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Authorized Signature

Number: APD-PT-16-032
Issue date: 8/31/2016

Topic: Long Term Care

Transmitting (check the box that best applies):

- New policy
 Policy change
 Policy clarification
 Executive letter
 Administrative Rule
 Manual update
 Other: _____

Applies to (check all that apply):

- | | |
|--|--|
| <input type="checkbox"/> All DHS employees | <input type="checkbox"/> County Mental Health Directors |
| <input checked="" type="checkbox"/> Area Agencies on Aging | <input type="checkbox"/> Health Services |
| <input checked="" type="checkbox"/> Aging and People with Disabilities | <input type="checkbox"/> Office of Developmental Disabilities Services(ODDS) |
| <input type="checkbox"/> Self Sufficiency Programs | <input type="checkbox"/> ODDS Children’s Intensive In Home Services |
| <input type="checkbox"/> County DD Program Managers | <input type="checkbox"/> Stabilization and Crisis Unit (SACU) |
| <input type="checkbox"/> ODDS Children’s Residential Services | <input type="checkbox"/> Other (<i>please specify</i>): |
| <input type="checkbox"/> Child Welfare Programs | |

Policy/rule title:	Operationalizing HCW Overtime Agreement		
Policy/rule number(s):	OAR 411-031, 2015-2019 HCW/PSW CBA, Letter of Agreement: FLSA Implementation	Release no:	
Effective date:	9/1/2016	Expiration:	

References:	OAR-411-031
Web address:	OAR 411-031 Homecare Workers 2015 – 2019 HCW/PSW CBA Letter of Agreement: FLSA Implementation

Discussion/interpretation:

Operationalizing Overtime Agreement

On Friday, June 24, 2016, DHS finished negotiating overtime (OT) requirements for HCWs and PSWs. The agreement covered retroactive OT compensation, ongoing OT,

caps on hours authorized to HCWs/PSWs and caps on the hours HCWs/PSWs may work.

Retroactive OT Compensation:

HCWs/PSWs will be compensated for OT accrued between January 1st, 2016 and August 27th, 2016 (Last day of last full week of August). Per the agreement reached all retroactive OT payments, across all program areas (APD, OPI, ODDS & AMH) must be made by September 30th, 2016. In order to do this the Department will pull data on claims paid for the retro OT time period. Checks will be issued no later than 9/30/2016, processing the night of September 29, 2016. (See [APD-IM-16-073](#))

Overtime will be calculated as 1.5 times the average rate. The CEP payment system will calculate this automatically. Local offices do not need to calculate OT payments.

HCWs are being notified of this payment by a letter distributed by CO to all active HCW impacted by the hours limitation. The letters are scheduled to be mailed August 31, 2016.

Ongoing Caps

Every HCW will be limited on the number of hours they can be authorized and work per week. This includes time claimed as travel time on Travel Time Claim Sheets. This hour limitation is across all consumer-employers and across all program areas (APD-Medicaid & OPI, ODDS & AMH). HCWs are required to ensure they do not exceed their cap. Case Managers should not authorize HCWs to work more than their specific caps. Cap are assigned as follows:

- New HCWs and PSWs are subject to the 40 hours per week limitation when their first consumer-employer is re-assessed. New HCWs/PSWs means anyone hired on or after June 1, 2016.
- Hourly HCWs and PSWs working prior to June 1, 2016 that were working less than 40 hours per week (176 hours per month) are subject to the 40 hours per week limitation when their first consumer-employer is re-assessed. .
- HCWs/PSWs who worked more than 40 hours per week on average in March, April, and May, are subject to the 50 hour per week limitation.

For monthly service plans, these hours translate to:

- 40 hours per week = 176 hours per month
- 50 hours per week = 220 hours per month

HCWs Providing Live-in Services

HCWs providing live-in services (including 24 hour relief care) are not subject to a weekly hourly hour's limitation at this time.

- A HCW who provides both Hourly and Live-in services **is subject to the hours limitation** based on their calculated weekly average.

PSWs Providing Services through the Independent Choices Program

PSWs who are working for a consumer-employer through the Independent Choices Program (ICP) are not subject to the hours limitation or retroactive OT.

The PSW is an employee of the consumer-employer only. The hours worked for that consumer-employer do not count towards their hour limit (nor do they count towards accruing OT). It's the consumer's responsibility to verify with BOLI if this is applicable to them as the consumer-employer.

