of residence and employs approximately 2300 caregivers.

In 2006, our company worked very closely with this body in crafting section 52 of Public Act 06-187, which was the first legislative enactment regulating the home care industry in Connecticut. Today we are pleased to testify in support of most of the contents of Committee Bill Number 3.

The statute regulating providers of

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testimony which clearly states that registries should never tell a client, a consumer, "these people are independent contractors." They're not, "in fact, they may be your employee." And, let's face it, I mean, consumers don't ever imagine being in a position where they're going to be required to make all these payments, to be responsible, potentially, for unemployment benefits. It's an untenable position to be in, it's an unfortunate position to be in, yet, there is no legislation that uniformly requires the registries to make all those disclosures. There is a bill pending right now, Bill 911, which seeks to address that. So, I think it's important that this committee is aware that there's an intersection between this bill and Bill 911. So, I hope I made it clear what the differences are.

REP. COOK: No, you have made that clear and that actually could probably help us, going forward, to making sure that when legislation is either proposed or suggested, that we understand the difference.

MARTIN ACEVEDO: Yes, absolutely.

REP. COOK: There's so many play on words with everything --

MARTIN ACEVEDO: Exactly.

REP. COOK: -- that, you know, you want to make sure that that fine line is done, and I think that that's what we spend most of our time doing, is clearing up statutes that are misleading or uninformed.

MARTIN ACEVEDO: Exactly. And, Representative Cook, if I may, the word "registry" is a fairly old term and it started with nurse registries a long time ago. And nurse registries that

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KEVIN DONOHUE: Well, I -- I think you need to also allow that worker to understand that if they're, you know, that they can forego that for perhaps a higher pay. You know, it's an informed decision. I mean, we want to protect everybody, but certainly -- I mean I know -- I know you're referring to Raised Bill 911 which I spoke on a -- a couple of Thursdays ago. Which I think is a good intent, but I think the intent goes beyond that into scaring clients away from nurse registries because -- as one gentleman said in that hearing -- that they wanted truth in advertising. If it's truth in advertising and I'm telling someone that you might be the employer -- that may be true, but it's never happened to -- to -- in my situation. I know it's happened in the state and I -- and I'd like to think that it's -- it -- a not informed decision on the part of perhaps the referee.

And you know, so, you know, once these things are out of our hands -- we insure -- we do everything we can to maintain as much of the 20 Factor Common Law Test and the ABC Test as possible.

REP. STEINBERG: Well I'll just -- I'll just you with this. We have a graying population in the State of Connecticut. We're going to have a growing need for this -- these kind of workers.

KEVIN DONOHUE: Absolutely.

REP. STEINBERG: But we continue to have both disconnects in terms of communication --

KEVIN DONOHUE: Right.

Appeals held that a companion -- we all know what a companion does, okay? They go, they -- they take care of Mrs. Jones. They engage in conversation with Mrs. Jones. Mrs. Jones tells them, you know, honey I would like to, you know, maybe play cards, you know? Why don't we watch a little T.V. et cetera, et cetera. In that case the -- The Board of Review held, no. These people are employees and therefore she's entitled to unemployment compensation.

So you have the Connecticut Supreme Court saying that these people are not independent contractors. You have the Board of Review of Unemployment Appeals -- and by the way, that case was appealed by the registry. It is appealed because it's an administrative tribunal that -- that issued the ruling -- it gets appealed to the Superior Court and the Superior Court affirmed. And it wasn't taken - - there weren't any further appeals. So that case is good law as well.

There is also, members of the committee, a -- a legal memorandum that was issued by the Department of Public -- Department of Labor dating back to December of 1998. And this is, I mean it doesn't get any clearer than this. This is a D.O.L. -- Connecticut D.O.L. saying registries or agencies should not advise their clients that the referred individual is an independent contractor. The registry agency should inform their clients that the referred individual may well be considered the client's employee. It -- this is the D.O.L. speaking and this is what Senate Bill 911 goes to. Give them that notice and like Madame Chair, you put it, no one here is talking about you know, we - - that the registries shouldn't be able to engage in -- in this enterprise. It's about educating the consumer and it's about educating

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SENATOR DOYLE: Okay. Thank you for your (inaudible). Maybe you can get back and catch the last class today. Skip lunch and go catch it. I'm sorry, Lonnie. Gentlemen, Nick? Gentlemen, sorry. Nick, come back. Sorry. Senator Reed has a question. I apologize.

REP. REED: Thank you. Thank you, Mr. Chairman.

I just had a quick question. Is -- when you pursue your dream of being in this business, do you see solar being a part of it as well? Is that something that interests you as a young man these days?

NICK DELMORO: Definitely. I think there's a --

REP. REED: And, will you pursue getting the PV-1 and 2 along with, you know, the E-1, 2 and 3?

NICK DELMORO: They all start out going from the E-2, and then I go for my E-1 which holds the PV-1 (inaudible).

REP. REED: Great. I think it's great. You obviously have a very good mentor there, and I think it's great that you're going into solar and renewable. That's terrific.

NICK DELMORO: Thank you very much.

REP. REED: Thank you. Thank you, Mr. Chairman.

SENATOR DOYLE: Thank you. Thanks, Nick, thank you. Senator Prague, please? Senator Prague is going to speak. The next speaker after that is Martin Acevedo, Don Vaccaro, Bob Muccino, Mary Jane Fax. Senator Prague?

SENATOR PRAGUE: Thank you, Senator Doyle and Representative Taborsak and members of the General Law Committee. Thank you for this

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opportunity to testify on the Senate Bill 911 that you have before you. If you wait a second, I'll put my 'glasses on to see what I'm doing.

The issue in this bill about the registries and them placing people in the homes of the elderly to take care of the -- to take care of them, and then at the end of the year, the elderly person is required to pay all the state and federal taxes, it is a problem.

This bill is better than nothing because what's happening now is that the elderly person is not notified in any way that they are going to be responsible to pay these taxes. So, this bill mandates that the registry gives the client or the client's relatives the notification that they're responsible for all the taxes and the insurance.

It would be my preference if it is possible -- and the Committee on Aging has a similar issue that we're trying to deal with -- is to mandate that the registries consider these people as employees and pay the taxes and also do criminal background checks on people that they send into the homes of elderly people.

I think any organization has a responsibility to the elderly clients that they're trying to service to send people in who have been, number one, checked out, and, number two, to charge whatever is appropriate, but that they should pay the taxes and the insurance. It's easy to just have a phone and somebody calls you up and says, oh, I'm looking for work, and they say, well, go to Mrs. Smith's house for a week or two; she needs somebody to come in; she may need you even longer, I don't know, but go to Mrs. Smith's house and take care of

her.

It makes me extremely nervous, so I would ask this Committee in your process of discussing this bill to see if you can adjust it in some way to make the registry do a criminal background check on the people that they're sending into the homes of the elderly and to also pay the taxes and the insurance that's required.

So, having said that, I thank you for this opportunity. This is a very serious issue. I'm hoping that you can work out some language that will be appropriate.

SENATOR DOYLE: Thank you, Senator Prague. I'm going to ask you some questions. I usually don't ask first, but I'm going to ask. Because you're a colleague, I will.

Senator Prague, your propose -- your proposed amendments, the thing is wouldn't that take away a menu option for our seniors in the sense that if you're basically converting -- if we were imposing on registries the duties to hire their, you know, their referenced individuals as employees and do criminal background checks, isn't that simply basically eliminating registries as a menu option for a senior?

You may -- you may think it's an option they shouldn't have, but do you think that's worthwhile, eliminating that as an option? I'm just curious.

SENATOR PRAGUE: I don't think that the option they have now just to send anybody without knowing anything about them and also throwing the responsibility on the elderly person to pay all the taxes and whatever else is required,

I'd rather see them not have that option than to have the option the way it is.

SENATOR DOYLE: Okay. Thank you, Senator. Any other questions? Representative Rebimbas?

REP. REBIMBAS: Thank you, Mr. Chairman. Good afternoon, Senator.

SENATOR PRAGUE: Good afternoon.

REP. REBIMBAS: This is a learning experience for me on this topic, and I think just to kind of piggyback a little bit on the Chairman's question, are there currently companies out there that have as employees homemakers -- yes, homemakers that the elderly or anybody else can elicit them for services?

SENATOR PRAGUE: Yes, there is. There are homemaker and companion agencies. Then we have CCI that also offers home care. And, I think that you're raising, you know, an issue that is of concern. Frequently people don't know where to go to get these services, and that's something else we have to work at, to make the knowledge of what's available, get that out there so that people who need home care -- and home care services are where we're really going to keep people out of nursing homes.

My concern is that you can't just send in anybody and then dump the responsibility of paying the taxes onto the elderly person.

REP. REBIMBAS: I certainly agree with you that it is, you know, obviously concerning in that regard. I'm happy to hear that there are other companies, that there are options, then that the person would be well informed, that a media background check has been done, and that

they are an employee, and that the taxes and all of that stuff is being done by the company, and the person has the option to go to the company.

Do you feel that with the registry, assuming that the registry stays in place, are you -- are you aware of any information or warnings that the registry provides the person who contacts them, is it clear enough to them that the person that they're referring to their home has not possibly had a background check, and is it clear to the person who's enlisting the registry that, again, there are added costs that then the consumer, the elderly person, is going to have to obviously be faced with?

SENATOR PRAGUE: I have -- Representative Rebinbas, I have personally not had any dealings with the registries. I'm aware that there are registries and that if somebody wants a job taking care of elderly people, if they call the registry, they're on a list, and if an elderly person or a family member calls in and says I need somebody to take care of my mom, that the registry provides that person.

It's my understanding that currently there is no information given to the family member about the responsibility of paying the taxes. It's also my understanding that there is no criminal background check required by registries, so, you know, even though registries may serve a purpose, they have to do it in the right way. It's too risky not to.

REP. REBINBAS: I would have to agree with that. It's unfortunate the registries are not providing that information and making it clear, so thank you again for your testimony.

SENATOR PRAGUE: You're welcome.

REP. REBIMBAS: Thank you, Mr. Chair.

SENATOR DOYLE: Thank you. Any further questions?
Seeing none, thank you very much, Senator
Prague.

SENATOR PRAGUE: Thank you.

SENATOR DOYLE: I'm sorry. Representative Baram.
I'm sorry.

REP. BARAM: Thank you, Mr. Chairman, and thank
you, Senator.

In looking at this proposed bill real quickly,
one thing that seems to be missing is the
definition of a registry. In the definitional
section, there's no reference that I see made
to it, and then in the body of some of the
language, it talks about failure of an agency
that acts as a registry, and I'm just
wondering do we know the difference between a
registry and some other kind of an agency? Is
there some sort of custom or tradition that
defines or separates those two operations?

SENATOR PRAGUE: No, Representative Baram. I
truthfully cannot answer that question. Now,
I know that the homemaker/companion agencies
are registered with the Department of Consumer
Protection. I am wondering whether the
registries are registered with the Department
of Consumer Protection. I don't know.

REP. BARAM: Thank you. I'll look into that
further.

SENATOR PRAGUE: Thank you. Thank you.

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SENATOR DOYLE: Thank you. Any questions, further questions for the Senator? Seeing none, thank you very much, Senator.

SENATOR PRAGUE: Thank you.

SENATOR DOYLE: The next speaker is Martin Acevedo, then Don Vaccaro, Bob Muccino, Mary Jane Fax, Jenn Jennings. Martin? Thank you.

MARTIN ACEVEDO: Good morning, Senator Doyle, members of the Committee, my name is Martin Acevedo. I'm the General Counsel of Companions & Homemakers, a 20-year-old homemaker-companion agency registered with the Department of Consumer Protection. With ten offices throughout the state of Connecticut, our company cares for over 2,700 elderly consumers and employs approximately 2,300 caregivers.

In 2006, our company worked very closely with the General Assembly in crafting Public Act 06-187, which was the first statute regulating the home care industry in Connecticut. Today, we are pleased to testify in support of Senate Bill 911, which is a much needed complement to that statute.

Senate Bill 911 is designed to protect elderly home care services consumers and home care workers by requiring agencies that follow the registry model to make certain disclosures concerning responsibility for payroll taxes and employee status to the consumer and to the worker.

A registry is a type of homemaker-companion agency that treats its workers as independent contractors in order to avoid having to pay payroll taxes, unemployment and workers' compensation insurance as well as Medicare and

Social Security contributions.

Consumers who contract with registries are asked to make two separate payments every week for services rendered. One check is payable to the worker for all hours worked during the week. A second check goes to the registry for its fees, usually a pre-determined charge which is multiplied by the number of hours worked by the caregiver during that given week. The problem is that the registry neither takes out the taxes nor makes payroll contributions, nor does it advise the consumer of his duty to do so.

Registries do not see themselves as employers. The problem is that someone has to be the employer of record of that worker. Unbeknownst to the elderly consumer, any time the consumer hires one of these registries to provide home care services, it is the consumer who winds up becoming the employer of record in assuming the responsibility to withhold taxes, provide workers' compensation, pay unemployment contributions and match Social Security and Medicare deductions. The consumer, of course, has no idea that he or she just became what we call an accidental employer largely because the registry has negligently -- and in some cases intentionally -- failed to disclose the consequences of that arrangement to the consumer.

And, at the end of the day, everyone is a loser here. The consumer has unknowingly become the employer of record, and eventually he or his estate will face substantial liability for unpaid taxes; the worker has been cheated out of benefits and contributions; the state of Connecticut has lost millions of dollars in this underground economy, which a prominent University of

Connecticut economics professor, Dr. William T. Alpert, estimates results in billions of dollars in losses to the state on an annual basis.

This bill aims to remedy that momentous problem. It requires registries to provide consumers and workers alike with a notice written in clear and unambiguous language, identifying which party is responsible for taxes, which party is the employer of the home care worker, and what are the potential legal and tax implications consumers can face if they are found to be the employer of the home care worker.

This bill is about truth in advertising in the home care industry and makes good law. The bill is cost neutral, and the bill is consistent with Connecticut public policy against intentional misclassification of workers. With respect to this last point, I would respectfully ask the Committee to add a provision making a registry's intentional misclassification of its workers a violation of the Connecticut Unfair Trade Practices Act, CUTPA.

We respectfully request the Committee to vote favorably and make Senate Bill 911 the law of the state of Connecticut.

SENATOR DOYLE: Thank you.

MARTIN ACEVEDO: I welcome any questions.

SENATOR DOYLE: Any questions? Representative Baram?

REP. BARAM: Thank you, Mr. Chairman.

So, you're here supporting Senate Bill 911.

MARTIN ACEVEDO: That's right, sir.

REP. BARAM: But, are you advocating the same kind of an amendment that Senator Prague was suggesting where the registry be required not only to give the notice you're speaking of, but to pay taxes and do background checks in addition, or are you -- is your agency and service satisfied with just the reporting requirements?

MARTIN ACEVEDO: Personally and as an attorney, I feel that the registries, they should pay the taxes. This bill, however, is -- doesn't take that step. It just takes a more conservative step which is as a matter of consumer protection the right thing to do.

You tell the person, look, this is what could happen; this is -- these are the potential responsibilities and obligations. You just don't tell the consumer don't say anything; you just don't instruct the consumer that everything is going to be okay, don't worry about the taxes, which is what these registries do in the course of their daily business.

So, you know, what I would take as a more conciliatory approach, I guess, which is maybe not necessarily converting the bill into one that would, you know, rule these employees as employees as a matter of law, but I would respectfully request that this provision making an intentional classification of workers a violation of CUTPA. I think it can go a long way to curb what to us is basically an unscrupulous set of practices.

So, if a change is going to be made to this -- to this law, to this bill, I think it should

be the section concerning CUTPA. And, also, it is our position that registries as a subset of homemaker/companion agencies, they are required to conduct background checks or comprehensive background checks under current law.

But, I just wanted to raise a point in response to a point that you had raised with Senator Prague. There is a registry definition in the proposed bill, and it reads, if I may: Registry means any person or entity engaged in the business of supplying or referring an individual to or placing an individual with a consumer to provide homemaker or companion services provided by such individual when that individual providing services is either, A, directly compensated in whole or in part by the consumer or, B, treated, referred to or considered by such person or entity as an independent contractor.

So, the definition is there in the proposed bill.

REP. BARAM: Just lastly, does an agency, a registry have to register with the Department of Consumer Protection?

MARTIN ACEVEDO: They should.

REP. BARAM: But do you know if there's any mandate now under law to do that?

MARTIN ACEVEDO: Construing the law in the manner most favorably to the consumer, they should register. If they are providing homemaker and companion services, they should register, and I know that some of them have registered. There are 360 homemaker and companion agencies registered with the Department of Consumer Protection in Connecticut, and I know for a

fact that various registries are registered as such, but I cannot make a representation that all registries have complied with the current law, which is codified at Chapter 400 of the General Statutes.

But, they should register. They fall under the jurisdiction of the Department of Consumer Protection.

REP. BARAM: Thank you very much.

MARTIN ACEVEDO: You're very welcome.

SENATOR DOYLE: Thank you. Any more questions from the Committee? Seeing none, thank you very much.

MARTIN ACEVEDO: Thank you.

SENATOR DOYLE: The next speaker is Don Vaccaro followed by Bob Muccino, Mary Jane Fax, I believe, Jenn Jennings and David Fay. Don Vaccaro?

DON VACCARO: Good afternoon, Senator Doyle and Representative Taborsak, and the rest of the Committee. I'd like to thank you for allowing me to speak.

Just to give you some background on my company, TicketNetwork, we're located in Vernon, Connecticut. We employ approximately 300 people there. We sell both software for the secondary ticket market. We also sell software for the primary ticket market, so we're actually in both markets that this bill is about.

This bill's a great bill. It gives customers a lot of choice, and it's choice that the customers and consumers really want and really

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the FDA on tobacco, and he resigned.

But, anyways, he's a renowned expert on tobacco issues, and it is interesting that Massachusetts has maintained ad valorem because I know that my friends are not just working in Connecticut. I know they're working in Massachusetts and all the other states to get on this great idea, and we're working to say it's not such a great idea, but I haven't seen any, you know, no huge market shifts (inaudible), no, no.

REP. TABORSAK: Okay. Any other questions from the Committee? Thank you for your testimony.

ROBERT Y. MAPLES: Thank you. I appreciate it.

REP. TABORSAK: Ken Gurin followed by Sharon Massafra followed by Patti Urban.

KENNETH A. GURIN: Good afternoon, everybody, and thanks to the distinguished General Law Committee. I'm here to talk to you about supporting Senate Bill Number 911.

My name is Ken Gurin, and I am president of the Connecticut Chapter of the National Private Duty Association. It's also called the NPDA. I'm also the owner of Comfort Keepers, an employer-based home care agency servicing the elderly located in Shelton, Connecticut.

The NPDA is the nation's first association for providers of private duty home care who operate using only the payrolled employees versus registries who use non-employee independent contractors. The mission of the NPDA is to enhance the strength and professionalism for private duty home care, and in so doing, maintain high levels of care

provided to the elderly consumer.

Our Connecticut chapter was formed four years ago to promote this mission for our residents here in Connecticut.

On average, the registries are approximately five dollars less per hour than the employer-based providers but, of course, this does come at a cost. Today's challenging economic times make the lower price on the surface especially attractive to elderly consumers; however, the registry model poses risks to both the client and the worker, seldom known by either.

Operating outside of the legal requirements of withholding payroll taxes, Social Security, Medicare, registries place 'misclassified independent contractors into elderly consumers' homes. Elderly consumers unknowingly become accidental employers, unaware that they are responsible for handling all payroll tax withholdings and contributions.

Shamefully, these workers are not by IRS definition or Connecticut ABC definition independent contractors, and the registries collect an hourly fee from the client for merely placing the worker in their home with no further responsibility. It's important to remember that these cost savings are coming at the expense of the citizens of Connecticut as the state's cash-strapped income is further eroded by not collecting the payroll taxes legally owed.

There are serious risks and consequences for the worker as well. Some of them have been mentioned. Most are not aware that they should be paying taxes or contributing to

Social Security and Medicare, and at the time that they may need these benefits, they find out they just aren't eligible because they never -- they never contributed.

We're not questioning the quality of services delivered by the registries, but we feel full disclosure of the potential risk is critical. This way both consumers and the workers can make informed risk/benefit decisions. Non disclosure of this information serves no one except the workers -- the owners of the registries who are profiting by putting those they serve at potential risk.

Truth in advertising, a long established requirement in most industries, is sorely needed and long overdue in the home care industry as well.

This past October, I had the opportunity to --

REP. TABORSAK: I'm sorry. Could you please summarize, sir? Could you please summarize? Thank you.

