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On Behalf Of The
Society for Human Resource Management

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Chairman Dodd, Ranking Member Alexander and distinguished members of the Subcommittee, my name is Elissa O'Brien. I am the Vice President of Human Resources for Wingate Healthcare, a privately owned health care provider that operates and manages high quality, skilled nursing facilities and assisted living residences throughout Massachusetts and New York.

I appear today on behalf of the Society for Human Resource Management (SHRM), the world's largest association devoted to serving the needs of human resource professionals and to advancing the HR profession. On behalf of SHRM's more than 250,000 members, I thank you for the opportunity to appear before the Subcommittee to examine our nation's response to H1N1 and paid sick leave proposals.

Clearly, the top-of-mind issue for this Committee is the current H1N1 flu pandemic and what Congress can do to help Americans deal with a potential health care crisis. A national health emergency such as H1N1 comes along extremely infrequently, and few institutions, public or private, can be fully prepared – as we cannot predict the severity of the impact. Despite this uncertainty, employers must take every precaution to educate our employees and take common-sense steps to prevent the spread of the virus in the workplace. Our efforts must focus both on ensuring the well-being of our employees, and making sure plans are in place to maintain critical business functions. In my testimony today I will briefly outline what Wingate Healthcare is doing to protect its facilities and employees, the efforts SHRM has undertaken to educate our members and the profession on H1N1, and discuss the broader issue of mandated paid sick leave.

At Wingate, we offer a very generous paid time off (PTO) plan that provides our 4,000 employees with paid leave to use for any reason. The nature of our business – providing care for the sick, disabled and elderly on a 24-7 basis – requires that we make every effort possible to prevent the spread of illness in our facilities and to our patients. Wingate policy, therefore, encourages employees to stay home if they are experiencing any flu-like symptoms such as fever, cough, or fatigue and advises them to remain at home until they are free from fever. Our policies are designed to provide maximum flexibility for our workers, and include a PTO bank consisting of 26 days of paid leave for new employees, growing to 33 days for those who have been with Wingate for seven years or more. A flexible PTO policy such as ours supports and encourages employees to stay home for their illness, or if needed, to stay home to care for a close family

member with an illness. Wingate also offers alternative schedules and a telecommuting option for some employees to use to care for a sick family member.

In addition to encouraging sick workers to use their paid time off and recuperate at home, Wingate has taken other specific measures in our facilities to protect our employees and patients from the spread of illness. This includes distribution of a “Wingate Bag” that includes Lysol, tissues, hand sanitizer and information on how to keep healthy. These bags have been distributed organization-wide to our employees who work in an office setting. We have also installed hand sanitizer throughout our facilities. As part of our proactive measures, as we do every year, we have provided our staff with the seasonal flu vaccine at the company’s expense, although we are experiencing some backlogs in obtaining the vaccine this year. In addition, Wingate is working to obtain the H1H1 vaccine for our employees, although this too has proven difficult.

As I stated, no institution can be fully prepared – but we are confident that we are doing everything we can to protect our facilities from the H1N1 virus. We are also proud that our efforts have been recognized by SHRM as an example to employers and human resource professionals on how to best prepare for a health emergency such as H1N1. SHRM’s leadership in the employer community on this issue has been extremely beneficial, and I believe will help lessen the impact of the H1N1 pandemic in workplaces throughout the country.

With the early outbreak in 2008 of H1N1 influenza, SHRM and HR professionals across the country began to prepare for a more serious and widespread pandemic in 2009. In preparation, SHRM and the Center for Infectious Disease Research & Policy (CIDRAP) at the University of Minnesota partnered together to host a 2-day summit, “Keeping the World Working During the H1N1 Pandemic: Protecting Employee Health, Critical Operations, and Customer Relations.” Leaders and presenters of four breakout sessions encouraged candid sharing among attendees, keeping the focus on practical tools, tips, and resources that can be put into action right away.

Following the summit, SHRM consulted with the government’s leading health authorities—the Centers for Disease Control and Prevention (CDC), and the US Occupational Safety and Health Administration (OSHA)—to compile information for employers to prepare for and respond to a widespread influenza pandemic in the workplace. In collaboration with CIDRAP, we created the

toolkit, *Doing Business During an Influenza Pandemic: Human Resources Policies, Protocols, Templates, Tools, & Tip.*

From SHRM's perspective, most employers and HR professionals are responding appropriately and proactively during this national emergency. While Wingate's flexible paid time off policy may be an example of an "effective practice" – other employers are doing what they can by relaxing attendance or absenteeism policies, allowing more alternative schedules, promoting telecommuting, or simply addressing employee needs as required. In a poll of its members conducted last May, 67% of SHRM members indicated that they either planned to, or were currently sending employees home if they came to work with flu or cold-like symptoms. As the national focus on H1N1 has grown in recent months, we believe that it is highly likely that an even larger percentage of employers have adopted a similar approach.

