



## What Should I Know About Mediation and Appeals?

NOTE: In addition to the person needing supports, “you” also refers to the family member or friend who will assist him or her to get the needed supports and services.

### What is Mediation?

- Mediation is a way to resolve disputes between you and the County Mental Retardation Program concerning the identification, evaluation or the provision of appropriate waiver services or supports.
- Your county is responsible for informing you of your right to mediation when the above conditions apply. Mediation is through an independent mediation entity, which is currently the Office for Dispute Resolution (ODR). An ODR mediator is available on the request of and at no charge to your County MH/MR Program or to you. The address and phone number for ODR is:

Office for Dispute Resolution  
6340 Flank Drive, Suite 600  
Harrisburg, Pennsylvania 17112  
Telephone: 1-800-992-4334

- In mediation, everyone agrees to work together with an impartial mediator. The mediator is a person trained to help people work out an agreement, without taking sides.

You can download a copy of this FAQ pamphlet and any other FAQ by going to the Office of Mental Retardation Web site [www.dpw.state.pa.us](http://www.dpw.state.pa.us)

This informational pamphlet was created by a work group of the Pennsylvania Self Determination Consumer and Family Group and the Pennsylvania Office of Mental Retardation. For more information or other assistance from the PA Self Determination Consumer and Family Group, call 1-800-459-1838.

## What is the Mediation Process?

- You can make a request for mediation either orally or in writing to your County MH/MR Program or directly to the Office for Dispute Resolution (ODR). If you make the request to your county, the county shall immediately notify ODR in writing and send a copy of the notification to you.
- The independent mediator is responsible for scheduling the mediation process within 10 days of notification.
- Discussions that occur during the mediation process are confidential and may not be used as evidence in any later due process hearings. You and other people participating in the process may be required to sign a statement of confidentiality.
- Mediation is to take place in a location that is convenient for you and the other parties who are part of the process. It also is to be completed in a timely fashion. The result of the mediation process is everyone involved coming to an agreement which is then put into writing. The written mediation agreement includes time frames for implementing changes and also includes any outstanding issues. You will receive a written copy of this report.
- Your county is responsible to participate in the mediation process and to cooperate with the independent mediator in all aspects of the process. Your county also is responsible for ensuring that actions or changes are carried out according to the conditions and time frame that are in the mediation agreement.

## During the Mediation and/or Appeal Processes, Will My Services Continue?

- If you choose to have a county conference or to use mediation, services should not change until a decision on the conference or independent mediation is made, unless that change is based solely on federal or state law, regulation or policy.
- If your appeal is about a change in services that are already provided to you, and if you appeal to the Department within 10 days of the county's decision, your services will generally continue without change until the Department's hearing officer makes a decision. Services will not continue if the action is based only on a change in federal or state requirements.

can use one at your County MH/MR program or the telephone of a friend, relative or neighbor. You will indicate whether you want a telephone or face-to-face hearing by checking a box on the “Fair Hearing Request Form.”

- If you do not agree with the decision from the Department of Public Welfare, Bureau of Hearings and Appeals, you can request reconsideration by the Secretary for the Department of Public Welfare. To do this you must send a written request to the Secretary within 15 days. The request must be sent to the Bureau of Hearings and Appeals who will forward it to the Secretary. Your request must detail the reasons for the requested reconsideration and the Secretary can decide to disapprove the reasons for reconsideration or send it back to the Director of the Bureau of Hearings and Appeals for further review.
- If you still are not satisfied, you can appeal through the Court of Common Pleas. You will want to have legal counsel to assist you with this process.

### Are Mediation and Appeals Available to Me?

- You have the right to mediation and appeals if you have applied for or receive services funded through the Infants, Toddlers and Families Waiver, Person/Family Directed Support Waiver or the Consolidated Waiver for Individuals with Mental Retardation.
- You also have the right to appeal through the Court of Common Pleas if you are an applicant or recipient of non-waiver services. Local Agency Law gives you this right when services are denied, reduced significantly or terminated. *Nason v. Commonwealth*, 533 A.2d 435 (PA 1987).

- The mediator will discuss with you who should participate in the mediation process. If you do not want someone (for example a provider) included in the process, then the mediator will respect your desire. However, if part of your problem is concerning the provider, then the mediator will explain why it is important to have the provider involved so that an agreement can be reached by everyone.
- ***Lawyers are not permitted to participate in mediation meetings or request mediation on your behalf.***
- Copies of the mediation agreement and status reports shall be kept by your county for three years and be available to representatives of the Department of Public Welfare and the Department of Health and Human Services upon their request.
- Your county may offer mediation to you before you file an appeal.
- You may use both the mediation and appeal process at the same time.

### What is an Appeal?

- An appeal is a formal process that you can use when you have a problem concerning the Infants, Toddlers, and Families Waiver, Person/Family Directed Support (P/FDS) Waiver or Consolidated Waiver services that you cannot resolve with your County Office of Mental Retardation. It is an opportunity to present your side of the disagreement to a

group that is independent from your county and the Office of Mental Retardation.

- For problems concerning the above, you file an appeal with your County MH/MR Office. They will send it on to the Department of Public Welfare (DPW), Bureau of Hearings and Appeals within three days. See the section, “What is the Appeal Process?” on page 6.

### When Should I Be Told About Appeals?

- When you ask for information about Mental Retardation Medicaid Waivers, you should be given a copy of the appeals form entitled, “Fair Hearing Request Form” and instructions. The instructions should include the name of the person the county designates to assist you, address and telephone number.
- You do not have to be enrolled in a waiver to get these documents.
- All Supports Coordinators have copies of the instructions and forms and should give them to you when you ask for information about appeals or when you indicate a desire to file an appeal.
- When you are having a problem with the waiver and you have tried other things, then your Supports Coordinator should remind you about the appeals process that is available for you to use.

