



WRITTEN STATEMENT
of
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Before the

SUBCOMMITTEE ON WORKFORCE PROTECTIONS
COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES

**HEARING on "H.R. 3582: the Fair Home Health Care
Act"**

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My name is Dorie Seavey. I am a Ph.D. economist, and Director of Policy Research at PHI, a national nonprofit based in the Bronx, NY that works to improve the lives of people who need home or residential care—by improving the lives of the workers who provide that care. Our goal is to ensure caring, stable relationships between consumers and workers, so that both may live with dignity, respect and independence. With nearly 50 staff, PHI works to strengthen our nation’s long-term direct-care workforce, which includes nearly 3 million home health aides, certified nurse aides, and personal care attendants. PHI’s programs and activities develop recruitment, training, supervision, and client-centered caregiving practices—along with the public policies necessary to support those practices. PHI’s premise is that creating quality jobs for direct-care workers is essential to providing high-quality, cost-effective services to long-term care consumers: *Quality Care through Quality Jobs*.

As a labor economist, my career has focused on analyzing low-wage labor markets and the impact of public policy on the lives of low-wage workers and families. At PHI, I am responsible for analyzing state caregiver labor markets as well as evaluating national trends and data on the direct-care workforce. I conduct workforce needs analysis, evaluate workforce policy, assist with the assessment of state and local strategies to improve the compensation of this workforce, and advise on efforts to improve state and federal reimbursement policies that affect long-term care. The particular lens that I bring to an assessment of H.R. 3582 is a labor market perspective, with a focus on public policy development in the area of long-term care service delivery systems at both the state and federal level.

The history of the Fair Labor Standards Act (FLSA) is a fascinating one, and I believe that H.R. 3582 offers Congress a critical opportunity—which it has had on only several occasions before—to bring the FLSA into alignment with ever-evolving industry conditions. PHI stands firmly behind the Fair Home Health Care Act, and believes that it is possible to have a long-term care system in this country that meets consumers’ need for quality, stable services at the same time as ensuring that paid caregivers have the basic employment protections that allow them to earn a decent livelihood.

It is difficult, if not impossible, to construct any economic arguments as to why other domestic or household-based service jobs such as maids, cooks, housekeepers, and gardeners should receive this basic wage and hour protection but homecare/personal assistance workers should not.

Additionally, keeping this exemption in place works to subvert key policy goals that have been established by the federal government concerning the development of the nation’s long-term care system. Most importantly, it undermines the federal government’s support of “rebalancing”—that is, the expansion of home- and community- based services relative to those provided in institutional settings, such as nursing homes—and it also undermines federal support for

“consumer direction,” a rapidly expanding service delivery model in which consumers directly employ and supervise their own workers.

1. The context for H.R. 3582: Dramatic changes in the provision of home-based supports and services have eclipsed the companionship exemption, essentially rendering it a vestige of prior era.

There have been enormous changes in the homecare industry since 1975, when the regulations implementing the companionship services exemption were published. The debates surrounding the 1974 amendments to the FLSA characterized the “companion” to be exempted as an occasional adult sitter hired by a private household to watch over an elderly or infirm person in the same way that a babysitter watches over children. This notion of “companion” has very little relevance in today’s context in which a homecare/personal assistance aide typically delivers a range of in-home services and supports as a primary vocation under formal employment relationships made either with an agency, directly with the consumer/household, or by way of a joint employment relationship between the consumer and an agency.

H.R. 3582 should be considered in light of three fundamentally altered aspects of homecare/personal assistance service delivery: the changed nature of homecare/personal assistance duties and training; the demographic and employment profile of the homecare/personal assistance workforce; and the size and structure of the homecare/personal assistance industry.

a. Changed nature of homecare/personal assistance duties and training.

Since the 1974 amendments to the FLSA, dramatic changes have occurred in the nature of the duties performed by many employees classified as exempt under the companionship services exemption. As the U.S. Department of Labor (U.S. DOL) noted in 2001, “Due to significant changes in the home care industry over the last 25 years, workers who today provide in-home care to individuals needing assistance with the activities of daily living are performing types of duties and working in situations that were not envisioned when the companionship services regulations were promulgated.”¹

While not recognized in the current U.S. DOL regulations, there are in fact three levels to the homecare/personal assistance workforce: companions and homemakers, personal care attendants, and home health aides and certified nursing assistants. The work across these three levels ranges from: companionship and help with activities such as shopping, transportation, meal preparation, and light housekeeping; to assistance with everyday self-care activities like bathing, dressing, and eating; to more clinically-oriented tasks such as checking vital signs (pulse, temperature, respiration), medication management, routine skin and back care, and assistance with exercise and simple procedures connected to physical therapy services. While the training

