

# Support for Revising the Companionship Exemption Regulations in the Fair Labor Standards Act

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## News Coverage Organized by State

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## Home care workers deserve minimum wage and overtime pay

*By Sascha Bittner*

I proudly shared the stage with President Barack Obama at a December news conference in which he announced a proposal to give home care workers the same basic labor protections guaranteed to most other American workers. The proposal would extend minimum wage and overtime pay to workers, including more than 375,000 employed by California's publicly funded In-Home Supportive Services program, who provide services for elders and people with disabilities,

I have relied on personal attendants all my life, whether unpaid family members or aides hired through California's In-Home and Home Supported Living Services programs. I need assistance to get out of bed, go to the restroom, take a bath, brush my teeth, get dressed, prepare my meals and clean my home. I wouldn't be able to work, live in my own apartment, go out with friends -- or participate in a news conference with the president of the United States -- without the help of aides.

That's why I believe it is so crucial that we ensure fair pay for home care workers. These workers are critical to the independent living movement, which has fought for the rights of people with disabilities to live as full citizens in our communities -- not warehoused in nursing homes or other institutions. These workers deserve to be treated fairly under the law.

Some people with disabilities fear unintended consequences from this change, perhaps even a loss of services. I share the worry that politicians will use this as an excuse to cut services. But the answer isn't to oppose the rights of home care aides. The answer is to fight for full funding of attendant services, just as we have been doing for decades.

If we continue to treat home care workers as casual laborers, it will be increasingly difficult to attract good people to these jobs. According to the Paraprofessional Healthcare Institute, demand for home care workers in California is expected to grow by about 45 percent between 2008 and 2018--more than four times faster than overall job growth.

As the economy picks up, not many workers are likely to choose home care as their vocation. The work is challenging and the pay isn't good. There is no guarantee of time-and-a-half pay for overtime. About half of California's home care workers earn so little that they rely on public assistance to support their households. We need quality jobs that will attract and retain workers to provide high-quality, comprehensive care for ourselves and our family members.

I, along with hundreds of other seniors, people with disabilities, domestic workers and allies are putting this vision into practice with Caring Across Generations, a visionary campaign that aims to transform caregiving in America.

I often quote my friend, the late Paul Monette, a writer and National Book Award winner, who said, "We sail together if we sail at all." While Paul was referring to the human condition, he was also aware of the relationship between caregivers and those needing care. He cared for two different partners who died of AIDS, and then needed caregivers himself.

Martin Luther King Jr. observed that, "The time is always right to do the right thing." Seniors, people with disabilities and home care workers are all part of the same community. We are engaged in the same struggle to be treated with respect and to make sure that our contributions are valued. We sail together if we sail at all.

*Sascha Bittner, a longtime disability activist, is a member of Hand in Hand: The Domestic Employers Association and works in San Francisco as a member of its Caring Across Generations campaign.*

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## Guest commentary: It worked in Michigan; Raise wages for home care workers across the nation

freep.com

By Dohn Hoyle and RoAnne Chaney  
Detroit Free Press guest writers



The Obama administration has proposed to end long-standing discrimination against home care aides, to ensure that these invaluable workers finally receive minimum wage and overtime protections under the Fair Labor Standards Act. The proposed rule to narrow the so-called "companionship exemption" is now under final review by the Office of Management and Budget.

This move is key to providing quality home and community-based services because it ensures we have an adequate number of skilled home care aides.

In 2006, Michigan took a big step forward in recognizing the value of a skilled, compassionate, and stable home care workforce, and eliminated the state's "companionship exemption." As a result, most home care workers in Michigan are guaranteed to earn at least the state's minimum wage as well as a premium for working more than 40 hours per week. People with disabilities and their advocates supported this change because we saw minimum wage and overtime protections as essential to protecting the civil rights of people with disabilities as well as the right, moral treatment of valued working people.

Demand for home care is at an all-time high in Michigan and across the country. According to the Paraprofessional Healthcare Institute (PHI), the nation's leading authority on the direct-care workforce, the home care workforce in Michigan is already 100,000 strong, and we can expect to generate at least an additional 20,000 jobs over the next decade. Nationally, these jobs are expected to grow by about 70% between 2010-2020.

It's good news that this sector of our economy is growing. The problem is that many people steer clear of this work because they are seen as "lousy" jobs.

That's because, historically, these workers have been deemed "unskilled, domestic companions." The mostly female workforce has been poorly paid and supported. Since 1974 they have been excluded from the Fair Labor Standards Act, leaving home care aides without the same basic labor protections guaranteed to most American workers.

Expanding these protections to home care workers across the country will ensure they are guaranteed fair wages. Representatives of the \$84 billion home care industry — with the help of Michigan Congressman Tim Walberg — have been fighting to prevent this national change, claiming that it will make care so expensive that people won't be able to afford it. They claim that the elderly and people with disabilities will be forced into institutional care and home care businesses will fail.

Our Michigan experience does not support these claims. We did not hear of anyone losing hours of service or aides when Michigan changed its wage laws in 2006.

Moreover, Michigan's home care industry continues to grow. Wage protections have also helped Michigan to create a stronger, more professional workforce, which is key to improving home care quality.

Nationally, the need for home care services is growing astronomically. We must attract qualified and committed workers to ensure that those who need these services have access to them. That requires that home care be recognized as a skilled and valued profession, with all the same wage and hour guarantees that most other American workers enjoy.

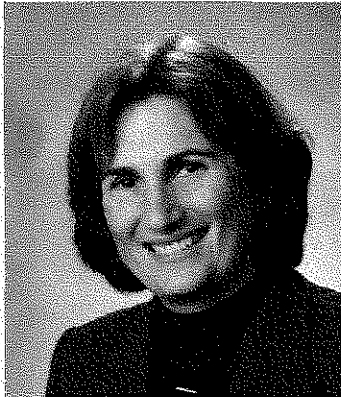
*Dohn Hoyle is executive director of The Arc Michigan, a nonprofit organization that facilitates a statewide network of local chapters assisting persons with developmental disabilities and their families. RoAnne Chaney is associate director of the Michigan Disability Rights Coalition.*

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<http://www.freep.com/article/20130224/OPINION05/130224064/Guest-commentary-It-worked-in-Michigan-Raise-wages-for-home-care-workers-across-the-nation?odyssey=mod|newswell|text|Opinion|p<http://www.freep.com/article/20130224/OPINION05/130224064/Guest-commentary-It-worked-in-Michigan-Raise-wages-for-home-care-workers-across-the-nation?odyssey=mod%7Cnewswell%7Ctext%7COpinion%7Cp>>

# Be fair to home-care workers

By Karen Kulp



One year ago, I was among the home-care workers, providers, and consumers who stood with President Obama when he proposed a regulation that would guarantee, at long last, that home-care workers receive minimum-wage and overtime protections under the federal Fair Labor Standards Act. The Department of Labor received 26,000 comments on the rule, 80 percent of them favorable.

Unfortunately, though, the regulatory process has dragged on, and the nation's two million home-care workers are still not fully protected by labor laws. It's time for the Obama administration to end this injustice.

Predictably, many people representing the home-care industry have attacked the proposal. They say they would have to compensate for the financial burden by charging consumers more.

As president of Philadelphia's Home Care Associates, an agency that employs more than 175, I know all about the costs of running a home-care business. And since Pennsylvania is one of 16 states that already mandates minimum-wage and overtime protections for home-care workers, I know firsthand that a successful home-care business can pay workers a fair wage.

Nearly 1.5 million home-care workers, however, work in states that don't offer such protections. Employers are allowed to pay them less than minimum wage and less than the standard time-and-a-half rate for overtime. Consequently, wages remain low across the country. The average home-health worker earns \$9.70 an hour, and some must rely on public assistance.

Meanwhile, the \$84 billion home-care industry is pulling in record profits, growing even during the downturn.

In my experience, decent wages ultimately lead to greater investment by workers, resulting in lower turnover rates and better care. It takes a special kind of person to do this work day in and day out, and workers stay when their work is respected and adequately rewarded.

While annual turnover rates in the industry are 50 to 60 percent, Home Care Associates' aides spend an average of more than four years on the job. This consistency improves care by allowing aides to develop relationships with clients, and it helps our bottom line by sparing us recruiting costs.

It's time to recognize the valuable role that home-care workers play. The need for them will only increase in the coming years. And many of us would not be able to work to support our own families without their assistance.

*Karen Kulp is president of Home Care Associates of Philadelphia and a board member of the Paraprofessional Healthcare Institute.*

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[http://articles.philly.com/2012-12-28/news/36038414\\_1\\_home-care-workers-paraprofessional-healthcare-institute-minimum-wage-and-overtime-protections](http://articles.philly.com/2012-12-28/news/36038414_1_home-care-workers-paraprofessional-healthcare-institute-minimum-wage-and-overtime-protections)

# THE HUFFINGTON POST

THE INTERNET NEWSPAPER: NEWS BLOGS VIDEO COMMUNITY

## **A Stable Workforce Is Essential for People With Disabilities**

*By Althea McLuckie*

Nearly one year ago, the U.S. Department of Labor proposed that the people who provide support for people with disabilities and elders should be guaranteed at least minimum wage and overtime for the work they do. Currently, these workers are exempt from these labor protections, which are provided to most workers under the Fair Labor Standards Act.

For people with disabilities, direct-care staff are essential to our ability to live independently. They provide all sorts of help -- from making it possible for us to work to assisting with the functioning of our homes and doing what it takes to help us get to civic and social events, places of worship and school.

"As someone who has used personal care aide (PCA) services for over 20 years," says Scott Goyette of Vermont, "I can state unequivocally that quality, reliable PCA care directly affects my own quality of life. My ability to be an active, contributing member of the community is made possible by the invaluable work of my PCAs."

Our direct-care staff are people who must, in many cases, deal with the unpredictability of our health and needs, basic bodily functions and frustrations with our situations. We must often rely on their skills and compassion to watch out for threats to our safety. We count on them to show up, leave their troubles at home and navigate with us through our days, responding to what we ask of them when we are at our most vulnerable.

Christina Battista of Rhode Island, notes, "Without my PCA's assistance, I would not have been able to go to college and get my bachelor's degree in psychology, work as a cross-disability coordinator and volunteer on many of the boards and committees that I do. My life would not be as rewarding as it is today."

Christina and Scott are members of the National Participant Network (NPN), an organization of people who direct their own long-term services and supports. The NPN aims to improve the lives of people with disabilities. We strongly believe this means that all people must be honored for what they contribute to society. And that includes the PCAs who support us every day.

To consider PCAs not worthy of the labor protections afforded to almost every other worker is an insult. It says that our society believes that those who care for us -- as well as our relatives and our friends -- day in and day out are not as valued as those who prepare fast food and perform other "minimum wage" jobs. And it reflects the idea that those who need direct-care staff are less important than french fries.

Christina explains, "My personal care assistant and I have been together for several years, because she was able to support herself with the full-time living wages she earns. If she were to receive less than minimum wage, she would not be able to work for me any longer. Because of her longevity in her job, we have a relationship. She is able to make me comfortable with highly sensitive areas of support, such as personal hygiene and finances. I wouldn't trust someone I didn't know as well."

With the ever-increasing need for long term care as our nation ages, it makes sense to cultivate the people on whom we will depend. After all, our nation will need 5 million direct-care staff by 2020, more direct-care workers than nurses or teachers, according to PHI (the Paraprofessional Healthcare Institute.)

We want them to bring their best to the job and even consider it as a career. In some cases, all that is needed is someone to watch for seizures in the night, or to make sure Mom doesn't get lost on the way to the grocery store. But regardless of the specific task, direct-care staff make a commitment to helping each one of us live the life we want -- and for that they should be paid fairly.

"Direct care is a viable, stimulating profession and shouldn't be treated as less by paying below legal minimum wage," says Stevie Bass, an NPN member in New Mexico who has a daughter with multiple disabilities. "Direct-care work offers the opportunity for personal growth and long-term stable employment and satisfaction for the worker. However, direct-care staff cannot remain in these jobs without a good legal living wage."

Direct-care staff are indispensable to all NPN members. As Scott says, "paying less than minimum wage -- and denying overtime where applicable -- makes no sense for PCAs, participants or the communities in which they live."

Now that President Obama has been reelected, it is time to follow through on his administration's promise to ensure that personal care workers receive minimum wage and overtime protections. It's the right thing to do -- for our workers and for us.

This article appeared in the IMPACT column of the Huffington Post on December 18, 2012, at: [http://www.huffingtonpost.com/mobileweb/althea-mcluckie/a-stable-workforce-is-ess\\_b\\_2322191.html](http://www.huffingtonpost.com/mobileweb/althea-mcluckie/a-stable-workforce-is-ess_b_2322191.html)



## Home care workers deserve fair wages

*By S.E. WATTS*

Since I left home to attend Hofstra University in 1997, I have relied on personal care aides to help me manage the basic tasks of daily living -- bathing, dressing, food shopping, preparing meals, housekeeping and errands like getting to the post office.

Today, I also depend on a personal care aide to assist me with getting up and out for work in the morning, as well as with various errands throughout the day. My aide also assists me with my evening meal and personal care before the day draws to a close.

The aides who've helped me over the years have made an immeasurable difference in what I've been able to accomplish while living with physical limitations. They make it possible for me to pursue a career in the nonprofit sector, helping seniors and people with disabilities access medical treatments and prescription drugs.

Like most working people in America, I am guaranteed minimum wage and time and a half for overtime under the Fair Labor Standards Act. But my personal care aides are exempt from these basic federal labor protections.

These workers -- who provide the critical long-term services and support that make it possible for me and other people who live with disabilities to lead full and independent lives -- are considered to be mere "companions" to the "elderly and infirm," the equivalent of a teenage baby-sitter.

When the Fair Labor Standards Act was revised in 1974 to include domestic workers such as chauffeurs, gardeners and full-time nannies, it excluded home care workers under the "companionship exemption." The exemption was intended to apply to casual situations, like a neighbor coming to sit with the elderly woman next door. Today, it is a loophole that allows the thriving \$84-billion home care industry to keep labor costs low.

The late Evelyn Coke, a home care aide and Queens resident employed by an East Meadow-based home care agency --who never received overtime pay for working more than a 40-hour week -- challenged the companionship exemption in 2007. She took her case to the Supreme

Court but lost. The court said that it was not in its jurisdiction to update the companionship exemption, though the Department of Labor had the authority to do so.

Finally, on Dec. 15, President Barack Obama announced that the labor department was proposing a revised rule to extend federal minimum wage and overtime guarantees to home care workers. The public has the opportunity to voice its opinion on this proposal at [companionshipexemption.org](http://companionshipexemption.org), during an official comment period that has been extended until March 21.

Most long-term care is covered by public funds. Personal care aides are skilled professionals and not baby-sitters. They perform physically demanding jobs that also require knowing how to be personable but not domineering, caring but able to foster independence, communicating well, and performing intimate tasks while being sensitive to clients' moods.

These workers are the backbone of the home care system, yet they are undervalued and do not get the respect that they deserve. Updating the companionship exemption would be a very good start.

According to PHI, a nonprofit advocacy group for the direct-care workforce, personal and home care aides earn an average of \$16,600 annually, and about half depend on public assistance like food stamps for their own families. One-third lack health insurance despite a high rate of occupational injuries.

Under New York State laws, home care workers usually earn more than minimum wage, but their overtime pay is calculated at time and a half of the minimum wage, not the workers' base hourly wage. This change at the federal level will help put a few more essential dollars in the pocket of these essential workers.

This isn't just the right thing to do, it's the smart thing: Fair pay will help ensure that people with disabilities and the rapidly growing elderly population have access to support services at home and in the community, so that we can lead full and meaningful lives.

While Evelyn Coke won't see this grave labor injustice undone, her legacy will be carried forward when 2 million home care aides are finally treated fairly under the law.

***This story appeared in Newsday, Long Island's largest daily paper, on March 6, 2012***



January 2013

On December 27, 2011, The U.S. Department of Labor (DOL) published a Notice of Proposed Rulemaking (NPRM) to revise the companionship and live-in domestic worker regulations. This fact sheet addresses commonly-asked questions about the proposed changes.

## **What is the companionship services exemption?**

In 1974, Congress extended for the first time the Fair Labor Standard Act's minimum wage and overtime protections to almost all domestic service workers. At the same time, it provided a limited exception for workers who performed casual babysitting and for companions for the aged or infirm. Congress also provided for an overtime exemption for domestic workers who live in the household where they work.

Congress left it to the Secretary of Labor to define what functions an exempt companion could perform. The Secretary published companionship regulations in 1975. The rules have remained unchanged since then, while the home care workforce and the industry have undergone dramatic growth and changes. The 1975 companionship regulations are worded so broadly that large numbers of workers have been swept into the exemption, including workers whose duties range from personal care services to housekeeping to paramedical tasks. Around 2.5 million workers are excluded from these baseline minimum wage and overtime rules, including those employed by for-profit corporations and national agencies, and Home Health Aides and Certified Nursing Assistants funded through Medicaid, Medicare and other public funding sources.

## **Why do these rule changes matter?**

Our nation's 2.5 million home care workers provide the vital care that allows older adults and persons with disabilities needing care to remain in their own homes. Growing demand has made home care one of the top five fastest-growing jobs in the country. The exemption has suppressed wages for this workforce, consigning millions of caregivers to working poverty, and has led to higher workforce turnover and increased costs for employers as they try to replace and train their labor pool. Higher turnover also lowers the quality of care received by elders and people with disabilities. While the general level of overtime hours in the home care industry is modest, the exemption has encouraged excessive hours in some segments. Long hours are not only grueling for workers but can contribute to worse care for patients, as caregivers working 60 hours or more a week face fatigue and stress in performing what is a demanding job under any circumstances. These substandard working conditions have created serious employee recruitment and retention problems, generating labor shortages that prevent us from meeting the nation's rapidly growing need for home care.

## **How would the proposed regulations improve conditions in the industry?**

Narrowing the exemption will ensure that most home care workers receive federal minimum wage and overtime protections. Although most of these workers earn the minimum wage or slightly higher for their direct care hours worked, gaining these protections will ensure that home care workers have the right to: time-and-a-half when they work over 40 hours in a week; compensation for time spent traveling between clients' homes; and compensation when workers wake to care for clients on overnight shifts.

The proposed rules would:

1. Help workers who provide home care for older adults and persons with disabilities;
2. Help to stabilize this critical workforce that is now experiencing high turnover because of the abysmal pay and long hours;
3. Help keep elderly and people with disabilities in their homes and out of institutions; and
4. Help improve standards for live-in domestic workers.

### **What group of workers would be affected by the proposed changes?**

The proposed changes to the companionship services regulation would result in the extension of minimum wage and overtime protections to most home care aides. Home care workers today are employed primarily to provide personal care duties, housekeeping services, and medically-related tasks. Workers who provide household services to members of the household other than the elderly or disabled recipient of companionship care or who provide general housekeeping services that are not incidental to companionship care would no longer be exempt. Additionally, workers employed by a third party, such as a home care agency, would be covered.

**That means the group of workers who remain exempt would be limited to those whose primary duties are the provision of fellowship and protection and who perform personal care duties only on an incidental basis, who do not perform work for other members of the household, and who are employed solely by the individual, family member or household.**

### **What specific regulatory changes is the DOL proposing?**

The Department is proposing to make the following changes:

1. Clarify the definition of "domestic service employment" to remove the requirement that the services be performed in the home of the employer and add home health aides, personal care aides to the illustrative list of domestic workers;
2. Narrow the definition of "companionship services";
3. Make clear that employees of third party employers such as staffing agencies are not exempt; and
4. Change the record-keeping requirements for employers of live-in domestic workers to more closely align them with what other employers must do.

### **What changes is the DOL proposing to the definition of companionship services?**

The DOL is proposing to more clearly define the tasks that may be performed by an exempt companion. The **current rule** defines companionship services as services which provide fellowship, care, and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs; it allows for an unlimited amount of household work related to the care of the recipient, such as meal preparation, bed making, washing of clothes and other similar services; and it allows for the performance of general household work so long as that work is "incidental," defined as not exceeding 20 percent of the total weekly hours worked. The **proposed definition** of companionship services would limit it to those duties that are *directly related* to the provision of fellowship and protection for a person who, because of advanced age or infirmity, is unable to care for himself or herself. It would allow for the performance of *personal care services* when those services are performed incidental to the core companionship functions and so long as they do not exceed 20 percent of the employee's time during a work week. Under the new rule, any work benefiting other members of the household, such as

preparing meals or performing housekeeping or laundry for other members of the household, would not fall within the allowable incidental duties of an exempt companion.

### **What kind of personal care services could an exempt companion perform?**

The proposed regulation provides an illustrative list of incidental personal care services that may be provided by an exempt companion. The list includes: (1) occasional dressing; (2) occasional grooming; (3) occasional toileting (4) occasional driving to appointments, errands, and social events; (5) occasional feeding, including preparing food eaten by the person while the companion is present; (6) occasional laundry; and (7) occasional bathing when exigent circumstances arise. The proposed rule requires that this work be performed in conjunction with the fellowship and protection of the individual and not exceed 20 percent of the total hours worked by the companion in the workweek.

### **Will employers still be able to claim the companionship exemption when the worker performs general household work?**

The proposed rule would remove the current provision that allows an exempt worker to provide some general housekeeping services if those services make up 20% or less of the employee's work for the week. The new rule would clarify that an exempt companion may not perform household work benefiting other members of the household, such as general housekeeping, making meals for other members of the household or laundering clothing used by other members of the household. The DOL explains that the intent of this change is to ensure that the companionship services exemption does not apply to an employee who performs general household work, such as vacuuming, washing windows, and dusting.

### **What kind of medically-related tasks could an exempt companion perform and still remain exempt?**

The proposed rule would clarify that companionship services do not include the performance of medically-related tasks for which training is typically a prerequisite. The current regulations specifically identify trained personnel such as nurses as outside the scope of the exemption, and the change aims to more clearly identify what constitutes medically-related services. The proposed rule would include examples of medically-related tasks including, but not limited to, catheter and ostomy care, wound care, injections, blood and blood pressure testing, turning and repositioning, determining the need for medication, tube feeding, and physical therapy. An exempt companion, however, would be allowed to remind the aged or infirm person of a medical appointment or a predetermined medicinal schedule.

### **What changes is the DOL proposing to make to the rules on third-party employers of domestic workers?**

The DOL's proposed change would disallow both the minimum wage and overtime exemptions to any third-party employers, whether or not the worker's duties otherwise qualified as exempt companionship services. Under the proposed rule, the individual, family, and household employer would still be able to

claim the exemption, whether the individual, family, and household employer were a sole or joint employer along with a third-party, but only in those cases where the worker otherwise qualifies as an exempt companion.

**How will this proposed change affect individuals, families, and/or households directly employing the companion?**

The proposed change would continue to allow the individual, family, or household employing the worker's services to claim the companionship exemption if the worker otherwise qualifies as an exempt companion, even as it requires all third-party employers to comply with minimum wage and overtime requirements.

**Would the individual, family or household employing the worker be able to claim the exemption even if it is found to be a joint employer with an agency?**

Yes. The proposed change would continue to allow the individual, family, or household employing the worker to apply the companionship and live-in exemptions but would deny all third-party employers the use of such exemptions.

**Would live-in domestic workers be entitled to overtime pay under the proposal?**

Under the proposed rules, live-in home care and other domestic workers employed jointly or solely by a third-party employer would be entitled to minimum wage and overtime from that third-party employer. The overtime pay exemption would only be available to individuals, families and households employing the live-in domestic worker.

**What changes is the DOL proposing to make to the record-keeping requirements for employers of live-in domestic workers?**

The proposed rules require employers to maintain an accurate record of the actual hours worked by live-in home care and other domestic workers. The current rules allow an employer and live-in domestic employee to enter into an agreement that excludes the amount of sleeping time, meal time, and off-duty time from pay, and allows the employer to use this agreement in place of actual records. The change would require employers to maintain a record of the actual hours of work.

**How would the proposed rules impact the costs of providing home care?**

Making the transition to minimum wage and overtime coverage should be limited and manageable for the following reasons:

1. Many states already provide minimum wage and overtime coverage to some or all home care workers.<sup>1</sup>

- Fifteen states provide minimum wage AND overtime protection: CO, HI, IL, ME, MD, MA, MI, MN, MT, NV, NJ, NY, PA, WA, WI.
- Twenty one states provide minimum wage protection: AZ, CA, CO, DC, HI, IL, ME, MD, MA, MI, MN, MT, NE, NV, NJ, NY, ND, OH, PA, SD, WA, WI.

In these states, including some with the nation's largest Medicaid home care programs, extension of federal wage laws would result in no or minimal change to employers' responsibilities to workers.

2. In those states that do not already have minimum wage and overtime protections, the costs of transitioning to coverage would be minimal and could be contained by more evenly balancing work among workers. Many concerns over the costs of a companionship reform have centered on the impact of overtime costs, especially for high-hours cases. But 24-hour and live-in cases are rare. Only about 9% of home care workers nationally report working more than 40 hours/week overtime, and most of those work only slightly more than 40 hours.<sup>2</sup> In fact, most workers are employed part-time, and many would rather work full-time. Where workers are currently working more than 40 hours a week on multiple short-hours cases, employers can cap workweeks at 40 hours and divide cases more evenly among workers, limiting the amount of overtime paid to workers and simultaneously creating more full-time employment. A recent study shows that states with minimum wage and overtime protections for home care workers have comparable rates of institutionalization as states without coverage,<sup>3</sup> suggesting that the remaining states should be similarly capable of making this shift without major disruptions to their long-term care systems.

3. There is evidence that low wages actually impose significant costs to the system due to turnover – costs that a reform would help to mitigate. Studies have shown turnover rates among home care workers of between 44 and 65%.<sup>4</sup> And a 2007 National Home Health Aide Survey found that 35% of home health aides intended to quit in the next year. The primary causes of high turnover rates are low wages, insufficient hours, and a lack of reimbursement for travel costs. High turnover imposes a significant financial burden to employers in the form of recruitment, retraining, and administrative costs. Additionally, because workers' annual earnings are so low, many workers rely on public benefits programs – a huge financial burden on state budgets. Raising wages modestly could therefore result in an overall costs savings to Medicaid home care programs and state budgets.

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<sup>1</sup> See fact sheet “Which states provide minimum wage and overtime to home care workers” at [http://nelp.3cdn.net/6e193991edf8bd0df9\\_o6m6i28s2.pdf](http://nelp.3cdn.net/6e193991edf8bd0df9_o6m6i28s2.pdf).

<sup>2</sup> PHI analysis of the U.S. Census Bureau, Current Population Survey (CPS), 2010 Annual Social and Economic (ASEC) Supplement.

<sup>3</sup> PHI Data Brief, *Institutionalization Rates in States that Extend Minimum Wage and Overtime Protection to Home Care Workers* (January 3012), available at <http://phinational.org/sites/phinational.org/files/research-report/institutionalization-data-brief.pdf>.

