

#14-540-96

Kroh, Karen

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From: Mochon, Julie
Sent: Monday, December 19, 2016 8:34 AM
To: Kroh, Karen
Subject: Fw: comments on Chapter 6100
Attachments: chapter 6100 comments 12-2016.docx

From: Deb Kunsch <dkunsch@altecservices.org>
Sent: Friday, December 16, 2016 4:38 PM
To: Mochon, Julie
Cc: Shirley Walker
Subject: comments on Chapter 6100

Dear Ms. Mochon,

Following a review of the proposed Chapter 6100 regulations, ALTEC Services is offering the attached comments.

I am sure this will be a busy time of the year due to your many work demands. I do hope that you make the time to enjoy the holiday season.

Respectfully,
Deb Kunsch

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Debra Kunsch
Executive Director/CEO

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2016 DEC 20 PM 1:10

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Kunsch-Re: Chapter 6100 comments

Dear Ms. Mochon,

ALTEC Services fully supports the comments and language used by PAR to address recommendations in the proposed Chapter 6100 regulations. We offer no suggestions beyond the attached work of PAR in the areas of:

- Purpose
- Applicability
- Definitions
- General Requirements (broad section)
- Cost based rates and allowable cost
- Room and Board
- Department established fee for ineligible portion

In the following sections, ALTEC Services again supports the language used by PAR but also wants to underscore the impact on a small to mid-size provider organization. ALTEC Services provides Supported Employment services, Home and Community Habilitation and has two locations where we operate under the 2380 and 2390 licenses.

6100.45 Quality Management

Discussion: The overly prescriptive nature of the proposed regulations does not allow agency flexibility to address specific internal and external issues that may impact true quality improvement. As an Employment provider of 24 years, we may want to focus on issues such as more rapid job development or diversity in the types of jobs we locate versus many of the recommended performance areas.

Recommendations: The language being submitted incorporates effective and continuous quality improvement strategies that work for the organization, monitoring entities as well as the individuals that the organization supports. PAR allows for the structure and implementation of a credible QM plan yet recognizes that formatting and specific performance areas may not be necessary or as effective when generated by the monitoring body.

6100.52 Rights Team

Discussion: Providers are already responsible for establishing a committee/team of professionals (i.e. Restrictive Procedures or Peer Review) that are responsible for monitoring and addressing any use of Restrictive procedures or restraints as well as all Investigations conducted by the provider including an alleged Individual Right violation. Since this is addressed in Incident Management regulations this would be another layer of requirements that duplicates what is already in place. With limited resources, this would be another burden that removes resources from supporting individuals and build community connections.

Recommendation: Remove this section since the purpose is unclear and already being addressed in existing regulations.

6100.141 and 6100.143 Annual Training Plan

Recommendations: Streamline these sections into one set of requirements since both address the annual training required by HCBS providers. See language being submitted by PAR which is fully supported by ALTEC Services.

6100.141. (a) and (d) PAR recommendations focus on training that will improve the knowledge, skills and core competencies of the staff persons. The plan addresses the need for training in basics such as

rights, community integration, honoring choice and supporting individuals maintain relationships. As long as the staff possesses the knowledge, the number of specific hours on these training topics is unnecessary. It could have an adverse effect on the reduction on training on other subjects more relevant to supporting a specific person.

The training plan will include the following positions:

1. Paid staff with client contact
2. Paid and unpaid interns who provide reimbursed supports to an individual and who work alone with the individual
3. Volunteers who provide reimbursed supports to an individuals and who work alone with the individual.

6100.181 Exercising of Rights

Recommendation:

- (a) Add the statement that ' An approved PSP will be deemed consistent with an individuals rights.
- (b) Replace the current language with: An individual will be provided services, supports, and accommodations to assist the individual to understand and actively exercise rights as they choose. The services, supports and accommodations necessary for the individual to understand and exercise rights as they choose will be funded by the ODP as part of the PSP.

Note : sections (d),(e) and(h) remain unchanged.

Note: Sections d, f, and g are no longer required since it will be addressed in the approved PSP

6100.182 Rights of the individual

Recommendation:

- (b) Delete proposed language and recommend replacing it with: An individual has the same civil rights, and human rights afforded by law to all people.
- (c) Delete proposed language and recommend replacing it with: An individual has the right to be free from abuse, neglect, mistreatment, exploitation, abandonment or be subjected to corporal punishment.
- (e) Delete proposed language and recommend replacing it with: An individual has the right to make informed choices and accept personal risks that do not pose a threat to the individual's and/or another person's health, safety or well-being.

