

# Private Duty INSIDER

Strategies to improve productivity

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#### *Wage-and-hour law*

### **Understand wage options after increased 'white collar' exemption ruled invalid**

A recent decision by a U.S. District Court in Texas has killed white collar exemption changes for now, meaning agencies won't be required to pay overtime based on salary exemption levels more than double what they once were.

Since many agencies already had adjusted practices because of this change, they will need to re-evaluate the way they pay employees to have the best results going forward.

(see **Wage options**, p. 5)

#### *Technology*

### **Smart speaker technology may address loneliness, medication adherence**

Smart speaker wireless technology like Amazon Echo and Google Home may not be for fun and convenience alone. Some home care agencies are adding them to their array of services to improve care for clients.

Libertana Home Health Care of Van Nuys, Calif., began using the technology about three months ago after partnering with Boston-based software company Orbita, Inc., to develop a software platform for Amazon Echo. The platform helps

(see **Smart speaker**, p. 6)

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the new startup policy, and the revised form, should be further delayed.

As of late August, however, DHS had not provided comment on how the regulatory freeze memo affects the International Entrepreneur Rule, nor had the department issued additional rules delaying the effective date of the regulation.

### Make required changes immediately

In the absence of further guidance from USCIS or DHS, private duty employers should consider using the revised form sooner rather than later. It makes sense to scrap the prior version and begin using the revised form immediately for new employees.

The revisions shouldn't have a significant impact on hiring processes or overall procedures.

The revised form is in many ways very similar to the previous version, but some individual fields and the form instructions have been revised.

The core requirements of the form haven't changed, and the acceptable documents list and retention requirements also remain the same. (*See tool, insert.*)

There is also an interactive PDF option with the new form that enables users to fill in the fields of the form online before printing and signing a hard copy.

### Audit completed forms for compliance

Because the potential for fines is significant, employers should audit their already completed I-9 forms for compliance with the law.

- **Conduct audits regularly.** Ensure the form has been completed for each employee, that identity and employment authorization status have been verified and that no discriminatory practices have been committed in the process of completing the forms.

- **Don't discriminate.** Audits must be completed in a non-discriminatory manner, and any corrections to the forms must be done in accordance with guidelines issued by ICE.

Discrimination in conducting audits or failure to adhere to ICE's guidelines can also result in fines for an employer in addition to the potential for fines related to missing or incomplete forms.

For this reason, audits should be planned and conducted with great care and a sound understanding of the legal principles at play, so as to ensure consistency and transparency while also ensuring that appropriate action is taken within a reasonable time when discrepancies are found.

**Related links:** Visit USCIS's "I-9 Central" at <http://bit.ly/1TDITfe> to get more details about the changes and compliance audits.

**About the author:** Joseph Maddaloni Jr. is partner at the law firm Lentz & Gengaro LLP of West Orange, N.J. As an attorney, he focuses on labor and employment law, and regularly provides counseling and representation to private duty agencies.

### Marketing & referrals

## Agency's tech built to track outcomes, attract referrals in value-based space

Homewatch Caregivers, a non-medical home health care agency, recently launched proprietary technology that gives a visual, digital representation of how clients are doing in the agency's care.

The technology allows clients and families to track progress and also lets the agency demonstrate outcomes to referral sources, says Julie Smith, the agency's COO and president.

Demonstrating and tracking those outcomes is how the agency becomes a better partner to hospitals and other facilities. While it's too soon to show results, the Boulder, Colo.-based agency expects to see an increase in future referrals as a result, Smith says.

Private duty agencies should track client outcomes as a way to demonstrate value to referral sources such as hospitals and skilled nursing facilities, says Stephen Tweed, CEO of Leading Home Care in Louisville, Ky.

Although value-based purchasing doesn't directly impact how private duty agencies are reimbursed, agencies need to pay attention as the model becomes more of a focus in other areas of health care.

For example, being able to show a doctor your success at preventing falls for a client at risk for them can prove valuable in building relationships with referral sources while also benefiting the client, Smith says. Her agency's software measures and tracks fall risk as well as activities of daily living such as eating, bathing, dressing, toileting and transferring.

The agency shares outcomes with clients and families through a shared online portal or in paper format on an ongoing basis.

Sales staff show the actual outcomes and data collected to referral sources in the field, Smith says.

"This is far more valuable to referral sources than a brochure," Smith says.

## Become a partner in value-based model

Historically, home care companies have talked about quality but haven't necessarily measured it, Tweed says.

