MEMORANDUM

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| TO: | Ohio Providers Resource Association |
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| FROM: | Suzanne Scrutton  Michael F. O'Brien |
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| DATE: | January 6, 2015 |
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| RE: | Good News and Bad News: Federal Court Decision Strikes Down Part of Revised DOL Companionship Services Exemption Regulations |
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New Department of Labor (DOL) regulations concerning the companionship services exemption to minimum wage and overtime requirements were scheduled to take effect on January 1, 2015. There were two main components to these revised regulations. The first provided that third party employers of direct care workers (i.e., OPRA member agencies) would not be permitted to claim the minimum wage and overtime exemptions for companionship services, even if those services were provided in the home of the individual or his or her family. Second, the new regulations implemented a more restrictive companionship services duties test.

On December 22, 2014, the U.S. District Court for the District of Columbia struck down the first component of the new regulation. The court’s ruling means that, at least for now, the part of the new regulations that excluded third-party employers from using the companionship services exemption will not go into effect. That is the good news.

The bad news, however, is that the second component of the new regulations – setting forth a more restrictive definition of companionship services – did go into effect at the beginning of 2015. This new definition is so restrictive that it may effectively prevent OPRA member agencies from taking advantage of the companionship services exemption. For example, under the new regulations, if the employee performs any domestic services during a workweek that are primarily for the benefit of other members of the household (e.g., making dinner for the entire family or doing laundry for another member of the household), the exemption is lost for that week. Also excluded from the exemption are employees who perform any medical tasks that typically require training and are performed by medical personnel (e.g., catheter care, turning and repositioning, ostomy care, tube feeding, treating bedsores, and physical therapy). Also, an employee who provides “care” (e.g., dressing, grooming, feeding, bathing, toileting, transferring, meal preparation, driving, light housework, assistance with taking medications) for more than 20% of the workweek loses the exemption for that week. In short, these more restrictive regulations are striving to limit the exemption to persons who provide companionship, as opposed to those who are providing care, medical services, or general domestic services.

**Conclusion**

OPRA member agencies should not assume that the federal court’s decision striking down part of the new regulations means that it is “business as usual” and that they can continue to use the companionship services exemption as they have in the past. In fact, given the new restrictions, OPRA members may find it practically impossible to continue using the exemption. At a minimum, if OPRA members want to continue using the companionship services exemption, they would have to very closely regulate the activities of their employees to ensure that they fall within the new restrictive definition of companionship services.

As a reminder, OPRA members can use their annual member benefit of two hours of legal services to consult with a Vorys attorney if they have any questions regarding the continued availability of the exemption for their employees.