

CICA Statewide Call
November 18, 2015
10 a.m. to 11:10 a.m.

Notes

Roll Call: Michelle Geving Joe Samora, Janet Clark, Charlie Bean, Cindy Calderon, Janie Whiteford, William Reed, Gary Gray, Todd Metcalf, Kristine Loomis, Deborah Doctor, Karen Keesler, Deborah Kindley, Sandy Hilton, Donna ?????, Amanda Carles, Melissa Kelly, & M. Jorgensen

Cities, no names: Upland, Grvy Main, Sacramento, Lower Lake, Victorville, Visalia, Santa Ana, Merced, Hawthorne, Auburn, Woodland, Roseville, San Diego, Stockton, Chico, Valley Spring, San Jose, Desert Springs, Vallejo, San Rafael, Anaheim, Modesto, Petaluma, & Oakland

There were 38 callers on today's call. If you need your name to show on the Roll Call in the future let me know on our next call December 16th. It is tentatively scheduled to have Karol Schwartzland from the State IHSS Public Authority to speak!

Deborah Doctor, DRC: There are two waivers that may be effected by the new FLSA (overtime regulations); these waivers are administered by one department In-Home Operations (IHO). One is a small waiver called the IHO which no one has been added to in a long time. The other waiver is the Nursing Facility/Acute Hospital (NFAH) which has about 3,700 registered in it.

Those on these waivers could face potential harm that could happen because of the new rule changes. There is an individual waiver budget and the cost of IHSS costs going up can cause someone to exceed their cap. This often happens with increased hours allotted and the cost of wages (O/T now could raise the cost), causing cuts in services to remain within the range of the allotted individual budget cap (inflexible cap).

Now we are being told that the hours are not being reduced because of costs going up, but we do not know if this applies to cuts made in the past which has hurt some on the waivers. They need to be more solid

on what is being done. There is also the restrictions surrounding the IHSS hours per week that can be worked at 66 per week connected to the FLSA overtime statute.

Then there is a concern that they are going to enforce the number of hours one can work a day that is in the waiver but not enforced. There could a situation where people need to get another care provider to meet the 66 hours per week cap guideline, which in some areas of the state may not be possible. The need for another care provider to have to come into a shared household by the provider and recipient where it would reduce the income coming into the home for upkeep caused by bring an outside worker in due to the caps.

The statute says the department will do no harm through changes, about the strongest language they could come up with. The department has had calls and meetings with stakeholders over a year with no solution to solve the unintended harm due to implementation of the overtime. The truth is they have not fixed this yet and the results of the overtime regulations will harm some. It was never the intended results.

It can't be just said they are working with people to solve this and only leaving provider lists with people. People on waivers need to have an exception policy provided. There needs to be an exception policy as there is on the IHSS side.

Rebecca Shoup (sp?) head of Long-Term Services, agrees, and says on the right things and there needs to be exceptions and the department agrees people need to be not harmed, but it is not getting changed. Pressure needs to be placed on the state. It is important to keep pressure on the department and legislature to get exceptions. It is being urged to continue to keep pressure on several fronts to get the department legislature not to do harm to those under the waivers.

Kristine Loomis question: Is there anything you can suggest we can do to support you in direct action?

Deborah response: Send another letter to Diana Dooly and Governor laying out these issues. Make calls to your legislatures, but they are not in session (hesitant to encourage this because they are not in session).

Those under the waiver programs could call or write to their local legislator and ask them to be sure no harm come to them from enforcing the overtime rules being enacted.

Another letter from CICA could be helpful (*working on*). Need to keep this issue alive.

Janie: It was asked “if it was all of the 3700 on waivers that would be harmed, do they know what is happening?”

Deborah: No, there is a small number who do not receive IHSS or even meet their caps. They may be concerned about the amount of hours worked per week. Some may not be affected. We do not have a way to reach them directly to find out. We know the department has made some contacts, but guessing few.

Janie: Do you have any sense of how many will be affected out of the 3700?

Deborah: I don't. It is guessed about half. People are going to be affected in different ways.

Janie: Get a prototype letter out for individuals to use (Charlie & Deborah)

Deborah: It is hoped to include other parts of the programs that the new guidelines. There are other situations that need exceptions. People can be affected in different ways.

Note individuals not on the waiver who also may be affected...

Could be a letter to encourage information to go out to recipients to educate them on possible affects.

Fixes by workers by giving the recipient a list of where to get additional providers is not a fix, just does not cut it. There needs to be a directive from the department that says this is what is going to happen and there will be no harm. There are too many situations where an adult is caring for both parents, an adult caring for an adult and sibling, the availability

of providers, or parent caring for one or two children needing care, or other family constellation.

There needs to be exceptions where a recipient is expected to get another provider, but they live in a remote area where there are no other providers. Or consider where the consumer's life could be so disruptive by bringing in a new provider, it could cause more harm to the individual. Family relationship issues. Need to be clear it is a small number of people going to be affected, so we are talking about a small amount of cost.

