

## Publications

### RCPA v. DHS/ODP: What Pennsylvania Providers of Services to Individuals with A/ID Need to Know

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On September 29, 2022, the Supreme Court of Pennsylvania issued its decision in a long-pending case that has significant implications for providers of services to individuals with Autism and Intellectual Disabilities (A/ID providers). That ruling reaffirmed that A/ID providers must exhaust available administrative remedies prior to seeking judicial review of decisions by the Office of Developmental Programs (ODP) within the Department of Human Services (DHS). However, the decision left other significant questions unanswered.

The case, *Rehab. & Community Providers Assn. v. Dept. of Hum. Servs. Office of Dev. Programs*, relates to DHS/ODP's release of new rates and amendments to Pennsylvania's Medicaid waivers programs in 2019. On May 25, 2019, DHS/ODP issued a new rate structure for community participation support (CPS) services under the Home and Community Based Services (HCBS) waivers. Shortly thereafter, the Rehabilitation and Community Providers Association (RCPA) filed suit in a direct action to the Commonwealth Court, invoking that court's original jurisdiction.

RCPA is an advocacy association representing over 350 members who provide services relating to mental health, drug and alcohol dependency, developmental disabilities, child brain injuries, and the like. RCPA was joined in the suit by three companies (the Providers) that provide services to individuals who receive benefits under one or more of the relevant waiver programs administered by DHS/ODP. Two developmentally disabled adults also joined in the suit.

RCPA's suit claims that DHS/ODP's issuance of the new rates in 2019 was contrary to law and that the rates set by DHS/ODP were insufficient to sustain the provision of CPS services to eligible recipients. More specifically, RCPA claims that the 2019 rates constitute an "unpromulgated regulation" which created a "binding norm" without complying with the Commonwealth Documents Law, the Regulatory Review Act, and the Commonwealth Attorneys Act.

On February 3, 2021, the Commonwealth Court dismissed the suit in full, ruling that providers had an adequate administrative remedy and that failure to exhaust that remedy precluded judicial review. Providers have the ability to appeal DHS/ODP decisions, including rate releases, under Title 55, Chapter 41 of the Pennsylvania Code. The Bureau of Hearings and Appeals at DHS hears those appeals.

The Supreme Court's decision, No. 13 MAP 2021, 2022 Pa. LEXIS 1420 (Sep. 29, 2022) (available online [here](#)), affirmed the Commonwealth Court in part and vacated and remanded the decision for further proceedings. Specifically, the Supreme Court upheld the dismissal as to the Providers, affirming that the Providers had an adequate administrative remedy via appeal to the Bureau of Hearings and Appeals.

However, the Supreme Court vacated the order as applied to RCPA and the individuals, as it determined that the Commonwealth Court had not adequately considered whether those parties were subject to dismissal. Accordingly, the case returns now to the Commonwealth Court where, presumably, the Commonwealth Court will address whether RCPA and the individuals have standing to challenge the rates set by DHS/ODP. In addition, the Supreme Court's decision did not resolve the central question posed by RCPA, namely whether the DHS/ODP rates constitute an unpromulgated regulation under PA law.

A/ID providers in Pennsylvania should continue to monitor the RCPA case for further developments. In addition, the Supreme Court's decision reinforces the need for providers to familiarize themselves with the administrative appeal procedures under Title 55, Chapter 41, or to work with legal counsel who are experienced in handling provider appeals to the Bureau of Hearings and Appeals.

Providers have rights to appeal any adverse decision by DHS/ODP to the Bureau, including but not limited to rate schedules, denials of needs exception allowances (or approvals of NEAs at rates lower than those proposed by the provider), or adverse licensing decision. However, the deadlines for filing those appeals is short, and failure to file in a timely fashion is typically fatal to the appeal.

Vorys has extensive experience in representing providers and handling administrative appeals with DHS/ODP. For questions about provider appeal rights, please contact Michael Oliverio in Vorys' Pittsburgh Office or your regular Vorys attorney.