Flexible Paid Time Off Programs

Obviously, the H1N1 pandemic has thrust the issue of paid sick leave into the national debate. Employers and HR professionals have long understood the value of providing paid leave to employees. For example, according to the *SHRM 2009 Examining Paid Leave in the Workplace Survey*, 81 percent of responding SHRM members reported that their organization offered some form of paid leave while 88 percent offered paid vacation leave. In addition, 2008 data from the Bureau of Labor Statistics suggests that 83 percent of private sector workers had access to paid illness leave. Because many employers already offer generous paid leave, efforts to mandate paid sick leave would likely result in unintended consequences that could negatively impact both employers and employees, as discussed later in my testimony.

The current flu pandemic illustrates the need for a 21st Century workplace flexibility policy that adapts to emergency situations, reflects the nature of today's workforce, and meets the needs of *both* employees and employers. It should enable employees to balance their work and personal needs while providing predictability and stability to employers. Most importantly, such an approach must encourage employers to offer greater flexibility, creativity and innovation to meet the needs of their employees and their families.

At Wingate, our flexible PTO program allows our employees to schedule their time off to meet personal and individual needs, including observing holidays, caring for a family member, illness or injury, vacation, or tending to personal matters. For most employees, unused days are automatically rolled into an employee's "Extended Illness Bank," which ensures compensation for illness and injury that last more than 5 days. After an absence of more than 15 days, our Short Term Disability benefit is available for employees, providing much needed assistance. I have attached a copy of Wingate Healthcare's Paid Time Off Policies and Procedures for the record.

Wingate's PTO program reflects the principles for paid leave that the Society for Human Resource Management advocates. Both SHRM and Wingate believe that any federal leave policy should:

- Provide certainty, predictability and accountability for employees and employers.
- Encourage employers to offer paid leave under a uniform and coordinated set of rules that would replace and simplify the confusing – and often conflicting – existing patchwork of regulations.
- Create administrative and compliance incentives for employers who offer paid leave by offering them a safe-harbor standard that would facilitate compliance and save on administrative costs.
- Allow for different work environments, union representation, industries and organizational size.
- Permit employers that voluntarily meet safe harbor leave standards to satisfy federal, state and local leave requirements.

I have attached a copy of SHRM's Principles for a 21st Century Workplace Flexibility Policy for the record.

The collective membership of SHRM represents the professionals who develop and implement human resource policies in organizations throughout the country and, as such, are responsible for administering employee benefit plans, including paid time-off programs. Our members are also constantly looking for ways to adapt and design workplace policies that improve

employee morale and retention – two essential elements in developing and maintaining a productive workforce. It just makes sense that offering a solid benefits program makes it easier for organizations to attract and retain great employees.

Given the practical experience SHRM and its members possess, we believe we are uniquely positioned to provide insight on a sensible federal leave policy that ensures fairness and balance for employees and employers and we urge Congress to take a serious look at adopting policies that will encourage employers to adopt the type of flexible paid time off program that has worked so well for Wingate Healthcare and its employees.

Family and Medical Leave Act

As Congress considers workplace leave policy, I'd like to take a moment to point out the pitfalls that can accompany a new government mandate. Since its enactment in 1993, the Family and Medical Leave Act (FMLA) has helped millions of employees and their families, yet not without consequences. Key aspects of the regulations governing the statute's medical leave provisions, however, have drifted far from the original intent of the Act, creating challenges for both employers and employees.

As you know, the FMLA provides unpaid leave for the birth, adoption or foster care placement of an employee's child, as well as for the "serious health condition" of a spouse, son, daughter, or parent, or for the employee's own medical condition.

From the beginning, HR professionals have struggled to interpret various provisions of the FMLA. What began as a fairly simple 12-page document has become 200 pages of regulations governing how the law is to be implemented. This is the result of a well-intentioned, but counter-productive attempt to anticipate and micro-manage every situation in every workplace in every industry – without regard for the evolving and diverse needs of today's workforce.

Among the problems associated with implementing the FMLA are the definitions of a serious health condition, intermittent leave, and medical certifications. Vague FMLA rules mean that practically any ailment lasting three calendar days and including a doctor's visit, now qualifies

as a serious medical condition. Although we believe Congress intended medical leave under the FMLA to be taken only for truly serious health conditions, SHRM members regularly report that individuals use this leave to avoid coming to work even when they are not experiencing serious symptoms. This behavior is damaging to employers and fellow employees alike.

