



April 22, 2014

The Honorable John Pérez
Speaker of the Assembly
State Capitol
Sacramento, CA 94249

The Honorable Darrell Steinberg
Senate President Pro Tempore
State Capitol
Sacramento, CA 95814

The Honorable Toni Atkins
Speaker-Elect of the Assembly
State Capitol
Sacramento, CA 94249

The Honorable Kevin de León
Senate Pro Tempore-Elect
State Capitol
Sacramento, CA 95814

Dear Speaker Pérez, Senate President Pro Tem Steinberg, Speaker-Elect Atkins, and Pro Tem-Elect de León:

I am writing to express PHI's grave concern about Governor Brown's proposal to cap hours for personal assistants in the In-Home Services and Supports (IHSS) program at no more than 40 hours per week, without exception, in order to avoid the cost of overtime compensation. This rigid response, to new U.S. Department of Labor (DOL) regulations under the federal Fair Labor Standards Act, will harm both consumers and workers. We urge the legislature to reject the Governor's proposal and appropriate sufficient funds to pay overtime compensation to IHSS workers.

PHI is a national organization that works to improve the lives of people who need home or residential long-term supports and services (LTSS) – and the lives of the direct-care workers who provide those services. PHI's work is grounded in the philosophy that quality care for LTSS consumers is inextricably connected to quality jobs for direct-care workers.

PHI advocated for and strongly supports the new DOL requirements based on the evidence laid out in our in-depth report, [Caring in America](#). The requirements, which finally grant the same wage and hour protections to home care aides that the majority of U.S. workers already receive, are essential. Not only does the new DOL rule afford workers the respect and wages they deserve, but it also provides a foundation on which to build a stronger, more stable home care workforce that can meet our nation's ever-growing need for LTSS.

Indeed, today, more than 10 million Americans need LTSS. This number will jump to 12 million by 2020, and nearly triple to 27 million by 2050. The vast majority of these individuals prefer to



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receive LTSS in their homes. Enacting policies, such as Governor Brown's proposal, to circumvent the DOL rule is counterproductive to building the workforce necessary to meet these burgeoning needs.

In California, IHSS currently saves taxpayers hundreds of millions of dollars by providing LTSS to approximately 440,000 individuals who are aged, blind or have disabilities, allowing them to live safely at home rather than in more expensive nursing home settings. [PHI's analysis of IHSS costs and hours of care](#) shows that, even if an IHSS worker were to receive overtime pay when working the maximum 283 hours a month for a single consumer, home care for that consumer would still cost 25 percent less than nursing home care.

As this analysis demonstrates, the real threat to California's budget and families is not the DOL's new requirements but rather Governor Brown's proposed response. Adopting the Governor's inflexible cap on hours could make it impossible for some IHSS consumers to continue to live at home, which would exact a devastating but avoidable financial and human toll on Californians, especially individuals receiving care and their families.

One of the greatest challenges in providing LTSS to individuals in their homes is high turnover among home care aides. Industry turnover rates are estimated somewhere between 40 and 60 percent annually. Recruiting and training replacement workers is expensive (estimated at a direct cost of \$2,500 per worker), costing the industry, states, and taxpayers billions of dollars each year.

The IHSS program's heavy reliance on care provided by family caregivers does not negate this serious problem. According to [figures released by AARP](#), our nation faces a crisis as a result of the decreasing availability of family caregivers. IHSS will need to grow its home care workforce in the future—and the new federal rule, by making these jobs more attractive, can help pave the way. Unfortunately, Governor Brown's short-sighted proposal ignores this imperative.

PHI believes that overtime hours can and should be managed to reduce worker exhaustion and injuries, minimize overtime costs, and create a bigger "back-up pool" of workers; however, rather than implementing a universal, inflexible cap on overtime, California must balance the needs of consumers, workers, and taxpayers. In some cases, splitting a high number of hours between two workers is a good solution. In other cases, the consumer's disability and/or family situation may require overtime pay. Most importantly, decisions about how much care a consumer receives and who provides it should be based on a person-centered assessment of the individual's needs.

Furthermore, Governor Brown's proposal assumes that somewhere between 30,000 –50,000 new workers will be willing and available to do this work if overtime is prohibited. Although the extension of minimum wage and overtime protections to the home care workforce is an essential first step to stabilizing the workforce and attracting more individuals to the profession, recruitment and retention remain a challenge. It is possible that the state will be unable to recruit enough additional workers to completely avoid the payment of overtime costs. In rural California, the only available person to provide care may be a family member. The state must

take a more thoughtful approach in order to ensure that consumers don't go without the care they need. Indeed, the state is responsible for setting wage rates and policies that attract enough home care workers to deliver all of the services for which the individual qualifies.¹

As a first step to developing a more reasoned approach, California must analyze the number of IHSS workers who currently work more than 40 hours per week for one or more recipients. PHI's analysis shows that only about 10 percent of IHSS consumers are authorized for hours in excess of 40 hours per week—a figure that parallels national data that shows only about 10 percent of home care aides work overtime hours.

The Brown administration should calculate and release California's workforce data—including the extent of overtime and part-time hours for IHSS workers—as a first step toward well-informed crafting of policy. Furthermore, the Legislature must consider any action in the context of the 1999 U.S. Supreme Court Olmstead decision, in which it confirmed the right of people with disabilities to receive services in the least restrictive setting.

Specifically, DOL recently issued guidance on the new regulation that refers to the Olmstead decision, saying that if a state “puts in place new policies that have the impact of reducing or otherwise disrupting a consumer's services, the state must ensure that the policy does not place the affected individuals at serious risk of institutionalization. This could include making exceptions to the policy or providing alternative services to individuals who otherwise would be placed at risk of institutionalization.” Insofar as consumers' homes and care are disrupted by Governor Brown's proposed overtime ban, and consumers face otherwise unnecessary placement in a nursing home, the state will be defying the Olmstead mandate and violating their civil rights.

Finally, California is experiencing higher revenues than projected in the 2013-14 budget, with an additional \$6.3 billion in unanticipated revenue from the 2012-2013 budget through the 2014-2015 budget. For all the reasons enumerated above, PHI believes that, to the extent that the new DOL rule results in increased costs for payment of reasonable overtime compensation, the surplus should be used to meet this cost.

Please don't hesitate to contact us if we can be of assistance.

Sincerely,



Jodi M. Sturgeon
President

¹ Ball et al v. Biedess et al 00-cv-67, United States District Court for the District of Arizona.
<http://www.acdl.com/ball.html>