



American Pharmacists Association[®]

Improving medication use. Advancing patient care.

March 2, 2016

Mary Ziegler, Director
Division of Regulations, Legislation, and Interpretation
Wage and House Division
U.S. Department of Labor, Room S-3502
200 Constitution Avenue, N.W.
Washington, DC 20210

CC: Molly Conway, Labor and Pensions Counsel
Senate Committee on Health, Education, Labor, and Pensions

Reference: Regulatory Information Number (RIN) 1235-AA11; Docket ID: WHD 2015 0001

RE: Notice of Proposed Rulemaking; Defining and Delimiting the Exemption for Executive, Administrative, Professional, Outside Sales and Computer Employees

Dear Ms. Ziegler:

The American Pharmacists Association (“APhA”) appreciates the opportunity to provide our perspective on the Department of Labor’s Proposed Rule, Defining and Delimiting the Exemption for Executive, Administrative, Professional, Outside Sales and Computer Employees (the “Proposed Rule”). APhA, founded in 1852 as the American Pharmaceutical Association, represents more than 62,000 pharmacists, pharmaceutical scientists, student pharmacists, pharmacy technicians, and others interested in improving medication use and advancing patient care. APhA members provide care in all practice settings, including community pharmacies, physicians’ offices, hospitals, long-term care facilities, community health centers, managed care organizations, hospice settings and the uniformed services.

APhA is committed to working with the Senate Committee on Health, Education, Labor and Pensions, the Department of Labor’s Wage and Hour Divisions, and other health professionals and stakeholders to carefully support implementation of the Proposed Rule in its final form. While we support the Department of Labor’s efforts to modernize the salary and compensation levels to fully implement the Fair Labor Standards Act’s intended protections, we have concerns regarding the impact the Proposed Rule will have on certain health profession’s residency programs and the implementation timeframe.

I. Pharmacists' Education and Training Is Similar to That of Other Health Professionals

In line with the Department of Labor's history of determining exemptions based on an employee's specific job duties, as opposed to the employee's job title, APhA believes that pharmacists' professional category regarding postgraduate pharmacy education and training (residency training) should be the same as physicians.¹

Like physicians, pharmacists have to meet significant education and training requirements before being able to practice. To obtain a Pharm. D., many individuals complete three to four years of undergraduate coursework and then an additional four years in their pharmacy program with many students seeking postgraduate pharmacy education and training (residency training) upon graduation.² Additionally, pharmacists must pass state board exams to receive a license to practice. As medication experts, pharmacists satisfy a vital role along the care continuum. States have been expanding pharmacist's scope of practice to increase the services they can perform. For example, in some states, pharmacists have prescriptive authority, the ability to modify drug therapies, and order and interpret laboratory tests.

In addition to the training and education provided in schools and colleges of pharmacy, there are currently over 2000 pharmacy resident programs, including several in specialty areas such as critical care and oncology.³ Approximately 30 percent of Pharm. D. graduates seek residencies, even though they have obtained the appropriate degree for general practice. In 2014, there were 1,280 more residency applicants than available positions, which signals that pharmacy residency programs are in demand and becoming the profession's norm. Some employers make completion of pharmacy resident program an employment requirement. Funding of postgraduate pharmacy education and training programs continues to be a significant issue. Not all first year programs receive Centers for Medicaid and Medicare Services pass through funding to support this important clinical training in pharmacy practice, specifically those in community-based practice. The total costs of these community-based programs are supported by the organizations and institutions sponsoring these training programs. As there is an ongoing struggle to meet the needs of patients in the outpatient environment, providing accelerated training in these community-based practices is increasingly important.

Although wages for pharmacists participating in postgraduate pharmacy education and training (residency training) would be exempted from the requirements within the Proposed Rule if our request is adopted,⁴ we believe pharmacists participating in residency training should be categorized in the same manner as other health care professionals' residency training, such as physicians. Regarding resident programs, the Proposed Rule states, "employees engaged in internship or resident programs... qualify as exempt professionals if they enter such internship or resident programs after earning the

¹ §541.304(b) states that "the term "physicians" includes medical doctors including general practitioners and specialists, osteopathic physicians (doctors of osteopathy), podiatrists, dentists (doctors of dental medicine), and optometrists (doctors of optometry or bachelors of science in optometry)."

² Pharmacists graduating today have a Doctor of Pharmacy (Pharm.D.) degree – a post-graduate degree which requires a minimum of six years of college to complete and some programs requiring 8 years.

³ American Pharmacists Association & American Society of Health-System Pharmacists. Community-based post-graduate pharmacy education and training, presented Saturday March 5, 2016 at APhA2016.

⁴ §541.304(c) states that "Employees engaged in internship or resident programs, whether or not licensed to practice prior to commencement of the program, qualify as exempt professionals if they enter such internship or resident programs after the earning of the appropriate degree required for the general practice of their profession." Consequently, by recognizing pharmacists as physicians, pharmacist residents would likely fall under §541.304(c) and be exempt from §541.600(e) salary requirements. If pharmacists are recognized as physicians, "pharmacists" would need to be removed from §541.600(e)'s list of medical occupations that are not interpreted to qualify as the practice of law or medicine.

appropriate degree required for general practice of the profession.”⁵ Based on the aforementioned language, pharmacy residency training should be exempt because it is available to pharmacists after they have obtained appropriate degree, the Pharm. D., which is required for general practice of the profession. Pharmacy residency training is a valuable source of experience for pharmacists just as it is physicians, dentists, and optometrists and may in some cases be a prerequisite to employment. Demand for such training is growing; however, funding is limited and additional costs could threaten the viability of several residency training programs, especially if pharmacies and other sponsors do not have time to plan for these salary increases. Because pharmacists’ education and training are similar to those of physicians and other professionals, we recommend that postgraduate pharmacy education and training programs (pharmacy residency programs) be treated similarly with regard to the Proposed Rule.

II. Implementation Timeline Should Be Extended

APhA is extremely concerned about the Proposed Rule’s short implementation timeline. In addition to the impact it will have on employers generally, it will significantly impact health care organizations, companies and institutions that sponsor postgraduate pharmacy education and training (pharmacy resident programs). Without proper time to plan for salary increases, entities, many of which are community pharmacies as well as small businesses, may face budget constraints and some may be forced to discontinue these important programs that assist in training pharmacists as clinical care providers. Moreover, patients will experience the most harm resulting from reduced positions or discontinuation of residency programs as pharmacy residents help provide patients access to health care. APhA supports the goal of the Proposed Rule but believes because of the cost implications associated with it, implementation should be delayed significantly to allow for proper budget planning so as not to disrupt patient care.

Thank you for your leadership and work on this issue. As noted above, we commend the Department of Labor for its diligent response to the President’s efforts to pay employees fair and reasonable wages. We look forward to supporting your efforts and working with you as the Proposed Rule is finalized. If you have any questions please contact, Jenna Ventresca, Associate Director for Health Policy, by email jventresca@aphanet.org or phone (202) 558-2727.

Sincerely,



Thomas E. Menighan, BSPHarm, MBA, ScD (Hon), FAPhA
Executive Vice President and CEO

⁵ §541.600(e) lists professional employees that are exempt from the section’s salary requirements, but creates a new term “medical occupations” to which the exception to the salary or fee requirement does not apply. §541.600(e) distinguishes various health care professionals (i.e., pharmacists, nurses, therapists, technologists, sanitarians, dietitians, social workers, psychologists, psychometrists) from physicians based on whether the profession “service[s] the medical profession.”