



# MENTAL RETARDATION BULLETIN

COMMONWEALTH OF PENNSYLVANIA • DEPARTMENT OF PUBLIC WELFARE

DATE OF ISSUE

December 1, 1981

EFFECTIVE DATE

Immediately

NUMBER

99-81-51

**SUBJECT** Policies and Procedures Governing Admissions, Commitments, Transfers and Discharges at State-Operated Mental Retardation Facilities

**BY**

JENNIFER L. HOWSE, PhD  
Deputy Secretary for Mental Retardation

**SCOPE:** DPW Headquarters Units  
Regional MR Commissioners  
State Center Superintendents  
MR Unit Directors  
County MH/MR Administrators  
State Hospital Superintendents  
President Judges  
Public Defenders  
Regional DPW Attorneys  
Base Service Units

**PURPOSE:** The purpose of this Bulletin is to establish the Department's revised policy and procedures on admissions, commitments, transfers, leaves and discharges of persons with respect to State Centers and MR Units. This policy replaces DPW Bulletin 1232 issued on May 30, 1974. Mental Retardation Bulletin 99-81-31 on MR Units continues to be in effect.

**POLICY:** The policy of the Department of Public Welfare and the Office of Mental Retardation is to refine the residential service system so that the needs of mentally retarded clients are met in the most appropriate program setting. All placement decisions are to be made on an individual basis and must take into account the client's legal rights and program needs as well as developmental program requirements as defined in the MH/MR 5200, Appendix IV Regulations. In addition, no admission which jeopardizes the current Medical Assistance certified capacity will be permitted.

**STANDARDS AND PROCEDURES:**

Pursuant to the MH/MR Act of 1966, the following standards and procedures must govern all client movement in State Centers and MR Units.

I. Admissions:

A. Voluntary (Section 402) - The application of this provision is limited to: (1) clients 18 years or older who can provide consent (expressed preference) to the admission; this provision will be applicable in rare situations only; (2) Pursuant to the

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:

Appropriate Regional Commissioner for Mental Retardation

United States Supreme Court decision in Institutionalized Juveniles v. The Secretary of Public Welfare, voluntary admissions by parents or guardians of their minor children are permissible only when the requirements set forth in Volume 3 Pennsylvania Bulletin 1840 (September 1, 1973) (copy attached) are met.

B. Emergency (Section 405) - Active case management will usually obviate the necessity of this provision. If appropriate, however, a ten day emergency admission may be authorized by the appropriate county MH/MR administrator providing that (a) the standard of risk is established, (b) the proposed facility is willing and able to accept the client and (c) the appropriate Regional Commissioner of Mental Retardation approves. Under no circumstances can the placement exceed ten days.

C. Court Commitment (Section 406) - On October 28, 1976; the Federal District Court ordered in Goldy v. Beal (see Pennsylvania Bulletin Volume 6 Number 48 - November 13, 1976) that all county court of common pleas commitments of mentally retarded persons must meet the following standard:

1. The person is impaired in adaptive behavior to a significant degree and is functioning at an intellectual level two standard deviation measurements below the norm as determined by acceptable psychological testing techniques; and
2. The impairment and the resultant disability were manifested before the person's 18th birthday and are likely to continue for an indefinite period; and
3. The person, because of his/her retardation presents a substantial risk of physical injury to himself/herself or physical debilitation, as demonstrated by behavior within 30 days of the petition, which shows that he/she is unable to provide for, and is not providing for, his/her most basic need for nourishment, personal and medical care, shelter, self-protection and safety and that provision for such needs is not available and cannot be developed or provided in his/her own home or in his/her own community without residential placement.

The petition for a 406 hearing will generally be through the responsible county MH/MR administrator although the statute does not preclude a family member or "any other responsible" person from filing a petition to the county court. Superintendents of MR Centers and MR Units will not petition

for a 406 commitment hearing unless expressly approved by the Deputy Secretary of Mental Retardation.

In order to ensure that all appropriate facts are brought before the court in the 406 hearing, the petitioner should notify all interested and applicable parties of the intent to petition at least 30 calendar days prior to the petition filing.

Included with such notice, the county case manager must provide a complete summary of the case record and pre-admission evaluation criteria which should include complete medical, psychological, social and program data.

