



# DEVELOPMENTAL PROGRAMS BULLETIN

## COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE

DATE OF ISSUE  
**January 30, 2008**

EFFECTIVE DATE  
**January 1, 2008**

NUMBER  
**00-08-03**

SUBJECT:

**Procedures for Service Delivery Preference**

BY:

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**Deputy Secretary for Developmental Programs**

### SCOPE:

Administrative Entity Directors or Administrators  
County Mental Health and Mental Retardation Program Administrators  
Supports Coordination Entities

### PURPOSE:

This bulletin disseminates the Office of Developmental Programs' (ODP's) policy regarding an individual's preferred choice of service delivery preference for either Home and Community-Based Waiver or Intermediate Care Facility for the Mentally Retarded (ICF/MR) services prior to Waiver enrollment.

### BACKGROUND:

Federal regulations at 42 CFR 441.302 outline assurances that States must make to the Centers for Medicare and Medicaid Services (CMS) in order to ensure initial and subsequent approvals of a Medicaid Waiver. The assurance at 42 CFR 441.302(d) requires that "when a recipient is determined to be likely to require the level of care provided in a hospital, NF [Nursing Facility], or ICF/MR, the recipient or his or her legal representative will be given the choice of either institutional or home and community based services." The term "recipient" as used in 42 CFR 441.302(d) is a person who is receiving services through the Medical Assistance Program (also referred to as Medicaid).

This bulletin supersedes Bulletin 00-00-09 entitled "*Service Preference in Medicaid Waivers for Individuals with Mental Retardation*", and is being revised in an effort to meet the following objectives:

1. To simplify the service delivery preference process.
2. To provide consistency in application and timelines through the standardized "*Home and Community- Based or ICF/MR Application and Service Delivery Preference form*" (DP 457) (Attachment #1).

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:

**Appropriate Developmental Programs Regional Office**

3. To minimize the amount of paperwork required to document an individual's service delivery preference should funds become available to enroll the individual in either the Consolidated or Person/Family Directed Support Waiver.
4. To update information based upon new applications and processes such as the Home and Community Services Information System (HCSIS).
5. To clearly define what constitutes service delivery preference.
6. To provide standardized letters that Administrative Entities (AEs) and County Programs or their designee send to the individual when DP 457 is completed.

## **POLICY:**

### **Individuals Who must be Provided With Service Delivery Preference**

A person who has mental retardation, is enrolled in the Medical Assistance Program, and is likely to require an ICF/MR Level of Care must be provided with service delivery preference. Anyone who is eligible for mental retardation services and enrolled in the Medical Assistance Program meets this requirement.

This includes:

- Individuals with mental retardation who are enrolled in Medical Assistance and register with the AE or County Program for the first time.
- Individuals with mental retardation who register with the AE or County Program for the first time and are determined eligible for Medical Assistance by the County Assistance Office (CAO) at that time.
- Those individuals already registered with the AE or County Program and already enrolled in Medical Assistance who have not completed a service delivery preference form.

When an individual registers with the AE for the first time and the individual is not currently enrolled in Medical Assistance, an application must be submitted to the CAO for a determination of eligibility for the Medical Assistance Program. Once the individual is enrolled in the Medical Assistance Program (also known as Medicaid), the individual or their surrogate<sup>1</sup> shall be offered the opportunity to indicate their service delivery preference. This is done by completing Attachment 1, *Home and Community-Based or ICF/MR Application for Service Delivery Preference Form (DP 457)*.

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<sup>1</sup>Not everyone can make legally binding decisions for themselves. This would include minor children and some adults who have substantial mental impairment. In these instances, a substitute decision-maker may be identified under State law. Substitute decision-makers have various legal titles, but for the purposes of this bulletin, they will be referred to as "surrogates." "Surrogates" include the following:

- Parents of children under 18 years of age under the common law and 35 P.S. § 10101.
- Legal custodian of a minor as provided in 42 Pa.C.S. § 6357.
- Health care agents and representatives for adults as provided in 20 Pa.C.S. Ch. 54.
- Guardians of various kinds as provided in 20 Pa.C.S. Ch. 55 (as limited by 20 Pa.C.S. § 5521(f)).
- Holders of powers of attorney of various kinds as provided in 20 Pa.C.S. Ch. 56.
- Guardians of persons by operation of law in 50 P.S. §4417(c).

Any of these would be considered "legal representatives" as the Center for Medicaid and Medicare Services uses that phrase. Please see *Application for a §1915(c) Home and Community-Based Waiver [Version 3.4]: Instructions, Technical Guide and Review Criteria*, page 287 [[www.cms.hhs.gov/HCBS/02\\_QualityToolkit.asp](http://www.cms.hhs.gov/HCBS/02_QualityToolkit.asp)].

For individuals already receiving Medical Assistance benefits and registered with the AE or County Program who have not completed a DP 457 form, the AE or County Program should ensure completion of the form during the individual's next individual planning meeting. Individuals currently enrolled in a Waiver or placed in an ICF/MR facility who have already designated their service delivery preference do not need to complete DP 457 unless the individual wishes to choose a different service delivery option.