KENNETH A. GURIN: This past October, I had the opportunity to address this issue with former Attorney General Richard Blumenthal, who is very supportive of requiring clear and concise disclosure by registries. A copy of his letter is attached to the testimony.

Thank you for your time to listen to my views, and I urge you to support this bill to eliminate needless risks being exposed to our most vulnerable citizens.

Thank you.

REP. TABORSAK: Thank you for your testimony, and we will take a look at that written testimony you submitted.

Are there any questions from the Committee?
Thank you.

Sharon Massafra followed by Patti Urban.

SHARON MASSAFRA: Good afternoon Representative Taborsak and members of the General Law Committee, I am here on two accounts, one as vice president of the Connecticut chapter of the National Private Duty Association, and I am also the franchise owner and president of Home Instead Senior Care with offices located in Trumbull and Sandy Hook, Connecticut. We are a non-medical homemaker and companion agency, and we hire our own employees.

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I realize we're going three minutes here. There's a number of us here who are also testifying as well, so I think you're going to learn a lot about registries. I think I'm just going to -- I would like to move right over to an example of where a caregiver, a professional caregiver was working in the home of an elderly consumer. This example, I'm going to call her Dorothy because I happen to know her. She's been hired by an agency to care for a relative of mine, so I got to know her quite well.

When the case ended, Dorothy was looking for other work, and she signed on with two other agencies. One was a registry model. It appeared no different from the other agencies that she had worked for. Caregivers often do sign on with more than one agency so that they can get assignments and work a full work week.

When I saw Dorothy about a year later, she was quite upset. Dorothy is a single mom with two children living pay check to pay check. Dorothy was taking care of a client she had

received through the registry. Her client was paying her for services rendered weekly, and this went on for approximately nine months.

In December of that year, her client became gravely ill, and the client's son, who lives out of state, took over bill payment and management. He wrote out a check to Dorothy as the son's mom had been doing, but then he also informed Dorothy that he would be submitting a 1099 form in January.

Dorothy was devastated as was her client. Dorothy didn't realize she was working as an independent contractor there. She believed that her relationship was still with the registry. Dorothy never did meet the qualifications of an independent contractor and, therefore, this 1099 could not have been legally filed. She now has not paid her taxes and doesn't even have money to pay the taxes. Neither client nor caregiver was informed of their responsibilities and legal liabilities placed upon each other. They were not informed of the employer-employee arrangements, and this is what I hear over and over when people come to be employed with my company, that they worked for so-and-so, and these types of things are happening.

So, this is why I am here today because I believe that we do need to clearly define the business relationships, responsibilities and the legal liabilities often between the elderly consumer, the professional caregiver and registry, and it's really imperative that we meet this now because, as you know, our senior population is growing as is the professional caregiver population.

It is incumbent upon all of us to work together to set the gold standard in homemaker

and companion agency industries. I do support this bill, and I urge you to review all the testimony today and support Bill 911 as well.

REP. TABORSAK: Thank you for your testimony. Any questions from the Committee? Thank you.

SHARON MASSAFRA: Thank you.

REP. TABORSAK: Patti Urban followed by Guy Tommasi followed by Dustin Brighton.

PATTI URBAN: Okay. Good afternoon. My name is Patti Urban. I'm the owner of Comfort Keepers located in Guilford, Connecticut. I'm also a companion-homemaker agency. We employ an employment model for our caregivers. We pay their taxes, workers' compensation, liability insurance, the full gamut of being an employer.

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You've heard several others' testimony today, so I'm going to cut to the chase and just go with a few examples.

The independent contractor caregivers that work for the registry receive their compensation generally directly from the client that they are working for. I had a caregiver that came to apply to me for a job, and she was in tears because a client that she had been caring for for quite a long time had suddenly passed away. She went to file for unemployment and was turned down because nothing had been paid. She was completely unaware of her rights as an employee.

Protections for this proposed bill are also for the elderly client who engages the services of registry agencies. Because they are paying the caregiver directly, they're now de facto employers. I can tell you they are

completely unaware of their responsibility in this area. They don't know it. They just want someone to come in to help them. They're 80 and 90 years old. They don't have a clue about employment law.

When I was out on an assessment, a client told me a story about a caregiver they had working for them from another agency which turned out to be a registry, and this person, this caregiver had fallen on their property and broken her leg. She had to sue the clients, her client, for the medical bills because she had no medical insurance. The client's homeowner's policy would not cover the employee, and the client had to pay the medical bills in cash.

So, we really are experiencing problems for the caregivers and the clients because of misrepresentation or non-disclosure. So, I respectfully request that you support this bill because it really will make a difference in the lives of these people. Thank you.

REP. TABORSAK: Thank you for your testimony, and thanks for trying to provide us with some new information and examples that we haven't heard on these issues so far.

Are there any questions from the Committee?
Thank you.

PATTI URBAN: Thank you.

REP. TABORSAK: We have Guy Tommasi followed by Dustin Brighton.

GUY TOMMASI, JR.: Good afternoon. Senator Doyle, Representative Taborsak and members of the General Law Committee, my name is Guy Tommasi. I'm the managing director of Lifetime

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Solutions, a private duty home care company, an affiliate of VNA Community Healthcare based in Guilford, North Haven, and Old Saybrook.

I'm here today to urge you for the support of the registry disclosure Bill 911.

As presented in the statement of purpose, I cannot emphasize the importance of these words for the protection of our most vulnerable population, the elderly, and for those who provide this much needed service, the worker. The passage of this bill will ensure that both the consumer and the worker are given the ability to make intelligent, informed decisions regarding their status as employees, independent contractors and employers.

For too long now these registries have been allowed to provide services and supply workers with little to no regard for the consequences of their actions. Independent contractors offer services to an elderly population without informing them of their legal responsibilities, that they are now considered an employer and may be held responsible for the payment of federal and state taxes, Social Security, overtime and minimum wage, unemployment, workers' comp, and many other applicable payment required under state or federal law.

Ladies and gentlemen of the Committee, I ask you, would you want one of your family members to be blindsided with this financial burden because they were not told of this upfront?

I urge you to support this bill and stop a practice that has been allowed to exist far too long. This bill will not only level the playing field and return thousands of dollars in state taxes, but most importantly, it will

protect those who need it the most, our aging loves ones.

Thank you for your consideration.

REP. TABORSAK: Thank you, Mr. Tommasi. Any questions from the Committee? Thank you very much.

The next speaker is Dustin Brighton and Paul Costello, Doug Barker and Nicole Granados and Randy Mealy. Dustin?

DUSTIN BRIGHTON: Thank you, Mr. Chairman. Mr. Chairman, members of this Committee, invited guests, my name is Dustin Brighton. I'm a senior manager of government relations for eBay. eBay is the world's largest on-line marketplace with over 89 million active users worldwide who choose from a variety of categories for goods.

I'm here today to testify in support of House Bill 6298, An Act Concerning The Fair Sale Of Tickets to Entertainment.

Ticketing experiences are just one such category with eBay's marketplace, but it's one of the most popular and dynamic on eBay. In 2007, eBay expanded its ticket business by buying StubHub dot com, one of the largest ticket marketplaces that offers industry leading consumer protections.

People from all across the country visit eBay and StubHub to buy and sell tickets that are in high demand. eBay's open and StubHub's open, transparent marketplaces where buyers can see all available inventory ensures that buyers have the widest choices and sellers get the best price.

Connecticut or somewhere else?

JOHN D. BREYVAULT: No. We're a national organization. We're based in Washington, D.C.

SENATOR KISSEL: Okay. So you came up. Good. Thank you.

SENATOR DOYLE: Any further questions? Thank you very much.

JOHN D. BREYVAULT: Thank you.

SENATOR DOYLE: The next speaker is Ray Boller, I think, then Renny Wieland, Cameron Champlin, Sue Christolini and Ken -- Kevin Donohue.

RAY BOLLER: Good afternoon. Thank you for giving me this opportunity to provide my testimony.

My name is Ray Boller, and I'm the owner of BrightStar of Stamford/Greenwich, a private duty, private pay home care agency serving Stamford, Greenwich, Darien and New Canaan.

I'm here today to voice my support of Senate Bill Number 911.

I am a recent entrant into the health care field after 25 years in corporate America. I purchased the franchise and opened my office this past July. While there were many reasons for my getting into this field, knowing that I can provide a service that allows seniors to age in place in their own homes was an important motive for me.

As I did my research and due diligence into opening an agency, it became very clear to me that I have actually two sets of, quote-unquote, clients -- my patients and their families and my caregivers. Providing

excellent customer service and care to both groups will ultimately bring success to my agency. Providing compassionate caregivers to families in need of assistance is my goal. The focus should be on the quality of care supervised by professionals, and that focus should not be diverted by having patients or the caregivers having to worry about non-care related matters.

I made a conscious decision to run my agency in a responsible, accountable manner. My business model is an expensive one to operate: Employing a nurse to provide a plan of care for all clients and supervising the caregivers, hiring caregivers as my employees, and carrying the necessary insurance to protect both my patients and my caregivers.

Over the last six months, as I heard of the horror stories of both clients and caregivers abuse from registries, I know I made the right decision.

One caregiver told us the story of how she worked for a registry and got paid directly by the patient. It was nice to make a higher hourly rate, but being responsible to pay her taxes was too complicated, and when she got hurt and dislocated her shoulder while working with a male Alzheimer's patient, she bore full responsibility for covering the bills related to her injury. No workman's comp.

One client was shocked when she got a notice from the state that she owed over \$30,000 in taxes and fines after employing a caregiver from a registry to care for her dying mother. She paid the caregiver directly and didn't take any taxes out. After her mother passed away, the caregiver filed for unemployment, and the state came after her for taxes and

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unemployment insurance.

It is stories like these that lead me to support this bill. Having registries disclose to both prospective clients and caregivers how they operate as to supervision, taxes and insurance is important so that both groups can make an informed decision. Disclose this information up front and avoid surprises down the road. That way everyone can focus on what is really important -- providing quality care to the seniors.

Additionally, it doesn't hurt to have the state collect new-found tax revenue at a time of fiscal need.

In closing, I ask the Committee to vote in favor of Bill 911. Thank you.

SENATOR DOYLE: Thank you. Any questions from the Committee? Seeing none, thank you very much.

The next person up is Renny Wilcox -- I'm sorry, Renny. I'll have to have you clarify your name for me. And Cameron Champlin and Sue Christolini, Kevin Donohue, Joyce Wojtas.

W. RENNARD WIELAND: Do I have the right to -- okay. The name is Wieland, W-i-e-l-a-n-d, and if it's bad handwriting, I apologize.

SENATOR DOYLE: I'll clean the handwriting up.

W. RENNARD WIELAND: Okay.

SENATOR DOYLE: Thank you.

W. RENNARD WIELAND: Good afternoon, Senator Doyle, Representative Taborsak, and members of the General Law Committee.

SB911

I am a member of the National and Private Duty Association Board at (inaudible), Connecticut. My name is Renny Wieland. I have been involved with home health care for most of my working life.

I was the executive director of a visiting nurse association for 18 years, and I now own and operate a private duty home care agency in Trumbull, Connecticut, which I started about eleven years ago.

One of the points that I'd like to make is there is still, despite Medicare, despite all the titles out there, there is still a lot of confusion among the public and even law makers at times about the difference between certified home health agencies, private duty home care agencies, and referral agencies, and generally the public has this confusion, and I know that because I deal on a personal basis with most of my clients.

We receive calls from seniors who come to us for service who are confused over the fact that they were having to pay a caregiver directly. They didn't know that when they started the service, and the reason they came to us was they didn't that arrangement, and some of them did realize there were a lot of implications to that, particularly on the liability side.

Many of the frail elderly that we serve are more than willing to accept help in their homes without questioning the employment relationship that the caregiver brings in. The pamphlets and the literature -- and I have them in my possession -- handed out to senior audiences all reflect advertising which purports those agencies to specialize in home care service for the elderly without even

mentioning the independent status of the caregiver being sent out.

Most of the time, independent contractors lack supervision. In many instances they're without criminal background checks or even references on file. We know this because the caregivers come to us, and they want to become employed, and they give us that information.

I'm going to tell you something shocking. The classic example of how this service goes wrong happened in Bridgeport, Connecticut, several years ago when a male aide in his thirties was sent out by a registry to care for a frail elderly female in her eighties. This woman lived in an apartment with her granddaughter. The male aide was in the process of raping the grandmother when the granddaughter arrived home from school. Obviously, an arrest was made in this case; however, the question remains: Did this person have a criminal background check? Most likely not. Was this aide now an employee of the grandmother, and was she aware of it? What type of professional liability insurance was available? Who carried it? Why was a male aide sent out to care for an elderly woman in the first place?

This is not the standard for safe home care practice.

I'm going to conclude by saying that misleading advertising can lead to extreme situations like this. The public should be fully aware of the type of service they're subscribing to and fully understand their own responsibility in choosing a registry or placement service.

I strongly support Raised Bill 911.

SENATOR DOYLE: Thank you. Any questions from the Committee? Representative Nicastro?

REP. NICASTRO: Thank you, Mr. Chairman. I'll try and be very brief.

You talked about criminal background checks. Why wouldn't the proposed employer do the background check? If I own the business and I was going -- and I'm liable for the services that I provide, why wouldn't I do the background checks on the people I'm going to hire?

It's just like in a city, municipality. Before we hire police officers or firemen, or whatever the case may be, we do background checks, and sometimes we're very shocked -- like you said -- we find things out that, you know, that you didn't know. Why wouldn't the employer do it?

W. RENNARD WIELAND: It just adds to the cost.

REP. NICASTRO: I'm sorry?

W. RENNARD WIELAND: It adds to cost.

REP. NICASTRO: I realize it adds to cost, but if you want to have a good business and you want to provide proper services and you want to have a good name out there, I would think that you should be -- that you would be willing to talk concerns.

W. RENNARD WIELAND: I think that the implication here is that hiring independent contractors is a way to cut your costs. Not doing a criminal background check on them is another way to cut your costs. There's very little, if any, oversight with regard to those types of

agencies.

You know, I've been in this business for a long, long time, and what I'm saying about those agencies is absolutely the case. This is a new industry. The home care industry, even though some agencies have been in business 20 years, most of the latest entities that have come into this have come in probably in the past five or ten years. It sounds like an easy business to get into, but it's not, and I personally believe in more regulation in that direction because what you're looking at is really an emerging industry that has not had a lot of guidance and has not had a lot of oversight. That's my opinion.

REP. NICASTRO: Thank you. Thank you, Mr. Chairman.

SENATOR DOYLE: Thank you. Any further questions from the Committee? Seeing none, thank you very much.

The next speaker is Cameron Champlin, then Sue Christolini and Kevin Donohue, Joyce Wojtas, Susan (inaudible).

SB 867 HB 6265

CAMERON CHAMPLIN: Good afternoon Senator Doyle, Representative Taborsak, and members of the Committee. You have my written testimony, so I won't read it, but I'll just tell you that I have been involved with the piping industry for 45 years. I've been a member of the Heating and Cooling Board for the last -- well, since 1986.

HB 6337

We need more enforcement. It's been all of the committee -- all of our committee, all of the other boards, all have been trying to get more enforcement for years, and we think this is a start. We do believe that if everything

SENATOR DOYLE: Yeah, for the Clerk. Thank you.
I'm sorry to interrupt you. Keep going. I interrupted you.

CAMERON CHAMPLIN: All right. And, the other -- there's two other bills that I would like to support, and you're going to hear more information from one of the -- one of the people that will be up here next, Joyce Wojtas, on S.B. 867, mechanical contractors. There would be a fine put in place for people that are cheating on that, and I would like to speak in favor of that for Local 777, and also on H.B. 6265, advertising for the unlicensed people. That's something that's very unfair, and I believe that that would be something that would really forward the industry to have that happen.

So, with that, I would like to thank you for the opportunity to testify today, and I will make sure that I get that language to you.

SENATOR DOYLE: Thank you very much, Cameron. Any questions? Seeing none, thank you very much.

The next speaker is Susan Christolini, Kevin Donohue, Joyce Wojtas, Susan Giacalone. Sue?

SUSAN CHRISTOLINI: Good afternoon. Mr. Chairman and members of the Committee, my name is Susan Christolini. I'm the president of Northwest Home Care, Incorporated, a member of the Connecticut Association of Home Care Registries, a member of the Connecticut Home Care and Companion Association, and a member of the Private Care Association. I'm speaking today against proposed -- Raised Bill 911 for the following reasons.

The bill continues the confusion of the original statute where the words employee and

independent contractor are used synonymously. A distinct separation of the two words would provide more clarity to the meaning and the intent of the provisions of the statute. The words employee and independent contractor have very different meanings and are governed by distinctly different laws and regulations on a state and federal level.

In Section 3(a), if the intent of this modification is to inform the consumer of the duties, responsibilities, obligations and legal liabilities of a registry, should the consumer also be entitled to the same information from a payrolled agency?

In 3(b), one, does the bill propose requiring registries to advise the consumer that the client is responsible for items (A) through (F) or is the amendment requiring registries to provide answers as to who is responsible for (A) through (F)? If the latter is true, the Homemaker Companion Act of 2006 already contains some of the same requirements.

In Section 20-670-3 of the Regulations of the Department of Consumer Protection, all agencies registered as Homemaker Companion agencies are required to provide a clear definition of the employee, provider and client employment relationship. Raised Bill 911 is redundant here.

In 3(c), the language of this section should include the same language that is in Section 3(a)3, stating the liability of the consumer if, in fact, the consumer is deemed to be the employer.

If registries are required to comply with Section 3, Homemaker Companion agencies should also be required to comply. Elderly

consumers, many with diminished cognitive capacity, are unaware of the intricacies of employment law. Having only a registry define these issues would lead consumers to believe that Homemaker Companion agencies are not responsible for the same issues. The requirement to provide information should be across the board.

Section 4(a), the list of proposed information to be given to referred individuals serves to further confuse the issues. By definition and by law, independent contractors are responsible for their own supervision, tools and equipment of their trade, and the duties they perform.

In 4(b), the statement appears to be overly cautionary and non-specific as to the lack of the protections afforded.

The bill unfairly singles out registries in a state where they have served elderly residents and anyone in need of care for over eighty years. Registry owners have worked with the Department of Consumer Protection to recommend and bring about workable regulations for all private home care agencies in the state. Several components of regulation PA187 came from recommendations of the Connecticut Association of Home Care Registries.

We deserve the respect of the legislature by not being singled out unfairly and overburdened with regulation that could bring about the demise of a valued elderly resource in a state with a rapidly escalating elderly population. Registries provide thousands of jobs to individuals who care for thousands of elderly clients in Connecticut at the lowest possible cost.

Are we trying to fit a square peg into a round hole? Instead of trying to make registries fit into legislation structured for payrolled Homemaker Companion agencies, perhaps we should look to develop separate legislation for registries. Many other states, including California, Florida, Maryland and Pennsylvania have done this to their benefit. As we've done in the past, The Connecticut Association of Home Care Registries would be very interested in talking to and working with anyone interested in this project.

Quickly as an aside --

SENATOR DOYLE: Okay. You're --

SUSAN CHRISTOLINI: -- my agency has done criminal background checks since the year 2000, six years before it was enacted into law. Other agencies in my association have done the same thing. We're registered with the Department of Consumer Production and the Department of Labor. I've been in business since 1987.

I've given you a white paper that details what a registry is, which will give you accurate information into who we are and what we do, which has not been brought forth today.

SENATOR DOYLE: Thank you. Any questions? Mr. Chairman?

REP. TABORSAK: Thank you, Mr. Chairman. Thank you for testifying.

I was wondering -- you made a comment about a specific regulation -- I missed the exact regulation number -- that requires you to define the employee/employer relationship, something along those lines, in your testimony.

SUSAN CHRISTOLINI: Yes. In the companion homemaker of the regulations of the Department of Consumer Protection, we're already required to define that -- define that regulation, that relationship, and it's in our contract. It has to be in your contract.

REP. TABORSAK: So basically if I understand you correctly, you provide that information to a client through the form of a contract. Is --

SUSAN CHRISTOLINI: Yes.

REP. TABORSAK: It's in the contract.

SUSAN CHRISTOLINI: It's required.

REP. TABORSAK: Would you be able to provide us with some language that you use so that we can get an understanding of what that looks like?

SUSAN CHRISTOLINI: Absolutely, I can.

REP. TABORSAK: That would be helpful.

SUSAN CHRISTOLINI: I can get you a copy of my contract.

REP. TABORSAK: Thank you.

SUSAN CHRISTOLINI: Okay.

SENATOR DOYLE: Representative Rebimbas?

REP. REBIMBAS: Thank you, Mr. Chair.

Just briefly. Do you know of any registries specifically in the state of Connecticut that may be violating or not making it clear to the people that they work with that they are independent contractors?

