



September 3, 2015

Via electronic submission at <http://www.regulations.gov>

Director Mary Ziegler
Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor
Room S-3502
200 Constitution Avenue NW.
Washington, DC 20210

Re: DOL Proposed Rule Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees published in the Federal Register on July 6, 2015 (RIN 1235-AA11)

Dear Director Ziegler:

On behalf of the Rehabilitation and Community Providers Association (RCPA) and the more than 325 health and human service members serving over 1 million people with disabilities in Pennsylvania, I am writing to thank you for the opportunity to comment on the proposed DOL rule entitled, "Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees" that was published in the Federal Register on July 6, 2015 (RIN 1235-AA11).

RCPA represents the full spectrum of health and human service provider non-profit organizations, including mental health, drug and alcohol, intellectual and developmental disabilities, medical rehabilitation, and brain injury services for children and adults, vocational and residential settings. As a result of the diversity of non-profit disability service providers in our membership, we have heard significant concerns about the proposed regulations, the impact they will have on employees working with individuals with addictions, physical, intellectual and developmental disabilities, and the direct impact it will have on the individuals living and working with a disability.

It is vital that the Department balances the equally important priorities of ensuring adequate compensation for all workers and ensuring that services and supports that individuals with disabilities rely on remain intact. However, this rule has the potential to seriously harm the very workers it seeks to protect, as well as a significant number of workers beyond its scope including non-profit health and human service providers.

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 to wages, because an economic investment in staffing improves recruitment and retention efforts; however, RCPA has serious concerns about the proposed rule because of its fiscal impact it will have on members.

- An increase in the overtime rules will be an unfunded mandate;
- RCPA members are not Walmart or McDonald's. In fact, many are funded largely or solely through public funds; therefore, RCPA members cannot increase their prices to consumers to cover the additional costs that this proposed rule would bring;

If the Department imposes this rule, then RCPA recommends the Department work with the applicable federal and state agencies to ensure that policies that will result in appropriate funding are in place to meet the requirements of the rule.

If this rule is finalized as proposed, health and human service providers would be forced to convert currently-exempt salaried employees to hourly workers. This will have a huge negative impact on worker morale and job satisfaction, as well as create operational challenges as we struggle to shift work from exempt employees to others.

The Department must understand the impact that this rule will have on industries and employers as a whole. There is the potential for serious and severe negative consequences for non-exempt workers if this rule is implemented as proposed.

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 salaries to mid-level workers, which worsens turnover. Since rates cannot be negotiated or increased costs passed on, non-profits have no choice but to scale back wherever possible, which means not being able to offer health insurance or other employee benefits comparable to companies in other industries.

Any significant increase in operational costs for publicly-funded programs requires action on behalf of state legislatures to appropriate more funding and Pennsylvania is no different. If the Department enacts this rule, as proposed, non-profits will not be able to adjust quickly enough to absorb the extra operating costs, because of the time it takes a state to appropriate funds through its budget process. It is imperative that states be given sufficient time to allocate and appropriate funding especially in Pennsylvania because providers have not been paid in the last two months due to a budget impasse between the Governor and the General Assembly.

RCPA is extremely concerned that this proposed rule would have negative unintended consequences for many health and human service providers, their employees and their consumers. While our association supports an increase in wages, RCPA wants to make sure that the aforementioned issues are addressed prior to the implementation of the rule. Health and human service providers are dependent on the Pennsylvania General Assembly to appropriate adequate funding and set rates. Health and human service providers cannot increase their prices to consumers to cover the additional costs that this proposed rule would bring. We strongly urge the Department to consider our comments to avoid unintended consequences to health and human service providers in Pennsylvania and nationwide and the consumers with disabilities they support.

Thank you for the opportunity to comment on the proposed rule. If you have any questions regarding our comments, please contact me at (717) 364-3280 or redley@paproviders.org or Jack Phillips, Director of Government Affairs, at (717) 364-3280 or jphillips@paproviders.org.

Sincerely,
Richard Edley
President & CEO, RCPA