

Kroh, Karen

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#14-540-(50)

From: Mochon, Julie
Sent: Thursday, December 15, 2016 8:53 AM
To: Kroh, Karen
Subject: FW: Response to Chapter 6100 Proposed Regulations
Attachments: Comments regarding Proposed Chapter 6100 Regulations.docx

(P)

From: Ferenz, Carol J. [<mailto:cferenz@cparc.org>]
Sent: Wednesday, December 14, 2016 5:36 PM
To: Mochon, Julie
Subject: Response to Chapter 6100 Proposed Regulations

Hello Julie,

Hope you are enjoying the Holiday season! I have several comments to submit, so I am going to attach a word document to make it easier. Talk to you soon as I am thinking you will be at the meetings in January and February when our work group gets together to review all of these.

Happy Holidays!

Carol J. Ferenz

Director of Residential Services
The Arc of Cumberland/Perry Counties
71 Ashland Avenue, Carlisle 17013
717-249-2611 FAX 717-249-5271
www.cparc.org

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Comments regarding Proposed Chapter 6100 Regulations – 12/14/16 Carol Ferenz

Regulation /Section	Comments
6100.1 6100.2	<p>I have a concern that base-funded programs are subject to these same regulations without the ability for exceptions, given that base funds are the safety net for circumstances that require some flexibility. For example, in section 6100.221, it is required that an individual have a PSP in order to receive services. If there is an emergency that comes up with an individual previously unknown to the Administrative Entity/SCO and as a result the person does not have a PSP, how could a provider offer emergency respite services? Please give counties/AEs the authority temporarily waive sections of the regulations when necessary to meet emergency, unexpected, or extraordinary situations.</p>
6100.42	<p>Monitoring Compliance – (a) – This states that the department and the designated managing entity may monitor compliance with this chapter at any time through an audit, provider monitoring or “other monitoring method”. This is very open-ended. Please add the words, “department pre-approved” after “other” and before “monitoring”. Also in section (c) and (d) please delete “format required by the Department” and allow for information to be presented in any reasonable format in order to reduce the need for providers to complete several formats for different entities.</p>
6100.43	<p>Regulatory Waiver (a) – It is a concern that waivers are not permitted for positive interventions or rights. For example, not allowing a waiver impacts services that are provided to individuals who are sexual offenders, or for people with lifelong medical conditions like Prader-Willi. When supporting people with problematic sexual behavior or someone with Prader Willi, rights must be restricted. Individuals with PBS come into the program with the understanding that they cannot access some public places or need to leave if they display behavior associated. Individuals with Prader –Willi live with food locked up.</p> <p>Another example is when supporting an individual who use their personal property to self-injure. Sometime access must be limited and use monitored. Individual who insert objects into all orifices of the body and do great damage. These objects are often their personal property and waivers are necessary to limit access.</p> <p>Please change this section to address these circumstances, and please permit for a serious health concern to which the individual and their team consent.</p>
6100.44	<p>Allowing for innovative projects/services is very positive, as it will allow for ideas that might not fit cleanly in the definitions. This is an excellent way to enable providers and families to pioneer new programming that could advance the development of best practice that better serve individuals with disabilities.</p> <p>Also there is significant concern with all of the requirements spelled out that “must” be included in a project proposal. Instead of saying “must”, please consider saying “must include sufficient information on which a prudent and informed decision can be made by the Deputy Secretary. As much or all of the following information should be provided:” It will be in the provider’s best interest to submit as much of the information as possible. However, there may be certain information that simply is not available or not worth developing and submitting given the nature of the project. The Deputy Secretary is under no obligation to approve the project as submitted, and if he or she believes certain key information is lacking, it can be returned for fine tuning.</p>

