

Topic:	PSWs exceeding weekly hour limitations
Date Issued/Updated:	9/2/2016

Overview

Description: Case management entity roles and responsibilities in tracking, following up on, and taking action when PSWs exceed their weekly hour limitations.

Purpose/Rationale: To assist Service Coordinators (SC) and Personal Agents (PA) as well as CDDPs and Brokerages in understanding their roles and responsibilities related to the weekly limitations for PSW hours.

Applicability: Service Coordinators and Personal Agents

Procedure(s) that apply:

Effective September 1, 2016 Personal Support Workers (PSWs) will have a limit to the number of hours they can work per week. PSWs have a limitation of 50 hours per work week if the PSW was credentialed prior to June 1, 2016 and worked **more** than an average of 40 hours per week in March, April, and May 2016. All other PSWs have a limitation of 40 hours per work week. See [APD-PT-16-030 PSW Weekly Hours Limitations](#) for more information

The weekly limitation applies to all hours a PSW works during a work week including:

- attendant care,
- skills training,
- job coaching,
- relief care,
- travel time, and
- time worked for other DHS programs as a PSW or homecare worker

Service Coordinator/Personal Agent actions when a PSW exceeds weekly limit:

ODDS recognizes that while the SC/PA may not always know if a PSW is working more than their weekly limit there are times where the SC/PA will be aware that the PSW is violating the limitation.

The SC/PA role is in monitoring the services delivered and supporting the employer. In situations where the SC/PA is aware that a PSW is working more than their weekly limit the SC/PA has the responsibility to take the following next steps:

- Does this situation qualify for an exception (relief care for immediate loss of primary caregiver, emergent need related to risk of health and safety)?
 - If so, determine if this exception could be locally reviewed and approved or needs to be submitted to ODDS. Assess whether there are options to prevent the need for this exception the future. See [Worker Guide](#) for more information.
- Does the individual need support in identifying more providers for their planned care needs or as part of their back-up plan?
 - If so, assist the individual in accessing other resources to meet their needs.
- Does the Common Law Employer (EOR) need support to manage their employee better? Need support to understand the policy? Support to understand their responsibilities as an employer under OAR? Support to discipline an employee for exceeding the limits? Is the issue ongoing and an intervention to terminate the employer necessary?
 - If so, support and assistance from a PA or SC may be helpful or a referral to the STEPs program. If it is determined that the Employer is not able to fulfill their responsibilities assist the Employer in selecting a different Employer, delegating some of the Employer responsibilities to a proxy, or follow the steps outlined in [OAR 411-375-0055\(7\)](#) to intervene and terminate the Employer.

CDDPs and Brokerages should not deny hours worked within the individual's assessed hours that do not exceed the service authorization.

ODDS actions when a PSW exceeds weekly limit

ODDS will be monitoring PSWs who exceed their weekly limit.

PSWs may be terminated by ODDS if they commit fiscal improprieties. "Fiscal improprieties" is defined in [OAR 411-375-0010\(21\)](#) as "financial misconduct involving the money, property, or benefits of an individual. Fiscal improprieties include, but are not limited to, financial exploitation, borrowing money from an individual, taking property or money from an individual, having an individual purchase items for the independent provider, forging the signature of an individual, falsifying payment records, claiming payment for hours not worked, repeatedly claiming payment for hours not prior authorized, or similar acts intentionally committed for financial gain."

PSWs who repeatedly violate their weekly limit may have action taken against their provider number. Actions that ODDS may take are:

- Warning letter for exceeding weekly limit
- Required training
- Inactivation of provider number
- Termination of provider number

ODDS will keep in contact with the Brokerage or CDDP if any action is being taken against a PSW for violating their weekly limit. ODDS will seek clarification from the SC/PA to determine if the instance of exceeding the cap was related to an emergent

need or an authorized exception. ODDS will also be seeking clarification if the instance of exceeding the cap was related to the employer needing training or support. ODDS will provide copies of notifications sent to PSWs for any actions taken to the CDDP or Brokerage.

Form(s) that apply:

[Request for Action against Independent Provider](#)

FAQ's:

eXPRS

Q: Will eXPRS be updated to assist with tracking?

A: ODDS is exploring and developing enhancements to eXPRS to assist with this policy. However, until eXPRS limitations are available ODDS does recommend that PSWs not be authorized in a plan line for more than:

- 220 hours per month for a PSW limited at 50 hours per week; or
- 176 hours per month for a PSW limited at 40 hours per week

While this will not enforce a weekly limit for the PSW, it will assist with monitoring services delivered on timesheets for the SC or PA. The Brokerage Director or Program Manager has been provided a searchable list of all PSWs with the 50 hour limit to assist with identifying each PSW's weekly limit.

Q: Since weeks don't fit neatly into months, having monthly allocations of ANA hours but weekly caps makes it impossible to effectively allocate hours when the customer wants to authorize a PSW close to the weekly cap. If a customer wants a PSW for the full 50 hours/week how should we authorize this in POC?

A: ODDS is not requiring that POCs be entered in a manner that aligns with the PSW's weekly limitation. If an individual receives less than 220 (for 50 hours limit) or 176 (for 40 hours limit) hours per month.

ODDS does not recommend that weekly authorizations be used in POC.

Exceeding the Limit

Q: What hours count towards a PSW's weekly limit?

A: Attendant care hours, skills training hours, relief care hours, and travel time work across all individuals all count towards the weekly limit on hours.

