
HOUSE CONCURRENT RESOLUTION

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.

1 WHEREAS, the Fair Labor Standards Act generally requires
2 employers to pay employees a minimum wage and overtime
3 compensation under certain conditions; and
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5 WHEREAS, 1974 amendments to the Fair Labor Standards Act,
6 exempted casual babysitters and various domestic service workers
7 from minimum wage and overtime pay requirements; and
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9 WHEREAS, in 2013, the United States Department of Labor
10 adopted a final regulation requiring that third-party employers
11 of companionship services and live-in employees be subject to
12 the minimum wage and overtime pay requirements of the Fair Labor
13 Standards Act; and
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15 WHEREAS, the new regulation may have a profound impact on
16 current home care services and costs, especially for healthcare
17 providers providing services to persons with developmental
18 disabilities and persons with intellectual disabilities; and
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20 WHEREAS, the United States Department of Labor has made the
21 statement that it could not "address all shared living
22 arrangements raised in the comments because the circumstances
23 are different under countless factual scenarios" as it relates
24 to application of the Fair Labor Standards Act to domestic
25 services; and
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1 WHEREAS, the United States Department of Labor's 2013
2 regulation has left it to the states to consider how best to
3 provide healthcare services to persons with developmental
4 disabilities or intellectual disabilities or older adults; now,
5 therefore,

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7 BE IT RESOLVED by the House of Representatives of the
8 Twenty-eighth Legislature of the State of Hawaii, Regular
9 Session of 2016, the Senate concurring, that the Director of
10 Health is requested to convene a Fair Labor Home Care Services
11 Task Force to examine the impact of the federal regulation that
12 extends minimum wage and overtime pay protections under the
13 Federal Labor Standards Act to workers who provide essential
14 home care services to persons with disabilities and older
15 adults; and

16
17 BE IT FURTHER RESOLVED that the Fair Labor Home Care
18 Services Task Force is requested to:

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- 20 (1) Examine whether the Federal Labor Standards Act
21 applies to various shared living arrangements in the
22 State, including adult foster care and community care
23 homes, and the State's current community-based
24 caregivers and home care businesses providing
25 caregiver services in the State;
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27 (2) Examine whether there is an employment relationship
28 between a covered employer and a nonexempt employee,
29 and whether a worker is an employee or an independent
30 contractor;
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32 (3) Provide guidance on the application of Federal Labor
33 Standards Act to innovative shared living programs and
34 the administration of Medicaid-funded and other home
35 care programs;
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37 (4) Review the work of direct service workers and develop
38 a test or system to classify whether direct service
39 workers remain independent contractors or become
40 employees;

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1 (5) Review the Federal Labor Standards Act economic
2 realities test for independent contractors and
3 determine whether it changes the status of a caregiver
4 being an independent contractor or an employee; and
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6 (6) With respect to essential services provided by
7 developmental disabilities and mental retardation
8 services providers to the State's elderly and disabled
9 adult participants who live in community homes,
10 examine the effect of the federal regulation on home
11 caregivers in the State who provide developmental
12 disabilities and mental retardation Medicaid waiver
13 services under section 1915(c) of the Social Security
14 Act (developmental disabilities and mental retardation
15 waiver services); and
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17 BE IT FURTHER RESOLVED that the task force is requested to
18 consist of the following members or their designees:
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- 20 (1) The Director of Health, who is requested to serve as
21 the chair of the task force;
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23 (2) The Director of Human Services; and
24
25 (3) The Director of Commerce and Consumer Affairs; and
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27 BE IT FURTHER RESOLVED that the Director of Health is
28 requested to invite the following individuals to become members
29 of the task force:
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- 31 (1) Representatives from health insurance plans within the
32 State;
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34 (2) A representative from the Healthcare Association of
35 Hawaii; and
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37 (3) Representatives from community care home organizations
38 doing business in Hawaii and providing healthcare
39 services to residents in the State; and
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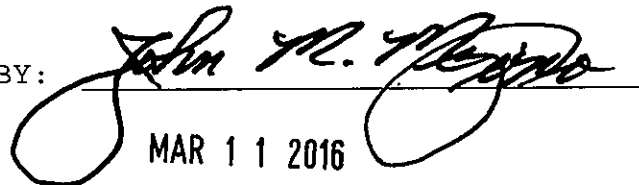
1 BE IT FURTHER RESOLVED that the task force, by majority
2 vote, may select an additional member to assist the task force;
3 and
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5 BE IT FURTHER RESOLVED that no member of the task force be
6 deemed subject to chapter 84, Hawaii Revised Statutes, solely
7 because of that member's participation as a member of the task
8 force; and
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10 BE IT FURTHER RESOLVED that the task force is requested to
11 submit a report to the Legislature of its findings and
12 recommendations, no later than twenty days prior to the
13 convening of the Regular Session of 2017; and
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15 BE IT FURTHER RESOLVED that certified copies of this
16 Concurrent Resolution be transmitted to the Director of Health,
17 Director of Human Services, Director of Commerce and Consumer
18 Affairs, the Chief Executive Officer of Hawaii Medical Service
19 Association, President of Hawaii Permanent Medical Group, and
20 the President of the Healthcare Association of Hawaii.
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OFFERED BY:


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