# DAUPHIN COUNTY MH/MR PROGRAM
## POLICY AND PROCEDURE

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<th>Department</th>
<th>Policy No. 08-03</th>
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<td>Effective Date 03/05/2008</td>
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**Name of Policy:** Notice of Due Process Rights and Fair Hearing Instructions

**Policy:** The Dauphin County Mental Health and Mental Retardation Program will ensure that all individuals enrolled in services receive all applicable notice of due process rights. Waiver participants will receive notices as outlined in MR Bulletin 00-00-09 “Service Preference in Medicaid Waivers” and MR Bulletin # 00-05-06 “Service Review Protocol for Individuals in the Consolidated Waiver”.

**Definitions:**

_Bureau of Hearings and Appeals_ – The Bureau of Hearings and Appeals (BHA) is the Department of Public Welfare’s entity charged with conducting administrative hearings and timely adjudicating appeals which are filed in accordance with State and Federal regulations. Centers for Medicare and Medicaid Services – the Centers for Medicare and Medicaid Services (CMS) is the agency in the Department of Health and Human Services that is responsible for federal administration of the Medicaid, Medicare, and State Children’s Health Insurance Programs.

_County_ – The County refers to the Dauphin County Mental Health and Mental Retardation Program. The county program has signed the Administrative Entity agreement with DPW to perform operational and administrative functions delegated by the Department, related to the Department’s approved Consolidated and Person/Family Directed Support (P/FDS) waivers, in addition to other mental retardation services.

_Office of Developmental Programs_ – The Office of Developmental Programs is a state program office within the Department of Public Welfare that sets policy, provides funds, and administers services for persons with mental retardation.
Procedure:

1. The County program assigns the responsibility for assuring that notices of rights are disseminated to participants in the mental retardation program to CMU. CMU is Dauphin County’s Supports Coordination Unit.

2. Information about an individual’s rights are provided to individuals/families at the following points in time:
   a. Enrollment into the mental retardation program
   b. Enrollment into the Consolidated or P/FDS waiver program
   c. At each ISP meeting
   d. Upon notification of a denial, reduction or termination of a waiver service.

3. Individuals are informed that their Supports Coordinator or another designee would be available to assist them in filing an appeal of decisions that affect their eligibility or services. For individuals receiving waiver-funded services, the notice of Fair Hearing will also be provided.

4. Non-waiver applicants and recipients have the right to appeal under the Local Agency Law when services are denied, reduced, or terminated.

5. If an individual or their representative submits a request for a County Conference or a Fair Hearing, the Deputy MR Administrator will follow procedures for submission of the Request as outlined in MR Bulletin #00-04-07; Clarifying Procedures for Individual and Provider Appeals or county policy regarding County Conference.

For Waiver Participants:

1. The participant and their representative has the right to:
   A. Choose, at any time, between Home and Community-based waiver-funded services or services provided in an ICF/MR;
   B. Choose a qualified service provider for the supports and services received;
   C. Receive the services identified in the ISP; and
   D. Not have waiver-funded services reduced, suspended, or terminated without their consent, after the county has authorized them.
   E. Fair hearing information will be shared using Department approved notices.

2. Fair hearing rights and the provision of Departmental fair hearing and appeal information and notice to eligible individuals and their representatives will occur when:
   A. The waiver participant is determined likely to require an ICF/MR level of care and is provided information about waiver-funded services;
   B. The waiver participant or representative is asked to sign the service preference form;
   C. There is a decision or action taken to deny the participant a waiver-funded service or a willing, qualified waiver provider of his or her choice;
D. There is a decision or action taken to refuse, suspend, reduce, or terminate waiver-funded services authorized in the individual support plan. A delay of services based on the availability of waiver funds or on a waiting list situation can be appealed on this basis;

E. The waiver participant or representative notifies the County of their decision to file an appeal, or requests information about the waiver participant’s appeal and fair hearing rights; and

F. Whenever there is an action that affects the waiver participant’s claim for eligibility or receipt of services.

3. If a waiver participant or their representative is denied the above-noted rights, the participant or their representative can request a meeting with the Dauphin County MH/MR Program and/or a Fair Hearing with the Bureau of Hearing and Appeals.

4. Fair hearing and appeal requirements do not apply to changes caused solely by federal or state law, regulations, and policy requiring a change in the type of services available under the waiver. Also excluded from the fair hearing and appeal process are changes solely established by a waiver renewal or amendment approved by the Centers for Medicare and Medicaid Services, a non-Medicaid service funded outside the waivers, and services provided at times when the person is ineligible for waiver funding.

5. Continuation of Waiver Services: In the event that an appeal is filed, the participant’s services will continue until a decision has been finalized under the following:

   A. The waiver participant or representative is appealing a decision to reduce, terminate, or suspend a waiver-funded service(s) that is authorized in the ISP.
   B. The appeal is filed within ten (10) calendar days of the waiver participant’s notice of the decision, and
   C. The action is not being taken solely to comply with federal or state law, regulation, or policy.

6. Services that are denied prior to their authorization on the ISP cannot be continued and therefore do not need to be provided pending a fair hearing.

Applicable Requirements:
- MR Bulletin #00-04-07: Clarifying Procedures for Individual and Provider Appeals
- Administrative Entity Operating Agreement