

Statewide Call Minutes

October 16, 2013

Moderator: Cindy Calderon, CICA President

Presenter: Karen Keeslar, CAPA

On the Call:

Rick Simonson, Sacramento

Leoma Lee, Sacramento

Edward Gerber, San Diego

Elaine Paoli, Napa

Chandra Livingston-Blanks, Sacramento

Louise Osejo, Mendocino

Richard Rangel, Santa Clara

William Reed, Placer

Bud Sayles, San Diego

Ken Cooper, Placer

Olivia Quezada, Center for Independent Living

Jan Clark, Calaveras

Elizabeth Pope, Monterey

Bertha Gonzales, Monterey

Mark Beckwith, Alameda

Erin Stevens, Santa Rosa

Andy Rossoff, Mendocino

Becky Stockton, Lake

Cindy Calderon, Humboldt

Eric George, Mendocino

Sam Cooper, Placer

Staff: John Stansbury

ACRONYMS

AC: County IHSS Advisory Committee (includes citizen governing boards)

CAPA: California Association of Public Authorities

CCI: Coordinated Care Initiative

CDSS: California Department of Social Services

CMIPS II: Case Management Payrolling System, version II

CSAC: California State Association of Counties

CWDA: California Welfare Directors Association

DOL: United States Department of Labor

FLSA: Fair Labor Standards Act

MOE: Maintenance of Effort

PA: Public Authority

UDW: United Domestic Workers of America

Sacramento Update Karen Keeslar, Executive Director, CAPA (California Association of Public Authorities) will talk about:

- New federal Fair Labor Standards Act (FLSA), overtime regulations.
- County Maintenance of Effort (MOE)
- CMIPS II (with Bud Sayles, Executive Director, San Diego Public Authority)

Fair Labor Standards Act (FLSA) Overtime Regulations

The U.S. Department of Labor (DOL) issued overtime regulations on September 17. The regulations do not take effect until January 1, 2015. For a copy of the 358 page Final Rule, [click here](#)

Regulations absolutely require payment of overtime for hours worked above 40 in a week.

Travel Time: Compensation for travel time is required if an employer requires a provider to go from one consumer's house to another. This will not apply in counties that have the Independent Provider Mode because each consumer is considered separately. But it will apply in counties with the Contract Mode.

The **companionship exemption** for a live-in family member provider does not apply where there is a third party employer such as a Public Authority. The third party employer issue will become important as the legislature and stakeholders weigh various options.

When there is a third-party employer the consumer is off-the-hook because they are excluded from the requirement to pay overtime.

Plan of Care: Regulations seem to limit overtime payment requirement to whatever is required in the Plan of Care. In California it is possible that the Plan of Care is the amount of IHSS hours assessed by a social worker.

There was some talk about making all hours worked by a provider compensable but it was rejected. In many cases a provider volunteers hours over and above those assessed because the consumer simply requires more care.

Karen believes that unless there is a statutory change the state and federal government will be required to share the cost of overtime to IHSS providers who work more than 40 hours per week. Counties would not have a share of cost in overtime pay because of the changes enacted in 2012 to county financial participation in IHSS (known as the county IHSS Maintenance of Effort).

As part of the 2013 May Revision proposal, the Brown Administration suggested to the legislature that it wanted to place a limit on the number of IHSS hours a provider could work. This is not yet a formal proposal.

We know there are approximately 50,000 providers who routinely submit timesheets for more than 40 hours per week. It is estimated the annual overtime costs for these workers would be \$150,000,000.

Karen again thanked CICA for its partnership in working with CAPA, the California Welfare Directors Association (CWDA), and the California State Association of Counties (CSAC). We submitted a joint letter ([Click here](#) for a copy) that outlined our concerns on

- Increased state cost
- Data on how many providers routinely work more than 40 hours a week for the same consumer
- Very serious concerns for the implications about continuity of care if the state places a limit on the number of hours an IHSS provider can work for one consumer to avoid paying overtime.

In the 358 page federal document the joint CSAC-CWDA-CAPA-CICA letter is cited six times. So it is very clear they listened to us even though they did not agree with the concerns raised.

The DOL believes payment of overtime will be:

- Good for the economy and good for the providers, and
- If multiple providers are needed then that will mean workers who are better rested who may get second jobs at a higher rate of pay.

Thousands of comments were submitted and the bulk of the 358 page document responds to those comments.

Question: What happens if there is an emergency some week resulting in the provider working more than forty hours?

Answer: Regulations require the consumer and provider to enter into a work agreement on how hours will be allotted and also allow some flexibility for variations. Example: Consumer has 160 hours a month and the work agreement says forty hours a week. Not clear about what happens if the worker works 41 hours one week.

