CICA Statewide Call
Wednesday, February 17, 2016
10 a.m. to 11:25 a.m.

Notes

Deborah Doctor, Legislative Advocate, Disability Rights California (CDR) shared information about the power point created by DRC about the "New Rules for IHSS: Overtime and Related Changes" that came in with the FLSA ruling.

A brief overview was discussed going over key points of the power point created. **NOTE**: Instead of typing "word for word" three documents have been provided for your review:

- News Rules for IHSS: Overtime and Related Changes (PDF - 10 pages). Provides overview of important changes and follows parts of the overall.

- Information about In-Home Supportive Services (IHSS) Overtime and Related Changes (January 25, 2016). Link to DRC page.

    - News Rules for IHSS: Overtime and Related Changes (PP - 27 pages). DRC Document.

    - New Rules for IHSS: Overtime and Related Changes (PDF – 27 pages). DRC document

    - Recording of call (use to follow Ms. Doctor's description)

    NOTE: The power point presentation created by DRC are available in other languages and soon will be available in ASL. Click here to view languages and updates.

Ms. Doctor shared DRC will receive phone calls and in most cases they will be referred to the power point, unions, or local Social

Service Office. They will especially refer many calls looking for help to complete the timesheets to unions and local Social Service offices.

Calls that DRC want are those that the waivers and other programs involving the New IHSS program changes does not meet one's needs. Individuals that are facing loss of care are encouraged to write their local government, CDSS, State Representative, and Governor Brown. Below is information on how to do this directly from DRC's page:

> http://www.disabilityrightsca.org/Events/20150IHSSOvertimeInformation.htm. This takes you directly to DRC informational page on IHSS program changes.
>
> **Attention In-Home Supportive Services Consumers and Providers:**
> Overtime pay and new rules for In-Home Supportive Services (IHSS) take effect February 1, 2016. Providers will receive overtime pay for working between 40 to 66 hours a week. They cannot work more than 66 hours a week. There are no exceptions to the 66 hour limit. (There will be no penalties for exceeding the new rules until May 1, 2016.)
>
> **The problem:**
> While overtime will help most consumers and workers who are eligible, it will hurt a small group of people. For example, some parents provide IHSS services for more than one child so they need to work more than 66 hours a week. The new rules mean that parents cannot provide care for both children even if there is no other provider available. These changes will create major hardships for these families.
>
> **How can we fix the problem?**
> The state legislature and the governor can enact exceptions to the new rules in January.

What you can do:
Call or write to your assembly member, senator and Governor Brown. Tell them there must be exceptions to the new rules.

Contact your legislators in their district or Sacramento offices: http://www.legislature.ca.gov/legislators_and_districts/legislators/your_legislator.html

Contact the governor's office: https://govnews.ca.gov/gov39mail/mail.php

What you should say to your legislators and the governor?

- Tell them your story. Overtime is not supposed to hurt providers and consumers. But without exceptions to the new rules, a small number of people will be adversely affected.
- Remind them that money for overtime is already in the state budget. Since the courts didn't authorize overtime until mid-October, there is money available to cover the small amount it will cost to pay those few providers.
- Ask them to enact the following exceptions into legislation in January before overtime takes effect.
  The exceptions should apply to people who use only IHSS and people who have IHSS and Waiver Personal Care Services under the NF/AH and IHO Waivers.

We think there should be two types of exemptions from the 66-hour week limit:

- Providers who would be prevented from providing services for one or more recipients who are closely related to them. They include spouses, domestic partners, children, parents, siblings, grandchildren or grandparents.
- Parents of minor children who are paid to provide services only because no other suitable provider is available.

We think there should be Individual exceptions if the:

- Recipient would be at risk of out-of-home placement

- Recipient's health (including physical, psychiatric or emotional) or safety would be at risk
- Recipient has no other appropriate provider

We think there should also be an Individual exception to the seven-hour weekly travel time limit:

- No other appropriate provider is available to serve the recipient
- Recipient's health (including physical, psychiatric or emotional) or safety or ability to stay at home would be at risk. (This could be a one-time exception if the worker is stuck in traffic, or an ongoing exception for the above reasons)

The State has issued various documents and there is also a video that hits the highpoints; it does not mention exemptions, wait time or information about the waivers. Clink here for the video. Script of the video click here.

Click here for other materials CDSS has published!

Joey's question: If you live with your recipient and you need to travel to another recipient can travel time be claimed?

The response was thought they were not eligible and others concurred.

NOTE: This came up at a training I was involved in and it was said there it is paid if a provide lives with a recipient and travels directly to another recipient they care for, they would qualify for travel time. **Refer to page 13, ACL-16-01.**

After getting different answers it was confirmed: FLSA requires if you work with recipient A on the same day as Recipient B your entitled to travel time - Doesn't matter if you live with Recipient A.

