**Report Concerning the Transfer of Registration and Oversight Responsibilities for Homemaker-Companion Agencies**

By the Connecticut Chapter of Home Care Association of America

June 4, 2024

## Introduction

Public Act 23-48 requires the Secretary of the Office of Policy and Management (OPM) to develop a plan and proposed timeline to transfer homemaker-companion agency registration and oversight responsibilities from the Department of Consumer Protection (DCP) to the Department of Public Health (DPH).

The plan must include recommendations on training standards that:

(1) exemplify best practices for providing homemaker-companion services;
(2) include instruction and specialized training benchmarks for caring for clients with Alzheimer's disease, dementia, and related conditions; and
(3) ensure a high level of care for homemaker-companion agency clients.

The plan may also evaluate and make recommendations on the appropriate use of the term "care" to describe services homemaker-companion agencies provide, and any limitations on using the term to ensure consumer clarity.

The Secretary must prepare the plan in consultation with the commissioners of Consumer Protection and Public Health and report on it to the Aging, General Law, and Public Health committees of the General Assembly by August 1, 2024. Home Care Association of America Connecticut submits this report to OPM to serve as a resource to the state and to help officials as they begin to develop the plan and transition registration and oversight responsibilities for the home care industry.

## About HCAOA and the Connecticut Chapter

HCAOA (HCAOA) is the home care industry's leading trade organization representing home care agencies and their suppliers across the country. HCAOA strives to provide member agencies with practical resources to improve training and quality within the industry, protect consumers and caregivers, and enhance home care agency operations. HCAOA advocates to help ensure caregivers have safe and secure environments in which to work and the industry continues to innovate care in communities across the nation. HCAOA brings together innovators and suppliers to help sustain individuals and families as they age in place at home, helping build independence and choice.

HCAOA Connecticut is the Connecticut state Chapter of HCAOA. HCAOA Connecticut advocates for home care agencies that recruit, employ, train, monitor, screen and does background checks, and supervise caregivers; create a plan of care for the client; and work toward a safe and secure environment for the person at home and their caregivers. More than 100 HCAOA Connecticut members employ several thousand caregivers providing quality, affordable care in the home to thousands of elderly consumers, persons with disabilities and veterans across the state. For additional information about HCAOA and the Connecticut Chapter, visit www.hcaoa.org.

NOTE: This report and its recommendations reflect the views of the Connecticut Chapter. It has not been endorsed by HCAOA nor does it necessarily reflect the policy of any other state chapter.

**About the Home Care Industry in Connecticut**

For many years the non-medical home care industry in Connecticut, aka "homemaker-companion agencies" have been regulated and overseen by the Department of Consumer Protection. Laws authorizing DCP oversight of the home care industry 2006, when Chapter 400o and the corresponding regulations were enacted, with several recent revisions and additional requirements.

As people are living longer lives with a clear desire to spend as much time as possible at home (non-institutional), the marketplace for these services has changed significantly.

Additionally, initiatives by Government, healthcare companies, insurance companies and others are seeking to contain the cost of care by providing services in people's homes and communities, rather than in hospitals, nursing homes or other higher-cost, institutional settings.

The confluence of these trends, bolstered by a baby-boomer population entering advanced age, has caused the level and type of care provided in a home setting by individuals, families, and professional services that support them to undergo dramatic change.

As this has happened, Connecticut has not updated its regulation or oversight of a relatively new and changing home care industry to meet this need. The legislation to transfer regulation and oversight of non-medical home care agencies to the Department of Public Health is consistent with current and longer terms trends nationwide that see non-medical care as part of a continuum of care people

routinely receive in their own homes, alongside medical services such as home health care, hospice care and other supportive services.

**Key Points to Consider for the Transition to DPH**

Nomenclature and Definitions

While this may seem trivial, the wide number of terms used across State Government, the healthcare industry and consumers for the home care industry is confusing. The odd terms of "homemaker and companion" used in Connecticut are not to our knowledge used anywhere else in the country and are customarily not used by consumers or searched by them online. "Home care", which is distinguished from "home health", is most commonly used by consumers and industry alike.

Home Care

Home care is not home health. It covers services provided to support individuals in their own home that is distinct from medical services. However, such non-medical services absolutely support people needing help at home because they have medical conditions. In almost all cases, ~~our~~ home care services are provided because the person needing help has one or more medical conditions that limit their abilities to perform daily activities at home without assistance.

