Value the Care!

Minimum wage and overtime for home care aides

No. 7

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High-Hour Consumers in the California IHSS Program: Impact of Compensating Overtime Hours

On October 1, 2013, the U.S. Department of Labor (DOL) published its final rule narrowing the "companionship exemption" under the Fair Labor Standards Act (FLSA). As a result, beginning January 1, 2015, most home care workers will be guaranteed federal minimum wage and overtime protections for the first time. In addition, because they are newly covered under federal wage and hour laws, home care workers will now be eligible for compensation when driving between clients, and will be protected by federal law when challenging employers in wage and hour disputes.

As the federal government and states prepare for implementation of the rule, there remains some concern about the impact of the rule on publicly funded long-term services and supports, particularly continuity of care. To address this question, PHI examined how the revised rule might affect California's In-Home Supportive Services (IHSS) Program, the nation's largest publicly funded home care program. Size aside, IHSS differs from other state programs in that it allows individuals with high-level needs to hire attendants for long hours (a maximum of 283 hours per month) and the program relies heavily on paid family members to support program participants.

IHSS Program Overview

The IHSS Program provides home-based support to California elders and individuals with disabilities (or "consumers"), virtually all of whom are authorized to receive Medicaid-funded long-term services and supports. In 2008, the most recent year for which this data is available, IHSS provided support services to approximately 414,000 consumers each month. Most of these consumers have very low incomes. Additionally, in order to qualify, a person must be aged, blind or disabled and require services such as assistance with cleaning, meal preparation, bathing, grooming, and taking medications to remain safely at home. The number of hours of monthly authorized services varies widely, ranging

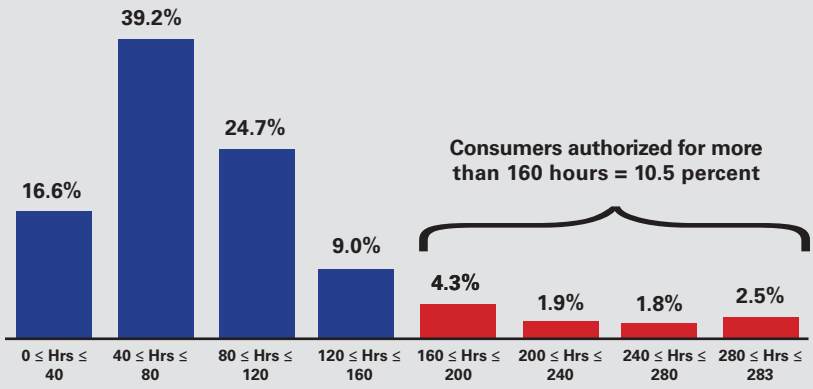
Value the Care is a publication of the **PHI Campaign for Fair Pay (www.PHInational.org/fairpay)**, which is working to ensure successful implementation of the revised rule extending federal wage and overtime protections to home care workers.

from 1 to 283 hours per month, and is based on the severity of impairments. Consumers receiving over 195 hours of service each month are considered to be "severely impaired."[1]

Average Support Hours for Consumers

While IHSS consumers may receive up to 283 hours of home care service per month, as shown in Figure 1, in 2008 nearly 60 percent were authorized to receive less than 80 hours of care each month (about 18 hours of care per week).[2] **Approximately 90 percent of consumers were authorized to receive between zero and 160 hours of service per month, or no more than 37 hours per week.** Only a small percentage of consumers (10.5 percent or 43,685 people) were authorized to receive more than 160 hours of services each month (or on average, more than 37 hours per week).

Figure 1: IHSS Consumers by Authorized Hours per Month, 2008

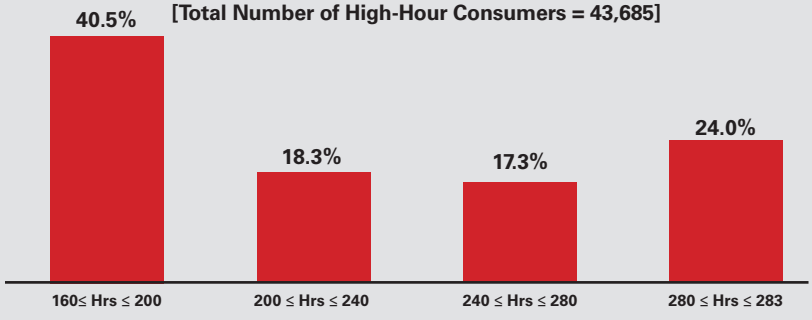


High-Hour Consumers

The relatively small number of consumers who were authorized for 160 hours or more of IHSS services can be further divided into four groups (see Figure 2 below). Just over 40 percent of the high-hour consumers were authorized for between 160 and 200 hours per month. Approximately one fifth were authorized for between 201 to 240 hours, and another one fifth for 241 to 280 hours. Finally, nearly a quarter of consumers who received more than 160 hours (10,480 individuals) were authorized for between 280 and 283 hours per month, or more than 65 hours a week. Individuals in this group would be most vulnerable to being placed in a skilled nursing facility without the support of IHSS services.

