

Testimony regarding Department of Labor ruling on FLSA for homecare workers Melissa Unger, SEIU Local 503

Chair Bates and Chair Nathanson, thank you for letting me talk today. My name is Melissa Unger, I am political director for SEIU Local 503 and we represent a wide variety of care givers that provide services to the APD and DD consumers, including homecare workers, personal support workers, workers at DD facilities, nursing homes, and adult foster home providers and the front line staff at DHS. Unfortunately I was supposed to be joined by Rebecca Sandoval, a homecare worker in Medford but her consumer is too sick and she was not able to travel at the last minute, so I am going to talk about the homecare FLSA since she couldn't be here.

The most important and most basic take away from the federal ruling is this -- The federal ruling from the DOL simply says that care giving is work, it should be treated like all other work, and compensated as such. I hope we can all agree with the sentiment from the ruling.

However, the challenge is that Oregon has set up a unique system of live-in care giving for homecare workers - and as far as we know - we are the only state in the country who has prioritized this unique system of care. While these 2000 caregivers amount to about 10% of all homecare workers, it accounts for 85% of the cost of the new ruling from the federal government. Oregon's unique system prioritizes choice, independence and dignity by allowing vulnerable people with significant needs to stay in their home with live-in home care workers. In other states, people with these types of significant needs would be in a facility. We value Oregon's priority for people to live in their own home, and as we implement the rule change, we want to protect our values.

While one might think the most significant impact of the ruling is paying for overtime for live-in care providers, it is actually not paying for overtime. The most significant challenge is that care providers are paid based on the "assessed hours" of the consumer rather than the actual hours they work. Let me give you an example.

So if a Consumer comes in, a case manager will assess their need. They get assessed and assigned a set number of ADL hours (Activities of daily living), based upon their needs with activities such as feeding, toileting, bathing, walking and transferring. They then get assessed for "IADL hours" (Instrumental activities of daily living) which includes activities such as shopping, preparing meals, housework, and managing medication. Currently someone qualifies for the live-in program if they have ADL and IADL support needs at unpredictable times throughout the day and need full assistance in ambulation, transferring, toileting and/or cognition. This care-giver is paid \$13.75 for ADL hours and \$6.88 for IADL and 24 hour availability hours. Some live in providers get paid for as little as 9 hours a day, but they are expected to be available to their Consumer 24 hours a day and if they are not there they would be required to get a relief worker, to be paid out of their own pocket. During any hour of the day (or night), they could be helping toileting, giving medication, feeding, etc. but they are only paid for 9 hours a day and often below minimum wage.

Ironically, this system of 24 hour-a-day care is going to prevent you from hearing from a really remarkable Oregonian today. Rebecca Sandoval, a live-in care provider in Medford, very much wanted to attend today's hearing and share her story with you herself. Unfortunately, her client, Diane, is experiencing some health problems and wasn't able to travel to Salem. Rebecca wasn't able to find a relief worker, so she needed to stay and care for Diane. She and Diane have given me permission to share an overview of her story with you.

Rebecca has been providing care to Diane for several years, ever since Diane suffered a major stroke. In recent months, Diane's health has taken a turn for the worse. She's been hospitalized numerous times, and has needed an increasingly intense level of care when she's at home.

Rebecca provides truly round-the-clock care: Many of Diane's health issues are respiratory-related, and Rebecca needs to check in on Diane while she's sleeping to ensure she's able to breathe properly. Between that and frequent restroom assistance, Rebecca generally gets no more than two hours of consistent sleep per night.

To you and me, this may sound like an untenable situation, but Rebecca copes with incredible grace. She considers herself a caregiver by nature, and has often told me that she feels that her work is her "calling."

She does the work because she loves it, and she loves her client. She has no illusion that she's going to get rich... but she does feel—and rightfully so—that she deserves to get paid for all of her work hours. Rebecca gets paid for 10 hours a day of work at sub-minimum wage.

We agree that the system we have set up is a model nationally and we want to protect it. But we do also believe that people should be paid for all of the hours they work. So if a worker is awake for 16 hours a day and is providing supports for the Consumer throughout that time, they should be compensated for all of those hours.

