



State of Vermont

Agency of Human Services

Department of Mental Health

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MEMORANDUM

**TO: DA/SSA Executive Directors, Children's Directors, CFOs,
Business Office Managers**

FROM: Laurel Omland, CAFU Operations Chief

DATE: 10/13/15

RE: DOL Home Care Rule

The Department of Labor issued new Fair Labor Standards Act rules related to home care services ("the Home Care Rule") that will go into effect October 13, 2015¹. The Home Care Rule change impacts services funded through Enhanced Family Treatment (EFT), Individual Service Budgets (ISBs), and the DMH Respite Grant. Please share this memo with EFT/ISB coordinators, respite coordinators, business office, and anyone else you deem needs this information.

I. The Home Care Rule

Under the Home Care Rule, many direct care workers will be required to receive minimum wage and an overtime rate (if they work more than 40 hours in workweek). Information on the rule can be found at <http://www.dol.gov/whd/homecare>.

II. When the Law Requires Minimum Wage and Overtime

The Home Care Rule applies to children receiving hourly and overnight respite services. Foster Care and Therapeutic Foster Care are excluded. DMH, in collaboration with DCF, has clarified service definitions related to respite and therapeutic foster care. These definitions will be reflected in the updated Enhanced Family Treatment manual and Respite Manual:

- Respite (hourly or overnight): In- or out- of home care for the purpose of providing a planned break for parents/guardians. It is a supportive service for non-custody children/youth that are living in their own home/residence, be it a biological, adoptive, or kin-care home. This is not a service for children/youth in DCF custody living in their own home, or for any child/youth living in a foster home (therapeutic foster care or DCF foster care). Whenever possible, family

¹ DOL has said it will not begin enforcement until 30 days after the final rule becomes effective, which is November 12, 2015 (http://www.dol.gov/whd/homecare/non-enforcement_policy.htm).

and natural supports should be utilized as respite. Family and natural supports will not receive EFT funding.

- Therapeutic Foster Care: TFC is *short-term* out-of-home care for children/youth (in DCF custody or not) who have higher needs for treatment and services to address serious mental, behavioral, or emotional problems and their family's need for enhancement of parenting skills. Child/youth must have a DSM-V diagnosis and meet the out-of-home placement criteria. Treatment and support services are provided in the TFC home, home of origin, and community settings and the therapeutic foster parents are actively engaged with the team supporting the child/youth. TFC is a part of the child's plan and the *goal of this care is for reintegration back home*. If there is need for a planned break for the primary foster home, the child will stay at a second foster home. Foster homes must be licensed.

III. Rates

Hourly Respite:

Rates of reimbursement for hourly respite are currently at or above minimum wage. Agencies are responsible for adhering to the VT Minimum Wage increases (see chart below) and to monitor overtime for these workers in accordance with the Home Care Rule.

Overnight Respite:

To comply with the Home Care Rule, overnight respite must be calculated using an hourly rate selected from the range below multiplied by the anticipated number of direct care hours in a 24-hour period (number of hours X hourly rate). Overnight respite assumes 16 hours of direct care out of a 24-hour period, but if the child needs care during typical sleep hours that time must be accounted for. It is up to the agency to manage the oversight and procedure for tracking hours of service.

Vermont's minimum wage is due to increase each calendar year through 2018 and will be reflected in changes to the Overnight Respite Rate range accordingly.

Date of Increase	VT Minimum Wage	Overnight Respite Range
1/1/2015	\$9.15	\$9.15 - \$10.00
1/1/2016	\$9.60	\$9.60 - \$10.45
1/1/2017	\$10.00	\$10.00 - \$10.85
1/1/2018	\$10.50	\$10.50 - \$11.35

IV. Next Steps

Please identify which EFT and ISB plans need to be updated to comply with this rule change.

- If the only change is to adjust the rate for Overnight Respite, then we will waive the requirement to submit a cover letter with the budget change. Please inform DMH of the selected rate and we can make an administrative change to the budget and return it for your records.

- If the change requires a change in service or amount of service as well as to the rate, then an EFT revision must be submitted (see EFT Manual P.13), including a cover letter, updated Individual Plan of Care, Budget, and signature page.
- For budgets with TFC, one line of up to 30.42 days/month is allowed, whether there is a single TFC home or a 2nd TFC home.

DMH has updated relevant documents:

- DMH Respite Manual
 - a. The definition of respite services has been updated.
- Enhanced Family Treatment (EFT, aka children's mental health waiver)
 - a. The EFT manual and EFT Rate Sheet have been revised effective 11/12/15.
 - b. Attached are final versions of the 11/12/15 EFT Manual and EFT Rate Sheet (also attached is the EFT Manual with tracked changes to clearly identify where the changes were made).