

# Key Information on Self-Direction and the Department of Labor's Final Rule

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August 21, 2015

The U.S. Court of Appeals for the District of Columbia upheld the U.S. Department of Labor Final Rule related to home care. The court heard arguments from both sides in the *Home Care Association, et al. v. David Weil, et al.* case on May 7, 2015, and decided on August 21, 2015 that the DOL Final Rule was valid.

Last year, the U.S. Department of Labor released a Final Rule related to personal care attendants under the Fair Labor Standards Act (FLSA) related to minimum wage and overtime. This rule was expected to become effective on January 1, 2015. Instead, the U.S. District Court of the District of Columbia (Washington, D.C.) issued a ruling in the *Home Care Association* case that struck down some parts of the rule that could impact the home and community based services (HCBS) programs and self-directed services in Kansas.

Over the past year, Kansas has been actively involved in the discussion related to the DOL Final Rule.

- Kansas sent a letter to the DOL in August of 2014 asking for guidance on this Final Rule.
- Kansas posted a [Commissioner's Open Letter](#) and other helpful information on the [KDADS website](#).
- Kansas met with DOL and other federal agencies to discuss the impact of the Final Rule on home and community based programs.
- Kansas has been making changes to the programs that help self-directing consumers exercise their role as employer. These changes will continue.
- Kansas is updating AuthentiCare® KS to allow consumers to have better tools for managing the workers the consumer hires to help them.
- Kansas consumers now get a federal employer ID number to assist Financial Management Services (FMS) providers file taxes for the consumer's employees on their behalf.
- Kansas Attorney General filed an Amicus Brief in support of the position taken by the Home Care Association.

KDADS is committed to minimizing any negative impact this may have on consumers, direct service workers and providers while ensuring the health, safety and welfare of those who receive services from HCBS programs. At this time, KDADS has not issued any directions to providers about how this rule applies to HCBS Programs and self-directed services.

The State is reviewing the decision to determine the potential impact this will have on the HCBS Programs. In the meantime, Kansas will continue notify MCOs, providers and consumers of the next steps.

## For More Information about the DOL Final Rule visit:

- Visit the KDADS website: [https://www.kdads.ks.gov/commissions/csp/home-community-based-services-\(hcbs\)/federal-guidelines](https://www.kdads.ks.gov/commissions/csp/home-community-based-services-(hcbs)/federal-guidelines)
- Visit the DOL website: [www.dol.gov/whd/homecare](http://www.dol.gov/whd/homecare)