



## Economic Impact of Eliminating the FLSA Exemption for Companionship Services

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## Executive Summary

The U.S. Department of Labor recently proposed changes to sections of the Fair Labor Standards Act pertaining to the exemption from its minimum wage and overtime provisions for workers who provide companionship services and live-in domestic services. Among the proposed changes, employees of third party employers of companionship workers would no longer be exempt from the FLSA minimum wage and overtime provisions.

The International Franchise Association (IFA) asked IHS Global Insight to undertake a study of the impact of these proposed rule changes on companion care businesses that operate as franchises. To assess the impacts, we conducted a survey of franchise businesses in this industry. This report presents the findings of that survey and IHS Global Insight's conclusions regarding the impacts of the proposed rule changes. Our principal findings are as follows.

- The Department of Labor's economic impact analysis of the proposed rule changes substantially understated the extent of overtime work among companion care workers, at least among those working for franchise-operated companion care businesses. The average amount of overtime worked is three times greater than estimated in the Department of Labor analysis.
- Other costs of the proposed rule change may also be understated in the Department of Labor economic impact analysis, including management costs of adding staff to avoid the cost of overtime pay (assumed zero) and the cost of travel time for employees travel between work sites.
- We believe the Department of Labor's assumption about the sensitivity of the demand for companion care services to price increases (the demand price elasticity) is based on incomplete data on the source of payment for these services and is, therefore, significantly understated.
- As a result of the underestimation of costs and the price elasticity, the Department of Labor has significantly understated some of the economic impacts (transfer costs and the dead-weight loss) that will result from the proposed changes in regulations.
- The impact of the proposed rule changes on employment is less clear. Businesses that responded to our survey indicate a strong intention to avoid paying higher overtime costs, which may lead to sufficient hiring of additional employees to offset job loss due to reduced demand. To the extent this occurs, the effect of the proposed Department of Labor regulations may be to create a certain number of additional (primarily low-wage) jobs, while at the same time reducing the earnings of a substantial number of workers who are already low-wage workers.

There are a total of 27 companies (franchisors) in the companion care industry, which have an estimated 4,193 franchisees. The greatest impact of the Department of Labor's proposed rule changes would be on approximately 2,500 of these businesses, which are located in states that currently do not require overtime pay to companion care workers. These businesses operate an estimated 3,200 establishments with approximately 200,000 employees, including 168,000 companion care workers.

## 1. Introduction

In December 2011, the U.S. Department of Labor (DoL) issued a notice of proposed rulemaking to revise the current Fair Labor Standards Act (FLSA) regulations pertaining to the exemption for companionship services and live-in domestic services. The FLSA exempts from its minimum wage and overtime provisions domestic service employees employed to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves. DoL's proposed amendments of the regulations would revise the definitions of companionship services and change the regulations to deny all third party employers of companionship workers the use of exemptions from the FLSA minimum wage and overtime provisions.

The International Franchise Association (IFA) engaged IHS Global Insight to make an independent assessment of the impact of these proposed rule changes on home care businesses that operate as franchises. To assess the impacts, we conducted a survey of franchise businesses that provide companion care services. This report presents the results of that survey and IHS Global Insight's findings about their implications for the economic impacts of the proposed rule changes.

The published notice of rulemaking included a detailed description of how DoL estimated the expected economic impact of the rule changes, including specific assumptions and calculations made to quantify the overall economic impact. One of the objectives of our survey of companion care agencies was to gather information that could be used to evaluate some of the important quantitative inputs into the calculation of an industry-wide estimate of the impact of the rule changes.

In Section 2, we provide a general description of the survey of franchise businesses and summary results of the size and composition of the sample from which we were able to estimate industry averages. In Section 3, we describe some of the key assumptions, estimates and findings of DoL's analysis of economic impacts of the proposed rule changes and compare those figures with estimates based on the survey data.

Our survey of companion care franchise businesses also gathered information from the business owners on their assessments of likely outcomes of implementation of the proposed rule changes. In Section 4, we summarize the comments received regarding the potential impact on employees of the agencies and customers of the agencies, and we consider additional health policy considerations that are raised by the rule changes proposed by the Department of Labor.

## 2. Survey of Franchise Companion Care Businesses

With the cooperation of the International Franchise Association (IFA), IHS Global Insight identified nine IFA member companies in the companion care industry (franchisors) that agreed to contact their franchisees to request that they provide information about their business operations and the potential impact of the proposed Department of Labor rule change.

IHS Global Insight prepared a list of questions to be posed to all participating franchisees. The survey requested data on the employment, wages paid and revenue of companion care agencies. Additional questions were included on the amount of overtime worked and overtime pay practices to make it possible to evaluate assumptions made in DoL's analysis of the economic impacts of the proposed rule changes. Since certain states have their own regulations governing minimum wage and overtime payment, data were collected to identify the state(s) where each franchise business operates. Data were also collected separately on whether agencies have companion care employees that work 24-hour live-in schedules. Survey data were collected during the first two weeks of February 2012 using an on-line survey process.

Data were obtained from 542 franchise businesses that operate from a total of 706 locations. Table 1 provides a tabulation of the responses received by each of the nine participating franchisors. Across all participating companies, 17 percent of their franchisees submitted survey questionnaires. Response rates of the participating companies' franchisees varied from 1 percent to 37 percent. Not all survey submissions were complete.

**Table 1.**  
**Summary Survey Results by Franchisor**

Franchisor	Total Franchisees	Participating Franchisees	
		Surveys Received	Number of Locations
<b>Total</b>	<b>3,259</b>	<b>542</b>	<b>706</b>
Company 1	237	87	113
Company 2	146	27	36
Company 3	658	40	44
Company 4	910	139	179
Company 5	45	10	11
Company 6	319	4	26
Company 7	224	46	59
Company 8	300	46	62
Company 9	420	137	166
Not specified	--	6	10

The 542 companion care agencies that submitted survey data operate in 47 states. The location of the businesses by state is an important factor in assessing the economic impact of the proposed Department of Labor rule changes, because some states have their own minimum wage rates and/or overtime pay regulations that supersede the FLSA exemption. The Department of Labor report on the proposed rulemaking identifies three groups of states for purposes of its analysis:

- Group 1. 29 states that do not include home health care workers in their minimum wage and overtime provisions: Alabama, Alaska, Arkansas, Connecticut, Delaware, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Hampshire, New Mexico, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, and Wyoming.
- Group 2. 16 states that extend both minimum wage and overtime coverage to most home health care workers who would otherwise be excluded under the current regulations: California, Colorado, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Jersey, New York, Pennsylvania, Washington, and Wisconsin. (New York and Minnesota have special provisions.)
- Group 3. Five states (Arizona, Nebraska, North Dakota, Ohio, and South Dakota) plus the District of Columbia, which extend minimum wage, but not overtime coverage to home care workers.

