

Secretary James Dimas
Illinois Department of Human Services
100 South Grand Avenue East
Springfield, Illinois 62762

March 17, 2016

Dear Secretary Dimas,

As you know, the U.S. Department of Labor's home care rules, which extend federal minimum wage and overtime coverage to over two million home care workers previously excluded from fundamental labor protections under the Fair Labor Standards Act (FLSA), went into effect in 2015.

We ask that you continue to invest in a quality workforce with incentives for retention by ensuring that workers in programs throughout the state are paid in accordance with federal and state minimum wage and overtime laws. By ensuring compliance with new federal and state wage and hour rules, Illinois will take a crucial step forward towards improving workers' rights while also ensuring its home care system can continue to deliver the critical high-quality services that so many Illinois consumers and families rely on and many more will require in the coming years.

Illinois, like much of the country, faces a rapidly growing demand for home and community based services. The state's workforce of 73,000 personal care aides and home health aides is projected to grow by 36% between 2012 and 2022.¹ Median wages of just \$10.41 per hour, however, may weaken the state's ability to recruit and retain a qualified workforce. Illinois can take a major step towards improving industry standards and strengthening the workforce by ensuring that home care workers are paid for all hours worked and any overtime, as required by both federal and state law. The state should begin by paying Personal Care Attendants for all hours worked and any overtime, sending a strong message to the entire home care industry that home care workers are now covered by the same rights as almost all other workers, and setting the stage for a stronger home care system and more robust economy.

Other states' examples.

Many states have already taken concrete steps to properly implement the new rules, including: collecting and publicizing data on the publicly and privately-funded home care workforce; assessing whether the state qualifies as a joint employer of some or all of their Medicaid-funded home care workforce; paying workers for all hours worked, including travel time between clients, and any overtime; updating record-keeping practices; budgeting the necessary Medicaid dollars to pay for any increased costs associated with the new federal rules; ensuring that any modifications to home care programs do not violate the rights of consumers or workers; and taking other steps to strengthen the workforce. Examples of states' implementation efforts include:

- Massachusetts began paying the 35,000 personal care attendants (PCAs) in its MassHealth Medicaid-funded home care program for travel time and any overtime, beginning January 1, 2016. To facilitate the transition, MassHealth's contracted fiscal intermediaries now track PCAs' cumulative weekly work hours across all consumers, and automatically record, calculate, and pay for any workday travel time.
- New York is surveying Medicaid-reimbursed home care agencies to determine how much their labor costs have increased as a result of paying workers in accordance with federal minimum wage and overtime rules, and whether the state should increase its reimbursement rates to agencies to cover

¹ PHI State Data Center, retrieved February 2016. <http://phinational.org/policy/states/Illinois>

these additional costs. In the meantime, retroactive to October 13, 2015, the NY Department of Health has increased its reimbursement rate by \$0.34 per hour to pay for travel time and for increased payment for “live-in” cases. New York worked in collaboration with SEIU 1199 United Health Care Workers East and worker advocacy organizations to calculate the adjustment. New York has requested a funding increase from the Centers for Medicare & Medicaid Services (CMS), as all states may do (see the below resources for requesting federal Medicaid payment adjustments).

- California’s estimated 376,000 workers in its In-Home Supportive Services (IHSS) program are now paid for weekly overtime and travel time. The governor budgeted \$450 million for fiscal year 2016-2017 to cover additional overtime costs.
- The Oregon Home Care Commission, the state agency that provides caregivers to 24,000 elderly and disabled Medicaid beneficiaries, asked for and received an additional \$35 million in the previous year’s budget to account for implementation of the home care rules.

