Operational Guidance as a Result of the Dunkelberger v. Department of Human Services (DHS) Court Decision
ODP Announcement 26-067 UPDATED

AUDIENCE:

Administrative Entities (AEs)

Supports Coordination Organizations

Agency with Choice (AWC) Financial Management Services (FMS) organizations

Managing Employers (MEs)

Common Law Employers (CLEs)

Supports Brokers (SBs)

PURPOSE:

Provide additional information and operational guidance as a result of the Dunkelberger v. DHS court decision.

DISCUSSION:

The Office of Developmental Programs (ODP) has a long-standing policy that permits certain services to be rendered by relative caregivers, subject to reasonable limitations. ODP has also allowed services to be provided during out-of-state travel for a maximum of 90 days. ODP's policy was intended to provide flexibility for travel and permit family caregivers to receive payment through the Medicaid program with reasonable limitations.

On February 17, 2026, in *Dunkelberger v DHS*, Pennsylvania's Commonwealth Court determined that because the below limitations on provider model services were

included in the Individual Support Plan manual and the federal 1915(c) waivers and were not promulgated as regulations by DHS in accordance with the procedures required in the Commonwealth Documents Law, the Regulatory Review Act, and the Commonwealth Attorneys Act, they must be considered null and void:

a. Limitation that a maximum of 40 hours per week can be provided by one relative, legally responsible person, or legal guardian, which effectively eliminated the restriction on overtime;
b. Limitation that a maximum of 60 hours per week may be provided by any combination of legally responsible persons, relatives, and legal guardians for In-Home and Community Support (IHCS) and Companion services; and
c. Limitation that a maximum of 90 days of service may be provided during out-of-state travel per year.

The Dunkelberger decision was about process, not validity of policy. In the Dunkelberger decision, the court did not say that ODP's policy establishing reasonable limitations was improper policy; rather the decision was that the procedures that ODP relied on for that policy were improper. **ODP's policies are a balanced approach between important flexibilities for travel, relative caregivers and health, safety and program integrity concerns. ODP is taking several steps to ensure we continue to take this balanced approach.**

Actions in Response to the Court Decision

ODP updated the two required agreements for participation in participant-directed services in response to the Dunkelberger decision, specifically:

- The Common Law Employer (CLE) Consent Form used in the Vendor Fiscal/Employer Agent (VF/EA) model, and
- The Managing Employer (ME) Agreement Form used in the Agency With Choice (AWC) model.

The updated agreements clarify:

- That CLEs and MEs are responsible for developing and managing Support Service Professionals' (SSPs) work schedules, including not scheduling any one SSP to work more than 40 hours per week.
- Work schedules may not include more than 60 hours per week of authorized IHCS, Companion, or a combination of IHCS and Companion services provided by relatives, legal guardians, or legally responsible persons when more than one relative, legal guardian, or legally responsible person is providing services.
- Limitations on number of hours worked may only be exceeded due to unforeseen circumstances affecting SSP availability, such as inclement weather, sudden illness, or the unexpected resignation of an SSP which requires temporary additional staffing coverage. Limitations on the number of hours an SSP may work may only be exceeded for up to 13 weeks per fiscal year.
- That all waiver services provided by an SSP must occur within Pennsylvania or a state contiguous to Pennsylvania.

All CLE Consent Forms and ME Agreements signed prior to May 8, 2026, will be considered invalid effective August 6, 2026. Individuals who wish to continue participating in participant-directed services must review, sign, and submit updated agreements by August 6, 2026, as discussed in **ODP Announcement 26-051**.

Impact of Agreement Updates

Submission of an updated CLE Consent Form or ME Agreement is required for continued use of participant-directed services.

CLEs and MEs that do not submit updated agreements within the required timeframe will be subject to corrective action processes and may ultimately face involuntary termination of the CLE or ME role if an updated agreement is not signed and submitted.

Updated agreements must be completed in accordance with instructions provided by the applicable Financial Management Services (FMS) organization. Public Partnerships, LLC (PPL) administers the CLE process for the VF/EA model, while AWC providers administer the ME process for the AWC model.

