Pennsylvania
Department of Human Services

Email date: December 19, 2025
Sent to Email: Keys.Cert@ssa.gov

Scott Logan
Social Security Administration
Office of Income Security Programs
Keys Section
2518 Robert M. Ball Building
6401 Security Boulevard
Baltimore, MD 21235

Dear Mr. Logan:

I have been assigned the responsibility for implementing the Keys Amendment requirements and the Keys Amendment Certification for the Commonwealth of Pennsylvania. Enclosed is Pennsylvania's certification under the Keys Amendment, Section 1616(e) of the Social Security Act, 42 U.S.C §§ 1382e and 45 CFR Part 1397, for Federal Fiscal Year 2026.

There were new licensing regulations which would affect residential settings where Supplemental Security Income (SSI) recipients reside proposed or promulgated during this past year. Bulletin OMHSAS-25-03, "Administration of Psychotropic Medication to Individuals Over Objection in State Mental Hospital" was issued by the Office of Mental Health and Substance Abuse Services that affect residential settings. Please see attached. These were the only regulatory actions implemented during this past year.

If you have any questions about this submission, please contact me at this office at 717-787-9763.

Sincerely,

Ashley de Vitry
Program Manager
Supervisor Licensing
Administration

Enclosure
Bulletin OMHSAS-25-03

STATE CERTIFICATION

The Commonwealth of Pennsylvania submits the following certification, as required by 45 CFR, Section1397.10(e) and (f) for Federal Fiscal Year 2026.

1. Two State Agencies in the Commonwealth of Pennsylvania are responsible for establishing, maintaining, and ensuring the enforcement of standards for residential facilities in which significant numbers of SSI recipients are likely to reside in accordance with 45 CFR, Section 1397.10. These agencies are:

   The Department of Human Services
   The Department of Labor and Industry

The Department of Labor and Industry is responsible for standards relating to life safety. The Department of Human Services is responsible for the program standards governing the facilities listed below:

Domiciliary Care Program of Adults
Child Residential and Day Treatment Facilities
Community Residential Rehabilitation Facilities
Community Homes for Individuals with Mental Retardation
Personal Care Homes for Adults
Family Living Homes
Long Term Structured Residences

2. The Department of Human Services has been identified as the single state agency responsible for the certification by the laws and regulations related to the Keys Amendment.

3. The Commonwealth assures that information about standards, enforcement procedures, waivers of standards, and violations of standards by specific facilities has been made available for public review, as required by 45 CFR, Section 1397.109(c) and 1397.20(d)(2).

4. The names and addresses of facilities that are in violation of the above standards and regulations are reported to the relevant Social Security Administration Regional Office in accordance with 45 CFR, Section 1397.20(c).

Ashley de Vitry
Program Manager Supervisor
Licensing Administration

pennsylvania
DEPARTMENT OF HUMAN SERVICES

OFFICE OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES BULLETIN

ISSUE DATE:	EFFECTIVE DATE:	NUMBER:
June 16, 2025	June 16, 2025	OMHSAS-25-03

SUBJECT:

Administration of Psychotropic Medication to Individuals Over Objection in State Mental Hospitals

BY:

Jennifer S Smith

Jennifer S. Smith Deputy Secretary
Office of Mental Health and Substance Abuse Services

SCOPE:

- State Mental Hospital Chief Executive Officers
- State Mental Hospital Physicians
- The Office of Mental Health and Substance Abuse Services (OMHSAS) Medical Director

PURPOSE:

To update the standards and procedures for determining when to administer psychotropic medications over objection in State Mental Hospitals. To identify and document the process for individuals' appeal of medication orders for non-emergency administration of medications.

BACKGROUND:

On April 11, 1985, the Department of Human Services (DHS) OMHSAS published Mental Health Bulletin *99-85-10 Administration of Psychotropic Medication to Protesting Patients,* which discussed the history of Third Circuit Court of Appeals and Pennsylvania Supreme Court decisions involving the administration of antipsychotic medications over objection of a civilly committed individual. The bulletin referred to the Third Circuit's decision in Rennie v. Klein, 653 F.2d 836 (3d Cir. 1981), as well as the Third Circuit's reconsideration (Rennie v. Klein, 720 F.2d 266 (3d Cir. 1983)) of the original decision upon remand by the United States Supreme Court following Youngberg v. Romeo, 457 U.S. 307 (1982). A review of the first Rennie v. Klein decision demonstrates that the court's decision is limited in its applicability to patients who have not been adjudicated incompetent, Rennie v. Klein, 653 F.2d at 846, n. 12. The Third Circuit's opinion on remand demonstrates that the overall conclusion remains the same, but the analysis leading to that judgment required revision.

