

Sally Coomer

Seattle, Washington Area Homecare Provider

Testimony before the Full Committee
U.S. House Committee on Oversight and Government Reform

8 February 2012

Chairman Issa and the members of the Committee, thank you for the time here today to expose part of the travesty that Service Employees International Union (SEIU) created with its control and power over Medicaid funded services and how the dues finance political causes in the State of Washington.

Let me begin by saying that were it not for the forced unionization of parents and family members who are merely caring for their loved ones, I would not be here today. Had SEIU not been able to use forced union dues for political causes that disrupt the delivery of Medicaid funded services, I would not be here today. In fact, thousands of parents would not be forced to pay union dues just to take care of their own children. But, please let me begin by giving you some background.

My name is Sally Coomer, and I live in Washington State near the Seattle area. My husband Tom and I have been married for 30 years and have been blessed with seven children.

In 1990, our third child, Becky, was born a normal, healthy baby. Shortly after birth, Becky became very ill with spinal meningitis. After many weeks of hospitalization, we were able to bring her home to be with her family.

The consequences of her illness caused Becky to sustain severe permanent disabilities both physically and developmentally. Although Becky is now an adult, her functional level ranges from a toddler to a very young child depending on the skill. Becky requires constant care and supervision; she needs us to perform all of her personal care such as toileting, feeding dressing and bathing. Becky is approaching the end of her school career, and, like many families, we will need to make some significant adjustments to the time we will need to spend caring for her throughout her lifetime.

We, like thousands of other families, want to provide for our loved ones, and greatly appreciate the services available to make it possible. Our hope and plan is to care for Becky as long as we are able.

In 2004, due to my own experiences and connections with other families facing similar challenges, I had the opportunity to become a contracted Medicaid provider in the state of Washington. In addition to providing care for Becky, our agency helped other families who were in need of caregivers to provide personal care services. Since 2004, we have served thousands of families through the Medicaid Personal Care program. This experience has given me a broader understanding of the Washington State system, both through an agency perspective as well as through a personal caregiver's perspective.

In our State, when an individual of any age qualifies for Medicaid Personal Care Services, they are assessed by case management through the Department of Social and Health Services (DSHS) system. After the assessment, the recipient is allotted to receive a certain number of in-home care hours. DSHS pays a caregiver to provide tasks such as toileting, feeding, dressing, bathing, and all other personal care as assessed.

Currently we have two systems in which this care can be provided. One is the unionized Individual Provider (IP) system where the recipient is considered the employer and responsible for the hiring, supervising, managing and firing of the caregiver. The other is the agency models which are organizations contracted with the State of Washington to screen, hire, fire and supervise the homecare workers that they employ. Medicaid funding through the electronic SSPS (social service payment system) pays for both models.

Prior to 2002, individual providers were subcontracted with the state of Washington; the recipient of services was "clients" and not considered "employers." No employee relationship existed and there was no union bargaining agreement.

In 2002 the system changed. This was as a result of a SEIU supported initiative called the Washington In-Home Care Services 775.

As a result of this initiative, the current Individual Provider system was created. The state proclaimed that the recipient of services is now the employer, and the individual caregiver is now the employee. The Governor of the State of Washington is deemed the employer, for bargaining purposes only.

This measure would establish a Washington State governmental agency called the Home Care Quality Authority (HCQA). This was originally set up to act as the public employer of the individual providers for purposes of collective bargaining.

In 2004 those duties of employer for bargaining purposes only was transferred from the HCQA to the Governor of the State of Washington. This is how the system remains today.

For the union to bargain, they had to set up an employer/employee relationship. Since the state did not want to make all home care workers state employees and provide the benefits that would come with that, they set up a system which names the recipient the employer and their Individual care provider their employee.

