



**GLOBAL  
INSIGHT**

## Economic Impact of Eliminating the FLSA Exemption for Companionship Services

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Prepared for:  
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Educational Foundation

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## TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY .....</b>	<b>1</b>
<b>1. INTRODUCTION .....</b>	<b>3</b>
<b>2. SURVEY OF FRANCHISE COMPANION CARE BUSINESSES .....</b>	<b>4</b>
<b>3. ECONOMIC IMPACT ANALYSIS – ESTIMATES AND ASSUMPTIONS .....</b>	<b>10</b>
THE DEPARTMENT OF LABOR'S ECONOMIC IMPACT ANALYSIS.....	11
FRANCHISE COMPANION CARE AGENCY SURVEY DATA.....	11
IMPACT OF CHANGES IN OVERTIME REGULATION .....	13
BUSINESS RESPONSE TO CHANGES IN OVERTIME REGULATION.....	17
GLOBAL IMPACT ON THE FRANCHISE COMPANION CARE INDUSTRY .....	19
<b>4. HEALTH POLICY ISSUES .....</b>	<b>20</b>
<b>APPENDIX. COMMENTS OF COMPANION CARE BUSINESS OWNERS .....</b>	<b>23</b>



## Executive Summary

The U.S. Department of Labor recently proposed changes to sections of the Fair Labor Standards Act pertaining to the exemption from its minimum wage and overtime provisions for workers who provide companionship services and live-in domestic services. Among the proposed changes, employees of third party employers of companionship workers would no longer be exempt from the FLSA minimum wage and overtime provisions.

The International Franchise Association (IFA) asked IHS Global Insight to undertake a study of the impact of these proposed rule changes on companion care businesses that operate as franchises. To assess the impacts, we conducted a survey of franchise businesses in this industry. This report presents the findings of that survey and IHS Global Insight's conclusions regarding the impacts of the proposed rule changes. Our principal findings are as follows.

- The Department of Labor's economic impact analysis of the proposed rule changes substantially understated the extent of overtime work among companion care workers, at least among those working for franchise-operated companion care businesses. The average amount of overtime worked is three times greater than estimated in the Department of Labor analysis.
- Other costs of the proposed rule change may also be understated in the Department of Labor economic impact analysis, including management costs of adding staff to avoid the cost of overtime pay (assumed zero) and the cost of travel time for employees travel between work sites.
- We believe the Department of Labor's assumption about the sensitivity of the demand for companion care services to price increases (the demand price elasticity) is based on incomplete data on the source of payment for these services and is, therefore, significantly understated.
- As a result of the underestimation of costs and the price elasticity, the Department of Labor has significantly understated some of the economic impacts (transfer costs and the dead-weight loss) that will result from the proposed changes in regulations.
- The impact of the proposed rule changes on employment is less clear. Businesses that responded to our survey indicate a strong intention to avoid paying higher overtime costs, which may lead to sufficient hiring of additional employees to offset job loss due to reduced demand. To the extent this occurs, the effect of the proposed Department of Labor regulations may be to create a certain number of additional (primarily low-wage) jobs, while at the same time reducing the earnings of a substantial number of workers who are already low-wage workers.

There are a total of 27 companies (franchisors) in the companion care industry, which have an estimated 4,193 franchisees. The greatest impact of the Department of Labor's proposed rule changes would be on approximately 2,500 of these businesses, which are located in states that currently do not require overtime pay to companion care workers. These businesses operate an estimated 3,200 establishments with approximately 200,000 employees, including 168,000 companion care workers.

## 1. Introduction

In December 2011, the U.S. Department of Labor (DoL) issued a notice of proposed rulemaking to revise the current Fair Labor Standards Act (FLSA) regulations pertaining to the exemption for companionship services and live-in domestic services. The FLSA exempts from its minimum wage and overtime provisions domestic service employees employed to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves. DoL's proposed amendments of the regulations would revise the definitions of companionship services and change the regulations to deny all third party employers of companionship workers the use of exemptions from the FLSA minimum wage and overtime provisions.

The International Franchise Association (IFA) engaged IHS Global Insight to make an independent assessment of the impact of these proposed rule changes on home care businesses that operate as franchises. To assess the impacts, we conducted a survey of franchise businesses that provide companion care services. This report presents the results of that survey and IHS Global Insight's findings about their implications for the economic impacts of the proposed rule changes.

The published notice of rulemaking included a detailed description of how DoL estimated the expected economic impact of the rule changes, including specific assumptions and calculations made to quantify the overall economic impact. One of the objectives of our survey of companion care agencies was to gather information that could be used to evaluate some of the important quantitative inputs into the calculation of an industry-wide estimate of the impact of the rule changes.

In Section 2, we provide a general description of the survey of franchise businesses and summary results of the size and composition of the sample from which we were able to estimate industry averages. In Section 3, we describe some of the key assumptions, estimates and findings of DoL's analysis of economic impacts of the proposed rule changes and compare those figures with estimates based on the survey data.

Our survey of companion care franchise businesses also gathered information from the business owners on their assessments of likely outcomes of implementation of the proposed rule changes. In Section 4, we summarize the comments received regarding the potential impact on employees of the agencies and customers of the agencies, and we consider additional health policy considerations that are raised by the rule changes proposed by the Department of Labor.

## 2. Survey of Franchise Companion Care Businesses

With the cooperation of the International Franchise Association (IFA), IHS Global Insight identified nine IFA member companies in the companion care industry (franchisors) that agreed to contact their franchisees to request that they provide information about their business operations and the potential impact of the proposed Department of Labor rule change.

IHS Global Insight prepared a list of questions to be posed to all participating franchisees. The survey requested data on the employment, wages paid and revenue of companion care agencies. Additional questions were included on the amount of overtime worked and overtime pay practices to make it possible to evaluate assumptions made in DoL's analysis of the economic impacts of the proposed rule changes. Since certain states have their own regulations governing minimum wage and overtime payment, data were collected to identify the state(s) where each franchise business operates. Data were also collected separately on whether agencies have companion care employees that work 24-hour live-in schedules. Survey data were collected during the first two weeks of February 2012 using an on-line survey process.

Data were obtained from 542 franchise businesses that operate from a total of 706 locations. Table 1 provides a tabulation of the responses received by each of the nine participating franchisors. Across all participating companies, 17 percent of their franchisees submitted survey questionnaires. Response rates of the participating companies' franchisees varied from 1 percent to 37 percent. Not all survey submissions were complete.

**Table 1.**  
**Summary Survey Results by Franchisor**

Franchisor	Total Franchisees	Participating Franchisees	
		Surveys Received	Number of Locations
<b>Total</b>	<b>3,259</b>	<b>542</b>	<b>706</b>
Company 1	237	87	113
Company 2	146	27	36
Company 3	658	40	44
Company 4	910	139	179
Company 5	45	10	11
Company 6	319	4	26
Company 7	224	46	59
Company 8	300	46	62
Company 9	420	137	166
Not specified	--	6	10



The 542 companion care agencies that submitted survey data operate in 47 states. The location of the businesses by state is an important factor in assessing the economic impact of the proposed Department of Labor rule changes, because some states have their own minimum wage rates and/or overtime pay regulations that supersede the FLSA exemption. The Department of Labor report on the proposed rulemaking identifies three groups of states for purposes of its analysis:

- Group 1. 29 states that do not include home health care workers in their minimum wage and overtime provisions: Alabama, Alaska, Arkansas, Connecticut, Delaware, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Hampshire, New Mexico, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, and Wyoming.
- Group 2. 16 states that extend both minimum wage and overtime coverage to most home health care workers who would otherwise be excluded under the current regulations: California, Colorado, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Jersey, New York, Pennsylvania, Washington, and Wisconsin. (New York and Minnesota have special provisions.)
- Group 3. Five states (Arizona, Nebraska, North Dakota, Ohio, and South Dakota) plus the District of Columbia, which extend minimum wage, but not overtime coverage to home care workers.

Businesses operating in Group 1 states are subject to the greatest impacts from the proposed Department of Labor rule changes. Table 2 provides a breakdown of the businesses participating in the survey across these three groups of states. 52.4 percent of all franchise businesses that responded had locations in Group 1 states. Because businesses in these states are most subject to the impact of the proposed rule change, we report results separately for businesses operating in Group 1 states below.

**Table 2.**  
**Survey Responses by Groups of States\***

	Total	Group 1 States	Group 2 States	Group 3 States
Franchise Businesses	542	284 <sup>a</sup>	225	33 <sup>b</sup>
Percent of total	100.0%	52.4%	41.5%	6.1%

\*See text for states included in each group

<sup>a</sup>Includes 6 businesses that also operate in Group 2 or Group 3 states.

<sup>b</sup>Includes 1 business that also operates in Group 2 states.

Companion care franchise businesses are predominantly small businesses. This is reflected in the data reported on the number of locations owned by each franchisee as well as average revenue and number of employees.

Over three-fourths of all franchisees responding to our survey operated from only a single location (Table 3).

**Table 3.**  
**Number of Locations Operated by Franchise Businesses**

	All Franchises		Those in Group 1 States	
	Number	Share (%)	Number	Share (%)
<b>Total</b>	<b>541</b>	<b>100.0%</b>	<b>283</b>	<b>100.0%</b>
1	429	79%	220	78%
2	77	14%	42	15%
3	24	5%	13	5%
4+	11	2%	8	3%
Mean for 4+	5.7		6.2	

The number of locations was not reported for one agency.

About half of all franchisees reported total revenue (business receipts) of \$1 million or less in 2011 (Table 4).

**Table 4.**  
**Total Revenue of Franchise Businesses: 2011**

	All Franchises		Those in Group 1 States	
	Number	Share (%)	Number	Share (%)
<b>Total</b>	<b>540</b>	<b>100.0%</b>	<b>284</b>	<b>100.0%</b>
Less than \$500,000	129	23.9%	66	23.2%
\$500,000 - \$1 million	165	30.6%	90	31.7%
\$1,000,000 - \$2 million	152	28.2%	74	26.1%
\$2 million - \$3 million	54	10.0%	31	10.9%
\$3 million - \$4 million	16	3.0%	9	3.2%
\$4 million - \$5 million	7	1.3%	4	1.4%
More than \$5 million	17	3.0%	10	3.5%
Mean for \$5 million+	\$10.3 mil.		\$10.3 mil.	

Revenue was not reported for one agency.

Despite their modest revenue, these companion care businesses employ a substantial number of employees. Across all franchisees reporting, the average number of total employees (including all support staff and other occupations as well as companion care workers) was 76 (85 in Group 1 states). More than half of all franchisees have 50 or more employees (Table 5).

**Table 5.  
Number of Employees**

	All Franchises		Those in Group 1 States	
	Number	Share (%)	Number	Share (%)
<b>Average number of employees</b>	<b>76</b>	<b>--</b>	<b>85</b>	<b>--</b>
<b>Employment Size Distribution:</b>				
<b>Total</b>	<b>535</b>	<b>100.0%</b>	<b>282</b>	<b>100.0%</b>
0-9 employees	20	3.7%	13	4.6%
10-24 employees	56	10.5%	32	11.3%
25-49 employees	143	26.7%	77	27.1%
50-99 employees	195	36.5%	93	32.7%
100+ employees	121	22.6%	67	23.6%

Employment was not reported for seven agencies.

Within the framework of the North American Industry Classification System (NAICS), the companion care agencies for which data are reported here would be classified in the industry NAICS, 62412, Services for the Elderly and Persons with Disabilities (SEPD). This is evident based on the distribution of their revenue by type of revenue, since the industry classification of a business establishment is based on the predominant line of business. More than 80 percent of the respondents to our survey received more than half of their revenue from companion care services in 2011 (Table 6).

**Table 6.  
Share of Revenue from Companion Care Services: 2011**

	All Franchisees	Those in Group 1 States
Average share of revenue from companion care services	85.6%	84.1%
Number of franchisees reporting more than 50% of revenue from companion care services	451	229
Share of all franchisees reporting	83.2%	80.9%

The distribution of employees by type of activity also reflects the focus of these franchisees on providing companion care services (Table 7).

**Table 7.**  
**Share of Employees that Provide Companion Care Services**

	All Franchisees	Those in Group 1 States
Average share of employees that provide companion care services	83.6%	83.2%
Number of franchisees reporting more than 50% of employees provide companion care services	473	217
Share of all franchisees	88.4%	76.4%

Table 8 provides selected summary figures for all franchise businesses that responded to the survey.

