**U.S. Department of Labor**
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

April 11, 2005 **FLSA2005-15**

Dear **Name*,**

This is in response to your request for an opinion on the application of "joint employment" under the Fair Labor Standards Act (FLSA) to one of your clients, a health care system (the System) consisting of two acute care hospitals, a nursing home, and one combined long-term hospital and nursing home. The System is owned by a single, not-for-profit parent holding company that has no employees.

Each facility within the System has its own Human Resources Department, employee handbook, payroll system, retirement plan, and Federal Identification Number. There is no regular interchange of employees among the facilities. You present the example of a Licensed Practical Nurse who works at an acute care hospital during the week and at the nursing home on the weekend. You ask whether this employee would be due overtime pay if the total of his or her hours at both locations exceeds 40 in a week.

As you know, "employee" under Section 3(e) of the FLSA means any individual employed by an employer, and "employer," under Section 3(d), includes any person acting directly or indirectly in the interest of an employer in relation to an employee. The term "employ" means to suffer or permit to work, and includes the principles of joint employment. Joint employment refers to a condition in which a single individual stands in the relation of an employee to two or more persons at the same time. A determination of whether the employment is to be considered joint employment depends upon all the facts in the particular case. If the facts establish that two or more employers are not completely disassociated with respect to the employment a particular employee, a joint employment situation exists (29 CFR 791.2(a)).

The regulations on joint employment are located in 29 CFR Part 791, copy enclosed. Nothing in the FLSA prevents an individual employed by one employer from also entering into an employment relationship with a different employer. An employee who performs work which simultaneously benefits two or more employers, or works for two or more employers at different times during the workweek, generally will be jointly employed where the employers are not completely disassociated with respect to the employment of the particular employee and may be deemed to share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer (29 CFR 791.2(b)(3)). For example, where one business entity controls another through total stock ownership, and/or interlocking directorates and common corporate officers, we have concluded that employees of the latter are simultaneously employees of the former. See opinion letters of January 7, 1986 and December 4, 1984.

Based on the information you have provided, it is our opinion that all employees of the System's facilities are under the under the common control of the parent company. You have provided numerous instances of association between the System's various employing entities. For example, the nursing home and the combined hospital/nursing home share a common President and Board of Directors. At times, the hospital's Human Resources Department provides administrative support for the Human Resources staff of the nursing home. The System's Vice President of Human Resources and several senior executives and senior managers "have responsibility for more than one entity" within the System. Some of the facilities' personnel policies are the same, such as those regarding the Family and Medical Leave Act, workplace harassment, and anti-nepotism. Non-union employees of the System have a common health care plan. System job vacancies are posted within the System before they are advertised publicly. Thus, multiple associations exist within the System and we believe these outweigh the fact that each entity does its own hiring and has its own pay scale and payroll system. Thus, we believe that a joint-employment relationship exists in weeks in which an individual works for more than one of the System's employers. As you know, joint employers are responsible, both individually and jointly, for compliance with the FLSA, including the overtime compensation provisions. Therefore, the entities must aggregate all hours worked in a workweek by an employee who works for more than one entity. See opinion letters of July 13, 1998 and January 7, 1999; Chao v. A-One Medical Services, Inc., 346 F.3rd 908 (9th Cir. 2003).

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein. You have represented that this opinion is not sought by a party to a pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor. This opinion letter is issued as an official ruling of the Wage and Hour Division for purposes of the Portal-to Portal Act, 29 U.S.C. 259. See 29 C.F.R. 790.17(d), 790.19; Hultgren v. County of Lancaster, Nebraska, 913 F.2d 498, 507 (8th Cir. 1990).

We trust that the above information is responsive to your inquiry.

Sincerely,

Alfred B. Robinson, Jr.
Deputy Administrator

Enclosure: 29 CFR 791

Note: * The actual name(s) was removed to preserve privacy.