



November 2, 2023

Board of Directors

Dimitri Cavathas, President
Lower Shore Clinic

Johnnie Fielding, President-Elect
Upper Bay

Wunmi Fadiora-Adediji, Treasurer
Hope Health System

Anne Peyer, Secretary
Cornerstone Montgomery

Charles Anderson
University of Maryland

Johnathan Davis
Baltimore Crisis Response

Ann Ebhojiaye
Community Residences

Kevin Keegan
Catholic Charities

Holly Ireland
Crossroads Community

Kylie McCleaf
Jewish Social Services Agency

Kim Morrill
Aspire Wellness Center

Victoria Morgan
Partnership Development Group

Laura Mueller
WIN Family Health

Sheryl Neverson
Volunteers of America

Jennifer McGlothlin- Renault
Arrow Child & Family Ministries

Jeff Richardson
Sheppard Pratt

Karishma Sheth
EveryMind

Donald Webster
Family Service Foundation

Wage and Hour Division
U.S. Department of Labor
Attention: RIN 1235-AA39

Submitted via regulations.gov

RE: Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees (RIN 1235-AA39)

On behalf of the Community Behavioral Health Association of Maryland (CBH), thank you for the opportunity to comment on the Department of Labor's (DOL) proposed rule, Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees (RIN 1235-AA39) ("the Proposed Rule"), at 88 Federal Register ("FR") 62152 (September 8, 2023).

CBH is the leading voice for community-based providers serving the mental health and addiction needs of vulnerable Marylanders. Our 110 members serve the majority of those accessing care through the public behavioral health system. CBH members provide outpatient and residential treatment for mental health and addiction-related disorders, day programs, case management, Assertive Community Treatment (ACT), employment supports, and crisis intervention.

CBH's members comprise the backbone of the public mental health and substance use disorder safety net in Maryland, serving low-income and uninsured populations whose cost of care is covered primarily by Medicaid or state and local general funds. Medicaid reimbursement rates and grant funding levels are set by states, counties, or other third-party entities—often at levels so low that the costs to provide services are not covered, forcing providers to combine funding from multiple sources to keep their doors open and continue serving community members in need. Further contributing to a harsh and complex funding environment is the variation in Medicaid reimbursement rates for mental health services across states resulting in a pay differential of fivefold between the highest and lowest paying states.¹

¹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10125036/>

CBH thanks DOL for attending to the important issue of raising wages for lower-paid American workers. Specific to the members we represent, we note that undervaluation of mental health and substance use treatment provider services has long been a barrier to care and contributes to our nation's current workforce shortage and crisis. In a 2022 report, the Government Accountability Office (GAO) cites low reimbursement rates for mental health services as a contributing factor to service access challenges.² And research has shown that increasing reimbursement rates for providers helps to improve access to care for beneficiaries.³

As currently written, the proposal does not consider the implications of current health care funding for safety net services. Thus, the current proposal would have a potentially devastating effect on health care organizations serving low-income individuals with serious and persistent mental illnesses and substance use disorders, resulting in the need for service cutbacks and program closures. In the recent CY2024 Physician Fee Schedule proposed rule, CMS acknowledges that behavioral health provider rates have been systemically undervalued.⁴ We agree that modernizing and paying an appropriate wage is critical and we believe that the proposed solution must be comprehensive, taking into account the barriers that exist in realizing the desired outcomes.

As a result of the harsh funding environment for mental health and substance use disorder services, described above, provider organizations have limited ability to raise new revenue in response to increased costs of doing business. DOL's proposal to increase the overtime pay exemption threshold to \$55,068 annually for full-time workers would place a restrictive burden on organizations providing critical and lifesaving services that are already struggling to keep their doors open. For example, community mental health counselor salaries can vary widely, and current data demonstrate a national average salary of \$50,786; community mental health counselors in states in the South Census Region largely make an average salary that is lower compared to the national average.⁵ Thus, the proposed threshold would likely have a disproportionately negative impact on organizations providing safety net mental health and substance use disorders in the South Census Region, subsequently exacerbating existing health disparities and care access as the South Census Region has been found to have states with some of the higher rates of adults with mental illness and some of the lowest rates of access to care.^{6,7}

² <https://www.gao.gov/assets/gao-22-104597.pdf>

³ <https://www.nber.org/bh-20193/increased-medicare-reimbursement-rates-expand-access-care>

⁴ Medicare and Medicaid Programs; CY 2024 Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment and Coverage Policies; Medicare Shared Savings Program Requirements; Medicare Advantage; Medicare and Medicaid Provider and Supplier Enrollment Policies; and Basic Health Program, 88 FR 52320 (proposed August 7, 2023).

⁵ <https://www.salary.com/research/salary/recruiting/community-mental-health-counselor-salary>

⁶ https://www.samhsa.gov/data/sites/default/files/report_3190/ShortReport-3190.html

⁷ <https://mhanational.org/issues/2022/ranking-states>

While CBH understands the need for simplified methodology that is transparent as DOL proposes (88 FR 62167), we fear that taking a sweeping approach in addressing low-wage industries, as the Department describes (88 FR 62167), does not take into account the real regulatory and statutory barriers that exist in funding wages for mental health and substance use disorder provider services.

Moreover, the proposed automatic updates to salary level tests (88 FR 62179), is also not responsive to the funding environment for safety net services which may not be able to keep up with automatic updates without any ability to raise state-determined payment rates or otherwise ensure revenue increases to offset changes. Provider organizations could be squeezed more tightly with each update, and without sufficient methods to respond accordingly, many could be forced to close programs and lay off staff, resulting in fewer clients served and reduced access to critical mental health and addiction services for individuals in need.

Finally, the 60-day effective date after publication of the final rule (88 FR 62180), if finalized as written, may not give employers enough time to plan responsive action that would ensure services can continue to be provided and paid for. Given the extensive impact that this proposal would have on behavioral health organizations providing safety net mental health and substance use disorder services, a 60-day window to respond to and raise additional funds where it is projected to be needed in order to maintain service access for beneficiaries is not sufficient nor feasible.

In sum, CBH agrees that modernizing and updating the Fair Labor Standards Act exemption regulations are critical and ensuring adequate and appropriate wages for mental health and substance use service providers is paramount. However, meaningful changes that do not inadvertently worsen access to care for safety net mental health and substance use disorder treatment services are vital. The way behavioral health providers' payment rates are set and how safety net health care services are funded must be considered. The untenable financial pressure resulting from the proposed changes would force provider organizations into disastrous service reductions and program closures.

We strongly urge DOL to re-examine the proposed new salary threshold in a manner that considers the unique pressures on health care providers as well as regional variations in the cost of living and average salary for mental health and substance use providers. We further urge DOL to work with other agencies and Congress on this issue in the face of a workforce shortage and systemic undervaluation of services that plays a critical role in our country's ongoing mental health and substance use crisis.

DOL Comments
November 2, 2023



CBH appreciates the opportunity to provide these comments. We welcome any questions or further discussion about the recommendations described here. Please contact me at shannon@mdcbh.org. Thank you for your time and consideration.

Sincerely,

Shannon Hall
Executive Director