**Table 8.**  
**Summary Data from Survey of Companion Care Agencies**

	All Franchisees	Those in Group 1 States
Number of Franchise Businesses	542	284
Number of Locations	706	380
Revenue in 2011	\$799 mil.	\$431 mil.
Total Employment	44,026	24,098
Companion Care Employees	36,823	20,042

The Department of Labor's proposed rule changes include specific new language governing the hours of work of companion care employees who provide live-in 24-hour services. Therefore, our survey of franchise home care agencies asked separately about the incidence of live-in 24-hour service. This question was asked both in terms of the number of an agency's customers with a need for such service and the share of the agencies' workforce that work such schedules.

Table 9 summarizes results regarding the share of all customers that require 24-hour live-in service. About 10 percent of all customers require 24-hour live-in care. Across all agencies responding to the survey, 13 percent of their companion care employees are working 24-hour live-in schedules.

**Table 9.**  
**Types of Care Required by Customers of Companion Care Agencies**

	All Franchisees	Those in Group 1 States
<b>Total Customers of Franchise-Operated Companion Care Agencies</b>	<b>100.0%</b>	<b>100.0%</b>
Receive live-in 24hour services	9.5%	8.9%
Do not receive live-in service, but require care more than 40 hours per week	25.7%	29.5%
Require 40 hours or less care per week	64.8%	62.1%

Many of the employees of companion care agencies who work 24-hour live-in schedules are paid a daily rate, while others are paid at an hourly rate. Those who do not serve customers on a live-in basis are typically paid at an hourly rate. Table 10 shows the average rates of pay separately for these two groups.

**Table 10.**  
**Average Earnings of Companion Care Employees**

	All Franchisees	Those in Group 1 States
Those on 24-hour live-in schedules:		
Paid at a daily rate (\$ per day)	\$133	\$127
Paid at an hourly rate – straight-time rate (\$ per hour)	\$9.87	\$8.49
All Others (straight time hourly wage)	\$9.45	\$9.12

The rule changes proposed by the Department of Labor would remove the exemption for companion care workers to be paid the minimum wage. No survey respondents reported an average wage for companion care employees that was below the federal minimum wage of \$7.25.

### 3. Economic Impact Analysis – Estimates and Assumptions

A principal focus of the proposed the Department of Labor rule changes is to remove the exemption for companion care workers for paying overtime wages. Among the 261 responses to the question "Does your business pay overtime to companion care workers for hours worked in excess of 40 in a week?" from businesses in Group 1 states, 46 (18 percent) responded yes. Most of these respondents indicated that they pay overtime voluntarily, but some responded that they were required to pay overtime due to state regulations (even though they are located in states without overtime regulations).

Table 11 contains data on the number of companion care workers who usually work over 40 hours per week and the average amount of overtime worked. In this table, we combine franchises operating in Group 1 states and Group 3 states as defined above, because states in both of these groups have no regulations regarding overtime. Across agencies in all states, 27 percent of companion workers usually work over 40 hours per week. Businesses in states in Groups 1 and 3 have a slightly higher incidence of overtime – 29 percent. Based on the responses of businesses that reported the average hours of overtime worked by companion care workers that usually work over 40 hours, the average hours of overtime nationwide was 8.2. The average for businesses operating in states in Groups 1 and 3 was 6.8 hours per week.

**Table 11.  
Overtime Work by Companion Care Employees**

	All Franchisees	Group 1 and Group 3 States	Group 2 States
Companion care employees that are not on 24-hour live-in schedules:*	33,713	20,614	13,099
Usually work 40 hours or less per week	24,618	14,577	10,041
Usually work more than 40 hours per week	9,095	6,037	3,058
Share that usually work overtime	27%	29%	23%
For those that work overtime, average hours of overtime per week	8.2	6.8	9.1

\*Results for respondents with valid responses for number of employees by work schedule.

Another dimension of compensation of companion care workers that would be affected by the proposed Department of Labor rule changes is payment of employees for travel time between clients. Of the 521 agencies that responded to the survey question "Do you pay for travel time for companion care employees for their travel between clients during the same day?" 50 percent responded affirmatively (39 percent in Group 1 states).

## ***The Department of Labor's Economic Impact Analysis***

The Department of Labor estimated that there were 631,000 Personal Care Aides (PCAs) and 955,000 Home Health Aides (HHAs) employed by agencies in 2009 for a total of 1.59 million workers.<sup>1</sup> [78] However, not all of these workers are FLSA-exempt companion care workers; many provide health-related services. Others are either not employed in the home or are employed in states that provide minimum wage and overtime coverage. [79]

The Department of Labor estimated that 934,000 of the 1.59 million employees work in the home – 45 percent of HHAs and 80 percent of PCAs. [89,93] They estimated that 738,000 PCAs and HHAs are currently exempt from overtime coverage under the FLSA because they are employed in states without overtime coverage or are employed in public agencies and non-profit organizations that may be exempt from overtime coverage. This is approximately 47 percent of all PCAs and HHAs employed by agencies. [97]

The Department of Labor cites studies that indicate that only 8 percent of HHAs and 15 percent of PCAs report working greater than 40 hours per week. They base their estimates of the cost of overtime on assumptions that 10 percent of companion care workers work 45 hours per week and 2 percent of workers work 52.5 hours per week. [97] Thus, on a weighted average basis, 12 percent of non-covered workers work an average of 6.25 hours of overtime per week, for a total of 30 million hours of overtime a year. The Department of Labor estimates the cost of overtime for exempt companion care workers based on a wage of the affected workers of \$9.51 per hour derived from 2009 OES data. [97]

## ***Franchise Companion Care Agency Survey Data***

The companion care hourly wage used by the Department of Labor to estimate the added cost of increased overtime is generally consistent with the average wage of companion care workers reported in our survey. The franchise agencies that reported wages in our study reported that those companion care workers who were paid at an hourly rate are paid an average straight-time wage of \$9.45. (This is an employment-weighted average across all respondents reporting both employment and wages). Employees working live-in 24-hour schedules were paid an average of \$133 per day.

However, the building blocks of the Department of Labor's estimate of the amount of overtime worked by companion care workers are not at all representative of our sample of franchise-operated companion care agencies. Because many companion care workers who provide live-in 24-hour service are paid on a daily basis and responses to the question regarding the number of hours they actually work are subject to varying interpretations of work time, we focused our questions about overtime work schedules on

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<sup>1</sup> Here and below, the numbers in brackets are page numbers in the Department of Labor's "Notice of proposed rulemaking: Application of the Fair Labor Standards Act to Domestic Service."

those companion care workers within each agency who do not work a 24-hour live-in schedule. Some summary statistics for these workers are as follows:

Among the 527 agencies that provided data on the number of their hourly-paid workers, 440, or 83 percent reported that at least some of their workers usually work more than 40 hours per week. For businesses operating in Group 1 and Group 3 states (those without overtime regulations), the share was 89 percent.

- For these agencies, the share of workers who worked more than 40 hours per week ranged from 1-2 percent to 100 percent.
- For agencies in all states, as reported above, 27 percent of all hourly-paid workers usually worked more than 40 hours per week (29 percent in states in Groups 1 and 3). This is more than double the incidence of workers with overtime that was used as a basis of the Department of Labor's estimates.
- Among respondents who reported the number of overtime hours usually worked, the average hours of overtime per week was 8.2 hours (6.8 hours for employees in Groups 1 and 3 states). These figures are also above the effective average of 6.25 hours per week underlying the Department of Labor's analysis.

Combining our results for the number of workers who usually work over 40 hours per week and the usual hours worked in excess of 40, the average amount of overtime worked by our sample of companion care workers is 2.7 to 3.0 times greater than that assumed in the Department of Labor's economic impact analysis. For example, for 1,000 companion care workers, the DoL assumptions would yield an estimate of 750 hours of overtime per week ( $10\% \times 1,000 \times 5 \text{ hours} + 2\% \times 1,000 \times 12.5 \text{ hours}$ ). Across all states, 1,000 companion care workers in our sample work 2,214 hours of overtime ( $27\% \times 1,000 \times 8.2 \text{ hours}$ ) – nearly three times more.<sup>2</sup> Moreover, this could be a lower-bound estimate of the understatement of overtime work by the Department of Labor as it relates to franchise-operated agencies for two reasons. First, we did not collect information on overtime hours that occur when an employee with less than 40 hours weekly but works more than eight hours in a single day. The Department of Labor study also makes no direct calculation of these added overtime costs. Second, 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. The incidence of overtime work could be greater for workers who are not being paid an overtime premium.

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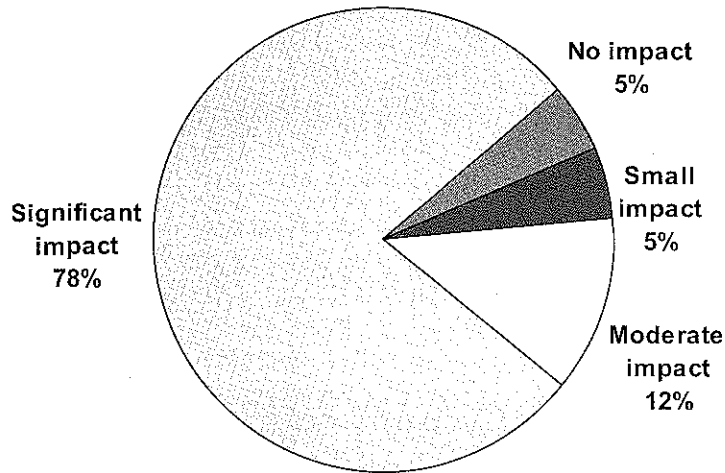
<sup>2</sup> The Department of Labor estimate of the incidence of overtime work is based largely on a study that used Current Population Survey data on two occupations identified in the CPS – "Personal Care Aides" and "Nursing, Psychiatric & Home Health Aides." The former occupation is defined in the CPS as "Personal and home care aides." The CPS shows employment of about 900,000 in this occupation – well above the 686,000 employment in PCAs reported in the Occupational Employment Statistics. So the CPS category could include many employees who are not companion care workers. The mismatch of the second CPS occupation for companion care workers is even greater. Employment in the CPS of "Nursing, Psychiatric & Home Health Aides" is nearly double the number of Home Health Aides alone; the wages paid to the nursing and psychiatric aides that are included in the CPS occupation are about 16 percent above those of Home Health Aides; and their hours of work could also differ significantly. So, these two CPS occupations may not give an accurate reflection of the overtime worked by PCAs and HHAs.



## Impact of Changes in Overtime Regulation

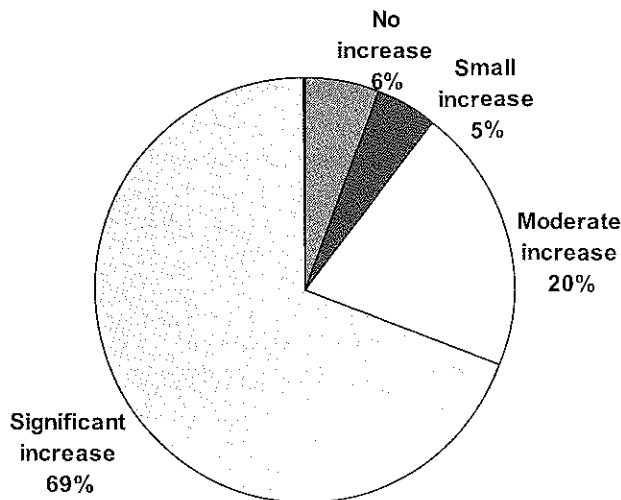
A large majority of the franchise business owners who responded to our survey are greatly concerned about the potential impact of the proposed rule change on their business (Figure 1).

**Figure 1**  
If the proposed Department of Labor rules regarding the payment of overtime are adopted, will your business be affected?



The business owners in our sample expect implementation of the proposed rule changes to result in a significant increase in the cost of doing business (Figure 2).

**Figure 2.**  
If the proposed Department of Labor rules are adopted, do you anticipate an increase in your business costs?



This distribution of responses about the impact on the cost of doing business largely reflects the added cost of paying overtime. As is evident from the agencies' responses to other questions reported below, the responses given likely represent the increase in costs that these businesses would experience before taking action to cut overtime.