We recommend that Illinois take the following steps to implement the new rules appropriately:

- **Address potential wage and hour violations within in HSP Policy.** The new Illinois policies could possibly indicate or lead to labor violations. For example, the policy does not specify a process for emergency coverage beyond the one time allowed and it wrongly indicates that workers will not get paid for all hours worked.
- **Ensure Illinois’s Medicaid-funded home care workers are getting paid minimum wage for all hours worked and overtime pay for any hours worked beyond 40 in a week.** Home care workers, including PCAs in state-administered programs, have the right to be paid at least the state minimum wage for all hours worked, including travel time between consumers, and overtime at a rate of one and a half times the regular hourly rate for any hours worked over 40 in a week. As detailed above, other states have begun paying state-funded workers in compliance with federal requirements. There are ample resources to help Illinois assess what changes it may need to make to comply with new requirements, including a Department of Labor fact sheet and Administrator’s Interpretation.²³
- **Track worker hours and pay as required by federal and state law.** Accurately tracking and paying for all work hours is not only the law, it can also help the state collect the data it needs to budget for future fiscal years and request the federal contribution for Medicaid from CMS.
- **Request federal Medicaid payment adjustments.** Illinois should ensure it does not miss an opportunity to request and receive federal matching funds for any increases in its Medicaid spending. In a January 2016 informational bulletin, CMS provided states with additional information on options for receiving increased Medicaid payments for consumer-directed programs.⁴ Reviewing this information, along with the July 2014 guidance, is important given upcoming deadlines to make such requests.⁵ The January bulletin states that state Medicaid plan amendments may be retroactive to the beginning of the quarter. Therefore, any amendment to adjust a rate methodology to accommodate increased labor costs that is submitted on or before March 31, 2016 for a state plan service can be approved with an effective date of January 1, 2016. If a 1915(c) waiver rate methodology must be changed due to FLSA, CMS commits to approve within a month of a submitted amendment.

² US DOL Wage and Hour Division, *Fact Sheet #79 E*, June 2014. <http://www.dol.gov/whd/regs/compliance/whdfs79e.htm>

³ US DOL Wage and Hour Division, *Administrator’s Interpretation No. 2014-2*, June 19, 2014.

http://www.dol.gov/whd/opinion/adminIntrprtn/FLSA/2014/FLSAI2014_2.htm

⁴ CMCS Informational Bulletin, *Options for Medicaid Payments in the Implementation of the Fair Labor Standards Act Regulation Changes*, January 8, 2016. <https://www.medicaid.gov/federal-policy-guidance/downloads/CIB-01-08-16.pdf>

⁵ CMCS Informational Bulletin, *Self-Direction Program Options for Medicaid Payments in the Implementation of the Fair Labor Standards Act Regulation Changes*, July 3, 2014. <https://www.medicaid.gov/Federal-Policy-Guidance/Downloads/CIB-07-03-2014.pdf>

- **Ensure state transparency and stakeholder input.** Create a task force or series of open stakeholder meetings to facilitate ongoing communication and coordination between Illinois Department of Labor, Department of Human Services, other agencies and stakeholders, including home care workers, live-in workers, consumers with disabilities, older adult consumers, and family caregivers. The state should also ensure that non-IP programs are complying with the new rules. This task force or series of open meetings would ensure the meaningful participation of home care workers and consumers. The state should also consider arranging for an implementation Ombudsman who could hear the concerns of both workers and consumers.
- **Plan an implementation budget that ensures stable worker hours with no unreasonable reductions.** If the state makes unreasonable cuts to worker hours, it will further destabilize the workforce, reducing the potential for sustaining a long-term, professional workforce.
- **Ensure any modifications to Medicaid programs do not violate consumer rights.** Letters from the US Department of Labor and the US Department of Justice and US Department of Health and Human Services emphasize that states should not make any program changes that violate individual's rights under the Americans with Disabilities Act or the Supreme Court's *Olmstead* decision.^{6 7}

We are committed to serve as a resource to you and to the workers and consumers in the state. We request an opportunity to meet with you and thank you for your efforts to implement this rule in a way that supports workers' and consumers' rights.

Sincerely,

Caring Across Generations
Jobs with Justice
National Domestic Workers Alliance
National Employment Law Project
PHI – Quality Care through Quality Jobs

Cc:

Governor Bruce Rauner
Michael Zolnierowicz
Gregory Bassi
Kris Smith
Vivian Anderson

⁶ US DOL, Letter to Governors from the Secretary of Labor, March 20, 2015. <http://www.dol.gov/whd/homecare/letter-to-governors.pdf>

⁷ US Department of Justice and US Department of Health and Human Services, Dear Colleague Letter, December 15, 2014. http://www.ada.gov/olmstead/documents/doj_hhs_letter.pdf