

PROPOSED RULEMAKING

DEPARTMENT OF HUMAN SERVICES

[55 PA. CODE CH. 1101]

Interrelationship of Providers

The Department of Human Services (Department), under the authority of section 403.1(a)(6) of the Human Services Code (code) (62 P.S. § 403.1(a)(6)), proposes to amend § 1101.51 (relating to ongoing responsibilities of providers) to read as set forth in Annex A.

Purpose of the Proposed Rulemaking

The purpose of this proposed rulemaking is to amend § 1101.51 by rescinding subsection (c)(3), which prohibits providers from leasing or renting space, shelves or equipment within a provider's office to another provider or from allowing the paid or unpaid staff of a provider to be placed in another provider's office.

Developments in the health care industry over the last several years have emphasized the need for integrated health care. The Department recognizes the benefits of integrated care, and the rescission of this regulation will support the enrollment in the Medical Assistance (MA) Program of providers that share space (co-locating providers). By expanding provider qualifications to include co-locating providers, the Department seeks to support more coordinated and integrated care within the MA Program.

Background

Section 1407(a)(2) of the code (62 P.S. § 1407(a)(2)) provides that it is unlawful to solicit or receive or to offer or pay any remuneration, including any kickback, bribe or rebate, directly or indirectly, in cash or in kind from or to any person in connection with the furnishing of services or merchandise for which payment may be in whole or in part under the MA Program or in connection with referring an individual to a person for the furnishing or arranging for the furnishing of any services or merchandise for which payment may be made in whole or in part under the MA Program. The Department promulgated the regulation in § 1101.51(c)(3) to provide specific examples of the types of arrangements that section 1407(a)(2) of the code prohibits. Among the examples is that providers may not "lease or rent space, shelves or equipment within a provider's office to another provider or allowing the placement of paid or unpaid staff of another provider in a provider's office."

This regulation prevented co-locating providers from enrolling in the MA Program. Since promulgation of this regulation, the health care industry has moved to a more integrated approach to diagnosis and treatment of conditions or injuries. To support that trend, retail clinics, some of which are placed within the same building as a pharmacy, have emerged, and multidisciplinary providers, including physical and behavioral health providers, have entered into co-location arrangements between distinct providers. These arrangements increase consumer access to services, including behavioral health and substance use disorder services. According to an informational bulletin issued by the Centers for Medicare & Medicaid Services

on January 16, 2014, titled "Reducing Non-Urgent Use of Emergency Departments and Improving Appropriate Care in Appropriate Settings," increasing access to primary care services, including through urgent care and retail clinics, has been estimated to result in a potential savings of \$4.4 billion Nationwide. (https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/CIB-01-16-14_14.pdf). The Department, by establishing provider qualifications that incorporate co-locating providers, wishes to support these advancements in the health care industry when services are provided in a manner that allows the beneficiary to retain freedom to choose the service provider and is not automatically directed to or referred to a co-located provider.

After reviewing the trend in the health care delivery system toward integrated care, the Department determined that a narrow interpretation of the example set forth in § 1101.51(c)(3) is more restrictive than required to comply with the code, and prevents co-locating providers who are otherwise eligible from enrolling in the MA Program. On May 28, 2016, the Department issued Statement of Policy (SOP) 1101-16-03, codified in § 1101.51a (relating to clarification of the term "within a provider's office"—statement of policy), to clarify the meaning of "within a provider's office" and the guidelines for providers that enter into co-location arrangements with other participating providers. See 46 Pa.B. 2683 (May 28, 2016); 55 Pa. Code § 1101.51a. The Department also developed an attestation form to be utilized by providers seeking to co-locate, in which each provider attests to its compliance with Federal and State anti-kickback laws, the Health Insurance Portability and Accountability Act of 1996 (Pub.L. No. 104-191) (HIPAA), and MA beneficiary freedom of choice. The Department will rescind the SOP upon the effective date of the final-form regulation.

In an effort to establish provider qualifications that allow co-locating providers to enroll in the MA Program, the Department is rescinding the regulation in § 1101.51(c)(3), which prohibits providers from leasing space within a provider's office to another provider. Providers must continue to comply with HIPAA, Federal and State anti-kickback and self-referral laws, and the requirement to provide MA beneficiaries with freedom of choice.

