



TO: CHC Agency Based Providers of Live-In Personal Care Assistance Services, Access Agencies, Fiscal Intermediary
RE: Rate for Live-In Person Care Assistant Service

This is an important message regarding implementation of new minimum wage and overtime requirements under the Fair Labor Standards Act. The new implementation date is November 12, 2015.

The Department of Social Services (DSS) has been in ongoing consultation with the Department of Labor regarding its rate methodology for the live-in service. The methodology that was agreed upon is as follows.

There is an assumption that Personal Care Assistants (PCAs) are able to sleep at least eight hours. The sleep is not required to be uninterrupted but must total eight hours, five of which must be uninterrupted. The rate methodology is based on a 16-hour day with no other deductions for time such as meal time or breaks. If a PCA will not be able to sleep at least eight hours, the Access Agencies will be advised that live-in is not an appropriate service.

Agencies may further apply deductions from hours worked such as free time, meal time or break time.

The rate methodology DSS utilized included a minimum allowance for room and board. This standard is estimated to be one hundred dollars per week and will include all housing and utility costs. The Access Agency care managers will complete a worksheet itemizing the housing-related expenditures prior to DSS staff approving the live-in service. The providers can expect to begin seeing the worksheets around November 1st.

This worksheet will be shared with the provider agency. Agencies should use the actual housing expenditures from the worksheet when applying the housing credit toward the minimum wage requirement. For purposes of valuing board, costs for three meals per day have been estimated at seventeen dollars and fifty cents per day.

The rate is based on 40 hours per week of regular time and 72 hours per week of overtime.

The starting wage for the regular time is permitted to start below minimum wage but must meet the Connecticut minimum wage standard when added to the value of room and board.

DSS' rate methodology has also taken into account that there may be additional documentation requirements of the providers.

The following tables show the rates that will be in effect 11/12/2015 – 12/31/2015, and the rates that will then be in effect beginning 1/1/2016.



Rates effective 11/12/2015	
1023Z Personal Care Services Agency Per Diem	\$225.00
1022Z Personal Care Services: Overnight, Agency No deductions for sleep time, room or board are permitted in the rate methodology for this service	\$167.78
1225Z PCA Agency, Per Diem, Prorated, Hourly	\$9.38
3022Z PCA Agency Overnight Prorated Hourly This rate does include overtime and is based on an 84-hour work week.	\$13.98

Rates effective 01/01/2016	
1023Z Personal Care Services Agency Per Diem	\$236.47
1022Z Personal Care Services: Overnight, Agency No deductions for sleep time, room or board are permitted in the rate methodology for this service	\$175.33
1225Z PCA Agency, Per Diem, Prorated, Hourly	\$9.85
3022Z PCA Agency Overnight Prorated Hourly This rate does include overtime and is based on an 84-hour work week.	\$14.61

The following is guidance on how to bill PCA Per Diem (24 hours) in which less than 24 hours of service was provided on any calendar day.

For billing purposes, the PCA Per Diem (24 hours) calendar day begins at 12:00 am and ends at 12:00 am. PCA Per Diem (24 hours) codes must not be billed for any date of service (calendar day) in which less than 24 hours of services were rendered. Providers are required to use Procedure Code 1225Z (PCA Agency) or Procedure Code 1227Z (PCA Individual), as applicable, to bill PCA services that are less than 24 hours in a calendar day.

For Example: Client A is discharged from the hospital and placed in the care of the PCA agency at 2:00 pm on January 1. The provider proceeds to render 24 hour PCA care to the client until the client is admitted back into the hospital at 5:00 am on January 3. The provider would bill for these services for these three calendar days as follows:

Date of Service	Shift	Hours Worked within the 24 Period	Procedure Code
Jan. 1	2 pm – 12 am	10	1225Z
Jan. 2	12 am – 12 am	24	1023Z
Jan. 3	12 am – 5 am	5	1225Z

Please contact Kathy Bruni, DSS Home and Community Based Services Program Director, with any questions or concerns at Kathy.a.bruni@ct.gov or 860-424-5177.



JOINT GUIDANCE ISSUED BY DSS, DDS AND CTDOL

REGARDING

USDOL's FINAL RULE EFFECTIVE JANUARY 1, 2015

The United States Labor Department ("USDOL") announced a final rule (78 FR 60454, 10/1/13), effective January 1, 2015, amending regulations regarding domestic service employment. The purpose and effect of the amendments are to extend Fair Labor Standards Act ("FLSA") protections (specifically, minimum wage and overtime) to most home care workers.

This bulletin provides guidance regarding the impact of the federal FLSA on the provision of agency-based live-in services to recipients of Connecticut Medicaid home and community-based waivers. This guidance applies exclusively to third-party agency employers providing live-in services and not to consumer/family employers who directly hire such employees without assistance from a third-party agency employer.