The goal of home care services is to help people remain as independent at home as long as and is as safe as possible –for the client and for employees (caregivers) helping them.

Home Care Agencies

It is the consensus of our membership to refer to our companies as "Home Care Agencies." Home care agencies are companies that employ caregivers and others (W-2 employees on staff as opposed to 1099 independent contractors) to help people remain safe and independent at home.

Home care agencies are distinct from "registries", which identify and place people in homes, receive fees based on hours worked, but are not the employer of record for the people working in the home. In this model, the client/family becomes the employer who is responsible for all employment duties, insurance, taxes and other obligations and liabilities. It is unclear how registries will be regulated at the Department of Public Health under the new regulatory scheme after the transition.

Home care agencies perform employer responsibilities and assume the necessary insurance, tax and other obligations and liabilities, are responsible for employee

safety, are regulated and compliant with all state and federal laws around employment, background checks, worker safety and other requirements.

Employees and Caregivers

Home care agencies employ "caregivers" to work in people's homes. Caregivers can be people trained by that agency or through formal Certified Nurse's Assistant programs, Personal Care Assistant programs or Home Health Aide programs. Because so many terms and credentials are used in our labor pool, our membership believes that the term "caregiver" is both a descriptive and an appropriate catch-all for this group of potential employees. Note that caregivers are not supervised by a medical professional, such as a nurse, and are ***not*** allowed to perform medical duties. As a result, the industry prefers to reference this position in a way that does not suggest a job description that could be confused with a medical certification or provider, such as home health aide or certified nurse's assistant. We believe these terms are not entirely accurate, are sometimes poorly understood non-medical professionals, and are inherently confusing to consumers. As a result, this report will use the term "caregiver" when referring to an employee working with clients in a home setting.

Where do Home Care Agencies Provide their Service?

Home care agencies provide services where the client resides. Our clients receive home care services in private homes, apartments, assisted living communities and caregivers even provide support to persons needing additional care at nursing homes or during hospital stays. Caregivers working for home care agencies work in all these settings for the individual client residing there. Generally, agencies are not paid by a facility, but directly by the client.

State and Federal Providers

In addition to private pay, which can include payment by long term care insurances held by individuals, home care agencies provide services for various state and federal agencies and are reimbursed directly for those services by a third-party payor. Most common in Connecticut are home care agencies that participate in programs provided by the Department of Social Services, such as the Connecticut medical assistance program or waiver programs. Many agencies also are approved providers of the U.S. Department of Veterans Affairs and receive payment for home care directly from the VA.

In many states, but not currently in Connecticut, Medicare Advantage plans offer limited home care coverage. The industry expects that reimbursement of these services through Medicare will likely increase in the coming years, as Medicare

seeks to encourage people to remain in their homes. There are other limited Federal programs that may be used in future to help people afford home care more widely to reduce the cost to Federal and State Governments.

***It is an important state and industry objective that Connecticut is positioned to take advantage of these payor sources that help consumers access and afford care and support at home.***

Industry Structure in Connecticut

Please note the following about the industry as part of this review:

- The home care industry in Connecticut is made up of over 900 small businesses, many of which are minority-owned or woman-owned.
- These agencies are owned by people who live in and support their local communities as well as employ people who live in those communities and provide services to local residents across the state.
- These businesses employ thousands of workers throughout the State, many of whom come from economically disadvantaged households.
- The industry serves clients at all points on the socio-economic spectrum, from the very wealthy to the very poor, including agencies that focus almost exclusively on clients through Medicaid programs and/or serving Veterans.
- Most services provided by agencies in Connecticut are paid for privately out of personal funds, and not reimbursed by any insurance or government.

The Gray Market for Services

It is important to note that additional regulations on the home care industry can have the unintended consequence of increasing the cost of services to legitimate businesses and pushing these services further out of reach of many consumers. This incentivizes or even forces consumers to seek out unregistered agencies or individuals with no client or employee protections.

Regrettably, it is still legal in Connecticut for people to hire friends, family members, neighbors, acquaintances, and people directly from the Internet to care for them or their family members.

This common practice is entirely unregulated with no oversight, and can create great risk for consumers, especially for uninformed vulnerable individuals who might come under the care of unscrupulous actors.