Separately, in 1983 the Pennsylvania Supreme Court issued a decision in In re: Hutchinson, 454 A.2d 1009 (Pa. 1982) that suggests involuntary commitments are at least a limited adjudication of incompetency regarding treatment decisions under the Mental Health Procedures Act ("MHPA") (50 P.S. § 7101 et seq.). Against that backdrop, OMHSAS issued its

bulletin addressing procedures for voluntary treatment (pursuant to 50 P.S. § 7201) and involuntary treatment (pursuant to 50 P.S. §§ 7302, 7303, 7304, or 7305) under the MHPA. The bulletin instituted procedures involving administration of any psychotropic medication.

Since the bulletin was issued in 1985, two Federal cases have elaborated upon a patient's right to object to administration of antipsychotic medications. First, in 1990 the United States Supreme Court analyzed a prisoner's right to avoid unwanted administration of antipsychotic medication and determined that the medication may be administered for no purpose other than treatment when the person is a threat to himself or others. Washington v. Harper, 494 U.S. 210 (1990). The Court in *Harper* recognized that individuals have "a significant liberty interest in avoiding the unwanted administration of antipsychotic drugs under the Due Process Clause of the Fourteenth Amendment." Id. at 222. However, the Court also determined that due process protections in this context do not require judicial oversight. Id. at 233. Instead, the Court found that medical professionals are best suited to assess the risks associated with antipsychotic medication, stating that "[a] State may conclude with good reason that a judicial hearing will not be as effective, as continuous, or as probing as administrative review using medical decisionmakers. We hold that due process requires no more." Id. Further, forced medication treatment over a prison inmate's objection only occurs under the supervision of a medical professional when there is medical consensus that doing so is in the inmate's medical interest. Id.

The principles established in *Harper* were reaffirmed by the Third Circuit in Disability Rights New Jersey, Inc. v. Commissioner, New Jersey Department of Human Services, 796 F.3d 293 (3d Cir. 2015). These decisions collectively emphasize that due process in the involuntary administration of antipsychotic medication requires: (1) a meaningful and impartial review process, (2) a hearing before a three-person panel of medical professionals with procedural safeguards—including notice, the right to be present at an adversarial hearing, and the right to present and cross-examine witnesses, and (3) a secondary review or appeal process.

DISCUSSION:

Given the Klein, Harper, and most recent Third Circuit holding in Disability Rights New Jersey and due to potential side effects of antipsychotic and other psychotropic medications, the following procedures apply to individuals that are involuntarily committed to a DHS operated state mental hospital under an appropriate section of the MHPA.

Although the cited court rulings address only antipsychotic medications, this guidance will apply to any psychotropic medication.

Involuntary Individual – Emergency Administration

During an emergency involving any involuntary committed individual under MHPA, those staff in charge of treatment are authorized to provide the necessary treatment, including medication administration, to protect the health and safety of the individual and others.

The following section outlines procedures for the non-emergency prescription and administration of psychotropic medication over objection for involuntarily committed individuals that should be carried out within their treatment plan.

Procedures for Administration of Non-Emergency Medication Over Objection

Whenever an individual committed for involuntary treatment pursuant to an appropriate section of the MHPA protests a treating psychiatrist's order prescribing psychotropic medication, the following procedures are to be followed by the treatment team lead or designee.