This paid service can be provided by a family or non-family caregiver qualified through the State of Washington. Prior to 2009, all providers had a choice as to whether they wanted to be in the unionized IP system or be employed by an agency. In 2009, there was legislation passed (HB 2361) that required all caregivers related to their clients to be forced to move over to the unionized individual provider system. Our state has now required that to provide care to any relative by blood or marriage you must be part of the union IP (Individual Provider) system.

(See the following image: Urgent notice from DSHS prohibiting family providers from working outside the unionized IP system.)



PLEASE READ URGENT NOTICE

CAREGIVER CHANGES FOR CLIENTS RECEIVING PERSONAL CARE SERVICES OR DDD RESPITE SERVICES FROM A FAMILY MEMBER EMPLOYED BY A HOME CARE AGENCY

This notice only applies to you if you receive personal care or DDD respite services from a family member who works for a home care agency.

DSHS, Aging and Disability Services Administration (ADSA), will no longer pay a home care agency for in-home personal care or DDD respite services if the agency caregiver is your family member by blood, adoption, or marriage or registered domestic partnership. If the agency employee assigned to provide your care is a family member, you can either:

- Continue to receive services through the home care agency by an agency employee who is not your family member; or
- Continue to receive services from your family member by hiring him or her as an Individual Provider (IP). If you choose this option, you will be the IP's employer. You will decide what hours the IP will work, what tasks will be done, and you will supervise the IP while he or she is working. *(Client training on how to be an employer and work with an IP is available. If you are interested in this training, please contact your case manager.)*

Why is this change happening?

The changes are required by Substitute House Bill 2361, which was recently passed by the state legislature. As you probably already know, the 2009 Legislature made changes to many types of state services due to serious budgetary problems. Changes in your choice of caregiver need to be implemented by August 31, 2009.

Section 1 of Substitute House Bill 2361 states that "to the extent permitted under federal law" these new requirements do not apply if the "family member providing the care is older than the client." DSHS will not be applying this exception because it is prohibited by federal law, including age discrimination laws.

Will this change the number of personal care or respite hours I am eligible for?

The number of hours you are eligible to receive and the personal care/respite tasks that your caregiver provides are the same whether you receive services through a home care agency caregiver or an Individual Provider. As long as you are eligible, services will continue during this change.

You do not have the right to appeal this service change because the change is required by the Legislature and it applies to the entire in-home care program.

If your agency caregiver is a family member, contact your home care agency and your case manager.

We understand that these changes may be difficult for you. Your case manager will be working with you to implement your choice of a home care agency or an Individual Provider. If you have questions or concerns, please contact your case manager.

Sincerely,

Kathy Leitch, Assistant Secretary
Aging and Disability Services Administration

This Governmental Individual Provider fiction making my daughter, Becky, my employer did not change reality. Our situation, like many others, is that Becky does not have the developmental capacity to be an employer. More ridiculous is making my daughter her parent's employer while we remain her guardian is irresponsible, as well as illogical. (See image below: A DSHS Statement regarding my daughter's responsibility as employer.)



DIVISION OF DEVELOPMENTAL DISABILITIES (DDD)
**ACKNOWLEDGMENT OF MY RESPONSIBILITIES
AS THE EMPLOYER OF MY INDIVIDUAL PROVIDERS**

I wish to receive services from an individual provider paid by the Department of Social and Health Services (DSHS) through the Division of Developmental Disabilities.

I understand and acknowledge that I am primarily responsible for screening and hiring a qualified individual provider and that I am my provider's employer.

- I understand that I may terminate my provider's services at any time and choose a different provider.
- I understand that I am responsible for supervising the daily work and activities of the provider and for approving the hours the provider is billing DSHS for. Although my provider has a contract with DSHS, DSHS cannot supervise my provider's daily work and activities.
- I understand that I can contact my DSHS/DDD Case Resource Manager if I have any concerns about my service plan or about the quality of the care that I am receiving from my provider.
- I understand that DSHS is not responsible for withholding or paying income tax for any individual provider. However, as the source of payment, DSHS is responsible for the withholding and payment of Social Security and Medicare taxes (FICA) and for the payment of federal and state unemployment taxes (FUTA/SUTA) except for certain family members employed as individual providers.
- I understand that DSHS has a responsibility to ensure that providers are doing the work they are being paid for and that I must cooperate with DSHS in these efforts.
- I understand that I have a right to a Fair Hearing if DSHS terminates the Medicaid Personal Care contract of my individual provider.

