

November 7, 2023

Wage and Hour Division
US Department of Labor
Attention: RIN 1235-AA39

Submitted via regulations.gov

RE: Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees (RIN 1235-AA39)

On behalf of the Rehabilitation and Community Providers Association (RCPA), we want to thank you for the opportunity to comment on the Department of Labor’s (DOL) proposed rule, Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees (RIN 1235-AA39) (“the Proposed Rule”), in 88 Federal Register (“FR”) 62152 (September 8, 2023).

RCPA represents nearly 400 community agencies and organizations across 9 divisions of health and human services in PA. This includes mental health, substance use disorder, intellectual and developmental disabilities, brain injury, children’s services, criminal and juvenile justice, medical rehabilitation, pediatric rehabilitation, and physical disabilities and aging. Collectively, these agencies employ hundreds of thousands of staff serving well over 1 million Pennsylvanians annually. Many of these agencies will be significantly impacted by the DOL proposed rule.

RCPA members comprise the backbone of the public health and human services safety net, serving low-income and uninsured populations whose cost of care is covered primarily by Medicaid or state and local general funds. Medicaid reimbursement rates are set by Managed Care Organizations (MCOs) or the Commonwealth, depending upon the system, and the funding is tight, with services stressed given the significant workforce shortages.

RCPA thanks DOL for attending to the important issue of raising wages for lower-paid American workers. Specific to the members we represent, we note that undervaluation of human services providers and direct support professionals has long been a barrier to care, and contributes to our nation’s current workforce shortage and crisis. In a 2022 report, the Government Accountability Office (GAO) cited low reimbursement rates for mental health services as a contributing factor to service access challenges.¹ And research has shown that increasing reimbursement rates for providers helps to improve access to care for beneficiaries.²

As currently written, the proposal unfortunately does not consider the implications of current health care funding for safety net services. Thus, the current proposal would have a potentially devastating effect on health care organizations serving low-income individuals with serious and complex disorders and disabilities, resulting in the need for service cutbacks and program closures. In the recent CY2024 Physician Fee Schedule proposed rule, CMS acknowledges that behavioral health provider rates have been systemically undervalued.³ We agree that modernizing and paying an appropriate wage is critical and we believe that the proposed solution must be comprehensive, taking into account the barriers that exist in realizing the desired outcomes.

As to the IDD system in PA, RCPA recently conducted a provider survey with several other associations and the results were staggering. 34% of providers had permanently closed programs and 62% of providers

¹ <https://www.gao.gov/assets/gao-22-104597.pdf>

² <https://www.nber.org/bh-20193/increased-medicaid-reimbursement-rates-expand-access-care>

³ Medicare and Medicaid Programs; CY 2024 Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment and Coverage Policies; Medicare Shared Savings Program Requirements; Medicare Advantage; Medicare and Medicaid Provider and Supplier Enrollment Policies; and Basic Health Program, 88 FR 52320 (proposed August 7, 2023).

reduced the number of individuals served. In total, over 4,000 individuals in need lost services, and this is in addition to a waitlist for services of over 12,000 (5,000 plus in the “emergency” category). The vacancy factor for staff was 28% with a turnover rate of 38%. Substitute any of the other RCPA divisions (e.g., brain injury, aging) and you will get the same dire results.

As a result of the harsh funding environment for human services, as described above, provider organizations have limited ability to raise new revenue in response to increased costs of doing business. DOL’s proposal to increase the overtime pay exemption threshold to \$55,068 annually for full-time workers would place a restrictive burden on organizations providing critical and lifesaving services that are already struggling to keep their doors open. This is exacerbated by the fact that many of the human services agencies are largely or fully publicly funded. They do not control their rates and certainly cannot unilaterally raise them as can be done in private sector businesses.

While RCPA understands the need for simplified methodology that is transparent as DOL proposes (88 FR 62167), we fear that taking a sweeping approach in addressing low-wage industries, as the Department describes (88 FR 62167), does not take into account the real regulatory and statutory barriers that exist in funding wages for human services.

Moreover, the proposed automatic updates to salary level tests (88 FR 62179) are also not responsive to the funding environment for safety net services, which may not be able to keep up with automatic updates without any ability to raise state-determined or managed care payment rates, or otherwise ensure revenue increases to offset changes. Provider organizations could be squeezed more tightly with each update, and without sufficient methods to respond accordingly, many could be forced to close programs and lay off staff, resulting in fewer clients served and reduced access to critical mental health and addiction treatment services for individuals in need.

Finally, the 60-day effective date after publication of the final rule (88 FR 62180), if finalized as written, may not give employers enough time to plan responsive action that would ensure services can continue to be provided and paid for. Given the extensive impact that this proposal would have on organizations providing safety net services, a 60-day window to respond to and raise additional funds where it is projected to be needed in order to maintain service access for beneficiaries, is not sufficient nor feasible.

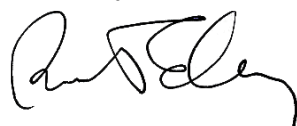
In sum, RCPA agrees that modernizing and updating the Fair Labor Standards Act exemption regulations are critical, and ensuring adequate and appropriate wages for human services providers is paramount. However, meaningful changes that do not inadvertently reduce access to care for safety net services are vital. The way providers’ payment rates are set and how safety net health care services are funded must be considered. The untenable financial pressure resulting from the proposed changes would force provider organizations into disastrous service reductions and program closures.

We strongly urge DOL to re-examine the proposed new salary threshold in a manner that considers the unique pressures on health care providers, as well as regional variations in the cost of living and average salary for human services providers. We further urge DOL to work with other agencies and Congress on this issue, in the face of a workforce shortage and systemic undervaluation of services that play a critical role in our country's ongoing mental health and substance use crisis.

RCPA appreciates the opportunity to provide these comments. We welcome any questions or further discussion about the recommendations described here and you can contact me at redley@paproviders.org.

Thank you for your time and consideration.

Sincerely,



Richard S. Edley, PhD
President and CEO