Direct Care Alliance, Inc.

Direct Care Alliance Policy Brief No. 6

Minimum Wage & Overtime Protection for All?

A Closer Look at the Companionship Exemption

By Lisa Forhan, M.P.P.A.

The U.S. Department of Labor regulatory agenda for this year was released on April 26, 2010,[1] and includes a proposal to revise the companionship exemption in the Fair Labor Standards Act of 1938[2] (FLSA). When Congress enacted the FLSA, it was intended to address what President Roosevelt called "starvation wages and intolerable hours."[3] It was amended in 1974 to include workers employed in private households performing such services as "cooks, butlers, valets, maids, housekeepers, governesses, janitors, laundresses, caretakers, handymen, gardeners, and family chauffeurs."[4] The same amendment created a special exemption from minimum and overtime wages for workers described as casual babysitters and persons "employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary [of Labor])" as well as workers who reside in the home of their employer. The exemption included workers employed by third-party agencies.

The nature of, and demand for, home care work has changed significantly since 1974. In an attempt to reflect contemporary practices in the home care industry, the United States Department of Labor (DOL) proposed amendments to the regulation in 1993, 1995, and 2001.[5] In each instance, the proposal was withdrawn without DOL taking any action. This policy brief provides an update to the Direct Care Alliance Policy Brief No. 2 of June 2009, in which Peggie Smith provided a comprehensive description of the 2001 DOL proposal and the rationale for DOL to use its authority to revise the companionship exemption.[6] Using the letters submitted by stakeholders during the 2001 public comment period, this brief represents a detailed consideration of the responses to the earlier proposed change and the framework various stakeholders used to articulate their positions with respect to the exemption. It also offers suggestions for strategies to influence the rulemaking process in the interest of ensuring that a workforce of capable, competent caregivers be available to the aging and disabled public.

The 2001 Proposed Amendment

DOL's 2001 proposal acknowledged that there were widely varying interpretations of the work of "companions," and that the growth of the industry and the changing nature of home care work had resulted in FLSA protections being denied to workers in a way that Congress had not intended. The proposal in-

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The Direct Care Alliance

The Direct Care Alliance is the national advocacy voice of direct care workers. We empower workers to speak out for better wages, benefits, respect, and working conditions, so more people can commit to direct care as a career. We also convene powerful allies nationwide to build consensus for change.

cluded revisions to three sections of the regulations:

1. Duties of a "companion"—The proposal suggested that Congress did not envision the services currently provided by workers classified as "companions" when the exemption was written, and that the language used in 1974 to describe companions who would be eligible for the exemption is open to be interpreted too broadly. The proposal referred to the discussions noted in the Congressional record that referred to companions as "elder sitters whose main purpose of employment is to watch over an elderly or infirm person in the same manner that a babysitter watches over children" and by including domestic workers in the FLSA, Congress intended to "cover all workers who performed domestic services as a *vocation*, excluding casual babysitters and providers of companionship services who were *not* regular bread winners or responsible for their families' support."[7] The proposal acknowledges that the duties of contemporary home care workers go far beyond what could have been predicted then.

2. "Trained personnel"—At the time the exemption was written, Congress specifically excluded what was referred to as "trained personnel, such as registered or licensed practical nurses" recognizing that those responsibilities went beyond companionship and should be covered by the FLSA. The DOL proposal acknowledged that home care workers are now expected to work with clients with medical needs, and they are often called upon to do medically related duties such as skin care, medication management, and physical therapy exercises.

3. Third-party employment—Though the companionship exemption included people who worked for a third-party employer such as an agency, the proposal suggested that the intent of Congress was to exempt companions who were employed directly by the family or client they provided services to on a casual basis, not employees working in the contemporary version of the home care industry.

The open comment period was from January 19 to March 20, 2001. No action was taken by DOL until April 8, 2002, when the proposed amendment was withdrawn with the following citation:

> **"In the proposed rule, the Department had concluded that there would be little economic impact on affected entities if such workers were not exempt from the FLSA's minimum wage and overtime pay requirements. However, numerous commenters on the proposed rule, including multiple government agencies such as the Small Business Administration and the Department of Health and Human Services, seriously called into question the Department's conclusion that there would be little economic impact. Based on its review of the rulemaking record as a whole, the Department has decided to withdraw the proposed rule and terminate the rulemaking action"[8] (Federal Register Vol. 67, No. 67, 4/8/02).**

This withdrawal referred to Presidential Order 12866[9] of October 4, 1993, Section (f)(1), which states that "'significant regulatory action' means any regulatory action that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, of State, local or tribal governments or communities." The DOL proposal justified its use of the amendment process by stating that the amendment would not constitute "significant regulatory action." The withdrawal does not address the merit of the proposal on other grounds.