¹ US Department of Labor, Employment Standards Administration, Wage and Hour Division (January 2001) *Notice of proposed rulemaking and request for comments: Application of the Fair Labor Standards Act to Domestic Service*. Federal Register, Vol. 66, No. 13, pp. 5481-5489.

required to assist with self-care activities and more clinically-oriented tasks is far less than the training received by nurses or licensed practical nurses, the broad range of duties now performed by homecare/personal assistance aides extends far beyond the scope of an “elder sitter.”

As the tasks performed by the homecare and personal assistance workforce have required greater autonomy and responsibility, the challenges faced by these aides in fulfilling their roles have grown. The increasing use of in-home services translates, on the workforce side, into a much greater need for skill, judgment and personal accountability on the part of homecare/personal assistance aides. Furthermore, changes in the acuity of the consumer population mean that homecare/personal assistance workers are now providing services to nursing home-eligible consumers in home- and community-based settings. Whether they are persons with physical, developmental, and intellectual disabilities, or people with chronic or terminal illnesses and conditions, many of these consumers are older, frailer, and more impaired than the consumer population served even a decade ago.

Additionally, homecare workers must practice their caregiving skills with far less direct supervision and access to on-site consultation from professionals. Much of this work is difficult, physically taxing, and requires responsibility and judgment as well as emotional commitment and flexibility. The demanding nature of this work is presumably reflected in a just-released report from the Substance Abuse and Mental Health Services Administration which found that, among all workers in the United States, personal care workers experience the highest rates of depression lasting two weeks or longer.²

b. Demographic and employment profile of the homecare/personal assistance workforce. The number of workers providing in-home services and supports has greatly increased over the last three decades and now totals over 800,000, according to the latest federally-administered Current Population Survey (2007). In fact, nationally there are now more aides providing supports and services in people’s homes (826,802) than in nursing care facilities (765,948). Indeed, the combined occupations of personal care and home care aides constitute the tenth most rapidly growing occupational group in the American economy, and the U.S. Bureau of Labor Statistics (BLS) projects that by 2014 the numbers of these positions will have increased by another 41 percent compared to 2004.³

² Substance Abuse and Mental Health Services Administration, Office of Applied Studies. (October 11, 2007). *The NSDUH Report: Depression among Adults Employed Full-Time, by Occupational Category*. Rockville, MD. Available at: <http://oas.samhsa.gov/2k7/depression/occupation.htm>.

³ Daniel E. Hecker, *Occupational Employment Projections to 2014, Monthly Labor Review* (Washington, DC: U.S. Bureau of Labor Statistics, November 2005). Available at: <http://www.bls.gov/opub/mlr/2005/11/art5full.pdf>.

From an employment perspective, there is no question that homecare/personal assistance occupations are now *bona fide* forms of employment that by and large are not performed on a casual basis. Forty-one percent of personal and home care aides report working year-round, full-time. Only 16 percent work part-year, part time. (See Exhibit 1.)

The workforce providing homecare/personal assistance services is predominantly low-wage, female, and has low levels of general education. Average earnings are very low, and, according to a recent tabulation by Forbes Magazine, the personal and home care occupation qualifies as one of the 25 worst paid jobs in America, ranking just above cashiers and under parking lot attendants.⁴

Exhibit 1: Demographic and Employment/Income Characteristics of Personal and Home Care Aides, 2005

Demographic Characteristics	
Median age(years)	45
Gender	
Female	87%
Male	13%
Race	
White only, non-Hispanic	53%
Black only, non-Hispanic	23%
Spanish, Hispanic, or Latino	14%
Other or mixed, non-Hispanic	10%
Single parent, grandparent, or caretaker	18%
Citizenship/Foreign Born	
Native	80%
Foreign born	20%
Education: High school or less	64%
Employment & Income Characteristics	
Labor force participation in home & personal care	41%

⁴ Paul Maidment (June 4, 2007) "America's Best- and Worst-Paying Jobs," *Forbes Magazine*. Available at: http://www.forbes.com/2007/06/04/jobs-careers-compensation-lead-careers-cx_pm_0604jobs.html.

