

The National Save Our Services (S.O.S.) Campaign Funding the Future of Disability Services

Topline Messaging

- Though well-intended, the proposed Overtime Exemption Rule threatens to put an unreasonable strain on already overstrained providers of community-based supports for people with disabilities, which could have a serious impact on their ability to provide quality support to those who need it.
- **Without additional funding, providers will struggle to find money they do not have in order to comply. The essential programs and individualized services they provide, as well as advancement of direct support professionals, will all take a hit and the people with disabilities they serve will suffer.**
- Many providers of community services for people with disabilities are funded by state and federal Medicaid dollars and have no control over setting their payments, which have failed to increase as operating costs and demand for community-based services have dramatically increased.
- Providers have almost no margin to absorb cost increases, and so without additional funding, the added costs of the Overtime Exemption Rule would leave many of them with no other choice but to cut the wages of their direct support professionals, creating the opposite of the rule's intended effect.
- Providers want to pay their employees more, but their current funding makes this impossible. The added strain of this proposed rule would force them to cut wages even further just to stay afloat, and this would exacerbate the already serious problem of turnover among direct support providers.
- With increased operating costs, increased demand, and no additional funding, the additional costs that this rule would bring may be the straw that broke the camel's back. **Survey data shows that not all providers will be able to survive this hit.**
- Our employees have dedicated their lives to supporting people with disabilities, but every year they are being asked to do more and more with less, and their ability to continue to operate is being threatened.
- We urge Congress to pass legislation [PLUG IN BILL NAME TBA] to increase Medicaid funding support for providers accordingly so that they can afford to comply with this rule – and other unfunded mandates like it – so that our members can continue to provide the support people with disabilities rely on every day.
- Until adequate funding can be provided for publicly funded providers to comply with this rule, we urge the Department of Labor to implement a more manageable threshold and a rule that increases the salary threshold more gradually.

Q&A

- **What is ANCOR?**

ANCOR (American Network of Community Options and Resources) is a national trade association representing more than 1,000 private providers of community living and employment services to more than 600,000 individuals with intellectual and developmental disabilities, and employing more than 500,000 direct support professionals and other staff. Our mission is to advance the ability of our members in supporting people with intellectual and developmental disabilities to fully participate in their communities.

- **What is the proposed Overtime Exemption Rule?**

Under the Fair Labor Standards Act (FLSA), workers are subject to overtime pay at one and one half times their hourly wage for hours worked over 40 hours in a work week. Employees are exempt from this requirement if they qualify as “white collar” workers by performing specified duties and make at least \$455/week or \$23,660/year.

In March 2014, President Obama directed the Department of Labor to update the FLSA regulations to increase the salary level at which employees would be exempt from overtime requirements to the 40th percentile of full-time salaried workers, which would increase the threshold to approximately \$50,440 annually (\$970/week) in 2016, with the salary level increasing automatically over time. This would qualify an estimated additional 20 million workers for overtime pay.

The Department of Labor received public comments in 2015, and is currently finalizing the rule, which is expected to be released in the spring or fall of 2016.

- **Why is the proposed rule problematic?**

As written, this rule has the potential to harm the very workers it seeks to protect, as well as a significant number of workers beyond its scope including the direct support professionals that are the backbone of the disabilities long term supporters and services industry, and people with disabilities who rely on this segment of the workforce in order to live meaningful lives as part of their communities.

We agree that the Overtime Exemption Rule should be modernized and the salary level increased, but without additional funding, many of our members will either be forced to cut wages to direct support professionals, serve fewer people, or both. At a time when more people than ever rely on these services to continue to live in their communities – with thousands more on waiting lists across the country – this would be devastating.

If the rule is to be implemented as proposed, it will be critical that Congress enact legislation to increase funding for providers who rely on Medicaid so that they can afford to comply.

- **How do you propose the Department of Labor adjust the rule to allow your members to continue providing support in their communities?**

First and foremost, we urge the Department of Labor to collaborate with Congress and other federal agencies to ensure that policies will be in place to provide appropriate funding to allow providers to meet the requirements of the rule.

Until adequate funding can be provided for publicly funded providers to comply with this rule, we urge the Department of Labor to implement a more manageable threshold and a rule that increases the salary threshold more gradually.

We believe that, in this case, a more measured approach – which would increase the salary threshold to about \$30,000/year, rather than the much more dramatic increase to over \$50,000/year - would be appropriate.

- **Don't you support better wages for workers?**

Of course we do. Direct support professionals and other employees of community service providers serve a critical function in the lives of people with disabilities who want to live in their communities rather than live in state-run institutions, and the work they perform requires patience, skill, and dedication deserving of robust compensation.

But providers of community services to people with disabilities receive nearly all of their funding from Medicaid, through rates set by states and matching funds contributed by the federal government. They have no power to negotiate higher rates, even as operating costs rise and demand for their services increases. As a result, most states have seen little to no increase in funding for these programs in the last decade, with some states even cutting funding.

Providers want to offer better compensation, including benefits, and already struggle to attract qualified workers because they are unable to offer competitive wages. But they are powerless to raise wages without going out of business unless adequate funding can be provided. The reality is that without additional funding, many providers will be forced to choose between cutting wages and going out of business.

- **What is the difference between the proposed Overtime Exemption Rule and the Home Care Rule?**

The proposed Overtime Rule is often confused with the Home Care Rule, which took full effect in October 2015. The Home Care Rule (also sometimes known as the Companionship Rule) affects a narrow segment of workers because it was specifically aimed at extending minimum wage and overtime protections to home care workers who were previously exempt in some states. The Overtime Exemption Rule will affect nearly everyone in any type of management structure across every industry. Workers exempted from the FLSA under the Home Care rule would not be appropriately exempted under the "white collar" exemptions. The Home Care rule, now in effect, is the latest illustration of the systemic issue of changing federal rules that create significant costs for Medicaid funded programs without ensuring that appropriate funding is provided. Providers cannot continue to bear the burden of unaffordable costs.