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SUBJECT

PROPOSED REGULATIONS – HOME AND
COMMUNITY-BASED SUPPORT AND LICENSING

BY



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Deputy Secretary

SCOPE:

Individuals and Families
Advocacy and Self-advocacy Organizations
County Mental Health and Intellectual Disability Administrators
Intellectual Disability Administrative Entity Administrators and Directors
Home and Community-Based Service Providers
Base-funded Community-Based Service Providers
Support Coordination Organizations and Agencies
Community Homes for Individuals with an Intellectual Disability
Family Living Homes
Vocational Facilities
Adult Training Facilities

PURPOSE:

The purpose of this bulletin is to announce the publication of proposed regulations that govern the program, operational and fiscal aspects of the following: (a) home and community-based supports (HCBS) provided through the adult autism, consolidated and person/family directed support 1915(c) waiver programs; (b) Medicaid state plan HCBS for individuals with an intellectual disability or autism, such as targeted support management; and (c) services funded exclusively by grants to counties under the Mental Health and Intellectual Disability Act of 1966 or Article XIV-B of the Human Services Code. The proposed rulemaking also amends four chapters of licensing regulations to eliminate duplication and conflict in the areas of training, rights, person-centered support plans (PSP), incident management, positive intervention and medication administration. These licensing chapters are Chapters 2380, 2390, 6400 and 6500. The proposed rulemaking also repeals and replaces 55 Pa.Code Chapters 51 (relating to Office of Developmental Programs home and community-based services) and 6200 (relating to room and board charges).

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:

Office of Developmental Programs, Bureau of Policy and Quality

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Visit the Office of Developmental Programs Web site at

<http://www.dhs.state.pa.us/dhsorganization/officeofdevelopmentalprograms/index.htm>

BACKGROUND:

The purpose of the proposed rulemaking is to support Pennsylvanians with an intellectual disability or autism to live in and participate fully in the life of their community, to achieve greater independence and to have the full range of opportunities enjoyed by all citizens. The proposed rulemaking strengthens community supports to promote person-centered approaches, community integration, personal choice, quality in support delivery, equity, and accountability in the utilization of resources and innovation in service design.

The proposed rulemaking is needed to continue the Commonwealth's eligibility for Federal financial participation in the HCBS waiver programs. This rulemaking protects the health, safety and well-being of the individuals receiving supports in individual-directed, family-based, community residential and day programs. This rulemaking eliminates unnecessary language, streamlines processes and reduces the volume of regulation. This rulemaking incorporates consistent and best practice terms, language and principles throughout the regulations.

DISCUSSION:

The proposed rulemaking affects individuals with an intellectual disability or autism and families of individuals who receive funded services and supports through the Office of Developmental Programs, providers of state and federally-funded intellectual disability services and supports and facilities licensed by the Department.

Following is a brief summary of the major regulatory amendments that are proposed:

1. Inclusion of base-funding. The proposed Chapter 6100 enlarges the scope of Chapter 51 to incorporate program and operational provisions for services funded exclusively by grants to counties. The inclusion of these services in the scope of this rulemaking provides protection and support for individuals who are not served in a HCBS waiver program, but who receive similar supports and services through state-funds-only allocations.
2. Provisions for individuals with autism. The proposed rulemaking incorporates provisions for the regulation of HCBS adult autism supports. The goal of the more comprehensive inclusion of the adult autism waiver in Chapter 6100 is to provide similar safeguards and opportunities for both individuals with autism and individuals with an intellectual disability.
3. Improved flow and format. To aid in overall readability, rather than disperse regulatory exemptions and special program requirements throughout the chapter, the special program provisions and exemptions are now listed at the end of the chapter. This revised format improves the flow and readability for the mainstream of programs affected by the rulemaking and shortens the overall length of the regulations.
4. Plain English and definitions. The proposed rulemaking uses plain English and consistent terminology, keeps acronyms to a minimum to aid in readability and removes unnecessary language to make the regulation shorter and easier to read.

