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MENTAL RETARDATION BULLETIN

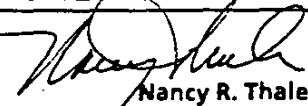
COMMONWEALTH OF PENNSYLVANIA • DEPARTMENT OF PUBLIC WELFARE

ISSUE DATE
July 12, 1996

EFFECTIVE DATE
July 1, 1996

NUMBER
00-96-08

SUBJECT
2176 Waiver Supplemental Grant Agreement
for 1996-2000

BY 
Nancy R. Thaler
Deputy Secretary for Mental Retardation

SCOPE

County Mental Health/Mental Retardation Administrators

PURPOSE

The purpose of this bulletin is to transmit the provisions of the supplemental grant agreement between the Department of Public Welfare, Office of Mental Retardation, and county mental health and mental retardation programs for home and community based services for individuals with mental retardation under the 2176 Waiver.

BACKGROUND

The Department's approved home and community based services waiver under Section 1915(c) of the Social Security Act provides for a grant agreement between the Department and the county mental health/mental retardation program for the administration and provision of waiver services. Grant agreements under the waiver have been in place since the waiver's inception in 1983 as a primary means of ensuring accountability in the use of federal and state funds.

DISCUSSION

This new supplemental grant agreement is being sent to the county mental health and mental retardation administrators for signature by the appropriate county commissioners or authority effective July 1, 1996. After the agreement has been signed by the county, it should be forwarded to the appropriate regional program manager to obtain departmental approval. Once signed by the county and the department, the agreement will continue to be in force for the duration of the waiver renewal period unless otherwise amended. Any subsequent change in the agreement will require the approval of the Deputy Secretary for Mental Retardation as a modification to Appendix A of the Agreement - Supplemental Grant Conditions. This method of making modifications within Appendix A will avoid the need to enter into new agreements from year to year.

REFER COMMENTS AND QUESTIONS TO:

Appropriate Regional Program Manager

COUNTY

SUPPLEMENTAL GRANT AGREEMENT

THIS AGREEMENT made this _____ day of _____, between the Office of Mental Retardation, Department of Public Welfare, hereinafter referred to as "Department," and the _____ County Mental Health and Mental Retardation Program, hereinafter referred to as the "County."

WITNESSETH:

WHEREAS, the County is responsible for providing community mental retardation services pursuant to the Mental Health and Mental Retardation Act of 1966; and

WHEREAS, authorization has been given for a home and community based services waiver as a result of Federal approval under Section 1915(c) of the Social Security Act; and

WHEREAS, Federal approval was conditioned on assurances that the expenditure of funds be governed by the criteria set forth below.

NOW, THEREFORE, the parties intending to be legally bound agree as follows:

1. Subject to legislative funding approval, the Department will allocate Medicaid Waiver funding to the County's approved fiscal year community mental retardation allocation.
2. Allocation of the Medicaid Waiver funding is conditional upon the County Program's compliance with the Supplemental Grant Conditions, Appendix A.
3. Changes or corrections in written policies and procedures under this Waiver project shall be effective only as of the dates mentioned therein.

4. This agreement shall remain in full force and effect as an integral part of the Department's funding obligation for the County's annual statutory grant for community mental retardation services until superseded by another agreement or amendment to this agreement.

Department of Public Welfare

_____ County Commissioners

Nancy R. Thaler
Deputy Secretary
for Mental Retardation

APPENDIX A
SUPPLEMENTAL GRANT CONDITIONS

The following preconditions govern the allocation and expenditure of the supplemental grant funds for the provision of community mental retardation services by the County pursuant to the Department's home and community based services waiver, hereinafter referred to as the waiver, approved by the Department of Health and Human Services under Section 1915(c) of the Social Security Act.

SCOPE

1. a. All services must be provided in compliance with the Department's approved waiver application, as transmitted by the Department, for individuals with mental retardation, and subsequently approved waiver amendments and corrective action plans.
- b. The term of the agreement shall be from July 1, 1996 through June 30, 2000, subject to continuing Federal approval of the waiver and availability of appropriated funds.
- c. Any changes which result from changes in Federal or State law, regulation, or conditions of waiver approval shall be binding on the parties and will be issued to the County Program as revisions to the Supplemental Grant Conditions (Appendix A).
- d. At any time during the State fiscal year, either party to the supplemental grant agreement may initiate discussions regarding modifications to Appendix A. The currently existing agreement shall remain in effect until superseded by agreed upon modifications.
2. a. The County shall provide services for up to the allocated number of individuals identified in the County's annual allocation letter and cannot at any point in time during the State Fiscal year exceed this allocated number of individuals receiving waiver funded services without prior approval of the Department.