Year round, full time	25%
Year round, part time	18%
Part year, full time	16%
Part year, part time	
Individual annual earnings, mean	\$14,675
Individual annual earnings if full time, full year	\$23,556
Family poverty status	
< 1.00	23%
< 2.00	53%
Health insurance	
Uninsured	32%
Employer provided or other private	48%
Public insurance	20%
Household public assistance	
Any	47%
Medicaid	38%
Food and nutrition assistance	32%
Housing, energy, transportation, TANF/AFDC	17%

Source: PHI calculations based on the March Supplement of the 2006 Current Population Survey.

The mean annual income of this occupation is only \$14,675. Home health aides generally receive higher wages than personal and home care aides—\$8.74 per hour (mean hourly wage) for personal and homecare aides, and \$9.66 per hour for home health aides.⁵

Over half the workforce lives in households with incomes under 200 percent of the poverty level. Nearly a third of personal and home care aides have no health insurance; another 20 percent are covered at some point during the year by public health insurance.

The degree to which this workforce struggles with basic economic survival is further underscored by the fact that *nearly half (47 percent) of all personal and home care aides live in households that receive some kind of public assistance*, whether it be Medicaid, food and nutrition assistance, cash welfare, or housing, energy, or transportation assistance.

c. Size and structure of the home care/personal assistance industry. The formal provision of homecare/personal assistance services in the United States now occurs within a rapidly expanding, and complex industry composed of a diverse array of providers that includes: long-standing voluntary nonprofit organizations such as the Visiting Nurse Association; public agencies operated by state, county, and city governments; proprietary for-profit homecare

⁵ US Bureau of Labor Statistics (May 2006) Occupational Employment Statistics. Available at: http://data.bls.gov/oes/search.jsp?data_tool=OES.

agencies (including rapidly growing chains of elder care franchises); and private non-for-profit private duty agencies. The fastest growing sector of Medicare-certified homecare agencies is the for-profit sector, which increased from 7.3 percent of freestanding agencies in 1980 to 69 percent in 2006.⁶ Public health agencies, which constituted half of Medicare-certified agencies in 1980, now represent only 16 percent.

There is also a booming consumer-directed market, financed primarily by Medicaid, in which consumers serve as the employer of record or as joint employers with agencies. Various kinds of intermediary support organizations sometimes serve as fiscal agents under this model. Workers in this sector are known as consumer-directed workers, or “independent providers.” About 400,000 of them now rely on public authorities and collective bargaining agreements to stabilize their employment conditions.⁷ States with public authorities for independent providers include: California, Massachusetts, Michigan, Oregon, and Washington. Recently, governors in Illinois, Iowa, and Ohio have signed executive orders giving collective bargaining rights to independent providers. One of the reasons why state governments and many provider intermediaries have become supportive of a union presence is that such presence brings greater stability to the workforce and makes these jobs more attractive.

Finally, there is an admittedly huge private-pay “grey market” operating “off the books,” where private individuals hire aides on their own and may or may not pay required employer taxes on behalf of the worker, such as Social Security, unemployment compensation, and workers’ compensation. This segment of the industry is completely unregulated and, although it is thought to be sizeable, very little is known about it except on an anecdotal basis.

The growth of our multi-billion dollar homecare industry is fueled in large part by significant increases in life expectancy and medical advances that allow individuals with chronic conditions to live longer. In the very near future, caregiving for baby-boomers will become a rapidly growing source of demand: over the next two decades there will be more than 70 million people over the age of 65. Nearly one out of every four U.S. households provides care to a relative or friend aged 50 or older and about 15 percent of adults care for a seriously ill or disabled family member. The growth in the demand for in-home services is further promoted by the availability of public funding assistance for in-home care under Medicaid and Medicare, and also by the rising cost of traditional institutional care combined with a growing preference for receiving supports and services in the home as opposed to in institutional settings.

⁶ National Association of Home Care (2007) *Basic Statistics About Home Care*, Table 1. Available at: http://www.nahc.org/facts/07HC_Stats.pdf.

⁷ Dorie Seavey and Vera Salter (October 2006) *Paying for Quality Care: State and Local Strategies for Improving Wages and Benefits for Personal Care Assistants*. Policy Report #2006-18, Washington, DC: AARP Public Policy Institute, pp. 17-19. Available at: http://assets.aarp.org/rgcenter/il/2006_18_care.pdf.