Credit for Housing and Food Costs: USDOL guidance confirms that it is permissible for employers to credit specified amounts of the cost of housing and food provided to the PCA by the client toward a live-in's wages. Housing and food costs may, however, only be credited toward regular time. In addition to payment for the regular time, the live-in is entitled to time and a half for all hours worked after 40.

The first permissible credit is the housing credit. Credits for housing costs may only be utilized for a live-in who is in a client's home for a minimum of five full days per week. USDOL has indicated that housing costs must be calculated on an individual basis, and are dependent on actual housing-related expenditures. DSS has provided the Access Agencies with a worksheet for this purpose. The involved Access Agency Care Manager will use the worksheet to calculate the credit for housing costs and will provide this information to the involved agency. The agency should then apply this amount to the live-in's minimum wage for his or her regular time.

Sample calculation for purposes of illustration only: If the PCA's share of the client's housing costs is \$100 per week, that amount will be divided by 40, resulting in an amount of \$2.50 per hour that may be applied toward the minimum wage for the regular time.

The second permissible credit is the food credit. The USDOL has indicated that \$17.50 per day is a reasonable valuation of three meals per day. The food credit may be utilized for any individual who is working a 24-hour shift. Food credits should be calculated as follows: $\$17.50 \times 7 \text{ days} = \122.50 per week. This amount must then be divided by 40 hours, resulting in an hourly food credit of \$3.06.

Sample calculation for purposes of illustration only: Continuing the above example, the agency would deduct the hourly food credits from the required minimum wage for the 40 hours of regular time, in addition \$2.50 per hour housing credit deducted. This is calculated as follows:

\$9.15 (hourly wage) minus \$2.50 (housing credit) minus \$3.06 (food credit) equals \$3.59.

\$3.59 times 40 hours equals \$143.60.

The payment due to the live-in in this example is \$143.60 for the 40 hours of regular time.

Credits for Hours Not Worked: Agencies have posed questions regarding the permissibility of deducting time not worked by a live-in from that individual's compensable time. Pursuant to 29 CFR 552.102, "the employee and the employer may exclude, by agreement between themselves, the amount of sleeping time, meal time and other periods of complete freedom from all duties when the employee may either leave the premises or stay on the premises for purely personal pursuits."

Information available on the USDOL website, www.dol.gov/whd/homecare, indicates that the starting assumption is that a live-in is able to sleep 8 hours per night, 5 of which must be uninterrupted. See 29 C.F.R. § 785.22. This sleep time may be deducted from the live-in's time on site in a client's home, initially resulting in a 16-hour work day.

Sample calculation for purposes of illustration only: Again, continuing on the examples above, if we assume the PCA is a seven day per week live-in, if only the sleep time is deducted the live-in is also entitled to 72 hours of overtime (16 hours/day x 7 days – 40 hours of regular time). The overtime in this example is paid at the rate of \$13.73 (\$9.15 hourly wage x 1.5) per hour.

The amount of overtime due in this example is calculated as follows: $\$13.73 \times 72 = \988.56 for the overtime.

Therefore, the total pay due to the live-in caregiver in this continuing example is \$143.60 (regular time less the housing and food credits) + 988.56 (overtime) = \$1,132.16.

If additional time for meal periods and other duty free periods are excluded by agreement between the employee and employer such additional periods would be deducted from all hours worked including the regular time and overtime in excess of the regular 40 hours.

Impact of Connecticut Law

Agencies have also expressed concerns about the alignment between Connecticut and federal law as it relates to credit for hours not worked. To address this, DSS has engaged in conversations with the CTDOL. Pursuant to current state law, "C.G.S. Sec. 31-76b(2)(D)", the CT DOL will rely upon the written agreement between each agency, client and live-in provider to memorialize any applicable housing and food credits as well as the deduction of sleep time, meal time and other periods of complete freedom from all duties. The CTDOL and DSS will also work collaboratively to explicitly align Connecticut statutes and regulations to reflect the same deductions recognized under the 29 CFR 552.102, provided that the parties have entered into a written agreement to that effect pursuant to Conn. Gen. Stat. § 31-71f.

The DSS has reviewed its recently published rate for the live-in service, procedure code 1023Z. Effective 1/1/15, the Department will reimburse live-in service at a daily rate of \$225.

Please contact Kathy Bruni, DSS Alternate Care Program Manager, with any questions or concerns at Kathy.a.bruni@ct.gov or 860-424-5177 or Gary Pechie, Director of Wage and Workplace Standards Division, at Gary.Pechie@ct.gov or 860-263-6376.