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Kathy Cooper

From: Kristy Meyer <kmeyer@persondirectedsupports.com>
Sent: Thursday, December 15, 2016 12:06 PM 2016 DEC 15 PM 2:34
To: IRRC; Mochon, Julie; c-karkroh@pa.gov
Subject: Regulation #14-540: Home and Community-Based Supports and Licensing Public Comment IRRC #3160
Attachments: PDSI Proposed Rulemaking Public Comment.pdf

Ms. Mochon, Ms. Kroh and the Independent Regulatory Review Commission,

Please find Person Directed Supports, Inc.'s comments on the proposed Chapter 6100, 2380, 6400 and 6500 regulations. Regulation #14-540 Home and Community-Based Supports and Licensing promulgated by the Department of Human Services. We thank you for taking our comments into consideration as we have great concern over the proposed changes. We hope that you find our comments and recommendations valuable as this process continues.

Thank you,

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1541 Alta Drive, Suite 202 Whitehall, PA 18052

IRRC and The Department,

Person Directed Supports, Inc. is a well-established provider agency for close to 17 years in the Northeast, Central and most recently Southeast regions. We have roughly 400 employees who provide supports and services under the Chapter 51, 6400, 6500 and 2380 to 130 individuals with intellectual disabilities as well as the dually diagnosed. Person Directed Supports, Inc. values regulatory compliance as paramount to providing "Everyday Lives" to our individuals, and thus devotes an entire department to Quality Management.

Upon reviewing the proposed regulations PDSI appreciates the intentions of the new regulations to improve the flow and format, include the adult autism waiver in Chapter 6100, and introduce an all-encompassing PSP that would seemingly reduce the amount of documents an agency would need to compile and maintain.

While the proposed regulations appear to have virtuous intentions, upon review, the regulations will create an enormous financial burden for our agency that will be detailed in our comments, specifically the changes in the Incident Management, Rights Team, and Annual Training Plan sections as most concerning. Combined with the impending fee schedule, this will only further deplete the amount of financial resources PDSI will have available to satisfy the demands of the regulations.

PDSI also feels the proposed regulations contain frequent use of vague terminology that will need to be clarified, to minimize misinterpretation. We also feel they put unrealistic demands on the provider that far supercede those required in the current regulations, and do not fall in line with the ideals of "Everyday Lives".

The proposed regulation review process for our agency was conducted over several days with senior management including the Quality Management department and owners of PDSI who were all ardent about reviewing and commenting on these regulations in an effort to have our agency's opinions considered. We were disheartened and discouraged after reading, as the implementation of the regulations as written will be detrimental to our agency, and our mission to support the individuals in our services.

Person Directed Supports, Inc. specializes in supporting individuals with severe behavioral concerns, and the implementation of these regulations as currently written would make it near impossible for us to keep these individuals and others around them safe from harm.

Although idealistic in nature, the proposed regulations do not take into consideration the wide range of individuals we support with varying needs levels and fully puts the financial

responsibility of additional requirements on the provider. This financial burden, estimated to cost our agency at our current size roughly \$1,000,000 to implement.

We hope our comments on the proposed regulations give the Committee and the Department perspective from a medium-sized provider who strives to promote "Everyday Lives" while demonstrating unyielding dedication to regulatory compliance.

Thank you,



Kristy Meyer

Vice President of Quality Management

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CHAPTER 6100 REGULATIONS PUBLIC COMMENT

6100.42 Monitoring Compliance

6100.42(a)

The “designated managing entity” needs to be defined as to who this is referring to. This should be more specific as providers should be aware of the entities that will be responsible for monitoring our compliance of our agencies.

6100.42(e)

This regulation states that the provider must complete a corrective action plan for a violation or *an alleged* violation. A corrective action plan should not be required for allegations that are unfounded.

Recommended rule: “The provider shall complete a corrective action plan for any confirmed violations of this chapter, in the timeframe required by the Department.”

6100.42(i)

As there are times that the Department requires the hiring of additional positions, outside trainings or consultants, the provider should be reimbursed for these additional costs mandated by a directed corrective action plan. This regulation should be removed.

6100.42(k)

Please specify the amount of time that the provider is required to keep documentation relating to an audit, provider monitoring or other monitoring method as required by this proposed regulation.

Recommended rule: “The provider shall keep documentation relating to an audit, provider monitoring, or other monitoring method, including supporting compliance documentation in accordance with their agency records policy and procedure and in accordance with the Department minimum of 4 years.”

6100.43 Regulatory Waiver

6100.43(a)(3)

A provider must be able to submit a request for a waiver for the regulations relating to individual rights in order to protect the individual's health and safety. Each individual's PSP must be able to include risk mitigation strategies that may potentially violate their individual rights if these rights would pose as a threat to their health and safety or the health and safety of others.

For example: Although an individual has a right to personal property, if the individual has a

swiss army knife and threatened to harm himself or others with the knife, the individual's team must be able to restrict access to the item (as part of the PSP) in order to ensure the safety of the individual as well as the safety of others.

Recommended Rule: "6100.181-6100.186 (relating to individual rights) If an individual exercising their individual rights is a health and safety risk to the individual or others, the PSP team is able to include risk mitigation strategies as part of the PSP that may potentially violate the individual's rights in accordance with this Chapter, in order to maintain the health and safety of the individual and others."

6100.44 Innovation Project

Please define within the regulations, "innovation project".

6100.44(e)

Are the fiscal procedures, reporting, monitoring and oversight as specified in this regulations something additional to this Chapter, or in accordance with the Chapter 6100 regulations? Please specify within this regulation.

Recommended Rule: "If the innovation project proposal is approved by the Deputy, the provider shall be subject to the fiscal procedures, reporting, monitoring and oversight required by this Chapter."

6100.45 Quality Management

6100.45(a)

This regulation requires a form specified by the Department. Is this the current Quality Management Plan format? If there is a new form that is required, this should be released to providers prior to the implementation of these regulations in order for providers to have adequate time to comply.

6100.45(a)-(e)

Resources need to be given to providers to comply with these requirements, as this proposed review would require the hiring of a full time position and would cost our agency approximately \$50,000 per year.

Providers should be able to choose what our desired outcomes are for our Quality Management Plan, and not be limited to only those outcomes the Department has deemed important.

It is strongly recommended that the Department provide a Quality Management quarterly report template with further direction and clarification on how they would like progress to be shown, and the specific way they would like providers to track the information.

6100.45(a)(1)

This regulation implies that we must report within the Quality Management Plan review, performance data of each specific individual. This is burdensome to the provider, and repetitive

as we are required to document this information and monitored through the licensing regulations 2380, 2390, 6400 and 6500, for quarterly progress on PSP outcomes.

It is strongly recommended that this be removed from the 6100 regulations requirements, as the way it is written providers will be monitored by two entities on the same information and document.

6100.45(a)(6)

Please define “successful learning”, as this is extremely subjective. With any room for interpretation, providers would be subjected to various auditors and inspectors having varying opinions on what would constitute “successful learning”. It is recommended that the Department provide a test that can be universally given, with a grading scale that would determine “successful learning”

6100.45(a)(8)

Please specify the positions that should be included in this review. It is recommended that the positions by category should be sufficient. For example: Direct Support Professionals, Program/Life Sharing Specialists, Management and Administrative Management.

*Rates do not substantiate keeping Direct Support Professionals, and there will continue to be high turnover rates in this position until this changes.

Recommended Rule: “Turnover rates by position category and suspected causes”.

6100.46 Protective Services

6100.46(a)

Please define “suspected abuse” and “alleged abuse”.

This regulation requires reporting “regardless of the alleged location”. Please specify whether or not this includes when the individual is on a home visit, out of the provider’s care, and if so, who in this circumstance would be the required reporter?

6100.46(b)

The Supports Coordinator should be included in this list. The way that the regulation is worded insinuates that the provider must terminate the employee for any confirmed abuse case. The provider has the right to determine whether or not our employees should be terminated based upon the nature and severity of the incident.

Recommended rule: “If there is an incident of abuse, suspected abuse, or alleged abuse of an individual involving a staff person, consultant, intern, volunteer, or supports coordinator, the staff person, consultant, intern, volunteer or supports coordinator shall have no direct contact with the individual until the abuse investigation is concluded and the investigating agency has had time to make recommendations and the provider or SCO has fulfilled those recommendations as written, up to and including termination of the employee, if deemed necessary in accordance with the agencies policies & procedures.”

6100.46(c)

All incidents are entered into the current EIM system according to the Incident Management Bulletin. This has been and should continue to be sufficient as reporting to the Department, the designated managing entity (which should be specified), and the county government office responsible for the intellectual disability in addition to this would be burdensome to the provider.

For people that do not have access to EIM, please specify the term "immediately" and how reporting should be documented.

This list does not include the individual's parent/guardian/advocate. This is assumed then to mean that if the individual does not specify that he or she would like these people to be notified, the provider does not have a responsibility to do so.

Recommended Rule: "In addition to the reporting in subsection (a), the provider shall report the incident to the Department, the designated managing entity (which should be specified), and the county government office responsible for the intellectual disability program by entering incidents on the EIM system in accordance with the Department's Incident Management Bulletin. The provider shall notify all other persons designated by the individual that does not have access to the EIM system within 24 hours."

6100.46(c)(1)

This should be removed. If an incident, the individual is already aware of the incident as they are the victim. The individual should only be subjected to discussing the incident for investigation purposes.

6100.47 Criminal History Checks

6100.47(a)(1)

There needs to be a minimum age requirement for criminal history checks. The way this regulation is written, we would require criminal history checks for children including infants. Criminal background checks should only be required for these staff persons, staff positions, supports coordinators, targeted supports managers, base-funding support managers, household members, etc. identified in these regulations who are 18 years of age or older.

6100.47(a)(2)

Please specify that it is not the responsibility of the provider to keep record of the supports coordinators, targeted support managers and base-funding supports managers. If these regulations are stating that it is the providers responsibility to keep these records, providers need to be given funding in order to run these additional background checks.

6100.47(b)(1)

Please specify that "household members" do not include household visitors that do not live in the home. The way that the regulation reads, the provider would be responsible for ensuring that every person that comes into contact with each individual (lifesharing included) has a criminal background check prior to the contact, which would not possible.

6100.47(d) & 6100.48(b)

Please define natural supports. *For example, if the lifesharing provider's brother spends time alone with the individual, is this considered a natural support?*

Please also specify if the natural supports would need to be outlined in each individual's PSP.

6100.50 Communication

6100.50(a)

This should be specified in the regulations that this is the responsibility of the supports coordinator, not the provider.

6500.50(b)

The provider would not be able to fund every individual with assistive technology. This would need to be at the expense to the individual, or the Department, including if the individual breaks their device, for a replacement. The person should be able to choose their mode of communication and not be forced to utilize assistive technology if they choose not to.

It is strongly recommended that either it is specified in the regulation that it is at the individual's expense if insurance does not cover (to align with room and board regulations) or that the Department provides a communication start up fund for all homes, not just private homes in order to pay for the assistive technology this regulation is requiring.

Recommended rule: "The individual shall be provided (if they so choose) with the assistive technology necessary as part of their PSP at the individual's expense if not covered by insurance."

6100.51 Grievances

6100.51(h)

There should be extenuating circumstances upon request as exceptions, as not all grievances may be able to be resolved within 21 days or at all, depending on the nature of the grievance.

Recommended rule: "The grievance shall be addressed within 21 days from the date the grievance was received, unless an extension has been granted in writing by the Department."

6100.52 Rights Team

This is a wonderful goal, however, unrealistic and near impossible to coordinate. Coordinating all these schedules, reviewing each incident with that individual's team, and waiting on decisions from the team will cost a provider of our size over \$100,000 per year. This cost is calculated by the number of meetings needed to review and the length of time to review each incident and the manpower that will be needed to complete this. The Department would need to drastically raise reimbursement rates to account for that, and also providers will never be

able to coordinate all these people meeting. This section should be rewritten to include annual review of incidents by the individual and their team at the annual PSP meeting.

6100.52(2)(iii)

There are reasons for individual behavior that cannot be resolved, for example, symptoms of a mental health disorder such as hallucinations. This is absolutely the goal and idealistic in nature, however, not realistic in all circumstances.

Recommended rule: "Attempt to discover and resolve, when possible, the reason for an individual's behavior."

6100.52(c)

The provider does not have control over the members of the rights team that is specified in these regulations. The provider could invite, however, they would not be able to ensure that these members are in attendance for each meeting that would need to occur. The regulations should specify the minimum number of attendees that must be present in order to hold a meeting, and whether or not it will be required for all members to have criminal background clearances prior to meeting.

These members that are specified in the proposed regulations implies that each individual would have to have a different rights team, which would be extremely difficult to coordinate. It is strongly recommended to allow for one rights team for all individuals.

6100.52(e)

If a doctor recommends a specific restraint be used for safety, this should not constitute as a rights violation, as the provider is following doctor orders.

The doctor will not be able to be on a rights committee, which is what this regulation is implying the need for.

The regulations need to specify in this section who is responsible for consulting with the individual's health care practitioner.

6100.52(g)

The regulations need to specify the process for when the PSP team does not agree with the recommendations being made by the rights committee, or what to do if the PSP team does not attend the rights team meetings. In the case of the PSP team not agreeing with the rights team, will there be thought of a resolution committee to address this concern, and would this be considered a grievance?

6100.52

Recommendation A: The implementation of the rights team regulation would be extremely burdensome to providers and would cost additional funding that would need to be provided. It is strongly recommended that this regulation is removed as all incidents are reviewed already by the Administrative Entity as well as the Department. This is an additional layer, where the goal of these regulations is to eliminate oversight duplication.

Recommendation B: Adopt the state of Virginia's rule for rights teams.

6100.53 Conflict of Interest

6100.53(c)

This regulation needs clarified, as it is not clear if this is corporate based, or what exact conflict of interest this regulation is intending to prevent.

6100.54 Record Keeping

6100.54(b)

The terms utilized within this regulation “the Department” and “designated managing entity” need to be clearly defined.

This regulation does not include direct support professionals, who need to be able to access the file to reference the PSP document that they are responsible for implementing as written as part of their primary job function.

6100.55 Reserved Capacity

6100.55

We are unable to agree or disagree with this regulation as it references the Department’s Federally-approved waivers and waiver amendments, which we have not been able to review.

This regulation references “timelines specified by the Department”, the exact timeline should be specified right within the 6100 regulations.

6100.81 HCBS provider requirements

6100.81(b)(4)

This regulation requires providers to be compliant with Chapter 5100 regulations, however, the Chapter 6100 regulations are replacing the Chapter 5100 regulations. Chapter 5100 should be removed from the list of applicable regulations.

6100.81(c)(1)

This regulation should be removed as it is contradictory. Provisional licenses should count as a full license and providers should be able to continue providing services under a provisional license unless the license has been revoked. The way the regulation is currently written with 6100.81(c)(1) included, implies that the provider would not be able to continue providing services to individuals under a provisional license.

6100.83 Submission of HCBS qualification documentation

The provider needs to be notified in writing when they are due for resubmission of qualification documentation.

Recommended Rule: “The provider of HCBS shall submit written qualification documentation to the designated managing entity or to the Department at least 60 days prior to the expiration of its current qualification. The managing entity is responsible for notifying the provider of upcoming expiration 6 months prior to the expiration date.”

6100.84 Provision, Update and Verification of Information

The provider should be given support and assistance as needed throughout the initial and ongoing qualification process.

Recommended Rule: "The provider of HCBS shall provide, update and verify information within the Department's system as part of the initial and ongoing qualification processes with the assistance and support of the managing entity as needed."

6100.85 Ongoing HCBS provider qualifications

6100.85(c)

This is unnecessary and burdensome to the provider. The qualification schedule should match the Federally-approved waiver schedule. This regulation should be removed.

6100.85(d)

We are in agreement with this regulation and appreciate the fact that the agency can determine the intervals as to how often checks are run to ensure that the provider and staff persons are not listed on the Federal or State lists. One recommendation would be to remove the words "such as" as this infers that there are additional lists other than SAM, LEIE and Medichcek.

Recommended Rule: "Neither a provider nor its staff persons who may come into contact with an individual, may be listed on the following Federal or State lists of excludable persons: (1) System for award management. (2) List of excludable persons, individuals and entities. (3) Medichcek list.

6100.86 Delivery of HCBS

6100.86(c) & 6100.86(d)

There needs to be a section included in these regulations that determines how emergency placements are handled. Currently, it can take months for the ISP to be approved with the services loaded, however, there are cases that the individual needs immediate placement, and cannot wait for services to be approved prior to providing the service.

Recommended rule: "The provider shall deliver the support in accordance with the individual's PSP and only the HCBS to an individual who is authorized to receive that HCBS, however, in emergent cases, services may be provided prior to the approval of the PSP with written documentation of the PSP team's agreement of the specific service, service start date, chosen provider and reason for the emergency placement submitted to the Department prior to services starting."

6100.141 Annual training plan

This section is redundant as the same requirements are needed for the 2380, 6400 and 6500 regulations. This means that the duplication that is trying to be avoided through the

revisions of these regulations is not fully being done. With these regulations being in the Chapter 6100, 2380, 6500 and 6400, providers are subjected to multiple monitoring agencies having oversight on the same documentation and requirements.

This section will require additional funding as the specificity of the trainings that are required is going to take additional trainers in order for providers to comply. Each individual would require their own unique training curriculum, which would increase the amount of trainings offered. The annual training plan requirements within these proposed regulations would grossly add hours not decrease as the preamble claims.

