MassHealth Educational Trainings for the Direct Care Worker (DCW)

Rules Around Overtime for DCWs Providing Self-Directed Waiver Services to ABI/MFP Waiver Participants

DCW Overtime Rules

What are the DCW Overtime Rules?

To align with MassHealth PCA Program regulations, and in accordance with HCBS Waiver Provider Bulletin 27, overtime hours for DCWs in the ABI/MFP Waiver self-direction program are any hours worked over 50 hours per week.

Waiver Participants can schedule a DCW to work up to 50 hours per week without an overtime authorization. DCWs may work more than 50 hours per week if they have an overtime authorization from MassHealth.

DCWs are prohibited from working more than 60 hours per week under any circumstances.

How does the Overtime in the ABI/MFP Waiver Self-Direction Program Work?

When a Waiver Participant needs their DCWs to work more than 50 hours per week, they need to ask for authorization for that specific DCW.

Overtime is calculated in the aggregate. This means that a DCW working for more than one Waiver Participant must consider all of the hours they work for other Waiver Participants. This will help them determine whether or not their Waiver Participant needs to ask for an authorization for the DCW to work overtime. If the DCW also works as a PCA, those PCA hours must also be included.

How to Request an Overtime Authorization

Waiver Participants should reach out to their Waiver Case Manager/Service Coordinator at MassAbility/DDS to request an authorization for overtime. MassHealth has two different types of overtime authorizations.

TYPE OF AUTHORIZATION/ DETAILS	DURATION	HOURS ALLOWED TO WORK	ACCEPTABLE REASONS FOR THE REQUEST	TYPE OF DOCUMENTATION REQUIRED
TEMPORARY AUTHORIZATION	Up to 12 weeks	Over 50 hours, but no more than 60 hours per week	– The Waiver Participant needs time to hire additional DCWs	At least one of the following: – Printed ads offering DCW jobs or posted on any web or social media resource, including the PCA Directory – DCW termination forms with a specific reason provided
			– The Waiver Participant has planned travel within the United States, including its territories, and it would not be possible to bring multiple DCWs to provide the Waiver Participant's DCW services	– Travel dates relevant to the request

TYPE OF AUTHORIZATION/ DETAILS	DURATION	HOURS ALLOWED TO WORK	ACCEPTABLE REASONS FOR THE REQUEST	TYPE OF DOCUMENTATION REQUIRED
TEMPORARY AUTHORIZATION	Up to 12 weeks	Over 50 hours, but no more than 66 hours per week	– The Waiver Participant's informal supports are unavailable, or less available, to help them.	– Statement from the Waiver Participant explaining the reason for the change in informal supports.
			– The DCW(s) left employment suddenly	– When available, proof that the DCW left employment suddenly (resignation letters or other documentation)
			– The Waiver Participant's DCW(s) is/are temporarily unavailable	– Statement from the DCW explaining the reason for being temporarily unavailable, or for taking a short leave, and the dates when the leave will take place
			– The Waiver Participant is receiving hospice care	At least one of the following: – Post-hospitalization and discharge summaries, provider's notes, or any other clinical supporting documentation relevant to the request – Hospice referral or care plan
			– The Waiver Participant has a temporary medical need to schedule their DCW to work additional approved hours, including post-acute hospitalization **OR** skilled nursing facility	At least one of the following: – Post-hospitalization and discharge summaries, provider's notes, or any other clinical supporting documentation relevant to the request – Proof of intensive care needs associated with a formal diagnosis (electronic medical records, doctors' letters)

TYPE OF AUTHORIZATION/ DETAILS	DURATION	HOURS ALLOWED TO WORK	ACCEPTABLE REASONS FOR THE REQUEST	TYPE OF DOCUMENTATION REQUIRED
CONTINUITY OF CARE (CoC) AUTHORIZATION	Up to 1 year (or up to the time of the next review of the Plan of Care)	Over 50 hours, but no more than 60 hours per week	– The Waiver Participant needs time to hire additional DCWs because the Waiver Participant has one or more circumstances that make it difficult to hire additional DCWs	– Proof associated with the specific circumstance(s) that make it difficult for the Waiver Participant to hire additional DCWs – Supporting documentation that the Waiver Participant is actively recruiting DCWs, such as job postings, responses, etc. – DCW terminations with a specific termination reason
			– The Waiver Participant receives hospice care	At least one of the following: – Post-hospitalization and discharge summaries, provider's notes, or any other clinical supporting documentation relevant to the request – Hospice referral or care plan
			– The Waiver Participant has a medical need that requires intensive care and needs to schedule the DCW to work additional approved hours. This also includes post-acute hospitalization **OR** post-skilled nursing facility	– Proof of intensive care needs associated with a formal diagnosis (electronic medical records, doctors' letters) (applies to self-directed Waiver Personal Care only)

How do violations of the overtime rules work?

