

RULES AND REGULATIONS

Title 28—HEALTH AND SAFETY

DEPARTMENT OF HEALTH

[28 PA. CODE CHS. 701, 709, 711 AND 713]

Drug and Alcohol Facilities and Services

The Department of Health (Department) deletes, in part, Part V (relating to drug and alcohol facilities and services) under the authority of the Pennsylvania Drug and Alcohol Abuse Control Act (Act 63) (71 P. S. §§ 1690.101—1690.115), Reorganization Plan No. 2 of 1977 (71 P. S. § 751-25) and Reorganization Plan No. 4 of 1981 (71 P. S. § 751-31). The portions of Part V being deleted include the activity matrix, provisions for licensure of shelter activities in free standing and health care related facilities and the approval of drop-in activities and hot-line activities, to read as set forth in Annex A.

Purpose

The purpose of the amendments is to delete the matrix and the regulation of various activities so that Department staff and other resources may be directed toward oversight of entities providing substance abuse treatment services. These amendments will reduce the workload and allow for more efficient regulatory oversight of the substance abuse treatment delivery system, and result in the redirection of State government costs in ensuring safe and effective substance abuse treatment.

The Department is deleting these regulations because regulation of the substance abuse service delivery system has changed significantly over the past few years. Even more changes are predicted in the coming years based on current plans to change the health care delivery system at both the State and Federal levels. In point of fact, the present Health Choices implements a new system of managed care in five counties in southeast Pennsylvania on both physical health and behavioral health sides. To better address the needs of the substance abuse service delivery system and maximize existing resources, it is necessary to modify the regulatory process beginning with the cessation of licensing shelter, drop-in and hot-line activities. This will reduce the overload on survey staff resources and enable the Department's attention to focus on the oversight of activities which actually provide treatment to the substance abusing client.

The activities that the Department will cease licensing do not provide treatment to clients. Shelters provide beds for individuals to stay while they make arrangements to receive treatment elsewhere. Drop-in centers, similarly, provide a place for individuals to gather and make arrangements for referral to treatment providers. Hot-lines only provide referral to treatment providers over the telephone. No assessment is done by any staff of any of these three activities. As indicated, the most that occurs is that the substance abuse client is referred to a facility where an assessment can occur. The referral system carried out through these activities will not be diminished as a result of these actions. The Department's specific resources will be better focused on activities by which specific substance abuse treatment services are being provided. Currently, the Department licenses 10 shelters, and approves 17 drop-in centers and 28 hot-lines.

Further, the matrix and definitions have no practical purpose. Not all the activities that are in the matrix are being performed. They are not necessary for licensure since any activity that is licensed is already defined in § 701.1 and has accompanying standards within the remainder of Part V. The activity matrix is not appropriate for regulation but merely shows levels, activities and approaches.

Requirements of the Regulations

The following provisions are being deleted:

A. § 701.1—*General Definitions (in part)*.

The definition of the shelter, drop-in and hot-line activities in this section have been deleted.

B. § 701.2—*General Matrix Definitions*.

This section sets forth definitions and a matrix which categorizes drug and alcohol services. The matrix has no practical purpose. Some activities which are listed are not licensed, for example, driving while intoxicated activities. Other activities which are licensed have specific regulations elsewhere in Part V. This matrix is not part of the licensing process, nor is it necessary for licensing. It simply identifies levels and activities and is not regulatory in nature.

C. § 709.21(a) (relating to applicability); and §§ 709.101—709.102 and 711.101—711.106 (relating to standards for shelter activities).

These sections set forth licensing standards for current shelter activities in freestanding facilities and health care facilities. Shelter activities are the provision to the client of food, clothing, hygienic facilities, referral services and overnight housing in a supportive atmosphere.

Facilities licensed for these activities do not actually provide substance abuse prevention, intervention or treatment services, but serve persons with multiservice needs in addition to or in conjunction with substance abuse problems. A shelter provides no substance abuse treatment services, rather, it provides a place for individuals to stay and avail themselves of referrals for other services related to their individual needs.

D. §§ 713.51—713.55 (relating to standards for drop-in center activities).

These sections set forth standards for approval of drop-in center activities. Drop-in center activities are the provision of information, referral and crisis intervention as well as the opportunity to discuss personal problems in an informal setting.

Drop-in activities fall within the intervention level of care which is aimed at assisting the client in decisionmaking and supporting the client until the client can cope independently. Referral is provided if the need for a structured treatment regimen or other services is indicated. The drop-in center provides information, referral and crisis intervention as well as the opportunity to discuss problems in an informal setting, which is not a treatment activity. Client records are maintained only when crisis intervention, short-term counseling or referral services are rendered.

E. §§ 713.61—713.63 (relating to standards for hot-line activities).

These sections set forth standards for approval of hot-line activities. Hot-line activities are the provision of

information, referral, advice and crisis intervention through telephone service. Again, these activities are not treatment activities. Records are maintained on standardized forms which indicate the nature of the telephone call and the disposition of the call. The maintenance of client specific records is optional as the project deems appropriate and feasible.

Affected Persons

Since the amendments become final upon publication, there will no longer be regulations governing these activities. Thus, licenses and approvals for shelters, drop-in and hot-line activities issued and existing will expire at the time of the publication of these amendments in final-form. Further, no new shelter, drop-in or hot-line activities will be licensed or approved as of December 6, 1997. The lack of Department license or approval, however, will not prohibit the continuation of these activities. They will merely no longer be licensed or approved by the Department.

