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VOR is the only national organization advocating for a full range of residential and support options for people with mental retardation, including Medicaid-certified Intermediate Care Facilities for the Mentally Retarded (ICFs/MR) and home and community-based care. VOR supports choice.

VOR Weekly E-Mail Update For March 30, 2007 and April 6, 2007

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1. CMS awards second round technical assistance grants to enhance direct care workforce in 5 states GA, NJ, NC, UT and WI
2. Foundation Issues New Primers On The Medicare and Medicaid Programs
3. Justices to Hear Case on Wages of Home Aides

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Source: Direct Services Workforce Resource Center Newsletter Winter 2007

CMS is pleased to announce that Georgia, New Jersey, North Carolina, Utah, and Wisconsin were selected on February 16, 2007 to receive the second round of individualized intensive technical assistance (TA) from the National Direct Service Workforce Resource Center. Applications for the 2008 round of Intensive TA will be available in late summer 2007.

Georgia: Intensive TA will support the Georgia Office of Developmental Disabilities to: * conduct a study that will provide recommendations and assistance to align Georgia's Direct Support Professional certificate program with proposed national standards * develop a sustainable instructor training material production and expand options for workers to access national DSP certificate programs * study the various data collection systems in GA in order to provide recommendations to coordinate info or data elements in a manner that will allow analysis for decision-making in the ongoing development of a sustainable direct support workforce

New Jersey: The New Jersey Division of Medical Assistance and Health Services will use intensive technical assistance to support the following tasks: * designing a Career Path for a statewide service delivery system * assisting provider agencies, DDD, and Medicaid to explore sources of funding or ways to change current funding practices to find the funds to implement

and support a career path * assisting provider agencies to develop creative management strategies related to recruitment and retention.

North Carolina: The Office of the Secretary of the Department of Health and Human Services will use technical assistance to support their Frontline Worker Initiative. The goals of this initiative include: * developing a cross-population, cross-divisional, statewide stakeholder group * identifying the positions comprising workforce across agencies and populations, gaps and needs, and trends * identifying successes and evidence-based practices * determining core competencies for training and assistance in coordinating venues for training * implementing social marketing campaign * developing a broader public education/marketing strategy about the NC New Organizational Vision Award (NC NOVA)

Utah: The Utah Division of Services for People with Disabilities will use intensive TA to further their Workforce Augmentation and Integration Taskforce initiative. Utah's goals are to: * develop and implement web-based training * expand their web-based system to permit free or low-cost professional development * conduct market comparability studies on DSW wages and the broader market to determine adequate levels of compensation * provide assistance to providers and families to devote greater resources toward workforce development

Wisconsin: The Wisconsin Division of Disability and Elder Services will use TA to aid in implementing their "Meeting the Demand for Quality Direct Care Workers Resulting from Managed Long-Term Care Expansion" project. Wisconsin plans to: * develop a methodology for projecting the demand for direct care workers * develop training materials for self-directed consumers and workers * explore incorporating DSW quality measures into Family Care CMO contracts with long-term care providers * support the implementation of the College of Direct Supports

2. Foundation Issues New Primers On The Medicare and Medicaid Programs

- Kaiser Family Foundation Monday, March 19, 2007

Together, Medicare and Medicaid provide health coverage to about 90 million Americans. To help explain the two programs, the Kaiser Family Foundation today issued a new primer on the Medicare program and an updated version of its primer on the Medicaid program. Prepared by Foundation staff, the primers provide an overview of the programs, who they serve, how the programs work, and how they are financed.

Medicaid: A Primer, available at <http://www.kff.org/medicaid/7334-02.cfm>, provides an overview of the basic components of the nation's largest health coverage program which covers 55 million low-income individuals (including families, people with disabilities and the elderly) and is the dominant source of the country's long-term care financing. The primer examines the structure of the program, who it covers, what services it provides, and spending. Because Medicaid is jointly financed by the federal and state governments and the states administer the program within broad federal guidelines, programs vary across states. Tables examining the state-to-state variation in eligibility, enrollment, and spending for Medicaid enrollees are included in the primer.