Businesses operating in Group 1 states are subject to the greatest impacts from the proposed Department of Labor rule changes. Table 2 provides a breakdown of the businesses participating in the survey across these three groups of states. 52.4 percent of all franchise businesses that responded had locations in Group 1 states. Because businesses in these states are most subject to the impact of the proposed rule change, we report results separately for businesses operating in Group 1 states below.

**Table 2.**  
**Survey Responses by Groups of States\***

	Total	Group 1 States	Group 2 States	Group 3 States
Franchise Businesses	542	284 <sup>a</sup>	225	33 <sup>b</sup>
Percent of total	100.0%	52.4%	41.5%	6.1%

\*See text for states included in each group

<sup>a</sup>Includes 6 businesses that also operate in Group 2 or Group 3 states.

<sup>b</sup>Includes 1 business that also operates in Group 2 states.

Companion care franchise businesses are predominantly small businesses. This is reflected in the data reported on the number of locations owned by each franchisee as well as average revenue and number of employees.

Over three-fourths of all franchisees responding to our survey operated from only a single location (Table 3).

**Table 3.**  
**Number of Locations Operated by Franchise Businesses**

	All Franchises		Those in Group 1 States	
	Number	Share (%)	Number	Share (%)
<b>Total</b>	<b>541</b>	<b>100.0%</b>	<b>283</b>	<b>100.0%</b>
1	429	79%	220	78%
2	77	14%	42	15%
3	24	5%	13	5%
4+	11	2%	8	3%
Mean for 4+	5.7		6.2	

The number of locations was not reported for one agency.

About half of all franchisees reported total revenue (business receipts) of \$1 million or less in 2011 (Table 4).

**Table 4.**  
**Total Revenue of Franchise Businesses: 2011**

	All Franchises		Those in Group 1 States	
	Number	Share (%)	Number	Share (%)
<b>Total</b>	<b>540</b>	<b>100.0%</b>	<b>284</b>	<b>100.0%</b>
Less than \$500,000	129	23.9%	66	23.2%
\$500,000 - \$1 million	165	30.6%	90	31.7%
\$1,000,000 - \$2 million	152	28.2%	74	26.1%
\$2 million - \$3 million	54	10.0%	31	10.9%
\$3 million - \$4 million	16	3.0%	9	3.2%
\$4 million - \$5 million	7	1.3%	4	1.4%
More than \$5 million	17	3.0%	10	3.5%
Mean for \$5 million+	\$10.3 mil.		\$10.3 mil.	

Revenue was not reported for one agency.

Despite their modest revenue, these companion care businesses employ a substantial number of employees. Across all franchisees reporting, the average number of total employees (including all support staff and other occupations as well as companion care workers) was 76 (85 in Group 1 states). More than half of all franchisees have 50 or more employees (Table 5).

**Table 5.  
Number of Employees**

	All Franchises		Those in Group 1 States	
	Number	Share (%)	Number	Share (%)
<b>Average number of employees</b>	<b>76</b>	<b>--</b>	<b>85</b>	<b>--</b>
<b>Employment Size Distribution:</b>				
<b>Total</b>	<b>535</b>	<b>100.0%</b>	<b>282</b>	<b>100.0%</b>
0-9 employees	20	3.7%	13	4.6%
10-24 employees	56	10.5%	32	11.3%
25-49 employees	143	26.7%	77	27.1%
50-99 employees	195	36.5%	93	32.7%
100+ employees	121	22.6%	67	23.6%

Employment was not reported for seven agencies.

Within the framework of the North American Industry Classification System (NAICS), the companion care agencies for which data are reported here would be classified in the industry NAICS, 62412, Services for the Elderly and Persons with Disabilities (SEPD). This is evident based on the distribution of their revenue by type of revenue, since the industry classification of a business establishment is based on the predominant line of business. More than 80 percent of the respondents to our survey received more than half of their revenue from companion care services in 2011 (Table 6).

**Table 6.  
Share of Revenue from Companion Care Services: 2011**

	All Franchisees	Those in Group 1 States
Average share of revenue from companion care services	85.6%	84.1%
Number of franchisees reporting more than 50% of revenue from companion care services	451	229
Share of all franchisees reporting	83.2%	80.9%

The distribution of employees by type of activity also reflects the focus of these franchisees on providing companion care services (Table 7).

**Table 7.**  
**Share of Employees that Provide Companion Care Services**

	All Franchisees	Those in Group 1 States
Average share of employees that provide companion care services	83.6%	83.2%
Number of franchisees reporting more than 50% of employees provide companion care services	473	217
Share of all franchisees	88.4%	76.4%

Table 8 provides selected summary figures for all franchise businesses that responded to the survey.

**Table 8.**  
**Summary Data from Survey of Companion Care Agencies**

	All Franchisees	Those in Group 1 States
Number of Franchise Businesses	542	284
Number of Locations	706	380
Revenue in 2011	\$799 mil.	\$431 mil.
Total Employment	44,026	24,098
Companion Care Employees	36,823	20,042

The Department of Labor's proposed rule changes include specific new language governing the hours of work of companion care employees who provide live-in 24-hour services. Therefore, our survey of franchise home care agencies asked separately about the incidence of live-in 24-hour service. This question was asked both in terms of the number of an agency's customers with a need for such service and the share of the agencies' workforce that work such schedules.

Table 9 summarizes results regarding the share of all customers that require 24-hour live-in service. About 10 percent of all customers require 24-hour live-in care. Across all agencies responding to the survey, 13 percent of their companion care employees are working 24-hour live-in schedules.

