



## **HCAOA Supports Consumer Protections to Prevent Misclassification of Home Care Workers**

### **Position**

The Home Care Association of America (HCAOA) supports efforts to ensure home care services are provided by workers who are trained, supervised, insured, and bonded. To achieve this level of consumer protection it is critical that employers appropriately classify their workers as employees and not as independent contractors.

Unfortunately, some within the home care community are not properly classifying home care providers as employees. To address this issue, HCAOA asks that you cosponsor the “**Payroll Fraud Prevention Act,**” (**S. 1896/H.R. 3427**) introduced by Senator Bob Casey (D-PA) in the Senate and by Representative Fredericka Wilson (D-TX) in the House of Representatives.

### **Background**

Current law requires that workers be treated as employees when the nature, time, location, and method of performing the work are under the control of the entity or person for whom the work is done.

However, agencies that refer workers, seniors and their families who employ them, and the workers themselves often do not know or misinterpret these rules. This can result in a misclassification of these workers as independent contractors.

A misclassified home care worker loses important employee protections when this misclassification occurs. These include: 1) worker’s compensation, 2) unemployment insurance, and 3) the employer-paid share of payroll taxes for Medicare and Social Security benefits. They are also less likely to be provided important training and are less likely to have access to critical employee benefits.

Federal and state governments lose much needed tax revenue when misclassified home care workers fail to pay their appropriate level of income and payroll taxes. Seniors, individuals with disabilities and their families are also harmed by this worker

misclassification because they may find themselves liable for back taxes and penalties when their situation is discovered and remedied.

**S. 1896/H.R. 3427 would:**

- Amend the Fair Labor Standards Act (FLSA) to require every employer and enterprise to: notify each new employee or non-employee of his or her classification and provide important information concerning their legal rights.
- Strengthen the law's anti-retaliation protections to ensure workers who are misclassified can seek assistance from DOL and others;
- Increase the penalties for misclassification by doubling the current amount of liquidated damages that are due. Subjects a person who violates such requirements to a civil penalty of up to \$1,100; or repeatedly or willfully violates such requirements to a civil penalty of up to \$5,000 for each violation.
- Amend the Social Security Act to require, as a condition for a federal grant for the administration of state unemployment compensation, for the state's unemployment compensation law to include a provision for: 1) auditing programs that identify employers that have not registered under the state law or that are paying unreported compensation where the effect is to exclude employees from unemployment compensation coverage, and 2) establishing administrative penalties for misclassifying employees or paying unreported unemployment compensation to employees.

If you would like more information on this matter or have questions please contact Patrick Cooney at [Patrick@federalgrp.com](mailto:Patrick@federalgrp.com) or by calling (202) 347-0034 x101.

*The Home Care Association of America (HCAOA) is the nation's first association for providers of private-pay home care. HCAOA was founded on the principle that quality private duty home care has one model of care and that model is to employ, train, monitor and supervise caregivers, create a plan of care for the client and work toward a safe and secure environment for the person at home.*