

# DEVELOPMENTAL DISABILITIES ADMIN IP Overtime



## 2016 SUPPLEMENTAL BUDGET

| Request      | FY16                | FY17                | 15-17               |
|--------------|---------------------|---------------------|---------------------|
| FTE          | 5.5                 | 7.2                 | 6.3                 |
| GF-State     | \$4,829,000         | \$6,799,000         | \$11,628,000        |
| <b>Total</b> | <b>\$10,630,000</b> | <b>\$15,159,000</b> | <b>\$25,789,000</b> |

### DECISION PACKAGE SUMMARY

The Developmental Disabilities Administration (DDA) requests \$25.8 million (\$11.6 million GF-State) to pay Individual Provider (IP) homecare worker overtime in accordance with the Department of Labor (DOL) rule requiring overtime to be paid to homecare workers that was recently upheld by the US Federal Court of Appeals and will be in effect October 2015, with enforcement beginning January 1, 2016. This also includes funding for Agency Provider (AP) parity costs resulting from IPs receiving additional overtime pay.

### PROBLEM STATEMENT

Currently, Washington State is only the employer of IPs for the purposes of collective bargaining. They are employed by the aged and disabled clients who receive personal care services in their homes. Last year, the Department of Labor modified a “Domestic Service Rule” that requires third party employers to pay overtime when homecare workers such as IPs provide over 40 hours a week of authorized care. Additional appropriation will be necessary to pay the overtime. There is an accompanying request for IP overtime costs from the Aging and Long Term Supports Administration (AL TSA).

As a result of legal challenges, implementation of the DOL rule has been delayed for approximately a year. On August 21, 2015 the federal Court of Appeals upheld the DOL rule decision, and it will likely be made effective October, following an automatic stay after the decision to allow for appeals. If there is not an appeal to the US Supreme Court or the entire District of Columbia Circuit (beyond the three-judge panel that upheld the rule), overtime must be paid, by third party employers.

### PROPOSED SOLUTION

Beginning January 1, 2016, the department will pay overtime hours for IPs and APs for all authorized hours over 40 hours per week. In the 2015 Legislative Session, the Legislature considered House Bill 1725 (RCW 74.39A.270), which would give the department the ability to control overtime by creating and enforcing rules to limit “windshield” time and require pre-approval for hours over 45 hours per week. However, that bill did not pass.

In response to the DOL rule being upheld, DDA will adjust care plan authorizations, changing from monthly to weekly authorization of personal care hours and managing overtime exceptions on a case-by-case basis. This will reduce the cost of overtime hours to approximately \$52 million per year by taking away the option of front-loading hours. This requires additional staff time to manage the exceptions on a case-by-case basis. The state Fiscal Year 2016 cost estimate includes an assumption that 15 percent of the overtime costs that should not be paid will be paid in the first four



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months of implementation as a result of errors (see backup for calculation detail). The department does not believe it has the legal authority to deny the overtime. The only recourse for enforcement is to terminate the IP's contract if they claim over 40 hours per week a second time after a warning.

If legislative authority (such as HB 1725 introduced in the 2015 Legislative Session) is granted, the department can further control the level of overtime by requiring pre-authorization for any hours above 45 hours per week, reducing the cost of overtime hours to approximately \$26 million per year. However, it will take approximately 18 months and an investment of approximately \$10 million to make the information technology system changes in CARE, ProviderOne, and Individual ProviderOne to achieve the additional savings. The work has to occur in the current biennium to be able to control overtime in the 2017-19 Biennium.

Once that is done, case managers may arrange personal care hours beyond 40 hours per week to be worked by another provider. The pre-authorization for overtime above 45 hours per week would be granted only if there is not another provider available to provide personal care. This will be a staff-intensive effort, requiring an ongoing 25.5 FTE between AL TSA and DDA combined when fully implemented.

#### **EXPECTED RESULTS**

The department will pay overtime to IPs and APs beginning January 2016 with only a change to client care plans to 40 hours of personal care per week, but no underlying statutory authority to further restrict overtime. In the meantime, work on the technology to be able to implement pre-authorization is underway.

#### **STAKEHOLDER IMPACT**

In addition to discussions with IPs and APs on the mechanics of paying overtime, the state will need to demonstrate to DOL that we are in compliance with the new rule.