6100.186 Role and family and friends

Recommendation: Respecting the rights of an individual is critical however at times this relationship can be detrimental to the health and welfare of the individual.

- (a.) Delete proposed language and recommend replacing it with: The provider will take reasonable steps to facilitate appropriate involvement and encourage participation of an individual's family, friends and others, with regard to the health and safety of the individual.
- (b.) Delete proposed language and recommend replacing it with: The provider will take reasonable steps to facilitate appropriate involvement and encourage participation of the individual's family, friends and other in decision making, planning and other activities, with regard to the health and safety of the individual.

6100.221 Development of the PSP (including revisions of the plan)

Recommendations:

- (a) Delete proposed language and recommend replacing it with: The PSP is intended to ensure that services are delivered in a manner reflecting individual preferences consistent with an individual's health, safety, well-being and personal preferences as agreed upon by the PSP team so as to promote an individual's opportunity for an Everyday Life.

(d) Recommend clarifying this regulation to include the time frame for completing the assessment (i.e. within 60 days) from the date of the individual's admission to the provider

(e) Recommend clarifying this regulation to address when the PSP should be revised: The PSP shall be evaluated for revision at least annually, or when the needs or support system of the individual changes, and/or upon the request of the individual or court appointed legal guardian.

6100.223 Content of the PSP

(8) include in the schedule of supports the amount of units as well as duration and frequency of supports

(12) The PSP should be consistent with an individual's rights and is the governing document for rights purposes

Recommendations: Add a regulation to address when an individual has a behavioral support need, the plan should be identified in the PSP. This may require a PSP revision if a new behavior concern emerges.

6100.226

Recommendations: Replace the words "of support" to "for services" since this minor word edit addresses when services must be documented which is needed for billing.

Employment, Education, and Community Participation

6100.261 Access to the Community

Recommendation: Since a requirement of the Community Rule is full access to the community, this must be financially supported by ODP

(a) address the need for ODP to ensure adequate funding in this regulation

Recommendation: Consider adding a regulation that addresses that "providers will assist the individual in accessing the community."

6100.262 Employment

Recommendation: Address the role of Support Coordination in ensuring that the individual has information about OVR Services. This can be clarified in proposed regulation 6100.262 (a).

Transition

Recommendation: For clarity, this may be best titled "Transition of Services" since the word transition has several meanings in our service system including transition from school to adult services or even a type of employment services.

6100.303 Reasons for a transfer or a change in a provider

Recommendation to add under section (a) Circumstances outside of the provider's control that create an undue burden, safety risk, irreconcilable rights violation or inability to effectively provide the HCBS as necessary in the PSP, or based on changing needs that may not be accommodated.

6100.304 Written Notice

(a.) **Recommendation** to delete section 1 through 6 under (a) and expand on (a) to read "If the individual chooses another provider, the PSP team shall provide written notice to the provider, the individual, guardian, person(s) designated by the individual, the PSP Team members, the designated AE and the SC or TSM at least 30 days prior to the transition to a new provider.

Recommendation to add as section (c) : If a provider is no longer able or willing to provide a service(s)for an individual in accordance with the provisions specified in § 6100.303 (relating to reasons

for a change in a provider or a transfer), the provider shall provide written notice to the individual, guardian(s), persons designated by the individual, the PSP team members, the designated managing entity and the support coordinator or targeted support manager and the Department, at least 30 days prior to the date of the proposed change in service provider or transfer.

Recommendation to clarify (5), (6) and (7) and replace these sections with (d) and (e):

(d) A provider shall provide written notification to the Department and the designated managing entity immediately if the provider is no longer able to provide a home and community based support due to an immediate health and safety risk to the individual.

(e) The provider's written notice specified in (c) shall include the following: (1) The individual's name and master client index number. (2) The current provider's name, address and master provider index number. (3) The service that the provider is unable or unwilling to provide or for which the individual chooses another provider. (4) The location where the service is currently provided. (5) The reason the provider is no longer able or willing to provide the service's specified in § 6100.303. Suggested time frames for transitioning the delivery of the service to the new provider.

Positive Intervention

6100.341 Use of Positive Intervention

(a) **Recommendation** of language change: A positive intervention will be used when challenging behaviors are anticipated and/or in response to challenging behaviors to prevent escalation of behaviors, or in attempts to modify, decrease or eliminate behaviors.

Comments: Delete all other sections since they do not address positive intervention.

6100.342 PSP

Recommendation: Delete this section and move it to 6100.223 regarding the PSP.

