



# MassHealth Educational Trainings for the Direct Care Worker (DCW)

## Rules Around the Weekly-Hour Limit for DCWs Providing Self-Directed Waiver Services to ABI/MFP Waiver Participants

### DCW Weekly 66-hour Limit

#### What is the DCW Weekly 66-hour Limit?

The weekly-hour limit is a rule that says a DCW can only work a maximum of 66 hours per week across all Waiver Participants served.

To align with MassHealth Personal Care Attendant (PCA) Program regulations, and in accordance with HCBS Waiver Provider Bulletin 25, DCWs are prohibited from working more than 66 total hours in a single week. This also applies to DCWs who work for more than one Waiver Participant and those who also work as PCAs.

**DCWs cannot work more than 66 hours per week under any circumstances.**

#### Violation of the Weekly 66-hour Limit Rule

A violation occurs when a DCW's work time exceeds 66 hours in a single week.

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

**DCWs** who work for more than one Waiver Participant need to count their combined hours across all of their Waiver Participants to make sure they do not work over 66 hours. If a DCW also works as a PCA, those PCA hours will be counted as part of their combined hours.

**Waiver Participants** should talk to their DCWs. If your DCWs work for other Waiver Participants, they should tell you how many hours they work in total, including any hours they may work as a PCA.

#### What Hours Count Towards the 66 Hours?

The weekly hour limit applies only to the hours a DCW spends providing ABI/MFP Waiver self-directed services as approved in the Waiver Participant's Plan of Care. For DCWs who are also PCAs, it also applies to the time that the PCA spends working as a PCA providing MassHealth PCA covered services approved in the prior authorization for PCA services. Hours that count include:

- i. Regular hours worked
- ii. Overtime hours worked
- iii. Holiday hours worked (if applicable)
- iv. Jury duty hours paid.

The weekly hour limit does not apply to:

- i. Travel time hours
- ii. Paid Time Off (PTO)
- iii. EVV training hours
- iv. New Hire Orientation (NHO) hours
- v. Other training hours paid to PCAs.

## Compliance Process

- a) **Violations.** If a DCW works over 66 hours in a single week, this is a violation.
- b) **Notifications.** The DCW and Waiver Participant(s) will be notified about each violation. The fiscal intermediary (FI) will send a message via Everbridge (email, text) and also mail a notice.
  - 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 will terminate DCWs who have violated the weekly-hour limit rule three times. In some circumstances, the Waiver Participant may be terminated from the ABI/MFP Waiver self-direction program.

- Both DCW and Waiver Participant are terminated when the DCW only works for one Waiver Participant, and they have violated the weekly-hour limit rule three times.
- Only the DCW is terminated when they work for more than one Waiver Participant and has violated the weekly-hour limit three times.

MassHealth will inform both the DCW and the Waiver Participant of the termination via mail. DCWs who are terminated for the first time can't work as a DCW or as a PCA for 9 months after the date of termination.

## Expungement Process

MassHealth may reset violations in certain circumstances:

- i. If the Waiver Participant provides proof that the DCW worked over 66 hours because of an emergency or an unforeseen situation.
- ii. After 5 full pay periods (10 weeks) of compliance.

## Readmission to the Program

DCWs may return to the DCW workforce 9 months from the date of termination. If they violate the weekly-hour limit three more times, they will be permanently terminated from working as a DCW.

***For example, a DCW was terminated from the program. After 9 months, the DCW is eligible to work as a DCW for Waiver Participants again. After resuming work as a DCW, they continue to violate the weekly 66-hour limit rule and receive 3 violations. They will be permanently terminated from the MassHealth ABI/MFP Waiver self-direction program.***

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

## Additional Resources

For more information about the weekly-hour limit, 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 25 <https://www.mass.gov/doc/hcbs-waiver-provider-bulletin-25-waiver-participant-self-direction-program-rules-for-providers-0/download>

## 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. Travel time hours
- ii. Paid Time Off (PTO)
- iii. EVV training hours
- iv. NHO hours
- v. 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 25 <https://www.mass.gov/doc/hcbs-waiver-provider-bulletin-25-waiver-participant-self-direction-program-rules-for-providers-0/download>