2015 Ways and Means Human Services Subcommittee
Home and Community Based Services Rules
US Department of Labor Regulations

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Oregon’s APD and DD programs have a long history of supporting people to live independently in their own homes and communities. Together, APD and DD serve over 44,000 people in the community through the following programs:

- Foster Care
- Group Homes
- In-Home
- Supported Living
- Assisted Living
- Residential Care
- Employment services
- Day services
New Federal Regulations

Centers for Medicare and Medicaid Services (CMS) issued regulations on Home and Community Based Services on January 16, 2014

US Department of Labor issued regulations on the Fair Labor Standards Act on October 1, 2013

Impact on APD and DD Home and Community Based Service Systems
Stakeholder Engagement

Providers

Consumers

State/Local Employees

Advocates
HCBS Settings Regulations
HCBS Settings Regulations

Defines and Describes Home and Community Based Service Settings

– Impacts all HCBS
  • APD, DD, AMH
– Sets timelines for implementation
– Creates new protections for people served
– Establishes requirements for Community Based Care Providers
HCBS Settings Regulations

Settings that are NOT Community-Based:
- Hospitals
- Nursing Facilities
- Institutions for mental diseases (IMD)

Settings that Must be Reviewed to Determine level of Compliance:
- Provider and State Controlled Homes
- Foster Care Homes
- Employment Service Settings
- Day Service Settings
Improvements for Individuals

Consistent with the goals of APD and DD, the State must ensure:

• That a person lives, works and spends the day in settings that are integrated in and support full access to the greater community

• The setting is selected by the individual from among all available options

• The rights of privacy, dignity and respect are upheld and individual is free from coercion and restraint

• The individual has the autonomy and independence in making life decisions

• The individual has choice regarding services and who provides them
Improvements for Individuals

For people who live in provider owned or controlled settings

• The individual will have a lease or other legally enforceable agreement providing tenant protections

• The individual has privacy in his/her unit including lockable doors, choice of roommates, and freedom to furnish or decorate the unit

• The individual controls his/her own schedule including access to food at any time

• The individual can have visitors at any time

• The setting is physically accessible
HCBS Transition Plan

Current Status

• Five year implementation timeline from effective date of the rule (March 17, 2019)
• Engaged HCBS Stakeholder Group
• Oregon submitted the first Draft of the Statewide Transition Plan October 2014
  ➢ Awaiting further feedback from CMS.
HCBS Transition Plan

Key Proposed Activities (pending CMS approval):

• Develop website/educational materials – now and ongoing
• Consumer and Provider surveys - November 2015
• Provider plans - April 2016
• New Oregon Administrative rules - January 2017
• Consumer and provider survey - November 2017
• Work with providers to reach compliance - 2016-2018
• Full compliance - January 2019
Department of Labor

Changes to the Fair Labor Standards Act
Fair Labor Standards Act Changes

• On October 1st, 2013, the US Department of Labor (DOL) issued final rules that extended minimum wage and overtime protections.

• Rules affect Home Care Workers (HCWs) and Personal Support Workers (PSWs) paid in APD and DD systems

• *Minimal impact to OHA*
Rule Change Topics

- Hourly Providers
- Live-in Providers
- Travel Time
- Recordkeeping
- US DOL Changes
Fiscal Impact of Implementation without Program Changes

Overlay DOL requirements on top of current system

Implement real time electronic time capture

Estimated Fiscal:
$74M GF
$242M TF
DOL Rationale

• Consistent interpretations of Fair Labor Standards Act regulations
• Minimum wage protections
• Workforce demand in changing market
• Workforce participation profile
  – (90% women/ 50% minority)
• Industry practices
HCW / PSW Compensation in Oregon

- Collective Bargaining
- Hourly Wage: $13.75-$14.75
  - ($6.88 standby for Live-in providers)
- Insurance (Medical/ Dental/ Vision)
- Paid Time Off
- Training
- Worker’s Compensation Coverage
- Unemployment Coverage
Joint Employer Relationship

State of Oregon = Joint Employer

Consumer Employers

Home Care Workers/ Personal Support Workers
Consumers determine the amount of hours their selected HCWs/PSWs work in a week.

**Existing regulations:** Overtime is not required.

**Proposed regulations:** 5 hours Overtime.
Regulation Impacts: Live-in Providers

- HCWs/PSWs must be paid at least minimum wage for all hours worked.
- Additional pay for availability time.
- Overtime liability after 40 hours.
Regulation Impacts: Travel Time

- ½ hour travel to first worksite, unpaid
- 30 minute travel back to home, unpaid
- 1 hour travel from first worksite to second, paid
- 30 minute travel from second worksite to third, paid
Regulation Impacts: Recordkeeping Requirements

- Consumers/HCWs/PSWs must report the number of hours and schedule for each worked day.

- State must capture and aggregate information across different delivery systems (APD/DD/AMH).
Governor’s Budget: $35M GF Investment

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

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

Travel Time: Limit the amount of compensation attributable to travel.

Recordkeeping: Implement as required by rule.
Current Litigation: Step 1

December 22, 2014: Federal District Judge Leon **vacated** the new definition of Third Party Employer.

January 14, 2015: Judge Leon **vacated** the new definition of “companionship services”.

[Image of a building]
Current Litigation: Step 2

The Department of Labor has appealed the District Court’s decision to the Court of Appeals for the District of Columbia.

Briefings are scheduled to conclude by early April, with oral arguments scheduled afterward. Decision expected late summer/early fall.
Next Steps

Engage Legislature on contingency planning.

Seek additional feedback from Stakeholders.
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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