The rescission of the regulation in § 1101.51(c)(3) does not invalidate other rules affecting co-locating providers if, for example, they are prohibited by licensing or certification requirements from leasing or renting space, shelves or equipment or otherwise shared space.

Requirements

The following is a summary of the specific provision in this proposed rulemaking:

§ 1101.51(c)(3) (relating to the interrelationship of providers)

The Department proposes to rescind subsection (c)(3) to allow co-locating providers to enroll in the MA Program and to support integrated health care in the MA Program. Rescission of subsection (c)(3) will allow MA beneficiaries to receive services in a more integrated manner, consistent with developments in the health care industry.

Affected Individuals and Organizations

Nine co-located providers operating at 82 separate locations have requested and received a waiver of the regulation in § 1101.51(c)(3) from the Secretary. Under § 1101.51a, beginning May 28, 2016, any provider who enrolled and was co-located with another provider had to complete an attestation. Current waivers and attestations will remain in effect until a final-form rulemaking eliminates the co-location provision in § 1101.51(c)(3).

The rescission of this regulation provides the regulatory framework to promote integrated health care services by establishing provider qualification that allow providers that co-locate to enroll in the MA Program. Providers that want to co-locate in the future will be able to do so without obtaining a waiver or submitting an attestation.

Accomplishments and Benefits

This proposed rulemaking rescinds the regulatory provision that has prevented or delayed enrollment of providers who are co-located. Allowing different types of providers to be located in the same space will benefit MA beneficiaries by providing the opportunity for a more integrated approach to health care.

Fiscal Impact

There is no fiscal impact.

Paperwork Requirements

This proposed rulemaking will require no additional reports or paperwork or any new forms. Less paperwork will be required because an attestation form will not be required for enrollment of providers that are co-located.

Effective Date

This proposed rulemaking will be effective upon publication of the final-form regulation in the *Pennsylvania Bulletin*.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to the Department of Human Services, Office of Medical Assistance Programs, c/o Regulations Coordinator, Room 515, Health and Welfare Building, Harrisburg, PA 17120, within 30 calendar days after the date of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference Regulation No. 14-549 when submitting comments.

Persons with a disability who require an auxiliary aid or service may submit comments by using the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

Regulatory Review Act

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 10, 2021, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Health Committee and Senate Health and Human Services Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review

criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the rulemaking by the Department, the General Assembly and the Governor.

MEG SNEAD,
Acting Secretary

Fiscal Note: 14-549. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 55. HUMAN SERVICES

PART III. MEDICAL ASSISTANCE MANUAL

CHAPTER 1101. GENERAL PROVISIONS

RESPONSIBILITIES

§ 1101.51. Ongoing responsibilities of providers.

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(c) *Interrelationship of providers.* Providers are prohibited from making the following arrangements with other providers:

(1) The referral of MA recipients directly or indirectly to other practitioners or providers for financial consideration or the solicitation of MA recipients from other providers.

(2) The offering of, or paying, or the acceptance of remuneration to or from other providers for the referral of MA recipients for services or supplies under the MA Program.

(3) **[A participating provider may not lease or rent space, shelves or equipment within a provider's office to another provider or allowing the placement of paid or unpaid staff of another provider in a provider's office. This does not preclude a provider from owning or investing in a building in which space is leased for adequate and fair consideration to other providers nor does it prohibit an ophthalmologist or optometrist from providing space to an optician in his office] (Reserved).**

(4) The solicitation or receipt or offer of a kickback, payment, gift, bribe or rebate for purchasing, leasing, ordering or arranging for or recommending purchasing, leasing, ordering or arranging for or recommending purchasing, leasing or ordering a good, facility, service or item for which payment is made under MA. This does not preclude discounts or other reductions in charges by a provider to a practitioner for services, that is, laboratory and x-ray, so long as the price is properly disclosed and appropriately reflected in the costs claimed or charges made by a practitioner.

(5) A participating practitioner or professional corporation may not refer a MA recipient to an independent laboratory, pharmacy, radiology or other ancillary medical service in which the practitioner or professional corporation has an ownership interest.

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[Pa.B. Doc. No. 21-989. Filed for public inspection June 25, 2021, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 63]

Fishing; General Fishing Regulations

The Fish and Boat Commission (Commission) proposes to amend Chapter 63 (relating to general fishing regulations). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendments update the Commission's regulations pertaining to authorized devices for ice fishing use.