SUSAN CHRISTOLINI: I couldn't specifically say that because that's not -- that's not something that I look to do, but I'm sure you could look at any home care agency, any business that is in some sort of violation of some sort of law that they have to be payrolled agencies, registries. Not everybody is complying. Not everybody is registered.

REP. REBIMBAS: And it's (inaudible). It's not just in this area of employment. It's many areas of employment that if you don't have responsible employers either making it clear that they're not an employee or maybe they should actually be an employee?

SUSAN CHRISTOLINI: Exactly.

REP. REBIMBAS: Based upon the people that you have that work through your registry, the people who have come to you as home makers and have requested to work through your registry, again, as an independent contractor, have you heard the story that's been shared earlier here today regarding some, again, bad experience that they may have had with other registries?

SUSAN CHRISTOLINI: I have not, not against other -- I occasionally hear a story about another registry. I also hear stories about payrolled agencies, and I read the newspapers where you have, you know, reports of abuses of elderly, and the reports, the newspaper articles I have seen, they were employees of payrolled agencies. This isn't something that is just from registries.

REP. REBIMBAS: Okay. Thank you.

REP. TABORSAK: Thank you. And again, hopefully

you'll provide us a copy of your agreement?

SUSAN CHRISTOLINI: Absolutely.

REP. TABORSAK: And, I assume you were here when Senator Prague testified?

SUSAN CHRISTOLINI: I was.

REP. TABORSAK: Do you disagree -- I assume you disagree with her?

SUSAN CHRISTOLINI: Well, she didn't seem to have a complete awareness of what a registry does, and she also didn't know that this raised legislation has a definition, the first definition of a registry in it.

REP. TABORSAK: Right. Now, I understand what the two entities do.

SUSAN CHRISTOLINI: Yeah.

REP. TABORSAK: But, I'm just trying to figure out why is it -- why do you think if you already kind of do this, if you already disclose, why is this legislation so threatening or harmful or why do you oppose it so much? I mean, if it's simply requiring you to disclose a little more, what's so wrong with it?

SUSAN CHRISTOLINI: It's -- we're already required under another law, another regulation, and if you start making similar requirements in many, many pieces of legislation, you know, the tone of it changes, and, you know, you're trying to comply with one, but you have to read the next one, and are you complying with this. It just confuses the issue.

REP. TABORSAK: Okay. Any further --

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SUSAN CHRISTOLINI: We already have it in one spot.
I didn't feel it was needed to be repeated in
another.

REP. TABORSAK: Okay. Any further questions?
Seeing none, thank you very much.

SUSAN CHRISTOLINI: Thank you.

REP. TABORSAK: The next speaker is Kevin Donohue,
then Joyce Wojtas and Susan Giacalone and
Andrew Clifford.

KEVIN DONOHUE: Good afternoon, Chairman Taborsak,
and I guess --

REP. TABORSAK: Senator Doyle.

KEVIN DONOHUE: I want to thank you for hearing me
today. I did -- my name is Kevin Donohue. I
am the owner of the Danbury Nurse's Registry
in Danbury, Connecticut. I'm here really
speaking on behalf of the Connecticut
Association of Home Care Registries. I've
provided some written testimony which I may or
may not get to based on prior testimony I've
heard.

SB911

I just feel -- I didn't get struck down --
we've been a nurse registry since 1930. Some
of these things that I've heard described here
definitely are not coming from at least a
reputable nurse registry. Nurse registries,
there's a lot of misinformation that I heard
go around the room. We don't provide care.
We provide prescreened, pre-credentialed,
caregivers available for immediate placement
for people who would prefer to hire their own
caregiver.

It's an arrangement that's been going on for
81 years. We have not had one instance of a

caregiver referred through us that was held an employee of either the registry or the client. We do disclose to all of our caregivers the nature of the relationship. We do disclose to our clients that the people we send are independent contractors. It would be erroneous for me to comment to them or give them advice as to whether or not that person will maintain the independent contractor status. Certainly in Section 3(a) through (f), you would want to remove the word employee as a legal term. I agree with Sue Christolini on that.

Also, (a) through (d) of the same section would, in fact, impose more of an employer/employee relationship on the client. Directing, controlling, providing equipment, supplies are all functions of an employer/employee relationship. So by eliminating them as to what their duties would be, we would, in fact, be encouraging them to step closer to an employer/employee relationship.

These have always been determined on a case by case basis. The 20 factor common law test is pretty intricate, and it accounts for a lot of different situations. We have petitioned before the different Senators and also with the Department of Labor to get a determination to remove all this confusion so that people can actually hire an independent contractor. We've been turned down every time and have been taking it on a case by case basis.

To that end, I don't think that we should have to create a situation where we're scaring somebody, particularly in my case. I could tell them they may be the employee, they may not. It's not my determination. I'm not going to determine that even if I say they are

or they aren't, but caregiver registries reduce costs to the consumer. They also allow the caregiver to keep more of the remuneration. They will have to pay taxes on it. We do absolutely disclose that to every caregiver that comes through the door. To not do so would be irresponsible.

Thank you.

REP. TABORSAK: Thank you for your testimony. Are there any questions from the Committee?

I just have a question or two.

KEVIN DONOHUE: Sure.

REP. TABORSAK: Thanks for coming up and testifying.

You mentioned that you do disclose to both -- I think I heard you say you disclose to both your own -- I should say the caregiver and the client.

KEVIN DONOHUE: The caregiver isn't ours. We represent them. We work as their agent and represent them to the community.

Yes, we do, both to caregiver and client.

REP. TABORSAK: Is that disclosure in writing? Is it spoken? How does --

KEVIN DONOHUE: The disclosure is in writing. We disclose to every caregiver that they incur profit and loss risks and benefits, they're responsible for their own taxes, Social Security they're not -- unemployment. They're not covered by unemployment as an independent contractor, unemployment insurance, and other insurances not limited to, you know, workmans

compensation.

The client, we keep it a little bit more brief based on the, you know, audience. If we put this big huge disclaimer in there, it's going to scare the heck out of everybody from using nurse's registries, and as Sue had stated before, many other states have enjoyed the benefit of the cost reduction, and they actually will participate in certain Medicare waiver programs. As a matter of fact, in some states, it's actually the preferred method because of the cost savings.

REP. TABORSAK: On the -- on the issue of notice to the client, what exactly -- you said that it's brief and a little more to the point. Is that written notice as well?

KEVIN DONOHUE: It's -- it's -- it's in our information packet that we send out, that we say that the persons we refer are independent contractors, they're not employees, and that they are responsible -- they, meaning the caregiver is responsible for any taxes. That's the way the caregiver represents himself to us.

REP. TABORSAK: Would you be comfortable sharing that information with us?

KEVIN DONOHUE: Certainly.

REP. TABORSAK: You know, if you have to redact that portion of your contract or whatever, that's fine.

KEVIN DONOHUE: I can -- I can do that.

REP. TABORSAK: That would be great. It would be helpful, and you can get it to this Committee.

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KEVIN DONOHUE: And again, I just want to, if I may, just a little bit -- I know it's late; we've been here all day -- you know, these agencies that some of my contemporaries are, you know, claiming that they misled everybody, we wouldn't be around for 81 years misleading people and have no findings that any of our caregivers were ever an employee of anyone other than themselves, so there's a right way to do it. People are doing it wrong. It shouldn't be a reflection on registries. I've seen this, you know. It just gets me angry. I've been doing this a long time. We love, you know, the success has just been fantastic, tens of thousands of caregivers, ten thousand -- tens of thousands of families that we've helped through the most difficult time in their life, and I'm proud about that, and I kind of get annoyed when people start coming at me.

REP. TABORSAK: Well, thanks for your testimony. Are there any other questions from the Committee? Thank you. Thank you for your time.

The next up is Joyce Wojtas and Susan Giacalone, Andrew Clifford, Dennis Patouhas, Ron Tully.

JOYCE A. WOJTAS: Good afternoon members of the General Law Committee. My name is Joyce Wojtas, and I am here today representing the Mechanical Contractors Association of Connecticut. I also represent the Plumbers and Pipefitters Union, and we work together on most of our issues.

SB946

I want to appear in support of Senate Bill 867, An Act Concerning Penalties for The Violation of Mechanical Contractor Registration Requirements. The mechanical

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ANDREW CLIFFORD: Good afternoon, Senator Doyle, Representative Taborsak, and General Law Committee Members. My name is Andrew Clifford. I am owner of Home Instead Senior Care, a non-medical provider, an employee-based non-medical provider of home care services in New Haven County since 2002, and I'm here to express my support for Bill Number 911.

I know you hear a lot of testimony from colleagues in the business, but as a relatively new industry, non-medical home care has seen a surge of providers of late, each offering a similar scope of service which are all designed to help keep seniors safe and independent at home.

I often field calls from anxious family members faced with a crisis. Their mother has fallen and broken her hip; following a hospital and rehab stay, she is being released and definitely wants to go home, but she's simply unsafe to be alone. The caller, meanwhile, is trying to juggle home life, work life, and all her responsibilities as a mother. Meanwhile, she's trying to arrange help for her mom, and she's desperate and faced with an important decision. She's basically searching for information.

A quick search of the Yellow Pages or Google -- if you type in home care in Connecticut -- yields many different choices for a consumer; however, there is no distinction as to how providers operate. At face value, all seem to be created equal, and many consumers base their decision on the most logical factor, especially now in a tight economy, which is price.

But, in reality, when comparing different companies, they're often comparing apples and oranges based on a provider's business model. You've heard about employee-based companies; you've heard about registries.

Registries are often able to charge less than employee-based agencies. They may provide a similar scope of service, but the method in which they provide it, namely, utilizing independent contractors, is fundamentally different. This puts the consumer in an awkward and vulnerable position, and consumers often don't know the difference or are unaware of the implications.

What if the worker gets hurt assisting my mom? Who will supervise the worker? Who handles the payroll taxes? These are all key questions for consumers to ask when researching home care services, but very few know to even ask them.

I take my business very personally, and I've made it a mission and a priority of mine to educate consumers in need so that they are able to make informed decisions. Now I ask the state's assistance to be in support of Bill Number 911.

Thank you.

SENATOR DOYLE: Thank you. Any questions from the Committee? Seeing none, thank you very much.

The next speaker is Dennis Patouhas. Would someone pronounce his last name for me? Ron Tully, Devon Williams, Nick Miller. Again, Dennis, I'm sorry. Please pronounce your --

DENNIS PATOUHAS: It was pretty close. It's Dennis Patouhas.

SENATOR DOYLE: Thank you.

DENNIS PATOUHAS: Thank you. Thank you Chairmen and members of the Committee. My name is Dennis Patouhas. I, too, am an owner of a non-medical home care agency, Comfort Keepers, which is based in Greenwich. We're part of a 600-office network of companies around the country, providing the service. I'm also a member of the NPDA, National Private Duty Association.

SB911

We've been in business for eleven years, and when we first considered entering into the home care industry, we chose a model that we felt was the high ground in approach. We wanted to provide service to clients that only had to deal with their care and they didn't have to worry about being accidental employers having to deal with issues of employment taxes or being responsible potentially for personal injury to someone that was in their employ in their home, when homeowner's insurance will not respond. Our approach was that we wanted to be problem solvers, not problem makers.

I want to take issue, if I may, with a statement that was earlier made with regard to the registry. It seems that in part the linchpin for the registry model is the independent contractor definition, and independent contractors have been around for many, many years, and over the last 25 years, it has become very much an issue of debate, and there was an advisory that was promulgated by the Connecticut Department of Labor in December of 1998 that specifically addresses the issue of home care registries, and it was predicated upon a Connecticut Supreme Court ruling in Latimer versus Administrator that stated that the fact that a PCA, personal care

assistant, placed with a client by the registry signed an agreement that they were independent contractors is of no moment. Such provisions in a contract are not effective to keep an employer outside the purview of the act when the established facts bring him within it.

It goes on to say that registry agencies should not advise their clients that the referred individual is an independent contractor. The registry agency should inform their clients that the referred individuals may well be considered the client's employees.

Over the years, we've encountered many consumers, elderly consumers' families, the elderly that have incurred in one case \$50,000 of personal liability due to injury to the caregiver, and another, \$25,000 for taxes that were incurred because they were construed to be the employer.

One thing that I think is very interesting and should be noted is that hospitals in the state of Connecticut may act unwittingly to assist a lack of knowledge at the consumer level. By merely providing a list of potential home care providers known to the case managers or discharge planners, the list does not distinguish between the type of agency or its structure. The consumer, rightfully so, assumes that all on that list are the same, and from that list, they find price differences and gravitate to the lower cost and are unaware of the potential liability that their selection will make, and the disclosure made by Senate Bill 911 will help to alleviate that.

That's it.

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SENATOR DOYLE: Thank you.

DENNIS PATOUHAS: Thank you.

SENATOR DOYLE: Any questions from the Committee?
Senator Kissel?

SENATOR KISSEL: Thank you, Mr. Chairman.

You said you represented a group that has offices not only in Connecticut but outside of Connecticut?

DENNIS PATOUHAS: Yes.

SENATOR KISSEL: The part that I'm having the hardest time with is we've had testimony this afternoon from folks that have been involved in the registry business, some of them in excess of eighty years, without incident, and I've got to believe that there's a couple of things going on out there. First, we're in a recession, and we have an aging population.

So, when I've seen that in the past, that means that there's more competition for a diminishing pie, but I think with our aging population, the pool of folks that might be fooled or misled or run into problems is getting greater.

It strikes me that probably in the last ten to fifteen years may be more bad apples getting into the registry business, and also more consumers that might not really know the lay of the land, and so we have to try to address that maybe through education, or something else.

But, at the same time, if I'm hearing from them right, they're already governed by Consumer Protection and the Department of

Labor, and if they have to put into their agreements or this laundry list of what is the responsibility of the people that are hiring these caregivers, then that information is in there. Maybe we have to change the type font or make it larger, put it on the front page, something like that, but what I'm sort of hearing from you is, you know, you have a different business model and that's fine, but I don't know why you're sort of kicking these other folks where there seems to be reputable folks in this area as well as disreputable folks because my guess is that in your business model, there are reputable folks and there's disreputable folks, so I don't understand why you're in this fight other than to try to get a bigger market share away from these folks to make it more difficult for their lives.

DENNIS PATOUHAS: It's -- it's not a fight.

It's -- what we're trying to accomplish is people to be aware of the consequences. If someone is seeking care for themselves or an elderly relative, that's all they want. They want to be able to age gracefully in their own home, and they want to hire someone to take care of them and do the things that they can't do for themselves. They don't want to be an employer; they don't want to have to deal with the possibility of being liable for --

SENATOR KISSEL: But, you're not saying that as --

I apologize for interrupting, but you're not saying that we should outlaw registries.

DENNIS PATOUHAS: I didn't say that.

SENATOR KISSEL: But you're saying -- I know what most consumers probably want is exactly what you're saying, but there may be some that are in a financial situation, and they're not

business savvy enough or for whatever reason they want to use the registry sort of business model, and they understand that there are certain consequences regarding payments of taxes and things like that.

As long as people -- as long as we as a state government try to make sure that people are aware of the ramifications of their choices, it strikes me -- and I don't want to engage in a debate, but I just sort of think that I appreciate where you're coming from, I think your industry and your business model performs a very valuable service, but I did hear from some very sincere folks with great track records this afternoon that are in that other business model, and if there's some problems out there, we have to find what the problems are without throwing the baby out with the bath water. That's all.

DENNIS PATOUHAS: No one is saying that either model should go away. It's that there is the presumption, for instance, at the hospital level. Most hospitals will not or do not know the difference between agency structure, and for that very reason, that's why I brought it up because you are discharged, you're given a list of 20 agencies, it doesn't say that this is a registry, this is an employer-based, it doesn't say that you're potentially liable for anything, but it assumes that they're all the same, and that in itself is misleading, and the hospitals themselves are potentially putting themselves in the referral liability world, because they're professionals, expected to know the difference, but as far as our objective here with Bill 911, it's intended to disclose. It's not intended to curtail anybody's business.

SENATOR DOYLE: Thank you. Any further questions?

DEVON WILLIAMS: Mr. Chairman and members of the Committee. Thanks for having me. I'm a part of the group in support of Senate Bill 911. My name is Devon Williams, operator of ComForcare Senior Services of Danbury.

A few things I think personally have been misconstrued, and I think some of our -- two of our great friends were here earlier testified as well. We have seen or I personally know of some terrible situations with registries, and I respectfully disagree with some of your statements, Senator Kissel.

Registries in most cases that the gentleman testified to earlier is a medical registry. He wouldn't be affected on this bill from what we understand. He has LPN's, RN's, on part of his team, so those are medical professionals.

What we're targeting here are the non-skilled folks who have a salary range of 9 to \$15 an hour. They operate unregulated. I understand it was on the cost, but as an employee-based institution, I personally have to absorb background checks, the sex offender registry checks, the DMV checks, the background checks, of course, the drug tests, supervisor of visits, all of those things which registries do not incorporate on their books. Bonding, insurance, workers comp, all of those things, if something happens in a client's home, it goes back to the client taking care of that or the caregivers themselves.

I've seen many applicants from registries who applied to me for a job, and they just couldn't cut the bill. They either fail the Social Security verification check, they either fail the background check, they fail the drug check, from all gamuts I'm seeing

problems.

There was a recent incident in Danbury recently where a client employed a caregiver from a registry, and at the end of the day, she was told that she's liability for tax. That resulted in a heart attack; she's gone. There's another incident where some of my colleagues were at an independent living community, the executive director there testified that a caregiver beat the hell out of one of her residents. When she called the registry, the registry said they're not an employee, so we have to have some level of accountability here.

If you're talking about revenue into our coffers, this is one way that everyone has for pooling up as well. I just can't afford to play by the rules. We're asking for a level field, so-to-speak.

If that answers or clarifies some of the things or (inaudible) that we have, I would really appreciate your voting for us on Bill 911.

SENATOR DOYLE: Thank you. Any questions?
Representative Rebimbas?

REP. REBIMBAS: Thank you, Mr. Chairman. I guess just to kind of clarify some of this stuff that you said, I'm a small business owner, and I can assure you I hate all of the restrictions and mandates and things that we need to comply with, and I encourage you to testify then on the many other legislation that is going to be before us that may help business owners.

With that said, I guess my struggle is there's rules and regulations already out there for

registries. We had some testimony from some registries here today that have been in compliance with those rules and regulations. I do understand that there's probably, you know, hopefully, a minority and not a majority of registries out there that may not be complying with that and/or having some individuals register through them that should not be in the business.

My concern with that is additional rules or duplicative rules and regulations may not be the answer so much as maybe the enforcement of the current regulations that we have and/or the, you know, the speediness of reporting certain incidents or concerns. And, again, going back to maybe the consumers don't have all the information or it hasn't been made clear to them, so what I would implore and encourage businesses such as yours and the organizations that you guys may have is you need to be out there, promoting then what makes you different from these other businesses, and if that's, you know, bottom line, the services, background checks, all of that stuff, and that's (inaudible) if it's the personal one-on-one and you make sure the individuals who are working for you are higher quality or better qualified.

I'm just throwing this out because, again, you know, not knowing how we all may go on this particular legislation, I think it's just important to know that we all do care about, you know, the consumers, the elderly, the people who are being subjected to this. It's just how do we go about making responsible rules and regulations that ultimately is going to reach the result that we're all looking for.

So again, I thank you for your testimony and

for waiting here today in order to provide that. Thank you, Mr. Chair.

DEVON WILLIAMS: Thanks for the feedback. We have to understand -- and the gentleman testified to it earlier as well -- when asked, how much detail does he provide to some of his clients. It was somewhat minute. These are vulnerable folks, so that does not need to be minute. It needs to be detailed.

SENATOR DOYLE: Thank you. Senator Kissel?

SENATOR KISSEL: Thanks. And, along the lines of what Ranking Member Rehimbas had indicated, it wasn't just the gentleman from Danbury, but there was a woman that had I believe it was like Northwestern Connecticut Registry Association, and I don't -- I didn't gather from her testimony, although I may have been mistaken, that it wasn't necessarily a nurse model that they were utilizing, and in her business, she said that she actually had done things in advance of state requirements such as criminal background checks. I believe she testified it was six years in advance of the state requiring some kind of legalization of that.

And, I guess my concern is I have no problem with requiring businesses to have a notification to potential consumers, but if we already have some things either promulgated through regulations through the Department of Consumer Protection or the Department of Labor, and they're part of contracts, whatever we end up doing here I hope doesn't muddy those waters so that at the end of the day, while we're trying to help people out, we're actually getting them more confused than they were before.