Overtime

Figure 2: IHSS Consumers with Authorized Hours Over 160/Month by Authorized Hours, 2008



Based on this data, we cannot conclusively describe the amount of overtime that individual providers in the IHSS program may work. This is because a consumer may have multiple providers, and a provider may support more than one consumer. However, even if we assume that services are provided to each IHSS consumer by only one provider, then the data suggest that only 10.5 percent of consumers would need their provider to work overtime on a monthly basis.[4] Moreover, 40.5 percent of those consumers would require very minimal overtime — on average, 1.3 hours of overtime per day. This analysis also shows that in 2008, only 10,480 consumers were very high-hour cases (>280 hours a month), which is only 2.5 percent of the total monthly IHSS caseload of 413,791 consumers.

Looked at another way, our analysis shows that in 2008 potential "overtime" hours (i.e., authorized hours in excess of 160 per month) constituted approximately 8 percent of total IHSS authorized service hours on an annual basis. Even if the highest-hour beneficiaries were served by only one provider who was paid overtime at time and half, the IHSS program would still be more cost effective than the alternative — placement in a skilled nursing facility at the state's average daily reimbursement rate of $175.[5] The annual cost of the latter is $63,875, which is a quarter again more expensive than the maximum cost of $50,022 required to provide care to the highest hour IHSS consumer using only one personal care aide who is paid overtime. The cost of providing services to the IHSS consumer assumes a maximum wage and benefit cost (in which the state will participate) of $12.10 an hour.[6] Since many of California's 58 counties have IHSS wages and benefits under $12.10 an hour, the actual cost of this extreme scenario is likely to be significantly less.[7]

Conclusion

California's IHSS program data does not support the claim that paying minimum wage and overtime to IHSS workers will significantly increase the cost of the state's program. The state's program data show that the vast majority (90 percent) of consumers are not authorized for overtime hours on a monthly basis. Even under the assumption that each IHSS consumer relies on only one individual provider, then this data suggests that at most 10 percent of IHSS providers may work on average more than 40 hours per week.

Furthermore, nearly half of consumers requiring overtime hours need only about 1.3 additional hours per day. Only a very small percentage of the program's caseload (2.5 percent) is authorized for very high-hour cases that would require about 4 additional hours per day, but these are precisely the individuals who are most at risk for even more costly long-term institutionalization.

To the extent that high-hour IHSS consumers tend to rely on one provider, then the IHSS program can either pay time and a half for overtime hours or require that consumers hire additional workers. Employing additional providers would be less costly, but may cause disruption for consumers and workers. Consumers who rely on family members to provide long hours of care may be reluctant to hire additional personal care aides.

While these disruptions should not be minimized, there are significant upsides to these changes. Long hours are exhausting even for providers who are family members, and the resulting stress and fatigue can result in poorer health status for family members and injuries for both workers and consumers. Furthermore, spreading authorized hours over more providers will increase hours for some, result in more balanced workloads,[8] and provide better backup coverage when one provider is unavailable. According to national data, the vast majority of home care workers work part-time and a significant proportion of those would prefer more hours.[9]

California has been a leader in achieving a rebalanced long-term care system that emphasizes community-based care. Indeed, California ranks among the top five states in terms of long-term care coverage and cost-effectiveness, and in terms of the balance between nursing home and home- and community-based care.[10] IHSS providers constitute the workforce backbone of that system and should receive the same wage and hour protections afforded other workers. While the size of California's personal care program—the nation's largest[11]— may raise concerns for officials charged with managing the program, data about the extremely low incidence of high-hour cases should substantially alleviate those concerns.

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For more information on the revised companionship exemption, go to www.companionshipexemption.com and www.dol.gov/whd/homecare/

To learn more about the home care workforce, visit www.PHInational.org/homecarefacts

Questions? Contact PHI's Government Affairs staff at 202-888-1972.

Data Sources

The main source of data for this issue brief is: California Department of Social Services, unpublished Case Management Information and Payrolling System (CMIPS) tables for 2008 from the California Medicaid Research Institute (CAMRI) at the University of California, San Francisco.