<p>6100.45</p>	<p>Quality Management - The new EIM system currently has less dynamic reporting features than the former system. This has decreased amount and ease of access to incident trend data, and more time and resources are required to create the same trend and analysis reports previously available. It is requested that the department make enhancements to its IT system to support the additional data and analysis requirements contained in the 6100 regulations.</p> <p>This chapter expands the areas of performance data and although this data could be beneficial, it will require more staff time, tracking tools and sophistication for all agencies. Rates do not include the additional staff time and tracking tools. Larger agencies may have staff to provide quality management, but smaller agencies will have to add responsibilities to already overburdened staff.</p> <p>Also, these requirements are too prescriptive. Please consider using them as examples of what can go into a QM plan, but do not require them.</p> <p>Also, at a minimum, ODP training is needed for providers on trend analysis, how to analyze and successful learning and application of training, systemic improvement, and measures to evaluate the success of the plan.</p> <p>Also, providing examples of low-cost tracking tools or ones that are developed as a statewide initiative will be helpful.</p> <p>ODP has issued a QM Bulletin with requirements for the areas providers must address in their QM plans, and it was based on state priorities – please clarify whether that bulletin still be applicable.</p> <p>Quality management – (b)(1) – This should be clarified or deleted as it is not measurable. Measuring every possible outcome contained in an individual’s PSP is impossible. There are not enough resources in the system to do this.</p> <p>Also, it is not clear how a provider would measure. It is not clear whether it need to be done for every person served by the agency. It is not clear whether it would be done by service (e.g., an individual could receive several services from one provider and make progress in residential goals, but not in their vocational goals, etc.). It is not clear whether trying to simply preserve skills as a person ages would be considered “progress.” It is not clear whether it means progress in the utilization of units or an individual’s actual progress to goal outcomes.</p> <p>Quality Management (b)(6) should be deleted as it is not measurable – it is not clear how providers are supposed to analyze successful learning. Please clarify whether providers would be required to test adults on everything taught. Please clarify whether a test is the same as analyzing learning.</p> <p>Also, please define the core competencies so that it is not left to interpretation, and please clarify how compliance with this requirement will be evaluated.</p> <p>Quality management - (b)(7) – Please consider removing staff satisfaction from the regulation. Results would be very subjective, and while it may provide the agency with useful information, sometimes things that lead to staff unhappiness are really out of a provider’s control (i.e. low pay, working weekends, holidays,</p>
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	and nights, completing required paperwork, etc.).
6100.47	<p>Criminal history checks – (a)(1)and(b) – These two provisions overlap – the first seems to cover every single staff person imaginable. Please review what the department is trying to accomplish and rewrite to clarify.</p> <p>Criminal history checks – (b)(3) – Please clarify who is responsible for getting the criminal history check if the consultant is billing ODP directly (the consultant, SC, etc.?).</p>
6100.50	<p>Communications - (b) – Please clarify who provides this assistive technology. Presumably if it is indicated in the PSP, it would be something provided and reimbursed, but the language as written does not reference the PSP. Please clarify whether each provider must provide it independently and/or regardless of the PSP, if the individual is responsible for the cost of the technology, etc.</p> <p>Also, please clarify which provider is responsible when there are multiple providers involved in supporting an individual.</p>
6100.52	<p>Rights team (b)(1) – General comment - Having a meeting of the rights team for each incident, alleged incident and suspected incident of a violation of rights is going to be problematic, because the rights are so broadly drawn. For example, 181(b) “an individual shall be continually supported to exercise the individual’s rights”, while sound philosophically, is incredibly vague and open to interpretation, and fails to take into account the individual’s functional ability. The same problem exists with (c) an individual shall be provided the support and accommodation necessary to be able to understand and actively exercise the individual’s rights. It is one of those regulations that will be almost impossible to validate for compliance without becoming extremely burdensome. Considering that violation of rights is also an incident which must be reported, the regulations would now require that an allegation of rights violation be reported as an incident, investigated by a Certified Investigator, and the reviewed by a rights team consisting of the Provider, the individual, the SC, an AE representative. Interpretations have often differed on what constitutes an incident, so in the example of 181(c), an SC could decide that a provider has allegedly violated an individual’s rights by not allowing him/her to drive a forklift as desired even though he/she is legally blind, cannot drive and would pose a hazard to others. Yet the individual has under 6100.182 (e) has the right to make choices and accept risks. While the example seems to border on the absurd, providers have had similar types of situations. One SC identifies his/her responsibility to support one particular individual without regard to how it affects others. And a lot of time, energy and money is wasted by a provider in defending themselves.</p> <p>If this section is kept intact, please replace “alleged” with “founded”. Often reports are made by disgruntled employees, or perhaps an individual who enjoys the attention paid for making allegations that are not founded. Keeping “alleged” would end up taking time and resources from needed service time, and may have an unintended result of giving more attention to a negative behavior. <u>Such issues are best dealt with by the PSP team.</u></p> <p>Also, please clarify whether this section includes individual-to-individual incidents.</p> <p>Rights Team - (c) – Please consider changing this from requiring that an individual be part of the team to considering it on a case by case basis as</p>

