



POLICY FOCUS

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Free Caregivers and Repeal the Home Care Rule

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EXECUTIVE SUMMARY

Due to the absence of affordable care and a shortage of companion caregivers, many seniors are unable to age in the comfort of their own homes, and others face additional issues, including social isolation. Revoking the 2013 Home Care Rule and instituting an improved regulatory framework will help alleviate these challenges for seniors and other vulnerable populations who depend on this essential care.

INTRODUCTION

The desire to age in place is widespread among Americans, with **88 percent** preferring to remain in their homes for as long as possible as they grow older, rather than relocating to a senior living facility.

The current market for in-home support is mostly limited to home healthcare aides or nurses, which can be prohibitively expensive, making regular support services unattainable for many.

A large share of the elderly do not have serious medical conditions and can live

at home without intensive medical care. However, due to their age, they simply require companionship and assistance with daily tasks, including light housework, meal preparation, and transportation. Unfortunately, finding qualified and affordable in-home help can be nearly impossible.

This lack of care affects both seniors and middle-aged Americans who are struggling to care for their aging parents. Furthermore, independent caregivers who wish to provide these in-home care services on their own terms but cannot do so are adversely affected.

The care shortage can be largely attributed to an overly complex regulatory framework. Due to the narrow definition of “companionship services” under the Department of Labor’s 2013 Home Care Rule, most in-home caregivers do not qualify for a companionship exemption under the Fair Labor Standards Act (FLSA). Additionally, the Rule’s burdensome recordkeeping requirements discourage many individuals from engaging in this form of caregiving.

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Policymakers should replace the 2013 Home Care Rule with a regulatory framework that supports households seeking in-home care and workers seeking employment in this field.

BACKGROUND

Before 2015, regulations for in-home caregivers were not as restrictive as they are today. The **2013 Home Care Rule**, which took effect in 2015, imposed a new test for individuals and households to claim the exemption and prohibited third-party employers from claiming the exemption.

The Fair Labor Standards Act (FLSA), first enacted in 1938, did not originally apply to in-home workers employed directly by households. In **1974**, Congress amended the FLSA to extend federal minimum wage and overtime pay requirements to certain workers providing in-home services. However, caregivers who offered companionship services to individuals who were elderly or disabled were **exempt from these requirements**. Other in-home workers, who resided in the employer’s home but did not provide companionship services, were **exempt from the overtime requirement but not the minimum wage**.

The following year, in 1975, the Department of Labor issued **regulations clarifying the definition of “companionship services”** to include “fellowship, care, and protection” provided to those unable to care for themselves due to advanced age or physical or mental infirmity. This included tasks directly related to the person’s well-being, such as meal preparation and laundry. Companions could also do other household work not directly related to the person’s care, provided it did not exceed 20 percent of their total weekly working hours, and still maintain their exemption.

In 2013, the Department of Labor under then-President Obama issued new regulations regarding federal minimum wage and overtime requirements, which took effect in 2015. Under the final rule, the **definition**

of “**companionship services**” was narrowed to cover only “the provision of fellowship and protection for a person who, because of advanced age or infirmity, is unable to care for his or her own needs.” Fellowship is considered social, physical, and mental activities—such as conversation, reading, and games—while protection involves being present to monitor the person’s safety and well-being.

This means that if a caregiver allocates more than 20 percent of their time per week assisting an elderly or disabled person with getting dressed or preparing a meal, they forfeit their eligibility for the companionship exemption. In-home caregivers employed through third-party employers, such as home care agencies or staffing firms, are also automatically excluded from the caregiving exemption.

The rule also imposed onerous **recordkeeping requirements** in which the household employer must document the exact number of hours worked each day by the caregiver; previously, it was sufficient to have an agreement defining regular working hours. If they fail to comply, they can face back wage liability.

Additionally, the new wage and recordkeeping requirements require households employing live-in caregivers and covering room and board to keep detailed records of lodging costs and calculations to demonstrate minimum wage compliance. To calculate the worker’s hourly rate, the estimated cost of lodging is added to cash wages and divided by the number of hours worked that week. The credit can then be applied to the employer’s minimum wage requirement when determining the worker’s pay.

Understanding and adhering to the regulations surrounding compliance for live-in caregivers can be extremely confusing and frustrating. Given the complicated and

extensive mathematical calculations required to determine the precise hourly rate for employees who receive room and board and earn a set, pre-determined salary, it comes as no surprise that many employers simply skip this step or completely forego hiring this type of worker.

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The Cost of In-Home Care Is Crushinglly Expensive

The average annual cost of full-time in-home support for elderly Americans is about **\$80,000**, but can run upwards of **\$230,000** for around-the-clock care. Medicare does not cover “non-medical care”; therefore, seniors needing assistance that does not require skilled nursing do not qualify for Medicare support.

This might be an affordable option for a portion of the high-income senior population. But for most, especially the many seniors who rely on fixed incomes, it is out of reach. It’s not just seniors who are impacted, but also middle-aged Americans who may be struggling to care for their aging parents.

Currently, the market is largely confined to home healthcare aides and nurses. Of course, it is only appropriate that seniors who require more intensive medical care be cared for by aides with medical training, and such aides receive commensurate compensation. For instance, procedures such as catheterization, injections, and tube feeding should only be performed by a registered or practical nurse.