6100.141(c)

It is strongly recommended that the Department provides providers with the information and training materials to train on the required core competencies. The Department should have a training curriculum for providers to utilize in order to train employees on the required core competencies on the My ODP website.

6100.141(d)

This is burdensome and unnecessary as each position should not require a different set of trainings, as there are many different positions agency wide.

Recommended rule: "The annual training plan shall include the following: the required training courses, including training course hours."

6100.142 Orientation Program

6100.142(b)(5)

"Job related knowledge and skills" needs to be defined within the regulations.

6100.143 Annual training

6100.143(b)(1)

Twelve hours is too many hours needed for administrative and fiscal personnel. Eight hours of job related training is sufficient. Fiscal positions should not need to be trained on the core competencies as they have no contact with individuals. Training would be more beneficial for the fiscal employees on job skills related to their roles within the agency.

6100.143(c)(1)

It is strongly recommended that the Department provide the trainings that are being required in this regulation.

6100.143(c)(2)

There needs to be a provision specified in this section that if the provider does not provide services to individuals that would pertain, that we do not have to follow. For example, if the agency does not provide services to individuals under the age of 18, the provider does not have to report in accordance with Child Protective Services.

6100.143(c)(5)

There may not be positive interventions for individuals who may be hallucinating that are putting themselves or others in danger. There needs to be an ability for providers to have risk mitigation strategies put into an individual's PSP's that address these circumstances in order to keep the individual and others safe from harm.

INDIVIDUAL RIGHTS

6100.181 Exercise of rights

6100.181(b)

Continually should be defined as one training per year, continually is too general of a term.

6100.181(c)

Please define what constitutes support and accommodation necessary to be able to understand and actively exercise the individual's rights. The Department should provide resources for these supports and accommodations.

6100.181(d)

There needs to be something in this section that talks about natural consequences if the individual were to break a local, state or federal law. Individuals as U.S. Citizens and as Pennsylvania residents must abide by local, state and federal laws. There also needs to be something documented within the regulations that state that risk mitigation strategies as part of the individual's PSP are not considered forms of retaliation, reprimands, or punishment.

6100.181(e)

If the provider does not have a court order and a court order has been requested by the provider a process should be developed to ensure health and safety in the meantime such as the individual not having contact with someone who may have just sexually abused them. This regulation should also include a doctor's written order or legal guardian's written order as well. In these cases, a waiver should not be needed, as the court order, doctor's written order or legal guardian order should be sufficient documentation.

6100.181(h)

This regulation is concerning, as the individual may not make the best choices in terms of the type of person they are designating to assist in making their decisions. There needs to be exceptions to this regulation in order to protect the individual who may not make appropriate choices that is in their best interest health and safety wise.

6100.182 Rights of the individual

6100.182(e)

This regulation is not in the best interest of the individual or the individual's potential housemates. The individual should have the right to make choices and accept risks as long as these choices and risks do not risk the health and safety of the individual or others around the

individual. There needs to be protections for the provider, as the provider would be held liable if the individual were able to make a choice and accept a risk that harms themselves or others. This puts the provider in a very tough spot as we would be in violation of the individual's rights if we intervened when making a choice that would harm himself or others, however, if we do not intervene, we would be held liable for the result.

6100.182(f)

Something in the regulation needs to specify the amount of times the provider is required to encourage the individual to participate in activities and supports. This will need to be financed, and the individual's rate should include a refusal factor.

6100.182(g)

A sentence should be added that states "in accordance with the individual's PSP". Staffing is not always available for the individual to control their own schedule. Individual needs to control schedule within the confines of what services/staffing are provided. If an individual wanted to control their own schedule to go out at 3 AM, and there was only one staff in the home for two individuals being supported and the other individual was sleeping a provider would be in an impossible situation. The only way full control could be granted to individuals would be if the Department funded 1 to 1 support for everyone.

6100.182(h) & 6100.182(i)

There needs to be an exception process specified within the regulations. An individual should not have rights to privacy of person and possessions when those possessions may put others in harm's way. This should be amended to state unless the health and safety of others is being jeopardized then the individual has the right to privacy of person and possessions.

6100.182(j)

The individual should have to give a 30 day notice to the provider when they are choosing a different provider after a team meeting has been held. In this case, there shall be no 5 day wait period to fill the vacancy once the person gives notice.

6100.182(k)

This regulation should be removed as we are not able to agree to this. This is an idealistic view that does not capture the individuals who are on any other staffing level than 1:1. The SIS score and corresponding rate for every person will not support this requirement. For example, at midnight, an individual with 1:1 supports decides he no longer would like services at this time and tells his supporter to leave. Complying with this regulation is not feasible for any person with or without intellectual developmental disabilities. Another example would be an individual only wanting to receive services from one specific gender or one specific race, an individual would like to eat out for a lobster dinner every single night. This does not fall in line with the ideals of an everyday life.

6100.182(m)

There is a major cost associated with this requirement if this is the providers responsibility to pay for each individual as communication devices can be very expensive. The regulations

should state that this is the individual's choice whether or not they would like to utilize a communication device, and the provider would assist the individual in submitting the cost to their insurance companies. If the individual's insurance does not cover the cost of the communication device, the individual would then pay for the device, if they so choose.

6100.183 Additional rights of the individual in a residential facility

6100.183(a)

There needs to be an exception process defined as the provider's responsibility is to ensure the individual's health and safety. For example, the individual invites a person they have been talking to online to the home at 2:00am. The person could be dangerous, and the individual could be putting themselves, their housemates and supporters at risk.

To align with the ideals of an everyday life, the individual must adhere to any home owner association rules as well as practice good neighborhood. There are rules to live in any community and if we are teaching and striving for our individuals to have an everyday life, they are not exempt from these rules. With rights also come responsibilities, which is part of being a member of any community.

6100.183(b)

There also must be an exception process for this regulation for those instances where the individual may not be able to read or may be able to read, however, not comprehend what is read., For example, SSI benefit information. The provider shall be given the opportunity to assist the individual with their benefits, which comes in mail form, addressed to the individual. If the provider is unable to open the individual's mail, or unable to read the mail, the individual could be at risk of losing their waiver if these papers are not completed in the appropriate timeframes. Most individuals require assistance with this process and this regulation hinders providers ability to assist.

6100.183(f)

We are not in disagreement that the individual should have the right to decorate their bedrooms and furnish the home, however, this must be at the expense of the individual. The provider will provide basic, homelike and comfortable furniture and decorations, however, anything above and beyond shall be at the individual's cost. This should be specified in these regulations.

6100.183(g)

There must be an exception process for this regulation. We support individuals that have medical conditions that would not allow them to be able to safely lock their bedroom doors. For example, individuals who have been diagnosed with Pica, a seizure disorder, or a physician's order to check on them throughout the night are not able to have their door locked as it poses as a health and safety risk to do so. This should be a PSP team decision, unless ordered by a doctor, which would veto the team decision, as we must abide by physician's orders.

6100.183(h)

There must be an exception process for this regulation. We support individuals with medical conditions and physician's orders that must be abided by that would be in violation of this regulation, for example, fluid restrictions, menu plans for individuals diagnosed with Prader Willi

Syndrome. Also, there is the home grocery shopping budget that needs to be thought about as well. There shall always be at least 3 meals a day available in the home, however, allowing access to food at any time is not safe for all individuals, as many individuals will binge eat until they make themselves ill.

6100.183(i)

There must be an exception process. If the individual makes the informed health care decision to not adhere to doctor recommendations, or to not attend their regulatory required appointments (for example, their annual physicals, 90 day psychiatric medication review, annual mammogram, etc.), not only are they putting themselves at risk, but the provider is liable for these decisions and associated risks. It should be specified within these regulations that it is the providers right to discharge the individual from services based upon dangerous decisions that are made.

If the individual has the right to informed healthcare decisions, this should discontinue the regulation of a needed desensitization plan for any health care decisions that are made, including refusals.

6100.184 Negotiation of choices

6100.184(a)

There needs to be specifications as to what the provider is supposed to do if an individual exercises his or her right and by doing so, violates the rights of another individual.

6100.184(b)

It is strongly recommended that the Department provide guidance as to how choices shall be negotiated by the affected individual. It is recommended that the Department provide a policy for agencies to adopt in order to comply with this regulation.

6100.185 Informing of rights

6100.185(b)

Providers have a difficult time getting legal guardians to sign even after repeated attempts. There should be a statement within this regulation that providers should send one registered letter attempt to the legal guardian in attempt to inform them and have them sign off on the rights that they were informed.

6100.186 Role of family and friends

1600.186(a)

There is a 30 mile radius rule within the service definitions that is funded through ODP. When an individual's family lives outside the 30 mile radius, there needs to be a way that this is funded through the Department. We have individuals in which their family lives in Puerto Rico. It is outside the agency's ability to fund the individual and the individual's family to travel back and forth this far of a distance as much as the individual so chooses.

1600.186(b)

There should be limitations or exceptions, as the individual may request that the provider facilitate ten of their family members from another country to be at the PSP meeting, the provider would not be able to make this accommodation without additional funding from the Department.

PERSON-CENTERED SUPPORT PLAN

6100.221 Development of the PSP

The regulations need to specify that it is the responsibility of the Supports Coordinator to develop the PSP, since they are the ones who dictate the plan. Supports Coordinators need to be held accountable for the content of the plan, not the providers.

6100.221(c)

We are in agreement with this regulation as it holds the Supports Coordinator accountable for the revisions of the PSP. The 2380, 2390, 6400 and 6500 should also align with this and in turn licensing should hold the Supports Coordinators responsible for the compliance with this regulation.

6100.221(d)

This regulation does not support emergency placements. This should clarify if the regulation is talking about reimbursement to the individual or to the provider.

6100.221(f)

This regulation contradicts the 6500 and 6400 regulations where the program specialist has 60 days upon admission in order to complete the assessment. The provider would not be able to complete an assessment prior to the individual moving into the home.

The Department has recognized that individuals do not change that much over the course of 5 years, which is why they are recommending that the SIS assessment is only completed once every 5 years. The same theory should be applied to the assessment in these regulations. The SIS assessment should take the place of the annual assessment required in the 2380, 6400 and 6500 regulations and in all cases where the individual receives HCBS funding. If the individual does not receive HCBS funding and therefore does not receive a SIS assessment, the program specialist or family living specialist will be responsible for completing an assessment as required in the 2380, 6400 and 6500 once every 5 years.

6100.221(g)

Based upon this regulation, the provider, nor the program specialist is responsible for being involved in the initial development and revisions of the PSP unless the individual chooses them to be. Therefore, it is recommended that the Supports Coordinator should be responsible for training on the document that they are responsible for writing.

6100.221(h)

The "form" that is referenced within the regulations should be defined and named.

6100.222 The PSP Process

As this section does not specify the need for the provider to be involved, this entire section should be the responsibility of the Supports Coordinator and not the provider. This includes this same section that is in the 2380, 6400 and 6500 regulations. All oversight agencies shall hold the Supports Coordinators responsible for the compliance of this regulatory section, including the establishment of a PSP process.

6100.222(b)(3)

Given their right to choice and accept risks, agencies are not able to ensure health and safety.

6100.222(b)(9)

The "guidelines" that are references in this regulation needs to be defined.

6100.223 Content of the PSP

This regulation needs to clarify the need for the staffing ratio for each individual and what the guidelines are in determining which individuals need staffing ratios versus individuals that do not.

If the regulations go into effect 7/1/2017 as currently planned, all individuals ISPs will need to be reformatted into PSPs prior to this occurring, as they are very different.

The regulation needs to be made clear that it is the Supports Coordinators responsibility to ensure the compliance of this section of the regulations. The providers do not have control over what is dictated within the individual's PSPs and we should not be held accountable for the content.

This comment remains true for the 2380, 6400 and 6500 regulations as well. Licensing needs to hold the Supports Coordinators accountable for compliance with this section of the regulations.

6100.223(14)

This regulation is contradictory to **6100.43(a)(3)**, which states that no waivers will be granted for individual rights. This would mean that modifications would be in violation of **6100.43(a)(3)** as written.

6100.224 Implementation of the PSP

The provider is not listed as being involved in the PSP process within these regulations. There needs to be an appeal process in the event that the provider is not in agreement with what the PSP team decided upon, for example, if the PSP includes more support and services than the SIS level funding would provide for.

6100.225 Support Coordination and targeted support management

It needs to be specified within this regulation that the supports coordinator or the targeted support manager are the people held responsible for the compliance of this regulation, not the provider as it has been in the past. Providers are currently being cited for the supports coordinator job responsibilities such as updating the ISP, sending out invites to the team, etc.

6100.225(a)(1)

We are in agreement with this regulation, however, it again needs to be clear that the supports coordinators need to be held accountable for requesting the assessment from the providers.

6100.225(a)(5)

There needs to be more of a definition of the agreement that this regulation is requiring. There also needs to be a process for when the PSP team is in disagreement.

6100.225(a)(6)

We are interpreting this regulation to mean that it is the supports coordinators responsibility to complete the PSP Reviews (otherwise known as the 90 day reviews or quarterly reports). We are in agreement of this regulation, however, the supports coordinator needs to be held accountable for complying with this regulation both in the 6100 regulations as well as the 2380, 6400 and 6500 regulations in order to eliminate duplication.

6100.226 Documentation of support delivery

6100.226(a)

It is recommended that the Department come up with an encounter form that they would like providers to follow that would comply with this regulation. We do appreciate the distinction within the regulations of the documentation of support delivery versus the quarterly progress note.

6100.226(e)(4)

The term "summary" as used within this regulation needs to be clearly defined. It is recommended that this would be part of a PSP outcome.

6100.226(e)(7)

We appreciate and like the fact that this regulation gives the option of documenting either a record of the time worked or, not and the time that a support was delivered to support the claim.

6100.226(f)

We are in full agreement with this regulation, however, this regulation is contradictory with the Chapter 6400,6500 and 2380 regulations that require monthly reports. It is strongly recommended in order to cut down on unnecessary duplication of reporting, this regulation match the Chapter 6400, 6500 and 2380 regulations and the monthly report requirement be removed. The quarterly report would be the sufficient progress note that should be required across all Chapters of these proposed regulations.

EMPLOYMENT, EDUCATION AND COMMUNITY PARTICIPATION

6100.261 Access to the community

6100.261(c)

Although this ideal, this is really an idea of best practice, and does not have a place within regulations. There is no way to measure or comply with this regulation as every person has a different view of what degree of community access should be required. This is extremely subjective, which would open up providers to many areas of non-compliance based upon the view of each individual auditor. If this regulation is stating that individuals would have the right to community outings on demand, this would require 1:1 staffing support for all, which providers would need to be compensated for.

6100.262 Employment

6100.262(a)

There needs to be clear definition on how often “ongoing” is referring to, as this is again subjective and each auditor could think that different amounts would be sufficient.

It is recommended that all supports coordinators be qualified as an employment counselor so that the individual would not be in jeopardy of losing their benefits.

6100.263 Education

The individual's PSP should supercede this regulation if the individual does not wish to participate. This should be clarified within this regulation that it is based upon the individual's desire to participate.

It needs to be specified that these post-secondary educational opportunities would be at the cost of the individual, as the provider would not have the means to pay for college courses or technical education for every individual who would like to attend. This would have an extreme financial implication to providers that we could not comply with in terms of both the tuition for these programs, as well as the 1:1 staffing that would be required for the individual to participate.

6100.301 Individual choices

6100.301(a)

The term “influence” as used in this regulation needs to be more clearly defined. A PSP team meeting should be held in order to inform the individual of their options.

There also needs to be a process within these regulations that discusses the process for the individual switching supports coordinators, which is also the right of the individual.

6100.301(c)

The term “to the extent as possible” needs to be clearly defined. The provider should be afforded a timeframe of 30 days in order to prepare for the pending vacancy. In the case where the individual would choose a different provider, the provider should not have to wait the 5 days once the individual gives notice in order to move another individual into the vacancy, this move needs to be allowed immediately upon discharge.

6100.302 Transition to a new provider

This subsection should not be titled “transition to a new provider” as the individual has the right to not only transition from providers, but also supports coordinators.

6100.302(b)(2)

It needs to be specified within the regulation that it is the responsibility of the new provider, with the cooperation of the current provider to transport all of the individual's belongings to the new home.

It also needs to be specified more clearly that the current provider is not required to provide staffing when the individual is visiting with the new provider.

6100.302(b)(3)

This would not always be possible, as we are not able to close incidents unless they are completed thoroughly, which may not be in the timeframe required. There needs to be a process for extensions.

6100.303 Reasons for a transfer or a change in a provider

Provider agencies are unable to agree to this section. Providers need to be given the opportunity and ability to choose if we are able to support them for any reason. For example, if we are a provider agency that specializes in more of the behaviorally challenging individuals, and do not have the resources or expertise in medically fragile individuals, providers need to be given the opportunity to voice this concern and discharge individuals that we know we are not able to successfully support for whatever reason. Individual's needs may change, and as their needs change, we as the provider may not be able to successfully support the individual and we need to be given the right to protect the individual as well as the agency in these circumstances.

6100.304 Written notice

6100.304(b)

The word "willing" is contradictory to 6100.303, as providers are not given the right to be willing or unwilling providers. 6100.303 needs to match 6100.304(b) in that providers need to be given the right to be a willing provider or an unwilling provider for any reason.