	<p>recommended by the PSP team and/or allowing an exception if including the individual is likely to be detrimental to them. For example, including the individual in the team could re-traumatize an individual who has been abused by making them recount the experience. This should be something that is considered on a case by case situation and recommendations of the PSP team.</p> <p>Rights team - (d) – Please consider adding language that ensures the confidentiality of the individual. Having a majority of the members of the team be those who do not provide direct support to the individual will make it difficult to ensure confidentiality.</p> <p>Rights team - (f) – Please considering “if there are incidents to review” to this provision. As written, requiring the team to meet at least once every 3 months is going to be burdensome. These meetings will be in addition to the PSP meetings!</p> <p>This requirement is not consistent with having an “everyday life”. Nobody else in society is required to have so many meetings about their lives.</p> <p>Also, this will be very difficult for providers to comply with since it will be impossible in all cases to get family members together.</p>
6100.141	<p>I recommend that ODP remove the very specific requirements in relation to exact “8 hours” of training on the core areas and 12 overall. It is recommended that ODP simply require that providers meet the requirements of the core training and completing 12 hours (and remove the 8 hours on the core training specification). The length of time a training takes should be should not be specified. People learn at different rates, and the important issue is that they understand the topic, not the amount of time spent.</p> <p>Also, I am concerned that the training requirements will discourage volunteers. Some volunteers are only available for a very limited time, and this amount of training hours would take a great deal of their availability.</p> <p>These requirements will require more funding and resources that ODP is not making available I recommended that all categories of people who do not have direct contact with individuals and/or are involved in the development or implementation of services to individuals be deleted from this requirement.</p> <p>Also, this entire section of the 6100s has also been inserted into the licensing regulation sections (see 6400.50-52). As such, please clarify if this mean a provider would have to produce training plans and records for all of these categories of staff during an inspection by BHSL.</p> <p>Annual Training - (c)(1,2,3,4,5) – Please clarify that BHSL will include these 8 hours as part of the 24 hours required for direct care and those who supervise direct care. There have been situations where licensing will not accept what they consider redundant training. If that is the case, then in effect these regulations will require 32 hours of training, which is an additional cost and resource burden on providers.</p>
6100.182	<p>Rights of the individual (f)(g)(l) Please consider allowing exceptions for special populations when it comes to individual health and safety, and community safety.</p>
6100.183	<p>Additional Rights of the individual in a residential facility - (a) – While the philosophy of being free to make choices is supported, there are practical</p>