However well-intended the original FMLA legislation was, proscriptive attempts to micro-manage how, when and under what circumstances leave must be requested, granted, documented and used are counter-productive to encouraging flexibility and innovation. This is an especially important lesson when considering legislation that would mandate paid sick leave.

Healthy Families Act

SHRM has strong concerns with the one-size-fits-all mandate encompassed in S. 1152, the “Healthy Families Act” (HFA). The bill would require public and private employers with 15 or more employees for 20 or more calendar workweeks in the current or preceding year to accrue one hour of paid sick leave for every 30 hours worked. Under the HFA, an employee begins accruing the sick time upon commencement of employment and is able to begin using the leave after 60 days. The paid sick time could be used for the employee’s own medical needs or to care for a child, parent, spouse, or any other blood relative, or for an absence resulting from domestic violence, sexual assault or stalking.

We share the goal that employees should have the ability to take time off to attend to their own or a close family member’s health, and that the leave should be paid. However, at a time when employers are facing unprecedented challenges, imposing a costly paid leave mandate on employers could easily result in additional job loss or cuts in other important employee benefits. While the HFA presents a host of practical concerns, I would note four significant challenges with this bill from an HR professional’s perspective.

First, the HFA, like the current FMLA, prescribes a series of vague and ill-defined qualifying events that may trigger leave eligibility for the employee. Under the current FMLA, employers and employees alike must make a determination if the requested leave is eligible for coverage as a qualifying event. While in many instances this determination of leave eligibility under

the FMLA can be made easily, in others it requires the employer and employee to make a rather subjective, sometimes intrusive determination to determine leave eligibility – often leaving both parties frustrated and distrustful of each other. Unfortunately, we anticipate that employers and employees will have a similar experience under the HFA in trying to determine leave eligibility.

Second, although it may not be the intention of the bill sponsors, the HFA would disrupt current employer paid leave offerings. For example, if an employer's existing paid leave policy fails to meet all the requirements of the Act, the employer's plan would need to be amended to comply with the HFA requirements. In addition, it is unclear how the HFA's paid "sick" leave requirement would impact paid time off plans, programs that are growing in popularity. In fact, more and more employers have begun to offer Paid Time Off plans, similar to the one offered at Wingate Healthcare, in lieu of other employer-sponsored paid leave programs because these types of plans are preferred by employees and employers. According to the *SHRM 2009 Examining Paid Leave in the Workplace Survey*, 42 percent of employers offer PTO plans to their employees. Congress should build on the progress that is already being made by offering incentives for employers to do more – not risk the unintended consequences of an onerous government mandate that could very well result in decreased benefits and fewer new jobs.

Third, the HFA specifically states that the Act does not supersede any state or local law that provides greater paid sick time or leave rights, thus forcing employers to comply with a patchwork of varying federal, state and/or local leave laws – as well as their own leave policies. As it stands now, employers consistently report challenges in navigating the various conflicting requirements of overlapping state and federal leave and disability laws. The HFA would only add to the already complex web of inconsistent but overlapping leave obligations under federal and state laws.

Finally, the HFA's inflexible approach could cause employers to reduce wages or other benefits to pay for the leave mandate and associated compliance costs, thereby limiting employees' benefit and compensation options. This is because employers have a finite pool of resources for total compensation. If organizations are required to offer paid sick leave, they will likely "absorb" this added cost by cutting back or eliminating other employee benefits, such as health or retirement benefits, or forgo wage increases, a potential loss to employees who prefer other benefits rather than paid sick leave.

SHRM believes the federal government should encourage paid leave – without creating new mandates on employers and employees. As has been our experience under the FMLA, inflexible mandates and proscriptive regulations are counter-productive to encouraging flexibility and innovation. As a result, the focus is on documentation of incremental leave and the reasons for the leave, rather than on seeking innovative ways to help employees to balance the demands of both work and personal life. Another rigid federal mandate would be more of the same.

Conclusion

SHRM and the 250,000 human resource professionals it represents believe that it is time to give employees choices and give employers more predictability when it comes to a federal leave policy. We believe employers should be encouraged to provide the paid leave their workforces need – and let *employees* decide how to use it. From our perspective, a government-mandated approach to providing leave is a clear example of what won't work – particularly during a time of economic crisis.

It is clear that the H1N1 pandemic presents extreme challenges to business, government and non-profit organizations of all types. SHRM and its members are focused on keeping their workforces as safe and healthy as possible and keeping their businesses running until this public health threat has run its course. In the meantime, we caution against rushing to impose new mandates that will do more harm than good. Rather, we welcome the opportunity to work with Congress to develop a more modern workplace flexibility policy. Thank you for the opportunity to testify before the Committee and I welcome your questions.