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But, I think the ultimate goal, I think we're all trying to figure this one out, and all of us want to see no harm come to the consumers, we don't want anybody to have heart attacks and keel over when they get the bill from the state of Connecticut. People are already keeling over from the budget address from last week, and so I hope nobody is having any heart attacks, but, you know, it's a difficult economy, we're sensitive to that, and we have an aging population. A lot of this is educational, and we've got to get the messages out that there's various choices with various responsibilities associated therewith.

DEVON WILLIAMS: That's a great point because from my understanding, the Department of Labor already ruled in this, but it hasn't been enacted in law.

SENATOR DOYLE: Thank you. Anybody else? Chairman Taborsak?

REP. TABORSKAK: Thank you. Thanks for coming up here. I just wanted to thank you for coming up and testifying and, you know, we'll certainly take a look at the information you provided and be looking at this issue closely. Thank you.

DEVON WILLIAMS: Thanks. Thank you.

SENATOR DOYLE: Thank you. The next speaker is Nick Miller. Is Nick here?

NICHOLAS MILLER: Hi, folks. Thanks for the opportunity. My name is Nick Miller. I'm also a member of the NPDA. I'm also an owner of a Comfort Keepers franchise in Connecticut.

SB911

My original testimony is pretty much out the window now, but I do want to just bring up a

couple of things that I think might be relevant. Right now as a business owner, you know, I am legally obligated to, you know, display the rights, minimum wage rates and employees' rights, you know, on display somewhere in my office so my employees can see that.

One of the things I'm obligated to do by law is display their workers' comp insurance company that they can all go in there and see, so if for some reason I give them a hard time regarding their claim, they can bypass me, and it's there displayed.

You know, you're talking about level playing field. You know, the registries don't offer these things, and it's really not, I think, something that's apparent to them. We are dealing with a subset of the population. For the most part, these are not highly educated people. They're mostly, you know, my employees are mostly middle-aged women. They don't have anything more than a high school education, and to sit there and say that their awareness of these laws is the same as yours or mine, it's just not accurate, and I feel obligated to protect them. I have obligations to let them know that these things are out there for them, and I mean I would argue that if any one of you were to go out there and shop around for registries as both an employee or potential person to hire them, the processes are not that different. There's nothing really there to distinguish the two. There's not much there to distinguish the two types of agencies in terms of when you're a consumer, and I think what we're asking for is just something that says, you know, this is how we operate, and I think there's a place out there for registries.

I mean, I think that this proposed legislation will be as beneficial to them as it will be to anybody because it's going to make sure that the bad apples can't make the other registries look bad, so all we're saying is look, when you go with us, these are, you know, the responsibilities you're taking on, and these are your liabilities, and the benefit (inaudible) and you're going to be paying less money.

But, again, we should disclose both sides of the equation. We're doing that, but it's really not happening, and it really -- I mean, if you're in my area and you come by my office, there's a whole bunch of brochures for both myself and my competitors. They're the same. There's nothing on it saying oh, by the way, you know, we're not -- mostly what they argue is well, our organizational costs are not as high, where we're keeping these things down, and it's really not the case. They're not paying workers' comp insurance, they're not paying unemployment insurance, there are certain responsibilities they're not taking on, and that's why they're less expensive.

And in one specific case I can think of, Counterpoint or another registry that's in Manchester, their rates are the same as mine. They're the same as any labor agency out there, but they're still operating under that registry model, and they're just making, you know, money hand over fist by doing so, and I think that's the type of (inaudible) you want to isolate just from the other registries so they don't -- they don't compare.

But, I think for someone who's looking just to save money who doesn't mind these responsibilities and someone who's savvy, then that registry model makes a lot of sense, but

I think that it just -- it's not something that's commonly known, and I think we as employers really bear the responsibility to make sure that both our employees are properly informed, and I don't think that's happening. I think we need to make sure that the public is properly informed, and I don't think that's happening now either.

And, we have the rare opportunity to address this issue. It has to be addressed in some way. I think this is a fair way of doing so.

SENATOR DOYLE: Senator Kissel?

SENATOR KISSEL: Thank you, Mr. Chairman. Are you a constituent or is your business --

NICHOLAS MILLER: I'm in Enfield on Hazard Avenue.

SENATOR KISSEL: And, do you live in the district as well?

NICHOLAS MILLER: I'm in Somers.

SENATOR KISSEL: Okay. So, I work for you and (inaudible). You know what? I thought -- I actually think that you had a really balanced approach to your testimony. In other words, it carved it out, said that there is a role for these registries, but it's educating both the caregivers as well as the employers, and that's my -- that's our goal. Is that it?

NICHOLAS MILLER: Yeah. (Inaudible.)

SENATOR KISSEL: I think your testimony made a lot of sense.

SENATOR DOYLE: Thank you. Any further questions from the Committee? Seeing none, at this point in time, we have nobody else signed up.

Does anybody else want to testify? There's a person. Please come up. Please identify yourself for the record.

LINDA GRIGEREK: Yes. My name is Linda Grigerek. I'm from Companions and Homemakers, one of the largest homemaker/companion agencies in Connecticut.

SB 911,

Martin had testified earlier, our general counsel.

I think the thing we're missing here is that the registries are quite often arguing that they are independent contractors. What we're saying is an RN could be an independent contractor; an LPN could be an independent contractor. They're professionals. They make their own hours. They bring their own work. These are custodial caregivers. They have to be employees. There's no fairness to the workers' comp, no fairness to no Social Security. They make very little money.

The registries are piggybacking onto the medical agencies which are RN's and LPN's, and they're trying to do it with custodial care workers, and it's wrong, and that's what I think is missing in the explanation today.

SENATOR DOYLE: Thank you. Any questions?
Representative Baram?

REP. BARAM: Thank you, Mr. Chairman. You raised a good point about independent contractors, and from my knowledge of the law, there are about 10, 12 factors set forth by the IRS to determine whether somebody is an independent contractor, and typically it includes things like making your own hours, having your own tools or equipment, not being under the supervision or oversight of another person,

and so when you said an LPN, for instance, is an independent contractor but a homemaker may not be, may be an employee of the consumer that's getting the care, I mean, that's an interesting distinction for me because I'm not sure whether I agree or not.

But, it seems to me that if we do decide to go forward with the bill to give notice, that it might be appropriate to give notice not only to the consumer, the person receiving the home care service, but also the home care provider because both of them could be liable for various taxes --

LINDA GRIGEREK: That is in there.

REP. BARAM: -- and ultimately that decision is probably going to be made by the IRS and Department of Revenue Services because they're the ones that enforce those laws as to when taxes are due, so to me it seems prudent that if we do require some notice, that everybody get it.

LINDA GRIGEREK: I don't disagree, but it also falls under the ABC test for the Labor Department, and there's already been a Supreme Court decision in Connecticut saying that these caregivers are definitively employees and not independent contractors, so that's already been decided, and this report here, which I'd like to submit, is from 1998, which does say that the Labor Department directly addresses registries and says that these home care workers should err on the side of considering them to be an employee of either the client or of the agency, but they definitely don't fall into the independent contractor.

So, I think people are going under the IRS

rule which -- I think these -- I've been doing it for 20 years. I think these caregivers fall under employees any way you look at it. It's just the dollar amount that they make on their own doesn't allow them to make their own hours. Home care in and of itself is specific hours, and it always has been. Mrs. Jones needs her breakfast from 9:00 to 12:00. They can't call up and say oh, by the way, I'm not going to give Mrs. Jones breakfast; I decided to show up for dinner. It's just -- I've never seen a case with these custodial care workers where independent contractors would ever apply.

SENATOR DOYLE: Thank you. Any further questions? Seeing none, thank you very much. Again, at this point, does anyone else in the room want to speak, testify? Seeing none, I entertain a motion to adjourn the public hearing.

A VOICE: So moved.

SENATOR DOYLE: Is there any discussion or debate on it, or are we ready to vote? All in favor, signify by saying aye. Aye. Thank you.

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In 7**NPDA**

NATIONAL PRIVATE DUTY ASSOCIATION

The Voice of Private Duty Home Care

Connecticut Chapter

500 Howe Ave., Suite 200, Shelton, CT 06484

February 24, 2011

To: General Law Committee

RE: Testimony on Bill No. 911, An Act Concerning Home Care Consumer and Worker Protections

Dear Senator Doyle, Representative Taborsak and Distinguished Members of the General Law Committee:

I want to thank you for the opportunity to address this growing issue of concern.

My name is Ken Gurin and I am the president of the CT Chapter of the National Private Duty Association (NPDA). Additionally, I am the owner of Comfort Keepers an employer based agency providing homemaker and companion services to the elderly, located in Shelton, CT.

The NPDA is the nation's first association for providers of private duty home care who operate using only pay rolled employees vs. Registries, who use non-employee independent contractors. The mission of the NPDA is to enhance the strength and professionalism for private duty home care and in so doing, maintain high levels of care provided to the consumer. The CT Chapter was formed 4 years ago to promote this mission for our residents, both clients and employees.

With the growing number of people 65+ and especially those in their 80's, the need for homemaking and companionship services has expanded dramatically. These services have become critical for seniors to age in place where they most desire, in their own home. Not only is this more affordable than Skilled Nursing Homes, seniors generally thrive in the comfort and independence the home setting provides them.

On average, Registries are approximately \$5.00 per hour less than employer based providers, but of course this comes at a cost. Today's challenging economic times makes the lower price on the surface, especially attractive to elderly consumers.

However, the Registry model poses risks to both the client and the worker, seldom known by either. Operating outside of the legal requirements of withholding payroll taxes, Social Security and Medicare, Registries place misclassified independent contractors into an elderly consumer's home. Elderly consumers unknowingly become "accidental employers", unaware that they are responsible for handling all payroll tax withholdings and contributions.

Shamefully, these workers are not by IRS definition independent contractors and the Registries collect an hourly fee from the client for merely placing the worker in their home, with no further responsibility. It is important to remember that these cost savings are coming at the expense to the citizen's of CT as the state's cash strapped income is further eroded by not collecting the payroll taxes legally owed.

To make matters worse, these independent contractors are not provided Workers Compensation insurance. Without this insurance which all employer based agencies carry, the elderly consumer is exposed to liability for any injury the worker may suffer in their home; homeowners insurance does not typically provide coverage for injuries of the homeowner's employee.

The risk is real and I can relay a case that recently occurred in an assisted living facility in Trumbull. An aide sent by a Registry physically abused her client requiring subsequent hospitalization. When the Director of the facility called the agency to file a complaint, the Director was told that the aide was not their employee and therefore, the agency had no liability. While the facility ultimately assumed responsibility to protect their resident, the question must be asked what happens in the much more common private home setting. To directly quote the facility's Director "a Registry will never again set foot in our building".

There are serious risks and consequences for the worker as well. Many are not aware that they are not complying with IRS and state payroll tax requirements. Additionally, by not contributing to the social welfare programs of unemployment, Social Security and Medicare, they can be left devastated at the time they need to collect these benefits.

While not questioning the quality of the services delivered by Registries, we believe full disclosure of the potential risks is critical. This way, both the consumers and workers can make an informed, risk/benefit decision. Non-disclosure of this vital information serves no one, except the owners of the Registries who are profiting by putting those they serve at potential risks. Truth in advertising, a long time requirement in most businesses, is sorely needed and long overdue in the home care industry.

This past October, I had the opportunity to address this issue with former Attorney General Richard Blumenthal, who is very supportive of requiring clear and concise disclosure by Registries. A copy of his letter is attached to this testimony.

Thank you for your time to listen to my views and I urge your support of this bill to eliminate the needless risk being exposed to our most vulnerable citizens.

Sincerely,

Kenneth A. Gurin
President, NPDA CT Chapter
& Owner, Comfort Keepers
500 Howe Ave., Shelton, CT 06484

RICHARD BLUMENTHAL
ATTORNEY GENERAL



55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120

Office of The Attorney General
State of Connecticut

October 21, 2010

Kenneth Gurin, President
NPDA Connecticut Chapter
500 Howe Avenue
Shelton, Connecticut 06484

Dear Mr. Gurin:

I am writing in response to your letter regarding employee misclassification in the home health care industry. You express concern that patients may be contracting through 'registries' without fully understanding their responsibilities may include payment of employment taxes and other liabilities as an employer.

I understand and share your concern regarding the disadvantage that certain home health care companies have in relation to registries. I would support a clear and concise disclosure requirement for registries regarding the patients' potential liability for employer/employee related expenses. This requirement would be best implemented through state legislation. Therefore, I urge you and your organization to discuss this matter with your state senators and state representatives and obtain their support for such a requirement.

Thank you for bringing your concerns to my attention.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Richard Blumenthal".

Richard Blumenthal

RB/RFK/sk

**Connecticut Association of Home Care
Registries**

Opposes

Raised Bill No. 911

The Connecticut Association of Home Care Registries ("CAHCR") opposes Raised Bill No. 911 (the "Bill") because it would require a registry to provide notices to its consumer clients and its caregiver clients concerning matters over which the registry has no control and concerning matters which the registry lacks sufficient information or legal expertise to address. Also, the proposed notices would have the effect of misrepresenting a registry's business to its consumer clients and its caregiver clients, and create unnecessary fear and uncertainty for such clients.

CAHCR submits that the bill would do a serious disservice to consumers who seek to self-manage their own home care and to the caregivers who choose to offer their services as independent contractors.

The Bill appears premised on a fundamental misunderstanding of how a registry operates in the home-care market.

Registries provide their consumer clients with just-in-time access to pre-background screened, pre-credential verified home-care providers. A registry's services are *referral* services and, in some cases, administrative support for the caregiver relationship between a consumer and a referred caregiver.

Registries provide their caregiver clients with access to client opportunities.

CAHCR submits that requiring a registry to provide the notifications that the Bill proposes would be at best confusing and at worst grossly misleading. Each of the proposed notices is discussed in detail below.

I. Notice to Consumer Clients

The Bill would require a registry to provide each consumer with a notice meeting the following requirements:

Sec. 3. (NEW) (*Effective January 1, 2012*) (a) A registry shall provide each consumer with a notice specifying the duties, responsibilities, obligations and legal liabilities of such registry to the individual supplied or referred to or placed with the consumer and to the consumer. The

notice shall be given to the consumer before the commencement of services. If the registry maintains an Internet web site, a sample of the notice shall be posted on such Internet web site.

(b) The notice to the consumer shall be in a form approved by the commissioner and shall include, at a minimum, the following information:

(1) The consumer's responsibility for:

(A) Day-to-day supervision of the employee,

(B) Assigning duties to the employee,

(C) Hiring, firing and discipline of the employee,

(D) Provision of equipment or materials for use by the employee,

(E) Performing a comprehensive background check on the employee, and

(F) Ensuring credentials and appropriate certification of the employee.

Comments:

- The notice would characterize caregivers as "employees," which generally is not accurate, as most if not all caregivers who obtain client referrals through a registry operate as independent contractors. A registry member of the CAHCR within the past couple years was involved in a dispute with the Connecticut Employment Security Division (the "Division"), in which the Division ultimately concluded that the caregiver at issue was *not* an employee of the registry and was *not* an employee of the consumer, but instead was an independent contractor.
- A registry has no right to dictate to a client the allocation of duties referenced in items (1)(A) through (D), as those matters are separately negotiated by the client and a caregiver.
- Registries always are responsible for items (1)(E) and (F); but, as mentioned, the caregivers commonly operate as independent contractors, not "employees."

The Bill also would require a registry to provide a consumer with a statement meeting the following requirements.

(2) A statement identifying the registry as an employer, joint employer, leasing employer or nonemployer, as applicable, along with the responsibility the registry will assume for the payment of wages, taxes, Social Security, overtime and minimum wage, workers' compensation and unemployment compensation insurance payments and any other applicable payment required under state or federal law.

Comments:

- While a registry would identify itself as a nonemployer relative to a caregiver, that characterization would have no legal effect on the Internal Revenue Service ("IRS") of the U.S. Department of Labor ("DOL"). Moreover, a registry's status relative to a caregiver is dictated by federal statutes over which federal agencies have exclusive jurisdiction. Thus, for a state statute to require a registry to opine on matters governed by federal law is fundamentally inappropriate.
- Similarly, a registry would include in the statement that it does not assume any responsibility for the payment of any of the items described in paragraph (2). These payment obligations are dictated by federal statutes; they are not voluntary. The statement's declaration that a registry assumes, or does not assume, these payment obligations would not be binding on the IRS or the DOL. If, for example, a registry were to state that it is assuming the payment obligation for Social Security taxes, but the IRS were to determine that the consumer is liable for those taxes, the IRS could collect the taxes from the consumer – regardless of what the statement provides.
- In addition, if a registry were to provide a consumer with a statement that it does not assume any responsibility for the payment of Social Security, overtime and minimum wage, workers' compensation and unemployment compensation insurance payments, the consumer would reasonably infer, by process of elimination, that the consumer *must be* responsible for

making those payments – which would *not* be true in most cases, because caregivers commonly operate as independent contractors. Furthermore, as home-care providers, these individuals likely would be exempt from any overtime requirements.

- The catchall requirement at the end that would require a registry to state its obligations “under any other applicable payment required under state or federal law” would impose an overwhelming burden on a registry that is far afield from its business model. A registry is not in the business of providing consumers with legal advice on these issues.

The Bill would require registries to create unnecessary fear for elderly and infirm consumers, by requiring the following notice:

(3) A statement that, regardless of the registry's status, the consumer may be considered an employer under law and, if that is the case, the consumer may be held responsible for the payment of federal and state taxes, Social Security, overtime and minimum wage, unemployment, workers' compensation insurance payments and any other applicable payment required under state or federal law.

Comments:

- A consumer who receives home care from an independent contractor would *not* be subject to any of the requirements described. To state that they “may be” would be highly misleading and would likely result in consumers opting not to accept referrals from a registry.
- The clear effect of such an *in terrorem* notice would be to drive consumers away from registries. The consequence would be *vulnerable* consumers obtaining caregivers on their own – without the background-screening and credential-verification protections that registries provide. Alternatively, consumers could instead obtain care through homemaker-companion agencies, but at a higher price and with caregivers earning less.

The Bill would create a trap for the unwary registry or for the registry that through administrative oversight neglects to provide the required notice.

(c) A registry's failure to give the notice required pursuant to subsection (a) of this section to a consumer shall not relieve the consumer of any of his or her duties or obligations as an employer. In the event a registry fails to give such notice to the consumer and the consumer is later held liable to the employee for payment of wages, taxes, workers' compensation or unemployment compensation, the consumer shall have a right of indemnification against the registry, which shall include, but not be limited to, the actual amounts paid to or on behalf of the employee, as well as the consumer's attorneys' fees and costs.

Comments:

- This is another provision that greatly expands the business of a registry. A registry is not in the business of providing consumers with advice on legal issues; nor does it involve itself in the relationship between a consumer and a caregiver. Rather, a fundamental distinction between a registry and an employee-based agency is that a registry is *not* a provider of *home care*, but rather *is* a provider of caregiver *referrals*. Thus, a registry remains detached from the care relationship, so the consumer and a caregiver can structure it in the manner that they choose, not how the registry chooses. It follows that to impose on a registry a duty of indemnification with respect to matters in which a registry has no involvement would be highly inequitable and inappropriate.

II. Notice to Caregiver Clients

The defects in the notice the Bill would require a registry to provide its consumer clients also exist with respect to the proposed notice for a registry's caregiver clients.

Sec. 4. (NEW) (*Effective January 1, 2012*) (a) A registry shall provide each individual supplied or

referred to or placed with a consumer with a notice that sets out such individual's legal relationship with the registry and the consumer. The notice shall be given to such individual upon being recruited by the registry. If the registry maintains an Internet web site, a sample of the notice shall be posted on such Internet web site.

(b) The notice to the individual shall be in a form approved by the commissioner, and shall include, at a minimum, the following information:

(1) The duties, responsibilities, obligations and legal liabilities of the registry to the consumer and the individual. Such description shall include the following information:

(A) A statement as to the party responsible for the payment of the individual's wages, taxes, Social Security, unemployment and workers' compensation insurance,

(B) A statement identifying which party will be responsible for the individual's hiring, firing, discipline, day-to-day supervision, assignment of duties and provision of equipment or materials for use by the individual, and

(C) A statement that, under state and federal law, an individual treated as an independent contractor may enjoy less protection than one who is treated as an employee.

Comments:

- The comments above concerning a registry's inability to dictate to a consumer and caregiver the allocation of the listed duties, and the inappropriateness of a registry advising a consumer about matters over which federal agencies have exclusive jurisdiction and which are not binding on those agencies, apply here with equal force.

