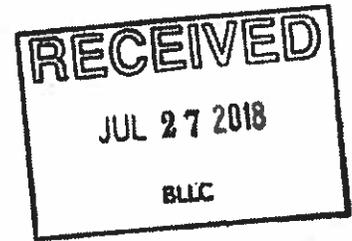
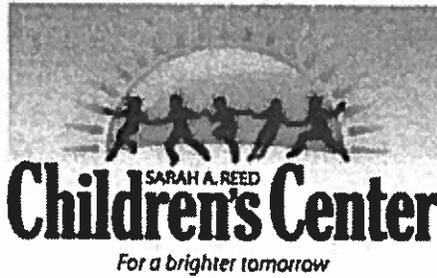
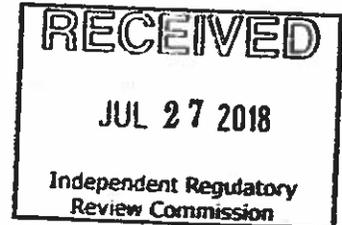


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July 16, 2018

Mr. Bryan Smolock, Director, Bureau of Labor Law Compliance  
 Ms. Jennifer Buchanan Rapach, Director, Policy Office  
 PA Department of Labor and Industry  
 Harrisburg, PA 17120



Dear Directors:

Thank you for the opportunity to comment on the proposed amendments to 34 Pa. Code Chapter 231 regarding Overtime Pay. As the Vice President for Finance and Operations for one of Pennsylvania's oldest social service agencies, I have an acute interest in this proposal as it could severely impact our workforce and our ability to continue to provide all of the services we currently offer.

The Department of Labor and Industry's ("the Department") proposed amendments are intended to (1) increase the minimum salary requirement for executive, administrative and professional salaried employees; (2) change the duties tests for these white collar exemptions. While the salary test is clearly outdated, the proposal provides a test level that is far too high and will likely harm either Pennsylvania's competitiveness or overall employment. Bringing the duties test into alignment with the 2004 federal changes is long overdue but should not be used to make an invalid argument for an unreasonable increase in the salary test. I will explain my reasoning.

Because the federal guideline for a minimum salary requirement for executive, administrative and professional salaried employees (\$455 per week) has not changed since 2004, some increase in that requirement is needed. The first step of the Department's current proposal is consistent with the average wage growth most Pennsylvania workers have experienced over the last 14 years. Increasing the minimum threshold from \$23,660 per year (\$455 per week) to \$31,720 per year (\$610 per week) represents a compounded annual growth rate of 1.85% which is very close to the average increases our Agency has been able to provide. Our average increase has been 2.167% over the 14 years from 2004 to 2018.



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The subsequent increases to \$766 per week by 2021 and to \$921 by 2022 represent compounded annual increases of 3.1% and 4.0% respectively both of which are far in excess of the annual increases we have been able to give to our employees over the past two decades. These steps would distort the compensation structure in our organization and the labor market throughout the state for the behavioral health providers. The proposal to then index this overinflated rate would further damage the labor market and force providers to choose between reducing services (eliminate jobs) or sustain increasing losses.

This industry cannot pass these increased costs on to our customers. Our rates are controlled by the Pennsylvania Department of Human Services. Many of the rates we must accept for the services we provide were set in 1994 and remain at those levels 25 years later. Among rates that have been adjusted for our Agency is our Psychiatric Residential Treatment Facility per diem which was last adjusted in 2006. These adjustments and others that have happened in our industry only came about after significant efforts were undertaken by providers including pursuing legal action. That is why any increase to the salary level test in Pennsylvania that exceeds the existing rate of wage increase for this industry is most likely to result in reducing services and eliminating jobs.

One further comparison to consider when evaluating the proposed increase to the salary limit test is using the annual poverty guidelines published by the United States Department of Health and Human Services (HHS). Let's compare the salary test level from 2004 to the federal poverty guideline for a family of four in 2004:

Weekly salary limit set in 2004 = \$455 x 52 weeks = \$23,660 annually

HHS poverty guideline for a family of 4 in 2004 = \$18,850 annually

$\$23,660 / \$18,850 = 125.52\%$

So, in 2004, the salary test was 25.52% above the poverty guideline established by HHS for use in determining family eligibility for benefits. If we use that same factor applied to today's poverty guideline, we extrapolate an income number to compare to the new proposed salary test limits:

HHS poverty guideline for a family of 4 in 2018 = \$25,100 annually

Ratio of HHS guideline to salary test limit in 2004 = 125.52%

$\$25,100 \times 125.52 = \$31,505$  annually / 52 weeks = \$605.87 / week

This analysis clearly shows the need for the first step of the increase to \$610 per week and equally shows the distortive impact the second and third steps.

Additionally, in the regulatory analysis the Department compiled addressing the need for regulatory action, there is a misleading heading. Item 4 states "Update 40 year old salary levels". While the text of the underlying paragraph accurately identifies the most recent change to the salary level occurred in 2004, a quick reading could lead one to believe the \$455 threshold was set prior to 1978. The limit was as noted set in 2004, so the heading should identify 18 year old salary levels and allow a reviewer to consider the increases on a 14 year horizon, not 40 years.

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With respect to the changes to the duties test, the Department notes this is being done to provide continuity with the standards promulgated by the federal Department of Labor. This is a sensible objective and one the Department cites as a need for regulatory action, namely to "Provide clarity to employers and employees". This objective is seriously undermined by attaching a triannual index to the final proposed increase assuring the Commonwealth to forever have a salary test not aligned with a federal limit.

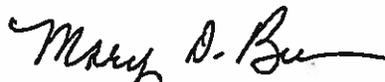
Finally, I beg to disagree that this change can in some way guarantee a happier population in the Commonwealth. Our Agency had a pay cycle start before the 2016 increase published by the Department of Labor was blocked in federal court. We converted more than three dozen previously exempt employees to hourly employee status. These employees earned \$30,000 to \$45,000 per year. The majority acknowledged they appreciated the little bit of extra income they earned on occasion, but resented the loss of flexibility we could allow them as exempt employees to structure their work day in a way that best fit their job responsibilities with their family and personal responsibilities. While they were not malcontent, they certainly were not happier.

On behalf of the Sarah A. Reed Children's Center and the hundreds of nonprofit social service agencies across the Commonwealth of Pennsylvania, thank you for considering our comments and facts. While the update to the duties test makes sense and there is economic support to increase the salary test to \$610 per week, we strongly object to the proposed second and third step increases as well as the proposed triannual indexing of the salary limit. We ask that you take serious consideration of our position, and do not increase the salary test beyond \$610 per week. Please let the market forces drive the labor rates, and allow our organization, and scores of other organizations like ours, a fair opportunity to continue meeting the needs of Pennsylvania's most vulnerable citizens.

Sincerely,



Robert L. Freeman, CPA  
Vice President – Finance & Operations  
814/835-7647



Mary D. Barr  
Assistant Vice President for Human Resources  
814/835-7605

c: Jack Phillips, RCPA Director of Government Affairs, RCPA  
Robert W. Kauffman, Chairman – Labor and Industry Committee, PA House of Representatives  
89<sup>th</sup> Legislative District; Harrisburg Office: Room 312, Main Capitol Building PO Box 202089,  
Harrisburg, PA 17120

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