Completing the DP 457 form is not a guarantee that the individual meets the ICF/MR Level of Care criteria, but that they are "likely" to meet the requirements based on a preliminary determination of eligibility. The ICF/MR Level of Care determination is subject to formal review before Waiver services are received by the individual or placement is made to an ICF/MR facility.

### **Providing Assistance to Individuals Applying for Medical Assistance and Home and Community-Based Services (HCBS) or ICF/MR Services**

In accordance with current Waiver requirements, the AE or County Program shall ensure that all individuals not previously determined eligible for Medical Assistance are provided assistance in applying for Medical Assistance. This offer of assistance and the date it was offered shall be documented in HCSIS within the Demographics screen under Medicaid, and shall also be documented in the individual's service notes.

Individuals or their surrogates may also initiate an application for Waiver-funded or ICF/MR services by completion of a *Home and Community-Based or ICF/MR Application and Service Delivery Preference Form* (DP 457).

### **Informing Individuals about Other Feasible Alternatives**

Individuals who are determined likely to meet ICF/MR level of care or their surrogate must be informed of feasible HCBS alternatives funded under the Waiver. This is a requirement that must be met before an individual is given the choice of service delivery preference. Feasible alternatives include the types of Waiver and non-Waiver services that may be available to the individual, even if they are not currently available to meet the individual's needs due to funding, Department allocation, or system capacity.

The AE or County Program may delegate part or all of its responsibilities to provide information about feasible service alternatives to a Supports Coordination Entity or other Qualified Mental Retardation Professional (QMRP) who meets criteria established in 42 CFR 483.430(a), as long as this designee does not present a conflict of interest in presenting this information to the individual. Conflict of interest, for purposes of this bulletin, is defined in accordance with the *County Mental Health and Mental Retardation Fiscal Manual*, 55 Pa. Code § 4300.140 (relating to Conflict of Interest). A provider of Waiver or ICF/MR services, except for a qualified Supports Coordination Entity or a County functioning as an AE, may not be delegated this responsibility.

To the extent that feasibility of Waiver enrollment is contingent upon available funding, the AE or County Program is required to ensure the completion of the Prioritization of Urgency of Need for Services (PUNS) for an unmet need. The PUNS is completed in accordance with the processes outlined in the PUNS Manual and the completed PUNS form indicates the individual's PUNS category of need. The individual or surrogate must

be informed that Waiver enrollment shall be offered based on the individual's PUNS category, subject to the individual's eligibility and level of care requirements and the availability of funds. For more information regarding the PUNS process, please refer to Bulletin 00-06-15, "*Prioritization of Urgency of Need for Services (PUNS) Manual*".

AEs or County Programs that receive requests for information about services for people residing in a County outside of their home County jurisdiction are required to provide the requested information along with other assistance that may be necessary.

### **Providing Individuals With Service Delivery Preference**

When an individual has mental retardation, is receiving benefits through the Medical Assistance Program, and is determined likely to require an ICF/MR Level of Care, the AE or County Program is required to offer the individual or surrogate the opportunity to designate a preference to receive HCBS funded under the Waiver, or to receive care in an ICF/MR.

The AE or County Program is required to use the DP 457 form when offering an individual or surrogate service delivery preference between Waiver-funded services and ICF/MR services. A preference for Waiver-funded services must be expressed prior to the enrollment of the individual into the Waiver for individuals offered service delivery preference after the effective date of this bulletin. The date of expression of the service delivery preference must be documented in HCSIS in the 'Service Preference' field of the Eligibility Determination screen.

When explaining the differences of service delivery preference between Waiver-funded services and ICF/MR services, the AE or County Program is required to explain to the individual or surrogate that the receipt of Waiver services is contingent upon the following:

1. Confirmation that the individual qualifies for Medical Assistance in Pennsylvania.
2. Confirmation that the individual qualifies for an ICF/MR Level of Care.
3. Allocation of sufficient Waiver funding and an opportunity to support Waiver enrollment for the individual.
4. Confirmation that the individual has a completed PUNS and has been placed in the appropriate category based on identified needs.
5. The completion of a needs assessment to inform the planning process. Upon implementation of the ODP standardized needs assessment (that is, the Supports Intensity Scale© and Pennsylvania Plus), the standardized assessment must be used to meet this requirement for individuals aged 16-72. Individuals under 16 and over 72 years of age will receive the needs assessment used by the AE or County Program at that time.
6. The development of an Individual Support Plan (ISP) for the individual.

The above criteria must be met before an individual is enrolled in a Waiver as outlined in the "*Individual Eligibility for Medicaid Waiver Services*" Bulletin<sup>2</sup>.

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<sup>2</sup>Bulletin 00-08-04 entitled "*Individual Eligibility for Medicaid Waiver Services*" will be published in final form in the near future.

Following the completion of the Service Delivery Preference form, the AE or County Program will inform the individual of available options. The individual or surrogate has the right to change the service delivery preference at any time by contacting the individual's Supports Coordinator and completing a new DP 457 form.

