



May 21, 2019

Submitted electronically via:
www.regulations.gov

Melissa Smith, Director
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

Dear Director Smith:

The Partnership for Medicaid Home-Based Care (PMHC) is pleased to submit these comments on the Department of Labor (DOL) proposed rule, “Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees” (RIN 1235-AA20).

By way of brief background, PMHC was established to advance the delivery of high-quality, cost-effective Medicaid home-based care and services. Our members bring to this important quest their experience as home care providers, associations, managed care organizations, and technology providers. While such a diverse membership is somewhat unique, our members have come together due to a shared commitment to support legislative and regulatory efforts that improve the quality, accessibility, and integrity of home and community-based care and services in Medicaid.

It is precisely because of the vital importance of home care in the lives of millions of elderly and disabled Americans that we wish to express our concerns with DOL’s proposed threshold and respectfully urge the Department to consider not updating the salary threshold at this time.

As we trust has been confirmed by the DOL in pre-rulemaking market analyses, home care providers often face difficult financial challenges as they serve seniors and individuals with disabilities. This problem is particularly acute in rural and low-income as well as in many minority communities nationwide. In addition, if the Department has not yet had an opportunity to do so, we urge it to carefully assess the downstream impacts of this rule and, in particular, how seniors and individuals with disabilities may be compelled to react to any increase in the cost of personal care services.

Access to personal care services in the home can be the difference between a senior’s ability to age at home with dignity or to be institutionalized. Given the extraordinary difference in cost between home care and institutionalized settings, as well as the long-documented preference of Americans to remain in their home and community, it is therefore vital to avoid any changes that could compel individuals to be placed in institutions.

We fear an upward adjustment of the salary threshold would result in precisely that adverse impact.

Having said that, we do recognize the Department is considering multiple sectors as it explores this threshold change. As a result, if DOL determines an increase to the threshold is necessary, we ask that bonuses, benefits, and incentive payments be permitted to satisfy some percentage of the standard salary level. This accommodation would be of great value to struggling home care providers, especially given their reliance on Medicaid reimbursement which is often unresponsive to regulatory changes, and it may be similarly helpful to other small businesses in a variety of industries.

In light of our concerns about the impact of a salary threshold increase on home care providers and the clients they serve, we respectfully wish to make the following requests:

- The final rule should include a commitment from the Department of Labor to create an interagency group with CMS and the Administration for Community Living (ACL) to monitor the implementation and, in conjunction with stakeholders, propose solutions to mitigate the impact of the rule on Medicaid funded home care providers of disability services.
- The final rule should include all benefits and bonuses in the calculation of the total salary in order to ease the burden of employers like disability service providers who do not control the price they are compensated for services.
- The final rule should, at a minimum, include language that encourages CMS and state governments to create adjustments to reimbursement rates given the increases in the salary exemption levels.

On behalf of the Partnership for Medicaid Home-Based Care, thank you for your consideration of these comments. Please do not hesitate to call on us if we can be of a resource to you.

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Totaro". The signature is fluid and cursive, with the first name being the most prominent.

David J. Totaro
Chairman