Another challenge to the companionship exemption occurred in 2007, in the Supreme Court case *Long Island Care at Home Ltd. V Coke, U.S., No. 06-593* (Coke). Evelyn Coke was an employee of Long Island Care at Home Ltd. and for more than 20 years had provided "companionship services" to elders in their own homes, at times working 24-hour shifts to ensure the care and safety of her clients. With the support of the Service Employees International Union (SEIU), the case challenged the DOL interpretation that home care workers employed by third-party agencies should fall under the same exemption as occasional babysitters.[10] The Supreme Court upheld the DOL regulation, saying the agency was within its rights to rule that workers employed by home care agencies are not entitled to federal minimum wage or overtime protections.[11] According to Justice Breyer's opinion:

> **"[W]hether, or how, the definition should apply to workers paid by third parties raises a set of complex questions. Should the FLSA cover all companionship workers paid by third parties? Or should the FLSA cover some such companionship workers, perhaps**

those working for some (say, large but not small) private agencies, or those hired by a son or daughter to help an aged or infirm mother living in a distant city? Should it cover none? How should one weigh the need for a simple, uniform application of the exemption against the fact that some (but not all) third-party employees were previously covered? Satisfactory answers to such questions may well turn upon the kind of thorough knowledge of the subject matter and ability to consult at length with affected parties that an agency, such as the Department of Labor, possesses. And it is consequently reasonable to infer (and we do infer) that Congress intended its broad grant of definitional authority to the Department to include the authority to answer these kinds of questions."

The Supreme Court's decision in Coke left two passages open for opponents of the exemption: advocate for DOL to overturn the exemption or urge Congress to add explicit language to the FLSA specifying that home care workers should be included. In pursuit of the latter goal, parallel legislation was filed in the U. S. House of Representatives and in the U.S. Senate. H.R. 3582, "The Fair Home Health Care Act,"[12] and S. 2061, "The Fair Home Health Care Act of 2007,"[13] were both filed in September 2007, with the intention of revising the companionship exemption and ensuring that home care workers were afforded the same employment protections as other workers in accordance with the FLSA.

S. 2061 was referred to the Committee on Health, Education, Labor and Pensions on September 28, 2007, and died before any further action was taken. H.R. 3582 was referred to the Committee on Education and Labor, Subcommittee on Workforce Protections on October 17, 2007, and a hearing was held on October 29, 2007. The hearing included testimony by various stakeholders, including the SEIU attorney who represented Evelyn Coke in the Supreme Court, a former DOL administrator, policy researchers representing various advocacy groups and trade associations, and a home care worker.[14]

Much of the testimony confirmed DOL assertions that people working as companions are actually performing duties comparable to other workers who are covered by the FLSA. For example, in her testimony, a home care worker described her caregiving responsibilities as follows:

"Mrs. G. cannot sit up. She spends most of her time in bed. I bathe her each morning, cook her breakfast. I also prepare her lunch and dinner. I ask her what she likes to eat —like she is in a restaurant. It is the little things that can maintain independence.

"Because Mrs. G. is in bed most of the day, we must be very careful to prevent pressure sores. Using a mat and draw sheet, I move her every two hours, wash her bottom, change her diaper. I also lift her and move her to be showered. I do her laundry, shop for her food. I update the visiting nurse and Mrs. G.'s family. Even though I regularly work more than 40 hours a week, I do not get overtime pay."—Testimony of Manuela Butler, home care worker.

Testimony by labor economist Dorie Seavey, the director of policy research for PHI, a non-profit advocacy group, provided the economic justification for the legislation:

"From a labor market point of view, maintaining the current companionship exemption in its current form contributes to significant structural problems in both the caregiver labor market and in workforce development for the home care industry. Furthermore, the exemption works to subvert key policy goals established by the federal government concerning the development of the nation's long-term care system.

"From a workforce development perspective, the exemption acts as a barrier to overall status of this occupation relative to other low-wage jobs. The bottom line is it's basically impossible to construct any economic arguments as to why other domestic or home-based service jobs, such as maids, cooks, housekeepers and gardeners, should receive this basic protection, but home care workers should not."

