



Texas Association for
Home Care & Hospice
Leading ★ Advancing ★ Advocating

Administrator Program

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12:00pm-1:00pm

CC4. Closing the Loop on Community Care (PAS) Compliance Issues

Presented by:

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***Closing the loop on community care
(PAS) COMPLIANCE Issues:***

***PROPOSED RULE: Application of the Fair
Labor Standards Act to Domestic Service.***

**TEXAS ASSOCIATION FOR HOME CARE & HOSPICE
ADMINISTRATOR PROGRAM 2025, NOV. 19, 2025**

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Disclaimer & Acknowledgement

This outline is provided as general information only. It does not constitute legal advice and should not be used as a substitute for seeking legal counsel. Consult with your own attorney about specific legal questions.

Many thanks to Marissa Machado, who actually created this presentation.

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Overview of *Proposed* Rule

- Issued July 2, 2025, by U.S. Department of Labor (DOL)-([RIN 1235-AA51, JULY 2, 2025](#))
- Revises FLSA regulations for domestic service workers
- Seeks to restore pre-2013 exemptions for companionship and live-in care
- Aims to reduce administrative burden and expand access to home care
- Comment period closed September 2, 2025; final rule pending

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Key FLSA Sections Impacted

- § 552.6 – Companionship Services Definition
- § 552.102 – Live-In Domestic Service Employees
- § 552.109 – Third-Party Employer Exemptions
- FEB 2025-4 – Temporary Suspension of 2013 Enforcement

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§ 552.6 – Companionship Services

Current Rule (2013):

- Defines companionship services as fellowship and protection.
- Care allowed only if incidental ($\leq 20\%$ of hours).

Proposed Rule (2025):

- Removes 20% care limit and incidental restriction.
- Restores broader 1975-era definition including fellowship, care, and protection.

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§ 552.102 – Live-In Domestic Service Employees

Current Rule:

- Exemption applies only to live-in employees directly hired by a household.
- Agencies cannot claim exemption.

Proposed Rule:

- Allows third-party employers (agencies) to claim the exemption.
- Restores pre-2013 treatment.

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§ 552.109 – Third-Party Employer Exemptions

Current Rule:

- Third-party employers cannot claim companionship or live-in exemptions.
- Workers must receive minimum wage and overtime.

Proposed Rule:

- Restores ability of agencies to claim both exemptions.
- Re-aligns with 1975 regulatory framework.

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Enforcement Pause – Field Assistance Bulletin 2025-4

- [Field Assistance Bulletin 2025-4](#): Issued July 25, 2025, by DOL's Wage & Hour Division.
 - Directs field offices to pause enforcement of 2013 rule for third-party employers, and they must immediately discontinue enforcement including open cases that predate this FAB.
 - Applies while 2025 rulemaking process is underway.
 - Agencies may rely on broader exemption cautiously until final rule.
 - Home care services provided by licensed professionals, such as, registered nurses or licensed practical nurses, therapists are not affected by this FAB and, as such, are not to be considered exempt, even when providing "companionship services."
- Note:** Nothing in the FAB limits WHD's authority to enforce the FLSA, nor does it affect the Department's enforcement discretion under other applicable statutes or regulations.

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Impact for Texas Home-Care Providers

- Could lower overtime liability for agencies with live-in or companionship staff.
- May expand scheduling flexibility and reduce cost pressure.
- Agencies must still comply with Texas wage laws and MCO/Medicaid contract rules.
- Should monitor final rule for exact effective date and compliance requirements.

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Next Steps

- Await publication of final rule in Federal Register.
- Note:** During the lapse in federal government appropriations, Regulations.gov will continue to operate.
- Review employment classifications and policies.
 - Prepare payroll systems for new definitions.
 - Stay engaged through TAHC&H for updates and member guidance.



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Form 1099 (independent contractor payments) and United States Department of Labor (DOL) requirements for personal care attendants..... and impact to State to attendants and Medicaid Community Care services programs rate setting.

