# EXHIBIT 7

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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| HOME CARE ASSOCIATION OF AMERICA, et al<br>Plaintiffs, | ) | |
| v. | ) | Case No. 1:14-cv-00967 |
| DAVID WEIL, et al<br>Defendants. | ) | |

DECLARATION OF DR. DORIE SEAVEY

I, Dorie Seavey, am the Senior Policy Advisor for the Paraprofessional Health Institute. I possess personal knowledge of the matters set forth in this declaration, am competent to testify to the same, and if called to testify my testimony would be as stated in this declaration. I declare pursuant to 28 U.S.C. § 1746 under penalty of perjury that the following is true and correct:

1. I serve as a Senior Policy Advisor for the Paraprofessional Healthcare Institute (PHI), and before assuming this position, I served as PHI's Director of Policy Research for over a decade.

    A. I am formally trained as a labor economist and received my Doctorate in Economics from Yale University in 1987. Prior to my employment at PHI, I served as a senior member of several national evaluation and research teams investigating sectoral employment initiatives and employment brokering programs for low-income and disadvantaged job seekers, and also as a Senior Research Scientist at the Heller School at Brandeis University.

    B. I have worked on issues affecting home care workers, the direct-care industry, and issues surrounding the transformation of care in the United States for 15 years.

2. Founded in 1992, PHI is a national non-profit that works to transform eldercare and disability services. The nation's leading authority on the direct-care workforce, PHI

promotes quality direct-care jobs as the foundation for quality care by developing recruitment, training, supervision, and person-centered caregiving practices—and the public policies necessary to support them. PHI works with employers, consumers, labor advocates, and government officials to develop recruitment, training, supervision, and person-centered caregiving practices and policies.

3. As Director of Policy Research at PHI, I led our policy research and analysis on Medicaid long-term care programs, and economic, financial, and policy issues affecting the direct-care workforce and the eldercare/disability services industry. I have conducted extensive research on America's home care workforce and industry, authoring numerous reports and analyses, including *Caring in America*, a comprehensive analysis of the nation's home care workforce. This report is available at: http://phinational.org/sites/phinational.org/files/clearinghouse/caringinamerica-20111212.pdf.

4. Over the past year, PHI has been working directly and through coalitions to assist states with implementing the 2013 Home Care Rule. A delay in implementation will disrupt or arrest the important progress that has been made by advocates and state officials towards this end. I provide some background and context below to help explain how further delay will exacerbate existing problems within the home care labor market.

5. Research confirms that there are severe workforce shortages within this industry. In 2007, PHI conducted a survey of state Medicaid agencies and aging agencies: 97% of states reported "serious" or "very serious" shortages in their direct- care workforce. Similarly, in 2012 the National Association of States United for Aging and Disabilities found that 84% of states reported serious concern about the lack of sufficient direct-care workers to meet beneficiaries' demand—nearly double the concern expressed in prior years. Many individual states consistently report shortages within their home care workforce.

6. Additionally, turnover problems plague the home care workforce. Numerous studies confirm that turnover for home care aides ranges from 44 to 65 percent per year. Left unremedied, such high rates of provider turnover result in significant costs for both the home care agencies providing care and the individuals receiving it. High rates of turnover also ultimately raise costs to taxpayers and state. My research has found that the turnover of each individual worker increases the direct cost of providing services by $3000, with 75% of that cost (about $2,230) attributable to hiring a replacement worker. Thus, the costs from turnover results in an implicit tax on the reimbursement rates paid to publicly-financed providers—a hidden tax which ultimately is paid by tax payers for high industry turnover costs. My article, *The Cost of Frontline Turnover in Long-Term Care* (2004), *available at* http://phinational.org/sites/phinational.org/files/clearinghouse/TOCostReport.pdf, has additional information concerning these turnover costs.