In reality, most of the recipients of these services are not in a position to be the “employer.” This has raised many questions and has created the inherent conflicts when reality hits political fiction, even in Washington’s Capitol where numerous state Representatives have questioned “who really is the employer?”

(See attachment: Representative Condotta’s letter asking the attorney general “who is the employer”)

STATE REPRESENTATIVE
12th DISTRICT
CARY CONDOTTA

State of
Washington
House of
Representatives



COMMERCE & LABOR
RANKING MEMBER
FINANCE
TECHNOLOGY, ENERGY
& COMMUNICATIONS

July 9, 2009

The Honorable Rob McKenna
Washington State Attorney General
P.O. Box 40100
Olympia, WA 98504-0100

Re: Independent Providers (ch. 70.127 RCW)—Employment Laws

Dear Attorney General McKenna:

This is a request for a formal Attorney General’s opinion. It concerns whether certain “individual providers” are State employees for the purposes of various employment laws.

Background

Chapter 70.127 RCW governs many aspects of home healthcare services. *See also* ch. 246-335 WAC (implementing statute). Some healthcare workers assist clients in their homes and other non-institutional settings; they are commonly referred to as “independent providers.” *See* ch. 388-71-0500 – 05695 (governing independent providers). Many clients of independent providers are profoundly disabled children and adults either under guardianships or without legal capacity to enter into contracts. Profoundly disabled persons are often unable to direct many aspects of the care given to them by independent providers. Independent providers are paid by the State. The State provides W2s, withholds federal taxes, state unemployment taxes, and Industrial Insurance premiums. Many independent providers are covered by a collective bargaining agreement which recites that the Governor is the “employer.” Please see the attachment.

However, the State claims that the employer of independent providers is the *client*, not the State. WAC 388-71-0503(2) (client “establishes employer/employee relationship with the [individual provider]”). The client, as previously noted, is often profoundly disabled and under a guardianship or lacking legal capacity to contract. In addition, a profoundly disabled client is often unable to direct the work of the independent provider. In contrast, the State pays the independent contractor, withholds his or her taxes, and the collective bargaining agreement considers the State to be the “employer.” Yet the State claims the *client* is the employer.

Page 2,
Independent Providers – Employment Laws

Questions Presented

1. Is the State of Washington or an agency thereof the "employer" of individual providers?
2. Is the State of Washington the "employer" or otherwise subject to the following laws regarding individual providers:
 - a. Wage and hour laws (federal Fair Labor Standards Act, chs. 49.46, 49.48, 49.52 or, 49.56 RCW)
 - b. Social Security Act
 - c. State retirement and pension laws (title 41 RCW).
 - d. Americans with Disabilities Act
 - e. Family leave (federal Family and Medical Leave Act, Washington Family Leave Act, ch. 49.78 RCW and family leave insurance ch. 49.86)
 - f. Immigration laws
 - g. Employment Security taxes
 - h. Industrial Insurance premiums
 - i. Washington Industrial Safety and Health Act ch. 49.17
 - j. Military leave
 - k. Domestic Violence Leave ch. 49.76
 - l. Employment discrimination laws (federal Title VII, Washington State Law Against Discrimination)
 - m. Civil rights laws (federal public accommodations law, 42 U.S.C. § 1983, ch. 9.91 RCW)

Best regards,



CARY CONDOTTA
12th District Representative

Because of the mandated move to the SEIU/ IP system, many providers were disheartened because they were forced to leave their agency employment that offered oversight and employment support. Many suffered real pay cuts, decreases and loss in benefits, and all

parent providers were no longer able to contribute to the social security system per IRS tax law (publication 926 page 4) which was a result of HB 2361 in 2009.

