

Request for Approved Program Capacity and Noncontiguous Clearance ODP Announcement 19-138

AUDIENCE:

Administrative Entities, Supports Coordination Organizations, Providers of the following Consolidated, Person/Family Directed Support, and Community Living Waiver services: Residential Habilitation (licensed and unlicensed), Life Sharing (licensed and unlicensed), Supported Living (unlicensed), and Respite (licensed and unlicensed), as well as Community Participation Support provided in Licensed Adult Training Facilities, Vocational Facilities and Older Adult Daily living Centers, and any other interested parties.

PURPOSE:

This Office of Developmental Programs (ODP) communication is to inform all interested parties providing services in the Consolidated, Person/Family Directed Support (P/FDS), and Community Living Waivers of the process ODP staff will utilize in making a determination for Approved Program Capacity (APC) and Noncontiguous Clearance through the updated form (Attachment #1).

DISCUSSION:

Since the release of the Request for Approved Program Capacity and Noncontiguous Clearance form and instructions with ODP Communication 071-18, additional changes have been made to align with requirements in the Consolidated, P/FDS, and Community Living Waivers as well as changes in regulatory requirements. Specifically, the form and instructions have been updated to include requests for Reserved Capacity as enumerated in 55 Pa. Code §6100.55. In addition, the Request for Approved Program Capacity and Noncontiguous Location Clearance form has been streamlined based on

feedback from providers and now captures whether providers are completing the form for revalidation purposes where APC documentation is required.

DEFINITION OF KEY TERMS:

Community Participation Support Facilities - Licensed Adult Training Facilities (55 Pa. Code Chapter 2380), Vocational Facilities (55 Pa. Code Chapter 2390), and Older Adult Daily Living Centers (6 Pa. Code Chapter 11) that provide Community Participation Support services funded by ODP. This definition does not include community hubs and when services are provided 100% of the time in the community.

Residential Service Locations - Service locations providing unlicensed or licensed Residential Habilitation, licensed Respite Only Homes, licensed and unlicensed Life Sharing, as well as unlicensed homes where Supported Living is provided.

Respite Only Home – A service location licensed under 55 Pa. Code Chapter 6400 that solely provides respite services in the home.

REQUEST PROCEDURES:

Prior to opening a new service location, closing an existing service location, or changing the program's capacity, the provider will email the attached *Request for Approved Program Capacity and Noncontiguous Location Clearance* form, Attachment #1, to the Regional Waiver Capacity Manager that covers the geographic area where the service location is located (see *Regional Waiver Capacity Manager Contact Information*, Attachment #4). The form will include information about the circumstances and the location that will enable the Regional Waiver Capacity Manager to ensure that the new or existing service location meets ODP criteria contained in the waiver and applicable regulations. After the Regional Waiver Capacity Manager receives the form and reviews the information, they will document their decision on the *Request for Approved Program Capacity and Noncontiguous Location Clearance* form and will send the determination to the provider.

REQUIREMENTS

► Noncontiguous Location Requirements for Community Participation Support Facilities

The APC and Noncontiguous Form, Attachment #1, is required for Community Participation Support facility locations that are newly funded on or after the effective date of 55 Pa. Code 6100 regulations. Providers who open a new Community Participation Support facility (including a relocation of an existing facility) must obtain approval from the Regional Waiver Capacity Managers verifying that the service location is a noncontiguous location.

- Providers of Community Participation Support services only need to get Noncontiguous Clearance if the services will be rendered for any amount of time in a Community Participation Support facility. **This form does not need to be completed when the provider renders Community Participation Support services in community locations (including community hubs) 100% of the time which are not subject to licensure.**

To obtain noncontiguous clearance, the physical location of the service location, as stated in 55 Pa. Code Chapter §6100.445, “may not be located adjacent to another human service residential service location or another human service day service location serving primarily persons with a disability”. For the purposes of noncontiguous locations, the following is clarification regarding what constitutes human service residential service locations or human service day service locations serving primarily persons with a disability as stipulated in 55 Pa. Code Chapter §6100.445.