7. My research has also shown that when providers leave their jobs, beneficiaries can experience an interruption of services and may have to accept periods of potential low

quality or unsatisfactory care while the new employee is trained and gains experience. Some consumers are forced to forego care altogether. Ultimately, these service gaps can force beneficiaries to visit an emergency room or seek other stopgap care, with states bearing the costs.

8. The recruitment and retention difficulties in the industry arise largely from the "relatively low status, poor pay, and difficult working conditions" of these workers. *See, for example,* A.E. Benjamin et al., Retention of Paid Related Caregivers: Who Stays and Who Leaves Home Care Careers? 48 Gerontologist 104, 105 (2008). Low pay and limited benefits frustrate recruitment and drive turnover. Studies consistently cite this factor when discussing the "deficit of direct- care workers." Comm. on the Future Health Care Workforce for Older Ams., Inst. of Med. of the Nat'l Acads., *Retooling for an Aging America: Building the Health Care Workforce* 199 (2008), *available at* http://tinyurl.com/PHI-InstofMed.

9. While this may seem counterintuitive at first, raising home care workers' compensation as part of a package of changes to working conditions may actually reduce a state's overall costs. Underpaying home care workers is in fact false economy. Paying workers too little ultimately increases the cost of providing care to beneficiaries since it results in unnecessary hospitalization, institutionalization, and replacement costs. But it also forces states to incur additional costs related to the underpaid workers themselves, especially when large numbers of the workforce are women with children. For example, if states' inadequate pay leaves home care workers at or below the poverty line, those workers will likely seek various forms of government assistance like food stamps, Medicaid, housing vouchers, or free school lunches for their children. Indeed, in Wisconsin, the fiscal cost just of providing such benefits to home care providers is "tantamount to a public subsidy of $1 to $2 for every hour worked by a Wisconsin direct-care worker." PHI, *State Facts: Wisconsin's Direct-Care Workforce* 5 (2011), *available at* http://tinyurl.com/PHI-WI. Thus, low wages simply divert government spending from one line item to another. Unlike private employers, states cannot externalize these costs. Rather, states eventually internalize all the negative consequences of underpaying home care workers.

10. The argument that the 1975 companionship services definition should be retained because it lowers the cost of services for elderly and disabled persons, and thus enables people to receive needed services that might otherwise be unaffordable is fundamentally flawed. Under-compensating labor in order to keep the cost of services down creates a labor market distortion that depresses the supply of labor, and also distorts the demand for services. Workers who are crucial to maintaining the health and independence of millions of Americans must as a result sacrifice their wages to keep costs down for their employers, clients, and taxpayers. And quality of care is also compromised by a limited labor pool, high turnover, and burnout among over-stressed and over-worked aides.

11. Given the enormous material change in both the structure of home care work, the duties performed by these aides, and the now formal industry in which they are employed, it is difficult, if not impossible, to construct economic or policy arguments for excluding what

is one of the largest and fastest growing workforces in this country from basic federal wage and hour protection.

12. In view of this context, any further delay to the implementation of the Department of Labor's Home Care Final Rule will prevent critical policies that support improved compensation for home care workers from taking effect as well as exacerbate existing problems within the home care labor market such as:

    A. The shortage of available, trained home care workers in comparison to the rapidly growing population in need of their services.

    B. The home care industry's high turnover which is disruptive to the continuity of services and quality of care for beneficiaries, and also imposes additional costs for recruitment and training on agency providers and ultimately states.

    C. In the absence of competent workers to fill labor demand in the home care industry, access to long-term care at home (particularly for consumers in publicly-funded programs) will be constrained. As a result, consumers and their loved ones may have to turn to institutionalization, despite the strong preference of Americans for home-based care, the considerable body of federal law that incentivizes it, and the fact that, on average, institutional care is considerably less cost effective for states than home-based care.

I declare pursuant to 28 U.S.C. § 1746 under penalty of perjury that the foregoing is true and correct.

Executed on this 5th day of January, 2015.

St. Helena, California

Dr. Dorie Seavey
Senior Policy Advisor
Paraprofessional Healthcare Institute