**Table 9.**  
**Types of Care Required by Customers of Companion Care Agencies**

	All Franchisees	Those in Group 1 States
<b>Total Customers of Franchise-Operated Companion Care Agencies</b>	<b>100.0%</b>	<b>100.0%</b>
Receive live-in 24hour services	9.5%	8.9%
Do not receive live-in service, but require care more than 40 hours per week	25.7%	29.5%
Require 40 hours or less care per week	64.8%	62.1%

Many of the employees of companion care agencies who work 24-hour live-in schedules are paid a daily rate, while others are paid at an hourly rate. Those who do not serve customers on a live-in basis are typically paid at an hourly rate. Table 10 shows the average rates of pay separately for these two groups.

**Table 10.**  
**Average Earnings of Companion Care Employees**

	All Franchisees	Those in Group 1 States
Those on 24-hour live-in schedules:		
Paid at a daily rate (\$ per day)	\$133	\$127
Paid at an hourly rate – straight-time rate (\$ per hour)	\$9.87	\$8.49
All Others (straight time hourly wage)	\$9.45	\$9.12

The rule changes proposed by the Department of Labor would remove the exemption for companion care workers to be paid the minimum wage. No survey respondents reported an average wage for companion care employees that was below the federal minimum wage of \$7.25.

### 3. Economic Impact Analysis – Estimates and Assumptions

A principal focus of the proposed the Department of Labor rule changes is to remove the exemption for companion care workers for paying overtime wages. Among the 261 responses to the question "Does your business pay overtime to companion care workers for hours worked in excess of 40 in a week?" from businesses in Group 1 states, 46 (18 percent) responded yes. Most of these respondents indicated that they pay overtime voluntarily, but some responded that they were required to pay overtime due to state regulations (even though they are located in states without overtime regulations).

Table 11 contains data on the number of companion care workers who usually work over 40 hours per week and the average amount of overtime worked. In this table, we combine franchises operating in Group 1 states and Group 3 states as defined above, because states in both of these groups have no regulations regarding overtime. Across agencies in all states, 27 percent of companion workers usually work over 40 hours per week. Businesses in states in Groups 1 and 3 have a slightly higher incidence of overtime – 29 percent. Based on the responses of businesses that reported the average hours of overtime worked by companion care workers that usually work over 40 hours, the average hours of overtime nationwide was 8.2. The average for businesses operating in states in Groups 1 and 3 was 6.8 hours per week.

**Table 11.**  
**Overtime Work by Companion Care Employees**

	All Franchisees	Group 1 and Group 3 States	Group 2 States
Companion care employees that are not on 24-hour live-in schedules:*	33,713	20,614	13,099
Usually work 40 hours or less per week	24,618	14,577	10,041
Usually work more than 40 hours per week	9,095	6,037	3,058
Share that usually work overtime	27%	29%	23%
For those that work overtime, average hours of overtime per week	8.2	6.8	9.1

\*Results for respondents with valid responses for number of employees by work schedule.

Another dimension of compensation of companion care workers that would be affected by the proposed Department of Labor rule changes is payment of employees for travel time between clients. Of the 521 agencies that responded to the survey question "Do you pay for travel time for companion care employees for their travel between clients during the same day?" 50 percent responded affirmatively (39 percent in Group 1 states).

## ***The Department of Labor's Economic Impact Analysis***

The Department of Labor estimated that there were 631,000 Personal Care Aides (PCAs) and 955,000 Home Health Aides (HHAs) employed by agencies in 2009 for a total of 1.59 million workers.<sup>1</sup> [78] However, not all of these workers are FLSA-exempt companion care workers; many provide health-related services. Others are either not employed in the home or are employed in states that provide minimum wage and overtime coverage. [79]

The Department of Labor estimated that 934,000 of the 1.59 million employees work in the home – 45 percent of HHAs and 80 percent of PCAs. [89,93] They estimated that 738,000 PCAs and HHAs are currently exempt from overtime coverage under the FLSA because they are employed in states without overtime coverage or are employed in public agencies and non-profit organizations that may be exempt from overtime coverage. This is approximately 47 percent of all PCAs and HHAs employed by agencies. [97]

The Department of Labor cites studies that indicate that only 8 percent of HHAs and 15 percent of PCAs report working greater than 40 hours per week. They base their estimates of the cost of overtime on assumptions that 10 percent of companion care workers work 45 hours per week and 2 percent of workers work 52.5 hours per week. [97] Thus, on a weighted average basis, 12 percent of non-covered workers work an average of 6.25 hours of overtime per week, for a total of 30 million hours of overtime a year. The Department of Labor estimates the cost of overtime for exempt companion care workers based on a wage of the affected workers of \$9.51 per hour derived from 2009 OES data. [97]

## ***Franchise Companion Care Agency Survey Data***

The companion care hourly wage used by the Department of Labor to estimate the added cost of increased overtime is generally consistent with the average wage of companion care workers reported in our survey. The franchise agencies that reported wages in our study reported that those companion care workers who were paid at an hourly rate are paid an average straight-time wage of \$9.45. (This is an employment-weighted average across all respondents reporting both employment and wages). Employees working live-in 24-hour schedules were paid an average of \$133 per day.

However, the building blocks of the Department of Labor's estimate of the amount of overtime worked by companion care workers are not at all representative of our sample of franchise-operated companion care agencies. Because many companion care workers who provide live-in 24-hour service are paid on a daily basis and responses to the question regarding the number of hours they actually work are subject to varying interpretations of work time, we focused our questions about overtime work schedules on

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<sup>1</sup> Here and below, the numbers in brackets are page numbers in the Department of Labor's "Notice of proposed rulemaking: Application of the Fair Labor Standards Act to Domestic Service."

those companion care workers within each agency who do not work a 24-hour live-in schedule. Some summary statistics for these workers are as follows:

Among the 527 agencies that provided data on the number of their hourly-paid workers, 440, or 83 percent reported that at least some of their workers usually work more than 40 hours per week. For businesses operating in Group 1 and Group 3 states (those without overtime regulations), the share was 89 percent.

- For these agencies, the share of workers who worked more than 40 hours per week ranged from 1-2 percent to 100 percent.
- For agencies in all states, as reported above, 27 percent of all hourly-paid workers usually worked more than 40 hours per week (29 percent in states in Groups 1 and 3). This is more than double the incidence of workers with overtime that was used as a basis of the Department of Labor's estimates.
- Among respondents who reported the number of overtime hours usually worked, the average hours of overtime per week was 8.2 hours (6.8 hours for employees in Groups 1 and 3 states). These figures are also above the effective average of 6.25 hours per week underlying the Department of Labor's analysis.