The 45 days needs to be changed back to 30 days, as does 6100.301(c) instead of stating that it should be in the individual's timeframe.

It is also strongly recommended that an emergency situation clause be added to these regulations, as emergent situations do occur and there needs to be a process as to how to handle these situations. If an emergency situation is to arise, the provider is able to give written notice to the Department as to why the provider is unable to give the 30-45 day notice in order to protect the individual's health and safety as well as the providers.

6100.305 Continuation of support

Once the individual gives notice they should be held to the notice.

There also need to be a process for emergency situations where the provider is unable to keep the individual safe, that the 45 day discharge will be waived and the individual would have to move immediately for their health and safety.

6100.306 Transition planning

It needs to be clarified that it is the responsibility of the supports coordinator and the supports coordinator will be held accountable for the implementation of this regulation.

6100.307 Transfer of records

There needs to be clarification as to what providers are legally able to release. It is our legal understanding that we as the provider are only able to release what we created and nothing additional.

POSITIVE INTERVENTION

6100.341 Use of a positive intervention

6100.341(a)

This regulation is very idealistic. Although the goal is for a positive intervention to prevent, modify and eliminate a dangerous behavior, this cannot be predicted and cannot be promised 100% of the time. The regulation should read as follows:

“A positive intervention shall be used to attempt to prevent, modify and eliminate a dangerous behavior when the behavior is anticipated or occurring. As we are all human, all humans will respond differently to positive interventions. Some positive interventions may be successful, others may not.

6100.341(b)

“Least intrusive method” needs to be defined as it is used in this regulation. “Every attempt” needs to be defined as well. You are not going to eliminate the behavior, however, you may be able to provide an alternative to the behavior and this needs to be recognized within the regulation.

6100.341(c)

The definition of “dangerous behavior” is extremely vague and it does not touch upon the individuals that have mental health symptoms such as voices or hallucinations. These are not behaviors and should not be classified as such within the regulations.

The definition of “positive intervention” should be expanded to include additional interventions that would fall into the category.

We are in agreement with the removal of the restrictive procedure plans and the implementation of positive interventions as part of the individuals PSP. This will save an immense amount of time and unnecessary paperwork.

6100.342 PSP This section should not be called the PSP, as this is the new name of the ISP, which is confusing. Recommend calling this section Positive Intervention Plan

The term “psychiatric illness” needs to be added in conjunction with “dangerous behavior” as they are not the same thing, however, both should be included within the scope of this regulation.

This regulation needs to specify that the individual may not always (as the PSP team feels appropriate) be a part of deciding what positive interventions are utilized. For example, if the individual has threatened or attempted to use a sharp object to harm themselves or others, the PSP team needs to be able to put risk mitigation strategies and positive interventions in order to keep the individual safe, The individual may not want sharp objects to be locked in the

home, however, there must be a way for the PSP team to implement these strategies without the consent of the individual in order to maintain their health and safety as well as the health and safety of others.

6100.342(2)

A “functional analysis” is a very specific analysis that can only be completed by a board certified behavior analyst (BCBA). This analysis can take months to complete for each individual. Having this requirement would cost the agency around an additional \$150,000 per year at our current size to hire enough behavior analysts in order to comply with this regulation. It would be our recommendation to change the requirement from a “functional analysis” to a “functional assessment” which can be completed by a behavior specialist for much less.

6100.342(4)

This regulation is again ignoring mental health and psychiatric illnesses. Add “psychiatric illness” in conjunction with “dangerous behavior” as these are different and should be treated as such.

The way the regulation is worded, makes it seem like there is just one positive intervention per dangerous behavior or symptom of a psychiatric illness, which is not always the case. Should be worded as follows “A description of the positive interventions aimed at preventing, modifying or eliminating the dangerous behavior or symptom of a psychiatric illness and the circumstances under which the intervention is to be used”

6100.343 Prohibition of restraints

6100.343(4)

This regulation needs to clarify that a chemical restraint does not include an individual who is able to self-administer a PRN psychotropic medication due to symptoms of a psychiatric illness.

6100.343(5)(ii)

We cannot agree to this regulation. In order to keep the individual safe, for example, a protective helmet prescribed by a physician, if the individual is able to easily remove the device, they are no longer protected. This regulation as written prohibits provider agencies from being able to protect the health and safety of individuals in our care.

6100.343(6)

The term “immobilize” needs to be defined more clearly.

This regulation also needs to clarify that in an emergency basis the agency approved emergency restraint carried out by a trained supporter in order to protect the immediate health and safety of the individual or others would not be considered a manual restraint.

6100.343(8)

Although it should never be the intent for a manual restraint to cause embarrassment or humiliation, there is a possibility that in the event of an emergency to protect the health and safety of the individual, that the individual would feel embarrassed or humiliated by having to be manually restrained. This should be clarified within the regulations, that it should never be the intent, and the restraint should be done as discreetly as possible, however, the health and safety of the individual and others is the number one priority.

6100.344 Permitted interventions

6100.344(b)

The timeframe needs to be specified within the regulations as to when and how often you are able to do this.

6100.344(c)

This contradicts the fact that physical protective restraints are not able to be a part of a plan. This just needs to be consistent across the sets of regulations.

6100.344(e)

The definition of a restraint needs to be in here, where a restraint is defined as 30 seconds or more.

6100.345 Access to or the use of an individual's personal property

6100.345(a)

It needs to be clarified, unless it is a part of the individual's PSP as a risk mitigation strategy. For example, they threaten to use their swiss army knife to harm themselves or others, this object should be able to be taken away and locked in order to keep the individual and others safe as part of the PSP.

6100.345(b)(1)

For people who have an understanding, the individual's funds should be able to be used as a natural consequence to pay for damages that they cause. This supports the ideals of an everyday life. If a person without IDD breaks the television in their home, they are not entitled to a new one, they have to pay for a new television as a natural consequence to their actions. Whether or not the individual would be able to understand this and benefit from this type of natural consequence should be a PSP team decision and be part of the PSP.

6100.345(b)(2)

The provider should be included as part of the people present during consent being obtained. Revise for providers being able to state the facts of the case. Example: Johnny you cost 5,000 of damages by breaking the heater and people now do not have heat in the home. Providers should be able to state to the individual you have the right to break things, however it then becomes your responsibility to pay for them. This is part of everyday living.

6100.345(b)(3)

It is recommended that you add "by any party" at the end of this sentence to include the provider, supports coordinator, or other party designated by the individual.

INCIDENT MANAGEMENT

6100.401 Types of incidents and timelines for reporting

6100.401(a)(2)

Define "suicide attempt".

6100.401(a)(16)

Inconsistent with the 6500 and 6400 regulations where it states that medication errors are not reportable incidents. This should be the same across all sets of regulations to maintain streamlined requirements. We are in agreement with the 6500 and 6400 regulations that does not require the reporting of medication errors.

6100.401(a)(17)

This is very vague and would be an enormous undertaking for providers. This would cost extra man power which would in turn cost our agency more money to comply with. This happens several times a day for individuals that we support.

6100.401(b)

"Immediately" needs to be defined, as there are certain steps that are required to occur per the Certified Investigator's Manual prior to the notification. This regulation needs to match with the requirements for certified investigations.

6100.401(c)

The provider enters all reportable incidents in the Department's electronic incident management system (EIM). This should count as keeping documentation, as well as suffice for the reporting the incident to all of the parties that have access to this system (Supports coordinator, AE, the Department, etc.)

6100.401(d)

It should specify within the regulations the timeframes that are discussed in the current ODP incident management bulletin. These regulations should match the corresponding bulletin.

6100.403 Individual Needs

6100.403(a)

It is recommended that this section be required to be included in each individual's PSP, this way it makes the requirements clear as to what the provider's responsibility is when considering the needs of each individual.

6100.403(b)

There are cases where we do not know why incidents occur. There needs to be a process for what the provider is supposed to do in such cases.

6100.403(c)

Remove the word "provider" and replace with "the entire team".

6100.404 Final Incident Report

6100.404(a)

There needs to be the ability and process for requesting extensions as not all incident reports are able to be finalized within 30 days of discovery.

6100.405 Incident analysis

The implementation of this section will cost the provider \$100,000 to implement at the size of agency that we are currently. This is an enormous undertaking and will have an immense financial implication associated with the changes, as we would need at least 2 full time positions dedicated to complying with this section alone.

6100.405(a)(1)

A root cause analysis is a specific analysis that can take up to 4 hours per incident to complete, around 240 hours per month for the amount of incidents we have in any given month. The person or people completing the root cause analysis must be trained in how to complete an RCA. As this is a very specific skillset that would require hours of training multiple people to be able to do, it is strongly recommended that the language "analysis to determine the root cause of the incident" is changed to "an analysis to determine potential causes of the incident".

6100.405(a)(3)

Often, a strategy to address potential risks is to move the individual from a home in which the housemate or housemates are the trigger, or the victims of abuse from the target individual. With these regulations, we would not be able to move the individual out of the home immediately, we would have to wait 45 days and subject the housemates to continual harm. This is another reason why emergency situations need to be addressed to protect the health and safety of other individuals.

6100.405(e)

The word "continuously" needs to be changed to "quarterly" to match the rest of the regulations. "Continuously" is vague and subject to interpretation.

PHYSICAL ENVIRONMENT

6100.441 Request for and approval of changes

6100.441(a)

The regulation needs to specify if this is for waiver capacity, licensing capacity or both.

6100.441(d)

We disagree with this regulation and feel it should be removed.

6100.442 Physical Accessibility

6100.442(a)

There needs to be clarifications that the provider will assist the individual in making the request for payment to their insurance companies, however, if the insurance company would deny payment, then the Department would have to provide additional funding in order for

providers to purchase this equipment for each individual, including needed repairs to the equipment.

6100.442(b)

It should be the choice of the individual if they would like the assistive equipment or not. It should be documented in the PSP.

6100.443 Access to the bedroom and the home

6100.443(a)

There needs to be exceptions to this regulation, for example, if an individual's bedroom is an egress to the outside, the bedroom door cannot be locked as it would be a violation of the fire safety regulations in the 6400 and 6500 Chapters. There also needs to be exceptions for individuals who have doctor orders for the provider to check on the individual throughout the night or every 15 minutes due to either behavioral concerns (suicide attempts) or due to medical concerns such as seizure disorders.

Also, it should be clear that if the individual loses the key, that it is their responsibility to pay for the locks to be changed, as the home would no longer be secure.

6100.443(b)

Adaptive equipment is extremely expensive and would cost the agency an immense amount of money to provide for each individual in our agency. For example, there are some individuals who we support that would require facial scan technology in order for them to be able to open their doors, which could cost thousands of dollars, not to mention then the repairs on such devices, or replacements if the individual were to break it.

6100.443(c)

Many assistive technology devices are based on electricity. In the event of an emergency, the electricity may be out, therefore, this regulation would require providers to purchase generators for each home, costing thousands of dollars.

6100.443(d)

There needs to be a clear definition of who would constitute as "appropriate" persons, as this is subject to interpretation.

6100.443(e)

The authorized people should be listed in the individuals PSP, as the provider agency supporters need to be able to access the individual's bedroom due to doctor's orders, psychiatric illnesses as well as to ensure compliance with all chapters of regulations.

6100.443(f)

The Department has recommended overnight checks based upon an incident that occurred several years ago for every person we support. This goes against this regulation, as it is prohibiting preventative safety measures for individuals. There needs to be the ability for exceptions.

6100.444 Lease or ownership

This shouldn't be titled lease or ownership, but should be titled occupancy.

6100.444(a)

This will not be possible. Providers have an extremely difficult time getting landlords to agree to lease to us under the current regulations. Adding these additional provisions would make it impossible to lease a home for individuals. This is not a realistic expectation and absolutely would not work especially for lifesharing. It is strongly recommended to include this as part of the room and board contract. The Department may have to co-sign on all leases in order for providers to acquire these homes.

There needs to be something specific about the process if the individual breaks the lease that they are in. This would be the individual's responsibility.

This would be a full time position just to assist individuals with their leases, which would cost the agency at our current size \$50,000 per year in additional costs.

6100.444(b)

Homeowners associations should also be included in this not just landlords, as there are many rules that must be abided by in an HOA as well.

6100.445 Integration

Although this ideal, this is really an idea of best practice, and does not have a place within regulations. There is no way to measure or comply with this regulation as every person has a different view of what degree of community access should be required. This is extremely subjective, which would open up providers to many areas of non-compliance based upon the view of each individual auditor. If this regulation is stating that individuals would have the right to community outings on demand, this would require 1:1 staffing support for all, which providers would need to be compensated for.

6100.446 Facility characteristics relating to size of facility

6100.446(a)

"Which *is* funded in accordance with Chapter 51" should be replaced with "Which *was* funded in accordance with Chapter 51". Chapter 51 should not be mentioned in these regulations as these regulations are replacing Chapter 51.

6100.446(a)(1)

This is a positive change to the regulations. We would absolutely consider doing this as a residential provider.

6100.446(c)

This regulation needs to clarify that the program capacity of 15 is in the facility, however, not the number of individuals that may be served at one time in general, as 15 individuals may be at the facility, however, another 20 may be in the community.

6100.447 Facility characteristics relating to location of facility

6100.447(a)

This regulation needs to be changed, as there is no reason why a facility cannot be located within close proximity to a hospital or a nursing facility. Also, for the other areas, "close proximity" needs to be defined, as this is subjective and could be interpreted in different ways. Different people have different views of what close proximity means.

It is strongly recommended that the words "in close proximity to" are removed from these regulations, as well as (3) a hospital and (4) a nursing facility.

This especially cannot be true for lifesharing, as we don't have the right to tell families where their homes are able to be located.

6100.447(b)

This needs to be specified that it is the Department's responsibility to keep track of how many units of any particular apartment, townhouse or condominium are funded in accordance with this chapter. Provider agencies would not have this information. The 10% constraint should be removed in general, because in an instance where there is an apartment building or condominium with 9 or fewer units, even if just one unit is occupied by an individual funded in accordance with the chapter, we would be out of compliance for this regulation. If there are 8 apartment units in a building, 1 unit out of 8 is 12.5% and out of compliance of this regulation.

MEDICATION ADMINISTRATION

6100.461 Self-administration

6100.461(c)

This type of equipment can be very expensive. This should be at the expense of the individual or the Department should provide additional funding for this type of assistive technology, if their insurance does not cover.

6100.462 Medication Administration

6100.462(b)(1)

This is a positive change that RN's and LPN's do not have to go through Medication Administration in order to administer medications.

6100.462(b)(2)(iv)

Insulin injections are not taught as part of the Department approved Medication Administration course. This would have to be added to the course in order for this regulation to be valid. Once added to the Medication Administration course, this should be sufficient for training supporters how to administer insulin injections and the additional Helwig Diabetes Center training should no longer be required, as it is an added cost for duplication of training.

6100.462(b)(2)(v)

Epinephrine injections are not taught as part of the Department approved Medication Administration course. This would have to be added to the course in order for this regulation to be valid.

6100.462(b)(2)

Rectal medications are not included in this, when they should be. Many individuals have enemas, or rectal diastat orders that supporters need to be trained how to administer.

6100.462(c)(3)

Crushing or splitting medications is not taught as part of the Medication Administration course, however, needs to be taught if this is being required.

6100.463 Storage and disposal of medications

6100.463(b)

This regulation goes against what is taught in medication administration, and is dangerous practice. Medication administration requirements should align with the 6100, 6400, 6500, 2390 and 2380 regulations.

6100.463(c)

This needs to be clarified.

6100.463(g)

Please clarify what "organized manner" means, as this is again subjective and could mean different things to different people.

6100.463(h)

The regulation should specify the exact requirements and not just reference another set of regulations.

6100.465 Prescription Medications

6100.465(b)

This does not make sense, because medications are current until they are discontinued by the physician. This regulation should be removed.

6100.465(e)

This regulation would be impossible to comply with. There are many cases where the individual goes to the ER and is prescribed a medication. That medication will then be changed by the PCP or other specialist, not the ordering ER physician. It should be any physician has the authority to change the medication .

As far as the "written notice" many doctors send electronically the script right to the pharmacy, so this is not always obtained. Electronic records need to be added.

6100.466 Medication Records

6100.466(c)

The 24 hours needs to be changed to say "the following business day" as many doctors do not have weekend hours and do not have on call hours as well. Many times, providers will

not be able to get a hold of the doctor within 24 hours. There should be something in the regulations stating what providers are to do when the physician does not respond, which is often the case.

6100.467 Medication Errors

There needs to be something specifying that if a physician orders a medication that the individual is allergic to, it is not a medication error if the provider administers the medication based upon doctor recommendations. (There are cases where the benefits of the medication outweigh the allergic side effects) Providers should not be held liable for following doctor orders.

6100.467(6)(b)

This must be in line with the Incident Management bulletin.

6100.469 Medication administration training

6100.469(b)(2)

This is contradictory to the medication administration section of the regulations that states that if you are trained through the Medication Administration Course, you are able to administer insulin injections. Once this training is included in the Department approved Medication Administration Course, employees should no longer also have to go through the Helwig Diabetes Program training as well, as this is duplicate training on the same topic.

6100.469(c)(2)

Please define what a licensed, registered or certified health professional means in the regulations.

6100.470 Exception for family members

Relative should be defines as a blood relative of the individual or anyone who the individual sees as family.