- b. The Department reserves the right to adjust the County's allocation for waiver services should the County not be able to provide services for the number of individuals identified in the County's annual allocation letter, particularly when a shortfall in services jeopardizes the Department's assurance of waiver cost effectiveness to the Federal government.
 3.
 - a. A vacancy created by an individual who discontinues waiver services within one year of moving from a State ICF/MR shall be filled by a person from a State ICF/MR.
 - b. The State ICF/MR from which the individual is selected shall be a specific State Center or Mental Retardation Unit designated by the Department or a State Center or Mental Retardation Unit selected by the County at the Department's discretion.

SERVICES

1. Only specific services, as defined in the Department's approved waiver renewal application issued under MR Bulletin 00-95-21, and any subsequent amendments, are eligible for Federal financial participation under the waiver. To the extent that funds are allocated to the County by the Department, the County shall make the following waiver services, herein referred to as "waiver eligible services", available for all waiver eligible individuals who need them as documented in the individual program plan approved by the County:
 - a. Community habilitation services, which consist of residential and support services including adult training, prevocational services and supported employment;
 - b. Transportation services;
 - c. Therapy services consisting of visual/mobility, physical, occupational, speech/language, behavior therapy services and visiting nurse services in accordance with Department policy which is currently set forth in MR Bulletin 6000-90-05; titled: Therapy and Other Specialized Services.
 - d. Minor physical adaptations for the individual's residence or family vehicle;

- e. Service management in accordance with Department policy which is currently set forth in MR Bulletin 00-92-23; titled: County Responsibilities for Waiver Case Management.
 - f. Permanency planning services;
 - g. Respite services for individuals living in their own home, in the home of a relative, or in a family living home.
2. The following services and provisions, herein referred to as "waiver ineligible services" are excluded from Federal financial participation under the approved waiver, and shall be made available by the County to the extent that funds are allocated to the County by the Department or available to the individual through other means, e.g., Medical Assistance or other third party payors:
- a. Room and board for individuals in accordance with 55 PA Code Chapter 6200 Regulations Room and Board Charges;
 - b. Home furnishings and maintenance;
 - c. Clothing for the individual;
 - d. Prevocational, educational and supported employment services for individuals who were never residents of an ICF/MR, ICF, NF, or SNF.
 - e. Prevocational, supported employment and educational service which are available under a program funded under the Rehabilitation Act of 1973 or P.L. 94-142.
 - f. Other services which are available under the State's Medical Assistance Program, including certain specialized therapy and visiting nurse services, pursuant to item 5, page 7 of this agreement.
3. The County, as the Department's fiscal agent, is required to provide administrative services for the proper and efficient operation of the waiver eligible services.
4. All services must be provided as part of the County program pursuant to the Mental Health and Mental Retardation Act of 1966 and in compliance with the Department's regulations, policy and procedures for community mental retardation programs, services and facilities.

5. The Department shall hold the County harmless from any Federal and State audit exception which may result from policy directives and bulletins issued by the Department which are not in compliance with the provisions of the approved waiver or related Federal requirements.
6. All waiver funded residential service settings shall be dispersed within the community to foster each individual's social integration and participation with neighbors and the general population.
7. The county shall ensure that waiver funded residential settings do not exceed the resident capacity limits established by the Department in its approved waiver application.
8. The County shall conduct at least one annual administrative review of the services provided to a representative sample of individuals. This review will include visits with individuals at settings where services are provided, a review of program records, a review of the service management monitoring, and a review of individual satisfaction with services. The county will retain records noting the date of the review, the individuals visited, and the plan of correction for each finding of non-compliance with conditions of this supplemental grant agreement.

PREREQUISITES FOR PROVIDER PARTICIPATION

1. A provider is a person or agency that renders direct services and must be licensed, certified or approved by the appropriate State agency or County authority.
2. The County shall verify that providers of waiver services meet the requirements in item 1 above in accordance with Department policy which is currently set forth in MR Bulletin 6000-90-04, titled: Provider Agreements Under the 2176 Waiver.
3. The County shall certify approval of habilitation and other providers such as relatives, friends, and other individuals who are exempt from licensure, in accordance with Department policy which is currently set forth in MR Bulletin 00-92-24, titled: County Responsibilities for Waiver Funded Habilitation in a Private Home.
4. Providers whose Medical Assistance provider agreements have been terminated or who have been excluded from the Medicare Program are not eligible to receive waiver

funding. The County shall exclude such entities from receiving either direct or indirect 2176 Waiver payments on receipt of notification of such terminations and exclusions by the Department.