End Notes

[1] M. Taylor (2010). Considering the State Costs and Benefits: In-Home Supportive Services Program. California Legislative Analysts Office. Available at: http://www.lao.ca.gov/reports/2010/ssrv/ihss/ihss_012110.pdf

[2] Note: hours per week were calculated using an average of 4.3 weeks per month.

[3] M. Taylor (2010). Considering the State Costs and Benefits: In-Home Supportive Services Program. California Legislative Analysts Office. Available at: http://www.lao.ca.gov/reports/2010/ssrv/ihss/ihss_012110.pdf

[4] Under federal law, workers are owed overtime after a 40-hour workweek. This differs from California state law. Pursuant to California Labor Code Section 510, non-exempt employees must be compensated at one and a half times the regular rate of pay for all hours worked in excess of eight hours in a workday, 40 hours in a workweek and the first eight hours of a seventh consecutive workday. IHSS workers are currently exempt from this state law, and a change in federal law would not require overtime for workdays in excess of 8 hours, unless they resulted in a workweek greater than 40 hours.

[5] http://www.dhcs.ca.gov/services/medi-cal/pages/ltcab1629.aspx

[6] The maximum hourly wage and benefit costs that the state will participate in was lowered to $10.10 per hour ($9.50 for wages and $0.60 for benefits) as part of the 2009—2010 State Budget. However, a federal judge issued an injunction to stop the decrease in state participation. As a result, the state has still been participating in combined wages and benefits of up to $12.10 per hour ($11.50 for wages and $0.60 for benefits). Counties with wages and benefits above $12.10 have been splitting the additional cost with the federal government. Important changes are underway in the IHSS Program including state collective bargaining for IHSS, creation of a county IHSS Maintenance of Effort (MOE), and creation of a Statewide Authority. For a summary of these changes, see: http://www.capaihss.org/_2009/home/new_information/ihss_labor_101512.pdf. The cost calculations provided in this brief assume the program as it operated up until FY 2013.

[7] For example, Los Angeles County, with 44% of the IHSS caseload, currently pays a wage rate of $9.50 per hour. This wage is set to increase by 65 cents later this year.

[8] Dorie Seavey and Alexandra Olins (2012). Can Home Care Companies Manage Overtime Hours: Three Successful Models. PHI. http://phinational.org/sites/phinational.org/files/clearinghouse/overtime-casestudies-20120209.pdf

[9] PHI (February 2012). "Home Care Jobs, The Straight Facts on Hours Worked." Value the Care #6. http://phinational.org/sites/phinational.org/files/policy/wp-content/uploads/phi-value-the-care-06.pdf

[10] Candace Howes (May 2010). Costs and Benefits of In-Home Supportive Services for the Elderly and Persons with Disabilities: A California Case Study. Institute for Women's Policy Research and PHI. Available at: http://phinational.org/sites/phinational.org/files/clearinghouse/E512HowesCBA_043010.pdf

[11] PHI (December 2010). California's Direct-Care Workforce. http://phinational.org/sites/phinational.org/files/clearinghouse/overtime-casestudies-20120209.pdf

The FLSA "companionship exemption" timeline

1938 – The federal Fair Labor Standards Act (FLSA) is enacted to ensure a minimum standard of living for workers through the provision of a minimum wage, overtime pay, and other protections — *but domestic workers are excluded.*

1974 – The FLSA is amended to include domestic employees such as housekeepers, full-time nannies, chauffeurs, and cleaners. However, persons employed as "companions to the elderly or infirm" *remain excluded from the law.*

1975 – The Department of Labor interprets the "companionship exemption" as including all direct-care workers in the home, *even those employed by third parties* such as home care agencies.

2001 – The Clinton DOL finds that *"significant changes in the home care industry" have occurred* and issues a "notice of proposed rulemaking" that would have made important changes to the exemption. The revision process is terminated, however, by the incoming Bush Administration.

2007 – The US Supreme Court, in a case brought by New York home care aide *Evelyn Coke*, upholds the *DOL's authority to define exceptions* to FLSA.

2011 – President Obama announces a Notice of Proposed Rulemaking (NPRM) that, if enacted, will finally extend minimum wage and overtime protections to the vast majority of home care workers.

2013 – After extensive review by the Office of Management and Budget, on October 1, the U.S. Department of Labor published the revised companionship rule in the Federal Register.

PHI Quality Care THROUGH Quality Jobs

PHI (**www.PHInational.org**) works to improve the lives of people who need home and residential care—and the lives of the workers who provide that care.

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