



Missouri Alliance for HOME CARE

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Breaking News:

DOL Companion Exemption

Yesterday, December 15th the U.S. Dept of Labor (DOL) released its Notice of Proposed Rulemaking to redefine the companion care exemption. The proposed rule (186 pages) is expected to be published soon. There will be a 60 day public comment period commencing the day of publication.

MAHC is waiting to receive additional analysis of this proposal and will be communicating with members in more detail when this is available. The National Private Duty Association sent out a brief analysis yesterday which I have included below. Members may be best served by reviewing current client and worker cases to determine to what extent, if any, this change will have on your operations.

Bill Dombi with NAHC sent the message below asking providers to take a moment to complete a survey NAHC is conducting. I encourage you to do so as it will be important for NAHC to have good information about the impact of this change on providers, workers and those receiving care.

From Bill: As you may know, the Department of Labor released a proposed rule that would essentially eliminate the "companionship services" exemption from the minimum wage and overtime compensation requirements. Home care providers that used the exemption with personal care aides, home care aides and home health aides would no longer have that option.

It would be greatly appreciated if you would complete the survey we are conducting. The link to the survey is: <http://homecarepulse.f67ee7dc5908.sgizmo.com/s3/> Please complete regardless as to whether you use the exemption. About 20 states do not have the exemption under state law. Information from those states is as important as information from states where the exemption still applies.

The survey should only take a few minutes with the information usually readily available. If you do not have actual data for some questions, please estimate.

We will keep the survey open until December 30. I recognize the holiday week issues and expect most respondents will do so by next Friday.

NPDA's initial analysis:

1. The proposal applies to the live-in exception as well as to the companion care exemption.
2. The proposal would deny use of the companion exemption and the live-in exemption to any third-party employer (i.e., it would be available only to family/household employers) of a caregiver --this is based on DOL's reading of the 1974 legislative history that states that FLSA is supposed to apply to domestic service workers whose work is done as a vocation...(i.e., a "breadwinner's job")...as I read this, it means that neither NPDA-model private duty companies nor registries, to the extent any registry may be a "joint employer," could use the companion care or live-in exemption.

That proposal also makes changes to recordkeeping, scope of duties, and hours worked (live-in exception) requirements--but since the proposal eliminates use of either exemption/exception by third-party employers, I question their (current) relevance to NPDA members...

Generally, the proposed changes include:

- ☐ Restriction of the live-in and companion care exemptions to only "individual/family or households employing the worker's services".
- ☐ Modifies definition of "domestic service worker" to include babysitters and elder sitters/companions -- notes that companions employed by an individual/family/household may still qualify for the companion care (or live-in) exemption, but any employer employing a caregiver whose vocation is caregiving cannot qualify for the companion care exemption.
- ☐ Modifies that which constitutes "incidental services" which are allowed--up to a maximum of 20% of hours worked (on a weekly basis) and thus ok within the exemption (food preparation, personal services (such as bathing or assistance w/toileting) that are in

connection with "companionship", etc.) Housework not arising from companionship (defined as "fellowship, care and protection") is specifically disallowed (e.g., vacuuming, window washing); medical care is also specifically disallowed (e.g., changing bandages, any kind of medication situation that exceeds simply reminding the client of a pre-set schedule and dosage of meds to take)...

□ Imposes new recordkeeping requirements--e.g., no longer can hours be tracked by use of an employment agreement; under the proposal, records of actual hours worked will be required

There is a 60-day comment period from the date of publication in the Federal Register (which has not yet happened)...but the comment period will run until approximately Feb. 15. The proposal is designated as a "significant regulatory action" w/a projected impact of \$100 million or more on the economy, and thus is subject to the Small Business Regulatory Enforcement Fairness Act (p. 44). DOL acknowledges the cost of its proposal, and also notes that "public funds pay the overwhelming majority of the cost for providing home care services" (DOL states that only 10 percent of payments to home care workers come from private payments).

New Resources & Highlights:

Alzheimer's and Dementia Training DVD Now Available – Take Advantage of MAHC Members Kick Off Special Pricing available until December 31st.