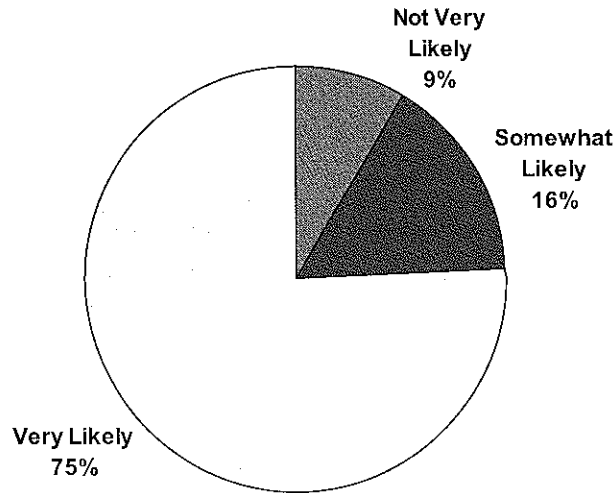
However, the fact that these companion care agency operators expect a significant increase in the cost of doing business despite a strong intention to reduce overtime also indicates that many have a different view than is reflected in the Department of Labor analysis of the increased cost of hiring, training and managing a larger number of employees to handle the same workload. The Department of Labor study acknowledges "additional managerial costs to agencies might occur as a result of changes in staffing" but takes the position "the Department has no basis for estimating these costs, but believes they are relatively small. Therefore, they are not included in the three scenarios [listed below]." [105] Our survey did not solicit specific estimates of the added managerial costs of making staffing changes in response to the new rules, but some business owners expressed concern about this in additional comments they provided. These comments are included in the appendix of this report.

Another part of the proposed rule change is to require agencies to pay employees for travel time between two job sites during the same day. The Department of Labor estimates the cost of paying for this travel as a fixed 19.2 percent of the cost of their Scenario 1 for overtime pay (based on a New York court case). This is an annual amount of \$26.7 million in the first year (equivalent to a 0.06 percent increase in wages to employees). At the hourly wage rate used by DoL for their economic impact analysis (\$9.51), this would compensate about 2.8 million hours of travel. Using 30 minutes per day as a hypothetical time for travel between two clients, it would compensate about 5.6 million trips. If we assign these trips to companion care workers who travel between clients on a regular basis year-round, this number of trips would be spread across 23,000 workers, which is only 2.5 percent of all companion care workers.

As reported above, about one-half of the agencies that responded to our survey pay their employees for travel time between job sites (39 percent in Group 1 states). We did not gather data on the share of companion care employees that work at more than one site during a day, but the fact that a large percentage of the total have a policy in place for this suggests that such travel may not be uncommon. This is another area where making an accurate assessment of the economic impact of the regulations requires better data.

Most of the business owners surveyed expect to try to pass the added costs of overtime, management and administration and other impacts of the proposed rule change on to their customers. Only 9 percent of the respondents to our survey reported that it is "not very likely" that their fees would increase if the proposed Department of Labor rules are adopted. Three-fourths reported that an increase in fees was very likely (Figure 3).

**Figure 3.**  
**If the proposed Department of Labor rules are adopted,**  
**how likely is it that you will increase the fees you charge**  
**your clients?**



The average expected increase in fees reported by those who said a fee increase is somewhat likely was 12 percent. The average increase reported by those who said a fee increase is very likely was 26 percent. Weighting these two categories of responses together with those who reported that a fee increase was not very likely, the industry-wide average expected fee increase was 20 percent. (There are some very high percentage increases among the responses received that boost the average, however, 20 percent was also the median expected fee increase.)

This expected increase in fees for companion care services is in sharp contrast with the expected cost impact estimated by the Department of Labor. DoL estimates the transfer costs (additional costs to businesses) of their preferred scenario of market response to overtime as about \$113 million, which is equal to 0.27 percent of wages (spread over all workers) and about 0.15 percent of average industry revenues. [115] Based on the results presented above, we can list some possible explanations that may account in part for the significant difference.

- The company responses we received may reflect the impact of the new proposed regulations before the agencies take action to reduce costs. The sample of businesses that agreed to participate in our survey may also include a disproportionate share of businesses that expect to be most significantly affected.
- As indicated above, the Department of Labor analysis appears to significantly underestimate the amount of overtime currently worked by companion care workers.
- The fact that the Department of Labor's analysis did not directly address the higher management and administration costs associated with increasing the

number of employees to avoid paying overtime could be omitting a significant cost factor.

- The franchise-operated sector of the home care industry may be more significantly impacted by the proposed regulations than other types of providers.

The franchise business owners' assessments of the impact on their customer base if they implement the necessary increase in their fees to cover higher costs were equally dire. Across all respondents, the agencies project losing 23 percent of their customers. This expected drop in demand for companion care services reflects a much greater sensitivity to a price increase than was assumed in the Department of Labor analysis. The Department of Labor assumes the price elasticity of demand for home companionship services is -0.15, and that the price elasticity of supply of these services is similar. A 23 percent drop in demand in response to an average fee increase of 20 percent obviously indicates a much higher expected price elasticity.

The Department of Labor supports its use of a low price elasticity in part on the grounds that Medicare and Medicaid cover most of the services provided. They cite the statistic that Medicare and Medicaid account for about 75 percent of total payments for home health care payments. [115,117] This is a reference to the source of funds for the revenue of the Home Health Care Services industry (NAICS 6216). As the Department of Labor's industry analysis shows, this is an industry that employs both health care and companion care workers. Services of the former would generally be eligible for Medicare reimbursement, but companion care services are generally reimbursable only if provided in conjunction with medical services.<sup>3</sup> Therefore, the Medicare reimbursable share of companion care services provided by the Home Health Care Services industry could be much lower than 75 percent. Moreover, the majority of companion care services are provided by the Services for the Elderly and Disabled Persons industry (NAICS 62412), and Medicare reimbursement is not reported for this industry. Inclusion of this industry would likely lower the share of companion care service costs that is covered by Medicare and Medicaid even further.

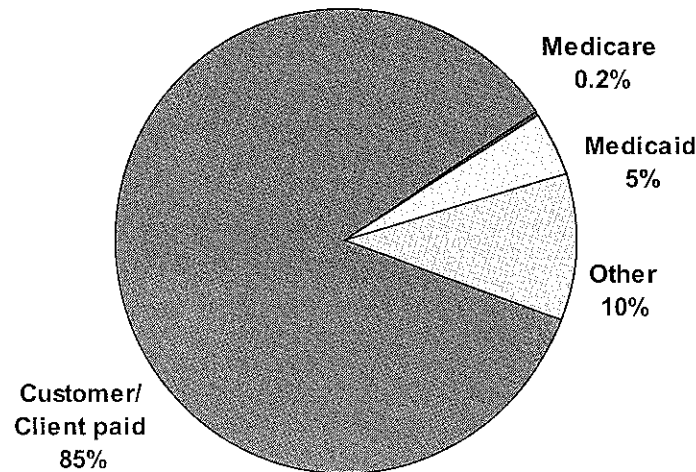
Indeed, our survey data indicate the source of the overwhelming majority of the receipts of companion care agencies is customer paid (Figure 4). It is possible that in many cases the agencies may not be aware of whether customer payments are subsequently reimbursed by Medicare, Medicaid, private health insurance or other programs. But it

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<sup>3</sup> Guidelines for Medicare coverage on the Medicare web site state that, if a series of conditions are met for home health services to be covered, Medicare will cover: "Home health aide services on a part-time or intermittent basis. A home health aide doesn't have a nursing license, but supports the nurse by providing services such as help with bathing, using the bathroom, dressing, or other personal care. These types of services don't need the skills of a licensed nurse. Medicare doesn't cover home health aide services unless you are also getting skilled care such as nursing care or other therapy. The home health aide services must be part of the home care for your illness or injury." Medicare.gov (July 2010) [Who can get Medicare-covered home health care, and what services does Medicare cover?](#)

seems likely that the share of customer-paid companion services is much higher than assumed in the Department of Labor's analysis.

**Figure 4.**  
**Source of Payment for Companion Care Agencies' Revenue**



The Department of Labor agrees that "Patients that pay all, or a significant share, of costs out-of-pocket might have a significantly different price elasticity for home health services;" [116] The source of funds for companion care is an issue that warrants further investigation in order to properly assess the impact of the proposed rule changes on consumers as well as on the agencies providing these services and their employees.

The results that flow from the Department of Labor's assumption are that average wages will increase by about \$0.044 per hour, and employment will decrease by 505 nationwide. That job loss number is exceeded more than five-fold by our small sample of businesses alone. The 158 survey respondents who anticipated job loss as a result of the revised Department of Labor regulations project job losses totalling 2,630. This represents 6 percent of the total employment of the 542 companion care agencies surveyed.

### ***Business Response to Changes in Overtime Regulation***

The Department of Labor analysis considers three scenarios of possible market response to the requirement to pay overtime hours at a time-and-a-half rate:

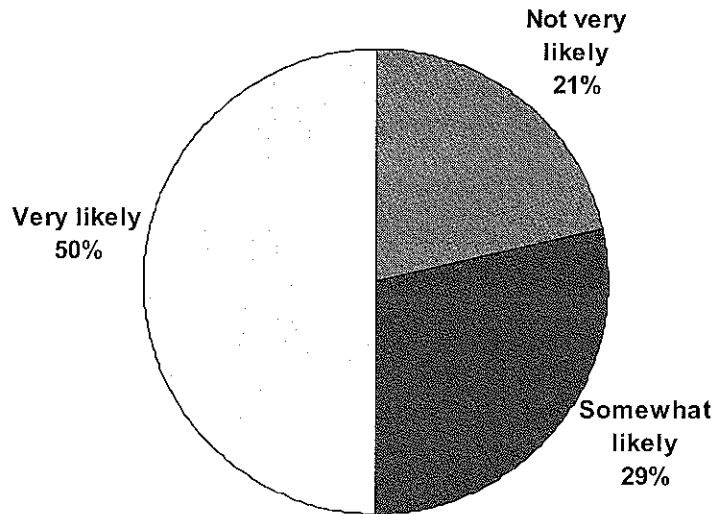
1. Firms do not adjust their staffing, and the additional overtime is worked and paid.
2. Firms make a partial adjustment to their staffing and reduce overtime by 50 percent.
3. Firms adjust their staffing so no additional overtime is worked and paid.

The Department of Labor says "scenarios 2 and 3 are more likely to occur." The results of our survey generally support this assumption:

- Ninety-five percent of our survey respondents operating in states where there are no overtime regulations (Groups 1 and 3) said they would eliminate all scheduled overtime hours.
- Two percent of these respondents said they would reduce but not eliminate scheduled overtime.
- Only 3 percent said they would make no change to scheduling and pay the additional overtime cost (the Department of Labor's Scenario 1).

Although franchise companion care business owners clearly expect to reduce overtime hours if the proposed regulations are implemented, the sentiment that there will be an increase in hiring of new employees to staff these hours is not quite as strong. About one-half of all respondents stated that it was very likely that they would hire additional companion care employees to avoid paying overtime and another 30 percent stated that this was somewhat likely (Figure 5).

**Figure 5.**  
**If the proposed Department of Labor rules are adopted,**  
**will you hire more workers in order to avoid paying more**  
**overtime?**



Above we cited results showing that the impact of implementation of the DoL rule changes could be significant job loss if agencies must raise their fees substantially to offset the higher cost of overtime. The more likely scenario is that they will strive to significantly reduce overtime and will in many cases add additional employees to accomplish this. Thus, the net jobs impact of the proposed rule change is somewhat uncertain. The likely impact of the proposed Department of Labor regulations on

employees might be characterized as follows. A certain number of additional (low-wage) jobs could be created, while at the same time the total earnings of a substantial number of workers who are already low-wage workers will be reduced because their overtime is cut.

### ***Global Impact on the Franchise Companion Care Industry***

The franchise company database maintained by the International Franchise Association shows a total of 27 companies (franchisors) in the companion care industry. These companies have a total of 4,193 franchisees, with employment of approximately 340,000, including 280,000 companion care workers.

