



# ODP Communication

## Scheduling Support Service Workers to Work More than 40 Hours per Week in the Consolidated and P/FDS Waivers

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### ODP Communication Number: Memo 068-16

*The mission of the Office of Developmental Programs is to support Pennsylvanians with developmental disabilities to achieve greater independence, choice and opportunity in their lives.*

**AUDIENCE:** Individuals and families, Administrative Entities (AEs), Supports Coordination Organization (SCO) providers, Common Law Employers (CLEs) in the Vendor Fiscal/Employer Agent (VF/EA) Financial Management Services model, Agency With Choice (AWC) Financial Management Services providers, and Managing Employers in the AWC model.

**PURPOSE:** The purpose of this communication is to provide guidance and expectations relating to SSW scheduling in ODP's Participant-Directed Services models.

**DISCUSSION:** CLEs and Managing Employers in ODP's Participant-Directed Services models may not schedule Support Service Workers (SSWs) to work more than 40 hours per week in accordance with the Managing Employer/Surrogate Agreement Form, Common Law Employer Agreement, and Bulletin 00-08-14, *Vendor Fiscal/Employer Agent Financial Management Services (VF/EA FMS)*.

However, ODP acknowledges that SSWs may occasionally work more than 40 hours per week due to unforeseen circumstances, including but not limited to:

- Unexpected circumstances such as inclement weather, sudden illness or the unplanned extension of medical leave that prevents a SSW from arriving at the job site and where another SSW/unpaid caregiver is not immediately available to work;
- The sudden loss of an unpaid caregiver which kept the provision of paid services at or below 40 hours per week; or

- A SSW unexpectedly quits or is terminated from employment such that one or more other SSWs must work more than 40 hours per week on a temporary basis.

When situations like the above occur, it is acceptable for SSWs to work more than 40 hours per week. Each CLE or Managing Employer (in conjunction with the AWC provider) may schedule one or more SSWs to work more than 40 hours per week for an individual up to 13 weeks per fiscal year, **but may not exceed 13 weeks under any circumstances**. Scheduling in excess of 40 hours for circumstances that are not due to an emergency or an unplanned departure of a regularly scheduled SSW continues to be prohibited.

All individuals are required to have a back-up plan to address situations when a SSW does not report to work for any reason. ODP recognizes, however, that there may be extenuating circumstances that cannot be addressed through the back-up plan. In the event that any of the situations in the bulleted list above occur, ODP expects the back-up plan to be reviewed and revised, as necessary, to prevent recurrence of the above situations.

Additionally, the CLE or Managing Employer (with assistance from the AWC provider as appropriate) **must notify the SCO after the 40-hour limit has been exceeded 3 times**. When the SCO is notified, the individual's SC should determine if the back-up plan was reviewed and revised, as necessary, and if the back-up plan was implemented. The SC and the Individual Support Plan (ISP) team should then work to ensure that supports are available to prevent continued scheduling of SSWs in excess of 40 hours per week by reviewing back-up plans and assisting with the recruitment of SSWs as necessary. **This is especially important if the individual is enrolled in the P/FDS waiver**, as SSWs' working in excess of 40 hours per week incurs overtime costs that impact the participant's budget which has a per person per fiscal year funding cap.

Please be advised that overtime must be paid for whenever a SSW works more than 40 hours per week unless the SSW is overtime-exempt pursuant to federal requirements.

### **Information for Individuals Utilizing the VF/EA Model**

If a CLE allows a SSW to provide services in excess of 40 hours per week, and the provision of the service does not meet the criteria for an exceptional circumstance, the CLE is responsible for paying for the cost of the services provided in excess of 40 hours. Bulletin 00-08-14 *Vendor Fiscal/Employer Agent Financial Management Services (VF/EA FMS)* requires that, if a timesheet or invoice is submitted to the VF/EA FMS organization by the CLE that includes services or supports not authorized for the person, the CLE will be responsible for paying the costs in excess of those authorized for the individual. The individual or his or her surrogate must pay any excess amount(s) using their own personal funds or other non-ODP funds.

NOTE: Under specific circumstances the SSW may be exempt from receiving payment for overtime. Please refer to the PCG Public Partnerships VF/EA Fiscal Year End Letter 2016-2017 communication:

[http://www.publicpartnerships.com/programs/pennsylvania/PADPWODP/documents/PPL%20VFEA%20FY%20End%20Letter\\_6-1-16.pdf](http://www.publicpartnerships.com/programs/pennsylvania/PADPWODP/documents/PPL%20VFEA%20FY%20End%20Letter_6-1-16.pdf).

ODP will continue to monitor SSW scheduling and will take appropriate action in response to repeated noncompliance with scheduling requirements.

### **Information for Individuals Utilizing the AWC Model**

Managing Employers are prohibited from scheduling Support Service Workers to work more than 40 hours per week and to ensure that back-up plans are in place to address situations where a scheduled worker does not report to work through their written agreements with an AWC provider. ODP recommends, but does not require, that AWC providers adopt and permit exceptions to the 40-hour scheduling restriction as described above.

If a Managing Employer allows a SSW to provide services in excess of 40 hours per week, and the provision of the service does not meet the criteria for an exceptional circumstance, the Managing Employer is responsible for paying for the cost of the services provided. Bulletin 00-08-08, *Management Services (AWC FMS) Agency With Choice Financial* and the Managing Employer/Surrogate Agreement Form indicate that if a timesheet or invoice is submitted to the AWC organization by the Managing Employer that includes services or supports not authorized for the individual or units and costs in excess of those authorized for the individual, the Managing Employer will be responsible for reimbursing the AWC provider for the costs required to cover the excess amount(s) related to payment of the SSWs. In these situations, the Managing Employer must pay the AWC provider or the appropriate entity for any excess amount(s) through the use of their own personal funds or other non-ODP funds.

It is the responsibility of the AWC provider to monitor SSW scheduling and to take appropriate action in response to repeated noncompliance with scheduling requirements.

### **Contact**

Please refer all questions about this communication to the appropriate Regional ODP Office.