Typically, a person will be hired directly, with no tax withholding or wage reporting and work unsupervised in a home setting not set up for worker protections. These workers often forego reporting their incomes and paying all associated taxes, including Social Security, such that when they come to their own retirement age, they will not be eligible for benefits and experience more impoverishment in advanced age, again imposing additional burdens on the State. The loss of state revenue is significant, unfair and costly to taxpayers.
Many are not legal to work. Some are professional scam artists preying on seniors. They may have some training or experience as caregivers but often do not have either. Families hiring them may or may not run background checks or have backup plans in place should that caregiver become ill or otherwise unable to provide care.

Homeowners often do not understand that they are the employer and are liable should that worker be injured while working in their home. As a result, most do not carry adequate homeowner's or renter's insurance policies to handle such eventualities.

Finally, it is important to recognize that the recipient of care is vulnerable to the person providing needed care, and as such, cannot reasonably be both a recipient of care and an employer in charge. The recipient of care is simply too vulnerable to that individual to also discipline or fire that person in a safe manner.
Home care agencies recruit, hire, run background checks, supervise, provide relief and fill-in care, carry liability and worker's compensation insurances, are the employers of record, pay all appropriate taxes and comply with all state and federal labor laws to provide these services safely in people's homes.

***The gray market may appear less expensive to the consumer, but is often dangerous, more costly in the long term and almost never in the best interests of the recipient of care, their estate, or the State of Connecticut.***

<u>Goals of this Report</u>
This report represents the nonmedical home care industry's recommendations on how the transfer of regulatory oversight to the Department of Public Health would help protect consumers by:

- Clarifying, updating, and harmonizing the services provided by home care agencies in Connecticut with other key medical and non-medical home providers;
- Ensuring that services authorized are in harmony with the many facets of Connecticut and Federal Government programs that pay for such services; and

- Promoting and enhancing consumer choice so that everyone, regardless of income or source of payment, has access to the quality care that suits their specific needs. ***This includes ensuring that privately paid services remain affordable to households not eligible for Medicaid.***

**Key issues and Recommendations:**

**ISSUE 1**: Harmony in definitions, scope of services and requirements to be consistent with the definitions, scope of services and requirements already in place at the Department of Social Services.

**Background**: The Department of Social Services (DSS) oversees many programs providing care in people's homes funded by Medicaid or other state sources for which home care agencies are routinely retained and reimbursed.
The definitions, scope of services, and training requirements under DSS have been in place and will remain in place, so an effort to ensure that there is regulatory consistency between Government agencies working with the same home care agencies is important.

Harmonizing these programs will improve efficiency and reduce costs of oversight by State agencies, and reduce confusion amongst both home care agencies, medical service providers and the public.

Furthermore, DSS programs have been in place for many years and have a body of practical experience to support them. Many home care agencies participate in these programs. Consumers better understand them and others in the industry generally support using them as a foundation for any regulatory rubric under the Department of Public Health.

**Recommendation**:
These DSS programs should be the basis for any regulations in place as it is largely consistent with the scope and practice of the home care industry around the country, compared to regulations currently in place in Connecticut under the Department of Consumer Protection.

As the regulatory oversight for home care agencies shifts to the Department of Public Health, HCAOA recommends that DPH adopt core definitions, scope of services permitted and training requirements from existing programs already in use and administered through the Department of Social Services, or otherwise ensure that any such regulations are in harmony with those programs.

The training manual for PCA training in use by DSS is an excellent reference for this and can be found at:

https://www.ctdssmap.com/CTPortal/Portals/0/StaticContent/Publications/PCA_Training_Modules.pdf

It is recommended that PCA training form the basis of any functional training requirements adopted by DCP or DPH.

**ISSUE 2**: What should licensure requirements look like and what other regulatory requirements and conditions should be imposed?

**Background**: The industry to date in Connecticut has been authorized DCP through a registration process with relatively few requirements for qualification, including payment of a $375 registration fee. As it stands, there is a relatively low barrier to entry for anyone seeking to establish a home care agency. The great majority of these agencies are small companies run by individual owners or families. Many are individually owned franchises. In any event, they generally are not large corporate entities.

The industry fully supports greater standardization, including licensure, that would improve the quality of care provided to Connecticut residents. That said, any such licensure requirement should be balanced against the costs it would impose on consumers and small businesses.

