

14-540- (42)

Kroh, Karen # 3160

From: Mochon, Julie
Sent: Wednesday, December 14, 2016 1:15 PM
To: Kroh, Karen
Subject: FW: 6100 PROPOSED REGULATIONS - COMMENTS zxm
Attachments: 12-14-16 Comments 6100 Proposed Regulations.pdf

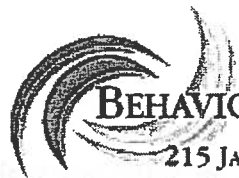
Importance: High

From: Judy Carpeal [<mailto:JudyCarpeal@fcbha.org>]
Sent: Wednesday, December 14, 2016 1:03 PM
To: Mochon, Julie
Cc: Thaler, Nancy; Harry Franks; Lisa A Ferris; Lynn Orawiec
Subject: 6100 PROPOSED REGULATIONS - COMMENTS zxm
Importance: High

Good Afternoon Ms. Mochon: Attached please find the 6100 Proposed Regulations Comments from Fayette. Merry Christmas and Happy New Year!!

RECEIVED
IRRC

2016 DEC 16 PM 1:11



**FAYETTE COUNTY
BEHAVIORAL HEALTH ADMINISTRATION**

215 JACOB MURPHY LANE, UNIONTOWN, PA 15401


LISA A. FERRIS, CHIEF EXECUTIVE OFFICER

PHONE: (724) 430-1370

WWW.FCBHA.ORG

FAX: (724) 430-1386

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

FROM : 
Harry Franks III
Director Financial Operations

RE : 6100 PROPOSED REGULATIONS – COMMENTS

DATE : December 14, 2016

As a Chapter 6100 Regulations Work Group Member County Fiscal Officer, and most importantly an Advocate/Relative to individuals with Intellectual Disabilities and Autism, I wish to make comment on the proposed 6100 Regulations.

The elimination of Chapter 51.97 Capital Assets—Residential Buildings, is inconsistent with established Department of Human Services, Office of Mental Health and Substance Abuse Services (OMHSAS) treatment and safeguard of Capital Assets AKA Residential Homes. (See Chapter 51.97).

Since the inception of the Commonwealth of PA HealthChoices Program, federally approved OMHSAS Program Standards and Requirements (PSR) within a managed care fee-for-service environment has established Capital Asset (homes) protective measures to assure that such Capital Assets be restricted to its originally intended purpose and if sold proceeds will be reinvested for eligible recipients'. (See HealthChoices PSR Appendix N Attachment 5 – page 3).

To date, lobbying efforts to remove Chapter 51.97 practical safeguards result in a disservice to Commonwealth of PA taxpayers, and most importantly to those individuals whose homes original/acquired by Commonwealth funding will be secondary to competing corporate interests.

Also, attached for review is correspondence from former Office of Developmental Programs (ODP) Deputy Secretary, Kevin Friel, expressing support of capital asset protective measures which resulted in the promulgated Chapter 51.97 Capital Assets Regulation.

HF/jac

Attachments

cc: Nancy Thaler, DHS-ODP
Lisa A. Ferris, FCBHA
Lynn Orawiec, FCBHA



§ 51.97. Capital assets—residential buildings.

For a provider owning new or existing residential buildings, the following shall apply for the costs of the residential buildings to be an allowable cost:

(1) A provider shall ensure an allowable cost for a capital asset for a residential building acquired prior to July 1, 2011, is governed by applicable agreements in place at the time of purchase.

(2) A provider shall depreciate a capital improvement of a residential building or land identified over the estimated useful life of the residential building or improvements using the straight line method of depreciation.

(3) A down payment made by the provider as part of the asset purchase shall be considered part of the cost of the residential building or capital improvement and depreciated over the useful life of the residential building or capital improvement.

(4) A provider shall receive written approval from the Department prior to a planned major renovation of a residential building with a cost above 25% of the original cost of the residential building being renovated.

(5) If a residential building is sold or the provider no longer provides an HCBS in that residential building, the Department shall recoup the funded equity either directly or through rate setting. The provider shall be responsible for calculating the amounts reimbursed and the amounts shall be verified by an independent auditor. As an alternative to recoupment, with Department approval, the provider can reinvest the reimbursement amounts from the sale of the residential building into any capital asset used in the program.

