Kroh, Karen #3160 #14-540 — #175

From: Mochon, Julie
Sent: Tuesday, December 20, 2016 12:20 PM
To: Kroh, Karen
Subject: FW: Comments for Chapter 6400
Attachments: 2016.1212 DRAFT 6400- Magge R comments 12-16-2016.docx

From: Maggie Rothenberger [mailto:MRothenberger@KenCrest.org]
Sent: Tuesday, December 20, 2016 11:48 AM
To: Mochon, Julie <jmochon@pa.gov>
Cc: Pam Schuessler <Pschuessler@KenCrest.org>; Loyce Brown <loyce.brown@KenCrest.org>; Maggie Rothenberger <MRothenberger@KenCrest.org>
Subject: Comments for Chapter 6400

Julie,
Attached are my comments on the Chapter 6400 draft. Please let me know if you need anything else.

Maggie Rothenberger
Director, Residential Services
Pennsylvania

960 A Harvest Drive
Blue Bell, Pa. 19422
mrothenberger@kencrest.org
Office: 610-825-9360 x2401

RECEIVED
DEC 27 2016
Independent Regulatory Review Commission

RECEIVED
DEC 13 2010
Iowa Utilities Board
Iowa Workforce Development

Duplicate

Kroh, Karen

From: Mochon, Julie
Sent: Tuesday, December 20, 2016 12:20 PM
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Subject: FW: 2016.1212 DRAFT 6400- Magge R comments 12-16-2016
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From: Maggie Rothenberger [mailto:MRothenberger@KenCrest.org]
Sent: Tuesday, December 20, 2016 12:02 PM
To: Mochon, Julie <jmochon@pa.gov>
Cc: Pam Schuessler <Pschuessler@KenCrest.org>; Loyce Brown <loyce.brown@KenCrest.org>
Subject: 2016.1212 DRAFT 6400- Magge R comments 12-16-2016

Julie,
I added a header as I am commenting on behalf of KenCrest.

Maggie R-CHAPTER 6400. COMMUNITY HOMES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR AUTISM

GENERAL PROVISIONS

§ 6400.1. Introduction.

Discussion 6400.1.

This chapter is based on the principle of integration and the right of the individual with an intellectual disability **or autism** to live a life which is as close as possible in all aspects to the life which any member of the community might choose. For the individual with an intellectual disability **or autism** who requires a residential service, the design of the service shall be made with the individual's unique needs in mind so that the service will facilitate the person's ongoing growth and development.

§ 6400.2. Purpose.

Discussion 6400.2.

The purpose of this chapter is to protect the health, safety and well-being of individuals with an intellectual disability **or autism**, through the formulation, implementation and enforcement of minimum requirements for the operation of community homes for individuals with an intellectual disability **or autism**.

§ 6400.3. Applicability.

Discussion 6400.3.

(a) This chapter applies to community homes for individuals with an intellectual disability **or autism**, except as provided in subsection (f).

(b) This chapter contains the minimum requirements that shall be met to obtain a certificate of compliance. A certificate of compliance shall be obtained prior to operation of a community home for individuals with an intellectual disability **or autism**.

(c) This chapter applies to profit, nonprofit, publicly funded and privately funded homes.

(d) Each home serving nine or more individuals shall be inspected by the Department each year and shall have an individual certificate of compliance specific for each building.

(e) Each agency operating one or more homes serving eight or fewer individuals shall have at least a sample of its homes inspected by the Department each year. The certificate of compliance issued to an agency shall specify the location and maximum capacity of each home the agency is permitted to operate.

(f) This chapter does not apply to the following:

(1) Private homes of persons providing care to a relative with an intellectual disability **or autism**.

(2) Residential facilities operated by the Department.

(3) Intermediate care facilities for individuals with an intellectual disability licensed by the Department in accordance with Chapter 6600 (relating to intermediate care facilities for individuals with an intellectual disability) **or intermediate care facilities for individuals with other related conditions**.

(4) Foster family care homes licensed by the Office of Children, Youth and Families of the Department that serve only foster care children.

(5) Summer camps.

(6) Facilities serving exclusively personal care home, drug and alcohol, mental health or domiciliary care residents.

(7) Residential homes for three or fewer people with an intellectual disability **or autism** who are 18 years of age or older and who need a yearly average of 30 hours or less direct staff contact per week per home.