1. Determine and document whether the medication is necessary to provide appropriate treatment or to prevent physical injury despite the objection. This review should also include identification of any reasonably viable alternatives.
2. Discuss with the individual the reasons why a specific medication is indicated and any available alternatives. Discuss with the individual their concerns and reasons for the objection/protest. Seek informed consent. Document the reason for the protest, whether the individual provided consent, and the entirety of the interaction in the individual's medical record.
3. If the individual continues to refuse the prescribed medication(s), obtain a second opinion from a psychiatrist concerning the degree of medical necessity for the medication. The psychiatrist providing the second opinion may be a colleague of the treating psychiatrist. However, the second opinion should be based on an independent examination of the individual and an independent review of all medical records for the individual.
4. If the consulting psychiatrist, referenced in #3 above, concurs that the prescribed medication(s) being protested are necessary, the medication may be administered over objection. Appropriate respect shall be shown for the individual's feelings and dignity.
5. If the consulting psychiatrist, referenced in #3 above, does not concur that the medication is necessary, a third psychiatrist's opinion should be obtained before proceeding. The third psychiatrist may be a colleague of the treating psychiatrist or the second psychiatrist consulted, but the third opinion should be based on an independent examination of the individual and a review of all medical records for the individual. Each of the involved psychiatrists should consider the risk/benefit value of the medication if administered over objection, author documentation (entry in the individual's medical records) summarizing the individual's articulated basis for their protest, and if applicable, alternative available treatment approaches.
6. If the third psychiatrist concurs with the treating psychiatrist, medication may be administered over objection. If both the second and third psychiatrists disagree with the treating psychiatrist, medication will not be administered over objection.

Appeals

At any point in the above process, an individual may appeal medication administration over objection. Appeal requests will be addressed by a medication review process as outlined in Attachment A *Medication Over Objection Appeal Process.* All individuals committed for involuntary treatment pursuant to the MHPA will be provided a copy of Attachment B *Medication Over Objection Appeal Form* in the patient handbook.

SUPERSEDED BULLETIN:

This bulletin supersedes Mental Health Bulletin *99-85-10 Administration of Psychotropic Medication to Protesting Patients.*

ATTACHMENT:

Attachment A: *Medication Over Objection Appeal Process*
Attachment B: *Medication Over Objection Appeal Form*

Medication Over Objection Appeal Process

First Level Appeal

1. If an individual chooses to appeal a medication over objection decision, a written appeal should be submitted. The individual may request assistance from an external advocate or other staff member to assist with the appeal request. The appeal request will flow to the hospital's chief medical officer (CMO) or designee, within five (5) business days of the medication over objection decision. Any appeal received after 30 days of a medication over objection decision shall be dismissed as untimely filed.

2. Upon receipt of the written request for appeal, the CMO, or designee shall convene a Standing Medication Rights Review Committee (SMRRC) to conduct a first-level appeal review. The review will occur within five (5) working days. The CMO shall determine the appropriate members. At a minimum, the committee will include the CMO, or designee, a psychiatrist, and another medical professional licensed in the Commonwealth of Pennsylvania (none of whom are directly involved in the decisions regarding the individual's medications). The SMRRC shall select a chairperson to lead the review prior to the beginning of proceedings.

3. The SMRRC chairperson shall provide written notification to the individual and other interested parties identified by the individual of the date, time, and place of the appeal review proceeding. Notification shall also be given to the treatment team leader or other appropriate persons as determined by a review of the medication over objection decision.

4. A first-level appeal review shall be conducted as follows:

    A. A review proceeding shall be held promptly to allow sufficient time for a written decision to be rendered within five (5) working days of the CMO's or designee's notification of the appeal request. Time limits may be waived with the written consent of the individual filing the appeal.

    B. The review proceeding shall be conducted in an informal manner without strict adherence to the rules of evidence. The testimony provided in a review proceeding shall focus on: 1) the individual's diagnoses; 2) the specific medication(s) and co-medications to address side effects as well as any testing required based upon administration of specific psychotropic medication being recommended; 3) the rationale for the recommendation (including an explanation of the individual's likelihood of serious harm to self or others due to non-compliance); 4) formulations and dosage ranges of the proposed medication(s); 5) and less restrictive alternatives, attempted or ruled out the medications,

including the objections, if any, expressed by the individual to the medication(s). The panel shall record the review proceeding in writing in the form of notes recorded by the panel members or someone designated as a proceeding stenographer. An audio recording or court reporter transcription is not required.

C. The chairperson shall administer an oral affirmation to "tell the truth regarding the subject at hand" to witnesses appearing before the SMRRC.

D. The individual has the right to be present at the review proceeding.

E. The review proceeding shall be closed except to the attending psychiatrist or certified registered nurse practitioner (CRNP), the individual, the external advocate if the individual requests the external advocate's presence, and the involved staff comprising the panel. If the individual chooses to have legal counsel, the cost of legal counsel shall be paid for by the individual. Other persons may be present if the SMRRC believes their presence will expedite the review process. Upon objection to the presence of other persons by any party, the review proceeding shall be closed unless those persons are called to testify. Objections to the presence of other persons may be overruled by a majority decision of the SMRRC.