"You've got to be a great partner," Smith says. "If all of the other providers in the care continuum are focused in on [value-based care] and you're not, that doesn't make you a good partner. It just really stitches us into that continuum of care."

"It's very clear on the Medicare and Medicaid side the government payers want to buy value," Tweed says.

Some of Tweed's home care clients have started tracking outcomes in order to demonstrate value to referral sources whose outcomes are tied to payment, and it's an endeavor that has been successful.

"There are things we see some of the top tier home care companies doing — this is exception, not majority," Tweed says.

## Keep an eye on rehospitalizations

One of the main areas to track is rehospitalization rates, Tweed says. This is in part because it's one of the easiest areas to track. Another reason is because it's an area that home care agencies can help improve.

Two of the major causes for rehospitalizations are problems with medication compliance and failure to follow-up with a physician, Tweed says.

"Who better to make sure that the patient takes their medication and goes to the doctor than a home care worker that is in the home every day," Tweed says.

Having someone to check on clients and make sure they are taking their medications can reduce the likelihood that clients will have to go back to the hospital. And being able to prove that positive outcome with data makes marketing to medical facilities easier, Tweed says.

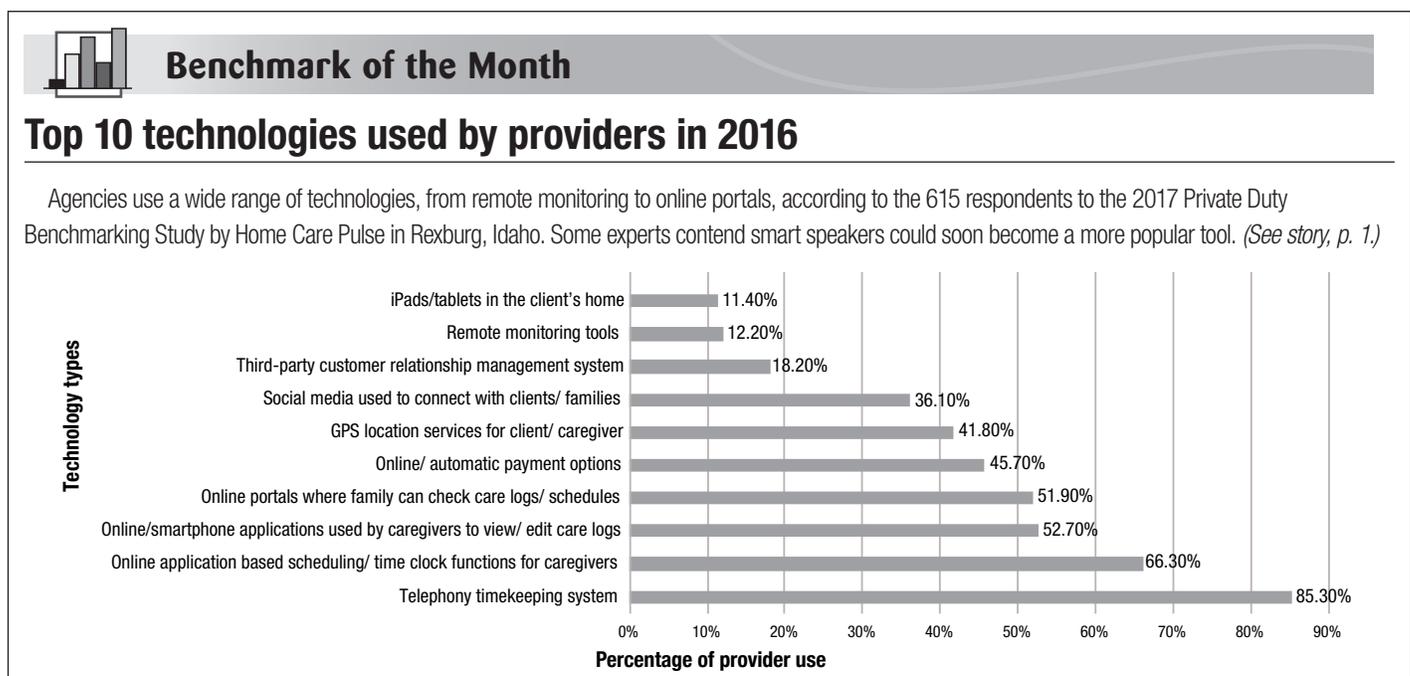
## Do this to start demonstrating value

- **Develop a system for tracking.** This can be done manually with Excel spreadsheets. Spreadsheets should at least include when the client was admitted to care, when the client was discharged and why, Tweed says. Note if the client improved and no longer needed care or if the client went back to the hospital, and keep careful account of that percentage.

