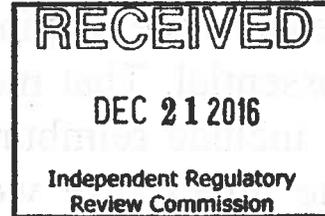


3160

#14-540-143

Kroh, Karen

From: Mochon, Julie
Sent: Tuesday, December 20, 2016 8:38 AM
To: Kroh, Karen
Subject: FW: Comments on Proposed 6100 Regulations
Attachments: 6100 Regulations Comments Final.docx; 6100 Comments Transmittal Ltr.pdf; 6100 Comments Transmittal Ltr.pdf



From: Dave Wyher [mailto:dwyher@deltaweb.org]
Sent: Monday, December 19, 2016 2:35 PM
To: Mochon, Julie
Cc: PAR
Subject: Comments on Proposed 6100 Regulations

Julie Mochon, Human Service Program Specialist Supervisor

Office of Developmental Programs, Room 502

Health and Welfare Building

625 Forster Street

Harrisburg, PA 17120

jmochon@pa.gov

Dear Ms. Mochon:

Delta Community Supports is a multi-state, multi-service provider for people with intellectual disabilities and autism, and for children and youth. On behalf of the several hundred people we serve we are pleased to have this opportunity to review and comment on the proposed 6100 Regulations recently published in the Pennsylvania Bulletin.

Delta is an organization that was incorporated to serve individuals who were residing in Pennhurst Center. For 40 years we have strongly advocated for people with intellectual disabilities and autism to be supported in a manner that will enable each one to achieve and enjoy a life in the community, a life that offers the same risks and rewards that others

enjoy. The responsibility of the Commonwealth service system is to maintain a service environment that will enable that goal to be realized. We have reviewed the proposed 6100 Regulations with a view to improving the sustainability and efficiency of the services and avoiding the creation of rules that would work against the achievement of everyday lives for the people we serve.

A fair and responsible method of reimbursing the costs of delivering these services is essential. That method must consider the realities of the labor market, and include reimbursements at a level that will support a living wage for the direct care workers, without whom we have no hope of achieving any of these objectives. The proposed regulations must be specific and transparent on how that will be accomplished.

We look forward to the review of our comments, and having an opportunity to enter into whatever additional discussion may be afforded prior to their finalization.

Sincerely,

David A. Wyher

President/CEO

Cc: Shirley Walker, PAR

Attachment: Proposed 6100 Regulations Comments

David A. Wyher
President/CEO

Direct: 215-654-1000 ext. 125

Gwynedd Hall Suite 400
1777 Sentry Parkway West
Blue Bell, PA 19422

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COMMUNITY SUPPORTS

Creating Richer Lives From Within



December 19, 2016

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

jmochon@pa.gov

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Sincerely,

A handwritten signature in black ink, appearing to read "David A. Wyher".

David A. Wyher
President/CEO

Cc: Shirley Walker, PAR

Attachment: Proposed 6100 Regulations Comments

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Comments on the Proposed 6100 Regulations

- **6100.44** Information about funded innovation projects should be reported to the public on a regular, consistent basis to promote transparency. It should not be discretionary.
- **6100.45** Revision is recommended to bring the proposed section on quality management up to current best practice and to be consistent with recent licensing review experience.
- **6100.463(b)** Our understanding is that that “inconclusive” is not an option for an outcome of an investigation. It is either founded or unfounded. We agree that appropriate protective corrective action measures need to be implemented immediately. Staff training as recommended as a result of the investigation should occur in a reasonable amount of time. It is not always possible to complete the staff training prior to their return to work. We support consideration for staff currently under investigation to be able to work separated from the target and or other individuals or under supervision at all times. This should only be considered at times when target is working with individuals who are known to make false allegations.

We recommend that the department develop a central registry for confirmed serious abuse and neglect offenders.