(8) Child residential facilities which serve exclusively children, which are regulated under Chapter 3800 (relating to child residential and day treatment facilities).

9

Comment [MR1]: Lifesharing sites unlicensed or licensed under the Chapter 6500.

(g) This chapter does not measure or assure compliance with other applicable Federal, State and local statutes, regulations, codes and ordinances. It is the responsibility of the home to comply with other applicable laws, regulations, codes and ordinances.

§ 6400.4. Definitions.

Discussion 6400.4.

All definitions for these regulations should be included in Chapter 6400., and the definitions

should be the same across Chapter 6100 and all licensing regulations. Definitions should be consistent and clear with the intent to facilitate communication and understanding. Deleting definitions from the program regulations and including them within Chapter 6100 and the licensing regulations promotes clarity, consistency, and reduces administrative burden across applicable services and programs.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Adult—A person 18 years of age or older.

Adult Autism Waiver - An HCBS Federal waiver program approved under section 1915(c) of the Social Security Act (42 U.S.C.A. § 1396n(c)) and designed to provide community-based supports to meet the specific needs of adults with autism spectrum disorders

Agency—A person or legally constituted organization operating one or more community homes for people with an intellectual disability **or autism** serving eight or fewer individuals.

Aversive Conditioning - The application of startling, painful or noxious stimuli in response to the exhibition of behavior in an effort to modify the behavior.

~~*Autism*—**A developmental disorder defined by the edition of the *Diagnostic and Statistical Manual of Mental Disorders*, or its successor, in effect at the time the diagnosis is made. The term includes autistic disorder, Asperger's disorder and autism spectrum disorder.**~~

Autism spectrum disorder (ASD) - A developmental disorder defined and diagnosed in accordance with criteria established in the Diagnostic and Statistical Manual latest edition in effect at time of diagnosis.

Base-funded services: A service funded exclusively by a grant to a county under the Mental Health and Intellectual Disability Act of 1966 or Article XIV-B of the Human Services Code.

Based-funded support coordination - A program designed to provide community-based support to locate, coordinate and monitor needed support for individuals who receive support through base-funding.

Chemical restraint - Use of drugs or chemicals for the specific and exclusive purpose of controlling acute or episodic aggressive behavior. A chemical restraint does not include a drug prescribed by a health care practitioner or dentist to treat the symptoms of a specific mental, emotional or behavioral condition, or as treatment prior to or following a medical or dental examination or treatment.

*Community home for individuals with an intellectual disability **or autism** (home)*—A building or separate dwelling unit in which residential care is provided to one or more individuals with an intellectual disability **or autism**, except as provided in § 6400.3(f) (relating to applicability).

Each apartment unit within an apartment building is considered a separate home. Each part of a duplex, if there is physical separation between the living areas, is considered a separate home.

~~[*Content discrepancy*—A difference between what was determined at the ISP meeting by the plan team and what is documented in the written ISP.]~~

Corrective action plan - a document prepared by a provider following a written determination by the Department of non-compliance with a provision(s) of this Chapter. The plan establishes timelines, person(s) responsible for the implementation and monitoring of corrective action steps.

Dangerous behavior – A decision, behavior or action by an individual that creates or is highly likely to result in harm or to place the individual and/or other persons at risk of harm.

Department—The Department of Human Services of the Commonwealth.

Direct ~~service~~ support ~~worker~~ professional—A person whose ~~primary~~ principal job function is to provide services to an individual who attends the provider's facility.

~~[*Documentation*—Written statements that accurately record details, substantiate a claim or provide evidence of an event.]~~

Emergency Closure – An event that is unplanned for any reason that results in program closure two days or more.

Family—the person or people who are related to or determined by the individual as family.

Fire safety expert—A local fire department, fire protection engineer, State certified fire protection instructor, college instructor in fire science, county or State fire school, volunteer fire person trained by a county or State fire school or an insurance company loss control representative.

HCBS—Home and community-based support—An activity, service, assistance or product provided to an individual that is funded through a Federally-approved waiver program or the Medical Assistance State Plan.

[*ISP—Individual Support Plan*—The comprehensive document that identifies services and expected outcomes for an individual.]

~~*Incident*—A situation or occurrence that has a high likelihood of a negative impact on an individual.~~

Comment [MR2]: Any situation, interaction, event, or series of events that is harmful or *potentially* harmful to an individual receiving service, employees, or property is an "incident".

