

Publications

Pennsylvania DHS/ODP Switching to Selective Contracting Waiver for Residential and Supports Coordination Services

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In Pennsylvania, certain Medicaid waiver programs are administered by the Office of Developmental Programs (ODP), a program office within the Department of Human Services (DHS). ODP administers the waiver programs that provide services to autistic individuals as well as those with intellectual and developmental disabilities (typically called ID/A services).

Historically, Pennsylvania has participated in federal Medicaid waiver programs that provide funding for ID/A services for residential services and behavioral supports coordination under Section 1915(c) of the Social Security Act. Under this section of federal law, Pennsylvania is required to contract with any “willing and qualified” provider, pursuant to Section 1902(a)(23) of the Social Security Act.

On May 24, 2023, ODP issued an Announcement via publication in the PA Bulletin (ODP Announcement 23-042), seeking public comment on its “Concept Paper on Selective Contracting for Residential and Supports Coordination Services” (Announcement). The Announcement opened a 45-day public comment period for stakeholders to submit comments on the proposal. Public comments are due by 11:59pm EDT on July 10, 2023.

Included in the Announcement is ODP’s “Concept Paper,” which confirms that ODP intends to file paperwork with the federal Center for Medicaid Services (CMS), who administers the Medicaid programs at the federal level, to implement two statewide waivers under Section 1915(b)(4) of the Social Security Act, to replace the current Section 1915(c) waivers. The primary impact of this change will be removing the requirement for Pennsylvania to contract with any “willing and qualified” provider, and instead permitting ODP to contract selectively with ID/A providers for residential services and behavioral supports coordination.

Follow these links for copies of the [Announcement](#) and [ODP's Concept Paper](#).

ODP indicates that the amendment to the waiver programs will impact roughly 400 residential services providers and 64 supports coordination organizations (SCOs). ODP's timeline indicates that it intends to submit the amended 1915(c) and 1915(b)(4) waivers to CMS to cover Residential Services in December 2023, with the implementation date to be in July 2024. ODP intends to submit the amended 1915(c) and 1915(b)(4) waivers to cover SCOs in December 2024, with implementation in July 2025.

ODP's Concept Paper indicates that in addition to public comments on the proposal, it will also publish for public comment the applications for the 1915(b)(4) waivers and any amendments to the existing 1915(c) applications. ODP will continue to administer the programs under 55 Pa. Code Chapter 6400 (known generally as the "6400 Regs"), and will continue to delegate tasks outlined in the CMS waiver applications to county-based administrative agencies. ODP will also hire an External Administrative Vendor to assist it with back-office support for the selective contracting services.

The Concept Paper provides only a general framework and goals for the selective contracting proposal and leaves many important questions unanswered. The Concept Paper also does not address ODP/DHS's statutory and regulatory authority to implement the 1915(c) waiver amendments or the new 1915(b)(4) waivers, or how ODP intends to comply with existing Pennsylvania administrative requirements.

The eventual switch from the existing 1915(c) waivers to 1915(b)(4) selective contracting waivers is a sea change for ID/A providers offering residential habilitation and/or CSO services. Providers who may be impacted should carefully review the Concept Paper and discuss their legal options with counsel.

Vorys is proud to represent ID/A providers in numerous administrative appeals against ODP/DHS, and would be happy to discuss the Concept Paper with any concerned provider.