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However, seniors who do not require this level of care should have better, more affordable options.

Implications for Live-in Nannies

While the 2013 Home Care Rule was written with those who care for the **elderly and individuals with disabilities in mind**, it also has implications for those who provide live-in care for children, such as live-in nannies.

Currently, only casual babysitters or occasional in-home child caregivers are typically exempt from FLSA wage requirements.

In 1974, when Congress amended the FLSA to include home workers but created the exemption for companionship, this exemption did not include child care except for children with a disability. Therefore, child care workers have been subject to minimum wage requirements since 1974.

However, the 1974 amendment exempted these in-home workers, including those caring for children, from overtime requirements. This

exemption was removed when the Home Care Rule went into effect in 2013. As a result, caregivers such as live-in nannies, who were previously paid a salary, now potentially would be owed overtime depending on exact hours of care, but which is often difficult to measure since the lines between providing child care and merely being at home with children in the house can be blurry. These caregiving arrangements are also subject to the same recordkeeping requirements under the Rule.

The increased complexity and higher costs associated with employing a live-in nanny have left many families unable to afford this option. As a result, families are forced to reduce hours, switch to part-time care arrangements, seek care outside the home, or even hire a full-time nanny off the books.

The Risks of “Off The Books” Caregiving

Given the high costs and burdensome regulations, few in-home caregiving relationships exist—at least relationships that are “on the books.” Families and workers who seek caregiving relationships outside of the legal system are not only risking being subject to enforcement for failure to comply with tax and labor laws, but are also vulnerable to exploitation and other negative outcomes.

The barriers to securing this type of lasting employment disproportionately affect some more than others. This includes college students looking for work that provides them with housing while they pursue their educational goals, and older women who are nearing retirement, are worried about their finances, and are hoping to save on housing costs as they prepare for retirement.

In other words, excessive federal regulations do not guarantee the fair treatment of workers. Rather, they encourage both parties to operate

(illegally) outside the framework completely, known as “off the books” caregiving, or deter people from entering into caregiving relationships altogether.

Loneliness and Social Isolation

As we age, community and companionship become even more vital for our physical and mental well-being. Social isolation and loneliness can have a severe impact on our health, potentially leading to **depression, anxiety, chronic diseases, and substance abuse.**

For older Americans longing for companionship, engaging an in-home caregiver can reduce feelings of loneliness and isolation while allowing them to age in place.

Strong social connections are **associated with** increased longevity and better health. Indeed, a 2021 **study** published in the American Association for Geriatric Psychiatry found that companionship intervention is a successful strategy for alleviating loneliness and improving the mental health of older Americans.

Moreover, policies that encourage companionship and supportive social circles can have enduring health benefits, not only for the individuals directly involved but also for society, as a whole, through improved public health and a stronger community.

COMMUNITY CAREGIVING THAT SUPPORTS AGING IN PLACE

In short, the current regulatory environment doesn't align with the real-life caregiving needs of American households, particularly elderly Americans who want to age at home.

Policymakers should consider creating a better regulatory framework to encourage more in-home caregiving relationships to take place

legally. As a first step, policymakers should rescind the 2013 Home Care Final Rule and review how the FLSA treats caregiving work.

This includes restoring the previous definition of the FLSA's companion services exemption standard for minimum wage and overtime pay. This solution was recently proposed by Representative Mary Miller with the **“Ensuring Access to Affordable and Quality Home Care for Seniors and People with Disabilities Act.”** Policymakers should also consider extending this exemption to live-in nannies.

Repealing the 2013 Home Care Rule is a relatively simple way to remove excessive red tape and make it easier for more seniors to access in-home care. Although it won't solve every problem related to long-term care for the elderly, it's a crucial initial step toward a better caregiving model.

Policymakers can further support seniors by **expanding the Au Pair program to include senior care** and **creating an American or a community caregiving program** where American citizens could work as live-in caregivers. These policy changes would make it easier for households, especially seniors, to get the help they need, while improving job opportunities and safety for caregivers.

In conclusion, repealing the 2013 Home Care Rule is a relatively simple way to remove excessive red tape and make it easier for more seniors to access in-home care. Although it won't solve every problem related to long-term care for the elderly, it's a crucial initial step toward a better caregiving model.

WHAT YOU CAN DO!

Get Informed

Learn more about improving caregiving for older Americans, visit:

- [American Association for Geriatric Psychiatry](#)
- [Association of Mature American Citizens](#)
- [Policy Focus: Au Pairs for Senior Care](#)

Talk to Your Friends:

Help your friends and family understand these important issues. Tell them about what's going on and encourage them to join you in getting involved.

Become a Leader in the Community:

Join [Independent Women's Network](#) and get a group together each month to talk about a political/policy issue (it will be fun!). Write a letter to the editor. Show up at local government meetings and make your opinions known. Go to rallies. Better yet, organize rallies! A few motivated people can change the world.

Remain Engaged Politically:

Too many good citizens see election time as the only time they need to pay attention to politics. We need everyone to pay attention and hold elected officials accountable. Let your Representatives know your opinions. After all, they are supposed to work for you!

Connect with Independent Women! Follow us on:

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