Joey's Question: When you have the 283 maximum hours and they can't get any more wait time or medical time, or whatever, can Social Workers document this as unmet needs to protect from future cuts? Also tell people who are struggling about the waiver programs?

Response regarding the discrepancy of some workers documenting unmet needs or not, it is not known what can be done. It is a fair question, and when recent cuts happened it was important because it saved some from losing services. Documentation of needed services as unmet needs is important.

> **NOTE**: Concern noted about documentation of unmet needs from county to county. Noting it does not affect those who do not have the maximum hours, but mostly those who have maximum hours and there are cuts; pointing to past cuts. New allowable services such as reading for the blind, wait time while visiting a doctor are new covered tasks and they should not be undocumented if needed because you have the maximum hours. How can consistency throughout the State in how unmet needs are documented?

In regards to waivers, it may be true the waiver programs are not well understood. They are not a solution for everybody. It needs to be pointed out, if an individual is at the IHSS maximum and additional care is needed, the waiver program may not help due to cost caps. Caps under waiver programs are low and unless these are raised it may not do any good. Waiver programs are underfunded.

One change in the waiver program was in the past if wages was raised, individuals would lose services because of the costs caps. Now it has changed to the increase in wages and cost of overtime will have no effect on individuals and services will not be lost.

NOTE: It was mentioned that the waiver programs have caps and knowledge of how they work is not widely known. Is this a topic CICA should have discussed on a statewide call? If so, who would be best to make a presentation?

Michael Condon Response: It was his understanding that the State was not making outs due to overtime, but also thoughts it was planned to not make cuts on general wage increases, as they did in the past.

Response comment: They are not cutting as a result of overtime, but it needs to be looked into about wages, but need to look into this about wages. Follow-up is needed to check this concern, if wage increases are being allowed under the waiver programs like the overtime dealing with caps?

Joey question: Referring to comment about getting additional providers if the weekly maximum hours are 7 different caps at 6, 30, 40, 50, etc. how can they get more hours, are they capped at these?

Response: No, they are not**.** Providers with multiple providers can work up to 66 hours per week.

Elaine question: How do you get to your power point?

Link will be mailed.

Kristine question: How does the funding stream interlink between waiver and IHSS. If a consumer is already at the maximum hours of the IHSS program, that the waiver funding would not actually increase their hours?

Response is not referring to someone who is not on the waiver program now, but only IHSS. Noting for some who are on IHSS

receiving the maximum of 283 is not sufficient may be able to get on a waiver. This is not a true belief.

The waivers all have different levels of funding and I refer to the Nursing Facility level of care where the budget is capped at $48,000 a year, $4,000 a month. Providers living in a county that pays above the minimum of $10 you may already be up to or over the capped amount. Other waiver programs have higher amounts for acute care.

It is not believed this is a solution until waiver caps are raised. For individuals with maximum IHSS hours it is not always going to be a solution to be placed under a waiver program. Until waiver dollar caps are raised there may not be a solution. There is a renewal process for the waivers and the possibility of raising the caps could happen.

> **NOTE**: Referring to an earlier note a speaker on waivers and dedicate a call to it may be of great value for an improved understanding of the waiver program and how it works with the IHSS program. The process of the waiver system and how it can be used may be a point of discussion.

To be fair there is a new admission at DHCS that the waiver process is not working; there is an openness to open the availability of waivers to the local level for approval; timeliness is not in the process, sometimes 6 months to be approved.

Can anyone on the call hearing from people having difficulty with the new changes, managing well with them? Maybe too soon to ask?

It was noted by Kim, there seemed to be more confusion than anything else. UDW is documenting questions for further discussion (Good job!) to be used as a most commonly asked questions. Hopefully to be posted later.

Ms. Doctor wanted to give the State credit on material sent out by Charlie that showed graphics and examples of consumers with more than one provider and providers with more than one consumer. This graphic information may answer many questions.

> **NOTE**: The State provides two versions of the power point presentation and on page 32 (33 in second verson) "Claiming Hours" provides guidance for those with multiple consumers and providers.
>
> **Click here for the presentation in PDF Format** (59 pages)
>
> **Click here for the presentation in PDF formation with trainer notes** (61 pages)

Janie was asking to consider developing questions to take back to the Advisory Boards about what is happening on their county pertaining to how changes are being handled. What are question Abs should be asking and how can they be on top of what is happening in their county?

- How many timecards are you getting back not completed appropriately?
- How many have not returned their needed paperwork that should be done completed?
- What system does the county have in place for responding to requests from consumers to move hours from week to week?
    - What's their mechanism?
    - Have they added staff?
    - A dedicated number?
    - Are they going to have to call their social worker?
    - What their policy for document unmet need?
    - Are they actually calling providers during the grace period about violations?

