



# OFFICE OF DEVELOPMENTAL PROGRAMS BULLETIN

<b>ISSUE DATE</b>  June 2, 2022	<b>EFFECTIVE DATE</b>  June 2, 2022	<b>NUMBER</b>  00-22-02
<b>SUBJECT</b>  Requesting a Waiver of Office of Developmental Programs Regulations	<b>BY</b>    Kristin Ahrens Deputy Secretary for Developmental Programs	

## SCOPE:

Entities seeking to be licensed or licensed under one or more of the following chapters:

- 55 Pa. Code Chapter 2380 (relating to Adult Training Facilities)
- 55 Pa. Code Chapter 2390 (relating to Vocational Facilities)
- 55 Pa. Code Chapter 6400 (relating to Community Homes for Individuals with an Intellectual Disability or Autism)
- 55 Pa. Code Chapter 6500 (relating to Life Sharing Homes)

Providers of home and community-based services (HCBS) for individuals with an intellectual disability or autism subject to 55 Pa. Code Chapter 6100 (relating to Services for Individuals with an Intellectual Disability or Autism).

## PURPOSE:

The purpose of this bulletin is to establish the process for requesting a waiver of a regulatory requirement.

## DISCUSSION:

Pursuant to 62 P.S. § 1002 all operators of facilities and homes must be licensed.<sup>1</sup> The Department of Human Services (Department), Office of Developmental Programs (ODP) regulations establish the minimum requirements that must be met to obtain a license to operate an adult training facility (Chapter 2380), vocational facility (Chapter 2390), community home (Chapter 6400) or life

<sup>1</sup> Section 1002 states: “No person shall maintain, operate or conduct any facility, as defined herein, without having a license therefore issued by the department.” 62 P.S. § 1002.

**COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:**

Office of Developing Programs Regulatory Administration Unit, [RA-PW6100REGADMIN@pa.gov](mailto:RA-PW6100REGADMIN@pa.gov).

Visit the Office of Developmental Programs Web site at  
<http://www.dhs.pa.gov/provider/developmentalprograms/index.htm>

sharing home (Chapter 6500). Entities seeking to operate a facility or home and operators of facilities and homes are referred to as “licensees.”

In addition, Chapter 6100 establishes the payment, program and operational requirements for providers of HCBS for individuals with an intellectual disability or autism. Chapter 6100 applies to providers that render HCBS through waiver programs under section 1915(c) of the Social Security Act (42 U.S.C. § 1396n(c)), State Plan HCBS, and services that are funded exclusively by grants to counties under the Mental Health and Intellectual Disability Act of 1966 (50 P.S. §§ 4101—4704) or Article XIV-B of the Human Services Code (62 P.S. §§ 1401-B—1410-B). These providers are referred to as “ODP enrolled providers.” Most, but not all licensees, are also ODP enrolled providers.

Licensees and ODP enrolled providers are expected to comply with all applicable regulations. However, the Department recognizes that there are occasions where compliance with a regulation impedes the licensee’s or ODP enrolled provider’s ability to provide services to an individual. As a result, the Department permits licensees and ODP enrolled providers to request that a section, subsection, paragraph or subparagraph of a regulation not apply when it is in the best interest of an individual or group of individuals who receive services from the licensee or ODP enrolled provider.<sup>2</sup>

Not all regulations can be waived. Section 6100.43(a) prohibits waivers of the following regulations:

- Sections 6100.1—6100.3 (relating to General Provisions)
- Sections 6100.41—6100.56 (relating to General Requirements)
- Sections 6100.181—6100.186 (relating to Individual Rights)
- Sections 6100.341—6100.350 (relating to Restrictive Procedures)

Additionally, section 6500.12(7) prohibits waivers of sections 6500.1—6500.4 (relating to General Provisions).

While Chapters 2380, 2390, and 6400 do not address waivers of regulation; waivers for these chapters are at the discretion of the Department and can be requested pursuant to 1 Pa. Code section 35.18. Licensees and providers should not request a waiver of the following regulations because usually waiver requests will not meet the conditions discussed below for the Department to grant a request to waive a regulation.

