

COMPANIONSHIP SERVICES EXEMPTION SURVEY

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INTRODUCTION

- The survey was conducted by the
 - **Private Duty Homecare Association**, an affiliate of the **National Association for Home Care & Hospice**
 - **National Private Duty Association**
- This survey was conducted for home care agencies to determine the potential impacts of a U.S. Department of Labor proposal to modify the companionship services and live-in exemptions from minimum wage and overtime compensation. **Home Care Pulse**, an independent third-party research firm, administered the survey and collected the response data.
- The study compares the reported impacts among agencies that are currently required by state law to pay overtime, agencies that voluntarily pay overtime without a requirement and agencies that do not pay overtime compensation to determine whether projected impacts are valid.
- The study results support the contention that the U.S. Department of Labor's efforts should be suspended until the agency and others have time to conduct adequate impact analyses on modifying the current companionship services exemption. In addition, the companionship services exemption should be maintained at the state and federal level until a comprehensive plan can be implemented that addresses service funding, worker health insurance, and career development. A comprehensive rather than a piecemeal approach to worker compensation and working conditions is necessary if access to high quality of care and continuity of services is to be achieved.

BACKGROUND

- The federal **Fair Labor Standards Act** exempts certain types of workers from minimum wage and overtime compensation. The exemptions include workers providing “companionship services for individuals who (because of age or infirmity) are unable to care for themselves”, 29 USC 213(a)(15), and an employee providing “domestic service in a household and who resides in the household,” 29 USC 213 (a)(21).
- The **U.S. Department of Labor issued a proposed rule** that would significantly alter longstanding existing regulations defining “companionship services” effectively eliminating the application of the exemption for typical home care aide/personal care attendant services. The proposed rule would also eliminate application of the so-called “live-in” exemption for caregivers employed by a third-party employer. 76 FR 81190 (December 27, 2011).

FINDINGS

- **Moderate to significant increases in business costs** have occurred or would occur under the proposed rule. The business cost impact responses of companies currently subject to overtime requirements mirrored the responses of those that would be subject to overtime requirements under the proposed rule.
- Agencies consistently referenced **restricting or expecting to restrict overtime hours** for employees that provide companionship services throughout the survey.
- Quality of care impact is reported by all respondents including **loss of service continuity**, weakened staff competencies, and a shift of clients to unregulated gray market caregivers.
- **Costs would be passed on to elderly, infirm and special needs clients/patients** in private pay care.
- **Current reimbursement for services covered by federal and state programs does not cover overtime.**

AGENCY DEMOGRAPHICS

- 1428 home care agencies participated in the survey representing all 50 states, the District of Columbia, Virgin Islands and Northern Mariana Islands.
- Most agencies surveyed are small businesses. 85.7% of the respondents had annual revenues of less than \$5 million. The remaining respondents included businesses with revenues up to over \$20 million annually.
 - 40.2% of agencies surveyed reported annual revenue for their company as being under \$1 million.
 - 45.0% of agencies surveyed reported annual revenue for their company as being between \$1-5 million.
- 67.7% of home care agencies surveyed reported that over half of their annual revenue comes from personal care and home health aide services. Over 72% of agencies with annual revenue under \$5 million reported that the majority of annual revenue comes from personal care and home health aide services.

DEMOGRAPHICS

- Nearly 70% of home care agencies reported that the majority of their companionship services are paid for privately by the individual client/patient, family or through a commercial insurance plan.
- Over 50% of agencies reported that they provide companionship services that are covered for payment under a public program, such as Medicare, Medicaid or the Veteran's Administration.
- 64% of agencies reported that they provide live-in caregiver services.
- 54.2% of surveyed agencies do not pay overtime wages to employees that provide companionship services.
- 25.1% of surveyed agencies reported they are required to pay overtime wages for companionship services.
- 15.1% reported that they voluntarily pay overtime wages.

Section I

WORKER IMPACT

Employed caregivers would lose income under the proposed rule: Companies restrict working hours to control overtime costs

Home care agencies were given the option to choose various business adjustments they may have implemented or expect to make in order to accommodate overtime pay. Regardless of the type of agency, the same primary business adjustments to avoid or control the added costs of overtime compensation:

- **Restrict overtime hours**
- **Assign additional employees for each client/patient**

Agency Type	Restrict OT hours	Assign more employees per client/patient
Does not pay overtime*	86.2%	77.9%
Required to pay overtime	62.6%	62.1%
Voluntarily pay overtime	60%	58.7%

**Agencies that do not provide overtime pay were asked about expected business adjustments. Agencies that pay overtime wages were asked about their actual business adjustments.*