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Why This is Especially Important for Personal Care Attendants (PCAs)

- Many PCAs or personal attendants work in home care settings and may appear to be “contractors,” but often they have the hallmarks of an employee (set schedule, under agency control, etc.).
- The DOL’s Fact Sheet #79A says that domestic service workers (which can include personal care aides) are **covered** by FLSA for minimum wage and overtime, unless a narrow exemption applies.
- For example, for someone working in a private home providing care services:
 - If the tasks exceed a certain threshold (e.g., more than “companionship services”), then the worker must be paid minimum wage and overtime.
 - The “companionship services” exemption is narrow, and when a third-party agency is employer rather than the household itself, the exemption often does **not** apply.

Because of these factors, classifying a PCA as a 1099 independent contractor can be very risky if the facts suggest they are really employees.

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DOL Guidance & Independent Contractor Rule

- The DOL's "Employee or Independent Contractor Classification Under the FLSA" final rule (effective March 11, 2024) provides guidance on how to test if someone is an employee (thus needing wage & hour protections) or a contractor.
- Key factors: control, profit/loss opportunity, investment by worker, permanence of relationship, work integral to business, skill/initiative. No one factor is determinative. Details can be important.
- For home care agencies, because PCAs are core to the business (they deliver the services being billed for), the "integral to employer's business" factor pushes them toward employee status.
- Also, note that while the DOL seems to be modifying its enforcement stance regarding the companionship exemption for third-party agencies (see proposed rule to reinstate it) — that's separate from the classification/income tax/1099 issue.

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Implications for Using 1099s for Personal Care Attendants

- If you classify a PCA as a 1099 contractor, but they function like an employee (e.g., fixed schedule, supervised by you, can't work for others, etc.), you risk:
 - Liability for unpaid minimum wage and overtime under FLSA
 - Back taxes (Social Security, Medicare, unemployment) and penalties from IRS and DOL
- Even if you issue a 1099, you may still need to treat that worker as an employee for wage & hour law if the "economic reality" test says they're an employee.
- Issuing a 1099 or signing a contract doesn't automatically make someone a contractor — classification still must follow the facts and the law.
- If someone is truly a contractor (rare in typical PCA situations), you can issue a 1099, but you still must ensure no wage & hour protections are violated (e.g., mis-applied companionship exemption, etc.).
- Because Texas has its own wage & hour laws (and Medicaid/HCSSA regulations may apply), you MUST also check state/regulation-specific requirements (not just federal).

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Key Best Practices for Your Agency

- Conduct a **classification audit**: review PCAs' job duties, schedules, control, tools/equipment, ability to work elsewhere.
- Use clear **contracts/agreements** if you engage someone as a contractor, reflecting the real relationship (e.g., can work other jobs, sets their own hours, provides own equipment). You may need assistance of an attorney with this.
- For PCAs, consider defaulting to employee classification unless you are confident in contractor status — safer for compliance and most likely, unless specific circumstances exist.
- Keep detailed **time records**, payroll documentation, and classification rationale.
- Stay alert to DOL developments: For example, the proposed rule to reinstate companionship exemptions might shift the landscape.

Work with your legal/advisory team to update forms and policies — especially around classification, payroll, benefits, independent contractor agreement vs employee handbook

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Where to report concerns with violations:

1) Texas Health & Human Services Commission – Office of Inspector General (HHSC OIG)

If a Medicaid provider is paying all personal care attendants as 1099 contractors — even though they're functioning as employees under agency supervision — that may constitute **non-compliance with Medicaid provider rules** and potentially **fraud or misrepresentation**.

How to Report:

- 📞 **HHSC OIG Fraud Hotline:** 1-800-436-6184
- 🌐 **Online:** <https://oig.hhs.texas.gov/reportfraud>

- You can report anonymously.
Select **"Medicaid Provider Fraud"** and include details such as:
- Agency name and location
- Description (e.g., "All attendants are paid on 1099 basis despite working scheduled shifts and under supervision")
- Approximate dates
- If you're aware, note whether they bill under Community Care, STAR+PLUS, STAR Kids, or other HHSC programs.

