



**Fair Labor Standards Act (FLSA) Payments
Frequently Asked Questions (FAQs)
March 7, 2016**

The Department has altered the attestation process, contrary to previous Department guidance, please see attached forms for details. If you have already submitted an attestation to the Department, you are not required to submit a new attestation.

MLTC plans are required to pass all funds received directly to providers using a reasonable methodology. Funds received by providers must be used to meet the provider's obligations associated with the revised FLSA regulations that took effect October 13, 2015. The Department anticipates that there will be different amounts allocated from MLTC plans to providers based on need. It is incumbent upon the MLTC plans and providers to negotiate these amounts.

Based on the amount the Department has provided, it is possible that an MLTC plan may have additional resources available subsequent to meeting provider FLSA needs. In these situations the MLTC plan must disperse funds to providers and such funds shall be utilized by the provider to benefit the worker.

1. Q: How will MLTC plans be required to apportion and distribute funds to home care providers?

A: Plans must distribute funds using a reasonable methodology based on FLSA impact to providers, including overtime and travel, and other requirements. Examples of distribution methods include: a) an across-the-board increase to all affected providers; b) an allocation based on hours provided to the plan; c) an allocation based on an estimated overtime usage post October 13, 2015; or d) an allocation based on each provider's proportionate share of reported costs paying for overtime and travel time. Plans may use other distribution methods; however, any method chosen must be reported to the Department.

2. Q: How soon after receiving the state share funds in the March 2, 2016 payment will MLTC plans be expected to pass the funds to their contracted home care providers?

A: All plans should distribute state share FLSA funds to contracted home care providers as soon as possible but no more than 30 days after posting of this document.

3. Q: When will the Department disperse the federal share of FLSA funding to MLTC plans?

A: Federal share will be disbursed through the Phase IV October 1, 2015 rate revision once the Division of Budget and CMS approvals are obtained.

4. Q: What are the Department's plans for distributing FLSA funding to MLTC plans for periods after March 31, 2016?

A: No determination has been made regarding continued funding after March 31, 2016.

5. Q: Are MCOs included or is funding just for MLTCs?

A: State-share funding will only be received by MLTCs at this time. Mainstream plan rates will be adjusted at a later date.

6. Q: Is it permissible to give a lump sum payment to providers, as increasing hourly rates would adversely affect the plan over time?

A: Yes.

7. Q: Would it be allowable to pass through the funds incrementally to providers when overtime hours are incurred?

A: The FLSA changes were effective October 13, 2015. Plans should take into consideration overtime costs that have already been incurred by providers and should prioritize retroactive payments. Plans may choose additional allocation methods after the retroactive payments have been made to providers. Plans must report allocation methods to the Department.

8. Q: If agencies have Personal Care Aides working for multiple members enrolled in different MLTC plans, how is that allocated?

A: The allocation method will be determined by the MLTC. If the methodology used is based on the number of hours, it should include a definition of which overtime hours are attributable to the MLTC.

9. Q: Will there be a reconciliation in the future that will require the plan to track FLSA costs? Will the Department be measuring how these funds are spent?

A: At this time the Department is not considering a reconciliation; however, plans should anticipate that the Department may request information on payments to providers and should retain records as needed.

10. Q: Do raises to providers already given since October 1 count towards meeting the FLSA obligations?

A: No, these dollars are for the costs of FLSA implementation.

11. Q: What is the time period that plans should consider when making retroactive payments?

A: Payments to plans are intended for the period 10/13/2015 to 3/31/2016.

12. Q: Do plans have the discretion to structure the terms of the provider contracts as they see fit, so long as the funds are included in payments?

A: Yes.

13. Q: Plans have provider contracts with variations in fees, do plans have to adjust all contracts with the same level of add-on or can there be variation?

A: Plans that have fee variation are allowed the flexibility to adjust contracts as needed.

14. Q: What are the obligations of a CHHA to pass through FLSA funding to its contracted LHCSAs that provide aide services on its Medicaid fee-for-service cases?

A: Funds received by the CHHA to pass through to the LHCSA must be passed through directly to the worker by the LHCSA to cover direct labor costs.

15. Q: How can the CHHA determine how much to give each of its contracted LHCSAs on its Medicaid fee-for-service cases?

A: The CHHA can exercise flexibility in the disbursement of funds to its contracted LHCSAs, but must ensure that funds disbursed are related to the LHCSA's FLSA obligation.

16. Q: What are the obligations of a CHHA to pass through FLSA funding to its contracted LHCSAs that provide aide services on its Managed Long Term Care cases?

A: Funds received by the CHHA to pass through to the LHCSA must be passed through to the LHCSA to cover direct labor costs.

17. Q: How does the requirement that funds be passed through to the benefit of the worker apply to the expense of overtime costs that have already been incurred by providers subsequent to October 13, 2015?

A: Funds received by providers may be used to offset costs already incurred by providers to pay workers for the implementation of FLSA.

18. Q: When are attestations due to the Department?

A: Attestation are due to the Department no later than April 1, 2016.