#3160

Wood Services, Bucks County, PA

Comments regarding the new Chapter 6100 and proposed amendments to Chapters 2380, 2390, 6400

2380.17, 2390.18, 6100.401, 6400.18 (a) Incident report and investigation

Discussion: The home shall report incidents (1-15) within 24 hours of discovery.

- The list does not include current reportable incidents: Individual to individual abuse; Communicable disease; and Medication Errors. Are these no longer going to be reportable incidents to the Department?
- For restraints, the current process allows the provider to enter restraints into EIM within 72 hours of occurrence. Is it now proposed that this will change to 24 hours?
- Under Chapter 6100, there are additional categories of reportable incidents: 16- medication error and 17-a critical health and safety event that requires additional interventions such as significant behavior event or trauma. If the reporting requirements are suppose to become universal across 2380, 2390, 6100, and 6400 chapters regarding incident management, why would only Chapter 6100 require these two categories?

Recommendations:

- Clarify if previously reported incidents mentioned above will no longer be considered reportable incidents.
- Make required reportable incidents the same across all Chapters instead of picking and choosing.
- Allow providers to continue to enter restraints (and if medication errors is going to be kept) in a 72 hour window as opposed to the 24 hour limitation.

6100.401 (a)(17) Types of incidents and timelines for reporting

Discussion: A critical health and safety event that requires immediate intervention such as significant behavior event or trauma. Needs to be defined better. What event or trauma that is critical would not involve hospitalization or an emergency room visit that would fit into another reportable category?

Recommendations:

- Delete this requirement as an incident regarding critical events or trauma can be categorized in another reportable category
- Or, clearly define events that would be captured under this requirement.

2380.17, 2390.18, 6400.18 (b) Incident report and investigation

6100.401 (b) Types of incidents and timelines for reporting

Discussion: The individual and the persons designated by the individual shall be notified immediately upon discovery of an incident relating to the individual. Currently, parents/guardians are notified of an incident. Also, funding and manage care organizations require that the EIM report is also sent to them including those individuals from other states. What if the individual won't designate them as people that are allowed to receive the incident report?

Recommendations:

- Include individual's funders and agencies in the scope of receiving the incident report.
- Clarify whether or not parents/guardians need to be notified and, if so, what to do if the individual does not designate them to receive it.

2380.17, 2390.18, 6100.401, 6400.18 (f) Incident report and investigation

Discussion: The home shall initiate an investigation of an incident within 24 hours of discovery by a staff person. Is it being proposed that the provider is required to complete an investigate for ALL incidents even those that were not previously considered for investigation: restraint, hospitalization-Illness, ER-Illness/Injury that is known, law enforcement activity, injury requiring treatment beyond first aid? If so, this is going to become quite burdensome on our certified investigators who have other duties beyond reporting incidents to the Department and then investigating all of them.

Recommendation:

- Allow providers to investigate incidents as it currently stands according to the IM bulletin.

2380.19, 6100.405, 6400.20 Incident analysis

2390.19 Incident procedures to protect the individual

Discussion:

- Is the idea of the analysis to determine the root cause of the incident actually implying "root cause" investigations or is the idea to simply find what caused the incident to occur.
- If it is implying an actual root cause investigation to occur, will training be provided by ODP in how to appropriately complete this by provider staff? For all incidents requiring investigations, providers are already required to have a thorough investigation completed by PA certified investigators. Is this something that is going to be expanded on via the certified investigator course to teach root cause applications?
- If a root cause analysis is required, what are the requirements of what it going to need to include? Is there department paperwork, formats that will be required? Please clarify what this will entail.
- An incident analysis shall be completed for each confirmed incident. Does this include just abuse/neglect incidents or does it also include all incidents such as individual to individual abuse, hospitalization etc.? Please clarify.
- Currently, Incident Management analysis is done on a monthly basis in which all reportable incidents are tracked and trended. Will this be something that is no longer required once the new regulations are passed and instead this new incident analysis protocol should be met? It seems redundant to require both.

Recommendations:

- Remove root cause as it implies presumed knowledge of root cause analysis principles.
- If it is going to be required, offer training on root cause analysis to provider agencies or expand the certified investigator course to cover the topic and apply it to incidents they are investigating.

6100.182, 6400.32 (e) Rights of the individual

2380.21. 2390.21 (m) Individual rights

Discussion: An individual has the right to make choices and accept risks. What happens if an individual makes a choice that can put them at risk and something bad happens to them? Who becomes liable?