- Furthermore, to require a registry to provide a caregiver with a notice describing the individual's legal relationship with a consumer is highly inappropriate for a registry, because the legal status of that relationship would be dictated (i) by the terms and conditions of the relationship, which the consumer and the caregiver separately negotiate, and (ii) by the specific attributes of each caregiver, such as the extent to which such caregiver has other clients, advertises his or her services, and possesses other indicia of being self-employed.
- The requirement to provide an independent contractor with a notice advising that as an independent contractor the individual may enjoy less protection than one who is treated as an employee, once again, positions a registry as a provider of legal advice. In addition, such a notice could well be viewed by an independent contractor as insulting and condescending, as the notice suggests that the individual does not fully understand the ramifications of his or her decision to operate as an independent contractor. Finally, such a statement reasonably could be viewed by recipients as expressing the judgment of the government that independent-contractor status is not in an individual's best interests, which is grossly misleading, as in many cases such business model can be financially advantageous to home-care providers.

III. Conclusion

For the reasons set forth above, CAHCR opposes the enactment of Raised Bill No. 911. CAHCR submits that the Bill would create confusion and uncertainty for a home-care market that currently is functioning well and meeting the needs of consumers who seek to self-manage their care and caregivers who have chosen to offer their services as independent contractors.

For additional information about CAHCR or the basis for its opposition to the Bill, please contact:

Arthur Pilson President

Kevin Donohue Member

203 470-7752

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IN 3

1

RAISED BILL 911

February 24, 2011 –

Mr. Chairman and members of the committee:

My name is Susan Christolini. I am the President of Northwest Home Care, Inc. and Treasurer of the Connecticut Association of Home Care Registries.

I am speaking today against Raised Bill 911 for the following reasons:

The bill continues the confusion of the original statute where the words “employee” and “independent contractor” are used synonymously. A distinct separation of the two words would provide more clarity to the meaning and intent of the provisions of the statute. The two words “employee” and “independent contractor” have very different meanings and are governed by distinctly different laws and regulations on a state and federal level.

Section 3:

- (a) If the intent of this modification is to inform the consumer of the duties, responsibilities, obligations and legal liabilities of a registry, should the consumer also be entitled to the same information from a payrolled agency?
- (b) (1) Does the bill propose requiring Registries to advise the consumer that the CLIENT IS responsible for items (A) through (F) or is the amendment requiring Registries to provide answers as to WHO IS RESPONSIBLE for item (A) through (F)? If the later is true, the Homemaker Companion Act of 2006 already contains some of the same requirements.
(2) In Section 20-670-3 of the Regulations of the Department of Consumer Protection, all agencies registered as Homemaker Companion agencies are required to provide a “clear definition of the employee, provider and client employment relationship”. Raised Bill 911 is redundant here.
- (c) The language of this section should include the same language that is in Section 3 (a) 3; stating the liability of the consumer, IF in fact the consumer is deemed the employer.

If Registries are required to comply with Section 3, Homemaker Companion agencies should also be required to comply. Elderly consumers, many with diminished cognitive capacity, are unaware of the intricacies of employment law. Having only a Registry define these issues would lead consumers to believe that Homemaker Companion agencies are not responsible for these same issues. The requirement to provide information should be across the board.

RAISED BILL 911
February 24, 2011 –

Section 4:

- (a) The list of proposed information to be given to referred individuals serves to further confuse the issues. By definition and by law, independent contractors are responsible for their own supervision, tools and equipment of their trade, and the duties they perform.
- (b) This statement appears to be overly cautionary and non-specific as to the lack of protections afforded. It also fails to mention the advantages of being an independent contractor.

This Bill unfairly singles out Registries in a state where they have served elderly residents and anyone in need of care for over 80 years. Registry owners have worked with the Department of Consumer Protection to recommend and bring about workable regulation for all private home care agencies in the state. Several components in the regulations for PA187, the Companion Homemaker Act of 2006, came from recommendation from the Connecticut Association of Home Care Registries.

Registries deserve the respect of the legislature by not being singled out unfairly and overburdened with regulation that could bring about the demise of a valued elderly resource in a state with a rapidly escalating elderly population. Registries provide thousands of jobs to individuals who care for thousands of elderly residents in Connecticut. at the lowest possible cost.

Are we trying to fit a square peg in a round hole? Instead of trying to make Registries fit into legislation structured for payrolled Homemaker Companion Agencies, perhaps we should be looking to develop separate legislation for Registries. Many other states, including California, Florida, Maryland and Pennsylvania have done this to their benefit. As we've done in the past, The CT Association of Home Care Registries would be very interested in talking to and working with anyone interested in this project.

Thank you.

Nurse Registries & Referral Agencies An Integral Part of the Continuum of Care for Connecticut's Elderly

Nurse Registries, also known as Referral Agencies, have existed in Connecticut for over 75 years. The basis of this business model is the referral of independent care providers to individuals in need of short or long-term care. The Nurse Registry industry has been instrumental in reducing the costs of government funded programs by helping the elderly and disabled remain in their own homes and out of institutions. At the same time, Registries have offered ongoing opportunities for work to individuals that otherwise may not have been able to participate in the workplace.

Care providers are referred through Registries into private homes as self employed individuals who pay self employment taxes. Registries either receive a fee from the client for the placement of caregivers or receive a fee from the caregiver for the work opportunity. Caregivers work for clients they choose during hours that they're available to work. Registries serve in an administrative capacity, maintaining a pool of screened care providers and relaying basic information received from the client to the workers. This is the basis of Registry operations today, although the methods may vary slightly from one Registry to the next.

Registries are frequently referred by Visiting Nurse Agencies to their patients who no longer qualify for free services under Medicare, but are still in need of care. Hospice organizations often call for experienced caregivers referred through Registries to assist with end of life care for their patients. In addition, hospitals and rehabilitation centers use Registries to refer care providers for continued care at home for discharged patients. Care providers referred through Registries provide emergency staffing in convalescent hospitals, nursing homes, assisted living centers, residential care centers and group homes, provide temporary nurses in schools and provide private duty nursing services that aid disabled children to be mainstreamed into school systems. The largest portion of care provided by independent care providers referred by Registries however, is provided to the frail elderly enabling them to remain in their own homes where statistics show they are happiest and healthiest. This type of at-home care is responsible in large part for delaying or preventing the entrance of at risk individuals and the elderly into the Title XIX program of the State of Connecticut.

The Executive Summary of the Long Term Care Plan of Connecticut 2004 report to the General Assembly states ¹“the overall goal for Connecticut's long-term care system should be to offer individuals the services and supports of their choice in the least restrictive setting. This means providing real choices to Connecticut residents regarding the types of supports that they need and requires a system that is consumer-focused and driven. “

² “A critical ingredient for an efficient *consumer-directed* home-care delivery system is a Nurse Registry, also known as a home-care referral agency. A Nurse Registry/Referral Agency matches self employed caregivers with consumers who seek home care. These registries recruit caregivers and provide valuable background-screening services”.

¹ Connecticut Long Term Care Planning Committee, *Long-Term Care Plan, A Report to the General Assembly, January 2004*, Page 1

² Private Care Association, Inc. Russell A. Hollrah, *The High Cost of Denying Choice in Home Care*, Page 2

Independent care providers referred by Registries vary in skill level from companions to registered nurses to skilled therapy professionals. Many are full time medical professionals who are licensed by the State of Connecticut. Others are Certified Nursing Assistants or Home Health Aides, registered with the Department of Health. Still others are Personal Care Attendants with no formal training, but with hands on experience learned by caring for family members or private clients. Homemakers provide light housekeeping and shopping services as well as assisting the elderly in maintaining a safe environment in which to live. Companions round out the array of home care workers from registries; everyday people who make lunches and keep seniors socialized in the community, remind them to take their medications and generally provide a degree of safety for the elderly at home.

Individuals referred by Registries vary from stay-at-home Moms who would ordinarily not be in the workplace due to child care conflicts to dedicated professionals who consider this work a career. Still others are individuals seeking additional working hours to compliment full time day jobs. Numerous workers are drawn to this type of work because of the flexibility it offers in regard to working hours and days. For many caregivers, this is the only type of work they are able to participate in and if not for referrals through a Registry, would not be working at all. Traditional shift work in hospitals and nursing homes, and working hours at Visiting Nurse Associations and residential care facilities do not provide the working hour flexibility needed by this type of worker.

Because independent care providers are self employed, the cost of care to the elderly they serve is greatly reduced and therefore, more affordable to a population that can afford care the least. Keeping health care costs in control is a primary concern to everyone including federal and state governments, business and industry and of course, elderly residents in all states. Many states solicit bids from Nurse Registries to fulfill contracts for entitlement programs, substantially reducing the cost of those programs.

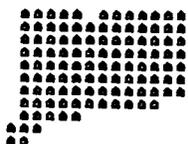
Several states, including Florida, Maryland, Pennsylvania, Washington and California have fashioned legislation that regulates this business model. More states are looking to this business model to assist in reducing costs of entitlement programs and care to fixed income elderly. A reduced cost of home care coupled with opportunities for work for many individuals who have found themselves unable to meet the requirements of more traditional work places is a positive situation for everyone involved. Several states require Registries to pay caregivers through "trust" or "escrow" accounts, supplying 1099's at year end and thereby guaranteeing tax accountability and compliance.

Caregivers from a Registry are fully screened; criminal and motor vehicle background checks are performed, professional credentials are verified through the State of Connecticut website and through Prometric; a national database that maintains CNA certifications for many states. Residency documentation and social security records are verified along with previous work history and references from previous work places. Finally, an on-site interview is conducted by the Registry. This process is crucial to insure the safety of the elderly clients served by the Registries.

Nurse Registries are registered with the State of Connecticut, Department of Labor and more recently (2006), with the Department of Consumer Protection. This dual registration affords an increased level of protection for the elderly. Additionally, some Registries are members of the Better Business Bureau where consumers can check the Registry's reliability report online.

Nurse Registries continue to provide professional referrals of qualified, screened care providers for the least cost to anyone in need of care. Fees for Registry referrals can be 40% lower than fees imposed by agencies that payroll caregivers, while the earnings of independent care providers can be 60% higher than the wages of payrolled employees. The opportunity for the lowest possible cost for care coupled with a decent income for caregivers makes using a Registry a win-win situation for the elderly in Connecticut and the economy of the state.

For many years, Registries have proudly and professionally served the elderly in Connecticut with professionalism, kindness and care. They are an important and essential part of the continuum of care for the elderly and disabled in Connecticut.



Connecticut Association for
**HOME CARE
& HOSPICE**

Leadership | Education | Advocacy | Information | Collaboration

TESTIMONY BEFORE THE GENERAL LAW COMMITTEE
REGARDING S.B. 911,
AN ACT CONCERNING HOMEMAKER SERVICES AND
HOMEMAKER-COMPANION AGENCIES

February 24, 2011

Senator Doyle, Senator Taborsak and members of the General Law Committee, my name is Tracy Wodatch and I am the Vice President of Clinical and Regulatory Services at the Connecticut Association for Home Care & Hospice (CAHCH), whose member agencies serve over 100,000 elderly, disabled and terminally ill Connecticut citizens. I am also a Registered Nurse with over 10 years of home care experience.

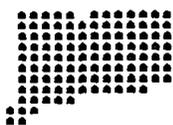
CAHCH supports S.B. 911, a bill that extends protections to clients serviced in their homes through registries. Currently, registries that provide homemaker services and homemaker-companion services are not regulated, yet they are caring for some of our most vulnerable citizens in the private home setting. Since these protections are already in place for our licensed home health agencies, we view this bill positively in “closing the gap” to ensure that all types of agencies will provide safe, quality home care for our Connecticut citizens.

In accordance with the State of Connecticut’s goal of rebalancing long term care delivery by expanding opportunities for individuals to receive care in their homes, this bill will also ensure consumer protection and provide important consumer education. Consumers will be responsible for day-to-day supervision and oversight of these workers, for managing their daily duties and for ensuring proper credentialing. Too often, consumers do not understand the differences between home care provider agencies and may not fully comprehend their own responsibilities. This bill and the requirement for delineation of the consumer responsibilities will help clarify consumer misunderstanding and expectations.

Additionally, CAHCH's Home Health Legislative Work Group, supported by Representative Betsy Ritter, has developed valuable consumer education materials which are attached to this testimony. Our Association and individual home care provider members would be pleased to work with the legislature and the Department of Consumer Protection to further develop the documents required in this legislation.

Thank you for consideration of our testimony. I will be pleased to answer any questions you may have. Please contact me at Wodatch@cahch.org or 203-294-7348.

**CAHCH's Legislative Breakfast is on Tuesday, March 1st
from 8:00 to 9:30 a.m. in the Executive Dining Room of the LOB.**



Caring for Yourself or A Loved One: What Consumers Should Know Before Hiring A Non-Licensed Personal Caregiver

The Connecticut Association for Home & Hospice Care (CAHCH) has developed guidelines for hiring personal caregivers to help ensure that its member agencies adhere to certain standards and take reasonable and prudent steps to hire the highest quality workforce to provide care for patients. These best practices provide guidance and protection to give patients and their families a way to evaluate qualifications and credentials. They are intended for all individuals who need personal care. As the need for home care services increases, we must ensure that the caregivers who are hired to care for our loved ones are qualified and competent.

When people are looking for non-licensed caregivers, the process can be very confusing. Whether you choose to use a licensed home health agency, non-licensed agency, or private hire, you should consider the following:

- ❑ **Contract/Written Agreement:** Be sure to have a contract or written agreement with the private care worker that specifies the anticipated schedule, planned duties, and payment arrangement.
- ❑ **Taxes/Workers Compensation:** Be sure to determine if you are responsible for paying taxes. If you hire someone directly, then you are the employer and you as an individual or your family are required to pay unemployment, social security and payroll taxes (and possibly worker's compensation). If you are using an agency, do not assume that all agencies pay employee related taxes. Be sure to inquire as to whether the agency that you are working with is paying the taxes.
- ❑ **Comprehensive Background Checks:** Be sure that the agency conducts comprehensive background checks, which at a minimum should include a criminal background check. Be sure to determine if the scope of the criminal background check is national or just statewide. Also, find out how far back the check goes and if it includes physical and drug screening, a personal and professional reference check, verification of appropriate education or training (if applicable), driving records (if applicable) and a review of appropriate registries (such as the sex offender registry or Certified Nursing Assistant (CNA) registry). Clients or family members can contact either the Department of Public Health or the Department of Consumer Protection to determine if an agency has had any complaints filed against them. Please note that the CNA registry only lists those CNAs licensed in CT who have worked for Skilled Nursing Facilities. Complaints from home health or other settings are not logged there.
- ❑ **Credentials:** Be sure to inquire if the agency is licensed or registered. If a home health agency is licensed they must be licensed through the state's Department of Public Health. If a homemaker/companion agency is registered they must be registered through the state's Department of Consumer Protection.

- ❑ **Education:** Be sure that agency staff is properly trained. Appropriate education and training is currently required for Certified Nurse Aides and Home Health Aides. Also inquire if non-licensed personal care providers (i.e. PCAs), receive agency orientation and ongoing in-service education to ensure clinical competence and compliance with agency policy.
- ❑ **Back Up/On Call Services:** Be sure that there is a back-up plan in place for the provision of care if the personal care worker is unavailable. If you are using an agency, the plan should be provided through the agency. If you are working with a private hire then be sure to have pre-established arrangements if the regular caregiver is unavailable.
- ❑ **Oversight:** Be sure that there is appropriate and frequent supervision of personal care workers and that there is a plan for follow-up in place if there is a problem with the contracted caregiver. Also, determine if there is a formal complaint process in place either through the agency or by contacting the appropriate officials.

Please contact CAHCH at 203-265-9931 or email info@cahch.org for further information.

Types of Agencies that Provide Non-Licensed Personal Caregivers:

Licensed Home Health Agency: This agency is a full service agency that provides skilled services (nursing, rehabilitation services and social work) as well as home health aide services. These agencies may also provide specialty services such as hospice, behavioral health, and telemonitoring. These agencies may choose to provide homemakers and other non-licensed services. Services may be paid for by Medicare, Medicaid, Private Insurance or private pay. This agency holds a license with the State of Connecticut and is surveyed by the Department of Public Health.

Licensed Homemaker/Home Health Aide Agency- This agency can provide services to the private pay or Medicaid population. This agency holds a license with the State of Connecticut and is surveyed by the Department of Public Health. They can provide companion, homemaker, home health aides and live in caregivers.

Registered Companion Homemaker Agency- This agency is a registered business with the Department of Consumer Protection. Effective October 1, 2006 an agency that provides these services must be registered as an employer. This agency can provide personal care attendants, companions, homemakers, and live in caregivers to chronic and stable private pay clients.

Private Duty Registries: These are providers who act as referral sources or “matchmaking services” for private pay personal care. Services that may be provided are nursing, personal care attendants, companions and homemakers. The client may or may not be responsible for taxes and liability insurance, unemployment, social security and workers compensation.

Privately Hired Caregivers- The client is the employer for these individuals. The client is responsible to pay unemployment, social security, workers compensation, taxes and liability insurance.

Current Home Care Services 2011

Category	I Private Hire or Self Pay PCA	II Homemaker/ Companion (CGS 20-670 through 20-680)	III Personal Care Attendant (PCA) State Funded/Medicaid Waiver (Regulations of CT State Agencies Sec. 17b-262-588)	IV Personal Support (DDS)	V Home Health Aide (HHA) (Regulations of CT State Agencies Sec 19- 13-D69)
Duties	Any duties necessary to promote independent living	Homemaking, shopping, laundry, meal preparation	Physical assistance to enable the consumer to carry out ADL/IADLs (CGS sec 17b-262-588)	Assistance necessary to meet the individual's day to day activity and daily living needs and to reasonably assure adequate support at home and in the community to carry out personal outcomes.	Personal Care: ADLs/IADLs, exercises, assist with medication self administration; any other task the RN chooses to have the aide perform (not defined but limited by Nurse Practice Act and Declaratory Ruling) (State of CT Public Health Code sec. 19-13-D9 (a)(3)(G))
Background Checks	Not required	Comprehensive background check- legislation pending to define	Criminal Background Check 7 years-state and federal-Client can sign a release of liability, but DSS may refuse payment based on certain findings	State of CT Criminal Background Check and DDS Registry Check	Not required but most agencies do; Medicare hospice requires 3 yrs
Contractual/Care Plan Requirements	Not required	Required between client and HM Companion agency	Required for CHCPE/State Funded clients-updated annually between DSS and the case management agency (Level of Care Plans and Cost of Care analysis)	Developed by DDS Case Manager and the individual's Support Team.	Developed by licensed agency with patient input and agreement. MD orders for care.

