

**MEMORANDUM OF UNDERSTANDING
COMMONWEALTH OF PENNSYLVANIA
BETWEEN
DEPARTMENT OF HEALTH AND DEPARTMENT
OF PUBLIC WELFARE
REGARDING PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES**

WHEREAS, a psychiatric residential treatment facility (PRTF) is a facility that provides psychiatric services, as defined in 42 CFR Part 441 Subpart D, to individuals under age 21, in an inpatient setting that is not a hospital;

WHEREAS, a PRTF is accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the Commission on Accreditation of Rehabilitation Facilities (CARF), the Council on Accreditation of Services for Families & Children (COA), or another accrediting organization with comparable standards that is recognized by the Department of Public Welfare (DPW), 42 CFR § 441.151(a)(2)(ii);

WHEREAS, an interim final rule published on January 22, 2001, and amended on May 22, 2001, codified at 42 CFR §§ 483.350 – 483.376, established a Condition of Participation (CoP) for the use of restraint and seclusion that PRTFs must meet in order to provide, or to continue to provide, inpatient psychiatric services to Pennsylvania Medical Assistance (MA) recipients under age 21;

WHEREAS, the Centers for Medicare and Medicaid Services (CMS), to whom the Secretary of the Department of Health and Human Services has delegated the authority for administration of the Medicare and Medicaid Programs, has assigned to the State Survey Agency (SSA) the responsibility to conduct validation and complaint surveys of PRTFs to determine compliance with the CoP codified at 42 CFR §§ 483.350-483.376;

WHEREAS, the Department of Health (DOH) serves as the designated SSA in Pennsylvania;

WHEREAS, DPW is the designated State Medicaid Agency (SMA) under Section 1902(a)(5) of the Social Security Act, 42 U.S.C. § 1396a(a)(5), responsible for administering the Pennsylvania MA Program, and is required by regulation, 42 CFR § 483.374(a)(b), to receive from each PRTF a written attestation of compliance with the CoP and reports of serious occurrences, including a resident's death, a serious injury to a resident, and a resident's suicide attempt;

WHEREAS, DPW is the state supervision and licensing authority for PRTFs under the Public Welfare Code, 62 P.S. §§ 901 - 922, 1001 - 1087, and 55 Pa.Code Ch. 3800;

WHEREAS, in order for DOH to conduct validation and complaint surveys of PRTFs and for DPW to receive the results of those surveys and to fulfill its responsibilities in

administering the Pennsylvania MA Program, timely communication and sharing of information between both Departments is essential; and

WHEREAS, Sections 501 and 502 of the Administrative Code of 1929 (71 P.S. §§ 181 and 182) require Commonwealth departments and agencies to coordinate their work and activities with other Commonwealth departments and agencies;

NOW, therefore, DOH and DPW set forth the following as the terms and conditions of their understanding:

1. DPW will supply DOH with the name, address, and provider number of every PRTF enrolled in the Pennsylvania MA Program, as well as such other information as the parties agree is necessary for DOH to conduct validation and complaint surveys of enrolled PRTFs.

2. As soon as reasonably possible after the execution of this MOU, DPW and DOH will issue a joint provider bulletin informing PRTFs of the respective roles and responsibilities of DPW and DOH with regard to survey, certification and licensure of PRTFs, as well as the PRTF's responsibility to submit a compliance attestation; to report serious occurrences; and to refer complaints about the use of seclusion and restraints, and the procedures for each.

3. DOH will conduct validation and complaint surveys of PRTFs in accordance with the State Operations Manual (SOM) issued by CMS, CMS Pub. 100-7; specifically, Chapter 5 (Complaint Procedures) of the SOM and Appendix N (PRTFs) to the SOM, currently in draft, both attached hereto.

4. On an annual basis, DPW will identify and forward to DOH the names of 20% of the PRTFs enrolled in the MA Program, along with the compliance attestations and such other information about those PRTFs as the parties agree is needed, to be included in the annual attestation surveys to be conducted by DOH.

5. DPW will forward to DOH all reports of serious occurrences, as defined at 42 CFR § 483.374(b), and complaints regarding the use of restraint and seclusion that it receives in its role as SMA or licensing authority, in order for DOH to respond, evaluate, and investigate, as appropriate, within the timeframes and in accordance with the other requirements set forth in the SOM and to fulfill its responsibilities as the SSA. DOH will forward to DPW any report of a serious occurrence or complaint that it receives from a source other than DPW, in order for DPW to fulfill its responsibilities as the SMA and the licensing authority.

6. DPW and DOH will develop protocols and operating procedures to coordinate their respective reviews to maximize efficiency and reduce duplicative effort as well as conflicting or contradictory outcomes. In addition, DPW and DOH will develop a mechanism to prioritize how to respond to complaints regarding serious occurrences that do not present immediate jeopardy. Such mechanism shall comply with all appropriate SOM procedures.

7. For each validation or complaint survey that DOH conducts at a PRTF, DOH will produce a report, on a CMS Form 2567, regardless whether deficiencies are identified, and will supply DPW (the Office of Medical Assistance Programs, the Office of Mental Health and Substance Abuse Services, and the Office of Children, Youth, and Families) with a copy of the 2567 report when it forwards the report to the PRTF. DOH will also forward to DPW any plan of correction submitted by a PRTF with identified deficiencies.

8. DPW, as the SMA, will accept as final the decision of DOH, as the SSA, with regard to compliance with the CoP, but will determine what impact the compliance decision will have on the PRTF's participation in the MA Program.

9. Any sanctions against a PRTF arising from a complaint or report of a serious occurrence, or from the failure to submit the complaint or report, or from the results of a DOH survey, or from a finding of regulatory non-compliance, will be imposed by DPW.

10. The parties agree to amend this MOU as necessary to comply with communications or changes in instructions from CMS regarding validation and complaint survey responsibility for PRTFs, or as the parties otherwise agree.

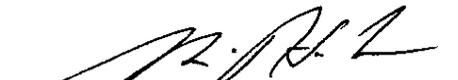
11. This MOU shall take effect when fully executed, and shall terminate upon the mutual agreement of DOH and DPW.

12. This MOU is not intended to and does not create any contractual rights or obligations with respect to the parties or any other person or entity.

13. Any dispute arising hereunder that the parties cannot resolve shall be submitted to the Governor's Office of General Counsel for final resolution.

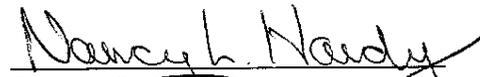
14. Nothing in this MOU shall be construed to apply to residential treatment facilities, or parts thereof, that do not participate in the Pennsylvania MA Program, and to which the CoP at 42 CFR §§ 483.350 – 483.376 does not apply.

DEPARTMENT OF HEALTH:

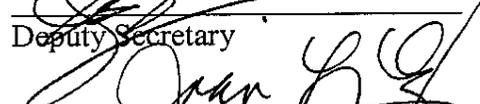

Deputy Secretary 7/26/06

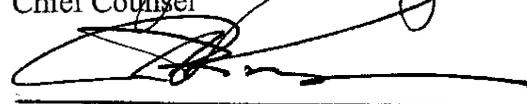

Chief Counsel

DEPARTMENT OF PUBLIC WELFARE:


Deputy Secretary


Deputy Secretary


Chief Counsel



Date

Date

OFFICE OF GENERAL COUNSEL:



Deputy General Counsel

9.11.06

Date