MAHC and the St. Louis Alzheimer's Association teamed up to produce a 90 minute Alzheimer's and Dementia Training DVD. Zoe Dearing, Professional Education Coordinator with the St. Louis Alzheimer's Association addresses the five basic topics required by statute for home care workers. Each topic is prefaced with an interview of a family currently struggling with Alzheimer's disease. Using the DVD and accompanying handouts, employees will learn basic quality information that follows the most recent guidelines and standards of care, so you can be confident they are receiving quality regulation-compliant dementia education.

MAHC members who purchase this Alzheimer's/Dementia Training DVD and handouts by December 31st can take advantage of the "kick-off" special pricing of \$349. After the first of the year there will still be an opportunity to purchase for \$399.

To learn more about this exciting new resource visit:

<http://www.homecaremissouri.org/resources/alzheimers.php>

To place an order before December 31st visit:

Kansas City Regional Home Care Association (KCRHA) honored outstanding leaders in home care at the 2011 Annual Luncheon December 1st. Among those honored were Carol Cronkhite with the VNA OF KC and Rick Lane with Alternacare Infusion Pharmacy. Visit the MAHC web for a picture (cell phone photo-sorry): <http://www.homecaremissouri.org/> then scroll to the bottom of the page.

State General Assembly Issues:

SynCare Update

MAHC and others continue to meet with representatives from the Department of Health and Senior Services, the Division of Senior and Disability Services (DSDS) and the Office of Administration, Division of Budget and Planning to discuss how to transition the in-home and CDS programs into a system that will assure timely client referral, assessments and re-assessments, provider choice, and appropriate and timely plan of care development and implementation. Since the demise of SynCare in September DSDS has been operating the in-take system, conducting assessments, developing plans of care and assuring provider choice. DSDS is using approximately 85 temporary “emergency hire” employees. According to DSDS the backlog of clients needing care or changes to their current plan of care created by Syncare has been dealt with. In addition DSDS states that most referrals are currently being handled within the 15 day time requirement and they expect to be able to meet the 15 day time requirement for all initial assessments soon.

The major part of our meetings has been to determine a way to move forward. MAHC is opposed to the state issuing a new RFP for another 3rd party assessor. We believe providers were doing an excellent job of accepting referrals, determining level of care, conducting timely assessments and developing plans of care that appropriately meet the client’s needs.

DSDS contends that CMS will no longer allow providers to determine eligibility for Medicaid and the system in place prior to SynCare is not a viable option. With that prohibition, MAHC believes the next best option would be for DSDS to take back the role SynCare had been given with some modifications.

Providers, working together with DSDS, can help assure that once the determination of level of care (qualification for Medicaid funded services), options counseling and provider choice has been conducted by DSDS, willing Home and Community Based Service (HCBS) providers can perform health assessments, determine appropriate plans of care and conduct all re-assessments.

To change to a model like this DSDS will need to convert the current “temp/emergency” employees to regular FTE. This may not be popular with member of the General Assembly who have for some number of years been reducing the size of state government by privatizing services (like SynCare). MAHC is committed to help DSDS secure funding that will allow them to operate the program in the most efficient manner – using state workers, in conjunction with providers doing allowable parts of the process. Funding state employees should cost the state (taxpayer) less than privatizing the service to a 3rd party vendor.

More as details develop. Please be ready to contact your state legislator when the time comes to support a new, workable and cost effective system at DSDS.

2012 State Appropriations and Legislative

The MO General Assembly begins on Wednesday, January 4th. We are expecting another tight budget year and possibly the threat of cuts to Medicaid funding for home care programs and services. The **Home Care Advocacy Day is scheduled for Tuesday, February 7th** in Jefferson City. Mark your calendar now to be here for this important event. The MAHC Advocacy committee is busy making plans for ways to efficiently operate in 2012 to get home care’s voice heard.

