



JOHN A. KITZHABER, MD  
Governor

August 14, 2014

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

Dear Secretary Perez,

Pursuant to our telephone conversation of July 29, I am writing today to request a delay in the effective date of the final rule, "Application of Fair Labor Standards Act to Domestic Service" (RIN 1235-AA05). Oregon's operation of robust in-home programs that serve seniors and people with disabilities has resulted in our State being disproportionately affected by the implications of this rule.

The impact of this rule change in Oregon is estimated at approximately \$60M (\$18M state general fund) in the current fiscal year, \$242M over the upcoming two-year period (\$74.2 M state general fund). Oregon, like many other states, adopts budgets on a biennial basis. Oregon's current budget cycle runs from July 1, 2013-June 30, 2015. As a result, additional costs of roughly \$18 M in state general funds associated with the implementation of these regulations on the current timeline have not been incorporated into the current budget.

Outside of the fiscal issues, there are considerable policy implications associated with these rules. I recognize that the Department of Labor has provided an unprecedented period of time between the regulation's publication and effective date. Unfortunately, the time provided is still insufficient to make and implement all of the necessary policy decisions.

Oregon operates a consumer-directed Medicaid in-home services program that is designed to meet the needs of the consumers it serves. Deliberating potential programmatic challenges in light of these values and the regulations is challenging. Oregon's in-home program has remained cost effective in comparison to institutional care. Consumers with complex needs usually employ only one caregiver and receive compensation for approximately 380 hours per month. We are attempting to develop policy through consensus that simultaneously values choice and self-direction, minimizes fiscal impact, and avoids unintended consequences of institutionalization. These issues quickly become quite personal for consumers.

Additionally, Oregon's In-Home program serving individuals with intellectual and developmental disabilities (I/DD) is dominated by family caregivers. Implementation of the new regulations could require that families now have caregivers from outside the family come into the home to provide care. This is incredibly disruptive to clients. Additionally, I/DD providers have created Supported Living programs and roommate models based on the companionship exemption. These programs will be difficult to maintain under the new regulations due to the potential increased cost, and certainly will not enhance either the quality of care or the quality of life of these individuals as they seek to live independently in their communities.

To summarize, this tight timeline has not allowed Oregon to engage in thoughtful and deliberative analysis of policy changes with affected consumers, providers, the Executive Branch and the Legislative Branch. Once policy is decided, the implementation effort is massive. An illustration of some of the implementation work that has not yet started:

- Collective bargaining over the impacts of policy changes.
- Modification to our Medicaid state plans and waivers.
- Modification to existing legacy I.T. systems.
- Procurement of new I.T. systems to manage time keeping.
- Modification of administrative rules (Oregon regulations).
- Training of approximately 1,200 staff.
- Training of approximately 20,000 in-home Providers.
- Training of approximately 22,000 in-home consumers.

Finally, Oregon appreciates the intent of these regulations to attempt to improve wages, benefits, and working conditions for individuals providing direct in-home care. As I conveyed in our call, Oregon has developed strong collective bargaining relationships with wages at \$13 per hour for most providers, and our live-in program is set up to meet the needs of clients to live independently. I don't believe that Oregon's practices and relationships were the target the department had in mind.

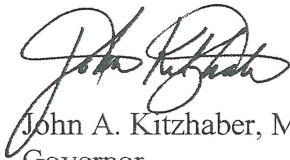
To ensure compliance with the regulations through a measured and disciplined implementation process, Oregon respectfully requests either:

- an 18-month delay in the effective date of the regulation or
- an 18-month enforcement moratorium or
- waivers that recognize states with robust programs that provide good wages and benefits for workers and independent choices for clients.

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Thank you for considering this request. If you have questions, please feel free to contact Erinn Kelley-Siel, Director of Oregon's Department of Human Services at 503-945-7001.

Sincerely,

A handwritten signature in black ink, appearing to read "John Kitzhaber", written over a horizontal line.

John A. Kitzhaber, M.D.  
Governor

DS:gg

c: Oregon Congressional Delegation  
Senator Richard Devlin, Co-Chair, Ways and Means Committee  
Representative Peter Buckley, Co-Chair, Ways and Means Committee