AWC providers that utilize their own ME agreement forms must ensure those forms include all required elements contained within the most current ODP model agreement.

CLEs should verify that PPL has their current contact information, and MEs should verify that their AWC has their current contact information. Maintaining accurate and current contact information is important to ensure CLEs and MEs receive required instructions, notices, and timelines related to updated agreements and ongoing participation requirements.

Out-of-State Travel and Travel Planning Expectations

Once an updated agreement is signed, the ME or CLE agrees to ensure that waiver services provided through the participant-directed service models are only delivered in Pennsylvania and states contiguous to Pennsylvania. These limitations are intended to support ODP's ability to monitor service delivery, address health and welfare concerns, maintain appropriate operational oversight, and respond to incidents or other issues involving waiver services delivered through participant-directed service models. A state contiguous to Pennsylvania means a state that directly borders Pennsylvania. The states contiguous to Pennsylvania are New York, New Jersey, Delaware, Maryland, West Virginia, and Ohio.

There is no limit on the number of days waiver services may be provided in a state contiguous to Pennsylvania or during travel within Pennsylvania. Waiver services that are delivered during time spent traveling must comply with all other waiver requirements.

When waiver services are provided during travel under circumstances that could affect the individual's health, safety, supervision, or service delivery, the ISP team should discuss the travel plans and identify any appropriate safeguards. Such circumstances may include travel to an area that is a significant distance from the individual's primary residence or community, travel for an extended period of time, or other situations that may affect the individual's services. This discussion may address anticipated travel and is not required before every routine trip, day outing, or instance of travel that is part of the individual's normal activities and supports.

In general, if an individual chooses to travel to a state that is not contiguous to Pennsylvania, waiver-funded participant-directed services may not be provided in that location. In those situations, individuals may choose to pay for services using private funds.

Individuals may also reach out to the county to discuss whether there are options for service delivery during travel to non-contiguous states.

In situations where the only medical providers available for medically necessary Medicaid paid treatment **not covered by the waivers** are located out of state, the requirement that waiver-funded participant directed services be provided in Pennsylvania or a state contiguous to Pennsylvania does not apply.

Services provided in an Acute Care Hospital must be provided in accordance with ODP Bulletin 00-23-01: Home and Community Based Waiver Services Provided to Individuals in an Acute Care Hospital. Waiver services cannot be provided in residential treatment facilities, psychiatric facilities, and skilled nursing facilities.

The individual's ISP must have documentation of the condition and prescribed treatment in the Health Evaluations and Medical Contacts fields.

Responsibility for Scheduling SSPs

Scheduling SSPs is the responsibility of the CLE or ME. Individuals or their surrogate self-directing services through the VF/EA or AWC model are responsible for managing staffing arrangements in accordance with applicable requirements and the signed CLE or ME agreement. CLEs and MEs must ensure that scheduling practices adhere to the requirements established in the updated agreements.

Service Authorizations in Advance of Updated CLE/ME Agreements

AEs should not deny or reduce service authorizations solely because a relative caregiver may potentially provide some or all the authorized hours.

AEs should continue to authorize services based on the individual's assessed need, health and welfare, and the ISP planning process. The anticipated use of a relative as an SSP should not, by itself, result in the denial, reduction, or non-authorization of waiver services. Consistent with existing utilization review responsibilities, ISP teams should continue to review service utilization, service delivery patterns, and staffing arrangements to support ongoing discussions regarding the individual's needs and the effective delivery of authorized services.

Role of the Team Process in Scheduling Relative Workhours

ISP teams should already be familiar with addressing issues related to scheduling relative caregivers, as limitations on overtime and combined relative caregiver hours existed prior to the recent court decision.

When an ME or CLE seeks to increase the use of relative caregivers beyond the

limitations, the team should clearly explain that these arrangements continue to not be permitted under the updated agreements, which are effective upon submission. Teams should avoid creating the expectation that staffing arrangements exceeding the agreement limitations will be permitted under the participant-directed model.

The team should also discuss the potential consequences of noncompliance, including loss of the ability to self-direct services.