(See image below: IRS tax law 926 prohibiting parents from paying into social security when not employed by an agency.)

pay state unemployment tax for your household employee. For the address and phone number, see the *Appendix* near the end of the publication. You should also determine if you need to pay or collect other state employment taxes or carry workers' compensation insurance.

Social Security and Medicare Taxes

The social security tax pays for old-age, survivors, and disability benefits for workers and their families. The Medicare tax pays for hospital insurance.

Both you and your household employee may owe social security and Medicare taxes. Your share is 7.65% (6.2% for social security tax and 1.45% for Medicare tax) of the employee's social security and Medicare wages. Your employee's share is the same.



You can use Table 3 on page 18 to figure the amount of social security and Medicare taxes to withhold from each wage payment.

You are responsible for payment of your employee's share of the taxes as well as your own. You can either withhold your employee's share from the employee's wages or pay it from your own funds. If you decide to pay the employee's share from your own funds, see *Not withholding the employee's share* on page 5. Pay the taxes as discussed under *How Do You Make Tax Payments?* on page 7. Also, see *What Forms Must You File?* on page 8.

Social security and Medicare wages. You figure social security and Medicare taxes on the social security and Medicare wages you pay your employee.

If you pay your household employee cash wages of \$1,700 or more in 2009, all cash wages you pay to that employee in 2009 (regardless of when the wages were earned) are social security and Medicare wages. However, any noncash wages you pay do not count as social security and Medicare wages.

If you pay the employee less than \$1,700 in cash wages in 2009, none of the wages you pay the employee are social security and Medicare wages and neither you nor your employee will owe social security or Medicare tax on those wages.

Cash wages. Cash wages include wages you pay by check, money order, etc. Cash wages do not include the value of food, lodging, clothing, and other noncash items you give your household employee. However, cash you give your employee in place of these items is included in cash wages.

State disability payments treated as wages. Certain state disability plan payments that your household employee may receive are treated as social security and Medicare wages. For more information about these payments, see Instructions for Schedule H (Form 1040), Household Employers, and the notice issued by the state.

Wages not counted. Do not count wages you pay to any of the following individuals as social security and Medicare wages, even if these wages are \$1,700 or more during the year.

1. Your spouse.
2. Your child who is under the age of 21.
3. Your parent. **Exception:** Count these wages if both the following conditions apply.
 - a. Your parent cares for your child who is either of the following.
 - i. Under the age of 18, or
 - ii. Has a physical or mental condition that requires the personal care of an adult for at least 4 continuous weeks in a calendar quarter.

Table 2. Household Employer's Checklist

You may need to do the following things when you have a household employee.

When you hire a household employee:	<input type="checkbox"/> Find out if the person can legally work in the United States. <input type="checkbox"/> Find out if you need to pay state taxes.
When you pay your household employee:	<input type="checkbox"/> Withhold social security and Medicare taxes. <input type="checkbox"/> Withhold federal income tax. <input type="checkbox"/> Make advance payments of the earned income credit. <input type="checkbox"/> Decide how you will make tax payments. <input type="checkbox"/> Keep records.
By February 1, 2010:	<input type="checkbox"/> Get an employer identification number (EIN). <input type="checkbox"/> Give your employee Copies B, C, and 2 of Form W-2, Wage and Tax Statement.
By March 1, 2010 (March 31, 2010 if you file Form W-2 electronically):	<input type="checkbox"/> Send Copy A of Form W-2 to the Social Security Administration (SSA).
By April 15, 2010:	<input type="checkbox"/> File Schedule H (Form 1040), Household Employment Taxes, with your 2009 federal income tax return (Form 1040). If you do not have to file a return, use one of the other filing options, such as the option to file Schedule H by itself.

