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August 22, 2018

Bryan M. Smolock
PA Department of Labor and Industry
Director, Bureau of Labor Law Compliance
651 Boas Street, Room 1301
Harrisburg, PA 17121



Via email to bsmolock@pa.gov

Re: Amendments to 34 Pa. Code Chapter 231 regarding Overtime Pay; Minimum Wage #12-106 (IRRC# 3202)

Dear Mr. Smolock:

The Pennsylvania Homecare Association (PHA) represents more than 700 home health, hospice and homecare agencies that provide care to Pennsylvanians in their homes. Our members collectively employ about 27,000 full-time and 37,000 part-time workers statewide. Many employees of homecare and hospice agencies such as office managers, schedulers, nurses, CEOs and administrators are currently taking advantage of the white collar exemption. The on-call nature of some of these positions makes it difficult to pay hourly wages and track hours worked in a reliable way.

For this reason, providers were relieved when the U.S. Department of Labor (DOL) abandoned the 2016 proposal to dramatically increase the salary threshold for the exemption with such short notice. The increase would have forced providers to either increase an employee's salary to continue his or her exempt status or transition the employee to an hourly wage, track hours worked and pay overtime when appropriate. PHA and many other industry and business leaders opposed the final rule for this reason.

Providers certainly see the need to update the current salary threshold that was set in 2004 before the economy—and wages in response—shifted based on several domestic and global changes. Back in 2016, PHA suggested to DOL that the threshold should be updated incrementally and phased in over several years, which is just what the Pennsylvania Department of Labor and Industry (L&I) has now proposed. The goal is for the law to reflect more current wage trends without shocking employers' operating budgets all at once.

PHA supports the proposal to modernize the current salary threshold in Pennsylvania law. The phased-in approach will help businesses prepare and adjust their personnel policies over time. We also appreciate that the department included language in the regulation to provide for



continuing updates every third year. However, we strongly recommend an edit to this language to require the publication of the update in the *Pennsylvania Bulletin* within 180 days of the effective date. Without any qualifying language such as this, the regulation as written could create the same situation that businesses feared in 2016 when the federal DOL would have increased salaries with only a few months' notice.

Thank you for the opportunity to provide feedback on this change. We are grateful that the department has considered employers' needs while providing for fair labor protections for employees that reflect today's economy.

Sincerely,

A handwritten signature in black ink that reads "Vicki Hoak". The signature is written in a cursive, flowing style with a large initial "V" and a long, sweeping underline.

Vicki Hoak, CEO