How can no one be responsible to determine whether or not an individual is capable of making this choice?
Recommendation:

- Amend this proposed regulation and specify someone that can make this choice. Or put as determined by the PSP with the person who may determine this for the individual.

6400.32 (l) Rights of the individual
6100.183 (a) Additional rights of the individual in a residential facility

Discussion: An individual has the right to receive scheduled and unscheduled visitors, and to communicate and meet privately with persons of the individual's choice, at any time. The way this is written is that visitors can just show in the middle of the night without notice and the provider has to abide. What about situations where visitors are required to be supervised per the individual's PSP? What about court ordered supervised visitation? What about situations where the visiting party is on an abuse offenders list, such as Megan's Law, where they have a right to visit their family member but are not allowed to visit within in the building due to other individuals residing there?
Recommendation:

- Allow visitors and communication within reasonable hours, not 24/7. In addition, add also to include conditions as stated in their PSP.

6400.32 (p) Rights of the individual
6100.183 (e) Additional rights of the individual in a residential facility

(p) Discussion: An individual has the right to choose persons with whom to share a bedroom. It is not always feasible to accommodate one individual as it may not be feasible for other individuals. We try to match up roommates that would get along with one another, age etc. However, allowing the individuals themselves to choose roommates is also giving them a choice to refuse to be someone's roommate if they wake up one morning and decide that they no longer want to room with their peer. What if an individual wants to move in with someone that is not age appropriate- one an adult and another a minor?
Recommendation:

- Remove this right.

6400.32 (r) Rights of the individual
6100.183 (g) Additional rights of the individual in a residential facility

Discussion: An individual has the right to lock the individual's bedroom door. This can become a dangerous situation for individuals who may want to hurt themselves and run into their room to lock it. What if there are two individuals that reside in the same bedroom? Would they have a right to be in there with the door locked? What if an individual's PSP prohibits them from being in their room alone and within staff's visual range at all times? What about individuals who have severe medical conditions, such as seizure conditions, where staff need to be able to get to them immediately to provide care.
Recommendation:

- Remove this right.

6400.32 (s): Rights of the individual

6100.183 (h): Additional rights of the individual in a residential facility

Discussion: An individual has the right to access food at any time. What if an individual has dietary restrictions ordered by a doctor, has Prader-Willi syndrome? Are providers suppose to ignore these factors and allow individuals to eat what they want and at any time? If an individual becomes obese to the point it begins to affect their health, will providers be liable for the illnesses that incur? What about individuals that have allergies or at risk for choking? Is it their right to eat whatever they want even if it could cause harm?

Recommendations:

- Leave the regulation to be more generic like: An individual has a right to three meals a day along with a snack. An individual's desire for more food will be in accordance with their nutritional diet as prescribed by their PCP.
- Or define the regulation to include if an individual has a medical diagnosis or controlled diet it would exclude them from free access to food at all times.

2380.39, 2390.49, 400.52 (f) Annual training

6100.141 (e) Annual training plan

Discussion: Records or orientation and training, including the training source shall be kept. Would the source for providers that have training departments with their own trainers/courses be considered the source themselves? In addition, would staff signatures be a requirement for each course sign in sheet? Nowadays with electronic records, the regulations would need to address this.

Recommendations:

- Clarify the "source" of training. Would it be the provider, online course, outside person etc.
- If signature for proof of taking a course is required, clarify what would be acceptable when the course is taken electronically and requires an electronic signature.

2380.182, 2390.152, 6400.182 (5)(g) Development of the PSP

6100.221 (h) Development of the PSP

Discussion: The PSP, including revisions, shall be documented on a form specified by the Department. Is it going to be required that agencies can only use a Department form? With agencies moving toward electronic records, this may not be feasible for them to use unless there is a Department electronic document that is compatible for use with the agencies electronic record. Or, will agencies, be able to use their own developed PSP form which would include all of the mandatory requirements issued by the Department?

Recommendations:

- Clarify if agencies are going to be given the option of using a specific form from the Department or if agencies will be allowed to create their own PSP document with the required sections within it.
- Give the agencies the ability to create their own format to include mandatory Department content instead of having the Department mandate a specific form to use.

2380.185, 2390.155, 6400.185 (11) Content of the PSP
6100.223 (15) Content of the PSP

Discussion: Health care information, including a health care history. Is the idea behind this that an individual will no longer require a separate Lifetime Medical Assessment document? Will the health care history only be a part of the PSP? This can be a lengthy document for individuals residing at a provider for several years.

