

**PROPOSALS FOR SPECIAL ACT 22-12 TASK FORCE:
CREATING ACCOUNTABILITY, INITIATING/ENFORCING REGULATIONS,
IMPLEMENTING/ENFORCING OVERSIGHT OF DCP AND OF CT HOME COMPANION AGENCIES**

A. IMPLEMENT THE FOLLOWING REQUIREMENTS REGARDING HCA CARE PLANS:

- 1) Require HCA and client (or client representative) signatures/dates on all care plans/revisions
- 2) Require HCAs to review and update care plans after significant events (i.e. hospitalizations, spouse death, etc.)
- 3) Require HCAs to provide language as to whether a caregiver may leave a client home alone at any time
- 4) Require HCAs to leave copies of all care plans (original and all revisions) with client
- 5) Require HCAs to include the following: *“Caregivers are legally prohibited from dispensing, crushing, handing to, or feeding any medications to clients.”*

B. REQUIRE AND ENFORCE MONITORING OF HCA CAREGIVERS - ESPECIALLY FOR CLIENTS WITH DEMENTIA

- 1) Require caregivers to clock in more often than 1x/day. Establish a frequency – higher if client has dementia.
- 2) Require a minimum number of spontaneous visits by HCA to client’s residence.
- 3) Require electronic tracking of caregivers during working hours (currently used by DSS).
- 4) Require HCAs to perform a specified number of random check-in phone calls to caregivers. If a caregiver doesn’t answer, the HCA must leave a message and if the caregiver does not return the call within a specified amount of time, they must be accountable for their whereabouts.
- 5) Require caregivers to document all outings in care log when taking clients off premises. Documentation must include destination as well as times of departure/return.
- 6) Require a specified frequency and number of full days off from work for caregivers

C. CREATE AN ABUSIVE CAREGIVER REGISTRY

- 1) Create an easily accessible online registry that lists caregivers who been convicted of and/or face a credible allegation of elder abuse (by both DSS’s criteria as well as CT criminal criteria).
- 2) Create an easily accessible online registry that lists HCAs with substantiated regulation violations
- 3) Initiate legislation to prohibit HCAs from employing those listed on the registry. Designate a governing body to manage the registry. Registry should include caregivers’ names and dates of birth. This may help prevent an abusive caregiver from gaining employment from another HCA as this is known to happen.

Cheryl Ryan Chan created a bill called Nicky’s Law which passed unanimously in 2020 in MA establishing a registry of caregivers who have been accused of abusing someone with a disability after her autistic non-verbal son was abused multiple times by his caregiver in his day program in MA. His illness prevented him from testifying and the abuser was found not guilty. Nicky’s Law enables employers to screen job applicants against the registry to identify those with substantiated abuse cases and cases that could not be prosecuted. Alleged abusers have 10 days to file an appeal in order for the commission to hold off on adding the caregiver’s name until the appeal is reviewed by the governing agency. The commission is expected to notify the caregiver’s employer, the victim and, if applicable, the victim’s guardian, of the results of the appeal. At least 26 states have enacted similar registries for caregivers who abuse those with disabilities. CT should establish this type of registry specific to protecting the elderly. This would be especially effective to protect those with dementia. Abusers often go unreported or found not guilty because victims are not able to report the abuse to their loved ones or testify against them.

D. IMPLEMENT REGULATIONS FOR DCP OVERSIGHT & ESTABLISH CRITERIA FOR DISCIPLINARY ACTIONS OF HCAs

- 1) Establish clear criteria for managing HCAs that violate regulations, especially those with documented repeat or numerous violations and patterns of misconduct. Currently no criteria exist. Criteria should include detailed consequences of violations, clear guidelines as to when disciplinary actions should be issued, who provides oversight and designates whether criteria is met, and time frames within which disciplinary actions must take place.
- 2) Initiate and enforce policies/procedures regarding oversight of HCAs to ensure maintenance of compliance after Letters of Correction and AVCs are issued. Require that an HCA's registration must be revoked upon failure to maintain compliance after issuance of a Letter of Correction and an AVC. Currently no regulations address this.
- 3) Require a minimum number and frequency of DCP audits of HCAs.
- 4) Remove AVC language so that an HCA is not exempt from admission of guilt or liability for its violation(s).
- 5) Require HCAs that continue to violate DCP regulations to hire an independent compliance monitor to oversee a compliance regime (for a specified number of years) and require proof of contract.
- 6) Create a "watch list" (accessible to the public?) to monitor HCAs with frequent, numerous or repeat violations. Establish criteria for inclusion on the list.
- 7) Require HCAs to display the following statement in bold directly following their HCA# designation on any advertising including websites, print material, vehicles, etc.: ***"The Dept. of Consumer Protection [or DCP] does not regulate quality of care"***.