<b>Chapter</b>	<b>General Provisions</b>	<b>General Requirements</b>	<b>Individual/Client Rights</b>	<b>Restrictive Procedures</b>
<b>2380</b>	2380.1—2380.3	2380.11—2380.26	2380.21	2380.151-2380.169
<b>2390</b>	2390.1—2390.5	2390.11—2390.24	2390.21	2390.171-2390.180
<b>6400</b>	6400.1—6400.4	6400.11—6400.25	6400.31—6400.34	6400.191-6400.210

In the event that compliance with one or more of the regulations that the Department will not waive impedes the ability to provide services to an individual, licensees and ODP enrolled providers are encouraged to contact the Department for technical assistance with reaching the desired outcome while maintaining compliance with the regulation.

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<sup>2</sup> Waivers of regulation are different from HCBS “waiver” programs under section 1915(c) of the Social Security Act; licensees and ODP enrolled providers should be careful not to confuse these terms.

When reviewing a request to waive a regulation, the Department will consider the following, which are set forth in 55 Pa. Code 6100.42(c)(1)-(3)<sup>3</sup>:

1. Will the waiver jeopardize an individual's health, safety, and well-being if the waiver is granted;
2. Will an individual or group of individuals benefit if the waiver is granted because the waiver will result in increased person-centered practices, integration, independence, choice, or community opportunities for individuals; and
3. Any additional conditions deemed appropriate by the Department based on the circumstances unique to a given situation.

## **REQUESTING A REGULATORY WAIVER**

All requests for a waiver of a regulation must be submitted on form DP 1087, "Request for Regulatory Waiver." Requests received via any other format will be returned to the licensee or ODP enrolled provider with instructions for proper submission. The DP 1087 form must be completed in its entirety and include any documentation necessary to support the request. The Department may contact the licensee or ODP enrolled provider for clarification or additional information relating to the request in order to make an informed decision about the request. Communication with a licensee or ODP enrolled provider relating to the request prior to making a final decision may be through email, telephone, telecommunications applications that offer live-feed video interactions, or any other method.

If the request for a waiver of regulation relates to specific individuals, the licensee or ODP enrolled provider must provide a copy of DP 1087 to the affected individuals and to persons designated by the individuals prior to or at the same time as submission to the Department. If more than one specific individual is impacted, the copy provided to any one individual may only include that individual's identifying information; other individuals' identifying information must be redacted. For example, if a waiver request impacts three individuals, identifying information for "Individual 2" and "Individual 3" must be redacted on the copy provided to "Individual 1."

## **REGULATORY WAIVER DECISIONS**

Licensees and ODP enrolled providers will receive formal notice of the Department's decision via email. In the event that the request for a waiver of regulation is denied, notice will also be sent via regular and certified mail. Licensees have the right to appeal the denial of a Chapter 2380, 2390, 6400, or 6500 regulation waiver request in accordance with 1 Pa. Code Part II (General Rules of Administrative Practice and Procedure). ODP enrolled providers have the right to appeal the denial of a request for a waiver of a Chapter 6100 regulation in accordance with 55 Pa. Code Chapter 41 (relating to Medical Assistance Provider Appeal Procedures).

The licensee or ODP enrolled provider must also provide a copy of the Department's decision to all individuals and persons designated by the individuals who received copies of the request for a

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<sup>3</sup> Section 6500.12 provides the criteria for requesting a waiver of the Chapter 6500 regulations. The Department has adopted the lesser-restrictive standards for requesting a regulatory waiver provided by § 6100.43 for Chapter 6500. These standards have also been adopted for Chapters 2380, 2390, and 6400 based on the Department's decision to accept and act on requests for waivers of these regulations.

waiver. If the decision includes identifying information about multiple individuals, copies provided to any one individual and designated person must be redacted as described above.

**ATTACHMENT:**

Office of Developmental Programs Form DP 1087, "Request for Regulatory Waiver"

**OBSOLETE DOCUMENTS:**

ODP Informational Packet 002-13, *Request for Waiver of a Provision of Chapter 51*