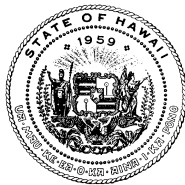


DAVID Y. IGE  
GOVERNOR OF HAWAII



VIRGINIA PRESSLER, M.D.  
DIRECTOR OF HEALTH

**STATE OF HAWAII  
DEPARTMENT OF HEALTH  
DEVELOPMENTAL DISABILITIES DIVISION**  
P. O. BOX 3378  
HONOLULU, HI 96801-3378  
TELEPHONE: (808) 586-5840  
FAX NUMBER: (808) 586-5844

In reply, please refer to:  
File:

July 1, 2016

Dear Employers (Participants and Family/Representatives) using the Consumer-Directed Option

Re: Use of Overtime

The purpose of this letter is to inform you of recent rule changes by the United States Department of Labor (Home Care Final Rule) regarding overtime for domestic workers. Please review this information carefully as it may affect your Consumer-Directed (CD) Employees and your responsibilities as CD Employers.

Under the Consumer-Directed option in the Home and Community Based Services (HCBS) Medicaid Waiver, participants or their designated representatives are considered Employers. The DOH DDD (Department of Health, Developmental Disabilities Division) delegates responsibility for following program rules to employers in the Consumer-Directed Option. One of these rules is that overtime is not used on a regular basis for on-going services. The recent rule change by the United States Department of Labor rule change requires that home care workers (Personal Assistance/Habilitation—PAB, Respite and Chore workers) are entitled to time and a half pay for every hour worked over 40 hours in a week, increasing the importance of avoiding overtime because it is cost prohibitive and could cause the HCBS waiver to exceed its budget.

It is noted that some Employers have been submitting timesheets approving overtime that is not authorized in the participant's (Employer) Individualized Service Plan (ISP). Please note that the DOH DDD is responsible for administration of the HCBS Medicaid Waiver and authorizes the services in the ISP through the person-centered planning process. In the Consumer-Directed option, the responsibility for managing approved services is delegated to the Employer but the Employer does not have authority over a budget of funding for the services in the ISP. If you are an Employer that has approved overtime that is not authorized in the ISP, you will be responsible for payment of overtime.

**A copy of your Employee's timesheets for June 2016, must be submitted by July 20, 2016. Thereafter, copies of timesheets must be submitted with each of your Employee's monthly vouchers.**

## Policy

The DOH DDD must ensure the health and safety needs of waiver participants are met and that public funds are used responsibly. **It is DOH DDD's practice that overtime should be used only in emergency situations when a waiver participant's health and safety is jeopardized.**

In addition, best practices require that the workers in the very demanding field of home care be protected from exhaustion and burnout that can occur when working more than a typical 40 hour work week. Therefore, restricting authorization of funding for overtime is an important way to protect the health and safety of waiver participants by ensuring they are served by well-rested workers.

## Procedure

- When a need for overtime arises, the Employer or his/her designated representative should immediately contact the Participant's Case Manager for authorization of the overtime funding and planning to avoid the use of overtime in the future.
- In the event of an emergency occurring outside of State work hours, the Employer may use overtime and shall leave a message on the Case Manager's phone. The Case Manager will review the request and contact the Employer.
- Some Participants will have significant needs and the ISP may authorize more than 40 hours of service per week. In these situations, a plan for the use of more than one worker must be developed through the person-centered planning process and included in the ISP. Any overtime outside of the authorization in the ISP shall not be used.

## Actions Due to Unauthorized Overtime

If, as an Employer, you approve overtime that is not authorized in your ISP, the DOH DDD will take one or more of the following actions:

- Your case manager will contact you to assess the situation, determine the reason for use of the overtime and plan with you to avoid use of overtime in the future.
- You may be involuntarily terminated from using the Consumer-Directed option and will receive services from a waiver provider agency.
- You may be determined to be financially responsible to pay your Employee(s) for services that were not authorized in your ISP.

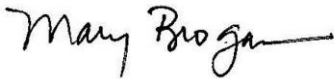
The DOH DDD must advise you of these changes in the HCBS Medicaid Waiver as a result of the recent federal regulations regarding overtime for workers providing care in homes.

Employers (Participants and Family/Representatives) using the Consumer-Directed Option  
July 1, 2016  
Page 3

If you have questions about the authorization of overtime by Employers using the Consumer-Directed option, please contact your Case Manager. Here are links on the Department of Labor Home Care Final Rule for your additional information:

- DOL Home Care Final Rule Webpage: <http://www.dol.gov/whd/homecare/finalrule.htm>
- DOL FAQ: <http://www.dol.gov/whd/homecare/faq.htm>
- Fact Sheets: <http://www.dol.gov/whd/homecare/factsheets.htm>

Sincerely,

A handwritten signature in black ink that reads "Mary Brogan" followed by a horizontal flourish.

Mary Brogan  
Administrator

Attachment

c: Lynn Fallin, Deputy Director for Behavioral Health  
Judy Mohr Peterson, Administrator, MED-QUEST Division  
DDD Branch Chiefs