

STATE OF HAWAII
DEPARTMENT OF HEALTH
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Testimony IN OPPOSITION TO HCR114
**REQUESTING THE DIRECTOR OF HEALTH TO ESTABLISH A FAIR LABOR
HOME CARE SERVICES TASK FORCE TO EXAMINE THE IMPACT OF THE
FEDERAL REGULATION EXTENDING MINIMUM WAGE AND OVERTIME PAY
PROTECTIONS UNDER THE FEDERAL LABOR STANDARDS ACT TO
WORKERS WHO PROVIDE ESSENTIAL HOME CARE SERVICES TO PERSONS
WITH DISABILITIES AND OLDER ADULTS**

REPRESENTATIVE DELLA AU BELATTI, CHAIR
HOUSE COMMITTEE ON HEALTH

REPRESENTATIVE DEE MORIKAWA, CHAIR
HOUSE COMMITTEE ON HUMAN SERVICES

Hearing Date: March 24, 2016

Room Number: 329

1 **Fiscal Implications:** Cost in staff time dedicated to scheduling, staffing, researching, and
2 supporting the Task Force. Significant fiscal impact if implementation needs to be delayed until
3 findings of a Task Force are presented to the Legislature.

4 **Department Testimony:** The Hawaii State Department of Health **opposes** House Concurrent
5 Resolution 114.

6 HCR114 would require the Department of Health to create a Task Force to study the
7 impact of the federal Fair Labor Standards Act (FLSA) Home Care Rule on services for people
8 with disabilities and older adults. A Task Force is unnecessary because the FLSA Final Rule is
9 already in effect and is being enforced as of January 2016. Analyses of the impact have been
10 completed by multiple entities, and steps are being taken through the Home and Community
11 Based Services Waiver for Individuals with Intellectual and Developmental Disabilities to
12 address the requirements.

13 DOH's Developmental Disability Division has extensively researched and completed an
14 impact analysis based on the numerous documents issued by the U.S. Department of Labor that

1 relate to home care services, shared living arrangements and joint employment. DOH/DDD also
2 had several teleconference calls with U.S. Department of Labor staff for technical assistance and
3 has consulted with national experts on the FLSA Final Rule and Home and Community Based
4 Waiver services.

5 The FLSA Final Rule is already in full effect, and enforcement for compliance by the
6 Department of Labor Wage and Hour Division (DOL/WHD) became effective on January 1,
7 2016. Most of the requests of a Task Force in House Concurrent Resolution 114 are part of the
8 guidance documents that have been released by the US Department of Labor, or are part of
9 employment law and are determinations that need to be made by individual employers. Because
10 of the context-specific situations for each Medicaid Waiver Provider, these employers had to
11 make their own determination about how to take any applicable agency-specific actions based on
12 the FLSA Final Rule requirements.

13 DOH/DDD has collaborated with the Hawaii Department of Human Services Med-
14 QUEST Division to incorporate strategies in the 1915(c) Medicaid Home and Community Based
15 Services Waiver that can support the state and its providers in compliance with the FLSA Final
16 Rule. The waiver renewal application with these strategies will be submitted to the Centers for
17 Medicare and Medicaid at the end of March.

18 Convening a Task Force at this late date will delay implementation of the strategies that
19 have been identified based on the research and thorough impact analysis already completed.
20 Efforts are well underway. Delayed implementation will pose significant risk to the state because
21 the U.S. Department of Labor has begun enforcing compliance with the FLSA Final Rule. Many
22 of the parties named in HCR114 are not affected by the Final Rule. It is unlikely that a Task
23 Force would come to different conclusions than those that have already been put into motion by
24 DOH/DDD.

25 Thank you for the opportunity to testify.

26 **Offered Amendments:** None



STATE OF HAWAII
STATE COUNCIL
ON DEVELOPMENTAL DISABILITIES
919 ALA MOANA BOULEVARD, ROOM 113
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March 24, 2016

The Honorable Della Au Belatti, Chair
House Committee on Health
and

The Honorable Dee Morikawa, Chair
House Committee on Human Services
Twenty-Eighth Legislature
State Capitol
State of Hawaii
Honolulu, Hawaii 96813

Dear Representative Belatti, Representative Morikawa, and Members of the
Committees:

**SUBJECT: HCR 114 - REQUESTING THE DIRECTOR OF HEALTH TO
ESTABLISH A FAIR LABOR HOME CARE SERVICES TASK FORCE TO
EXAMINE THE IMPACT OF THE FEDERAL REGULATION EXTENDING
MINIMUM WAGE AND OVERTIME PAY PROTECTIONS UNDER THE
FEDERAL LABOR STANDARDS ACT TO WORKERS WHO PROVIDE
ESSENTIAL HOME CARE SERVICES TO PERSONS WITH DISABILITIES AND
OLDER ADULTS**

The State Council on Developmental Disabilities (DD) **DOES NOT SUPPORT**
the adoption of HCR 114.