Teams should proactively discuss longer-term service delivery arrangements prior to implementation of the updated agreements. Depending on the individual's circumstances, these discussions may include:

- Hiring additional SSPs who are not relatives;
- Modifying staffing schedules;
- Reducing reliance on relative caregivers; or
- Partial or full transition to a traditional provider-managed service model including Life Sharing. Life Sharing is paid on a per diem basis and there is no limit on the number of hours of service that can be provided by relatives or legal number of hours of service that can be provided by relatives or legal guardians. Life Sharing resources for individuals, families and Supports Coordinators are available at **Life Sharing – MyODP**.

  The goal of these discussions should be to ensure conflict-free choice of provider(s), support continuity of services, and avoid disruption once the updated agreements take effect.

Failure to Return CLE Agreement – VF/EA Model

- If a CLE does not return the updated CLE Consent Form by August 6, 2026, ODP will issue the CLE a **Notice of Noncompliance** requiring the completed

agreement to be returned within 7 calendar days

- If the updated agreement is not returned within the 7-day period, ODP will issue a **Second Notice of Noncompliance** advising the CLE that failure to return the

  required agreement within 30 calendar days will result in the inability of PPL to continue providing administrative functions necessary to support participant-directed services, including the processing of payroll and timesheets.
- If the agreement is not returned during the 30-day period, ODP will issue a **Final Notice of Noncompliance** advising the CLE that, absent a current and valid CLE agreement, the administrative fee for the individual cannot be paid and the

  processing of payroll and timesheets through the VF/EA model will not continue unless the agreement is returned within 30 calendar days).
- If a CLE does not return the updated agreement following the corrective action process, PPL will no longer receive an administrative fee for the individual,

  payroll and administrative processing through the VF/EA model will be suspended, and the CLE will receive notice of involuntary termination in accordance with the applicable waiver requirements governing participant-directed services.
- Following involuntary termination of an individual's CLE, the individual will have **30 days** to designate a new CLE, transition to the AWC model, or transition to a traditional provider-managed service model.
- During this transition period, the **ISP team should work with the individual to support continuity of services and minimize disruption.**
- The involuntary termination of a CLE is not subject to appeal.

Failure to Return ME Agreement – AWC Model

- If an ME does not return the updated ME Agreement Form by August 6, 2026, the AWC provider will issue the ME a **Notice of Noncompliance** requiring the completed agreement to be returned within 7 calendar days.
- If the updated agreement is not returned within the 7-day period, the AWC provider will issue a **Second Notice of Noncompliance** advising the ME that failure to return the required agreement within 30 calendar days will result in the inability of the AWC provider to continue providing administrative and operational functions necessary to support participant-directed services through the AWC model.
- If the agreement is not returned during the 30-day period, the AWC provider will issue a **Final Notice of Noncompliance** advising the ME that, absent a current and valid ME agreement, participant-directed services through the AWC model cannot continue unless the agreement is returned within 30 calendar days.
- If an ME does not return the updated agreement following the corrective action process, **participant-directed services through the AWC model will be suspended, and the ME will receive notice of involuntary termination** in accordance with the applicable waiver requirements governing participant-directed services.
- Following involuntary termination of the individual's ME, the individual will have **30 days** to designate a new ME or transition to a traditional provider-managed service model.
- During this transition period, the **ISP team should work with the individual to support continuity of services and minimize disruption.**
- The involuntary termination of an ME is not subject to appeal.

Life Sharing Rendered by a Relative or Legal Guardian Option

For individuals seeking more than 60 hours per week of care rendered by a relative or legal guardian, the Life Sharing model should be explored. The participant-directed
service model and the Life Sharing model have significant differences for the individual and the caregiver related to service delivery.

