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September 21, 2011

The Honorable Hilda L. Solis
Secretary
U.S. Department of Labor
200 Constitution Avenue, N.W.
Room N-5609
Washington, D.C. 20210
Via the Internet

Re: RIN 1215-AB79 and 1245-AA03; Labor-Management Reporting and Disclosure Act; Interpretation of the "Advice" Exemption; Notice of Proposed Rulemaking, 76 Fed. Reg. 36,178

Dear Secretary Solis:

The Virginia Hospital & Healthcare Association (VHHA) has 39 member health systems and hospitals, representing 108 community, psychiatric, rehabilitation and specialty hospitals throughout Virginia. VHHA works closely with its counterparts at national hospital associations, and wishes to endorse the American Hospital Association's comments on the Department of Labor's proposed reinterpretation of the "advice" exemption to persuader reporting under Section 203 of the *Labor-Management Reporting and Disclosure Act* of 1959 (LMRDA), 29 U.S.C. § 433. The proposal would narrow the definition of "advice," thereby expanding the circumstances under which reporting is required of employer-consultant persuader agreements. **VHHA opposes the revised interpretation of the advice exemption and requests that the Department decline to adopt the proposed rule.**

In a time of decreasing patient revenues and dramatic proposed cuts in payment rates in both the Medicare and Medicaid program, hospitals and health systems can ill afford additional federal regulation that corrects no demonstrated harm to patient care, offers no improvement to care quality, and drives no efficiencies in the administration of health care. To the contrary, at the very time hospitals and health systems are striving to drive *value* in health care, such new regulations take the system in exactly the *wrong* direction, driving greater costs with no meaningful improvement in care.

Hospitals and health systems are large employers, frequently among the three largest in a given area, and contribute significantly to those economies. These providers are focused on their patient care mission and, when issues arise related to specific and complex rules regarding the NLRA, collective bargaining and union organizing, frequently seek labor relations advice from outside counsel. The Department's revised interpretation of the advice exemption would interfere with hospitals' ability to receive labor relations advice that is needed to ensure proper compliance with all applicable laws.

While the American Hospital Association outlines a variety of reasons for opposing this rule, any one of which should be sufficient to decline finalizing the proposal, one area VHHA wishes to focus is on the “significant underreporting problem” identified in the proposed rule. Circuitously, this “problem” is a direct result of the Department’s *new view* that it is a reportable event for consultants to engage in indirect “persuader activity” by directing their activities to the employer’s supervisors. If there is underreporting of activity Congress wanted reported, such as communications from consultants acting as “agents of management” or undercover “middlemen” between management and employees, the appropriate agency response should be increased enforcement of the existing law and regulations. Before any new regulations are finalized, driving needlessly increased costs in the health care system, the Department should ensure it is enforcing current law and regulations appropriately.

Other areas of concern highlighted by the American Hospital Association include:

- The Department’s proposed standard for distinguishing between “advice” and “persuader activity” is simply unworkable and would bring hopeless ambiguity to this area of law.
- The Department’s proposed reinterpretation of the advice exemption would invade the attorney-client privilege and violate attorney-client confidences.
- The Department’s proposed reinterpretation of the advice exemption is not supported by the text or legislative history of Section 203 of the LMRDA.
- The Department’s proposed reinterpretation of the advice exemption advances an employer neutrality policy that conflicts with the statutory policy of robust debate expressed in the NLRA.
- The Department’s proposed reinterpretation of the advice exemption is an unconstitutionally vague content-based regulation.

VHHA urges you not to drive up health care costs needlessly and to decline to finalize this proposal. If you need further information, please contact me at 804-965-1221.

Sincerely,



Paul Speidell
Vice President