	<p>concerns with the how this provision will be implemented. For example, there are many documented instances of individuals who have been taken advantage of by friends and family. There should be a process that allows the team (with the individual's input) to limit some access.</p> <p>Also "at any time" makes no sense. Allowing visitors at any hour will infringe upon the other individuals' rights. While section 184 introduces the concept of "negotiating" choices, it does not address situation whereby different individuals in the home are unable to come to a resolution supported by everyone. Please clarify how an ultimate decision is to be made when negotiations are unsuccessful.</p> <p>Also, please clarify how provider liability will be handled if someone is injured or abused by a visitor that the provider "allowed" the individual to be alone with.</p> <p>Please consider allowing exceptions to these sections when it comes to individual health and safety and community safety.</p>
6100.183	Additional rights in a residential facility - (d) – Please clarify how this provision is implemented if an individual has a representative payee (that person has control over how the individual spends their money).
6100.183	Additional Rights in a residential facility – (g) – There is a concern how a provider is to ensure safe and swift egress in the event of a fire or other emergency, conduct bed checks, or accommodate a roommate who cannot independently operate the lock. Also there are some individuals who even with assistive technology, would not be able to independently operate a door lock. These issues are not adequately addressed simply by following 6100.184, negotiation of choice.
6100.183	Additional Rights in a residential facility - (h) – Please clarify how this provision should be implemented if the individual has Prader Willi, or a doctor has issued orders regarding allergies, dietary limitations, etc.
6100.184	<p>Negotiation of choice. I really like this addition in recognizing that if you live with others you have to be respectful of other people's rights and negotiate agreements – like other people who share living spaces. Please add language that addresses a situation when the negotiation fails. Please clarify who makes the ultimate decision and who rights ultimately trumps the others' rights.</p> <p>Also, please clarify how this section is to be documented to demonstrate compliance.</p>
6100.186	Role of Family and Friends - (b) – There is a concern that this implies that the provider is required to make all accommodations necessary without any acknowledgement of feasibility or reasonableness. It also fails to say who determines what is necessary or when it is necessary. For example, there is a big difference between connecting family and friends by Skype versus flying a family member in from across the country. This is an extreme example but it is the kind of thing that can cause a provider to end up defending themselves in legal proceedings. Please add language that requires "reasonableness" and "feasibility".
6100.223	<p>The general language change and focus on person-centered planning are very positive. I especially appreciate the wording "provide sufficient flexibility to provide choice by the individual".</p> <p>Content of the PSP - (8) – Experience suggests that the phrase "amount,</p>

	<p>duration and frequency” may be causing more problems for providers than any other single requirement. Some of the issues that have been raised: (1) The ISP should specify the number of units within the time frame, i.e. 125 units weekly. (2) The ISP should specify days and times of service, i.e. Monday, Tuesday Wednesday, Thursday, Friday from 9 am to 2 pm. (3) the ISP should specify Monday, Tuesday, Wednesday, Thursday, Friday, 5 hours per day. (4) The ISP should just list total units for the year i.e. 4600 units. And on and on and on. Every SC writing the ISP has their own idea as to which is more appropriate. Where this becomes a problem is the requirement that <u>any variation</u> from the schedule must be explained in the documentation. For some programs, attendance hours are often dictated by transportation or other factors that are beyond the provider’s control. . So the provider ends up documenting not only when services are provided, but documenting when they aren’t as well. There has to be some way of resolving this so that documentation isn’t so overburdening.</p> <p>(11) requiring “Active pursuit of competitive, integrated employment as a first priority” does NOT allow for individuals to make a choice, or respect their desire, rights, if that is not what they want, or if is not what is in their best interest for some reason. Providing education and opportunities is good, but individuals should have the choice and not be forced to consider this as a first priority if it is not what they want. Please replace “pursuit” with “consideration.” The governor’s employment first policy requires competitive integrated employment to be the first <u>consideration</u>, not the first pursuit.</p> <p>(14) Content of the PSP – Please clarify that, if an individual has a health and safety issue with access to food, this is where it can be described and an exception to the rights section is allowed.</p> <p>Documentation of support delivery – (c) – Please clarify what it means to document “each time a support is delivered”. Please clarify whether it relates to the amount, frequency and duration, or if it relates to units, etc. For example, if a services is authorized in 15-minute units, the language might be interpreted to require documentation every 15 minutes. Under Act 51, a monthly progress note that reviewed the information for the past month’s services was considered sufficient when it was an ongoing service. There is no mention in the 6100s of a monthly progress note and the requirements for content of the support delivery documentation are significant if they must be done for every unit of service.</p> <p>Documentation of support delivery – (e)(5) - Requiring documentation that reflects amount, frequency and duration for a residential service doesn’t make sense. Please clarify how this would apply to group home living, as it would be impossible to document everything that staff provide all day. Outcomes are documented, but not every single thing that staff does throughout the several-hour shift is documented.</p>
6100.262	<p>Employment - (a) – After the word “shall”, please insert “be given information about competitive, integrated employment as well as information about resources that could assist the individual in their pursuit of competitive, integrated employment. If the individual wishes to pursue competitive, integrated employment, the individual shall”</p>
6100.303	<p>Reasons for a Transfer or a Change in Provider – (a) - Discharges and transfers have occurred due to irreconcilable differences with family members. This section should either be changed to allow transfers when there are conflicts</p>