One of the many questions Karen will raise with the DOL is how much variance is allowed before the work agreement must be changed.

It appears state law will need to be changed before the state can put a cap on the number of hours a worker can work.

There will be considerable dialogue next year on what the regulations mean and what IHSS program changes will be required.

Question on timesheets: All the discussion is about hours per week, yet there are two timesheets per month for the 1st to the 15th and from the 16th on. How does that work when there are basically 4.3 weeks per month?

Answer: It's possible that payroll system changes may be needed, but not clear how they will be implemented. If CMIPS II changes to a weekly time card there will be costs to change CMIPS II, additional costs on mailing timesheets, etc.

Bud Sayles commented that major and expensive CMIPS II changes will be required including the way the scanners work.

Question on travel time: This a question Karen has for the DOL. If a provider works for two different IHSS consumers Karen believes each employment relationship may be considered separately. However, if travel is required by an emergency back-up program or the contract mode, that seems to require payment for travel time.

Maintenance of Effort (MOE)

Part of the Coordinated Care Initiative (CCI) of 2012 changed the IHSS funding system. Counties now have a flat MOE amount based on fiscal year 2011-12 expenditures.

CAPA and CICA have many questions for the state about:

- How much flexibility do counties have to spend more money on advisory committee and public authority activities?
- How the state will go about adjusting the MOE when the county increases IHSS provider wages and benefits.

Hopefully the state will soon issue comprehensive direction as to how it will deal with MOE issues and particularly how counties allocate money to advisory committees.

Over the last month the dialogue with the state has accelerated in getting answers to those questions, particularly in light of the fact that we now have twelve counties who have increased provider wages and benefits. The state must now adjust the MOE so it can recover the cost of increased wages enacted since 2012.

Bud Sayles, San Diego, reports the San Diego IHSS Advisory Committee (AC) is putting together a budget to justify an increased AC allocation. Not based on the \$53,000 it was before, but on actual activities the committee has done before and would like to continue. It is hoped the state will allow counties to go above current budgets for PA and IHSS administration, but also for the \$6,000 AC allocation.

Question: If a county raises wages and benefits right now, how does that affect the county cost or the MOE, or is that what is uncertain?

Answer: We know for sure that if a county increases wages and benefits after July 1, 2012, the MOE is increased. What we don't know is:

- How much the increase will be
- How that relates to IHSS caseload and hours changes since July 1, 2012 when the MOE went into effect
- What is the federal sharing ratio? Is it 50%? Or is it the 56% ratio for consumers eligible for the Community First Choice Option?

We hope those questions are answered when the state issues written clarification.

CMIPS II

We are moving into the fourth and last wave of counties crossing over into CMIPS II. This is primarily rural and Valley-Mountain counties. The "go live" date is November 4th. Hopes are high that earlier problems have been resolved. Still questions about whether the timesheet is intuitive and is read in the right way by the scanners.

Bud Sayles, San Diego: CMIPS II will be down Friday, November 1st to prepare for the "go live" on Monday, November 4. Bud is relatively optimistic that Wave Four of CMIPS II implementation will go smoothly.

Los Angeles went much more smoothly than most of us had predicted. It seems that HP (Hewlett-Packard) has learned a lot since this process started. The Timesheet Processing Facility (TPF) has become much more flexible in the way they process timesheets. If they have to forward them to the counties that adds an extra day or two to the process.

Question: Does the signature on the timesheet need to be inside the lines to avoid rejection?

Answer: No. They have been flexible on signatures. The key is to use the timesheet with the dots on each corner. Getting the numbers inside the lines is more of a challenge. If the scanner cannot read them, then it kicks them out requiring a manual process and that may cause a delay.

Question: Can we get some data on the kickback numbers and the reasons?

Answer: Yes. CDSS has been giving monthly metrics reports. [Click here](#) for a September, 2013 copy.

Question: How is the timesheet information getting to providers?

Answer: All three unions have made vigorous efforts to educate their members. Counties have been doing trainings and sending out information. [Click here](#) for a video on properly filling out a timesheet.

Question: How are timesheet signatures checked -- by a computer or live person?

Answer: Almost all timesheets are scanned on both sides. The image is captured and the information is available to the county. Some timesheets are processed manually and some are mailed back to the county to resolve with the provider.

Suggestions for Future Statewide Calls

- Bud Sayles: Consumer and provider training. Anything an AC or PA is doing that is creative such as best practices that might be implemented in a broader way.
- Elaine Paoli, Napa: Keeps hearing about consumers with bad providers. Is there a way to teach consumers how to know what constitutes a good provider and what to do when they are unhappy?
- Jan Clark, Calaveras: Ideas on how to keep providers more than a couple of months.