Why GAO Did This Study

Older adults and people with disabilities are increasingly receiving care at home, and home care workers are performing increasingly skilled duties. DOL recently revised its FLSA regulations to extend minimum wage and overtime protections to more of those home care workers. The Home Care Rule, scheduled to go into effect January 2015, may affect a diverse set of stakeholders, including home care workers, consumers receiving home care services, private home care agencies, and state Medicaid programs. GAO was asked to assess the potential effects of this rule.

GAO examined (1) changes DOL made in the Home Care Rule and factors it considered during the rulemaking process, (2) the potential effects of the rule identified by key stakeholders, and (3) steps DOL has taken to help state Medicaid agencies and other stakeholders understand and comply with the Home Care Rule. GAO visited six state Medicaid programs selected in part for variation in state Medicaid program design; reviewed relevant federal regulations; and interviewed government officials and representatives from 14 national organizations representing the spectrum of home care stakeholders, including workers and consumers.

What GAO Found

The Department of Labor’s (DOL) Home Care Rule is expected to increase the number of home care workers who qualify for minimum wage and overtime protections under the Fair Labor Standards Act of 1938, as amended (FLSA). The Home Care Rule narrows the definition of companionship services and limits who may claim the companionship services exemption, among other changes. It is scheduled to go into effect in January 2015, although a challenge to the rule is currently pending in federal court. When developing the rule, DOL considered several factors, including the growth and specialization of the home care workforce, as well as the amount of time needed to make adjustments.

Representatives from national organizations GAO interviewed identified potential effects of the Home Care Rule on jobs and earnings, employer costs, and care, but did not always agree. Some representatives said extending FLSA protections to home care workers will create more full-time employment opportunities for part-time workers, while others said those who work more than 40 hours in a workweek may see reduced hours and earnings. Some representatives said employers may face increased business costs to pay overtime and some said that certain consumers could be placed in institutions because of possible service cost increases. Effects on Medicaid home care services will vary by state. Officials in five of six states GAO visited explained that they were still assessing possible changes to their programs, while one state had determined what changes it would make to comply with the new rule.

What GAO Recommends

Depending on the outcome of the litigation, GAO recommends that the Secretary of Labor take steps to ensure the agency will be positioned to conduct a meaningful retrospective review of the rule at an appropriate time. DOL agreed with this recommendation and is working on developing data collection plans.

Potential Redistribution of Home Care Worker Hours

After the Home Care Rule was published, DOL collaborated with other federal agencies and stakeholders to develop guidance, conduct outreach, and provide technical assistance to help stakeholders plan for implementation. For example, DOL worked with the Centers for Medicare & Medicaid Services to develop guidance on applying FLSA principles to different home care living arrangements commonly funded by Medicaid. DOL officials said they are focusing on technical assistance to help employers and states with implementation and have developed a phased-in enforcement strategy. The effects of the Home Care Rule, such as whether the workforce will grow or the use of institutional care will increase, remain uncertain, and DOL officials said they do not currently have any plans to evaluate the rule.