FLSA Facts

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Growing Home Care Industry Can Afford Basic Labor Protections for Workers

For decades, home care workers—who help elders and people with disabilities with daily tasks such as dressing, bathing, and preparing healthy meals—have been exempt from federal minimum wage and overtime laws. In January 2015, the U.S. Department of Labor (DOL) was finally set to fix this decades-old injustice. But as a result of a lawsuit brought by the International Franchise Association and home care business associations, the DOL rule that would have extended federal labor protections to 2 million home care aides is now held up in court.

Why the lawsuit? Business groups are claiming that the DOL rule, which would require employers to pay workers for time spent traveling between clients as well as time and a half for overtime, is unaffordable. According to industry spokespeople, extending these basic labor protections to workers would force agencies to pass on additional expenses to consumers.

Yet as this fact sheet demonstrates, **home care is a thriving $100 billion industry**. It is the fastest-growing sector of the American economy, creating hundreds of thousands of new jobs in response to demand from a rapidly growing elder population. Revenues are steadily rising, and many home care companies report extraordinarily high profit margins.

The financial health of the home care industry stands in sharp contrast to that of the workers who provide the services. Earning a median annual income of $13,000, the majority of these workers—90 percent of whom are women and more than half of whom are women of color—are living in poverty, struggling to support their families.[1]

FLSA Facts is a publication of the **PHI Campaign for Fair Pay (www.PHInational.org/fairpay)**, which is working to ensure successful implementation of the revised rule extending minimum wage and overtime protections to home care workers.

Home care is one of America's fastest-growing industries.

The home care industry—composed of two Bureau of Labor Statistics industry categories, "Home Health Care Services" and "Services for the Elderly and Persons with Disabilities"—is enormous and fast growing.

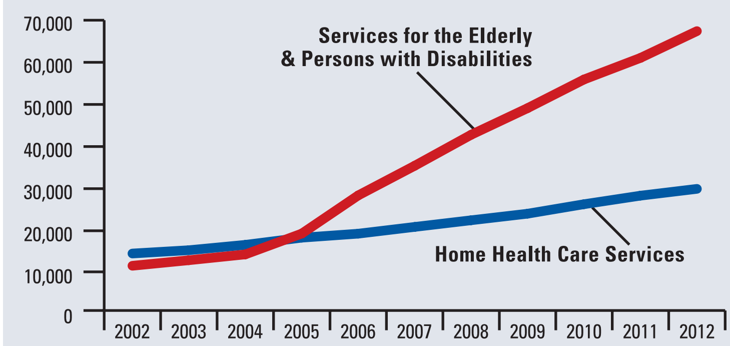
Home Health Care Services[2]

- The number of establishments grew by 7.5 percent annually from 15,000 in 2002 to nearly 30,000 in 2012 (see Figure 1).
- Through 2022, these services are expected to constitute the fastest-growing industry in the U.S.[3]

Services for the Elderly and Persons with Disabilities (SEPD)

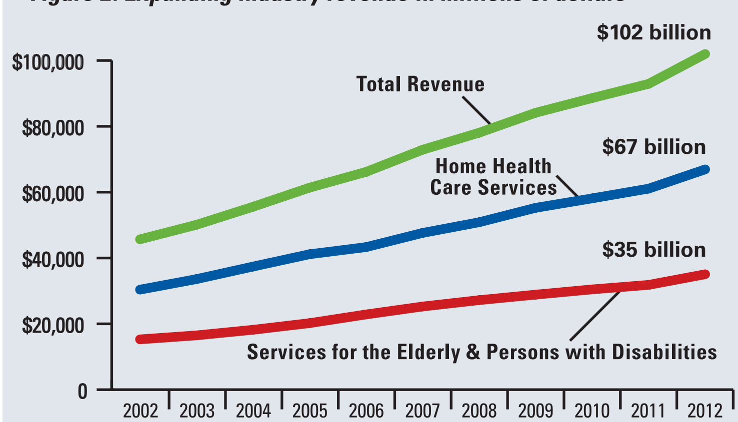
- The number of establishments grew astronomically, at a rate of 20 percent per year between 2002 and 2012, and now totals over 67,000 (see Figure 1).
- Business analysts describe the SEPD market—which primarily delivers non-medical support services—as "virtually untapped and limitless" due to increasing demand and low barriers to entry.[4]

Figure 1: Growth in Home Care Establishments



Source: US Bureau of Labor Statistics, Quarterly Census of Employment and Wages.

Figure 2: Expanding industry revenue in millions of dollars



Source: U.S. Census Bureau, Health Care and Social Assistance, 2012 Service Annual Survey Data for Health Care and Social Assistance.

Though the last decade has shown little increase in public reimbursement rates for home and community-based services, home care industry revenues have shown solid growth.

- Revenue for the home care industry grew at an average rate of 8 percent per year from 2002 to 2012. Revenue continued to climb even during the recession (see Figure 2).
- In 2012, the combined revenues of the two key industries providing home care services totaled $102 billion!

For-profit franchises are flourishing.

For-profit home care franchise chains are one of the fastest-growing segments of the home care services sector and some of the biggest employers. For those seeking to start new businesses, home care franchises are particularly attractive due to low initial investment and relatively high profits.

