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Subject: New CMS Memo on Waiver/State Plan Amendment Changes Due to FLSA

Compliance with the Fair Labor Standards Act Home Care Rule may require that states with 1915(c) waivers and 1915(i), (j), and (k) personal care services amend their existing waivers and state plan amendments. CMS has recently released a memo advising states of expedited timelines for these amendments. The memo, which also includes a re-release of CMS's July 2014 guidance on claiming approaches for third party overtime and travel time, can be found here: www.medicaid.gov/federal-policy-guidance/downloads/CIB-01-08-16.pdf

For 1915(c) Waiver Programs: Per CMS, amendments to 1915(c) waiver rate methodologies cannot be approved retroactively. If a waiver rate methodology requires adjustment because of FLSA compliance, CMS will approve amendments submitted within 30 days that are limited to the following language:

"Waiver (fill in the service title) rates will be adjusted to comply with the FLSA regulations. The specific rate methodology will be submitted to CMS in an amendment or renewal no later than 180 days after this amendment approval date."

If additional waiver amendments are requested, CMS will be unable to expedite the request and will require a 90 day review period at minimum.

For Non-Waiver Programs: Per CMS, state plan amendments can be approved retroactively to the first day of the quarter in which the amendment is submitted. For example, submitting an amendment before March 31, 2016 can be approved with an effective date of January 1, 2016.

NRCPPDS presented a webinar on Medicaid claiming procedures for third party travel time and overtime on October 28, 2015. The webinar recording is free for NRCPPDS members [here](#). Non-members can purchase the webinar recording and slides for \$25 here: <https://commerce.cashnet.com/cashnetg/selfserve/EditItem.aspx?PC=NRCPPDS-33%20%20%20&ItemCount=7>

Sincerely,

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

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