2. It is my opinion that maintaining the companionship exemption in its current form contributes to significant structural problems in both the caregiver labor market and in workforce development for the homecare industry. Furthermore, the exemption works to subvert several key policy goals that have been established by the federal government concerning the development of the nation’s long-term care system.

a. From a *labor market* point of view, maintaining the current exemption in only one segment of the long-term care labor market creates distortions in and artificial segmentation of caregiver labor markets across the entire system. Strikingly, the same work performed by an aide in a nursing home is unambiguously covered by minimum wage and hour protection.⁸ By supporting this kind of disparity, the exemption impedes the normal functioning of markets, and serves to undermine the development of a stable, adequate workforce of paid caregivers to provide home- and community-based services.

b. From a *workforce development* perspective, because the exemption has been interpreted as broadly as it has been within the homecare/personal assistance service industry, it acts as a barrier to the overall status of this occupation relative to other low-wage jobs. It is difficult if not impossible to construct *any* economic arguments as to why other domestic or household-based service jobs such as maids, cooks, housekeepers, and gardeners should receive this basic protection but homecare/personal assistance workers should not.

c. From a *federal policy* point of view, updating the FLSA with respect to this group of workers (non-live-in homecare and personal assistance workers) will help bring needed alignment to various aspects of federal policy with respect to the provision of publicly reimbursed long-term care services. Not extending minimum compensation standards to these workers will only serve to send conflicting messages that undermine several key elements of federal policy. Specifically, the exemption in its present form subverts:

- The federal government’s encouragement of “**rebalancing**”—that is, the expansion of home- and community- based services relative to those provided in institutional settings, such as nursing homes: This realignment is required by the Supreme Court’s 1999 Olmstead decision which interpreted the integration mandate of the Americans with Disabilities Act to require that care be provided in the least restrictive setting.
- The federal government’s support of the **consumer-as-employer model** whereby Medicaid-eligible consumers directly employ and supervise their own workers (known

⁸ U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division. Fact Sheet #31: Nursing Care Facilities Under the Fair Labor Standards Act. Available at: <http://www.dol.gov/esa/regs/compliance/whd/whdfs31.htm>.

as the “consumer as employer” model under consumer direction): In fact, there are several states now where consumer-directed workers, or “independent providers” as they are also known, outnumber agency-employed workers.

- Recent efforts by the U.S. Department of Labor to support **innovative training and credentialing programs**: Since 2001, the U.S. Department of Labor has invested in creating two federally-sponsored Registered Apprenticeship Programs for homecare and personal assistance services: one is for Home Health Aide and the other for Direct Support Specialist. These are voluntary industry-driven training programs, but, ironically, unless H.R. 3582 is enacted, aides completing these programs will not be entitled to basic federal wage and hour protection.

3. How would H.R. 3582 change the status of homecare/personal assistance workers?

a. What H.R. 3582 would do. My understanding is that this bill would extend federal hour and wage laws to non-casual, non-live-in homecare/personal assistance workers. The overtime provision that would apply is the same one that applies to all other non-exempt occupations—namely, time and half for work over 40 hours in any one week at the worker’s regular rate of pay.

By extending basic wage and hour protections to non-casual, non-live-in workers, H.R. 3582 would also allow homecare/personal assistance workers to be paid for travel time between clients and for time spent in required training. When workers fail to be compensated for travel and training time, they can end up making less than minimum wage on a net hourly basis.

It should be underscored that, as a practical, on-the-ground matter, the companionship services exemption, as it now stands and as it has been interpreted by the U.S. DOL and the courts, has created a very grey area in domestic employment that has been the subject of considerable litigation across the country. While the Code of Federal Regulations (29 CFR §552.1-552.110) specifies four conditions that serve to limit the construction of the exemption, the fact is that, in practice, the exemption has tended to be interpreted expansively, creating a broad exemption for almost all homecare/personal assistance workers. As a result, there are third-party agencies across the country that rely on U.S. DOL interpretation of the exemption and hire home-based workers as “companions” in order to avoid overtime, regardless of whether or not the duties of these workers require providing “companionship.”

By eliminating the companionship exemption for non-casual, non-live-in aides, two of those most difficult “grey area” matters would be resolved by H.R. 3582:

- The first concerns **whether the type of employer** should condition the exemption. By eliminating the companionship exemption, it will no longer be an issue whether the employer is a third-party agency, the consumer him or herself, the family or a personal representative of the consumer, or a joint employment arrangement which involves both the consumer and an agency. Furthermore, it should not matter whether the “worker” hired by the consumer is a family member. This is important because most states now have implemented Medicaid programs that allow the consumer to hire some categories of family members to provide supports and services at home.
- The second area of confusion concerns **what constitutes a “private home”** for the purpose of household employment. Under 29 CFR §552.3, the term “domestic service employment” is defined as “services of a household nature performed by an employee in or about a private home (permanent or temporary) of the person by whom he or she is employed.” Courts have had to address the extent to which a “private home” includes “non-traditional” homes such as group homes, assisted living facilities, or other congregate arrangements.