	<p>with family that are detrimental to the individual and/or other program participants and reasonable efforts to resolve the conflict have been exhausted, or language should be added somewhere else in the regulations that enable the provider to take steps to mitigate the detrimental effects the family is having on the individual and/or other program participants.</p> <p>There needs to be a clause that allows the provider as an autonomous entity to refuse service without having to prove it meets one of the grounds listed. There are numerous possibilities as to when an individual may choose something that the provider is unwilling to provide for any number of reasons beyond "requiring a significant alteration of the provider's program or building" as listed in (3). Liability is a major one, but not the only one.</p> <p>(b) – Please clarify what is meant by a "support provider". Hopefully this does not refer to the Direct Support staff working with an individual as we often do not have much control over where staff chose to work.</p>
6100.304	<p>Written Notice – Overall, this requirement is excessive. It makes much more sense to require a PSP review team meeting to discuss the issues of the individual's service needs and the appropriate changes. All of the items identified as requirements in the written notice would be better handled as part of a team meeting under 306 (transition planning). Then all that is required for notification is that the provider contacts the SC, and the SC sets the meeting. I appreciate seeing that in (a) – the individual needs to give a 30-day notification, I would like to see in (b) – the same standard applied to providers. There should no difference between how many days an individual must give and how many a provider must give. Change to make it consistent – 30 days for an individual and 30 days for a provider. I do believe that there should be a clause however that allows for emergency situations, that 30 days notification does not apply to emergency situations and/or where an individual's immediate health and safety may be at risk and/or where that individual's actions could be an immediate health and safety issue for other program participants.</p>
6100.305	<p>Continuation of support – While we agree that the current provider continuing support during the transition period is essential for assuring the person's needs are being met without lapses in service and a smooth transition, please include a reasonable limit as to how long a provider is forced to continue services after they have given notice. There would have to be a very good reason why a provider is giving notice in the first place and to then be required to continue supports in a difficult, perhaps dangerous situation is not fair to the provider.</p> <p>Also, this should include an exception for circumstances where the individual is a threat to self or others, or the provider is unable to meet the needs of the individual jeopardizing the health and safety of the individual. Without such an exception, it puts the provider in the position of continuing to provide services after having acknowledged that the provider cannot guarantee safety while doing so, placing full liability on the provider if someone is injured.</p> <p>Also, there needs to be a process outlined for requesting the "directive" from the department or managing entity.</p> <p>Also, based on the phrasing, there is no requirement on the part of the Department or designated managing entity to make a decision quickly. Please add language requiring the department to make a decision in a timely manner.</p> <p>Also, criteria should be spelled out that indicates on what basis the department</p>

