



ODP Announcement

Clarifying the Provision of Home and Community Habilitation and/or Companion Services by Relatives and Legal Guardians in the Consolidated and P/FDS Waivers

ODP Communication Number: Memo 069-16

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, Providers of Consolidated and Person/Family Directed Support (P/FDS) Waiver services, Common Law Employers (CLEs) in the Vendor Fiscal/Employer Agent (VF/EA) Financial Management Services model, and Managing Employers in the Agency With Choice (AWC) Financial Management Services model.

PURPOSE: The purpose of this communication is to:

- Clarify the maximum number of hours per week of Home and Community Habilitation and/or Companion services that relatives and legal guardians may provide to individuals who are enrolled in the Consolidated or P/FDS waiver.
- Explain the exceptional circumstances that will permit relatives and legal guardians to provide Home and Community Habilitation and/or Companion beyond the maximum allowed hours per week.
- Establish how often exceptions are allowed and how to track exception use.

DISCUSSION: ODP allows relatives to provide services to individuals enrolled in the Consolidated or P/FDS waivers because we understand and support the knowledge and passion they bring as well as their importance in the individuals' lives. Based on recommendations from stakeholders to expand this support, the recently amended Consolidated and Person/Family Directed Support waivers include a change to allow relatives and legal guardians to provide Companion services. Both waivers have allowed relatives and legal guardians to provide Home and Community Habilitation services in accordance with the service definition and the individual's needs.

A relative includes any of the following: a spouse, parent of an adult,¹ a stepparent of an adult child, grandparent, brother, sister, half-brother, half-sister, aunt, uncle, niece, nephew, adult child or stepchild of a parent or adult grandchild of a grandparent with an intellectual disability. A legal guardian is a person who has legal standing to make decisions on behalf of a minor or adult (e.g. a guardian who has been appointed by the court). The definition of a legal guardian does not apply to agency providers, but does apply to the person actually rendering service to an individual within the provider organization.

MAXIMUM NUMBER OF HOURS PER WEEK THAT HOME AND COMMUNITY HABILITATION AND/OR COMPANION MAY BE PROVIDED

The P/FDS waiver amendment was approved to be effective on July 8, 2016 and the Consolidated waiver amendment was approved to be effective on July 13, 2016. The waivers now contain the following limits on the number of hours a relative or legal guardian may provide Home and Community Habilitation, Companion or a combination of both services:

- When Home and Community Habilitation and/or Companion services are authorized on an Individual Support Plan (ISP), any one relative or legal guardian may provide a maximum of 40 hours per week of Home and Community Habilitation, Companion or a combination of Home and Community Habilitation and Companion (when both services are authorized in the ISP).
- When multiple relatives and/or legal guardians provide the service(s), each individual may receive no more than 60 hours per week of Home and Community Habilitation, Companion, or a combination of Home and Community Habilitation and Companion (when both services are authorized in the ISP) from all relatives and legal guardians. In this circumstance, no single family member may provide more than 40 hours per week.

For services that are not participant-directed, the provider is responsible for ensuring that the maximum allowable number of hours of service delivery by relatives and legal guardians is not exceeded. Prior to providing waiver services, providers sign an agreement stating that they will comply with the approved waivers. This includes ensuring services are provided in accordance with the waivers. Further, providers are required to comply with 55 Pa. Code Chapter 51 regulations which state that as a prerequisite for participation in the Consolidated and P/FDS waivers, the provider must “comply with the approved applicable waiver, including approved waiver amendments.”

For services that are participant-directed, either the CLE or the AWC organization is responsible for ensuring that the support service workers (SSWs) comply with the waivers. Prior to fulfilling employer duties, the CLE signs an agreement stating that he or she will ensure services are provided consistent with the approved waivers. According to ODP bulletin 00-08-08 and 55 Pa.

¹ An adult is an individual who is age 18 or older

Code Chapter 51 regulations, the AWC organization is responsible for complying with waiver requirements.

Supports Coordinators (SCs) will be responsible for communicating the change in requirements with individuals and reporting any suspected violations of the rule to ODP.

Individuals, relatives and legal guardians who are impacted by these limits have 6 months after the waiver amendment approval dates to implement this change. The amendments were approved in July 2016; therefore, these limitations must be implemented by January 31, 2017. For Participant Directed Services (PDS), it is the responsibility of the CLE and managing employer to have a sufficient number of qualified SSWs to provide the authorized units of service in the approved ISP.

EXCEPTION TO THE LIMITATION OF HOURS

All individuals are required to have a back-up plan to address situations when a worker, including a paid relative or legal guardian, 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.

