



H.R. 3582 The Fair Home Health Care Act: An Analysis

H.R. 3582 offers Congress an historic opportunity to send three important economic and social signals:

1. Homecare workers should be on an equal footing with respect to all other low-wage occupations.
2. Within long-term care, the homecare labor market should not have second-class status with respect to compensation and, therefore, with respect to its ability to attract and retain workers.
3. Federal lawmakers can work together to coordinate, rather than send conflicting messages about, the direction of our nation's long-term care policy.

The context for H.R. 3582 is very different than the one that confronted lawmakers in 1974, when the FLSA was last amended. Profound changes in the provision of home-based supports and services have eclipsed the companionship services exemption.

Significant changes have occurred in three areas:

- In the duties performed by many workers classified as exempt,
- In the homecare workforce itself (which now totals over 800,000, recently topping the number of nursing home workers),
- And, finally, in the size and structure of the homecare industry.

Homecare occupations are now *bona fide* forms of employment that generally are not performed on a casual basis. Homecare workers need and deserve basic protection:

- The remuneration of this workforce is notoriously low, with mean annual earnings of under \$15,000;
- About a third of homecare aides have no health insurance; and
- Nearly half of all aides live in households that receive some kind of public assistance, such as Medicaid, or food and nutrition assistance.

Propelled by demographic and other trends, homecare is a rapidly expanding multi-billion dollar industry, in which for-profit agencies constitute the fastest growing segment. There is also a booming consumer-directed market, financed primarily by Medicaid, in which consumers serve as the employer of record or as joint employers with agencies.

Maintaining the companionship exemption in its current form contributes to structural problems in both the caregiver labor market and in workforce development for the homecare industry. Furthermore, the exemption works to subvert key policy goals established by the federal government concerning the development of the nation’s long-term care system.

From a labor market point of view – Maintaining the current exemption in only one segment of the long-term care labor market creates distortions and artificial segmentation of caregiver labor markets across the entire system. The same work performed by an aide in a nursing home is unambiguously covered by minimum wage and hour protection. By supporting this kind of disparity, the exemption impedes the normal functioning of markets, and serves to undermine the development of a stable, adequate workforce of paid caregivers to provide home- and community-based services.

From a workforce development perspective – The exemption acts as a barrier to the overall status of this occupation relative to other low-wage jobs. It is basically impossible to construct **any** economic arguments as to why other domestic or household-based service jobs such as maids, cooks, housekeepers, and gardeners should receive this basic protection but homecare workers should not.

From a federal policy vantage point – Not extending minimum compensation standards to these workers sends conflicting messages that undermine several important elements of federal policy. In its present form, this exemption works to subvert the federal government’s encouragement of **rebalancing**—the expansion of home- and community-based services relative to those provided in institutional settings, such as nursing homes.

While the costs of this bill should be carefully and thoroughly explored on a state-by-state basis, several factors suggest that extending basic employment protections to non-live-in homecare workers is unlikely to dramatically increase the nationwide cost of services or seriously disrupt service delivery systems

Four quick facts to keep in mind when thinking about the cost impact of this legislation:

- Virtually all homecare workers currently are paid at least the federal minimum wage.
- **Live-in** homecare workers would continue to be exempt from overtime under this bill.
- The vast majority of homecare workers do not work over 40 hours per week.
- And, in at least 16 states and the District of Columbia, either all homecare workers or significant subgroups of them already are eligible for overtime pay because state laws exceed the federal standard.

To those that argue that the exemption is needed to help make homecare for the elderly and those with disabilities more affordable, then the proper way to accomplish this is NOT to artificially depress the market-based minimum cost of labor, but rather to make adjustments in state reimbursement rates [for publicly financed services], and to use the tax code [for private-pay services] to subsidize the cost of care.