	will make their decision, as well as what the appeal process will be.
6100.307	<p>Transfer of Records – (a) - Recommend adding “Upon receipt of signed releases”, before “The provider shall transfer a copy of the individual record...”</p> <p>Transfer of Records – As written, this section implies that a copy of the entire record has to be provided to the new provider. An individual’s record can include items not generated by the agency (e.g., a copy of a psychiatric evaluation if one was conducted). In such a case, the provider does not have the legal right to give a copy of the document since it does not “own it.” There are also additional concerns under HIPAA that affect how information can be released that would impact this requirement. Finally, since the ISP and the ISP reviews (as the primary documentation) are maintained by the SC, and given that the SC should be providing this to any provider chosen by the individual, there should be no need for every provider to transfer copies of their files to new providers</p>
6100.343	<p>Prohibition of restraints – (5)(i) – “support of the achievement of functional body position” is a good addition – while this should cover things like seat belts in wheelchairs that are designed to keep the person from falling out of the chair because of balance issues, etc., please add a reference to seatbelts as allowable for use in wheelchairs for safety to avoid future interpretation issues.</p> <p>Prohibition of Restraints – (5)(ii) – As written, devices such as a helmet for drop seizures, or seatbelts for balance, would only be allowed if the individual “can easily remove the device”. In reality, many individuals do not have the physical skills to remove such things as a helmet.</p>
6100.345	Access to or the Use of an Individual’s Personal Property - (b) - Personal funds or property should be used if it is ordered as part of a legal proceeding; e.g., an individual causes damages to a hotel room - the hotel presses charges and the individual is ordered to make restitution. In this instance, it should be the individual who bears the cost as a natural consequence of the behavior.
6100.401	<p>Incident Investigation - (b) and (c) - needs to list what types of incidents need investigated. The way it currently reads, it would cover ALL incidents listed in 6100.401 (a). That would include emergency closure, injury requiring treatment beyond first aid, med errors, critical health and safety event, law enforcement activity, etc. We will all need more investigators and staff to complete all of these.</p> <p>Types of incidents and timelines for reporting – (a)(16) Adds medication administration errors to be reported in the 24 hour time frame. Will this also change the timeline to finalize these reports to 30 days?</p> <p>Types of incidents and timelines for reporting – (a)(17) This is a new addition to reportable incidents in EIM (there is not currently a category in EIM where “critical health and safety event that requires immediate intervention such as a significant behavioral event or trauma” are reported). Please consider removing this from the list, or at least define it more clearly. This could be interpreted many ways, and is too abstract.</p> <p>Please be very judicious when comes to determining new types of incidents that need investigated. The emphasis needs to be on the types that truly need to be investigated to protect health and safety and improve quality rather than inefficiently using staff time.</p>

6100.401	<p>Types of Incidents and Timelines for Reporting - (d) - requires incident reports to be shared if requested. Please either delete or rewrite considering the amount of confidential information that is contained in some reports (especially when staff are involved).</p> <p>Also, notification to the individual and family when an incident is discovered and notification of the conclusion of an investigation is the current practice. Experience suggests that very few if any requests for incident reports are made by families but this requirement may "open the floodgates".</p> <p>Also, the family is at times the target of investigations, and giving them a copy of the report will be a problem.</p> <p>Also, provider reports of allegations that are not found to be confirmed would be a concern. Those completing the reports may hesitate to include confidential information in these reports. To require families to get a copy of all reports would be an unreasonable risk due to the fact that all allegations are reported regardless of whether there are facts to support them. The standard for what is reportable will need to be modified.</p> <p>Also, the system will need be set up so that it is possible to print a report with redacted information.</p>
6100.405	<p>Incident Analysis - Many of the activities listed here for incident analysis should really be the function of the individual's PSP team who is most familiar with the individual and what might help reduce incidents.</p>
6100.442	<p>Physical accessibility - (a) – Please add the phrase, "as described in the PSP."</p> <p>Also, please add the word "reasonable" in front of "physical site accommodation." As written, this makes it seem like a provider is required to make any and all site accommodations without regard for what is reasonable or whether it would require a significant alteration to the building.</p> <p>Please add language that makes it clear that this section must be viewed in the context of section 6100.303(3), which allows a person to be transferred if a major alteration to the building is required.</p> <p>Also, as written, there is concern that the integration mandate will be interpreted as including any "physical site" in the community, even when they are not under the control of the provider. Please clarify that it does not.</p>
6100.443	<p>Access to bedroom and home – Please add clarification language that these requirements are applicable only to the extent that the individual desires them. Please include language that allows documentation that demonstrates when a person was given the option and made an informed choice to decline any requirement listed.</p> <p>Also, add clarification language as to how these requirements are to be implemented in the context of potential risks for fire evacuation or other emergencies which may be created as a result of these requirements (e.g., if staff have to find the keys to rooms to get individual out).</p>