The greatest impact of the Department of Labor's proposed rule changes would be on approximately 2,500 businesses located in states that currently do not require overtime pay to companion care workers (those operating in Group 1 and Group 3 states as listed in Section 2). These businesses operate an estimated 3,200 establishments with approximately 200,000 employees, including 168,000 companion care workers.<sup>4</sup>

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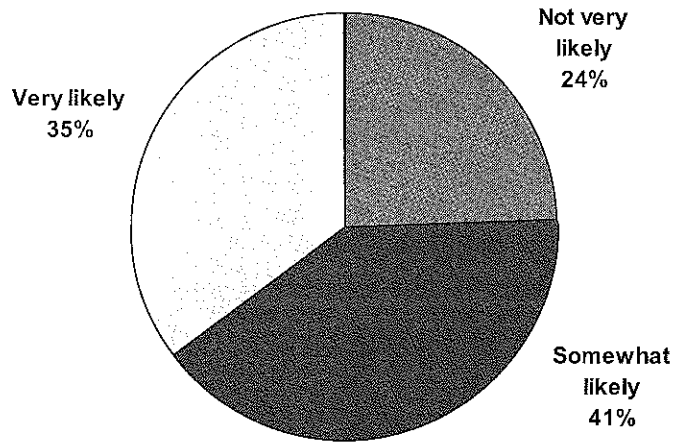
<sup>4</sup> These estimates are based on ratios of revenue and employment per establishment from our survey of companion care agencies.

## 4. Health Policy Issues

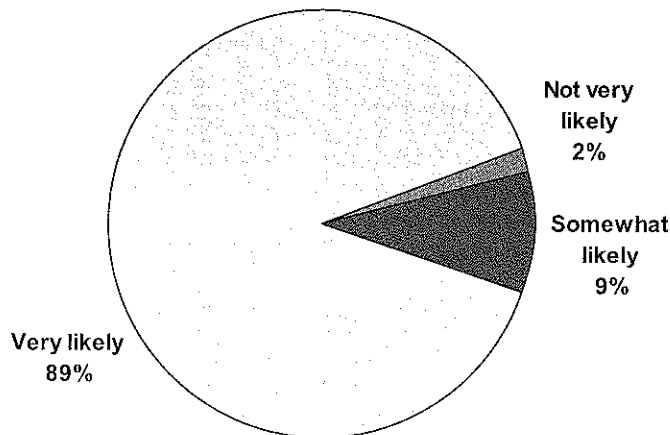
We also asked the companion care agencies their opinions about the likely response of their clients to an increase in fees (see Figure 6).

**Figure 6.**  
**Based on your knowledge of your industry and your clients, what is the likely response of clients who can no longer afford companion care services from an agency?**

**They would seek institutional care (nursing homes, assisted living centers):**



**They would seek other care, such as "underground" providers:**



Those who use companion care services are motivated by a desire not to move from their homes into a nursing home or assisted living setting. For many, an assisted living



institution may not be an option due to financial constraints. However, for those who need care for a substantial portion of the time, an increase in the cost of companion care could push them in the direction of moving to an institution, which in many cases would mean personal financial resources are soon exhausted and the cost of care would shift to Medicaid.

For those who do not have a medical condition in need of close oversight, higher costs for companion care could lead to seeking a cheaper alternative (grey market) source of companion care. Others may respond to the increased cost by reducing or attempting to forego home care altogether. Another possible outcome is that some adult children of elderly parents might leave the workforce to care for a parent. A June, 2011 report, "Study of Caregiving Costs to Working Caregivers," by MetLife's *Mature Market Institute*, put the cost per person over age 50 if they are taking care of elder family members at over \$300,000. This number reflects lost wages, pensions, and Social Security benefits over their lifetime, due primarily to a reduction in working hours, or leaving the work force entirely early to care for a parent.<sup>5</sup>

The U.S. Department of Labor estimates that nearly 30% of workforce employees provide elder care for a parent or parents. Over 14 million employees today are dealing with balancing careers, jobs and elder care. Stress related health issues for caregivers has risen 27%. Nearly two-thirds of caregivers express some conflict between demands at home and demands from employers.

The potential for increased additional health care costs from a reduction of service in response to higher costs must be taken into account in assessing the impact of the proposed rule changes. Grey market companion care aides may not be properly trained, licensed or insured. This can present a clear danger to senior health. One of the greatest risks to the elderly is injury from a fall. The CDC estimates the cost of falls by seniors will be \$55 billion by 2020 in 2007 dollars.<sup>6</sup> Home companions reduce the risk of falls and thus help to restrain the societal costs of treatment for and recovery from serious injuries to the elderly and disabled.

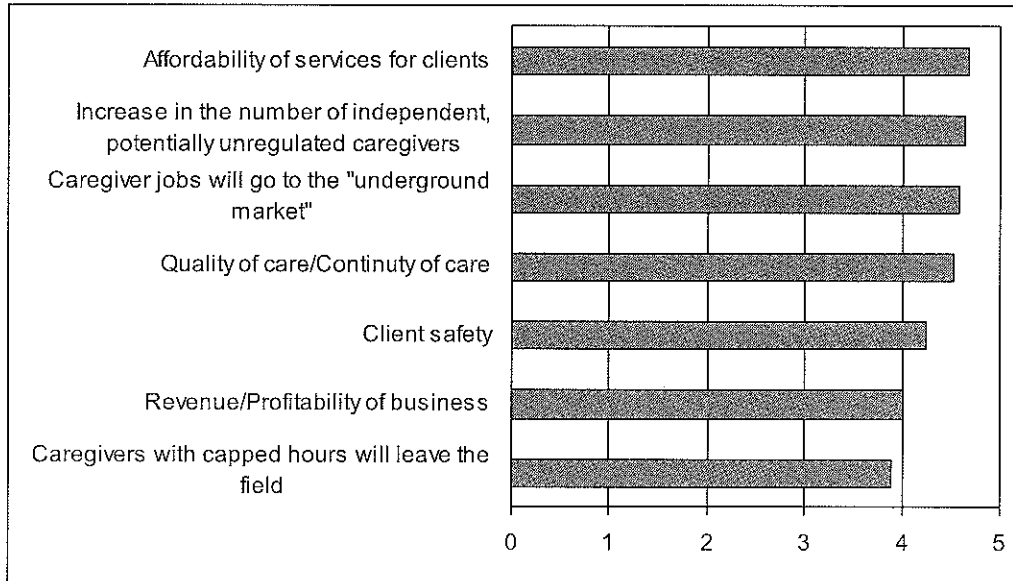
We posed a series of outcomes from implementation of the proposed Department of Labor rule changes to the companion care agencies to solicit their views about the areas of greatest concern to them. Respondents were asked to score each outcome on a scale of 1 to 5. Impacts on the ability of their customers to afford companion care service and the potential for them to shift to grey market providers ranked at the top of the list. The results of these responses are presented in Figure 7.

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<sup>5</sup> "The Economic Cost of Caring for Elderly Parents,"  
[http://www.lokvani.com/lokvani/article.php?article\\_id=7586](http://www.lokvani.com/lokvani/article.php?article_id=7586)

<sup>6</sup> <http://www.cdc.gov/HomeandRecreationalSafety/Falls/fallcost.html#costly>

**Figure 7.**  
**If the proposed DoL regulations are adopted, what are your biggest concerns? Please rank each of the items below based on the level of your concern (with "1" being "least concern" and "5" being greatest concern).**



## **Appendix. Comments of Companion Care Business Owners**

Typical families have a difficult time affording these necessary services now. To add mandatory overtime has a significant impact on the client as well as the employee. More employees may go "underground" themselves so that they can continue to work more hours....As for the clients, they will lose continuity of care, meaning their consistent, steady companion will be cut off at 40 hours max and a replacement will have to come in....I will struggle to find more part-time employees to fill in the gaps. If the employee goes into OT, the client cannot be charged for the OT unless they expect the same employee all the time.

*Chesapeake, VA*

This industry is quite competitive. It will be very difficult for a new business like my own to survive these changes. Moreover, continuity of care and thus quality of care will be greatly impacted.

*Phoenix, AZ*

The net result will be to reduce caregiver income while at the same time making the cost of care unaffordable to many.

*Birmingham, AL*

Most of my caregivers are over 50 years old, who need the extra income to meet their financial needs. They are in good health and want 50-60 hours per week with 2/3 of that time spent overnight, resting or sleeping while their client sleeps. My caregivers genuinely love caregiving, but many would not be able to stay in this line of work if the 50 - 60 hours per week were not available. Unfortunately, at their age and skill level, there are not many jobs out there...My biggest concern is that my caregivers who want to be self sufficient, will quickly be forced to seek government assistance, because we will not be able to provide the hours...From the client's perspective, my clients are families who are making the ultimate commitment to keep their loved ones at home. We offer them the best rate we can, and it is still difficult for them to finance. If we had to pay overtime, our clients would go away, and the business would close. This proposed law is a situation where the intent may be good, but in the end, it will hurt the many hard working people who are trying to make a career of caregiving, and people who want to keep their incapacitated loved ones at home.

*Greenwood, IN*

Clients will hire "underground" caregivers who are not licensed with no credentials and proper background checks. The client's well-being will be at a high risk.

*Huntington Beach, CA*

It's a real safety issue for the clients as they'll have to look to the underground market and take huge risks.

*Austin, TX*

The proposed regulations will increase regulation, increase operating costs (administrative and regulatory), increase caregiver turnover, increase client costs, and force agencies to decrease the hours and pay of employees... Clients will see a huge decrease in continuity and the level of care will suffer as there will be multiple employees providing care. I've done the job of the caregiver and the exemption is valid. There is not a continuous work flow in a home to support the need for this proposal. As a net result of this proposal, I will employ more people with less hours and disallow overtime. Caregivers will be forced to work for other competing agencies to make ends meet. This is bad for companies, bad for clients, and bad for employees. While well intended, this is not the solution for our industry or seniors.

*Havertown, PA*

The adoption of this rule will: (1) Move caregivers to unregulated grey market as clients will no longer be able to pay for live-in care through a regulated agency. (2) Caregivers will lose take home pay (gross amount) as clients will not be able to pay overtime - meaning an overall loss in jobs. (3) Less taxes as more caregivers will be paid under the table and not report their income.

*Omaha, NE*

I do not see an upside to this rule. HomeCare companies will suffer because they will not be able to afford to pay the overtime rates and be able to stay in business. Clients will suffer the most because they will not be able to have the continuity of caregiver that is so crucial to many of our Alzheimer and dementia clients. The caregivers will not be able to make enough money to live on so they will either leave the field or try to work for several different agencies. This is a no-win situation.

*Duluth, GA*

If my caregivers had to work less than 40 hours, or my dementia clients had to have several different caregivers because of the overtime rule change, we would lose clients and caregivers both.

*Clearwater, FL*

Very few seniors will be able to afford the increased cost and lifestyle changes with constant caregiver rotations in their homes. This new rule is unworkable and unaffordable to seniors. We may have to close our business as we will have no bottom line left after implementing these changes.

*New Port Richey, FL*

This would be a homerun for unregulated caregivers. The "next door neighbor" with little or no training and experience will be sought out for less expensive care.

*Nashville, TN*

DoL does not understand that the real impact to clients for 24 hour service will be to have as many as 12 caregivers in a 24 hour period vs. 4 caregivers in a 24 hour period (that is typical with caregivers on a 12 hour shift.) Clients want one caregiver, and once they

have four (two weekly & two weekend) they adapt. They will not adapt to having 12 caregivers!! Would you want 12 people caring for your parent?

*Reston, VA*

This is a job killer. Most of my workers will go underground immediately. We will also see client satisfaction decrease due to the increase in the number of caregivers they will see in a given week.

*Fort Collins, CO*

A significant portion of my business is based upon companion services. The new rule would make our services unaffordable for the vast majority of our clients. As a result, we will likely go out of business if the new rule is adopted.

*Grapevine, TX*

Clients do not want multiple caregivers in their home on any given day. They won't be able to pay the overtime required to have one caregiver there for 10 hours. They will most likely limit the hours of care that they have, thus putting themselves at risk.

*Granada Hills, CA*

This bill is a lose, lose, lose proposition. Employees lose jobs, clients lose safety, and small companies lose revenue.

*Rockville, MD*

The companion care business will move underground. No supervision, no taxes, and no workers comp.

*Manchester, NH*

My biggest concern is that we would lose clients to private unregulated caregivers.