Current Home Care Services 2011

Orientation	Client orients	Client orients	Fiscal Intermediary orientation/Client orients care	Individual or family orients	75 Hours; Trained by qualified nurse.
<p>Inservice Training/Competency</p>	<p>Client trains as needed</p>	<p>Client trains as needed</p>	<p>Client trains PCA; Must demonstrate competency in effective employer/employee relationships, disability awareness, use of equipment, and activities of daily living</p>	<p>Prior to being alone with the Individual: -demonstrate competence in knowledge of DDS policies and procedures: abuse/neglect; incident reporting; client rights and confidentiality; handling fire and other emergencies, prevention of sexual abuse, knowledge of approved and prohibited physical management techniques -demonstrate competence/knowledge in topics required to safely support the individual as described in the Individual Plan -Medication Administration* * if required by the individual supported</p>	<p>10 hours orientation 12 hours per year Ongoing can be trained by licensed agency staff</p>
<p>Supervision Level</p>	<p>Supervised by Client</p>	<p>Supervised by Client</p>	<p>Case Manager -RN or Social Worker does onsite level of care review (RN Every 6 months for CHCPE). Supervision of daily tasks by Client</p>	<p>Direct Hires--Supervised by the individual or the employer of record. Agency--Supervised by agency administrative staff</p>	<p>RN</p>

Current Home Care Services 2011

Supervision Frequency	N/A	N/A	N/A	N/A	Every 14 days; Every 60 Days for nonskilled care plans only
Complaint Process	PSE, DDS	Through HM/Comp agency and DCP, DDS	Through access agency, PSE, or DSS case manager; Through FI for fraud complaints, DDS	Through case manager, Resource Administration, FI, or Ombudsperson	Through DPH, PSE, DDS
Potential Risks/Identified Gaps *Consider broadening scope of HHA duties for specific tasks *Define coordination of care *Consider agency training assistance *Further define complaint process	*Background checks *Need for specific skills training if client is unable to train *Coordination of care between licensed agency and private hire if applicable. *Fraud /Abuse *Complaint process * Consumer awareness	*Caring for clients who are not "chronic & stable" without skilled services involvement *Providing PCA/personal "hands on" care without appropriate training/oversight *Clarify Supervision/Training/Background Check Requirements *Fraud and Abuse *Complaint process?	*Training needs for skills above competency (i.e. catheter care, suctioning, wound care) *Caring for clients who are not "chronic &stable" without skilled services involvement *No protective services for clients between age 18-59.		*Limited scope of services for HHAs vs PCAs *Complaint process through DPH but no registry for HHA fraud/abuse complaints

Current Home Care Services 2011

Regulatory Framework for Home Care Patients Receiving Non-Skilled Services-2011

Hierarchy of Patients Needing Non-Skilled Services	Category of Personnel Recommended	Potential Payors	Key Patient Characteristics	Regulatory Environment	Staffing Models
Medicare/Medicaid coverable- needs medical necessity and homebound criteria	Home Health Aide (HHA)	Medicare Medicaid	Likelihood of condition change during post-acute recovery and/or complex interactive unskilled needs	CoPs- OASIS, MD oversight on plan of care, biweekly nurse supervision of aides State Licensure	*Licensed Home Health Agency (Staff employed by agency)
Medicare qualifying skilled need present, but patient is not homebound	Home Health Aide (HHA)	Medicaid CHCPE Private Pay	Likelihood of condition change and/or complex interactive unskilled needs	CoPs- OASIS, MD oversight on plan of care, biweekly nurse supervision of aides State Licensure	*Licensed Home Health Agency
Stable with no reasonable potential for change	Personal Care Assistant (PCA)	CHCPE Private Pay	Stable with no reasonable potential for change	CoPs- applicable to unskilled patients State Licensure	*Licensed Homemaker/Home Health Aide Agency * Private Duty/Vendor Agency (Staff employed by agency) *Agency with Choice: Agency contracts to assist pt in managing PCA hired by pt. *Self Directed/Private Hire
Stable with no reasonable potential for change, self directing	Personal Care Assistant (PCA)	CHCPE-self directing option or PCA pilot Private pay		Unlicensed	*Licensed Homemaker/Home Health Aide Agency *Private Duty/Vendor agency *Agency with Choice *Self Directed/Private Hire
Stable with no reasonable potential for change, no personal care needs	Homemaker/ Companion	AAA's/ CCCCI CHCPE Private Pay		Unlicensed	*Licensed Homemaker/Home Homemaker/Companion Agency *Private Duty/Vendor agency *Agency with Choice *Self Directed/Private Hire

Types of Agencies that Provide Non-Licensed Personal Caregivers:

Current Home Care Services 2011

Licensed Home Health Care Agency-CGS 19a-490(d): This agency is a full service agency that provides skilled services (nursing, rehabilitation services and social work) as well as home health aide services. These agencies may also provide specialty services such as hospice, behavioral health, and telemonitoring. These agencies may choose to provide homemakers and other non-licensed services. Services may be paid for by Medicare, Medicaid, Private Insurance, or private pay. This agency holds a license with the State of Connecticut and is surveyed by the Department of Public Health.

Licensed Homemaker/Home Health Aide Agency-CGS 19a490 (e): This agency can provide services to the private pay population. This agency holds a license with the State of Connecticut and is surveyed by the Department of Public Health. They can provide companions, homemakers, home health aides and live in caregivers.

Registered Companion Homemaker Agency-CGS 20-670: This agency is a registered business with the Department of Consumer Protection. Effective October 1, 2006 an agency that provides these services must be registered as an employer. This agency can provide personal care attendants, companions, homemakers, and live in caregivers to chronic and stable private pay or Medicaid waiver clients.

Private Duty Registries: These are providers who act as referral sources or "matchmaking services" for private pay personal care. Services that may be provided are nursing, personal care attendants, companions and homemakers. The client may or may not be responsible for taxes and liability insurance, unemployment, social security, and workers compensation.

Privately Hired Caregivers- The client is the employer for these individuals who provide private pay personal care. The client is responsible to pay unemployment, social security, workers compensation, taxes and liability insurance.

Self-Directed Care: The client is the employer for these individuals, but utilizes a fiscal intermediary for payroll and all applicable taxes/insurances. The client may also choose to use an agency for case management services. These clients are serviced under Medicaid or Medicaid Waiver programs.



LIFETIME SOLUTIONS

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LifeTime Solutions, LLC
753 Boston Post Rd.
Guilford, CT 06437

February 24, 2011

GENERAL LAW COMMITTEE

RE: SB #911 Registry Disclosure Bill

Senator Doyle - Representative Taborsak and Distinguished members of the General Law Committee.

My name is Guy Tommasi, Jr and I am the Managing Director of LifeTime Solutions, the Private Duty Home Health Care affiliate of VNA Community Healthcare in Guilford, CT. I urge you to SUPPORT the Registry Disclosure Bill #911.

As presented in the Statement of Purpose, I cannot emphasize the importance of these words for the protection of our most vulnerable population – the elderly, and for those who provide this much needed service – the worker.

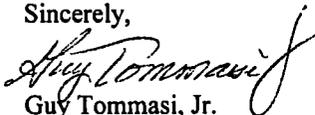
The passage of this bill will insure that both the consumer and the worker are given the ability to make intelligent, informed decisions regarding their status as employees, independent contractors, and employers.

For too long now these registries have been allowed to provide services and supply workers with little to no regard for the consequences of their actions. Independent contractors offer services to an elderly population without informing them of their legal responsibilities – that they are now considered an employer and may be held responsible for the payment of federal and state taxes, Social Security, overtime and minimum wage, unemployment, workers compensation insurance payments and any other applicable payment required under state or federal law.

Ladies and Gentlemen of the committee, I ask you, would you want one of your family members to be blindsided with this financial burden because they were not told of the risk upfront?

I urge you – please support this bill and stop a practice that has been allowed to exist for too long. This bill will not only level the playing field and return thousands of dollars in state taxes but most importantly, it will protect those who need it the most – our aging loved ones.

Thank you for your consideration

Sincerely,

Guy Tommasi, Jr.
Managing Director
LifeTime, Solutions, LLC

BESIDE YOU AT EVERY TURN

753 Boston Post Rd | Guilford, Connecticut 06437 | www.LTScare.com | P. 203 458 5990

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Presented by Devon Williams c/o ComForcare Danbury

Things to Consider	ComForcare "Employee Based Agency"	Registry or By Yourself
Services & caregiver selection <i>Knowing what services are needed for your loved one</i>	We will work together to be sure that your needs are met	You are responsible
Taxes & Injuries Reporting and paying taxes and social security	We take care of this for you	You are responsible
Supervision Managing the caregiver's performance	We perform unscheduled supervisory visits	You are responsible
Background Check Performing criminal background and license checks	We take care of this for you	You are responsible
Hiring Caregiver interviewing, hiring	We take care of this for you.	You are responsible
Scheduling Creating a consistent Care Plan and scheduling care	Even if your caregiver is sick or has a family emergency, we take care of this for you	You are responsible
Theft Responsibility if the employee steals from you or your loved one	Our employees are insured and bonded	You are responsible

Risks Associated with Use of Registries and Independent Contractor Companies

There are many unexpected or hidden issues that consumers and workers face when dealing with companies that place workers who they (the company) do not employ. One major issue is that there IS an employer-employee relationship that is created in most of the care situations—it is between the worker and the consumer. Unfortunately consumers in most cases are not aware of this. Referring registries and independent contractor agencies often don't communicate to the worker and consumer that this arrangement could result in the creation of an employee-employer relationship. Because of this, both the worker and consumer can suffer significant financial liabilities.

Liabilities and abuses

Payroll taxes

Consumers and the families of those receiving care are confronted by a confusing array of federal and state laws. The simplest and most direct requirement is that anyone who gets a paycheck must pay the government any taxes due. This includes social security, Medicare, federal and state unemployment, and state and federal payroll taxes. When the consumer is the employer and responsible for compliance, and none of these taxes are being paid, the government may sue the consumer or their estate for back taxes, interest and penalties. In a situation where many days of care or many hours each week of care over a long period of time have been delivered, this tax responsibility can be a substantial amount. Other remedies that authorities may seek can include civil fines and criminal penalties. There are also many problems for workers. No payment into social security leaves them vulnerable in their old age, and no protection is afforded for their



periods of unemployment. Also, workers may not be receiving the minimum wage and overtime protection to which they may be entitled.

Worker Related Injuries

This is the most potentially financially devastating result for consumers and workers who are unaware of the employer-employee relationship. If no workers' compensation protection is provided (as mandated by law for employees for nearly every state), and the worker sustains an on-the-job accident, the liabilities can be substantial. Medical costs and disability payments for workers could cause financial hardship for even a very wealthy client. For clients who could not afford to pay, the worker could be left with no help for a devastating injury. Many consumers incorrectly assume that homeowner's insurance will cover this type of loss, when, in fact, homeowner's insurance usually specifically excludes employees in the home.

Abuse and Exploitation

Most workers who enter the home care industry are caring, giving people. Unfortunately, there are also those who know that it is very easy to take advantage of frail, functionally limited, often cognitively impaired clients. Registries or independent contractor agencies, because they have little ongoing liability and want to avoid being considered as the employer of the worker, may provide inadequate or no background investigations on their caregivers. This could subject clients to physical, psychological or financial abuse. Families of the consumer can help, but time constraints and geographical distances often don't allow for this.

Supervision of the Worker

Because of Internal Revenue Service regulations, registries and independent contractor agencies cannot provide any substantive work supervision, scheduling, or training to workers in home care without becoming employers. If they do, the company, by law, becomes the employer of the worker. Supervision, scheduling and worker training are important benefits to consumers and workers and are provided only by agencies that hire their workers.

For consumers and their families, hiring a NPDA member home care agency provides assurance that someone with experience and responsibility is reviewing the changing care needs of the client. The NPDA member home care agency provides ongoing assessments of the limits of care that individual workers are allowed to provide. Member agencies also provide appropriate supervision that can potentially head off, or at least deal with, the sometimes difficult relationship issues that can occur between clients and their care workers.

Conclusions

- Consumers who receive home care, and caregivers who work in the industry, face increasing risk because of the growing use of companies who refer, but do not hire, workers.
- There is inadequate information about this issue for consumers and for the professionals in the industry who refer clients for care. They need to be aware of the risks and liabilities faced when families become employers.
- Consumer choice is important and should be preserved. Clients and their families should be able to hire the workers or companies that best meet their care needs, with full disclosure from companies that are providing care workers for the home.
- Action needs to be taken now to protect consumers and workers.

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February 24, 2011
General Law Committee

RE: Bill #911: AN ACT CONCERNING HOMEMAKER SERVICES AND HOMEMAKER-COMPANION AGENCIES

My name is Andrew Clifford, owner of Home Instead Senior Care, an employee-based provider of non-medical home care services in New Haven County since 2002. I am here to express my support for Bill #911.

As a relatively new industry, non-medical home care has seen a surge in providers of late, each offering a similar scope of service such as companionship, light housekeeping, incidental transportation, meal preparation and errands. These services are all designed to keep seniors safe and independent at home.

With the variety of service providers comes a variety of operational models, the two most popular being employee-based agencies and registries. Registries match up independent contactors with clients. As such, there are no taxes withheld or matched, no Workers Compensation insurance, and no Social Security or Medicare contributions made on behalf of the worker.

I often field calls from anxious family members faced with a crisis. Their mother has fallen and broken her hip. Following a hospital and rehab stay, she is being released and wants to go home. But she is unsafe to be alone. The caller, meanwhile, is trying to balance home and work life and needs to arrange help for her mom. She is desperate and faced with an important decision. She needs information.

A quick search of the Yellow Pages or Google for "home care in Connecticut" yields many different choices for the consumer. However, there is no distinction as to how providers operate. At first glance, all providers seem to be created equal, and many consumers base their decision on the most logical factor: price.

But in reality, they are often comparing apples and oranges based on a provider's business model. Registries often charge less than employee-based agencies. They may provide a similar "scope of service," but the method in which they provide it—namely utilizing independent contractors—is fundamentally different. This puts the consumer in an awkward and vulnerable position. Consumers often don't know the difference and are unaware of the implications.

"What if the worker gets hurt assisting my mom?" "Who will supervise the worker?" "Who handles the payroll taxes?" These are all key questions for consumers to ask when researching home care services, but very few know to ask them.

I have made it a priority to help to educate consumers in need so that they may make informed decisions. Now I ask the state's assistance via Bill #911. Thank you.

Andrew Clifford, Owner
Home Instead Senior Care
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75 New Haven Avenue • Milford, CT • 06460



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 Certified Senior Advisor
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 www.homeinstead.com/307

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February 24, 2011

Senator Doyle, Representative Taborsak and members of the General Law Committee.

Re: S.B. No 911 (Raised) An Act Concerning Homemaker Services and Homemaker-Companion Agencies

As franchise owner and president of Home Instead Senior Care #307 in Trumbull and Sandy Hook, Connecticut, I wish to express my support of SB911.

Fifteen months ago the One Hundred Eleventh Congress of the United States of America passed by unanimous consent H.Con.Res.59. This resolution speaks to senior caregiving and the importance of recognizing the caregivers who provide the care. It states "Whereas in order to address the surging population of seniors who have significant needs for in-home care, the field of senior caregiving will continue to grow." It resolved that Congress recognizes caregiving as a profession.

It is paramount that we recognize this exponentially growing business and the outcome it may have on the elderly consumer and the professional caregiver. In the State of Connecticut, there are homemaker-companion agencies structured as registries. Under the "registry" business model there are serious liability, quality and legal implications for both the elderly consumer and the professional caregiver. It is also questionable as to the business relationship between the registry, the consumer and the caregiver. Senate Bill 911 addresses homemaker-companion agencies and the need to regulate those agencies operating as "registries."

The elderly consumer has the right to quality home care when provided by professional caregivers through homemaker-companion agencies. If the agency is a registry, there are critical concerns as to whether or not the consumer is receiving the quality care they need by professional caregivers. Some of these concerns include, but are not limited to:

1. There is no over site of the case, no supervision of the caregiver, and no quality assurance checks to ensure the consumer is receiving the needed services;
2. It is doubtful that the caregivers are bonded and insured since they are not employed by the agency (registry) and they are not aware of the business relationship or lack of one, and
3. Are comprehensive background checks performed on all caregivers? How are their skill levels determined, and who is providing the on-going education to the caregiver?

Testimony SB911 An Act Concerning Homemaker Services and homemaker-Companion Agencies

The registry model also has legal implications for the professional caregiver who is often uncertain and confused about the business relationship.

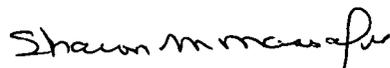
For example:

A caregiver, (I'll call her Dorothy) was hired by an agency to care for a relative of mine in a nursing home. When the case ended, Dorothy was looking for other work and she signed on with two other agencies. One was a registry model but appeared no different from the other agencies she had worked for. Caregivers often sign on with more than one home care agency to be assured of assignments. When I saw Dorothy about one year later, she was quite upset. She is a single mom, with two children and living paycheck to paycheck. Dorothy was taking care of a client she received through a registry. Her client was paying her for services rendered weekly and this went on for approximately nine months. In December of that year, her client became gravely ill and the client's son who lives out of state took over bill payment and management. He wrote out a check to Dorothy and informed her he would be submitting a 1099 form in January. Dorothy was devastated as was her client. Every penny of Dorothy's paycheck went to living expenses and she had no money to pay taxes. Neither client nor caregiver was informed of the responsibilities and legal liabilities placed upon each other. They were not informed of an employer/employee arrangement.

Clearly defining the business relationship, responsibilities and legal liabilities of and between the elderly consumer, the professional caregiver and registries is imperative in meeting the home care needs of our growing senior population and the caregiving profession.

It is incumbent on all of us to work together to set the "gold" standard in the homemaker-companion agency industry. I strongly support any efforts that help regulate homemaker-companion agencies that operate as registries and encourage you to vote in favor of Bill No.911. Thank you for your time.

Sincerely,



Sharon M. Massafra
Franchise Owner/President

Attachment: signed resolution H.Con.Res.59

H. Con. Res. 59

Agreed to September 23, 2009

**One Hundred Eleventh Congress
of the
United States of America**

AT THE FIRST SESSION

*Begun and held at the City of Washington on Tuesday,
the sixth day of January, two thousand and nine*

Concurrent Resolution

Whereas 8,000 people in the United States turn 60 years old every day;

Whereas an estimated 35,900,000 people, 12.4 percent of the population, are 65 years of age and older;

Whereas the United States population age 65 and older is expected to more than double in the next 50 years to 86,700,000 in 2050;

Whereas the 85 and older population is projected to reach 9,600,000 in 2030 and double again to 20,900,000 in 2050;

Whereas it is estimated that 4,500,000 people in the United States have Alzheimer's disease today;

Whereas it is estimated that number will increase to between 11,300,000 and 16,000,000 by 2050;

Whereas 70 percent of people with Alzheimer's disease and other dementias live at home, and these individuals are examples of individuals who need assistance in their homes with their "activities of daily living";

Whereas currently over 25 percent of all seniors need some level of assistance with their "activities of daily living";

Whereas in order to address the surging population of seniors who have significant needs for in-home care, the field of senior caregiving will continue to grow;

Whereas there are an estimated 44,000,000 adults in the United States providing care to adult relatives or friends and an estimated 725,000 nonfamily private paid senior caregivers;

Whereas both unpaid family caregivers and paid caregivers work together to serve the daily living needs of seniors who live in their own homes;

Whereas the Department of Labor estimated that paid caregivers for the year 2006 worked a total of 835,000,000 hours, and the projected hours of paid senior caregivers are estimated to increase to 4,350,000,000 hours by 2025; and

Whereas the longer a senior is able to provide for his or her own care, the less burden is placed on public payment systems in State and Federal governments: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That Congress—

- (1) recognizes caregiving as a profession;
- (2) supports the private home care industry and the efforts of family caregivers nationwide by encouraging individuals to provide care to family, friends, and neighbors;
- (3) encourages accessible and affordable care for seniors;
- (4) reviews Federal policies and supports current Federal programs which address the needs of seniors and their family caregivers; and
- (5) encourages the Secretary of Health and Human Services to continue working to educate people in the United States on the impact of aging and the importance of knowing the options available to seniors when they need care to meet their personal needs.



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February 24, 2011

Re: GENERAL LAW COMMITTEE – Raised Bill No. 911
An Act Concerning Homemaker Services and Homemaker-Companion Agencies

Senator Doyle, Representative Taborsak, and Distinguished Members of the General law Committee:

I wish to thank you for this opportunity to address the issue of Homemaker Services. My name is Patti Urban, and I am a Certified Senior Advisor and the President and Owner of Comfort Keepers located in Guilford, CT. My business provides caregivers, CNAs, and homemakers to care for the elderly. I am here today to speak about the revisions to Bill 911.

There are two different business models for Homemaker-Companion Agencies. The first is an employment model where workers are hired as employees. They are covered by unemployment insurance and workers' compensation, and their taxes are deducted and paid for them. Comfort Keepers employs this work model. The second is a registry agency where workers are hired as independent contractors. There are no employment benefits for them.

The purpose of the revisions to Bill No. 911 is to protect not only consumers, most of whom are elderly, but also their hard-working caregivers. I support these revisions wholeheartedly and ask that you join me in your support.

Protections are being proposed for *caregivers* who work for the registry-type agency. The independent contractor caregivers often receive their compensation directly from the client they are working for. However, sometimes they receive their check from the agency and are told to withhold their own taxes. A caregiver came to me to apply for a job. She was in tears because a client she was caring for from a registry had suddenly passed away. She went to file for unemployment only to be turned down. She needed a job right away because she had no other income.

Protections are also being proposed for elderly *clients* who engage with the registry agency. Because they are paying the caregiver directly for services, they are now the employer. Clients, however, may not be aware of this. Therefore, they could become liable for unemployment insurance, workers' compensation, and liability insurance. They should also issue a 1099 to the caregiver. When out on an assessment, a client told me a story about a caregiver they had working for them from another agency (a registry) had fallen on their property and broke her leg. She sued the clients for her medical bills since she had no medical insurance. The clients' homeowners' policy would not cover the employee, and the client had to pay the medical bills in cash.

General Law Committee
Raised Bill No. 911
February 24, 2011

The short-coming with registries is that neither the client knows they are incurring liability as an employer and the caregivers may not know that taxes are not being deducted from their paychecks and that they are not covered for unemployment or workers comp.

By approving the revisions in this bill, required disclosures will ensure that registry clients and caregivers are fully aware of their responsibilities.

I am asking you, the Committee, to vote IN FAVOR of Bill 911. By doing so, the client and caregiver are protected, and the state collects tax revenue that is rightly owed.