	<p>Also, please add clarification whether the PSP may include language that documents when an individual is not capable of handling the responsibility for securing a home (particularly one with multiple residents) and is thus prevented from having the means to open the entrance to the home.</p> <p>Also, please add exceptions to the bedroom door key provision for forensic populations and/or health and safety risks.</p>
6100.444	<p>Lease or Ownership - Along with the legally enforceable agreement that assure rights for the individual, the language needs to be changed to make sure the provider and or landlord's rights are also protected.</p> <p>Also, consider removing language that refers to providers as a "landlord". This term introduces zoning and occupancy permit issues. It is recommended that references to the Landlord/Tenant Act be removed and instead a simple agreement that complies with HCSB rule be developed. ODP should develop and make available a model agreement that is acceptable to CMS (not mandatory, though).</p> <p>Also, responsibilities to individuals are stressed in this section, but it is contradicted when individuals have to agree to restitution, when it may be a part of a legal responsibility to pay for property damages. Please clarify.</p> <p>Also, please add tenant responsibilities or add language that allows tenant responsibilities permitted under Landlord/Tenant Act.</p> <p>Also, please clarify how the "protection from eviction" under the Landlord/Tenant Act applies in the context of section 6100.303 – transfer to a new provider against the individual's wishes. If the individual poses a danger to self or others, but does not agree to leave the current residence, the provider would be placed in a situation whereby the provider would have to go through formal eviction procedures to remove the resident. Please address this conflicting language.</p> <p>Also, please clarify whether the lease replaces the room & board contract required in section 6100.688.</p>
6100.446	<p>Facility Characteristics Relating to Size of Facility – (c) - The number 15 is arbitrary and is not sufficient to sustain a facility. If the department's intent is to not have any new facilities, then it should simply state that no new facilities will be licensed after the March 17, 2019 deadline. Otherwise, conduct an analysis to determine what the smallest size would be that can be sustained. Given the new Community Participation Service description, a provider would need anywhere from 5 to 15 direct care staff, a program specialist, and administrative staff.</p> <p>Also, please add a provision that will allow "legacy" day and prevocational programs to move after 3/17/19 and still maintain their original capacity. Also, it is recommended that all provisions in the proposed regulations be removed because such facility size limits are better suited for waiver service definitions.</p> <p>Facility Characteristics (Size and Location) – Please clarify the language so that it is clear whether a provider supporting up to 8 in an apartment complex</p>

	<p>currently will be able to continue that service, just not open new ones.</p> <p>We operate an apartment building on the main street of a small town where the individuals can easily walk independently to the laundry mat, bank, convenience store, restaurants, etc. There are only four apartments in the building. It would be impossible for us to meet the 10% guideline since there are only 4 units in the building. One makes 25%... thus relegating people controlled by the 6100s to large apartment complexes, which seems counterintuitive to the goal of meaningful community participation and individual choice as espoused in "Everyday Lives – My Life My Way". On the other hand, some townhouse developments are quite large. It seems unnecessary and punitive to prohibit a person from living in such a development if they are the one who would go over the 10% limit.</p> <p>Also, the 10% figure is not only arbitrary but illogical. The estimates in terms of the percentage of people in society who have disabilities varies depending on how disability is defined, but if one merely looks at the data used when the Americans with Disabilities Act was passed, about 19% of people have a disability.</p> <p>Finally, it seems like a violation of law to tell a person that they're prohibited from living in an apartment, condominium, or townhouse development that has "too many people with disabilities." Many time, these individuals want to live in the same building as their friends.</p> <p>Please modify the language to require that such limits are merely guidelines and individuals' PSPs shall document what efforts were undertaken to find the most integrated housing and/or that the individual made an informed choice to live where they are living, even their housing choice include more people with disabilities than recommended by ODP.</p>
6100.463	Storage and Disposal of Medications - (d) and (e) - allowing for epinephrine and epinephrine auto injectors to be kept unlocked HURRAY! Nice change.
6100.482	Storage and Disposal of Medications - (d) and (e) - allowing for epinephrine and epinephrine auto injectors to be kept unlocked HURRAY! Nice change.
6100.482	Payment - (c) - We need some allowance for flexibility in the frequency and duration statement and there should be some provision for services provided in an emergency (like respite) that are not yet authorized and/or a provision for back-dating an authorization or frequency and duration change
6100.487	Loss or Damage to Property - This should be clarified that the provider would replace the property if it is determined to be as a result of staff negligence, or some fault of the provider, and also allow for the repair of the item instead of requiring that items must be replaced.
6100.571	<p>I appreciate that the department has proposed language that requires refreshing the rates, however, instead of every three years, please consider evaluating it annually.</p> <p>Fee Schedule Rates - (c) - Language should be added that requires the department to be transparent about the method it used to "consider" the factors indicated.</p> <p>Also, language should be added that requires the department to be transparent about the sources of data and information used. If the department does not</p>