Individual—An ~~individual~~ adult or child who received a home and community-based intellectual disability or autism support or base-funded services. ~~with an intellectual disability or autism who resides, or receives residential respite care, in a home and who is not a relative of the owner of the home.~~

~~*Intellectual disability* - Subaverage general intellectual functioning which originates during the developmental period and is associated with impairment of one or more of the following:~~

~~(i) Maturation.~~

~~(ii) Learning.~~

~~(iii) Social adjustment.~~

Mechanical restraint - a device that restricts the movement or function of an individual or portion of an individual's body in response to the individual's behavior. Mechanical restraints include a geriatric chair (unless prescribed in the individual's PSP), handcuffs, anklets, wristlets, helmet with fasteners, muffs and mitts with fasteners, restraint vest, waist strap, head strap, papoose board, restraining sheet, chest restraint and other locked restraints:

(i) A mechanical restraint does not include a device prescribed by a health care practitioner that is used to provide pre/post-surgical/medical care, proper balance or support for the achievement of functional body position.

(ii) A mechanical restraint does not include a device prescribed by a health care practitioner to protect the individual in the event of a seizure or other non-voluntary movements or physical conditions that limit motor control and create the potential for injury.

Natural support—An activity or assistance that is provided by family, friends, or other community members without expectation of payment

Non-conformity - Failure to conform to or meet the expectations outlined within this chapter.

[*~~Outcomes~~* ~~- Goals the individual and individual's plan team choose for the individual to acquire, maintain or improve.~~

~~*Plan lead* - The program specialist, when the individual is not receiving services through an SCO.~~

~~*Plan team* - The group that develops the ISP.~~]

***PSP*—Person-centered support plan**: The comprehensive plan for each individual that is developed using a person-centered process and includes HCBS, risks and mitigation of risks, and individual outcomes for a participant.

Physical restraint - A physical (manual) hands-on technique that lasts longer than 30 consecutive seconds and restricts, immobilizes, or reduces an individual's ability to move his/her arms, legs, head, or other body parts freely.

Positive interventions - actions or activities intended to prevent, modify, decrease or eliminate challenging behaviors. These interventions or positive behavior supports include, but are not

limited to: environmental adaptations or modifications, identifying and addressing physical and behavioral health symptoms, voluntary physical exercise, health and wellness practices, redirection, praise, modeling, conflict resolution, trauma informed care, de-escalation, and reinforcing desired behavior (contingent and non-contingent rewards).

Pressure point techniques - The application of pain for the purpose of achieving compliance. This technique does not include approved physical intervention techniques in response to aggressive behavior, such as bite release.

Provider—~~An entity or person that enters into an agreement with the Department to deliver a service to an individual.~~ The person, entity or organization that is authorized to deliver services under the Medical Assistance Program.

Record

Comment [MR3]: Documentation electronically or in another format such as paper.

Relative—A parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, half brother, half sister, aunt, uncle, niece or nephew.

***Restraint*—A physical, chemical or mechanical intervention used to control acute, episodic behavior that restricts the movement or function of the individual or a portion of the individual's body, including an intervention approved as part of the PSP or used on an emergency basis.**

SC—Supports coordinator—An SCO employee whose primary job functions are to locate, coordinate and monitor services provided to an individual when the individual is receiving services from an SCO.

Comment [MR4]: Supports Coordination Office

SCO—Supports coordination organization—A provider that delivers the services of locating, coordinating and monitoring services provided to an individual.

Seclusion - Involuntary confinement of an individual in a room or area from which the individual is physically prevented from leaving.

~~*Services*—Actions or assistance provided to the individual to support the achievement of an outcome.~~

State plan—The Commonwealth's approved Title XIX State Plan.

Support—An activity, service, assistance or product provided to an individual that is provided through a Federally-approved waiver program, the State plan or base-funding. A support includes an HCBS, support coordination, TSM, agency with choice, organized health care delivery system, vendor goods and services, and base-funding support, unless specifically exempted in this chapter.

Support coordination - an HCBS Federal waiver program under section 1915(c) of the Social Security Act (42 U.S.C.A. § 1396n(c)) designed to provide community-based support to locate, coordinate and monitor needed HCBS and other support

Vendor - A directly-enrolled provider that sells goods or services to the general public, as well as to an HCBS program.