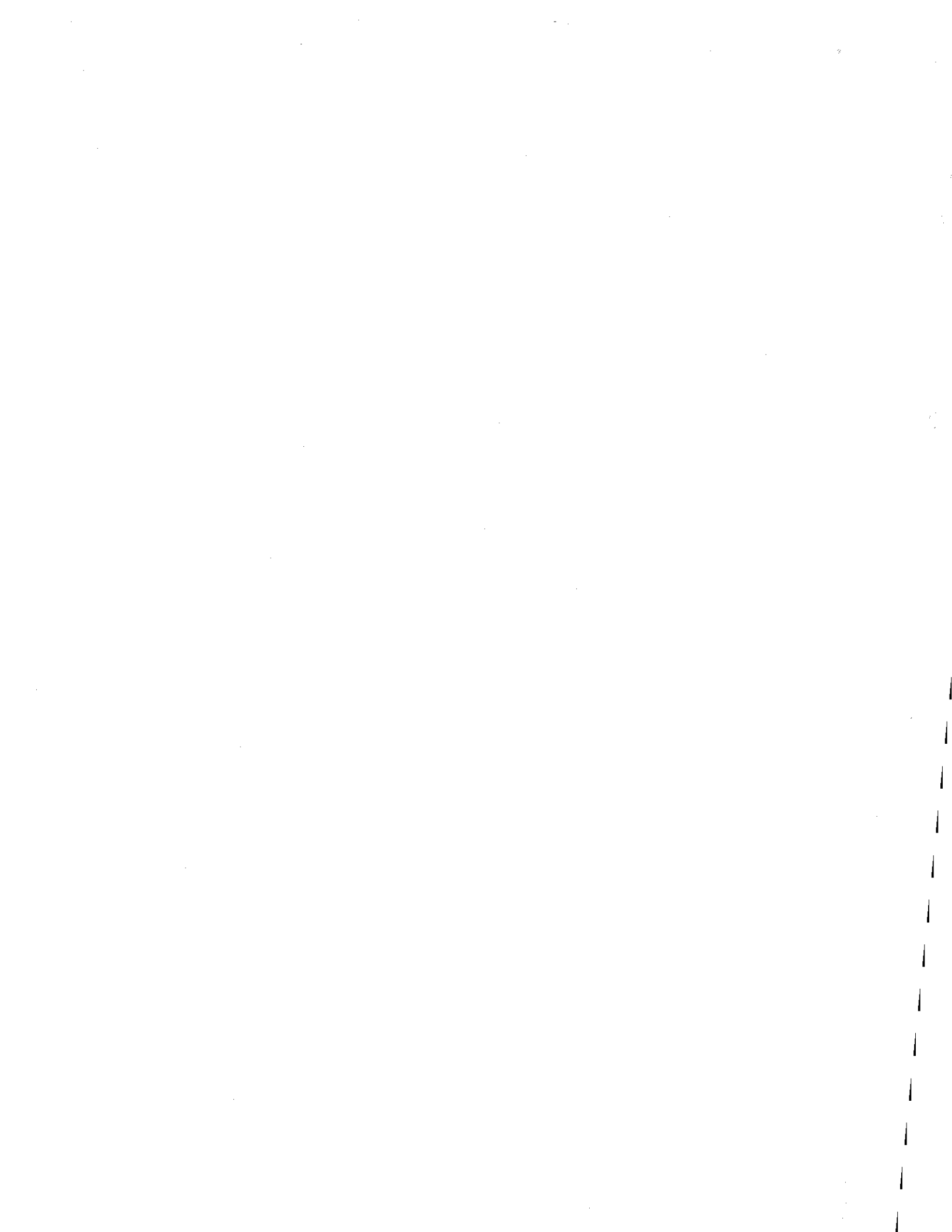
*South Orange, NJ*

The DOL doesn't understand the scope or magnitude of this issue. This change in rules will devastate the lives of seniors AND caregivers nationwide, and everyone will lose.

*Roanoke, VA*

If this passes I will be forced to close my doors. I will not be able to operate because clients will not pay for rate increases and caregivers will begin working independently. If that happens, client care will suffer.

*Abbeville, LA*



## SHOW US THE MONEY FIRST!

My name is Philip Bennett from Brooklyn, NY. I am speaking as a home care worker of 36 years, not for any home care agency.

The Federal Department of Labor's proposing changes to the Fair Labor Standards will seriously reduce the take-home pay of countless numbers of homecare workers such as I and make the lives of the people with disabilities we assist less manageable.

The changes would require that homecare workers must receive time and a half pay for every hour over 40 hours per week of work done. Medicaid/Medicare would bear most of the burden.

This sounds like it would be a major victory for me and my fellow homecare workers, right? I'd be gaining an extra \$2,142.40. But where is the money to pay for this? If the law says we can't work without time and a half pay but the money's not there, then we won't be allowed to work those hours!

That means, instead of increasing our take-home pay, the proposal will slash all hours beyond 40 per week of our pay. I currently work 48 hours per week. Take away my 8 hours and that's 416 hours and, instead of gaining \$2,142.80 per year, I'll lose \$4,742.40 per year.

What's even more likely is the agency will cut my hours back to only 24 a week then offer the other 24 to a second worker since 24 hours per week, meager as it is, is more attractive than 8 per week. That way both of us will barely qualify for health insurance, which is based on working at least 80 hours per month. But, if either of us misses work for even 2 days in a month, we lose our insurance completely and it'll take 4 months of near-perfect attendance to requalify.

And workers who currently put in 84 hours per week will suffer a 44 hour loss -- over half their pay!

As a result, many workers will be forced to seek out second or third jobs to make up the loss. That will be a daunting task since home care agencies are spread out and often assigned different regions so traveling from one region to another will be extra time-consuming.

For the people we assist, life will be harder. They will endure a reduction in homecare hours or will have to tolerate more workers coming in and out of their homes or pay an unaffordably higher deductible for the service or be forced to hire nonprofessionals. That means more poorly paid people in their homes with even less incentive to do a good job. Many people with disabilities have a hard enough time right now managing their assistants. Add to that an increase in the co-pay and the added strain will force many to give up and move into nursing homes.

Who benefits from this proposal? Certainly the nursing home industry. Also the homecare unions which will receive more dues-paying members even as all the members' average standard-of-living declines. Even the most poorly-paid worker in a closed shop is





required to turn over at least \$25.10 per month in union dues. That's a windfall for union coffers even as the average standard of living of the workers plummets.

And why should the unions support home care workers when the average nursing home worker, a nurse's aide, pays more dues than a home care worker?

What can we do? I suggest, before this proposal is put into effect, funding for it be allocated and in place to begin payment immediately. Finding this money won't be easy. The federal government is 16 trillion dollars in debt (that's \$16,000,000,000,000: a lot of zeros!) The states and municipalities aren't doing much better. But, until we are shown the money, this proposal is nothing but a shell game which promises a reward but leaves us worse off than before.

Consumers of long term care and direct care workers are both groups of people who are not valued by society. Both groups have a vested interest in the advancement of each other's economic security and personal freedom.

ADAPT and the National Council on Independent Living have proposed a solution. They have urged DOL to simply eliminate the ability of third-party employers from using the exemption and clarify that this change would not affect individuals with disabilities in consumer-directed programs – including those operating under agencies with choice models. This proposal would mean that 70 percent of attendants would no longer fall under the current exemption. DOL could then begin formal discussions with the Disability Community about how to handle changes to the rest of the companionship exemption including services through consumer directed and agencies with choice models.

Alternatively, the administration could utilize a negotiated rule-making process which would include the Disability Community in determining how the rules would be applied. Right now, what the Dept. of Labor is proposing is little better than a pie-in-the-sky scheme.

The home care workforce — some 2.5 million strong — is one of the nation's fastest growing yet also worst paid. Turnover is high with a potential labor shortage looming as the baby boomers age. Obviously this scheme is designed to attract more workers. But, in the real world, it will drive people out of the profession, including workers like me who love the job since we can do much better financially bussing tables at a Burger King. Even opening a lemonade stand would be an improvement.

**SHOW US THE MONEY!**



Statement from Paula Herman, June 4<sup>th</sup>, 2013

I'm a single mom and my daughter is 41yrs old and disabled. She is one of 300 recipients in the State of California that receives Advanced Pay. My daughter receives 24 hour Protective Supervision on the IHSS Program. This means that she receives the maximum amount allowed by the State of California.

This proposed Companion Care law will not benefit us and in fact will hurt us. I would love a vacation or sick pay or overtime pay for all the hours I work. It isn't realistic here in California. The Governor will pull the trigger and put us on a 40 hour a week limit to be a Provider and exclude IHSS from any overtime. Its in place in his budget. Until there is a way to finance this and there is a positive solution for all of the disabled and seniors in California that rely on IHSS for their attendant care needs I would ask that this not be passed into law.

Effective July 1st, 2013 due to the 8% across the board cuts on IHSS the maximum amount of hours for 24 hour care will be capped at 260 hours until next July and then reduced to 7% the following year. I have never seen across the board cuts to IHSS until the 3.6% percent. The maximum amount was 283 hours a month for a severely disabled person.

There are 720 hours in a month. Who is going to provide free care for my daughter for this remaining 460 hours a month? Are we going to be forced into looking into a board and care home so my daughter receives the care she needs? This doesn't sound like the Least Restrictive Environment and goes against the Olmstead Act and everything the Disabled Community has fought for.

Hiring a stranger care for my daughter's personal needs is not a option. Placing my daughter out of the home is not a option. I have watched my daughter almost die several times. I have fought for the right to be her attendant ie parent provider and now here we go again.

Taking care of a disabled person or being disabled is not a easy life. Why are the disabled always the first to be targeted and stressed out? Don't they go through enough already? I think this is idea had great intentions but unfortunately there is no way it will work in California. Until the finances can be figured out I am praying that IHSS is excluded from the Overtime rule.

Thank you so much for your time, Paula Herman



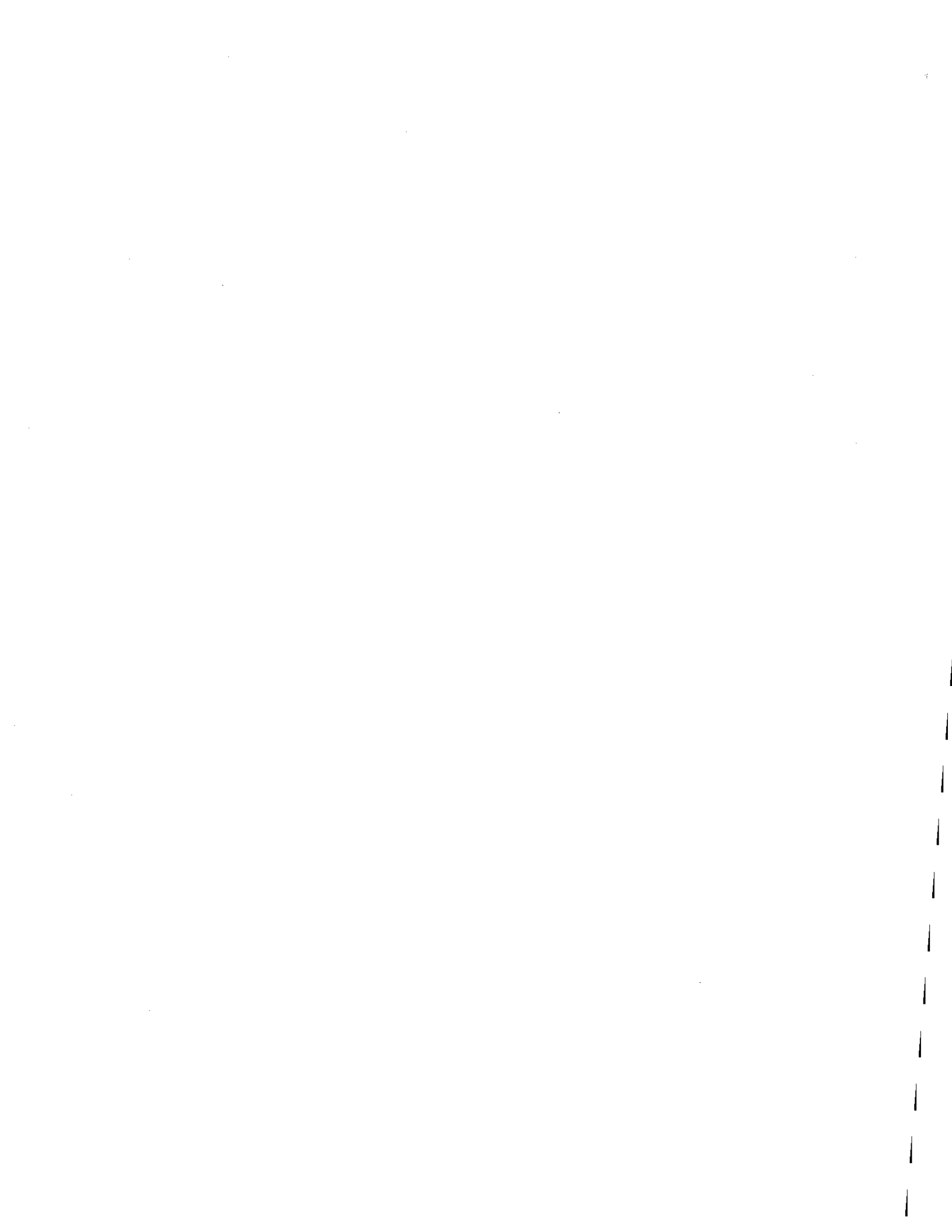
Lets focus on the Home Care Aide, because that is what this issue is really about. . . RIGHT??