Why OIG matters:

They oversee Medicaid provider compliance and can refer findings to HHSC Licensing or to the Attorney General for prosecution.

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2.) U.S. Department of Labor (DOL) – Wage & Hour Division (WHD)

If the issue involves **employee misclassification under federal wage laws** (Fair Labor Standards Act, FLSA) — for example, attendants not receiving overtime or minimum wage — you can report it to DOL.

How to Report:

 File online: <https://www.dol.gov/agencies/whd/contact/complaints>

 Texas offices:

- **Dallas District Office:** (972) 850-2600
- **Houston District Office:** (713) 339-5500
- **San Antonio District Office:** (210) 308-4515

You can remain confidential. The DOL investigates misclassification and unpaid wage claims.

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3. Texas Workforce Commission (TWC)

If attendants are being misclassified, it also affects unemployment insurance contributions.

The **TWC Tax Department** investigates employers who improperly classify employees as contractors to avoid paying unemployment taxes.

Report to:

 <https://www.twc.texas.gov/jobseekers/report-employer-violations>

 512-463-2731

Describe the issue as:

“A Medicaid home care provider classifies all personal care attendants as independent contractors (1099) even though they perform employee duties under agency supervision.”

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4. If You Suspect Tax or Payroll Fraud

For possible **IRS violations** (e.g., not withholding taxes or issuing improper 1099s):

 **IRS Fraud Hotline:** 1-800-829-0433

 **Form 3949-A:** <https://www.irs.gov/individuals/how-do-you-report-suspected-tax-fraud-activity>

Recommended Reporting Approach:

If you're reporting as a Medicaid employer, the cleanest route is:

1. File the main complaint with **HHSC OIG** (since it's Medicaid-related).
2. Copy or reference **DOL Wage & Hour Division** if wage violations are likely.
3. Optionally alert **TWC** if unemployment misclassification is clear.

Best practice: Keep documentation (ads, contracts, job postings, or emails showing 1099 offers) — these are often key evidence for OIG or DOL.

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What we already know about Texas rates & cost reporting

- The Texas Health and Human Services Commission (HHSC) publishes rate tables for attendant/personal care services (e.g., for programs such as STAR+PLUS HCBS, Primary Home Care (PHC), etc.).
- HHSC uses cost and accountability reports from providers to inform rate-setting.
- The rate-setting methodology (for reimbursement) is documented in the Texas Medicaid Provider Procedures Manual, including cost reimbursement, reasonable cost, interim rates.
- Texas has moved to increase base wages for attendants over time (reflecting workforce issues) which affects the attendant cost component of the rate.

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Cost reporting and Rate-setting implications:

- When HHSC or other oversight entities look at cost data to set base wages or the attendant component of the rate, if many providers use 1099 arrangements (and thus lower costs) the rate-setting model might trend downward (or not increase as much).
- If you're a provider using 1099s and your cost structure is lower, you might gain a competitive advantage in margin, but you must ensure the service quality and regulatory compliance are not compromised (which could trigger recoupments, audits).
- If the program's policy or audit standard requires that attendants be employees (or that employer wage+benefits be a certain amount), then using 1099s might risk disallowance of certain costs, or possibly the rate might not reflect your true cost structure if your arrangement is outside typical standards.

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Cost report impact & eligibility of contractor payments

- When HHSC sets rates (especially for attendant services), they look at "attendant cost" as a component of the rate formula (for example, in PHC the "attendant cost" portion is listed separately). If your actual cost is lower because you treated workers as contractors, this might lower your reported cost, but it also might raise workforce stability concerns, quality issues, or risk of non-compliance.
- If they are mis-classified (were functionally employees but treated as contractors), there may be tax / employment law exposures (e.g., payroll taxes, unemployment taxes) which could result in additional costs, penalties or adjustments.
- From a cost-reporting perspective: Providers often must report wages, payroll taxes, benefits for attendants (because the attendant wage is a material part of the service cost). If you have "contractors" instead of employees, the cost line items may look different (you might not have employer FICA, unemployment and benefits) and this may affect the cost basis you report.

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QUESTIONS?

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