Voluntary Exclusion - An individual voluntarily or willingly removing himself/herself from his/her immediate environment and placing himself/herself alone to a room or area.

Volunteer - A person who works without compensation and under the supervision of an authorized provider or family member alone with an individual in the performance of a service

GENERAL REQUIREMENTS

§ 6400.15. Self-assessment of homes.

Discussion 6400.15.

(a) The agency shall complete a self-assessment of each home the agency operates serving eight or fewer individuals, within 3 to 6 months prior to the expiration date of the agency's certificate of compliance, to measure and record compliance with this chapter.

(b) The agency shall use the Department's licensing inspection instrument for the community homes for individuals with an intellectual disability **or autism** regulations to measure and record compliance.

(c) A copy of the agency's self-assessment results and a written summary of corrections made shall be kept by the agency for at least 1 year.

§ 6400.18. [~~Reporting of unusual incidents.~~] Incident report and investigation.

Discussion 6400.18.

I support the wording of subsection (a)(8) found in Chapter 6100 and recommend that it be used uniformly across the licensing chapters, including this chapter.

[~~(a) An unusual incident is abuse or suspected abuse of an individual; injury, trauma or illness of an individual requiring inpatient hospitalization; suicide attempt by an individual; violation or alleged violation of an individual's rights; an individual who is missing for more than 24 hours or who could be in jeopardy if missing at all; alleged misuse or misuse of individual funds or property; outbreak of a serious communicable disease as defined in 28 Pa. Code § 27.2 (relating to specific identified reportable diseases, infections and conditions); an incident requiring the services of a fire department or law~~

~~enforcement agency; and any condition that results in closure of the home for more than 1 day.~~

~~(b) Written policies and procedures on the prevention, reporting, investigation and management of unusual incidents shall be developed and kept at the home.~~

~~(c) The home shall orally notify the county intellectual disability program of the county in which the home is located, the funding agency and the appropriate regional office of the Department, within 24 hours after abuse or suspected abuse of an individual or an incident requiring the services of a fire department or law enforcement agency occurs.~~

~~(d) The home shall initiate an investigation of the unusual incident and complete and send copies of an unusual incident report on a form specified by the Department to the county intellectual disability program of the county in which the home is located, the funding agency and the appropriate regional office of the Department, within 72 hours after an unusual incident occurs.~~

~~(e) The home shall send a copy of the final unusual incident report to the county intellectual disability program of the county in which the home is located, the funding agency and the appropriate regional office of the Department at the conclusion of the investigation.~~

~~(f) A copy of unusual incident reports relating to an individual shall be kept in the individual's record.~~

~~(g) A copy of unusual incident reports relating to the home itself, such as those requiring the services of a fire department, shall be kept.~~

~~(h) The individual's family or guardian shall be immediately notified in the event of an unusual incident relating to the individual, if appropriate.]~~

(a) ~~The~~ A provider shall report the following incidents, ~~and~~ alleged incidents ~~and suspected incidents~~ through the Department's information management system within 24 hours of ~~discovery by a staff person~~ having knowledge of the incident:

(1) Death.

(2) Suicide attempt.

(3) Inpatient admission to a hospital.

(4) Visit to an emergency room.

(5) Abuse.

(6) Neglect.

(7) Exploitation.

(8) ~~An individual who is missing for more than 24 hours or who could be in jeopardy if missing at all.~~ Missing individual.

(9) Law enforcement activity.

(10) Injury requiring treatment beyond first aid.

(11) Fire requiring the services of the fire department.

(12) Emergency closure.

~~(13) Use of a restraint.~~

(~~14~~ 13) Theft or misuse of individual funds.

(~~15~~ 14) A violation of individual rights.

(15) Individual to individual incident

(b) ~~The individual and the persons designated by the individual shall be notified immediately upon discovery of an incident relating to the individual.~~ A home shall report the following incidents in the Department's information management system within 72 hours of the occurrence or discovery of the incident:

(1) A medication administration error.

(2) Use of a restraint outside the parameters of the PSP.

(c) ~~The home shall keep documentation of the notification in subsection (a).~~ The individual and person(s) designated by the individual shall be notified upon discovery of an incident related to the individual.

(d) The incident report, redacted to exclude information about another individual and the reporter, unless the reporter is the individual who receives the report, shall be available to the individual, and persons designated by the individual, upon request.