- **6100.50** This section lacks clarity for who will cover the cost of an interpreter and who will be responsible for providing the assistive technology when costs are not covered by an individual’s insurance. This section must more clearly define the terms of the requirements.
- **6100.52** This entire section is not needed because it is covered in the Incident Management Section. In addition to incident management requirements, providers are required to review and analyze all incidents at least every three months. The rights team process would be redundant.
- **6100.54** This is redundant of HIPAA standards.
- **6100.81** This section needs to be clearer, listing the applications, agreements verifications, and supporting documentation required for admission as an enrolled provider. A timely review by the Department should be required.
- **6100.141** The proposed regulation should require a deliberate plan be developed based on the support needs and circumstances unique to the individual. The individuals who need to be trained should be determined by the PCP team taking those things into account. Interns and volunteers should be required to receive the additional training (beyond the basic orientation training all receive) only when indicated by specific assigned responsibilities.
- **6100.142** All persons working with or interacting regularly with service recipients should be required to receive orientation training that incorporates application of person-centered

practices such as including respecting rights, facilitating community integration, honoring choice and supporting individuals in maintaining within the first 30 days of employment. Including volunteers and management staff is problematic because of the additional costs. Rates must reflect the costs associated with training additional staff.

- **6100.181(e)** What is the process for individuals to designate a person to assist with decision making? We suggest this person be identified in the PSP.
- **6100.182** We suggest that the rights be stated as all those conferred by law, and not enumerated in part.
- **6100.184** It should also be indicated that an individual's rights include risk-taking so long as it does not involve interfering with the rights or safety of other recipients of services.
- **6100.183** Exercising rights may have a negative impact on the individual's wellbeing and safety. For example, an individual with Prader-Willi with unrestricted access to food; individuals having access to telecommunications and who are known to access illegal sites, order excessive items on line or have committed identity theft. We recommend that wording be included that allows for restrictions in consideration of behavior support plans and/or safety protocols.
- **6100.186** The PSP team should be involved in the decision process. It should deliberate on the advisability of the individual's choices with consideration of prudent judgment, the individual's health and safety, and the potential consequences.
- **6100.223** The text may lead to confusion and requires greater clarity.
- **6100.261** The Commonwealth must provide adequate funding to support these initiatives in order to secure successful inclusion in the life of the community. As a provider we have worked for years in this endeavor, but we are severely limited by the lack of resources to effect complete access to the community. The regulations should affirm the Department's responsibility to enable this principle.
- **6100.301-307** The accuracy and thoroughness of referral information received when an individual is referred to a service must be the underpinning of this section, and should be affirmed. Provider capacity and sufficient reimbursement often cause a delay of up to 1 year after the provider has given the required 30 day notice. This can cause an undue burden on a provider and delay the change needed by the individual.
- **6100.303** Added language should be included to account for circumstances when the changing needs of the individual would require the provider to initiate new services, or provide care beyond what it is presently licensed to offer. We recommend an expedited process with added funding for a transition period be included.
- **6100.305** The provider must have recourse if the needs of the individual would require additional financial support to reasonably protect the health and safety of the individual, or others in care, during a period of notice. Added PCP requirements during a period of notice must be given reasonable consideration and funded.
- **6100.341** We agree with PAR's recommendation to move this information to the definition section.
- **6100.342** We recommend that this section be included in the section dealing with the Content of the PSP.

