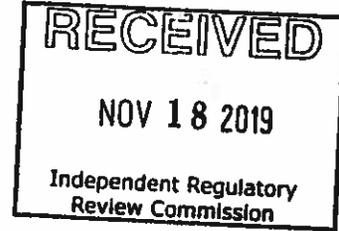


3202



Sent via e-mail to: irrc@irrc.state.pa.us

November 15, 2019

Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Dear Commissioners:

LeadingAge PA is a trade association representing more than 340 nonprofit providers of senior housing, health care, and community services across the commonwealth. These providers serve more than 80,000 older Pennsylvanians and employ over 50,000 dedicated caregivers.

LeadingAge PA appreciates the opportunity to provide comments on Regulation 12-106, Amendments to 34 Pa. Code Chapter 231 regarding Overtime Pay (IRRC # 3202), as these regulations will have a dramatic effect on our members' operations. We strongly urge the Independent Regulatory Review Commission (IRRC) to disapprove this final form rulemaking and request that the Department of Labor and Industry continue to work toward consensus to achieve a proposal that will not harm non-profit providers of services like our members.

LeadingAge PA does commend the Department for waiting until publication of the U.S. Department of Labor's changes to the Fair Labor Standards Act, as we requested in our comments to the proposed rule, so that the state regulations could be better aligned with the federal requirements. Further, LeadingAge PA appreciates that the Department has aligned some of the duties tests and the first year salary threshold with the new federal threshold. We continue to have serious concerns regarding the threshold increases that would become effective in subsequent years and are troubled that the Pennsylvania requirements will continue to diverge from the federal requirements, making compliance a continuing challenge.

Because our members have a significant portion of business costs invested in staffing, the subsequent increases will have a large impact on their ability to provide services. Not-for-profits cannot adjust to this increase in costs by simply reducing profits or distributions to shareholders; instead, this regulation would directly reduce the funding available to provide care and services - or to hire additional workers. The services our members provide are often funded directly by the seniors themselves or through the Medical Assistance Program, which does not reimburse providers as much as it costs to provide care.¹ Thus, our members have

¹ According to a study conducted by RKL of MA-11 cost reports posted as of February 2019, nursing facilities in the MA program are reimbursed nearly \$632 million less than their cost to provide care. The shortfall averages \$47.85 per resident per day, but is much greater for not-for-profit nursing facilities, with an \$82.16 shortfall per resident per day

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limited ability to increase revenue to meet the increased costs associated with meeting the salary threshold test.

Finally, while we appreciate that the Department responded to our request to abandon the initially proposed basis for automatic adjustments and use one based on Pennsylvania-specific wages, we continue to have serious concerns about the proposed adjustments. The automatic adjustment appears to be a significant increase, difficult to predict, and, in an economic downturn, may be counterproductive. Further, we continue to be concerned that a public comment period has not been provided for the imposition of automatic increases. . We are concerned that dramatic threshold increases like this are unsustainable and unpredictable, and therefore challenging to project for budget and planning purposes.

For the reasons stated above, we respectfully strongly urge the IRRC disapprove Regulation 12-106, Amendments to 34 Pa. Code Chapter 231 regarding Overtime Pay.

Thank you again for the opportunity to submit comments. If you have any questions, please contact me.

Sincerely,



Beth Greenberg
Senior Director of Regulatory Affairs
beth@leadingagepa.org