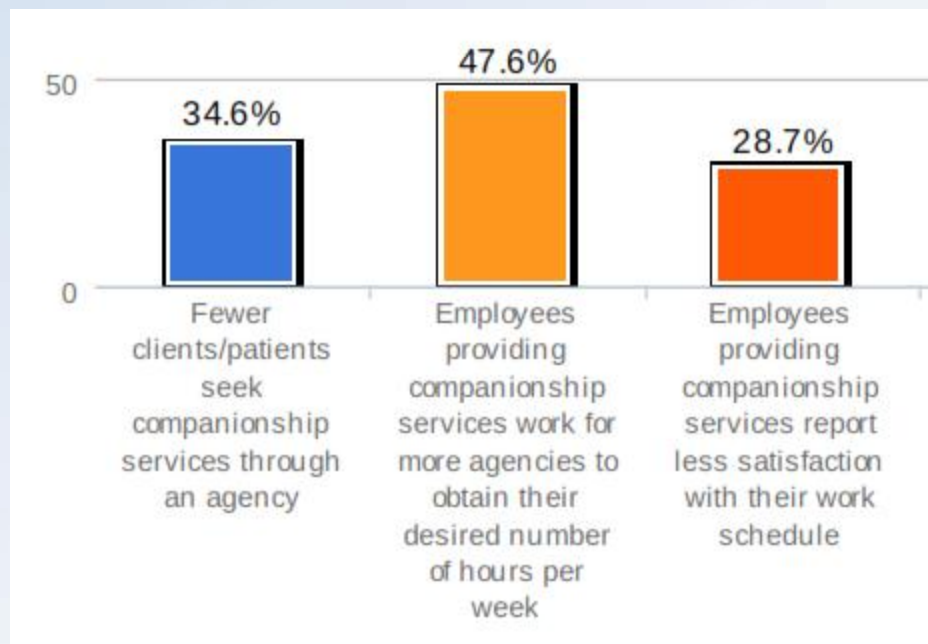
Employed caregiver income and hour restrictions continued

Many survey participants used the “Other” category to elaborate on how they limit or intend to limit worker.

- “We don’t have our employees work overtime.”
 - Respondent, required to pay overtime
- “Several caregivers had to quit as caregivers when I reduced their hours to 40 per week if they provided home care for elderly in a “non-private home” environment because they could not work enough hours to sustain a standard of living...”
 - Respondent, required to pay overtime
- “Negative impact to employees who would and could work more hours and make MORE money but we restrict them in order to be able to afford to deliver care.”
 - Respondent, required to pay overtime
- “We cannot afford to pay overtime. It would put us out of business with the living wage laws that are in place. Patients and workers are not going to be happy with the restrictions we will impose and ultimately patient care will suffer.”
 - Respondent, does not currently pay overtime

Agencies required to pay overtime wages report that employees work for multiple agencies to earn additional hours to overcome limits on work hours

Agencies that pay overtime wages were asked about various market impacts they have observed since their agency has had to pay overtime, whether voluntary or required. The chart below presents the three highest rated market impacts.



Section II

CLIENT/PATIENT IMPACT

Continuity of care and client/patient preference for fewer employed caregivers are placed at risk by overtime requirements.

Home care agencies provided a mixed review of the impact of overtime pay for companionship services on the quality of care provided to clients/patients. However, agencies consistently wrote in various comments sections that patients risk less continuity of care if assigned more than one companionship employee. In addition, agencies explained that they receive requests from their clients/patients to have fewer caregivers.

- “Everyone would be unhappy including the client for lack of continuity, the caregiver for reduced hours of work and the home care company for added staffing difficulty.”
 - Respondent, required to pay overtime
- “Caregivers get pulled from shifts if we need to pay overtime. Client finds this frustrating.”
 - Respondent, required to pay overtime
- “Clients want a single companion.”
 - Respondent, voluntarily pays overtime
- “We would have to rotate more caregivers at a clients to keep overtime down so they can afford our services. Clients with Dementia and Alzheimer’s would become more confused and the continuity of care would go down.”
 - Respondent, does not pay overtime
- “More patients will try to hire their own staff and will not have the quality of staff an agency can provide nor the benefit of protection of the agencies general/professional liability and other insurance coverage.”
 - Respondent, required to pay overtime

Clients/patients have seen or are expected to see rising costs and less availability of live-in services

Agencies reported that they have or expect to **increase billing costs to the client/patient as a result of paying overtime**. Clients/patients requiring companionship services are often the disabled and elderly on fixed incomes, and increased costs could limit access to services. Agencies also explained throughout the survey that they have or will likely limit live-in services.

