

SECRETARY OF LABOR
WASHINGTON, D.C. 20210

SEP - 2 2015

Dear Governor:

On August 21, 2015, the U.S. Court of Appeals for the District of Columbia Circuit issued a unanimous decision upholding the validity of the U.S. Department of Labor's Home Care Final Rule that requires the payment of minimum wage and overtime compensation to most home care workers. This decision is vital to nearly two million home care workers, who will now qualify for minimum wage and overtime protections. Although the court's opinion does not take effect immediately and the timeline for issuance of the court's mandate depends on various factors, I am writing to again encourage your State to thoughtfully prepare for compliance now.

As you know, this is a crucial issue affecting many of your State's citizens, including low-wage workers, seniors, and individuals with disabilities, that could require an adjustment to your State's budget or programs as well as careful and timely attention to the legal rights afforded to individuals with disabilities. Throughout this process, we have stressed two key implementing principles – protecting the rights of workers *and* supporting the individuals who rely on home care services by not interfering with the innovative models of care that allow them to stay in their homes and communities. These twin principles guide our implementation – as they should guide yours – because fair wages for home care workers and independent living are not mutually exclusive. In fact, they build on one another, because a qualified, stable workforce is critical to ensuring that seniors and individuals with disabilities can remain in their homes. Although there may be additional costs that accompany the provision of minimum wage and overtime protections to home care workers, by professionalizing this critical workforce we will reduce the costs associated with high turnover in the home care industry, avoid the high cost of unnecessary institutional care and ensure that our citizens will be able to remain fully engaged in their own homes and communities.

Thoughtful implementation of the rule also includes compliance with states' obligations under the Americans with Disabilities Act and the Supreme Court's *Olmstead* decision. We explained in the Final Rule itself that in order to comply with these obligations, "public entities must have in place an individualized process – available to any person whose service hours would be reduced as a result of the Final Rule – to examine if the service reduction would place the person at serious risk of institutionalization and, if so, what additional or alternative services would allow the individual to remain in the community."

As part of our collaborative efforts with our federal partners, the U.S. Department of Justice and the U.S. Department of Health and Human Services jointly issued a "Dear Colleague" letter, available at http://www.ada.gov/olmstead/documents/doj_hhs_letter.pdf, that addresses those obligations. As you consider possible changes to your State's home care programs in order to come into compliance with the minimum wage and overtime compensation requirements

mandated by the Home Care Final Rule, it is imperative that you consider the information in this letter. The letter emphasizes that “states need to consider reasonable modifications to policies capping overtime and travel time for home care workers, including exceptions to these caps when individuals with disabilities otherwise would be placed at serious risk of institutionalization.” Inflexible state caps on the number of hours personal assistants may work could violate the ADA and *Olmstead* if they place individuals with disabilities at serious risk of institutionalization or segregation.

Since publication of the Home Care Final Rule on October 1, 2013, nearly two years ago, the Department has led an unprecedented implementation program to help states prepare for compliance, including offering an extensive and individualized technical assistance program, providing a 15-month period before the effective date to aid compliance, and adopting a time-limited non-enforcement policy (described in detail on our website at http://www.dol.gov/whd/homecare/non-enforcement_policy.htm). I am confident that you and your staff can implement this Rule in a manner that affords due respect for workers, seniors, and individuals with disabilities. I continue to stand ready to assist you as you do so.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom E. Perez', written in a cursive style.

THOMAS E. PEREZ