If LOU GARCIA - according to this story makes \$10 per hour and works a 12 hour shift, she can make \$120 per day to support her family. Lets suppose she works 5 days per week, a total of 60 hours per week. Then she is making roughly \$600 per week before taxes.

Lets say that this law comes into affect. Then anything over 40 hours per week will be entitled to overtime compensation. It is not mandatory that she work over 40 hours. So what Lou will see is that her hours will be cut to avoid paying overtime. Another aide will come in to cover the additional 20 hours that Lou is not working. WHY? Because unlike other industries, most patients who want to stay home will not be able to afford the additional cost of overtime. To avoid this cost to the private household, companies will simply staff another aide at the home, or the family will bring in another aide. This is Obamas way of creating jobs, by splitting a job that can be performed by one person to two people!

This will result in at least a 4 hour per shift drop for Lou Garcia, a 33% drop in her hours and wages. In some cases, it may be more appropriate to simply split the 12 hour shift in half between 2 caregivers. Meaning that one caregiver works a 6 hour shift and Lou would work the other 6 hours. This would then cut Lou's wages and earning potential by 50%!!! Now she has gone from making \$600 per week to \$300 per week!!!

This is the REALITY of the situation. Medicaid will not change its rates to accommodate overtime. Private households will not simply incur the additional cost without looking for ways to keep their costs down. Although minimum wage and overtime have good intentions, it will do nothing to protect home care aides. In fact, this law will hurt more aides than it will help.



Mike Volkman

64 Fans

05:58 PM on 09/01/2012

We want our personal assistants to be paid better than they are. This proposal will backfire. Overtime pay as proposed will be a higher rate than regular hours. Most of our services are paid through Medicaid. Medicaid will not pay extra. When this new regulation takes effect, all of our workers, whom we rely on, will be prohibited from working more than 40 hours per week. Many of them work more than that now. If the purpose of this proposal is to pay them better, what will actually happen in reality is that they will be cut back and paid less than what they are making now. If our workers need to work more hours to be able to afford their rent and feeding and clothing their children, they will no longer be allowed to. This defeats the purpose of this proposal. It would be much better if Medicaid simply raised its rates to a much more respectable level. They should also be afforded health insurance, accrued vacation and sick pay, and a 401K. Also, consumer-directed personal assistance is the wave of the future; here in New York we do this through not-for-profit fiscal intermediaries which keep administrative costs very low and we pay our workers much better.

This proposal as it is written must not pass. Our advocates have been working tirelessly to convince the Department of Labor to accept our compromise instead. More details of this can be seen on [adapt.org](http://adapt.org).





Statement of Nancy Becker Kennedy

The Obama administration is developing labor rules that will require seniors and people with disabilities to bring strangers into their homes, force others into institutions, and reduce the take home pay of attendants. In California, in anticipation of these Department of Labor Rules passing is causing the state to gear up to cut back IHSS worker's hours to no more than 40 hours a week, because of the state's fiscal limitations.

Here is a sample letter from one consumer that can help you write yours. There's a link at the bottom of this that tells you how to find your federal legislator and two petition links right below it. If you want to express yourself, feel free to copy from these letters included with the petitions and in the statement below.

From Michael Condon -- STOP THE UNINTENDED CONSEQUENCES OF THE DOL PROPOSED RULES

My name is Michael Condon. I'm a disabled Veteran, paralyzed from the neck down for the last 40 years. I live in San Diego, CA, in a home I rent, and I am assisted by a caregiver paid for by In-Home Supported Services (IHSS). IHSS employs nearly 400,000 caregivers across the State. Almost 50% of these caregivers currently work more than 40 hrs/week. In addition, 70% of the IHSS caregivers in this program care for family members, many of whom require protective supervision (24 /7 care).

The State has neither the funds nor the inclination to pay overtime. This will put me, and hundreds of thousands like me, at risk of institutionalization. Because our caregivers will be limited to a 40 work week, I will be forced to have multiple caregivers while there are already not enough to meet the current need. Please do not institute the DOL regs. requiring overtime. The disabled, elderly and blind on ...this program would love to have their caregivers receive time and a half, but that will not happen. What will happen (unintended consequences) instead, the caregivers hours will be cut driving many deeper into poverty. The caregiver loses, the senior/disabled loses and the Unions almost double their membership dues.

Sincerely.

Michael Condon

This is why a 40 hour work week mandate is bad. It will be financially devastating to 46% of IHSS IP's (190,000 workers) in CA alone.

DOL Proposes Changes to Companionship Exemption HURT people with disabilities!

The Department of Labor (DOL) has proposed changes in federal labor rules that, although well-intentioned, will have a negative impact on people with disabilities and most seriously impact people who have the most significant disabilities who rely on Medicaid home and community based services to be independent.

Labor advocates have urged people to support these rules which are intended to assure that attendants get paid minimum wage and are paid time-and-a-half for overtime work. The disability community recognizes the invaluable role that attendants play in supporting the independence of people with disabilities and has advocated for increased funding for attendant services to improve wages, however the way DOL is implementing this rule change will have a serious negative impact on people with disabilities and promote unwanted institutionalization.

Detailed Policy Implications

Most notably, people with disabilities could face unwanted institutionalization as a result of implementing these proposed rules.



Increasing the cost of home and community based services by requiring overtime pay, without increasing the Medicaid rates or raising the Medicaid caps for available funding, will result in a reduction in hours of personal assistance, forcing some people with disabilities into unwanted institutionalization.

Requiring minimum wage payments for overnight assistance may raise the cost of serving individuals above established Medicaid caps, resulting in people with significant disabilities either going without needed assistance or being forced into unwanted institutionalization.

The proposed DOL change will limit the availability of family and friends as paid attendants in consumer directed personal assistance programs. Reducing the availability of this vital component of the attendant workforce threatens the independence of Americans with disabilities.

The DOL also significantly mischaracterizes consumer directed services. DOL describes consumer directed services "as a 'grey market;' that contains an element of 'over-the-back-fence network of women [who are] usually untrained, unscreened, and unsupervised, but more affordable without an agency's fee, less constrained by regulations and hired through personal recommendation.' The term 'grey market' is sometimes used to suggest that at least some of these private arrangements are designed to avoid applicable labor laws..."

DOL notes that "There is no consolidated source of data on state consumer-directed programs" even though there are several resources within the disability community, and DOL fails to assess the impact that the proposed changes will have on that system for providing services and supports to people with disabilities.

It is also likely that the proposed changes will not significantly improve the lives of attendants. Because Medicaid and Medicare rates are not being increased to cover the additional cost associated with these changes, home care agencies will limit the hours attendants can work, forcing attendants who currently to work for multiple agencies in order to match their current standard of living.

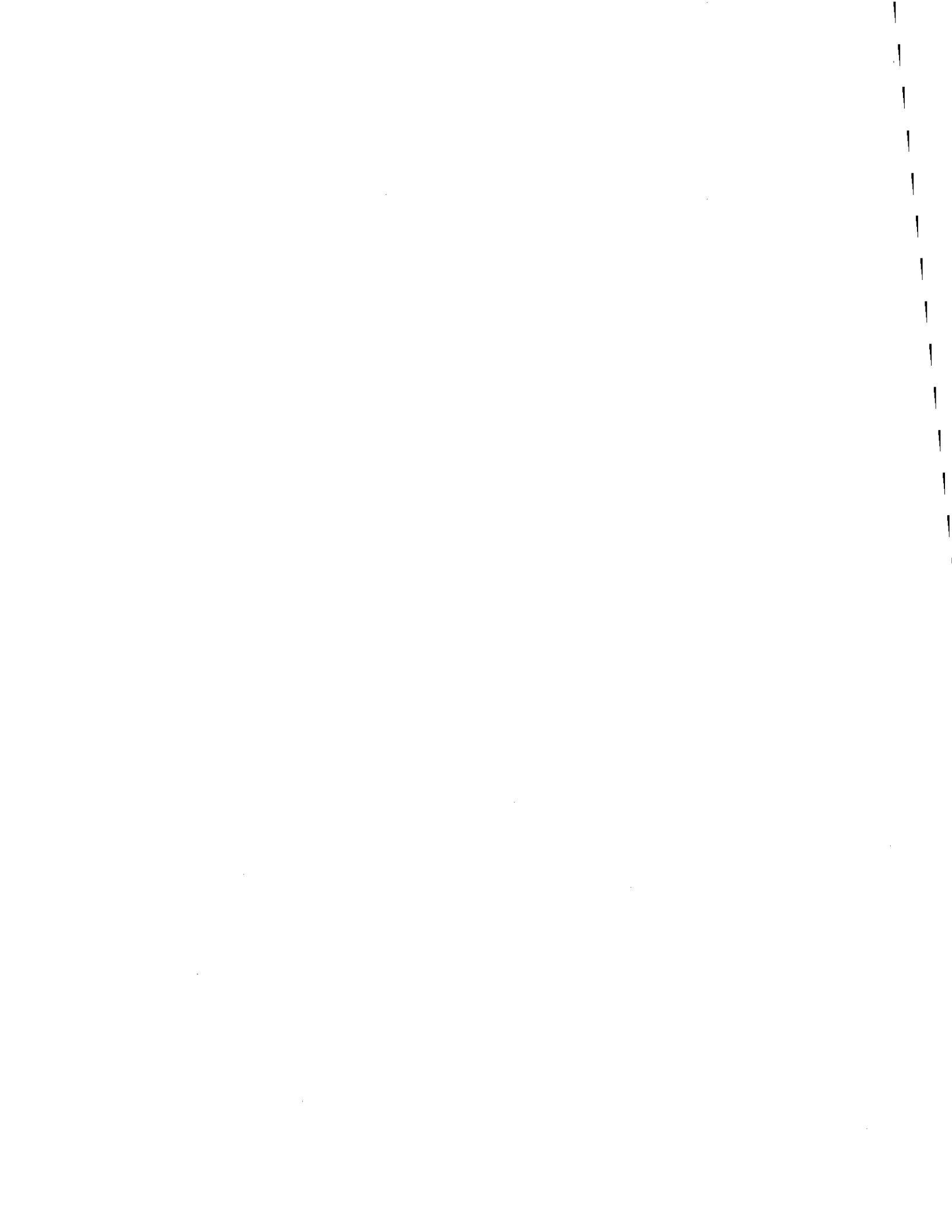
The necessity to balance efforts to enhance workers' wages and benefits with the needs of people with disabilities was identified and addressed in Guiding Principles which were developed between SEIU and disability advocates. According to those Guiding Principles, signed on November 16, 2011, "As a general principle, enhancements to workers' wages and benefits shall be paid for through increased funding." The DOL proposal does not do this.

ADAPT, NCIL and the Disability have proposed a compromise solution!

At this point, we have proposed a solution that allows the White House to keep its promise AND work with the disability community on the sections of the rules that affect consumer directed services.

DOL can finalize the change in the companionship exemption that would eliminate the exemption from third-party employers. After clarifying that this change would not affect consumer-directed fiscal intermediaries, the proposed change would cover 70 percent of attendants - including those who are taken advantage of by the home care industry. By leaving the rest of the rules intact, DOL could start formal discussions with the disability community about how to handle the companionship exemption in consumer directed services.

