



What You Need to Know Regarding the Companionship Services Exemption
February 2013

History & Overview:

- In 1974, Congress established an exemption for companionship services from the Minimum Wage and Overtime Requirements of the Fair Labor Standards Act (FLSA). This is known as the “Companionship Services Exemption.”
- This provision exempts caregivers from the overtime and minimum wage requirements of the FLSA by allowing a caregiver to care for one senior or disabled individual for an extended period of time without the senior/disabled having to be charged overtime. The exemption is essential to the continuity of private in-home care in America today, as it makes care more affordable to those individuals who need home care to remain independent and avoid institutionalization.
- On December 27, 2011, DOL issued a proposed rule that would significantly restrict the exemption and make it inapplicable to workers employed by home care companies. The proposed rule limits companionship care to “fellowship and protection” and requires third party employers to pay overtime to companion care employees, including those caregivers that provide live-in care services.
- The DOL has announced its intention to finalize new regulations interpreting the Companionship Services Exemption by April 2013.
- Currently, national rates for in-home care average approximately \$20/hour. If the government repeals the Companionship Services Exemption, seniors could see these costs rise to \$30/hour.

Consequences of Repealing the Companionship Services Exemption:

The PCA, on behalf of the private duty home care industry, fears four primary negative outcomes if the labor laws are changed and seniors or disabled are required to pay time and a half for the care they receive over 40 hours per week:

- (1) Greater reliance will be placed on Nursing Homes and Medicaid
- (2) The caregivers themselves will struggle to meet the amount of hours they are used to working
- (3) The quality of care that seniors receive and their relationships with their caregivers will be negatively affected

(4) The growing private home care industry will be crippled during this time of economic recovery

1. If seniors cannot afford to pay more for home care services, the consequence is that the number of seniors going into nursing homes and relying on Medicaid will likely increase. Seniors having to rely on expensive institutional care is contrary to Congressional intent and the best interests of society. Both nursing homes and Medicaid are government

The majority of third-party employers who provide private-duty non-medical companionship services care are small businesses, which, if required to pay overtime to their employees for hours over 40, will not be able to absorb the increased cost. They will have no other option than to pass the increased cost on to their clients, vulnerable seniors, which will make it harder for seniors to remain in place as they age and will likely result in more seniors needing to rely on Medicaid for their care.

Additionally, seniors who are driven away from home care registries and agencies and the safety they provide, may turn to the “grey market,” where these protections and conveniences will not exist.

2. There will be negative consequences to the caregivers who are providing home care services, as they will struggle to meet the amount of hours they are used to working each week (and earn less as an outcome) because home care agencies will limit their schedules to under 40 hours because they can't afford to pay overtime. Additionally, home care companies provide valuable services to caregivers by screening the clients to protect the worker's safety, and providing multiple work opportunities.
3. Both caregivers and the vulnerable seniors who receive home care cherish what is called “continuity of care,” which is the ability to work continuously with the same person. This would be shattered if overtime were imposed, as it would preclude any caregiver from working more than 40 hours for any client. For a senior with 24-hour care who might normally have 3-4 caregivers with whom they work, this new law would double this number to 6-8 caregivers. This sort of turnover is very uncomfortable for the elderly, especially the growing number with dementia, who become confused and agitated when forced to interact with someone new.
4. The home care industry is a rapidly growing sector of the U.S. economy, mostly made up of small business owners who will be unable to absorb the increased cost of service and so will have to pass it on to the vulnerable seniors they serve. Because rates will increase by 50-60%, less seniors will be able to afford these services. Less need will translate to less businesses being able to enter the market, causing a growing industry to shrink.

What YOU Can Do:

Contact your Congressperson and ask him or her to support proposals that would preserve the Companionship Services Exemption. Visit <http://whoismyrepresentative.com> to find out who represents you in Congress by searching the database using your zipcode or state.

Download the PCA form letter at www.PrivateCare.org and send it to your Congressperson urging him or her to support proposals that would protect the Companionship Services Exemption, including H.R. 5969, the "Ensuring Access to Affordable and Quality Companion Care Act" and H.R. 5970, the "Protecting In-Home Care from Government Intrusion Act." Ask them to oppose those proposals that would eliminate or severely narrow the Companionship Services Exemption. Encourage them to keep home care affordable for seniors and disabled adults.