

Policy Transmittal Developmental Disabilities Services



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Number: APD-PT-19-037
Issue date: 10/25/2019

Topic: Developmental Disabilities

Due date:

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 type="checkbox"/> Area Agencies on Aging: {Select type} | <input type="checkbox"/> Health Services |
| <input type="checkbox"/> Aging and People with Disabilities | <input checked="" type="checkbox"/> Office of Developmental Disabilities Services (ODDS) |
| <input type="checkbox"/> Self Sufficiency Programs | <input checked="" type="checkbox"/> ODDS Children's Intensive In Home Services |
| <input checked="" type="checkbox"/> County DD program managers | <input type="checkbox"/> Stabilization and Crisis Unit (SACU) |
| <input checked="" type="checkbox"/> Support Service Brokerage Directors | <input checked="" type="checkbox"/> Other (<i>please specify</i>): DD Services Coordinators, Brokerage Personal Agents, DD Provider Agencies |
| <input type="checkbox"/> ODDS Children's Residential Services | |
| <input type="checkbox"/> Child Welfare Programs | |

Policy/rule title:	PSW/DSP Dual Roles Transition		
Policy/rule number(s):	411-375, 411-415, 411-450	Release number:	
Effective date:		Expiration date:	
References:			
Web address:			

Discussion/interpretation:

ODDS is adopting administrative rule changes November 1, 2019. Included in those changes are expanded restrictions on providers who have dual role with an individual receiving services, effective January 1, 2020.

The new rules prohibit the following three dual role situations:

1. Community Living Supports (CLS) agency staff (DSPs) providing community

living supports to their spouse.

2. Community Living Supports agency staff (DSPs) providing community living supports to their minor child, including step-parents of minor children.
3. A personal support worker (PSW) also providing CLS skills training, relief care or attendant care, other than day support activities, as a Community Living Supports (CLS) agency staff (DSP) for the same individual receiving services.

These rule changes restrict case management entities, PSWs and CLS agencies from knowingly creating prohibited dual roles.

What is the case manager's responsibility?

When an individual has both a PSW and a CLS agency authorized in their ISP, the case manager should attempt to determine if the PSW and DSP are the same person. The case manager must make the worker and the agency aware that the dual role is prohibited. Failure by the agency and PSW to correct the situation should be reported to the Department.

What is the provider's responsibility?

A worker must not provide attendant care services, including relief care, to the same individual as both a PSW and a DSP after January 1, 2020 and the individual's ISP is being renewed.

What is the Employer of Record's and CLS Agency's responsibility?

EORs and CLS agencies may not hire the same person to work with the same individual after January 1, 2020 when individual's ISP is renewed.

Who will be tracking compliance?

When a case manager is informed of a dual role after the individual's 2020 plan renewal, they should follow up with the EOR and Agency to make adjustments to the staffing schedule as quickly as possible.

ODDS will be reviewing compliance through provider audits as well as data obtained through EVV and notifying case management entities as applicable.

What is a dual role?

A dual role is when a person acts in more than one capacity within an individual's life. Not all dual roles are a problem, but dual roles do pose a risk when there is a potential for role confusion, unclear boundaries, and conflict of interest.

What is the problem with DSPs also being a parent of a minor child or a spouse?

Parents of minor children and spouses are assumed to have a duty to care for their own child or spouse. This rule already applies to PSWs and inadvertently agency DSPs were omitted from this restriction.

What are the problems with a provider being a DSP and PSW for the same individual?

- Role confusion for worker compensation claims when a worker is both a PSW and a DSP for the same individual. Compensation claims are investigated by different offices based on the type of provider the worker is at the time of injury. Identifying when a worker was acting as a PSW versus a DSP has been difficult for investigators when the service agreements are similar or identical and may result in inaccurate findings.
- Assigning abuse substantiations against a PSW vs. a CLS agency have been difficult when there is no clear difference between when a worker is a PSW or a DSP and when the service agreements are similar or identical and schedules are not set out prior to work shifts. Clearly identifying the responsible provider type is critical in investigations of abuse.
- Role confusion for the individual receiving services, especially if they are the employer of the PSW. It is unclear when they have the responsibilities of the employer and when the agency is the employer.
- Role confusion for the agency delivering the services. It is unclear when the agency is responsible for the specific care needs of the individual and when the employer is responsible. This can cause gaps in service and inadequate back-up coverage from the agency.
- Conflict of interest for the provider. The provider may receive financial benefit from being either a PSW or a DSP and can influence the schedule and allocation of resources to maximize their financial gain rather than being directed by the individual receiving services.
- Risk of isolation, abuse or neglect. Receiving all services from a single provider is a recognized risk factor for isolation, abuse or neglect especially for people with significant needs. When the PSW is also a DSP for an agency for the same individual there is not any additional check to ensure that this risk has been considered and that a single person providing all the care is the best available option. If the situation meets that criteria the person would likely meet the criteria for the PSW to exceed their weekly cap.

Implementation/transition instructions:

ODDS acknowledges that dual roles may already exist. As of January 1, 2020, no new prohibited dual roles may be permitted.

As ISPs renew over 2020, existing dual roles must be resolved.

CLS agency DSPs that are currently working as PSWs for the same individual must choose to work in only one of those roles with that individual on or before the end date of the current ISP. The worker can continue to be a PSW and CLS agency DSP to

deliver services to different individuals.

For a worker who has been in a dual role and will continue as a PSW, follow the guidance and criteria in the [PSW Hours Limits Exceptions Worker Guide](#) to determine if an exception to the PSW's weekly limit is necessary to meet their attendant care needs.

These new restrictions do not impact PSWs who deliver skills training or attendant care to an individual (OR526, OR502, OR507) and are also employed as an agency DSP to deliver DSA (OR542R1, OR542ZE, OR542W1, OR542W2) or any employment service to the same individual including on-the-job support (OR545). There are also times when a DSP works for a CLS agency providing attendant care (OR526) and is a PSW job-coach to deliver job coaching support (OR401). This will continue to be permitted.

However, an individual may not utilize a provider agency to deliver job coaching supports and the same Employment Specialist from the agency provider may not also deliver job coaching supports as a PSW job coach.

Training/communication plan:

Monthly transmittal call on the 3rd Thursday in November. Conference line 877-848-7030. Guest access code 458900.

ODDS will send letters (via USPS and email) communication to PSWs and EORs notifying them of the prohibited dual roles in November 2019.

Local/branch action required:

When an individual has both a PSW and a CLS agency authorized in their ISP, the case manager should attempt to determine if the PSW and DSP are the same person.

When a case manager is informed of a dual role after the individual's 2020 plan renewal, they should follow up with the EOR and Agency to make adjustments to the staffing schedule as quickly as possible.

Central office action required:

ODDS will be reviewing compliance through provider audit documentation as well as data obtained through EVV and notifying case management entities as applicable.

Field/stakeholder review: Yes No

If yes, reviewed by: Engagement and Innovations website

Filing instructions:

If you have any questions about this policy, contact:

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