GENERAL PAYMENT PROVISIONS

6100.481 Departmental rates and classifications

6100.481(a)(2)

These should not be included as we are no longer cost-based as of January 2018.

6100.481(e)

The provider should be able to negotiate a different fee or rate with county for base as there are different requirements depending on the county. This should be left up to the county and the provider to determine.

6100.482 Payment

6100.482(f)

This is burdensome and would cost additional funds and manpower having to submit to insurance to get a rejection for each service for each individual.

6100.482(g)

The provider should be able to appeal and still collect payment for services at that time, which wouldn't mean payment in full.

6100.482(h)

Please provider further clarification within the regulation on this.

6100.482(i)

Providers should retain all payments until any appeal is fully settled.

6100.484 Provider Billing

Promise is not user friendly and we are recommending that the system be updated as it is very slow.

6100.486 Bidding

6100.486(a)

This is a positive change as this went up \$5,000 to \$10,000.

6100.486(d)

This is a positive change.

FEE SCHEDULE

There should be specifications of whether or not there will be any restrictions for what fee schedule funds can be used for.

6100.571 Fee schedule rates.

6100.571(b)

Specify exactly what market based data is being used. Although we do like the system of rebasing the rates every 3 years, we feel as if this should be done annually.

6100.571(c)

Specify more information on all the factors and where all of the information is coming from.

6100.571(c)(2)

Specify where the information is coming from. Please reference state center increase in pay.

6100.571(c)(4)

Please give further definition.

6100.571(c)(6)

Under fee-schedule, it needs to be clarified as in the process for administrative costs being taken out and capped at a percentage. This needs to be clear in the regulations how this is done in a fee schedule.

6100.571(c)(9)

Further define what the “review” consisted of. This should have included provider increased costs.

6100.571(c)(10)

This is extremely vague and needs to be specified as to what the other criteria that impacted costs that was used.

COST-BASED RATES AND ALLOWABLE COSTS

It needs to be specified that these regulations only come into play when providers are being paid in a cost-based system.

6100.659 Rental and administrative spaces

6100.659(a)(1)

We will never be able to obtain a lease with this regulation in place. As long as the agency does an analysis of 3 properties, this should be sufficient. This regulation would add unnecessary administrative burden, to an already difficult process.

6100.660 Occupancy expenses for administrative buildings

6100.660(b)

This needs clarified as to how fair market value would be determined. It is recommended that this regulation be removed, as this already happens naturally through utility companies.

6100.664 Residential habilitation vacancy

6100.664(e)

Please add “and shall not be withheld or cause a provider undue hardship” Providers shall be compensated as costs occur if holding a spot for someone.

6100.668 Insurance

Providers shouldn't be limited at the minimum amount. We determine as the provider what we need, as we are the ones taking the risk associated.

Also, directors and officers coverage should be included in this regulation.

6100.669(b)

The provider should be able to be reimbursed for legal costs when there is a settlement and no parties admit wrongdoing.

6100.672 Cap on start up costs

There should be something stating that there could potentially be start up costs in a fee for service model.

ROOM AND BOARD

6100.682 Support to the individual

This should be the responsibility of the Supports Coordinators.

6100.685 Benefits

6100.685(a)

Please define what similar benefits are.

6100.688 Completing and signing the room and board residency agreement

6100.688(b)

The provider should be able to send one copy by registered mail to the guardian. This should be sufficient attempts to get them to sign off on the room and board agreement. Currently we send out several copies, often with no response. This is administratively burdensome.

6100.692 Hospitalization

This is not fair for providers. Providers need Department's approval first who is paying for room for that period of time. Not a part of everyday lives as you still have to pay rent if you are in the hospital.

DEPARTMENT-ESTABLISHED FEE FOR INELIGIBLE PORTION

6100.711 Fee for the ineligible portion of residential habilitation

6100.711(B)

Providers should be given a copy as this would help us know assumptions given rates.

6100.711(c)

Although we like the structure of the rebasing of rates, we feel it should be done every year instead of every 3 years.

6100.741 Sanctions

6100.741(a)

Providers should have the right to appeal sanctions.

6100.742 Array of sanctions

This cannot be enforced without emergency hearing by administrative law judge and result of appeal from the administrative law judge. Providers have the right to appeal any sanctions

.6100.742(6)

If this is ordered by the Department, it should be paid for by the Department.

6100.803 Support coordination, TSM and base-funded supports coordination

6100.803(e)

This makes it seem like we are going back to bi-annual reviews, when this was removed as a requirement.



CHAPTER 6400 REGULATIONS PUBLIC COMMENT

General Provisions

6400.2 Purpose

The “minimum requirements” does not apply for 6400 regulations as the regulations manage every aspect of what a provider should be doing. The regulations should pertain only to health and safety, not dictate what trainings are needed, what qualifications are needed etc.

6400.3 Applicability

6400.3(b)

The “minimum requirements” does not apply for 6400 regulations as the regulations manage every aspect of what a provider should be doing. The regulations should pertain only to health and safety, not dictate what trainings are needed, what qualifications are needed etc.

6400.3(e)

Providers should be able to know what percentage of the homes are to be sampled to prepare individuals supported as licensing can be/and has been disruptive to daily routines of the people we support.

6400.3(f)(1)

All private homes of persons providing care to a relative with an intellectual disability of autism should be stand alone with no licensing as this is an encouraged service by the Department, this should not need to be mentioned.

6400.3(f)(2)

Residential Facilities operated by the Department should be held to the same requirements as providers as it is the same service to the same individuals.

6400.3(7)

Should be clarified if the total hours is 30 hours per person, or 30 hours per household

6400.3(8)(g)

The individual should also be responsible for complying with other applicable laws, regulations, codes, and ordinances. This would help providers to maintain a healthy and safe environment for those living in the homes

6400.4 Definitions

Community homes for individuals with an intellectual disability or autism (home)- It should be made clear that apartments that share a wall are still separate units.

Fire Safety Expert- A video that is approved by Fire Safety Expert standards should also constitute Fire Safety Experts. It is an additional recurring cost to have experts come out on site.

General Requirements

6400.15 Self Assessment of Homes

6400.15(a)

Training should be provided on self assessments by the Department for providers

6400.18 Incident Report and Investigation

6400.18(9)

Please define law enforcement activity. An example would be is this law enforcement activity specific to the individual, specific to a housemate, specific to a family member of the individual. It would help providers to be more descriptive here.

6400.18(12)

Please define emergency closure. Is this closed for one day, or multiple days, when is an emergency closure an emergency closure.

6400.18(d)

Staff for confidential purposes should able be redacted from the report as well as individuals.

6400.18(e)

Please define immediate, immediate is too general of a term. An example of language for the Department to use would be within 24 hours unless life threatening emergency is immediate.

6400.18(f)

Providers will not be able to investigate every incident within 24 hours, this would require hiring additional Certified Investigators which would need to be funded by the department. If Supports Coordinators report an incident they should be responsible to complete the investigation.

6400.18(h)

Extensions are needed as key witnesses are not always available to be spoken to, also with policy involvement they have told providers to stay out of it until the police investigation is complete.

6400.19 Incident procedures to protect the individual

6400.19(a)

Currently a medication error must be reported, it should be made clear that a medication error does not need to be reported

6400.19(b)

Please define individual's risk, one person's risk is can be interpreted as a right by many. Examples of appropriate corrective action should be given, and it should be solely up to the provider as they know the individual they support best in most cases to decide if corrective action is appropriate

6400.20 Incident Analysis

This section is estimated to cost 100,000 dollars through adding full time positions to comply based upon our provider size. The Department would need to fund the additional resources needed to comply.

6400.20(1)

A root cause analysis is a specific analysis that can take up to 4 hours per incident to complete, around 240 hours per month for the amount of incidents we have in any given month. The person or people completing the root cause analysis must be trained in how to complete an RCA. As this is a very specific skillset that would require hours of training multiple people to be able to do, it is strongly recommended that the language "analysis to determine the root cause of the incident" is changed to "an analysis to determine potential causes of the incident".

6400.20(3)

Often, a strategy to address potential risks is to move the individual from a home in which the housemate or housemates are the trigger, or the victims of abuse from the target

individual. With these regulations, we would not be able to move the individual out of the home immediately, we would have to wait 45 days and subject the housemates to continual harm. This is another reason why emergency situations need to be addressed to protect the health and safety of other individuals.

6100.20(c)

Providers need buy in from individuals, families, other stakeholders to implement preventative measures, providers cannot do this standing alone.

Individual Rights

6400.31 Exercise of Rights

6400.31(b)

The word "continuously" needs to be changed to "quarterly" to match the rest of the regulations. "Continuously" is vague and subject to interpretation.

6400.31(d)

An individual needs to be help to natural consequences, if an individual exercises rights that upset others there may be natural consequences. ODP should develop a process if one persons exercising of rights violates another person's rights.

6400.31(g)

If the provider does not have a court order and a court order has been requested by the provider a process should be developed to ensure health and safety in the meantime such as the individual not having contact with someone who may have just sexually abused them.

6400.31(h)

This regulation is concerning, as the individual may not make the best choices in terms of the type of person they are designating to assist in making their decisions. There needs to be exceptions to this regulation in order to protect the individual who may not make appropriate choices that is in their best interest health and safety wise.

6400.32 Right of the Individual

6400.32(b)

Rights do not come without responsibilities, individuals need to be held accountable when possible and encouraged to maintain responsibility.

6400.32(c)

Everyday lives is living together with other people. People sometimes argue and verbal abuse will happen from time to time, to say an individual may not be abused verbally if they have an argument with a housemate is not everyday lives. Abandonment should be defined.

6400.32(e)

A doctor order should take precedence over the right to make choices and accept risks. Many times individuals who would not have followed doctor's orders or had examines per the regulations they would have been placed in serious life threatening situations. The provider is responsible and others are responsible for ensuring health and safety, so if an individual chooses not to follow doctor's orders then a provider should have the choice to support or not support that person immediately following refusal of doctors orders.

6400.32(g)

Staffing is not always available for the individual to control their own schedule. Individual needs to control schedule within the confines of what services/staffing are provided. If an individual wanted to control their own schedule to go out at 3 AM, and there was only one staff in the home for two individuals being supported and the other individual was sleeping a provider would be in an impossible situation. The only way full control could be granted to individuals would be if the Department funded 1 to 1 support for everyone.

6400.32(h)

An individual should not have rights to privacy of person and possessions when those possessions may put others in harms way. This should be amended to state unless the health and safety of others is being jeopardized then the individual has the right to privacy of person and possessions.

6400.32(j)

Staff should also be able to voice concerns against the individual, rights come with responsibilities

An additional responsibility should be added to this section for the individual to be respectful to/of the home and the people in the home

6400.32(l)

Individual need to have visitors in accordance with good neighbor standards. Loud music cannot be played by visitors at 3 AM when people are sleeping, this can lead to eviction from the home. The Department should develop a training in accordance with good neighbor standards that the individuals would be trained on. The provider/team should decide if the visitor is going to endanger the health and safety of the individual of others in the home or the individual that the visitor is not allowed until other safety measures can be taken.

6400.32(m)

If the individual receives court orders or waiver funding information the provider needs to be able to receive/view that information to ensure services are not interrupted and court orders are being followed

6400.32(q)

The individual should be solely responsible financially for decorating their room and their house. This regulation should be revised to include that all decorations/furniture must be in according with leases that the provider has with landlords and that the decorations shall not offend other individuals living in the home in common areas.

6400.32(r)

This should be revised to say that if health and safety is at risk, the individual does not have right to lock the individual's bedroom door. An example would be if a person has life threatening seizure activities and a provider needs to get into the bedroom to ensure health and safety a door should not be locked. Also if an individual has a history of suicide attempts it could endanger the individual if they are locking their door and staff are not able to check on the individual. Some of our individuals require per the doctor multiple overnight checks, this process would be impeded if the door is locked.

6400.32(s)

There must be an exception process for this regulation. We support individuals with medical conditions and physician's orders that must be abided by that would be in violation of this regulation, for example, fluid restrictions, menu plans for individuals diagnosed with Prader Willi Syndrome. Also, there is the home grocery shopping budget that needs to be thought about as well. There shall always be at least 3 meals a day available in the home, however, allowing access to food at any time is not safe for all individuals, as many individuals will binge eat until they make themselves ill.

6400.32(t)

A provider should have the right to immediately discharge people if the person is refusing to participate in their medical care. The Department should provide trainings to individuals on informed healthcare decisions. If this regulation stands it would be interpreted that an individual making informed health care trumps any medical regulation in this Chapter, and the provider would not be responsible.

6400.33 Negotiation of Choices

6400.33(a)

The Department should develop best practices/policy for providers for this conflict.

6400.33(b)

It should be clarified that the provider has full control over resolving the differences in accordance with whatever the provider's policy is for resolving differences.

6400.34 Informing of Rights

6400.34(a)

Providers have a difficult time getting legal guardians to sign even after repeated attempts. There should be a statement within this regulation that providers should send one registered letter attempt to the legal guardian in attempt to inform them and have them sign off on the rights that they were informed.

6400.34(b)

Providers have a difficult time getting legal guardians to sign even after repeated attempts. There should be a statement within this regulation that providers should send one registered letter attempt to the legal guardian in attempt to inform them and have them sign off on the rights that they were informed.

STAFFING

6400.44 Program Specialist

6400.44(a)

This regulation should match the 6500 regulation of 1 program specialist for 8 homes, or 16 total individuals. The same amount of work is required for 6400 vs 6500 so the house requirements should be the same. The Department would need to fund in their rates the increased need for program specialists if the ratio is 1 program specialist for 8 hours, or 16 total individuals.

6400.44(1)

The only assessment completed should be the assessment by ASCEND. Program Specialists can help coordinate the SIS assessment with ASCEND but ACEND is contracted by the Department to perform assessments so that should be the end all be all assessment. It is very confusing to have multiple assessments for the same individuals. Only if individuals do not have a SIS assessment should the program specialist complete a SIS assessment. This will cut down on administrative work that is really duplicating work that is already done by ASCEND.

6400.44(3)

This cannot be completed with the proposed 1:30 ratio for program specialists to individuals. This would be more feasible under 1 program specialist to 8 homes, or 16 individual maximum (as proposed in the 6500 regulations). The Department would need to fund the extra program specialists needed.

6400.44(5)

The program specialist should not have to assist if the person whom the individual wishes to participate poses a risk of health and safety to the program specialist or the individual. Should be revised to say as long as the person does not pose any risk of health and safety.

6400.44(c)(1)

Should be revised to count volunteer experience. Most of our best staff come from a background of volunteer service.

6400.44(c)(2)

Should be revised to count volunteer experience. Most of our best staff come from a background of volunteer service.

6400.44(c)(3)

We have many staff from other countries, regulation should be revised to include degrees from other countries

This section should match the qualifications in 6500 that a program specialist also can have a high school diploma, and 6 years experience. Inconsistency across 6400,6500, and 2380 make things hard to follow for compliance.

6400.45 Staffing

6400.45(a)

Regulation should be revised to include the use of remote monitoring technology when approved by the individuals team. This would save the Department money in the long run if the Agency is able to monitor multiple homes using current technology.

6400.45(d)

It has been stated by the Department that ratios are not necessary to be in a PSP. The regulation should be revised that providers will staff individuals in accordance with their risks and risks mitigations. The Department would need to ensure staffing ratios are covered in the rate setting process for risks and risk mitigation. Everyday lives should have flexible ratios.

6400.45(e)

Alone time should be the amount of time the individual is safe to be without supervision. This is an example of the Department regulating too much. If an individual is approved for alone time it should not matter when that alone time is used.

6400.46 Emergency Training

We do not see anything referencing what is required for emergency training. Language should be inserted for what constitutes emergency training.

6400.46(b)

A video on fire safety that is recognized by Fire Professionals should be included in the regulation as acceptable training.

6400.50 Annual Training Plan

This section will require additional funding as the specificity of the trainings that are required is going to take additional trainers in order for providers to comply. Each individual would require their own unique training curriculum, which would increase the amount of trainings offered. The annual training plan requirements within these proposed regulations would grossly add hours not decrease as the Executive Summary claims. For example, medication administration requires two full days, which is 16 hours, 5 hours is CPR/FA, 1 hour for expert fire safety, and 8 hours is proposed to be required for the core competencies, which with these four requirements alone equals 30 hours, not 24. On top of this is orientation, and all of the position specific and individual specific training which could be an additional 10-15 hours of training at a minimum for a grand total of 45 hours per employee. Providers however, are only getting paid for the 24 hours.

6400.50(a)

The Department will need to fund for additional trainers in order to base trainings on the needs of specific individuals. We currently support well over 100 individuals and this would require developing specific training for each individual, and would add a huge cost to us. The annual training plan requirements within these proposed regulations would grossly add hours not decrease as the Executive Summary claims. For example, medication administration requires two full days, which is 16 hours, 5 hours is CPR/FA, 1 hour for expert fire safety, and 8 hours is proposed to be required for the core competencies, which with these four requirements alone equals 30 hours, not 24. On top of this is orientation, and all of the position specific and individual specific training which could be an additional 10-15 hours of training at a minimum

for a grand total of 45 hours per employee. Providers however, are only getting paid for the 24 hours.

6400.50(c)

The Department should develop the trainings to ensure core competencies. If the Department provided the training materials this would help the administrative burden on providers. The training should be recorded and given to providers to ensure it hits all the points the Department is looking for.