Further testimony addressed the question of the economic impact of the legislation if it were passed. "Only a small percentage of clients receive more than 40 hours of care per week," said SEIU attorney Craig Becker. "Therefore the fiscal impact will be modest, as projected by the Clinton Labor Department." PHI's Dr. Seavey also confirmed that the number of workers affected and the

increase in costs would likely be modest. According to the March 2006 Current Population Supplement, Dr. Seavey said, approximately 15% of the home care workforce works overtime, but that probably overstates the number of workers putting in overtime at any given time, since the study did not ask how many hours over 40 people worked or how often they did so.

This hearing was the last action taken on this legislation. While the bill never got out of the subcommittee, the hearing provided insight into the consequences of the companionship exemption and how it is used in the home care industry today.

Public Comments

Stakeholders who submitted responses to DOL during the 2001 comment period included home care agency owners or their attorneys, family members, home care consumers, home care workers, labor unions, and public and quasi-public agencies. Excerpts from letters in favor and opposed to the amendment provided information about the types of services and responsibilities of workers employed in home care and classified as "companions." Examples follow.

Content of Letters Opposing the Amendment

The public comments cited three primary reasons for opposing the amendment:

1. Affordability of care—comment letters frequently cited opposition to the amendment on the grounds that care services would become unaffordable for the sick and elderly if clients or agencies were required to pay overtime wages to caregivers (overtime was the focus because, as most commenters acknowledged, virtually all home care workers earn minimum wage or more). This letter provides an example:

> **"If the companionship was exempted we would be forced to pay not only minimum wage for each of these 12 hours we would also be required to pay overtime after 8 hours each night. This would cause our sleep over pay rate to increase from $87.00 to $100.00 per night. Therefore, our sleep over price would be forced up to $185.00 per night or by 30%. As a result of higher prices, many of our most needy clients would simply cancel our services."—Letter submitted to DOL from Donna Cozell, Owner of Home Instead Senior Care, 6/25/01.**

2. Consistency and quality of services—letters in opposition to the amendment suggested that requiring that caregivers be paid overtime wages would result in recipients of services getting less care than they needed, or being forced to contract with a number of different caregivers, since agencies would reduce hours to avoid paying overtime. Also cited was the risk of the jobs "going underground" as clients hired privately rather than using agencies to avoid complying with the law. If that happened, commenters warned, the protections of screening and supervising caregivers and compliance with payroll taxes and worker's compensation coverage would be lost. For example:

> **I believe that an unanticipated result of the regulations changes, as proposed, would be to force individuals to hire caregivers, for services such as live-in care, privately, rather than working through home care agencies. It is intuitively evident that it is much more risky for an elderly or disabled individual to hire his/her caregiver than to work with an agency. The majority of individuals do not have the resources or knowledge to conduct criminal history checks, reference checks, ongoing training and professional supervision. Home care agencies, in general, provide all of these services when providing home care.—Letter submitted to DOL from Sharon Kleinschmidt, Financial Director, Carondelet Care Resources, 3/20/01.**

3. Congressional intent—letters that opposed the amendment for this reason disagree with DOL's assertion that Congress did not intend to exclude these workers from the FLSA. They cite evidence including prior court challenges to bolster their claim. For example:

> **"The Secretary states that he believes the current regulation 'impermissibly extends the exemption for companionship services and for live-in workers to employees who do not qualify as domestic service employees'; however, as noted by the Secretary himself, several courts have upheld the validity of the regulations as currently enunciated. In the McCune case, cited by the Secretary, the United States Court of Appeals for the Ninth Circuit examined the legislative history of the FLSA, concluding that it 'cannot say, however, that the Secretary's definition of 'compan-**

ionship services' is not unreasonable in light of his congressional mandate.' The court noted 'sound policy reasons' for applying the exemption to companions as defined by the Secretary, explaining 'we are informed that these critical services reach more elderly or infirm individuals than they otherwise would precisely because the care providers are exempt from the FLSA.'" —Letter submitted to DOL from Attorneys Gerald P. Halpern and Roni E. Glaser, 3/19/01.