Following the receipt of the notice and case material, the facility will arrange for an interview with the prospective client and family in conjunction with the county case manager. The proposed facility will also notify the appropriate Regional Commissioner of Mental Retardation and the Department's Regional attorney. It will be the responsibility of the Regional Commissioner or designee to evaluate the availability of all alternative resources to an institutional commitment and to discuss the application of such resources with the county MH/MR administrator.

If it becomes necessary to file a 406 petition, the county MH/MR administrator will provide notice of the hearing date to the proposed facility and the Regional Commissioner of Mental Retardation who will advise the Regional Department attorney. Notices should be received at least five days prior to the hearing date.

Court commitments should be time-limited and should not exceed a duration of one year. At least three months prior to the expiration of a commitment, the Center or Unit will contact the responsible county MH/MR administrator to ensure that the case manager is actively involved in the development of community alternatives pursuant to the Life Management Plan.

II. Transfers (Section 416) - Client movement under this provision is limited to the transfer of clients from one State-operated Mental Retardation facility to another. Prior to such a transfer, all of the following must be evident:

- A. The parent/guardian of a minor client (under age 18) must consent to the transfer. In the case of an adult client, the procedures set forth in Section IV must be followed. In all instances, the client should be permitted to participate in the decision process according to his/her capabilities.
- B. The receiving facility must provide evidence to all parties that the program needs of the client can be met in a quantity and quality equal to the program being provided in the transferring facility.

- C. The responsible county MH/MR administrator, upon review of the client's Life Management Plan, must agree to the transfer in writing.
- D. The transfer of the client will not jeopardize the Federal ICF/MR certification status of the receiving facility.
- E. The receiving facility must notify the Regional MR Commissioner and receive approval in writing from the Regional Commissioner of Mental Retardation.
- F. The receiving facility must receive a copy of the updated Life Management Plan, including goals and objectives of the new placement. The plan must be received two weeks prior to the transfer.
- G. In all instances, parents/guardians and advocates, if designated, are to be provided opportunities to participate in the decision-making process as prescribed in the Section IV.

In addition to the factors above, strong consideration should be given to individual transfers when the transfer will result in the additional benefit of moving the client closer to home.

### III. Client Movement from State MR Facility to Community Residential Program

Client movement from a State mental retardation facility to a community residential program must include the following procedures:

- A. Identification of clients for possible placement into community residential programs as a result of:
  - 1. Client's annual staffing review. Case managers, parents and/or guardians are to be invited to the annual staffing review.
  - 2. Notification received by State Center/MR Unit from county administrator of a vacancy or new slot in community residential program.
- B. State Center/MR Unit social service staff and county case manager will work with the parents/guardians and the client in matching functional and skill levels of the client to a community residential program within his/her home county.

- C. The client and his/her parents/guardians are to be invited to visit the prospective community residential program and meet with the other clients and staff.

#### IV. Parental Participation: Policy and Procedures

- A. Policy: The Department recognizes and supports sustained interest and active involvement of families/guardians in the lives of all mentally retarded citizens. It is also recognized that many residents of our State facilities have not had the benefit of interested, continuous relationships with parents and other immediate family members. All State and county mental retardation personnel having responsibility for mental retardation services should make every effort to take all appropriate steps to continue natural family relationships unless the adult client expressly indicates a desire to the contrary.

Therefore, although it is duly noted that the legal rights and accompanying responsibilities differ with respect to minor clients and adult clients, parents and legal guardians of all clients should be given an opportunity to participate in all residential placement decisions; exceptions may be taken only if an adult client expressly indicates a desire to exclude the family.

Guardianship in the context of this policy refers to a court-appointed guardian of the person following a judicial finding of incompetence. Guardianship of the person is not to be confused with a guardian of an estate. However, it is possible for a court to appoint a guardian of the estate and of the person.

Since State statute does not specify the authority of court-appointed guardians of the person, for this policy we are regarding guardians of adult clients in the same relationship as parents of adult clients with the following two exceptions: a) the adult client may not exercise his/her option to exclude the personal guardian's participation in placement decisions and b) court resolution may be sought when legal guardians object to a placement that the client prefers.

- B. Notice to Parents/Guardians: Written notice of the planning process must be given to parents and legal guardians of all clients. Parents/guardians must be invited to participate in the process. Such notice will generally be provided by the county case manager. However, when a Section 416 transfer is contemplated, such notice shall be provided by the Superintendent/Director of the facility where the client is residing.