F. The chairperson shall conduct the review proceeding in an orderly fashion, manage the conduct of the participants, limit repetitive questioning and not allow abusive questioning. If the SMRRC determines the need for more extensive participation of the individual filing the appeal or other parties, committee members shall be permitted to ask additional questions and call additional witnesses.

G. The SMRRC shall take an active role in the review proceeding and may independently investigate and question any witness regarding the allegations named in the appeal or related issues during the review. Documentation from the individual’s record may be reviewed by the SMRRC.

H. The individual and the panel may ask questions, present testimony, review records referenced during the proceeding, and call witnesses concerning the medication over objection decision by the treating psychiatrist.

I. The SMRRC's deliberations on reaching a decision by majority vote shall be closed and limited to its members. The content of these deliberations shall not be documented as part of the review proceeding record.

J. The decision of the SMRRC shall be in writing. The SMRRC decision shall contain the following information: 1) the disposition; 2) the names of the witnesses presented; 3) a list of the evidence presented; 4) a summary of the individual’s position and objections to the proposed medication; 5) if the medication at issue in the proceeding was not authorized, what alternative

treatment(s) the panel believes should be attempted, if any; 6) if the panel determined to authorize the medication over the objection of the individual, why the medication is necessary to treat the individual to avoid the likelihood of dangerousness or harm to self, others or property and why the medication is essential to the current treatment plan; 7) whether or not the individual has requested any modifications or will consent to other types of medication; 9) the formulation and dosage of the medication(s) authorized by the panel; and 10) signatures, names, and titles of the SMRRC panel members confirming the decision.

A copy of the decision shall be provided to the individual, the CMO of the facility, and shall be filed in the individual's electronic health record (EHR) within three (3) working days of the review proceeding. The decision must address with specificity all issues raised in the appeal and must include specific recommendations as appropriate regarding medications.

K. The attending psychiatrist or CRNP is responsible for implementing the decision reached by the SMRRC. The CMO, or designee, shall distribute the decision of the SMRRC to involved parties through the supervisory chain of command.

Second Level Appeal Review:

1. Within 10 working days of issuance of the written decision, the individual or the hospital's CEO may appeal the decision of the SMRRC in writing to the OMHSAS Medical Director or designee. This second level appeal shall set forth the specific objections to the previous decision. Following submission of a second level appeal, the individual shall be provided access to notes of the first level appeal proceeding and documentation from the EHR related to the first appeal. If the individual is unable to submit the necessary information, the facility shall assist in doing so.

2. The OMHSAS Medical Director, or designee, will be the medical professional who reviews the first-level appeal decision and all other submitted documentation to render a decision on a second-level appeal review. The second level appeal review is intended to occur through a review of the record from the first level review proceeding although, the Medical Director may obtain further evidence as deemed appropriate.

3. The OMHSAS Medical Director or designee may consult with a psychiatrist or other medical professional from another state hospital as deemed beneficial or warranted. Any such consultation will occur with staff from a state hospital external to where the appealing individual is being served. Should consultation occur, that fact will be included in the final determination document noted in #5 below.

4. The OMHSAS Medical Director, or designee, shall conduct the second-level appeal review of the first level appeal documentation within five (5) working days of

receiving it. If the Medical Director determines that additional testimony or other records are necessary, a second level review proceeding will be scheduled, and the individual and the hospital's CEO shall be notified. Any subsequent review proceeding, at the discretion of the second-level appeal reviewer, will be held by the OMHSAS Medical Director or designee and will be conducted consistent with the procedures set forth for the SMRRCC panel in the first-level review.

5. The final determination shall be made in writing and submitted to the individual, the hospital's CMO and CEO within 10 days after conclusion of the second level review. A copy of the OMHSAS Medical Director's final determination shall be provided to the individual, the CMO of the facility, and filed in the individual's EHR within three (3) working days of the decision.

Subsequent Appeal

The final determination of the OMHSAS Medical Director is not subject to further appeal. An individual's failure to file a timely appeal of either the medication over objection decision or the SMRRC first level review decision, render the unappealed decision to be the final determination. Any change in medication to which the individual objects, creates a new right to appeal that newly prescribed medication.