



1201 15th Street NW
Suite 350
Washington, DC 20005
Phone 202-898-2578
Fax 202-898-2583
www.nasuad.org

May 14, 2014

The Honorable Thomas E. Perez
Secretary
U.S. Department of Labor
200 Constitution Ave, NW
Washington, DC 20210

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Maryland

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Dear Secretary Perez,

On behalf of the National Association of States United for Aging and Disabilities (NASUAD) and our member states, we respectfully request that the Department of Labor delay the effective date of the final rule, "Application of Fair Labor Standards Act to Domestic Service" (RIN 1235-AA05). NASUAD represents the nation's 56 state and territorial agencies on aging and disabilities. Each of NASUAD's members oversees the implementation of the Older Americans Act, and many serve as the operating agency for Medicaid home and community-based services (HCBS) waivers that serve older adults and individuals with disabilities. These programs will be significantly impacted by the provisions of the final rule.

We appreciate and commend the Department of Labor (DOL) for the collaborative process they have undertaken during the implementation of this rule. We also thank the Department and your staff for engaging in dialogue with the states to identify areas of concern and confusion, and to develop guidance regarding the rule. We recognize that DOL has provided an unprecedented period of time between the regulation's publication and the effective date. However, at this time, there remain a number of outstanding items where states are awaiting further guidance before they can begin formal planning and implementation. Most significantly, DOL has not yet issued guidance regarding Third Party Employers and Joint Employment arrangements. The exact nature of this forthcoming guidance will likely have significant ramifications on the way that states design and pay for certain home and community-based programs, particularly for programs with consumer-directed options. States will need time to assess the potential impact on internal policies, information technology, and expenditures.

The implementation of these rules will likely require new policies, new tools for authorizing services and tracking hours, new IT systems, and new procedures at the state and local level. Additionally, since much of the application of these rules will be determined on a case-by-case basis, compliance will place new burdens on providers and, particularly, on consumers who are the designated employer. All of these changes will require significant outreach and education for state administrative staff, providers, and consumers on the new requirements.

As state legislative sessions are coming to a close, or, in some cases, have already ended, we believe that many states will not be able to appropriately address legislative changes that will likely be necessary based on future guidance. As such, we request that DOL delay the implementation of the rule by 18 months. This timeframe will align with the beginning of the fiscal year for the majority of states, and will provide more time to modify IT systems, adjust appropriations, and make changes to state policies and procedures. It will also allow states to effectively educate consumers and providers on the new rules and on the tools necessary to ensure compliance.

NASUAD recognizes and applauds the effort that the Department of Labor has put into engaging your partners at the Department of Health and Human Services and in State governments. We appreciate your consideration of this request, and we look forward to continuing this partnership and to working with you to implement the standards in the most effective and efficient way possible. We believe that delaying the implementation date will help all of the impacted parties, including the States, the Federal government, providers, and consumers, ensure that the requirements are implemented properly. Please feel free to contact Damon Terzaghi of my staff at (202) 898-2578 or dterzaghi@nasuad.org if you have further questions.

Sincerely,



Martha A. Roherty
Executive Director

cc:

Cynthia Mann, Deputy Administrator and Director, Center for Medicaid and CHIP Services,
Centers for Medicare & Medicaid Services