(e) The home shall take immediate action to protect the health, safety and well-being of the individual following the initial knowledge or ~~notice~~ identification of an incident, alleged incident and/or suspected incident.

(f) The home shall initiate an investigation of ~~an incident~~ certain incidents within 24 hours of the occurrence or discovery by a staff person 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

(g) ~~A Department-certified incident investigator shall conduct the incident investigation of the incident listed in subsection (a).~~ The incident investigation shall be conducted by a Department-certified incident investigator.

(h) ~~The~~ A home shall finalize the incident report in the Department's information management system ~~or on a form specified by the Department within 30 days of discovery of the incident by a staff person.~~ by including additional information about the incident, results of a required investigation and corrective actions taken within 30 days of the occurrence or discovery of the incident unless an extension is filed.

(i) ~~The~~ A home shall provide the following information to the Department as part of the final incident report:

(1) Any known additional detail about the incident.

(2) The results of the incident investigation.

(3) A description of the corrective action(s) taken or planned in response to ~~an~~ the incident as necessary.

(4) Additional action(s) taken to protect the health, safety and well-being of the individual.

(5) The person responsible for implementing the corrective action.

(6) The date the corrective action was implemented or is to be implemented.

§ 6400.19. **[~~Reporting of deaths.~~] Incident procedures to protect the individual.**

Discussion 6400.19.

This section incorporates content from 6400.20.

[~~(a) The home shall complete and send copies of a death report on a form specified by the Department to the county intellectual disability program of the county in which the home is located, the funding agency and the regional office of the Department, within 24 hours after a death of an individual occurs.~~

~~(b) The home shall investigate and orally notify the county intellectual disability program of the county in which the home is located, the funding agency and the appropriate regional office of the Department within 24 hours after an unusual or unexpected death occurs.~~

~~(c) A copy of death reports shall be kept in the individual's record.~~

~~(d) The individual's family or guardian shall be immediately notified in the event of a death of an individual.~~]

(a) ~~In investigating an incident, the home shall review and consider the following needs of the affected individual:~~ **In reviewing a serious incident, or pattern of incidents, a home shall review and consider the following needs of the affected individual(s):**

(1) Potential risks.

(2) Health care information.

(3) Medication history and current medication.

(4) Behavioral health history.

(5) Incident history.

(6) Social needs.

(7) Environmental needs.

(8) Personal safety.

(b) The home shall monitor an individual's risk for recurring incidents and implement corrective action, as appropriate.

(c) The home shall work cooperatively with the PSP team to revise the PSP ~~if indicated by the incident investigation.~~ as needed.

(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.

~~§ 6400.20. [Record of incidents.] Incident analysis.~~

Discussion 6400.20.

Content has been incorporated in 6400.19

~~**[The home shall maintain a record of individual illnesses, seizures, acute emotional traumas and accidents requiring medical attention but not inpatient hospitalization, that occur at the home.]**~~

~~(a) The home shall complete the following for each confirmed incident:~~

~~(1) Analysis to determine the root cause of the incident.~~

~~(2) Corrective action.~~

~~(3) A strategy to address the potential risks to the affected individual.~~

~~(b) The home shall review and analyze incidents and conduct a trend analysis at least every 3 months.~~

~~(c) The home shall identify and implement preventive measures to reduce:~~

~~(1) The number of incidents.~~

~~(2) The severity of the risks associated with the incident.~~

~~(3) The likelihood of an incident recurring.~~

~~(d) The home shall educate staff persons and the individual based on the circumstances of the incident.~~

~~(e) The home shall analyze incident data continuously and take actions to mitigate and manage risks.~~

(*Editor's Note*: The following section is new and printed in regular type to enhance readability.)

§ 6400.24. Applicable laws and regulations.

Discussion 6400.24.

The home shall comply with applicable Federal, State and local laws, regulations and ordinances.

INDIVIDUAL RIGHTS

§ 6400.31. **[~~Informing and encouraging exercise~~] Exercise** of rights.

Discussion 6400.31.

Suggested text is added for clarity and suggested text is redundant or otherwise unnecessary.

