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Letter No.: 16-002

To: Waiver Personal Care Services Participants
Waiver Personal Care Services Providers

Subject: Temporary and Permanent Overtime Exemption

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

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 does work 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 workweek, 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 workweek, not to exceed 283 hours worked in a month.
- If a provider works a 70-hour and 45-minute workweek, 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 workweek.
 - If a provider works a 70-hour and 45-minute workweek, 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.

NF/AH and IHO Waiver participants who are enrolled in either waiver after January 31, 2016:

DHCS may temporarily allow more overtime hours up to the waiver limit (a 12-hour work day, or 360 hours per month) on a case-by-case basis, if:

1. The Waiver participant lost their primary care provider (their provider that worked the most hours in a work week or month); and
2. The Waiver participant is working closely with their IHO care manager to try to find more care providers.

The Temporary Exemption Process:

IHO care manager will work with participants enrolled on either IHO or NF/AH waiver to approve exemptions on a case-by-case basis.

To ask for an overtime exemption, the provider must fill out the Workweek Temporary Exemption for WPCS Care Providers form (DHCS 2280); have the participant or the authorized representative of the participant sign the form, and return it to the Department of Health Care Services. Participants and providers can get a copy of the Workweek Temporary Exemption form from their IHO care manager at any time.

A Temporary Exemption can be granted for a period of 60 days if the above requirements are met. If the participant could not find an additional provider during the 60-day Temporary Exemption period, the participant may request a permanent exemption from their IHO care manager.

The Permanent Exemption Process:

DHCS may permanently allow more overtime hours up to the waiver limit (a 12-hour work day, or 360 hours per month) on a case-by-case basis, if:

1. The Waiver participant lost their primary care provider (their provider that worked the most hours in a work week or month); and
2. DHCS agrees that there are no other possible care providers near the waiver participant's home that can meet the needs of the participant. The waiver participant must work closely with their IHO care manager to try to find more care providers. Participant must show that he/she tried to get another provider.

Participants can request the permanent exemption for several reasons. Reasons for requesting an exemption may include:

- Proof that a participant lives in a rural area;
- A participant could not find an available provider who speaks the participant's primary language; or
- A participant can have other reasons that cause undue hardship to their living dynamics that will be considered on a case-by-case basis.

Participants can work with IHO manager to demonstrate that they have tried to find a provider by showing that they have:

- Posted classified advertisements for the job, but nobody 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 including:
 - How many possible care providers the participant met with;
 - Why the participant did not hire the care provider; or
 - Whether the providers refused the job.

If the participant could not find an additional provider during the 60 days Temporary Exemption period, the existing provider may become eligible for a permanent exemption, after the participant has worked closely with their IHO care manager.

DHCS will still monitor each waiver participant's care and provider situations. This is to safeguard waiver participants' health, safety, and welfare, and to make sure all waiver laws are followed.

In-Home Operations Branch contact information is (916) 552-9105 or IHOWaiver@dhcs.ca.gov.

If you need this letter in another language or alternate format, like large print, audio, or Braille; or if you need help understanding this letter, please call IHO Branch at (916) 552-9105, Monday – Friday from 8am to 5pm.