#14-540 - (102)

Kroh, Karen #3160

From: Mochon, Julie
Sent: Monday, December 19, 2016 8:37 AM
To: Kroh, Karen
Subject: Fw: COMHAR's Response to Draft Regulations #14-540
Attachments: 1947_001.pdf

From: JOE KISSLING <jkissling@comhar.org>
Sent: Monday, December 19, 2016 7:55 AM
To: Mochon, Julie
Subject: COMHAR's Response to Draft Regulations #14-540

Attached please find COMHAR's response to proposed regulations #14-540.

Joseph Kissling
COMHAR
IDD Division Director
3825 Whitaker Ave
Phila. Pa. 19124-4233
Phone-215.425.9212 ext.238
Fax-215.425.5720

COMHAR INC

DEVELOPMENTAL/INTELLECTUAL DISABILITIES DIVISION
Vanderwoude Center / 3825 Whitaker Avenue / Philadelphia, PA 19124-4233
Phone: 215.425.9212 Fax: 215.425.5720

December 16, 2016

Re: Regulation No.14-540

Julie Mochon
Human Service Program Specialist Supervisor
Office of Developmental Programs,
Health and Welfare Building, Room 502
625 Forster Street
Harrisburg, Pa. 17120

Dear Ms. Mochon:

Attached is COMHAR's response to the proposed regulations for Chapter 6100 and the revisions to Chapters 2380, 2390 and 6400. We appreciate the opportunity to respond to the proposed regulations as a community service provider delivering services and supports affected by the regulations.

Should you require additional explanation on COMHAR's comments, I can be reached at: 215.425.9212 extension 238 or via email at jkissling@comhar.org

Respectfully submitted,

Joseph Kissling
Intellectual Disabilities Division Director

COMHAR

2380

2380.17 (a) Category listing of what needs to be reported is different from 6000 regs:
Individual to Individual Abuse is missing
Exploitation is new
Med errors no longer reportable? No longer any 72 hour reportables?
Critical Health event that requires immediate intervention is not listed here but is listed in 6100.401 (17) and is new category
Does Individual to Individual Abuse now fall under the abuse category and if so does that mean each one will require a mandatory investigation.
For emergency closure, is closure for weather conditions now reportable if only for one day?
Does restraint move from a 72 hour reportable to a 24 hour reportable?
(f) Does not specify which of the reportable incidents needs to be investigated so do all listed incidents require investigations?
(g)) Does not specify which of the reportable incidents needs to be investigated so do all listed incidents require investigation by department certified investigator? Would be cost prohibitive.
(h) No exceptions for 30 day finalization of incident if requesting extension due to witness availability, extended hospitalization, etc.
Notified immediately – persons designated by individual. What are HIPAA requirements to document when protected health information is shared? What type of timeframe is immediately? Within 24-48 hours?

2380.18 Process for training certified investigators to regarding how to communicate PSP changes needed within their investigation?

2380.19 Assessing the likelihood of an incident recurring seems to be an ephemeral criterion based on what?
How will a provider quantify this (more likely than less, less likely than more.....)
It implies all incidents have an identifiable root cause.
Is this risk mitigation for each individual for each individual medication, medical diagnosis, psychiatric diagnosis and degree of social need specific to each incident?
What does analyzing incident data continuously mean?
Is this part of the quarterly analysis or is this above and beyond that?
Guaranteeing the prevention of incidents should not be considered risk mitigation.
How can a provider guarantee that they will prevent any type of incident from occurring?

2380.36 Emergency training
(b) No mention of annual training by staff trained by fire safety expert if film is shown for those staff that miss actual fire safety training by expert. This was in previous regs in explanation. Should be stipulated in regulation as it would be time and cost prohibitive to have fire safety expert repeating presentation for staff not present during annual training

2380.37 Annual training plan
(c)Define what core competencies are. Are they considered pre-existing mandatory trainings?

2380.38 Are these training requirements applicable only to staff who work ALONE with individuals? If they will never work alone with individuals are these training requirements still in place?

What would encompass "job-related knowledge and skills"? Is this training beyond the scope of already indicated trainings and "core competencies"?

2380.39 (b) (l) are these listed positions for staff that work at the facility only? Not from headquarters? (c),(c) (1) Please explain necessity for maintenance , housekeepers, and fiscal staff to have 8 hours of training specific to facilitating community integration and supporting individuals in maintaining relationships

2380.121 (c) provide or arrange for assistive technology to support self-administration of meds? Please explain

2380.122 (c) (3) crush or split the medication as ordered by the prescriber (comment: suggest "prepare medication as ordered by prescriber if needed")

2380.123 What does easily accessible to epinephrine entail? Logistically close by in its original container but still locked or does stored safely imply something else?

2380.125 (a) do electronic prescriptions count as "prescribed in writing"?

2380.125 (e) verbal orders can be accepted by an LPN in accordance with regulations of the Department of State. This regulation limits acceptance of oral orders to registered nurses. Will have fiscal impact as written

2380.153 (6) difficult to understand – can physical protective restraint be used?