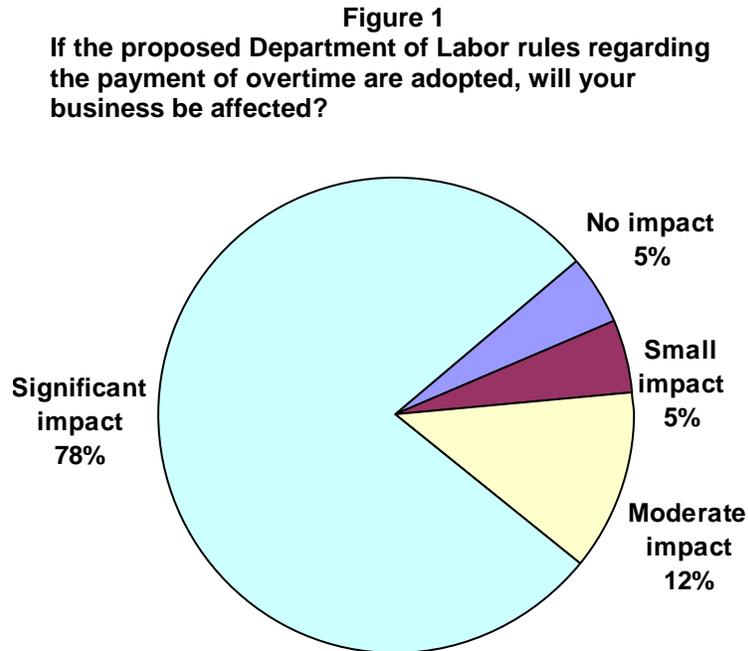
Combining our results for the number of workers who usually work over 40 hours per week and the usual hours worked in excess of 40, the average amount of overtime worked by our sample of companion care workers is 2.7 to 3.0 times greater than that assumed in the Department of Labor's economic impact analysis. For example, for 1,000 companion care workers, the DoL assumptions would yield an estimate of 750 hours of overtime per week ( $10\% * 1,000 * 5 \text{ hours} + 2\% * 1,000 * 12.5 \text{ hours}$ ). Across all states, 1,000 companion care workers in our sample work 2,214 hours of overtime ( $27\% * 1,000 * 8.2 \text{ hours}$ ) – nearly three times more.<sup>2</sup> Moreover, this could be a lower-bound estimate of the understatement of overtime work by the Department of Labor as it relates to franchise-operated agencies for two reasons. First, we did not collect information on overtime hours that occur when an employee with less than 40 hours weekly but works more than eight hours in a single day. The Department of Labor study also makes no direct calculation of these added overtime costs. Second, the question on hours of overtime worked in our survey was asked only of respondents who currently pay a time-and-a-half premium for overtime work. The incidence of overtime work could be greater for workers who are not being paid an overtime premium.

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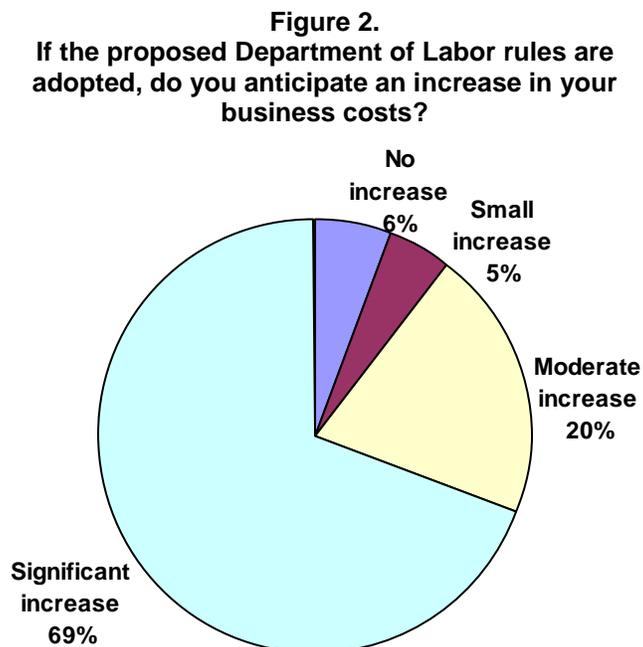
<sup>2</sup> The Department of Labor estimate of the incidence of overtime work is based largely on a study that used Current Population Survey data on two occupations identified in the CPS – "Personal Care Aides" and "Nursing, Psychiatric & Home Health Aides." The former occupation is defined in the CPS as "Personal and home care aides." The CPS shows employment of about 900,000 in this occupation – well above the 686,000 employment in PCAs reported in the Occupational Employment Statistics. So the CPS category could include many employees who are not companion care workers. The mismatch of the second CPS occupation for companion care workers is even greater. Employment in the CPS of "Nursing, Psychiatric & Home Health Aides" is nearly double the number of Home Health Aides alone; the wages paid to the nursing and psychiatric aides that are included in the CPS occupation are about 16 percent above those of Home Health Aides; and their hours of work could also differ significantly. So, these two CPS occupations may not give an accurate reflection of the overtime worked by PCAs and HHAs.

## Impact of Changes in Overtime Regulation

A large majority of the franchise business owners who responded to our survey are greatly concerned about the potential impact of the proposed rule change on their business (Figure 1).



The business owners in our sample expect implementation of the proposed rule changes to result in a significant increase in the cost of doing business (Figure 2).



This distribution of responses about the impact on the cost of doing business largely reflects the added cost of paying overtime. As is evident from the agencies' responses to other questions reported below, the responses given likely represent the increase in costs that these businesses would experience before taking action to cut overtime.