INDIVIDUAL PROGRAM PLAN DEVELOPMENT

1. The County is required to develop and approve a written individual program plan prior to each individual's receipt of waiver eligible services. This individual program plan shall be based on a written assessment or other documentation which supports the individual's need for each waiver funded service. This individual program plan shall include:
 - a. all waiver eligible and ineligible services the individual is authorized to receive in the home and community (See Appendix A: "Services" 1. a-g, and 2. a-e).
 - b. the estimated duration and frequency of each waiver eligible service and the provider of the service;
2.
 - a. The County shall ensure that each individual program plan is developed in conjunction with the individual's team consisting of, at a minimum, the individual and his/her representative, the individual's service manager, and major providers of service.
 - b. The County shall ensure that implementation of each individual program plan is coordinated in accordance with Department policy which is currently set forth in MR Bulletin 00-92-23, titled: County Responsibilities for Waiver Case Management.
3. The County shall authorize services based on the individual program plan. Such authorization shall be issued prior to the individual's receipt of waiver eligible services. This authorization, which can be the form MH/MR 11, must identify the service being authorized and the effective time period for the authorization for each waiver eligible service. Individual service rates or charges do not need to be specified as part of the service authorization if a unit charge or payment schedule has been established in a separate provider contract or agreement.

4. The County shall ensure the authorization for waiver eligible services and the individual program plan are updated to reflect significant changes in the individual program plan. A significant change in the plan shall include, but is not limited to, any change in the location of a residential service and any change in the provider of service. Minor shortfalls and variances in service delivery which routinely occur due to hospitalization or other reasons for non-utilization shall not be considered a significant change in services.
5. Waiver eligible services authorized by the County shall not duplicate services which are provided under the State Medical Assistance plan. However, services which are similar to those provided under the State plan are allowable under the waiver when they differ in definition, amount, duration or scope from those provided in the State plan.

OVR REFERRAL

1. The County shall assure that supported employment and vocational services are coordinated with the local District Office of Vocational Rehabilitation, in accordance with Department policy, which is currently set forth in MR Bulletin 00-95-23, titled: Coordination of Vocational Training and Supported Employment Under the 2176 Waiver.
2. The County shall only claim Federal financial participation under the waiver for supported employment and vocational services when the local District Office of Vocational Rehabilitation has documented that OVR funding for these services is not available and when the individual has once been a resident of an ICF/MR, ICF, NF, or SNF.

FREEDOM OF CHOICE

1. The County shall ensure that persons with mental retardation who are likely to require an ICF/MR level of care, or their legal representative, are informed of any feasible alternatives under the waiver and given the choice of either institutional or home and community based services in accordance with Department policy, which is currently set forth in MR Bulletin 99-85-02; titled: Beneficiary Choice Under the 2176 Waiver Program.

2. The County shall provide an opportunity for fair hearing to individuals who are not given the choice of home and community-based services as an alternative to ICF/MR care or who are denied the services of their choice or the provider(s) of their choice in accordance with Department policy, which is currently set forth in MR Bulletin 99-87-08; titled: Revised Fair Hearing Proceeding Related to Services Under the 2176 Waiver Program.

FINANCIAL ADMINISTRATION

1. a. The County shall base payments on rates or charges for services established in the individual program plan that are negotiated between the provider and the County MH/MR Program in accordance with 55 PA Code Chapter 4300, titled: Fiscal Manual for the County MH/MR Program.
 - b. The Department will participate in an allowance for service providers to retain revenue in excess of eligible expenses realized under the contract in accordance with 55 Pa. Code Chapter 4300.108. This allowance may be applied to both waiver eligible and waiver ineligible revenues at the discretion of the County MH/MR Program.
2. The County shall ensure that funding for waiver eligible services is not used (a) to purchase waiver ineligible services, (b) to provide services or benefits to individuals who are ineligible for waiver services or benefits, or (c) to purchase services rendered by providers who are ineligible to render waiver services.
3. a. The County shall prohibit payments for waiver services to anyone other than a provider, except in specified circumstances approved by the Department.
 - b. The County shall ensure that state payment for a waiver service furnished to a recipient by a provider is not made to or through a factor, either directly or by power of attorney. A factor means an individual or an organization, such as a collection agency or service bureau, that advances money to a provider for accounts receivable that the provider has assigned, sold or transferred to the individual organization for an added fee or a deduction of a portion of the

accounts receivable. A factor does not include a business agent, such as a billing service or an accounting firm, that furnishes statements and receives payments in the name of the provider, if the agency's compensation for this service is:

- (i) related to the cost of processing the billing
- (ii) not related on a percentage or other basis to the amount that is billed or collected; and
- (iii) not dependent upon the collection of the payment.