<sup>4</sup> A survey of home care agency staff in Pennsylvania found a turnover rate of 44% (University of Pittsburgh (2007) *The State of the Homecare Industry in Pennsylvania*, Prepared for the PA Homecare Association); a review of 13 state and 2 national studies of in-home care for persons with intellectual and developmental disabilities found an average turnover rate of 65% (Hewitt and Larson (2007)); a study of agency-employed home care workers in Maine found a turnover rate of 46% (L. Morris (2009) “Quits and Job Changes Among Home Care Workers in Maine,” *The Gerontologist*, 49(5): 635-50).

Home care clients would benefit as well from reduced turnover, increased stability and less burnout in the home care workforce, and the resulting improvement in quality of care.<sup>5</sup> Continuity of care means continuity of *services*, not continuity of *worker*. Clients may also have an easier time finding workers if working conditions improve and more workers are attracted to and more likely to remain in the home care field.

### **What effect will the extension of overtime rights have on high-hours and live-in work arrangements?**

Employers that currently employ one worker for more than 40 hours a week will have the option of employing an additional worker (or workers) for hours in excess of 40, which may in turn help ensure continuity in the event that one worker becomes sick or has an emergency. Alternatively, employers may choose to pay time-and-a-half when a worker works more than 40 hours in a week.

It is important to note that, even under the proposed rules, home care workers would still be subject to federal rules that allow sleeping and on-call time to be unpaid under certain circumstances. Employers of home care workers employed on shifts of 24-hours or more will be allowed to exclude up to 8 hours of sleep-time from pay if the worker agrees to the arrangement; is provided with adequate sleeping facilities; and is usually able to get an uninterrupted night's sleep.<sup>6</sup>

### **How would home care agencies respond to increased coverage?**

We don't know exactly how home care agencies would respond to the extension of minimum wage and overtime rules to their workers, but we do know that they *are capable of* managing the transition without raising costs or cutting care. First, as explained above, agencies can manage overtime costs by more evenly distributing work among their workers. Some of the nation's largest home care employers already follow minimum wage and overtime rules, even in states where coverage is not required. Addus HomeCare, for example, has curbed overtime usage and costs through close monitoring of employee workloads and by spreading hours more evenly among its staff. Case studies of other large home care employers demonstrate how they have managed overtime costs through the adoption of modern scheduling programs, by developing systems for staffing high-hours cases with primary and secondary aides, and by maintaining pools of substitute workers (and engaging in sufficient recruitment and training needed to maintain those pools).

Moreover, the home care industry can afford to pay a fair wage without raising costs to consumers. For-profit home care businesses make 30-40% profits in a 70 billion dollar industry.<sup>7</sup> Subsidizing the system by denying these workers a fair wage is unnecessary.

Some for-profit agencies that have publicly opposed a reform to the companionship exemption, such as Home Instead Senior Care, operate in states that already provide minimum wage or overtime protections

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<sup>5</sup>Steve Dawson and Rick Surpin, *Direct-Care Health Workers: The Unnecessary Crisis in Long-Term Care* (PHI, January 2001), available at <http://phinational.org/sites/phinational.org/files/clearinghouse/Aspen.pdf>.

<sup>6</sup> See 29 C.F.R. § 785.20-23. These regulations apply to all workers and will not be changes by the proposed rule change.

<sup>7</sup> Franchise Business Review Special Report, *Senior Care and Home Healthcare Franchises* (December 2010), available at: [http://www.franchisebusinessreview.com/content/files/FBR\\_Senior\\_Care\\_Report2010.pdf](http://www.franchisebusinessreview.com/content/files/FBR_Senior_Care_Report2010.pdf).

to workers. Presumably these agencies have been able to cover their operating costs and even make a profit despite being subject to minimum wage and overtime requirements.

Other helpful resources and materials on the companionship exemption:

- Links to the proposed rule and background on the issue from the U.S. Department of Labor (<http://www.dol.gov/whd/flsa/companionNPRM.htm>)
- DOL FAQs on the proposed rules (<http://www.dol.gov/whd/flsa/companionNPRM-FAQ.htm#13>)
- Fair Pay for Home Care Workers NELP report (<http://www.nelp.org/page/-/Justice/2011/FairPayforHomeCareWorkers.pdf?nocdn=1>)
- End the Exclusion of Home Care Workers from Minimum Wage and Overtime NELP fact sheet (<http://www.nelp.org/page/-/Justice/2011/EndExclusionofHomeCareWorkersfromMinimumWage.pdf?nocdn=1>)
- Caring in America PHI report ( [www.phinational.org/homecarefacts](http://www.phinational.org/homecarefacts) )
- DCA's Respect for Home Care Workers page (<http://www.directcarealliance.org/flsafix>)
- PHI's Fair Pay for Home Care Workers page ( [www.phinational.org/fairpay/](http://www.phinational.org/fairpay/) )
- The Financial Realities for Direct Care Workers DCA fact sheet (<http://blog.directcarealliance.org/wp-content/uploads/2011/06/P7-DCA-Fact-Sheet-The-Financial-Realities-for-Direct-Care-Workers.pdf>)
- Protecting Home Care Workers Under the Fair Labor Standards Act DCA policy brief ([http://blog.directcarealliance.org/wp-content/uploads/2009/06/6709-dca\\_policybrief\\_2final.pdf](http://blog.directcarealliance.org/wp-content/uploads/2009/06/6709-dca_policybrief_2final.pdf))
- Minimum Wage and Overtime Protection for All? DCA policy brief ([http://blog.directcarealliance.org/wp-content/uploads/2010/12/DCA\\_brief6.pdf](http://blog.directcarealliance.org/wp-content/uploads/2010/12/DCA_brief6.pdf))
- *Value the Care*, a series from PHI on key questions related to the companionship exemption. ([www.phinational.org/fairpay](http://www.phinational.org/fairpay)).

#### About NELP

For more than 40 years, the National Employment Law Project (NELP) has worked to restore the promise of economic opportunity for working families across America. In partnership with grassroots and national allies, NELP promotes policies to create good jobs, enforce hard-won workplace rights, and help unemployed workers regain their economic footing.

For more information, please visit our website at [www.nelp.org](http://www.nelp.org) or contact:

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December 13, 2012

President Barack Obama  
The White House  
1600 Pennsylvania Avenue  
Washington, D.C. 20500

Dear President Obama,

One year ago, on December 15, 2011, we stood with you as you announced a plan to extend federal minimum wage and overtime protections to home care workers, as part of your "We Can't Wait" program to advance important issues stalled by Congress.

We—a diverse group of home care workers, employers, and care recipients—celebrated the news that, after decades of exclusion, home care workers would finally be covered by the same basic workplace protections enjoyed by most of America's workers.

One year later, we are still waiting. We write to ask you to move quickly to finalize the Labor Department rules that will apply the Fair Labor Standards Act to our nation's 2.5 million home care workers.

We cannot afford to wait any longer for this change.

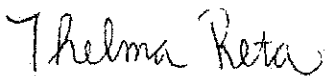
Home care remains one of our nation's fastest-growing but lowest-paid occupations. Wages have long stagnated, and since December, have even declined in some states, forcing more workers and their families who live in poverty to rely on public assistance. Workers continue to provide invaluable care for seniors and people with disabilities without fair pay or the dignity that comes from having their work be valued and respected.

Meanwhile, many home care agencies continue to benefit from the minimum wage and overtime exemption, charging consumers approximately twice the hourly rate paid to caregivers and raking in billions in profits.

One year later, home care consumers and employers are still struggling to attract and retain qualified caregivers in the face of poor working conditions and the resulting high rates of turnover—as high as 60 percent—which cost the industry billions each year in higher recruitment, training, and administrative costs. Without prompt action to improve conditions, worker shortages are likely to worsen at the same time that the demand for home care skyrockets. As the home care industry continues to rapidly grow, we need to ensure, for the sake of our economic recovery, that home care jobs are jobs that can support families.

President Obama, last December, we stood with you as you announced your "We Can't Wait" initiative because it was the right thing to do. Won't you please stand by your promise to home care workers, and carry these long-overdue minimum wage and overtime reforms across the finish line?

Sincerely,



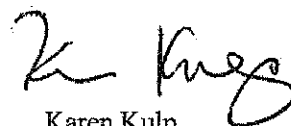
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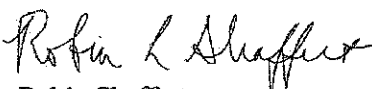
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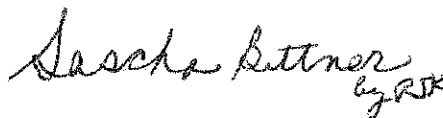
Tracy Dudzinski



Karen Kulp



Robin Shaffert

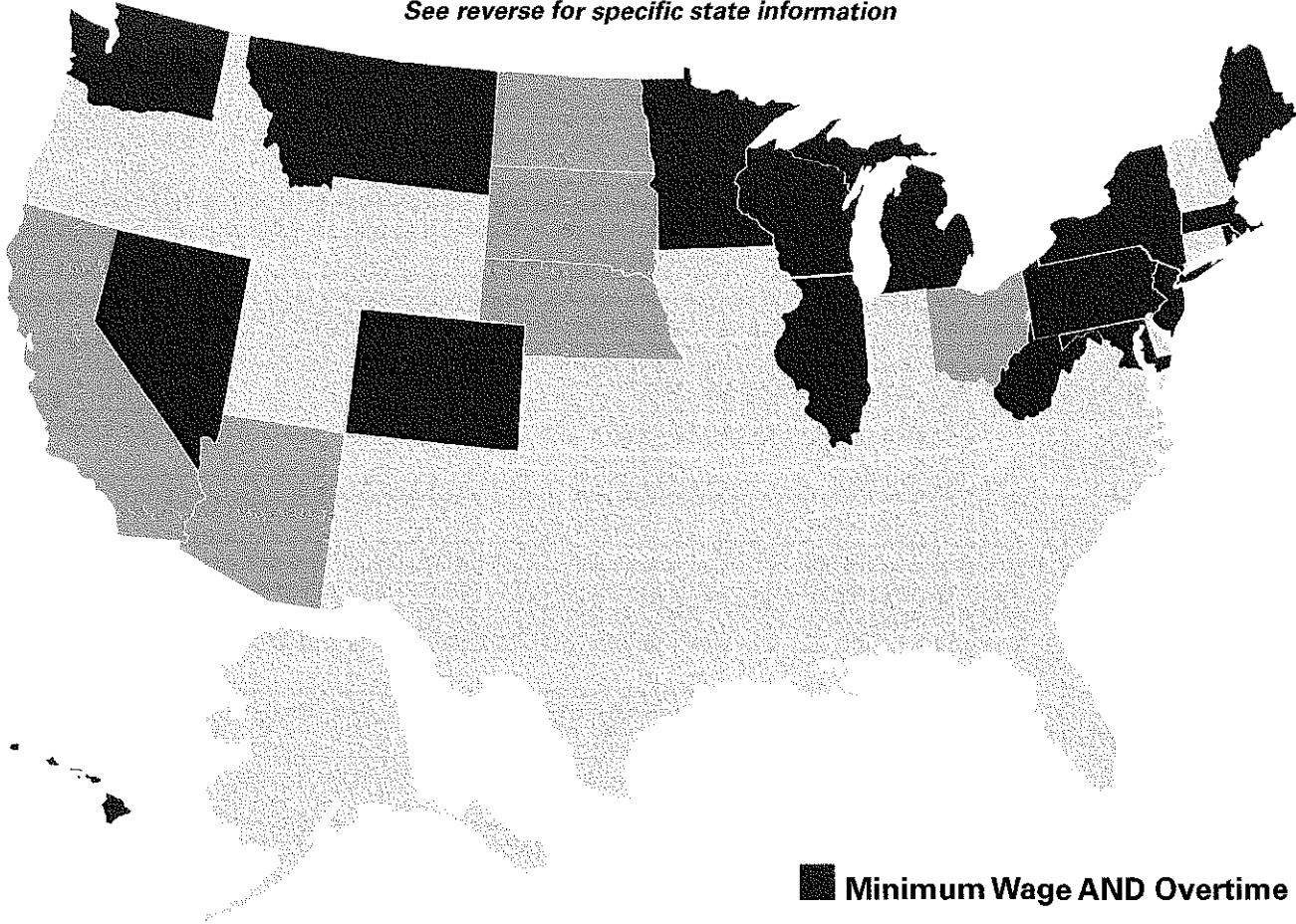


Sascha Bittner



# Which states provide minimum wage and overtime to home care workers?

See reverse for specific state information



- Minimum Wage AND Overtime
- Minimum Wage, But NO Overtime
- No Minimum Wage, No Overtime

This map, based on information compiled by the National Employment Law Project ([www.nelp.org](http://www.nelp.org)), was created by the PHI Campaign for Fair Pay, which seeks to end the exclusion of home care workers from federal minimum wage and overtime protections. See [www.PHInational.org/fairpay](http://www.PHInational.org/fairpay) for more information.

## For more information...

At PHI contact Carol Regan, PHI Government Affairs Director at [cregan@PHInational.org](mailto:cregan@PHInational.org) or 202.223.8355. For more information on the direct-care workforce, go to PHI Policy Works, [www.PHInational.org/policy](http://www.PHInational.org/policy).

At NELP contact Catherine Ruckelshaus, Legal Co-Director at [cruckelshaus@nelp.org](mailto:cruckelshaus@nelp.org) or Sarah Leberstein, Staff Attorney, at [sleberstein@nelp.org](mailto:sleberstein@nelp.org). Phone: 212.285.3025.



**PHI** ([www.PHInational.org](http://www.PHInational.org)) works to improve the lives of people who need home and residential care — and the lives of the workers who provide that care.

**The National Employment Law Project** ([www.nelp.org](http://www.nelp.org)) works in partnership with national, state and local allies, to promote policies and programs that create good jobs, strengthen upward mobility, enforce hard-won worker rights, and help unemployed workers access improved benefits and services.



### States that Provide Minimum Wage and Overtime Coverage to Home Care Workers

<b>Colorado</b>	Minimum wage and overtime coverage for home care workers, but exemption for those employed directly by private households. <i>Colorado Minimum Wage Order No. 26</i> § 5; <i>7 Colo. Code Regs.</i> § 1103-1:5 (West 2010).
<b>Hawaii</b>	Minimum wage and overtime coverage for home care workers, but exemption for those employed directly by private households. <i>Haw. Rev. Stat.</i> § 387-1 (West 2010).
<b>Illinois</b>	Minimum wage and overtime coverage for home care workers, but possible exemption for those employed solely by private households as a result of exemption for employers with fewer than four employees. <i>820 Ill. Comp. Stat.</i> § 105/3(d) (West 2010); <i>Ill. Adm. Code</i> § 210.110.
<b>Maine</b>	Minimum wage and overtime coverage for all home care workers. No relevant exemptions. <i>Me. Rev. Stat. Ann.</i> tit. 26, §§ 663, 664 (West 2010).
<b>Maryland</b>	Minimum wage coverage for all home care workers. Overtime coverage for most home care workers but exemption for workers employed by non-profit agencies. <i>Md. Code Ann., Lab. &amp; Empl.</i> § 3-415 (West 2010).
<b>Massachusetts</b>	Minimum wage and overtime coverage for all home care workers. No relevant exemptions. <i>Mass. Gen. Laws</i> ch. 151, § 1 (West 2010).
<b>Michigan</b>	Minimum wage and overtime coverage for home care workers, but exemption for live-in workers. <i>Mich. Comp. Laws</i> § 408.394(2)(a) (West 2010). Exemption for workers employed solely by private household as a result of exemption for employer with fewer than two employees. <i>Mich. Comp. Laws</i> § 408.382(c) (West 2010).
<b>Minnesota</b>	Minimum wage and overtime coverage for all home care workers, but nighttime hours where employee is available to provide services but does not actually do so need not be compensated. <i>Minn. Stat.</i> § 177.23(11) (West 2010).
<b>Montana</b>	Minimum wage and overtime coverage for home care workers, but exemption for those employed directly by private households. <i>Mont. Code Ann.</i> § 39-3-406(p) (West 2010).
<b>Nevada</b>	Minimum wage and overtime coverage for home care workers, but exemption for live-in workers. <i>Nev. Rev. Stat.</i> § 608.250(2)(b) (West 2010).
<b>New Jersey</b>	Minimum wage and overtime coverage for all home care workers. No relevant exemptions. <i>N.J. Stat. Ann.</i> § 34:11-56a et seq. (West 2010).
<b>New York</b>	Minimum wage coverage for all home care workers. <i>N.Y. Labor Law</i> § 651 (5) (West 2010). Overtime coverage for all home care workers but workers employed by agencies receive overtime at a reduced rate of 150% of the minimum wage (rather than the usual 150% of their regular rate of pay). <i>N.Y. Labor Law</i> §§ 2(16), 170; <i>N.Y. Comp. Codes R. &amp; Regs.</i> tit. 12, § 142-2.2 (West 2010). Overtime coverage for live-in workers after 44 hours/week (rather than the usual 40 hours) at the same rates detailed above. <i>Id.</i>
<b>Pennsylvania</b>	Minimum wage and overtime coverage for home care workers, but exemption for those employed solely by private households. <i>Pa. Stat. Ann.</i> tit. 43, § 333.105(a)(2) (West 2010).
<b>Washington</b>	Minimum wage and overtime coverage for most home care workers, but exemption for live-in workers. <i>Wash. Rev. Code</i> § 49.46.010(5)(j) (West 2010).
<b>Wisconsin</b>	Minimum wage and overtime coverage for most home care workers, but overtime exemption for those employed directly by private households, <i>Wis. Admin. Code</i> § 274.015 (West 2010), and those employed by non-profit organizations. <i>Wis. Admin. Code</i> §§ 274.015, 274.01 (West 2010). Additional minimum wage exemption for live-in workers who spend less than 15 hours a week on general household work. <i>Wis. Admin. Code</i> § 272.06(2) (West 2010).

### States that Provide Minimum Wage But No Overtime Coverage to Home Care Workers

<b>Arizona</b>	Minimum wage but no overtime coverage for home care workers. No state overtime law. <i>Ariz. Rev. Stat. Ann.</i> §§ 23-362, 23-363 (West 2010); see also Office of the Attorney General of the State of Arizona, Opinion No. 107-002 (Feb. 7, 2007).
<b>California</b>	Minimum wage but no overtime coverage for most home care workers. "Personal attendants" exempt from overtime. Industrial Welfare Commission Order No. 5-2001.
<b>District of Columbia</b>	Minimum wage but no overtime coverage for home care workers. <i>D.C. Mun. Regs.</i> tit. 7, § 902.5(b) (West 2010).
<b>Nebraska</b>	Minimum wage but no overtime coverage for home care workers. No state overtime law. <i>Neb. Rev. Stat.</i> §§ 48-1202, 48-1203 (West 2010).
<b>North Dakota</b>	Minimum wage but no overtime coverage for home care workers. Additionally, nighttime hours where employee is available to provide services but does not actually do so need not be compensated. <i>N.D. Cent. Code</i> § 34-06-03.1 (West 2010).
<b>Ohio</b>	Minimum wage but no overtime coverage for home care workers because overtime law adopts FLSA exemptions. <i>Oh. Rev. Code Ann.</i> § 4111.03(A) (West 2010). Additional overtime exemption for live-in workers. <i>Ibid.</i> , (D)(3)(d).
<b>South Dakota</b>	Minimum wage but no overtime coverage for home care workers. No state overtime law. <i>S.D. Codified Laws</i> §§ 60-11-3, 60-11-5 (West 2010).

## THE MICHIGAN *OLMSTEAD* COALITION

*Working to Make Community-Based Long Term Care Available To All Who Need It*  
3498 E. Lake Lansing Rd. ♦ Suite 100 ♦ East Lansing ♦ Michigan ♦ 48823

March 9, 2012

Mary Ziegler, Director  
Division of Regulations, Legislation, and Interpretation  
Wage and Hour Division  
U.S. Department of Labor, Room s-3502  
200 Constitution Avenue, N.W.  
Washington, DC 20210

RE: (RIN) 1235-AA05

Dear Ms. Ziegler:

The **Michigan Olmstead Coalition** supports the U.S. Department of Labor's proposed **regulations** to revise the current Fair Labor Standards Act (FLSA) standards regarding the exemption for companionship services and live-in domestic services. The Coalition and its membership support the proposal as the fair treatment of a vital workforce and as the end of another governmental "bias" that damages the ability of individuals to find and secure home and community based services. And, as one of the states that removed the federal exemption in 2006, we can report successful implementation of the protections and no reductions in services, quality, or worker income because of those changes.

The Michigan Olmstead Coalition was created more than 11 years ago to implement the promise of the U.S. Supreme Court's 1999 *Olmstead vs. L.C.* decision and the Americans with Disabilities Act (ADA) to make community-based long-term care available to all who need it. We are a coalition of advocates serving the preferences and needs of older adults, people living with disabilities, and people living with intellectual and developmental disabilities. In fact, we appear to be one of the country's few and oldest statewide coalitions that serve this array of individuals who use long-term supports and services.

We came together to fulfill the following vision:

The State of Michigan supports all citizens to live in homes of their own choice with full participation in their communities, across their life spans. To make this

vision a reality all individuals must have access to any support they need regardless of where they live.

This vision is based on our values of freedom, choice, respect, quality of life, and liberty-driven safety.

We believe that enactment of the federal proposal will help fulfill our vision.

**Michigan's home care aide workforce is large and important; substantial public revenues are spent on in-home services in this state every year.**

- In 2010, over 60,000 individuals provided Medicaid-funded Home Help services— activities of daily living and independent activities of daily living. Almost 90% of this workforce is selected and supervised directly by the Home Help participant.
- Federal Bureau of Labor (BLS) statistics ([http://www.bls.gov/oes/current/oes\\_mi.htm#31-0000](http://www.bls.gov/oes/current/oes_mi.htm#31-0000)) reports another 34,980 home health aides and 11,360 personal care aides working in the state in May 2010.
- Combining the “self-employed” Home Help providers with the federal BLS data, we estimate that Michigan's in-home aide workforce to be over 100,000 people or approximately 23% of the state's entire health care workforce.
- Today, over 640 certified home health agencies offer to serve Michigan's 1.7 million Medicare beneficiaries. According to [www.Medicarecompare.gov](http://www.Medicarecompare.gov), all but ten of these agencies offer “home health aide” services. And, Medicare spent over \$1.2 billion on Medicare certified home health care services in this state in 2009.
- And, based on home-an-community-based workforce survey work being done now in the state with federal funding, we estimate that another 600 to 700 agencies serve the Medicaid-funded MI Choice home and community-based waiver program. Very few of these home care agencies are Medicare-certified; most are private duty agencies, county agencies (aging and mental health), and franchises of national chains. MI Choice participants qualify to receive services in one of the state's nursing homes but instead choose to receive services in their own home or a licensed adult foster care home or home for the aged. The budget for the MI Choice program in fiscal year 2012 is \$220 million.
- Unlike simple “companionship,” providing home care services requires specific skills and knowledge. The federal exemption, at heart, does not recognize or honor the skills needed by a home care aide, nor by extension the worth of the individuals who need the skills and knowledge of a home care aide.
- Home care work is a job and occupation, just like others, which provides wages and benefits for thousands of Michigan workers and their families.

**The proposal will help end another “institutional bias” that favors nursing homes.**

- Through the federal ADA and the U.S. Supreme Court *Olmstead* decision, governmental policies must now support and promote inclusion, not segregation, of people living with disabilities. The Supreme Court ruled that state governmental long-term supports and services policies that default or favor institutional locations to provide needed long-term supports and services violate the ADA’s inclusion policies. People who need long-term supports and services should not be forced to receive those services in institutions rather than their own homes and apartments.
- With the expanded array of settings to receive services, particularly Medicaid-funded services, many home care workers do the same work as workers in nursing homes. Both occupations and settings should have minimum wage and overtime protections and responsibilities.
- Without similar workplace compensation protections applied to institutions and home care, the home care industry faces another governmental policy that creates a disadvantage relative to nursing homes.
- Without wage and overtime protections in home care, nursing homes are better able to attract and retain staff creating additional burdens or competitive challenges on home care agencies.
- With a more stable staff, nursing homes are more “accessible,” or able to “admit or serve” an individual needing services.

**Michigan implemented minimum wage and overtime protections in 2006 successfully despite our state’s well documented years of budget challenges.**

- On October 2006, Michigan’s minimum wage increased to \$6.95 an hour as compared to the then federal rate of \$5.85 an hour. Two other scheduled increases were enacted in the same legislation and the state’s minimum wage now stands at \$7.40 an hour. (Public Acts 81 and 363 of 2006)
- As part of setting its own minimum wage higher than the federal minimum wage, the federal companionship exemption was removed but for limited exemptions for “live-in” staff and individuals who hire less than two employees.
- Despite the state’s long, deep, well-documented economic and budgetary challenges, the Michigan Legislature made the necessary appropriations increases to actualize both the wage increases and overtime protections in all publicly funded home care services required by the changes in state policy. And, the summary legislative documents describing the state’s budget for fiscal year 2006 to 2007 makes no mention of increases to actualize the minimum wage and overtime protections. (Public Act 330 of 2006.

- As advocates for building more high quality in-home services in 2006, the implementation of wage and overtime protections was not alarming, stressful, harmful, or counterproductive to our vision, to individuals receiving services, or to the home care aides who serve those individuals. These workplace protections were implemented successfully and without remarkable disruptions in either the amount or quality of home care services.
- And, at this time, we have and see no evidence that access to or the quality of home care services are diminished by the extension of minimum wage and overtime protection to home care aides in this state almost six years ago.

From our actual, real life experience, extending minimum wage and overtime protections to home care workers is good public policy that should be part of federal work place laws. The Michigan Olmstead Coalition and its members support the proposed federal regulations.

The Michigan Disability Rights Coalition

The Arc Michigan

UCP Michigan

Disability Network/Michigan

Area Agencies on Aging Association of Michigan

Michigan Campaign for Quality Care

Michigan Protection and Advocacy Service

Michigan Statewide Independent Living Council

Michigan Developmental Disabilities Council

Michigan Paralyzed Veterans of America

ADAPT of Michigan

Community Housing Network

National Multiple Sclerosis Society-Michigan Chapter

Developmental Disabilities Institute

PHI-Michigan

UCP of Metropolitan Detroit

Washtenaw Association for Community Advocacy

Disability Network/Lakeshore

Capital Area Center for Independent Living

Disability Advocates of Kent County

Ann Arbor Center for Independent Living

Disability Network/Mid- Michigan

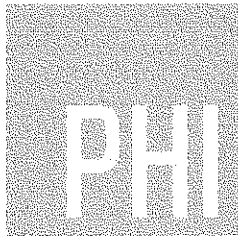
disability Connections

Disability Network/Southwest

Michigan Alliance of Direct Support Professionals

The Disability Network

The State Long-Term Care Ombudsman



**Quality Care  
THROUGH  
Quality Jobs**

## **Home Care Partners Low Turnover Rate Reflects Agency's Commitment to Providing Quality Jobs**



Marla Lahat, MSW, LICSW (right), is the executive director and president of Washington D.C.-based Home Care Partners, a private, non-profit agency founded in 1957 that employs nearly 200 certified home health care aides who provide services and supports in D.C., Maryland, and Virginia.

