REHABILITATION & COMMUNITY PROVIDERS ASSOCIATION

Senate Labor & Industry Committee and Senate Appropriations Committee
Informational Hearing on
The Federal Department of Labor's Overtime Exemption Rule

June 9, 2016

Presented by
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Good morning, Senator Baker, Senator Tartaglione, Senator Browne, Senator Hughes, and distinguished members of the Senate Labor and Industry and Senate Appropriations Committees. My name is Richard S. Edley and I am the president and CEO of the Rehabilitation and Community Providers Association (more commonly known as RCPA).

RCPA consists of over 325 organizations serving well over 1 million Pennsylvanians annually, and is among the largest and most diverse state health and human services trade associations in the nation. RCPA members offer mental health, drug and alcohol, intellectual and developmental disabilities, medical rehabilitation, brain injury, long term living, and other related human services, for both children and adults, across all settings.

On behalf of RCPA, it is my honor to testify before these committees regarding the impact that the Federal Department of Labor's (DOL) Overtime Exemption Rule will have on health and human service providers here in Pennsylvania.

RCPA is concerned that implementing this new rule will greatly affect our members as well as all businesses throughout the Commonwealth. RCPA's major concern is that the Federal Department of Labor's Overtime Rule will have negative unintended consequences for many health and human service providers, their employees, and the consumers they serve. Due to the DOL's release of its final rule, providers will now have to make the choice of converting currently-exempt salaried employees to hourly workers or to raise salaries to the new threshold. If the former occurs, it will have a huge negative impact on worker morale and job satisfaction, as well as create operational and management challenges. If the latter occurs — well, it truly cannot as it would simply be financially disastrous.

Please understand that RCPA is not against the DOL rule per se. We want more dollars to reach direct service providers and supervisors. The issue is just that this is an unfunded mandate.

It should be noted that this change is potentially compounded by another coming issue. Governor Wolf's 2016/17 budget proposal includes an increase to the Commonwealth's minimum wage. Again, something that RCPA supports for the reasons noted, but it cannot be another unfunded mandate.

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With the DOL's final rule and the potential for an increase in the state's minimum wage, our members are being overly burdened by federal and state regulations and unfunded mandates. Health and human service providers do not have the ability to negotiate rates or to pass on increased operating costs to the state, the people we serve, or other entities. RCPA is 100% supportive of an increase in wages, because an economic investment in staffing improves recruitment and retention efforts; however, we also see the serious harm that the DOL's final rule will have on the very workers these proposals seek to protect.

Please understand that the providers RCPA represents are 100% publicly funded or largely publicly funded. They are what is often referred to as the "safety net" providers. Unlike the commercial industry, they cannot adjust their business model, raise prices, and meet these mandates. They are not large corporations who can raise the cost of soda a penny and meet the needed revenue challenge. As such, these providers are not rate setters but rate receivers.

Health and human service providers offering services under Medicaid struggle to keep positions filled with qualified employees. They are unable to pay higher wages to hourly workers or increased salaries to middle management workers and supervisors. Since rates cannot be negotiated, or increased costs passed on, public providers have no choice but to scale back wherever possible, which means not being able to offer employee benefits comparable to companies in other industries. The turnover rate is already alarming and this will only make it worse.

To illustrate the burdens that health and human services providers face, RCPA conducted a survey of its membership regarding the economic and other changes that the DOL's Overtime Exemption Rule would have on them. While the results are still coming in and being reviewed, the following are some initial findings:

- The impact per organization of course ranges by size, service lines, and structure, but many estimate it at over $1M annually, with some approaching upwards to $5M annually, if no changes are made to operations.

- The rough average would be well over $500,000/agency; extrapolated out, this could be well over $150M across the entire health and human service system.

- As with an increase in the minimum wage, the DOL's new overtime rule also causes compression of existing salaries, leading to eventual raises for other experienced workers. That additional cost is nearly impossible to calculate.

- According to the survey data, few if any organizations can absorb these costs and plan to address the situation by:
    a. Changing salaried staff to non-exempt/hourly and then strictly controlling OT hours (thereby severely impacting service and morale);
    b. Moving people to part-time status to avoid paying benefits;
    c. Implementing a straight reduction in benefits;
    d. Eliminating supervisor positions;
    e. Reducing staff; and/or
    f. Eliminating or reducing programs.

RCPA is deeply concerned that without the proper investment from government, our members will have difficulty implementing this new policy, and it will impact the consumers and families they serve. Without additional state and/or federal funding, the rule will destabilize the health and human service sector, compromising the quality of important programs and services throughout the Commonwealth on which countless individuals and families depend. Health and human services providers – the safety net providers – are already struggling and this new rule is piled onto an industry that is already on the brink.

Furthermore, it should be noted that the temporary 34-month exemption for a very small class of Medicaid-funded service residential providers is of no real, practical help. While the DOL will "look the other way" during this time, the agencies will still be held to the standard and liable for employee action if they do not comply. Even if they attempt to use the exemption, it will put these organizations at a disadvantage, making it more difficult for them to attract and retain workers and further hurting their employees' morale.

Accordingly, RCPA urges the members of the General Assembly to consider the impact that the Department of Labor's Overtime Rule has on health and human service providers. Some suggestions for the General Assembly:

- Work with the Pennsylvania Congressional Delegation to obtain more Federal funding;

- Lobby the Congress to overturn or delay the DOL's overtime rule by asking the Pennsylvania Congressional Delegation and other federal legislators to:
  a) Adopt a resolution of disapproval under the Congressional Review Act;
  b) Enact specific legislation, such as the Protecting Workplace Advancement and Opportunity Act (S. 2707 and H.R. 4773), which would nullify the proposed rule, among other things; or
  c) Attach a rider to an appropriations bill to block enforcement of the rule for a year.

  However, all three actions require either the President's approval (which is unlikely, given that the proposed rules are coming from his administration) or sufficient votes (two-thirds of both the House and Senate) to override his expected veto – see more here;

- Increase state reimbursement rates to cover this cost of expanded overtime eligibility and/or increased salaries; and

- Increase grant awards to cover this cost.

In closing, it is important to note that the intent of the Department of Labor's Overtime Rule was to get more money in the pockets of employees and giving businesses a shot in the arm by boosting productivity, while reducing turnover and training costs. However, information from RCPA's member survey shows that the DOL's OT Rule will actually:

- Reduce staffing because providers will be unable to sustain this cost without an increase in reimbursement;
- Decrease employee morale and potentially increase turnover by adding work and responsibility to employees strictly limited to a 40 hour week;
- Eliminate flexibility and incentives for employees;

- Curtail employee benefits;
- Reduce or eliminate services currently being provided; and
- Limit staff that are available to consumers and/or limit the amount of time staff have to assist consumers and families.

Thank you for the opportunity to provide testimony on this important issue that will have a wide range of impact on human services providers and those they serve. Please feel free to contact me if there are any additional questions.

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