



September 8, 2022

Simone Marstiller, Secretary
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, Florida 32308

Secretary Marstiller,

On behalf of the Florida Chapter of the Home Care Association of America, we ask for your reconsideration of the newly proposed Medicaid rates for the purpose of increasing the minimum wage for employees of Medicaid providers.

Situation

The General Appropriations Act for State Fiscal Year 2022-2023 appropriated funding to the Medicaid program for the sole purpose of raising the minimum wage for direct care workers to \$15/hour.

We wholeheartedly agree with the Legislature's decision to hold hearings related to wages for direct care workers during the most recent legislative session. Our caregivers are extremely important to our agencies and our communities. We support the rapid enactment of the Constitutionally mandated minimum wage increases for these workers within the Medicaid program. However, we also want to ensure that our agencies are able to continue to support our Medicaid clients after the increases are implemented.

The funds appropriated were based on the minimum wage study produced by Milliman on behalf of the state. The study was commissioned to estimate the impact of the change in the minimum wage to the Agency's expenditures over the next five years. The report focused four broad categories of service, as well as the two prepaid lines, as follows:

- Inpatient and Outpatient Hospital
- Physician
- Home and Community Based Services
- Nursing Facility
- Managed Medical Assistance Program
- Long Term Care Program

The report gives a helpful breakdown of the estimated fiscal impact to the state for the constitutionally mandated change. However, it did not dive into the impact the increase would



have on individual providers outside these broad categories nor give guidance on how to address provider fee schedules.

The GAA provided over \$600 million for this endeavor, but requires the following:

- *The Agency shall enter into a supplemental wage agreement with each provider to include this minimum wage requirement to ensure compliance. The agreement must require the provider to agree to pay each of its employees at least \$15.00 per hour. The agreement shall include an attestation under penalty of perjury under section 837.012, Florida Statutes, stating that every employee of the provider, as of October 1, 2022, will be paid at least \$15.00 per hour.*
- *Beginning January 1, 2023, an employee of a provider receiving an increased rate that is not receiving a wage of at least \$15.00 per hour may bring a civil action in a court of competent jurisdiction against his or her provider and, upon prevailing, shall recover the full amount of any back wages unlawfully withheld plus the same amount as liquidated damages, and shall be awarded reasonable attorney's fees and costs. In addition, they shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, reinstatement in employment and/or injunctive relief. Such actions may be brought as a class action pursuant to Rule 1.220 of the Florida Rules of Civil Procedure.*
- *The Agency shall enter into a supplemental wage agreement with all managed care plans to ensure these funds are used to raise the wages of direct care employees under contract with the managed care plan. The managed care plan shall provide attestation to the Agency that they have amended each provider's contract reimbursement rate to comply with this provision by January 1, 2023.*

In August, AHCA released a website with guidance on implementation of the above requirements and uploaded the wage agreement in the Medicaid portal. However, provider rates were not released. The impacted fee schedules and number of employees implicated were much greater than anticipated. HCAOA fears that this will serve to dilute the pool of money from which the potential wage increases is to be drawn.

To our knowledge, neither the GAA nor the Milliman report offered guidance as to whom these requirements would apply. We understand that implementation of a minimum wage to this industry is very complex, involving many moving pieces. We are merely concerned that under AHCA's current interpretation, the approximately \$600 million appropriation would dry up far too soon. This would unintentionally hurt our clients and caregivers.

Key Question

Can the agencies providing support and care to seniors and the disabled both in the community and within facilities continue to serve the Medicaid population on such an incremental increase while grappling with wage demands and the threat of class action liability?



In an industry facing severe workforce shortages, our agencies (who employ thousands of caregivers across the state) are being forced to make difficult decisions regarding what clients they can continue to support. The requirements listed above, coupled with threats of class action lawsuits and low reimbursement rates will no doubt leave many vulnerable Floridians without access to the vital care they've come to rely on.

Solution

We ask AHCA to reevaluate the overly broad interpretation of the GAA. A reevaluation and more narrowly focused implementation structure would ensure the appropriation can be properly applied to adequately fund fee schedules that will allow our caregivers to continue to do their jobs. We would also suggest that AHCA delay the posting of rates to allow time to reevaluate which provider types should be included in the implementation.

HCAOA would like to thank AHCA for its hard work in implementing this minimum wage mandate. If you have any questions or would like any additional information, please do not hesitate to contact me or our VP of Government Relations, Eric Reinerman, at eric@hcaoa.org. Jenn Ungru can also be reached at jungru@deanmead.com.

Sincerely,

A handwritten signature in black ink that reads "Vicki Hoak". The signature is fluid and cursive, with the first and last names being clearly legible.

Vicki Hoak, CEO
HCAOA