

3202



July 6, 2018

Via electronic submission at bsmolock@pa.gov

Mr. Bryan Smolock
Director, Bureau of Labor Law Compliance
Pennsylvania Department of Labor & Industry
651 Boas Street, Room 1700
Harrisburg, PA 17121

Re: PA Department of Labor's Proposed Regulatory Amendments to 34 Pa. Code Chapter 231 regarding Overtime Pay, IRR # 3202

Dear Director Smolock:

On behalf of the Rehabilitation and Community Providers Association (RCPA) and the more than 330 health and human service members serving over 1 million people with disabilities in Pennsylvania, I am writing to thank you for the opportunity to comment on the proposed Pennsylvania Department of Labor's (L&I) regulatory amendments to 34 Pa. Code Chapter 231 regarding Overtime Pay, IRR # 3202.

RCPA represents the full spectrum of health and human service provider non-profit organizations, including mental health, drug and alcohol, intellectual and developmental disabilities, medical rehabilitation, and brain injury services for children and adults, vocational and residential settings. As a result of the diversity of non-profit disability service providers in our membership, we have heard significant concerns about the proposed regulations, the impact they will have on employees working with individuals with addictions, physical, intellectual and developmental disabilities, and the direct impact it will have on the individuals living and working with a disability.

It is vital that L&I balance the equally important priorities of ensuring adequate compensation for all workers and ensuring that services and supports that individuals with disabilities rely on remain intact. However, the proposed regulatory amendments have the potential to seriously harm the very workers it seeks to protect, as well as a significant number of workers beyond its scope including non-profit health and human service providers.

RCPA is 100% supportive of an increase to wages, because an economic investment in staffing improves recruitment and retention efforts; however, RCPA has serious concerns about the proposed regulatory amendments, because of its fiscal impact it will have on members. Health and human service providers do not have the ability to negotiate rates or to pass on increased operating costs to the state, the people we serve, or other entities.

Specifically:

- An increase in the overtime rules will be an unfunded mandate;
- RCPA members are funded largely or solely through public funds; therefore, RCPA members cannot increase their prices to consumers to cover the additional costs that these proposed amendments would bring.

If L&I imposes these proposed amendments, then RCPA recommends L&I work with the applicable federal and state agencies to ensure that policies that will result in appropriate funding being in place to meet the requirements of the regulation.

If these proposed amendments are finalized as drafted, health and human service providers would be forced to convert currently-exempt salaried employees to hourly workers. This will have a huge negative impact on worker morale and job satisfaction, as well as create operational challenges as we struggle to shift work from exempt employees to others.

L&I must understand the impact that these proposed amendments will have on industries and employers as a whole. There is the potential for serious and severe negative consequences for non-exempt workers if these proposed amendments are implemented as drafted.

Health and human service providers offering services under Medicaid struggle to keep positions filled with qualified employees. They are unable to pay higher wages to hourly workers, or salaries to mid-level workers, which worsens turnover. Since rates cannot be negotiated or increased costs passed on, public sector have no choice but to scale back wherever possible, which means not being able to offer health insurance or other employee benefits comparable to companies in other industries.

Any significant increase in operational costs for publicly-funded programs requires action on behalf of the General Assembly to appropriate more funding. If L&I enacts these proposed amendments, as drafted, non-profits will not be able to adjust quickly enough to absorb the extra operating costs, because of the time it takes the General Assembly to appropriate funds through the budget process. It is imperative that the General Assembly be given sufficient time to allocate and appropriate funding.

RCPA is extremely concerned that this proposed rule would have negative unintended consequences for many health and human service providers, their employees and their consumers. While our association supports an increase in wages, RCPA wants to make sure that the aforementioned issues are addressed prior to the implementation of the proposed amendments. Health and human service providers are dependent on the General Assembly to appropriate adequate funding and set rates. Health and human service providers cannot increase their prices to consumers to cover the additional costs that these proposed amendments would bring. We strongly urge L&I to consider our comments to avoid unintended consequences to health and human service providers in Pennsylvania and the consumers with disabilities they support.

Thank you for the opportunity to comment on the proposed amendments. If you have any questions, please contact me at (717) 364-3280 or redley@paproviders.org or Jack Phillips, Director of Government Affairs, at (717) 364-3280 or jphillips@paproviders.org.

Sincerely,



Richard Edley
President & CEO, RCPA