

South Florida Hospital News[™] and HEALTHCARE REPORT

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New FSLA Rule Means Changes for Home Health Care Agencies

This October, the U.S. Supreme Court cleared the way for new federal rules that will affect the wages paid to live-in home health aides. While their decision is expected to improve the standard of living for those who care for the elderly and disabled, it is also expected to increase the cost for families who use these services, as well as for the companies that provide them.

The rule, which became effective Oct. 15, 2015, states that home health aides nationwide will now be covered under the federal Fair Labor Standards Act, which requires workers to be paid the minimum wage and to get overtime pay after 40 hours of work. Currently, this industry employs about 2 million people, who make an average of about \$10 per hour.

It is estimated that these new federal laws will add \$10 to \$40 a day to aides' pay, but will also create higher administrative costs for home health agencies. Some agencies are expected to choose to use multiple live-in caregivers for each patient in order to limit each employee to 40 hours a week to eliminate overtime pay, but there is concern that this could confuse some patients with dementia, who are more comfortable with just one caregiver.

Before this rule was enacted, many home health agencies



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chose to pay workers as independent contractors, which did not require those workers to be subject to minimum wage and overtime consideration. These companies must now make changes, including switching employees from 1099 to W-2 status; carrying a workers' compensation policy; and complying with Health Care Reform and ESR reporting standards if they have more than 50 employees.

In consideration of this mandate, the Department of Labor (DOL) established an implementation program to help employers of home care workers prepare for FSLA compliance that includes an individualized technical assistance program. Enforcement of the Final Rule began on Nov. 12, but is currently following a time-limited, non-enforcement policy until Dec. 31, 2015, during which the DOL will exercise prosecutorial discretion in determining whether to bring enforcement actions, with consideration given to the extent to which states and other entities have made good faith efforts to bring their home care programs into compliance.

Are you in compliance with the new FSLA policy? Talk to a Marcum expert to learn more. You can reach Michael Curto at Michael.Curto@marcumllp.com or (954) 320-8000.