Implementation/transition instructions:

Local office staff (Medicaid and OPI) will not need to calculate HCW weekly hour caps. Central office has provided a report of hours worked for each work week in March, April and May to determine the average weekly hours worked by each HCW.

HCWs who are authorized to work up to 50 hours per week are on this list.

- The list will be securely distributed to APD, AAA, and OPI supervisors and should be available to staff.

HCWs who are not qualified for the up to 50 hour limit are subject to the 40 hour per week limit across all Medicaid & OPI consumer-employers served.

- HCWs may dispute their hours limitation determination by providing documentation of hours worked per week to DOL.Questions@state.or.us.

*This email address may be given to HCWs.

The process to request an exception to an individual provider's hour's limitation will remain the same. Exceptions will only be allowed based on the needs of the consumer-employer. Please review [APD-PT-15-028](#).

The cap will be implemented as the consumer-employer(s) of the HCW are reassessed for services (OPI, SPPC, Title XIX, etc.).

This means;

- For cases with a date of request on or after September 1, 2016 the HCW hour's limitation will be applied when the service plan begins.
- For ongoing cases reassessed on or after September 1, 2016 the HCW hours limitation will be applied on the start date of the new service plan (generally 10/1/2016).

Example:

- Bill is working for 2 consumer-employers (Jodi and Phyllis) and his calculated weekly average is less than 40 hours. Jodi's assessment was just completed in June and is not due until June 2017. Phyllis' assessment is due in October. Bill will be subject to the hour's limitation when Phyllis' re-assessment is completed.
 - If Jodi is re-assessed before Phyllis due to a change in condition, Bill would be subject to the hour's limitation at that time.
 - This is also true even if Jodi and Phyllis are in different programs

HCWs who are working more than 50 hours per week for multiple consumer-employers, regardless of the program, will be subject to the hour's limitation when the first consumer-employer they work for is re-assessed. Upon that assessment taking place the HCW may no longer work over 50 hours per week.

- This may mean the HCW is unable to continue providing services to all of their consumer-employers or may need to work fewer hours.
- It is the HCWs responsibility to notify their consumer-employer(s) if they will no longer be able to continue providing services or to work with each consumer to reduce the number of hours worked.
 - o As a courtesy, case managers should also notify each other if they are aware of a HCW who may no longer be providing services to another consumer-employer.
- It is the consumer-employer's responsibility to hire HCWs as needed to meet their needs based on the authorized hours.
 - o The Steps to Success program can provide lists of HCWs and provide additional assistance with the hiring process.

It is strongly recommend staff work proactively and collaboratively when implementing caps for HCWs who work for many consumer-employers.

CO understands there is a potential for hours over to be authorized over the providers limit. CO will be conducting post payment review, with a focus on providers working across different program areas. APD/AAA case managers are not expected to track or determine if a HCW is also providing services as a Personal Support Worker (PSW) in the ODDS program.

There is a shared responsibility between the three parties involved to manage the service plan.

- The case manager should do their best to not authorize a provider to work beyond their hours limitation
- The consumer should do their best to not ask and not allow a HCW to work beyond their hours limitation
- The HCW should do their best to not work beyond their hours limitation

Training/communication plan:

*SEIU has notified their members of FLSA changes.

*Distribute an IM to schedule a webinar regarding FLSA implementation.

*See attached letter mailed to all HCWs with their calculated average weekly hours and their weekly hour limitation.

Local/branch action required:

When reassessing a consumer-employer, review the cap status of the HCWs employed by that consumer-employer.

1. Is HCW authorized to work 40 + hours per week? (See list provided to supervisors)
 - a. Staff may also review SHHW, Provider # to review hours authorized and worked for each month.

- b. SHHW shows the hours authorized and paid out per month.
 - i. The hours authorized units are reduced when vouchers are paid.
- c. When case managers review this screen they may look at the totals hours worked for March, April and May for a quick reference of the provider hour limit.
 - i. A provider who worked less than an average of 176 hours per month would be limited to 40 hours per week.
 - ii. A provider who worked 176 hours per month or more would be limited to 50 hours per week.
- d. Case managers can also use the screen to determine if the HCW is able to accept more hours or not.
 - i. If the provider is limited to 40 hours per week (176 hours per month) and they are currently authorized to work 100 hours per SHHW that provider has roughly 76 hours that they could potentially work.