6400.50(d)(1)

The titles should only be for general categories. Example would be direct support staff, management, executive management. To list out each title would be an administrative burden to providers.

6400.51 Orientation program

6400.51(b)(1)

The Department should develop the trainings to ensure consistency. If the Department provided the training materials this would help the administrative burden on providers. The training should be recorded and given to providers to ensure it hits all the points the Department is looking for. The regulation should be revised to state that staff such as Fiscal Staff do not need these trainings and they do not help the fiscal staff do their jobs or add value.

6400.52 Annual Training

6400.52(b)(1)

Fiscal Staff should not need 12 hours of training per year. This is an administrative burden, excess cost and has little value to their role.

6400.52(c)(1)

Fiscal staff do not need these trainings as they add no value to the fiscal staff. Fiscal Staff should attend trainings that relate to fiscal matters. This will add additional costs to providers if Fiscal Staff need specific programmatic training. The Department would need to fund additional costs. For other staff it is recommended ODP develop recorded webinars for these trainings so providers do not need to take on the additional expense of these trainings.

6400.52(c)(5)

The regulation should define the use of appropriate positive interventions.

6400.52(g)

The Department should develop and fund an online training database to cut down on administrative budget on providers. This would help to streamline the process for oversight and review entities. The oversight entities could simply login to the database to view trainings.

MEDICATIONS

The way the medication section is written will greatly increase the number of individuals who can self medicate which is a positive thing and we agree with that.

6400.161 Self-Administration

6400.161(c)

This is a great idea, the only recommendation would be the Department funds the assistive technology or the individual pays for the needed assistive technology.

6400.162 Medication Administration

6400.162(b)(2)(iv)

Insulin is not part of the current Department approved medication administration training. The Department should revise the training to include Insulin injections. The Department would need to account for these additional trainings in the provider's rate.

6400.162(b)(2)(iv)

Epinephrine is not part of the current Department approved medication administration training. The Department should revise the training to include Epinephrine injections. The Department would need to account for these additional trainings in the provider's rate.

6400.162(b)(3)

The Departments Medication Administration does not teach crushing or splitting pills. The Department should revise their training to include crushing and splitting pills. The Department would need to account for these additional trainings in the provider's rate.

6400.163 Storage and Disposal of Medications

6400.163(b)

This regulation goes against what is taught in medication administration, and is dangerous practice. Medication administration requirements should align with the 6100, 6400, 6500, 2390 and 2380 regulations.

6400.163(c)

Please elaborate on the requirements for this regulation, as it is unclear.

6400.163(g)

Please clarify what "organized manner" means, as this is again subjective and could mean different things to different people.

6400.163(h)

Regulation should be revised to include what safe disposal of medications is, and not just reference other regulatory requirements from outside the Chapter 6400.

6400.164 Labeling of Medications

6400.164(4)

This should be revised to match the 5 Rs (right route, etc.) of the Department approved medication administration class.

6400.164 Prescription Medications

6400.164(a)

Regulation should specify electronic submission of script or recommendation should count as in writing.

6400.164(b)

Current should be revised to as long as a script is on file at the provider or the pharmacy for the medication that will suffice. This regulation should be removed. Medications are current until they are discontinued by the physician or changed by the physician.

6400.164(e)

Regulation should be revised that electronic notices are in compliance with the regulation, also it should be stated the change on the record does not happen on the record until the medication is received from the pharmacy.

6400.166 Medication Record

6400.166(a)

This regulation should be clarified that these requirements do not apply to an individual who is self-medicating.

6400.166(c)

This regulation should be revised to include any doctor within 24 hours if the prescriber is not able to be reached. This should include next business day to account for how difficult doctors can be to get a hold of on weekends. If a life threatening medication is missed the provider would be responsible to get the person to the ER on the weekend, but if a nasal spray is refused by an individual on a weekend that should not rise to the level of a doctor on the weekend, and can wait until the next business day.

6400.167 Medication Errors

6400.167(4)

This should match the previous section that a medication cannot be taken out of container up to two hours before medication is due.

6400.167(6)(b)

We appreciate that medication errors do not need to be entered into EIM. Should be revised to read any physician (just not the prescriber, as they are not always available) should be able to give follow up action. This regulation needs to be throughout the regulations, however, as there are sections that contradict, requiring the submission of medication errors, while another section states that medication errors are not on the list of reportable incidents.

6400.169 Medication administration training

6400.169(a)

Should include that rectal medications can also be given after completion of Department training.

6400.169(b)

Department should revise training to include insulin, and once staff completed Department's training they can administer insulin with no further requirements. It is an ongoing cost for providers to have a nurse or additional class also training on top of the Departments

training. The Department would need to account for additional training/nurses in the provider's rates. This additional training if required should be once and done, not an annual basis.

6400.169(B)(2)

Department should revise training to include epinephrine, and once staff completed Department's training they can administer insulin with no further requirements. It is an ongoing cost for providers to have a nurse or additional class also training on top of the Departments training. The Department would need to account for additional training/nurses in the provider's rates. This additional training if required should be once and done, not on an annual basis.

6400.181 Assessment

This section should be revised to read: The only assessment completed should be the assessment by ASCEND. Program Specialists can help coordinate the SIS assessment with ASCEND but ACEND is contracted by the Department to perform assessments so that should be the end all be all assessment. It is very confusing to have multiple assessments for the same individuals. Only if individuals do not have a SIS assessment should the program specialist complete a SIS assessment. This will cut down on administrative work that is really duplicating work that is already done by ASCEND. Providers will not be responsible for the assessment since ASCEND will be completing the assessments.

6400.181(b)

Define what a "service implementation plan" is, this is not mentioned elsewhere and is confusing

6400.181(c)

Revise to state that either the Supports Coordinator or targeted support manager should be the primary person responsible. The other parties will assist.

6400.181(e)

The Department has recognized that individuals do not change that much over the course of 5 years, which is why they are recommending that the SIS assessment is only completed once every 5 years. The same theory should be applied to the assessment in these regulations. The SIS assessment should take the place of the annual assessment required in the 6500 regulations and in all cases where the individual receives HCBS funding. If the individual does not receive HCBS funding and therefore does not receive a SIS assessment, the family living specialist will be responsible for completing an assessment as required in the 6500 once every 5 years.

6400.181(g)

Please provide this form as we do not have a copy for what PSP revisions should go on. Providers should have input on this form.

6400.183 The PSP Team

6400.183(3)(a)

Direct Support staff are working in the homes, there is currently a direct support staffing crisis and we do not have any staff to spare to attend meetings. Other individuals who live in the homes still require the direct support staff to be present. This would cost hundreds of thousands dollars per year to pay for new staff and retain staff so other direct support staff can attend meetings. We do invite staff to be at meetings, however they are usually on shift elsewhere.

6400.183(7)(c)

This should be revised to state each party is responsible solely for their own signing of the document. If the Supports Coordinator does not sign the document that is not the responsibility of the provider.

6400.184 The PSP Process

As this section does not specify the need for the provider to be involved, this entire section should be the responsibility of the Supports Coordinator and not the provider. This includes this same section that is in the 6100 regulations. All oversight agencies shall hold the Supports Coordinators responsible for the compliance of this regulatory section, including the establishment of a PSP process.

6400.184(1)

Please explain this in more detail as what "necessary information and support" means.

6400.184(3)

This should be revised to state within the constraints of resources, and in constraints with the individual's health and safety. The Department would need to ensure the provider's rates ensure that support can be delivered in a manner reflecting individual preference, current rates do not cover those costs.

6400.184(4)

Revise regulation to state Supports Coordinator is responsible for timely revisions to the plan, and holding timely meetings. Revisions should be completed by the Supports Coordinator within one business day of notification that a change is needed to the PSP.

6400.184(5)

Should be revised to be communicated in the individual's preferred language and Supports Coordinator would be responsible for that since they oversee the PSP.

6400.184(7)

Should be revised to the provider will develop guidelines for solving disagreements between team members, and the providers guidelines are final.

6400.185 Content of the PSP

The Supports Coordinator does revisions and should be accountable for all revisions to the PSP by BSHL, not the provider as it has been in the past. The provider does not have control over when ISPs are updated and therefore cannot be held accountable for the job duties of the supports coordination. All PSPs must be in place by 7/1/17 in order for these regulations to be in effect regarding a PSP.

6400.185(9)

Recommend to specify that a psychiatric illness is different than dangerous behaviors

6400.185(10)

The Department should revise to include some general guidelines such as if an individual is suicidal they do not have the right to lock their door for their health and safety.

6400.185(13)

Should be revised to state the Support Coordinator is responsible to monitoring the PSP, and the provider is responsible for implementing the PSP.

POSITIVE INTERVENTION

6400.191 Use of a positive intervention

6400.191(a)

Provide further clarification as a positive intervention is not obtainable for someone who is running into the street and endangering themselves. Sometimes positive interventions cannot be used when health and safety is in jeopardy. This regulation is very idealistic. Although the goal is for a positive intervention to prevent, modify and eliminate a dangerous behavior, this cannot be predicted and cannot be promised 100% of the time.

Recommended Rule: "A positive intervention shall be used to attempt to prevent, modify and eliminate a dangerous behavior when the behavior is anticipated or occurring. As we are all

human, all humans will respond differently to positive interventions. Some positive interventions may be successful, others may not.

6400.191(b)

“Least intrusive method” needs to be defined as it is used in this regulation. “Every attempt” needs to be defined as well. You are not going to eliminate the behavior, however, you may be able to provide an alternative to the behavior and this needs to be recognized within the regulation.

6400.191(c)

The definition of “dangerous behavior” is extremely vague and it does not touch upon the individuals that have mental health symptoms such as voices or hallucinations. These are not behaviors and should not be classified as such within the regulations.

The definition of “positive intervention” should be expanded to include additional interventions that would fall into the category.

We are in agreement with the removal of the restrictive procedure plans and the implementation of positive interventions as part of the individuals PSP. This will save an immense amount of time and unnecessary paperwork.

6400.192 PSP

This section should not be called the PSP, as this is the new name of the ISP, which is confusing.

Recommend calling this section Positive Intervention Plan

The term “psychiatric illness” needs to be added in conjunction with “dangerous behavior” as they are not the same thing, however, both should be included within the scope of this regulation.

This regulation needs to specify that the individual may not always (as the PSP team feels appropriate) be a part of deciding what positive interventions are utilized. For example, if the individual has threatened or attempted to use a sharp object to harm themselves or others, the PSP team needs to be able to put risk mitigation strategies and positive interventions in order to keep the individual safe, The individual may not want sharp objects to be locked in the home, however, there must be a way for the PSP team to implement these strategies without the consent of the individual in order to maintain their health and safety as well as the health and safety of others.

6400.192(2)

A “functional analysis” is a very specific analysis that can only be completed by a board certified behavior analyst (BCBA). This analysis can take months to complete for each individual. Having this requirement would cost the agency around an additional \$150,000 per year at our current size to hire enough behavior analysts in order to comply with this regulation.

It would be our recommendation to change the requirement from a “functional analysis” to a “functional assessment” which can be completed by a behavior specialist for much less.

6400.192(6)

Should be revised to say health conditions that require special attention as determined by the team (otherwise a doctor would need to sign off on the PSP).

6400.193 Prohibition of Restraints

6400.193(1)

This should be revised to state an individual can be verbally redirected to leave an area if they are endangering the health and safety of other individuals in that area as decided on by the support staff

6400.193(5)(i)

We cannot agree to this regulation. In order to keep the individual safe, for example, a protective helmet prescribed by a physician, if the individual is able to easily remove the device, they are no longer protected. This regulation as written prohibits provider agencies from being able to protect the health and safety of individuals in our care.

6400.193(6)

Further define “emergency”. The term “immobilize” needs to be defined more clearly as well.

This regulation also needs to clarify that in an emergency basis the agency approved emergency restraint carried out by a trained supporter in order to protect the immediate health and safety of the individual or others would not be considered a manual restraint.

6400.193(8)

Every physical restraint that is needed to protect health and safety could cause embarrassment the individual. The provider has no way of knowing if stopping an individual from running into the street will cause embarrassment to the individual. Regulation should be revised to state health and safety trumps these issues notes.

6400.194 Permitted Interventions

6400.194(a)

This information should be stated in the PSP if the individual likes to go to their room to help cope with a situation.

6400.194(c)

Define protective physical protective restraint, the Department should develop a training around protective physical restraints.

6400.194(d)

Define protective physical protective restraint, the Department should develop a training around protective physical restraints. Regulation should be clarified to state if this does or does not need to reported in the Department's EIM system.

6400.194(f)

Should be revised to state if the police or law enforcement has not arrived that should be documented to the provider, and the provider can continue to use physical restraint as needed for health and safety.

6400.195 Access to or the use of an individual's personal property

6400.195(a)

It needs to be clarified, unless it is a part of the individual's PSP as a risk mitigation strategy. For example, they threaten to use their swiss army knife to harm themselves or others, this object should be able to be taken away and locked in order to keep the individual and others safe as part of the PSP.

6400.195(b)

For people who have an understanding, the individual's funds should be able to be used as a natural consequence to pay for damages that they cause. This supports the ideals of an everyday life. If a person without IDD breaks the television in their home, they are not entitled to a new one, they have to pay for a new television as a natural consequence to their actions. Whether or not the individual would be able to understand this and benefit from this type of natural consequence should be a PSP team decision and be part of the PSP.

6400.195(b)(3)

Revise for providers being able to state the facts of the case. Example: Johnny you cost 5,000 of damages by breaking the heater and people now do not have heat in the home. Providers should be able to state to the individual you have the right to break things, however it then becomes your responsibility to pay for them. This is part of everyday living.

6400.196 Rights Team

This is a wonderful goal, however, unrealistic and near impossible to coordinate. Coordinating all these schedules, reviewing each incident with that individual's team, and waiting on decisions from the team will cost a provider of our size over \$100,000 per year. This cost is calculated by the number of meetings needed to review and the length of time to review each incident and the manpower that will be needed to complete this. The Department would need to drastically raise reimbursement rates to account for that, and also providers will never be able to coordinate all these people meeting. This section should be rewritten to include annual review of incidents by the individual and their team at the annual PSP meeting.

6400.196(b)(2)(iii)

If we were able to resolve the behaviors the individuals would not be in our services, this is not a realistic step.

6400.213 Content of Records

6400.213(1)(vi)

Define current dated photograph, example one photograph within the last 5 years would suffice, as this is what the regulation currently is.

6400.213(6)

Revise to state SIS assessment, or providers assessment if no SIS assessment available on file.

6400.213(7)

This should be removed. The documents have already been listed that are required by this chapter.

6400.213(8)

Define this further, and when defined, this should be in the PSP

6400.213(10)

Define this further, should be updated to state this will be updated/reviewed yearly at the PSP meeting.

Additional Comments for the 6400 Regulations:

Although it is understood that not all sections of the regulations were revised, there are many that are outdated and subjective that have room for interpretation. It is recommended that additional sections be revised, included below are additional comments on the 6400 regulations in total.

- As our homes span 2 hours away from the office, it should be specified within the regulations that the records are able to be located at the office instead of in the individual's home. The Department would need to provide more funds in order for us to travel and spend the time traveling to homes several times a week to file documents. Records for 6500, 2380 and 6400 regulations must be able to be located at the office. A copy of the PSP and emergency information, however, should also be located at the home.
- Providers should not bear the responsibility of ensuring the full completion of physical examinations prior to the individual moving into the home. The current licensing requirement from BHSL that each individualized space and question must be filled out for compliance is unrealistic and prohibits individuals from being able to move into their new homes in an efficient manner. Providers are currently being cited if something as small as "N/A" is not written on a mammogram question for a male, which is an administrative burden and is not a health and safety issue.
- 62(a) Clarify what a poisonous material is defined as and if an individual is a new admission and does not have an assessment completed, does the provider lock up poisonous if they are documented to not safely be able to use poisonous materials in their most recent ISP until initial assessment is completed?
- 64(a) Clarify clean and sanitary, as this is subject to interpretation.
- 67(a) Clarify what not being in good repair looks like. This is subjective.
- 67(c)(1) Clarify whether or not having a history of ingesting paint qualify the need for paint to be tested and what else is considered a paint substance?
- 69(a) and 69(b) specify that this regulation does not apply to areas not lived in such as basements, garages or attics.
- 72(a) Windows in areas not lived in (i.e. garages, attics, basements) that are never opened should not need screens, this should be clarified, also if the home has central air it should be specified that screens are not required unless opened.
- 76(a) Clean and sturdy needs to be defined as this is subjective.
- 76(c) Comfortable and home like needs to be defined as this is subjective.

- 80(b) Define well maintained and in good repair, as this is subjective.
- 81(k)(2) Clarify the definition of “clean” mattress, as this is subjective.
- 82(g) Wash cloths and bath towels should be able to be labeled with individuals’ initials if more than one individual lives in the home to cut down on costs of paper towels.
- 86 Define lethal weapon.
- 101 Define unobstructed. It is recommended that this mean that the individual is able to easily exit.
- 110(g) Specify how notification and repair needs to be documented.



CHAPTER 2380 REGULATIONS PUBLIC COMMENT

General Provisions

2380.3 Definitions

Adult training facility or facility- This should not be defined as individuals under the age of 59 as this will require them to find another service during daytime hours even though they may enjoy their current training facility.

Fire safety expert- A video should also be included showing designated individuals defined as an expert conducting the training. It is an additional cost to have experts come out to the site.