Agency Type	Increased billing costs to the client/patient	Scale back offering companionship services
Does not pay overtime*	81.8%	23.7%
Required to pay overtime	45.2%	10.4%
Voluntarily pay overtime	47.1%	10.7%

**Agencies that do not provide overtime pay were asked about expected business adjustments. Agencies that pay overtime wages were asked about their actual business adjustments.*

Client/patient costs and services impact continued

Agencies consistently reported that clients/patients risk not being able to afford the rise in companionship services costs. Some comments include:

- “The economy is tough on private care right now—this will just drive up costs for which families can not afford.”
 - Respondent, voluntarily pays overtime
- “Clients cannot afford overtime.”
 - Respondent, required to pay overtime
- “Clients will not be able to afford my services and will find other resources, such as nursing homes, driving me out of business and forcing my clients to move from their homes!”
 - Respondent, does not pay overtime
- “Much more turbulence for clients due to switching caregivers when they reach the maximum hours for work below the overtime limit. The clients cost would have to rise to pay for the overtime wages. We refuse to charge our clients (who are already struggling to pay for care) more for overtime. The only option is to switch caregivers. This increases stress on the clients, reduces wages for the caregivers and reduces quality of care for the family.”
 - Respondent, does not pay overtime

Agencies believe the greatest impact on the communities they serve will be that fewer clients/patients will be able to afford companionship services

- 86.4% of agencies that do not pay over-time wages reported that the greatest impact on the communities they serve is **fewer clients/patients will be able to afford companionship services.**

Agencies also provided additional comments on other community impacts:

- Increases in the number of independent and potentially unregulated caregivers
- Limited availability of live-in services for clients/patients
- **Clients/patients who are unable to afford companionship services will seek care in nursing homes**
- Employed caregivers with capped hours will likely leave the field or work for multiple agencies

Section III

BUSINESS IMPACT

Home care agencies have to make difficult choices to address the impact of overtime pay on business costs

Over 90% of all agencies surveyed reported that paying overtime wages increases or is expected to increase business costs. While a greater percentage of agencies that do not pay overtime reported they expect significant increases in business costs, the majority of agencies that currently pay overtime similarly reported that there is either a significant or moderate increase in business costs. 67.8% of companies currently required to pay overtime report a moderate to significant increase in costs thereby validating the concerns expressed by the 93.6% of companies that expect moderate or significant cost increases under the proposed rule.

Agency Type	Significant Increase	Moderate Increase	Minimal Increase	Total
Does not pay overtime*	76.3%	17.3%	2.9%	96.5%
Required to pay overtime	40.0%	27.8%	24.2%	92.0%
Voluntarily pay overtime	34.0%	34.9%	24.1%	93.0%

*Agencies that do not provide overtime pay were asked about expected impact on business costs. Agencies that pay overtime wages were asked about the actual impact.

Agencies see increases in various types of business costs

Home care agencies reported they would see increases in certain types of business costs particularly surrounding the desire by the agency to hire additional employees to reduce the need for employees to work overtime. **Staff training costs and human resources costs were the larger cost items agencies reported.** Some agencies listed additional costs resulting from hiring additional employees such as paying for additional drug screenings, background checks and increased supervisory hours.

Agency Type	Increases in human resources costs	Increase staff training costs
Does not pay overtime*	67.4%	67.9%
Required to pay overtime	38.2%	38.3%
Voluntarily pay overtime	38.7%	31.6%

**Agencies that do not provide overtime pay were asked about expected business adjustments. Agencies that pay overtime wages were asked about their actual business adjustments.*

Agencies make or expect to make a variety of business adjustments to the services provided to clients/patients and to employee working conditions

Home care agencies were given the opportunity to provide comments in an “Other” category when describing business adjustments they have or expect to make in order to provide overtime compensation. Some agencies provided additional business adjustments from those provided in a list of potential options.

Some additional adjustments include:

- **Cutbacks on employee benefits and pay increases**
- **Consider withdrawing from Medicaid**
- **Stop offering live-in services**
- **Change the shifts offered to employees**
- **Reduce the current pay rate for employees providing companionship services**

RECAP

Recap

- Moderate to **significant increases in business costs** have occurred or would occur under the proposed rule.
- Agencies consistently referenced **restricting or expecting to restrict overtime hours** for employees that provide companionship services throughout the survey.
- Quality of care impact is reported by all respondents including **loss of service continuity, and weakened staff competencies.**
- **Costs would be passed on to elderly, infirm, and special needs clients/patients** in private pay care.
- **Current reimbursement for services covered by federal and state programs does not cover overtime.**
- Clients/patients will seek out services from the **underground economy** through **untrained, unsupervised and unskilled workers creating risk of elder abuse and mistreatment of people with disabilities.**

Contact for More Information

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