Currently, the sole language which addresses DCP regulation violations by HCAs is detailed below. All three designate "authority" or "permission" however they do not designate "responsibility" or "obligation" regarding issuance of penalties or discipline of any type for violations. Regulations require criteria. Otherwise, they are simply "suggestions". The language below should to be rewritten to hold the DCP accountable for exercising its authority to issue disciplinary action to HCAs that meet the designated criteria (to be established).

DCP Regulations Chapter 400o - Sec. 20-675:

"Disciplinary actions against homemaker-companion agency. Grounds. Notice and hearing. (a) The Commissioner of Consumer Protection may revoke, suspend or refuse to issue or renew any certificate of registration as a homemaker-companion agency or place an agency on probation or issue a letter of reprimand for: (1) Conduct by the agency, or by an employee of the agency while in the course of employment, of a character likely to mislead, deceive or defraud the public or the commissioner; (2) engaging in any untruthful or misleading advertising; (3) failure of such agency that acts as a registry to comply with the notice requirements of section 20-679a; or (4) failing to perform a comprehensive background check of a prospective employee or maintain a copy of materials obtained during a comprehensive background check, as required by section 20-678."

Per DCP Investigation Supervisor:

"When an agency is found to be out of compliance with a statute or regulation they are notified of such and provided with the steps to comply within the statute or regulation. The case is closed upon verification of compliance and/or the completion of an Assurance of Voluntary Compliance. Failure to comply can result in fines and cease and desist orders."

Chapter 400o Homemaker Companion Agencies Sec. 20-672:

*"(c) Upon the failure by a homemaker-companion agency to comply with the registration provisions of this section, the Attorney General, **at the request of the Commissioner of Consumer Protection, is authorized to***

apply in the name of the state of Connecticut to the Superior Court for an order temporarily or permanently restraining and enjoining a homemaker-companion agency from continuing to do business in the state."

E. REQUIRE HCAs TO DISCLOSE THE FOLLOWING IN THEIR SERVICE AGREEMENTS/CONTRACTS:

- 1) *"Upon request, [the HCA] must provide clients (or client representatives) with a caregiver's history of criminal activity, any criminal implications, and the type of crime" (if permitted by law).*
- 2) *"Clients (or client representatives) may request and is entitled to a caregiver who claims on their employment application or is found to have a clean legal history."*
- 3) *"Caregivers are not permitted by law to purchase, dispense, hand to or feed any type of medication (prescription or over-the-counter) to clients."*

F. DESIGNATE A BODY TO OVERSEE AND HOLD THE DCP ACCOUNTABILITY FOR ENFORCING ITS REGULATIONS

Regulations are mere "suggestions" without enforcement.

- 1) Conduct annual audits of the DCP to review investigations of HCAs and their resolutions
- 2) Establish and enforce clear regulations regarding oversight **of** the DCP and establish penalties for failure to enforce regulations based on established criteria
- 3) Establish a clear set of penalties for failure to enforce regulations based on established criteria. Penalties should include employment termination, suspension, or salary cuts.
- 4) APA audits of the DCP **must** include the management of investigations rather than simply auditing budgets, bookkeeping, budgets, and vacation policies. The DCP claims to "monitor compliance" of its agencies yet has outright refused to define that.

G. REASSESS DESIGNATION OF GOVERNING BODY TO OVERSEE HCAs

The DCP acknowledges that it lacks the resources to properly manage the number of complaints filed against HCAs. Consequently, HCAs in violation of regulations, particularly those with more serious violations, are currently being enabled by the DCP to continue to do business for years without penalty jeopardizing the health and safety of CT's vulnerable elderly population.

