

Testimony of Henry Claypool  
Policy Director, Independence Care System  
On  
The Home Health Fairness Act (H.R.3582)  
Before the  
Subcommittee on Workforce Protections  
Committee on Education and Labor  
U.S. House of Representatives  
October 25, 2007

Chairwoman Woolsey, Congressman Wilson, and Members of the Subcommittee,  
Good morning. I am Henry Claypool, the Policy Director of Independence Care System (ICS), a nonprofit managed long-term care plan based in New York City, serving more than 1,200 people with disabilities living in their homes.

Thank you for inviting me to testify today. I would like to give you ICS' perspective on the Fair Home Health Act (H.R. 3582) as both an organization that pays for the services of direct-care workers and as an advocate for services for people with disabilities. My comments are also informed by my own personal experience. I am a former Medicaid beneficiary and I continue to rely on supports provided by direct-care workers.

We support enactment of the Fair Home Health Act and we believe that there are three major policy challenges that this legislation seeks to address:

One...Antiquated Department of Labor rules must be re-adjusted to address the current shortage of direct care workers.

Competition for workers to take jobs in the service sector is fierce and it makes no sense to continue to put direct-care jobs at a comparative disadvantage by allowing the erroneous categorization of workers as “companions” to persist.

Two...Federal labor policies should be conducive to delivering high-quality services.

It can be difficult to find someone who is capable, competent and interested in helping with often intimate personal needs like dressing, using the bathroom, and eating. The result is that many people who rely on community-based services struggle with quality issues on a daily basis. To assure quality, all workers who provide non-casual, non-live-in long term services should be protected by FLSA.

Three...The current exemption from some FLSA protections for home care workers should be eliminated or at least narrowed, so that these protections apply equally to direct-care workers across all long-term care settings.

For the disability community, the number one civil rights issue in this country is the need to expand access to community long-term services so that Medicaid beneficiaries who need these services are not forced to be isolated in a nursing home in order to receive these services. When community-based direct-care workers are exempted from wage and hour protections, it exacerbates the institutional bias by making direct-care jobs in nursing homes more attractive than comparable jobs in community settings.

As the Subcommittee moves forward with its consideration of this important legislation, we make the following recommendations:

**Consult with the Energy and Commerce Committee to consider fully the ramifications for the Medicaid program**

Medicaid is an extremely complex program and the Energy and Commerce Committee has accrued very significant expertise that may prove valuable to the Subcommittee.

**Redefine the live-in exemption in a way that provides narrow exemptions from FLSA's hour and wage protections**

While ICS believes that Department of Labor rules have been misinterpreted to exempt too many workers from FLSA standards, we do acknowledge some exemptions are appropriate. Careful consideration should be given to reclassifying certain direct-care workers as "live-in" per diem workers whose per diem pay must be equivalent to at least 14 hours of regular pay. This step should be taken, however, after consulting with groups that represent consumers and independent providers.

In closing, I would like to thank the Subcommittee for its efforts to protect direct-care workers and for considering how to ensure that Medicaid beneficiaries who depend on community-based long-term services are not inadvertently harmed. ICS looks forward to serving as a resource to you as you continue to consider these important issues. We urge the Congress to enact the Fair Home Health Act into law. I look forward to answering any questions that you may have.