DHS, including our team, has convened a work group over the past year to develop strategies to mitigate the short-term impact of the ruling. While you heard during Monday's presentation the full impact would be \$74 million if we did nothing, the workgroup has mapped out a plan to limit the Oregon impact to \$35 million. One straightforward idea was to take into consideration sleep time. So if a live-in provider is able to get 7 hours of sleep a night, they would only be compensated for 17 hours of work.

As I said, the biggest driver in the cost-assumptions is paying for all hours worked or engaged to wait. Caregivers are being paid for very few hours, but expected to work for 24 hours. Under the suggestions from the workgroup, we would set up an on-call system so clients with few assessed hours of need but requiring 24-hour availability would have a caregiver available within 15 minutes. Our priority is your priority – keep people in their homes safely. To do that, we need to continue the work of the workgroup and implement the solutions that make this something that is affordable for the system of care we have set up... Thank you.

Fair Labor Standards Act

Homecare Workers

Background

The Department of Labor issued a ruling that the Fair Labor Standards Act (FLSA) should apply to homecare workers, making them eligible for minimum wage protection, and for compensation for all hours worked, overtime, and travel time between consumers. Homecare workers are primarily women, and many don't make minimum wage or have the opportunity to work full time. This landmark ruling ensures that caregiving is respected, just like any other job. The workers who spend all day ensuring that seniors and people with disabilities can live with dignity and independence will finally receive the respect they deserve for their hard work.

The DOL Ruling was to take effect on January 1, 2015. Currently the ruling has been overturned by a district court and it is under an expedited appeal by the DOL. Since the state and stakeholders expected to the ruling to take effect, there was much work done to make changes to the program to ensure the ruling could take effect and maintain our strong system of care that provides people with independence, dignity and choice.

Budget

The original budget for implementing FLSA for homecare workers was estimated to be \$74 million general fund and \$242 million total funds. The main cost driver for the estimate is about 2000 consumers who have a live-in caregiver. The live-in program has allowed thousands of people to remain in their homes instead of more costly settings, but the caregivers are not paid for all hours worked, some do not make minimum wage, and overtime would be expensive since they work around the clock.

Rebecca Sandoval, a homecare worker from Medford, is a live-in care provider. She is required to be with her client 24 hours a day. If she is not there, she must find a relief worker to take her place. Rebecca is only paid for the hours her client is assessed (10.1 hours a day). In addition, her average wage is only \$8.32/hr, which is below minimum wage. The new DOL ruling requires that she be paid for all hours worked at minimum wage. Assuming she can sleep 8 hours, paying for all hours worked would add 5.9 hours per day that she must be paid. It would also add \$.93 to her regular hourly wage, before overtime.

While we believe that work should be respected and treated like work, we also understand that allocating \$74 million from the general fund would have an impact on other services. So we came together with a stakeholder group and DHS to find ways to mitigate the cost. Through the stakeholder group, we came up with ideas about how to ensure that live-in caregiving is only available for consumers with higher support needs, how to contain travel costs, and how to account for sleep time. The changes proposed through the stakeholder group would have brought the estimated cost down to \$35 million from the general fund. This \$35 million was set aside for these changes in the Governor's budget and the Co-Chair's budget.

Next Steps with the Unknown Outcome of Court Cases

With the appeal outcome unknown and the likelihood that the legal issue will remain unresolved for the foreseeable future, we are proposing that the state take the opportunity to phase in the FLSA requirements for homecare workers. Compensating homecare work, like any other work, is the right thing to do. At the same time, we understand that there are many competing priorities in the budget. By phasing in the FLSA



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requirement for homecare workers, we can ensure that it is implemented correctly and that other needs for seniors and people with disabilities are met.

We propose in the 2015-2017 budget that we phase in the requirement that all hours of work are compensated at a minimum wage. If workers are able to sleep uninterrupted for 5 or 8 hours, they would not be compensated during that sleep. But all other hours they are asked to work would be compensated at least at minimum wage. **This would cost \$18 million if the changes proposed by the DHS stakeholder group continue to be implemented.**

We believe that the Emergency Board should be prepared if the ruling does go into effect on appeal.



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