Home Care Partners pays their home care workers more than the minimum wage. In the rare instances when their aides work overtime – such as cases referred by Adult Protective Services – the aides are paid overtime wages at time and a half of their base pay.\*

Home Care Partners, complying with the complex laws and regulations of two states and a municipality, is funded through government contracts and also has private pay clients. The agency is not Medicaid- or Medicare certified.

The starting hourly wage for the agency's home care workers is about \$12.50, or just over \$13.00, depending on which state or municipality the government contract is based. Ms. Lahat says that she and her agency's board of directors only work under contracts that make it possible for the agency to pay their home care workers more than the minimum wage, or require that the workers be paid a living wage, as in the case of Arlington Country in Virginia.

Home Care Partners is also a licensed, certified home health aide training school. The school provides all of their students with 125 hours of training – the District's standard for training hours since July 2012 – which is 50 training hours more than the federal government requires. Ms. Lahat was been a longtime advocate with the Board of Nursing in the District and Maryland to increase pre-employment training hours beyond the federal requirements.

The agency also offers its employees health insurance and subsidizes 60 percent of individual coverage.

Ms. Lahat says that Home Care Partners' mission is to deliver quality services to its clients. She added that the agency could never carry out its mission if it did not pay its workers adequate wages, offer health care benefits, or provide enough training to give the aides the tools they need to provide quality care.

Home Care Partners' commitment to quality jobs has paid off. Ms. Lahat, noting the strong correlation between good jobs and employee retention, takes pride in reporting that her agency's turnover rate is just 15 percent annually – significantly lower than the 50 percent annual turnover rate that plagues the industry.

\* Maryland and the District of Columbia require that home care aides be paid a minimum wage; Virginia does not have minimum wage protections for this workforce. In both states and the District, Home Care Partners is not required to pay overtime to this workforce.

District of Columbia : Minimum wage but no overtime coverage for home care workers. D.C. Mun. Regs. tit. 7, § 902.5(b) (West 2010).  
Maryland: Minimum wage coverage for all home care workers. Overtime coverage for most home care workers but exemption for workers employed by non-profit agencies. Md. Code Ann., Lab. & Empl. § 3-415 (West 2010).



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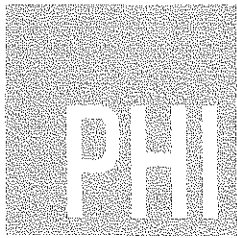
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**Quality Care  
THROUGH  
Quality Jobs**

**INTERVIEW: Home Care Consumer Stevie Bass on Fair Wages for Home Care Workers**

*By Matt Ozga*



Stevie Bass's 31-year-old daughter has multiple disabilities and requires around-the-clock care from a team of nine home care aides. When it comes to choosing her home care aides -- who are hired through Mi Via, New Mexico's self-directed Medicaid waiver program -- Stevie's daughter knows exactly the type of people she wants to care for her.

"My daughter responds to people who are upbeat, creative, smile a lot - people with a positive outlook on life," Bass said. She also leads an active lifestyle -- she skis, swims, hikes -- so she needs her aides to keep up with her. "She has to have an aide who is with her all the time -- that aide has to ski!" Bass said. Stevie's daughter relies on home care workers for a wide range of tasks: personal care, daily active exercise, yoga, cognitive drills, shopping, and meal planning and preparation.

Bass, a member of the National Participant Network, has her own requirements for home health aides -- they need to be paid a fair wage. In a recent Huffington Post article, Bass was quoted as saying that "direct-care staff cannot remain in [their] jobs without a good legal living wage." Last month, she spoke up for better pay for home care workers during a quarterly meeting of the National Council on Disability.

In an interview with PHI last week, Bass re-emphasized her support for fair pay for home care workers. "They've got to be paid correctly," she said. "It's a travesty if they are not."

Bass was referring to the poverty-level wages earned by most home care workers -- in New Mexico, where she and her daughter live, the average wage for home health aides is just \$9.22 an hour. But Bass was also talking about the fact that federal law excludes home care workers from basic labor protections, such as the right to a minimum wage and time-and-a-half pay for overtime hours.



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Supporters of quality care and quality jobs are hopeful that a change is on the horizon. In December 2011, President Obama announced his intention to amend the "companionship exemption" of the Fair Labor Standards Act, a move that would finally extend those basic labor protections to home care workers.

But 14 months later, the companionship exemption remains intact. And some groups -- including home care industry representatives and advocates for people with disabilities -- have been vocal in their opposition to such a change. Some disability advocates, for example, say that they will have to cut their care workers' hours to avoid paying them the time-and-a-half rate for overtime. They will have to hire more home care workers to make up for the hours lost, which they argue would be too difficult a task to manage.

Stevie Bass says that managing a larger staff of home care workers can be harder than managing one or two care providers -- but it's far from impossible. "People [with disabilities] seem quite concerned that they might need to hire a larger staff," she said. "It may be a hard transition in the beginning, but you can do it. It's a lot of work, but you can be successful."

Indeed, for the last five years, the Bass family has had quite a lot of success managing a staff of nine home care workers -- none of whom work more than 40 hours a week, under the terms of the Mi Via program. In her experience, Stevie said, home care workers would "rather work fewer hours and get paid better than work a lot of hours and paid worse."

The bottom line, Stevie said, is that home care workers -- like all direct-care workers -- need to be respected as professionals. They need to have the same basic labor protections as other workers, and they need to make a decent wage in order to be effective caregivers.

"If you don't get paid properly, you can't function. You've got to be paid well," she said. "My overall view is that care workers need to be looked at with great respect -- it's a real profession."



## **DATA BRIEF:**

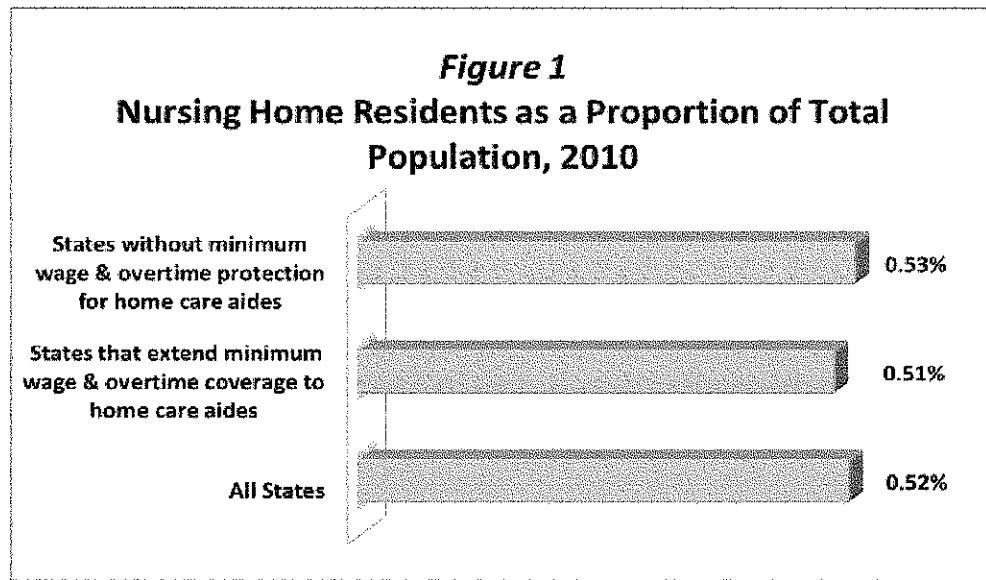
### **Institutionalization Rates in States that Extend Minimum Wage and Overtime Protection to Home Care Workers**

Concern has been expressed that the extension of federal workforce protections under the Fair Labor Standards Act (FLSA) via a narrowing of the companionship services exemption will result in higher rates of “institutionalization”<sup>i</sup> for individuals with functional limitations who rely on personal assistance services in order to remain in their own homes or in small community-based settings. The implied cause-and-effect is that extending minimum wage and overtime protections to home care and personal assistance aides will increase the cost of the services provided so significantly that persons with disabilities will be forced to move into nursing facilities.

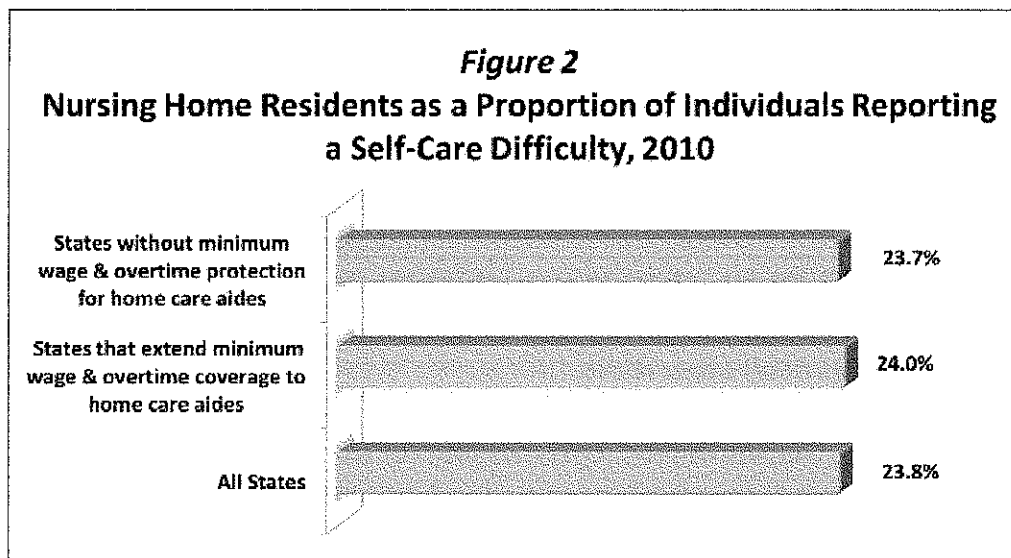
This concern implies that rates of institutionalization will be higher in states that extend basic workforce protections to home care and personal assistance aides. To examine this issue, we compared various measures of institutionalization across two groupings of states. The first group consists of the 15 states that already extend state workforce protections to at least some groups of personal assistance and home care aides<sup>ii</sup> and the second group consists of all other states.

Using data from U.S. Census Bureau, two measures of institutionalization at the state level were investigated: 1) the number of nursing home residents as a proportion of the total population, and 2) the number of nursing home residents as a proportion of individuals reporting a “self-care difficulty” (a proxy for the number of individuals who require long-term services and supports).

As shown in Figures 1 and 2 below, states that already extend minimum wage and overtime protection to aides have very similar institutionalization rates compared to states that do not extend these workforce protections to home care and personal assistance aides.



In 2010, approximately one half of one percent of the total population in each state resided in a nursing home *regardless* of whether the state extended workforce protections to home care and personal assistance aides (see Figure 1).



Similarly, in 2010, approximately 24 percent of persons reporting a self-care difficulty resided in a nursing home *regardless* of whether the state extended workforce protections to home care and personal assistance aides (see Figure 2).

**In summary, the 15 states that already have taken steps to extend basic workforce protections to home care workers do not exhibit higher rates of institutionalization than states that do not offer such protections.**

## DATA SOURCES

Total population of each state is from the 2010 U.S. Census. The number of nursing facility residents per state is found in table “PC05: Group Quarters Population in Nursing Facilities/Skilled-Nursing Facilities by Sex by Age,” of the 2010 U.S. Census. Both data sets are available at the U.S. Census Bureau: <http://www.census.gov/>

The number of individuals with a “self-care difficulty” is from the 2010 American Community Survey, 1-year estimates, available at the U.S. Census Bureau: [http://www.census.gov/acs/www/data\\_documentation/data\\_main/](http://www.census.gov/acs/www/data_documentation/data_main/)

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<sup>i</sup> “Institutionalization” refers most generally to placement in a nursing facility or a skilled nursing facility defined as facilities licensed to provide medical care with 7-day, 24-hour coverage for people requiring long-term non-acute care. People in these facilities require nursing care, regardless of age.

<sup>ii</sup> While current federal law exempts large numbers of home care and personal assistance aides from workforce protections under the FLSA, over the years 15 states that have elected to extend minimum wage and overtime protection to at least some groups of aides. These states include: Colorado, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Jersey, New York, Pennsylvania, Washington, and Wisconsin. See: National Employment Law Project & PHI (October 2011) *Which states provide minimum wage and overtime to home care workers?*, available at: [http://nelp.3cdn.net/6e193991edf8bd0df9\\_o6m6i28s2.pdf](http://nelp.3cdn.net/6e193991edf8bd0df9_o6m6i28s2.pdf).

*PHI works to transform eldercare and disability services. We foster dignity, respect, and independence – for all who receive care, and all who provide it. The nation’s leading authority on the direct-care workforce, PHI promotes quality direct-care jobs as the foundation for quality care.*



**DATA BRIEF:**  
**Impact of Extending Labor Protections to Home Care Aides**  
**On Michigan Home Care Industry**

Concern has been expressed that the extension of federal workforce protections to home care workers under the Fair Labor Standards Act (FLSA) via a narrowing of the companionship services exemption will be prohibitively expensive for home care agencies. Critics of the proposal claim that extending minimum wage and overtime protections to home care and personal assistance aides will force home care agencies to increase prices for consumers—or result in many businesses closing their doors.

But minimum wage and overtime protections have already been extended to home care aides in 15 states, many with thriving home care industries.

In fact, in Michigan, where minimum wage and overtime protections have been offered to home care aides since 2006, the home care sector has grown at a faster rate since extending these protections than in the same time period before. An analysis of U.S. Department of Labor data (see Table on next page) shows that the number of home care establishments within Michigan grew at a steady pace following the state's implementation of the new minimum wage and overtime rules.

As the table illustrates, growth in these business establishments is actually higher in the five years following implementing wage and hour protections than the five years before—41 percent compared to 32 percent. This suggests that implementing these protections nationally will not have the feared dire business consequences.

**Table: Michigan Home Care Establishments**

**Before Implementation**

No. of Home Care Establishments	2001	2002	2003	2004	2005	Change 2001-2005
	775	813	843	948	1019	244
Percent Change in No. of Home Care Establishments	2001/2002	2002/2003	2003/2004	2004/2005	2005/2006	2001/2005
	4.9%	3.7%	12.5%	7.5%	8.1%	31.5%

**After Implementation**

No. of Home Care Establishments	2006	2007	2008	2009	2010	Change 2006-2010
	1102	1180	1283	1388	1556	454
Percent Change in No. of Home Care Establishments	2006/2007	2007/2008	2008/2009	2009/2010		2006/2010
	7.1%	8.7%	8.2%	12.1%		41.2%

Over 100,000 Michigan workers provide home care services the state's residents. These jobs constitute one of Michigan's largest and fastest-growing occupations. Home care occupations in the state are expected to increase by 50 percent between 2010 and 2020, while jobs in general are projected to increase by only 8 percent in the same time period.

Nationally, between 2010 and 2020, home care occupations are projected to be the fastest growing in the country: Personal Care Aides positions are expected to increase by 71 percent during this decade, and Home Health Aides by 69 percent. Yet, without basic labor protections, it will be difficult to recruit and retain enough qualified individuals to provide these essential services and supports.

## Data Source:

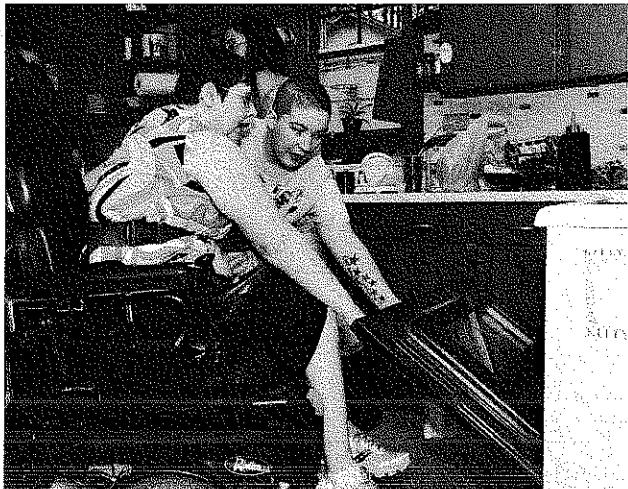
U.S. Department of Labor, Bureau of Labor Statistics, Quarterly Census of Employment and Wages (QCEW) 2001-2010. Available at: <http://www.bls.gov/cew/> "No. of home care establishments" represents the total number of establishments in the two NAICS industries where most home care workers are employed: Home Health Care Services (621610), and Services for the Elderly and Persons with Disabilities (624120).

# Value the Care!

## Minimum wage and overtime for home care workers

No. 7

### High-Hour Consumers in the California IHSS Program: Impact of Compensating Overtime Hours



In December 2011, the Obama administration announced its proposal for revising the companionship exemption of the Fair Labor Standards Act — a change that would finally guarantee federal minimum wage and overtime protections for most home care aides. During the public comment period, the proposed rule received 26,000 comments—75 percent in favor of providing home care workers with basic labor protections. This overwhelming support notwithstanding, one concern has been the potential impact of this change on publicly funded long-term services and supports, particularly continuity of care. To address this question, PHI examined how the proposed rule might affect California’s In-Home Supportive

Services (IHSS) Program, the nation’s largest publicly funded home care program. Size aside, IHSS differs from other state programs in that it allows individuals with high-level needs to hire attendants for long hours (a maximum of 283 hours per month) and the program relies heavily on paid family members to support program participants.

#### **IHSS Program Overview**

The IHSS Program provides home-based support to California elders and individuals with disabilities (or “consumers”), virtually all of whom are authorized to receive Medicaid-funded long-term services and supports. In 2008, the most recent year for which this data is available, IHSS provided support services to approximately 414,000 consumers each month. Most of these consumers have very low incomes. Additionally, in order to qualify, a person must be aged, blind or disabled and require services such as assistance with cleaning, meal preparation, bathing, grooming, and taking medications to remain safely at home. The number of hours of monthly authorized services varies widely, ranging from 1 to 283 hours per month, and is based on the severity of impairments. Consumers receiving over 195 hours of service each month are considered to be “severely impaired.”<sup>1</sup>

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*Value the Care* is a publication of the **PHI Campaign for Fair Pay** ([www.PHInational.org/fairpay](http://www.PHInational.org/fairpay)), which is calling on the DOL to extend federal wage and overtime protections to home care workers.



# Value the Care! Minimum wage and overtime for home care aides

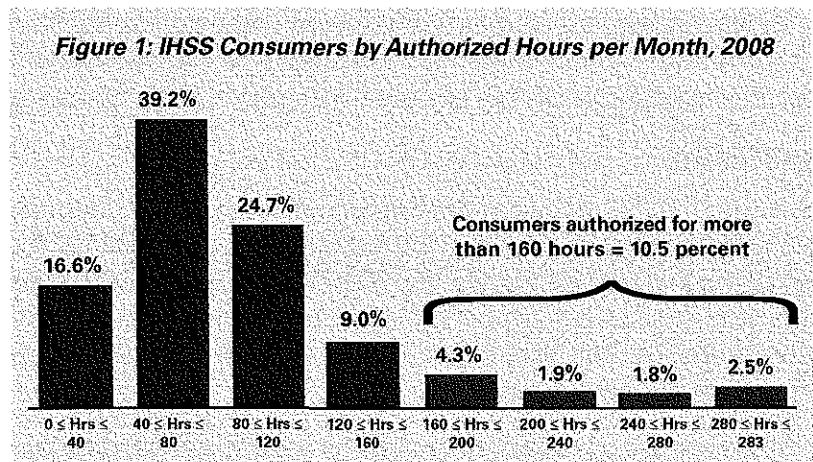
## Average Support Hours for Consumers

While IHSS consumers may receive up to 283 hours of home care service per month, as shown in Figure 1, in 2008 nearly 60 percent were authorized to receive less than 80 hours of care each month (about 18 hours of care per week).<sup>2</sup> **Approximately 90 percent of consumers were authorized to receive between zero and 160 hours of service per month, or no more than 37 hours per week.** Only a small percentage of consumers (10.5 percent or 43,685 people) were authorized to receive more than 160 hours of services each month (or on average, more than 37 hours per week).

## High-Hour Consumers

The relatively small number of consumers who were authorized for 160 hours or more of IHSS services can be further divided into four groups (see Figure 2 below). Just over 40 percent of the high-hour consumers were authorized for between 160 and 200

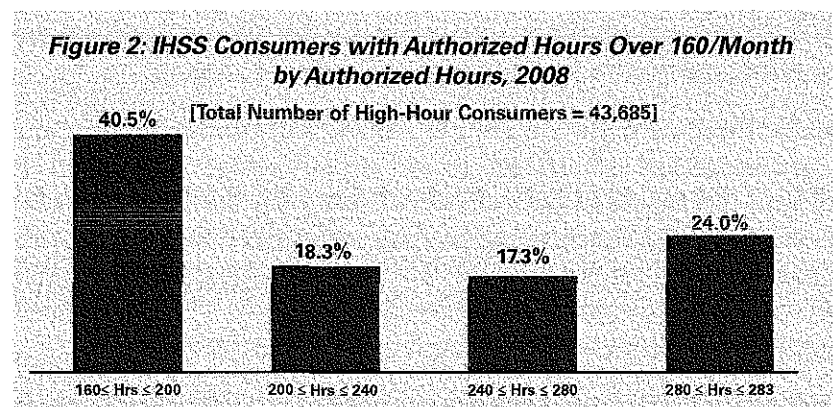
hours per month. Approximately one fifth were authorized for between 201 to 240 hours, and another one fifth for 241 to 280 hours. Finally, nearly a quarter of consumers who received more than 160 hours (10,480 individuals) were authorized for between 280 and 283 hours per month, or more than 65 hours a week. Individuals in this group would be most vulnerable to being placed in a skilled nursing facility without the support of IHSS services.



## Overtime

Based on this data, we cannot conclusively describe the amount of overtime that individual providers in the IHSS program may work. This is because a consumer may have multiple providers, and a provider may support more than one consumer. However, even if we assume that services are provided to each IHSS consumer by only one provider, then

the data suggest that only 10.5 percent of consumers would need their provider to work overtime on a monthly basis.<sup>4</sup> Moreover, 40.5 percent of those consumers would require very minimal overtime — on average, 1.3 hours of overtime per day. This analysis also shows that in 2008, only 10,480 consumers were very high-hour cases (>280 hours a month), which is only 2.5 percent of the total monthly IHSS caseload of 413,791 consumers.



Looked at another way, our analysis shows that in 2008 potential "overtime" hours (i.e., authorized hours in excess of 160 per month) constituted approximately 8 percent of total IHSS authorized

## *Value the Care!* Minimum wage and overtime for home care aides

service hours on an annual basis. Even if the highest-hour beneficiaries were served by only one provider who was paid overtime at time and half, the IHSS program would still be more cost effective than the alternative — placement in a skilled nursing facility at the state's average daily reimbursement rate of \$175.<sup>5</sup> The annual cost of the latter is \$63,875, which is a quarter again more expensive than the maximum cost of \$50,022 required to provide care to the highest hour IHSS consumer using only one personal care aide who is paid overtime. The cost of providing services to the IHSS consumer assumes a maximum wage and benefit cost (in which the state will participate) of \$12.10 an hour.<sup>6</sup> Since many of California's 58 counties have IHSS wages and benefits under \$12.10 an hour, the actual cost of this extreme scenario is likely to be significantly less.<sup>7</sup>

### **Conclusion**

California's IHSS program data does not support the claim that paying minimum wage and overtime to IHSS workers will significantly increase the cost of the state's program. The state's program data show that the vast majority (90 percent) of consumers are not authorized for overtime hours on a monthly basis. Even under the extreme assumption that each IHSS consumer relies on only one individual provider, then this data suggests that at most 10 percent of IHSS providers may work on average more than 40 hours per week.

Furthermore, nearly half of consumers requiring overtime hours need only about 1.3 additional hours per day. Only a very small percentage of the program's caseload (2.5 percent) is authorized for very high-hour cases that would require about 4 additional hours per day, but these are precisely the individuals who are most at risk for even more costly long-term institutionalization.

To the extent that high-hour IHSS consumers tend to rely on one provider, then the IHSS program could either pay time and a half for overtime hours or require that consumers hire additional workers. Employing additional providers would be less costly, but could cause disruption for consumers and workers. Consumers who rely on family members to provide long hours of care may be reluctant to hire additional personal care aides.

While these disruptions should not be minimized, there are significant upsides to these changes. Long hours are exhausting even for providers who are family members, and the resulting stress and fatigue can result in poorer health status for family members and injuries for both workers and consumers. Furthermore, spreading authorized hours over more providers will increase hours for some, result in more balanced workloads,<sup>8</sup> and provide better backup coverage when one provider is unavailable. According to national data, the vast majority of home care workers work part-time and a significant proportion of those would prefer more hours.<sup>9</sup>

California has been a leader in achieving a rebalanced long-term care system that emphasizes community-based care. Indeed, California ranks among the top five states in terms of long-term care coverage and cost-effectiveness, and in terms of the balance between nursing home and home- and community-based care.<sup>10</sup> IHSS providers constitute the workforce backbone of that system and should receive the same wage and hour protections afforded other workers. While the size of California's personal care program—the nation's largest<sup>11</sup>— may raise concerns for officials charged with managing the program, data about the extremely low incidence of high-hour cases should substantially alleviate those concerns.

# Value the Care! Minimum wage and overtime for home care aides

**Take Action:** Ask President Obama to carry through on his promise to provide minimum wage and overtime protections to home care workers.

Sign our petition at: [www.companionshipexemption.com](http://www.companionshipexemption.com)

## Data Sources

The main source of data for this issue brief is: California Department of Social Services, unpublished Case Management Information and Payrolling System (CMIPS) tables for 2008 from the California Medicaid Research Institute (CAMRI) at the University of California, San Francisco.

## End Notes

<sup>1</sup> M. Taylor (2010). Considering the State Costs and Benefits: In-Home Supportive Services Program. California Legislative Analysts Office. Available at: [http://www.lao.ca.gov/reports/2010/ssrv/ihss/ihss\\_012110.pdf](http://www.lao.ca.gov/reports/2010/ssrv/ihss/ihss_012110.pdf)

<sup>2</sup> Note: hours per week were calculated using an average of 4.3 weeks per month.

<sup>3</sup> M. Taylor (2010). Considering the State Costs and Benefits: In-Home Supportive Services Program. California Legislative Analysts Office. Available at: [http://www.lao.ca.gov/reports/2010/ssrv/ihss/ihss\\_012110.pdf](http://www.lao.ca.gov/reports/2010/ssrv/ihss/ihss_012110.pdf)

<sup>4</sup> Under federal law, workers are owed overtime after a 40-hour workweek. This differs from California state law. Pursuant to California Labor Code Section 510, non-exempt employees must be compensated at one and a half times the regular rate of pay for all hours worked in excess of eight hours in a workday, 40 hours in a workweek and the first eight hours of a seventh consecutive workday. IHSS workers are currently exempt from this state law, and a change in federal law would not require overtime for workdays in excess of 8 hours, unless they resulted in a workweek greater than 40 hours.