Medicare: A Primer, available at <http://www.kff.org/medicare/7615.cfm>, explains key elements of the program that now provides health coverage to nearly 44 million people including about 37 million people age 65 and older and another 7 million younger adults with permanent disabilities. It looks at the characteristics of the Medicare population, what benefits are covered, how much people with Medicare pay for their benefits and the program's overall costs and future financing challenges. It also provides information about the Medicare Advantage program and the Medicare drug benefit, and includes detailed tables showing the number of Medicare beneficiaries in each state, broken out by age, income level, source of drug coverage, and by enrollment in Medicare Advantage plans.

3. Justices to Hear Case on Wages of Home Aides

Summary: The Supreme Court is scheduled to hear arguments in a case that questions whether federal labor laws relating minimum wage and overtime pay should apply to home care workers. The stakes in this case are considerable, not least because home care attendant is one of the nation's fastest growing occupations. There are expected to be nearly two million aides by 2014, as the elderly population grows and government pushes for the elderly to be cared for at home rather than in nursing homes, where costs are high. Providers worry that if overtime and minimum wage laws apply to home care workers, they'll be forced out of business due to reimbursement rates too low to cover the increase in labor costs that would result. Others think that if fair labor standards apply to home care workers, the government will be forced to increase reimbursement rates to cover the increase and home care workers will more fairly compensated, in light of their demanding work.

March 25, 2007 By Steven Greenhouse Source: The New York Times

Evelyn Coke sat in her wood-frame home in Corona, Queens, a hobbled figure, not realizing that this is supposed to be her moment in the spotlight.

For 20 years, she had cared for clients in their homes, bathing them, cooking for them, helping them dress and take their medications. But now, suffering from kidney failure, she is too ill to work.

Her mind and memory are not what they once were, she acknowledges, and as a result she is hazy about the important events that will take place on April 16. On that day, the Supreme Court of the United States is scheduled to hear oral arguments in a case in which Ms. Coke, a 73-year-old immigrant from Jamaica, is the sole plaintiff.

She is challenging Labor Department regulations that say home care attendants, who number 1.4 million, are not covered by federal minimum-wage and overtime laws.

"I loved my work, but the money was not good at all," Ms. Coke said in a whispering voice, noting that she often worked three or four 24-hour days a week, sleeping at a client's home, while hardly ever receiving time-and-a-half pay for overtime.

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Ms. Coke's lawsuit has attracted powerful supporters and opponents.

The nation's largest health care union, the Service Employees International Union, is backing Ms. Coke's effort because a victory for her could mean larger paychecks for hundreds of thousands of home care aides, many of whom live in poverty.

AARP plans to file a brief backing Ms. Coke, arguing that the increased pay that would result from requiring overtime coverage would reduce turnover among home care aides and help prevent a shortage.

The federal government and the Bloomberg administration have lined up against her, arguing that a victory for Ms. Coke could greatly increase Medicare and Medicaid costs, perhaps causing a budget shortfall that could leave many of the elderly without home-care aides.

In a friend-of-the-court brief, the Bloomberg administration, joined by the New York State Association of Counties, argued, "In the worst cases, some clients, especially those with high hour needs, might no longer be able to be serviced in their homes and might have to be institutionalized."

The Bloomberg administration said a victory for Ms. Coke could force the city, state and federal governments, which all finance home care through Medicaid, to pay \$250 million more a year to the 60,000 home attendants who work in the city.

Some advocacy groups have criticized the city's position, saying it conflicts with Mayor Michael R. Bloomberg's push to reduce poverty because keeping these aides exempt from overtime coverage would hold down their pay.

The defendant in Ms. Coke's case is Long Island Care at Home, which is based in Westbury and employs 50 aides.

MaryAnn Osborne, Long Island Care's vice president, said that a defeat in court could put her agency out of business because, with many aides working 60 or 70 hours a week, it might face huge overtime costs. Her agency pays aides \$8 to \$11 an hour, but a defeat in the Supreme Court would require the agency to pay time and a half, meaning \$12 to \$16.50 an hour, for overtime.

"This would be horrendous for the entire industry because the reimbursement rate we get won't cover that type of money," she said.

But supporters of Ms. Coke's lawsuit say that if she wins, the government would most likely increase reimbursement rates to compensate for the overtime costs.

Ms. Coke said that Long Island Care made a lot of money off her, saying she earned just \$7 an hour when she last worked there in 2001.