(Below is an image of a parent's pay stubs without social security deduction.)

Wage and Tax Statement 2008		OMB No. 1545-0008		1. Wages, tips, other compensation 18,741.21	2. Federal income tax withheld 1,084.06
b. Employer's Identification Number 91-392189		d. Employee's SSN 392189		3. Social Security Wages 0.00	4. Social Security withheld 0.00
e. Employer's name, address and ZIP code C/O DEPT. SOCIAL & HEALTH SERVICES P.O. BOX 45346 OLYMPIA, WA 98504-5346		5. Medicare Wages and Tips 0.00		6. Medicare Tax withheld 0.00	
		9. Advance EIC payment 0.00		10. Dependent Care 0.00	
		11. Nonqualified Plans 0.00		12. a 0.00	
		13. Statutory employee <input type="checkbox"/> Retirement Plan <input type="checkbox"/> Third party sick pay <input type="checkbox"/> 14. Other		12. b 12. c 12. d	
c. Employer's name, address and ZIP code REDMOND WA 98052-5437					

Form W-2 Wage and Tax Statement
 Copy B - File with employee's FEDERAL tax return

Department of the Treasury - Internal Revenue Service

In Washington State, we have thousands of family members who have chosen to be the "formal" paid caregivers for their family member. The State recognizes that this method is much less expensive by facilitating families to keep their loved ones at home rather than institutionalizing them. (It is estimated that 65% -75% of homecare workers in Washington State are family members.)

When my own daughter turned 18 and qualified for Medicaid services, I learned first-hand about the impacts of forced unionization. If I wanted to continue providing homecare for my daughter, Becky, through the Medicaid program managed by DSHS, I was forced to leave my nonunion agency employment and sign up as a SEIU unionized provider.

Prior to being forced to become an SEIU union member, I had better benefits, contributed to the social security system, and **was not forced** to pay union dues.

The consequence of having to move to the Individual Provider system was devastating for many. I know families who lost benefits for their child or spouse since the union insurance would not cover dependents. We had a family that had a dependent in the middle of cancer treatment who lost benefits due to the required move to the IP system. Many fought the move after learning the consequence of not being able to pay into the social security system, which

would have long lasting consequences into the future. These changes came about merely because family members wanted to continue caring for their adult child.

To rub more salt on the wound, I frequently receive flyers and pamphlets promoting political causes that have negatively impacted the direct services Becky receives, and are polar opposites of my political beliefs. These views are against my moral values, and I obviously do not support them. Recently, SEIU increased my union dues to fund its “political accountability fund.” I do not agree with their causes, and yet, I am forced to contribute.

(See image below: I was forced to contribute to this SEIU emergency political accountability fund.)



In a landslide vote, 85.4% to 14.6%, Washington Home Care Workers Voted to Establish an Emergency Fund to Fight Back against the Budget Cuts

(The votes were counted on July 9, at our office in Federal Way. The original announcement was sent out by automated call, email and posted on our website.)

The Emergency Fund will be used to pay for a lawsuit, a statewide public education campaign and an initiative to reinstate quality training.

The \$5 a month (for 5 months) will start coming out of your paycheck starting THIS month.

Up till now, if you contributed to our Political Accountability Fund, it was listed as “PAC.” We will replace that line with “Vol Ded” (short for Voluntary Deduction).

For 5 months, your “Vol Ded” (Voluntary Deduction) will reflect both the amount of your authorized contribution to the Political Accountability Fund and the \$5 that will specifically go toward the Emergency Fund. The line on your notice will read “The Vol Ded amount includes the \$5 Emergency Fund fee.”

After the 5 months are over, your “Vol Ded” (Voluntary Deduction) will go back to the authorized amount you are contributing to our Political Accountability Fund.

More information about the Emergency Fund can be found on our website at <http://ip.seiu775.org>. If you have specific questions, please contact our Member Resource Center toll-free at 1 (866) 371-3200 or via email at mrc@seiu775.org.