- Currently, over 35 different franchise brands[5] are capitalizing on the growing demand for these services.
- Even during the recession, from 2007 to 2009, the number of franchise locations increased 9.4 percent annually and corporate revenues increased by 11.6 percent per year.[6]
- Two leading home care franchises, Visiting Angels and Comfort Keepers, ranked in the top 100 fastest-growing franchises in 2014, according to *Entrepreneur*.[7]
- Home Care Assistance, founded in 2002, made the 2014 Inc. 5000 list, with a three-year sales growth of 98 percent and $77 million in revenue.[8]
- Comfort Keepers and Home Instead, another leading franchise, together employ nearly 100,000 home care workers.

Low and stagnant wages fuel agency profits.

Artificially low wages resulting in part from the lack of basic labor protections for workers are underwriting the 30 to 40 percent profit margins of the for-profit franchises delivering home care services.[9]

- The six publicly-traded home care and hospice companies grossed over $1 billion in profit last year, with an average profit margin of 32 percent.
- The median hourly wage for home care workers in 2014 was $9.78. Adjusted for inflation, home care workers earn less today than they did a decade ago.
- More than 50 percent of home care workers rely on some form of public assistance to supplement their low wages.[10]

It's time for America's home care industry to invest in its workforce.

Despite clear evidence that home care agencies can afford the modest increase in cost associated with basic labor protections for workers, the trade associations for these private companies are leading efforts to stop the DOL Home Care Final Rule from going into effect.

Though the industry's resistance to paying fair wages is not unexpected, the strategy is short sighted. The biggest challenge faced by home care employers is attracting and keeping workers—because home care is not only one of the most poorly paid occupations, but one of the most challenging, characterized by emotionally and physically taxing work, often performed in isolation.

As we await the outcome of DOL's appeal of the district court ruling that vacated the home care rule, the home care industry should rethink its labor strategy. Poverty wages are undermining the ability of home care employers to attract and retain a skilled workforce that can meet the needs of an aging America. Rather than fighting these basic labor protections, home care employers should invest some of their profits in paying fair wages to the workers upon which their businesses rely.

References

1. PHI (February 2015). *Paying the Price: How Poverty Wages Undermine Home Care in America*. New York.
2. Beyond home care and personal assistance, Home Health Care Services may also include: skilled nursing, physical therapy, occupational therapy, speech therapy, audiology, occupational therapy, medical social services, dietary and nutritional services, and bereavement counseling. In addition, some providers derive revenue from the provision of durable medical equipment, infusion services and equipment, and telehealth equipment.
3. R. Henderson (2013). "Industry employment and output projections to 2022." *Monthly Labor Review*, Table 3. **http://www.bls.gov/opub/mlr/2013/article/industry-employment-and-output-projections-to-2022.htm**
4. Francine Russo (September 14, 2009). "Franchising the Care and Feeding of Grandma," *Time*, Vol. 174. **http://www.time. com/time/magazine/article/0,9171,1920298,00.html**; Kerry Pipes (December 7, 2006). "Aging U.S. Population Is Driving Growth in Elderly Franchising," **http://www.franchising.com/articles/154/**
5. *Franchise Business Review* (May 2014). Top Senior Care Franchises, Special Report. **http://www.franchisebusinessreview.com/franchise-reports/top-senior-care-franchises/**
6. Ibid.
7. *Entrepreneur*. 2012 Fastest-Growing Franchise Rankings. **http://www.entrepreneur.com/franchises/rankings/fastestgrowing-115162/2012,-2.html**
8. *Inc.* Inc. 5000 2014. **http://www.inc.com/profile/home-care-assistance**
9. *Franchise Business Review* (May 2014). Top Senior Care Franchises, Special Report. Available at: **http://www.franchisebusinessreview.com/franchise-reports/top-senior-care-franchises/**
10. For more on home care aide wages, visit **http://phinational.org/policy/issues/wages**

To learn more about the home care industry, visit **www.PHInational.org/homecarefacts**.

For more information on the companionship exemption and efforts to secure fair pay for home care workers, visit **www.companionshipexemption.com**.

The FLSA "companionship exemption" timeline

1938 – The federal Fair Labor Standards Act (FLSA) is enacted to ensure a minimum standard of living for workers through the provision of a minimum wage, overtime pay, and other protections—but domestic workers are excluded.

1974 – The FLSA is amended to include domestic employees such as housekeepers, full-time nannies, chauffeurs, and cleaners. However, persons employed as "companions to the elderly or infirm" *r*emain excluded from the law.

1975 – The U.S. Department of Labor (DOL) interprets the "companionship exemption" as including all direct-care workers in the home, even those employed by third parties such as home care agencies.

2007 – The U.S. Supreme Court, in a case brought by New York home care aide Evelyn Coke, upholds the DOL's authority to define exceptions to FLSA.

2011 – President Obama proposes a revision to FLSA that will finally extend minimum wage and overtime protections to the vast majority of home care workers.

2012 – During the three-month public comment period on the proposed regulation, the DOL receives about 26,000 comments, with more than 75 percent in favor of the rule change.

2013 – DOL publishes the final home care rule in the Federal Register.

2015 – On January 14, Judge Richard Leon of the U.S. District Court of the District of Columbia vacates the final home care rule. The U.S. DOL appeals.

PHI Quality Care THROUGH Quality Jobs

PHI (**www.PHInational.org**) works to transform eldercare and disability services. We foster dignity, respect, and independence—for all who receive care, and all who provide it.

National Headquarters: 400 East Fordham Rd, 11th floor, Bronx, NY 10458
Phone: 718.402.7766 • E-mail: **info@PHInational.org**

Washington DC Office: 2040 S Street, NW, Lower Level, Washington, DC 20009
Phone: 202.888.1973