Moreover, she said, she did not get paid overtime for her 24-hour stints at homes in Great Neck, Roslyn, Manhasset and other communities.

She said she stopped working because she was hit by a car, injuring her shoulder, and she later had colon and kidney problems. "The job didn't even give us health insurance," said Ms. Coke, who goes to a dialysis clinic three times a week.

The Supreme Court agreed to hear her case after the United States Court of Appeals for the Second Circuit overturned Labor Department regulations that exempted home care aides from federal minimum-wage and overtime coverage, saying the exemption conflicted with Congress's intent.

Before 1974, home care aides were generally covered by minimum-wage and overtime laws if they were employed by agencies. (Aides hired directly by families were not covered and will remain exempt from overtime regardless of the outcome of Ms. Coke's case.)

In amending the Fair Labor Standards Act in 1974, Congress extended minimum-wage and overtime coverage to household workers like maids and cooks but said that baby sitters and "companions" for the elderly and infirm would be exempt.

When the Labor Department first proposed regulations to enforce the changes in the law, it said that home care workers employed by agencies should continue to get overtime. But the department reversed itself in 1975, saying Congress had not intended to allow those workers overtime when it created the exemptions the year before.

But the Court of Appeals, sitting in Manhattan, wrote, "It is implausible, to say the least, that Congress, in wishing to expand F.L.S.A. coverage, would have wanted the Department of Labor to eliminate coverage for employees of third-party employers who had previously been covered."

Those urging the Supreme Court to overturn that ruling say the Court of Appeals failed to show proper deference to the Labor Department's decision-making authority.

Even with the exemption, few home care workers receive less than the federal minimum wage of \$5.15 an hour. But many do not receive any overtime premium even when they work more than 40 hours a week. (Under federal rules, workers who sleep in are generally paid for all extra hours on the job, less eight hours' sleep time.)

Natasha Maye, a home care aide in Philadelphia who is part of a separate suit concerning the minimum wage, is rooting for Ms. Coke. She said that she earned, in effect, less than \$5.15 an hour at her former agency because she was not paid for the two hours spent each day

traveling between her three clients' homes. Including travel time, she said, she often put in 60 hours a week and earned \$300.

"I don't think that's fair," she said. "We should be entitled to overtime and travel time."

The Clinton administration, in its next-to-last day in office in 2001, proposed regulations that would restore minimum-wage and overtime protections to home care aides employed by agencies, arguing that the 1975 exemption clashed with Congressional intent.

But in 2002, the Bush administration scrapped that proposal, concluding the revised rules would have a severe economic impact on clients, government budgets and home care agencies.

In its brief, Long Island Care at Home argued that exempting aides who worked for agencies was consistent with Congressional intent because some lawmakers back in 1974 voiced concerns about holding costs down. "The need to restrain costs in the case of third-party employees has only become more acute as agencies provide an increasing amount of needed care," Long Island Care said.

But Craig Becker, the chief lawyer for Ms. Coke, argued that legislative history showed that the exemption to minimum wage and overtime laws was to apply only to baby sitters and companions who were employed directly by families and were not regular breadwinners.

"In its exemption for baby sitters and companions Congress had in mind the quintessential neighbor-to-neighbor relations," Mr. Becker said. "Increasingly this is not a casual form of work akin to baby-sitting but a full-time regular type of employment."

Ms. Coke became a plaintiff through unusual circumstances. After she was hit by the car six years ago, she hired a lawyer, Leon Greenberg. When seeking to determine her economic losses, Mr. Greenberg learned that she sometimes worked 70 or more hours a week without receiving any overtime premium.

He invited her to bring a test case challenging the federal exemption. Ms. Coke agreed. Mr. Greenberg is no longer involved in the case; her current legal costs are being paid by the service employees union.

And because of her condition, Ms. Coke now has her own, unpaid, home care aide: her son Michael, a computer technician.

She said she brought the lawsuit to help hundreds of thousands of home care workers like her for years to come. But she also said there was another reason. "I just hope I get some money from this," she said.

Tamie Hopp

REFERRAL/MEMBERSHIP/CONTRIBUTION FORM

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Mail the completed form (if joining or contributing) with payment to: Voice of the Retarded
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FOR REFERRALS: The contact information provided is for someone I think would
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