Content of Letters in Favor of the Amendment

Two reasons were primarily cited in the letters supporting the proposed amendment:

1. Wage parity—letters suggested that home care workers have comparable responsibilities as nursing assistants in institutional settings, whose wages are higher. For example:

> **As a home care worker, I work hard every day to give the best care I can. Home care workers today help with things like housekeeping, bathing, dressing, medical care and all the other tasks that allow people with disabilities to live at home instead of an institution. It's the same kind of work that's done in nursing homes by aides, yet under the current rule on the companionship exemption, we have been denied basic worker rights provided to nursing home workers and most other workers in America. It's time for this denial of basic rights to end. We care deeply for our clients, but we are hired to provide needed services, not to serve as companions. —Letter submitted to DOL from Chiniqua Wesley, via SEIU Local 880, 8/2/01.**

2. Congressional Intent—letters agreed with DOL that Congress did not intend to exclude home care workers who provide the kind of services that are provided today.

This passage demonstrates this understanding:

> **"We support the Department's proposal to correct an inconsistency in the regulations that allows third party employers to claim that their employees are exempt companions. Domestic service employment, as intended by Congress and as defined in the regulations, is service in the home of the employer. The companionship exemption was an exemption created for private families who employed casual babysitters or companions, not for the largest emerging field of health care workers on a national scale."—Letter of 3/16/01 from Ruth McEwen and Jim Davis, co-chairs of the Advocacy Coalition.**

Letters opposing the proposed amendment demonstrated the very concerns that propelled DOL to propose changing the regulation. For example, DOL's concern about the term "companionship" being interpreted too broadly is clearly demonstrated in the way these letters described the services of these agencies:

> **"Founded in 1988, Trimark operates a home care company in the metropolitan Atlanta, Georgia area. It employs approximately 150 certified nursing assistants (CNA's) who provide a variety of services to clients on a private duty, live-in, shared services or emergency call-in basis. These services include without limitation assistance with bathing, dressing, grooming, and managing incontinence, meal preparation and delivery, light housekeeping and laundry, security checks and monitoring, medication set-ups and reminders, transportation, assistance with exercise, companionship and fellowship, and other assistance with activities of daily living."—Comments submitted to DOL by Michael L. Stevens, Esq. on behalf of Trimark Health Services, Inc., 3/20/2001.**

> **"Oversight of when and which medications should be taken can be required where an individual receiving support cannot be relied upon to remember when to take medication or how many of which types of pills. Family members are also helping people with diabetes who have visual limitations and cannot read blood sugar levels, and are helping draw insulin into a syringe and sometimes are even giving injections. Assistance with range of motion exercises certainly requires a lower level of expertise, but these are all functions that family members perform—some on a daily basis —and which enable people who are elderly or disabled to remain more physically active and self-dependent. It is no longer assumed that people must remain in a skilled care setting in order to receive these kinds of medically related support, or that those who provide these types of supports must be highly trained. These are appropriate tasks for people who serve as compan-**

ions."—Letter to DOL from Joni Fritz, former Executive Director of the American Network of Community Options and Resources (ANCOR), 3/18/2001

Both letters describe medically related care, and the first acknowledges that the staff are certified nursing assistants. Other letters also refer to their employees as home health aides, home care aides, and personal care assistants, yet the agencies are using the companionship exemption to deny minimum and overtime wage protections to these workers. Numerous letters also refer to Medicare reimbursement as being inadequate to allow for an increase in wage costs, yet Medicare does not cover companionship services, only services for patients with medical needs. This verifies DOL's assertion that many workers being classified by employers as companions are in fact home health aides and should be entitled to FLSA protections.

In creating the exemption, Congress specifically excluded "trained personnel," the examples given being registered or licensed practical nurses. Because federal standards for training and certifying nursing assistants and home health aides were not established until 1987 (in that year's Omnibus Budget Reconciliation Act), it is likely that Congress did not envision that direct care workers, other than licensed nurses, would require any kind of formal training.[15]

The letters illustrate the tension—and the mutual dependence—between the interests of the caregivers and those who need care that is caused or complicated by the sparse financial resources dedicated to home care. The stakeholders who submitted comments opposing the amendment generally acted in response to that tension, favoring the interests of the people who receive care services over those of the people who provide them. They wanted to do what was best for care recipients, and yet, as their own letters showed, it's not easy to draw the line between what's good for caregivers and what's good for the people they assist. Many of their letters noted the low wages paid to home care workers and acknowledged the fact that poor wages contribute to high turnover and job vacancy rates, which are in turn serious barriers to quality care.

