



Judge David L. Bazelon Center for Mental Health Law • National Senior Citizens Law Center
National Council on Independent Living • National Disability Rights Center
American Association of People with Disabilities

Home Care Rule Advocacy Fact Sheet: *How to Prevent Service Cuts and Protect Consumer-Directed Programs*

The U.S. Department of Labor (DOL) recently issued a new rule that affects home care services for people with disabilities and seniors. This rule may impact some of your state's long term care programs, particularly your state's "consumer-directed" programs, where the person receiving services can hire his/her own worker (oftentimes family members or close friends) and direct the care the worker provides.

The rule narrows the types of home care workers who are exempt from the Fair Labor Standards Act's (FLSA) minimum wage and overtime requirements, meaning more home care workers will be entitled to these protections. Some states, however, may consider actions that would technically bring them into compliance with the new rule but would undermine its goals and could lead to cuts in critical community services for consumers, workforce shortages, and even the abandoning of the consumer-directed programs for which people with disabilities and seniors have long fought. **Consumers and advocates must take immediate action to make sure that your state is ready to implement this new rule in a way that helps and does not harm people with disabilities and seniors and their home care workers.**

To help consumers and advocates take action, we've created a guide, *Action Steps for Consumers and Advocates Regarding the New Home Care Rule: How to Prevent Service Cuts and Protect Consumer-Directed Programs*. Below is an overview of the advocacy steps that consumers and advocates should take in their states, which are described in more detail in the guide:

- **Make sure your state is aware of and preparing now for the new home care rule to take effect.** Many states have not yet focused on this rule and its impact, even though its effective date is January 1, 2015.¹ It is critical to make sure this rule is a priority in your state.

¹ A number of stakeholders have requested an extension of the effective date to allow states more time to prepare for implementation. We will notify stakeholders and update this document if the effective date changes.

- **Push your state to analyze which programs are affected by the rule and what the budget impact will be for these programs.** Your state will need to determine which of its consumer-directed programs have home care workers employed by anyone other than the consumer or his/her household (known as a “third party employer”). DOL has said that most states’ programs have a third party employer together with the consumer, known as a “joint employer.” If there is a joint employer, your state will need to determine and budget for the cost of paying overtime to workers (including people who provide services to more than one consumer) and the time for workers travelling between their work with different consumers.
- **Advocate for additional funding in impacted programs.** The effective date of the rule is in the middle of most states’ Fiscal Year 2015 budget, which has already been completed in most states. To date, only one state (California) has planned for implementing this rule in its 2015 budget. You should explore if your state has any way to add money to these programs outside the regular budget cycle. In addition, most state agencies are already preparing their Fiscal Year 2016 budgets. It is critical that you advocate for additional funding in the 2016 budget now.
- **Make sure your state does not comply with the rule in ways that cause harm to consumers and workers.** States could take actions that technically comply with the rule but hurt consumers and home care workers. These actions include prohibiting all overtime and restricting all or most travel, which could lead to cuts in services for consumers and reductions in income to home care workers. You should tell your state that any policies that lead to service cuts that place people at serious risk of institutionalization could violate the Americans with Disabilities Act and the Supreme Court’s decision in *Olmstead v. L.C.* Push your state to create an “exceptions process” from any new policies for consumers who would be harmed. In many cases, you may be able to advocate that the additional costs of implementing restrictive policies (such as hiring additional workers, setting up backup worker systems, and hiring staff to explain and enforce the restrictions) may be more expensive than having more generous travel and overtime policies.
- **Ensure your state uses Medicaid to help with additional costs but without impacting individual access to services.** Your state can use federal Medicaid to help defray the costs of complying with this rule. But make sure your state plans to use Medicaid to cover overtime and travel costs in a way that does not come out of money allocated to individual consumers for purchasing services. Otherwise, consumers will lose services they are entitled to receive.

- **Do not allow your state to abandon consumer-directed programs.** If your state is seriously considering abandoning its consumer-directed programs altogether, make sure your state is aware of the different program models, described in more detail in *Action Steps*, and the impact of the rule on each.
- **Make sure your state educates individual consumers about the rule even if the state is not a “joint employer” in the program.** Advocates should work with your state to develop materials to assist consumers who are the only employer in their consumer-directed programs.

See Also: [Action Steps for Consumers and Advocates Regarding the New Home Care Rule](#) (in PDF or [plain text](#)) and the [Department of Labor's website](#) for guidance on the home care rule.