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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

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<http://help.senate.gov>

September 12, 2011

The Honorable Hilda Solis
Secretary, Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

The Honorable Jacob Lew
Director, Office of Management and Budget
Executive Office of the President
Washington, DC 20503

Dear Secretary Solis and Director Lew:

As you know, the Department of Labor has been preparing a notice of proposed rulemaking on the exemption of home care workers from the Fair Labor Standards Act (FLSA). We write in support and encouragement of this effort, and we hope this proposed regulation will soon be completed and released publicly.

Today millions of home care workers provide critical care and support to older Americans and persons with disabilities. These workers provide physically and emotionally demanding and often life-sustaining care. They cook, bathe, feed, and care for the everyday medical needs of people who cannot care for themselves. In doing so, they ensure that individuals can maintain a degree of independence and continue to live in the privacy and comfort of their own homes. These workers perform a critical job, and they are often the sole breadwinners for their families. However, home care workers receive low pay, a median of just \$9.34 an hour in 2009, and minimal to no benefits.

Regrettably, these workers are exempt from the basic protections of the FLSA. Although Congress expanded the FLSA to include most domestic workers in 1974, the Department of Labor (DOL) has broadly interpreted a narrow exemption that Congress provided for "companionship services." Congress enacted the exemption to address concerns that the FLSA would be extended to teenagers, neighbors, and friends who provided occasional or informal services, such as babysitters. A professional caretaker is not the type of informal and casual relationship that Congress sought to exempt. However, the DOL's interpretation of this exemption excludes from the FLSA's wage and overtime protections all workers, including those employed by a third party or agency, who provide in-home care for elderly or disabled people.

The Supreme Court in 2007 upheld DOL's interpretation of this exemption in *Long Island Care at Home v. Coke*. In doing so, the Court recognized the Department's broad authority to issue rules that determine the scope of the exemption. We are encouraged that the DOL's regulatory agenda notes that it plans to use this broad authority to issue new rules on this exemption, specifically that "DOL intends to update the companionship services regulations in order to clarify when domestic service employees, who provide companionship services to the aged or infirm, are exempt from the minimum wage and overtime provisions of the FLSA." We hope that the new regulations will ensure that home care workers have the same protections other workers enjoy.

The home care workforce is growing rapidly—home care is no longer the casual work performed by a friend or relative but a full-time job performed by professional workers. And this workforce must continue to grow to meet the growing need for home care services as our population ages. Yet a shortage of qualified home care workers and high turnover endanger our ability to meet our nation's long-term care needs. One way to ensure that we meet these challenges is to provide home care workers the critical protections of the FLSA.

This longstanding injustice must be corrected. We urge you to complete the notice of proposed rulemaking on companionship services regulations, and we anxiously await its public release. We also hope that the ensuing comment period and final regulation will be completed within a reasonable time period. Thank you in advance for your attention to this matter.



Senator Tom Harkin
Chairman, Committee on
Health, Education, Labor and Pensions

Sincerely,



Senator Robert P. Casey, Jr.
Member, Committee on
Health, Education, Labor and Pensions