<sup>5</sup> <http://www.dhcs.ca.gov/services/medi-cal/pages/itcab1629.aspx>

<sup>6</sup> The maximum hourly wage and benefit costs that the state will participate in was lowered to \$10.10 per hour (\$9.50 for wages and \$0.60 for benefits) as part of the 2009–2010 State Budget. However, a federal judge issued an injunction to stop the decrease in state participation. As a result, the state has still been participating in combined wages and benefits of up to \$12.10 per hour (\$11.50 for wages and \$0.60 for benefits). Counties with wages and benefits above \$12.10 have been splitting the additional cost with the federal government. Important changes are underway in the IHSS Program including state collective bargaining for IHSS, creation of a county IHSS Maintenance of Effort (MOE), and creation of a Statewide Authority. For a summary of these changes, see: [http://www.capihss.org/\\_2009/home/new\\_information/ihss\\_labor\\_101512.pdf](http://www.capihss.org/_2009/home/new_information/ihss_labor_101512.pdf). The cost calculations provided in this brief assume the program as it operated up until FY 2013.

<sup>7</sup> For example, Los Angeles County, with 44% of the IHSS caseload, currently pays a wage rate of \$9.50 per hour. This wage is set to increase by 65 cents later this year.

<sup>8</sup> Dorie Seavey and Alexandra Olins (2012). Can Home Care Companies Manage Overtime Hours: Three Successful Models. PHI. <http://phinational.org/sites/phinational.org/files/clearinghouse/overtime-casestudies-20120209.pdf>

<sup>9</sup> PHI (February 2012). "Home Care Jobs, The Straight Facts on Hours Worked." Value the Care #6. <http://phinational.org/sites/phinational.org/files/policy/wp-content/uploads/phi-value-the-care-06.pdf>

<sup>10</sup> Candace Howes (May 2010). Costs and Benefits of In-Home Supportive Services for the Elderly and Persons with Disabilities: A California Case Study. Institute for Women's Policy Research and PHI. Available at: [http://phinational.org/sites/phinational.org/files/clearinghouse/E512HowesCBA\\_043010.pdf](http://phinational.org/sites/phinational.org/files/clearinghouse/E512HowesCBA_043010.pdf)

<sup>11</sup> PHI (December 2010). California's Direct-Care Workforce. <http://phinational.org/sites/phinational.org/files/clearinghouse/overtime-casestudies-20120209.pdf>

## The FLSA "companionship exemption" timeline

**1938** – The federal Fair Labor Standards Act (FLSA) is enacted to ensure a minimum standard of living for workers through the provision of a minimum wage, overtime pay, and other protections — *but domestic workers are excluded*.

**1974** – The FLSA is amended to include domestic employees such as housekeepers, full-time nannies, chauffeurs, and cleaners. However, persons employed as "companions to the elderly or infirm" *remain excluded from the law*.

**1975** – The Department of Labor interprets the "companionship exemption" as including all direct-care workers in the home, *even those employed by third parties* such as home care agencies.

**2001** – The Clinton DOL finds that "significant changes in the home care industry" have occurred and issues a "notice of proposed rulemaking" that would have made important changes to the exemption. The revision process is terminated, however, by the incoming Bush Administration.

**2007** – The US Supreme Court, in a case brought by New York home care aide *Evelyn Coke*, upholds the *DOL's* authority to define exceptions to FLSA.

**2011** – President Obama announces a Notice of Proposed Rulemaking (NPRM) that, if enacted, will finally extend minimum wage and overtime protections to the vast majority of home care workers.



PHI ([www.PHInational.org](http://www.PHInational.org)) works to improve the lives of people who need home and residential care—and the lives of the workers who provide that care.

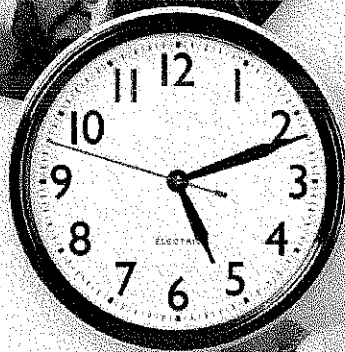
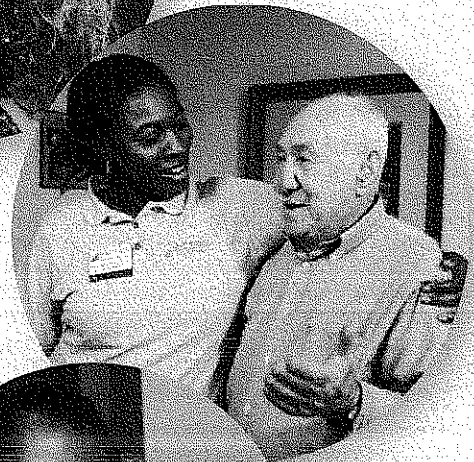
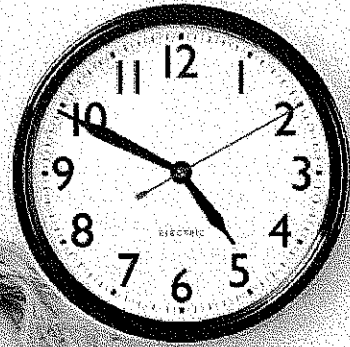
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# Can Home Care Companies Manage Overtime Hours?

## Three Successful Models

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## About PHI

PHI ([www.PHInational.org](http://www.PHInational.org)), a national nonprofit based in the South Bronx, works to improve the lives of people who need home and residential care—and the lives of the workers who provide that care. Using our workplace and policy expertise, we help consumers, workers, employers, and policymakers improve long-term services and supports by creating quality direct-care jobs. Our goal is to ensure caring, stable relationships between consumers and workers, so that both may live with dignity, respect, and independence.

For more information, please contact PHI at [info@phinational.org](mailto:info@phinational.org) or 718-402-7766.

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## Introduction

As the result of an exemption to the Fair Labor Standards Act, many home care workers are denied the basic federal wage and hour protection afforded to virtually all other jobs because they are construed as providing “companionship services” to people who are elderly and/or infirm. In December 2011, the U.S. Department of Labor issued a Notice of Proposed Rulemaking that, if adopted, would update its regulations concerning the companionship services exemption, significantly reducing the number of individuals to whom it applies and, thereby, extending minimum wage and overtime protection to the vast majority of home care workers.

Opponents of narrowing the exemption argue that the proposed regulations will dramatically increase the cost of overtime for agency providers—because it would have to be compensated at time and a half—with adverse consequences for home care agencies, consumers, and workers. They claim that because of the increased cost of overtime, the cost of care for elders and people with disabilities will become unaffordable. They further argue that, in response, agencies will have no choice but to reduce the number of hours that aides work and disrupt continuity of care for consumers by assigning multiple aides to their clients.

These arguments make several assumptions that are not supported by available data.<sup>1</sup> First, nationally representative surveys show that, for the home care workforce as a whole, the incidence of overtime is low, at less than 10 percent. What *is* high is the incidence of part-time work, with many aides reporting that they would like to work more hours.<sup>2</sup> Second, the vast majority of states have restrictions on the numbers of hours they authorize under Medicaid, so high-hour cases are uncommon. Third, a number of states—16 in total—already provide overtime coverage to at least some groups of home care workers, typically those that are employed by agencies.

Still, there are bound to be individual agencies—located particularly in states that don’t already provide overtime protection to workers—that, under their current practices, do accumulate overtime hours. If paid at a premium, these overtime hours could have significant financial consequences. The question is, once there is a financial incentive to minimize overtime, how will these agencies respond? And what proactive steps can agencies take to manage their staffing and scheduling practices in order to minimize their overtime costs?

This report examines three home care agencies that successfully control their overtime costs: Community Care Systems in Illinois; Addus HealthCare, a nationwide company; and Cooperative Health Care Associates in New York City. While striving to maintain

high standards of caregiver consistency critical to client satisfaction and well-being, these companies have put in place workforce management systems to minimize their overtime costs. As a result they have remained profitable while also paying their aides at least minimum wage and overtime at time and a half.



## **Case Study I: Community Care Systems, Inc.**

Community Care Systems, Inc. (CCSI), is an Illinois-based for-profit in-home care provider. Operating since 1980, CCSI has 14 offices throughout the central part of the state. The company provides personal care services to over 3,000 clients and employs about 1,700 home care aides.

The vast majority of CCSI's business comes from contracts with the Illinois Department on Aging's Community Care Program (CCP). One of the largest home and community-based services programs in the country, CCP assists low-income adults aged 60 and older at risk of nursing home placement by providing comprehensive care coordination, adult day and in-home services, and emergency home response. The Department on Aging contracts with about 55 in-home service providers to meet the needs of an average monthly caseload of approximately 45,000 older adults.

Funding for CCP comes from state General Revenue funds as well as through a federal Medicaid Waiver program. Older adults not enrolled in Medicaid are also eligible to receive CCP services if they meet certain criteria; these clients may have a co-pay. Homemaker services (*e.g.*, assistance with cleaning, laundry, shopping, errands, and preparing and planning meals) account for the vast majority of program spending.<sup>3</sup>

### **Clients**

Approximately 95 percent of CCSI's caseload is made up of CCP consumers. The maximum number of hours of care that CCP consumers can receive is determined by the program's service cost maximums along with the reimbursement rates set by CCP.<sup>4</sup> A recent study for the Illinois Department of Aging determined that maximum hours per week per CCP client range from 5 to 36.8, for groups with the lowest and then the highest levels of need; actual mean hours for these two groups ranged from 2.4 to 25.7.<sup>5</sup> Over two-thirds of clients (68 percent) receive service hours at the lower end of the range.

In line with the state's service cost restrictions, the majority of CCSI clients receive from two to four hours of service per day, two to five days per week. That means that the vast majority of the company's clients receive between four and twenty hours of care a week. As a result, it is unusual for a caregiver to incur overtime hours based on his or her regular roster of clients.

### **Workforce**

CCSI aides work 26 hours per week on average and serve two to three clients in a typical day. Just over a third (35 percent) of the company's aides work more than 30

hours per week, which for CCSI is considered full-time work in terms of qualifying for benefits.

Illinois is one of 16 states that already extend overtime coverage to at least some groups of home care workers, and CCSI provides services exclusively in the state of Illinois. Illinois' wage and hour laws for home care workers and companions have been in place since 1976 and apply to employers with more than five employees.<sup>6</sup> CCSI's aides are members of SEIU Healthcare Illinois & Indiana, a union that unites 91,000 healthcare, home care, nursing home and child care workers across two states.

### **Overtime challenges and solutions**

Despite the fact that the majority of its cases were low-hour cases, as CCSI grew, managing overtime hours became an increasing challenge. Overtime hours came to account for 10-11 percent of payroll costs. These work hours were primarily incurred when substitute aides picked up additional hours in response to other aides calling out or not showing for a shift.

At the time, CCSI field offices conducted their scheduling using "manual rosters" — that is, paper lists of each worker's schedule for the week. Field staff found it cumbersome to manage these rosters because they required constant rewriting and updating. Furthermore, the roster system was not designed to give managers a snapshot overview of available staffing capacity for picking up additional (non-overtime) hours in a given week. Additionally, none of the company's field offices had a staff person tasked with tracking overtime hours; instead, overtime expenditures were accepted as a normal cost of doing business.

CCSI determined that its overtime expenditures were not sustainable. To control these costs, over the period 2003 to 2005 the company began to implement three new workforce management practices: permanent substitute positions in each office, an electronic roster program, and an office administrator position. CCSI estimates that, within the first two years of implementation, these three innovations reduced annual overtime costs by approximately \$50,000. Today, overtime at CCSI accounts for only 0.6 percent of the company's wage costs.

**Permanent Substitute Position.** CCSI created a new position in each of its 14 field offices— a permanent substitute (or "Perm Sub") position—for filling assignments due to call-outs or no-shows. The Perm Sub position is full-time—in contrast to normal aide positions—and receives a higher hourly wage than the company's general home care aides. An aide filling this position must be available for any assignments totaling a maximum of 40 hours in any

given week (driving time included). If replacement hours are less than 40 hours, then the aide is assigned extra quality-control visits or office work.

To apply to be a Perm Sub, an aide must formally interview for the position, and is required to have been with the company for at least two years and to have a good record of dependability. If a Perm Sub wants to become the primary caregiver for a specific client, then she must give up her Perm Sub position.

CCSI's larger offices have between five and six Perm Subs, while smaller offices have two. The Perm Sub position has given CCSI the flexibility it needs to fill call-outs, while keeping overtime hours under control.

**Electronic Roster Program.** CCSI also adopted a new computer-based information technology system that enables managers and schedulers to receive real-time data regarding how many hours each aide has worked in a given week and which workers are eligible to pick up extra hours under the 40-hour threshold. According to Toni Gerencir, CCSI Director of Operations, the new system "allows managers to push a button and get automatic information" that allows them to more evenly distribute extra hours across their aides. Previously, considerable time was expended in manually searching the paper roster for available workers, and as CCSI offices grew to 130 to 200 aides, manual rosters became a "paperwork nightmare."

The electronic roster program maintains up-to-the-minute information on schedules. Office administrators can systematically search for available workers. The program also enables Perm Subs to call in to find out their assignments for the day. When call-outs are high and all Perm Subs are occupied (for example, during bad weather), the electronic roster program enables schedulers to quickly determine which workers are able to pick up additional hours without incurring overtime.

**Office Administrator.** In addition to the electronic roster, CCSI created an administrator position at each of its 14 field offices. Administrators work side by side with at least one service coordinator (*i.e.*, scheduler) and are responsible for tracking and managing overtime, and monitoring the difference between service hours authorized and actually delivered.<sup>7</sup> Prior to the creation of the administrator position, no staff member had direct responsibility for tracking overtime.

**Scheduling Guidelines Regarding Continuity of Care.** CCSI informs its clients that, since it does not receive reimbursement from the CCP program for overtime pay, it may assign a second worker to a client in order to ensure that the assigned aides do not work more than 40 hours in a given week. Coordinating consistent care can become challenging when a

client who already has a caregiver is allocated additional hours by CCP that would push the aide into overtime given her other assignments. In these cases, aides are asked to choose whether they would like to work the additional hours for their client, giving up other hours, or whether they prefer that the new hours be assigned to a different worker. In other words, the aide decides how to allocate her time.

## **Case Study II: Addus HealthCare, Inc.**

Addus HealthCare is a comprehensive provider of a broad range of social and medical services in the home. Addus services include personal care and assistance with activities of daily living, skilled nursing and rehabilitative therapies, and adult day care. Addus consumers are individuals with special needs who are at risk of hospitalization or institutionalization, such as elders and persons who are chronically ill or disabled. In addition, Addus also provides services to Medicare-eligible beneficiaries who are in need of recuperative care services following an acute medical condition. In 2010, Addus had over 13,000 employees and provided in-home services in 129 locations across 19 states to approximately 27,000 consumers per week.<sup>8</sup>

Addus' corporate headquarters are based in Palatine, Illinois. The company has been in operation since 1979 and it has been publicly traded since 2009. Addus is one of the five largest multi-site, multi-state providers of personal care services in the country as measured by revenue and units (or hours) served. In 2010, the company's net revenues totaled \$272 million.

The company has two primary divisions: 1) Home & Community and 2) Home Health. The Home & Community segment provides social and personal care services (81 percent of 2010 revenues) and the Home Health segment provides skilled medical services (19 percent of 2010 revenues). In nine states, Addus provides both personal care and home health services, using an integrated service model. In ten other states, it provides non-medical services exclusively.

Addus' payers include federal, state and local governmental agencies, the Veterans Health Administration, commercial insurers, and individuals. In 2010, 94 percent of the company's non-medical home care business came from state, local, or other governmental programs. Private duty work made up an additional 5 percent of revenues. On the home health side, Medicare made up 64 percent of revenues.

Addus' operations are concentrated in Illinois and California. In 2010, 52 percent of net revenues came from Illinois and 13 percent from California. In Illinois, the largest payer is the Illinois Department on Aging, accounting for 38 percent of net revenues. An additional 14 percent of net revenues came from Washington and Nevada.

### **Clients**

The vast majority of Addus' clients are "low hour" cases. Low hours are typical for Medicaid-funded services, as most Medicaid programs do not authorize high-hour care for recipients of in-home services and supports. Virtually all (98 to 99 percent) of

Addus' clients receive less than 40 hours of care per week, and the average Addus client receives 15 hours of care per week.

### **Workforce**

Approximately 90 percent of Addus' total workforce consists of home care aides, or about 12,000 workers. Addus' workers are represented by unions in 11 of the 19 states in which the company operates. Roughly two-thirds of the company's workforce is covered by collective bargaining agreements.

Home care aide jobs at Addus are largely structured as part-time jobs. About 80 percent of aides work part-time, with the average home care worker at Addus working 23 hours per week. Nearly a third (30 percent) of the company's caregivers work more than 32 hours per week. Aides at Addus serve an average of two to three clients in a day.

Addus operates in seven states that extend minimum wage and overtime protection to agency-employed home care workers (CA, IL, MT, NV, NJ, PA, and WA). But it also operates in another 12 states that follow the federal government in allowing home care companies to use the companionship services exemption, thereby relieving them of the requirement to pay at least the federal minimum wage and to compensate overtime hours at time and a half of the aides' base wage (AL, AR, DE, GA, ID, IN, MS, MO, NM, NC, OR, and SC). In each of these 12 states, however, Addus *chooses* to pay overtime and travel time to its caregivers regardless of state law.

Addus management believes a careful reading of the federal Fair Labor Standards Act and the companionship services exemption *requires* the company to pay its workers for overtime incurred in all of the states in which it operates. According to Darby Anderson, Divisional Vice President for Home and Community Services, "our read of the companionship exemption is that the work must be to primarily provide companionship [to qualify for the exemption], rather than personal care, and the majority of the work that our aides do is personal care." Additionally, Anderson notes, state governments do not pay for companionship as the primary service of a consumer's care plan. Therefore, it would be inconsistent for Addus to categorize the aide delivering services under the authorized care plan as a "companion."

### **Overtime challenges and solutions**

Given its large size and corporate policy of paying overtime at time a half—which, management admits, sometimes puts the company at a competitive disadvantage—Addus has an incentive to keep overtime expenditures as low as possible. As described below, the company manages overtime by both carefully coordinating worker

schedules using electronic timekeeping and balancing aide workloads by splitting high-hour cases among two aides. Addus also monitors time spent traveling between clients in one day to minimize overtime. In 2010, field staff overtime costs accounted for 0.8 percent of revenue or 1.4 percent of base wages for the company.

**Electronic Timekeeping.** Since 1986, Addus has used scheduling software that allows it to distribute work hours more evenly among staff. Using real-time data, schedulers keep overtime to low levels by not assigning make-up cases or replacement hours to aides that would be pushed into overtime in a given pay period.

**Coordinating Schedules of Aides Assigned to High-Hour Cases.** Addus also controls overtime costs by coordinating schedules. High-hour cases—*i.e.*, those requiring more than 40 hours of care per week—are assigned to two aides. If a case calls for care seven days a week, one aide typically works weekends, and the other works weekdays. Alternatively, one aide might work three days of the week, and the other aide the remaining four days.

There is no set formula for splitting high-hour cases, and every effort is made to meet the preferences of the client and the aides. When clients express reluctance at having more than one aide assigned to them, service coordinators explain that aides who work more than 40 hours are more likely to be fatigued and therefore less effective. In addition, coordinators stress that it's in the interest of the client to have more than one aide with whom they are familiar, in the event that the aide is ill, is out on vacation, or leaves her job. Finally, clients are reminded that a 40-hour work week is the definition of a "fair" work week across most industries and that Addus endeavors to create fair jobs for its employees.

**Monitoring Travel Time.** Addus reimburses aides for their travel time between clients. As a result, the company makes scheduling decisions by factoring in information about travel distance between locations and resulting driving time between clients as well as data about workers' hours. To the extent possible, Addus tries to schedule clients in close proximity to one another since time spent driving can push a worker's hours into overtime.

## Case Study III: Cooperative Home Care Associates

Cooperative Home Care Associates (CHCA) is a worker-owned for-profit home care agency, located in the South Bronx in New York City. Founded in 1985 to provide high-quality home care to clients by providing quality jobs for home care aides, CHCA provides in-home services to 1,620 elders and people with disabilities on a weekly basis and employs nearly 2,000 aides. CHCA also runs an employer-based training program that trains hundreds of unemployed women each year. Like the two other companies profiled in this brief, the CHCA workforce is unionized and is represented by SEIU.

CHCA contracts with New York agencies to provide home care services for individuals who are elderly, chronically ill, or living with disabilities. Its largest contracts are with the Visiting Nurse Service of New York, Independence Care System (ICS),<sup>9</sup> and the New York City Human Resources Administration. CHCA's net revenues totaled \$48 million in 2011.

### Clients

CHCA's clients live in New York City, and nearly all receive Medicaid-funded personal and home care services. Historically, New York City has allowed a significantly higher proportion of "high hour" cases under its publicly financed home care programs compared to other jurisdictions, but this is changing.<sup>10</sup>

On average, CHCA clients require six hours of care per day. An estimated 12 percent of CHCA's clients require more than 10 hours of service per day. Many of these are Priority 1 or 2 clients, meaning that either 24 hours of care or up to 12 hours per visit are required *and* the client does not have family members or significant others who are available, willing, and capable of providing essential care.

### Workforce

CHCA has a "quality care through quality jobs" mission. Unlike most home care employers, it structures its jobs as full-time employment and emphasizes employment practices such as profit sharing, required in-depth training,<sup>11</sup> employer-provided health insurance, and paid leave and sick days. Consistent with its emphasis on quality jobs and creating a culture of retention, CHCA chooses to pay its aides overtime at 150 percent of their *hourly* wages, whereas New York State law requires overtime paid at the reduced rate of 150 percent of the *minimum* wage.<sup>12</sup>

One of the most important payoffs of these positive workforce practices, and the steadier, more predictable income they create, is the company's relatively low annual



turnover rate of 20 to 25 percent. This compares to an annual turnover rate for the industry of 40 to 60 percent.

Over 20 years ago, CHCA implemented an innovative guaranteed hours program in order to provide its workers with reliable hours and stable, predictable income.<sup>13</sup> This program offers employees 30 guaranteed hours of work each week, provided they meet certain requirements, including a commitment to accept all assignments<sup>14</sup> and to be on call every other weekend.<sup>15</sup> Aides can participate after they log 5,460 hours of work, the equivalent of three years of full-time (35 hours per week) employment. Workers who meet the requirements of the guaranteed hours program are paid for 30 hours a week, even if the total number of hours actually worked in a particular week is less. Currently, about 63 percent of CHCA's workforce is enrolled in the guaranteed hours program.

### **Overtime challenges and solutions**

Compared to CCSI and Addus, CHCA faces greater pressures related to overtime. First, eight hours of care seven days a week historically has been common practice for publicly funded home care services in New York City. As a result, in order to maintain consistent caregivers for its clients, it is not uncommon for CHCA aides to work between 40 and 56 hours per week. In 2011, for example, 35 percent of the company's aides worked between 40 and 56 hours a week. Another 37 percent worked between 30 to 40 hours weekly. Furthermore, about half of the company's cases require services on the weekend.

A second factor underscoring the importance of managing overtime is that CHCA supports a full-time work model through its guaranteed work program. As a result, a sizeable portion of the company's workforce is eligible to be compensated for 30 hours of work per week. Finally, because of the priority that CHCA places on providing quality jobs, roughly 80 percent of its revenues are devoted to wages and benefits for staff, paying workers the highest possible wages, providing good benefits, and paying overtime at a higher rate than its competitors. This leaves a margin of 20 cents on the dollar to run the business, so any increase in overtime costs stresses operating expenses.

As a result of these pressures, CHCA's President, Michael Elsas, emphasizes that "CHCA has always strived to control overtime costs because otherwise we would go out of business." To manage overtime, CHCA has developed scheduling guidelines for high-hour cases and uses an electronic timekeeping system along with weekly scorecard reporting that allows it to evaluate overtime hours and costs. Together, these innovations allow the company to proactively "spread the work" among as many caregivers as possible, while also maintaining its standards for continuity of care for its clients.

According to Elsas, proactively managing the company's workforce in order to control overtime costs requires focused attention to several factors, which in turn requires easy access to good data on the company's workforce. Through the following measures, CHCA has successfully maintained overtime at less than 10 percent of total annual hours despite serving a caseload that contains a significant number of high-hour cases:

**Scheduling Guidelines.** CHCA has pioneered scheduling guidelines that enable the company to manage overtime for "high-hour" cases. These guidelines have become an industry model in New York City, and have been adopted by the Visiting Nurse Service of New York—the largest home care company in the country. Cases requiring more than 10 hours a day, 7 days a week are split between two aides, each working a 3.5 day shift as well as one weekend day. One shift runs from Sunday to Wednesday, and the other from Wednesday to Saturday. On Wednesday, as one shift ends and another begins, aides have a scheduled "cross-over" where they exchange helpful information about the client.

Live-in cases, for which an aide is allowed sleep time, are split between two aides, each working 3.5 days per week. Currently these cases receive a flat daily rate, as determined by industry practice. Cases requiring 24-hours-a-day service, 7 days a week (with no sleep time) are split among four workers. The daytime aides each work 12 hour shifts for 3.5 days, while the night shift aides each work either 3 or 4 days.

**Electronic Timekeeping and Scheduling.** In 2009, CHCA made a strategic investment in two software systems that, together, enable it to track the hours of its large workforce.

The first system tracks each aide's time and attendance with her client via company-issued GPS-tracked cell phones. Using her phone, the aide "checks in" at the beginning of a shift at her client's residence and "checks out" at the end of the shift. She also enters information about the tasks performed. Throughout the day, especially following the most frequent start-times, the company receives reports that enable service coordinators to see which aides have not checked in. At this point, the company sends replacement aides to those clients with Priority 1 (high acuity) status.

The second software system interfaces with the cell-phone tracking system, and is used by coordinators to schedule aides, assign replacement aides if necessary, and monitor the number of aides on assignments and hours worked.

**Weekly Scorecard.** CHCA's management team developed a comprehensive scorecard tool that it uses to track hours worked and overtime on a weekly basis. Automatically generated by the scheduling system, the scorecard presents information on indicators

such as: weekly hours worked by contractor, average hours worked per aide, active aides as a percent of available aides, and the number of overtime hours between 40 and 56 hours, and over 56. The scorecard benchmarks current weekly performance against the corresponding weekly performance in each of the prior two years, and allows managers to assess, for example, whether current overtime levels indicate that the company should expand its workforce or whether an emergency event such as a hurricane had a significant impact on overtime.

## Analysis

The companies profiled in this report have devised systems that enable them to keep overtime costs to a minimum while better managing their workers' hours and spreading work hours more evenly. And each of these employers pays overtime at time and a half even in states that do not require it.

Of note, the three profiled companies represent a range of characteristics: one is a large, publicly traded company with offices in 19 states and over 13,000 employees; another operates in the central region of one large state and employs 1,700 aides; and the third operates solely in New York City and employs nearly 2,000 aides. One of these providers (CHCA) provides full-time employment to its aides whereas the other two employers (CCSI and Addus) hire their aides largely on a part-time basis. Finally, the caseloads of two of the companies are dominated by low-hour cases while the third company, CHCA, has a relatively higher number of high-hour cases.