Also striking were the handful of letters from caregivers themselves opposing the rule change. These workers fear that agencies unwilling to pay overtime will limit workers' hours, and they are concerned about the effect that switch will have on their clients. They're also concerned about themselves, since they depend on the pay they earn working those extra hours and have been told by their employers that they will no longer be offered overtime hours and may lose their benefits if the rule is passed. Here are a few examples:

"I hope that the changes to companion care workers' pay isn't subjected to overtime pay rates. No home health care agency can afford to pay those rates. That means to get the same number of hours us employees will have to work at two or three different agencies, and dividing our hours up might make us lose our benefits. It also makes it hard to be loyal to the client and the company. I need those hours and benefits and I only want to work for one agency. Please don't make the change."—Letter submitted to DOL from Aronen Edmunds, 6/19/01.

"I work for a home health agency. My agency cannot afford to pay me overtime. I cannot afford to work less only forty hours a week. I cannot afford to work at multiple agencies and risk my benefits. The people who I take care of do not want to have to constantly have their companions switched up on them throughout the day. Making employers pay companions overtime pay will hurt everyone: the employer, the employees and the clients". —Letter submitted to DOL from Shauna Lester, 6/1/01.

It is also essential to evaluate the meaning of the numbers of comments that were submitted, both before and after the public comment period closed. The number of letters opposing the proposed amendment greatly outnumbered the letters in favor, probably indicating the superior organization and familiarity with the political process of the commenters (mostly home care agencies, their attorneys, or advocacy and trade groups representing their interests) that submitted the vast majority. Their motivations were clear: paying more for overtime would drive up their costs, forcing them to either earn less or pass on the cost and drive away customers, since some would be unable to pay more for care. The next largest group opposing the proposed change was relatives of people receiving care and elder law attorneys, who feared that increasing home care workers' wages

would force care recipients to forego needed care or price them out of the home care market altogether, forcing them into nursing homes or other institutions. The letters from home care workers opposing the amendment appear to have been written at the urging of employers, since they all made the same points. Two letters were identical word for word, right down to an identical typo.

The letters in favor of the change were mostly from advocacy groups and unions representing workers or from direct care workers themselves, but support was also voiced by three advocacy groups for people with disabilities, and a geriatric care manager. An employer who managed both an assisted living facility and a home care agency also supported the change, saying it was difficult to recruit workers for the home care agency because of discrepancies in pay.

The Current Proposal

DOL's current proposed amendment, released on April 26, 2010, uses language that signals the support of home care workers by the Obama administration:

> **This Notice of Proposed Rulemaking (NPRM) concerning workers who provide companionship services will support the Secretary's outcome goals of securing minimum wages and overtime and helping middle-class families remain in the middle class.**[16]

In consideration of whether or not to revise the companionship exemption, the following criteria should be taken into account, keeping in mind the purpose of the FLSA, as well as the goal of ensuring quality care to those members of society who need it. The criteria are:

Equity

Are home care workers treated equitably under the companionship exemption compared to other workers who perform similar duties? Do home care agencies' interpretations of the exemption result in inequities in terms of their ability to compete with other providers?

Only by amending the regulation so home care workers come under the protection of the FLSA can the current inequity be corrected, ending inappropriate interpretation by employers and offering minimal wage protections to this crucial and fast-growing workforce.

Effectiveness

Does the current exemption meet the purpose of the FLSA? Does it promote the development of a workforce adequate to meet the needs of the sick and elderly?

If DOL chooses not to amend the regulation and the status quo prevails, the result is likely to be an inadequate workforce to meet the needs of the aging and disabled population due to the current low wages and exploitative working conditions experienced by home care workers. Acknowledging the value of the supports, care and services provided by these workers will reduce the stigma imposed by the current exemption and encourage individuals to choose this field of work.

Economic Feasibility

Are the costs associated with the rule change outweighed by the benefits to the public?

Cost is a concern expressed by many commenters, especially home care agencies, but the impact of the change probably would not be as great as these stakeholders fear.

The minimum wage requirement would have little or no impact, since virtually all home care workers already earn minimum wage or more.

