



OFFICE OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES BULLETIN

ISSUE DATE:

May 2, 2024

EFFECTIVE DATE:

May 2, 2024

NUMBER:

OMHSAS-24-03

SUBJECT:

Removal of Lifetime Employment Bans in "OAPSA"
(the Older Adults Protective Services Act)

BY:

A handwritten signature in black ink that reads "Jennifer S. Smith".

Jennifer Smith, Deputy Secretary
Office of Mental Health and Substance Abuse Services

SCOPE:

County Mental Health/Intellectual Disability (MH/ID) Offices.

PURPOSE:

The purpose of this bulletin is to obsolete Bulletin OMHSAS-07-01 given the court's decision regarding the unconstitutionality of lifetime employment bans under *Peake v. Commonwealth of Pennsylvania, et al.*, 132 A.3d 506 (Pa. Commw. Ct. 2015).

BACKGROUND:

In 1987, the General Assembly, recognizing that Pennsylvania's older adults require protection from exploitation, neglect, and abuse, enacted the Older Adults Protective Services Act (OAPSA), which also established a program of protective services for older adults, including those in mental health inpatient and residential facilities.

Subsequently, in 1996, OAPSA was amended to permanently prohibit employment for individuals convicted of certain criminal offenses. However, in 2015, the Commonwealth Court held the "lifetime employment ban" contained in Section 503(a) of OAPSA (35 P.S. § 10225.503(a)) violated due process guarantees pursuant to the Pennsylvania Constitution and the provision was unconstitutional and unenforceable.

DISCUSSION:

Because Section 503(a) of OAPSA was declared unconstitutional and unenforceable under *Peake v. Commonwealth*, the Department of Human Services (DHS) is obsoleting OMHSAS-07-01, titled "*Clarification of Act 169, also known as the Older Adults Protective Services Act (OAPSA), in regard to hiring practices for inpatient and residential facilities.*"

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:
Office of Mental Health and Substance Abuse Services, Bureau of Policy, Planning and Program Development, P.O. Box 2675, Harrisburg, PA 17105. General Office Number 717-772-7900
Email: RA-PWOMHSASBULLETINS@pa.gov

This bulletin is only related to the unenforceability of the employment ban provision of OAPSA and is not intended to preclude an employer's ability to perform due diligence pursuant to their hiring practices. Employers should continue to screen prospective candidates in accordance with their policies and procedures applicable to all employees. All employers should ensure compliance with state and federal laws.

OBSOLETE BULLETIN:

This bulletin obsoletes Bulletin OMHSAS-07-01, titled "*Clarification of Act 169, also known as the Older Adults Protective Services Act (OAPSA), in regard to hiring practices for inpatient and residential facilities.*"