Individual- We appreciate the fact that you are including people outside the IDD spectrum. The regulations will need to specify the process to apply for funding for these individuals.

The regulations need to specify the minimum amount of individuals needed to license an ATF

2380.17 Incident Report and Investigation

2380.17(9)

Please define law enforcement activity. An example would be is this law enforcement activity specific to the individual, specific to a housemate, specific to a family member of the individual. It would help providers to be more descriptive here.

2380.17(12)

Please define emergency closure. Is this closed for one day, or multiple days, when is an emergency closure an emergency closure.

2380.17(d)

Staff for confidential purposes should be redacted from the report.

2380.17(e)

Please define immediate, immediate is too general of a term. An example of language for the Department to use would be within 24 hours unless life threatening emergency is immediate.

2380.17(f)

Providers will not be able to investigate every incident within 24 hours, this would require hiring additional Certified Investigators which would need to be funded by the department. If Supports Coordinators report an incident they should be responsible to complete the investigation.

2380.17(h)

Extensions are needed as key witnesses are not always available to be spoken to, also with policy involvement they have told providers to stay out of it until the police investigation is complete.

2380.21 Individual Rights

2380.21(n)

This should be removed from the regulations, or the provider needs to be given a vacancy reimbursement.

STAFFING

2380.33 Program Specialist

2380.33(a)

At least one program specialist shall be assigned for every 16 individuals as 30 individuals puts intense demands on a program specialist to ensure timely, accurate reporting in regards to assessments, reports and ISP clarifications. Having 16 be the max would align with the lifesharing regulations as this position has the same requirements across all sets of regulations.

2380.33(c)

The qualifications that are necessary should also include a high school diploma and six years experience to qualify as a program specialist, as it does for a lifesharing specialist. These positions are required to complete the same work, and the requirements should be the same across the board for continuity.

2380.25 Staffing

2380.25(a)

The regulations need to more clearly define the supervision levels that are proposed in this regulation. Also, if the staffing ratio is a minimum of 1 staff for 6 individuals, the individual's choice of where they would like to go and what they would like to do is limited to

the other preferences of the other individuals in the group. The staffing proposed also needs to take into account if individuals have complex medical or behavioral needs that require more intensive staffing.

2380.25(c)

This statement implies 2:1 staffing is needed for each individual at all times and is contradictory to 2380.33(a).

2380.25(f)

Alone time needs to be clearly defined and the definition should be consistent throughout this chapter. It is unclear how an individual would be able to use alone time in an ATF setting, as this would violate other regulations within this chapter that states 2 staff must be present at all times.

2380.36 Emergency training

2380.36(c)

This statement implies there needs to be 2 staff at the facility at all times, even if there is no individuals present. This should be clarified to state if this is still necessary when all the individuals are out in the community.

2380.37 Annual training plan

This section will require additional funding as the specificity of the trainings that are required is going to take additional trainers in order for providers to comply. Each individual would require their own unique training curriculum, which would increase the amount of trainings offered. The annual training plan requirements within these proposed regulations would grossly add hours not decrease as the preamble claims.

2380.37(c)

It is strongly recommended that the Department provides providers with the information and training materials to train on the required core competencies. The Department should have a training curriculum for providers to utilize in order to train employees on the required core competencies on the My ODP website.

2380.37(d)

This is burdensome and unnecessary as each position should not require a different set of trainings, as there are many different positions agency wide.

Recommended rule: "The annual training plan shall include the following: the required training courses, including training course hours."

2380.38 Orientation Program

2380.38(5)

“Job related knowledge and skills” needs to be defined within the regulations.

MEDICATIONS

According to the wording of the proposed medication regulations, it appears as though the number of individuals who will be able to self-administer medications will drastically increase, which is a positive addition that we agree with.

2380.121 Self-Administration

2380.121(c)

The responsibility to provide or arrange for assistive technology on the provider could potentially be a massive financial burden that would need to be funded by The Department. The regulation should clarify what is meant by providing or arranging for assistive technology.

2380.122 Medication administration

2380.122(b)(2)

The regulations need to clarify if medications that need to be administered rectally are authorized to be administered also once staff has completed the medication administration training. They need to be clarified if insulin injections and epinephrine will also be included in the medication administration training and the Department would need to provide funding for these additional trainings.

2380.122(c)(3)

Medication administration also doesn't teach how to crush or split medication and while we feel this is a good idea, the Department would need to provide funding for these additional trainings.

2380.123 Storage and disposal of medications

2380.123(b)

If the regulations are stating this allows for a two hour window prior to designated medication administration time, the medication administration training needs to be modified to match the regulation.

2380.123(c)

This regulation needs to be clarified to state what constitutes not being packaged in an individual dose container.

2380.123(g)

The regulation needs to be more specific as to what “organized manner under proper conditions of sanitation, temperature, moisture and light” means in regards to how an individual’s medications need to be stored.

2380.123(h)

Regulation should be revised to include safe disposal of medications.

2380.124 Labeling of medications

2380.124(4)

This should be revised to match the 5 Rs (right route, etc.) of the Department approved medication administration class.

2380.125 Prescription medications

2380.125(a)

Regulation should specify electronic orders to be sufficient for “in writing” requirement.

2380.125(b)

Current should be revised to as long as a script is on file at the provider or the pharmacy for the medication that will suffice. One script on file should suffice for the length of that medication, unless a change occurs with the medication.

2380.125(e)

Regulation should be revised that electronic notices are in compliance with the regulation, also it should be stated the change on the record does not happen on the record until the medication is received from the pharmacy.

2380.126 Medication record

2380.126(a)

Regulation should specify that this doesn’t include individuals that are self-administering

2380.126(c)

If a medication is refused, the refusal should be allowed per the regulation to be reported to any doctor or nurse on staff at the primary care physician’s office the individual attends, as the prescribing doctor will not always be available or be able to get ahold of. The 24hr timeframe should also be changed to as soon as possible as this could be on a weekend and the primary care physician’s office may be closed.

2380.127 Medication errors

2380.127(4)

This regulation needs to be amended to match what was the previous section about the medication not being able to be taken out of the container for no more than 2 hours prior than the administration time

2380.127(6)(b)

This regulation should be amended to include not just the actual prescriber's response, but any physician or nurse who works at the same practice as the PCP as the original prescriber may not be readily available. We do appreciate that fact that medication errors don't need to be entered into EIM

2380.129 Medication Administration Training

2380.129(a)

Regulation needs to be clarified as to whether this includes administration of medications that are administered through the rectal route

2380.129(b)

Department should revise training to include insulin, and once staff completed Department's training they can administer insulin with no further requirements. It is an ongoing cost for providers to have a nurse or additional class also training on top of the Department's training. The Department would need to account for additional training/nurses in the provider's rates. This additional training if required should be once and done, not an annual basis.

2380.129(b)(2)

Department should revise training to include epinephrine, and once staff completed Department's training they can administer insulin with no further requirements. It is an ongoing cost for providers to have a nurse or additional class also training on top of the Department's training. The Department would need to account for additional training/nurses in the provider's rates. This additional training if required should be once and done, not on an annual basis.

POSITIVE INTERVENTION

2380.151 Use of a positive intervention

2380.151(a)

This regulation needs to take into account that there is not always an opportunity to utilize a positive Intervention when a dangerous behavior is occurring.

2380.151(b)

Should be revised to “attempts” shall be made to modify and eliminate the behavior. The word every attempt would add thousands of dollars to costs, and the Department would need to fund these costs.

2380.151(c)

The definition of “dangerous behavior” is extremely vague and it does not touch upon the individuals that have mental health symptoms such as voices or hallucinations. These are not behaviors and should not be classified as such within the regulations.

The definition of “positive intervention” should be expanded to include additional interventions that would fall into the category.

We are in agreement with the removal of the restrictive procedure plans and the implementation of positive interventions as part of the individuals PSP. This will save an immense amount of time and unnecessary paperwork.

2380.152 PSP

This section should not be called the PSP, as this is the new name of the ISP, which is confusing.

Recommend calling this section Positive Intervention Plan

The term “psychiatric illness” needs to be added in conjunction with “dangerous behavior” as they are not the same thing, however, both should be included within the scope of this regulation.

This regulation needs to specify that the individual may not always (as the PSP team feels appropriate) be a part of deciding what positive interventions are utilized. For example, if the individual has threatened or attempted to use a sharp object to harm themselves or others, the PSP team needs to be able to put risk mitigation strategies and positive interventions in order to keep the individual safe, The individual may not want sharp objects to be locked in the home, however, there must be a way for the PSP team to implement these strategies without the consent of the individual in order to maintain their health and safety as well as the health and safety of others.

2380.152(2)

A “functional analysis” is a very specific analysis that can only be completed by a board certified behavior analyst (BCBA). This analysis can take months to complete for each individual. Having this requirement would cost the agency around an additional \$150,000 per year at our current size to hire enough behavior analysts in order to comply with this regulation.

It would be our recommendation to change the requirement from a "functional analysis" to a "functional assessment" which can be completed by a behavior specialist for much less.

This regulation is again ignoring mental health and psychiatric illnesses. Add "psychiatric illness" in conjunction with "dangerous behavior" as these are different and should be treated as such.

The way the regulation is worded, makes it seem like there is just one positive intervention per dangerous behavior or symptom of a psychiatric illness, which is not always the case. Should be worded as follows "A description of the positive interventions aimed at preventing, modifying or eliminating the dangerous behavior or symptom of a psychiatric illness and the circumstances under which the intervention is to be used"

2380.152(6)

Should be revised to say health conditions that require special attention as determined by the team (otherwise a doctor would need to sign off on the PSP).

2380.153 Prohibition of restraints

2380.153(1)

This should be revised to state an individual can be verbally redirected to leave an area if they are endangering the health and safety of other individuals in that area as decided on by the support staff

2380(5)(i)

We cannot agree to this regulation, while keeping individuals safe at the same time. This should be revised to state devices are allowed so the individual cannot detach the device if a doctor recommends the individual needs to wear the device. An example would be if the individual is removing a lifesaving device, there should be measure that can be taken so the individual does not remove those devices.

2380.(6)

Further define "emergency" as well as the term "immobilize" needs to be defined more clearly.

This regulation also needs to clarify that in an emergency basis the agency approved emergency restraint carried out by a trained supporter in order to protect the immediate health and safety of the individual or others would not be considered a manual restraint.

2380.(8)

Although it should never be the intent for a manual restraint to cause embarrassment or humiliation, there is a possibility that in the event of an emergency to protect the health and

safety of the individual, that the individual would feel embarrassed or humiliated by having to be manually restrained. This should be clarified within the regulations, that it should never be the intent, and the restraint should be done as discreetly as possible, however, the health and safety of the individual and others is the number one priority.

2380.154 Permitted Interventions

2380.154(a)

This information should be stated in the PSP if the individual likes to go to their room to help cope with a situation.

2380.154(c)

The definition of a restraint needs to be in the regulations where a restraint is defined as 30 seconds or more. The Department should develop a training around protective physical restraints that are deemed appropriate.

2380.154(d)

Define protective physical protective restraint, the Department should develop a training around protective physical restraints. Regulation should be clarified to state if this does or does not need to be reported in the Department's EIM system.

2380.154(f)

Should be revised to state if the police or law enforcement has not arrived that should be documented to the provider, and the provider can continue to use physical restraint as needed for health and safety.

2380.155 Access to or the use of an individual's personal property

2380.155(a)

It needs to be clarified, unless it is a part of the individual's PSP as a risk mitigation strategy. For example, they threaten to use their swiss army knife to harm themselves or others, this object should be able to be taken away and locked in order to keep the individual and others safe as part of the PSP.

2380.155(b)

For people who have an understanding, the individual's funds should be able to be used as a natural consequence to pay for damages that they cause. This supports the ideals of an everyday life. If a person without IDD breaks the television in their home, they are not entitled

to a new one, they have to pay for a new television as a natural consequence to their actions. Whether or not the individual would be able to understand this and benefit from this type of natural consequence should be a PSP team decision and be part of the PSP.

2380.155(b)(3)

The provider should be included as part of the people present during consent being obtained. Revise for providers being able to state the facts of the case. Example: Johnny you cost 5,000 of damages by breaking the heater and people now do not have heat in the home. Providers should be able to state to the individual you have the right to break things, however it then becomes your responsibility to pay for them. This is part of everyday living.

2380.156 Rights team

This is a wonderful goal, however, unrealistic and near impossible to coordinate. Coordinating all these schedules, reviewing each incident with that individual's team, and waiting on decisions from the team will cost a provider of our size over \$100,000 per year. This cost is calculated by the number of meetings needed to review and the length of time to review each incident and the manpower that will be needed to complete this. The Department would need to drastically raise reimbursement rates to account for that, and also providers will never be able to coordinate all these people meeting. This section should be rewritten to include annual review of incidents by the individual and their team at the annual PSP meeting.

2380.156(2)(iii)

There are reasons for individual behavior that cannot be resolved, for example, symptoms of a mental health disorder such as hallucinations. This is absolutely the goal and idealistic in nature, however, not realistic in all circumstances.

Recommended rule: "Attempt to discover and resolve, when possible, the reason for an individual's behavior."

2380.165(c)

The provider does not have control over the members of the rights team that is specified in these regulations. The provider could invite, however, they would not be able to ensure that these members are in attendance for each meeting that would need to occur. The regulations should specify the minimum number of attendees that must be present in order to hold a meeting, and whether or not it will be required for all members to have criminal background clearances prior to meeting.

These members that are specified in the proposed regulations implies that each individual would have to have a different rights team, which would be extremely difficult to coordinate. It is strongly recommended to allow for one rights team for all individuals.

2380.165(e)

If a doctor recommends a specific restraint be used for safety, this should not constitute as a rights violation, as the provider is following doctor orders.

The doctor will not be able to be on a rights committee, which is what this regulation is implying the need for.

The regulations need to specify in this section who is responsible for consulting with the individual's health care practitioner.

2380.165(g)

The regulations need to specify the process for when the PSP team does not agree with the recommendations being made by the rights committee, or what to do if the PSP team does not attend the rights team meetings. In the case of the PSP team not agreeing with the rights team, will there be thought of a resolution committee to address this concern.

It should be specified that this disagreement would not be considered a grievance.

6100.52

Recommendation A: The implementation of the rights team regulation would be extremely burdensome to providers and would cost additional funding that would need to be provided. It is strongly recommended that this regulation is removed as all incidents are reviewed already by the Administrative Entity as well as the Department. This is an additional layer, where the goal of these regulations is to eliminate oversight duplication.

Recommendation B: Adopt the state of Virginia's rule for rights teams, where there is one rights team that the county is responsible for assembling that providers are able to go to and present incidents and proposed plans.

2380.181 Assessment

This section should be revised to read: The only assessment completed should be the assessment by ASCEND. Program Specialists can help coordinate the SIS assessment with ASCEND but ACEND is contracted by the Department to perform assessments so that should be the end all be all assessment. It is very confusing to have multiple assessments for the same individuals. Only if individuals do not have a SIS assessment should the program specialist complete a SIS assessment. This will cut down on administrative work that is really duplicating work that is already done by ASCEND. Providers will not be responsible for the assessment since ASCEND will be completing the assessments.

2380.181(b)

Define what a “service implementation plan” is, this is not mentioned elsewhere.

2380.181(c)

Revise to state that either the Supports Coordinator or targeted support manager should be the primary person responsible. The other parties will assist.

2380.181(e)

The regulation should be revised to enforce the Department's current view that individuals do not change much over 5 years, this is why the Department has stated numerous times they only have a SIS (Supports Intensity Scale) Assessment completed every 5 years. If that is the Department's view, then the PSP should only need to be updated every 5 years. The current assessment should be updated to state that is the SIS on file completed by ASCEND.

2380.181(g)

Please provide this form as we do not have a copy for what PSP revisions should go on. Providers should have input on this form.

2380.182 Development of the PSP

The regulations need to specify that it is the responsibility of the Supports Coordinator to develop the PSP, since they are the ones who dictate the plan. Supports Coordinators need to be held accountable for the content of the plan, not the providers.

2380.182(b)

Service implementation plan needs to be defined and how it related to the PSP.

2380.182(c)

The regulation must specify who shall coordinate the development of the PSP. Designated several potential entities will lead to ultimately the provider being responsible when the other entities don't take the initiative.

2380.182(d)

This regulation essentially implies the initial assessment will need to be completed within 30 days of admission to allow for an invitation letter accompanying that assessment to the initial ISP review meeting within 60 days. This timeframe is unrealistic for a provider and/or the entity completing the SIS assessment to accurately gather enough information to compile a comprehensive assessment on a newly admitted individual.

2380.183 The PSP team

2380.183(a)(3)

Direct Support staff are working with the individuals. There is currently a direct support staffing crisis and we do not have any staff to spare to attend meetings. Other individuals who live in the homes still require the direct support staff to be present. This would cost hundreds of thousands dollars per year to pay for new staff and retain staff so other direct support staff can attend meetings. We do invite staff to be at meetings, however they are usually on shift elsewhere.

2380.183(7)(c)

This should be revised to state each party is responsible solely for their own signing of the document. If the Supports Coordinator does not sign the document that is not the responsibility of the provider.

2380.184 The PSP process

2380.184(1)

Please explain this in more detail as what "necessary information and support" means.

2380.184(3)

This should be revised to state within the constraints of resources, and in constraints with the individual's health and safety. The Department would need to ensure the provider's rates ensure that support can be delivered in a manner reflecting individual preference, current rates do not cover those costs.

