

The General Assembly approved language that states, “no authority is provided for the payment of overtime for Medicaid-reimbursed consumer-directed personal assistance, respite and companion services.

PPPP. The Department of Medical Assistance Services shall amend the State Plan under Title XIX of the Social Security Act, and any necessary waivers, to reflect that no authority is provided for the payment of overtime for Medicaid-reimbursed consumer-directed personal assistance, respite and companion services. The Department shall implement the necessary regulatory changes and other necessary measures to be consistent with federal approval of any appropriate state plan and/or waiver changes, and prior to the completion of any regulatory process undertaken in order to effect such change.”

What is changing as a result of the legislative action? This language approved by the General Assembly means that overtime payments can no longer be made to attendants who work more than 40 hours per work week. Starting June 30, 2016, attendants will be limited to working no more than 40 hours per employer per work week.

What is considered a work week? Each work week begins on Thursday and ends on the following Wednesday.

Can an attendant work for multiple Employers of Record (EORs) for more than 40 hours combined?

Yes. An attendant may work for more than one EOR. Hours worked for each EOR are calculated separately. Attendants may work up to 40 hours for each EOR.

Are there any exceptions to the 40 hours limit to attendant hours? The only exception is when an attendant resides at the same physical address as the individual receiving services. This is known as the live-in exemption.

What is the live-in exemption? The live-in exemption applies when an attendant and the individual receiving services reside at the same physical address. These attendants are permitted to work more than 40 hours a week because they are excluded from overtime pay requirements. Per the Department of Labor, live in caregivers may be exempt from overtime reimbursement.

How is the attendant live-in status verified? Live-in status is based on the physical addresses of both the individual receiving services and the attendant. Address matches are processed systematically and identified for the live in exemption. It is important to ensure that waiver individual addresses are up to date with the local department of social services. Attendants ensure addresses on file with Public Partnerships, LLC are accurate. Services facilitators should be made told of the live-in status as there are additional requirements when this relationship exists.

What if there is an emergent need, lack of attendant relief, or a complex situation? Are there additional exceptions for the 40 hour limit on the hours an attendant may work? *There are no exceptions for attendants that do not live with the individual whom they provide care. Regulations at 12VAC30-120-766; 12VAC30-120-924; and 12VAC30-120-1020 state requirements for back-up plans for Medicaid waiver individuals in the event of an emergency to ensure their health and safety.*

Can a non live-in attendant work more than 40 hours for a single EOR and receive payment? No, attendants will not be reimbursed for hours worked over 40 in a work week. Any hours over 40 worked in a single week will be denied.

Does the SF need to adjust the current service authorization(s) to reflect the 40 hour per week limit that an attendant may work? No. The existing service authorization(s) will not be affected by this change. The limit is on the number of hours a single attendant can work for one employer of record (EOR).

How can the SF assist the EOR in ensuring the plan of care is met? SFs are encouraged to provide additional supports to assist EORs in employers and attendants in this process. Providers must continue to ensure the health and safety of all consumers. Strategies may include the following:

- Supporting the EOR in hiring an additional attendant
- Providing the option of a combination of Consumer-Direction and agency direction; some personal care agencies may be willing to hire a qualified Consumer-Directed attendant therefore allowing an individual to be served by a single attendant who works some hours for an agency and some for the EOR.

How can the SF determine which consumers may be affected by this change? SFs should review all records of individuals they are assisting to determine those impacted. A routine visit should be conducted to work with the EOR to develop a plan of action to provide coverage for all approved hours. Timesheets may be reviewed in the PPL portal. Individuals currently receiving more than 40 hours of support per week from a single attendant is likely impacted by this change.

Will attendants be paid overtime for dates of service from January 1, 2016 through June 29, 2016? Yes. The overtime rates will continue to be paid for dates of service between January 1 – June 29, 2016.

Can the same attendant provide services for an individual through a combination of CD and AD services? Yes. Qualified attendants may be employed through both the CD model of service delivery and by a personal care agency. Personal care agencies retain the right to make employment decisions.

When do these changes go into effect? These changes will go into effect for dates of service on June 30, 2016.

Is the cap only limited to personal care hours? No. An attendant may only work 40 hours per week regardless of the type of services provided. This includes any combination of personal care, respite, and companion services.

How can additional attendants be hired? The EOR and attendants may call PPL's Over the Phone Enrollment line at 877-908-1752 to start the new hire process. They may also call PPL's customer service department at 866-259-3009.