	<p>include language requiring an annual refresh (or rebasing) of market data, then the language ought to say the department will apply a cost-of-living-adjustment based on the federal home health market basket index.</p> <p>Fee Schedule Rates – (c)(2) - Language should be added that requires the department to consider US Department of Labor and PA Department of Labor and Industry statistics for relevant industries, such as the health care industry, as well as labor statistics for non-health care or human service industries with which ODP-funded HCBS providers are in direct competition for workers (e.g., fast food, retail, etc.).</p>
6100.648	<p>Donations - (c)(3) – This should be deleted. Providers should not have to disclose donated items? It should not impact a cost report since it is not cash that would reduce expenses. The value should not be used against the legitimate costs of providing services.</p>
6100.652	<p>Compensation - (b) - Recommend allowing bonuses or severance payments for a separation package “not to exceed three month’s salary”. This is normal and customary business practice. Three month’s pay is reasonable.</p>
6100.659	<p>Rental of Administrative Space - (a)(1) and (2) - There should not be a difference in allowable cost for administrative space due to the relationship with the lessor – it should be the same as the rental charge of similar space whether the lessor is a related party or not</p> <p>Rental of Administrative Space - (c) – It is unclear how the “minimum amount of space necessary” will be determined. As written, it may restrict the ability for expansion of services if limits are placed on the amount of space allowable.</p>
6100.661	<p>Fixed Assets - (i)(3) – Remove or modify this provision. An annual physical inventory is extremely burdensome to complete.</p>
6100.662	<p>Motor Vehicles - (3) – Please clarify how often a provider must analyze the cost differences between leasing and purchasing vehicles. Please make it reasonable or delete altogether.</p>
6100.663	<p>Fixed Assets of Administrative Building - (c) – Delete this provision. A provider should not have to get permission from department to make improvements to their administrative facility. (On what basis will an approval or denial be made? Will such criteria be included in the 6100s? Will appeal rights be included and spelled out?)</p> <p>Fixed Assets of Administrative Building - (f) - This should read that “funded equity” is equity that was built “using department funds”. This provision should not apply to equity built or acquired through donations, fundraising, etc.</p>
6100.670	<p>Start-Up Cost - (a) - Start-up costs for new locations and conducting business in a new geographic area is positive and will assist in assuring there are meaningful options available in more locations. The amount for the start-up costs has to be reasonable.</p>
6100.681	<p>More details or guidelines are needed to explain what is included and not included in room and board rates.</p> <p>Room and Board Applicability – This should only apply to licensed group home settings - not to unlicensed settings or apartment settings. As written, it will make utilizing HUD vouchers very difficult for individuals who are living in supported living arrangements.</p>
6100.684	<p>Actual Provider Room and Board Cost - (b) - Recommend that the provider do it annually instead of each time an individual signs a room and board contract.</p>
6100.686	<p>Room and Board Rate - (a)(2) - Proration of board being changed from every day</p>