If you are interested in keeping up with what’s going on at the capitol I suggest you set your browser homepage to the MO General Assembly main page. From this page you can access the web pages for the MO Senate, MO House, all state departments, state laws and

regulations and much more. Once you familiarize yourself with this page and all that is available you will be surprised at how easy it is to keep up with what's going on with state government. The web address is: <http://www.moga.mo.gov/>

Federal Home Health and Medicare Issues

2012 Home Health PPS Payment Timelines (from NAHC Report)

The *Federal Register* published Nov. 4, 2011 provided the final rule that updates the home health prospective payment system (PPS) rates.

The notice details changes to the national standardized 60-day episode rates and per visit LUPA rates based on the market basket update and the case-mix creep adjustment. In addition, this rule includes changes to HH PPS case-mix system. These two changes will be implemented on different timelines.

Average Episode Payment Rate Timeline

Episodes and per visit rate changes will reflect a market basket update of 1.4 percent (2.4 percent market basket update minus 1 percent reduction mandated by the Affordable Care Act). These will then be reduced by 3.79 percent for case mix creep, resulting in an overall episode and per visit reduction of 2.39 percent. An additional 3 percent will be applied to payments for services to patients in rural areas based on the Congressional approved rural add-on. Finally, agencies that failed to submit required quality data will be subject to a reduction of 2 percent to their episodes and per visit payments.

The Centers for Medicare and Medicaid Services (CMS) will apply the CY 2012 HH PPS payment rates for episodes with claim statement "through" dates on or after Jan. 1, 2012, and on or before Dec. 31, 2012.

Case-Mix System Changes

The case mix system changes that will go into effect for 2012 reflect removal of two hypertension codes - 401.1 benign essential hypertension, and 401.9 unspecified essential hypertension - with recalibration of case-mix weights and structural changes to therapy service payments. The structural changes to therapy will result in an average reduction in payment at the 14 visit threshold of 2.5 percent and at the 20 visit threshold of 5 percent, with adjustments to other case-mix categories to maintain budget neutrality. Changes are reflected in revisions of the case-mix scoring table.

Policy changes in the CY 2012 HH PPS final rule related to the case-mix system will be effective beginning with episodes with OASIS M0090 dates of January 1, 2012.

Provider Enrollment Revalidation (From NAHC Report)

Medicare providers including home health agencies and hospices will be requested by their Medicare Administrative Contractors (MAC) to revalidate their enrollment information over the next four years.

CMS List Available to Verify Revalidation Status

The Centers for Medicare & Medicaid Services (CMS) urges providers not to begin the revalidation process until they have been requested to do so by their MAC.

In response to provider requests, CMS has posted a listing of providers who have been sent a request to revalidate their Medicare enrollment information. The listing contains the name and national provider identifier (NPI) of each provider sent a letter, as well as the date the letter was sent. To see the listing, click on "Revalidation Phase 1 Listing" in the Downloads section of the Medicare provider supplier enrollment revalidation page: https://www.cms.gov/MedicareProviderSupEnroll/11_Revalidations.asp#TopOfPage

NOTE: You must widen each column in the spreadsheet to view the contents. CMS will be updating this list monthly.

Home health and hospice providers are encouraged to check this list to verify if revalidation is being requested. If listed, but a revalidation request has not been received, providers should contact your Medicare

contractor. Their toll free number may be found at http://www.cms.gov/MedicareProviderSupEnroll/downloads/contact_list.pdf

Regarding the home health agencies (HHA) that have received a revalidation letter when their enrollment application is sitting in an "Approval Recommended" status, the HHA's Medicare contractor should be reaching out soon to advise that they do not need to submit their revalidation at this time. The Medicare contractor will be adding the HHAs - who have received a revalidation letter and the enrollment application is sitting in an "Approval Recommended" status - back on the revalidation list to have the revalidation request re-mailed at the appropriate time.

Responding to Multiple Revalidation Requests

Hospital based home health and hospice providers reported receipt of requests from two MACs (the HH & Hospice MAC and the hospital MAC). In response to these reports, CMS advised these HHAs that they should respond to the revalidation request issued by their audit intermediary and not their claims processing intermediary.