We appreciate the Legislature's interest and concern to request that the Director of Health establish a Fair Labor Home Care Services Task Force to examine the impact of the Federal regulation extending minimum wage and overtime pay protections under the Fair Labor Standards Act to workers who provide home care services to persons with disabilities and older adults. However, we feel it is unnecessary to establish a Task Force based on the previous and current work of the Department of Health DD Division (DOH/DDD) to address the Final Rule.

The Fair Labor Standards Act Home Care Rule was finalized in 2013, became effective on October 13, 2015, and is being enforced as of January 2016. In an effort to address the Final Rule and meet the requirements for compliance, DOH/DDD conducted a review and analysis of the Final Rule and numerous documents issued by the U.S. Department of Labor, Wage and Hour Division; held teleconference calls for technical assistance; and distributed information to the Medicaid Waiver providers for them to review the Final Rule and seek their legal counsel. Furthermore, DOH/DDD

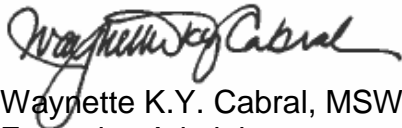
The Honorable Della Au Belatti
The Honorable Dee Morikawa
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has been working with the Department of Human Services, Med-QUEST Division, to include Residential Habilitation as a Waiver service in the renewal application to the Centers on Medicare and Medicaid services to address shared living arrangements in certified and licensed homes.

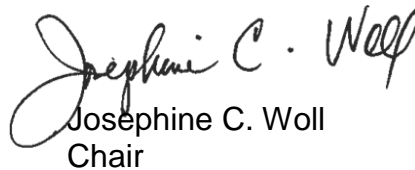
The Council believes establishing a Task Force to examine the impact of the Final Rule would be duplicative of what has already been done by DOH/DDD. The timeliness of the Task Force to carry out the activities described in HCR 114 would delay the implementation of specific strategies identified and may jeopardize meeting the requirements of the Final Rule.

Thank you for the opportunity to provide testimony **opposing HCR 114.**

Sincerely,

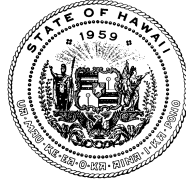


Waynette K.Y. Cabral, MSW
Executive Administrator



Josephine C. Woll
Chair

DAVID Y. IGE
GOVERNOR OF HAWAII



TERRI BYERS
DIRECTOR

VIRGINIA PRESSLER, M.D.
DIRECTOR OF HEALTH

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Testimony in **OPPOSITION** to HCR114
**REQUESTING THE DIRECTOR OF HEALTH TO ESTABLISH A FAIR LABOR
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REPRESENTATIVE DELLA AU BELATTI, CHAIR
HOUSE COMMITTEE ON HEALTH

REPRESENTATIVE DEE MORIKAWA, CHAIR
HOUSE COMMITTEE ON HUMAN SERVICES

Hearing Date: March 24, 2016
10:15 AM

Room Number: 329

1 **Fiscal Implications:** Inefficient use of Departmental resources (scheduling, staffing,
2 researching) for the Task Force in which the outcome will serve no practical purpose.

3 **Department Testimony:** The Executive Office on Aging **opposes** House Concurrent
4 Resolution 114.

5 HCR114 would require the Department of Health to establish a Task Force to study the
6 impact of the federal Fair Labor Standards Act (FLSA) Home Care Rule on services for people
7 with disabilities and older adults. Thorough analyses of the impact have been completed by
8 multiple entities at the national level and steps are being taken to address the requirements.
9 There is no doubt that home care workers are a vital part of our nation's long term support and
10 services and home and community based system, and should be adequately and appropriately
11 compensated for their work. However, a Task Force is unnecessary as the FLSA Final Rule is
12 already in effect and is being enforced.