While differing in their case loads, service areas, and business models, the three companies have implemented remarkably similar staffing and scheduling practices to manage overtime. Notable among these practices are:

- Electronic timekeeping and scheduling that enable “real-time” monitoring of aide availability, workloads, and overtime.
- Designation of new aide positions specifically designed to pick up incidental hours due to call-outs, worker absences, or emergencies.
- Proactive scheduling to spread work hours more evenly across the agency's available aides.
- Splitting high-hour cases into multiple shifts shared by two or three aides.

All three companies have moved from a paper-based tracking system to electronic timekeeping and scheduling solutions that allow for more accurate tracking of employee time and for making staffing adjustments when necessary. Instead of relying on outdated paper schedules, these employers distribute replacement hours (generated from call-outs or no-shows) based on up-to-the-minute information regarding which workers can take on extra hours without incurring overtime.

In addition, both CHCA and CCSI have created positions that are specifically designed to fill replacement hours—the Perm Sub position at CCSI and aides participating in

CHCA's guaranteed hours program, which blends regular hours with replacement and on-call hours.

When high-hour cases arise, as in the case at CHCA and sometimes Addus, scheduling guidelines are used to divide these cases into more than one shift so that two or more aides work the case. Both companies strive to maintain continuity of care and believe that provider continuity that results in overtime work has drawbacks—including aide fatigue and burn-out—that can affect the quality of care received by the client.

Proactive scheduling and the use of real-time data has enabled all three employers to distribute work hours more efficiently and equitably—whether they are scheduled hours or incidental or replacement hours. As the “before and after” experience of Community Care Systems, Inc., indicates, more efficient scheduling can result in significant reductions in overtime costs.

## Conclusion

Critics of the Department of Labor’s proposed revisions to the companionship services exemption argue that the reform will significantly raise the cost of overtime, thereby raising the cost of non-medical in-home services and supports to unaffordable levels. This argument assumes that employers will make no adjustments to their staffing and scheduling practices and instead will choose to simply pay overtime premiums for all hours worked in excess of 40 hours. The three company case studies profiled in this report show that this assumption is unrealistic—employers in a highly competitive business environment with players vying for market share and business efficiencies are unlikely to exhibit such static and uncompetitive behavior.

If adopted, the revised companionship services regulations would create an incentive for home care agencies to manage overtime. As the Department of Labor notes, “[c]urrently, agencies have little incentive to manage overtime because hours worked in excess of 40 per week are paid at the same rate as hours less than 40 per week.”<sup>16</sup> Exactly how home care agencies will respond is of course not known.

However, the experiences of CCSI, Addus, and CHCA offer strong evidence that—in 20 states around the country—it is possible to grow and run successful home care agencies that have reputations for high-quality care and pay overtime to their aides even in states that do not require it. By spreading hours more evenly across their workers, these companies manage their overtime so that it does not become a costly business expense that undermines business profitability.

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<sup>1</sup> PHI (February 2012) *Home Care Jobs: The Straight Facts on Hours Worked, Value the Care #6*, available at: <http://www.PHInational.org/fairpay>. Also see in-depth information presented in D. Seavey and A. Marquand (December 2011) *Caring in America*, Bronx, NY: Paraprofessional Healthcare Institute, available at: <http://www.phinational.org/homecarefacts>.

<sup>2</sup> *Ibid.* More than half of personal care aides report working part-time; of those, 40 percent would like to work more hours and are therefore involuntary part-time workers.

<sup>3</sup> IL Older Adult Services Advisory Committee, Finance Workgroup (June 2007) *How Long-Term Care Services for Seniors Are Currently Financed in Illinois*, IL Department on Aging. Available at: <http://www.state.il.us/aging/1athome/oasa/resources/finance.pdf>

<sup>4</sup> A Service Cost Maximum is defined for a specific interval level of unmet need for assistance in performing an activity, as defined by the Definition of Need (DON) scale.

<sup>5</sup> Health and Medicine Policy Research Group, Center for Long-Term Care Reform and Center for Research on Health and Aging, University of Illinois at Chicago (2009) *Determination of Need, Service Cost Maximum Study*, Prepared for IL Department of Aging, Table 12, p. 32. Available at: <http://www.state.il.us/aging/1athome/oasa/resources/DON.pdf>.

<sup>6</sup> 820 Ill. Comp. Stat. § 105/3(d) and Ill. Adm. Code § 210.110. Note that an exemption may apply for home care workers employed solely by private households.

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<sup>7</sup> The electronic roster system allows administrators to generate bi-monthly “60 percent reports” that alert the office as to whether a client has received 60 percent or less of their approved monthly services.

<sup>8</sup> Addus Homecare Corporation, *2010 Annual Report*, Form 10-K, U.S. Securities and Exchange Commission, Palatine, IL: Addus.

<sup>9</sup> ICS is a nonprofit Medicaid managed long-term care program based in the New York City area that currently coordinates services for 1,800 individuals living with physical disabilities.

<sup>10</sup> Starting in 2012, certain individuals covered by Medicaid—specifically, those 21 years old or older, who need 120 days or more of home care services per year—will be *required* to enroll in a Managed Long-Term Care (MLTC) plan or care coordination model. This will provide the state with a more streamlined and cost-effective system to care for its most vulnerable citizens, and one which is expected to require fewer high-hour cases. Over the next three years, once New York receives approval from the federal government, at least 70,000 Medicaid beneficiaries in New York City will transition from fee-for-service plans into MLTC plans; also, new entrants into the system will be enrolled in MLTC plans.

<sup>11</sup> CHCA only employs aides who have completed the company’s own five-week training program, a program enabled in part by philanthropic funding.

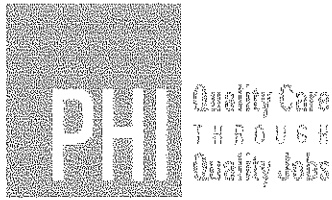
<sup>12</sup> New York State law extends minimum wage coverage for all companions as defined by FLSA. Aides employed by third parties (*e.g.*, home care agencies) must also receive overtime but at the reduced rate of 150 percent of the *minimum wage*, rather than their regular rate of pay. See: NY Labor Law § 651 (5); N.Y. Labor Law §§ 2(16), 170; N.Y. Comp. Codes R. & Regs. tit. 12, § 142\_2.2.

<sup>13</sup> For more information on CHCA’s Guaranteed Hours Program, see: PHI (2007) *The Guaranteed Hours Program*, Workforce Strategies No. 4, Bronx, NY: Paraprofessional Healthcare Institute. Available at: <http://www.directcareclearinghouse.org/download/WorkforceStrategiesNo4.pdf>

<sup>14</sup> Assignments can include: permanent case assignments, replacement hours covering call-outs, and assignments from the weekday on-call worker pool (for the latter, aides must phone the office between 7:45 a.m. and 8:15 a.m. daily and be ready to leave immediately for a client’s home).

<sup>15</sup> In general, aides at CHCA are expected to work every other weekend.

<sup>16</sup> U.S. Department of Labor, Wage and Hour Division, *Economic Impact Analysis, Application of the Fair Labor Standards Act to Domestic Services*, December 2011, p. 55. Available at: <http://www.dol.gov/whd/flsa/EconomicAnalysis.pdf>.



## Private-Duty Industry Association Studies of DOL’s Proposal to Revise FLSA’s Companionship Exemption: What Do They Tell Us?

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During the past two months, private duty trade associations have produced three different studies designed to bolster their position that narrowing the companionship services exemption of the Fair Labor Standards Act would have serious negative consequences for home care companies, clients, and workers. Each of these studies presents serious flaws. This document describes the three studies—two surveys and an economic analysis—and provides an assessment of their contributions to the national conversation currently underway regarding the U.S. Department of Labor’s proposal to revise the companionship services exemption.

### Survey Analyses of Private-Duty and Franchise Trade Associations

Two of the three reports present results from surveys of trade associations representing for-profit home care companies that deliver non-medical services and supports. In December 2011, the **Private Duty Homecare Association (PDHA)**, an affiliate of the National Association for Homecare and Hospice, and the **National Private Duty Association (NPDA)** sponsored a survey of their members to determine the potential impacts of the U.S. Department of Labor proposal to modify the companionship services and live-in exemptions (“PDHA/NPDA survey”). **Home Care Pulse**, a consulting firm closely affiliated with these associations, administered the survey and collected the response data. In late January 2012, a study was released—*Companionship Services Exemption Survey*<sup>1</sup>—using the survey findings to underscore the position that

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<sup>1</sup> Home Care Pulse (January 2012) *Companionship Services Exemption Survey*, Sponsored by the Private Duty Homecare Association and the National Private Duty Association. Available at: <http://www.private-duty-benchmarking.com/companionship-exemption-2012>.



eliminating the overtime exemption would have serious negative consequences for workers, clients/patients, and home care companies.

The second study surveyed franchise businesses that provide home care services (“franchise survey”). The survey was conducted by **IHS Global Insight** and paid for by the **International Franchise Association (IFA)**. The resulting report, **Economic Impact of Eliminating the FLSA Exemption for Companionship Services**, was released on February 21, 2012.<sup>2</sup> IFA’s mission is to protect, enhance and promote franchising by, among other things, preserving and enhancing the legislative and regulatory climate for the growth of franchising.<sup>3</sup> IFA’s attention to the proposed companionship services regulatory changes is not surprising, given that non-medical home care franchising, with gross margins on the order of 30 to 40 percent, has zoomed to the top of the lists of most profitable and fastest-growing franchises in the United States.<sup>4</sup>

### **Flawed sampling methodology**

Both surveys were limited to the associations’ members, and within that universe, respondents were self-selecting. Both Home Care Pulse and IHS Global Insight fielded what is known as a non-probability convenience sample. This kind of sample is not nationally representative or statistically valid, and there is no statistical basis for extrapolating these survey findings to the entire home care industry or even to the private-duty segment of the industry. At best, the sample can be considered representative of the companies that actually completed the survey.

IFA selected nine of its 27 franchise home care companies to participate in the survey.<sup>5</sup> These nine companies in turn represent 3,259 franchisees of which only 17 percent actually participated in the survey, for a total of 554 franchisees—a very poor response rate. IHS Global Insight, the firm responsible for fielding the survey and writing the final report, acknowledges the probable bias in its convenience sample when it notes that “[t]he sample of businesses that agreed to participate in our survey may also

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<sup>2</sup> IHS Global Insight (February 2012) *Economic Impact of Eliminating the FLSA Exemption for Companionship Services*, Prepared for the International Franchise Association, Washington, DC: IHS, p. 2. Available at: [http://www.franchise.org/uploadedFiles/Franchise\\_Industry/Resources/Education\\_Foundation/IHSGlobalInsightCompanionCareReport.pdf](http://www.franchise.org/uploadedFiles/Franchise_Industry/Resources/Education_Foundation/IHSGlobalInsightCompanionCareReport.pdf)

<sup>3</sup> See <http://www.franchise.org>

<sup>4</sup> See Franchise Business Review (December 2010) *Senior Care and Home Healthcare Franchises*, Special Report. Available at: [http://www.franchisebusinessreview.com/content/files/FBR\\_Senior\\_Care\\_Report2010.pdf](http://www.franchisebusinessreview.com/content/files/FBR_Senior_Care_Report2010.pdf). Also PHI (January 2012) *Value the Care!*, No. 5. Available at: <http://phinational.org/policy/wp-content/uploads/phi-value-the-care-05.pdf>

<sup>5</sup> According to the franchise report, “[t]here are a total of 27 companies (franchisors) in the companion care industry, which have an estimated 4,193 franchisees.” See IHS Global Insight, *op. cit.*, p. 2.

include a disproportionate share of businesses that expect to be most significantly affected.”<sup>6</sup>

According to the PDHA/NPDA report, 1,428 home care agencies “participated in the survey” yet the report does not indicate the size of the total universe of private-duty home care companies that could have participated. As a result, the response rate is unknown, leaving in question the sample’s validity even as a convenience sample.<sup>7</sup>

### **Problematic survey instruments**

The complete PDHA/NPDA survey instrument was publicly available at the website of the National Association of Home Care and Hospice during part of December 2012. A review of this survey makes clear that it was not designed to obtain data on the incidence and extent of overtime in the respondent companies nor any information about the home care workers they employ. Instead, it largely reflects an opinion polling effort that relied heavily on leading questions.

IHS Global’s final report did not include a copy of the survey that was fielded to the franchisees of the nine selected franchise brands.<sup>8</sup> Therefore, the content of the actual survey can only be inferred from the findings found in the final report. These findings suggest that the franchise survey did include a number of questions that gathered basic quantitative information about the respondent companies including: total revenue (categorical); number of employees (support staff and aides); average hourly wage rate of aides; information on the incidence and extent of overtime worked by aides; information on the type of care required by customers;<sup>9</sup> and whether travel time is paid

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<sup>6</sup> IHS Global Insight, *op. cit.*, p. 15.

<sup>7</sup> A more technical problem with the PDHA/NPDA survey (and perhaps also the franchise survey — which is not available for public review) is that it should have used a stratified sampling approach since one of the goals of this survey was to be able to compare three groups of respondents: companies already obligated to pay overtime under state law, those who voluntarily pay overtime, and those who are not already obligated to pay overtime. To reliably achieve these comparisons, the survey instrument should have been designed to divide the respondents into three separate groups as they entered the survey. Instead, the identical instrument was fielded to all respondents and several of the questions have extremely low face validity depending on which of the three groups the respondent answering belonged to (*e.g.*, the question “Do you expect that paying overtime wages would impact your business costs?” is likely to be a confusing question for a respondent who is already paying overtime wages).

<sup>8</sup> The final report states that “[s]urvey data were collected during the first two weeks of February 2012 using an on-line survey process.” IHS Global Insight, *op. cit.*, p. 4.

<sup>9</sup> Type of care was presented in three categories: a) receive live-in 24-hour services; b) do not receive live-in service but require care more than 40 hours per week; and c) require 40 hours or less care per week. IHS Global Insight, *op. cit.*, Table 9.

for between job sites. However, it is unclear whether all these questions were asked of all respondents.<sup>10</sup>

While the franchise survey attempted to gather far more quantitative data than the PDHA/NPHA survey, it left out questions that, if included, would have allowed for a much fuller picture of current overtime hours and staffing capacity at the respondent companies. For example, assessing the importance of overtime hours to a company's financial situation requires information about overtime hours as a percent of total service hours and/or as a percent of the total wage bill. To understand staffing capacity, data is needed on the average number of hours worked per week by aides, the percentages of aides who work part-time and full-time, and also aide turnover.

Both surveys emphasize "loaded" opinion questions—that is, questions phrased either to lead the respondent to answer "yes" to a particular question or that lead the respondent to a confined set of responses that exclude or omit reasonable alternatives. Here are some examples from the PDHA/NPDA survey:

- In response to the question "What impact on the communities you serve would you expect from paying overtime wages for companionship services?" the respondent could choose: "fewer clients/patients able to afford care," "less work available for employees who provide companionship services," "no impact," or "other." Notice that these possible responses omit any positive impacts of narrowing the companionship exemption such as "a larger and more stable home care workforce."
- In response to the question "What business adjustments have you made in response to paying overtime wages to employees who provide companionship services?" possible responses are confined to a set of negative consequences such as increased billing rates to clients and scaling back companionship services, excluding the possibility of an adjustment that redistributed work hours to part-time workers who desire more hours.

### **Misleading and incomplete survey analysis**

**Qualitative Findings.** Both reports handpick and highlight responses that align with the associations' predetermined message that the revisions proposed by DOL will increase business costs, raise the fees charged to clients, and thereby lead clients to seek institutional care or "underground" providers. This allows for misleading and alarmist conclusions to be drawn such as that businesses will be forced to raise client fees by 20

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<sup>10</sup> At least one question appears to have been asked only of respondents who currently pay a time-and-half premium for overtime work (a question on hours of overtime worked). IHS Global Insight, *op. cit.*, p. 12.

percent or more or that 90 percent of business owners say that higher fees will cause some of their clients to seek care from “underground” caregivers or be forced into institutions.

What’s most misleading about these inferences is that they are derived from *ceteris paribus* responses (*i.e.*, all other things being equal). That is, they indicate what companies say would happen *before* they actually adjust to the new overtime or travel time incentives. The authors of the franchise report rightly note this important nuance when they write: “[t]he company responses we received may reflect the impact of the new proposed regulations before the agencies take action to reduce costs.”<sup>11</sup>

Here’s an example from the PDHA/NPDA report. The report concludes that: “[o]ver 90% of all agencies surveyed reported that paying overtime wages increases or is expected to increase business costs” (p. 18).<sup>12</sup> At face value, this finding seems obvious and self-evident: if the price of an input (*e.g.*, labor) increases, then all other things equal, business costs will go up. The survey could have as well asked: Do you expect that paying higher postage costs would impact your business costs? A critical area that the two survey reports unfortunately don’t explore is the capacity that home care companies might have for minimizing the impact of an increase in overtime costs by better managing staffing.<sup>13</sup>

A further problem with the PDHA/NPDA analysis is that it often conflates responses from agencies already paying overtime wages with those that are not, creating misleading statements. In one of the few instances where the report *does* break out the differences between the responses of agencies paying overtime and those that are not, the results are *dramatically* different but yet go unexplained. For instance, when asked how much of an impact paying overtime wages would have on business costs, 76.2 percent of agencies not already paying overtime reported that they expected a significant cost. The actual experiences of the agencies that already pay overtime wages was markedly different, with only 34 - 40 percent reporting significant impact. This discontinuity across respondent subgroups held for several other questions, with the “fear” of impact of the proposed changes being nearly twice as significant as the actual

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<sup>11</sup> IHS Global Insight, *op. cit.*, p. 15.

<sup>12</sup> Note: To construct this statistic, the authors of the report first add up responses across the three possible ranges—minimal, moderate, and significant increase. So even companies that reported that paying overtime wages would only minimally increase their business costs are lumped into the aggregate statistic, rendering it essentially meaningless.

<sup>13</sup> D. Seavey and A. Olins (2012) *Can Home Care Companies Manage Overtime Hours? Three Successful Models*, Bronx, NY: PHI. Available at: <http://www.directcareclearinghouse.org/download/overtime-casestudies-20120209.pdf>

experiences of agencies already paying additional wages for overtime hours. The report, however, does not explain this phenomenon.

The qualitative findings of the franchise study are difficult to follow because they don't make sense when considered together. For example, the study reports that 75 percent of respondents say they will increase their fees if the proposed DOL rules are adopted, with an industry-wide average expected fee increase of 20 percent. However, the study also reports that 95 percent of respondents operating in states where there are no overtime regulations say they would eliminate all scheduled overtime hours and 50 percent of respondents state that it was very likely that they would hire additional aides. If overtime hours are eliminated and/or more aides are hired, then one would presume that the need for fee increases would be obviated. These inconsistent and contradictory findings raise serious questions about the design of the survey effort itself.

**Quantitative Findings.** While the PDHA/NPDA survey did not include many quantitative questions, the survey report neglects to report on some of the numbers questions that were found in the survey. For example, survey respondents were asked the following three questions but the report does not mention them:

- What percentage of your workforce provides companionship services?
- What percentage of your employees that provide companionship services provide live-in services?
- What percentage of your employees who provide companionship services work overtime?

The franchise study tells us that respondent companies report that 27 percent of their aides "usually work more than 40 hours per week" with average overtime worked of 8.2 hours per week.<sup>14</sup> However, respondent companies from states that don't require minimum wage and overtime protection report lower overtime hours per week (6.8) than companies in states that do require these protections (9.1). This curious anomaly is not addressed in the report, and these findings on overtime are called into further question by this statement in the report: "the question on hours of overtime worked in our survey was asked only of respondents who currently pay a time-and-a-half premium for overtime work."<sup>15</sup>

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<sup>14</sup> IHS Global Insight, *op. cit.*, Table 11.

<sup>15</sup> IHS Global Insight, *op. cit.*, p. 12.

In any case, the franchise report doesn't provide the findings needed to assess the financial implications of current levels of overtime worked in respondent companies. As noted above, to do that requires information on average hours worked per week by aides, overtime hours as a proportion of total hours, and information about the percentile distribution of hours worked by aides (part-time, full-time, etc.). It would also be important to know what proportion of the overtime hours were for scheduled overtime as opposed to incidental overtime.

## **Economic Analysis by Navigant Economics**

The Navigant Economics study is a different kettle of fish from the other two studies: it takes an unabashed theoretical rather than applied approach. Paid for by the same private-duty associations that financed the first survey, this study was conducted by two economists at Navigant Economics who are newcomers to the field of home care labor market analysis.<sup>16</sup> The main emphasis of the study is to underscore the data limitations of the economic analysis provided by the Department of Labor as part of the Notice of Proposed Rule Making – limitations that DOL fully notes in its own report. It should be remembered that the DOL analysis confined its data sources to publicly available, national representative, and statistically valid data sets.

The Navigant analysis asserts that the costs of the proposed regulations would be “substantial” and that the proposed regulations “would likely create substantial disruptions in the market for home health care.”<sup>17</sup> But for all its criticisms of the DOL analysis, it does not provide its own estimate of the costs.

Furthermore, the Navigant economists fail to build into their methodological critique any provision for addressing two real-world challenges confronting any serious attempt to address the likely costs of the proposed regulatory revisions: a) allowing for the differential costs of alternative adjustment scenarios for home care companies since total estimated transfers are in large part a function of the response of employers to the regulatory changes, and b) parsing out the adjustment costs for companies in states that do and do not already extend wage and hour protections to home care workers. The DOL analysis addressed the former by considering three scenarios of possible market

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<sup>16</sup> J.A. Eisenach and K.W. Caves (March 2012) *Estimating the Economic Impact of Repealing the FLSA Companion Care Exemption*, Washington, DC: Navigant Economics. Abstract available at: <http://ssrn.com/abstract=2017109>.

<sup>17</sup> Eisenach and Caves, *op. cit.*, p. 52.

response to the requirement to pay overtime hours at the time-and-a-half rate.<sup>18</sup> It addressed the latter by distinguishing between three groups of states: states that do not include home care aides in their minimum wage and overtime provisions; states that extend both minimum wage and overtime coverage; and finally states that extend minimum wage but not overtime coverage.

The study's most self-promoted achievement is an estimation of the decrease in demand for "companion care labor" caused by an increase in wages, known in economic theory as the "elasticity of demand." Whether or not Navigant has produced a superior elasticity to the one used by the DOL is a subject for economists to consider and discuss.<sup>19</sup> However, the Navigant report arguably overemphasizes the role of this elasticity in assessing the impact of proposed regulations by failing to acknowledge that the costs of the regulatory change will be driven more by how those agencies not already extending overtime protections to their aides respond to new payment requirements. As DOL notes, "those employers who adjust schedules and redistribute hours can be expected to decrease overtime costs significantly."<sup>20</sup>

Probably the most bizarre inference made in the Navigant study is that, since millions of employees, such as administrators, fishermen, movie theatre employees, and criminal investigators, are also exempt from minimum wage and overtime protection, continuing to exempt home care workers shouldn't be regarded as unusual or aberrant. What the report fails to point out is that the vast majority of occupations that are exempt from FLSA fall under the "executive," "administrative" and "professional" employee exemptions. Of these workers, those classified by the SOC Code for Management Occupations alone constitute more than 6 million workers, with mean annual salaries of more than \$105,000.<sup>21</sup> These professional workers have very little in

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<sup>18</sup> The three scenarios that DOL considered are: a) firms do not adjust their staffing and the additional overtime is worked and paid; b) firms make a partial adjustment to their staffing and reduce overtime by 50 percent; and c) firms adjust their staffing so no additional overtime is worked and paid.

<sup>19</sup> It is likely that the price elasticity of demand for home care purchased out-of-pocket is different than that for services purchased through public programs. The Navigant report discusses this possibility but then estimates an overall labor demand function using state expenditures on Medicaid home health as a proxy for public spending on personal care services. Since federal regulations require that home health services include a range of services that go far beyond home health aide services—such as nursing, medical supplies, medical equipment, and appliances suitable for use in the home, it may be that other measures of Medicaid spending on personal care services would be better proxies.

<sup>20</sup> U.S. Department of Labor, Wage and Hour Division, Economic Impact Analysis, Application of the Fair Labor Standards Act to Domestic Services, December 2011, p. 100. Available at: <http://www.dol.gov/whd/flsa/EconomicAnalysis.pdf>

<sup>21</sup> Bureau of Labor Statistics, Occupational Employment Survey, May 2010. Employment and mean annual salary figures for SOC Code 11-0000, Management Occupations.

common with home care workers: management occupations usually require a college degree and are paid on a salary basis, as compared to home care occupations, which often allow for less than a high school degree and are paid on an hourly basis, typically at less than \$10 an hour and with few employment benefits.

The other exempt occupations cited in the Navigant report amount to very few workers by comparison: for example, the BLS Occupational and Employment Survey counts only 700 people employed as fishermen in 2010.<sup>22</sup> Most importantly, the attempted conflation of home care workers with other exempt occupations is clearly out of touch with the reality that home care occupations top the list of the country's fastest-growing jobs and constitute one of the largest workforces ever produced by our economy.<sup>23</sup>

## Conclusions

### **1. The three studies provided by trade associations representing private-duty and franchise businesses are advocacy tools, not serious research studies.**

The two survey-based studies unfortunately missed the opportunity they had to provide credible information on the private-duty part of the home care industry and instead relied on flawed survey instruments and very small samples that are biased towards businesses that expect to be most significantly affected. These biased samples are not statistically representative of the part of the industry they allegedly are meant to represent and they are not statistically valid.

While perhaps useful advocacy tools in support of the associations' opposition to the proposed rule, there are serious grounds for questioning the credibility of the two surveys and resulting reports. In particular, three serious problems merit attention: flawed sampling methodology; problematic survey instruments; and misleading and incomplete analyses of the survey results.

### **2. The size of the private duty/franchise segment of the home care industry should be kept in perspective.**

Even if the two surveys were representative of the private duty and franchise segment of the industry, it's important to remember that the home care industry is a wide and broad sector, composed of a number of distinguishable and sometimes overlapping

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<sup>22</sup> Bureau of Labor Statistics, Occupational Employment Survey, May 2010. Employment number for SOC Code: 45-3011, Fishers and Related Fishing Workers.

<sup>23</sup> <http://phinational.org/archives/huge-growth-projected-for-direct-care-occupations-dol-report-shows>



components.<sup>24</sup> According to the **U.S. Bureau of Labor Statistics**, in 2010 there were 55,929 establishments operating in “Services for the Elderly and Persons with Disabilities,” the industry that encompasses the vast majority of home care companies specializing in the provision of non-medical home care services, and **approximately 70 percent of these companies were non-profit organizations.**<sup>25</sup> This means that the for-profit segment of the industry represented by the three trade associations sponsoring the studies constitutes only one component of the overall industry and a minority segment at that.

### **3. The industry association surveys provide considerable unintentional support for DOL’s conclusion of small adjustment costs.**

The most remarkable empirical finding of the two survey-based studies is inadvertent and not mentioned in either report: both surveys report that fully 40 percent of respondents already extend minimum wage and overtime to home care workers. Why? Because the companies are located in states that already extend protections or because they voluntarily elect to meet these basic standards. It’s hard to imagine stronger evidence in support of the Department of Labor’s conclusion that the economic impact on the home care industry of the proposed revisions to the companionship services exemption is likely to be small.