SHHW Homecare Worker Health Ins Hours Inquiry 08/22/2016

Prov Nmbr	<input type="text" value="Provider#"/>	Prov Name	<input type="text" value="Provider Name"/>						
Mo/Yr	Auth	Worked	Curr Month	Prev Month	Mo/Yr	Auth	Worked	Curr Month	Prev Month
201207	0.00	0.00	0.00	40.00	201103	0.00	98.00	98.00	98.00
201206	0.00	40.00	40.00	40.00	201102	0.00	98.00	98.00	98.00
201205	0.00	40.00	40.00	40.00	201101	0.00	98.00	98.00	98.00
201204	0.00	40.00	40.00	40.00	201012	0.00	98.00	98.00	98.00
201203	0.00	40.00	40.00	40.00	201011	0.00	98.00	98.00	98.00
201202	0.00	40.00	40.00	40.00	201010	0.00	98.00	98.00	98.00
201201	0.00	40.00	40.00	40.00	201009	0.00	98.00	98.00	100.00

- 2. Is the HCW working for other consumer-employers?
 - a. Review ONIQ, Provider# in the Mainframe CEP system
 - b. When filtered by provider # ONIQ will show the start and end date for each service plan.
 - c. ONIQ can also be used to determine if the hours limitation has already been applied to the provider.
 - i. If the begin date of any plans is September 1, 2016 or later, the HCW is subject to the hours limit.
 - d. ONIQ can also be used to assist staff to communicate and collaborate with each other.

Begin Dt	Expire Dt	Prime	Prov	Branch	Last Issue	SVC	Status
05/01/2016	04/30/2017	Prime #	Provider	2211	08/31/2016	APD	
05/01/2016	03/31/2017			2211	08/31/2016	OPI	
07/16/2016	01/31/2017			2211	08/31/2016	KPS	
05/01/2016	08/31/2016			2211	08/31/2016	APD	
08/01/2016	08/15/2016			2211	08/31/2016	APD	
04/01/2016	07/31/2016			2211	07/31/2016	APD	

Central office action required:

*Conduct post payment audits by reviewing hours paid to HCW/PSWs to track the implementation of the hours limitation policies.

*HCWs that violate the hours limitation will be subject to termination (See APD-PT-16-031).

Field/stakeholder review: Yes No

If yes, reviewed by: APD Operations Committee & APD Policy

Filing instructions:

If you have any questions about this policy, contact:

Contact(s):	Mat Rapoza 503-945-6985 Ben Sherman 503-602-3471 Chris Ellis 503-945-7035
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Email:	Mathew.G.Rapoza@state.or.us Ben.C.Sherman@state.or.us Christopher.M.Ellis@state.or.us
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Fact Sheet for FLSA Overtime Implementation

For HCWs in Medicaid & OPI programs

1. Retroactive overtime checks will be processed on Sept 29th.

- a. These checks will be before the difference between Gross OT and the standard rate HCWs have already been paid.
- b. The retroactive OT is paid on the hours authorized and paid to HCWs.
 - i. HCWs who reported working more than the hours authorized on their vouchers will not be compensated for that time.

2. Letters will be mailed to HCWs by August 31.

- a. Letters will notify HCWs of the retroactive OT payment
- b. Letters will notify HCWs of avg hours per week based on their 3 month avg (Mar, Apr, May)
 - i. The hours limitation was determined by first calculating the average hours worked per day for each HCW. This was done by looking at the hours paid in each pay period and dividing by the number of days in the pay period. Next, the average hours worked per week was determined by taking the total hours worked for each provider over a 14 week period of (Feb 28-June 4) and dividing the total hours worked by 14 to get the average hours worked per week over that period of time.
- c. Letters will also notify HCWs whether they will be limited to 40 OR 50 hours per week.
- d. Per the collective bargaining agreement HCWs who were paid for working an average of 40 or more hours a week during the months of March, April and May will be limited to 50 hours per week across **ALL** consumers served.
 - i. HCWs who worked an average of less than 40 hours (39.8 or below) will be limited to 40 hours per week across **ALL** consumers served.
- e. HCWs working more hours than their authorized hour limitation per week will need to adjust their schedules and/or reduce the hours of service they are providing to some consumers.
- f. HCWs who were not working during March, April and May are limited to 40 hours per week.
 - i. HCWs will be allowed to provide documentation that their hour limitation was calculated incorrectly, but we are holding a very firm and very high burden of proof for HCWs to validate that they were working over 40 hours per week.
- g. There will continue to be exceptions to the 50 hour limitation, although – again, the threshold is very high.
- h. Strictly live-in HCWs are not subject to the 50 hour limitation. If they receive a letter informing them of the hour limitation – it was likely by mistake. We have pulled and reviewed the data, but with 20,000+ providers it can't be perfect.
 - i. HCWs who choose to provide both hourly and live-in services are limited to their hour limitation based on their three month average.

