

Protecting Essential Disability Services in Your State:

Helping Service Providers Comply with the Department of Labor Overtime Rule

Issue Summary:

The Department of Labor's (DOL's) new overtime exemption rule presents significant challenges due to service providers' reimbursement coming nearly exclusively through Medicaid funding. American Network of Community Options and Resources (ANCOR) supports the intent and spirit of the rule, which will take effect on December 1, 2016. We know that paying the staff who take care of individuals with disabilities more is not only the right thing to do, but also essential to providers' remaining competitive employers, but our members need help to comply. This is why we are calling for Congressional action to keep services for people with intellectual and developmental disabilities stable across the nation.

Background on Medicaid Home and Community-Based Services (HCBS) for People with Disabilities:

The HCBS program, for which the ANCOR's 1,000+ members are providers, helps millions of families nationwide ensure that their loved ones with disabilities, including intellectual and developmental disabilities (IDD), receive services to allow them to live in their communities and outside of state-run institutions. The HCBS program is a key funding mechanism for ensuring that people with disabilities have assistance with daily life functions such as dressing, bathing, grocery shopping, finding and going to work, and generally being integrated in society. The vast majority of HCBS program costs go to labor because the primary service is assistance with daily life functions – in the instance of individuals with significant disabilities, the staff to individual ration can be 2:1 and services may be required 24/7 to ensure the individual's safety and well-being.

Why We Need Help:

The Department of Labor overtime exemption rule increased the salary threshold at which an employee can be exempt from overtime, raising it from \$23,660 per year to \$47,476 per year. The employees affected include frontline managers who supervise group homes, maintain schedules and step in to offer services when a direct support professional is not available, including handling emergency situations. Overtime is built into their duties, and providers have no way to offset the heightened labor costs the increase in the salary threshold will cause. This is because 90 percent or more of their funding comes from fixed Medicaid HCBS rates, which providers have no power to negotiate.

Unless Medicaid funding is increased, providers will have to make difficult decisions which will likely result in scaling back on services or wages, or both, leading to disastrous consequences for the individuals they serve.

While the DOL has recognized providers' unique circumstances by delaying enforcement for a limited subset of Medicaid IDD providers for three years, it is an incomplete solution because all providers may still be exposed to other enforcement actions. As such, our members expect to have to comply with the rule in December 2016. Unless Medicaid funding is increased, providers will have to make difficult decisions which will likely result in scaling back on services or wages, or both, leading to disastrous consequences for the individuals they serve.

The Solution:

In light of this major federal change, ANCOR supports the Disability Community Act of 2016, H.R. 5902. Led by U.S. Representatives Tonko (D, NY) and Stivers (R, OH) and co-sponsored by U.S. Representatives Langevin (D, RI) and Harper (R, MS), **this bill proposes a 3-year, targeted and temporary Medicaid funding increase that is fiscally responsible.** Increased Medicaid funding will allow providers to comply with major unfunded rules while allowing states time to include these new rules in their budget planning process. Additionally, the bill updates language referring to individuals with IDD in the Social Security statute that is antiquated.