E-Alliance Extra

***Missouri Alliance for* Home Care**
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In this Edition:

Issues and Priorities for 2017

As the MO General Assembly is grinding to the end, home care can breathe a sigh of relief. The 3% Medicaid rate increases, called for by the governor and supported by the General Assembly, passed, the override of the Governor's veto of the Joint Committee on Administrative Rules (JCAR) decision to throw out the union negotiated wage for CDS workers took place this week, and no significant legislation impacting on home care providers received serious attention.

So what's ahead for home care providers in MO at the state level? The CDS, State Programs and Medicaid Task Forces, along with the Pediatric Home Care and DMH/DD Task Forces are beginning the process of evaluating laws, appropriations and regulations to see what the agenda should be for next year.

Among the issues being discussed are:

1. Reimbursing Private Duty Nursing to attract more providers into the program and in a way that demonstrates the state's willingness to pay appropriately for quality care delivered in the home – thus avoiding expensive (and often inappropriate) institutional care. For example, should the reimbursement rate for a visit made by a Registered Nurse be higher than the reimbursement rate for a visit made by a Licensed Practical Nurse? Are all private duty nursing patients alike? Obviously not. So should providers be reimbursed a higher rate when caring for a complex patient verses a stable chronic patient?
2. Respite, including block and advanced, is woefully under reimbursed. In addition, DSDS staff may authorize respite, when in-fact, the aide will be providing personal care. Should the reimbursement for respite be increased? Should personal care be billed at the personal care rate and not as respite?
3. CDS is a unique program. With recent U.S. DOL changes and union activities, the CDS program is facing additional challenges. Are there ways to change laws, rules or policies that might enhance the program, clarify the employer/employee relationship and keep the program's philosophy in-tact?
4. Can some of the differences between the provision of personal care through a department of Mental Health/DD program and the In-Home program be worked out

so that providers have more similarities in the requirements of both programs?
5. Is it time to consider a new way to authorize and pay for HCBS programs and services? Do these programs lend themselves to an episodic type of reimbursement? Perhaps a case-mix reimbursement that can distinguish between a client with lower care needs from a high need client.
6. Are there EVV rules or laws that need to be changed?
7. Is the Good Cause Waiver working as well as it could and if not, what changes might make it better?
8. What is the industry going to do if a serious effort is made to put the ABD population into managed care?

These are just a few of the issues that your MAHC Task Forces and Committees are working on.

If you are interested in getting involved in advocating for home care and would like to join one of these groups, please let us know.

US Department of Labor Issues Home Care Specific "Sleep Time" Guidance

May 5, 2016

A longstanding area of confusion in federal minimum wage and overtime law has been the issue as to when an employer can exclude sleep time from the calculation of "hours worked" for purposes of calculating employee compensation. With the advent of change in the application of federal overtime requirements to home care workers previously exempt from the Fair Labor Standards Act (FLSA), the sleep time standards have become a big home care issue. On April 25, 2016, the U.S. Department of Labor, Wage and Hour Division (DoL) issued detailed sleep time guidance focused on "domestic service," specifically home care services. While the guidance does not establish any new standards, it applies existing standards to various home care situations.

As a general rule, an employer may exclude sleep time from the calculation of the number of hours worked. An employee is entitled to be paid only for hours worked, and the determination as to whether overtime is also owed depends on the total number of hours worked. However, there are numerous qualifications and limitations on an employer's authority to exclude sleep time from hours worked. To start with, DoL divides home care into three categories for purposes of the sleep time guidance: live-in employees; those who work shifts of 24 hours or more; and those who work shifts of 24 hours or less.

Live-in employees

The guidance first sets out the standards for determining whether an employee meets the "live-in" standard. That requires the employee to reside at the worksite on a permanent basis, defined as seven nights a week and having no other home. Non-permanent live-in status requires working and sleeping at the worksite five days a week for 120 or more hours or five consecutive nights.

For sleep time of "live-ins" to be excluded from the number of hours worked, there must be a "reasonable agreement" between the employer and employee to exclude sleep time. In

addition, the employee must have “private quarters in a homelike environment.” DoL is somewhat flexible on the "private quarters" requirement, recognizing the realities of today’s caregiving. Separate bedrooms with a bed, lighting, and a space or dresser to keep personal belongings are nearly a necessity although the use of a pull out couch in a living room “would likely qualify.” Sharing a bedroom in order to be close to the client would not.

