[Date]

Division of Medical Services
Program Development and Quality Assurance
P.O. Box 1437 (Slot S295)
Little Rock, Arkansas 72203-1437

To Whom it May Concern:

I am writing to express [Organization]’s grave concern about the proposal by the Division of Medical Services of the Arkansas Department of Human Services to cap hours for personal assistants in the Alternatives for Adults with Physical Disabilities Waiver (AAPD) program at no more than 40 hours per week, without exception, in order to avoid the cost of overtime compensation, and to limit each worker to providing services to only one consumer per day to avoid compensating workers for travel time. This rigid response to new U.S. Department of Labor (USDOL) regulations under the federal Fair Labor Standards Act, will harm both consumers and workers. We urge you to reconsider this approach and instead budget for sufficient funds to pay overtime compensation to attendants in this program.

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 USDOL 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 Arkansas’ ever-growing need for long-term services and supports (LTSS).

Indeed, today, more than 150,000 Arkansans need LTSS. This number will jump by 50 percent by 2030, and 80 percent by 2060. The vast majority of these individuals prefer to receive LTSS in their homes. Enacting policies, such as the Division of Medical Services’ proposal, to circumvent the USDOL rule is counterproductive to building the workforce necessary to meet these burgeoning needs.

As you know, the LTSS provided to approximately 2,200 individuals with disabilities through the AAPD program, allows them to live safely at home rather than in more expensive nursing home settings. The real threat to Arkansas’ budget and families is not the USDOL’s new requirements but rather the Division of Medical Services’ proposed response. Adopting an inflexible cap on hours and limiting workers to assisting only one consumer per day could make it impossible for some consumers in this program to continue to live at home. This would be a devastating outcome for the Arkansans who rely on these services and their families, and *it can be avoided* if, instead, Arkansas budgets for sufficient funds to pay overtime compensation to attendants in this program.

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.

Rather than implementing a universal, inflexible cap on overtime and prohibiting attendants from providing services to more than one consumer per day, Arkansas 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, the Division of Medical Services’ proposal assumes that a sufficient number of new workers will be willing and available to do this work immediately if overtime is prohibited and workers are limited to only one consumer per day. 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 – exacerbated by growing demand (demand for [personal care attendants in Arkansas](http://phinational.org/policy/states/arkansas/) is projected to grow by 28 percent by 2020). It is possible that the state will be unable to recruit enough additional workers to completely avoid the payment of overtime and travel time costs. In rural Arkansas, the only available person to provide care may be the one worker already providing it. The state must take a more thoughtful approach in order to ensure that consumers don’t go without the LTSS they need, and that its policy decisions do not cause a shortage of home care workers. Indeed, the United States District Court [found](http://www.acdl.com/ball.html) that 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.

As a first step to developing a more reasoned approach, the Division of Medical Services should calculate and release Arkansas’ workforce data – including the extent of overtime and part-time hours and travel time between consumers for attendants in this program. The Division should then share this information with stakeholders, including consumers and workers, to find solutions that avoid disruption of care and strengthen Arkansas’s system of LTSS.

Moreover, the Division 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, [USDOL guidance](http://www.dol.gov/whd/opinion/adminIntrprtn/FLSA/2014/FLSAAI2014_2.htm) on the new regulation refers to the Olmstead decision, saying “If a public entity as a joint employer of its home care workers 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. See id. This could include making exceptions to the policy or providing alternative services to individuals who otherwise would be placed at serious risk of institutionalization. Id. (citing October 22, 2012 [Letter from DOJ and OCR to Washington State](http://www.ada.gov/olmstead/documents/ltr_gov_gregoire.docx)); accord M.R. v. Dreyfus, 663 F.3d 1100 (9th Cir. 2011) (finding that a state violates the ADA and Olmstead when policies place individuals at serious risk of institutionalization).” Insofar as consumers’ homes and care are disrupted by the Division of Medical Services’ proposed overtime ban and limits on the number of consumers per worker per day, and consumers face otherwise unnecessary placement in a nursing home, the state will be defying the Olmstead mandate and violating their civil rights.

Sincerely,

[Organization]