PECOS Error Messages

Some home health agencies have received the following error message when they attempted to submit their PECOS web enrollment when selecting Location Type = Practice Location in the "Special Payments" Address topic and entering Geographic Information.

CMS is targeting a PECOS web update for early December 2011, (12/2/2011). CMS advises that those who have received a revalidation notice and cannot wait for the PECOS web update may submit a paper 855A application. Those providers who received a revalidation notice and can wait for the PECOS web update should wait and submit their revalidation application online.

Regarding the home health agencies receiving the following error message when they attempt to submit their PECOS web enrollment by selecting Location Type = Practice Location in the "Special Payments" Address topic and entering Geographic Information, we are targeting a PECOS web update for early December 2011.

Non-Match of PECOS Web and Printed 855 pdf.

CMS advises providers that have experienced a failure of the information on the PECOS web to match the printed 855 pdf form to submit their revalidation application via PECOS web since the pdf. discrepancies will not impact their PECOS web enrollment submission. CMS has followed up with the PECOS system developers to make a correction of this problem in a future release of PECOS.

Mandatory EFT Payments

Existing regulations at 42 CFR 424.510(e)(1)(2) require that at the time of enrollment, enrollment change request or revalidation, providers and suppliers that expect to receive payment from Medicare for services provided must also agree to receive Medicare payments through electronic funds transfer (EFT). Section 1104 of the ACA further expands Section 1862 (a) of the *Social Security Act* by mandating federal payments to providers and suppliers only by electronic means. As part of CMS's revalidation efforts, all suppliers and providers who are not currently receiving EFT payments *will be identified, and required to submit the CMS 588 EFT form with the Provider Enrollment Revalidation application.*

Payment Alert! 5010 is coming. Are you ready?

You must comply with this important deadline to avoid delays in payments for Medicare Fee-For-Service (FFS) claims after December 31, 2011. You and your billing and software vendors must be ready to begin processing the Health Insurance Portability and Accountability Act (HIPAA) Versions 5010 & D.0 production transactions by December 31, 2011. Beginning January 1, 2012, all electronic claims, eligibility, and claim status inquiries MUST use Versions 5010 or D.0. Version 4010/5.1 claims and related transactions will no longer be accepted. The electronic remittance

advice will only be available in the 5010 version. Paper submissions are not an option! **Visit this link for more info:** <http://www.cgsmedicare.com/hhh/pubs/news/2011/1211/cope17210.html>

HHABN

From: Mary St. Pierre, NAHC Regulatory Affairs

CMS posted its update to instructions for completion of the Home Health Advance Beneficiary Notice in: CR7323 at

<http://www.cms.gov/transmittals/downloads/R2362CP.pdf>.

SUBJECT: Home Health Advance Beneficiary Notice, (HHABN), Form CMS-R-296

SUMMARY OF CHANGES: This transmittal implements the revised HHABN and instructions. Chapter 30, section 60 and its subsections are being revised, incorporating edits to simplify presentation of previously released information in section 60. This revises previous information from CR 5009, transmittal 1025, dated August 11, 2006.

EFFECTIVE DATE: February 3, 2012

IMPLEMENTATION February 3, 2012

The current version of the HHABN, which can be found at

http://www.cms.gov/BNI/03_HHABN.asp#TopOfPage, became mandatory on April 1, 2011.

End-Of-Year Donation Opportunity to Help Nursing and Therapy Students:

As the year comes to an end and we enter the season of giving, please consider making a year-end donation to the Home Care Research and Education Foundation. The Foundation is a 501(c)3 corporation established to promote home care education, research and the advancement of home care personnel into careers of home care nursing and therapy. Your contribution could produce a tax savings for you, and certainly give you a sense of pride knowing your gift will go to support home care.

The solicitation to members asking for nominations for nursing and therapy scholarships has gone out and we hope to have several qualified nominations. Since 2006 the Foundation has given \$13,000 in scholarships to nursing and therapy students. Members have contributed through donations, buying 50/50 tickets and raffle tickets at the Annual Conference, and supporting special events like Slap Shot Night for Nurses with the St. Louis Blues.

Thank you for your support of MAHC and the Foundation.

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