Furthermore, the franchise report, in its summary statistics on **ALL** franchise home care businesses (not just survey respondents), shows that 40 percent this entire segment of the home care sector is already operating in a post-companionship exemption world.

That four in ten franchise businesses and possibly a similar number of non-franchise private duty companies already operate in environments that don’t allow use of the companionship exemption raises the question: If providing these labor protections is so cost-prohibitive to the industry, then how do these businesses continue to operate and even thrive?

Additional findings that provide unintentional support include:

- **No evidence that paying minimum wage will be a burden.** The franchise study reports that the respondent companies pay aides an average wage of \$9.12, well above the federal minimum wage. Additionally, of respondents from states that

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<sup>24</sup> D. Seavey and A. Marquand (December 2011) *Caring in America*, Bronx, NY: Paraprofessional Healthcare Institute, Sections 3 and 4. Available at: <http://phinational.org/policy/guide-to-americas-home-care-workforce/>

<sup>25</sup> Seavey and Marquand, *op. cit.*, pp. 19 and 21.

do not extend minimum wage protection to home care aides, none report paying an average hourly wage that is less than the federal minimum wage.

- **Travel time is already paid by roughly 40 percent of respondents** in states that do not extend wage and hour protection to home care workers.

**4. Two of the studies mislabel the industry, the services it provides, and the workers thereby diminishing the significance of home care work.**

The franchise survey and Navigant report do a tremendous disservice by mislabeling the industry, the work, and the workers as “companion care” industry/work/workers. “Companion care” connotes a buddy/babysitter sitting next to the consumer on the couch, perhaps watching TV. This terminology is doublespeak—it misdirects us from the reality that, *in addition to companionship*, aides must provide *concrete* services—with great skill and competence such as helping their clients get out of bed, dress, and eat. Today’s workers are not “companions,” who sit with elders to provide fellowship and protection. Rather these are skilled caregivers who provide personal care, medical-related assistance, and social supports to millions of elders and people with disabilities who want to live independently.

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**For additional information or questions, please contact Dr. Dorie Seavey at [dseavey@phinational.org](mailto:dseavey@phinational.org) or visit our website, [www.phinational.org/fairpay](http://www.phinational.org/fairpay).**

# Support for Revising the Companionship Exemption Regulations in the Fair Labor Standards Act

Compiled February 25, 2013

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## Stories from Direct Care Workers

### **Ja'Ray Gamble, PENNSYLVANIA**

*Ja'Ray is a home care aide from Trafford, Pennsylvania*

Caregiving is my calling here on earth. I'm a giver. I love this work, and I am absolutely in love with my company: They've helped me a lot. That's my family. But they can't afford to pay me overtime when they don't get reimbursed for overtime pay by the government.

I first heard about being a direct care worker through my mother. She had worked with From The Heart for almost three years until she lost her client, who was very special to her. She is still grieving, but she plans to go back to work soon. She told me she had a surprise for me when I turned 18, and that surprise turned out to be a job interview at From the Heart. March 16, 2009, my interview day, changed me forever in many ways I'm still getting to understand. Being a home care aid has given me the toughness and courage to be the backbone for another person who needed me. This work has taught me how someone with disabilities and other restrictions can cope with their disabilities in order to live properly.

*I am a small man with a very big heart, but I was living in a bad neighborhood, growing up all the wrong ways, just living off of my mother. My job has not only given me the opportunity to change the lives around me for the better, but it has changed mine as well.*

My job has helped me mend other people's heart and help them overcome their fears. I do whatever my consumers need. I work seven days a week, and on an average day, I get to work at 10 a.m.

I'm supposed to be off at 3:30, but I usually stay until 4:30 or 5 because my consumer needs extra help. Just as I'm getting ready to leave, most times he'll ask me to do a store run or find something that needs to be done around the house. There are times when I come into work at 8 a.m. and don't leave until 6 or 7. There are times that I have stayed the night with my consumer to make sure he was okay. When my consumer and I go out on a doctor visit, I usually do about 4 hours of overtime. It's hard to say how much I do on an average week because things change so much from day to day, but there are definitely a lot of weeks when I work a lot more than 40 hours.

I get paid \$10.25 an hour for 38.5 hours a week, which comes to 77 hours every two weeks. After taxes, I take home \$619. I pay \$120 of that into child support for my daughter, so that leaves me with \$500.

I live with my mother, so I contribute to the bills in her house and pay her \$200 rent every month. I also pay for a rental for a bed and a TV, and I have to pay for the cell phone I use to communicate with my scheduler and my consumers. I can't afford a car, so I have to buy a weekly bus pass for \$22.50. When all that is settled, I have a little left to pay for some of my daughter's essentials, like diapers and wipes and formula, though of course I'd like her to have a lot more. I believe that home care aides like me should be paid time and a half for the overtime we put in. I do it because I love my job and my consumers, but I could sure use that extra money.

## **Anonymous, FLORIDA**

*This home care worker chose to remain anonymous for fear of losing her job.*

In order for me to pull my weight, I average 120 to 160 hours every two weeks. My husband loads trucks 40 hours a week. It takes me almost twice as long to earn what he does. I can work in two weeks what some people work in an entire month, because we home care aides don't get paid time and a half for overtime in Florida.

*Your clients feel like part of your family when you spend time with them and love them like I do, but my husband and kids need me too.*

A couple days a week, I work from 8 in the morning until 8 at night. Sometimes I work from 8 at night until 3 in the afternoon. I spend a lot of my days just going from one client to another from early morning to late at night. These days I'm not driving too far between clients, but there were times when I was traveling 30 to 50 miles a day to get from one client to the next. We used to get paid for that travel time and mileage, but now we don't, and gas costs a lot more now than it used to.

When I started for this company about three years ago, I was making \$9.50. Now I earn \$10 an hour. I wouldn't have gotten even those two 25-cent raises if I didn't make myself available 24/7 to make sure my clients get the coverage they need. Sometimes I stay overnight with someone who just needs light care. They call that companion care. When I do that, I just get \$8 an hour.

## **Cara Glenn, PENNSYLVANIA**

*A member of the Pennsylvania Direct Care Workers Association, Clara Glenn has been a home care and home health care aide for more than 30 years. She currently works for two agencies just outside Philadelphia.*

I've been doing home care work for 30-some years, and I love it. I tell everybody I wouldn't trade it for the world. You have to have a heart to do this work. You can't just do it for no reason. You have to be dedicated. I always put God first in my life, and that carries me through.

About 15 years ago, I worked for a home care agency that paid less than minimum wage. The minimum was \$5.15 at the time, and we were making \$4.90. I think that was a reason a lot of the girls left. We stayed as long as we could and then we went on to other places.

*When you're taking care of somebody, you want to do your best and you don't want to leave them, but sometimes you've got to because you need money to survive. You can't escape that. And you need health insurance if you're not on welfare, like some of us are. You need to earn enough to be able to pay for your insurance.*

I stayed because of the clients. I liked them and they liked me. We made our own little family, and that meant more to me than the money. As long as they were getting good care, that was really what mattered to me. Even now, some of their grandchildren send me Christmas cards and birthday cards and when they get married they call me up. They were like family, and I knew they needed help. I'm making \$8.45 an hour now. That's not a lot of money, and I haven't had a raise in two years. I would like to get a raise, Lord knows, but I've worked here for 21 years. I like the people I work with a lot, and I love the people I care for. It's not that easy to go and walk off. I just recently started working for another agency too to make ends meet.

## Anonymous, FLORIDA

*This direct care worker chose to remain anonymous for fear of losing her job.*

Here in Florida, when you work for an agency you don't get time and a half for overtime. Most of the agencies will give you all the time in the world—and you have to take it, if you're not getting overtime and you're only making \$8.25 an hour. You need to book the hours; you don't have much choice. The only time I've gotten time and a half is on a holiday, and that's because they're in a bind and that's the only way they could get someone to cover it.

I made \$8.25 when I first started and worked my way up to \$9 an hour. After taxes, that comes to \$7.50 an hour, for everything I'm doing. I never got any overtime when I worked for agencies, so I had to work 7 days a week, 12 hours a day, just to get by. I was bringing home \$750 a week [before taxes], but was I living? Was I really taking care of anyone?

I got so tired after a while that I had to go to bed for a week. And I didn't get paid anything for that week, of course, so I had to go back to working too much as soon as I could. It's a vicious cycle. I do private duty now because they pay me better. My private-duty clients pay time and a half if I work overtime, but I try not to charge my families too much overtime because I know their resources are limited. And I don't need to put in a lot of overtime because I'm getting paid so much more to begin with.

Being a CNA is a lot of hard work physically. You're transferring patients, giving bed baths, helping people get on and off the commode. When you work that many hours, you get so tired you may not have the strength to do a lot of that stuff right. That weighs heavily on you because you want to do it correctly for your client, so you're trying even harder to try to do it better and you're messing it up because you're so exhausted.

Sometimes I would just have to take a day off for my mental health, when I worked for agencies, but they don't like it when you're scheduled to work and you say you need some time to yourself. A lot of the time they wind up taking it away from you, almost like punishment: "You were gone for two days, so we've got somebody in there taking your place now." And then you have to go work for another agency part-time, because you have to have those hours.

I'm working 50 hours a week now. If I did 50 hours for an agency, that would just be \$450 [before taxes], but I get to bring home \$644. In this economy, you just can't make it on \$400 or \$450 a week.

I'll still work for an agency when I'm between clients, because I need to keep the money coming in. The agencies that I've worked for have high turnover rates, and they're constantly looking for good CNAs. Well, if you pay the ones that are good what they're worth, you wouldn't have that problem. They have really good CNAs who have been there for years, and years and they pay them the same as someone who's just come right out of school.

And you're not paid mileage or paid for the time you spend traveling between clients, no matter how far you go. Sometimes I'd drive almost an hour to get to whomever they wanted, because nobody else wanted to go to that client for whatever reason. We caregivers are the ones going into the home and doing the work, taking care of the people. We need to be well-rested, eating good meals, getting mental time off, getting good pay so we don't have to worry about working so many hours.

*The number one thing is sleep deprivation. When you're working these 12-hour shifts, you don't necessarily have 15 minutes to go sit and have a meal. You don't get sick days, you don't get paid holidays off, you don't get vacation time; you never get paid time off, period. The thing you never get time to do enough is sleep.*

## Donald Krutsinger, MINNESOTA

*Donald Krutsinger has been working with adults with developmental disabilities since 1988. Like most single DSPs, he has found it difficult to live on one full-time position, and has consistently had to work 50 to 60 hours a week to make ends meet.*

I work as a direct support professional with developmentally disabled adults in residential settings. One thing I have in common with just about all my coworkers is that we need to work more than 40 hours a week to make ends meet – and even so, too many of us can't afford our employers' health care coverage.

With the recent cutbacks by our state (Minnesota), most of our residential programs have cut out overtime and cut down the number of full-time positions, reducing the number of positions that receive health insurance and paid time off. That means nearly all of us have to work two to three jobs to make ends meet. Chances are, we don't get enough hours from any one of them to qualify for health insurance. That's a difficult, demoralizing way to live, especially for those of us who are dedicated to direct support work and have invested years of our lives in our careers.

I've been a direct support professional for 21 years. From 1988 to 2004, I worked in residential and day services programs in Kansas. I received a social work degree and worked as a targeted case manager in Iowa. In 2006, I moved to Minnesota to become a group home supervisor. My supervisory experience has taught me how difficult it is to train and retain quality staff. I've found the best way of supporting our residential programs is to float between homes, filling in where I'm needed because someone couldn't show up that day.

*Although I work for fairly good agencies that would provide some benefits if I were full-time, the distance between jobs and the short hours of support with each client make it difficult to put in 40 hours I'd need to be eligible for health insurance – and to afford the premiums. A few of the people receiving PCA services need assistance during every waking hour or around the clock. You might think the PCAs who work with these individuals would qualify for health insurance, but the cutbacks have changed that too. There are now limits on how many hours a week PCAs can work, so agencies don't have to pay overtime. Some people's hours are so limited that they don't qualify for health insurance either.*

For a while, I worked full-time at another residential program on a day shift while floating part-time at my group homes, but the other program had to eliminate their full-time day shift positions after the cutbacks. I now work full-time in my float position while working part-time during the day as a personal care attendant. As a PCA, I help an elderly man with multiple sclerosis get up in the morning. I also help a professional man with cerebral palsy use the restroom at his workplace twice a day.

It wasn't easy to make it on one PCA job before the cutbacks either, but we

had it better than most. The only reason we qualify for overtime is that Minnesota requires it, but less than half of the 50 states say home care workers are entitled to overtime pay. If you live in one of the others you're out of luck. The federal Fair Labor Standards Act, as interpreted by the U.S. Department of Labor (DOL), does not cover workers who provide "companionship services" to people in their homes.

This is an issue that can and must be decided on the federal level. We need legislation to include all home care workers in the federal Fair Labor Standards Act. We need to pay people fairly for the work they have done, so home care workers can afford health insurance and other basic benefits. Until we do, we won't be able to find and keep enough quality personal care attendants to meet the needs of the elders and people with disabilities who want to remain in their homes.

## Ted Rippy, MAINE

*Ted Rippy is a direct care worker, a consumer advocate, and the secretary of Local 771 MSEA-SEIU, a union for direct care workers in Maine*

Late last month, I had the opportunity to talk to Maine's Senator Susan M. Collins about the **Direct Care Job Quality Improvement Act**. Senator Collins asked why minimum wage and overtime protections weren't already in place for home care workers. I explained that in 1974 the Fair Labor Standards Act companionship exemption was removed from domestic workers like chauffeurs, butlers, cooks, gardeners, maids, and nannies, but not from home care workers because, back then, home care was a simple thing, more like asking a neighbor to check in on Mom or Dad than the skilled profession it is today. Senator Collins responded by saying that home care aides have become more professional over the years.

I shared with her my own story of taking care of a gentleman who has multiple sclerosis. I told her that when I started caring for him, he was still able to get around his home in his wheelchair and change channels on his TV with his remote, so he mostly needed companionship services, but now he is completely immobile and requires complete assistance with his ADLs. I handle his bowel and catheter care and check his blood sugar and vital signs, providing care that is comparable to skilled nursing.

*I said we need to improve wages so direct care workers can support their families, come off the Medicaid and food stamp rolls, and put their money right back into their local economies*

I explained to her that approximately 10,000 Americans turn 65 every day. I also told her about the extremely high turnover rate for direct care workers, explaining that low wages and lack of benefits contribute to that high rate and that being barred from minimum wage and overtime protections only makes it worse.

## Helen Hanson, MAINE

*Helen is a CNA and has been a direct care worker for 8 years. She is a Worker Advocate for the Direct Care Alliance and leads Maine PASA*

I have worked as a caregiver since 2003. The work has been basically the same all these years, but the title keeps changing. I started out at a home care agency, first as a homemaker and then as a personal support specialist. Next I provided home care to a woman with quadriplegia who directs her own care. I am currently working as a certified nursing assistant (CNA) in a skilled nursing facility, because the work is steadier and the benefits are much better, but if all else were equal I'd go back to home care in a heartbeat.

My experience has made it crystal clear to me why we need to grant home care workers basic labor protections under the Fair Labor Standards Act (FLSA). **Nearly everyone who needs help with daily activities would rather get it at home than in an institution, right? So why are we making it so hard for home care workers to make a living?**

I loved the one-on-one care I was able to provide in home care. I loved spending time with the people in my care, ensuring that their basic needs were met and getting to know who they were and how they liked things done. And I loved working even more closely with the woman who I reported to directly after leaving the

agency. It was empowering not to be at the whim of a scheduler who might not give me enough hours. She also paid me \$10.50 per hour to start, which was enough of a raise to make a real difference.

*Another response I find upsetting is the scenario of consumers suffering “unintended consequences.”*

*These “unintended consequences” would be consumers having more caregivers in their homes because workers’ hours would be “limited to avoid unfunded overtime pay.” This already happens. Workers’ hours are already based upon the number of hours a consumer’s plan of care allows for. On the personal care side of this, workers usually are PCAs/PSSs and they can only work the number of hours of care their consumers are allowed. I have worked several cases where there was more than one worker going in to help the consumer.*

In 2010, things changed again when I got divorced. Now I had to earn more, and I needed a job that provided affordable health care insurance. I took a job with Central Maine’s largest health care conglomerate as a CNA in its skilled nursing facility. For the first time in my career as a caregiver, I now have affordable health insurance and earn paid time off, so I don’t have to go without pay if I get sick and need to stay home, or want to take a few days’ vacation. I also have access to a retirement account, something I’d never dreamed of before.

The biggest difference between working in the facility and in home care is that I am now responsible for 6 to 12 people per shift, which does not leave much time for one-on-one interactions. There is always someone who needs you to do something as soon as possible, or it’s mealtime and you need to get everyone down to the dining room at once, or it’s bedtime and everyone needs to hit the hay. It is eight hours of non-stop on-the-go, running from one task to the next with almost no time to listen to a story or chat a bit with someone who spends too much time alone.

If things were better in home care, I would go back to it in a heartbeat. But now that I’m the sole wage earner in my household, I can’t afford to go back to a job with no benefits and no guaranteed hours.

No wonder the agencies who hire personal support specialists are constantly advertising for workers. You do not have access to health insurance, you don’t earn enough to support yourself, let alone a dependent child, there is no guarantee you will get full-time hours if you need them, and if you do manage to log some extra hours you may not get paid time and a half for working them. If the person or people you work with get sick and end up in the hospital or a nursing home, or if they pass away, you lose income until the agency has another client for you.

### **More than Just a “Companion”**

I worked with a lady who is a quadriplegic and her care was intensive. I would monitor her skin, handle bowel care, give her a daily shower, keep an eye on her catheter and drain and/or change the bag when need be, not to mention her routine housework, cooking, grocery shopping, bookkeeping, getting her to medical appointments, and helping her with her meds. I would report any concerns she or I had, any changes, to the RN that came in. One day a co-worker and I changed the batteries in her wheel chair! I am not a mechanic! Those batteries are like car batteries and there are two of them. This is a companion? I don’t think so.

In those hours you are in the home with them, you are helping with ADLs, doing housework, cooking for them. You are not sitting there, playing cards and drinking coffee, or watching TV with them. Oftentimes, you don’t



have enough time to get everything done that they need done. You prioritize and what doesn't get done on that day, gets done on the next day, or the next worker going in starts up where you left off.

I'm a direct care worker, a knowledgeable, trained, empathetic professional. I am a direct care worker that demands respect. I am not a companion to the people in my care. I think of a companion as a friend, not a care giver. Would a friend help you with bowel care, a catheter, or even a shower?

These are the types of questions we should demand answers for from politicians, employers and others who will one day need the support of a direct care worker – but seek to exclude workers from vital protections.

## **Anonymous, TEXAS**

*This worker chose to remain anonymous for fear of losing her job*

I receive \$7.75 per hour. We home care workers don't get paid overtime in Texas, so I usually work 50 or 60 hours a week. Sometimes it's less, but sometimes it's more. Usually I have to work every day of the week.

I work for two agencies now, one for 20 hours a week and the other for 20 or more, sometimes more than 40. But even when I worked for just one company, I didn't get time and a half for all that overtime. I don't get any benefits either.

I got into this work after I started taking care of my mom and my dad in 1987. My friend said, "Do you want to care for old people?" I said "No way! I don't want to do that kind of job. I just want to take care of my mom and my dad." Then I didn't find another job. I told my friend I'd try it, but as soon as I found another job I'll quit. But I never tried to find another job, because once I started doing this work I found out that I love it.

After a while, my clients and I become more than just client and caregiver. And in the end, if I stay with them for a long time, we are even more than friends. You become an intimate part of their lives. That's why I didn't leave a long time ago. I really love it.

I tried working just Monday through Friday for a little while. I liked having weekends off. I like to have fun; I like to enjoy my life. But I needed more money to pay for the necessities.

If I could get paid time and a half for overtime, I would work less to get a better life for myself. I think it would help us do our jobs better, too. When you are paid well for your job, you feel more respected and appreciated. You feel that people recognize that you are somebody and that your job is important.

*I would like to make better wages, though, because my job is hard. I don't work just with my hands and my body. I work with my heart. Most people don't know what we do. My job is to help the person have a better life. You have to care about the people you work with, talk to them, touch their feelings. You have love. That's my job. It's not a thinking job; it's a feeling job.*

## **Mohan Varghese, SOUTH DAKOTA**

*Mohan Varghese has been a CNA since 2005. He was a cadet in the Merchant Marine prior to immigrating to the United States, where his first job in the US was as a cashier at Wal-Mart. He then started working at a nursing home and got his CNA certification. After three years, he switched to home care. He lives in Aberdeen, South Dakota, and is a single father of two children.*

It is only just to give home health care workers the basic rights that are guaranteed by the Fair Labor Standards Act. If you look at any other job that's non-salaried, they have those rights. If you work at a fast food place flipping burgers, you're getting all those requirements met, but if you are providing home care you don't.

*It is very unfair that I have to pay a nanny 24 hours a day to watch my child while I am away, but I only get paid for 12 hours of work. I approached the Department of Labor with this issue and was informed that my state (South Dakota) does not offer its own FLSA protection and that I should call federal wage and hour division. I called them only to be informed that, since we home care workers are exempt from the FLSA under the companionship exemption, the only thing I could do to get paid for every hour I work is quit and find another job.*

I have worked three-plus years at a nursing home as a certified nurse aide and three years as a home health aide caring for a spinal cord injury patient. I do all the things in home care that I did in the nursing home and more. Some of the extras are simple tasks like cleaning and cooking. Others are complex medical tasks that were done by licensed nurses in the nursing home, like urinary catheterization and administration of shots and other medications.

I switched to home health care because I couldn't provide the level of care I wanted to provide in nursing homes. Wherever I went, we were working mostly understaffed, and the quality of care was low because of the time constraints imposed by low staffing. One night, I had to care for 30 people because a couple of CNAs called in sick. We nurse aides are the eyes and ears of nurses. We spent more one-on-one time with the people we care for than anyone else, so we are the first to notice when their condition changes. It was very hard for me to see the quality of care decline for the residents I cared for.

Doing home health care is much less stressful because there are no time constraints: I don't have to get a whole row of people to the dining room or have everyone showered by some arbitrary time. I am able to care for the people I assist according to their needs, and I can tell you that none of my home care patients has ever had a single pressure sore. Turning and repositioning was always done in time, and hygiene and personal grooming was done effectively, guarding the integrity of the patient's delicate skin.

For people who need long-term care, home health care is by far the best option. Able to remain in the comfort of their own home and surroundings with no time constraints on their care, they feel more secure and in control. That also makes it a more satisfying career, since good caregivers aren't satisfied if they can't provide good care. But we care providers should not have to pay for those advantages by going without the wages, benefits, and basic worker rights we need to support ourselves and our families.

### **Reducing turnover**

During the past year, the individual I care for has hired 20 caregivers who did not end up working for him. (I know because I did the W-2 forms.) Looking for all those workers cost him a lot of time, effort, and money: He has to pay \$450 every time he runs an ad for a week in the local paper. The reason for that huge turnover rate is the low wages we earn, the lack of health insurance, and the fact that we don't get the minimum wage and overtime guaranteed by almost every other non-salaried job. If employers took the money they spent on looking

for new employees and spent it on higher wages and overtime pay, the job would become more desirable and the turnover rate would drop.

### **Changing the law**

An honest day's work deserves fair pay. My co-worker and I drive the man we care for 675 miles to a hospital every year for his annual evaluation. He stays there for 5 days in an apartment provided by the hospital, and we stay with him. We cook, clean, do range of motion and catheter care, dress him, bathe him, and take him to appointments and therapy sessions. During these visits, he pays us each for 12 hours a day, but we put more than 12 hours of work. Range of motion, dressing and bathing, and transfers all require two people and they must happen around the clock, so we both wake up every three or four hours during the night to assist him.

### **LaDonna Williams and Lucille Daniels, TEXAS**

*LaDonna Williams and Lucille Daniels are both home care workers in the Houston area*

Dr. Martin Luther King, Jr. once said: "all mankind is tied together; all life is interrelated, and we are all caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly." His words were never truer than in the case of home care workers like us, who provide hands-on care, services and support to millions of Americans.

For one thing, there's a clear link between the quality of our jobs and the quality of care we can provide. We see a lot of people come and go in our profession, and we know how hard that is on their clients, who have to keep getting used to new caregivers. But we also know how hard it can be to commit to this profession, even when you love it, if the pay is so poor it's hard to provide for your own family.

Then there's the link between the home care workforce and our struggling economy. Politicians are talking a lot these days about how to strengthen our middle class and our economy, but it's clear to us that one big step in the right direction would be to improve home care jobs. Ending that injustice would be a good first step toward strengthening our economy and making sure people like us can meet the growing demand for high quality care at home, where most people want to receive it. In December 2011, President Obama and U.S. Secretary of Labor Hilda Solis promised to take that step, issuing a proposed rule to extend FLSA protections to home care workers. But more than a year later, the rule has not been finalized.

All of us—home care workers, consumers, our families and our communities—are interconnected, and none of us can afford to wait any more for this long overdue change. By finalizing the rule, President Obama and his next Secretary of Labor can take us farther down the path Dr. King helped create, reducing racial, gender and economic inequality and making the American Dream a reality.

*We are one of the fastest growing job categories in the nation, but the median hourly wage in 2011 was \$9.91 for home health aides and \$9.49 for personal care aides. Our wages are so low that about half of us rely on some kind of public assistance, like Medicaid or food stamps, to keep our households running. You have to wonder if those low wages have something to do with the fact that most of us are women and about half are members of a racial or ethnic minority. Certainly one reason our wages are so low is that home care workers are not guaranteed minimum wage and overtime protections under the federal Fair Labor Standards Act.*

# Stories from Consumers and Employers

## Sascha Bittner, CALIFORNIA

I employ personal care attendants and am writing in support of the Department of Labor's proposed rule that would narrow the current exemption of home care workers from the minimum wage and overtime protections under the Fair Labor Standards Act. Home health care workers deserve minimum and overtime like most other workers receive. They allow me to live independently, and without them I might be in a nursing home, so they deserve the protections given to them in this regulation. Furthermore, though the paper work of recording the hours an attendant works as well as other pertinent information may seem like a hassle, I have done it for years, easily, using my computer, and it means I don't make errors in calculating Workers' wages, so it is a win-win for everyone. I hope you will move this proposal forward!!

## Jessica Lehman, CALIFORNIA

I have been a wheelchair-user my whole life, and for all my adult life (the past 16 years) I have employed personal care attendants. I have someone come in every day to help me get out of bed, dress, shower, do the dishes, prepare food, and clean my house. My attendants allow me to live in my own house and work full-time, rather than live in a nursing home. I helped to found Hand in Hand: the Domestic Employers Association, because of how important I believe it is for people with disabilities to support workers' rights and lift up the importance of attendant work.

*It is important to me as a person with a disability to raise the value of this work, to treat domestic workers as the valued employees they are, and to stabilize this critical workforce, all which lead me to support fair pay and working conditions*

I support the Department of Labor's proposed rule to narrow the exemption of home care workers from the FLSA's minimum wage and overtime protections. . The proposed changes will make attendant jobs more sustainable, which will in turn allow people with disabilities and seniors to stay in their homes. Minimum wage and overtime are basic protections that should have been required long ago. These are simple and vital changes.