Comments

The Department received one comment on the proposed amendments. The Independent Regulatory Review Commission (IRRC) discovered that the proposed amendments failed to delete the word "shelter" from § 709.21(a). IRRC stated that failure to remove the reference to shelter in this section could negate the Department's efforts to remove shelters from the requirements of Chapter 701. The Department agrees with this comment and has deleted the term "shelter" from § 709.21(a) in the final-form rulemaking.

One other change has been made, regarding the effective date of the amendments. The proposed rulemaking indicated that existing approvals and licenses would continue after the amendments until they expired. Upon review, however, this position was considered to be inconsistent with the regulatory initiative. The approved and licensed activities are governed by the standards which are being deleted. Since the amendments are effective immediately, there will no longer be any standards for these activities to follow. If the standards upon which the approval or license is based no longer exist, and persons choosing to engage in the activity may do so uninhibited by a license or approval process, the existing approval or license ceases to have meaning. Therefore, all outstanding approvals and licenses will expire December 6, 1997.

Cost and Paperwork Estimate

There will be neither additional costs nor additional paperwork to the Commonwealth, local governments or the private sector resulting from the deletion of certain provisions of Part V.

Effective Date/Sunset Date

The deletion of the relevant portions of Part V will be effective upon final publication in the *Pennsylvania Bulletin*. No sunset date is necessary.

Statutory Authority

The Department was authorized by the General Assembly under Reorganization Plan No. 2 of 1977 (71 P. S. § 751-25) Reorganization Plan No. 4 of 1981 (71 P. S. § 751-31) and amendments under Act 63 to assume the functions and responsibilities of the Governor's Council on Drug and Alcohol Abuse (Council). The Council's authority to regulate and promulgate rules and regulations was transferred to the Department through those reorganization plans. See Reorganization Plan No. 2 of 1977 (transferring duties under the Public Welfare Code with regard

to regulation, supervision and licensing of drug and alcohol facilities to the Council), Reorganization Plan No. 4 of 1981 (transferring the functions of the Council to the Department and establishing it as an advisory council) and the 1985 Amendments to Act 63 which amended the reference to the Pennsylvania Advisory Council on Drug and Alcohol Abuse (Advisory Council)).

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of notice of proposed rulemaking, published at 27 Pa. B. 1815 (April 12, 1997), to IRRC and the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare for review and comment. In compliance with sections 5(c) and 5.1(a) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of all comments received, as well as other documentation.

The Department submitted a copy of the final-form regulations to IRRC and the Chairpersons of the Senate Committee on Public Health and Welfare and the House Committee on Health and Human Services on September 29, 1997. In addition, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

In preparing these final-form regulations, the Department has considered all comments received from IRRC, the Committees and the public.

These final-form regulations were deemed approved by the House Committee on Health and Human Services on October 20, 1997, and deemed approved by the Senate Committee on Public Health and Welfare on October 20, 1997. IRRC met on October 23, 1997, and approved the regulations in accordance with section 5.1(e) of the Regulatory Review Act. The Office of Attorney General approved the final-form regulations on November 12, 1997.

Contact Person

Interested persons are invited to submit written questions regarding the deletion of the regulations to John C. Hair, Director, Bureau of Community Program Licensure and Certification, 132 Kline Plaza, Suite A, Harrisburg, PA 17104, (717) 783-8665. Persons with a disability may submit questions in alternative formats, such as audiotape, braille or using TDD: (717) 783-6514. Persons with disabilities who require alternative formats of this document (for example, large print, audio tape, braille) should contact the Department so that necessary arrangements may be made.

Findings

The Department finds that:

(1) Notice of proposed rulemaking was published at 27 Pa.B. 1815, as required by sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and that the comments received were considered.

(3) The adoption of the amendments in the manner provided by this order is necessary and appropriate for the administration of the authorizing statutes.

Order

The Department, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 28 Pa. Code Chapters 701, 709, 711 and 713, are amended by deleting §§ 701.2, 709.101, 709.102, 711.101—711.106, 713.51—713.55 and 713.61—713.63 and by amending § 701.1 to read as set forth at 27 Pa.B. 1815 and amending § 709.21 to read as set forth in Annex A.

(b) The Secretary of Health shall submit this order, 27 Pa.B. 1815 and Annex A to the Office of General Counsel and to the Office of Attorney General for approval as required by law.

(c) The Secretary of Health shall certify this order, 27 Pa.B. 1815 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

DANIEL F. HOFFMANN,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 5840 (November 8, 1997).)

Fiscal Note: Fiscal Note 10-147 remains valid for the final adoption of the subject regulations.

Annex A**TITLE 28. HEALTH AND SAFETY****PART V. DRUG AND ALCOHOL FACILITIES AND SERVICES****CHAPTER 709. STANDARDS FOR LICENSURE OF FREESTANDING TREATMENT FACILITIES****Subchapter C. GENERAL STANDARDS FOR FREESTANDING TREATMENT ACTIVITIES.****§ 709.21. Applicability.**

(a) The intake, evaluation and referral, inpatient nonhospital, partial hospitalization, outpatient and inpatient hospital activities shall comply with this chapter.

(b) A facility in which freestanding treatment activities are provided that has a valid full license from the Department of Public Welfare under 55 Pa. Code Chapters 5300 and 5310 (relating to private psychiatric hospitals; and community residential rehabilitation services for the mentally ill) is deemed to be in compliance with the following standards: Sections 709.22—709.27, 709.29 and 709.32. This subsection shall remain in effect as long as the Department finds the standards in 55 Pa. Code Chapters 5300 and 5310 to be consistent with of this subchapter.

[Pa.B. Doc. No. 97-1945. Filed for public inspection December 6, 1997, 9:00 a.m.]