[~~(a) Each individual, or the individual's parent, guardian or advocate, if appropriate, shall be informed of the individual's rights upon admission and annually thereafter.~~

~~(b) Statements signed and dated by the individual, or the individual's parent, guardian or advocate, if appropriate, acknowledging receipt of the information on rights upon admission and annually thereafter, shall be kept.~~

~~(c) Each individual shall be encouraged to exercise his rights.~~]

(a) An individual may not be deprived of rights as provided under § 6400.32 (relating to rights of the individual). An approved PSP shall be deemed consistent with an individual's rights.

(b) ~~An individual shall be continually supported to exercise the individual's rights.~~ An individual shall be provided services, supports, and accommodations to assist the individual to understand and to actively exercise rights as he/she chooses. The services, supports, and accommodation necessary for the individual to understand and activity exercise rights as they choose shall be funded by the Department as part of the PSP.

~~(c) An individual shall be provided the support and accommodation necessary to be able to understand and actively exercise the individual's rights.~~

(~~d~~)(c) An individual may not be reprimanded, punished or retaliated against for exercising the individual's rights.

Comment [MR5]: their

(e)(d) A court's written order that restricts an individual's rights shall be followed.

~~(f) A court-appointed legal guardian may exercise rights and make decisions on behalf of an individual in accordance with a court order.~~

~~(g) An individual who has a court-appointed legal guardian, or who has a court order restricting the individual's rights, shall be involved in decision-making in accordance with the court order.~~

~~(h)~~(e) An individual has the right to designate persons to assist in decision making on behalf of the individual.

§ 6400.32. Rights of the individual.

Discussion 6400.32.

Suggested edits reflect the recommendations of qualified intellectual disability professionals and families.

~~[An individual may not be deprived of rights.]~~

(a) An individual may not be discriminated against because of race, color, creed, disability, religious affiliation, ancestry, gender, gender identity, sexual orientation, national origin or age.

(b) ~~An individual has the right to civil and legal rights afforded by law, including the right to vote, speak freely, and practice the religion of his choice or to practice no religion.~~ An individual possesses all the civil, legal, and human rights afforded under law.

(c) ~~An individual may not be abused, neglected, mistreated, exploited, abandoned or subjected to corporal punishment.~~ An individual has the right to be free from abuse, neglect, mistreatment, exploitation, abandonment or be subjected to corporal punishment

~~(d) An individual shall be treated with dignity and respect.~~

(e)(d) ~~An individual has the right to make choices and accept risks.~~

Comment [MR6]: People with disabilities have a right to an everyday life; a life that is no different than that of all other citizens

(f)(e) An individual has the right to refuse to participate in activities and supports.

(g)(f) An individual has the right to control ~~the~~ his/her ~~individual's~~ own schedule and activities in accordance to their PSP.

~~(h) An individual has the right to privacy of person and possessions.~~

~~(i) An individual has the right of access to and security of the individual's possessions.~~

~~(j) An individual has the right to voice concerns about the supports the individual receives.~~

~~(k)~~(g) An individual has the right to participate in the development and implementation of the PSP.

(l)(h) An individual has the right to receive scheduled and unscheduled visitors, and to communicate and meet privately with persons of the individual's choice, at any time.

(m)(i) An individual has the right to unrestricted access to send and receive mail and other forms of communications, unopened and unread by others.

(n)(j) An individual has the right to unrestricted and private access to telecommunications.

(o)(k) An individual has the right to manage and access his own finances.

(p)(l) An individual has the right to choose persons with whom to share a bedroom.

(q)(m) An individual has the right to furnish and decorate the individual's bedroom and the common areas of the home.

(r)(n) An individual has the right to lock the individual's bedroom door.

Comment [MR7]: their

(s)(o) An individual has the right to access food at any time.

(t)(p) An individual has the right to make informed health care decisions.

§ 6400.33. **[~~Rights of the individual.~~] Negotiation of choices.**

Discussion 6400.33.
Support

[~~(a) An individual may not be neglected, abused, mistreated or subjected to corporal punishment.~~

~~(b) An individual may not be required to participate in research projects.~~

~~(c) An individual has the right to manage personal financial affairs.~~

~~(d) An individual has the right to participate in program planning that affects the individual.~~

~~(e) An individual has the right to privacy in bedrooms, bathrooms and during personal care.~~

~~(f) An individual has the right to receive, purchase, have and use personal property.~~

~~(g) An individual has the right to receive scheduled and unscheduled visitors, communicate, associate and meet privately with family and persons of the individual's own choice.~~

~~(h) An individual has the right to reasonable access to a telephone and the opportunity to receive and make private calls, with assistance when necessary.~~

~~(i) An individual has the right to unrestricted mailing privileges.~~

~~(j) An individual who is of voting age shall be informed of the right to vote and shall be assisted to register and vote in elections.~~

~~(k) An individual has the right to practice the religion or faith of the individual's choice.~~

~~(l) An individual has the right to be free from excessive medication.~~

~~(m) An individual may not be required to work at the home, except for the upkeep of the individual's personal living areas and the upkeep of common living areas and grounds.~~]

(a) An individual's rights shall be exercised so that another individual's rights are not violated.