As to overtime, Dr. Seavey's analysis of federal data finds that "the vast majority of homecare/personal assistance workers do not work over 40 hours per week, and thus extension of overtime protection would likely have only modest financial impact."[17] Furthermore, home care workers were already covered by state minimum wage and overtime laws in 16 states as of 2007, so extending federal protections to them would not affect the cost of care in those states (California, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Jersey, New York, Ohio, Oregon, Pennsylvania, Washington, Wisconsin, and the District of Columbia). Besides, most employers who are now assigning overtime would likely restructure their scheduling to minimize or eliminate overtime work if the exemption were overturned.

Any costs that might be incurred as a result of the change must be weighed against the benefits that would accrue, both to home care workers and to the consumers and family members who rely on their services. Failing to include home care workers in federal minimum wage and overtime protection devalues the profession and contributes to the low wages that are a significant cause of turnover, [18] and turnover degrades the quality of care de-

livered to consumers, disrupting the crucial relationships they form with caregivers and creating a cycle in which they must constantly train new people to respond to their individual preferences and needs.[19]

There could also be said to be a moral imperative to extend FLSA protection to these workers. The government pays for more than three-quarters of all paid direct care work, and many people would agree that all government-financed labor should be subject to federal minimum wage and overtime protections.

Political Feasibility

Does revising the companionship exemption have the political support to be successful in the rulemaking process?

The effort by DOL to revise this exemption failed in 1993, 1995, and 2001, as did legislative efforts in 2007. Nevertheless, the current administration has framed its regulatory agenda in terms of "goals of securing minimum wages and overtime and helping middle-class families remain in the middle class." During a time of economic instability and high unemployment, this message is likely to resonate with the public. DOL is also using electronic rulemaking (e-rulemaking) in its current agenda, which makes the process more open to comments from direct care workers than past rulemaking efforts, in which the participants were predominantly agencies and advocacy groups. Also new is the concerted effort being made by the Direct Care Alliance (DCA) and other nonprofit workforce advocacy organizations to focus attention on the need for the change. The DCA and its allies are using social networking sites and other avenues to educate home care workers and their allies about the issue and provide them with ways of registering their support.

Recommendations for Policymakers

Two opportunities are available to federal legislators and policymakers who want to extend FLSA protections to home care workers: DOL could issue a new ruling, and Congress could pass H.R. 5902/S. 3696, the Direct Care Workforce Empowerment Act.[20] Each of the two has advantages and disadvantages, as the DOL ruling could probably be issued more quickly than the Congressional fix, but it could also be overturned more easily. To settle the issue as quickly and decisively as possible, we recommend both:

• DOL should amend the companionship exemption to extend federal FLSA protection to all home care workers.

• Congress should enact H.R. 5902/S. 3696, the Direct Care Workforce Empowerment Act.

Strategies for Advocates of the Fix

Direct care workers, care recipients, and others who support the amendment must take an active part in the rulemaking process this year, submitting their comments during the open comment period in order to build the political support policymakers and legislators need to make this change

The e-rulemaking process adopted by DOL makes it easier for home care workers and consumers to take part in the process, while advocacy efforts by the DCA and others to inform interested parties and encourage them to comment should urge more of them to comment than have in the past. Care should be taken to avoid inundating DOL with mass e-mails using form letters, as research shows that original comments are more likely to be noted and discussed, and therefore to affect the regulatory process.[21] Comments submitted to DOL should use language that emphasizes the skills of caregivers and their contributions to society, as the tendency to portray this workforce as unskilled promotes the devaluation of their work that makes it easy to dismiss them as mere "companions."[22]

Public comment letters submitted in the past clearly demonstrated the pressure many employers and family members feel to choose between the interests of caregivers and care recipients. The next round of comments from those in favor would be more effective if they stress the common interests and shared values between the groups. As a mounting body of evidence shows, it takes a stable and satisfied direct care workforce to deliver high-quality care. Extending FLSA minimum wage and overtime protections to home care would not answer all the unmet needs of this crucial and fast-growing workforce, but it would be a significant —and relatively low-cost —step in the right direction. Including these underappreciated workers in the FLSA would show them the respect they deserve and help ensure that they can afford to stay with their chosen profession, and that would make it easier for our frail elders and people with disabilities to find the reliable home care they need.

End Notes

[1] U.S. Department of Labor, Spring Regulatory Agenda Fact Sheet. http://www.dol.gov/regulations/factsheets/whd-fs-flsa-companionship.htm.

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[8] 67 Fed. Reg. No. 67 (2002).

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[20] *The Direct Care Workforce Empowerment Act*. http://www.opencongress.org/bill/111-h5902/text.

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