

Overtime

Trade Group Seeks Medicaid Hike For Providers to Implement Overtime Rule

The American Network of Community Options and Resources, whose members serve individuals with disabilities, said the Labor Department's proposed overtime rule should come with an increase in Medicaid funding.

The DOL's proposed regulation (RIN 1235-AA11) would require unaffordable wage hikes for employers that rely on fiscally constrained state Medicaid systems, officials with ANCOR said March 23 during a call with reporters. Unlike trade associations working to block the rule (52 DLR A-1, 3/17/16), ANCOR stressed that it supports a raise for its workforce. But it is seeking increased Medicaid funding for the added payroll costs.

The organization is working with lawmakers in both parties on draft legislation to provide states with three years of temporary federal Medicaid funding to ease community-based providers' compliance costs, Esme Grant Grewal, ANCOR's senior government relations director, said on the call.

If introduced, the bill would face political obstacles, so the association has also been asking members of Congress and the administration to consider other preemptive solutions, Grant Grewal said. She told Bloomberg BNA after the call that the organization hopes the DOL "will put something on the table now, whether it's longer implementation or temporary enforcement lenience for providers."

The department's Wage and Hour Division sent a draft final version of the rule to the White House Office of Management and Budget March 14 (50 DLR A-1, 3/15/16). The 2015 proposal (125 DLR AA-1, 6/30/15) would raise the threshold to \$50,440 from \$23,660 to qualify for overtime exemption and is projected to open up time-and-a-half pay eligibility to some 5 million workers.

ANCOR advocates for the advancement of private providers' ability to serve people with intellectual and developmental disabilities in the community setting.

Aftermath of Home Care Rule. The overtime expansion marks the latest wage-raising regulation in this administration to yield concerns from providers of people with disabilities.

The DOL's rule to extend minimum wage and overtime protections to previously exempted home care workers faces an industry challenge before the U.S. Supreme Court (38 DLR A-1, 2/26/16). The rule drew the ire of some, but not all, members of the disability advocacy community, who cited fears of service cuts that would force people out of their homes (220 DLR C-1, 11/16/15).

Curt Decker, the executive director of the National Disability Rights Network, which supported the home care regulation, told Bloomberg BNA March 23 that ANCOR does try to bridge its members' business interests with "a more progressive disability agenda."

Regarding overtime exemption changes, Decker said, "this is a very tough issue" for disability advocates, who work to ensure quality community-based care—and that includes paying the direct-care employees fairly. "We at NDRN have been concerned for a very long time about the quality of community residences and very low pay that workers in those places get," he said.

But the poorly funded Medicaid landscape creates a conflict. Decker said that while he applauds ANCOR for working on legislation, federal budget proposals of late have only tried to further scale back Medicaid. This means the greater chance at success comes via state-level advocacy, he said.

Grant Grewal said ANCOR has previously raised the Medicaid issue with the DOL and hopes to bring it up again with the OMB as it conducts final review of the regulation.

A department spokesman confirmed that ANCOR was one of the many stakeholders the agency engaged with in the pre-rulemaking phase. The group's comments were considered in the final rule's development, he said in an e-mail.

With respect to state-level funding mechanisms, "When the rule is final we will appropriately consider a range of engagement options," the spokesman added. "We welcome hearing from stakeholders about the type of technical assistance they feel would be helpful to be in compliance."

Study Estimates New Costs. The organization also unveiled a study it commissioned from the consulting firm Avalere Health, estimating the overtime rule's impact on its members. The report found that if community providers were to begin paying overtime to newly eligible employees, it would cost the industry's nearly 4,000 providers a combined \$1 billion in the first year.

Avalere calculated this figure based on the industry's approximately 154,000 workers, out of 242,000 overall salaried employees, who earn between \$23,660-\$50,440.

Under an alternate scenario, if providers were to increase those workers' salaries to \$50,440 so they remain exempt from overtime, it would create \$1.9 billion in overall costs, the study showed. Avalere also projected that the regulation would lead to \$388 million to \$856 million in new Medicaid spending because of pro-

viders being forced to limit services, transitioning individuals to the more expensive institutional setting.

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