At the point in the planning process when a placement decision is probable, the parents/guardians must receive written notice of the decision and the planned placement date. Such notice must be provided as soon as possible but not later than 30 days prior to the planned placement date. The notice must include a request for a response which should elicit a concurrence or non-concurrence. If the response indicates a non-concurrence, it is the responsibility of the Superintendent/Director or county case manager to arrange a meeting with the parents/guardians and all other appropriate parties to discuss/resolve the expressed concerns.

- C. Procedures - Minor Clients: Residential placements, including Section 416 transfers of minor clients, may not occur without the written consent of the parent/guardian. In instances where the county case manager contends that the parents/guardians are not acting in the best interest of the minor client, the Section 406 procedure should be followed in order to resolve the issue by a third party, i.e., the appropriate county court of common pleas.

These procedures are not applicable to members of the Pennhurst class. Placements of minor clients currently are governed by the United States Eastern District Federal Court.

- D. Procedures - Adult Clients: In recognition of varying abilities of adult clients to express preferences as well as varying degrees of interest and involvement from parents/guardians, the procedures set forth below are to be followed:

1. Adult Client Expresses Preference for Proposed Placement; Parents/Guardians Concur

The placement proceeds according to the plan.

2. Adult Client Expresses Preference for Proposed Placement; Parents/Guardians Non-Concur

Pursuant to the notice requirements above, a meeting with the client, parents/guardians and all other appropriate parties must occur. This meeting is intended to serve as a forum to discuss the objections and concerns expressed by the parents/guardians. Professional staff, including the Superintendent, should make every effort to resolve concerns and objections to the satisfaction

of all parties. However, if such resolution is not possible, the client's preference must prevail and the placement should proceed according to the plan unless the objections of the legal guardians are not resolved.

In instances where objections of the personal guardian are not resolved in the forum and the county case manager and Superintendent/Director contend that the planned placement is in the best interests of the client, final resolution will be sought by the appropriate county court of common pleas. In such instances, a joint 406 petition will be filed by the responsible county MH/MR administrator and the Superintendent/Director who will have the responsibility to present the proposed plan to the court.

3. Adult Client Expresses Objection to Placement; Parents/Guardians Non-Concur

The placement should not occur unless specifically ordered by the appropriate county court of common pleas via Section 406.

4. Adult Client Is Unable to Express a Preference; Parents/Guardians Non-Concur

Pursuant to the notice requirements above, a meeting with the client, parents/guardians and all other appropriate parties must occur. In this forum all professional staff should make every effort to resolve the concerns and objections raised by the parents/guardians. However, if such resolution is not possible in this forum, and the county case manager and Superintendent/Director contend that the planned placement is in the best interests of the client, final resolution will be sought by the appropriate county court of common pleas. In such instances, a joint 406 petition will be filed by the responsible county MH/MR administrator and the Superintendent/Director who will have the responsibility to present the proposed plan to the court.

These procedures are not applicable to members of the Pennhurst class. Placements of adult clients are currently governed by the United States Eastern District Federal Court.

V. Leaves of Absence

- Absences from a facility include:

Annex A hereto to the Department of Justice for approval as to legality as required by law.

(C) The Secretary of the Commonwealth shall duly certify this order and Annex A hereto and deposit the same with the Legislative Reference Bureau as required by law.

(D) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

By the Department of State,  
Bureau of Elections.

C. DeLORES TUCKER,  
Secretary of the Commonwealth

[4 Pa. Code Ch. 171]

### BUREAU OF ELECTIONS

The preamble of all Nomination Papers shall read:

#### NOMINATION PAPER

We, the undersigned, all of whom are qualified electors of Pennsylvania and of \_\_\_\_\_ County, hereby nominate the following persons as candidates representing the \_\_\_\_\_ Body:

[Pa. S. Doc. No. 73-1849. Filed August 31, 1973,  
9:00 a.m.]

## Title 55—PUBLIC WELFARE

### DEPARTMENT OF PUBLIC WELFARE

#### Additional Procedural Safeguards for Juveniles Admitted to Institutions.

The Department of Public Welfare by this Order adopts additional procedural safeguards for juveniles admitted to institutions pursuant to § 402 and § 403 of the Mental Health and Mental Retardation Act.

Notice of the proposed rule making was published in 3 Pa. B. 536, March 24, 1973.

