

New Rules for Pay of Home Health Care Workers

The U.S. Department of Labor issued new rules recently that mandate home health care agencies pay their workers the minimum wage and receive overtime pay starting in 2015. Although the new rules apply primarily to home health care agencies and other third party employers, individuals or families are subject to the requirements if they hire their own home health care aides to perform medically related tasks for which training is necessary or for domestic work that benefits other members of the household.

Currently, 15 states provide (www.dol.gov/whd/minwage/america.htm) minimum wage (currently at least \$7.25 an hour) and overtime protections to home care workers, and six more require minimum-wage pay.

Medicaid pays for a large share of these services. The long time period before the rule goes into effect is to accommodate states and families so they can plan for the additional costs.

The Department of Labor launched a new website to better inform people about the regulation – www.dol.gov/whd/homecare.

AAPD Response

The American Association of People with Disabilities (AAPD) supports this ruling, and issued a statement detailing the reasons for support. “Prior to the effective date of this rule, we urge HHS and DOL to develop and implement a plan to provide assistance to states, service providers and people with disabilities to minimize any disruption to the people who use consumer-directed programs. This should include a targeted technical assistance effort directed at those areas of the country where consumer-directed programs serve the greatest number of people.

“Managed care organizations have a particularly important role to play, leveraging their infrastructure and provider networks, as they are increasingly involved in contracting with states to manage their long-term services and supports systems. In addition, we call on organized labor to work with the disability and aging communities as these changes become effective. Further, consistent with the Administration’s priorities, this interagency effort must make certain that any unintended consequences

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Response from Carrie Ann Lucas, an attorney, founder and executive director of the Center for Rights of Parents with Disabilities. She has a form of muscular dystrophy and uses a ventilator and trach full time. She is a single adoptive parent to four children, all of whom have various disabilities.

The new rules are simply fair for our attendants. They are entitled to fair wages and working conditions. I understand that the rules create issues for some consumers, but it is simply not ethical to have our workers receive less than fair pay. It is possible to have around-the-clock care, and pay attendants not only minimum wage, but a living wage.

Under Colorado’s consumer-directed care model, I am able to pay a living wage and overtime to attendants and stay within my budget. I have 24 hours of care most days. It is not uncommon for attendants who work less than full-time hours to work for more than one consumer.

In states where it is not yet possible to pay fair wages, this rule change should be the impetus for immediate directed legislative and policy change to increase consumer-directed care budgets. The problem is not with this rule change, but with the oppressive and outdated medical model of providing care that favors agency and institutional care over consumer-directed community care.

These changes may result in service delivery changes for people with disabilities. Some people may need to start hiring more than one care provider to stay within their budget for care. To suggest that having to hire a care provider strips a person of dignity is an affront to the entire independent living movement. We rely on attendant care, and ventilator users tend to rely on many hours of care. It is not unreasonable to expect that someone requiring more than eight hours of paid care a day would have more than one attendant.

In fact, it is safer for the consumer to have multiple attendants in the event of an emergency with a care provider or a natural disaster that disrupts care. This prevents unnecessary institutionalization in the face of crisis.

As in any other industry paying low wages, the care provider may work more than one job. The solution to this is to pay a living wage. Even with a living wage, some care providers will choose to work more than one job.

stemming from these changes do not result in institutionalization.” To read AAPD’s complete statement about the rule, please visit www.aapd.com/resources/press-room/aapd-supports-new-rule-to.html.

ADAPT Response

The national disability rights group, ADAPT, decried the release of federal rules finalizing changes to the Fair Labor Standards Act companionship exemption because the changes will result in the unwanted institutionalization of people with disabilities.

“No matter what kind of propaganda the Obama administration manufactures to promote these rules as a victory for attendants and people with disabilities, the reality is that these rules will be devastating for citizens with disabilities who rely on Medicaid-funded home and

community-based services for more than 40 hours of assistance per week.”

National Associations Respond

The national associations for state Medicaid, Aging and Disability and Developmental Disability directors issued the following statement on the Department of Labor’s changes to the Fair Labor Standards Act:

“Implementation of this rule will require additional funding and may result in the cost of supporting people in their own homes becoming prohibitive. We are deeply disappointed that the Administration ultimately failed to adopt a rule that balances fair compensation for home care workers with the equally critical goal of assuring the ability of older adults and people with disabilities to maintain their independence at home and in their communities.” ■

Response from Jeffrey Sadow, an associate professor of political science at Louisiana State University Shreveport. He has been his wife Deshae Lott’s primary caregiver for more than 13 years, 12 of which she has used a ventilator full time.

This is a recipe for reduced service provision for clients and fewer jobs for workers.

While a minority of states already mandates minimum wage or higher payments and/or overtime to these workers, most do not require pay of at least \$7.25 an hour or time-and-a-half for any work over 40 hours. A good deal of the market involves families paying from their own resources or from insurance to a person or organization, meaning with the new rules the same individuals soon can afford fewer hours. Others receive aid in this form from states that pay agencies to supply services. These individuals will suffer the same difficulty but perhaps multiplied.

For states this could cause legal problems because states have an obligation to provide these services to a certain level and could run afoul of legal standards that mandate the state to provide care in the least restrictive setting. To prevent that from happening, this puts pressure on the state to raise reimbursement rates, which then either impairs other parts of the budget or taxpayers by taking more out of their hides in the future.

Thus, this new rule creates greater fiscal strains on the states. About the only salutary aspect of this government interference in the proper pricing of labor is that it could accelerate reform to curtail the preferential treatment that nursing homes receive in funding. Money currently going to subsidize the inefficient overutilization of them at the expense of home care could be shifted to stabilize those reimbursement rates thereby reducing nursing home populations in favor of greater home and community placements. Whether this necessity will attract sufficient political support remains questionable.

Lost in all of this is that the workers themselves suffer a greater level of unemployment if there is not beggaring of other government spending and/or taxpayers. The same amount of funds would have to be spread among fewer of them, replicating that familiar flaw from an imposed minimum wage.

All in all, the change creates an unpalatable future of more worker unemployment, reduced state services to the needy and/or increased taxes. Unless pressure comes to make Labor backtrack, clients likely will be made worse off.