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Date: 8/27/2015 11:26:29 AM
Subject: Home Care Rule Effective Date Likely October 13

As you know, a three-judge panel of the US Court of Appeals for the District of Columbia Circuit ("DC Circuit") recently reversed the lower court decision that the Fair Labor Standards Act Home Care Rule exceeded DOL's regulatory authority. The DC Circuit found that DOL acted well within its authority in issuing the Home Care Rule. The Home Care Rule consists of two major components: a new narrowed definition of "companionship" services for purposes of the companionship exemption from overtime and minimum wage, as well as a new Rule prohibiting third-party employers from using the companionship and live-in exemptions.

In light of this decision, the Rule will become effective again in the near future. We have just received confirmation from legal experts stating that the ruling is automatically stayed for 52 days from the decision date. **Therefore, the Rule will likely be made effective on October 13, 2015.** The automatic stay gives the plaintiffs (the Home Care Association of America, the International Franchise Association, and the National Association for Home Care & Hospice) time to decide their next move.

The plaintiffs have two options if they wish to appeal the decision.

1. They can file a petition asking the Supreme Court to review the DC Circuit decision.
2. They can file a petition asking the entire DC Circuit to review the three-judge panel's decision.

[A recent statement by the National Association for Home Care & Hospice indicated that plans were underway to take the case to the Supreme Court.](#) If the plaintiffs' appeal is granted, the effective date of the Rule could be pushed back.

However, [as a recent New York Times article on the case notes](#), legal experts have found that the evidence strongly suggests the Supreme Court will NOT agree to hear the case. These experts also find it overwhelmingly probable that the DC Circuit will NOT rehear the case. At this preliminary stage, therefore, it appears that the Home Care Rule is here to stay.

The most likely outcome is that the Home Care Rule will go into effect on October 13.

NRCPDS will hold a Home Care Rule webinar open to all participant direction stakeholders on Wednesday, September 9th from 3 to 4:30 PM EST. The webinar will

explore possible legal outcomes of the Home Care Rule litigation and will provide tools for stakeholders to develop a practical approach to compliance. Please stay tuned for webinar registration information.

If your organization needs immediate assistance with a Home Care Rule compliance strategy, please reach out to us at info@participantdirection.org.

Best,

The NRCPDS Team

Sincerely,

Your team at the National Resource Center for Participant-Directed Services (NRCPDS).

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