

**CHAPTER 4230. WAIVER OF SERVICE****GENERAL PROVISIONS**

- Sec.  
4230.1. Purpose.  
4230.2. Applicability.  
4230.3. Legal base.

**WAIVER OF SERVICE**

- 4230.11. Requesting waivers.  
4230.12. Documentation.  
4230.13. Onsite investigation.  
4230.14. Hearing.  
4230.15. Waiver decision.  
4230.16. Provision for mandated service.  
4230.17. Right to appeal.

**Authority**

The provisions of this Chapter 4230 issued under section 201 and 508 of the Mental Health and Mental Retardation Act of 1966 (50 P. S. §§ 4201(2) and 4508), unless otherwise noted.

**Source**

The provisions of this Chapter 4230 adopted December 17, 1982, effective December 18, 1982, 12 Pa.B. 4286, unless otherwise noted.

**GENERAL PROVISIONS****§ 4230.1. Purpose.**

This chapter defines the process for requesting a waiver of the duty to provide mental health and mental retardation mandated services. Section 301(d) of the Mental Health and Mental Retardation Act of 1966 (50 P. S. § 4301(d)) requires county mental health and mental retardation programs to provide the following nine mandated services:

- (1) Short-term inpatient services.
- (2) Outpatient services.
- (3) Partial hospitalization services.
- (4) Emergency services.
- (5) Consultation and education.
- (6) Aftercare services.
- (7) Rehabilitative and training services.
- (8) Interim care of mentally retarded persons.
- (9) Unified intake.

4230-1

**§ 4230.2. Applicability.**

This chapter applies to county mental health and mental retardation programs.

**§ 4230.3. Legal base.**

The legal authority for this chapter is sections 201(2) and 508 of the Mental Health and Mental Retardation Act of 1966 (50 P. S. §§ 4201(2) and 4508).

**WAIVER OF SERVICE****§ 4230.11. Requesting waivers.**

(a) A county mental health and mental retardation program is permitted to request a waiver of one or more of the nine mandated services if the service is not available or if the county mental health and mental retardation program shows that it is economically unsound to provide the service.

(b) A request for waiver shall be to waive the provision of an entire service. Waivers may not be requested for a reduction in the level of service.

(c) Waivers shall be requested for a period of one fiscal year or less.

(d) A request for waiver for the next fiscal year shall be submitted to the Department between April 15 and May 15 of the current fiscal year.

(e) Waivers may not be requested for the current fiscal year.

**§ 4230.12. Documentation.**

(a) The county mental health and mental retardation program shall submit a written request for waiver to the Secretary of the Department of Public Welfare, with a copy of the request for waiver to the Deputy Secretary, Office of Mental Retardation and the Deputy Secretary, Office of Mental Health.

(b) A request for waiver shall include the following:

(1) The service for which the waiver is requested.

(2) The fiscal year for which the waiver is requested.

(3) Justification for the waiver.

(4) The total expenditure by the county mental health and mental retardation program for the service in the previous and current fiscal year.

(5) Clients and units of service for the previous and current fiscal year.

**§ 4230.13. Onsite investigation.**

The Department has the authority to conduct an independent investigation, including but not limited to an onsite evaluation to determine if the waiver should be granted.

**§ 4230.14. Hearing.**

(a) The Department will hold a hearing in the county requesting the waiver by June 15 of the year in which the waiver request was made.

(b) The county mental health and mental retardation program shall arrange a location for the hearing.

(c) The county mental health and mental retardation program shall inform the public of the date, time, location and purpose of the hearing.

(d) The county mental health and mental retardation program shall present the request for waiver and justification for the waiver at the hearing.

**§ 4230.15. Waiver decision.**

The Department will provide a written waiver decision to the county mental health and mental retardation program by June 30 of the year in which the waiver request was made.

**§ 4230.16. Provision for mandated service.**

(a) If the waiver is granted, the county mental health and mental retardation program is not required to provide the mandated service for the fiscal year for which the waiver was granted.

(b) If a waiver is granted and the Department decides to provide the service according to section 508(b) of the Mental Health and Mental Retardation Act of 1966 (50 P. S. § 4508(b)), the county mental health and mental retardation program is liable for the total county share for the service waived, under section 508(c) of the Mental Health and Mental Retardation Act of 1966 (50 P. S. § 4508(c)). The county's mental health and mental retardation allocation shall be reduced by the total State amount expended in the fiscal year immediately preceding the fiscal year of the waiver, for the service waived. The actual amount reduced from the county's mental health and mental retardation allocation is deducted in the year of the waiver.

(c) If a waiver is granted, and the Department decides not to provide the service according to section 508(b) of the Mental Health and Mental Retardation Act of 1966 (50 P. S. § 4508(b)), the county mental health and mental retardation allocation shall be reduced by the total State amount expended in the fiscal year immediately preceding the fiscal year of the waiver, for the service waived. The actual amount reduced from the county's mental health and mental retardation allocation is deducted in the year of the waiver.

(d) If the waiver is denied, the county mental health and mental retardation program shall provide the service for which the waiver was requested.

**§ 4230.17. Right to appeal.**

The county mental health and mental retardation program has the right to appeal the Department's decision under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law). Appeals shall be submitted within 15 days of receipt of the Department's waiver decision to the Department's Hearing and Appeals Unit, according to the appeal procedures in 1 Pa. Code Part II (relating to preliminary provisions).

[Next page is 4300-1.]

4230-4

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