Since 2004, SEIU has set up other organizations such as an SEIU Health Care Trust and a Training Trust. There are millions of dollars that flow through these two trusts for the expressed purposes of health benefits and training of union Individual Providers.

Most recently, the union financed an initiative which has increased state mandated SEIU caregiver training requirements. These training increases would more than double the average training requirements in comparison to the rest of the nation.

This created a controversy in our state due to the collapsing budget and the new ongoing cost of over \$80 million during the next two years alone.

Last year, SEIU poured millions into what many feel was a misleading informational advertising campaign to promote this unfunded initiative. Last year, our state, out of desperation, delayed implementation of the passed initiative due to a State budget crisis.

This year, SEIU ran the same campaigns promoting the passing of the training initiative again, with no fiscal note or funding source attached, and it passed. Now, the impacts from these campaigns are devastating the financial stability of the system. Many clients are losing services as a result of the absurd costs of implementing this initiative.

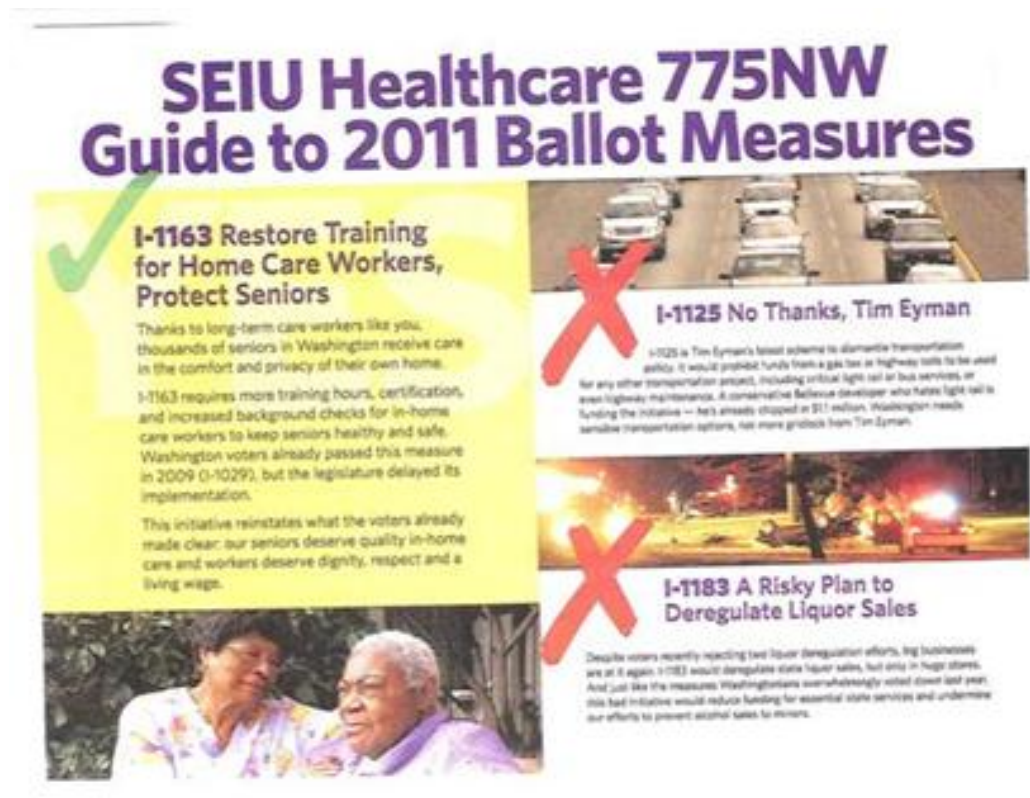
See excerpt out of an article from the Clark County *Columbian*:

No: I-1163 will require tax hikes or service cuts; only union benefits

Voters don't be fooled. I-1163 represents the wrong priorities. Mandatory caregiver training and criminal background checks are already required by law. For caregivers moving from another state, FBI fingerprint checks are already required by law. I-1163 costs \$80 million in the next two years and benefits just one interest group — Service Employees International Union.