By removing the companionship services exemption for non-casual, non-live-in aides, H.R. 3582 will eliminate holes that have led to considerable confusion about and litigation of these two issues.

b. What H.R. 3582 would not do. It is important to note that H.R. 3582 would not end the exemption for “live-in” workers, and it would still maintain an exemption for “casual” companions who work less than 20 hours per week. *Live-in* aides would need to be reclassified as live-in “domestic service” workers who already have minimum wage protection under the FLSA but are exempt from overtime. That is, the bill would restrict the minimum wage and overtime exemption under 29 USC 213(a)(15) to casual workers (defined as those working 20 hours or less in an irregular, intermittent and non-vocational capacity), and leave intact the overtime exemption for live-in domestic service employees under 29 USC 213 (b)(21).

Furthermore, this bill does not deal with the complex but important task of clarifying the category of workers that should be encompassed by the “live-in” category. Workers who live-in on a permanent basis in consumers’ homes probably constitute a very small segment of the homecare/personal assistance workforce. A much larger segment of workers includes those whose duties require that they reside or sleep at their place of employment, or who otherwise spend a substantial portion of their work time subject to call. States have begun to address these varying categories with greater care and specificity as programs and service delivery systems have evolved, particularly those states that are leading the country in the development of public authority structures to support self-directing consumers and their workers. For example, in Washington State, the state overtime exemption is restricted to “an individual whose duties require that he or she reside or sleep at the place of his or her employment or who otherwise

spends a substantial portion of his or her work time subject to call, and not engaged in the performance of active duties.”⁹ Another approach is taken in Minnesota which provides for an exemption for companions working certain hours at night.¹⁰ Oregon exempts live-in companions from overtime and also provides clarification about how overtime is defined under arrangements that involve “waiting time” and “sleeping time.”¹¹

Careful consideration should be given to clarifying the scope of the “live-in” exemption in consultation with consumer and worker groups.

4. The costs of H.R. 3582 need to be carefully and thoroughly explored on a state-by-state basis. However, several factors suggest that extending basic employment protections to non-live-in homecare and personal assistance workers is unlikely to increase dramatically the nationwide cost of services or seriously disrupt service delivery systems—so long as steps are taken to adjust service delivery management accordingly.

a. Since virtually all homecare and personal assistance workers already are receiving at least the federal minimum wage, extending the minimum hourly wage requirement is unlikely to have tangible cost consequences, except in so far that workers have not been being paid for travel time between clients as well as time spent in any required training.

b. The available evidence at the national level suggests 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. Furthermore, homecare/personal assistance workers in many states are already eligible for overtime, because state hour and wage laws exceed the federal standard.

- Predictions that massive dislocations of care would result from H.R. 3582 are inconsistent with the experience of many states with wage and hour laws that cover companions. *In at least 16 states, either all homecare workers or significant subgroups of them already are eligible for overtime because state laws exceed the federal standard.* These states include: California, Illinois, Maine, Maryland, Massachusetts,

⁹ See: <http://www.lni.wa.gov/WorkplaceRights/files/policies/esa1.pdf>.

¹⁰ See 177.23, Minnesota Statutes 2007, Subd 11, available at: http://www.revisor.leg.state.mn.us/bin/getpub.php?pubtype=STAT_CHAP_SEC&year=2007§ion=177.23.

¹¹ See Oregon Administrative Rules, Division 20, Wages, Sections 839-020-0041 and 839-020-0042, available at: http://arcweb.sos.state.or.us/rules/OARS_800/OAR_839/839_020.html.