Serious consideration should be given to transferring the oversight of HCAs from the DCP to DPH. HCA caregivers charged with the safety of their clients require standardized training and proper supervision. Bathing, transferring, and proper peri-care are all examples of tasks that require special training for safety. Per the DCP, *"The registration granted to Homemaker-Companion agencies has identified that this is a **non-skilled position and does not mandate any training including first aid or CPR.**"* HCA caregivers are charged with as much liability if not more than many DPH practitioners considered "health care". These practitioners include: Eyelash Technician, Nail Technician, Hairdresser, Music Therapist, and Art Therapist. The DCP oversees businesses such as automobile repair and towing, liquor licenses, gas stations, mattress warranties, vending machines, and public charities. Consider whether the DCP is the proper state agency to oversee the health and safety of CT's vulnerable elderly population.

The CDC website informs of NIOSH, National Institute for Occupational Safety & Health, which published recommendations for caregivers who lift and move patients that employers should provide training on assistive ergonomic devices and their uses in addition to developing policies to assess the caregiver's competence with the assistive devices once he or she has been trained and is using them. This includes adjustable beds, raised toilet seats, shower chairs, and hoist lifts – many of which are common in our loved ones homes. It is undisputable that training is necessary for keeping both clients and caregivers safe.

H. IMPLEMENT MORE STRINGENT VETTING

- 1) Require more stringent background checks including fingerprinting. HCA clients cared for in their own homes **should not** be deprived of a caregiver who is any less vetted than a caregiver in a facility. There is even more reason as there is little to no supervision in private residences. To defray the cost, HCAs should offer fingerprinting as an optional additional charge to the client (or client's representative).
- 2) Require HCAs to conduct reference checks on all applicants. Require HCAs to verify applicant photos with the references listed on an employment application to prevent applicants from sharing identities.
- 3) If a first assignment with an HCA begins any longer than 2 months after an interview, the HCA must conduct another in person or interview on ZOOM.
- 4) HCAs should conduct drug/alcohol tests during spontaneous visits. Conducting this only upon hire is worthless.

I. REQUIRE THE DCP TO POST THE FOLLOWING ON EASY-TO-FIND INFORMATION:

- 1) Create and publish a comprehensive list of HCAs with documented violations as well as which regulations are violated. Follow DPH's example.
- 2) Post the following: *"Complaints filed with the DCP about home companion agencies are available to the public upon request"*. Instructions for requesting should be included. Require the DCP to fulfill requests within a specified amount of time. Those seeking care for loved ones are often under tight time constraints.
- 3) Change the language or search engine within the CT governmental website for confirming credentials: www.elicense.ct.gov to search for HCA's credentials. Though the word "license" is a "catch all" here, the word "license" is misleading. HCAs hold registrations rather than licenses.
- 4) Require the DCP to supplement their online resource *"HCA Guide for Consumers"* to include constructive information for vetting HCAs. In the minimum, the following should be included:
 - a. *"Under Connecticut law (CGS §§ 17a-412) and (CCGS 17b-450) elder abuse includes, but is not limited to, the willful infliction of physical pain, injury or mental anguish, or the willful deprivation by a caretaker of services which are necessary to maintain physical and mental health. Elder abuse also includes neglect, exploitation, and/or abandonment of an elderly (ages 60+) person."* Provide clarification as to what constitutes "elder abuse" in lay terms.
 - b. *"All HCAs and its employees are Mandatory Reporters of elder abuse and are required to report any suspected elder abuse within 24 hours to DSS"*. Inform HCAs as well.
 - c. Require CT town websites to post constructive online guidelines for vetting HCAs.

J. REQUIRE CAREGIVERS WITH QUESTIONABLE/STOLEN IDENTITIES TO BE INVESTIGATED

Require that CT HCA caregivers with questionable or stolen identities who provide out of state addresses be investigated across state lines. Currently CT police will not pursue caregivers with questionable identities if the caregivers have provided out of state addresses on their employment applications (except in rare occasions).

