#14-540-(23)

#3160

Kroh, Karen

From: Mochon, Julie
Sent: Thursday, December 08, 2016 1:44 PM
To: Kroh, Karen
Subject: Fw: Regulation No. 14-540
Attachments: Chapter 6100 (Memo).docx

Karen - I emailed Shirley to let her know that it is my job to send you the comments and that she followed the directions perfectly and didn't need to do anything further.

From: Keith-Knox, Shirley <sknox@dauphinc.org>
Sent: Thursday, December 8, 2016 1:34 PM
To: Mochon, Julie
Subject: Regulation No. 14-540

Good Afternoon Julie - attached are a copy of my comments on Chapter 6100.
As part of the stakeholders group, should I also send a copy to Karen Kroh or will you handle that?

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TO: **Julie Mochon, Human Services Program Specialist Supervisor, Office of Developmental Programs**

FROM: **Shirley Keith Knox**

DATE: **December 8, 2016**

RE: **ID Department Review of Chapter 6100**

After reviewing the Chapter 6100 draft regulations which were published in the PA Bulletin on November 5, 2016, I wish to make the following comments:

What we like:

1. The regulations clearly outline that the purpose of these regulations is to support individuals to achieve greater independence, choice and opportunity in their lives.
2. The regulations align with the 2380, 2390, 6100 and 6400 licensing requirements.
3. **"Designated Managing Entity** – is the new name for Administrative Entities. I like the emphasis on "managing". It clearly outlines that the DME acts on the departments behalf. Throughout the document, the DME is aligned with actions of the department, clearly referencing authority of the DME to act. (i.e. 6100.42 Monitoring Compliance)
4. **6100.43 Regulatory Waiver and 6100.44 Innovation project** – these sections allow for flexibility in the regulatory waiver, as well as the opportunity to submit a proposal to the department for innovative projects. This will allow DMEs and providers to request a regulatory waiver that stands in the way of a person's needs being met, as well as, increase opportunities for new ideas to emerge.
5. **6100.50 Communication** – this section emphasizes that individuals have an effective form of communication, as well as the use of technology if necessary.
6. **6100.52 Rights Team** – this section outlines the need for providers to either have a rights team or to access a county based rights team. We do have some questions and some recommendations found in the 2nd section of this document.
7. **6100.182 Rights of the individual** – this section was a concern to the ID Committee of the MH/ID Advisory Board when reviewing previous drafts of Chapter 6100. Their concern was addressed with the addition of 6100.184 Negotiation of Choices. In addition, the rights section aligns with the new CMS Settings Rule.
8. **6100.221 Person Centered Support Plan** – this section focuses on the inclusion of community participation and employment – again, aligning with the CMS Settings rule.
9. **6100.304 Positive Intervention** – this is a welcome addition to the Chapter 6100 regulations. We support the refocusing to "positive" interventions and the prohibition of restraints. It does cause some conflict when individuals seek residential and other support services when they come from environments that use restraints, as well as, access other systems such a behavioral health, in addition to HCBS. For example, a young man was living in a residential home, but receiving services from a behavioral health provider that recommended the use of a restraint. While these conflicts have emerged and will continue to emerge, our system needs to stand by the prohibition on the use of restraints. It is such a 'slippery slope' when we allow restraints. In addition, we support the same requirements across all HCBS settings.

10. **6100.401 Incident Management, Types of Incidents** – this section includes exploitation. Unfortunately, we have had a number of incidents of exploitation. This allows separate reporting and trending ability.
11. **6100.405 Incident analysis** – this section is relatively new and highlights the need to analyze the root cause and mitigate risk related to incidents. All good.
12. **6100.441 Physical Environment** – aligns with the CMS Settings Rule.
13. **6100.446 Facility characteristics relating to size of facility** – a welcome addition to the regulations. This allows for existing entities to stay relatively the same, but new entities must meet these new size requirements.
14. **6100.461 Medication Administration – Self Administration** – the proposed regulation requires the provider to provide or arrange for the use of assistive technology to support the individual's self-administration. We have a number of folks using a medication dispenser. This has allowed them greater independence as well as regular medication administration. This has resulted in better personal outcomes for the person.
15. **6100.664 Residential habilitation vacancy** – (e) clarifies transfers of individuals related to absences.
16. **6100.670 Startup costs** – this section allows for startup costs and expands the conditions under which startup costs can be requested.
17. **6500.17 Self-assessment of homes** – this section of the 6500s allows a provider to complete a self-assessment of each home the agency is licensed to operate, a welcome relief for providers.