Community Participation Support may not be provided in a licensed facility for any percentage of time that enrolls on or after the effective date of 55 Pa. Code Chapter §6100.445 in a location that is adjacent to, attached to, or located in the same building as any of the following funded through any source:

- Hospital (medical or psychiatric),
- Skilled Nursing Facility (55 Pa. Code Chapter 201),
- Licensed public or private Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/ID) (55 Pa. Code Chapter 6600),
- Licensed Child Residential Services (55 Pa. Code Chapter 3800),

- Licensed Community Residential Rehabilitation Services for the Mentally III (CRRS) (55 Pa. Code Chapter 5310),
- Licensed Personal Care Homes (55 Pa. Code Chapter 2600),
- Licensed Assisted Living Residences (55 Pa. Code Chapter 2800),
- Licensed or Unlicensed Family Living Homes (55 Pa. Code Chapter 6500),
- Licensed or Unlicensed Community Homes for Individuals with an Intellectual Disability or Autism (55 Pa. Code Chapter 6400),
- Licensed Adult Training Facilities (55 Pa. Code Chapter 2380),
- Licensed Vocational Facilities (55 Pa. Code Chapter 2390), or
- Licensed Older Adult Daily Living Centers (6 Pa. Code Chapter 11).

► Noncontiguous Location Requirements for Residential Service Providers

This applies to Residential Service locations (excluding Supported Living).

The APC and Noncontiguous Form (Attachment #1) is required for Residential Service locations. Providers who open a new Residential Service location must obtain approval from the Regional Waiver Capacity Manager verifying that the service location is a noncontiguous location. This request must be made separately and before the provider can submit a request for APC for the service location. As stated in the Consolidated, Community Living, and Person/Family Directed Support waivers:

All settings must be integrated and dispersed in the community in noncontiguous locations and may not be located on campus settings. To meet this requirement, the location of each setting must be separate from any other ODP-funded residential setting and must be dispersed in the community and not surrounded by other ODP-funded residential settings. Settings that share only one common party wall are not considered contiguous. Settings should be located in the community and surrounded by the general public.

On or after the effective date of 55 Pa. Code Chapter §6100, to obtain noncontiguous clearance, the locality of the service location, as stated in 55 Pa. Code §6100.445, “*may not be located adjacent to another human service residential service location or another human service day service location serving primarily persons with a disability*”. For the purposes of noncontiguous locations, the following is clarification regarding what constitutes human service residential service locations or human service day service locations serving primarily persons with a disability as stipulated in 55 Pa. Code §6100.445.

Residential Service locations may not be enrolled on or after the effective date of 55 Pa. Code §6100.445 if they are adjacent to any of the following funded through any source:

- *Licensed public or private Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/ID) (55 Pa. Code Chapter 6600),*
- *Licensed Personal Care Homes (55 Pa. Code Chapter 2600),*
- *Licensed Assisted Living Residences (55 Pa. Code Chapter 2800),*
- *Licensed Adult Training Facilities (55 Pa. Code Chapter 2380),*
- *Licensed Vocational Facilities (55 Pa. Code Chapter 2390), and*
- *Licensed Older Adult Daily Living Centers (6 Pa. Code Chapter 11).*

Exceptions are allowed in 55 Pa. Code §6100.445 for Residential Service locations to share one common party wall with one other Residential Service location funded through ODP’s waivers in the form of a duplex, two bilevel units, and two side-by-side apartments. This exception does not extend to Residential Service locations that are not funded through ODP’s waivers.

► **Approved Program Capacity Requirements, Including Reserved Capacity, for Residential Service Providers**

This applies to Residential Service locations (except Respite Only Homes).

APC is the maximum number of people who can receive services at the Residential Service location on any given day, regardless of the service or funding type authorized to pay for that service. Residential Service locations that only render base-funded

Residential Habilitation, Life Sharing, or Supported Living also have to request APC. APC must align with the residential procedure codes billed that are specific to the number of people receiving services in each home.

- Example 1: Two people live in a home licensed under 55 Pa. Code Chapter 6500. One person receives Life Sharing in this home through the Consolidated Waiver and one person receives Life Sharing through base-funding. The APC for this home must be two. The codes that the provider must bill would be associated with each person's needs group in a licensed two-person home (W8595).
- Example 2: Three children live in a home licensed under 55 Pa. Code Chapter 3800. One child receives Residential Habilitation in this home through the Consolidated Waiver and the other two children receive services through the Office of Children, Youth and Families. The APC for this home must be three. The code that the provider must bill for the child enrolled in the Consolidated Waiver must be based on his or her needs group in a licensed three-person home with or without day (W9045).

A request for APC must be made when the provider plans to open a new Residential Service location or change the program capacity for an existing Residential Service location, which includes Reserved Capacity.

