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## **COMMUNITY INTEGRATION:**

### Independent Provider Overtime Rule Changes

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As of February 1, 2018, a new Ohio Department of Developmental Disabilities (DODD) rule will change the number of hours independent providers (IPs) can work for individuals with intellectual or developmental disabilities on the Individual Options (IO), Level One, and SELF waiver programs. IPs can only work 60 hours per week, but the limit can be higher in some circumstances.

#### **What is the difference between an IP and an agency provider? Who has to follow this rule?**

An IP is a self-employed home care worker, such as an aide or nurse. An agency provider works for a private business or nonprofit organization that provides home health services. The new rule only applies to IPs.

#### **How many hours per week can an IP work for people on the IO, Level One or SELF waivers?**

They can work 60 hours. Sometimes they will be allowed to work more than 60 hours, including in an emergency, as outlined below.

#### **What does "overtime" mean?**

Overtime is more than 40 hours in one work week. Under this rule, an IP can work 20 hours of overtime in a work week. A "work week" is from Sunday at midnight to the following Saturday at 11:59 p.m.

#### **How are the 60 hours calculated?**

An IP can only work 60 hours total per week providing Medicaid-funded services, even if the IP is helping more than one person. For example, one IP could work 30 hours a week for one person enrolled in the Ohio Home Care waiver program and another 30 hours a week for a different person on an IO waiver. The rule does not

provide much guidance for IPs who work for more than one person, so do not hesitate to call Disability Rights Ohio with questions.

### **When can an IP go over the 60-hour limit?**

Once an IP has worked 60 hours in a work week providing Medicaid-funded services, they can only work more hours in two situations:

- If the additional hours have been authorized by the client's service and support administrator (SSA) through the county board of developmental disabilities; or
- If there is an emergency

### **How will an SSA decide when to authorize more than 60 hours per week?**

You and your care teams must try to identify any "known or anticipated events or circumstances" that would cause an IP to work more than 60 hours in a work week. These "events and circumstances" and any authorizations to work more than 60 hours should be documented in a person's individual service plan (ISP). Some "events and circumstances" are:

1. the individual or his or her family member or provider has a surgery or travel scheduled;
2. the individual has holidays or scheduled breaks from school;
3. the individual has a compromised immune system and may be put at risk by having additional providers;
4. the independent provider is the only provider trained by a nurse to perform delegated tasks or trained by a behavioral specialist to implement unique behavioral support strategies; or
5. there is a shortage of other available providers.

For reasons 4 and 5, the SSA must work with you and your care team to develop a plan to change these circumstances. That could mean training another provider, finding an additional provider or relying more on family members and other "natural supports."

### **What happens if I can't find additional providers?**

You and your SSA must work together "in good faith" to try to find additional providers. If you are not successful, the SSA may give authorization for the IP to work more than 60 hours in a work week for the rest of your waiver eligibility span.

### **What is an emergency?**

The new rule defines an emergency as the "unanticipated and sudden absence of an individual's provider or natural supports due to illness, incapacity or other cause."

## **What should an IP do if they have worked more than 60 hours because of an emergency?**

The IP must notify the individual's SSA within 72 hours of the event that created the emergency to report the number of hours they worked that exceeded the 60-hour limit.

## **I requested that my IP work more than 60 hours per week, but my request was denied. What can I do?**

You or your authorized representative can request a Medicaid state hearing, and you can file a complaint with your county board. The county board must respond to the complaint within 30 days and must notify DODD. You should also call Disability Rights Ohio for advice.

## **What are IPs required to do under the new rule?**

IPs must tell an individual's SSA how many people they provide Medicaid-funded services for and the number of hours they work for each person. IPs must provide this information when they are hired, when an emergency causes them to work more than 60 hours in a week or when the SSA asks for it.

IPs who violate the requirements of the rule may have their certification denied, suspended or revoked.