- **6100.343** A physical restraint must not be allowed as a substitute for positive interventions, until less intrusive means have failed, and never for the convenience of staff.
- **6100.345** A person should be afforded the same rights and responsibilities as others. The natural consequences of some actions may call for restitution. It should be the decision of the support teams of the respective individuals as to whether restitution of some sort is expected.
- **6100.404** We suggest the addition of a provision for an extension for investigations if warranted by circumstances.
- **6100.443** The Community Rule is specific as to the requirements for access to an individual's bedroom, and the wording should be the same as the published rule so as to support consistency in interpreting the rule. The Rule creates potential risks as access to a bedroom may be restricted during a bone fide emergency that may compromise the health or safety of the individual.
- **6100.444** The room and board agreement should be used in place of a lease.
- **6100.447** The CMS final rule should be the standard for locating a facility.
- **6100.461** Medication Administration practice is already designed in an approved statewide certification program. It is redundant and conflicting to outline practices in this regulation. Continuing to utilize an external training module allows for easier process to update best practices as need to accommodate for future technology. An on line medication administration training has already been designed by ODP for Lifesharing and we recommend that be accepted as training for Lifesharing providers.
- **6100.481** The regulations should indicate a specific intent and not list a possible universe of options. It is the responsibility of the Department to be transparent and objective in setting rates to support the provision of these services.
- **6100.482** The regulations must be adopted in accordance with the Commonwealth process and not amended by reference to Waiver Amendments.
- **6100.485** The Commonwealth should identify one standard of auditing and not expect Providers to comply with a variety of potentially conflicting standards. GAAP standards are the expected principles and should be sufficient to satisfy Federal and Commonwealth requirements.
- **6100.487** The Provider cannot be expected to maintain an inventory of an individual's personal property. In keeping with the principles of Everyday Lives, personal property should be assumed to be under the control of the individual, and their responsibility. Liability for damages should be assessed in accordance with what would happen for anyone in the community. Further, Providers cannot be liable for all circumstances of potential loss or destruction of property by means outside the Provider's control, supervision, or in the event of uninsurable scenarios.
- **6100.571** Allowable cost factors must be predictable and consistently applied. The rates must be based on those cost factors and adjusted for actual variations each year. This paragraph appears to create discretion and variability in applying rate setting factors, leaving the provider without a clearly stated process for rate setting. Additionally, there is no mechanism identified

for objective recognition of increasing costs. The Medicare Home Health Market Basket Index should be inserted as a factor in the rate setting process.

- **6100.641** Will cost-based rates continue to be the Department's method for residential reimbursement? If not, this section is superfluous. If so, the rates must reflect changes in actual costs, and/or be modified by the Medicare Home Health Market Basket Index at least annually.
- **6100.646** Vacancy factor as a cost modifier should be replaced with a calculation of actual cost divided by units of service billed.
- **6100.648** Donations should not be used to offset costs for services and should not impact rate calculations due to their uncertainty. Adjusting rates for donations will cause further disruption to the provider level of the effect of a donation will lower the rates and if not repeated will cause a delay in replacing the lost revenue.
- **6100.661(h)** Fixed assets owned by the Provider should not be considered the property of the Department when sold. These assets are purchased with ineligible revenues.
- **6100.661(i.3-6)** An annual physical inventory of assets not paid for by the Department should be at the discretion of the provider.
- **6100.663** Fixed Assets by definition do not include real estate. The concept of funded equity should be stricken from the regulations. Deposits should be recouped only if the asset is not used in service of the Commonwealth for a suitable period of time.
- **6100.644** The vacancy factor should be eliminated in favor of a rate calculated by dividing actual allowable costs by the billed units of service.
- **6100.665** Section (2)(d) is covered in the OMB Circulars and is therefore unnecessary.
- **6100.669** It is reasonable for legal fees to be allowable and divided equally between the Provider and the Commonwealth if an appeal action results in an amicable settlement prior to a concluded hearing process.
- **6100.686** Proration of board costs should not occur until after a period of two weeks on leave from the residence to limit the proliferation of administrative work generated by the shorter period.
- **6100.741** The terminology used reflects the expectation of non-conformance with the regulations. It should be changed to more relevant terminology aimed at compliance.
- **6100.743** The Department should be expected to act consistently and reasonably at all times in administering remedies for any regulatory violation. Discretion should be limited to what is permitted by regulation.

Kroh, Karen

From: Mochon, Julie
Sent: Tuesday, December 20, 2016 8:34 AM
To: Kroh, Karen
Subject: FW: 6100 comments
Attachments: 6100 cover letter 12-19-16.doc; Linda 6100 comments.xlsx.docx

From: Linda London [<mailto:llondon@yourgoodwill.org>]
Sent: Monday, December 19, 2016 11:38 AM
To: Mochon, Julie
Subject: 6100 comments

Ms. Mochon:

Attached please find a cover letter and comments related to the 6100 regulation review by the IRRC. I understand that the deadline for comments is today. Please feel free to contact me should you have any questions.

**Linda London, MCP
MH/ID Compliance Monitor**

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