3. A list of HCWs who qualified for the 50 hour limitation will be provided to supervisors.

- a. This is a static list and will not change.
- b. No new HCW will default to being authorized to work above 40 hours per week, unless the consumer they work for receives an exception to hourly limitations.

4. The hour limitation will be applied to the HCW when the first consumer they are working for is reassessed.

- a. For cases with a date of request on or after **September 1, 2016** the HCW hour limitation will be applied when the service plan begins.
- b. For ongoing cases that are reassessed on or after September 1, 2016 the HCW hour limitation will be applied on the start date of the new service plan (generally 10/1/2016).

Example:

Bill is working for 2 consumers (Jodi and Phyllis) and his calculated weekly average is less than 40 hours. Jodi’s assessment was just completed in June and is not due until 2017. Phyllis’ assessment is due in October. Bill will be subject to the hour limitation when Phyllis’ re-assessment is completed.

If Jodi is re-assessed before Phyllis due to a change in condition, Bill would be subject to the hour limitation at that time.

- c. When a HCW is added to a service plans but an assessment has not yet been completed, the HCW is subject to their calculated hour limitation of either 40 or 50 hours.

5. There will be no systems hour limitation initially due to the rolling implementation.

- a. We will rely on HCWs, consumers, and Case Managers to manage the hours authorized to individual HCWs on the front end.
 - i. Case managers will need to be reviewing SHHW (hour’s auth per month) and ONIQ (ongoing authorizations) to determine if the provider on their case may be impacted by the hour limitation.
 - ii. We estimate that approx. 20% of HCWs have qualified to work above 40 hours per week.
- b. Central office will review payments after payment and review to determine if HCWs are in compliance. Review [APD-PT-16-031](#) and [APD-PT-16-008](#)
 - i. If they are not, there will be subject to a progressive discipline plan/approach

Voucher Exceeds 10% of Authorized Hours	Action for Consumer	Action for HCW
First Violation	CM sends Warning Letter	CM sends Warning Letter
Second Violation	CM sends Warning Letter and makes referral to STEPS	CM notifies Central Office CO sends Warning Letter
Third Violation	CM notifies consumer that they must: <ul style="list-style-type: none"> • Appoint a representative; • Choose to receive services through an In-Home Care Agency; or • Choose a different service setting. 	CM notifies Central Office CO sends Termination Letter

Dear Homecare Worker,

What has changed?

On June 24th, 2016 the Department of Human Services (DHS) and Service Employees International Union (SEIU) agreed on overtime for Homecare Workers (HCWs) who work more than 40 hours in a week.

Part of that agreement was to limit the number of hours a HCW is authorized to work in a work week. This was determined by averaging the hours paid to each HCW during March, April and May of 2016.

According to the agreement, if that average was more than 40 hours per week you can work no more than 50 hours per week. If that average was less than 40 hours per week you can only work 40 hours per week.

The average number of hours paid to you per week were: ##.##

When the consumer-employer you are working for has a reassessment or renewal you will be limited to working XX hours per week.

If you work for more than one individual as a PSW or HCW your weekly limit starts when the first consumer-employer's Service Plan is reassessed or renewed.

Will I be paid for Overtime I've already worked?

The Department has already paid HCWs their hourly wage for the hours worked. If a HCW was paid for more than 40 hours in a work week from January 1st, 2016 through August 31st, 2016 the HCW will receive retroactive pay equal to one half of their hourly wage for all hours over 40. A work week is Sunday at 12:00 AM through Saturday at 11:59 PM.

For example:

Homecare worker Ken worked 58 hours during the week of June 12th through the 18th at \$14.00 per hour. The Department previously paid Ken for 58 hours at \$14.00 per hour. The Department will be making a back payment for overtime for 18 hours at \$7.00 an hour. (See attachment)

What if I disagree with hour per week limit OR the amount of my retroactive payment?

If you disagree with the average number of hours DHS found you were paid, you can ask DHS to reconsider your weekly limit. Send any documentation that shows you worked an average of more than 40 hours per week during March, April, and May 2016 to:

PleaseReconsiderMyHours@state.or.us

Or mail to:

PSW/HCW Specialist

500 Summer St. NE, E-10

Salem, OR 97301