With non-permanent “live-in” employees, up to eight hours per night of sleep time can be excluded provided the employee is paid for at least eight hours of work each 24-hour period. For permanent “live-in” employees, up to eight hours of sleep time can be excluded as long as the employee is paid for some other hours in the workweek. The sleep time that can be excluded must only be at night. The sleep time exclusion also only applies if the worker “regularly has the opportunity to sleep overnight.” There is no specific number of hours that must be paid to qualify if the employee is a permanent live-in.

Shifts of 24 hours or more

The standards for excluding sleep time are different for 24 hour shift employees than for live-ins. Instead of the requirement of “private quarters,” 24-hour shift workers must be provided “adequate sleeping facilities.” In addition, the shift worker must “usually enjoy an uninterrupted night’s sleep.” Finally, the parties must “have an expressed or implied agreement.” Accordingly, the qualification standards for excluding sleep time are distinct from the live-in standards.

DoL interprets the requirement for “adequate sleeping facilities” to include basic sleeping amenities, but does not require private space as with live-ins. DoL recognizes that this is an intensely factual matter where context is important.

With respect to “uninterrupted night’s sleep,” DoL requires at least five consecutive hours of sleep. “Usually” means at least half of the time. Any time worked during the designated sleep period counts as time worked even if the “uninterrupted night’s sleep” standard is met. The sleep time need not be at night. However, it must be in a “fixed window.”

An employer of a 24-hour shift worker may exclude up to eight hours of sleep time each night as long as the employee receives some pay for the week. The calculation of the excluded time is based on the actual amount of sleep time that occurs, not the amount in the agreement.

Shifts of fewer than 24 hours

An employer may not exclude any sleep time from hours worked if the employee does not reside at her worksite and works shifts of fewer than 24 hours. That standard applies even if the employee is specifically permitted to sleep while on duty. Note that a worker working two separate 12 hour shifts on two different days is not a 24-hour shift employee.

Overall Limitations

There are limitations even where the sleep time exclusion qualifications are met. These limitations are:

- Any interruption in sleep time must be treated as hours worked. For example, if the home care worker is needed to provide bathroom assistance during sleep time and it

takes 20 minutes, that time is considered hours worked and is compensable.
- No sleep time can be excluded on any given night unless the worker gets at least a total of five hours of uninterrupted sleep time. These five hours do not need to be continuous.

Conclusion

The DoL guidance includes numerous home care-related examples on the application of the sleep time exclusion standards. It would be stretch to say that the guidance is 100% clear and answers all questions that home care employers have. However, that lack of clarity and comprehensiveness does provide a clear message to employers that caution is essential whenever attempting to rely on the sleep time exclusion to calculate compensable hours worked in home care. Facts matter a lot on this issue. In addition, an employer's plan on the hours worked and the sleep time excluded may not match reality and reality controls under the FLSA.

The DoL guidance is available here.

NIH Releases Resources to Help Families Navigate Pediatric Palliative

May 5, 2016

The National Institute of Nursing Research (NINR), part of the National Institutes of Health (NIH), has released new materials to help support families of seriously ill children. The materials include a fact sheet, a resource card for families, and a series of family stories. The materials are part of NINR's Palliative Care: Conversations Matter campaign.

"Palliative care is often associated with end of life, making it difficult for patients and their families -- and even for healthcare providers -- to start conversations around the subject. However, palliative care can be incredibly helpful for patients and their families at any stage during an illness. We hope these materials will improve patient and family understanding of pediatric palliative care and facilitate discussion with healthcare teams," said NINR Director Dr. Patricia A. Grady.

The materials include the following:

- The **Pediatric Palliative Care At-a-Glance Fact Sheet** provides a brief overview of pediatric palliative care and answers some common questions that families may have.
- The **Finding Family Support Resource Card** includes information on the types of support available to families, like sibling support, respite care, and school resources.
- In **A Family's Perspective**, four families shared their experiences with pediatric palliative care and how the services they received impacted their children and their lives.

NINR, according to a press release, developed the materials based on feedback from parents of seriously ill children regarding "what types of information and resources would be most helpful to others facing the serious illness of a child."

These materials are available on NINR's Palliative Care: Conversations Matter campaign site. They are also available on NINR's new Spanish-language campaign site.

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