2380.156 Rights team – Is there a separate rights team for each individual who may be restrained or had a violation of individual rights? It would appear so as written since the individual is a member of the team.
Is the Rights Team specific to only reviewing: alleged and suspected incidents of violations of individual rights and use of restraint? If so why the requirement to meet every 3 months if there isn't anything to meet about? Once an applicable incident occurs at what point would you stop meeting if another applicable incident hasn't occurred? How does one report its recommendation to a PSP? Is there a separate rights team for each client since the client is a member of the rights team? HIPAA would have a problem with multiple clients sharing potentially protected information while on the same team.

2380.173 full social security number? Given security breaches and identity theft did we consider using last 4 digits of SS as is done in ISP? With PSP's moving to X'ing out full Social Security numbers why make a full Social Security number mandatory for the provider to include in the record? MCI# is individual's identifier for service delivery and billing.

2380.182(a) With regards to an individual shall have one approved and authorized PSP at a given time, there will be some lag time with new admissions and the provider running goals to meet licensure guidelines that have yet to be approved and authorized in the PSP thus necessitating a second plan to comply with licensing regulations.

2380.183(2) How does the provider address the individual designating someone who does not want to be involved in the development and revision of the PSP?

2390

2390.18.12 Category listing of what needs to be reported is different from 6000 regs:

Exploitation is new
Critical Health event that requires immediate intervention is not listed here but is listed in 6100.401 (17) and is new category
Med errors no longer reportable? No longer any 72 hour reportables?

2390.18(5) Does Individual to Individual Abuse now fall under the abuse category and if so does that mean each one will require a mandatory investigation.

2390.18(12) For emergency closure, is closure for weather conditions now reportable if only for one day?

2390.18(13) Does restraint move from a 72 hour reportable to a 24 hour reportable?

2390.18.15 (b) Notified immediately – persons designated by individual. What are HIPAA requirements to document when protected health information is shared? What type of timeframe is immediately? Within 24-48 hours?

2390.19 Assessing the likelihood of an incident recurring seems to be an ephemeral criterion based on what?
How will a provider quantify this (more likely than less, less likely than more.....)
It implies all incidents have an identifiable root cause.
Is this risk mitigation for each individual for each individual medication, medical diagnosis, psychiatric diagnosis and degree of social need specific to each incident?
What does analyzing incident data continuously mean?
Is this part of the quarterly analysis or is this above and beyond that?
Guaranteeing the prevention of incidents should not be considered risk mitigation.
How can a provider guarantee that they will prevent any type of incident from occurring?

2390.40 Annual training plan
(c)Define what core competencies are. Are they considered pre-existing mandatory trainings?

2390.48 Orientation Program
(a)(1), (a)(2)Are these listed positions for staff that work at the facility only? Not from headquarters?
Are these training requirements applicable only to staff who work <u>ALONE</u> with individuals? If they will never work alone with individuals are these training requirements still in place?
(b)(1)) Please explain necessity for maintenance , housekeepers, fiscal staff to have 8 hours of training specific to facilitating community integration and supporting individuals in maintaining relationships.
What would encompass "job-related knowledge and skills"? Is this training beyond the scope of already indicated trainings and "core competencies"?

2390.49 (b)(1), (b)(2) 12 hours training identified in annual training hours Please explain necessity for maintenance , housekeepers, fiscal staff to have 8 hours of training specific to facilitating community integration and supporting individuals in maintaining relationships.

2390.124 (l) full social security number? Given security breaches and identity theft did we consider using last 4 digits of SS as is done in ISP? With PSP's moving to X'ing out full Social Security numbers

why make a full Social Security number mandatory for the provider to include in the record? MCI# is individual's identifier for service delivery and billing.
(10)Incident reports related to the client- Since repository for HCSIS/EIM incidents is contained in the Department's reporting system, is there a need for them to be in client records too?

2390.152(a) With regards to an individual shall have one approved and authorized PSP at a given time, there will be some lag time with new admissions and the provider running goals to meet licensure guidelines that have yet to be approved and authorized in the PSP thus necessitating a second plan to comply with licensing regulations.

2390.152(e) How does the provider address the individual designating someone who does not want to be involved in the development and revision of the PSP

2390.153 (a) Does the PSP need to be developed in a team meeting? Or can members of the PSP team submit their portions to the SC so long as 153 (b) is satisfied? To clarify, does being part of the development of the PSP process necessitate mandatory participation in the PSP meeting?

2390.175 (b) does not encourage client responsibility and protects from natural consequences

2390.176 Is the Rights Team specific to only reviewing: alleged and suspected incidents of violations of individual rights and use of restraint? If so why the requirement to meet every 3 months if there isn't anything to meet about? Once an applicable incident occurs at what point would you stop meeting if another applicable incident hasn't occurred? How does one report its recommendation to a PSP? Is there a separate rights team for each client since the client is a member of the rights team? HIPAA would have a problem with multiple clients sharing potentially protected information while on the same team.