As an industry of small businesses, regulatory requirements modeled on large medical providers would be inappropriate. Requirements such as highly prescriptive insurance coverages, retaining medical personnel on staff, comprehensive annual surveys, and corporate oversight with boards of directors, are unnecessary, cost prohibitive and have unintended consequences of increasing costs for consumers, making care less affordable and accessible, reducing employment opportunities for caregivers and workers, and harming small businesses.

Many small home care agencies provide essential, affordable in-home services and support to thousands of seniors, veterans and persons who are disabled across the state and would not be able to afford significant cost increases.

Increases in minimum wage form a backbone of cost structure for this industry as caregiver labor and all other costs based on payroll (taxes, benefits, insurances,

etc.) drive costs that are ultimately passed along to consumers. Caregiver wages and costs derived from wages such as FICA taxes, and unemployment, workers' compensation, and liability insurance comprise 60-70% of the total revenues generated by agencies, and even more for Medicaid home care providers because of the very low reimbursement rate. As wages and wage-related expenses rise, the cost of care will increase.

***In sum, any licensure, regulatory scheme or other state action that drives up wages will further increase costs and will put home care out of reach for many consumers and families, truncating their spend-down periods, pushing them into state-funded programs more quickly and for longer periods of time. Because home care is largely funded privately, and not covered by insurance, the state has a vested interest in keeping it as affordable as possible for consumers.***

**Recommendation**: The current registration requirements for owners, insurance coverage and other disclosures are appropriate for non-medical home care agencies and should be adopted as the requirements for licensure.
Furthermore, the Public Act 23-48 along with other new laws have added many requirements that providers must enact or include in their service agreement relative to definitions, terms of service, notifications, and service rate changes. The industry is continuing to respond and adapt to these requirements. As the impact of these changes has not yet been fully realized, there is no reason to update or change them with the transition.

**ISSUE 3**: Opportunities for expanded scope of services.

**Background**: While the definitions and scope of services under DSS provide a consistent and suitable framework for the non-medical home care industry, there is an increasing need for consumers to have services that are not specifically addressed. This "market gap" of services that no one is legally or logistically able to offer in a home setting is out of sync with the practical realities of providing support and assistance to people who want to continue to live at home.

Again, as more people requiring essential home care services live longer and want to remain at home, the urgency to ensure that both the medical and non-medical home care industries are well positioned to meet these needs is paramount for two reasons.

This market gap results in people not getting vitally needed care, increasing trips to emergency rooms and hospitalizations as basic home care services are not always able to be provided.
First, unmet needs in the home will be filled somehow and in some manner. The industry wants to ensure providers are compliant with any limitations on services as required by law. However, families and individuals must be supported at home at reasonable cost, with services that accessible, safe and effective for them.

There are some needs that fall in a gap where home health providers cannot logistically fulfill these needs, and nonmedical home care providers are not authorized to do so.

For example, requiring a Registered Nurse to empty, clean or change an ostomy bag, which DCP guidelines interpret as a medical service, unlike DSS training guidelines for PCAs. Medicare and Medicaid do not reimburse for a RN to visit a home to perform that service, nor is it practical for nurses to be called into homes on demand when that essential service is needed. Paying a nurse privately for such on-demand service, if it could be found, would be excessively expensive for consumers.

Additionally, if a regulated industry is prohibited from economically providing a critical in-home service, vulnerable individuals and their families will be forced to procure these services in the so-called "gray market" where providers operate without any oversight at all, exposing seniors and disabled clients to even greater risk.

The industry's position is that trained caregivers can help protect consumers by providing these essential services, and to not allow home care agencies to offer them puts consumers at risk or creates unmanageable situations for families.

**Recommendations**:

Medication Reminders – DSS and DCP regulations allow PCAs to assist clients with unimpaired cognition (no dementia) to take their medications. This assistance includes reminding clients when to take their medications as specified in their care plan, opening the pill bottle or container (but not removing pills), positioning the client to take the medication, providing water or other liquid for swallowing medication, and putting away and storing medication properly. It does not include measuring or dispensing medications, cutting pills or otherwise exercising any independent judgment with respect to timing or dosage.

Similarly, caregivers supporting clients with dementia should be allowed to perform similar tasks. Reminding and assisting clients with taking pre-poured or pre-packaged medications that have been packaged by a pharmacy and left by the supervising family member or attending nurse are essential and helpful tasks. In this case, the aide also exercises NO independent judgment or decision making in terms of dose or timing, but simply reminds and helps the client take pre-poured medications on a schedule as prescribed by the family or nurse and written in a care plan.