Recommendation:

- Clarify if the Lifetime Medical Assessment will still be needed. If yes, then clarify what are the expected requirements for inclusion in the PSP under Health care history.

2380.152, 2390.172, 6100.342, 6400.192 (1-6) PSP

Discussion: If the individual has a dangerous behavior as identified in the PSP, the PSP must include the following (2-6). This seems to be contents that were previously in the Behavior Intervention Plan. Is it the expectation that this should all be included with the PSP and that BIPs are no longer required? If so, will it be acceptable to continue to complete a BIP and attach it to the PSP as part of it PSP but a separate section of the PSP? Reason being, if PA does away with BIPs other out of state placing agencies require them to be completed. How would we justify that PA does not want them but they do and maintain compliance with both states?

Recommendation:

- Clarify the expectation of including dangerous behavior content within the PSP.

2380.154, 2390.174, 6100.344, 6400.194 (d) Permitted interventions

Discussion: A physical protective restraint may only be used in the case of an emergency to prevent an individual from injuring the individual's self or others. Is it safe to assume the restraints are no longer considers "restrictive" under the proposed regulation and instead are considered emergency situations. If this is the case, they would not be part of any PSP?

Recommendation:

- Clarify further how restraints are defined under the proposed regulation and whether or not they are expected to be part of the PSP.

2380.153, 2390.173, 6100.343, 6400.193 (5) Prohibition of restraints

Discussion: Regarding mechanical restraint, under current regulation, 200 (b), helmets, mitts and muffs [may be used] to prevent self injury on an interim basis not to exceed 3 months after an individual is admitted to the home. This does not appear in the proposed rulemaking.

Recommendation:

- Clarify whether or not this exception would no longer apply.

2380.153, 2390.173, 6100.343, 6400.193 (5)(i) Prohibition of restraints

Discussion: Regarding mechanical restraints (5)(i). The term does not include a device prescribed by a health care practitioner that is use to provide post-surgical care, proper balance or support for the achievement of functional body position. This does not include *post-medical* treatment and to *prevent aggravation while an injury is healing* as stated in the current regulations under 200(b).

Recommendation:

- Include as permissible, *post-medical* treatment and procedure to *prevent aggravation while an injury is healing.*

2380.154, 2390.174, 6100.34, 6400.194 (f) Permitted interventions.
Also Definition of Restraint in all four Chapters

Discussion: A physical protective restraint may not be used for more than 15 minutes within a 2-hour period. The proposed regulations do not specify what time limit is placed on when an incident is considered a restraint. As it stands currently, a manual restraint is a physical hands-on technique that last more than 30 seconds.

Recommendation:

- Allow the same standards of the restraints lasting more than 30 seconds to the new proposed regulation.

2380.156, 2390.176, 6100.52, 6400.196 Rights team

(b)(2): Discussion: Review each incidence of the use of restraint. Is there a threshold on the number of restraints that an individual has before the team has to meet? Or is it that if an individual has just one emergency restraint, a team will need to come together to discuss that one incident?

Recommendation:

- Clarify the expectation of how many incidents may occur before a team needs to meet.

(d) Discussion: Members of the rights team shall be comprised of a majority who do not provide direct support to the individual. This does not define who can make recommendations and reasoning behind an individual's behavior. Can just anyone design positive supports, discover and resolve the reason for an individual's behavior without being qualified or know the individual's background?

Recommendation:

- Define who can make qualified recommendations and reasoning behind an individual's behavior.

(e) Discussion: If a restraint was used, the individual's health care practitioner shall be consulted. Is this a nurse, doctor, psychiatrist?

Recommendation:

- Define a health care practitioner.

6100.443 Access to the bedroom and the home

(e) Discussion: Only authorized persons shall access the individual's bedroom. Who authorizes who can and cannot go into the room? The provider, individual?

Recommendation:

- Clarify who authorizes entrance into an individual's bedroom

(f) Discussion: Access to an individual's bedroom shall be provided only in a life-safety emergency or with the express permission of the individual for each incident of access. What if an individual's level of supervision is violated in situations where the individual refuses to allow staff in? What about individual's who level of supervision requires a staff to be with them at all times?

Recommendation:

- Consider adding "or in accordance with his/her level of supervision as listed in the individual's PSP"