(b) Choices shall be negotiated by the affected individuals in accordance with the home's procedures for the individuals to resolve differences and make choices.

§ 6400.34. **[~~Civil~~] Informing of** rights.

Discussion 6400.34.

[~~(a) An individual may not be discriminated against because of race, color, religious creed, disability, handicap, ancestry, national origin, age or sex.~~

~~(b) The home shall develop and implement civil rights policies and procedures. Civil rights policies and procedures shall include the following:~~

~~(1) Nondiscrimination in the provision of services, admissions, placement, use of the home, referrals and communication with non-English speaking and nonverbal individuals.~~

~~(2) Physical accessibility and accommodations for individuals with physical disabilities.~~

~~(3) The opportunity to lodge civil rights complaints.~~

~~(4) Informing individuals of their right to register civil rights complaints.~~]

(a) The home shall inform and explain individual rights to the individual, and persons designated by the individual, upon admission to the home and annually thereafter.

(b) The home shall keep a copy of the statement signed by the individual, or the individual's court-appointed legal guardian, acknowledging receipt of the information on individual rights.

STAFFING

§ 6400.44. Program specialist.

Discussion 6400.44.

(a) A minimum of **[~~one~~] 1** program specialist shall be assigned for every 30 individuals. A program specialist shall be responsible for a maximum of 30 people, including people served in other types of services.

Comment [MR8]: should be 25

Comment [MR9]: 25 people

(b) The program specialist shall be responsible for the following:

[~~(1) Coordinating and completing assessments.~~

~~(2) Providing the assessment as required under § 6400.181(f) (relating to assessment).~~

~~(3) Participating in the development of the ISP, ISP annual update and ISP revision.~~

~~(4) Attending the ISP meetings.~~

~~(5) Fulfilling the role of plan lead, as applicable, under §§ 6400.182 and 6400.186(f) and (g) (relating to development, annual update and revision of the ISP; and ISP review and revision).~~

~~(6) Reviewing the ISP, annual updates and revisions under § 6400.186 for content accuracy.~~

~~(7) Reporting content discrepancy to the SC, as applicable, and plan team members.~~

~~(8) Implementing the ISP as written.~~

~~(9) Supervising, monitoring and evaluating services provided to the individual.~~

~~(10) Reviewing, signing and dating the monthly documentation of an individual's participation and progress toward outcomes.~~

~~(11) Reporting a change related to the individual's needs to the SC, as applicable, and plan team members.~~

~~(12) Reviewing the ISP with the individual as required under § 6400.186.~~

~~(13) Documenting the review of the ISP as required under § 6400.186.~~

~~(14) Providing the documentation of the ISP review to the SC, as applicable, and plan team members as required under § 6400.186(d).~~

~~(15) Informing plan team members of the option to decline the ISP review documentation as required under § 6400.186(e).~~

~~(16) Recommending a revision to a service or outcome in the ISP as provided under § 6400.186(e)(4).~~

~~(17) Coordinating the services provided to an individual.~~

~~(18) Coordinating the training of direct service workers in the content of health and safety needs relevant to each individual.~~

~~(19) Developing and implementing provider services as required under § 6400.188 (relating to provider services).]~~

(1) Coordinating the completion of assessments.

(2) Participating in the PSP process, PSP development, PSP team reviews and the implementation of the PSP in accordance with this chapter.

(3) ~~Providing and supervising~~ Coordinating and facilitating ~~activities~~ for the individuals in accordance with the PSPs.

Comment [MR10]: And outcomes

(4) Supporting the integration of individuals in the community.

(5) Supporting individual communication and ~~involvement~~ relationships with families and friends.

(c) A program specialist shall have one of the following groups of qualifications:

(1) A master's degree or above from an accredited college or university and 1 year **of** work experience working directly with individuals with an intellectual disability **or autism**.

