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Restoration of the Fair Labor Standards Act Home Care Overtime Exemptions

Background:

The Fair Labor Standards Act (FLSA) includes overtime exemptions for “companionship services” and “live-in domestic services.” Under rules promulgated in 1975, these exemptions applied to employees providing personal care to the elderly and disabled in their own homes. The U.S. Department of Labor implemented revised rules, effective October 15, 2015, that eliminated the application of the exemptions to these home care services. As a result, individuals have had less access to home care, care costs have risen presenting new financial burdens to vulnerable citizens and government-funded health care programs such as Medicaid and the VA, and triggered limits on working hours to avoid overtime costs leading to reduced income for home care aides and personal care attendants.

Issues/Concerns:

- The regulatory elimination of the FLSA home care exemptions was done in a vacuum as it included no protection for the highly vulnerable home care clients/patients who often subsist on limited incomes and can not afford higher care costs.
- Medicaid and VA home care finance much of the home care affected by the FLSA rule change. These programs have not responded to the increase in care costs triggered by the rule change with increased financial support.
- Without improved financial support, home care companies have no choice but to restrict employee working hours to avoid overtime costs. However, there are still increased costs stemming from the expanded need for recruitment and training additional staff.
- The shift to a part-time workforce makes it more difficult to recruit and retain personal care aides while demand is increasing with the aging population.

Talking Points:

- In 1974, Congress established the home care exemptions in order to provide the elderly and disabled with improved access to home care services at an affordable cost.
- The application of the exemptions for nearly 40 years served to help create greater opportunities for individuals to stay in their own homes and outside of institutional care.
- Personal care aides have experienced no increase in their overall compensation as the employers are unable to afford the cost of overtime due to the client population’s financial status and the payment rate controls of government health care programs such as Medicaid and the VA. These workers have been forced to take several part-time jobs to maintain their income.

Congressional support is needed:

- To encourage the Department of Labor to restore the FLSA rules in effect for nearly 40 years.
- To enact legislation, if necessary, to restore the exemption and preempt any later rulemaking that would again restrict the exemptions.