Q: If a PSW works more than their limit: Do they get paid?

A: ODDS is not expecting that CDDPs or Brokerages deny hours worked within the assessed hours. ODDS will be monitoring PSWs who exceed their weekly limit. PSWs who repeatedly violate their weekly limit ODDS may take action against their provider number, up to and including termination. ODDS will keep in contact with the Brokerage or CDDP if action is being pursued against a PSW for violating their weekly limit.

Q: If a PSW works more than their limit in a week: What actions should a SC/PA take?

A: ODDS recognizes that while the SC/PA may not always know if a PSW is working more than their weekly limit there are times where the SC/PA will be aware that the PSW is violating the limitation. The SC/PA role is in monitoring the services delivered and supporting the employer. In these situations the SC/PA should research what happened with the individual and take next steps that are appropriate

- Was it a situation that would have qualified for an exception (relief care for immediate loss of primary caregiver, emergent need related to risk of health and safety)?
If so, determine if this exception could be locally reviewed and approved or needs to be submitted to ODDS. Assess whether there are options to prevent the need for this exception the future. See [Worker Guide](#) for more information.
- Does the individual need support in identifying more providers for their planned care needs or as part of their back-up plan?
If so, assist the individual in accessing other resources to meet their needs.
- Does the Common Law Employer (EOR) need support to manage their employee better? Need support to understand the policy? Support to understand their responsibilities as an employer under OAR? Support to discipline an employee for exceeding the limits? Is the issue ongoing and an intervention to terminate the employer necessary?
If so, support and assistance from a PA or SC may be helpful or a referral to the STEPs program. If it is determined that the Employer is not able to fulfill their responsibilities assist the Employer in selecting a different Employer, delegating some of the Employer responsibilities to a representative, or follow the steps outlined in OAR to intervene and terminate the Employer.

Q: If a PSW works more than their limit in a week: How many times can they go over the limit?

A: Depends on the situation.

- If it is an employer training/support issue determine if the employer is able to fulfill their responsibilities, if not an intervention with the Employer, up to and including termination of the employer, may be necessary. Follow the process in OAR including required Notices.

- If it is an employee who is working more than the employer has scheduled against the employer's wishes on a repeated basis this may need to be reported for abuse. This may also need to have a Recommendation to Take Action against a PSW sent to ODDS for committing fiscal improprieties.
- ODDS will also be tracking PSWs who exceed their limits and taking actions against the PSW up to and including termination of the PSW's provider number. ODDS will be in contact with the Brokerage or CDDP on any actions being taken against PSWs.

Q: If a PSW works more than their limit in a week: Can the hours over the limit be held back and only those under the limit be paid?

A: Not at this time, however the actions described above should be taken by the PA/SC to prevent recurrence

Roles and Responsibilities

Q: What role should the EOR/Common Law Employer have?

A: Their role is to schedule work times for their employee, cover leave, review hours worked and verify that they were authorized, and attempt to correct performance issues.

Q: Are SC/PAs expected to count up each week's hours during the pay period? Or random checks (acknowledging they are still reviewing for accuracy)

A: Each week does not need to be totaled by the PA/SC. While reviewing timesheets to monitor the provision of authorized services if it appears that there may be more than the limit of weekly hours claimed by a PSW in a week begin the follow up that is indicated above.

Q: This change really seems more like Employer responsibilities which we are trying to stay away from. If a person is sick and call their case manager for additional hours and the case manager is out and doesn't get this message, how will that look?

A: ODDS intends for the role of the CDDP or Brokerage to be focused on authorization of services that are within this policy.

This would include assisting the individual in developing a backup plan that includes adequate resources for the individual to utilize in the event that a PSW is not available to provide supports.

This may also include interventions with the Employer if the Employer is requiring work by the PSW outside of the authorization or is failing to correct the performance of a PSW that violates the policy.

If it is suspected that the PSW is committing fiscal improprieties or is not able to work within the limitations it may be appropriate to refer the case to Medicaid Fraud Unit or send a Recommendation to Take Action Against a PSW.

Other Questions

Q: If a new PSW is added, will the limitation be applied only to the new PSW or to ALL PSWs working under that plan?

A: The restriction to the new weekly limits will only apply to the new PSW if the ISP has not reached the date when it must be renewed.

Q: Will there be an opportunity for the state to meet with PSW's to explain these changes directly?

A: ODDS has sent letters to both PSWs and their Employers regarding this new policy. They can also be found at PSW Retro Pay Letter, PSW Weekly Limits Letter, PSW Overtime Calculation Flyer and [Employer](#) Letter on the [PSW Resources page](#).

Q: Where would you expect to see this limit on the ISP?

A: This could take various forms on the ISP. This could be recorded in the Personal Preferences section for PSW services that are being delivered identifying the amount of supports to be provided by this provider type and indicating the number of PSWs that the preferred supports are split among. This could also be in the Risk Management Plan documenting the back-up plan for when a PSW is not available due to the hourly limit. This could be in the Desired Outcomes section documenting when additional providers need to be secured to provide needed supports or to inform the Employer of the limitations or provide supports to the Employer around the limits.

This should also be included in the PSW's specific Service Agreement where they agree to the units authorized.

Reference(s):

[APT-PT-16-030 PSW Weekly Hours Limitations](#)
[OAR 411-375 Independent Providers](#)
PSW Weekly Hour Limits Worker Guide

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