



## **An Open Letter to U.S. Secretary of Labor Eugene Scalia**

Dear Secretary Scalia,

Government's good intentions sometimes leads to negative consequences. In 1974, Congress established the companionship services exemption. This provision exempted home care workers (caregivers) from the requirements of the Fair Labor Standards Act by allowing a caregiver to work for an elderly or disabled person for an extended period of time without the patient having to pay overtime (time and ½ for hours worked over 40 in a week). Furthermore, the exemption was essential to continuity of care, keeping the relationship one-on-one, patient to caregiver. It made care affordable and allowed for these individuals to maximize their independence and to avoid institutionalization.

Seven years ago, the U.S. Department of Labor effectively eliminated the companionship services exemption despite warnings it would dramatically increase the cost of care to families. While the repeal of the exemption intended to help hard working caregivers, it has instead caused them a massive injustice. In place of higher wages, many home care workers are seeing less pay in their checks. Furthermore, many find the need to work with multiple patients in order to make up for lost one-on-one hours that the repeal has caused. Government programs such as Medicare do not cover the costs of private in-home care leaving families faced with the decision whether to pay the overtime, go without care above 40 hours per week, or have a revolving door of caregivers thereby destroying continuity of care. Under the current circumstances, this also leads to potentially catastrophic exposure to Coronavirus (COVID-19).

During a recent House Ways and Means Committee hearing, it was estimated that round-the-clock home care - with overtime - can now cost a family \$180,000 a year. This is simply unaffordable.

In the world of COVID-19, the already shattered term, *continuity of care*, has led to an exponential domino effect on the health and safety of both patients and their caregivers. The repeal of the exemption has now brought additional and dangerous complications to caring for Mom and Dad or Grandma and Grandpa.

A current real-world scenario reveals Mr. Smith, a 79-year-old Alzheimer's patient, who receives home care services from two home care workers daily. Each caregiver works 40 hours per week, avoiding overtime for Mr. Smith. Mr. Smith develops symptoms of COVID-19, is admitted to his local hospital and tests positive for the virus. His two caregivers must now self-quarantine for 14 days. Unfortunately, it doesn't end here. Mr. Smith's caregivers have made home care visits to four other patients. The second order effect is that each of these other patients must now self-

quarantine, along with any other caregivers that may have attended to them. If these second effect caregivers attended to additional patients, third, and perhaps, fourth order effects may apply. And so on, and so on.

For these reasons, the national Private Care Association respectfully requests the return of the companionship services exemption which for almost 40 years balanced the interests of patients and their caregivers.

The Centers for Disease Control and Prevention (CDC) says seniors are at greater risk during the COVID-19 pandemic. The risk cuts two ways when it comes to home care. A multitude of caregivers at a single home increases exposure to the disease for both the patient and for the workers who are now at a higher risk, not knowing the health of those who have come and gone into a home before them.

The bottom line: persons in need of home care are going at it alone, out of fear and uncertainty that the revolving door of home care workers will bring potential exposure to COVID-19. And, workers are turning down shifts – in fear for their own safety. This is a classic lose-lose situation. The painfully ironic result is an increased demand for facility-based care – the worst possible scenario for vulnerable populations.

Each day, more Americans are reaching a point in their life when they might need home care to remain independent. But home care is quickly becoming a luxury only the very wealthy can afford. This is precisely what Congress sought to avoid when it enacted the companionship services exemption in 1974.

I urge the Department of Labor to rescind the 2013 rule and reinstate the companionship services exemption. Keep home care affordable - and safe - for those being cared for, their families, and those looking after them.

Respectfully,

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*Since 1977 the Private Care Association has represented caregiver registries throughout the country that refer independent care providers to seniors and disabled persons for assistance with activities of daily living, companion care, homemaker services and nursing services in a client's home.*