2380.184(4)

Revise regulation to state Supports Coordinator is responsible for timely revisions to the plan, and holding timely meetings. Revisions should be completed by the Supports Coordinator within one business day of notification that a change is needed to the PSP.

2380.184(5)

Should be revised to be communicated in the individual's preferred language and Supports Coordinator would be responsible for that since they oversee the PSP.

2380.184(7)

Should be revised to the provider will develop guidelines for solving disagreements between team members, and the providers guidelines are final. It should be specified that these disagreements would not be considered a grievance.

2380.185 Content of the PSP

General Note-The Supports Coordinator does revisions and should be accountable for all revisions to the PSP. All PSPs must be in place by 7/1/17 in order for these regulations to be in effect regarding a PSP.

2380.185(9)

Recommend to specify that a psychiatric illness is different than dangerous behaviors

2380.185(10)

The Department should revise to include some general guidelines such as if an individual is suicidal they do not have the right to lock their door for their health and safety.

This regulation is contradictory to **6100.43(a)(3)**, which states that no waivers will be granted for individual rights. This would mean that modifications would be in violation of **6100.43(a)(3)** as written.

2380.185(13)

Should be revised to state the Support Coordinator is responsible for monitoring the PSP, and the provider is responsible for implementing the PSP. The provider is not listed as being involved in the PSP process within these regulations. There needs to be an appeal process in the event that the provider is not in agreement with what the PSP team decided upon, for example, if the PSP includes more support and services than the SIS level funding would provide for.

Additional Comments for the 2380 Regulations:

Although it is understood that not all sections of the regulations were revised, there are many that are outdated and subjective that have room for interpretation. It is recommended that additional sections be revised, included below are additional comments on the 2380 regulations in total.

52 (a) Define occasional.

55 (a) Define clean and sanitary conditions.

58 (a) Define "in good repair"

58 (c)(1) Specify the timeframe required.

61 A cell phone should suffice and this should be documented within the regulations.

63 (a) Screens should not be required when windows are not open.

63 (b) Define "in good repair".

67 (a) Define non-hazardous, clean, and sturdy. This should be health and safety related.

72 (b) Define well maintained, in good repair, and free from unsafe conditions.

82 Define "obstructed".

121 (d) Define "proper conditions"

131 (b) Define clean and sanitary. This is subjective.



CHAPTER 6500 REGULATIONS PUBLIC COMMENT

General Provisions

6500.2 Purpose

The “minimum requirements” does not apply for 6500 regulations as the regulations manage every aspect of what a provider should be doing. The regulations should pertain only to health and safety, not dictate what trainings are needed, what qualifications are needed etc.

6500.3 Applicability

6500.3(b)

The “minimum requirements” does not apply for 6500 regulations as the regulations manage every aspect of what a provider should be doing. The regulations should pertain only to health and safety, not dictate what trainings are needed, what qualifications are needed etc.

6500.3(d)

Providers should be able to know what percentage of the homes are to be sampled to prepare individuals supported as licensing can be/ and has been disruptive to daily routines of the people we support. Inspections should be every 3 years which would create less disruption in the daily routine of individuals. Providers should complete their own yearly self-assessments and the Department should conduct an on-site review every 3 years, which would also align with the AE, in order to keep consistency among the sets of regulations.

6500.3(e)

Please clarify. It needs to be more clearly stated whether people are able to directly contract with ODP and bypass a provider, or if there must be a provider agency. This regulation implies that family living providers are able to directly contract with the Department.

6500.4 Definitions

Direct service workers

Do not apply to life sharing, this should be removed from the 6500 regulations.

Family living home or home:

6500.4(i)

Private homes of individuals should not be open to overtime laws.

6500.4(iii)

This is a violation of Lifesharing provider's rights. It should be based upon the PA state, local and federal laws pertaining to the number of people able to live in a home.

Relative

This should also include legal guardians, adoptive parents/children, and cousins.

General Requirements

6500.15 Responsibility for compliance

6500.15(b)

The home should have a year after implementation until being held responsible for compliance with this chapter.

6500.17 Self-assessment of homes

6500.17(a)

Training should be provided on self assessments by the Department for providers

6500.17(b)

The licensing inspection instrument should be updated by the same time that this chapter is implemented. It is strongly recommended that much like the AE provider monitoring is bi-annual (proposed to now be every 3 years), that BHSL licensing should run in alignment with this process. For example, providers submit self-assessments annually, however, on-site inspections would be every 3 years. This continuity would be beneficial, and it allows providers time to fully correct and see the plan of correction working prior to the next on-site inspection.

6500.20 Incident report and investigation

6500.20(i (should be a))

Incidents should not have to be reported both by the provider and the lifesharing provider. The way the regulation is worded "the provider and the home" insinuates that the provider agency and the lifesharing provider both must report.

We agree and appreciate this regulation, as it recognizes that the provider should investigate incidents that their staff person discovers, however, not those incidents discovered by supports coordinators. This regulation insinuates that if the supports coordinator discovers, that the investigation would fall on the supports coordination organization, not the provider agency.

6500.20(b)

Please define "immediately". We have to secure the scene first according to the certified investigators handbook. Compliance with the certified investigators manual should be included within these regulations, or have the requirements fall in line with the requirements of the certified investigator manual.

6500.20(c)

Both the agency and the home should not have to keep documentation of the notification. This information can be found in the EIM. Separate documentation should not have to be kept as people can view this information in EIM.

6500.20(d)

Staff person's confidential information should also be redacted, not just the individuals.

6500.20(f)

We agree with this regulation, as it insinuates that the provider agency is only required to investigate incidents that are discovered by our staff persons. This means that if a supports coordinator discovers an incident, their organization, not the provider should be responsible for completing the investigation.

6500.20(i)

It should be specified within these regulations that submission of the final incident report (with all required sections) can be submitted on EIM, which would suffice as notification to the Department, as they have access to the system.

6500.22 Incident Analysis

The implementation of this section will cost the provider \$100,000 to implement at the size of agency that we are currently. This is an enormous undertaking and will have an immense financial implication associated with the changes, as we would need at least 2 full time positions dedicated to complying with this section alone.

6500.22(a)(1)

A root cause analysis is a specific analysis that can take up to 4 hours per incident to complete, around 240 hours per month for the amount of incidents we have in any given month. The person or people completing the root cause analysis must be trained in how to complete an RCA. As this is a very specific skillset that would require hours of training multiple people to be able to do, it is strongly recommended that the language "analysis to determine the root cause of the incident" is changed to "an analysis to determine potential causes of the incident".

6500.22(a)(3)

Often, a strategy to address potential risks is to move the individual from a home in which the housemate or housemates are the trigger, or the victims of abuse from the target individual. With these regulations, we would not be able to move the individual out of the home immediately, we would have

to wait 45 days and subject the housemates to continual harm. This is another reason why emergency situations need to be addressed to protect the health and safety of other individuals.

6500.22(c)

Providers need buy in from individuals, families, other stakeholders to implement preventative measures, providers cannot do this standing alone, which should be recognized within these regulations.

Individual Rights

6500.31 Exercise of Rights

6500.31(b)

Continually should be defined as one training per year, continually is too general of a term.

6500.361(c)

Please define what constitutes support and accommodation necessary to be able to understand and actively exercise the individual's rights. The Department should provide resources for these supports and accommodations.

6500.361(d)

There needs to be something in this section that talks about natural consequences if the individual were to break a local, state or federal law. Individuals as U.S. Citizens and as Pennsylvania residents must abide by local, state and federal laws. There also needs to be something documented within the regulations that state that risk mitigation strategies as part of the individual's PSP are not considered forms of retaliation, reprimands, or punishment.

6500.361(g)

If the provider does not have a court order and a court order has been requested by the provider a process should be developed to ensure health and safety in the meantime such as the individual not having contact with someone who may have just sexually abused them. This regulation should also include a doctor's written order or legal guardian's written order as well. In these cases, a waiver should not be needed, as the court order, doctor's written order or legal guardian order should be sufficient documentation.

6500.361(h)

This regulation is concerning, as the individual may not make the best choices in terms of the type of person they are designating to assist in making their decisions. There needs to be exceptions to this regulation in order to protect the individual who may not make appropriate choices that is in their best interest health and safety wise. The Department should develop a process for this to ensure health and safety of individual. Someone who has consistently abused the individual should not be able to assist in decision making.

6500.32 Rights of the Individual

6500.32(b)

Rights do not come without responsibilities, individuals need to be held accountable when possible and encouraged to maintain responsibility.

6500.32(c) Everyday lives is living together with other people. People sometimes argue and verbal abuse will happen from time to time, to say an individual may not be abused verbally if they have an argument with a housemate is not everyday lives. Abandonment should be defined.

6500.32(e)

This regulation is not in the best interest of the individual or the individual's potential housemates. The individual should have the right to make choices and accept risks as long as these choices and risks do not risk the health and safety of the individual or others around the individual. There needs to be protections for the provider, as the provider would be held liable if the individual were able to make a choice and accept a risk that harms themselves or others. This puts the provider in a very tough spot as we would be in violation of the individual's rights if we intervened when making a choice that would harm himself or others, however, if we do not intervene, we would be held liable for the result. For example, if the individual refuses to attend medical appointments required by these regulations.

6500.32(g)

A sentence should be added that states "in accordance with the individual's PSP". Staffing is not always available for the individual to control their own schedule. Individual needs to control schedule within the confines of what services/staffing are provided. If an individual wanted to control their own schedule to go out at 3 AM, and there was only one staff in the home for two individuals being supported and the other individual was sleeping a provider would be in an impossible situation. The only way full control could be granted to individuals would be if the Department funded 1 to 1 support for everyone.

6500.32(h)

There needs to be an exception process specified within the regulations. An individual should not have rights to privacy of person and possessions when those possessions may put others in harms way. This should be amended to state unless the health and safety of others is being jeopardized then the individual has the right to privacy of person and possessions.

6500.32(j)

Staff should also be able to voice concerns against the individual, rights come with responsibilities

An additional responsibility should be added to this section for the individual to be respectful to/of the home and the people in the home

6500.32(l)

Individuals need to have visitors in accordance with good neighbor standards. Loud music cannot be played by visitors at 3 AM when people are sleeping, this can lead to eviction from the home. The Department should develop a training in accordance with good neighbor standards that the individuals would be trained on. The provider/team should decide if the visitor is going to endanger the health and safety of the individual or others in the home or the individual that the visitor is not allowed until other safety measures can be taken.

6500.32(m)

If the individual receives court orders or waiver funding information the provider needs to be able to receive/view that information to ensure services are not interrupted and court orders are being followed

6500.32(q)

The individual should be responsible financially for decorating their room and their house. This regulation should be revised to include that all decorations/furniture must be in accordance with leases that the provider has with landlords and that the decorations shall not offend other individuals living in the home in common areas. This regulation does not fit with the ideals of family living. In family living, one individual (any family member) does not have the ability to make all choices when it comes to decorating common areas, as it is a family decision.

6500.32(r)

There must be an exception process for this regulation. We support individuals that have medical conditions that would not allow them to be able to safely lock their bedroom doors. For example, individuals who have been diagnosed with Pica, a seizure disorder, or a physician's order to check on them throughout the night are not able to have their door locked as it poses as a health and safety risk to do so. This should be a PSP team decision, unless ordered by a doctor, which would veto the team decision, as we must abide by physician's orders.

6500.32(s)

There must be an exception process for this regulation. We support individuals with medical conditions and physician's orders that must be abided by that would be in violation of this regulation, for example, fluid restrictions, menu plans for individuals diagnosed with Prader Willi Syndrome. Also, there is the home grocery shopping budget that needs to be thought about as well. There shall always be at least 3 meals a day available in the home, however, allowing access to food at any time is not safe for all individuals, as many individuals will binge eat until they make themselves ill.

6500.32(t)

There must be an exception process. If the individual makes the informed health care decision to not adhere to doctor recommendations, or to not attend their regulatory required appointments (for example, their annual physicals, 90 day psychiatric medication review, annual mammogram, etc.), not only are they putting themselves at risk, but the provider is liable for these decisions and associated risks. It should be specified within these regulations that it is the providers right to discharge the individual from services based upon dangerous decisions that are made.

If the individual has the right to informed healthcare decisions, this should discontinue the regulation of a needed desensitization plan for any health care decisions that are made, including refusals.

6500.33 Negotiation of Choices

6500.33(a)

It is recommended that the Department should develop best practices/policy for providers for this conflict.

6500.33(b)

It should be clarified that the provider has full control over resolving the differences in accordance with whatever the provider's policy is for resolving differences.

6500.34 Informing of Rights

6500.34(a) Providers have a difficult time getting legal guardians to sign even after repeated attempts. There should be a statement within this regulation that providers should send one registered letter attempt to the legal guardian in attempt to inform them and have them sign off on the rights that they were informed.

6500.34(b)

Providers have a difficult time getting legal guardians to sign even after repeated attempts. There should be a statement within this regulation that providers should send one registered letter attempt to the legal guardian in attempt to inform them and have them sign off on the rights that they were informed.

STAFFING

6500.43 Life sharing specialist

6500.43(a)

The Department has recognized that individuals do not change that much over the course of 5 years, which is why they are recommending that the SIS assessment is only completed once every 5 years. The same theory should be applied to the assessment in these regulations. The SIS assessment should take the place of the annual assessment required in the 2380,6400 and 6500 regulations and in all cases where the individual receives HCBS funding. If the individual does not receive HCBS funding and therefore does not receive a SIS assessment, the family living specialist will be responsible for completing an assessment as required in these 6500 once every 5 years. Progress and growth within the ISP (or PSP) is already documented in the ISP quarterly review reports. Annual assessments is redundant and an added administrative burden.

6500.44 Supervision

6500.44(a)

Please define "direct supervision".

6500.44(c)

The Department should provide more funds for lifesharing providers needing to be on call at all times, which would amount to roughly \$50,000. The way this regulation reads, also only makes it a requirement that a lifesharing specialist be available when the individual is in the home. It does not specify the times that the individual is in the community.

6500.44(e)

It has been stated by the Department that ratios are not necessary to be in a PSP. The regulation should be revised that providers will staff individuals in accordance with their risks and risks

mitigations. The Department would need to ensure staffing ratios are covered in the rate setting process for risks and risk mitigation. Everyday lives should have flexible ratios.

6500.44(f)

Alone time should be the amount of time the individual is safe to be without supervision. This is an example of the Department regulating too much. If an individual is approved for alone time it should not matter when that alone time is used.

6500.45 CPR, First Aid, and Heimlich Maneuver training

The Heimlich Maneuver is no longer taught in the CPR/FA course, and therefore should be removed from these regulations.

6500.45(b)

Should take out clause about being indicated by the medical needs of the individual as this should be indicated by all individuals. All individuals could require the use of CPR/FA techniques, as accidents happen. Any individual, no matter what their medical needs could fall and cut themselves, accidentally choke on food, or have a heart attack. All lifesharing providers should be trained to handle emergency situations no matter what the medical needs of the individual are, if any.

6500.46 Annual Training Plan

This section will require additional funding as the specificity of the trainings that are required is going to take additional trainers in order for providers to comply. Each individual would require their own unique training curriculum, which would increase the amount of trainings offered. The annual training plan requirements within these proposed regulations would grossly add hours not decrease as the Executive Summary claims. For example, medication administration requires two full days, which is 16 hours, 5 hours is CPR/FA, 1 hour for expert fire safety, and 8 hours is proposed to be required for the core competencies, which with these four requirements alone equals 30 hours, not 24. On top of this is orientation, and all of the position specific and individual specific training which could be an additional 10-15 hours of training at a minimum for a grand total of 45 hours per employee. Providers however, are only getting paid for the 24 hours.

6500.46(a)

The Department will need to fund for additional trainers in order to base trainings on the needs of specific individuals. We currently support well over 100 individuals and this would require developing specific training for each individual, and would add a huge cost to us. The annual training

plan requirements within these proposed regulations would grossly add hours not decrease as the Executive Summary claims. For example, medication administration requires two full days, which is 16 hours, 5 hours is CPR/FA, 1 hour for expert fire safety, and 8 hours is proposed to be required for the core competencies, which with these four requirements alone equals 30 hours, not 24. On top of this is orientation, and all of the position specific and individual specific training which could be an additional 10-15 hours of training at a minimum for a grand total of 45 hours per employee. Providers however, are only getting paid for the 24 hours.

6500.46(c)

The Department should develop the trainings to ensure core competencies. If the Department provided the training materials this would help the administrative burden on providers. The training should be recorded and given to providers to ensure it hits all the points the Department is looking for.

6500.47 Orientation Program

6500.47(b)(1)

The Department should develop the trainings to ensure consistency. If the Department provided the training materials this would help the administrative burden on providers. The training should be recorded and given to providers to ensure it hits all the points the Department is looking for. Twelve hours is too many hours needed for administrative and fiscal personnel. Eight hours of job related training is sufficient. Fiscal positions should not need to be trained on the core competencies as they have no contact with individuals. Training would be more beneficial for the fiscal employees on job skills related to their roles within the agency.

6500.48 Annual Training

6500.48(5)

The regulation should define the use of appropriate positive interventions.

MEDICATIONS

The way the medication section is written will greatly increase the number of individuals who can self medicate which is a positive change.

6500.131 Self-Administration

6500.131(c)

This is a great idea, the only recommendation would be the Department funds the assistive technology or the individual pays for the needed assistive technology.