After consideration of the views presented by interested persons, the regulations are adopted with some changes. Additions have been made in Paragraphs 1, 2, 6, 7 and the form of notification to permit referral of mentally retarded juveniles to institutions by either a pediatrician, or general physician or psychologist. A new paragraph has been written to reflect whether the juvenile is capable of understanding the notification form. In these regulations, the word "applicant" shall refer to the person who signed the juvenile in while the word "juvenile" shall refer to any youth 18 years of age or younger. Several com-

ments urge that the role of the Public Defender's Office be replaced by a legal service program; however, the Public Defender Act, December 2, 1968 P. L. 1144, (No. 358) § 1 *et seq.*, (16 P. S. 9960.6(a), (c), specifically makes the Public Defender responsible for persons who are or may be subject to commitment under the Mental Health and Mental Retardation Act of 1966. To the extent, however, that Legal Services other than the Public Defender are readily available, such Legal Services may be utilized in lieu of the Public Defender's Office and § 5, § 6 and § 9 of these regulations have been changed accordingly. These regulations shall not be interpreted to permit direct intake into state-operated facilities. Although the Department is adopting these regulations, it will evaluate the procedures at the end of six months. If necessary, the Department will at that time hold public hearings.

The regulations hereby adopted are adopted pursuant to Article 2, § 201 of the Mental Health and Mental Retardation Act of 1966, Act of October 20, 1966, No. 6, Third Special Session.

The Department of Public Welfare finds:

1. That public notice of intention to adopt the administrative regulations adopted by this Order has been duly given pursuant to §§ 201 and 202 of the Commonwealth Documents Law (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code, §§ 7.1 and 7.2.

2. That the adoption of the regulations in the manner provided in this Order is necessary and appropriate for the administration of the Mental Health and Mental Retardation Act of 1966.

The Department of Public Welfare, acting pursuant to the Public Welfare Code, and the Mental Health/Mental Retardation Act of 1966, orders:

(A) The regulations of the Department of Public Welfare are amended to read as set forth in Annex A to this order.

(B) The Secretary of the Department of Public Welfare shall submit this Order and Annex A hereto to the Department of Justice for approval as to legality as required by law.

(C) The Secretary of the Department of Public Welfare shall duly certify this Order and Annex A hereto and deposit same in the Legislative Reference Bureau as required by law.

(D) This order shall take effect upon publication.

HELENE WOHLGEMUTH,  
Secretary of Public Welfare

### Annex A

#### Rules Relating to Persons 18 Years of Age or Younger Admitted to Mental Health or Mental Retardation Institutions Pursuant to §§ 402 and 403 of the Mental Health and Mental Retardation Act.

1. All juveniles aged 18 and younger to be admitted to an Institution must be referred from a recognized medical facility, Mental Health/Mental Retardation therapist or Mental Health Agency; however, mentally retarded juveniles may be referred by either a pediatrician, or general physician or psychologist;

2. This referral must be accomplished by a psychiatric evaluation and that report must indicate with specificity the reasons that the person requires institutional care; however, a medical or psychological evaluation may accompany the referral of a mentally retarded juvenile;

3. The Director of the Institution or his delegate, shall have conducted an independent examination of the proposed juvenile, and if his results disagree with the professional's opinion, the Director, or his delegate, shall discharge the juvenile;

4. The telephone number and address of the juvenile's parents or the person who is requesting admission for the juvenile, must accompany the referral;

5. Within 24 hours after the juvenile's admission, every youth who is at least 13 years of age must receive written notification (which he signs) explaining his rights indicating that he will be given a status report periodically of his condition; that he can contact by telephone or by mail his parents or the person who requested his admission; and that he will be furnished with the number of counsel (Public Defender's number; Legal Services) that he can call for representation. An appropriate person shall explain this notice (attached);

6. In the event that a juvenile whose chronological age is 13 or older objects (either orally or in writing) to remaining in the Institution, the Director, or his delegate, if he feels it is necessary for the youth to remain, may continue the institutionalization for two business days during which time he shall notify the applicant and the referral unit so that either party may institute a 406 proceeding. During that same two-day period, the Director, or his delegate, shall notify the Public Defender's Office or notify Legal Services readily available of the juvenile's need for legal representation. If a 406 proceeding is begun during the two-day period, the juvenile shall remain