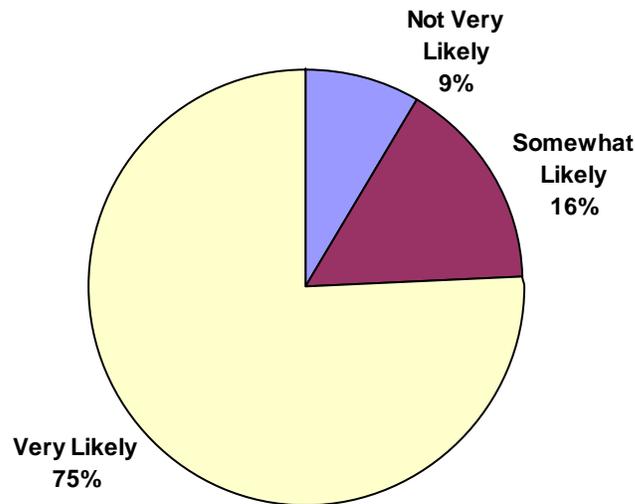
However, the fact that these companion care agency operators expect a significant increase in the cost of doing business despite a strong intention to reduce overtime also indicates that many have a different view than is reflected in the Department of Labor analysis of the increased cost of hiring, training and managing a larger number of employees to handle the same workload. The Department of Labor study acknowledges "additional managerial costs to agencies might occur as a result of changes in staffing" but takes the position "the Department has no basis for estimating these costs, but believes they are relatively small. Therefore, they are not included in the three scenarios [listed below]." [105] Our survey did not solicit specific estimates of the added managerial costs of making staffing changes in response to the new rules, but some business owners expressed concern about this in additional comments they provided. These comments are included in the appendix of this report.

Another part of the proposed rule change is to require agencies to pay employees for travel time between two job sites during the same day. The Department of Labor estimates the cost of paying for this travel as a fixed 19.2 percent of the cost of their Scenario 1 for overtime pay (based on a New York court case). This is an annual amount of \$26.7 million in the first year (equivalent to a 0.06 percent increase in wages to employees). At the hourly wage rate used by DoL for their economic impact analysis (\$9.51), this would compensate about 2.8 million hours of travel. Using 30 minutes per day as a hypothetical time for travel between two clients, it would compensate about 5.6 million trips. If we assign these trips to companion care workers who travel between clients on a regular basis year-round, this number of trips would be spread across 23,000 workers, which is only 2.5 percent of all companion care workers.

As reported above, about one-half of the agencies that responded to our survey pay their employees for travel time between job sites (39 percent in Group 1 states). We did not gather data on the share of companion care employees that work at more than one site during a day, but the fact that a large percentage of the total have a policy in place for this suggests that such travel may not be uncommon. This is another area where making an accurate assessment of the economic impact of the regulations requires better data.

Most of the business owners surveyed expect to try to pass the added costs of overtime, management and administration and other impacts of the proposed rule change on to their customers. Only 9 percent of the respondents to our survey reported that it is "not very likely" that their fees would increase if the proposed Department of Labor rules are adopted. Three-fourths reported that an increase in fees was very likely (Figure 3).

**Figure 3.**  
**If the proposed Department of Labor rules are adopted,**  
**how likely is it that you will increase the fees you charge**  
**your clients?**



The average expected increase in fees reported by those who said a fee increase is somewhat likely was 12 percent. The average increase reported by those who said a fee increase is very likely was 26 percent. Weighting these two categories of responses together with those who reported that a fee increase was not very likely, the industry-wide average expected fee increase was 20 percent. (There are some very high percentage increases among the responses received that boost the average, however, 20 percent was also the median expected fee increase.)

This expected increase in fees for companion care services is in sharp contrast with the expected cost impact estimated by the Department of Labor. DoL estimates the transfer costs (additional costs to businesses) of their preferred scenario of market response to overtime as about \$113 million, which is equal to 0.27 percent of wages (spread over all workers) and about 0.15 percent of average industry revenues. [115] Based on the results presented above, we can list some possible explanations that may account in part for the significant difference.

- The company responses we received may reflect the impact of the new proposed regulations before the agencies take action to reduce costs. The sample of businesses that agreed to participate in our survey may also include a disproportionate share of businesses that expect to be most significantly affected.
- As indicated above, the Department of Labor analysis appears to significantly underestimate the amount of overtime currently worked by companion care workers.
- The fact that the Department of Labor's analysis did not directly address the higher management and administration costs associated with increasing the

number of employees to avoid paying overtime could be omitting a significant cost factor.

- The franchise-operated sector of the home care industry may be more significantly impacted by the proposed regulations than other types of providers.

The franchise business owners' assessments of the impact on their customer base if they implement the necessary increase in their fees to cover higher costs were equally dire. Across all respondents, the agencies project losing 23 percent of their customers. This expected drop in demand for companion care services reflects a much greater sensitivity to a price increase than was assumed in the Department of Labor analysis. The Department of Labor assumes the price elasticity of demand for home companionship services is -0.15, and that the price elasticity of supply of these services is similar. A 23 percent drop in demand in response to an average fee increase of 20 percent obviously indicates a much higher expected price elasticity.

The Department of Labor supports its use of a low price elasticity in part on the grounds that Medicare and Medicaid cover most of the services provided. They cite the statistic that Medicare and Medicaid account for about 75 percent of total payments for home health care payments. [115,117] This is a reference to the source of funds for the revenue of the Home Health Care Services industry (NAICS 6216). As the Department of Labor's industry analysis shows, this is an industry that employs both health care and companion care workers. Services of the former would generally be eligible for Medicare reimbursement, but companion care services are generally reimbursable only if provided in conjunction with medical services.<sup>3</sup> Therefore, the Medicare reimbursable share of companion care services provided by the Home Health Care Services industry could be much lower than 75 percent. Moreover, the majority of companion care services are provided by the Services for the Elderly and Disabled Persons industry (NAICS 62412), and Medicare reimbursement is not reported for this industry. Inclusion of this industry would likely lower the share of companion care service costs that is covered by Medicare and Medicaid even further.

