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To: Waiver Personal Care Services Provider

Subject: Overtime for Waiver Personal Care Services

The federal government passed new rules about overtime for Waiver Personal Care Services (WPCS) and In-Home Supportive Services (IHSS) programs. California started paying IHSS and WPCS care providers under these new overtime rules on February 1, 2016.

This letter is being sent to people who provide services either through the In-Home Operations (IHO) Waiver or the Nursing Facility/Acute Hospital (NF/AH) Waiver. In January, 2016, we sent you informational packet Temp # 3001 informing you of the new overtime rule and its limitations and the exemption bulletin letter no. 16-001. If you did not receive the informational packet, please contact IHO at (916) 552-9214, and one will be sent to you in the mail.

Overtime is paid for hours worked over 40 in a week for WPCS, for IHSS, or for a combination of IHSS and WPCS. If a provider works both WPCS and IHSS hours, those hours are added together to figure out the total hours worked per week and the amount of overtime due per week.

There are two kinds of limits on the number of hours a provider can work:

1) Waiver limits: The IHO and NF/AH Waivers allow providers to work up to a 12-hour day for WPCS and IHSS hours combined. However, because of overtime limits, participants will need to get In-Home Operations (IHO) approval to have their providers work more than the allowed maximum hours, as provided in the new overtime rules. See \*Exemption on next page. If you need a WPCS provider for more than the limits outlined below, you must hire more providers.

2) Overtime limits: The Department of Health Care Services (DHCS) has limits on the number of overtime hours that can be worked by a WPCS provider.

**Providers who work for two or more participants:**

- Can work no more than 12-hours in a day, and up to a 66-hour work week.
  - If a provider works a 66-hour work week, they will be paid overtime for 26 hours.

**Providers who work for one participant:**

- Can work no more than 12-hours in a day, and up to a 70-hour and 45-minute work week, not to exceed 283 hours worked in a month.

- If a provider works a 70-hour and 45-minute work week, they will be paid overtime for 30 hours and 45 minutes.

**Waiver participants who have more than one provider working for them, and their provider does not work for any other participants:**

- Providers can work up to a 70-hour and 45-minute work week.
  - If a provider works a 70-hour and 45-minute work week, they will be paid overtime for 30 hours and 45 minutes.
- The total hours worked by any one provider cannot be more than 283 hours in a month.

Travel time: Travel time is paid separately. Travel time is limited to seven hours per week for travel between two or more participant locations on the same day, and the hours are not deducted from your overall hours.

Since the law is new, there was a three month grace period for violations. Violations will be given beginning May 1, 2016. You need to get approval from IHO before you work extra overtime hours. Without approval, you will get a violation. You may get a violation, if:

- You are identified to only work up to 40 hours in a work week, and you work more than the 40 hours, without approval from IHO, when the participant is authorized 40 hours or less in a workweek
- You work more than the participant's maximum weekly hours, and you do not get approval from IHO.
- You work for more than one participant and work more than 66 hours in a work week,.
- You claim more than 7 hours of travel time in a work week.

\* Exemption from overtime workweek limit:

For IHO or NF/AH waiver participants who were enrolled in a waiver on January 31, 2016:

As of May 1, 2016, DHCS may allow some providers to work more hours in WPCS than the overtime work week limits shown above; up to the waiver limit (a 12-hour work day or 360 hours per month). However, the provider and participant must request an exemption before a provider works beyond the overtime limits. Without the exemption, the provider may get a violation. To apply for an exemption, see "the exemption criteria and process" below.

DHCS will allow more overtime on a case-by-case basis, if:

- (1) You live in the same home as the waiver participant. You do not have to be a family member;  
or
- (2) You are now giving care to the waiver participant, and have done so for two or more years, without a break; or

(3) DHCS agrees that there are no other possible care providers to assist with the care. The waiver participant must work closely with IHO care managers. The IHO care manager will ask the participant to show that he/she tried many times to get another provider.

Reasons a participant may not be able to find a new provider include:

- Participant lives in a rural area;
- Participant cannot find available providers who speak the participant's primary language;

To show to IHO that the participant has tried to find a provider, participant needs to demonstrate that he/she has

- Posted ads for the job but no one responded;
- Contacted the Public Authority for Provider Registry list and no providers were available or could meet the participant's needs; and
- Kept track of any other ways the participant has tried to find a provider. Participant must include:
  - How many possible care providers the participant met with;
  - Why the participant did not hire the care provider, or
  - Whether the provider refused the job.

The Exemption Process:

IHO care managers will work with waiver participants and you to approve exemptions on a case-by-case basis.

To ask for an overtime exemption, you need to fill out the Workweek Exemption for WPCS Care Providers form, sent with this letter. Please, complete, sign, and date the Exemption form; have the participant or the authorized representative of the participant sign the form, and return it to the Department of Health Care Services. Use the envelope sent with this letter; it does not need a stamp.

The IHO care manager will check the form you send in. The IHO care manager may need to ask you and/or your participant for more information. Then the IHO care manager will go over all the information and make a decision. You and the participant will get a letter, in two weeks from the receipt of your exemption request that says if the request was approved, denied, or if IHO needs additional information.

Approved exemption requests will begin on May 1, 2016 to avoid any potential violations. IHO will send a Participant Assignment of Authorized Hours Agreement Form, with the approval letter. This is also known as Form DHCS 2256. This form has the participant's authorized hours. Your participant needs to fill out your weekly schedule and return it to IHO.

DHCS will continue to monitor each waiver participant's care and provider situations. This is to safeguard waiver participants' health, safety, and welfare and ensure all waiver rules are followed.

If you have questions, call your IHO care manager or the WPCS Hotline at (916) 552-9214.

If you need a copy of this notice in another language, in Braille, or in large print, call (916) 552-9105.