

Thomas O. Forslund, Director

Governor Matthew H. Mead

BHD Bulletin

DATE: December 4, 2015

TO: All Behavioral Health Division Waiver Providers

FROM: Joe Simpson, Administrator, Behavioral Health Division – DD Section

SUBJECT: Rate changes due to DOL requirements

REF #: JS-2015-099

The Wyoming Department of Health, Behavioral Health Division (Division) is announcing rate changes due to a change from the Department of Labor in the Fair Labor Standards Act regarding the companionship definition and services that may be subject to the overtime rate.

DOL promulgated a rule effective January 1, 2015 to address changes in the Fair Labor Standard Act, 29 U.S.C. § 201 et seq. The DOL Final Rule at 78 FR 60454-85 modified the “third party employment” regulation to prohibit employers other than the individual or their families or households from claiming the companionship services exemption from minimum wage and overtime or the live-in domestic service employee exemption from overtime. Clarification received from the Department of Labor required all states to review their rates for services that may be companionship in nature and subject to overtime when provided by one person in excess of 40 hours in a week. Providers must comply by ensuring that their employees are paid wages commensurate with this law.

The state identified that the following services may be impacted by the rule, therefore, effective January 1, 2016 we are implementing changes to the reimbursement to include an overtime component:

- Daily Respite rate will increase to \$187.56
- Special Family Habilitation Home rate will increase to \$187.56

Case managers must submit modifications to the plans of care for the units that will be changing, and the participant’s Individual Budgeted Amount will be adjusted accordingly.

Other possible rate changes for participants who qualify

The state also identified a third service, Residential Habilitation, that is impacted by this rule when provided in a host home arrangement by a provider who serves only one participant in the provider’s

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home. In these cases, the provider will receive a rate increase to the level 5 U8 tier rate of \$196.02 if the participant is not yet at that tier. The rate change only applies to this type of provider because the one and only participant's service rate provides the entire funding for the provider and staff in the home. Participants living with this type of a provider who need a rate change will be reviewed before approving the higher tier to ensure they meet the conditions.

Self-Directed services at the daily rate will also be reviewed to ensure they pay at a rate that covers federal minimum wage and overtime if accrued. If a participant has a rate for a service that must be changed, the Division and PPL will work with the case manager to resolve the concern.

If a participant requires a rate change, the case manager must submit a modification to reflect the units needed at the new rate, and the participant's Individual Budgeted Amount will be adjusted accordingly.

Questions

For questions on these rate changes, please contact Jamie Kennedy at the Division at 777-5660.