In the participant-directed model, services such as IHCS and Companion are authorized and billed as discrete waiver services that must be rendered in accordance with the
applicable service definition for each 15-minute unit billed. This can result in situations where the same relative caregiver is functioning as a paid direct support worker or SSP for extended periods of scheduled service delivery with no breaks, which raises
concerns related to burnout, sustainability, isolation, and program integrity. Medicaid payment rules dictate that every minute of a 15-minute unit of service billed to
Medicaid must be solely for the provision of care for the enrolled individual. Household or other activities unrelated to direct care provision for the enrolled Medicaid individual are not permitted. To illustrate, a relative providing Medicaid funded care in 15-minute billing units should not be engaged in any of the following during time billed to
Medicaid:

- Running errands for another member of the household
- Doing family laundry
- Preparing a lunch for another person in the home
- Talking on the phone unless the call is related to the care of the Medicaid enrolled individual

Overnight care in private homes is an allowable covered service when an individual

requires supervision or medical interventions during the night. Time spent sleeping is generally not allowable when a relative caregiver is billing for 15-minute units of Medicaid funded service.

Life Sharing operates differently. Life Sharing is a residential service model with a broader and more flexible daily service structure centered around the individual sharing everyday life within the home and family environment. Unlike IHCS and Companion
services, Life Sharing is not structured around continuous 15-minute unit delivery of discrete direct support activities. Relative caregivers are paid stipends, and the provider is paid a per diem rate, allowing for care provision as part of the natural flow of daily life.

In addition, Life Sharing includes ongoing oversight, monitoring, and support through a qualified Life Sharing provider agency. This creates an additional layer of provider involvement and operational oversight that differs from the participant-directed relative caregiver arrangement. For example, the Life Sharing provider agency may arrange for
additional professionals to support the life sharing family both on a daily or weekly basis to supplement care provision and as respite care to minimize burnout.

Additional Planned Updates

- ODP anticipates further updates to participant-directed services requirements and guidance. This includes updates to both the VF/EA and AWC bulletins to
  address the issues discussed in this guidance and to incorporate other operational and policy updates identified since the bulletins were originally published.
- ODP will amend regulations to provide the authority to establish

appropriate limits for all service models related to services and service delivery that support the health, safety, and welfare of individuals and program integrity.

- ODP anticipates submitting future amendments to the Consolidated, Person/Family Directed Support (P/FDS), and Community Living waivers and the Adult Autism Waiver (AAW) to include additional qualifications for providers to strengthen program integrity measures and related to participant-directed services. Traditional provider agencies providing IHCS and Companion services will have new requirements related to having a process for disclosing a direct support professional's relationship to the participant and ensuring proper programmatic oversight.

- As a result of the inability to effectively and timely monitor out-of-state services for extended periods of time, ODP also anticipates submitting a future amendment to the Consolidated, Community Living, and P/FDS waivers and the AAW limiting service delivery during travel to Pennsylvania and contiguous states except for required medical treatment as described in this announcement.

- The public comment period for the proposed changes to ODP's home and community-based waivers is anticipated in January 2027.

Documents Impacted and Subject to Revision

The following documents and resources have been determined to be impacted by the Dunkelberger decision and are under review for revision:

- Vendor Fiscal/Employer Agent Financial Management Services

(VF/EA FMS) Bulletin

- Participant-Directed Services: Agency With Choice Financial Management Services Model Bulletin

Common-Law Employer (CLE) Resource Guide

- Pennsylvania's Guide to Choosing Participant-Directed Services
- MyODP Course: Understanding, Promoting, and Monitoring Participant-Directed Services in Pennsylvania
- The ODP Gold Book
- Individual Support Plan Manual
- Consolidated, Community Living, P/FDS waivers and AAW
- Adult Autism Waiver Provider Information Table

CONTACT:

For questions about this announcement, AEs should contact their respective ODP Regional Offices.

ATTACHMENTS:

Frequently Asked Questions: Requirements and Timeframes for Updated Common Law Employer and Managing Employer Agreements in the Office of Developmental Programs (ODP) Participant-Directed Services

OBSOLETE COMMUNICATIONS:

The following documents are obsolete:

- ODP Announcement 23-041, Maximum Number of Hours per Week of In-Home and Community Support and/or Companion Services that Relatives and Legal Guardians May Provide
- ODP Communication Memo 068-16, Scheduling Support Service Workers to Work More than 40 Hours per Week in the Consolidated and P/FDS Waivers.