



*Submitted to regulations.gov*

November 7, 2023

Acting Secretary Julie Su  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

Dear Acting Secretary Su,

As a leading organization representing Medicaid home and community-based service (HCBS) providers and other partners, the Partnership for Medicaid Home-Based Care (PMHC) is pleased to provide our comments regarding the proposed rule, *Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees, RIN 1235-AA39* (Proposed Rule). As an organization that is comprised of home care agencies, Managed Care Organizations, technology innovators, and other entities that support HCBS, PMHC is committed to ensuring access to high-quality home-based care to the many individuals who participate in Medicaid programs. Our provider members serve over hundreds of thousands of HCBS beneficiaries across the country, employing a vast workforce to support these essential services.

Long-term care services provided in the home and community through HCBS allow Medicaid recipients to receive critical supports for daily living activities in their preferred home setting. Such home-based care helps to promote the overall health and well-being of critical populations and moreover, helps to play an integral role in reducing emergency room utilization, hospitalizations, hospital length-of-stay, unnecessary institutionalization, and other improved outcomes.

We are very concerned that the Proposed Rule does not fully consider the role of Medicaid-funded home and community-based services in the promulgation of the regulation. Importantly, deinstitutionalization requires additional person-centered care considerations and significant additional staffing needs. Our services rely heavily on a large workforce that has been managing high turnover and vacancy rates for decades which can often result in additional overtime for our supervisory staff fulfilling their own tasks or essential frontline coverage were vacancies exist. In late October, the Kaiser Family Foundation published a report on Medicaid home and community-based services based on a 50 state survey and indicated that “long-standing workforce challenges in Medicaid home-and community-based services (HCBS) were

exacerbated by the pandemic.”<sup>1</sup> The report further details that 49 states reported a personal care aide shortage in 2023, the direct care workers for home care services. As we continue to struggle with our workforce challenges and funding to support a sustainable workforce, we are concerned that the Proposed Rule could have an increasingly dire impact on our services.

It is also important to note that this proposed rule comes at a time where our Medicaid-funded services face daunting workforce pressures that are largely not in our control as Medicaid HCBS reimbursement rates are set by state governments and affirmed by the federal government. CMS recently proposed an “HCBS payment adequacy proposal” in their pending proposed Medicaid Access Rule that would divert 80% of all reimbursement rates for Medicaid HCBS home care services to payment for frontline workers. If this proposal is finalized, providers would have even less leeway to cover additional payments to salaried supervisorial workers not considered direct care staff.

PMHC urges the Department to work with the Centers for Medicare and Medicaid Services more closely on the impacts of the Proposed Rule. We further request mitigation of the proposed threshold taking into account the impact on the Medicaid HCBS program and its irreversible consequences on the individuals PMHC members support every day. Please contact [admin@medicaidpartners.org](mailto:admin@medicaidpartners.org) if PMHC can be of any further assistance as you seek to finalize this rulemaking.

Sincerely,

A handwritten signature in black ink, appearing to read 'Esmé Grewal', with a stylized flourish at the end.

Esmé Grewal  
PMHC Chair

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<sup>1</sup> Payment Rates for Medicaid Home and Community-Based Services; States Responses to Workforce Challenges published October 24, 2023, <https://www.kff.org/medicaid/issue-brief/payment-rates-for-medicaid-home-and-community-based-services-states-responses-to-workforce-challenges/>