This compromise position is consistent with the Guiding Principles signed between SEIU and the disability community last Fall. Under it, the administration covers 70% of all attendants and we get an opportunity to sit at the table! If the Obama Administration doesn't even do this, it's clear how little the Administration regards our community.



How to really improve attendant jobs -- by caregiver Lynn Hsu  
June 2, 2013

If the Department of Labor was sincere about turning attendant care into decent jobs for family and non-family members they would find a way to instead pay out sick pay and two-week vacations and enough emergency services for us to find someone to replace that attendant. Emergency services that really work with workers experienced with people with significant disabilities and Alzheimer's etc. must go hand-in-hand with these vacation and sick days or we will threaten seniors and people with disabilities with institutionalization. Making these three changes would help everyone. And of course the minimum wage must go up for all working people. It is so out of line with the cost of housing its laughable and tragic all at once.

Paying sick pay and two weeks paid vacation, would turn California's attendant job more into a real job. This would cost much much much less an overtime across the board which will not happen because the states Medicaid programs will still likely cap hours instead. We should tell Department of Labor to bring these jobs into alignment with real jobs by having sick days and paid vacation. It would cost a fraction of the money. It's one shot payment once a year instead of an enormous increase every month for some, and it helps every attendant. They have it in New York. The unions won't get more union dues by doing this but they will turn this into a better job by asking for far less money that will actually turn into a good for everyone instead of a pie in the sky request that will only result in caps on hours.

With direct care providers comprising one of the fastest-growing employment sectors in this country, there is every reason to fight for fair living wages and working conditions that give workers the same dignity and security that they labor to provide for their clients. However, simply slapping an overtime requirement on top of the existing system will not help anybody. The system will not \*pay\* overtime, so the real-world result will just be a cap on the number of hours a given provider can work with a given client. Providers will still have to work long hours without overtime; they'll just have to split those hours among multiple clients. Clients who have been able to rely on a few trusted caregivers will have to look for outsiders (in a system that, as I noted, attracts few truly qualified workers who aren't working as a "labor of love" for someone they care about) to fill in the gaps. Nobody will be any better paid or any more secure.

Enacting a law like this is a feel-good measure that circumvents the real work of finding the resources to compensate people providing essential services in our society fairly. It's all about the growing inequities in our economy, and our willingness to let the people doing the real work in our communities live in poverty while the wealthiest have the power to siphon off all of the added value our economy generates to multiply their own wealth. We have a "service economy" that does not value service fairly. Arbitrary rules with no resources to back them up will do nothing to correct that.



latimes.com/news/local/la-me-home-care-20130527,0,465488.story

State's disabled could suffer if home care rules change

Proposed federal home care rules would require overtime pay a California agency says it can't afford. That could mean disruption in many clients' lives.

By Chris Megerian, Los Angeles Times

6:00 PM PDT, May 26, 2013

SACRAMENTO — Arnold Arbiso, a quadriplegic living near Los Angeles, wanted to support the workers who bathe, dress and cook for him and other disabled Californians. So when they mobilized to join unions more than a decade ago, he used the knuckle on his little finger to dial the offices of state lawmakers and express his approval.

The 60-year-old is now having misgivings, fearing that union demands could harm the very people the workers are hired to help. He is caught in the middle of a pay dispute that has divided labor leaders and advocates for the disabled, who have long been allies in promoting California's enormous and controversial home care program.

Unions are lobbying for a new federal rule that would require overtime pay for in-home caregivers, arguing that their members shouldn't be paid less than other workers just because they are employed in people's houses. But the costs would be enough to disrupt a government program used by 450,000 elderly and disabled Californians, activists and state officials say.

The overtime change was proposed by the U.S. Department of Labor and is under review by the White House. It is unclear when it would take effect if implemented.

Officials say overtime would cost California's In-Home Supportive Services program \$150 million more in state funds every year at a time when Gov. Jerry Brown is trying to keep a lid on spending. His administration is already preparing legislation that would limit overtime payouts, possibly by restricting how many hours the state's nearly 360,000 caregivers may work.

Whatever the state ultimately does, the unions stand to win if the overtime policy is enacted. Limiting the hours each worker could log could increase unions' ranks by thousands as more workers would be required to care for people who need more than eight hours of service each day.

The policy could also upend the lives of severely disabled Californians, whose aides are often family members who form close bonds with them after many years of working together.

The aid recipients may have to find additional workers, and caregivers may need to seek other jobs to replace lost wages if their hours are limited, advocates and others say.

The neediest recipients "would have to accept strangers into their homes to perform their most intimate tasks and coordinate which providers would perform which tasks on which days and which





hours of the day," wrote Diana Dooley, secretary of the California Health and Human Services Agency, in an April letter to federal officials.

Arbiso said granting overtime "looks good on paper, but in the real world, that's not the way it's going to work." In the end, he said, "it will be a disaster."

The dispute is the latest involving In-Home Supportive Services, which became a political lightning rod as the fastest-growing social service in California. The nearly 40-year-old program allows poor elderly and disabled residents to use taxpayer money to hire caregivers to help them with basic tasks. Almost 3 in 4 recipients choose family members.

Republicans and other critics of the program have viewed it as prone to fraud and a strain on California's finances. After the state's caseload more than doubled in a decade, Gov. Arnold Schwarzenegger dramatically slowed its growth with new eligibility restrictions, tighter controls on time sheets and limits on services performed by the aides.

The program also has fierce defenders. Advocates say it's a cost-effective way to keep people out of more expensive nursing homes.

Laphonza Butler, president of the California council of the Service Employees International Union, said caregivers earn from \$8 to \$12.20 an hour and deserve extra pay for overtime. She said she's confident an agreement can be reached on the issue.

"Equal protection under the law is a valuable thing for working families," she said. "That's something we should strive for."

Mary Beth Maxwell, acting deputy administrator of the U.S. Department of Labor's Wage and Hour Division, said the country's 1.8 million home aides have some of the lowest wages in the service industry.

"With the aging of the American population and increased demand for these services, we need to stabilize this workforce," she said in a statement.

Deborah Doctor, a lobbyist for the advocacy group Disability Rights California, expressed doubt that Sacramento would fund any overtime. Brown recently secured a legal settlement allowing him to reduce spending on home care, and extra wages would almost completely undo those savings.

"If money could be found to pay for this overtime, we would be very happy to support it," Doctor said. "We don't think the overtime should be paid at the expense of the consumers."

chris.megerian@latimes.com

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Joe california, Huffington Post

0 Fans

12:28 PM on 12/21/2011

Home health aides and companions are not synonomous. Home health aides work for Medicare Certified home health agencies. Medicare does not cover companion care because it is considered "custodial". Companions usually work for private duty agencies and are usually paid for out of pocket. In California, companions must be paid the minimum wage of \$8 per hour. A live-in companion in California is currently paid \$192 per day. If the Obama proposal goes through, this same companion would need to be paid \$304 per day. What will happen if overtime is required? The case will be staffed by three workers, each being paid \$64 per day. The worker will see their pay fall and the client will need to have three workers rather than one. While well intentioned, the Obama proposal reflects a lack of understanding of how this care is provided and who pays for it. It distorts the history and purpose of the exemption and relies on incomplete and erroneous data. Most importantly, it fails to understand that keeping this care affordable is crucial just as the demand for such care is beginning to explode.

Allison Juceam

Commented 2012 in Politics, Huffington Post

"Please distinguish between what kind of health careworker you are referring to. You should know something about the business before making such sweeping comments. If you are referring to caregivers who are employees of licensed private duty agencies, this bill will harm our senior population to a degree you have not begun to understand. Until people are willing to pay for the true cost of private duty service, asking the agencies to foot the bill is not reality. An agencies profit on an hour of care is merely a few dollars. Do you expect the agency to pay overtime and lose money, so as to be forced to lower their standards of care or do you think seniors can afford to pay more than they are currently paying for an employee of a private duty home health agency? The reality is that consumers will not pay the rate required for time and half and therefore agencies will be forced to use more staff thereby reducing the amount of take home pay their quality caregivers currently receive, dilute the caregiving pool by adding additional caregivers who may not be as qualified and depriving the consumers of continuity of care. Eliminating the homemaker/companion exemption will not increase the take home pay of the average caregiver."



Blane Beckwith  
BlanBeckwith@4tires94703e

The unions and the Department of Labor are putting us in a very precarious position with these new proposed rules requiring us to pay overtime to our caregivers. Whereas, the unions were once among our best advocates in home care, they are proving themselves to be our adversaries in this case. It's almost as though the union is trying to drive a wedge between us and our workers. Maybe it's because they realize if push comes to shove, our workers will show us more loyalty than they will SEIU. In reality, the majority of home care workers don't blindly support the unions and often view them as nothing less than some type of protection racket.

In some ways, the unions are trying to make it seem like we are against paying our home care workers overtime, and that somehow we are the villains in this situation. Nothing could be further from the truth. After all, without their help and support, it would be impossible for us to live independent lives in the community. We all care very much for our home care workers and have said that they deserve to be paid overtime for many years.

Most disabled people who receive CA state-funded home care via the In-Home Supportive Services (IHSS) system have always been the biggest advocates for our workers even before SEIU and other unions, even became involved. Even though wages for home care workers did increase significantly after unionization, this did not come without a price. Home care workers must now pay nearly \$35 per month in union dues. And since the unions have established a "closed shop", home care workers now must pay to work.

The one factor that is being overlooked is the state of CA simply will not budget more money into the IHSS system for us to pay overtime. As it is, Gov. Jerry Brown and his predecessors have tried to gradually phase out the entire IHSS system for years, in favor of putting our lives into the hands of managed care corporations. Even though Gov. Jerry Brown is bragging about the State Treasury's surplus, and how he brought back the state's economy from a huge deficit, he has made no secret that he intends on maintaining cuts to the IHSS system. In fact, he has successfully sued in court to allow IHSS cuts from earlier budget years to stand. Unfortunately, the courts have settled in favor of the State of California's position. Those of us on IHSS are going to have our services cut by 8% on July 1. Where is the money for us to pay overtime to our deserving workers?

For some stupid reason, the bigwigs in Sacramento in both the State Senate and Assembly seem to think that diverting taxpayer's money into corporate hands will magically save the State money in providing the states disabled and seniors with home care services. What a crock of total bullshit!

Corporations are there for one reason, to make money. The only thing they will really give a damn about is making profits at the cost of disabled and seniors. If they have to shortchange us in our vital care that we depend on to live, they will have absolutely no qualms about doing it.

Neither the state of CA, or the Department of Labor seem to care that our hours of care will be cut rather than allocating more money into the IHSS system so that we can pay overtime. We cannot control how disabled that we are or how long it takes to administer the necessary care for us to survive. They don't take into consideration that if it takes 5 hours for the necessary care for a person to be able to be safe and functioning, that 3 hours of care will not suffice. What activities of daily living, do they expect us to do without?

Are disabled and seniors supposed to do without eating 3 meals a day, just because it takes more time that they allow for our meal preparation? Are we supposed to do without having any clean laundry and sleep in dirty sheets? Are we supposed to go without bathing because it takes too much time for our workers to bathe us? Should we just lie in our beds and die from lack of care?

C'mon Jerry! C'mon Department of Labor! Tell us how we're supposed to live! After all, you and corporate America have self-proclaimed yourselves to be the experts here. Give us some damn answers!



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Commented 2012 in Politics, Huffington Post

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The neediest recipients "would have to accept strangers into their homes to perform their most intimate tasks and coordinate which providers would perform which tasks on which days and which hours of the day," wrote Diana Dooley, secretary of the California Health and Human Services Agency, in an April letter to federal officials.