6100.343

Recommendation: In sections 6, 7 and 8 the word manual restraint should be replaced with physical restraint. Add a statement that includes "A physical restraint may not be used as a substitute for positive interventions, or as retribution, punishment, noncompliance, or for the convenience of staff person."

Incident Management

6100.401 Types of Incidents and timeliness for reporting

(8) **Recommendation** to clarify Missing individual: An individual is missing for more than 24 hours or if the individual is in immediate jeopardy if missing for any period of time.

(13) **Recommendation** to clarify Use of Restraints: Use of inappropriate or unnecessary restraint.

(16) **Recommendation** to delete

(b) **Recommendation** to clarify: A provider will report the following incidents in the ODP's information management system within 72 hours of the occurrence or discovery of the incident:

(1.) Medication administration error

Recommendation to add: (c) The individual and person(s) designated by the individual shall be notified upon discovery of an incident related to the individual.

6100.402

(b) **Recommendation** to clarify: The provider shall initiate an investigation of certain incidents within 24 hours of the occurrence or discovery of the incident of the following:

(1) Death (2) Abuse (3) Neglect (4) Exploitation (5) Missing person (6) Theft or misuse of individual funds
(7) Violations of individuals rights (8) Unauthorized or inappropriate use of a restraint (9) Individual to individual sexual abuse and serious bodily injury.

6100.403 Individual needs (recommend replacing this with Incident Analysis)

Recommendation to add:

- (d) A provider shall review and analyze all reportable incidents at least every three months.
- (e) As part of the review, a provider shall identify and implement preventive measures when appropriate to attempt to reduce: (1) The number of incidents. (2) The severity of the risks associated with incidents. (3) The likelihood of incidents recurring. (4) The occurrence of more serious consequences if the incident recurs.
- (f) A provider shall provide training/retraining to staff persons and the individual, based on the outcome of the incident analyses as necessary.
- (g) A provider shall monitor incident data and take actions to mitigate and manage risk factors as necessary

6100.405

Recommendation to eliminate this section since it is now covered in 6100.403

Physical Environment

6100.443 Access to the bedroom and the home

- (a) **Recommendation to change the language to read** “An Individual has privacy in their individual sleeping or living unit. Living units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.”
- (e) **Recommendation to change and clarify** : The rights of the individual to privacy in his/her bedroom should be respected in accordance with sections 6100.181-183, with consideration for the needs of the health, safety, and welfare of the individual as determined in the PSP, or as needed in an unforeseen or emergency circumstance.
- (f) **Recommendation to change and clarify**: Provider staff should request permission whenever possible when entering a bedroom in circumstance other than a health and safety emergency.

6100.444 Lease or ownership

- (b) **Recommendation to change and clarify**: Providers may establish reasonable limits for the furnishing and decorating of living units as long as the limits are not discriminatory and do not otherwise deny rights granted to individuals under applicable laws and regulations.

6100.446 Facility characteristics relating to size of facility

ALTEC Services fully supports PAR's comments regarding the Community Rule. The Community Rule does not specify an absolute cap on program size. Smaller size programs require additional staffing levels, additional facility costs, and contribute to the workforce shortage. (DHS itself has recently approved larger census programs for individuals with medical needs.) Federal regulation expressly provides: “We do not believe there is a maximum number that we could determine with certainty that the setting would meet the requirements of HCB setting. The focus should be on the experience of the individual in the setting.

Recommendations: Delete section (b) (1) and (2)

Medication Administration

Comment: There are two extremely important issues concerning the proposed new regulations pertaining to medication administration. These issues must be carefully reconsidered by the Department.

1. Codifying content that requires modifications over time into regulations will lock a crucial component of service provision into temporal practices which will become obsolete as new information, prevailing practices and technology emerge.

Duplicating content which is as detail-specific as the proposed five-and-a-half pages of regulation across 5 sets of regulations when the state already has an externally - accepted training module invites discrepancy between the regulations and the training manual and prohibits the training module from staying current as new information, prevailing practices and technology emerge.

2. Requiring 6500 LifeSharing providers to complete and adhere to ODP's Medication Administration Module is a new and counterproductive requirement which is in direct contrast to Everyday Lives principals and the Department's stated intent to develop more integrated and natural life opportunities for individuals.

As a ready example of the problem with codifying material which requires change over time, an area has been identified in which the proposed regulations are at odds with prevailing practices as detailed by Title 49 of the State Nursing Board. 49 PA. CODE CH. 21 explicitly provides for Licensed Practical Nurses to accept oral orders for administering medication. The proposed 6100.465 provision only allows this practice for Registered Nurses.