I also support the proposed rule requiring employers of live-in workers to keep records of hours worked. I have always kept records of which worker comes and for how many hours, as well as what I have paid them and on what date. It is easy to do and necessary for protecting workers and creating sustainable jobs.

Current economic hardships and cuts to Medicaid funding are all the more reason for us to ensure good, quality attendant jobs, NOT for us to resist these changes. I believe that the DOL can work with the domestic worker community and the disability and senior communities on implementation of these rules. First, the rules must be moved forward. It is the right thing to do for workers, seniors, and people with disabilities.

## **Joseph Kotzin, CALIFORNIA**

A domestic worker worked for my family for 40 years and had a very important and positive influence on me as a child. I suspect she stayed so long because my parents provided a decent wage and medical insurance. She was able to buy her own home, which was her lifelong dream. In 2010, I developed a serious lung infection and, after discharge from the hospital, was cared for at home for 2 months by home care workers. They were uniformly very caring and very capable and also reasonably well paid. I think everyone who does this kind of work should have the same benefits as other workers. Some adjustments in the system will be necessary, but the worst fears of those opposing the rule seem exaggerated. The possibility of reducing the high rate of turnover in this field through better pay would be one of the many benefits this rule would have.

*Unless this workforce is guaranteed minimum hourly wage and over time it will be impossible to recruit compassionate individuals who will work long term in this sector.*

## **Judy Clinco, Home Care Agency Owner**

As the owner of a 30-year-old home care company that employs Direct Care Workers, I am fully supportive of this workforce being protected by the Fair Wage Labor Law. Our aging society not only needs trained, compassionate individuals, but the continuity of having their services and care be provided by the same caregiver.

## **Roy Gedat, Home Care Agency Owner and Former Direct Care Worker**

I applaud the DOL's proposal to provide overtime and minimum wage protection for direct care workers. I am a former direct care provider, current employer and owner of a private duty home care agency and can speak with authority that this is long overdue. My business is not affected as I pay my workers well over the minimum wage and would pay overtime if needed. For those businesses who are profiting by underpaying skilled direct care staff I have nothing good to say. Direct care workers deserve reasonable pay.

## **Jacob Lesner-Buxton, CALIFORNIA**

I am a person with a disability who has been using domestic workers for the past 9 years to vacuum my room, help me go shopping and other tasks. I am messy and these people work hard, much harder than they should, for only making \$10.60 in California, under the IHHS program.

As someone who believes in a fair wage, I have fought with social workers, to allow me to hire workers from agencies who make between \$29 and \$41 an hour. I want to know that the person helping me is paid well, and their job be stable. However, my social workers are always trying to place me back on the program where my workers would be paid \$10.70 an hour. Please pass this rule to begin to give workers an ounce of dignity they deserve.

## **Ronna Hammer, MINNESOTA**

My mother is 86 and has 3 home healthcare workers. We recently gave them a pay raise that they deserved and they have been more attentive and happier to be doing this very important. My mother is happier as well. It is high time for domestic home health care workers to get treated fairly

## **Henry Carrey, CALIFORNIA**

My mother, who needed assistance with daily living for about 15 years, was lucky enough to get care from two devoted aides. At first, we used aides from agencies. However, when I learned that these agencies paid the workers only 50% of the fee I was charged, did not pay OT, sick time, give vacation or benefits, I was appalled. Eventually, we found two devoted certified, experienced aides. I paid them above the minimum wage and found a way to give them health benefits, vacation and sick time. We had two workers in order to split the shifts as it is extremely difficult to do this kind of work 24/7. I kept them on part time for three years once my mother was in a nursing home as the nursing home was woefully understaffed (but within government guidelines!!!). Since my mother's passing, one of them has been barely able to find enough hours through agencies to make ends meet and gets no OT, sick leave, vacation etc. The other one has found private work - but this requires her to stay for 24 hours 5 days a week. We must provide a living wage, OT and benefits for home care aides who do such a wonderful job.

## **Scott Einbinder, CALIFORNIA**

My family employs home care workers who take care of our mom who has dementia. . There is no ethical reason they should be treated in a less respectful way.

From a practical perspective, we cannot afford to continue to have the high turnover rate we see in home health care. The agency we use is always looking for new workers because of the high turnover rate in the industry. This is directly due to the low wages and lack of customary employee wage and other work place protections and laws. It is shortsighted to think otherwise. It would be better for the agency as well if they would focus more time on their clients and less time on continually having to find and train new home care workers who earn so little and therefore are always looking for new jobs. The proposed rule change is the right thing to do.

*The people who work for us through a local home care agency do an outstanding job. They take care of my mom in an amazing way. They are both friends and care takers for my mom. They deserve the same work place legal and wage protections as employees in other industries, as well as the same respect and dignity. Their work is invaluable to us*

## **Janis Durick, Home Care Agency Owner**

Being an owner of From the Heart agency, I want to support the issue of overtime and minimum wage that Direct Care Alliance is supporting. I feel direct care workers deserve the pay for all the physical, mental, and emotional support they give clients. This is only a small degree of respect that direct care workers receive for all their hard work and effort.

## David Levitus, CALIFORNIA

*My grandparents earned their retirement with many decades of work in sales, teaching, and guidance counseling in New York City and they've been fortunate to enjoy it for the most part. Now their continued well-being and comfort in their old-age depends heavily on the commitment of women who work in their home, cleaning, dressing, and shopping for them.*

Over the last year, I've watched the health of my grandparents decline to the point where they need the presence of home health aides to keep them functional in their own home. I've seen how indispensable these women, immigrants from Peru and Jamaica, are to my grandparent's health and happiness.

I've gotten to know Rosa, Maria, and Rona personally. I've watched them become close with my grandfather and grandmother. I've learned about their personal struggles to support their own children and parents, to live the American dream. They are hard-working people who deserve the same legal protections other workers enjoy. And they are talented professionals in their own right, for whom establishing good working conditions is vital to maintaining a stable pool of compassionate, qualified caregivers.

Clear and inclusive labor laws will create standards for well-meaning people such as my grandparents and other family members to follow with a clean conscience. These women have given our family so much; the least we can do, I feel, is to guarantee their fundamental rights. And in the end, I'm confident we will all benefit from creating a system where the work of caregiving is respected and decently compensated.

I'm also keenly aware that domestic workers were excluded from the foundational labor laws of the 1930s because they tended to be African-Americans. And today, many of these workers are immigrants and disadvantaged minorities still. It is long past time to remedy their exclusion from basic minimum wage and overtime protections that the rest of us take for granted.

## Mitchell Mandich, Home Care Agency Owner

As an owner of a home care agency, I know how critically valuable direct care workers are to the integrity of our health system. They are the backbone of healthcare. Without these caregivers, many consumers would be a much higher financial strain on our health care system. I fully support higher wages and increases for direct care workers.

## Veta Segal, MINNESOTA

I am a caregiver for my significant other, age 79, who was diagnosed with dementia. He became very ill, was in the hospital for two weeks, in a nursing home for three weeks rehab, then home to recover. This scenario has happened twice in the past two years. If we hadn't had the help of home health workers, he would have had to go live in a nursing home permanently. The workers have been wonderful, but there's been a huge turnover because they quit to find better paying jobs. Time after time, no one would show up because the worker had quit and the agency hadn't found a replacement. A lot of these workers were single parents, some immigrants. Not only do they deserve a fair living wage, and overtime protections, we need it so they stay on the job. Agencies can't stay in business if they can't keep the workers, so it's in their best interest as well as the public's to have this rule change. This is very important, especially as we have an aging nation.

## Ellyn D. Kessler, NEW YORK

My mother has advanced Alzheimer's Disease. She has been lovingly and capably cared for by the same home care worker for the past 4 years. I credit this home care worker 100% with the good physical health and good spirits that my mother enjoys despite the devastating toll the disease has had on her life. I have supplemented her wages from my own pocket and pay her for time off. I have on my own tried to be a fair employer. Therefore, I believe strongly in legislation that would ensure that the home care workers who provide invaluable services to our seniors are given fair wages and working conditions. Just like other valuable members of our working community, this should be a basic protection under the law and not subject to the present arbitrary absence of standards to protect individual home care employers.

*Were it not for this home aide, I would have had to stop working to care for my mother and been financially and psychologically devastated myself. Yet the home care worker, who is my same age and has done this work most of her life, has no work benefits at all, no retirement savings, no opportunities for advancement.*

## Christine Algozo, NEW YORK

My family has employed a home care worker. This issue speaks to me personally because we needed care for my father who was diagnosed with brain lymphoma. Following surgery and recovery for weeks in the hospital, he needed home care once he was discharged. My brother and I needed to be in school and my mom needed to continue commuting to New York City for work. Having home care for my father was essential for our family. I am writing in support of the Department of Labor's proposed rule that would narrow the current exemption of home care workers from the minimum wage and overtime protections under the Fair Labor Standards Act. **The proposed regulations will help to stabilize the home care workforce that is experiencing high turnover because of low pay and long hours. These workers help elders and people with disabilities stay in their homes and out of institutions and these protections will result in less attrition and better quality care.** I also support the proposed rule to require employers of live-in domestic workers to keep records of their workers' hours worked. But it is important for the employers to keep other records like the rate of pay, total wages paid, or deductions for meals and housing. Deductions for meals and housing are common for live-in workers, and without keeping these records, it is easy to make errors in calculating the worker's wages. Employers can easily keep track of these records using computers or smartphones. I hope you will move this proposal forward!



## Deborah Gardner, WASHINGTON

A year and a half ago, my grandmother fell while on the phone with me. She was uninjured, but a few days later, she happened to have a visit by a home health worker named Karen, who had checked in on her every once in a while since an illness a few years before. Karen looked at my grandmother and said, "Your skin is a little yellow. I think you need to see a doctor." A few days later, my grandmother was diagnosed with pancreatic cancer. The treatments were uncomfortable and my grandmother made the hard decision to stop treatment. What she wanted was to die at home, comfortably and with good care and respect. This never could have happened without Karen and two other home health workers working many hours. My grandmother particularly loved Karen, and felt most comfortable when she was around.

I spent some time with my grandmother during those months, although most of the time what she wanted was simply privacy in her home and for family not to see her so changed. I got to see the professionalism and skill of the home health workers up close. They could tell when something was wrong and, often, what it was. Coax my grandmother to doctor's appointments and help her feel safe and comfortable before, during, and after. They could change my grandmother's sheets without her ever having to leave the bed. Bathe her without her feeling too ashamed of losing the ability to bathe herself. Convince her to eat when she was refusing. Be strong and think fast on some of the days when, honestly, her mental faculties were not strong, and her behavior meant their jobs became more than a little frightening.

My grandmother passed away a year ago, and I still miss her every day. I'm still in touch sometimes with Karen, and she joined my family and I at the ceremonial unveiling of my grandmother's tombstone eleven months after her death. Karen's struggling with finding work, as are many in this economy.

*This all takes skill. And strength. And experience. And training. It's not an easy job. It's not something anyone can do. And I have the utmost respect for the job. I could not do this job. These women's skills and hard work meant that my grandmother, the woman I loved most in the world, was able to die the way she chose, comfortably, with competent care, and at home.*

There are millions of people like my grandmother, and every one of them deserves quality care. The numbers will be going up as the Boomer generation ages, and the economy struggles. As with every job, working in the field of home health care is only sustainable if it's a job that pays respectfully and includes the kind of benefits people need to get by, like overtime pay. People leave jobs that don't take care of them. And when they leave, and there is constant turnover, or when a job's pay reflects little respect for the field, everyone suffers. The people in the profession, the people who deserve quality care, their families, and society.

The people who work in this field are often low-income women of color. There are so many institutions in this country that de-value the work of low-income people, of women, of people of color. That's depressing in and of itself, and even worse in the case when it becomes considered okay to give low pay and benefits to the specialized professionals who are easing the last months of our beloved elders' lives. Is this really what we want as a society?

## **Kimi Lee, CALIFORNIA**

I am an employer of a domestic worker, 2 childcare providers and a caregiver for my parents. I have employed help for my family for the past 4 years and have handled all employment matters personally. I am a proud member of Hand in Hand: The Domestic Employers Association. I urge you to pass the companionship regulations. We need to pass these proposed regulations now - caregivers deserve to be treated fairly and be able to take care of their own families. 93% of caregivers don't make enough to pay for their own living expenses. We need to give fair pay to the people who provide such a crucial service to our families. Two days after my first child was born, my mother had a brain aneurysm that left her in the hospital for 6 months and now she is in a wheelchair. My family was not prepared to take care of her and we had her stay in a care home for a year so we could prepare the house for the wheelchair and get used to her needs. At the care home, I spoke to several workers and saw the long hours they work, often running into the night and that they couldn't get a full nights rest. I would stay overnight sometimes and saw the extent to their work - 24 hours a day. I could see the quality of the care my mother received depended on the quality of working conditions for the caregivers. If they were too tired or worried about their own families, they were distracted and couldn't care for my mother properly.

## **Susan Lob, NEW YORK**

My mother hired 3 women who worked either a day shift, an evening shift or weekends. She paid more than minimum wage as well as overtime. Their care giving allowed my mother to work and to have a quality of life that would not have been possible otherwise. My mother felt that paying the care workers fair salaries enabled her to hire experienced and dedicated workers, who stayed with my dad for many years. Having workers who feel they are treated with respect and fairness, creates a relationship that is without stress and benefited my father as well as my mother.

*My family has benefited immensely from the work of dedicated elder care workers, who took care of my father, the elderly aunt of my husband, and my mother-in-law. My father had Alzheimer's disease for 8 years and was able to live at home with my mother for most of that time because of the care he received from excellent domestic workers.*

My husband's aunt lived in her own home in Manhattan until she died at age 101, thanks to the excellent care she received from home attendants. They too were paid fairly (above the minimum wage) and paid for overtime. Without their help, his aunt would have lived for years in a nursing home with a much lower quality of life. Currently my mother-in-law, who has Parkinson's disease, is being cared for by 2 excellent care providers. She was able to live in her home until recently, when she fell and broke her hip. Even though she has been in a nursing facility, we continue to employ these 2 women to ensure that she gets the best of care.

Having quality workers caring for your loved ones provides peace of mind for the family and a much better quality of life for the elder. Making sure that those dedicated workers are compensated fairly and treated well ensures that peace of mind. I strongly support narrowing the companionship exemption regulations so that most personal assistants who support seniors and people with disabilities are entitled to minimum wage and overtime.

## **Lateef McLeod, CALIFORNIA**

I have cerebral palsy and have employed home attendants for most of my life. I understand the anxiety some people feel at the thought of finding new workers. It takes time for the workers I employ to learn how I like things done, and even longer for us to establish the kind of trust that makes everything go more smoothly. But I'm convinced that granting workers FLSA's basic labor protections is best for us all in the long run. If I had to rely on just one or two workers who had to work at least 60 hours a week to get by, what would happen to me when to me if one of them got sick, or had a family emergency, or developed a back injury?

## **Nikki Brown-Booker, CALIFORNIA**

My name is Nikki Brown- Booker. I have had a disability all my life and I rely on California based Medicaid for my healthcare services. As a person with a disability, I want to live independently and in the community. In order to do that I rely on my attendants for care. I started hiring and employing attendants when I left my parents' house at the age of 18. I now employ 6 attendants on a regular basis, and they help me do things like getting me in and out of bed, help me shower, prepare my meals, do my laundry and drive me to work.

If I did not employ attendants I would probably have to go live in a nursing home, which is a great deal more expensive than living independently in the community. My only other alternative would be for me to live with family and rely on them for my care. I am in my 40's, and my mother is almost 80 years old it is no longer her job to take care of me; it is my job to start thinking about how I will take care of her.

My attendants are mothers, college students, wives and sometimes grandparents, and they have lives outside of my life that they are struggling with. While they are in my home they give me excellent care and respect as if I was a member of their own family. In fact I have developed many strong important relationship with many of my workers and I feel like many of them are members of my family.

*Using attendant care services has made it possible for me to go to college and get a Master's degree in clinical psychology. I now work as a marriage and family therapist. I work with children who have disabilities. I work full-time, pay taxes, and am an active member of my community. I am able to do a quality job because of my 6 attendants.*

When I am treated fairly and respectfully at my own work, I do a better job, and the same is true of all workers. I believe that my employees deserve to have a work place that they feel comfortable in and that they are treated with respect. I believe all attendants deserve good treatment and fair wages. I know that the only way we can create a stronger, more sustainable attendant workforce is to create quality jobs for workers. That will enable people with disabilities to continue to receive high quality and to live independently and active vibrant lives. By lifting up this work, by saying that these are real jobs that deserve to be treated well, we lift up our communities.

## Stories from Advocates

### Jenn Craigie, NEW HAMPSHIRE

*Jenn Craigie is the secretary of the board of directors of the Direct Care Alliance. She worked for 10 years as a direct care worker, five as a CNA in Massachusetts and five as a licensed nursing assistant (that state's equivalent) in New Hampshire*

I was a direct care worker for 10 years. Unfortunately I became disabled so I can't work anymore, but I am still a direct care worker advocate, and a member of the Direct Care Alliance board. The thing about the DCA that amazes me is that not only do we have workers taking on leadership roles, but the people there who work in other professions really believe in the importance of direct care workers and the incredible work they do.

Our visit to Capitol Hill was a historic moment because this was the first time we direct care workers and our allies helped Congress send an important message to the U.S. Department of Labor about how home care workers need basic overtime and minimum wage protections.

As Representative Sánchez told us afterward: "I felt it was necessary to alert Secretary Solis to this issue for home care workers, who are the heart of our nation's long-term care system. It is absurd and disheartening that home care workers can go years and years without the right to a minimum wage, a raise, or even overtime pay. Home care workers should have the same basic wage protections as other service workers."

We saw nearly 50 legislators or their staff in DC last month. A lot of the visits were wonderful because the representatives or their staff were receptive to what we had to say. Even when they didn't seem too interested in our issues, they were always eager to hear the workers' point of view. As for the Dear Colleague letter, I am excited to say that 37 members of Congress, including House Education and Labor Committee Chair George Miller and Congressional Hispanic Caucus Health Chair Nydia Velasquez, signed the final version that went to Secretary Solis on May 20.

*In a press release about the letter, Rep. Sánchez said: "Home care workers are the backbone of our nation's long-term care system, providing essential care and daily living services to more than 15 million Americans. However, these are among the worst-paying jobs in America – mostly because of Department of Labor regulations that exclude them from federal minimum wage and overtime protections."*

## **Brenda Nachtway, PENNSYLVANIA**

*A nurse aide since 1987, Brenda Nachtway is a direct care worker specialist for the DCA*

On a brisk but beautiful morning early this month, I walked through Washington, D.C. to the building where my congressman, Thomas Marino, has his office. I was there, on behalf of the Direct Care Alliance, to ask his support for the proposed rule to extend minimum wage and overtime protections to home care workers. As I walked past our nation's Capitol and watched the American flag move in the light breeze, I was reminded of how lucky we are to live in the United States. I thought about other trips I have made to politicians' offices to advocate for direct care workers, on behalf of the DCA or my state organization, the Pennsylvania Direct Care Workers Association.

*I also thought about the many direct care workers I have met in my advocacy work who told me they could never take a trip like this. Some are just too busy, working two or three jobs and raising a family. But often, it seems to me, the real barrier is that the work they do is so widely disrespected and misunderstood that even they don't quite believe it's worth fighting for.*

*But we direct care workers do deserve what the DCA is fighting for. We need to stand up for ourselves, for DCA, and for our fellow workers. Even home care workers who are lucky enough to live in a state that requires them to be paid minimum wage and overtime need to speak up for this rule, for the sake of those who do not.*

If you knew your neighbor was out of a job and needed a meal, I thought, would you let them starve? Or would you pull together with your neighbors and friends to help them and make sure they got the meal they needed? We need to pull together in that same way to support our fellow home care workers who do not receive minimum wage or overtime pay.

As a veteran direct care worker of 26 years, I know the labor, love and pain that goes into this job. If you do this work, you know as well as I do how hard it is and how much it means to the people we assist. Don't forget that we are all professionals, and we need to be recognized as such.

When I arrived in the congressman's office, he offered me what he called the "hot seat" and invited me to talk. Inspired by the thought of all my fellow home care workers, I shared with him exactly what I just shared with you. I told him about the difficult work that a direct care worker does and asked if he knew what that meant. He shared what he knew and I filled in the blanks. He didn't know all the details, but he "got" the big picture.

Then I told him about the rule. I explained that the public comment period ends on March 21, but after that the Department of Labor will be reading the comments and deciding whether to finalize the rule. I told him how important it was that the rule is finalized. Congressman Marino told me the rule makes sense to him and offered to do whatever he could to help.

As I made my way to Union Station for my trip home, I again walked by the Capitol building, took one last look at that wonderful American flag, and thanked God for this free country. I also said a silent thank you to the Direct Care Alliance for fighting so you and I can provide better care for those we care so much about, and so our profession can be valued as it should be.

## **Joan Leah, FLORIDA**

*Joan is a CNA, a home health aide, and president of the Florida Professional Association of Care Givers.*

Last Friday, I had the honor of attending a forum hosted by the U.S Department of Labor (DOL) Women's Bureau on behalf of the Florida Professional Association of Care Givers and the DCA. It was a great opportunity to tell them what direct care workers in Florida are experiencing and thank some of the people who are working to extend basic labor protections to home care workers.

The occasion was the first in a series of Working for Working Women events. These events are designed to provide an opportunity to discuss the challenges faced by working women and to publicize initiatives and resources offered by DOL to help women get back to work and protect their rights.

Hilda L. Solis, the U.S. Secretary of Labor, delivered a truly inspiring keynote speech. I was moved by her dedication to addressing the labor issues that women are facing, and to driving changes that will have a significant positive impact on working women nationwide.

I was particularly delighted to see the important role of direct care workers and the need to revise the Fair Labor Standards Act's companionship exemption highlighted as an important issue. DCA's very own Tracy Dudzinski was one of several caregivers featured in a powerful video that demonstrated the difficulties faced by home care workers. After the video, I was able to thank the presenters, who were visibly moved by the video, for their efforts in helping to drive change for caregivers.

## **Tracy Dudzinski, WISCONSIN**

*Tracy Dudzinski has been a certified nursing assistant since 1997. She is the chair of the DCA's board of directors and the president of the board of directors of Cooperative Care, a worker-own home health care provider in Wautoma, Wisconsin.*

Last Thursday was a big day in the history of the fight for direct care worker rights, and I was lucky enough to be right there in Washington, DC, representing DCA and my fellow home care workers when President Obama made the announcement. (That's me in the video, right behind the President's left shoulder). The President was telling the press about a proposed rule that would finally give home care workers Fair Labor Standards Act (FLSA) protections.

I felt truly honored and humbled as I headed in to the Department of Labor on Thursday morning and met the other home care workers who were there for the announcement. We got to meet the staff who had made this proposed rule change a reality, who are all very passionate about correcting this injustice against home care workers. It was strange because they treated us like royalty. I told them that I wanted to thank them for all their hard work, but they kept saying we workers were the ones who deserved to be thanked for all that we do.

We then left for the Eisenhower Executive Office Building, where we met Secretary of Labor Hilda Solis. She introduced herself, talked about what important day this was, and thanked everyone for the work we do.

Then a staff person came in to say she had just received an email that the President was walking. (Gee, I thought, just like on TV!) We got lined up and waited, facing the doorway he was about to walk through. The air was electric. And then it happened: In walked President Obama. He shook hands with us all, saying a little

something to each one. Then he spoke with us about how important the work we do is and said he was going to try and make things right.

After he left the room everyone was buzzing. There were a few Hallelujah's and glory be's. I thought we might have a few women pass out, but there wasn't time for that, since we needed to get out onstage for the press conference. The press conference took place in a small room that felt even smaller with all the camera equipment. After we took our places, the President entered from a little room to the left. From the minute he entered, the sound of cameras taking pictures never stopped.

*Listening to President Obama speak was an amazing feeling. Here was the president of the United States, speaking in strong, no-nonsense language about how this was the right and fair thing to do and how he's determined to make the rule change happen. I've been a direct care worker advocate for many years, and sometimes we advocates can't help getting discouraged by how slowly things change, but the excitement and encouragement I felt that day will keep me going for a long time. It inspired me to keep on fighting.*

After President Obama was finished with his speech, we went back to the Department of Labor, where they taped our stories. They asked us each why our work is important to us and to the people we care for. They also asked what we would do with the extra money if we got overtime pay and whether we had anything else we wanted to say. I got to hear what some of the other workers were saying, and I was very moved by their stories. One sometimes works as much as 60 hours per week and doesn't get overtime pay. That's just wrong. Another said if she got time and a half for the overtime she works, she would use the extra money to better food on the table instead of having so many potatoes and so much pasta.

This is America, isn't it? We do some of the most important work a person can do. We are helping to improve human lives, and we cannot even afford to feed our families. That's just wrong.

As I told my story, I realized how fortunate I was to have the protections we are fighting for. I get paid a lot more than minimum wage, and I get overtime pay if I work extra hours, since my state has its own overtime laws, which apply to us home care workers too. But even so, I live paycheck to paycheck and there are a lot of important things that my family has to do without.

**When I was asked if I had anything else to say, I explained that most direct care workers are women, so most people just expect us to be caregivers. The work we do is expected, I said, but it is not respected. If it was respected, we wouldn't need a special rule to get basic worker rights under FLSA.**

## **“A Civil and Human Rights Issue”**

### **John Booker**

*John Booker is a home care worker, a former member of the DCA board of directors, and the founding president of the National Association for Direct Care Workers of Color*

Almost 50 years ago, when Dr. King went to the Washington Mall with hundreds of thousands of people, there were thousands of domestic workers in the crowd. The domestic worker of the 1950s and '60s could be compared to the home care worker of today. They did the cooking and cleaning. They cared for the babies. They cared for the owners of the house when they became sick. And most of them—about 99 percent of them in the South—were African American.

These workers were so closely involved with the lives of the families they worked for that they weren't even called workers. They were called “the help.” They didn't get a salary. They just took whatever the owner of the house decided they deserved for the time they worked—and they worked from sunup to sundown. That same way of thinking led to the so-called “companionship exemption” that denies us home care workers the right to Fair Labor Standards Act protections.

Dr. King took those domestic workers to the Mall with him for the same reason that makes us fight for the Fair Labor Standards Act now: economic justice. If Dr. King was here today, would he support extending the FLSA to home care workers, so they are paid minimum wage and overtime like everyone else? I firmly believe that he would be at the forefront. He would galvanize the country behind this fight for us to have these minimum rights.

### **Claire E. Curry**

*Claire E. Curry is a DCA board member and the legal director of the Civil Advocacy Program at the Legal Aid Justice Center in Charlottesville, Virginia.*

Dr. Martin Luther King, Jr. has had a huge influence on my life and on my decision to be a public interest lawyer. His legacy inspires me every day to work for justice and for peace. As a legal aid attorney since 1982, I have the privilege of working shoulder to shoulder with people who are disadvantaged and disempowered in our society. Every day I try to do what I can to level the playing field and empower my clients.