This SEIU-sponsored measure claims to protect vulnerable adults. What it really does is force taxpayers to pay for the watered-down training of union members, with inexperienced and uneducated trainers managed by SEIU, eliminating the current training conducted by medical professionals and credentialed educators — who are licensed by the state.

It is against my moral values for me to be required to finance these false SEIU political campaigns. My forced union dues are used for political purposes that oftentimes I oppose.



I believe that it is wrong for SEIU via Washington State mandated powers to force parents like me who are caring for family members to pay union dues and then have them finance SEIU political purposes which I oppose.

Most family caregivers **do not think of themselves as** career homecare workers. **They think of themselves as parents, brothers, sisters, or grandparents caring for someone they love.** In our State, I am not considered an employee of the State, I am not considered a subcontracted worker; in addition, I am considered a union member and an employee of my daughter **who has severe disabilities.**

I believe that SEIU has used my state mandated forced dues to manipulate a system for union officials' gains, not the caregivers' gain. To make it worse, it has been financed through a program that was supposedly created to help our most vulnerable citizens and their families.

Many, including me, oppose being forced to become SEIU members, but we have no choice. If we want to care for our children or any other family member, we must be union members and pay union dues. The state's bargaining agreement with SEIU states, **"any such individual provider home care worker who fails to satisfy this obligation (dues) within thirty days shall have his or her eligibility to receive payments from the state for providing services discontinued."**

I love my daughter, and as her legal guardian, it is my responsibility to do the best I can to ensure that she is cared for and has an optimum quality of life. Without the Medicaid funding available to her, it would be difficult to continue caring for her in our home. I find it appalling that as her parent and Medicaid personal care provider I am forced to be a union member for the privilege of taking care of my daughter.

Some may argue that if you don't want to be a union member, then don't be a provider for your own daughter. This is ridiculous, don't you agree? Thousands of parents and family members are forced to be union members, just for the privilege of taking care of a loved one. Let me ask each of you, "Regardless of the negative impacts of being forced into unionization, wouldn't you feel the need to comply? However, I believe it is not right to force people to make that choice.

I have learned through experience that the SEIU union has great control and influence over these Federal Medicaid services and the delivery of them. My hope is that we will not lose sight as to why these services are in place, and who they are for. I am so grateful for the Medicaid personal care programs in place that make it possible for my daughter to receive the care she needs. Without Medicaid, it would be nearly impossible to continue providing for her care in our home.

If you refer to the Centers for Medicare and Medicaid (CMS) website, you will see that the goal of these services is to facilitate independence and Community based living by offering the recipient flexibility, choice, and control over their services and the delivery of them. Right now, I feel like it is the SEIU union that has the greatest control and influence over these Federal Medicaid services. I cannot provide care for my own adult daughter unless I am a dues paying union member, I am prohibited from paying into the social security system because I am an IP union member, and I am forced to pay union dues that fund initiatives that are detrimental to Becky's services while also promoting politicians that I don't agree with.

Representative Issa and Rep. Cummings and all the other committee members, I greatly appreciate your interest in understanding the consequences forced unionization on tens of thousands of families: in particular, to those family members providing care through the Medicaid personal care program.

Most family members like me are only providing care out of love and circumstance. Families need all the support they can get in providing this long-term care. I believe that SEIU is taking advantage of our life circumstances and the services needed by those we care for. Worst of all, thousands of parents caring for their adult children will not be able draw on social security in their later years due to this forced unionization.

I am so grateful for the Federal Medicaid program which aids us in providing for Becky's care. My hope is that Government will really look at these social service systems and recognize the impacts of allowing unionization to infiltrate these systems and the long reaching consequences that follow.

Thank you so much for your time and consideration,

Sally Coomer