



# MENTAL RETARDATION BULLETIN

COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF PUBLIC WELFARE

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NUMBER  
00-06-13

**SUBJECT:**

Service Review Protocol for Individuals in the Consolidated and Person Family Directed Support Waivers

**BY:**

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Deputy Secretary for Mental Retardation

## SCOPE:

County Mental Health/Mental Retardation Administrators  
Administrative Entities  
Community Home Directors  
Family Living Directors  
Adult Training Facility Directors  
Vocational Facility Directors

## PURPOSE:

The Office of Mental Retardation (OMR) establishes this protocol to ensure consistent application of OMR policies and to create a more timely appeal resolution process. This bulletin shall supplement the current requirements of Mental Retardation (MR) Bulletin 00-00-09, entitled "*Service Preference in Medicaid Waivers for Individuals with Mental Retardation*", and MR Bulletin 00-04-07, entitled "*Clarifying Procedures for Individual and Provider Appeals*". Individuals, families and Administrative Entities should continue to follow the procedural requirements of those bulletins for making decisions regarding waiver services including proper notifications regarding mediation, administrative meetings and the filing of appeals.

## BACKGROUND:

In accordance with the Administrative Entity Operating Agreement, the Administrative Entity is responsible for ensuring that the health and welfare needs of Consolidated Waiver participants are fully met. The Administrative Entity may not enroll new applicants into the P/FDS Waiver if there is an outstanding health and welfare need that cannot be met within the individual cap. OMR is responsible for ensuring that Administrative Entities consistently apply waiver requirements.

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED:

**DISCUSSION:**

**TO THE APPROPRIATE REGIONAL PROGRAM OFFICE**

The Administrative Entity is required to explain fair hearing rights and provide Departmental fair hearing and appeal information and notice to waiver eligible individuals and their representatives when:

1. The waiver participant is determined likely to require an ICF/MR level of care and is provided information about waiver-funded services.
2. The waiver participant or representative is asked to sign the service preference form.
3. There is a decision or action taken to deny the waiver participant a waiver-funded service or a willing, qualified waiver provider of his/her choice.
4. There is a decision or action taken to refuse, suspend, reduce, or terminate waiver-funded services authorized in the Individual Support Plan (ISP). A delay of services to a waiver participant based on the availability of waiver funds or on a waiting list situation can be appealed on this basis.
5. The waiver participant or representative notifies the Administrative Entity of their decision to file an appeal, or requests information about the waiver participant's appeal and fair hearing rights.
6. Whenever action is taken that affects the waiver participant's claim for eligibility or receipt of services.

The Administrative Entity is responsible for ensuring that a waiver participant or their legal representative is notified of their right to appeal when they are asked to sign approval of their ISP, and changes to the plan. Copies of fair hearing and appeal information need not be provided unless adverse action is included in the plan.

The Administrative Entity is responsible for ensuring that participants receive the assistance they need to complete and file an appeal.

The Administrative Entity shall provide advance notice of denial of service(s) at the requested level: reduction, suspension, or termination of service.

If waiver services have been denied, reduced, suspended or terminated, and the individual was not provided with advanced notice and instructions on how to file an appeal, the individual may submit a written request to the Administrative Entity with a copy sent to the appropriate OMR Regional Office. The Regional Office will send out a confirmation letter to the appellant, confirming that the request meets Service Review criteria and detailing that any individual may submit additional information within 5 calendar days, which will be used in the decision-making process.

The Administrative Entity will have an opportunity to review the circumstances and either provide the service requested, provide advance notice of denial, reduction, suspension or termination of services and provide the individual/family with information regarding their right to appeal the decision to the Bureau of Hearings and Appeals (BHA).

## **POLICY:**

The Administrative Entity must notify the OMR Regional Office of its actions within 5 calendar days of receipt of the written request. When an individual/family submits a copy of the "*Fair Hearing Request*" form (MR 458) to the Administrative Entity in accordance with MR Bulletin 00-04-07, entitled "*Clarifying Procedures for Individual and Provider Appeals*", the Administrative Entity must date-stamp the appeal upon receipt, forward it to BHA and the appropriate regional office based on the individual's county of registration within three (3) working days of receipt of the appeal.

The OMR Regional Reviewer will review the reasons for appeal, review additional information, and may contact the individual, family and the Administrative Entity in order to obtain clarification needed to complete the review. Once an appeal has been filed, either party may provide written information to the OMR Regional Office within 5 calendar days following receipt of the appeal. OMR will determine whether the actions of the Administrative Entity are consistent with waiver requirements.

OMR will ensure that the Administrative Entity determination was based upon correct interpretation of regulations: the current Waiver, and any approved amendments, the State Plan; MR Bulletin 00-06-04, entitled "*Revised Units for Service Definitions and Procedure Codes for Healthcare and Non-Healthcare Waiver and Base Services*", or any approved revisions; MR Bulletin 00-00-09, entitled "*Service Preference in Medicaid Waivers for Individuals with Mental Retardation*", or any approved revisions; and all other pertinent MR Bulletins.

The Regional Reviewer will document their Service Review including: a description of the appeal, the materials reviewed, a list of parties who the reviewer communicated with, the findings and recommendations of the reviewer, and the policies and regulations that form the basis for the recommendations. The Regional Service Reviews are subject to concurrence by the OMR Area Directors. OMR's findings will be mailed to the individual or family, the Administrative Entity and BHA within 15 calendar days following receipt of the appeal.

Administrative Entities are required to maintain services pending appeal when the appeal has been filed within 10 calendar days of receipt of the action until the appeal is resolved in accordance with MR Bulletin 00-00-09. Please refer to MR Bulletin 00-00-09, section M (page 11) under "Discussion", for specific circumstances regarding continuation of services.

OMR shall ensure that Service Reviews and decisions from BHA are implemented in a timely manner. When a Service Review requires that a service be provided, the Administrative Entity shall initiate such services within 30 calendar days of the Service Review or as specified in the findings. In the case of services that require additional funding, services shall be initiated within 30 calendar days beyond receipt of notification of additional funding. The Administrative Entity shall modify the individual's ISP, authorize the services and document the start date of the services in the Home and Community Services Information System (HCSIS). If the Administrative Entity experiences delays in implementing the service(s), an extension will be requested from the OMR Regional Office.

If an Administrative Entity fails to implement the findings, the Regional Office will notify the Administrative Entity in writing that services must be implemented within 15 calendar days or as otherwise specified in the notice, or the Administrative Entity must provide documentation of good faith efforts to implement the service, including evidence of the barriers to successful implementation. If there is continued failure to implement the service, the Regional Office will notify the Administrative Entity Governing Board of the failure to provide waiver services in accordance with the Administrative Entity Operating Agreement and will require an immediate compliance plan from the Administrative Entity. Further failure to implement the service will result in agreement remedies.

OMR will track reasons for appeals and will analyze findings to identify patterns or trends that may have policy or training implications. OMR will review procedures and revise them as needed. OMR will also provide all Administrative Entities with a summary of its findings and recommendations.

For information or assistance regarding Service Review Protocol, please contact your supports coordinator, Administrative Entity MR Director or the OMR Regional Office.

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**OBSOLETE BULLETIN:**

MR Bulletin 00-05-06, entitled "*Office of Mental Retardation Service Review Protocol for Individuals in the Consolidated Waiver*"