(6) The title of any residential building acquired and debt-free shall remain with the enrolled provider.

Cross References

This section cited in 55 Pa. Code § 51.48 (relating to provider in the Adult Autism Waiver).

§ 51.98. Residential habilitation vacancy.

(a) From July 1, 2011, through November 14, 2011, the Department's residential habilitation vacancy policy consists of the following:

(1) Payments to residential habilitation service providers operating waiver service locations for an unlimited number of medical leave days per participant each fiscal year are as follows:

(i) The first day of absence for medical leave is the date the participant is admitted to the medical facility regardless of the length of the absence.

(ii) The last day of the medical leave is the day before the date of discharge from the medical facility.

County-Provider Reinvestment Plan Agreement:

Any agreement entered into between the County and a provider for the purpose of implementing a reinvestment plan priority, which contains costs for facility or real estate purchase, renovation, vehicle acquisition, and/or purchase of fixed assets, must:

1. Be reduced to writing
2. Be targeted to Medical Assistance eligibles with mental health and/or drug and alcohol service needs. For a housing development strategy the eligibles must be included as a priority population for housing services.
3. Assure that the acquisition or renovation is likely to be used in the HC program for at least five years and be subject to specified disposition requirements.
4. Identify any related parties and the relationship of the related parties regarding the accomplishment of the reinvestment plan.
5. Specify ownership rights, use of the facility, and the process for disposition of fixed assets in the event a sale should occur.

For housing development funds, the funds must be secured by legally binding documents that are in acceptable forms. Such forms include but are not limited to: mortgage, promissory note, loan agreement and restrictive covenant.

These legally binding housing documents will address how the restriction of use will be passed on to the future owner in the event of property transfer as well as how the County will be reimbursed or be assured the use restriction for the set-aside units will stay in place in the event the property goes into foreclosure or the owner violates the terms of the agreement or the use restriction.

6. In the event of a sale, proceeds from the sale are to be returned to the County HealthChoices program for reinvestment in programs or services for MA eligible members. This provision is not applicable to housing development plans.
7. Specify the accounting method to be used in expensing, depreciating or amortizing costs. This provision is not applicable to housing development plans.
8. Require maintenance, repair and insurance of fixed assets.

In the case of a facility being purchased for housing, the County should specify the required maintenance and insurance of fixed assets. To ensure a property is maintained, the County or its designee will require or conduct periodic inspections to ensure compliance with HUD's Housing Quality Standards (HQS). Failure of inspection may trigger foreclosure or other actions as specified by the

County. The County should be named on the insurance of fixed assets to order for the County to be notified if coverage ceases and failure to maintain insurance of fixed assets can also trigger foreclosure or other action as specified by the County.

9. Require competitive bidding or written estimates as required by County Code or prudent business practices.
10. Be reviewed and approved by the County Solicitor and/or other appropriate County official (e.g. MH/MR legal counsel) to ensure compliance with these Reinvestment Plan Guidelines and applicable County Code provisions.
11. Contain a budget that details the costs associated with the facility renovation or purchase of fixed assets as submitted in the County's reinvestment plan priority. This provision is not applicable to housing development plans

From: Friel, Kevin M. [mailto:kfriel@state.pa.us]

Sent: Tuesday, August 10, 2010 5:27 PM

To: Church, Joseph O.; 'Deedeeted1@verizon.net'; 'carolynmorgan62@yahoo.com'; 'thirdmountain@verizon.net'; 'tbunker@ucpcentralpa.org'; 'eapetkov@pathcenter.org'; 'jkane@kmlaw.org'; 'Blue5@csgonline.org'; 'dfelty@keystonehumanservices.org'; 'BobWill@barberinstitute.org'; 'jcooper@ucpcentralpa.org'; 'JEFF.WILUSH@hhinc.org'; 'Larry.Pace@phila.gov'; Markvan, Ron; 'ishane@drnpa.org'; 'ssuroviec@thearcpa.org'; 'george@paproviders.org'; 'gbianco@parf.org'; 'MCHAMBERS@pacounties.org'; 'Shirley@par.net'; Stillman-Toomey, Vicki E.; Casey, Kevin; Smetak, BethAnn; Grogan, Kathleen; Whitcraft, Kelly; Meikrantz, Jeanne; Zlockie, Jeanine A.; Thompson, Dana; 'misti.beckman@mercer.com'

