

Congress of the United States

Washington, DC 20510

August 10, 2018

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Administrator Verma:

On July 10, 2018, the Centers for Medicare & Medicaid Services (CMS) issued a proposed rule to attempt to prevent independent home care providers who provide services under Medicaid consumer-directed programs from electing to make voluntary deductions from their pay for benefits such as health insurance, skills training, and union membership. We write to express our significant concern regarding this proposed rulemaking. We support the more than 28,000 home care workers in our home state of Oregon and across the country and the right of independent home care workers to have a strong collective voice to improve their working conditions and the quality of care they deliver.¹

This proposed rule would repeal a regulatory provision adopted in the 2014 Home and Community-Based Services (HCBS) settings final rule.² The 2014 final rule stipulates that states may make deductions from payments to home care workers for benefits customary for employees. The CMS proposed rule appears to be designed to prevent states from making payments to third parties, such as unions, on behalf of certain independent provider home care workers who voluntarily elect to make certain deductions from their pay. CMS has failed to offer sufficient justification for the proposed rule that would remove the 2014 provision.

Home care workers provide critical daily support and services for seniors and individuals with disabilities. The services independent home care workers provide are essential to allowing individuals to remain in their home and community while receiving consumer-directed services.

¹ Oregon Careworks. (June 2018). *Oregon's Care Economy: A Snapshot*. http://www.orcareworks.org/wp-content/uploads/2018/06/Snapshot_finalfinalfinal.pdf.

² Department of Health and Human Services, Centers for Medicare & Medicaid Services, *Medicaid Program; Reassignment of Medicaid Provider Claims*, 83 Fed. Reg. 28066 (July 2018) (proposed rule).

Such services will become even more critical over the coming years with an aging population and increased demand on Medicaid home care services and supports. Oregon has one of the most rapidly aging populations in the country. Nearly one in six people in the state is age 65 or older.³ The demand for home care services will continue to increase because the number of seniors in the state is projected to increase by 34 percent by 2030.⁴ Despite the importance of this work, home care workers have historically been left out of worker protections and have had to fight to receive and maintain basic rights every step of the way. Many home care workers across the country are paid poverty-level wages, have limited advanced training opportunities, and do not have access to paid sick time or other basic benefits. One in four home care workers lives below the federal poverty line, and more than half rely on some form of public assistance.⁵ These challenging working conditions also have a disproportionate effect on the more than 90 percent of home care workers who are women, a majority of whom are women of color.⁶

In Oregon, home care workers and personal support workers gained the right to form a union in 2000.⁷ Through successful organizing and collective bargaining, workers have raised their base pay to \$14.65 per hour.⁸ The union worked with the state to provide a new model of health care for home care workers that provides health coverage assistance for medical, dental, vision coverage to eligible workers.⁹ Home care workers have also successfully negotiated for a training committee to improve quality of care, reimbursement for those who attend hourly training, pay increases for home care workers who complete certain training, and enhanced transportation benefits.¹⁰

Prohibiting voluntary payroll deductions for customary benefits like union dues would place an unnecessary burden on independent home care workers. We are concerned that the proposed rule would interfere with and compromise the ability of workers to join together to form unions and collectively bargain for higher wages, better working conditions, expanded benefits, and new training opportunities to improve the quality of care they provide to Medicaid beneficiaries.

³ U.S. Bureau of Labor Statistics. (2016). *Local Area Unemployment Statistics, Employment status of the civilian noninstitutional population in states by sex, race, Hispanic or Latino ethnicity, marital status, and detailed age, 2015*. <https://www.bls.gov/lau/ex14tables.htm>.

⁴ University of Virginia Demographics Research Group. (2016). *National Population Projections: Projections for the 50 States and D.C.*

<http://demographics.coopercenter.org/national-population-projections/?q=demographics/national-population-projections>.

⁵ Paraprofessional Healthcare Institute. (2017). *U.S. Home Care Workers: Key Facts*. <https://phinational.org/resource/u-s-home-care-workers-key-facts/>.

⁶ Paraprofessional Healthcare Institute. *PHI Workforce Data Center*. <https://phinational.org/policy-research/workforce-data-center/#tab=National+Data&natvar=Gender>.

⁷ Oregon Constitution. (2017). *Article XV, Section 11*.

https://www.oregonlegislature.gov/bills_laws/Pages/OrConst.aspx.


⁸ *Collective Bargaining Agreement Between the Department of Administrative Services, on Behalf of the State of Oregon and the Oregon Home Care Commission and Service Employees International Union Local 503, Oregon Public Employees Union*. <https://www.oregon.gov/DHS/SENIORS-DISABILITIES/HCC/PSW-HCW/Documents/ohcc-seiu-2015-19-bargaining-agreement.pdf>.

⁹ *Collective Bargaining Agreement Between the Home Care Commission and Service Employees International Union Local 503, Oregon Public Employees Union*. <https://www.oregon.gov/DHS/SENIORS-DISABILITIES/HCC/PSW-HCW/Documents/2013-2015-OHCC-SEIU-CBA.pdf>.

¹⁰ *Ibid.*

Accordingly, we encourage CMS to withdraw the proposed rule and not move forward with the rulemaking.

Sincerely,



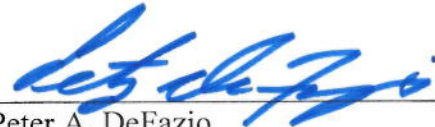
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U.S. Senator



Suzanne Bonamici
Member of Congress



Jeffrey A. Merkley
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Peter A. DeFazio
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