

SECRETARY OF LABOR
WASHINGTON, D.C. 20210

MAR 20 2015

Dear Governor:

I am writing to remind you and your staff of the importance of thoughtfully preparing for compliance with the federal minimum wage and overtime law in your State's home care programs. This is a crucial issue that affects many of your State's citizens, including low-wage workers, seniors, and individuals with disabilities, that could require an adjustment to your State's budget or programs, and that calls for careful attention to the legal rights afforded to individuals with disabilities.

The U.S. Department of Labor issued a Final Rule in October 2013 that requires the payment of minimum wage and overtime compensation to most home care workers, including most of those whose services are provided through Medicaid-funded programs, especially Home and Community-Based Services offered through consumer-directed models. We were proud to take this step toward ensuring that these workers enjoy the basic wage protections they deserve. Raising wages will make a meaningful difference in the lives of workers who, despite providing demanding and increasingly skilled services that merit admiration and fair pay, often live in poverty. Moreover, improving the jobs in this rapidly growing industry will also reduce high turnover rates, improve the continuity and quality of care provided, and help to develop a skilled workforce. These effects, beneficial for workers and consumers, are especially important because the demand for home care workers is projected to increase by fifty percent over the next decade.

As you likely know, the Home Care Final Rule is the subject of ongoing litigation. Before and just after the Rule's January 1, 2015 effective date, a Federal district court judge held that the Rule's major provisions were invalid. The government has filed an appeal asking the U.S. Court of Appeals in the District of Columbia to overturn the lower court orders. The appeal will be fully submitted in early May, after which the court could issue an opinion at any time. I know that you might currently be in the midst of budget planning, and that you may not have another budget cycle before the outcome of the lawsuit is clear. Because successfully attending to the important principles of treating both workers and recipients of home care services with dignity requires thoughtful planning, I ask that you take steps now toward implementation to ensure that you will be prepared if the Department prevails in this case.

Over the last year and a half, my staff and I have had more than 100 conference calls with representatives from every state to discuss plans for and answer questions about compliance with the Final Rule. As part of these engagements, we have stressed two key implementing principles – protecting the rights of workers *and* supporting the individuals who rely on home care services by not interfering with the models of care that allow them to stay in their homes and communities. These twin principles guide our implementation – as they should guide yours – because fair wages for home care workers and independent living are not mutually exclusive. In fact, they build on one another, because a qualified, stable workforce is critical to ensuring that seniors and individuals with disabilities can remain in their homes.

Effective implementation of the rule also includes compliance with states' obligations under the Americans with Disabilities Act and the Supreme Court's *Olmstead* decision. We explained in the Final Rule itself that in order to comply with these obligations, "public entities must have in place an individualized process – available to any person whose service hours would be reduced as a result of the Final Rule – to examine if the service reduction would place the person at serious risk of institutionalization and, if so, what additional or alternative services would allow the individual to remain in the community."

More recently, as part of our collaborative efforts with our federal partners, the U.S. Department of Justice and the U.S. Department of Health and Human Services jointly issued a "Dear Colleague" letter, available at http://www.ada.gov/olmstead/documents/doj_hhs_letter.pdf, that addresses those obligations. As you consider possible operational or budgetary changes to your State's home care programs in order to come into compliance with the minimum wage and overtime compensation requirements mandated by the Home Care Final Rule, it is imperative that you consider the information in this letter. The letter emphasizes that "states need to consider reasonable modifications to policies capping overtime and travel time for home care workers, including exceptions to these caps when individuals with disabilities otherwise would be placed at serious risk of institutionalization." Inflexible state caps on the number of hours personal assistants may work could violate the ADA and *Olmstead* if they place individuals with disabilities at serious risk of institutionalization or segregation.

I am confident that you and your staff can develop an implementation plan that affords due respect for workers, seniors, and individuals with disabilities. I stand ready to assist you as you do so, and my staff continues to be available to provide technical assistance to your health, disability, budget, legal, labor, aging, and other offices involved in this effort.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom E. Perez', written in a cursive style.

THOMAS E. PEREZ