4. The County shall ensure that payments for waiver eligible services are reconciled to actual allowable costs at the end of the fiscal year.
5. The County shall ensure that all costs are appropriately distributed and accounted for in the annual reconciliation process.
6. The average per capita cost of waiver eligible services reported by the County for the fiscal year cannot exceed the average per capita cost for waiver eligible services established in the County's waiver allocation without the written consent of the Deputy Secretary for Mental Retardation.
7. The average per capita cost shall be computed by dividing the County's total waiver eligible maintenance allocation expenditures for the fiscal year by the total number of unduplicated individuals served by these expenditures in the fiscal year.
8.
 - a. The County is required to make payments to providers for waiver eligible services within the amounts established in the County's waiver allocation(s) and in any other special purpose allocation by the Department used for funding services for individuals receiving waiver services.
 - b. The County shall not claim expenditures which exceed the County's allocation for waiver eligible services, or other categorical and special purpose funding provisions for individuals receiving waiver services.
9. County requests for an allocation change resulting from expenditures exceeding an allocation must be submitted to the Department for approval. Costs in excess of

allocated funds cannot be reported by the County without the written consent of the Deputy Secretary for Mental Retardation.

10. The Department shall make quarterly waiver payments to the County.
11. The County is required to ensure that each provider of waiver service prepares billing for waiver eligible services at the end of each month or other timeframe approved by the Department and that the provider forwards this report to the County Office.
12. The County is required to ensure that the billing specifies the name(s) of the individual(s) receiving waiver eligible services or an alternate unique identifier approved by the Regional Program Manager; the name of the waiver eligible service; the number of actual units of waiver eligible service provided during the report period; the approved charge or rate for each waiver eligible service and the individual's service liability.
13. The County is required to establish a process for the quarterly review of all provider billings which ensures that:
 - a. services are being provided in accordance with the individual program plan.
 - b. all individuals are financially eligible for Federal financial participation based on a current eligibility notice from the County Assistance Office.
 - c. the individual's financial liability for services is collected in accordance with the County Assistance Office's current financial liability determination;
 - d. room and board charges and waiver ineligible services are properly reported;
 - e. appropriate third party payors are assessed for relevant service funding;
 - f. providers are eligible to render waiver services and have used their correct provider number in billing.
14. The County is required to consolidate waiver billings and adjustments and complete a Department of Public Welfare (DPW) quarterly report. The DPW quarterly report shall be forwarded to the Bureau of Financial Operations (BFO) within 14 working days following the end of the quarter. The amounts must be identified as waiver eligible or waiver ineligible expenditures.

15. The County is required to make adjustments to its DPW Quarterly Report on its quarterly review of provider billings. Adjustments shall be made in the fiscal quarter following the quarter in which the adjustments were reported by the provider with the exception of fourth quarter adjustments which shall only be included in the annual report. All quarterly adjustments including the fourth quarter adjustment must be reflected on the County's annual waiver expenditure report.
16. Annual reports shall be submitted to the Department for the waiver program in accordance with reporting instructions issued by the Department. These reports shall reflect actual service costs reported by providers. The final reconciliation shall be contingent on receipt of actual provider audited costs with any subsequent final adjustments made in the following year's reports. The annual reports shall be prepared in accordance with instructions and on forms provided by the Department.
17. The Department shall not require an audit of waiver eligible funding made to an individual who is not an agency with whom the County regularly contracts, in accordance with the County MH/MR Fiscal Manual, Section 4300.138. This exclusion would apply to families providing habilitation service and persons providing respite services.
18. All monies due by reason of liability imposed by the County Assistance Office through its determination of an individual's financial eligibility shall be applied to the cost of waiver eligible services, and reported on the County's expenditure reports to the Department.
19. The County shall not assess an individual for any financial liability for services under the Department's 55 PA Code Chapter 4305 Regulations for waiver services provided under this agreement.
20. The County shall ensure that waiver funding is not claimed until the date the individual first receives waiver funded services and after all of the following State assurances are met:
 - a. the County Assistance Office has provided notice of individual eligibility and financial liability for services;