A. Effective Date

This proposed rulemaking, if approved on final-form rulemaking, will go into effect upon publication in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on this proposed rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at www.fishandboat.com.

C. Statutory Authority

The proposed amendments to §§ 63.6 and 63.10 (relating to authorized devices for game fish, baitfish and fishbait; and ice fishing) are published under the statutory authority of section 2102(b) of the code (relating to rules and regulations).

D. Purpose and Background

The specific purpose and background of the proposed amendments is described in more detail under the summary of proposal.

E. Summary of Proposal

Over the past two ice fishing seasons, anglers have asked the Commission whether devices such as the JawJacker, Automatic Fisherman, Easy Set Hooksetter, Sure Shot Hooksetter and Bro Craft Ice Fishing Tip-up are legal devices for use upon Commonwealth waters. These devices consist of a rod holder which allows anglers to put a bend in the fishing rod and pre-load it with the aid of a triggering device. When a fish takes the lure or bait, tension on the fishing line causes the trigger mechanism to release the rod which, being pre-loaded, automatically sets the hook without additional assistance by the angler. The angler is then free to fight the fish with a normal fishing rod and reel. In addition to commercially made devices, there are many do-it-yourself versions of these devices which can be found online and fabricated at home. As the hookset is rapid, fish are typically hooked in the lip or jaw and not deeply, thereby improving fish survival if intended for release.

Current interpretation of "immediate control" under § 63.6 suggests that the angler must set the hook and that no mechanical device could be substituted. This interpretation has carried over to other regulations, unless specifically mentioned in those regulations. Thus, the regulations found in § 63.10 also make it unlawful to utilize such mechanical devices to set the hook.

Staff from the Bureau of Law Enforcement and Bureau of Fisheries have conferred and support a clarification of regulations which would permit these ice fishing hook setting devices to be legally used.

The Commission proposes that §§ 63.6 and 63.10 be amended to read as set forth in Annex A.

F. Paperwork

This proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

This proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about this proposed rulemaking to the Executive Director, Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at www.fishandboat.com/regcomments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: 48A-314. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.6. Authorized devices for game fish, baitfish and fishbait.

(a) It is unlawful to fish for game fish with more than three lines of any description, whether fished by rod or by hand, at one time except while ice fishing in accordance with § 63.10 (relating to ice fishing). There is not a restriction on the number of hooks used for fishing for game fish, except when fishing in the Pymatuning Reservoir where no more than three hooks shall be attached to each line used in fishing. Rods, lines and hooks shall be under the immediate control of the person using them.

[A fishing device shall be deemed to be under the immediate control of the person using it if, when the terminal device (hook, bait or lure) is taken by a fish, the person using the device has direct control over it and it is not connected at that point to a casting or depth placement aid such as a casting boat or downrigger. Casting or depth placement aids such as downriggers or small remote controlled boats are not prohibited by this chapter.] For purposes of this chapter, an authorized device shall be deemed under the immediate control of a person if it is within reasonable reach and can be adjusted, manipulated or brought to hand quickly and the person is nearby. Downriggers, planer boards, depth control devices, pre-loaded rod holders, rod holders that provide for a loaded rod or a triggering device, or both, (with or without mechanically induced jiggling motion), or hook setting devices are authorized devices. Drones and other remote controlled devices are not authorized devices.

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§ 63.10. Ice fishing.

(a) Ice fishing is fishing through holes in the ice.

(b) It is unlawful while ice fishing to use more than five fishing devices[, **which may consist of rods, hand lines, tip ups or any combination thereof] as authorized in § 63.6 (relating to authorized devices for game fish, baitfish and fishbait). Each device shall contain a single fishing line. There is not a restriction on the number of hooks that may be used for ice fishing, except when fishing in the Pymatuning Reservoir where**

no more than three hooks shall be attached to each line used in fishing.

(c) **[Rods, lines and tip-ups used in ice fishing shall be under the immediate control of the person using the same] Reserved.**

(d) It is unlawful to fish through holes in the ice that measure more than 10 inches between the farthest points as measured in any direction.

[Pa.B. Doc. No. 21-990. Filed for public inspection June 25, 2021, 9:00 a.m.]