What we have concerns and/or questions about:

1. **6100.1 Purpose** – clarification is needed that base funding is covered under the Chapter 6100 regulations when HCBS services are purchased, yet counties are not limited in the ability to cover other needed services, supports, technical assistance and or materials, as long as following the 4300 regulations.
2. **2380.35 Staffing** – sections (a) and (c) conflict with each other.
3. **2390.5 Definitions** – Competitive employment definition needs to be aligned with the definition found in the Workforce Innovation Opportunities Act. (I.e. full or part time basis, including self-employment, compensated at not less that federal minimum wage nor less that the customary rate paid by the employer for similar work by people without a disability, at a location where the employee interacts with employees without disabilities and has opportunity for similar benefits and advancement.)
4. **6100.52 Rights Teams** – this section indicates that a provider should have a rights team. Our recommendations include the following:
    a. Require each agency to establish a "Risk management" team. This team would review all incidents, alleged incidents and suspected incidents of a violation of individual rights, as well as each use of restraint. This team could provide the analysis that is required in the section on incident management, as well as exploration of positive intervention alternatives to agency staff. This team can provide the trend analysis that is now required in the incident management section.
    b. Individual PSP team members (including the person) should be responsible to review each incident for that person, alleged incident, rights violations and use of restraints, as

well as consideration of alternative positive interventions related to that person. This is the responsibility of each team when incidents occur. If restraints were used, the individual's health care provider can be consulted if the team believes it is needed.

c. Each county or county joinder should be responsible for a rights team. Working in a county that has operated a Human Rights Team, we know that requiring each provider to have one is overly burdensome. With the emphasis on positive interventions, the need for a rights team is limited. This rights team includes members that are not associated with an agency, includes family members and individuals that receive services. The county based rights team reviews all restrictive plans PRIOR to implementation – plans that restrict a person's rights and provides recommendations to the local PSP team and the agency as appropriate.

5. **6100.141 Training, annual training plan** – while we agree with the required hours and the responsibility of the provider to establish a training plan that meets the needs of the individuals they serve and the staff they hire, our recommendation is that the following topics be included into the current overall topics that are listed:
    a. Agency mission and values
    b. Procedures for handling emergencies (natural disaster, health emergency, etc.)
    c. Accurate service documentation & billing

    These areas have been found to be missing during local provider monitoring activities.
6. **6100.401 Incident Management, Types of Incidents (d)** – this section clarifies that a copy of the incident report (redacted) can be provided to the individual or persons designated by the individual if requested. Additional recommendation – include a statement that the certified investigation report is the property of the agency providing or paying for the report and only available by court order to the individual or their designee.
7. **6100.803 Support Coordination, targeted support management and base-funded support coordination** – (e) (3) this regulation requires a 6 month review for level of residential habilitation. This is too frequent. When individuals are receiving residential supports, there is ongoing monitoring by the supports coordinator. If a situation emerges that the individual needs more or less service, the team should address this at that time.
8. **6100.804 Organized health care delivery system** – I am looking at this one in relationship to the number of folks that are now attending institutions of higher learning. This is overly burdensome – requiring colleges to following the incident management sections of the 6100 for example. Clarification is needed to what constitutes a subcontract? Students attending higher education institutions are provided a tuition payment. There should not be a separate requirement for the college and the OHCDS to enter into a subcontract.