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STATEMENT OF LUCY ANDREWS

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SUBCOMMITTEE ON WORKFORCE PROTECTIONS

COMMITTEE ON EDUCATION AND THE WORKFORCE

Hearing on: "Redefining Companion Care: Jeopardizing Access to Affordable Care for Seniors and Individuals with Disabilities." November 20, 2013

Good morning Chairman Walberg, Ranking Member Courtney, and members of the Subcommittee on Worker Protections. My name is Lucy Andrews, Vice Chair of the Board of Directors of the National Association for Home Care & Hospice. I am a Registered Nurse and the owner of a small home care business in California that has been providing care to the elderly and disabled for over ten years. My company provides care on a private pay basis as well as under the state Medicaid program and through the Veteran's Administration. Thank you for the opportunity to testify at today's hearing.

The subject of today's hearing is of crucial importance to the provision of home care to our nation's elderly and people with disabilities. The U.S. Department of Labor has issued a Final Rule that dramatically changes longstanding overtime compensation exemptions that would effectively eliminate the application of the exemptions for home care services. Specifically, the rule redefines "companionship services" to limit the application of the exemption to primarily "fellowship." "Fellowship" is not care and does little or nothing to keep people out of nursing homes or higher acuity facilities.

Also, the rule eliminates any application of the companionship services and live-in exemptions where the worker is employed by a third party. There has been no change in the law mandating these revisions. Further, these new rules change standards that have been in effect for nearly 40 years.

Based on our experiences in states that previously have required overtime compensation to personal care workers, we believe that the rule will trigger the following:

1. Moderate to significant increases in care costs

2. Restrictions in overtime hours to the detriment of the workers' overall compensation

3. Loss of service quality and continuity

4. Increased costs passed on to the patients and public programs such as Medicaid that would decrease service utilization, increase unregulated "grey market" care purchases, and increase institutional care utilization rather than absorbing and covering the higher cost of care.

So what does this mean for the workers and the seniors and disabled we care for?

Most personal care services to the elderly and infirm are financed out of pocket by the clients or their families along with various government programs such as Medicaid. Our clients are not wealthy, many living on limited, fixed incomes. They are purchasing care as a way of staying out of costly nursing homes and to maintain the greatest degree of independence that they can. The government programs are also not an endless source of financing. Medicaid spending is taxing all state budgets. More often than not, provider payment rates are going down rather than increasing as costs rise.

In my own company, this new rule will force me to make some very hard decisions in order to continue care. My employees that provide the care currently are paid between $12 and $14 per hour. With the requirement for overtime compensation, I will either need to restrict their working hours or increase my charges to my clients.

If I raise the charges to my clients, I know that most will then limit the amount of care they purchase even if it is to a level less than needed. For clients on fixed incomes, the cost of increasing care will be too much for them to carry and they will look to other options, going with less care or using the underground market that, at best, leaves them with a stranger caring for them without the protections a third party employer offers. By default, the consumer will become the employer of record with all of the employer responsibilities and risks.

If I restrict the employees' working hours, they will be paid less than they get today. For example, a client who has 10 hours of care a day will either have to pay the overtime or have two caregivers dividing the 10 hours into two shifts. This decreases the hours each employee works and decreases the continuity of care clients are used to when paying privately for care services.

Another option is that I reduce the employees' base hourly wage to accommodate overtime costs. Either approach will likely lead to higher turnover in my caregiving staff, increasing my costs of recruitment and training of new employees. Our industry is already struggling with high turnover rates and a cut in pay puts us at the bottom of the list of desirable work. Ultimately, it impacts access to the care that the increasing numbers of Baby Boomers and the disabled community rely on to stay at home.

These problems that are triggered by the new rules speaks to the caregivers I already employee. Across the country, the demand for caregivers increases every day. A recent study by Aaron Marcum of Home Care Pulse shows that 54% of agency's surveyed already feel the effects of caregiver shortages (600 providers participated in the study completed in 2012)resulting the inability to meet a growing demand for services. As this new rule forces companies to use more staff per client, hiring and training qualified caregivers becomes an even larger issue. Compounding the existing worker shortages is the study's finding that one of the biggest threats to losing a caregiver employee was a decrease in their work hours.

The predictable, adverse consequences of the new overtime rule are bad enough. However, when coupled with upcoming ACA employer mandates in 2015, we will be in the middle of the "perfect storm."

With respect to live-in services, the new rule effectively closes that as a business. If my business must pay overtime to live-in workers, but a consumer does not as under the new rule, consumers will go the Craig's List or classified ads to hire someone who has not been trained and is not subject to the supervision we offer. Daily we see the effects of this grey market-- the increases in abuses, lack of supervision and lost revenues to the state and federal government in unreported wages and taxes.

We are aware of allegations that home care companies have high profits and can afford to pay higher wages and overtime compensation. There is simply no truth to that claim. My annual margins range between zero and 9%. That is the bare minimum for working capital in order to meet payroll on a timely basis, address new regulatory costs that surface frequently, and to modernize with technologies that help bring higher quality care and efficiency.

The Department of Labor new rule, while likely well intentioned, was issued without any real appreciation or understanding of home care. We may be a business that is growing with the increasing population of seniors, but we are not a normal business as our clients are the most vulnerable citizens we have in this country, many supported through fragile entitlement programs.

What should be done?

The best thing that would be to rescind the new rules and start all over with an approach that respects the people under our care and recognizes that public- financed health care programs pay for most of the services they receive. Alternatively, the Administration and the Congress must find a way to fund this new mandate. Programs such as Medicaid must respond with payment rate changes that cover the cost of overtime. For private pay clients, we recommend a subsidy or tax credit that reflects the fact that individuals with limited income are using their own resources to stay at home rather than moving into a nursing home that may eventually be paid for by Medicaid. Without these changes, access to care it at risk along with the higher costs of institutional care.

Thank you again for the opportunity to testify at this important hearing.