K. EXTEND THE TIME PERIOD THAT AN HCA MUST RETAIN PERSONNEL AND CLIENT RECORDS TO 5 YEARS

HCAs are required to maintain personnel files for 3 years. As the DCP investigatory process has been known to span 2-3 years, a 3 year mandate is not sufficient and should extend to 5 years. Complainants often wait for a DCP investigation to be completed before considering taking legal action. This can result in the loss of consumers' legal rights as statutes of limitations can easily expire by the time the DCP completes an investigation. Furthermore, if legal actions are brought against an HCA, a court would likely request these documents.

L. REQUIRE THE DCP TO ISSUE THE REMINDERS TO HCAs:**1) HCAs are prohibited from advertising health related services**

Clarify the prohibition of any type of media using "health" related language whether written, verbal, online, on vehicles, any type of media, or in the HCA's name (if applicable).

2) HCAs are prohibited from advertising that they are “licensed”. DCP issues registration only to HCAs.

Include the above information in the DCP’s “*Homemaker Companion Agencies – A Guide for Consumers*”.

M. REQUIRE DCP REGULATIONS TO INCLUDE A “MANDATORY REPORTER” STATUTE

- 1) Require the DCP to add a clause to the “*Homemaker 400o Regulations*” stating that HCAs including their owners, employees and caregivers are “Mandatory Reporters” per CGS 17b-451 that law requires that they report suspected abuse, neglect, abandonment, or exploitation of the elderly to the CT Dept. of Social Services (DSS) within 12 hours. Include language detailing penalties violation of this statute. Require this language to be included on the HCA Registration Application.
- 2) Designate a governing body to hold the DCP accountable for following through and ensuring that all HCAs in violation are penalized to the fullest extent of the law. Failure to obey the Mandatory Reporting statute should be added as grounds for HCA registration revocation, suspension, or loss of eligibility to renew registration.

N. REQUIRE THE DCP TO REOPEN CLOSED CASES UPON DISCOVER/SUBMISSION OF NEW INFORMATION

Supplemental information/evidence and new legal findings can change the outcome of a closed DCP investigation. Critical information is often precluded from being uncovered during an investigation due largely in part to delays in by HCAs in response to DCP investigatory inquiries, the DCP’s lack of resources to execute timely investigations, and the manner in which legal proceedings often lag. A regulation should be established whereby any new information that would influence a change in the resolution of a DCP investigation of HCAs should required the reopening of a case and the new information should be explored.

O. CREATE CRITERIA FOR DCP ENFORCEMENT OF REGULATIONS

The DCP legal department has stated:

“Only a [DCP] hearing officer or judge can make a finding of fact to determine conclusively whether a violation of law has occurred.” Without either, a determination of legal violation of an HCA’s conduct cannot be made. Thus if the DCP chooses not to elevate a case to a hearing, no violations are recognized legally despite any recommendations by a DCP investigator to revoke, suspend or fail to renew an HCA’s certification. Per the DCP, *“An investigator is not a hearing officer or judge and cannot make a determination of law, just allege violations”*. Per the DCP, an investigator’s report is an “opinion”.

A DCP investigation supervisor detailed the DCP’s procedure for managing complaints about HCAs:

“The procedure in investigating complaints is to determine whether applicable laws or statues have been violated and if violations exist - to enforce the law and to obtain compliance from the respondent(s).” *“When an agency is found to be out of compliance with a statute or regulation they are notified of such and provided with the steps to comply within the statute or regulation. The case is closed upon verification of compliance and/or the completion of an Assurance of Voluntary Compliance [AVC]. Failure to comply can result in fines (up to \$1000 per violation) and cease and desist orders.”*

As long as the DCP chooses not to elevate a case to a hearing, which appears to be a pattern, and without any regulation to monitor compliance after an HCA audit, it seems highly unlikely for the DCP to be able to “enforce the law and obtain compliance” as mentioned in the above statement by the DCP investigation supervisor. Again, currently there are no DCP regulations for monitoring compliance after Letters of Correction and AVCs have been issued. Clear criteria needs to be established to hold the DCP accountable for following the procedures within their agency.

11/15/22