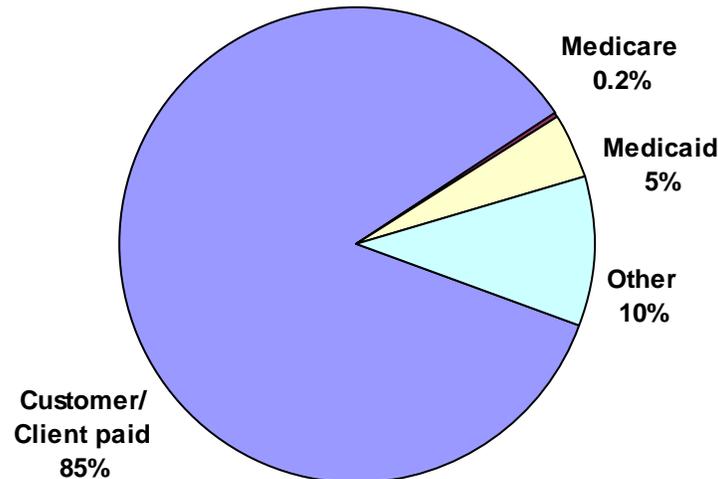
Indeed, our survey data indicate the source of the overwhelming majority of the receipts of companion care agencies is customer paid (Figure 4). It is possible that in many cases the agencies may not be aware of whether customer payments are subsequently reimbursed by Medicare, Medicaid, private health insurance or other programs. But it

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<sup>3</sup> Guidelines for Medicare coverage on the Medicare web site state that, if a series of conditions are met for home health services to be covered, Medicare will cover: "Home health aide services on a part-time or intermittent basis. A home health aide doesn't have a nursing license, but supports the nurse by providing services such as help with bathing, using the bathroom, dressing, or other personal care. These types of services don't need the skills of a licensed nurse. Medicare doesn't cover home health aide services unless you are also getting skilled care such as nursing care or other therapy. The home health aide services must be part of the home care for your illness or injury." Medicare.gov (July 2010) [Who can get Medicare-covered home health care, and what services does Medicare cover?](#)

seems likely that the share of customer-paid companion services is much higher than assumed in the Department of Labor's analysis.

**Figure 4.**  
**Source of Payment for Companion Care Agencies' Revenue**



The Department of Labor agrees that "Patients that pay all, or a significant share, of costs out-of-pocket might have a significantly different price elasticity for home health services;" [116] The source of funds for companion care is an issue that warrants further investigation in order to properly assess the impact of the proposed rule changes on consumers as well as on the agencies providing these services and their employees.

The results that flow from the Department of Labor's assumption are that average wages will increase by about \$0.044 per hour, and employment will decrease by 505 nationwide. That job loss number is exceeded more than five-fold by our small sample of businesses alone. The 158 survey respondents who anticipated job loss as a result of the revised Department of Labor regulations project job losses totalling 2,630. This represents 6 percent of the total employment of the 542 companion care agencies surveyed.

### ***Business Response to Changes in Overtime Regulation***

The Department of Labor analysis considers three scenarios of possible market response to the requirement to pay overtime hours at a time-and-a-half rate:

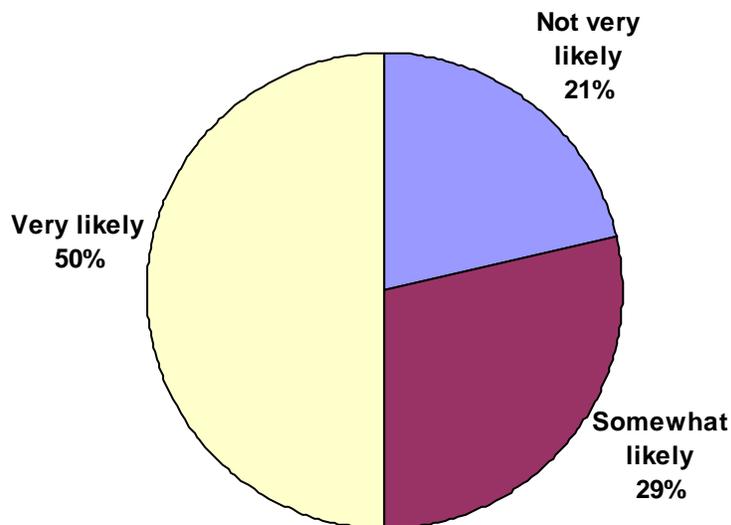
1. Firms do not adjust their staffing, and the additional overtime is worked and paid.
2. Firms make a partial adjustment to their staffing and reduce overtime by 50 percent.
3. Firms adjust their staffing so no additional overtime is worked and paid.

The Department of Labor says "scenarios 2 and 3 are more likely to occur." The results of our survey generally support this assumption:

- Ninety-five percent of our survey respondents operating in states where there are no overtime regulations (Groups 1 and 3) said they would eliminate all scheduled overtime hours.
- Two percent of these respondents said they would reduce but not eliminate scheduled overtime.
- Only 3 percent said they would make no change to scheduling and pay the additional overtime cost (the Department of Labor's Scenario 1).

Although franchise companion care business owners clearly expect to reduce overtime hours if the proposed regulations are implemented, the sentiment that there will be an increase in hiring of new employees to staff these hours is not quite as strong. About one-half of all respondents stated that it was very likely that they would hire additional companion care employees to avoid paying overtime and another 30 percent stated that this was somewhat likely (Figure 5).

**Figure 5.**  
**If the proposed Department of Labor rules are adopted, will you hire more workers in order to avoid paying more overtime?**



Above we cited results showing that the impact of implementation of the DoL rule changes could be significant job loss if agencies must raise their fees substantially to offset the higher cost of overtime. The more likely scenario is that they will strive to significantly reduce overtime and will in many cases add additional employees to accomplish this. Thus, the net jobs impact of the proposed rule change is somewhat uncertain. The likely impact of the proposed Department of Labor regulations on

employees might be characterized as follows. A certain number of additional (low-wage) jobs could be created, while at the same time the total earnings of a substantial number of workers who are already low-wage workers will be reduced because their overtime is cut.

### ***Global Impact on the Franchise Companion Care Industry***

The franchise company database maintained by the International Franchise Association shows a total of 27 companies (franchisors) in the companion care industry. These companies have a total of 4,193 franchisees, with employment of approximately 340,000, including 280,000 companion care workers.