It needs to be clear that it is a very small number who may be affected which means little in additional costs.

Janie: Do you have numbers that could be affected?

Deborah: The number we have been given was around 1200 that would be working more than the maximum allowed – this did not include siblings or grandparents.

There are concerns about individuals turning in a time card for 24 hours a day. Though this is being questioned, there are considerations being looked at to address the number of hours worked in a day and possible exceptions to exceed the weekly total. Big concern here is the quality of care. They are looking at having some sort of restriction on the amount of hour's one can work per day; looking at the reason ad quality of care being provided.

Christy, Regional Center: Noted that they agreed to send a letter to state about concerns. Burden will fall on the regional center. It is encouraged for people to go in front of their regional center and share the effects of the rule changes. Will send Charlie a copy of the letter.

Mark Beckwith: FLSA is a federal law, how much lead-way is there for the state to make exceptions?

Deborah: It is not making exceptions to the FLSA, it is the overtime restrictions that needs to be changed, to pay more. There are some states that have limited individuals from working more than 40 hours per

week, will pay no overtime. California, as far as it is known, is the only state that budgeted for paying overtime, even though it is capped at 26 hours per week.

Janie: CMS is supportive of not doing any harm, do they have any sway with the state demanding that?

Deborah: They have stopped short of forcing California to do things differently. In letters it mentions exceptions to meet the following, but it stops short in telling a state what it should do.

Kristine: Since it is the law overtime must be paid, is there a way of including in future laws that harm will not be caused because of overtime? Could a provider waive the payment of overtime?

Deborah: It is not something thought of, but many may not see it as acceptable. No, they cannot wave the requirements of the FLSA.

Karen: There is not a way a consumer to waive the payment of the overtime or minimum wage. This would be against the FLSA regulations.

Karen Keesler, CAPA: It was heard that the administration is working on fixes on problems discussed earlier. There is work with partners being done recognizing over-lap of services with IHSS and the Regional Centers.

The State is in the process of getting ready to mail out information on changes caused by the FLSA.

The calculation of time was still in question.

The state has finalized the forms and mailers on the new regulations surrounding the changes surrounding the FLSA. The state has set documents to be translated, usually it takes up to 10 days for this, but the timeline for translation on these documents has been shortened to 7 days.

This is for the providers and recipients explaining what is required under the FLSA in California. They will begin to mail this out December 5th on a flow basis. Meaning sending put 1 million pieces of mail will come out over a few days, not all at once.

The statute has placed a cap on the weekly hours that can be worked 66 hours maximum, 40 hours straight time and 26 hours overtime. The formula set up in statute was you take the monthly amount of hours given by the county and divide by 4.33 which gave you the 66 hours per week cap (283 hours per month).

The State's alternative mythology game up with called the divide by 4 calculation. Using a simple explanation, the recipient has 200 hours for tasks for the month. They would divide 200 by 4 to give them 50 hours per week.

The first question came up was, "How would a consumer figure this out for the months that have more than 28 days in a month?" The answer was "They would do as they do now and budget the allotted time across the month. This will require a lot of training and time, dialog will with local offices. They would be doing nothing more than what they are doing now in figuring the monthly hours for the month." Manage one's time. This makes it easier for figuring the cap and weekly work week.

By using the "divide by 4" method to figure weekly our it will make it easier to determine the total weekly hours that may be worked, raising the maximum hour cap from 66 to 70.75, an increase. So, the individual with one care provider the cap will raise to 70.75, while those providers who have multiple recipients the cap will remain at 66 per week will still apply. There was a lot of discussion and it is recognized this will be complicated and much education and work needs to be done.

It was pointed out this was the simplest to figure weekly hours for the large majority of IHSS consumers. This also will reduce the number of requests for adjustment in weekly hours agreed to. There is a lot to take in and understand. There is a call in to the California Welfare Directors Association (CWDA) to begin early training and simpler methods to understand upcoming changes.

Charlie: Figuring the weekly hours by 4 was to make the requirement for asking for approval for the change in hours worked per week. But the cap I thought remained at 66?

Karen: Any provider that has just one consumer instead of being subject to the lower cap of 66 hours, they would have 70.75 approved weekly cap. This does not raise the number of monthly hours allotted. It allows those who have the maximum monthly allotment with one provider to be paid 40 hours straight time and 30+ overtime per week, about \$60 more. For a vast majority this will allow for less weekly approvals needed and it will allow overtime to be paid up to 30 plus hours if they have the monthly allotted time.

Janie: I think the solution was very fair especially for about 80% of consumers. She got the feeling that everyone involved was trying to do the best they can to get meet the needs of the program and solve some of the problems that may be faced. Believes they are trying to work on issues still being faced and they are willing to work with others to meet the needs of the consumer.

Karen: It is noted there is an expedient move towards getting information out and partnerships with the State, Unions, CAPA, DRC and others to get the information out and begin training in the simplest format possible.