Some agencies track this information within their scheduling software, Tweed says. This approach is particularly helpful if the software allows for specific, user definable fields to document and track if/when a client returns to the hospital.

- **Consider tracking common diagnoses.** Keeping track of clients with diagnoses that commonly lead to rehospitalization can add another layer of useful data for agencies looking to demonstrate valuable outcomes. Under the hospital readmission reduction program, hospitals with readmission rates above the national average are penalized by a reduction in payments.

Tracking the same conditions — heart attack and heart failure, pneumonia, chronic obstructive pulmonary disease (COPD), elective hip or knee replacement, and coronary artery bypass graft (CABG) — can make the



data more valuable to hospitals. Agencies should track how many clients with these diagnoses are readmitted within 30 days in order to provide more valuable outcomes data to hospital referral sources.

“The home care companies that are more attuned to this will be tracking by disease,” Tweed says. “The vast majority of home care companies do not track that information at all — they may not even have the diagnosis in their records.” — *Kirsten Dize* ([kdize@decisionhealth.com](mailto:kdize@decisionhealth.com))

## Wage options

*(continued from p. 1)*

The changes to the Fair Labor Standards Act (FLSA) increased the current salary level of \$23,600, or \$455 a week, to \$47,476, or \$913 a week, needed to qualify for the exemption (PDI 6/17).

The rule was set to go into effect Dec. 1, 2016, but a nationwide preliminary injunction blocked its implementation.

On Aug. 31, U.S. District Court Judge Amos Mazzant concluded that the Department of Labor (DOL) had set the salary threshold so high that it essentially eliminated the second criteria of job duties in determining overtime exemption. Mazzant determined that is something the DOL doesn't have the authority to do.

In a court motion, the DOL said it won't pursue an appeal that previously had been filed in the case, although during a teleconference in early September, DOL officials said they were exploring legal options, says Eileen Maguire, attorney at Indianapolis-based Gilliland, Maguire & Harper, P.C.

The AFL-CIO had tried to step into the DOL's role and take over the case, but the union's motion was denied.

Attorney Robert Markette with Indianapolis-based Hall, Render, Killian, Heath & Lyman doesn't believe it likely that a third party will be able to take up the case.

The DOL already is investigating what the next step could be. It filed a Request for Information that was published in the Federal Register July 26. The request seeks public comment on minimum wage and overtime requirements. The comment period ends Sept. 25.

It's possible the DOL will take those comments and incorporate them into a new proposed rule, but it could take a year before anything is finalized, Maguire says.

### Consider these options after court ruling

- **Pay new hires at a lower rate.** New employees don't need to be paid at the same level as existing employees, Markette says.

If an agency decides increased salary levels aren't sustainable for new hires, the agency must be careful to document the change and reasons it was made in order to show the pay differences are not discriminatory, Markette says.

Because employers can't prevent employees from discussing pay, agencies that take this approach also should have an open discussion with staff. Explain that the higher pay is a historical issue and designed to comply with a regulation that is no longer in place. Let employees know the agency cannot afford to pay everyone that salary because of the realities of the business, Markette says.

- **Navigate the sticky scenario of rolling back salaries.** For agencies that raised salaries to ensure compliance, it will be difficult, though not impossible, to make adjustments.

It's not against the law to reduce salaries, but agencies that decide to do so need to make sure they comply with any advance notice requirements in their state and must demonstrate a non-discriminatory business justification for the move, Maguire says.

In light of “hints” from Labor Secretary Alexander Acosta, Maguire also recommends agencies taking this action consider a salary level in the mid-\$30,000s in case salary requirements change.

Keep in mind, though, that reducing pay can lead to problems with recruitment and retention which makes this option less than ideal, Maguire says.

- **Take into account what competitors are doing.** It's possible some markets have adjusted to higher salaries, which will require maintaining those salary levels to stay competitive. While Markette doesn't believe this is universally the case, it's a good idea to monitor salary levels in your area to be sure your agency is still a contender for talented caregivers.

- **Consider changing from hourly back to salary.** Agencies that moved employees to hourly and overtime eligible pay in order to comply with the rule can change back, Markette says. Making the switch back to salary can help avoid the headache of tracking overtime, Markette says.

Before doing so, conduct a business analysis.

“The concentration should be on what is best for the morale and retention of employees and your bottom line finances,” Maguire says.

- **Offer productivity bonuses.** If an agency decides to make the shift from hourly back to salary, employees can feel like they are losing pay with the loss of overtime eligibility, Markette says.