The greatest impact of the Department of Labor's proposed rule changes would be on approximately 2,500 businesses located in states that currently do not require overtime pay to companion care workers (those operating in Group 1 and Group 3 states as listed in Section 2). These businesses operate an estimated 3,200 establishments with approximately 200,000 employees, including 168,000 companion care workers.<sup>4</sup>

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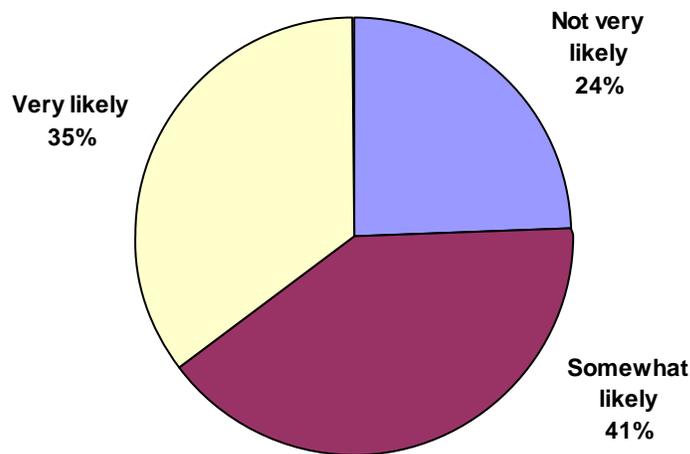
<sup>4</sup> These estimates are based on ratios of revenue and employment per establishment from our survey of companion care agencies.

## 4. Health Policy Issues

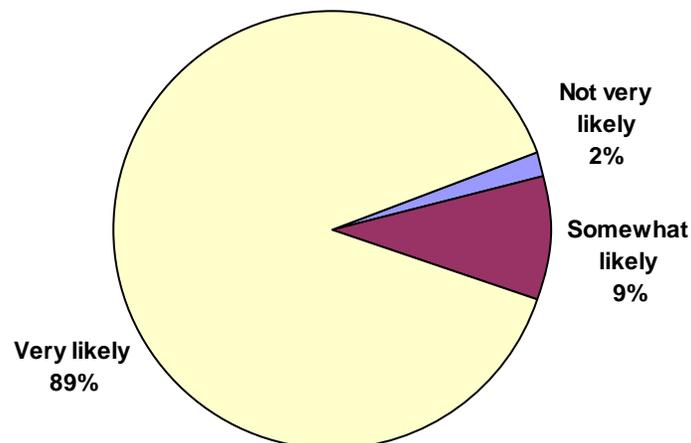
We also asked the companion care agencies their opinions about the likely response of their clients to an increase in fees (see Figure 6).

**Figure 6.**  
**Based on your knowledge of your industry and your clients, what is the likely response of clients who can no longer afford companion care services from an agency?**

**They would seek institutional care (nursing homes, assisted living centers):**



**They would seek other care, such as "underground" providers:**



Those who use companion care services are motivated by a desire not to move from their homes into a nursing home or assisted living setting. For many, an assisted living

institution may not be an option due to financial constraints. However, for those who need care for a substantial portion of the time, an increase in the cost of companion care could push them in the direction of moving to an institution, which in many cases would mean personal financial resources are soon exhausted and the cost of care would shift to Medicaid.

For those who do not have a medical condition in need of close oversight, higher costs for companion care could lead to seeking a cheaper alternative (grey market) source of companion care. Others may respond to the increased cost by reducing or attempting to forego home care altogether. Another possible outcome is that some adult children of elderly parents might leave the workforce to care for a parent. A June, 2011 report, "Study of Caregiving Costs to Working Caregivers," by MetLife's *Mature Market Institute*, put the cost per person over age 50 if they are taking care of elder family members at over \$300,000. This number reflects lost wages, pensions, and Social Security benefits over their lifetime, due primarily to a reduction in working hours, or leaving the work force entirely early to care for a parent.<sup>5</sup>

The U.S. Department of Labor estimates that nearly 30% of workforce employees provide elder care for a parent or parents. Over 14 million employees today are dealing with balancing careers, jobs and elder care. Stress related health issues for caregivers has risen 27%. Nearly two-thirds of caregivers express some conflict between demands at home and demands from employers.

The potential for increased additional health care costs from a reduction of service in response to higher costs must be taken into account in assessing the impact of the proposed rule changes. Grey market companion care aides may not be properly trained, licensed or insured. This can present a clear danger to senior health. One of the greatest risks to the elderly is injury from a fall. The CDC estimates the cost of falls by seniors will be \$55 billion by 2020 in 2007 dollars.<sup>6</sup> Home companions reduce the risk of falls and thus help to restrain the societal costs of treatment for and recovery from serious injuries to the elderly and disabled.

We posed a series of outcomes from implementation of the proposed Department of Labor rule changes to the companion care agencies to solicit their views about the areas of greatest concern to them. Respondents were asked to score each outcome on a scale of 1 to 5. Impacts on the ability of their customers to afford companion care service and the potential for them to shift to grey market providers ranked at the top of the list. The results of these responses are presented in Figure 7.

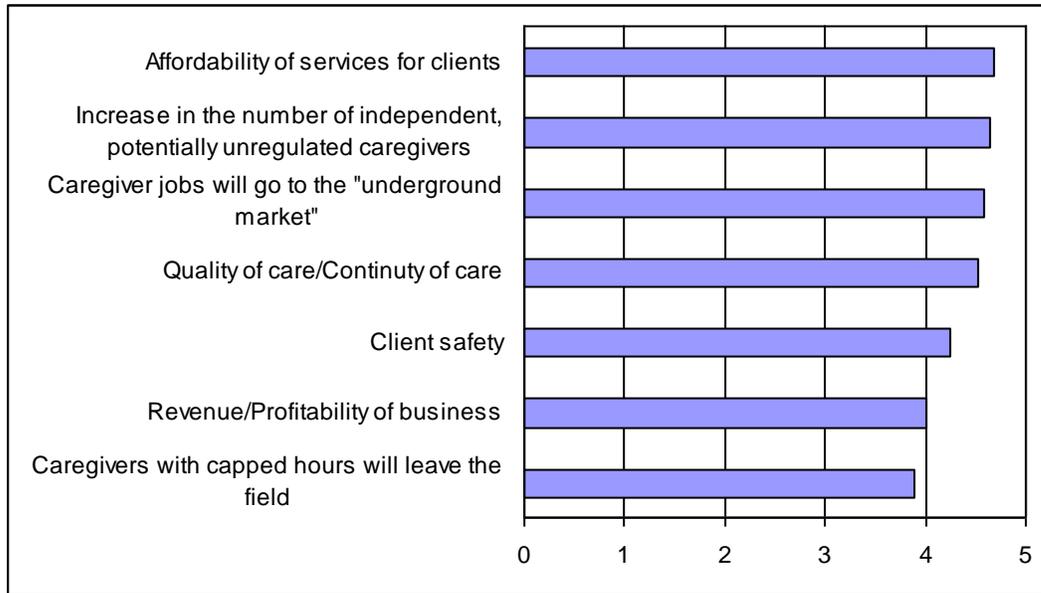
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<sup>5</sup> "The Economic Cost of Caring for Elderly Parents,"  
[http://www.lokvani.com/lokvani/article.php?article\\_id=7586](http://www.lokvani.com/lokvani/article.php?article_id=7586)