Subject: RE: Capital Assets

Dear Workgroup Regulation Members-per the most recent email from the Department to you, we wanted to provide you with a brief one-page document illustrating several issues we have encountered related to real estate/properties via our internal audit function. In addition, we also wanted to include an overview of some related topics that have been discussed, as indicated below:

- While we continue with efforts to finalize proposed language specific to the issue of property equity, I want to stress that the issue here is not singularly related to the examples encountered during our internal audits (as contained within the first attachment), but is also driven by the responsibility to be prudent stewards of the program. While there are various iterations, the concept of recapturing equity in instances when providers or buildings are removed from programs is not new or unique. In our proposed language, we are contemplating the recovery of the lesser of either the gain on a sale of or equity paid into a building. Per our discussion last week, we are open to your suggestions as we pursue a means to ensure that property ownership and related transactions provide benefit to the consumers, provider operations, and the Department's program, in general. We look forward to any alternative language or ideas you may have to achieve that end. Upon review of any suggestions, we will then finalize the proposed capital asset language and share that with you, as well as, the other topical areas discussed last Thursday.
- Finally, as concerns were raised last week regarding limitations on provider abilities to leverage financing resulting from the proposed regulation, I have also attached FAS 5, Statement of Financial Accounting Standards No 5, Accounting for Contingencies, for your review. We asked several CPAs to comment on the likelihood that the proposed regulation would require the recording of a contingent liability, and the response was that FAS 5 would not require accrual of the liability until it is probable that the liability had been incurred. One opinion received did convey the possibility that an independent auditor may believe it is necessary to disclose the possibility of a loss, but that it would not be necessary to record the liability. I am hopeful this allays concerns discussed last week.

Again, we look forward to any alternative suggestions you may have, and thank you for your efforts as members of our workgroup.

Kevin

Real Estate/Property Issues disclosed via Internal Audit

Provider A – A not-for profit with a related party real estate holding company, holding approximately 30 properties which were purchased with DPW funding. The holding company separated from the not for profit, sold one property and converted the proceeds to deferred compensation for two individuals at the holding company. The deferred compensation was used as down payment on the purchase of six properties at a discount price, by a family partnership.

Provider B - Approximately 50 properties were funded with DPW funding. Many of these properties were debt free and mortgages paid off early without knowledge of DPW/County Programs. Rather than being held by this for profit entity, the properties were purchased in the name of the owner and key staff. This provider was later purchased by another-although the properties were not received as part of the transaction.

Provider C- is comprised of seven for profit corporations. As of 6/30 /07 there were 51 properties owned by various parts of the provider, of which 26 were debt free. 8% continuing participation allowance became profit which was in some instances distributed to the owner-and in no way benefited either the provider or program operations. When coupled with retained earnings, profit was in excess of 1.6 million of which the owner took a distribution of \$1.1 m

Provider D- Comprised of a number of corporations which purchased properties funded by DPW which were later transferred from the not for profit to a for profit management company. The management company paid the CEO \$2,942,242 in compensation in the form of salaries and bonuses during the three and one half year period that ended 12/31/00. These cash draws placed the corporations in a difficult financial position and the CFO began to "float" checks. When the resulting check kiting was discovered by the banks, the provider defaulted on a number of loans. As a result of the default the bank exercised its rights in security interests in the properties. As a result of a "work out agreement" the deeds to 27 residential properties were delivered to the bank which then agreed to hold the CEO and board members harmless. The bank subsequently entered into negotiations with the new providers of service and the properties were repurchased. Similarly, the Program derived no benefit.



Financial Accounting Standards Board

ORIGINAL PRONOUNCEMENTS

AS AMENDED

Statement of Financial Accounting Standards No. 5

Accounting for Contingencies

Copyright © 2008 by Financial Accounting Standards Board. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of the Financial Accounting Standards Board.