Standardized letters are attached to this bulletin and should be used when the individual or surrogate chooses Waiver (Attachment 2) or ICF/MR (Attachment 3) as the service delivery preference option, or does not specify or refuses to choose a service delivery preference option (Attachment 4). These letters must be sent to the individual or surrogate within 20 calendar days from the date the DP 457 is signed and completed by all parties. A copy of the letter must be maintained in the individual's file at the AE or County Program until four years after the individual's case file has been closed.

An individual or surrogate has the right to request a fair hearing before the Department of Public Welfare, Bureau of Hearings and Appeals, if the individual or surrogate was not given the opportunity to express a service delivery preference for either Waiver-funded or ICF/MR services. Please refer to the bulletin entitled "*Due Process and Fair Hearing Procedures for Individuals with Mental Retardation*", for information relating to the circumstances when an appeal may be filed and the process to follow to file an appeal<sup>3</sup>.

**Additional Circumstances:**

- The AE or County Program is required to explain that state-operated ICFs/MR are not a service option for children (17 years of age or younger) pursuant to Bulletin SC-94-01, entitled "*Closure of Admissions of Children to State-Operated Intermediate Care Facilities for the Mentally Retarded*", issued December 14, 1994. Specific state-operated ICFs/MR may also be precluded when an admission or a continued stay in an ICF/MR is countermanded by a settlement decree, court order, or Department policy. Regional Offices of Developmental Programs are available to provide assistance to AEs and County Programs, individuals and their surrogates in locating nonState ICFs/MR.
- If an individual is eligible for more than one HCBS Pennsylvania Waiver, the AE or County Program is required to inform the individual or surrogate about the feasibility of each option and to explain the following:
  - Funding for services under each Waiver will be based on the needs identified and authorized in the individual's ISP or other individual plan and the available Waiver slots and funds.
  - Individuals can receive services under only one Medicaid Waiver at a time.
- If an individual or surrogate chooses not to designate service delivery preference by marking the "None at this time" block in Section II of the DP 457 form, the AE or County Program is required to document that the preference has been offered and that the individual or the surrogate has chosen not to designate a preference for services. A copy of completed DP 457 and the letter indicating that no

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<sup>3</sup>Bulletin 00-08-05 entitled "*Due Process and Fair Hearing Procedures for Individuals with Mental Retardation*" will be published in final form in the near future.

service delivery preference was chosen is sent to the individual or surrogate to document the choice (Attachment 4) with a copy kept in the individual's file at the AE or County Program. Choosing not to designate a service delivery preference does not alter the requirement for the AE or County Program to assist the individual in locating needed services, or prevent the individual from declaring a service delivery preference at another time, even when these services are not funded under the Waiver.

- If an individual or surrogate indicates ICF/MR as their service delivery preference, the AE or County Program is required to refer the individual to ICFs/MR which may meet the individual's needs.
- Individuals 18 years of age and older who are determined likely for an ICF/MR level of care and do not have a surrogate may choose between Waiver-funded home and community-based and ICF/MR services. Every accommodation available to the individual (for example, communication devices, interpreters, or physical assistance as needed) must be used to afford the opportunity to the individual to communicate a preference. This communication will sometimes be non-verbal. The QMRP will make a determination, after an appropriate face-to-face assessment in accordance with applicable professional standards, whether the individual is able to communicate the individual's preferences nonverbally and, if so, what that preference is.

If the individual has been determined incompetent to make the service delivery preference decision, a surrogate will be chosen as set forth below. The following hierarchy of order will be followed to choose the surrogate for individuals 18 years of age or older:

1. A health care agent designated by the individual.
2. A guardian appointed by the court and given authority to make health care decisions either specifically or by being made plenary guardian (20 Pa. C.S. Chapter 55).
3. In the absence of the above, any of the following, in descending order of priority, may agree to be the surrogate.
  - a. The spouse (unless an action for divorce is pending).
  - b. An adult child.
  - c. A parent.
  - d. An adult brother or sister.
  - e. An adult grandchild.
  - f. An adult who has knowledge of the individual's preferences and values, including, but not limited to, religious and moral beliefs.

### **Service Delivery Preference Forms and Required Documentation:**

Documentation must be maintained in accordance with the current *Administrative Entity Operating Agreement*. All correspondence and a copy of an individual's Service Delivery Preference (DP 457) must be given to the individual's family or surrogate once all signatures have been obtained and must be maintained:

- In the individual's personal file.

- On file with the AE or County Program until four years after the individual's case file has been closed.

AEs or County Programs must ensure that HCSIS is utilized whenever an individual's service delivery preference decision is completed. The AE or County Program that offers the individual service delivery preference, or revises service delivery preference with the individual, must record the date and service delivery preference choice in HCSIS in the 'Service Preference' field of the Eligibility Determination screen.

**OBSOLETE BULLETIN:**

Bulletin 00-00-09, "*Service Preference in Medicaid Waiver for Individuals with MR*" as it pertains to service delivery preference.