<sup>6</sup> <http://www.cdc.gov/HomeandRecreationalSafety/Falls/fallcost.html#costly>

**Figure 7.**

**If the proposed DoL regulations are adopted, what are your biggest concerns? Please rank each of the items below based on the level of your concern (with “1” being “least concern” and “5” being greatest concern).**



## **Appendix. Comments of Companion Care Business Owners**

Typical families have a difficult time affording these necessary services now. To add mandatory overtime has a significant impact on the client as well as the employee. More employees may go "underground" themselves so that they can continue to work more hours....As for the clients, they will lose continuity of care, meaning their consistent, steady companion will be cut off at 40 hours max and a replacement will have to come in....I will struggle to find more part-time employees to fill in the gaps. If the employee goes into OT, the client cannot be charged for the OT unless they expect the same employee all the time.

*Chesapeake, VA*

This industry is quite competitive. It will be very difficult for a new business like my own to survive these changes. Moreover, continuity of care and thus quality of care will be greatly impacted.

*Phoenix, AZ*

The net result will be to reduce caregiver income while at the same time making the cost of care unaffordable to many.

*Birmingham, AL*

Most of my caregivers are over 50 years old, who need the extra income to meet their financial needs. They are in good health and want 50-60 hours per week with 2/3 of that time spent overnight, resting or sleeping while their client sleeps. My caregivers genuinely love caregiving, but many would not be able to stay in this line of work if the 50 - 60 hours per week were not available. Unfortunately, at their age and skill level, there are not many jobs out there...My biggest concern is that my caregivers who want to be self sufficient, will quickly be forced to seek government assistance, because we will not be able to provide the hours...From the client's perspective, my clients are families who are making the ultimate commitment to keep their loved ones at home. We offer them the best rate we can, and it is still difficult for them to finance. If we had to pay overtime, our clients would go away, and the business would close. This proposed law is a situation where the intent may be good, but in the end, it will hurt the many hard working people who are trying to make a career of caregiving, and people who want to keep their incapacitated loved ones at home.

*Greenwood, IN*

Clients will hire "underground" caregivers who are not licensed with no credentials and proper background checks. The client's well-being will be at a high risk.

*Huntington Beach, CA*

It's a real safety issue for the clients as they'll have to look to the underground market and take huge risks.

*Austin, TX*

The proposed regulations will increase regulation, increase operating costs (administrative and regulatory), increase caregiver turnover, increase client costs, and force agencies to decrease the hours and pay of employees... Clients will see a huge decrease in continuity and the level of care will suffer as there will be multiple employees providing care. I've done the job of the caregiver and the exemption is valid. There is not a continuous work flow in a home to support the need for this proposal. As a net result of this proposal, I will employ more people with less hours and disallow overtime. Caregivers will be forced to work for other competing agencies to make ends meet. This is bad for companies, bad for clients, and bad for employees. While well intended, this is not the solution for our industry or seniors.

*Havertown, PA*

The adoption of this rule will: (1) Move caregivers to unregulated grey market as clients will no longer be able to pay for live-in care through a regulated agency. (2) Caregivers will lose take home pay (gross amount) as clients will not be able to pay overtime - meaning an overall loss in jobs. (3) Less taxes as more caregivers will be paid under the table and not report their income.

*Omaha, NE*

I do not see an upside to this rule. HomeCare companies will suffer because they will not be able to afford to pay the overtime rates and be able to stay in business. Clients will suffer the most because they will not be able to have the continuity of caregiver that is so crucial to many of our Alzheimer and dementia clients. The caregivers will not be able to make enough money to live on so they will either leave the field or try to work for several different agencies. This is a no-win situation.

*Duluth, GA*

If my caregivers had to work less than 40 hours, or my dementia clients had to have several different caregivers because of the overtime rule change, we would lose clients and caregivers both.

*Clearwater, FL*

Very few seniors will be able to afford the increased cost and lifestyle changes with constant caregiver rotations in their homes. This new rule is unworkable and unaffordable to seniors. We may have to close our business as we will have no bottom line left after implementing these changes.

*New Port Richey, FL*

This would be a homerun for unregulated caregivers. The "next door neighbor" with little or no training and experience will be sought out for less expensive care.

*Nashville, TN*

DoL does not understand that the real impact to clients for 24 hour service will be to have as many as 12 caregivers in a 24 hour period vs. 4 caregivers in a 24 hour period (that is typical with caregivers on a 12 hour shift.) Clients want one caregiver, and once they

have four (two weekly & two weekend) they adapt. They will not adapt to having 12 caregivers!! Would you want 12 people caring for your parent?

*Reston, VA*

This is a job killer. Most of my workers will go underground immediately. We will also see client satisfaction decrease due to the increase in the number of caregivers they will see in a given week.

*Fort Collins, CO*

A significant portion of my business is based upon companion services. The new rule would make our services unaffordable for the vast majority of our clients. As a result, we will likely go out of business if the new rule is adopted.

*Grapevine, TX*

Clients do not want multiple caregivers in their home on any given day. They won't be able to pay the overtime required to have one caregiver there for 10 hours. They will most likely limit the hours of care that they have, thus putting themselves at risk.

*Granada Hills, CA*

This bill is a lose, lose, lose proposition. Employees lose jobs, clients lose safety, and small companies lose revenue.

*Rockville, MD*

The companion care business will move underground. No supervision, no taxes, and no workers comp.

*Manchester, NH*

My biggest concern is that we would lose clients to private unregulated caregivers.

*South Orange, NJ*

The DOL doesn't understand the scope or magnitude of this issue. This change in rules will devastate the lives of seniors AND caregivers nationwide, and everyone will lose.

*Roanoke, VA*

If this passes I will be forced to close my doors. I will not be able to operate because clients will not pay for rate increases and caregivers will begin working independently. If that happens, client care will suffer.

*Abbeville, LA*