

MEMORANDUM

TO: Representative Kathy Watson

FROM: Valerie Barowski, Research Analyst
Health and Human Services Committee

DATE: January 27, 2017

SUBJECT: ODP Waiver Renewal Changes

As you know, proposed waiver renewal documents were published by the Department of Human Services in the *Pennsylvania Bulletin* on December 3, 2016. The waiver renewal documents encompass Appendices A through H of the Office of Developmental Programs' (ODP) proposed renewals of the Consolidated and Person/Family Directed Support (P/FDS) Waivers. These home and community-based waivers are approved by the Centers for Medicare and Medicaid Services (CMS) for a five-year renewal period. The current Consolidated and P/FDS Waivers for Pennsylvania expire on June 30, 2017 and are not tied to any legislation or legislative action.

There are several changes in the proposed waiver renewals that have caused both families and day programs/sheltered workshops concern. One issue of particular concern is the community participation requirement that individuals spend 75% of their time in the community rather than being segregated at day programs/workshops. This requirement has left many day programs/workshops wondering how they will continue to operate if individuals can only participate essentially one day out of five. Families are also concerned about this requirement because their loved ones have grown accustomed to the routine at the day programs/workshops and many look forward to their time there. If disabled individuals no longer have a place to go some may be forced to remain at home.

As with all waiver renewals, there was a 45-day public comment period, which ended on January 17, 2017. All comments received by this date will be reviewed and considered for revisions to the proposed waiver amendments. Once the comments are reviewed and considered the waivers must be submitted to CMS by March 30, 2017 for approval before being finalized.

The House Human Services committee has been closely monitoring this issue. The Chairman of the committee has met with DHS to share with them the many concerns that the committee has been hearing from both families and providers that will be affected by the proposed waiver changes. DHS stated that they have no intention of closing day programs or sheltered workshops and that is not the intention of the waiver changes. They explained that many of the changes are a result of a federal final rule governing Home and Community-Based Services, the Workforce Innovation and Opportunity Act (WIOA) and the Americans with Disabilities Act with which Pennsylvania must comply. There will be a phase-in period in which programs that receive waiver funding and that are considered to be exclusionary will need to start working on a plan to provide individuals with more opportunity in the community and they will work closely with providers to ensure that there is a smooth transition.

That said, concerns have been raised regarding the state's interpretation of the federal rule and the community participation requirement, as the federal rule does not impose time-in-facility limits. For this reason the Human Services Committee is planning a public hearing in the near future in which the committee hopes to gain clarification of what the final rule requires of states and whether DHS is misinterpreting the final rule in making such drastic changes.