

Aging and People with Disabilities Office of Developmental Disabilities Services

Interim Joint Ways and Means Subcommittee on Human Services US Department of Labor Regulations Update

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Fair Labor Standards Act Changes

Extensive presentation provided on February 16, 2015.

Recap of Changes:

State of Oregon is a joint employer over all Home Care Workers and Personal Support Workers and must:

- Pay for all hours worked
- Pay at least minimum wage
- Pay for travel time between consumers
- Pay overtime for hours worked in excess of 40 per week.

Litigation History

- June 2014: Home care companies challenged the Final Rule
- December 2014: Federal District court **vacated** the new definition of Third Party Employer.
- January 14, 2015: Federal District court **vacated** the new definition of “companionship services”.
- DOL appealed and on August 21st the Court of Appeals unanimously overturned the lower court’s decision.
- October 13th, 2015 – Rule becomes effective barring any stay on the regulation.
- Home care companies have appealed to the U.S. Supreme Court and have asked for a stay.



What this means for Oregon?

1. We await U.S. Supreme Court decision on whether or not they will hear the case
2. The remaining subject of interest to Oregon is whether overtime must be paid



Ongoing Steps to Contain Costs



Live-in Program: Narrow eligibility to only consumers with the most significant need



Record Keeping: Implement as required by rule



Travel Time: Limit the amount of compensation attributable to travel



Hourly Providers: Limit the number of hours a consumer may schedule a single HCW/PSW in a work week

DHS Efforts: Live-in Program

- With extensive stakeholder engagement, DHS has modified its live-in program
- Restricted Eligibility – only individuals with the highest levels of need
- All hours paid at state minimum wage effective 1/1/16
- Fiscal Impact estimated at \$16.4M GF/ \$45.9M TF

DHS Efforts: Enhanced Record Keeping

- Effective 10/1/15 - DHS will begin pilot of enhanced record keeping requirements to achieve hourly accountability
- New record keeping requirements are scheduled for statewide roll-out, effective 1/1/16
- Currently planning for enhanced Time Capture system to support these efforts

DHS Efforts: Travel Time

- Effective 1/1/16 - DHS will pay for travel time between consumers on the same day
- Travel time compensation limited to 10% of overall compensation
- Fiscal impact estimated at \$3.9M GF/ \$13.4M TF

DHS Efforts: Hourly Programs

- New consumers - Cannot schedule a single Home Care Worker/Personal Support Worker in excess of 50 hours per week, effective 9/1/15
- Existing consumers – Upon next annual assessment, cannot schedule a single worker in excess of 50 hours per week
- Overtime impact not yet determined due to regulation uncertainty and no bargaining yet on this issue

Next Steps

Await ratification of bargaining agreement – all implementation contingent upon final agreement

Monitor litigation - appeal or current implementation plan

Reopen bargaining agreement if applicable

Report back to Legislature.

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Department of Human Services

www.oregon.gov/dhs

Safety, Health and Independence for all Oregonians

For more Department of labor information see

<http://www.dol.gov/whd/homecare/>

***For more on Home and Community-Based Rule changes
information see***

[http://www.oregon.gov/dhs/dhsnews/Pages/hcbs-
transitionplan.aspx](http://www.oregon.gov/dhs/dhsnews/Pages/hcbs-transitionplan.aspx)