There is so much left to be done in the struggle for civil and human rights. If he were with us today, I think Dr. King would be mighty upset about the attempts to restrict voting rights by making voting more difficult for the elderly, people with disabilities, members of ethnic minority groups. He would no doubt speak out against the threatened slashes to funding for education, Medicaid, and other programs that provide critical support for vulnerable people. Dr. King would remind us that we can and must do better. We are all aware of the demographic data, and we can see the tsunami of aging and disabled people who will need access to quality care, but we are not doing enough to prepare. Dr. King would remind us of the humanity and the dignity of each individual, regardless of his or her age, health status, wealth or lack thereof, or other qualities. He would urge us to be ready and willing to provide high-quality, loving care for those who need it, because human beings deserve nothing less.

I have advocated for direct care workers not only because they are unsung heroes in our society but because none of us can count on access to quality care until America addresses its workforce issues and provides decent levels of pay, benefits, training, advancement opportunities, and recognition for direct care workers. Dr. King's vision reminds us that we are all connected as a community and as a nation in what he termed “an inescapable network of mutuality, tied in a single garment of destiny.”



## **Neill DeClercq**

*Neill DeClercq is the DCA board vice chair and a professor at the University of Wisconsin's School for Workers.*

I grew up in the 1950s and '60s, so I had firsthand experience of Dr. King and the Civil Rights movement, but I did not fully understand the impact his work and sacrifice was having on me. Mine was a white, working class, liberal Democratic family that believed in social justice for all people, especially the poor, disadvantaged, and disenfranchised. I remember watching the civil rights movement unfold on the nightly news and in the papers and magazines of the day. No doubt my involvement in the anti-Vietnam War efforts, and eventually my career choice to become a labor educator, were fed by Dr. King's legacy.

As an educator and worker advocate, my goal has always been to help empower working people to fight for and protect their human rights, in the workplace and in society as a whole. Like the sanitation workers Dr. King championed, direct care workers perform important and difficult work that is generally unrecognized and poorly paid. Like many others, I would like to see that change, and I would like to see the workers themselves lead the campaign for that change. I know that this is a cause that Dr. King would support and appreciate.

## **Clari Gilbert**

*Clari Gilbert is the DCA board treasurer and president and CEO of The Knowledge Institute & Conference Center in Kingstown, St. Vincent. From 2002 to 2010, she was executive vice president and chief operating officer of Beth Abraham Family of Health Services in New York City.*

"I have a dream that one day this nation will rise up and live out the true meaning of its creed: 'We hold these truths to be self-evident: that all men are created equal.' I have a dream that one day the sons of former slaves and the sons of former slave owners will be able to sit down together at a table of brotherhood. I have a dream that my four children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character. I have a dream today."

In 1969, a mere six years after Dr. Martin Luther King's "I have a dream" speech on those famous steps in Washington DC, I left the Caribbean to take up residence in Brooklyn, New York. I knew what it meant to dream. That's why I was leaving my homeland to come to a land of opportunity, a place where dreams could be realized. I soon came to understand that achieving Dr. King's dream was going to be an ongoing struggle, and that I'd have a lot to withstand and overcome, as an Afro-Caribbean woman, as I unraveled the cords of injustice, prejudice, and hatred at every rung on the ladder. Thank God, there were always other people who shared Dr. King's dream to help me up along the way.

As I reflect on this anniversary, I am so grateful that I was able to realize a part of that dream. I have sat in boardrooms where I was judged not for the color of my skin but for my professional abilities. I have seen a diverse group of people support my daughter and son-in-law as he made a bid to be mayor of Baltimore. I have seen my daughter's interracial marriage survive more than 20 years, and watched their children thrive and live well-balanced lives. I have lived to see an African American President.

None of this came lightly. Many have died to assure us the equality and access we have achieved so far, and we still have a way to go. But I am proud to support direct care workers in their fight for equality, respect, and fair wages. Home care workers are a vital part of the health care team, yet they are the only ones expected to work 16-hour days or 96-hour weeks without overtime pay. We should all be able to sit at the "table of brotherhood" and count on the protection of the Fair Labor Standards Act. We all deserve to realize the dream.

## **Dennis Fitzgibbons, MAINE**

*Dennis Fitzgibbons is the executive director of Alpha One, Maine's Center for Independent Living.*

As the executive director of Alpha One, Maine's Center for Independent Living, and a longtime advocate for people with a disability, I have experienced direct care work as an employer and an advocate. Home care workers play a vital role in allowing people to remain independent, in their own homes, and active in their communities, and they deserve the basic labor protections guaranteed by the Fair Labor Standards Act.

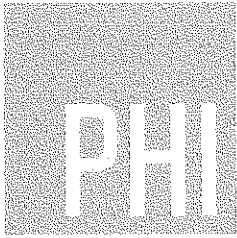
All of us who live with a disability want to go on with our lives as we see fit to the greatest extent possible. While we may solicit support from families and friends, we often need professional direct care workers to assist us as well. When we enlist their services, we expect the highest quality possible, and we owe them something in return.

We must value and respect those who help us maintain our autonomy by providing crucial hands-on services, and the best way to show that respect is by making sure they are granted a livable wage and basic benefits. We need to insure that direct care work is recognized and rewarded as real work, valued by the community at large as well as the individuals who receive the services.

Here in Maine, when we have worked to improve status and pay for direct care workers, some of our most articulate advocates have been the consumers who receive hands-on services. In the same way, some of the most eloquent advocates for people with a disability are home care workers who see first-hand the rewards and challenges they experience and know what it means to them to be able to live independently in the community. Direct care is all about relationships, and quality direct care is about developing mutually respectful relationships.

Besides, home care workers are our neighbors and fellow citizens, and theirs is one of the fastest-growing job categories in the nation. Ensuring that they make at least minimum wage and are paid time and a half when they work overtime will help enable them to be contributing members of our communities, shopping at the local stores, paying taxes, and forming an important part of the backbone of our entire economy.

*Improving the quality of home care jobs by enacting the proposed rule is not just the right thing to do. It's in the best interests of us all: people with a disability, the workers who support them, the workers' families and employers, and the communities they live in.*



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Quality Jobs**

## Round-the-Clock Home Care Consumer Prefers Multiple Caregivers



**Geraldine O'Rourke, 84-year-old Bronx resident**

Geraldine O'Rourke, age 84, has been receiving Medicaid-covered home care services and supports in the Bronx for two decades. Nearly a year after an unsuccessful operation on both hips in 1992 left Mrs. O'Rourke unable to walk, she returned home from the hospital with the help of a home care worker who provided care from the morning until the evening. Her husband was able to assist her at night until 1996 when he himself became ill and dementia set in, leading to his death two years later. Since 1996, Mrs. O'Rourke has been receiving round-the-clock home care services that make it possible for her to continue to live at home. Her aides assist her with transferring in and out of bed, toileting, showering, ambulating, food shopping, meal preparation, and housekeeping.



**Efua Morson, Home Care Aide**

For several years, Mrs. O'Rourke had one home care aide who provided services 24 hours a day, 7 days a week. Since 2005, two or three home care aides have split the round-the-clock shifts. Today, two aides from the Bronx-based Cooperative Home Care Associates provide her care – one lives in for four nights and the other for three. This allows the home care agency to meet Mrs. O'Rourke's needs without accruing expensive overtime costs.

Mrs. O'Rourke says having more than one aide on her case is much better than having just one aide who provides services and supports all of the time, for several reasons. When one aide has a family emergency or special event like a family graduation to attend, then the other aide can "accommodate" her. She says that this is a much better arrangement than getting assistance from a substitute aide who knows nothing about her care needs. Having two – or more – aides that know her "routine" gives her a sense of "security" and "comfort." Mrs. O'Rourke, speaking from years of experience of having round-the-clock care from home care aides, also says, "Even family gets on each other's' nerves spending so much time together." Having multiple aides who split shifts makes for much "better relations" when you are getting such intimate and continuous care.



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December 13, 2012

President Barack Obama  
The White House  
1600 Pennsylvania Avenue  
Washington, D.C. 20500

Dear President Obama,

One year ago, on December 15, 2011, we stood with you as you announced a plan to extend federal minimum wage and overtime protections to home care workers, as part of your "We Can't Wait" program to advance important issues stalled by Congress.

We—a diverse group of home care workers, employers, and care recipients—celebrated the news that, after decades of exclusion, home care workers would finally be covered by the same basic workplace protections enjoyed by most of America's workers.

One year later, we are still waiting. We write to ask you to move quickly to finalize the Labor Department rules that will apply the Fair Labor Standards Act to our nation's 2.5 million home care workers.

We cannot afford to wait any longer for this change.

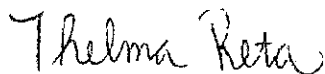
Home care remains one of our nation's fastest-growing but lowest-paid occupations. Wages have long stagnated, and since December, have even declined in some states, forcing more workers and their families who live in poverty to rely on public assistance. Workers continue to provide invaluable care for seniors and people with disabilities without fair pay or the dignity that comes from having their work be valued and respected.

Meanwhile, many home care agencies continue to benefit from the minimum wage and overtime exemption, charging consumers approximately twice the hourly rate paid to caregivers and raking in billions in profits.

One year later, home care consumers and employers are still struggling to attract and retain qualified caregivers in the face of poor working conditions and the resulting high rates of turnover—as high as 60 percent—which cost the industry billions each year in higher recruitment, training, and administrative costs. Without prompt action to improve conditions, worker shortages are likely to worsen at the same time that the demand for home care skyrockets. As the home care industry continues to rapidly grow, we need to ensure, for the sake of our economic recovery, that home care jobs are jobs that can support families.

President Obama, last December, we stood with you as you announced your "We Can't Wait" initiative because it was the right thing to do. Won't you please stand by your promise to home care workers, and carry these long-overdue minimum wage and overtime reforms across the finish line?

Sincerely,



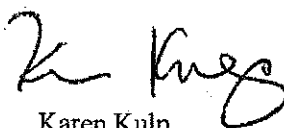
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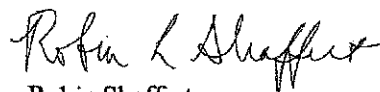
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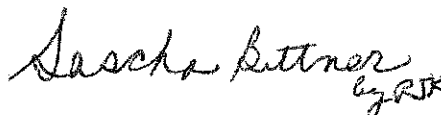
Tracy Dudzinski



Karen Kulp



Robin Shaffert



Sascha Bittner

# THE MICHIGAN *OLMSTEAD* COALITION

*Working to Make Community-Based Long Term Care Available To All Who Need It*  
3498 E. Lake Lansing Rd. ♦ Suite 100 ♦ East Lansing ♦ Michigan ♦ 48823

March 9, 2012

Mary Ziegler, Director  
Division of Regulations, Legislation, and Interpretation  
Wage and Hour Division  
U.S. Department of Labor, Room s-3502  
200 Constitution Avenue, N.W.  
Washington, DC 20210

RE: (RIN) 1235-AA05

Dear Ms. Ziegler:

The **Michigan Olmstead Coalition** supports the U.S. Department of Labor's proposed **regulations** to revise the current Fair Labor Standards Act (FLSA) standards regarding the exemption for companionship services and live-in domestic services. The Coalition and its membership support the proposal as the fair treatment of a vital workforce and as the end of another governmental "bias" that damages the ability of individuals to find and secure home and community based services. And, as one of the states that removed the federal exemption in 2006, we can report successful implementation of the protections and no reductions in services, quality, or worker income because of those changes.

The Michigan Olmstead Coalition was created more than 11 years ago to implement the promise of the U.S. Supreme Court's 1999 *Olmstead vs. L.C.* decision and the Americans with Disabilities Act (ADA) to make community-based long-term care available to all who need it. We are a coalition of advocates serving the preferences and needs of older adults, people living with disabilities, and people living with intellectual and developmental disabilities. In fact, we appear to be one of the country's few and oldest statewide coalitions that serve this array of individuals who use long-term supports and services.

We came together to fulfill the following vision:

The State of Michigan supports all citizens to live in homes of their own choice with full participation in their communities, across their life spans. To make this

vision a reality all individuals must have access to any support they need regardless of where they live.

This vision is based on our values of freedom, choice, respect, quality of life, and liberty-driven safety.

We believe that enactment of the federal proposal will help fulfill our vision.

**Michigan's home care aide workforce is large and important; substantial public revenues are spent on in-home services in this state every year.**

- In 2010, over 60,000 individuals provided Medicaid-funded Home Help services— activities of daily living and independent activities of daily living. Almost 90% of this workforce is selected and supervised directly by the Home Help participant.
- Federal Bureau of Labor (BLS) statistics ([http://www.bls.gov/oes/current/oes\\_mi.htm#31-0000](http://www.bls.gov/oes/current/oes_mi.htm#31-0000)) reports another 34,980 home health aides and 11,360 personal care aides working in the state in May 2010.
- Combining the “self-employed” Home Help providers with the federal BLS data, we estimate that Michigan’s in-home aide workforce to be over 100,000 people or approximately 23% of the state’s entire health care workforce.
- Today, over 640 certified home health agencies offer to serve Michigan’s 1.7 million Medicare beneficiaries. According to [www.Medicarecompare.gov](http://www.Medicarecompare.gov), all but ten of these agencies offer “home health aide” services. And, Medicare spent over \$1.2 billion on Medicare certified home health care services in this state in 2009.
- And, based on home-an-community-based workforce survey work being done now in the state with federal funding, we estimate that another 600 to 700 agencies serve the Medicaid-funded MI Choice home and community-based waiver program. Very few of these home care agencies are Medicare-certified; most are private duty agencies, county agencies (aging and mental health), and franchises of national chains. MI Choice participants qualify to receive services in one of the state’s nursing homes but instead choose to receive services in their own home or a licensed adult foster care home or home for the aged. The budget for the MI Choice program in fiscal year 2012 is \$220 million.
- Unlike simple “companionship,” providing home care services requires specific skills and knowledge. The federal exemption, at heart, does not recognize or honor the skills needed by a home care aide, nor by extension the worth of the individuals who need the skills and knowledge of a home care aide.
- Home care work is a job and occupation, just like others, which provides wages and benefits for thousands of Michigan workers and their families.

**The proposal will help end another “institutional bias” that favors nursing homes.**

- Through the federal ADA and the U.S. Supreme Court *Olmstead* decision, governmental policies must now support and promote inclusion, not segregation, of people living with disabilities. The Supreme Court ruled that state governmental long-term supports and services policies that default or favor institutional locations to provide needed long-term supports and services violate the ADA’s inclusion policies. People who need long-term supports and services should not be forced to receive those services in institutions rather than their own homes and apartments.
- With the expanded array of settings to receive services, particularly Medicaid-funded services, many home care workers do the same work as workers in nursing homes. Both occupations and settings should have minimum wage and overtime protections and responsibilities.
- Without similar workplace compensation protections applied to institutions and home care, the home care industry faces another governmental policy that creates a disadvantage relative to nursing homes.
- Without wage and overtime protections in home care, nursing homes are better able to attract and retain staff creating additional burdens or competitive challenges on home care agencies.
- With a more stable staff, nursing homes are more “accessible,” or able to “admit or serve” an individual needing services.

**Michigan implemented minimum wage and overtime protections in 2006 successfully despite our state’s well documented years of budget challenges.**

- On October 2006, Michigan’s minimum wage increased to \$6.95 an hour as compared to the then federal rate of \$5.85 an hour. Two other scheduled increases were enacted in the same legislation and the state’s minimum wage now stands at \$7.40 an hour. (Public Acts 81 and 363 of 2006)
- As part of setting its own minimum wage higher than the federal minimum wage, the federal companionship exemption was removed but for limited exemptions for “live-in” staff and individuals who hire less than two employees.
- Despite the state’s long, deep, well-documented economic and budgetary challenges, the Michigan Legislature made the necessary appropriations increases to actualize both the wage increases and overtime protections in all publicly funded home care services required by the changes in state policy. And, the summary legislative documents describing the state’s budget for fiscal year 2006 to 2007 makes no mention of increases to actualize the minimum wage and overtime protections. (Public Act 330 of 2006.



- As advocates for building more high quality in-home services in 2006, the implementation of wage and overtime protections was not alarming, stressful, harmful, or counterproductive to our vision, to individuals receiving services, or to the home care aides who serve those individuals. These workplace protections were implemented successfully and without remarkable disruptions in either the amount or quality of home care services.
- And, at this time, we have and see no evidence that access to or the quality of home care services are diminished by the extension of minimum wage and overtime protection to home care aides in this state almost six years ago.

From our actual, real life experience, extending minimum wage and overtime protections to home care workers is good public policy that should be part of federal work place laws. The Michigan Olmstead Coalition and its members support the proposed federal regulations.

The Michigan Disability Rights Coalition

The Arc Michigan

UCP Michigan

Disability Network/Michigan

Area Agencies on Aging Association of Michigan

Michigan Campaign for Quality Care

Michigan Protection and Advocacy Service

Michigan Statewide Independent Living Council

Michigan Developmental Disabilities Council

Michigan Paralyzed Veterans of America

ADAPT of Michigan

Community Housing Network

National Multiple Sclerosis Society-Michigan Chapter

Developmental Disabilities Institute

PHI-Michigan

UCP of Metropolitan Detroit

Washtenaw Association for Community Advocacy

Disability Network/Lakeshore

Capital Area Center for Independent Living

Disability Advocates of Kent County

Ann Arbor Center for Independent Living

Disability Network/Mid- Michigan

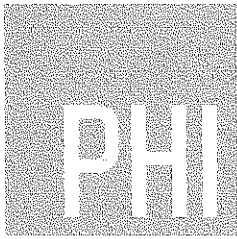
disability Connections

Disability Network/Southwest

Michigan Alliance of Direct Support Professionals

The Disability Network

The State Long-Term Care Ombudsman



**Quality Care  
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Quality Jobs**

## Home Care Partners Low Turnover Rate

### Reflects Agency's Commitment to Providing Quality Jobs



Marla Lahat, MSW, LICSW (right), is the executive director and president of Washington D.C.-based Home Care Partners, a private, non-profit agency founded in 1957 that employs nearly 200 certified home health care aides who provide services and supports in D.C., Maryland, and Virginia.

Home Care Partners pays their home care workers more than the minimum wage. In the rare instances when their aides work overtime – such as cases referred by Adult Protective Services – the aides are paid overtime wages at time and a half of their base pay.\*

Home Care Partners, complying with the complex laws and regulations of two states and a municipality, is funded through government contracts and also has private pay clients. The agency is not Medicaid- or Medicare certified.

The starting hourly wage for the agency's home care workers is about \$12.50, or just over \$13.00, depending on which state or municipality the government contract is based. Ms. Lahat says that she and her agency's board of directors only work under contracts that make it possible for the agency to pay their home care workers more than the minimum wage, or require that the workers be paid a living wage, as in the case of Arlington Country in Virginia.

Home Care Partners is also a licensed, certified home health aide training school. The school provides all of their students with 125 hours of training – the District's standard for training hours since July 2012 – which is 50 training hours more than the federal government requires. Ms. Lahat was been a longtime advocate with the Board of Nursing in the District and Maryland to increase pre-employment training hours beyond the federal requirements.

The agency also offers its employees health insurance and subsidizes 60 percent of individual coverage.

Ms. Lahat says that Home Care Partners' mission is to deliver quality services to its clients. She added that the agency could never carry out its mission if it did not pay its workers adequate wages, offer health care benefits, or provide enough training to give the aides the tools they need to provide quality care.

Home Care Partners' commitment to quality jobs has paid off. Ms. Lahat, noting the strong correlation between good jobs and employee retention, takes pride in reporting that her agency's turnover rate is just 15 percent annually – significantly lower than the 50 percent annual turnover rate that plagues the industry.

\* Maryland and the District of Columbia require that home care aides be paid a minimum wage; Virginia does not have minimum wage protections for this workforce. In both states and the District, Home Care Partners is not required to pay overtime to this workforce.

District of Columbia : Minimum wage but no overtime coverage for home care workers. D.C. Mun. Regs. tit. 7, § 902.5(b) (West 2010).  
Maryland: Minimum wage coverage for all home care workers. Overtime coverage for most home care workers but exemption for workers employed by non-profit agencies. Md. Code Ann., Lab. & Empl. § 3-415 (West 2010).



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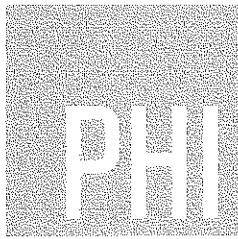
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Quality Care  
THROUGH  
Quality Jobs

## INTERVIEW: Home Care Consumer Stevie Bass on Fair Wages for Home Care Workers

By Matt Ozga



Stevie Bass's 31-year-old daughter has multiple disabilities and requires around-the-clock care from a team of nine home care aides. When it comes to choosing her home care aides -- who are hired through Mi Via, New Mexico's self-directed Medicaid waiver program -- Stevie's daughter knows exactly the type of people she wants to care for her.

"My daughter responds to people who are upbeat, creative, smile a lot -- people with a positive outlook on life," Bass said. She also leads an active lifestyle -- she skis, swims, hikes -- so she needs her aides to keep up with her. "She has to have an aide who is with her all the time -- that aide has to ski!" Bass said. Stevie's daughter relies on home care workers for a wide range of tasks: personal care, daily active exercise, yoga, cognitive drills, shopping, and meal planning and preparation.

Bass, a member of the National Participant Network, has her own requirements for home health aides -- they need to be paid a fair wage. In a recent Huffington Post article, Bass was quoted as saying that "direct-care staff cannot remain in [their] jobs without a good legal living wage." Last month, she spoke up for better pay for home care workers during a quarterly meeting of the National Council on Disability.

In an interview with PHI last week, Bass re-emphasized her support for fair pay for home care workers. "They've got to be paid correctly," she said. "It's a travesty if they are not."

Bass was referring to the poverty-level wages earned by most home care workers -- in New Mexico, where she and her daughter live, the average wage for home health aides is just \$9.22 an hour. But Bass was also talking about the fact that federal law excludes home care workers from basic labor protections, such as the right to a minimum wage and time-and-a-half pay for overtime hours.



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Supporters of quality care and quality jobs are hopeful that a change is on the horizon. In December 2011, President Obama announced his intention to amend the "companionship exemption" of the Fair Labor Standards Act, a move that would finally extend those basic labor protections to home care workers.

But 14 months later, the companionship exemption remains intact. And some groups -- including home care industry representatives and advocates for people with disabilities -- have been vocal in their opposition to such a change. Some disability advocates, for example, say that they will have to cut their care workers' hours to avoid paying them the time-and-a-half rate for overtime. They will have to hire more home care workers to make up for the hours lost, which they argue would be too difficult a task to manage.

Stevie Bass says that managing a larger staff of home care workers can be harder than managing one or two care providers -- but it's far from impossible. "People [with disabilities] seem quite concerned that they might need to hire a larger staff," she said. "It may be a hard transition in the beginning, but you can do it. It's a lot of work, but you can be successful."

Indeed, for the last five years, the Bass family has had quite a lot of success managing a staff of nine home care workers -- none of whom work more than 40 hours a week, under the terms of the Mi Via program. In her experience, Stevie said, home care workers would "rather work fewer hours and get paid better than work a lot of hours and paid worse."

The bottom line, Stevie said, is that home care workers -- like all direct-care workers -- need to be respected as professionals. They need to have the same basic labor protections as other workers, and they need to make a decent wage in order to be effective caregivers.

"If you don't get paid properly, you can't function. You've got to be paid well," she said. "My overall view is that care workers need to be looked at with great respect -- it's a real profession."

March 6, 2012

The Honorable Tim Walberg  
Chairman, Workforce Protections Subcommittee  
House Education and the Workforce Committee  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Lynn Woolsey  
Ranking Member, Workforce Protections Subcommittee  
House Education and the Workforce Committee  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Walberg and Ranking Member Woolsey:

As organizations dedicated to protecting and advancing progress for women and their families, the undersigned write in strong support of the rule proposed by the Department of Labor (DOL) to amend the Fair Labor Standards Act (FLSA) regulations to extend basic labor protections to nearly 1.8 million low-wage home care workers. This proposed rule (RIN 1232-AA05) will ensure that these workers are finally entitled to minimum wage and overtime premium pay, correcting a longstanding injustice and advancing economic security and fair pay for women, especially women of color. We oppose any delay in implementing these long-overdue regulations.

About nine out of ten workers in the rapidly growing home care industry are women, disproportionately women of color. Many of these women are primary income earners for their families who struggle to survive on median annual wages of less than \$21,000 for full-time work, below the Federal Poverty Guideline for a family of four. Home care workers provide a lifeline for the elderly and people with disabilities – yet for decades, their stressful and physically demanding jobs have come without the basic protections of the federal minimum wage and overtime laws. Extending the protections of the FLSA to a field heavily dominated by women will help these women lift their families out of poverty and reduce ongoing pay disparities between women and men.

The proposed rule also better reflects the intent of Congress when it passed the 1974 FLSA amendments to expand coverage for domestic service employees. The goal was to provide fair treatment for the low-income women and minorities who comprised the majority of workers in the field, exempting only casual companions, and not professional caregivers, from the protections of the FLSA. Since 1974, home care has grown into a major industry; with thousands of third party agencies now employing roughly 70 percent of workers in the industry, the proposed rule's extension of FLSA protections to home care workers employed by third parties is vitally important.

While cost considerations would not justify the continued denial of legal rights to home care workers, we note that the cost of extending FLSA protections to home care workers is manageable. Twenty-one states already require minimum wage and/or overtime pay for most

home health workers who would otherwise be excluded under current regulations. The national cost of the proposed change is estimated to amount to less than one-tenth of one percent of the home care industry's \$84 billion in annual revenue.

Moreover, providing wage and hour protections to home care workers will have benefits for the industry and consumers as well as for the workers themselves. The turnover rate in the home care field is estimated to be between 44 and 65 percent each year, mainly due to low wages, insufficient hours, and lack of reimbursement for travel costs. High turnover disrupts continuity and quality of care for customers and places great financial burdens on agencies and state and federal governments. By increasing wages, encouraging more even distribution of work hours, and requiring reimbursement for travel costs, the proposed rule will reduce turnover and promote better outcomes for both home care workers and the individuals and families they serve.

DOL's proposed rule will finally extend basic legal protections to home care workers who for too long have been underpaid and undervalued. The proposed regulations should be finalized and implemented without delay.

Sincerely,

9to5, National Association of Working Women  
American Association of University Women (AAUW)  
American Medical Women's Association  
American Civil Liberties Union  
Annie Appleseed Project  
Black Women's Health Imperative  
Catalyst  
Center of Concern  
Clearinghouse on Women's Issues  
Coalition of Labor Union Women  
Equal Rights Advocates  
Feminist Majority  
Florida Federation of Business and Professional Women's Club, Inc.  
Legal Momentum  
MomsRising.org  
National Congress of Black Women  
National Council of Jewish Women  
National Council of Women's Organizations  
National Organization for Women  
National Partnership for Women & Families  
National Women's Law Center  
Older Women's League  
Sisters of Mercy Institute Justice Team  
Turning Anger into Change  
U.S. Women's Chamber of Commerce  
Veteran Feminists of America  
Wider Opportunities for Women  
Women Employed  
YWCA USA

