



Andrea L. Devoti, MSN, MBA, RN
Chairman of the Board

NATIONAL ASSOCIATION FOR HOME CARE & HOSPICE
228 Seventh Street, SE, Washington, DC 20003 • 202/547-7424 • 202/547-3540 fax

Val J. Halamandaris, JD
President

OPPOSE CHANGES TO THE COMPANIONSHIP SERVICES EXEMPTION

ISSUE: In 1974, Congress established an exemption for companionship services from the Minimum Wage and Overtime Requirements of the Fair Labor Standards Act. Congress made a societal choice in balancing the interests of the worker relative to the needs for care to the elderly and the infirm. Current law provides the Secretary of U.S. Department of Labor (DOL) the authority to define and determine the scope of the companionship exemption.

In June 2007, the US Supreme Court ruled that the DOL companionship services exemption regulation was valid thereby reversing the Court of Appeals in a final decision.

Since the Supreme Court ruling, there has been a re-focusing of efforts by some opposed to the DOL rule. Currently, they are attempting to get Congress to change the law while also seeking legislative and/or regulatory remedies at the state level. Some states already have passed laws that eliminated the companionship services exemption. In others, there are efforts to interpret the regulations in a manner different than the federal rules. Advocates for changing the exemption have expanded their efforts with the Obama administration to encourage DOL to change the regulation. These efforts include enlisting the aid of 15 Senators to send a letter to the Secretary of Labor requesting that the exemption be modified through regulation to exclude home care aides employed by agencies or family of the client.

Legislative efforts in the 110th, 111th and 112th Congresses intended to eliminate or restrict the current companionship services exemption for home care aide workers are opposed by the National Association for Home Care & Hospice (NAHC) because they do not go far enough to protect workers. In the absence of a mandate that government payment programs increase payment rates to cover the added cost of wages that would result from the bills, home care aide employers are expected to restrict working hours to avoid overtime pay. Further, the bills do nothing to create career opportunities for home care aides or to address their need for health insurance. This isolated action related to a minor element of the home care aide working conditions will have a reverse negative impact on those workers.

The Department of Labor issued a regulatory agenda in 2010 that lists a plan to issue a revised regulation relating to the definition of companionship services in October 2011. While the agenda listing does not indicate the intended content of the proposed new definition of companionship services, it is expected that the revisions will significantly restrict the exemption and make it inapplicable to workers employed by home care companies.

In response to planned efforts by DOL, legislation has been introduced in the 112th Congress which codifies the current definition of companionship services. NAHC is supportive of the “Companionship Exemption Protection Act” (H.R.3066) because it creates certainty for home care providers and patients rather than leaving the definition open to changes through the regulatory process.

RECOMMENDATION: A companionship services exemption under wage and hour laws should be maintained at the state and federal level until a comprehensive plan can be implemented that address service funding, worker health insurance, and career development. Congress should block any attempt by the Department of Labor to modify the existing and longstanding definition and application of the companionship services exemption.

RATIONALE: Most home care providers are small businesses with limited resources. The companionship exemption result would be to reduce the availability of care to the elderly and the infirm and to increase the costs of service delivery with no corresponding increase from third party payers, such as Medicaid. A comprehensive rather than a piecemeal approach to worker compensation and working conditions is necessary if access to high quality of care and continuity of services is to be achieved.