13 Thank you for the opportunity to testify.

14 **Offered Amendments:** None



CATHOLIC CHARITIES HAWAI'I

TO: Representative Della Au Belatti, Chair
Representative Richard P. Creagan, Vice Chair
Committee on Health

Representative Dee Morikawa, Chair
Representative Bertrand Kobayashi, Vice Chair
Committee on Human Services

FROM: Diane M. Terada, Division Administrator

DATE: Thursday, March 24, 2016 (10:15 a.m., Room 329)

RE: HCR 114, Requesting the Director of Health to Establish a Fair Labor Home Care Services Task Force to Examine the Impact of the Federal Regulation Extending Minimum Wage and Overtime Pay Protections under the Federal Labor Standards Act to Workers who Provide Essential Home Care Services to Persons with Disabilities and Older Adults - **COMMENTS ONLY**

Catholic Charities Hawai'i (CCH) is a tax exempt, non-profit agency that has been providing supportive home and community based services to elders since 1973 and Medicaid Waiver services for individuals with Developmental Disabilities/Intellectual Disabilities (DD/ID) since 1996. We would like to offer the following Comments Only regarding HCR 114:

- The Home Care Final Rule was originally to take effect on January 1, 2015. The federal rule extends minimum wage and overtime protections to home care workers who previously fell under a domestic worker exemption from the Fair Labor Standards Act (FLSA).¹
- The rule was challenged in federal court but unanimously upheld by the federal Court of Appeals and took effect on October 13, 2015, although there was a time limited non-enforcement policy through December 31, 2015, giving the Department of Labor the ability to exercise prosecutorial discretion in determining whether to enforce the rule if States and other entities made good faith effort to bring home care programs into compliance with the FLSA.²
- Some written guidance provided by the Federal Department of Labor, Wage and Hour Division addresses FLSA as it pertains to Shared Living Programs.³

¹ <http://www.dol.gov/whd/homecare/litigation.htm>

² <http://www.dol.gov/whd/homecare/litigation.htm>

³ <http://www.dol.gov/whd/regs/compliance/whdfs79g.htm>



- If the State Legislature determines there is a need for this task force, it may be useful and productive to consider including **additional representation** from:
 - the Federal Department of Labor (DOL);
 - the State Department of Labor and Industrial Relations (DLIR); and
 - other organizations involved in home care activities beyond “community care home organizations”.

If there are any questions regarding the content of this testimony, please feel free to contact me at 527-4702 or via email at diane.terada@catholiccharitieshawaii.org.

Thank you for this opportunity to provide testimony.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 22, 2016 2:29 PM
To: HLTtestimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for HCR114 on Mar 24, 2016 10:15AM*

HCR114

Submitted on: 3/22/2016

Testimony for HLT/HUS on Mar 24, 2016 10:15AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Difference between "Home Care" versus "Residential Care Homes" (dyslexic?)

Indicators	Home Care Workers	Residential Care Home Operators
Status of Employment	Caregivers are employed by a Home Health Agencies	Sole proprietors / business owners and entrepreneurs
Hours of Service	Depending on hours requested by the Client, up to 40 hours per week	Twenty Four Hours, Seven Days a Week (24/7). Must have substitute Caregivers
Place of Business	Clients private home	A licensed Residential Care Home facility, owned by the Caregiver, who also lives in the same home
Licensing Requirements	None by the Employee	<ul style="list-style-type: none"> • Must meet Licensing, Annual Education / Certification, Criminal and Health Clearances • Care Home must meet all ADA and State Regulatory Care Home and Business Licensing Requirements
Investment	None for Employee, except for uniform	<p>\$1,000,000+ Investment to build or renovate a Residential Care Home (with median home prices being over \$700,000)</p> <ul style="list-style-type: none"> • Furniture, Fixtures and Equipment • General Liability Insurance • Special Car Insurance
IRS Tax Status	<p>W 4 Employee</p> <p>Employee of Home Health Agency: Payroll of \$8.50 to \$13.00 per hour</p>	<p>W 9 Self Employed Business / Corp. Annual Revenues from \$200,000 to \$800,000 depending on type of facility type of client and number of beds</p>
Control	Home Health Agency in control of Employees Hours and Performance	Residential Care Home Operators are not depending on one Agency Provide, and are in charge of their own hours, hiring of their Substitutes and Performance
Profit and Loss	None	Engages Consultants (Accountant, Attorney and Health Educators, etc., to meet all Requirements & manages Budget of \$250,000 to \$1,000,000 depending on # of beds.