It is simply impractical and inconvenient for a family member to leave work to come home and hand pre-poured medications to their loved one when they believe they are paying for the service and expect a caregiver to provide these essential services in the home that will otherwise not be provided, putting consumers at risk. The alternative is for families to hire unregulated, unsupervised people from the Gray Market or be forced to institutionalize their loved one after failure to receive routine medications or essential services.

Toileting – DSS regulations allow PCAs to help clients with toileting. It should also be similarly specified that properly trained caregivers can help change ostomy bags or catheter bags. People living with these conditions self-manage changing and cleaning ostomy bags, and other routine tasks that may become difficult, unsafe or undignified with conditions such as dementia, eyesight problems or any problem with fine hand motor skills. These are not activities that require a nurse but are routine toileting activities for anyone living with these conditions. Similar to medications, a nurse would not visit a home on demand to empty an ostomy bag every time someone has a bowel movement. The activities described above are distinct from activities that may require nursing such as inserting catheters or treating problems with a stoma.

***NOTE: It is important to recognize that proactive and routine non-medical care around medications and toileting can avoid a myriad of issues that lead to emergency room visits. Keeping seniors out of emergency rooms for routine care or complications from lack of routine care is a major goal of home care agencies and is critical to the overall function of our hospital and healthcare system in Connecticut.***

**ISSUE 4**: Use of the word "care"

**Background**: In 2023, in guidance issued by DCP, home care agencies were prohibited from using the word 'care' because, the Department claimed, the word suggested medical services and was misleading to consumers. While guidance was changed by Public Act 23-48, current guidance prohibits any mention or use of medical diagnoses in marketing materials and home care agencies are not allowed to refer to medical terms or diagnoses in care plans.

This prohibits care plans from including necessary information and guidance for their day-to-day activities when clients have dementia, or Parkinson's or diabetes, etc. This makes no sense and can put clients' health or safety at risk. When 911 or other emergency responders are called, the caregiver may be unable to give even basic information about the client. It may even put agencies at risk of violating insurance policy requirements.

Individuals and families regularly contact agencies seeking care. In Public Act 23-48, the legislature and Governor expressly authorized home care agencies to use the term 'care' in their business names and advertising as long as it meets certain conditions.

Specifically, the agency must prominently display in plain font and contrasting colors at the top of the ad, the clear and conspicuous words: "(agency's name) solely provides nonmedical care," or audibly convey these words in an audio advertisement at the same speed as the rest of the audio, and not use any words, such as those related to medical or health care licensure or services, to describe and discuss services beyond the scope of those an agency is authorized to provide. While home care agencies do not provide medical care, they do support people with various diseases and conditions – the underlying reasons people require help.

For example, a person suffering from chronic obstructive pulmonary disease (COPD) who uses a walker with 20-foot tubes tethered to an oxygen concentrator may need someone to assist in keeping her safe from entanglement or while cooking over a gas stove. Caregivers need to be mindful that the client will lack stamina and should assist the client more slowly with frequent breaks. This is just one example of how non-medical home care agencies provide essential support and assistance to a person suffering from a medical condition while living in her own home.

***Agencies should not be prohibited from discussing their services in the context of medical diagnoses with caregivers, clients, and the general public, so long as it is explicit that the activities provided are solely non-medical. Failure to do so is confusing to both caregivers and clients alike, does not protect consumers and compromises safety in the home.***

Client service agreements, advertising and other materials should be explicit and not misleading about the nature of the services in general and specific enough that consumers purchasing those services understand the limits of those activities. Agencies commonly find that people do not fully understand what home care agencies do or the services that they provide. The AARP Connecticut and Alzheimer's Association Connecticut Chapter regularly educate consumers and dispel confusion concerning services provided by the nonmedical home care industry.

The home care industry agrees and supports more education and outreach to consumers about how our services support and assist persons living with various diseases and medical conditions, while being explicit about what services non-medical care includes or does not cover.

**Recommendation**: Department of Public Health regulations should be consistent with the requirements of the Public Act 23-48 and model its notice requirements that require home care agencies, before providing services, to give consumers written notice that the agency solely provides nonmedical care and obtain the consumer's signature on the notice. This properly informs the consumer of the type of services she can expect to receive. Further, there should be no single prescriptive use of the word care, medical conditions or other terminology included in the regulations, but clear requirements that advertising by home care agencies indicates that services provided by them are solely non-medical.