- b. the individual has exercised freedom of choice in accordance with Department policy, which is currently set forth in MR bulletin 99-85-02 and MR Bulletin 99-87-08;
 - c. the individual has a County approved individual program plan;
 - d. providers are appropriately licensed, certified and/or approved to render waiver services.
21. Reasonable and appropriate costs incurred prior to an individual meeting all the conditions in subparagraph 20 are eligible for waiver funding when:
- a) the individual is in the process of enrolling into waiver funded services;
 - b) each service provided comports with the definition of a compensable waiver service;
 - c) the provisions of subparagraph 20d are met; and
 - d) the provider maintains adequate financial records to substantiate the costs which are actually incurred.
22. The County may use its waiver ineligible start-up allocation for the cost of waiver ineligible funded services incurred prior to the determination of the individual's eligibility for services.
23. The County cannot submit a claim for waiver eligible services for an individual until the individual meets all requirements of subparagraph 20.
24. The County agrees that all unresolved disputes between the County and the Department are subject to the exclusive jurisdiction of the Department's Office of Hearings and Appeals.

ELIGIBILITY FOR SERVICES

The County shall ensure that individuals are eligible for an ICF/MR level of care in accordance with criteria and procedures established by the Department which are currently set forth in M/R Bulletin 00-96-09, titled: Individual Eligibility for 2176 Waiver Services.

The County shall cooperate with the County Assistance Office in determining an individual's initial and continuing financial eligibility for waiver services in accordance with

procedures established by the Department, which are currently set forth in M/R Bulletin 00-96-09, titled: Individual Eligibility for 2176 Waiver Services.

PROVIDER RESPONSIBILITIES UNDER CONTRACT

1. The County is required to:
 - a. enter into an annual contract with providers of waiver eligible service in accordance with the Department's Fiscal Regulations for the County MH/MR Program, 55 PA Code 4300 and in compliance with Sections 1902(a)(4) and 1902(a)(27) of the Social Security Act, relating to record keeping and the furnishing of information by all providers, and 42 CFR Section 431.107 which implements the above-cited statutory provisions;
 - b. provide that all unresolved contract disputes between providers and Counties are subject to the requirements of 55 PA Code §4300.139(d) (relating to procedures to resolve contract disputes) and to portions of the Judicial Code relating to the use of arbitration and the jurisdiction of the Court of Common Pleas.
2. All contracts for waiver eligible services shall include the following additional standard provisions:
 - a. The provider shall use funds available under the waiver for only those individuals authorized by the County and eligible to receive waiver eligible services;
 - b. The provider shall use funds available for waiver eligible services for only those services authorized by the County in accordance with the individual's individual program plan.
 - c. The provider shall maintain adequate program and financial records which separately identify recipients, funds and services under the waiver from recipients, funds and services reimbursed by other means;
 - d. The provider shall preserve books, documents, and records until the expiration of four years after the waiver funded service is furnished under the contract and give full and free access to (i) the Commonwealth, (ii) the U.S. Comptroller General,

- (iii) the U.S. Department of Health and Human Services, and their authorized representatives;
- e. Records which relate to litigation or the settlement of claims arising out of the performance or expenditures under this contract, to which exception has been taken by the auditors, shall be retained by the provider until such litigation, claims, or exceptions have reached final disposition;
- f. The provider assures that it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The provider further assures that in the performance of this contract, it will not knowingly employ any person having such interest;
- g. The provider understands and agrees that all services provided under this contract and billed by the provider to the County for waiver services are subject to all of the provisions of this agreement and that the provider shall be held fully responsible for the performance thereof;
- h. The provider further understands and agrees that this contract is subject to all pertinent Federal, State and local laws and regulations and all amendments made thereto. Definitions of service, eligibility of individuals of service and other limitations in this contract are subject to modification by amendments to Federal and State laws and regulations without further notice to the provider;
- i. The provider agrees to furnish to the Commonwealth, the U.S. Comptroller, the Department of Health and Human Services, or their authorized representatives such information as required under 42 CFR 431.107;
- j. The provider agrees that these standard provisions will be applicable to and included in each subcontract for waiver services and shall also apply to organizations related to Contractor/Subcontractor;
- k. If the contract to provide waiver eligible services is terminated, the provider agrees to preserve the records relating to waiver funded services provided up to

the effective date of termination in accordance with the requirements of paragraphs d. and e; and

1. In the best interest of the individual and in order to maintain the individual's eligibility for medical assistance, the provider, whenever serving as representative payee for Social Security or other Federal benefits, shall remit promptly and in full, all funds received from the State Center for the individual which are due and owing to the State Center for care received. This remittance shall take place within 30 days after the representative payee receives the funds.