A violation occurs when the DCW works at least once for more than 50 hours in a single week without an overtime authorization. The violations can occur consecutively (e.g. two pay periods in a row) or several weeks apart.

Violations will reset after five full pay periods (10 weeks) of compliance.

DCWs working for more than one Waiver Participant must count the number of hours they work combined for all their Waiver Participants to make sure that they don't work over 50 hours without an overtime authorization.

Waiver Participants should talk to their DCWs. If they work for other Waiver Participants, they should tell you how many hours they work in total to make sure they do not work over 50 hours without an overtime authorization.

If the DCW also works as a PCA, those PCA hours must also be included.

What Hours Count Towards Overtime Hours?

The overtime limit applies only to the hours a DCW spends providing ABI/MFP Waiver self-directed services. For DCWs who are also PCAs, it also applies to the time that the PCA spends providing MassHealth PCA covered services. It is important that DCWs and Waiver Participants take the following hours into consideration.

i. Regular hours worked

ii. Overtime hours worked

iii. Holiday hours worked (if applicable)

iv. Jury duty hours (these hours are put in the timesheet as regular hours worked, and they are added to the PA).

The overtime limit does not apply to

i. Paid Time Off (PTO)

ii. EVV training hours

iii. NHO hours

iv. Other training hours paid to PCAs.

Compliance Process

a) **Violation:** A DCW works over 50 hours in a single week without an overtime authorization.

b) **Notifications:** The fiscal intermediary (FI) will send a message via Everbridge (email, text). They will also mail a notice for each violation recorded for each Waiver Participant or DCW.

i. Notice 1: Informs DCW and Waiver Participant(s) of a first violation

ii. Notice 2: Informs DCW and Waiver Participant(s) of a second violation

iii. Notice 3: Informs DCW and Waiver Participant(s) of a third violation and refers them to MassHealth for potential termination from the ABI/MFP Waiver self-direction program.

Termination from ABI/MFP Waiver Self-Direction

MassHealth issues a termination from the ABI/MFP Waiver self-direction program when the Waiver Participant and a DCW have violated the overtime rules three times.

– Both the DCW and the Waiver Participant are terminated when the DCW only works for that Waiver Participant, and they billed over 50 hours per week on three occasions without an authorization for overtime.

– Only the DCW is terminated when the DCW works for multiple Waiver Participants and bills over 50 hours in one week across all of their Waiver Participants on three separate occasions.

– MassHealth informs the DCW and the Waiver Participant of the termination via a mailed notice. MassHealth will decide if the termination is effective immediately or at a future date.

– Waiver Case Managers and Service Coordinators will work with Waiver Participants to identify agency-based provider services in place of self-direction.

– Terminated DCWs will be prohibited from working as a DCW or as a PCA for 9 months from the date of termination.

Expungement Process

MassHealth may reset violations in certain circumstances.

i. Violations will be reset when the Waiver Participant or DCW provides proof that they billed for over 50 hours in one week without an overtime authorization because of an emergency or an unforeseen situation.

ii. Violations reset after five full pay periods (10 weeks) of compliance.

Readmission to the Program

DCWs:

i. DCWs may return to the ABI/MFP Waiver Self-Direction / PCA workforce 9 months from the date of termination.

ii. If, after returning to the workforce, the DCW continues to violate overtime rules and reach their third violation for the second time, the DCW will be terminated and permanently prohibited from working as a DCW in the ABI/MFP Waiver self-direction program or as a PCA in the MassHealth program.

For example, a DCW was terminated from the program for violating the overtime policy. After 9 months, the DCW is eligible to provide DCW services for Waiver Participants again. If the DCW continues to violate the overtime rules and receives three violations, MassHealth will permanently terminate this DCW.

Waiver Participants will be allowed to return to ABI/MFP Waiver self-direction at the discretion of MassHealth.

Additional Resources

For more information about the overtime rules, please see the PCA program regulations at 130 CMR 422.422. You can also visit https://www.mass.gov/regulations/130-CMR-422000-personal-care-attendant-services

See also HCBS Waiver Provider Bulletin 27 https://www.mass.gov/doc/hcbs-waiver-provider-bulletin-27-waiver-participant-self-direction-program-rules-for-providers-update-0/download