5. Ch. 6200 rescission. Chapter 6200 (relating to room and board charges) is proposed to be rescinded with the promulgation of the final-form rulemaking. The proposed rulemaking includes the same updated room and board provisions for both HCBS and state-funds-only programs, providing application across the community system. The elimination of a chapter of regulations reduces the administrative burden for providers, the county programs and the Department.
6. Federal compliance. The Commonwealth must demonstrate full compliance with the CMS HCBS Settings regulations. This proposed rulemaking addresses the key components of the Federal regulations.
7. Reduction of licensing duplication. Four existing chapters of licensing regulations govern many of the same facilities that are funded through the HCBS waivers, the Commonwealth's Title XIX state plan and state-funds-only allocations. To provide consistency between the HCBS provisions and the four applicable licensing chapters, the proposed rulemaking includes revisions to the four licensing chapters to promulgate the same requirements for six major program and operational areas
8. Background check clarity. Changes are proposed to cast a wider net on the categories of persons who must complete background checks. Household members, volunteers, life sharers and interns who provide a support, and all staff persons, will now require a criminal history check.
9. Staff training overhaul. Traditionally, licensing regulations have dictated the specific training courses that each staff person must compete upon initial hire and on an annual basis. The proposed rulemaking takes a new approach whereby only four core courses are required, with much of the training program designed by the provider based on the needs of the individuals. The proposed number of 24 annual training hours matches the number of hours currently required in Chapters 2380, 2390, 6400 and 6500. Only 12 training hours are required annually for management and other non-direct support staff persons.
10. Expansion of individual rights. The proposed rulemaking encompasses a broad array of individual rights. Several of the rights are Federal regulations. Most of the rights are already enumerated under Chapter 6400, which are applicable for community homes.
11. Modification of the person-centered support plan. The individual support plan provisions have been streamlined to address the Federal regulations. The term "individual support plan (ISP)" has been updated to "PSP" to align with the Federal language of "person-centered".
12. Use of positive interventions. The proposed rulemaking proposes to propel Pennsylvania forward as a leader of humane treatment of individuals with disabilities, by prohibiting the use of chemical restraints, mechanical restraints, exclusion and many types of manual restraints. The use of a physical protective restraint is permitted only by trained staff in an emergency situation to protect the safety of the individual or others.

13. Facility characteristics. A new section is proposed to address the Federal regulations for facility size and community location to promote integration into the community.
14. Array of payment options. The proposed rulemaking allows an array of payment options including fee-based, cost-based, managed care and other methodologies.
15. Refresh of the data used to establish fee schedule rates. The proposed rulemaking requires the refresh of data every 3 years. In addition, the Department will request public comment on the market-based factors prior to establishing new fee schedule rates.
16. Fee-schedule criteria expanded. The factors considered to establish fees through the market-based approach have been expanded including individual needs, a review of the HCBS service definitions as provided in the Federally-approved waivers and waiver amendments, as well as the fiscal impact of compliance with Federal and Commonwealth laws and regulations and local ordinances. The Department may also consider other criteria that impact costs, such as the cost of living in a particular geographic area, if the criteria significantly affects staffing costs.

PUBLIC COMMENT:

The Department welcomes, encourages and values public comment in response to the proposed rulemaking. Each public comment received will be carefully reviewed and considered for inclusion in the final regulation. **Public comments are due to the Department no later than Tuesday, December 20, 2016.**

As you review the proposed regulations, please note that for Chapters 2380, 2390, 6400 and 6500 material proposed to be added appears in **bold face** while material proposed for deletion appears in [] **and bold face**. Chapter 6100 can be read in its entirety with no special printing format.

The proposed regulatory amendments and further instructions for the submission of public comments can be found in the *Pennsylvania Bulletin* at <http://www.pabulletin.com/secure/data/vol46/46-45/index.html>, 46 Pa.B. 7061 (November 5, 2016) Part II which is specifically found at http://www.pabulletin.com/secure/data/vol46/46-45/46_45_p2.pdf.