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Community Guidance Center

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Independent Regulatory Review Commission

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July 30, 2018

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

Dear Mr. Smolock:

I am responding to these proposed regulations as CEO of the Community Guidance Center. The Community Guidance Center (the Center) is a nonprofit community behavioral health agency serving consumers with mental health needs, substance abuse issues, and intellectual disabilities across six rural counties in Pennsylvania. The Center currently provides outpatient services to 3.000 consumers and has approximately 135 employees. All six counties are designated as Health Professional Shortage areas.

Although the Center is supportive of any funded effort to increase wages, or any effort that may improve recruitment and retention, another unfunded mandate would effectively have the opposite effect on nonprofit health and human service organizations, particularly for those agencies in rural areas.

Community behavioral health organizations, such as ours, are largely publicly funded. Approximately 85% of our revenues are derived from fee-for-service rates set by Medicare and Medicaid. These rates do not reflect actual costs and are not negotiated. There is no cost of living or inflationary increases to the rates and many have not been adjusted for decades. The proposed regulation notes that we could absorb the cost through operating efficiencies. We have been operating that way since the advent of HealthChoices. With relatively flat revenues for 20 years, we struggle to survive, and many of our counterparts do not manage to do that. In fact, in 2014 we merged with another community mental health center in Clearfield County that was imminently in danger of bankruptcy.

As such, without additional funding, any increases to expenses must be absorbed by reducing other salary expenses. This would be accomplished through strategies such as:

- Reducing the workforce
- Re-classifying currently exempt, salaried employees to hourly non-exempt employees
- Eliminating services
- Reducing or eliminating benefit plans

Any of these strategies would have a huge negative impact on services, employment, staff morale, and job satisfaction. In fact, it would have exactly the opposite effect of the intent of the regulation. Mental health services are currently insufficient to meet the needs of the population in most states. Pennsylvania is one of the states that are designated as a high professional shortage area. Fewer potential employees are choosing to enter mental health disciplines and rural agencies generally have high turnover and difficulty filling open professional positions. Any increase to operational costs that is not accompanied by direct increases in funding would increase our turnover and reduce our workforce.

One of the reasons for this proposed regulation is to create jobs and make us more competitive than neighboring states. We cannot be more competitive if we reduce the number of jobs to pay for the higher salary rates, or we drive businesses to bankruptcy. As noted in the proposed regulation, the cost of living is also much higher in neighboring states. The proposed rate is approximately 150% higher than the inflation-adjusted salary rate for PA.

This is a service industry and salaries and wages comprise approximately 75% of our budget. Although the impact of changes vary by agency, estimates by the Rehabilitation and Community Providers Association of Pennsylvania place average cost estimates at over $500,000 per agency. This approximates the additional costs that the Center would experience and would be impossible to absorb.

In addition, salary levels in the proposal are not addressed regionally or by industry. In rural western Pennsylvania, the originally proposed salary levels do not reflect the low cost of living in our area. We cannot compete with major metropolitan areas. However, costs are not the only issue. The proposed designations would cause our agency to reclassify professional positions from exempt to non-exempt. Our exempt employees are largely master's level mental health professionals. These individuals enjoy more independence as exempt salaried employees, and a sense of pride in their professional designation. When this was proposed in 2016, we actually lost several staff that refused to continue under the proposed rules and subsequently, left the industry. I do not believe that this is the intention of the regulations.

If an increase is required, it needs to be incremental and reflect the region and industry, and needs to be accompanied by a direct increase to reimbursement. The standard duties test accurately reflects our exempt staff that are professional, independent, and/or managerial.

Any increases considered need to be regionalized and industry specific. However, using statistics from major metropolitan areas places the rural agency at an increased disadvantage. Additionally, increases need to be applied incrementally.
Different rates for executive and administrative positions may be appropriate, however, it may not be effective. The largest effect on any proposed increase would be professional positions, which we cannot afford to lose. However, if the proposed increase continues, we will need to find other reductions, largely a reduction of benefits, which does not provide an actual increase to the employee. In addition, professionals would lose the independence and freedoms they currently enjoy as exempt staff, such as setting their own schedules.

Although we did not actually make changes to decrease hours in anticipation of the 2016 Final Rule (which currently are at the discretion of the exempt employee) or convert workers, we did discuss these changes with our employees. Affected employees did not see a benefit under these rules and several actually left the industry in anticipation of being "demoted" to an hourly status. Actual increases were not possible without additional government funding.

Non-profit industries that cannot control their governmental funding, such as health and human services, should be considered for exemption. In addition, mental health professionals generally provide at least 80% of their time in direct professional services, more than meeting the exempt requirements. Under the 2016 proposed rule, these individuals would be forced into a non-exempt status despite the professional nature of their work.

The inclusion of non-discretionary bonuses and incentive payments have little impact in the health and human services industry, as most merit increases are discretionary. As we bear no resemblance to retail, we do not have commissions and similar types of bonuses.

In general, increases need to be incremental and, for industries that are largely dependent on public funding, need to be accompanied by a direct funding mandate. Otherwise, such industries should be exempted from the proposed regulations.
Lastly, one of the intentions of the proposed rules is to align the state guidelines with federal guidelines. As you know, the U.S. Department of Labor is currently engaged in rulemaking regarding this same topic. It would appear to be more prudent to wait until the federal rules for EAP are released and then consider carefully any federal standards and how they would affect the state rule.

In summary, I would ask that the intent of the proposed changes be reviewed to determine if proposed rules actually succeed in accomplishing the intended goals.

Thank you for the opportunity to comment on the proposed regulations.

Sincerely,

Ann Williams

Ann Williams, CEO

CC: Mr. Jack Phillips