Sincerely,

COMFORT KEEPERS



Patti Urban, CSA
President/Owner

canpfa

The Connecticut Association of Not-for-profit Providers For the Aging

Testimony to the General Law Committee

Submitted by Mag Morelli, President

February 24, 2011

Regarding**Senate Bill 911, An Act Concerning Homemaker Services and Homemaker-Companion Agencies**

The Connecticut Association of Not-for-profit Providers for the Aging (CANPFA) is a membership organization representing over 130 mission driven and not-for-profit provider organizations serving elderly and disabled individuals across the continuum of care including nursing homes, residential care homes, housing for the elderly, continuing care retirement communities, adult day centers, home care and assisted living agencies. CANPFA members are sponsored by religious, fraternal, community, and governmental organizations that are committed to providing quality care and services to their residents and clients. Our member organizations, many of which have served their communities for generations, are dedicated to providing the services that people need, when they need them, in the place they call home.

On behalf of CANPFA I would like to submit testimony in support of the Committee's efforts to strengthen and improve our system of delivering homemaker services by enhancing the notice requirements. Homemaker and companion services play a vital role in the long term care system. Consumers of such services often enter the long term care system at a time of crisis and the market place can be confusing and daunting. Efforts such as those put forth in this bill which are aimed at enhancing the information that is provided to consumers are to be encouraged.

Thank you for your consideration of this testimony.

Mag Morelli, CANPFA, 1340 Worthington Ridge, Berlin, CT 06037 (860)828-2903 mmorelli@canpfa.org



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February 24, 2011

SB911

My name is William Wieland (Renny) and I have been involved with Home Health Care for most of my working life. I was the Executive Director of a Visiting Nurse Association for eighteen years and I now own and operate a private duty home care agency in Trumbull, CT which I began 11 years ago.

I have frequently observed the confusion that much of the public has in trying to differentiate the categories of home care services. Certified home health agencies, private duty home care agencies and referral or placement agencies sometimes all seem to be the same entity to many of those seeking homecare.

Our agency receives many calls from the seniors we service who were not aware that they had to reimburse their aides directly when they come from a registry and are classified as independent contractors. Further confusion comes when the unsuspecting senior is informed that they have become the employer with all of the attendant responsibilities. Many of the frail elderly whom we serve are more than willing to accept help in their homes without questioning the employment relationship the caregiver brings with them.

The pamphlets and literature handed out to the senior audience all reflect advertising which purports them to specialize in home care services for the elderly without mentioning the independent status of the caregiver being sent out. Most of the time independent contractor aides lack supervision and in many instances are without criminal background checks or even references on file. We are aware of this because many have sought employment with our agency.

A classic example of this type of service being rendered without proper supervision occurred in Bridgeport several years ago when a male aide in his 30's was sent out by a registry to care for a frail elderly female in her 80's. This woman lived in an apartment with her granddaughter. The male aide was in the process of raping the grandmother when the granddaughter arrived home from school. Obviously, an arrest was made in this case. However, the question remains, was a criminal background check performed?

Was this aide now an employee of the grandmother and was she aware of it? What type of professional liability insurance was available and who carried it? Why was a male aide sent out to care for an elderly woman in the first place? This does not meet the standard for safe home practice.

Misleading advertising can lead to extreme situations such as this. The public should be fully aware of the type of service they are subscribing to and fully understand their own responsibility in choosing a registry or placement service.



 W. Rennard Wieland, President/Owner



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February 24, 2011

General Law Committee

RE: Bill # 911, AN ACT CONCERNING HOMEMAKER SERVICES AND HOMEMAKER-COMPANION AGENCIES

Dear Senator Doyle and Distinguished Members of the General Law Committee

Thank you the opportunity to discuss bill # 911.

My name is Nicholas Miller, the owner of a Comfort Keepers franchise in Enfield Connecticut.

As you know, a Registry is one source of home care in our state . They currently do not disclose the realities of employment or the risks they impose on their clients

First The potential harm to employees when there is NOT full disclosure is:

- a) no unemployment benefits
- b) no benefits towards social security
- c) no accident insurance

In my second year of business, I talked with one of my staff members who at the time also worked with a registry. She told me she had no idea she was not eligible for unemployment until the one day she went to collect and was told she was ineligible. As we talked further she came to realize that for the 8 years she worked with this registry, nothing had been going into her social security for her retirement. She also realized that if she ever got hurt on the job, her only recourse might be that she'd have to collect from her elderly client.

Secondly: The potential harm to Seniors when there is NOT full disclosure is:

- a) being taken advantage of
- b) risk of losing their homes
- c) risk of losing their life savings

Seniors and their families often have to decide on care all of a sudden often time is short and emotion are high, full disclosure gives them the information they need to make an informed decision. Why risk having a few bad seeds mislead these families? I believe most registries are doing business fairly and will agree that disclosure will help protect their reputations as well as their clients and employees.

Best Wishes

Nicholas Miller
Owner

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February 24, 2011
General Law Committee
Testimony in Support of Senate Bill 911
"An Act Concerning Homemaker Services and Homemaker-Companion Agencies"

DEAR CHAIRMAN DOYLE AND MEMBERS OF THE COMMITTEE:

My name is Martin Acevedo. I am the General Counsel of Companions & Homemakers, Inc., a 20-year old homemaker-companion agency registered with the Department of Consumer Protection. With ten offices throughout the State of Connecticut, our company cares for over 2,700 elderly consumers and employs approximately 2,300 caregivers.

In 2006 our company worked very closely with the General Assembly in crafting Public Act 06-187, the first statute regulating the home care industry in Connecticut. Today, we are pleased to testify in support of Senate Bill 911, a much needed complement to that statute.

Senate Bill 911 is designed to protect elderly home care services consumers and home care workers by requiring agencies that follow the "registry" model to make certain disclosures concerning responsibility for payroll taxes and employee status to the consumer and the worker.

A "registry" is a type of homemaker-companion agency that treats its workers as "independent contractors" in order to avoid having to pay payroll taxes,

COMPANIONS & HOMEMAKERS, INC.
OFFICE OF THE GENERAL COUNSEL
TESTIMONY IN SUPPORT OF S.B. 911
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FEBRUARY 24, 2011
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unemployment and workers' compensation insurance, as well as Medicare and Social Security contributions.

Consumers who contract with registries are asked to make two separate payments every week for services rendered. One check is payable to the worker for all hours worked during the week. A second check goes to the registry for its "fees," usually a pre-determined charge multiplied by the number of hours worked by the caregiver during that given week. **The registry neither takes out taxes nor makes payroll contributions. Nor does it advise the consumer of his duty to do so.**

Registries do not see themselves as "employers." The problem is that **someone has to be the employer of the record of the caregiver.** Unbeknownst to the elderly consumer, anytime the consumer hires a "registry" to provide home care services, it is the consumer who winds up becoming the employer of record and assuming the responsibility to withhold taxes, provide workers' compensation, pay unemployment contributions, and match Social Security and Medicare deductions. The consumer, of course, has no idea that he or she just became an "accidental employer," largely because the registry has negligently—and many cases purposely—failed to disclose the consequences of this "arrangement" to the consumer.

At the end of the day, everyone loses. The consumer has unknowingly become the employer of record and eventually he (or his estate) will face substantial liability for unpaid taxes, the worker has been cheated out of benefits and contributions, the State of Connecticut has lost millions in this "underground economy"—one which prominent University

COMPANIONS & HOMEMAKERS, INC.
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of Connecticut Economics Professor Dr. William T. Alpert estimates results in billions of dollars in losses to the State on an annual basis.

This bill aims to remedy this momentous problem. It requires "registries" to provide consumers and workers alike with a notice, written in clear and unambiguous language, identifying which party is responsible for taxes, which party is the employer of the home care worker, and what are the potential legal and tax implications consumers can face if they are found to be the employer of the home care worker.

This bill is about "truth in advertising" in the home care industry and makes good law. First, it seeks to protect elderly and frail consumers against unscrupulous practices and liability for unpaid taxes, payroll contributions, and other charges employers are required to pay by state and federal law. Second, it protects workers who are otherwise cheated of Medicare, Social Security, Workers' compensation, and unemployment insurance protection, and are often coerced by registries to illegally "waive" their rights as employees. Third, the bill is cost-neutral. Fourth, the bill is consistent with Connecticut public policy against intentional misclassification of workers. With respect to this last point, we ask the Committee to add a provision to the bill making a registry's intentional misclassification of its workers a violation of the Connecticut Unfair Trade Practices Act (CUTPA).

For all these reasons, we respectfully request that this Committee raise Senate Bill 911 favorably and vote in favor of the bill becoming the law of the State of Connecticut.

I will be happy to address any questions.



**Comfort
Keepers.**

*17 Heronvue Road * Greenwich, CT 06831*
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TESTIMONY 2/24/11 IN SUPPORT OF SB -911 AN ACT CONCERNING HOMEMAKER SERVICES AND HOMEMAKER-COMPANION AGENCIES

My name is Dennis Patouhas

I am the owner of Assisted Living Associates, the Greenwich franchisee of Comfort Keepers, a 600 office network of providers of non medical homecare

I am also a member of the NPDA

11 years ago, when my wife Marian and I were considering entering into the homecare industry, we choose a model that we felt was the high road approach to providing seniors and others in need of care with a service that allowed them to ONLY concern themselves with obtaining care. Not with dealing with becoming an employer, potentially becoming liable for employer related liability or un-withheld, unreported or unpaid income taxes on the part of their caregiver. Not dealing with risk of suit for injury to a caregiver in their direct employment as their homeowners insurance would be non responsive in such cases.

We also wanted to assemble a staff of caregivers who would be protected with workers compensation insurance in the event of employment related injury and unemployment insurance in the event the need arose. We also did not want our staff to be faced with the year end shock of having reported income with no taxes withheld.

I urge you to vote in favor of SB 911

We have encountered several elderly consumers or their families over the past 10 years who had experience with becoming the target of litigation over employment related injury for as much as \$50,000 or that family who became liable after several years of obtaining caregiving services for \$25,000 of taxes. This as they were deemed the employer although an agency was the entity arranging caregiving services.

Recently, addressing a group of seniors at a health fair in Wilton on the topic of what we term "becoming an accidental employer", one woman was accompanied by her care giver. As I proceeded, the caregiver became very engaged in the topic, asking numerous questions relating to her relationship with her agency. By the end of the talk, she came to the realization that she was not an employee of the agency as she had come to believe, was not covered by workers compensation, not entitled to unemployment insurance and if she worked to the ripe old age of retirement, would have contributed little if anything to social security.

SB 911 seeks to merely disclose to both the client and the caregiver as to their status as relates to their potential liability as employer or for exposure and lack of benefits afforded their employee counterparts in the case of the caregiver.

Again, I urge your vote for SB 911

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- Recreational Activities



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Good Afternoon!

My name is Ray Boller and I am the owner of BrightStar of Stamford / Greenwich, a private duty / private pay home health care agency serving Stamford, Greenwich, Darien and New Canaan. I am here today to voice my support of **S.B. No. 911 AN ACT CONCERNING HOMEMAKER SERVICES AND HOMEMAKER-COMPANION AGENCIES.**

I am a recent entrant into the health care field after 25 years in corporate America. I purchased the franchise and opened my office this past July. While there were many reasons for my getting into this field, knowing that I can provide a service that allows seniors to Age in Place in their own homes was an important motive for me.

As I did my research and due diligence into opening an agency, it became very clear to me that I have actually two sets of "clients" – my patients and their families and my caregivers. Providing excellent customer service and care to both groups will ultimately bring success to my agency. Providing compassionate caregivers to families in need of assistance is my goal. The focus should be on the quality of care supervised by professionals and that focus should not be diverted by having the patients or the caregivers having to worry about non-care related matters.

I made a conscious decision to run my agency in a responsible, accountable manner. My business model is an expensive one to operate –employing a nurse to provide a plan of care for all clients and supervising the caregivers, hiring caregivers as my employees, carrying the necessary insurance to protect both my patients and caregivers.

Over the last 6 months, as I heard of the horror stories of both clients and caregivers abuse from Registries, I know I made the right decision.

One caregiver told us the story of how she worked for a registry and got paid directly by the patient. It was nice to make a higher hourly rate but being responsible for paying her taxes was TOO complicated. And when she got hurt and dislocated her shoulder while working with a male Alzheimer's patient, she bore full responsibility for covering the bills related to her injury.

One client was shocked when she got a notice from the state that she owed over \$30,000 in taxes and fines after employing a caregiver from a registry to care for her dying mother. She paid the caregiver directly and didn't take any taxes out.

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After her mother passed away, the caregiver filed for unemployment and the state came after her for taxes and unemployment insurance.

It is stories like these that lead me to support this bill. Having Registries disclose to both prospective clients and caregivers how they operate as to supervision, taxes and insurance is important so that both groups can make an informed decision. Disclose this information up front and avoid surprises down the road. That way everyone can focus on what is really important —providing quality care to the patient.

Additionally, it doesn't hurt to have the state collect new found tax revenue at a time of fiscal need.

In closing I ask the Committee to vote in favor of Bill 911.

Thank you

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GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
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Have all the members voted? If all the members have voted, please check the roll call board to make sure your vote has been properly cast. If all members have voted, the machine will be locked. Clerk, please take a tally. Clerk, please announce the tally.

THE CLERK:

House Bill Number 6249, as amended by House "A" and Senate "A", in concurrence with the Senate.

Total Number voting	147
Necessary for passage	74
Those voting Yea	131
Those voting Nay	16
Those absent and not voting	4

SPEAKER DONOVAN:

The bill as amended is passed. Will the Clerk please call Calendar 402.

THE CLERK:

On page 14, Calendar 402, substitute for Senate Bill Number 911, AN ACT CONCERNING HOMEMAKER SERVICES AND HOMEMAKER-COMPANION AGENCIES. Favorable report of the Committee on General Law.

SPEAKER DONOVAN:

Representative Taborsak.

REP. TABORSAK (109th):

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· Thank you, Mr. Speaker. Mr. Speaker, I move acceptance of the Joint Committee's Favorable Report and passage of the bill in concurrence with the Senate.

SPEAKER DONOVAN:

Question is on acceptance and passage. Will you remark?

REP. TABORSAK (109th):

Yes, thank you, Mr. Speaker. Mr. Speaker, this bill requires homemaker-companion registries and registries to provide certain disclosures to their clients so that they are aware of their legal liabilities. I -- Mr. Speaker, there is an amendment in the possession of the Clerk, Senate "A", LCO 5512. I'd ask that the Clerk call the amendment and I be granted leave of the Chamber to summarize.

SPEAKER DONOVAN:

Clerk, please call LCO 5512 designated Senate "A".

THE CLERK:

LCO Number 5512, Senate "A", offered by Senator Doyle and Representative Taborsak.

SPEAKER DONOVAN:

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Representative seeks leave to summarize. Any objection? Representative, you may proceed.

REP. TABORSAK (109th):

Thank you, Mr. Speaker. Mr. Speaker, the amendment sets for the very specific notice specifications that I mentioned in my description of the bill. I move adoption.

SPEAKER DONOVAN:

Question is on adoption. Remark further? Remark further? If not, try your minds, all those in favor of the amendment please signify by saying Aye.

REPRESENTATIVES:

Aye.

SPEAKER DONOVAN:

All those opposed, Nay. The Ayes have it. The amendment is adopted. Remark further on the bill as amended? Remark further on the bill as amended? If not, staff and guests come to the Well of the House, members take your seats, the machine will be open.

THE CLERK:

The House of Representatives is voting by roll call. Members to the Chamber. The House is voting by roll call. Members to the Chamber.

SPEAKER DONOVAN:

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Have all the members voted? If all the members have voted, please check the roll call board to make sure your vote has been properly cast. If all members have voted, the machine will be locked. Clerk, please take a tally.

Representative Cafero, in the affirmative.

Representative Janowski -- Representative Janowski, in the affirmative?

REP. JANOWSKI (56th):

Yes.

SPEAKER DONOVAN:

In the affirmative.

Clerk -- clerk, please announce the tally.

THE CLERK:

Senate Bill 911, as amended by Senate "A", in concurrence with the Senate.

Total Number voting	147
Necessary for passage	74
Those voting Yea	147
Those voting Nay	1
Those absent and not voting	4

SPEAKER DONOVAN:

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Bill as amended is passed. Clerk, please call
Calendar 121.

THE CLERK:

On page 4, Calendar 121, substitute for House
Bill Number 6376, AN ACT ELIMINATING THE REQUIREMENT
OF A STATE BOOK RECORDING EACH SALE OF A PISTOL OR
REVOLVER, (inaudible) Public Safety.

SPEAKER DONOVAN:

Representative Dargan.

REP. DARGAN (115th):

Thank you, Mr. Speaker. I move acceptance of the
Joint Committee's Favorable Report and passage of the
bill.

SPEAKER DONOVAN:

The question is on acceptance and passage. Will
you remark?

REP. DARGAN (115th):

Thank you very much, Mr. Speaker. This just
simply -- bill eliminates the redundancy you have a
bound book that's already required by the Federal
Firearms and Licenses.

SPEAKER DONOVAN:

Remark further on the bill? Remark further on
the bill? If not, staff and guests come to the Well

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Thank you.

THE CHAIR:

Seeing no objection, so ordered.

Mr. Clerk.

THE CLERK:

Madam President, top of page 10, Calendar
Number 153, Substitute for Senate Bill Number 911, AN
ACT CONCERNING HOMEMAKER SERVICES AND
HOMEMAKER-COMPANION AGENCIES, favorable report of the
General Law Committee.

THE CHAIR:

Thank you, Mr. Clerk.

And I'm going to take a moment and ask just to stand
at ease for a moment please. The Senate stand at ease
for a moment.

(Chamber at ease.)

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Thank you, Madam President.

I move acceptance of the joint committee's
favorable report and passage of the bill.

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THE CHAIR:

Acting on approval of the bill, will you remark?
Will you remark further?

Senator Doyle.

SENATOR DOYLE:

Yes. Thank you, Madam President.

What this bill does is it deals with an issue that some of our consumers have for placement of our seniors in home care. The underlying bill basically deals with individuals that are family members that get home care givers from entities called registries. And what the registries do is give individuals names of individuals that will come and work for them. In other words, the other registries do not provide employees. They provide a person that will work for you and it's the obligation of the family to take care of the employment and social security and other tax -- legal/tax obligations.

That being said, the Clerk has amendment, LCO Number 5512. May the Clerk please call and I be allowed to summarize.

THE CHAIR:

Mr. Clerk.

THE CLERK:

The Clerk is in possession of LCO Number 5512,
which shall be designated Senate Amendment "A."

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Thank you, Madam President. I move adoption of
the amendment.

THE CHAIR:

Please go ahead, sir.

SENATOR DOYLE:

Thank you, Madam President.

As I previously said, the underlying bill deals
with an issue of providing notice to consumers or the
family members that they have potential tax liability
for this registry employee because the family member
is assuming responsibility and is really the complete
employer of the registry referral. And what this
amendment does is it clarifies, it kind of makes a
parallel -- the disclosure of the potential tax
liability does not have to be presented immediately
upon placement. Really within seven days of the
notification -- provided to the family because
actually today dealing with a situation of placing a
family member -- not a family member -- as a client when

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you have exigent circumstances of placement, sometimes it's difficult to get all the paperwork completed on the date of placement.

So what this bill does, it makes kind of a parallel with the home companion agencies where you have seven days to really finalize the paperwork and therefore this disclosure so the consumer is aware of the potential liability down the road can be presented within seven days.

And ultimately, why this disclosure is very important is because the family members, the IRS and others have in the past imposed penalties and interest on individuals that do not properly treat the worker as an employee, and therefore, pay Social Security and collect Social Security. So at this point, I would ask the committee to approve the amendment.

THE CHAIR:

Will you remark further? Will you remark further?

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Madam President. Just a quick question through you to the proponent of the amendment.

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THE CHAIR:

Please proceed, sir.

SENATOR KISSEL:

I'm just wondering if this is business days -- seven business days, or seven calendar days? And in fact, during the day -- would the day of the initial placement count towards that seven days? Just so nobody trips up on the calculation. Through you, Madam President.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Through you, Madam President, it is seven Calendar days after the date the registry starts supplying. So basically, you know, if it happens on day one, it would take eight. So you have really -- day one passes and you have seven full days after that provide the notice. Through you, Madam President.

THE CHAIR:

Thank you.

Senator Kissel.

SENATOR KISSEL:

Thank you very much. That clarifies the question in my mind and I'm happy to support the amendment

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myself. Thank you.

THE CHAIR:

Thank you, sir.

Senator McKinney.

SENATOR MCKINNEY:

Thank you, Madam President.

