



To: Choices-Home Care Attendant Service Providers, Consumer Directed Personal Care Service Providers and PASSPORT Administrative Agencies
From: Matthew Hobbs, Chief – Division for Community Living
Date: August 25, 2016
Subject: Provider Travel and Overtime Rates Beginning January 1, 2016 - REVISED

On Tuesday, October 6, 2015, Chief Justice John Roberts of the United States Supreme Court denied an application that would have stayed implementation of the US Department of Labor's Home Care Final Rule. The rule applies minimum wage and overtime protections to domestic service workers.

Additionally, on December 9, 2015, the Ohio General Assembly clarified in law that an independent provider who provides services to an individual on Medicaid is not a public employee.

The purpose of this memo is to share information about how the Ohio Department of Aging (ODA) will make overtime and travel time payments to eligible Consumer Directed services providers who bill for more than 40 hours or 160 fifteen-minute units in a work week for dates of service beginning January 1, 2016. This memo **does not** change the requirement of Ohio Administrative Code rule 173-39-02.21 Scheduling choices home care attendant and personal care services, which states a Consumer-Directed provider may not furnish more than 40 hours of consumer-directed services to one PASSPORT enrollee or more than 56 hours of Consumer-Directed services to no more than 5 PASSPORT enrollees.

How is "work week" defined?

A work week begins Sunday at 12:00 a.m. and ends Saturday at 11:59 p.m.

What hours or units of service are to be included when determining whether a Consumer Directed Services Provider exceeded 40 hours or 160 fifteen-minute units of service in a work week?

- Overtime hours worked while providing PASSPORT consumer directed services will be paid based on documentation from the service provider. Consumer Directed services providers are responsible for identifying the time at which 40 hours or 160 fifteen-minute units of service were exceeded. The provider is responsible to maintain a record of all hours worked. The provider will submit hours worked for the appropriate services to the PASSPORT waiver program Financial Management Services vendor, Morning Sun, on the designated Overtime Record timesheet.
- If the provider is employed by more than one PASSPORT consumer, all hours in a work week exceeding 40 hours should be included.
- Time spent delivering services as an independent provider under waiver programs administered by the Ohio Department of Medicaid (ODM), ODA, and the Ohio Department of Developmental Disabilities (DODD), as well as time spent delivering Private Duty Nursing (PDN) as an independent provider should be included.

- Claims submitted to a managed care plan for services provided to an individual enrolled in a managed care plan are NOT included in the overtime calculation.

Example:

A provider works Monday – Friday 3:00 p.m. – 9:00 p.m. (30 hours) delivering Personal Care Aide services to a person enrolled in the Ohio Home Care Waiver. The provider works the following Saturday from 7:00 a.m. – 7:00 p.m. (12 hours) delivering Consumer Directed Personal Care services to a person enrolled in the PASSPORT Waiver.

- The provider submits claims for 30 hours of regular Personal Care Aid for the person enrolled in the Ohio Home Care Waiver (T1019)
- The provider submits claims for 12 hours of regular Consumer Directed Personal Care for the person enrolled in the PASSPORT Waiver on the timesheet submitted to Morning Sun FMS.
- The Overtime Record form is completed for each date of service with the hours worked for each waiver program. A total of 42 hours will be shown on the Overtime Record form. The 2 hours of consumer directed personal care will be eligible for overtime payment because the provider was work for a PASSPORT consumer when the 41st hour of work for the week was reached.

What should Consumer Directed providers do if working for more than 1 PASSPORT consumer in a work week?

- Maintain a schedule of hours worked each week. Include the types of services provided and the names of individuals served. Submit the Overtime Record form if any hours over 40 during the week are for a PASSPORT consumer.
- Use the Morning Sun time sheet to submit hours worked with each consumer/employer as usual.
- Submit any case manager approved, consumer specific overtime claims as usual.

Travel¹

Choices-Home Care Attendant Service providers (C-HCAS)

Do Consumer Directed providers have to submit timesheets differently to be paid overtime?

Yes. Consumer Directed providers must use the Overtime Record form to submit requests for overtime payment. This form will document the hours worked each week and include the types of services provided. This form is submitted to Morning Sun along with the regular timesheet for the pay period.

Do Choices – Home Care Attendant Service (C-HCAS) providers have to submit timesheets differently to be paid travel time?

- Yes. Morning Sun will provide a revised timesheet that includes an area to document travel time. All providers must use this new timesheet effective January 2016.

¹ This excludes home to work travel which is defined as “(a)n employee who travels from home to work and returns to his or her home at the end of the workday is engaged in ordinary home-to-work travel which is a normal incident of employment. Normal travel from home to work and return at the end of the workday is not work time.” Department of Labor FLSA Factsheet #79D <http://www.dol.gov/whd/regs/compliance/whdfs79d.htm>

Providers will document time spent traveling to individuals enrolled on the PASSPORT waiver. Providers must maintain a log of time traveled between PASSPORT consumers. Travel time between PASSPORT consumers will be submitted on the designated timesheet to Morning Sun FMS.

- If there is travel from one consumer's home to another, the travel start and end time should be recorded on the timesheet when arriving at the 2nd consumer's home. Example: travel start (leaving consumer A) travel end (arriving consumer B's home).

How is overtime calculated?

Overtime is calculated based on the service provided. Providers will continue to submit claims into the appropriate billing system for reimbursement. Consumer-directed providers will submit claims, including overtime claims, to Morning Sun.

What if a Consumer Directed provider forgets to submit the overtime billing and only submits the regular billing?

The provider will be reimbursed at the regular, non-overtime rate. However, the provider may submit the Overtime Record form in order to receive the appropriate overtime payment. All adjustments to claims must be submitted in accordance with requirements established by ODA and the PASSPORT Administrative Agencies (PAAs).

What if a Consumer Directed provider accidentally submits an Overtime Record form when the provider did not deliver more than 40 hours or 160 fifteen-minute units of service in a work week?

The provider **will not be paid for the overtime hours submitted. Morning Sun FMS will notify the provider that the reported hours did not meet overtime requirements.**

Will overtime payments be authorized?

Case Managers will continue to work with individuals and their teams in the development of service plans, which meet individual's needs, taking in to consideration availability of providers. Services authorized must continue to meet the requirements of OAC rule 173-39-02.21 Scheduling choices home care attendant and personal care services.

How will overtime claims be monitored?

Both ODM and ODA will run reports to track overtime payments made to individual providers, as well as to monitor the financial impact of overtime claims. Those who submit claims for overtime, when more than 40 hours or 160 fifteen-minute units of service were not delivered, may be subject to audits and/or investigation.

Will services have to be reduced to accommodate the payment of overtime claims to prevent someone from exceeding their cost cap?

No. Services will not be reduced as a result of overtime payments and overtime payments WILL NOT count against individuals' cost caps.

Please contact Morning Sun FMS with questions about timesheet submission.

<http://morningsunfs.com/pages/Contact/>

Thank you.

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