6500.132 Medication Administration

We disagree with lifesharing providers having to go through the Medication Administration course. This does not fall in line with the ideals of an Everyday Lifestyle. Lifesharing providers are a family and should be treated as such. Lifesharing providers are not employees and are contracted out, requiring this training could require lifesharing providers to be included in the new DOL rule. The regulation should remain as it was, allowing the physician or pharmacist to complete the training for the lifesharing provider.

6500.132(b)(2)(iv)

Insulin injections are not taught as part of the Department approved Medication Administration course. This would have to be added to the course in order for this regulation to be valid. Once added to the Medication Administration course, this should be sufficient for training supporters how to administer insulin injections and the additional Helwig Diabetes Center training should no longer be required, as it is an added cost for duplication of training.

6500.132(b)(2)(v)

Epinephrine injections are not taught as part of the Department approved Medication Administration course. This would have to be added to the course in order for this regulation to be valid.

6500.132(3)

The Department's Medication Administration does not teach crushing or splitting pills. The Department should revise their training to include crushing and splitting pills. The Department would need to account for these additional trainings in the provider's rate.

6500.133 Storage and Disposal of Medications

6500.133(b)

This regulation goes against what is taught in medication administration, and is dangerous practice. Medication administration requirements should align with the 6100, 6400, 6500, 2390 and 2380 regulations.

6500.133(c)

Please elaborate on the requirements for this regulation, as it is unclear.

6500.133(g)

Please clarify what “organized manner” means, as this is again subjective and could mean different things to different people.

6500.133(h)

Regulation should be revised to include what safe disposal of medications is, and not just reference other regulatory requirements from outside the Chapter 6500.

6500.134 Labeling of Medications

6500.134(4)

This should be revised to match the 5 Rs (right route, etc.) of the Department approved medication administration class.

6500.135 Prescription Medications

6500.132(a)

Regulation should specify electronic submission of script or recommendation should counts as in writing.

6500.132(b)

This regulation should be removed. Medications are current until they are discontinued by the physician or changed by the physician.

6500.132(e)

Regulation should be revised that electronic notices are in compliance with the regulation, also it should be stated the change on the record does not happen on the record until the medication is received from the pharmacy.

6500.136 Medication Record

6500.136(a)

This regulation should be clarified that these requirements do not apply to an individual who is self-medicating.

6500.136(c)

This regulation should be revised to include any doctor within 24 hours if the prescriber is not able to be reached. This should include next business day to account for how difficult doctors can be to get a hold of on weekends. If a life threatening medication is missed the provider would be responsible to get the person to the ER on the weekend, but if a nasal spray is refused by an individual on a weekend that should not rise to the level of a doctor on the weekend, and can wait until the next business day.

6500.137 Medication Errors

6500.137(4)

This should match the previous section that a medication cannot be taken out of container up to two hours before medication is due.

6500.137(6)(b)

We appreciate that medication errors do not need to be entered into EIM. Should be revised to read any physician (just not the prescriber, as they are not always available) should be able to give follow up action. This regulation needs to be throughout the regulations, however, as there are sections that contradict, requiring the submission of medication errors, while another section states that medication errors are not on the list of reportable incidents.

6500.139 Medication administration training

6500.139(a)

We disagree with lifesharing providers having to go through the Medication Administration course. This does not fall in line with the ideals of an Everyday Lifestyle. Lifesharing providers are a family and should be treated as such. Lifesharing providers are not employees and are contracted out, requiring this training could require lifesharing providers to be included in the new DOL rule. The

regulation should remain as it was, allowing the physician or pharmacist to complete the training for the lifesharing provider.

6500.139(b)

Department should revise training to include insulin, and once staff completed Department's training they can administer insulin with no further requirements. It is an ongoing cost for providers to have a nurse or additional class also training on top of the Departments training. The Department would need to account for additional training/nurses in the provider's rates. This additional training if required should be once and done, not an annual basis.

6500.139(b)(2)

Department should revise training to include epinephrine, and once staff completed Department's training they can administer insulin with no further requirements. It is an ongoing cost for providers to have a nurse or additional class also training on top of the Departments training. The Department would need to account for additional training/nurses in the provider's rates. This additional training if required should be once and done, not on an annual basis.

PROGRAM

6500.151 Assessment

The Department has recognized that individuals do not change that much over the course of 5 years, which is why they are recommending that the SIS assessment is only completed once every 5 years. The same theory should be applied to the assessment in these regulations. The SIS assessment should take the place of the annual assessment required in the 6500 regulations and in all cases where the individual receives HCBS funding. If the individual does not receive HCBS funding and therefore does not receive a SIS assessment, the family living specialist will be responsible for completing an assessment as required in the 6500 once every 5 years.

6500.152 Development of the PSP

The regulations need to specify that it is the responsibility of the Supports Coordinator to develop the PSP, since they are the ones who dictate the plan. Supports Coordinators need to be held accountable for the content of the plan, not the providers.

6500.152(b)

Define what a "service implementation plan" is, this is not mentioned elsewhere.

6500.152(c)

Revise to state that either the Supports Coordinator or targeted supports coordinator should be the primary person responsible. The other parties will assist.

6500.152(e)

The regulation should be revised to enforce the Department's current view that individuals do not change much over 5 years, this is why the Department has stated numerous times they are only have a SIS (Supports Intensity Scale) Assessment completed every 5 years. If that is the Departments view, then the PSP should only need to be updated every 5 years. The current assessment should be updated to state that is the SIS on file completed by ASCEND.

6500.152(g)

Please provide this form as we do not have a copy for what PSP revisions should go on. Providers should have input on this form.

6500.153 The PSP team

6500.152(a)

The lifesharing provider should be included in this list as part of the PSP team.

6500.152(a)(3)

Direct care staff persons do not apply to lifesharing.

6500.152(c)

This should be revised to state each party is responsible solely for their own signing of the document. If the Supports Coordinator does not sign the document that is not the responsibility of the provider.

6500.154 The PCP process

As this section does not specify the need for the provider to be involved, this entire section should be the responsibility of the Supports Coordinator and not the provider. This includes this same section that is in the 6100 regulations. All oversight agencies shall hold the Supports Coordinators responsible for the compliance of this regulatory section, including the establishment of a PSP process.

6500.154(1)

Please explain this in more detail as what "necessary information and support" means.

6500.154(3)

This should be revised to state within the constraints of resources, and in constraints with the individual's health and safety. The Department would need to ensure the provider's rates ensure that support can be delivered in a manner reflecting individual preference, current rates do not cover those costs.

6500.154(4)

Revise regulation to state Supports Coordinator is responsible for timely revisions to the plan, and holding timely meetings. Revisions should be completed by the Supports Coordinator within one business day of notification that a change is needed to the PSP.

6500.154(5)

Should be revised to be communicated in the individual's preferred language and Supports Coordinator would be responsible for that since they oversee the PSP.

6500.154(7)

Should be revised to the provider will develop guidelines for solving disagreements between team members, and the providers guidelines are final.

6500.155 Content of the PSP

The Supports Coordinator does revisions and should be accountable for all revisions to the PSP. All PSPs must be in place by 7/1/17 in order for these regulations to be in effect regarding a PSP.

6500.155(9)

Recommend to specify that a psychiatric illness is different than dangerous behaviors.

6500.155(10)

The Department should revise to include some general guidelines such as if an individual is suicidal they do not have the right to lock their door for their health and safety.

This regulation is contradictory to **6100.43(a)(3)**, which states that no waivers will be granted for individual rights. This would mean that modifications would be in violation of **6100.43(a)(3)** as written.

6500.155(13)

Should be revised to state the Support Coordinator is responsible for monitoring the PSP, and the provider is responsible for implementing the PSP. The provider is not listed as being involved in the PSP process within these regulations. There needs to be an appeal process in the event that the provider is not in agreement with what the PSP team decided upon, for example, if the PSP includes more support and services than the SIS level funding would provide for.

6500.159 Day Services

Individual's rates need to include funds for day services.

6500.159(a)

The Department will need to provide additional funds for the required recreational and social activities.

6500.159(b)

This regulation should be removed as families and individuals have the right to choose where they go. This contradicts with individuals being in charge of their own schedule, which is required within these regulations as well.

POSITIVE INTERVENTION

6500.161 Use of a positive intervention

6500.161(a)

Provide further clarification as a positive intervention is not obtainable for someone who is running into the street and endangering themselves. Sometimes positive interventions cannot be used when health and safety is in jeopardy. This regulation is very idealistic. Although the goal is for a positive intervention to prevent, modify and eliminate a dangerous behavior, this cannot be predicted and cannot be promised 100% of the time.

Recommended Rule: "A positive intervention shall be used to attempt to prevent, modify and eliminate a dangerous behavior when the behavior is anticipated or occurring. As we are all human, all humans will respond differently to positive interventions. Some positive interventions may be successful, others may not.

6500.161(b)

"Least intrusive method" needs to be defined as it is used in this regulation. "Every attempt" needs to be defined as well. You are not going to eliminate the behavior, however, you may be able to provide an alternative to the behavior and this needs to be recognized within the regulation.

6500.161(c)

The definition of “dangerous behavior” is extremely vague and it does not touch upon the individuals that have mental health symptoms such as voices or hallucinations. These are not behaviors and should not be classified as such within the regulations.

The definition of “positive intervention” should be expanded to include additional interventions that would fall into the category.

We are in agreement with the removal of the restrictive procedure plans and the implementation of positive interventions as part of the individuals PSP. This will save an immense amount of time and unnecessary paperwork.

6500.162 PSP

This section should not be called the PSP, as this is the new name of the ISP, which is confusing.

Recommend calling this section Positive Intervention Plan

The term “psychiatric illness” needs to be added in conjunction with “dangerous behavior” as they are not the same thing, however, both should be included within the scope of this regulation.

This regulation needs to specify that the individual may not always (as the PSP team feels appropriate) be a part of deciding what positive interventions are utilized. For example, if the individual has threatened or attempted to use a sharp object to harm themselves or others, the PSP team needs to be able to put risk mitigation strategies and positive interventions in order to keep the individual safe. The individual may not want sharp objects to be locked in the home, however, there must be a way for the PSP team to implement these strategies without the consent of the individual in order to maintain their health and safety as well as the health and safety of others.

6500.162(2)

A “functional analysis” is a very specific analysis that can only be completed by a board certified behavior analyst (BCBA). This analysis can take months to complete for each individual. Having this requirement would cost the agency around an additional \$150,000 per year at our current size to hire enough behavior analysts in order to comply with this regulation. It would be our recommendation to change the requirement from a “functional analysis” to a “functional assessment” which can be completed by a behavior specialist for much less.

6500.162(6)

Should be revised to say health conditions that require special attention as determined by the team (otherwise a doctor would need to sign off on the PSP).

6500.163 Prohibition of restraints

6500.163(1)

This should be revised to state an individual can be verbally redirected to leave an area if they are endangering the health and safety of other individuals in that area as decided on by the support staff.

6500.(5)(ii)

We cannot agree to this regulation. In order to keep the individual safe, for example, a protective helmet prescribed by a physician, if the individual is able to easily remove the device, they are no longer protected. This regulation as written prohibits provider agencies from being able to protect the health and safety of individuals in our care.

6500.5(6)

Further define "emergency". The term "immobilize" needs to be defined more clearly as well.

This regulation also needs to clarify that in an emergency basis the agency approved emergency restraint carried out by a trained supporter in order to protect the immediate health and safety of the individual or others would not be considered a manual restraint.

6500.(8)

Although it should never be the intent for a manual restraint to cause embarrassment or humiliation, there is a possibility that in the event of an emergency to protect the health and safety of the individual, that the individual would feel embarrassed or humiliated by having to be manually restrained. This should be clarified within the regulations, that it should never be the intent, and the restraint should be done as discreetly as possible, however, the health and safety of the individual and others is the number one priority.

6500.164 Permitted Interventions

6500.164(a)

This information should be stated in the PSP if the individual likes to go to their room to help cope with a situation.

6500.164(c)

The definition of a restraint needs to be in the regulations where a restraint is defined as 30 seconds or more. The Department should develop a training around protective physical restraints that are deemed appropriate.

6500.164(d)

Regulation should be clarified to state if this does or does not need to be reported in the Department's EIM system.

6500.164(f)

Should be revised to state if the police or law enforcement has not arrived that should be documented to the provider, and the provider can continue to use physical restraint as needed for health and safety.

6500.165 Access to or the use of an individual's personal property

6500.164(a)

It needs to be clarified, unless it is a part of the individual's PSP as a risk mitigation strategy. For example, they threaten to use their swiss army knife to harm themselves or others, this object should be able to be taken away and locked in order to keep the individual and others safe as part of the PSP.

6500.164(b)

For people who have an understanding, the individual's funds should be able to be used as a natural consequence to pay for damages that they cause. This supports the ideals of an everyday life. If a person without IDD breaks the television in their home, they are not entitled to a new one, they have to pay for a new television as a natural consequence to their actions. Whether or not the individual would be able to understand this and benefit from this type of natural consequence should be a PSP team decision and be part of the PSP.

6500.164(b)(3)

Revise for providers being able to state the facts of the case. Example: Johnny you cost 5,000 of damages by breaking the heater and people now do not have heat in the home. Providers should be able to state to the individual you have the right to break things, however it then becomes your responsibility to pay for them. This is part of everyday living.

6500.166 Rights Team

This is a wonderful goal, however, unrealistic and near impossible to coordinate. Coordinating all these schedules, reviewing each incident with that individual's team, and waiting on decisions from the team will cost a provider of our size over \$100,000 per year. This cost is calculated by the number

of meetings needed to review and the length of time to review each incident and the manpower that will be needed to complete this. The Department would need to drastically raise reimbursement rates to account for that, and also providers will never be able to coordinate all these people meeting. This section should be rewritten to include annual review of incidents by the individual and their team at the annual PSP meeting.

6500.166(b)(2)(iii)

There are reasons for individual behavior that cannot be resolved, for example, symptoms of a mental health disorder such as hallucinations. This is absolutely the goal and idealistic in nature, however, not realistic in all circumstances.

INDIVIDUAL RECORDS

6500.182 Content of Records

6500.182(1)(vi)

Define current dated photograph, example one photograph within the last 5 years, as the regulation currently states would suffice.

6500.182(6)

The Department has recognized that individuals do not change that much over the course of 5 years, which is why they are recommending that the SIS assessment is only completed once every 5 years. The same theory should be applied to the assessment in these regulations. The SIS assessment should take the place of the annual assessment required in the 6500 regulations and in all cases where the individual receives HCBS funding. If the individual does not receive HCBS funding and therefore does not receive a SIS assessment, the family living specialist will be responsible for completing an assessment as required in the 6500 once every 5 years.

6500.182(7)

This should be removed. The documents have already been listed that are required by this chapter. This regulation is redundant.

6500.182(8)

Define this further, and when defined, this should be in the PSP

6500.183 Record Location

This is unrealistic as our homes span 2 hours away from the office. The Department would need to provide more funds in order for us to travel and spend the time traveling to homes several times a week to file documents. Records for 6500, 2380 and 6400 regulations must be able to be located at the office. A copy of the PSP and emergency information, however, should also be located at the home.

6500.185 Access

Please define access, as this could be dangerous with all of the individual's personal information being present within the record. This should be part of PSP team decision if the individual has the understanding to make this decision for their own safety.

Additional Comments for the 6500 Regulations:

Although it is understood that not all sections of the regulations were revised, there are many that are outdated and subjective that have room for interpretation. It is recommended that additional sections be revised, included below are additional comments on the 6500 regulations in total.

- Lifesharing homes should be held to a different standard than 6400 community homes, as they are a family home, and contracted not employees. Providers cannot tell lifesharing providers how to keep their home (other than health and safety issues) and this is not in alignment with Everyday Lives.
- Providers should not bear the responsibility of ensuring the full completion of physical examinations prior to the individual moving into the home. The current licensing requirement from BHSL that each individualized space and question must be filled out for compliance is unrealistic and prohibits individuals from being able to move into their new homes in an efficient manner. Providers are currently being cited if something as small as "N/A" is not written on a mammogram question for a male, which is an administrative burden and is not a health and safety issue.
- Clarify what a poisonous material is defined as and if an individual is a new admission and does not have an assessment completed, does the provider lock up poisonous if they are documented to not safely be able to use poisonous materials in their most recent ISP until initial assessment is completed?
- Clarify clean and sanitary, as this is subject to interpretation.
- Clarify what not being in good repair looks like. This is subjective.

- Clarify whether or not having a history of ingesting paint qualify the need for paint to be tested and what else is considered a paint substance?
- Specify that this regulation does not apply to areas not lived in such as basements, garages or attics.
- Windows in areas not lived in (i.e. garages, attics, basements) that are never opened should not need screens, this should be clarified, also if the home has central air it should be specified that screens are not required unless opened.
- Clean and sturdy needs to be defined as this is subjective.
- Comfortable and home like needs to be defined as this is subjective.
- Define well maintained and in good repair, as this is subjective.
- Clarify the definition of "clean" mattress, as this is subjective.
- Wash cloths and bath towels should be able to be labeled with individuals' initials if more than one individual lives in the home to cut down on costs of paper towels.
- Define lethal weapon.
- Define unobstructed. It is recommended that this mean that the individual is able to easily exit.
- 70 - As many homes do not have the ability to have a landline phone, a cell phone should suffice as a telephone.