- Are you seeing an increase in registry services use to meet people's needs (more of a question for CAPA)?

  It is a talking point that this will allow for the hiring of more providers to meet needs?

  Concerns about providers for a minor child, like for a little girl a man for a girl, one who may not speak the language?

Ms. Doctor: One issue not covered in the power point: When a parent of a minor child applies to be an IHSS provider for the minor child there are a couple qualifications they need to meet: they must leave work to meet the needs of the minor child or prevented from working full-time to because of the needs of the child; and, there is not a suitable provider available. Now these very same parents, who are unable to get another provider, are being told they need to get another provider because they are not allowed to work over 360 hours per month.

This is an example of two State rules in conflict, finally last week there was acknowledgement from CDSS of this is an issue. DRC has requested CDSS to have an ACL done so parents in this situation and their minor children will not be kicked out of the system.

> **NOTE**: Important to listen and document if there is a parent who is being asked to find another provider when in the past it has been documented another suitable provider cannot be found (this could be really problematic for individuals in rural areas and just minor children). Look for ACL or other direction on this from CDSS!

Kristine suggested, underscore the opportunity to push back-up registries on our counties. With new changes and some of us, the need for a provider is very important that back-up providers are available.

Joey question: Regarding the violation and termination of providers. There is going to be an appeals process and wondered of you knew anything about this to Ms. Doctor?

Ms. Doctor responded yes, there is an appeal process. Did not go in deep detail.

> **NOTE:** Need to get more information out on the violation process and how to appeal a decision…

Ms. Doctor presented information on DRC, preliminary stage is keeping an eye on the Exemption and Exceptions not having criteria on these. There is believed harm may come to some who are limited to 360 hours per month – it is early, but need to keep an eye on this.

Something else to keep an eye out for are the two different weekly limits on hours per week for with more than one provider or those with one seems not practical. It allows one with one recipient to work more per week (70:45) and those with multiple providers to be maxed out at lower weekly maximum hours (66). It is something that may be a subject to be fixed through legislative means.

There is some discussion about decoupling IHSS from the monthly calculation of hours and dividing it by 4 to get your maximum weekly hours to the possibility of going to yearly pay schedule of 26 weeks (this is done in general for other businesses and government agencies). This would mean you would take your monthly total and multiple it by 12 and then divide it by 26. The pay period would be in two-week periods of 14 days (26 pay periods per year).

There is also concern about the statue for moving hours from one week to another. It is believed that the criteria provided may be too strict.

Randi question, what are the cons for going to the 26 pay period?

It is believed the cons could be the cost of reprogramming CIMPs, not clear what the additional cost would be; Not sure of other cons. Need to be sure no one got penalized because of how other monthly times are figured on the monthly basis.

Unknown questionnaire asked, clients needing to go to the Hospital ER and needed to be there, how does this work.

It can be done and approved afterwards to move hours. It would affect the hours available for the rest of the month and this would need to be considered. This may be a good example of where wait time could be used.

Joey shared, it was believed there might be a rule that a consumer cannot claim more than 60% or 70% more of their total authorized time in the first half of their monthly hours (maybe this applies to those under the Advanced Pay program). Also it was heard from other providers that Social Workers are telling them that if the consumer was placed in the hospital that the monthly hours would be deducted from their time, say they had 283 hours, 9.5 hours could be deducted for each day in the hospital. Prorated?

Response for the second part, it is thought the individual cannot be paid while the consumer is in the hospital; except for possibility of approved heavy cleaning. Need to look into this further to get a better answer.

The first part of your concerns about the 60% to 70% rule I do not know anything about this.

Is there a rule stating this cannot be done? **NOTE**: Research this.

Not sure if there is a rule, in fact it is being done now. Providers may be doing this to get paid sooner, but there is a concern if all the consumer's hours are used the first part of the month will they receive services towards the end of the month.

At this time, providers have worked 24 hours a day and this may be one-way the State is going to begin to control how hours are recorded or worked. The main concern is if a provider is paid the total hours of a month the first half, is the consumer receiving needed services the last half of the month?

A positive exception to the weekly time was for a consumer who has multiple providers in switching number of hours worked.

Lisa comment was she liked the idea of figuring one's pay periods by 26 weeks.

A question for ABs to ask: Who do consumers turn to for assistance?

Another question, with all the questions are all the Social Workers trained to answer every question about the new changes? What number should be calling to get assistance? Response time is a concern.

The cheat sheet sent out by the State for figuring out one's times was more difficult to understand by many.

UDW is getting staff up to date, but this is for providers.

Thank you, Deborah Doctor, DRC for your participation.