Madam President, I certainly support the amendment and the underlying bill, but just for clarification of several questions.

THE CHAIR:

Please proceed, sir.

SENATOR MCKINNEY:

Thank you. First, with respect to the disclosure form -- and I know that deals with the underlying bill and amendment -- is there -- is there a standardized industry disclosure form? Is there a disclosure form that we're going to develop through regulations or is it just information that the referring company has to disclose in whatever form they like? Through you, Madam President.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Through you, Madam President.

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The amendment at issue right now provides certain specific terms that should be in the disclosure. So the bill does not have the specific form, but it does detail in specificity what should be in the disclosure form.

So at the present time, there's no regulation -- certainly in the amendment. I'll doublecheck in the bill -- but here, it simply -- it does detail the amendment, what the notice should be. Through you, Madam President.

THE CHAIR:

Senator McKinney.

SENATOR MCKINNEY:

Thank you, and also through you, Madam President, obviously, what I appreciate about this amendment is it recognizes that, you know, sometimes late at night you might need to have someone in the care of a family member or loved one, and obviously, getting that notice to them prior to that placement might hinder that help from coming. So I think this is good, but it's also my understanding, Madam President, that the not all placements make the person an employer in terms of responsible for taxes. I don't know if that's accurate. If it isn't, please correct me.

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But if someone were -- were placed for a day and that didn't trigger any tax consequences with DRS or IRS, is the referring agency still required to send the notice? Through you, Madam President.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Through you, Madam President.

I assume hypothetical proposed by Senator McKinney is saying the referral is a, you know, a one-day refer. I mean I'm not sure in the real world whether it's a referral of one-day or it's more of -- do you have a name -- it's a legitimate hypothetical, but the common proposal is basically I need full-time care, the person comes over.

But I guess in this case, if it's a one-day referral, you still would have to give the notice because you're not really going to know. One day could lead to two years so you really not going to know. Even if it's premised to be a one-day -- because a lot of times, it's really a referral and then that's the end of the relationship so you don't know what happens from there. So if the intent is one day, it could lead to two years, which could have the same potential

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liability. So I think the notice should go out assuming there's an agreement signed.

Through you, Madam President.

THE CHAIR:

Senator McKinney.

SENATOR MCKINNEY:

Thank you. And I agree. I just wanted to clarify. So you don't have to trigger any tax consequences. You just need to have a referral, which automatically requires the information to be sent, because you're right, there is that separation between the referring agency and the person who is referred. So I appreciate that. That clarifies this. Thank you.

THE CHAIR:

Thank you.

Senators Suzio.

SENATOR SUZIO:

Thank you, Madam Chair.

Through you Madam Chairman, would this apply, Senator, to a situation in which a service provider has multiple people going and providing the service to the beneficiary? Would it be required for each successive employee or is it a one time notice from the service

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provider employer?

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Through you, Madam President, this is designed for specifically registries, which are statutory entity already. And each referral by the registry would necessitate a notice given. So there are plenty of other referrals that you know, may or may not be applicable, but at this point, we are focused on registries. And if, for instance, say the family member got a referral on day one and it didn't work out, and ten days later -- they got a referral of another, each one would necessitate a separate and distinct notice. Through you, Madam President.

THE CHAIR:

Senators Suzio.

SENATOR SUZIO:

Thank you, madam. That answers my question.
Thank you, Senator.

THE CHAIR:

Thank you. Will you remark further?

Senator Kelly.

SENATOR KELLY:

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Thank you, Madam President. Through you to
Senator Doyle.

THE CHAIR:

Please proceed, sir.

SENATOR KELLY:

Would this also include homemaker registries
that do pay the taxes and to act as the employer and
handle the unemployment, workers' comp and all those
other issues? Would they also have to give notice that
they are doing that?

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Yeah. Through you, Madam President. The answer
is no. And we had some discussions. The committee had
discussions and the intent of the bill is concerned
about the consumer potential -- no -- the consumer
liability. It's not potential. A referral from a
registry, which is clearly an independent situation
where, you know, me, as the family member, is liable
for the -- all the Social Security and taxes. That's
the real cause of concern here.

So the homemaker companion agencies that refer a
full employee which they pay is not applicable. It

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doesn't have to give a notice because there's no potential liability. They are already paying it. You know, to be fair the homemaker companion is much more expensive actually, and we are just trying to address because in these difficult family situations people may get it, not be aware of the complexities involved and later on, they have been, you know, hit hard by our IRS because, you know, because of the under the table situation the common, you know, as we know under the table. Through you, Madam President.

THE CHAIR:

Thank you.

Senator Kelly.

SENATOR KELLY:

I have another follow-up question.

THE CHAIR:

Please proceed, sir.

SENATOR KELLY:

Would this be applicable to a family member who provided assistance to a loved one?

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Through you, Madam President. The answer is no.

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THE CHAIR:

Senator Kelly.

SENATOR KELLY:

Through you, Madam President.

Is there a sanction for failure to comply with this
law?

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

There's no sanction. At this point, we are
considering the amendment. There's no sanction in the
amendment. I'll have to take a look at the file copy
again, but we are just talking about --

THE CHAIR:

About the amendment, sir.

SENATOR DOYLE:

I mean, at this point, there's no sanction in the
amendment. Let me look at the file copy.

Through you, Madam. Sorry.

THE CHAIR:

Please, Senator.

SENATOR DOYLE:

Thank you for your patience, Madam President.
Yes, there is. The consumer -- the commissioner of

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Consumer Protection may revoke or suspend the certificate of registration as a registry. So there is a penalty, you know, get a letter of reprimand if they fail to provide this notice. And basically really suspend them as a registry.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

One last question. In looking over the amendment, through you, Madam President.

THE CHAIR:

Please proceed sir.

SENATOR KELLY:

It indicates that the notice is going to be provided to the consumer and one of the concerns I have is that many times the consumer is the aged individual who may not have capacity. Wouldn't it also be wise to include, given that notice, to not only the consumer, but also their either attorney, in fact, or responsible party who is handling their affairs so that they would have adequate notice of what's going on and what their rights and liabilities are with regards to things such as taxation. Through you, Madam President.

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Senator Doyle.

SENATOR DOYLE:

Through you, Madam President, it was the consideration of us at this point, you know, although I don't disagree with the hypothetical proposed by Senator Kelly -- oftentimes it's not the disabled individual -- however you want to describe the person that may have -- dementia or the like, there is a family member that's signing on behalf of or a conservator or power of attorney and whoever signs the agreement is going to get the notice.

So at this point, we thought it was reasonable just to impose the burden, you know, for the registry to send it simply to the signer of the agreement, but I think it would be extremely rare for the individual that is incapacitated to whatever extent, that actually will be signing and will receive this. So it's a legitimate point, but I think it's very remote.

Through you, Madam President.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

Through you, Madam President, I'm not so sure that would actually be as remote as you'd think. I mean,

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your going to have somebody that's providing care and services within seven days of that care and service they are probably going to deliver this written notice of the time that they are doing it. In all likelihood, the individuals that are going to be there would be the consumer of the service, may be a home-health aide from the registry, may be a third-party, many granddaughter, a grandchild of some sort, where the person that's taking care of this, the power of attorney, the conservator might be engaged in their day-to-day activities.

What I see is that, you know, we've got the sandwiched generation that are taking care of young children at the same time are taking care of elderly parents and we are just trying to make it through, while at the same time engaged in our normal course of business. That person is not going to be present when the home-health aide is there because they are dealing with their own life and then they come back at the end of the day. So I'm not so sure that we are going to have a high incidence of the consumer be present and I'd like to see something like be there that is not only just the consumer, but that the person handling the affairs that's going to have this responsibility going

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forward actually undertakes it and knows about it.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Yes, through you, Madam President. I guess the committee and myself are making the presumption that whoever signs the registry -- because you know, there is an agreement between the two -- has capacity so whether -- if the actual person receiving the services signs it, I would assume that person has capacity. And if the person isn't signing it and the conservator is signing it, then clearly the person doesn't have capacity, but I guess it's my judgment and judgment of others that whoever signs in agreement with a registry has capacity and we're just hoping to give that person notice of the potential liability. Through you, Madam President.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

Thank you, Madam President.

THE CHAIR:

Thank you very much.

Will you remark further?

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Senator Roraback.

SENATOR RORABACK:

Thank you, Madam President. Are we still on the amendment?

THE CHAIR:

Yes, sir. I hope so.

SENATOR RORABACK:

I'll wait until the amendment is disposed of and then I'll --

THE CHAIR:

Thank you, Senator.

SENATOR RORABACK:

Thank you, Madam President.

THE CHAIR:

Thank you. Seeing no -- remark further? If there's no discussion, please let me try your minds. All in favor, please say, aye.

SENATORS:

Aye.

THE CHAIR:

Opposed, please say, nay.

The ayes have it. The amendment is adopted.

Senator Doyle.

Okay. Senator Roraback.

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SENATOR RORABACK:

Thank you, Madam President.

I just had a couple of the questions, if I may, through you to Senator Doyle.

THE CHAIR:

Please proceed, sir.

SENATOR RORABACK:

And good afternoon, Madam President.

THE CHAIR:

Good afternoon. It's good seeing you.

SENATOR RORABACK:

Nice to see you.

Through you, Madam President, to Senator Doyle, my understanding is that there are two universes of providers. If someone in your household needs a helping hand, a companion or someone to -- with more skilled -- you have a need for skilled services, you could call an agency. Where do you turn? Right? You need to call someone who can provide you with help at home.

And through you, Madam President to Senator Doyle, I understand that there's two different types of agencies in the state of Connecticut, one of which will furnish you an individual and that individual is the

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employee of the agency and the agency pays all of the taxes and the like. And the other universe is people that will find you someone, but that person is not their employee. They view that person as an independent contractor. Through you, Madam President, to Senator Doyle, does he have a similar understanding of kind of what's out there in the world?

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Through you, Madam President.

Senator Roraback is correct.

THE CHAIR:

Senator Roraback.

SENATOR RORABACK:

And what I understand this bill to be trying to do is to let people who use those agencies that don't treat the worker as an employee to notify the people that take advantage of those services that they could be deemed to be the employer and that they should be mindful that. Through you, Madam President, to Senator Doyle, is that right?

THE CHAIR:

Senator Doyle.

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SENATOR DOYLE:

Through you, Madam President.

Yes. That's the issue here and it's my interpretation and understanding that, you know, of course I'm not speaking for the IRS, but in this situation, it's pretty clear they are employees in most situations when they are there. And you know, I think you know, I think a lot of people may -- I'll presume a lot of people in the state do pay a lot of these individuals under the table, but I think they are really deemed employees and people should be paying Social Security and all that to make them full employees.

So yes, that is the presumption and Senator Roraback is correct again. Through you, Madam President.

THE CHAIR:

Senator Roraback.

SENATOR RORABACK:

Thank you, Madam President and I appreciate Senator Doyle's concern. I think it's a fair concern. I don't think anyone is being paid under the table. I mean, all of these wages are being reported. I think that the agency, when you hire an independent contractor, I think you actually pay the agency and they

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in turn cut a check. They take -- they take a commission for finding the individual and then they cut a check to the person. I'm not exactly sure how it works, but the -- through you, Senator Doyle might have a better understanding than I do. Through you to Senator Doyle.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Yeah. Through you, Madam President, I need to clarify my comments then. No. I was saying the registry certainly -- they're legitimate. They make the referral, you know, of the caregiver and then from there the registry's relationship is over. They are gone. Nothing wrong in that situation. From that point forward, you know, the family member with the referred registry individual caregiver, they move forward from there and that is the relationship I'm saying and I just think maybe people aren't aware that there are situations where, you know, a weekly wage of a thousand dollars is paid when Social Security is not paid and it really should be. You know, it's the formal relationship should be established there and it's often not done I believe.

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And this is trying to save listen, down the road,
as a consumer, awareness, you have some potential
liability.

Through you, Madam President.

THE CHAIR:

Senator Roraback.

SENATOR RORABACK:

And I appreciate that explanation.

And through you, Madam President to Senator Doyle,
my understanding is that some of these agencies may get,
you know, \$2 an hour for every hour that
individual -- that independent contractor works in
their home. That it's not -- they get paid, the
registries on an ongoing basis for as long as you need
the services of the individual that comes to your house
and works for you. Through you, Madam President -- and
that may vary, Madam President, from agency to agency,
but I did some of them are set up that way where they
get something. It's like a temp agency kind of.

Through you, Madam President to Senator Doyle.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Yeah. Through you, Madam President, to be honest

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I'm not aware of that relationship. The typical arrangement that I'm aware of, its usually like lump-sum fee, a one-month rent and then the relationship is gone. I'm not certain.

I'm familiar where, you know, the referral is made and then you have to make like a one-month, whatever. Is a thousand a month or something. You have to pay that fee to the registry and then the registry walks away. And there may be that situation you're referencing. I'm just not aware of that. Through you, Madam President.

THE CHAIR:

Representative -- Senator Roraback.

SENATOR RORABACK:

Thank you.

As you know, Madam President, there's no finer title than Representative in the state of Connecticut, but -- and Senator Doyle knows that as well.

THE CHAIR:

That's right, sir.

SENATOR RORABACK:

Through you, Madam President.

So Senator Doyle is suggesting a relationship more like a headhunter, like, I found you this person, pay

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me a lump-sum fee end then we're done.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Through you, Madam President, yes.

That's what I believe and as I described it is more like a headhunter. But I can't -- I'm not going to rule out the hypothetical you proposed because I haven't reviewed that many contracts. I, as an attorney, had a situation where I was aware of this lump-sum headhunter-esque payment, but you may well be right. I honestly don't know if there's other relation -- or other arrangements. Through you, Madam President.

THE CHAIR:

Senator.

SENATOR RORABACK:

Thank you, Madam President.

And where I'm going with all this, I think it's very hard to know in these relationships how long -- when you call one of these agencies, you don't know if the individual they send you, whether you are going to need them for a month or two months. I mean, in some cases you may know, I'm going to need them forever because I'm disabled and I'm always going to

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need somebody there. In other cases, you may be recovering from a knee replacement. You don't know whether you will be better in two weeks, four weeks, six weeks, eight weeks.

And it's very confusing for anyone to try to figure out whether this person coming to your home is an employee for Connecticut law or federal law or unemployment compensation or workers' compensation. And so we create a trap for unwary consumers, to Senator Kelly's point. And these individuals may not be an employee until a certain point and then all of a sudden, poof, they become an employee because you've satisfied one of these tests.

So Madam President, I support the bill, but I do think our State should be looking at ways to perhaps enable people who work in this line of service to be deemed independent contractors so that the families of people who usually are using these services are protected from these claims and the people who work as independent contractors know that they are getting paid a little bit more and they may not be eligible for some of the benefits that come with being an employee.

It's a very complicated world, Madam President, and this bill makes it a little bit less complicated,

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but I'd like to see it even more less complicated. I thank Senator Doyle for his answers and I thank the Chamber for their indulgence. Thank you, Madam President.

THE CHAIR:

Thank you, Senator. Will you remark further? Will you remark further? Any -- oh, so sorry.

Senator Frantz.

SENATOR FRANTZ:

(Inaudible.)

THE CHAIR:

Yeah. I should have gotten that. Sorry.

SENATOR FRANTZ:

Thank you, Madam President. This won't take long.

THE CHAIR:

And I'm used to looking to my left, but --

SENATOR FRANTZ:

I'll have to change with Senator Fonfara for the next session.

Thank you, Madam President. Just a simple question through you, Madam President to the proponent of the bill, Senator Doyle.

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Please proceed.

SENATOR FRANTZ:

Thank you. The amendment, which everybody appeared to be in favor of, calls for a one-week grace period during which the form can be distributed and I -- give the consumer of the service time to read it.

Do many or any of the existing nurse registries do that on a voluntary basis currently, do you know, and maybe what the percentage is?

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Through you, madam President, the real -- the seven-day window we're talking about, gives the opportunity for the registry to delay procurement or turning over the notice just because of the rush of the placement.

So it's not really a seven-day window for the consumer to review it. It just gives -- rather than having to do it, you know, because a lot of times placement is a real harried and immediate instant. This would basically give the registry the opportunity for a few days -- really, seven days to actually proffer the notice to the consumer or the child, who is ever

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signing the agreement.

But in terms of -- I don't, to be honest, as a general practice, I have reviewed a few of the agreements. Not a lot, so I can't really speak on all of them, but it's certainly not emphasized, the tax liability. It may be, you know, I hate to say it but sometimes they are buried in a ten page agreement and I'm not sure the consumers all see it. The intent here is to make it a separate document freestanding just so people, the consumers are aware that they have some potential liability. And you know, in terms -- Senator Roraback mentioned it may only be for two days or for two years. From my perspective, we have to err on caution so the consumer is aware of the liability and if it's two days it probably won't be an issue that the notice should go to every once in the consumer realizes the potential liability down the road. Through you, Madam President.

THE CHAIR:

Senator.

SENATOR FRANTZ:

Thank you.

And through you, Madam President, I appreciate that explanation now. I fully understand the intent

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of the bill as well as the amendment. Are you aware of these registries doing this on a voluntary basis during that one-week period, or maybe even a two-week period?

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Through you, Madam President. I'm not aware. I don't think they do it, but I can speak -- I do not believe so. Through you, Madam President.

THE CHAIR:

Senator.

SENATOR FRANTZ:

Okay. Thank you. And the reason I asked is that I believe some are -- and I think that, you know, and should be recognized for at least trying to comply with the spirit of the existing laws.

And I also just want to say I think your amended bill makes really good sense. We have a problem throughout the country and it's probably worse here in Connecticut than in most other states, of meeting the needs of individuals who need the kind of care that we are talking about here and finding the individuals who can provide that care.

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So the good old free market, you know, usually comes to the rescue. This is a good example of how the free market works magnificently. And this bill I think addresses something that needs to be addressed, but doesn't harm in any sense the component of the marketplace in Connecticut.

So in support of it, and thank you, Senator Doyle. Thank you, Madam President.

THE CHAIR:

Thank you, Senator. Thank you very much. Will you remark further?

Seeing no objection, Senator Doyle.

SENATOR DOYLE:

Thank you, Madam President. If there's no objection, I'd like to refer the bill to the consent calendar.

THE CHAIR:

Seeing no objection, so ordered, sir.

SENATOR DOYLE:

Thank you, Madam President.

THE CHAIR:

Mr. Clerk.

THE CLERK:

Madam President, continuing on page 10, Calendar

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Madam President, according to the Clerk's record on page 2, on the second consent calendar, Calendar Number 43, Senate Bill Number 851; on page 3, Calendar Number 46, Senate Bill -- Substitute for Senate Bill Number 849; on page 4, Calendar Number 65, Senate Bill Number 889; on page 7, Calendar Number 106, Senate Bill Number 933; on page 8, top of the page, Calendar 118, Senate Bill Number 885; on page 9, Calendar 131, Senate Bill Number 861; on page 10, Calendar Number 153; and also on page 10, Calendar Number 160, Substitute for Senate Bill Number 1109. SB 911

That completes the items placed on the second consent calendar according to my record.

THE CHAIR:

Thank you, sir. We have one more --

THE CLERK:

Madam President, on the top page 11, Calendar Number 162, Substitute for Senate Bill Number 1076.

THE CHAIR:

Thank you, sir.

Would you please call -- announce a roll call vote and the machine will be open.

THE CLERK:

An immediate roll call vote has been ordered in

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the Senate on the second consent calendar. Will all Senators please return to the chamber.. An immediate roll call vote has been ordered in the Senate on the second consent calendar. Will all Senators please return to the chamber.

THE CHAIR:

Mr. Clerk, could you announce it one more time please?

THE CLERK:

The Senate is voting on the second consent calendar. Will all Senators please return to the Chamber. The Senate is voting on the second consent calendar. Will all Senators please return to the Chamber.

THE CHAIR:

Everybody has voted. All members have voted. The machine will be locked. Will the Clerk please announce the tally.

THE CLERK:

Madam President, the result of the vote on the second consent under is:

Total Number voting	34
Necessary for adoption	18
Those voting Yea	34

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Those voting Nay 0

Those absent and not voting 2

THE CHAIR:

The consent calendar is adopted.

Senator Looney, please.

SENATOR LOONEY:

Thank you, Madam President. For purposes of a clarification.

Madam President, on calendar page 11, Calendar 162, Senate Bill 1076 was not an item that I had announced for the consent calendar. I'm told that it may have been listed on the consent calendar, but it should not have been. So I just want to make sure that is deleted.

THE CHAIR:

Yes, sir, and it was not listed on the machine, sir. Thank you.

At this time, Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, the Clerk is now in possession of Senate Agenda Number 4.

THE CHAIR:

Mr. Clerk.