MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES BULLETIN

COMMONWEALTH OF PENNSYLVANIA • DEPARTMENT OF PUBLIC WELFARE

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SUBJECT
Revised Procedure for Waiver of Office of Mental Health and Substance Abuse Services

BY
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Deputy Secretary for Mental Health and Substance Abuse Services

SCOPE:

This bulletin applies to county MHIMR programs and licensed/approved MH service providers. This bulletin does not apply to waivers of regulations for counties as stipulated in 55 PA Code §4300, County Mental Health and Mental Retardation Fiscal Manual, nor does it apply to requests for exceptions to requirements in managed care contracts. This bulletin supercedes MH Bulletin OMH-95-06.

PURPOSE:

To update the procedure for submitting and processing requests for waiver of OMHSAS program regulations and program standards used to license or approve behavioral health provider agencies.

BACKGROUND:

The OMHSAS licenses or approves community behavioral health facilities and other service providers operating in the Commonwealth of Pennsylvania. In line with this responsibility the Department's authorized agents periodically inspect behavioral health facilities and agencies. If regulatory requirements are met, Certificates of Compliance are granted under Article IX of the Public Welfare Code (62 P.S. §§ 901 - 922) or under Article X of the Public Welfare Code (62 P.S. §§ I001 - 1080).

If a facility or agency is found to be in substantial, but not complete, compliance with appropriate statutes, ordinances and/or regulations, the OMHSAS may issue a Provisional Certificate of Compliance. Facilities may receive no more than four consecutive Provisional Certificates of Compliance, each of which is valid for six months or less. Facilities may appeal the findings that substantiate Provisional Certificates of Compliance or the Department's timeframe for necessary corrective action. In some rare instances the facility or service provider may request the Department to waive a regulation or program standard.

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:

Bureau of Policy and Program Development (717) 772-7900

DISCUSSION:

If a facility cannot meet the requirements of compliance and issuance of a provisional Certificate of Compliance is inappropriate, it may request waiver of the same regulation or program standard or a portion of the regulation or program standard. However, the facility must demonstrate that substitute measures assure the health, safety and welfare of all consumers who reside in the facility or who receive services from the non-compliant provider.

WAIVER PROCESS

The following information must be provided for each waiver request:

1. The legal base which permit waivers (1 .PA. Code Chapter 35, 35.1 7-18);

2. The agency's address;

3. The number on the Certificate of Compliance, when applicable;

4. Reference to the PA. Code, Chapter and Section or Subsection from which the waiver is requested;

5. The period of time covered by the requested waiver (may not exceed one year);

6. The reason for the waiver request;

7. Detailed justification of the requested waiver;

8. Assurances that the health, safety and welfare of consumers will be safe-guarded during the proposed period of the waiver (describe how such assurances will be provided);

9. Measures taken to meet the intent of the waived regulation throughout the proposed period of the waiver.

While the period of a waiver may not exceed one year, providers may request continuation of an approved waiver. Requests for continuation of waiver must be submitted to the Field Office Manager 60 days in advance of the approved waiver's expiration date and/or 60 days prior to the date of license renewal. Requests for continuation must contain all information listed above and must follow the steps used to request the original waiver as indicated in the following procedure.

Procedure

Requests for Waiver and Requests for Continuation of Waiver will be processed and adjudicated within 60 days as indicated throughout.

A. Provider/Agency Requesting a Waiver

1. Must submit request for waiver to the County Mental Health/Mental Retardation (MHIMR) Program Administrator; or

2. Must submit the request for waiver to the Field Office Manager with a copy to the County MH/MR Program Administrator, *if the provider agency does not contract with the County MH/MR Program or if the provider contracts with multiple counties.*

B. County MH/MR Administrator:

1. Receives the request for waiver from the petitioning provider

2. Communicates with the petitioning provider in an effort to resolve the pending issue without waiver; and … *if waiver is the indicated solution*,

3. Submits the request for waiver to the Field Office Manager with recommendations within 10 days of receipt of the request.

C. Field Office Manager:

1. Communicates with the County MH/MR Administrator and the petitioning provider and/or consults with Bureau of Operations and Quality Management/ Division of Program Standards and Licensing (BOQMIDPSL) to resolve the issue without waiver, *if that option is deemed appropriate and useful*;

2. If needed, requests additional information from the petitioning agency within 10 days, using the sample letter (attached); and

3. Reviews the waiver request and submits the request package and recommendation to the BPPD within 15 days of receipt from County MH/MR Administrator or 15 days after receipt of additional information.

D. Bureau of Policy and Program Development:

1. Logs each waiver request by area, provider type, agency and type of waiver;

2. Maintains a file of all waiver requests and requests for continuation of waiver;

3. Determines the need for review by other OMHSAS program offices and offices such as the Office of Legal Counsel;

4. BPPD makes a decision to approve or disapprove the waiver request within 15 days of receipt from the Field Office Manager; and

5. Drafts a letter of response for the Deputy Secretary's signature.

E. Deputy Secretary

1. Reviews the waiver request, the BPRD recommendation and the drafted letter of response.

2. If the Deputy Secretary agrees with BPPD recommendation and letter of response he/she signs it and forwards it to the requesting provider within 10 days of receipt from the BPPD.

G. Providers have the right to appeal adverse rulings regarding requests for waiver. Appeals are directed to: Director, Office of Hearings and Appeals, P.O. Box 2675, Harrisburg, PA 17107. The Office of Hearings and Appeals must receive a letter of appeal within 10 days from receipt of the letter of approval or disapproval of the waiver request.