This discrepancy is instructive both to the specific issue regarding LPN's and to the process issue of codifying Nursing Practices content which changes from time to time according to authorities outside of the Department. It is noted that the provider system needs LPN's to be able to do all that state law provides for them to do. In the second case, we need regulations which do not lock providers to standards which may soon become obsolete due to new and emerging best practices and advances.

A second example of the problem with trying to maintain this content in multiple places is that there are already discrepancies between the proposed 6100's and the Department's Approved Medication Administration Training. The training's required checklist for medication self-administration has discrepancies with the proposed regulation. There is also a notable practice discrepancy regarding pre-pouring of medications. We should avoid such confusion by requiring compliance with the most current version of the Department's approved Medication Administration Training module.

6100.461 Self-administration

(c) **Recommendation:** Replace the word 'provider' with PSP Team will facilitate the utilization of assistive technology to support the individual in the self-administration of medication.

Recommendation: Add a section regarding 'the individual shall know and understand the purpose of taking the medication.'

6100.462 Medication administration

Recommendation: Clarify and replace the wording in this regulation to read 'Persons who administer prescription medication or insulin injections to the individual shall receive training by the individual's healthcare source or by the prescribed ODP medication administration model or required by chapters 2390, 2380 and 6400.'

Although ALTEC Services does not provide LifeSharing services I know PAR member organizations have concerns about the impact this change will have on these providers. We would hope this regulation will be re-considered to allow families or Life Sharing providers to continue the practice that has worked

effectively for both the providers and also for the individuals they are supporting. These are not traditional employees but people that open their home to help create an Everyday Life for the individuals.

6100.463 Storage and disposal of medications.

6100.464 Labeling of medications

6100.465 Prescription medication or the Use of a medication

6100.466 Medication Records

6100.467 Medication errors

6100.468 Adverse reaction

6100.469 Medication administration training

Recommendation: Fully support the changes and language proposed by PAR and member organization. They have adapted this information for chapter 6500 regulations which seem to be formatted in a more clear and concise manner.

General Payment Provisions

6100.481 Department rates and classifications

Comment: Sections (a) (1) through (6) do not sound like regulation but statement of information or intent. ALTEC Services fully supports the changes and language used by PAR and member organization regarding this matter.

6100.485 Audits (or Provider audits)

Comment: Providers have the right to know the precise standards that will govern an audit of payments received under this Chapter 6100. Explain the Department's policy and legal justification for imposing so many different standards on HCBS providers. What other Provider type is subject to so many different audit standards? What is the purpose of requiring costly audits of a fee schedule rate based payment system?

Recommendation: Revise this section.

6100.486 Bidding

6100.486 (a) **Recommendation:** Change the language to clarify and include supplies: Procuring supplies or equipment that total over \$10,000, the provider will obtain the supplies or equipment by competitive bidding with written estimates.

6100.486 (b) **Recommendation:** Change the language to clarify this process: The cost for supplies and equipment cannot exceed the amount that would be paid by a prudent person under the circumstances prevailing at the time the purchase decision was made to incur the costs.

Fee Schedule

6100.571 Fee schedule rates

Comments: ALTEC Services fully supports the comments and language suggested by PAR.

The proposed regulations reflect a statement of intent as opposed to establishing an enforceable standard of practice by the Department and fails to explain the precise methodology that ODP will actually rely upon to establish payment rates. ODP's proposed text essentially carries forward the worst elements of Chapter 51 – vagueness, unfettered discretion and lack of an affirmative duty to establish payment rates consistent with federal law (42 U.S.C. §1396 a(a)(30)(A). PAR's proposed amendments

reflect adherence to aligning payments with allowable costs incurred by providers to meet the documented needs of Waiver Program consumers. Providers are entitled to predictability, reliability, and accountability in the rate setting process. Reliance on statements about “review” and “consider” along with the vague reference to “criteria that impacts costs” are too imprecise and contrary to the Departments legal obligation to develop payment rates that are sufficient to meet the costs that providers must incur to meet the needs of their waiver program clients.

- (a) Recommendation: Include residential ineligible services and clarify this will be an annual process.
- (b.) Recommendation: Current language lacks clarify in what should be a transparent process.

• **Waiver Program Payment Rates** – The Department should include a section on payment rates for the Waiver Program. This section should include information on how rates are developed, how often they are reviewed, and how providers can appeal rates. It should also include information on how rates are used to determine provider participation and how providers are compensated for services provided.

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