Michigan, Minnesota, Montana, Nevada, New Jersey, New York, Ohio, Oregon, Pennsylvania, Washington, Wisconsin, and the District of Columbia.¹²

- That several states have already gone beyond the FLSA means that the universe of workers who may be impacted by H.R. 3582 is a subset of all home care workers. From a cost perspective, what is relevant then is **not** the entire universe of homecare workers, but rather the subset of non-live-in homecare and personal assistance workers who are: (i) employed for more than 40 hours a week, and (ii) reside in states that have not already taken steps to override fully the federal companionship exemption.

c. Overtime in this industry is not always voluntary. Rather it is often due to understaffing, worker shortages, and inadequate backup service delivery systems to cover no-shows, illness, or other excused absences.¹³ Continuing to diminish the profile of this occupation through the denial of basic wage and hour protection only exacerbates this kind of problematic overtime. Instead, what is needed is to make these occupations more attractive relative to other low-wage jobs through better compensation, improved training and supervision, the creation of career advancement opportunities, and scheduling that allows for full-time work, if desired, and stable work schedules with balanced workloads.¹⁴

d. From an employer/agency perspective, overtime and service delivery disruptions can be managed considerably by improving scheduling and other management practices.

e. These caveats notwithstanding, the cost implications of H.R. 3582 should be studied carefully according to the differing circumstances within each state—it is possible that in some

¹² Overtime is extended to the following categories of workers: California (home health aides but not personal attendants), Illinois (all aides), Maine (all except live-in aides), Maryland (all aides except those employed by non-profit agencies, and those who are family members), Massachusetts (all aides), Michigan (all aides except those in the Home Help Program), Minnesota (all aides except certain nighttime aides), Montana (all aides except those who are family members), Nevada (all aides except live-in aides), New Jersey (all aides), New York (all aides except live-in aides and aides in NYC's Home Attendant Program who are employed by non-profits; overtime is paid at minimum wage not the employee's regular wage), Ohio (all aides except live-in aides), Oregon (all aides except live-in aides), Pennsylvania (aides that are employed by third parties), Washington (all aides except those that live-in, sleep at, or spend substantial time on-call, and individual providers covered by collective bargaining agreements), Wisconsin (all aides except those who are family members, or those employed by non-profit agencies), and the District of Columbia (all aides). Source: PHI tabulation (preliminary).

¹³ Dorie Seavey and Vera Salter (October 2006). *Bridging the Gaps: State and Local Strategies for Ensuring Backup Personal Care Services*, Policy Report #2006-19, Washington, DC: AARP Public Policy Institute. Available at: http://assets.aarp.org/rgcenter/il/2006_19_pcs.pdf.

¹⁴ Steven Dawson (June 2007) *IOM Presentation: Recruitment and Retention of Paraprofessionals*. Bronx, NY: PHI. Available at: http://www.directcareclearinghouse.org/download/Dawson_IOM_6-28-07_bkmk.pdf.

states, the costs could have significant budgetary and service delivery implications that would require adjustments in federal and state funding—at least during a transitional period.

5. If the argument is that the exemption is needed to help make homecare for the elderly and infirm more affordable, then the proper way to do this is not to artificially depress the market-based minimum cost of labor, but rather—in the case of publicly financed services—to make adjustments in state reimbursement rates, and—in the case of private-pay services—to use the tax code to subsidize the purchase of care..

The argument that the exemption should be maintained because it lowers the cost of services for elderly and disabled persons, and thus enables people to receive needed services that might otherwise be unaffordable, may make short-term fiscal sense but fundamentally it is economically flawed. Under-compensating labor in order to keep the cost of services down creates a labor market distortion that depresses the supply of labor, and also distorts the demand for services, among other things. If a change in applicable wage and hour law or its construction results in increased costs for publicly financed care, then the proper way to account for these additional costs is to adjust reimbursement rates so as to enable providers to comply with the FLSA.

To the extent that the true costs of care are beyond the reach of consumers, then the more appropriate remedy is to use the tax code to give subsidies to consumers or families that are burdened by these costs. This is presumably part of the rationale behind the federal “Child and Dependent Care Credit” and plethora of state and new federal level legislation in play that would create income tax credits or deductions for payments for in-home services and time spent in family caregiving.¹⁵

6. In closing, H.R. 3582 offers Congress an historic opportunity to send important economic and social signals that will help steward the development of home- and community-based long-term care services in our country.

H.R. 3582 offers Congress the opportunity to send three important messages:

- That homecare and personal assistance workers should be on an equal footing with respect to all other low-wage occupations.

¹⁵ See the list of Federal and State Caregiving Legislation that would create “Caregiver Tax Incentives” compiled by the Family Caregiver Alliance, available at: http://www.caregiver.org/caregiver/jsp/content_node.jsp?nodeid=1848.

- That, within long-term care, the homecare and personal assistance labor market should not have second class status with respect to compensation and, therefore, with respect to its ability to attract and retain workers.
- And, finally, that federal lawmakers can work together to coordinate, rather than send conflicting messages about, the direction of our nation’s long-term care policy.

Thank you for this opportunity to testify on this important piece of legislation.

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