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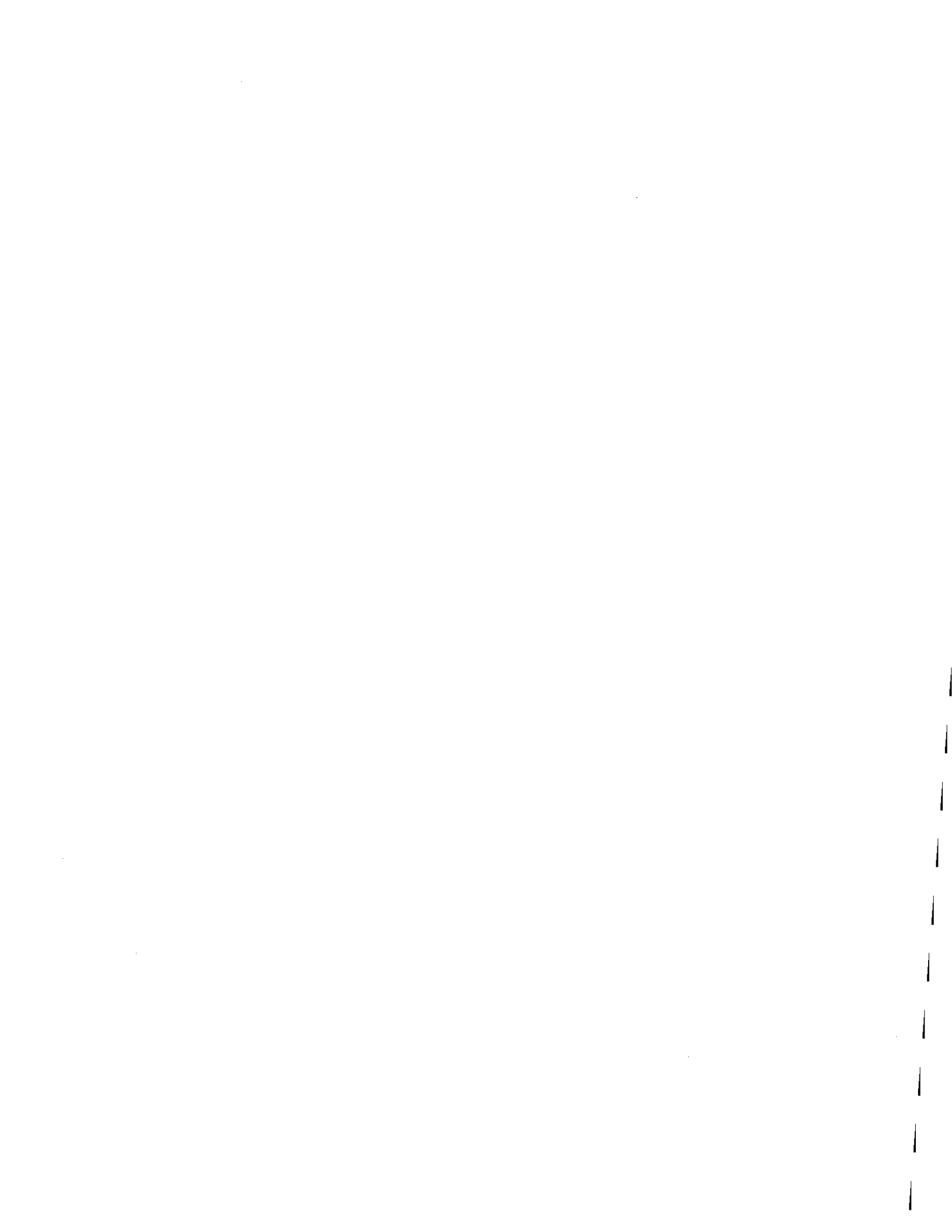
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[chris.megerian@latimes.com](mailto:chris.megerian@latimes.com)

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# Petition to United States Department of Labor: Don't remove the "companion exemption" to the FLSA until money is there.

The Federal Department of Labor (DOL) is proposing changes to the Fair Labor Standards Act (FLSA) to Domestic Service which, if put into effect, will seriously reduce the take-home pay of countless numbers of homecare workers such as I and make the lives of the people with disabilities we assist less manageable.

The changes would require the payment of minimum wage to homecare workers and mandate that homecare workers must receive time and a half pay for every hour over 40 hours per week of work done. Medicaid would bear most of the burden.

This sounds like it would be a major victory for me and my fellow homecare workers, right? But there's one big problem: where is the money to pay for this? If the law says we can't work without minimum wage or time and a half pay but the money's not there, then we won't be allowed to work those hours!

That means, instead of increasing our take-home pay, the proposal will slash all hours beyond 40 per week of our pay. For me, that's 416 hours and \$4,742.40 per year I will lose.

Other workers who currently put in 84 hours per week will suffer a 44 hour loss -- over half their pay! Healthcare insurance will also be harder to qualify for since it's based on the number of hours worked.

As a result, many workers will be forced to seek out second or third or forth jobs to make up the loss. And, for the people we assist, their lives will be harder. They will either endure a reduction in homecare hours or will have to seek more workers. That means more poorly paid people in their homes with even less incentive to do a good job.

Many people with disabilities have a hard enough time right now managing their assistants. The added strain will cause many to just give up and move into nursing homes.

Who benefits from this proposal? Certainly the nursing home industry. Also the homecare unions which will receive more dues-paying members even as all the members' average standard-of-living declines. Even the most poorly-paid worker in a closed shop is required to turn over at least \$25.10 per month in union dues.

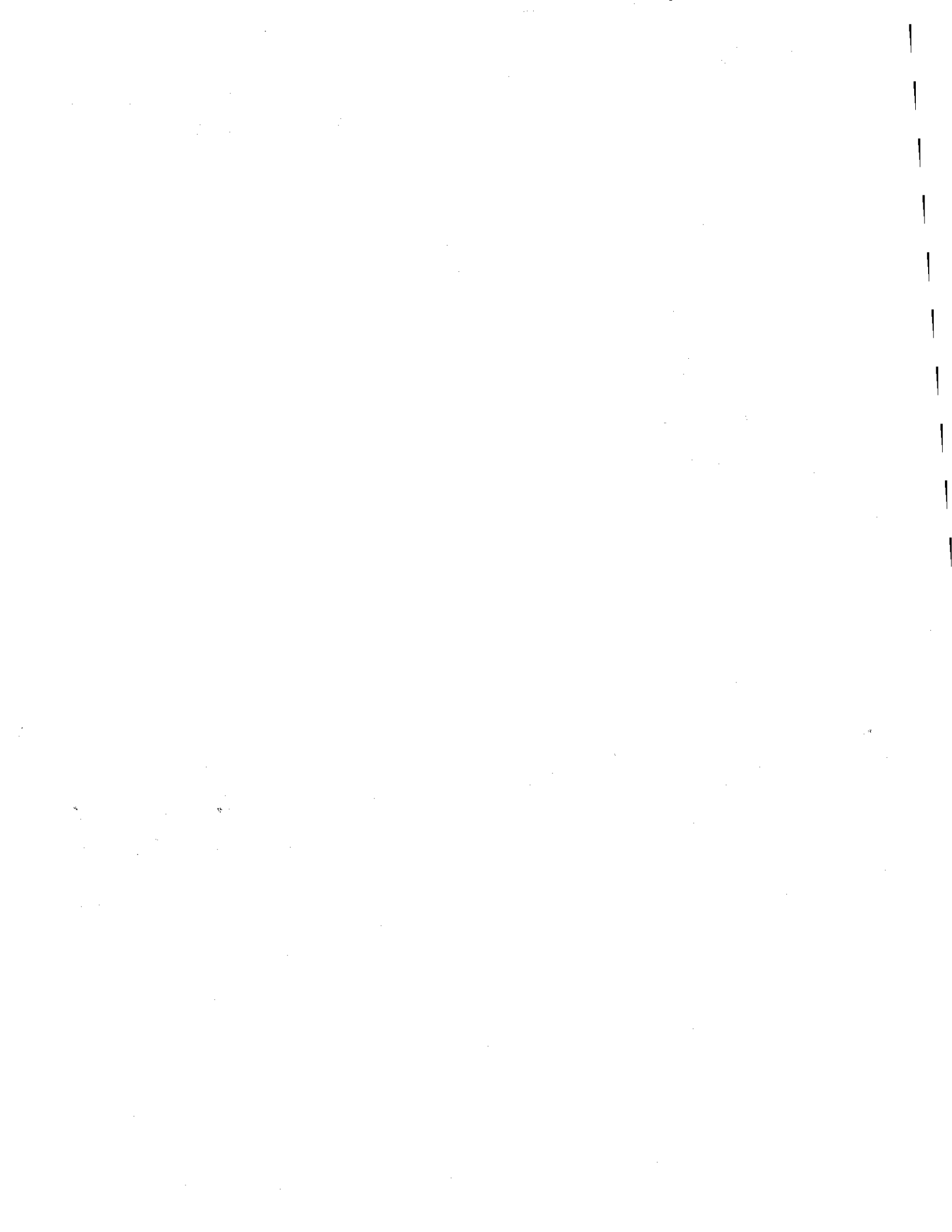
What can we do? We can demand that, before this proposal is put into effect, funding for it be allocated and in place to begin payment immediately. Finding this money won't be easy. The federal government is 15 trillion dollars in debt (that's \$15,000,000,000,000: a lot of zeros!) The states and municipalities aren't doing much better. But, until we are shown the money, this proposal is nothing but a shell game which promises a reward but leaves us worse off than before. Please, my brothers and sisters, before too many of you fall for this pie-in-the-sky scheme, before the DOL proposal is shoved onto us, we must see the money.

Contact the Dept. of Labor which is threatening to make this change at 1-866-4-USA-DOL (1-866-487-2365), a toll-free number or email at [talktosolis@dol.gov](mailto:talktosolis@dol.gov). Tell them, before they end the minimum wage and overtime exemption, first **SHOW US THE MONEY!**

Name (Print)	Signature	City and State	Zip code	Date
MARIO MATEO	<i>[Signature]</i>	1125 University Ave. Bronx, NY	10452	09/14/2012
Nelly Mateo	<i>[Signature]</i>	1125 University Ave. Bronx, NY	10452	09-14-2012
ANTHONY ROTH	<i>[Signature]</i>	119 West Ave. Bronx, NY	10462	09-15-2012
CAROL MASSI	<i>[Signature]</i>	365 West St. N.Y.C.	10001	
Julia YEPEZ	<i>[Signature]</i>	136 Saint Pauls Place, #2.A; Brooklyn	11226	
Monica Bartley	<i>[Signature]</i>		11221	10/14/2012
Harvie Finkelstein	<i>[Signature]</i>		11367	12/8/2012
JAM BATHS	<i>[Signature]</i>	NY, NY	10027	10/14/12
Lois Fuchs	<i>[Signature]</i>	NY NY	10022	10/14/12
Jean Ruan	<i>[Signature]</i>	646 West 112 St		10/14/12
Dyan Lopez	<i>[Signature]</i>	119 Metro Oval Pl. Box	10462	10/14/12
CHARLES KRAMER	<i>[Signature]</i>		10017	10/15/12
Cheryl Krist	<i>[Signature]</i>	NY NY	10009	10/14/12
WILLIAM PAUL	<i>[Signature]</i>		11213	
Cheryl	<i>[Signature]</i>	Kamos	11239	













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Workers who currently do 84 hours per week will suffer a 44 hour loss -- over half their pay!

Healthcare insurance will also be harder to qualify for since it's based on the number of hours worked.

And, for the people they assist, their lives will be harder. People with Disabilities will either endure a reduction in homecare hours, seek more workers, be charged an unaffordable co-pay or forced to hire unprofessionals.

That means more poorly paid people in their homes with even less incentive to do a good job. The added strain will force many people with disabilities to move into nursing homes.

We demand that, before this proposal is put into effect, funding for it be allocated and in place to begin payment immediately. But finding this money won't be easy. The federal government is 16 trillion dollars in debt (that's \$16,000,000,000,000: a lot of zeros!) The states and municipalities aren't doing much better. But, until we are shown the promised funding, this proposal is nothing but a shell game, promising a reward but leaving us worse off than before.

Name (Print)	Signature	City and State	Zip code	Date
Fina Torres	[Signature]	NY, NY	10010	5/19/13
Rodella Galy	[Signature]	NY, NY	10009	5-19-13
Mark Funkhouser	[Signature]	Flushing, NY	11357	5/19/13
Denise Conyers	[Signature]	N.Y. NY	10024	5/19/13
Anita Spaulding	[Signature]	Bx. N.Y.	10463	5-19-13
Brenda Smith	[Signature]	Bronx, NY	10453	5/19/13
Christina L. Gold	[Signature]	NY, NY	11209	5/19/13
R. Marinero	[Signature]	Queens, NY	11427	5/19/13
Diana Jones	[Signature]	Queens NY	11423	5/19/13
Robert Jones	[Signature]	Brooklyn	11239	5/19/13
William Clarke	[Signature]	Brooklyn	11231	5/19/13
DANIEL PORRO	[Signature]	Bx NY	10462	Same
DIA member 9-Metro OVAL Bx NY 10462				