2390.193 What does easily accessible to epinephrine entail? Logistically close by in its original container but still locked or does stored safely imply something else?

6400

6400.44 (c) 1, 2, 3 – working directly with individuals with "intellectual disability" – suggest same language as 2380/2390 "working directly with persons with disabilities" or "working with disabled persons" eliminate "intellectual". Pool of applicants is small enough without specifying the disability

6400.46 Emergency training
(b) No mention of annual training by staff trained by fire safety expert if film is shown for those staff that miss actual fire safety training by expert. This was in previous regs in explanation. Should be stipulated in regulation as it would be time and cost prohibitive to have fire safety expert repeating presentation for staff not present during annual training

6400.50 Annual training plan
(a) Will each individual home need an annual training plan?

6400.51 Are these listed positions for staff that work at the facility only? Not from headquarters?

6400.51 (b) (2) - applicable acts for individuals served. i.e. – if not serving children would there be need to be oriented to Child Protective Services Law?

6400.52 (c),(c) (1), (c)(2) Please explain necessity for maintenance , housekeepers, fiscal staff to have 8 hours of training specific to facilitating community integration and supporting individuals in maintaining relationships

6400.165 (e) verbal orders can be accepted by an LPN in accordance with regulations of the Department of State. This regulation as written limits acceptance of oral orders to registered nurses. Will have fiscal impact as written.

6100

6100.43 Regulatory waiver
(a)(3) No waiver for sections 6100, i83 (h) "an individual has the rights to access food at any time". Serving individuals with Prader Willi would require a waiver to protect the health and safety of individuals with this condition. There are probably other examples but this one is specific to our agency.

6100.45 Quality Management (QM Plan)
Excessively burdensome to review desired outcomes of the PSP's for 200 individuals, staff and family satisfaction surveys – will require additional position to manage.

6100.48 Define who "persons who provide reimbursed support" as it applies to full time and part time staff persons "in any staff position"

6100.49 Does this apply only to providers with staff serving participants under age 18?

6100.51 Define "grievance"
(g)(7) What if grievance cannot be resolved? Define "resolved"

6100.52 Rights Team
Will each individual have a rights team? Wording would indicate this is so since the individual is a member of the rights team. If team members are invited but cannot attend can the meeting go forward?

6100.142 Orientation Program – not sure why fiscal staff, housekeeping and maintenance should be involved in learning about facilitating community integrations, supporting individuals in maintaining relationships.

6100.143 Annual Training – same comment as above – not sure why fiscal staff, housekeeping and maintenance should be involved in learning about facilitating community integrations, supporting individuals in maintaining relationships.

6100.183 Additional rights of the individual in a residential facility
(h) Medical conditions such as Prader Willi require medically prescribed diets. This requirement if further complicated since it is identified as a right that cannot be waivered (6100 .43 (a) (3).
No mention of supporting individuals to vote if they so choose.

6100.223 Content of the PSP
(11) Need to put into context of day program/supports
(12) Learning history? Please define
(17) In what context? From what is existing in the PSP or in general?

6100.226 Employment
Does (a) (c) (d) comments apply to all HCBS or just day program and prevocational?

6100.307 Transfer of Records
Specify what needs to be included and how far back. Individual records can be voluminous.

6100.345 This section does not encourage responsibility for an individual's actions or natural consequences resulting from an individual's actions

6100.402 Incident investigations
(c) Would indicate investigations of all categories of incidents

6100.404 Final Incident Report
(a) Does not allow for extensions of 30 day closure timeframe

6100.405 (a)(1)Is the root cause analysis in addition to investigation of each confirmed incident or is it to be a part of the investigation? Will require additional staff resource.

6100.442 Physical accessibility
Provider is responsible for individual's WC?

6100.443 Access to the bedroom and the home
What assistive technology is there to allow individuals to open & lock the door without assistance? This regulation will be **impossible** to comply with given the functioning levels both cognitively and physically

6100.445 Please elaborate. How will this be measured and compliance determined?

6100.446 Facility Characteristics relating to size of facility
(c) Suggest program capacity of 30 to maximize program specialist efficiencies

6100.447 Facility characteristics relating to location of facility
(a) Define "in close proximity"
(b) Define "townhouse development". In Philadelphia we use the term row home. And developments are neighborhoods.

(c) Define process to obtain Department's written approval for existing residential or day facilities

6100.462 Medication Administration
(c) (3) suggest "prepare medication as prescribed"

6100.465 Prescription Medications
(E)) verbal orders can be accepted by an LPN in accordance with regulations of the Department of State. This regulation limits acceptance of oral orders to registered nurses. Will have fiscal impact as written. Include LPN's as able to accept oral orders for medication changes.

6100.487 Loss or damage to property
Provider is responsible for replacing lost or damaged property but provider cannot hold other individuals culpable when they damaged or destroyed another's property. (6100.345).