

United States Senate

WASHINGTON, DC 20510

February 5, 2018

COMMITTEES:
APPROPRIATIONS
FOREIGN RELATIONS
SELECT COMMITTEE ON INTELLIGENCE
SMALL BUSINESS AND ENTREPRENEURSHIP
SPECIAL COMMITTEE ON AGING

The Honorable R. Alexander Acosta
Secretary
U.S. Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

Dear Secretary Acosta:

As you know, the Obama Administration reversed a decades-long precedent exempting certain health care professionals from overtime rules under the Fair Labor Standards Act (FLSA). Specifically, the prior administration did this through the issuance of informal guidance on joint employment and independent contractors. This reversal would have created additional burdens and limitations on caregivers, ultimately threatening their ability to provide care to those in need.

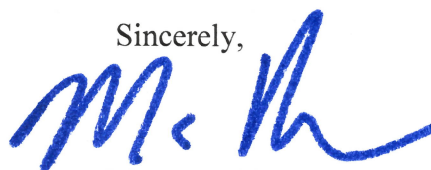
During the past year, I have continued to express my opposition to the previous administration's unilateral reversal of longstanding policies and its potential to harm vulnerable patients in need of care. I appreciate the commitment you and your department have shown to review several rules that unnecessarily eliminate jobs or impose costs that exceed benefits. I share the concerns you expressed in response to my questions during your testimony before the Senate Appropriations Committee that Americans in need should have access to affordable, high quality care that enables them to remain in their homes and communities longer.

To that end, I applaud your announcement on June 7, 2017 to withdraw the Obama Administration's informal guidance on joint employment and independent contractors. However, I have strong concerns with reports that department employees are still using the Obama Administration's interpretation of independent contractors under the FLSA with respect to home health registries. Stakeholders in my state have reported that personnel within the Wage and Hour Division and Solicitor's office were still applying the prior administration's guidance on joint employment and independent contractors months after you withdrew the guidance.

I respectfully request for you to provide additional direction to all divisions within the department outlining the provisions of the withdrawn guidance related to joint employment and independent contractors. Additionally, I ask that you examine enforcements and investigations related to these matters since June 2017 and take corrective action if it is determined that the department was wrongfully using the now-withdrawn guidance.

Thank you again for your leadership and your commitment to ensuring patients continue to have access to affordable, quality home health care services. I look forward to working with you on this important matter.

Sincerely,



Marco Rubio
U.S. Senator