As such, the waivers also allow for exceptions to the limitation on the number of hours of Home and Community Habilitation and/or Companion provided by relatives and legal guardians at the discretion of the employer, CLE or AWC organization in coordination with the managing employer when there is an emergency or an unplanned departure of a regularly scheduled worker. This exception has a 90-day limit in each fiscal year.

There may be circumstances when implementation of the back-up plan does not mitigate an emergency or unplanned departure. In general, these situations include, but are not necessarily 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 worker/unpaid caregiver is not immediately available to work;
- The sudden loss of an unpaid caregiver which kept the provision of paid services by relatives and legal guardians at or below 40/60 hours per week; or
- A work unexpectedly quits or is terminated from employment such that relatives and legal guardians must perform paid work in excess of the 40/60 limitation.

In the event that any of the above situations occur, ODP expects the back-up plan to be reviewed and revised, as necessary, to prevent recurrence of the above situations.

HOW TO COUNT 90 DAYS WITHIN THE FISCAL YEAR

When the situation is considered an exceptional circumstance as described above and the maximum number of hours permitted per week are worked, either the 40 hours per week or the 60 hours per week, and the relative or legal guardian continues to work, the entire work week in which the limit was exceeded will be counted towards the allowable 90-day exception maximum.

Example 1:

	Sunday (Beginning of Work Week)	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday (End of Work Week)	Total Hours Worked (Week)
Home and Community Habilitation Hours the Relative or Legal Guardian Worked	0	9	10	12	12	8	0	51

The relative or legal guardian exceeds the maximum of 40 hours per week on Thursday. Each calendar day during that week (Sunday through Saturday) is counted toward the **90 day limit**. Seven (7) days are counted towards the exception maximum.

Example 2:

	Sunday (Beginning of Work Week)	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday (End of Work Week)	Total Hours Worked (Week)
Companion Hours one Relative or Legal Guardian Worked	0	10	5	5	5	10	0	35
Home and Community Habilitation Hours another Relative or Legal Guardian Worked	0	8	0	0	12	10	10	40
The Total Number of Hours both Relatives or Legal Guardians Worked	0	18	5	5	17	20	10	75

The relatives and/or legal guardians exceed the maximum of 60 hours per week on Friday. Each calendar day during that week (Sunday through Saturday) is counted toward the **90 day limit**. Seven (7) days are counted towards the exception maximum.

When the requirements to the exception to the limitation of hours are met, relatives and/or legal guardians may work more than the 40 or 60 hours per week hours for a maximum of 90 days (which is a maximum of **13 work weeks) within a fiscal year**. However, the CLE or the managing employer or AWC organization must notify the SCO and the SCO will notify the Administrative Entity by the **3rd week** when this occurs. The 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 work to ensure that supports are available to avoid further exceptions to the limitation of hours.

The SC should determine if the back-up plan was reviewed and revised, as necessary, and if the back-up plan was implemented. The AE should work with the SC and the ISP team to ensure that supports are available to avoid further use of relatives and legal guardians working in excess of the 40/60 hours per week.

EXAMPLES:

Example 1: Bob is authorized to receive 50 hours of Home and Community Habilitation per week. His mother provides 30 hours of the service per week, and his sister provides 20 hours of the service per week. This is acceptable, because neither relative is providing more than 40 hours of service per week and together they don't provide more than 60 hours per week of services.

Example 2: John is authorized to receive 45 hours of Home and Community Habilitation per week and 15 hours of Companion per week. His father provides 20 hours of Home and Community Habilitation and 5 hours of Companion per week. John's brother provides 25 hours of Home and Community Habilitation per week, and 10 hours of Companion per week. The total number of hours of service provided by relatives is 60 hours per week. This is acceptable, because neither family member is providing more than 40 hours of service per week and the individual has not exceeded the 60 hour per week maximum.

Example 3: Susan is authorized to receive 70 hours of Home and Community Habilitation per week and 20 hours of Companion per week. Her sister provides 35 hours of Home and Community Habilitation per week. Susan's nephew provides 20 hours of Companion per week and 20 hours of Home and community Habilitation. The remaining hours of Home and Community Habilitation are provided by an SSW who is not a relative or legal guardian. The total number of hours of service provided by relatives is 75 hours per week. This is **NOT** acceptable, because Susan's relatives are providing over 60 hours of services per week. Susan must find a new SSW who is not a relative or legal guardian. This must be done by January 31, 2017.

Please refer all questions to the appropriate ODP Regional Program Manager.