Sara, with State Council: Appreciate what she has heard from Karen. The talk about training and so forth is great. Look forward and appreciate information Karen has been providing. Simplest is impossible. The information heard two weeks ago is different than what is today.

Karen: The next step is the All County Letter (ACL). This will be a long document to explain the new procedures, how to complete the forms, violations, appeals procedures and more. Last year's ACL was 89 pages; this ACL is expected to be longer. Stakeholders will be allowed to comment on the new process.

Violations will not begin until May 1, 2016 – there will be a three month grace.

All comments received about procedures and forms have been received and implemented where ever possible by the department.

CICA asked to make it easier to access forms. This was brought up at CAPA and thought CICA was on the right path. What was being purposed was to have access to the forms on individual county website; also when social workers go out to visit take extra forms to the recipients. But because of the short time and constant changing of the forms this is being put back for a while. There are many changes and time will be used towards improving forms, training and developing other issues surrounding the FLSA. Be focused on after the initial introduction of the new forms and procedures.

Last year there was going to be two different timesheets. One for providers who did not claim travel and the other to include travel. The State has eliminated this and there will be one timesheet and one claim form for travel.

Once the week work agreement has been turned it, the provider who travels will be paid through the use of a travel claim form. This form is still being worked and also not known where it will be turned into the local office or state office (just a couple things to get finalized – **probably decided by time you receive these notes**). It is important the work agreements get in to support the need for travel in order to get paid travel (**NOTE:** travel is 7 hours per week for time travelled the same day directly from one recipient's to another's).

Violations are being handled differently as well, where last year there were three strikes you were out! This is the new policy being explained: First time there is a violation the provider will get a warning notice letter from the State; the second violation they will receive a packet containing information on the caps, and other information to educate what violations are and how to avoid them. There will also be a form to be returned showing you have read and understand the information given you; The third violation they will be suspended and cannot work for three months; then if there is a fourth violation the provider will be terminated for one-year. In order to return they will need to start the process over again, finger-print, background check, orientation, and so on.

What was good about this new policy, is that the consumer can appeal at the local level the first three violations, with the fourth needing to be appealed through the Department of Social Services. This is more generous than what was talked about a year ago.

Next step will be the draft ACL and it will be a short turn around – CAPA is willing to partner with CICA to do a joint response in order to reflect good consumer values. **Looking for good consumer ideas.** Then there is work on getting training to the consumers and we are working with the unions to accomplish this.

Retro-pay: The Federal Regulations took effect October 13, November 12 when Department of Labor started enforcing it and be lenient thru December 31, 2015. It is believe there are workers who would like to be paid Overtime back to October 13, 2015. This has not been decided and the state is aware of this and it is under discussion, the retroactive-pay. There has not been any decision on how to handle this yet by the state.

Following Facebook posts and there was a post that the social worker told the poster that the Governor was going to impose a 40 hour a week cap. The social worker is wrong. There was also a post that a social work stated it was the consumer who should pay for gas to the provider's car to run to the store or other errors. This is also wrong.

Sometimes County workers give out wrong information. If you believe you received the wrong information let CAPA know which County the information was received from. Karen will work through the channels to get to correct information. This way it can be handled through the appropriate staff.

Melissa Kelly question about advanced pay: What is happening with advanced pay and overtime?

Karen: At this time, the state is working on issues affecting the larger population surrounding the implementation of the overtime and changes. I do know it is an issue and there is a small number of individuals under this program, but the state is working on the FLSA changes and

Advanced Pay will be brought up as this is implemented. At this time, I honestly do not have an update on Advanced Pay.

Christy: Priorities for the calendar year 2016, do you have an update on the 7% restoration funding process? Keeping the restoration in place.

Karen: The legislation failed to pass anything in its special sessions to fund this past July 1st 2016. The Legislation failed to pass a medical tax of 1 billion dollars. It did not happen for two reasons: Republicans not willing to raise taxes and also higher taxes on Health Management companies, Kaiser would be paying more is than they are presently is one example. Considerable opposition. There are two hearings coming up on this one in Los Angeles December 1st and the other December 17th in Oakland. Two hour hearings and you are encouraged to show up for these hearings. If the legislation does not come up with \$1 billion solution the governor may reduce IHSS through a reduction. This reduction may be greater than the 7%, so it is important to follow this and if at all possible participate in the two upcoming meetings.

Consumers are encouraged to attend and voice your views on the need to fund this medical care fund/tax.

It is not looking good to keep the 7% cut.

Janie: We need to put pressure on our legislature to keep the 7% restoration and make it permanent.

Also it is important to keep the consumer's informed and involved. In the past consumers have not been really involved in getting updates and with changes happening with the FLSA it is even more important for the consumers to be informed and involved! Especially if they have to get another provider and not know all the changes.

Kristine: Will there be a more flexibility for those who have three providers for when folks are sick or unable to make it for other reasons?

Karen: You will be doing what you are doing right now. Multiple providers will be 66 hours for individual providers. For as long as there would not be a change in normal hours in what may be paid.