



## ANCOR Leadership Conference: Federal Legislative Update

### Department of Labor Overtime Rule

Presenting on the Department of Labor proposed Overtime Rule was Tammy McCutchen and MaryBeth Musumeci. Tammy is a Principal at Littler Mendelson P.C. and former Administrator of the U.S. Department of Labor's Wage and Hour Division and primary architect to the 2004 revisions to the overtime exemption regulations. MaryBeth serves as Associate Director at the Kaiser Commission on Medicaid and the Uninsured.

The general takeaway from this presentation was that the salary level set forth in the proposed rule of \$47,892 or 40% of weekly earnings is too high. This is in line with the comment that ANCOR submitted to the DOL, where they recommended that the salary level be set at the 15% of weekly earnings, or \$30,472. This salary level would be consistent with methodology used in 2004 and 1958, the last two times that revisions were made.

Looking ahead, ANCOR will be mounting a large-scale media campaign focusing on the impact of the proposed rule. This campaign will be launched by next spring, with the understanding the rule may be finalized by the end of spring. You can look for more information about this in the coming months.

### HCBS Provider Tax

The Home and Community Based Services Provider Tax would allow states to tax Medicaid providers. This would be a tax on services or items and many view this as a legitimate way to increase resources and bring more money into the system. Over thirty states already have a similar tax on ICF services; in Minnesota it's called a surcharge.

Presenting on this issue at the conference was a panel of experts including:

- Barbara Edwards- *Former Director of the Disabled and Elderly Health Programs Group at CMS*
- Frederick Isasi- *Director of Health Division at the National Governor's Association*
- Joy Johnson Wilson- *Director of Health and Human Service Policy for the National Conference of State Legislators*
- Sarah Nolan- *Associate Director of Health Policy for SEIU*

The panel provided insight on potential roadblocks to implementing such a tax, the federal government views this as an abuse on the state level. They also shared some potential positive impacts, such as more integrated care and the ability to bring a revenue source with you to solve a problem within the system.

## HCBS Rule

Sharon Lewis, the Principal Deputy Administrator at the Administration for Community Living presented on the HCBS Rule. The Administration for Community Living serves as the central hub for disability programs.

The HCBS Rule is intended to serve as a catalyst for widespread stakeholder engagement on ways to improve how individuals experience daily life. There is no HHS initiative to shut down particular industries, provider or service types, CMS feels that everyone can transition into a community based setting based on the rule definition successfully.

To-date, no state has had its Statewide Transition Plan (STP) approved. CMS has been issuing Clarifications or Modifications required for Initial Approval (CMIA) letters. Customized letters will be sent out to each state, however some general trends that CMS is seeing include:

- Many states have not completed initial systemic assessments.
- Many states have not identified the specific policies, rules, licensure or certification process to be reviewed, the settings they apply to and/or the qualities of HCBS that they address.
- Many states have not completely identified the specific settings to be included in the assessment, the number of such settings, or the number of individuals served.

The next step will be state compliance assessment. This should include:

- Review of rules, regulations, policy, and the administrative foundation for a state's system.
- Site specific evaluations of individual settings using the federal requirements.
- Validation of reviews/assessment through another entity/process.
- State determines status of each service.

The Department of Human Services in Minnesota has a working stakeholder group focused on these next steps. ARRM COO Barb Turner and Devin Nelson of Habilitative Services, Inc. are members of that group.

CMS is also encouraging states to look at their plan for Heightened Scrutiny. As a reminder, any setting that has the effect of isolating individuals will be presumed to be institutional. In these instances, a state may submit evidence to overcome the presumption and demonstrate how the setting does meet the HCBS standards set forth. CMS recently released a [FAQ](#) on Heightened Scrutiny.

The timeline set by CMS of March, 2019 for all states to be in compliance is still in effect. The longer it takes states to finalize their transition plans the shorter amount of time providers will have to come into compliance. ANCOR and ARRM will continue to monitor developments. You can find more information on the HCBS Rule at <http://hcsadvocacy.org/state-resources/minnesota/>.