



Proposed Rule on Overtime Is Historic, But You Can Have a Say

Last fall, the U.S. Department of Labor (DOL) issued Defunding and Delimiting the Exemptions for Executive Administrative, Professional, Outside Sales, and Computer Employees (Overtime Rule), a notice of proposed rulemaking. “The most important takeaway from this proposed rule is that it would change how overtime protections are applied. This would have an historic impact on employers nationwide,” said Esmé Grewal, JD, vice president, government relations, BrightSpring Health Services. She added, “This would be the largest increase since the Fair Labor Standards Act became law and will impact millions of workers, including for the I/DD sector.”

What Is This, and What Does It Mean?

Some key aspects of the proposed rule include:

- It is designed to raise the minimum salary threshold for an exemption to apply to some salaried workers from overtime pay requirements.
- It would create a new minimum salary threshold of at least \$55,068 per year, which is a significant increase from the current salary threshold of \$35,368 annually. This would mean that certain salaried employers falling under \$55,068 would be eligible for overtime pay.
- It would increase the percentile of weekly earnings data, which the threshold is based on, from the 20th to the 35th percentile of full-time salaried workers in the lowest-wage Census Region.
- It would establish an automatic updating mechanism that would enable the DOL to increase the salary threshold every three years to the new 35th percentile.

Impact on I/DD Providers and What They Can Do

For I/DD providers, there’s no commensurate funding for this, so they will be considered the same as other employers. “ANCOR has commissioned an analysis of what this will look like for providers, and it would mean over \$1 billion in additional costs for Medicaid I/DD providers in the first year of implementation alone,” said Grewal.

There are some steps providers can take to limit the impact of this proposed rule:

- 1. Reach out to your Congressional representatives** and share personal stories about how this proposed rule would negatively impact individuals with I/DD in your communities, particularly if there is no additional funding to help. This will help bring attention about this issue to the Centers for Medicare & Medicaid Services and the Department of Health and Human Services and make sure they are wholly involved with this rule. “We need to raise awareness to make sure these agencies have this issue – and our input – on their radars,” said Grewal.
- 2. Reach out to your state Medicaid director.** “Flag this rule and let them know you’re watching it,” said Grewal, adding, “Be really vocal about it with anyone in the system. There is always a lot happening, and sometimes issues can get lost in the shuffle. Don’t assume everyone knows about it or how it would impact I/DD providers.”
- 3. Prepare.** It is predicted that this rule would be finalized in April this year; and it is typical for such regulations to go into effect 60 days later,



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so the clock is ticking. Start looking at your policies, budgets, and how you might be able to reduce the need for overtime. “If providers are forced to mitigate, they might have to remove some workers from being covered by the rule, such as adjusting them back to hourly workers,” Grewal said, adding, “You might have to look at whether to keep some staff in supervisory positions or move them to the front line.” She stressed that, best-case scenario, the rule doesn’t go into effect as proposed, but it’s better to prepare for all possibilities.

- 4. Think outside the box.** “The industry has made some creative inroads to pull in more professionals to make sure we are getting great people in the right roles so we don’t have high turnover,” said Grewal. Career ladders are essential, she said, and such efforts have already shown to have positive results. “These strategies are essential to let employees know we are investing in them and want them here for the long run.”

“This is a great opportunity to educate your Congressional offices about how these programs are funded and that there is little leeway for unfunded mandates,” said Grewal. She stressed that it is

important for decision makers to know how such rules play out in the real world and how they can be massively detrimental to those individuals with I/DD and providers who work so hard to provide quality care for them. It also is important, she said, for them to understand how I/DD is very different from other businesses.

Grewal emphasized, “We don’t oppose this rule. We just urge additional funding so we can support our workforce. We need to ensure that there is funding for the Medicaid sector to pay for overtime.” If funding isn’t achievable immediately, she noted, it is not the end of the story. “The Department of Labor can still provide Medicaid providers with a long runway and implementation period so that we can continue to work with state agencies and organizations to look at how we regard these changes and their impact on people, providers, and systems in our states,” she said.

Grewal concluded, “We have proven the outcomes of providers and need to look at how to sustainably fund our services and programs and prevent changes from having a negative impact. We really need to continue this drumbeat.”

For more information on the proposed DOL Overtime Rule and its impact on I/DD providers, please reference ANCOR’s one pager and stay tuned for future action alerts on the ANCOR Amplifier.