- At your request, a designated person in your County Office of MH/MR will help you in filing for an appeal before the Department of Public Welfare, Bureau of Hearings and Appeals.
- When a hearing date is scheduled, the Bureau of Hearings and Appeals will send of copy of the “Notice of Hearing Date and Time” form to you and to your County MH/MR Program.
- At the hearing, you can present to the hearing officer the reasons you disagree with the action or decision and present information and/or witnesses to support your case. You have the right to represent yourself or to have someone else represent you.
- You have the right to bring advocates to the hearing with you.
- If you need a lawyer, you can ask your County MH/MR contact person to refer you to free legal counsel and advocates. (A County may make a referral to a family regarding full free legal counsel, however, this is not a policy.)
- If you need some other accommodation (for example, an interpreter or a handicapped accessible location) to attend or participate in the hearing, you may request help in getting the accommodation by contacting your County contact person. Since you must make this request before the date of the hearing, it would be good to clearly state your accommodation needs when you file the appeal.
- The Bureau of Hearings and Appeals will hold a hearing for you either over the telephone or face-to-face. You may choose which type you prefer. If you do not have a telephone, you

- You do not have to have a conference with your county or use mediation if you want to go directly to an appeal.
- Appeals must be filed in writing by you or your legal representative using the form entitled, “Fair Hearing Request Form” (MR-458) sent to your County Office of MH/MR with a copy sent to your Regional Office of Mental Retardation. You can get this form from your Supports Coordinator or you can download it from the Service Preference Bulletin on the Office of Mental Retardation Web site. The web address is on page 6 of this FAQ.

### **Regional Offices of Mental Retardation**

addresses are as follows:

#### **Southeast Regional Office of Mental Retardation**

1400 Spring Garden Street, Philadelphia, PA 19130-4064

#### **Northeast Regional Office of Mental Retardation**

100 Lackawanna Avenue, Scranton, PA 18503

#### **Central Regional Office of Mental Retardation**

Room 430, Willow Oak Building,  
Harrisburg State Hospital, Harrisburg, PA 17120

#### **Western Regional Office of Mental Retardation**

300 Liberty Avenue, Pittsburgh, PA 15222

### **When Can I Use the Appeal Process for Medicaid Services?**

If you are enrolled in any one of the mental retardation waivers and you are not getting services you need, you or your legal representative, have the right to appeal. You may also appeal if:

- You have not been given the opportunity to choose either home and community waiver funded services that are provided in your home and community or services provided in an Intermediate Care Facility for the Mentally Retarded (ICF/MR) that are provided in an institution.
- You are denied your choice of waiver funded services, that are part of your individual support plan, including the amount, length of time, and frequency of services. Agreeing to services in your individual support plan does not prevent you from filing for a fair hearing regarding these services.
- You are denied your choice of a qualified waiver service provider or choice of an ICF/MR provider to meet your needs that are included in your individual plan.
- You are dissatisfied with a decision or action taken to refuse, suspend, reduce or terminate a waiver-funded service after your county has authorized the service.
- Your application for waiver services is not acted upon with reasonable promptness—45 days to determine your eligibility if you are already Medicaid approved; and 90 days if you are not approved for Medicaid.

## What Steps in Problem Solving Should I Try Before Using the Appeal Process of the Department of Public Welfare (DPW)?

- First it is best to try to solve your problem by contacting your Supports Coordinator. If that doesn't work, then you should contact the Supports Coordination Supervisor at your County Office of Mental Retardation.
- If your problem is not resolved, contact the County MH/MR Administrator.
- If your problem still is not resolved, contact the Regional Program Manager of the Office of Mental Retardation. The telephone numbers are as follows:

Northeast Regional Office, 570-963-4391

Southeast Regional Office, 215-560-2247

Central Regional Office, 717-772-6507

Western Regional Office, 412-565-5144

- If you still need assistance after going through the County and Regional offices, contact the Department of Public Welfare, Office of Mental Retardation.

The telephone number is 717-787-3700.

The Toll Free telephone number is 1-888-565-9435.

The Web site is [www.dpw.state.pa.us](http://www.dpw.state.pa.us).

## What is the Appeal Process?

- One of the first things you can do is request to have a conference with your county to discuss your concerns. You may also request independent mediation. If you are interested in either of these options, write or telephone your County MH/MR Program to let them know what you want to do.

- Your County MH/MR program must offer a pre-hearing conference to you (this does not involve the Bureau of Hearings and Appeals) but you may choose to decline the offer. The pre-hearing conference gives you an opportunity to settle the matter prior to the hearing but neither party is required to change its position at the conference. If the issue is resolved with the pre-hearing conference, your County Office of MH/MR will notify the Bureau of Hearings and Appeals.
- If you choose to have a conference or to use mediation with the County MH/MR Program, you may do so without losing your appeal rights with the following provisions: 1) You must contact your County MH/MR Program within 10 days of when you receive notification of the action with which you disagree. Two examples would be plans to reduce or to terminate your services. 2) You must agree to meet with the County in an attempt to resolve the matter outside the Department of Public Welfare appeal and fair hearing process. See the section, "When Can I Use the Appeal Process for Medicaid Services?" on page 4. Filing within 10 days provides the right for you to continue in services that are in dispute.
- If you are not satisfied with the results of the conference or mediation, you may appeal to the Department of Public Welfare, Bureau of Hearings and Appeals by filing the appeal with your County Office of Mental Retardation who will notify the Bureau. You must appeal within 30 days of your being notified of the county's decision. However, you do not have to wait for the results of the mediation before filing an appeal since you may use both mediation and the appeal process at the same time.