NEWS

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Home Care Industry Study Reveals Negative Economic Impact of FLSA Repeal

In December 2011, the U.S. Department of Labor published a Notice of Proposed Rulemaking to revise its regulations concerning the statutory exemptions for companionship and live-in workers under the Fair Labor Standards Act. The DOL proposed to substantially narrow both exemptions, and published a Preliminary Regulatory Impact Analysis (PRIA), which estimates the proposal would have a *de minimis* effect on both output and employment. Following the DOL's announcement, the home care industry, including the Private Care Association, engaged a private Research Company, Navigant Economics, to conduct an independent study on the effects of these proposed changes.

The study, titled "Estimating the Economic Impact of Repealing the FLSA Companion Care Exemption," was released in March. It examines the PRIA and finds that it "systematically understates the direct costs of the proposed rule" and "understates both the elasticity of demand for companion care labor and the elasticity of demand for companion care services." It is available online at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2017109#

The study's conclusion is that the proposed repeal of the Companion Care Exemption and the Live-in Exemption to the FLSA would likely create substantial disruptions in the market for home health care. Overall, the report suggests that the costs of these proposed changes would be substantial, far more than the PRIA reveals, resulting in less availability of companion care and lower quality care. The report concluded that the proposal's costs would far exceed its alleged benefits.

The cost differences between in-home care under the current regulations and what it would become if the proposed changes are adopted are real. One consumer shared her story about caring for her aging parents at a Small Business Administration Office of Advocacy roundtable discussion in February, explaining the way that this repeal would not only affect the cost of the care but also the quality and continuity of care that was so essential to her parents' well-being. Over the course of more than six years, her parents had consistent aides who worked 12 hours per day for anywhere from five to seven days a week. There was a nighttime aide and a daytime aide, each of whom worked 72 hours per week for $21 per hour. Together, the consumer paid them a total of $3,444.00 per week, or $179,088.00 per year for 6 ¼ years, which is a total of $1,119,300.00 for this level of private care.

Under the proposed legislation, if she were forced to pay overtime for hours worked over 40, the consumer's annual costs would have been $211,848 per year for a total of $1,324,050.00 for 6 ¼ years. This reflects more than a $200,000 difference, proving that the costs that will likely accompany the proposed change may not be easily payable by most of today's seniors or disabled population.

Additionally, the home care industry and those opposed to the change feel that, not only will this change impact peoples' wallets, but also the relationships formed between the caregivers and their patients are ultimately going to suffer if this proposal is implemented.

Joseph Bensmihen, National president of the Private Care Association (PCA) and chief executive officer of Boca Home Care Services, foresees the negative impact this rule will have on both the individual consumer and the individual caregiver from an economic and social standpoint. Economically, Bensmihen fears that consumers will face greater costs during an already weak economy and in-home caregivers will likely be forced to take on more clients for fewer hours, negatively impacting their incomes. These economic drawbacks will in turn affect the social aspect of home care by straining the relationships that form.

"To get around overtime, individuals or their children or grandchildren may choose to create a revolving door of caregivers, which will interrupt the quality and consistency of care they're used to," explains Bensmihen. "Caregivers could be forced to move multiple times weekly to accommodate families who are unwilling or unable to pay overtime. The difficulty of synchronizing multiple client schedules could actually reduce caregiver work hours, and this may ultimately be detrimental to the relationships they have with their regular clients."

What the study reveals is that the DOL, in its preliminary analysis, has understated the costs of the proposed change – including the costs of overtime, fixed costs such as investments and benefits, administrative and recordkeeping, additional travel expenses and the cost and requirement of live-in care – and fails to accurately characterize its impact on the quality of companion care and the way it will push people towards institutionalized care. The study's overall finding is that the repeal of the Companion Care Exemption and Live-In Exemption to the FLSA will "create substantial disruptions in the market for home health care," thus "increasing the costs of companion care and reducing its availability."

While the comment period for the proposed rule already closed on March 21, the home care industry continues to encourage individuals to express their concerns to their elected representatives in Congress and to the DOL's Secretary of Labor, Hilda Solis.

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