- APC is not to be confused with licensing. Licensing is the maximum number of participants that can reside or receive services at a service location based on square footage of the home and applicable licensing regulations. The licensing capacity may be greater than or equal to the APC but can never be less than the APC. A provider may never serve more people than they have licensed capacity to serve.
- The maximum number of participants who can be authorized to receive services (APC) are different based on when a home was enrolled to render waiver services. More information about this is contained in Attachment #3.

Life Sharing – Substitute Care and Respite

The home's licensed capacity may not be exceeded in order to provide Respite or Substitute Care. If it is a Licensed or an Unlicensed Home, no more than two people can be supported through Life Sharing, Respite, and/or Substitute Care.

- Life Sharing providers do not need to request a change to the licensed or unlicensed Life Sharing service location's APC when Respite or substitute care is provided at the service location. For Life Sharing service locations that have an APC of one, the APC can be exceeded to provide Respite and/or Substitute Care to a second person.
- When Respite is provided in the Life Sharing service location, the person receiving Life Sharing services would not require a change to their authorization in the individual support plan. The person receiving Respite in the same home, would require a Respite authorization for the specific home's address in their individual support plan.

Reserved Capacity –

The following requirements take effect upon publication of the Chapter 6100 regulations. As stated in 55 Pa. Code Chapter §6100.55:

The provider shall reserve an individual's residential placement during the individual's medical, hospital, or therapeutic leave not to exceed 180 consecutive calendar days from the individual's departure from a service location from a residential service location.

The following is clarification regarding when a provider may request to decrease the service location's program capacity for Reserved Capacity where Residential Habilitation, Life Sharing, or Supported Living is provided as stipulated in 55 Pa. Code Chapter §6100.55.

- In the case of an individual's medical, hospital, or therapeutic leave, a provider may request to decrease the service location's program capacity when the individual is absent from the service location for more than 30 consecutive calendar days. Starting on day 31, the provider may request Reserved Capacity by using the *Request for Approved Program Capacity and Noncontiguous Clearance Form*, and ODP may approve the decrease in capacity for a maximum of 150 consecutive calendar days, but must end on the day the individual returns to the service location.
 - ***Medical or Hospital Leave*** - Days when the individual is admitted to settings such as medical hospitals, psychiatric hospitals, rehabilitation care programs, and nursing homes.

- **Therapeutic leave** – Days when the individual is absent from the home to visit with a relative or friend, including absence due to vacation when the individual is not accompanied by a staff person from the residential provider, and is, therefore, not receiving services from the residential provider.
- Reserved Capacity can be requested multiple times per person if an individual is on leave more than once in the fiscal year. For example, Reserved Capacity can be requested and approved by ODP for an individual who was in the hospital for a total of 50 days (Reserved Capacity would start on day 31 and end on day 50). Reserved Capacity can be request and approved if later that same year the individual was in the hospital and later admitted to a nursing facility for a total of 40 days (Reserved Capacity would start on day 31 and end on day 40).

A provider may not:

- Request Reserved Capacity for situations that involves an individual who is permanently moving out of the service location and into another service location; or situations where an individual has passed away.
- Bill for Respite services in the space for which Reserved Capacity is approved for an individual. In other words, a provider cannot render Respite services in a bedroom that is being reserved for a person who is on medical, hospital or therapeutic leave.

► Licensure Request

Providers need to become familiar with the licensing requirements and whether they pertain to a setting owned, leased, or operated by the provider. This is relevant in requests for APC where Regional Waiver Capacity Managers will review the licensed capacity of a setting when applicable.

For further information on licensing, please contact:

Traditional mail:

Office of Developmental Programs
Bureau of Community Supports
625 Forster Street, Room 412
Harrisburg, Pennsylvania 17105
Attention: Licensing Management Unit

Electronic mail:

RA-odplicensing@pa.gov

ATTACHMENTS

- Attachment #1: *Request for Approved Program Capacity & Noncontiguous Clearance Form*
- Attachment #2: *Instructions for Completing the Approved Program Capacity & Noncontiguous Clearance Form*
- Attachment #3: *Approved Program Capacity Requirements by Year*
- Attachment #4: *Regional Waiver Capacity Managers Contact Information*
- Attachment #5: *Sample Letter of the Written Request and the Department's Response*

OBSOLETE:

This communication obsoletes

- *ODP Informational Packet 028-15, Changes to the Approved Program Capacity Process Resulting from the Provider Settlement Agreement and*
- *ODP Announcement 071-18, Request for Approved Program Capacity and Noncontiguous Clearance.*