(2) A bachelor's degree from an accredited college or university and 2 years **of** work experience working directly with individuals with an intellectual disability **or autism**.

(3) An associate's degree or 60 credit hours from an accredited college or university and 4 years **of** work experience working directly with individuals with an intellectual disability **or autism**.

§ 6400.45. Staffing.

Discussion 6400.45.

(a) A minimum of one staff person for every eight individuals shall be awake and physically present at the home when individuals are awake at the home.

(b) A minimum of **[one] 1** staff person for every 16 individuals shall be physically present at the home when individuals are sleeping at the home.

(c) An individual may be left unsupervised for specified periods of time if the absence of direct supervision is consistent with the individual's assessment and is part of the individual's **[ISP] PSP**, as an outcome which requires the achievement of a higher level of independence.

(d) The staff qualifications and staff ratio as specified in the **[ISP] PSP** shall be implemented as written, including when the staff ratio is greater than required under subsections (a), (b) and (c).

(e) ~~An individual may not be left unsupervised solely for the convenience of the residential home or the direct service worker.~~

Comment [MR11]: The PSP drives supervision now.

§ 6400.46. **[~~Staff~~] Emergency** training.

Discussion 6400.46.

~~**[(a) The home shall provide orientation for staff persons relevant to their responsibilities, the daily operation of the home and policies and procedures of the home before working with individuals or in their appointed positions.**~~

~~**(b) The home shall have a training syllabus describing the orientation specified in subsection (a).**~~

~~**(c) The chief executive officer shall have at least 24 hours of training relevant to human services or administration annually.**~~

~~**(d) Program specialists and direct service workers who are employed for more than 40 hours per month shall have at least 24 hours of training relevant to human services annually.**~~

~~**(e) Program specialists and direct service workers shall have training in the areas of intellectual disability, the principles of integration, rights and program planning and implementation, within 30 calendar days after the day of initial employment or within 12 months prior to initial employment.**~~

~~(f)~~ **(a)** Program specialists and direct service workers shall be trained before working with individuals in general fire safety, evacuation procedures, responsibilities during fire drills, the designated meeting place outside the building or within the fire safe area in the event of an actual fire, smoking safety procedures if individuals or staff persons smoke at the home, the use of fire extinguishers, smoke detectors and fire alarms, and notification of the local fire department as soon as possible after a fire is discovered.

[(g)] (b) Program specialists and direct service workers shall be trained annually by a fire safety expert in the training areas specified in subsection **[(f)] (a)**.

Comment [MR12]: Or someone who has been trained by a fire safety expert and deemed qualified to administer said training

[(h)] (c) Program specialists and direct service workers and at least one person in a vehicle while individuals are being transported by the home**[,]** shall be trained before working with individuals in first aid techniques.

[(i)] (d) Program specialists, direct service workers and drivers of and aides in vehicles shall be trained within 6 months after the day of initial employment and annually thereafter, by an individual certified as a trainer by a hospital or other recognized health care organization, in first aid, Heimlich techniques and cardio-pulmonary resuscitation.

~~**[(j) Records of orientation and training, including the training source, content, dates, length of training, copies of certificates received and staff persons attending, shall be kept.]**~~

(*Editor's Note*: Sections 6400.50—6400.52 are new and printed in regular type to enhance readability.)

§ 6400.50. Annual training plan.

Discussion 6400.50.

The purpose for a training plan is defeated by the idea that specific subjects or specific number of hours will address the needs of the clients or the organization. The training plan must be created based on an assessment that is by definition unique. As agencies analyze the needs of the people they support, the knowledge created in the field and their assessment of performance, a flexible, customized, quality focused plan will emerge. This new section collapses the critical elements of section 50 and 52 into one streamlined and accountable set of standards to not only maintain the basics, but to advance our work to the next level.

Collapse 6400.50 and 6400.52 into one section.

(a) ~~The home shall design an annual training plan based on the needs of the individuals as specified in the individuals' PSPs, other data and analysis indicating staff person training needs and as required under §§ 6400.46 and 6400.52 (relating to emergency training; and annual training).~~ The home shall design an annual training plan based on the needs specified in the individual's PSP and the provider's quality improvement strategy.

(b) The annual training plan ~~must~~ shall include the orientation program as specified in § 6400.51 (relating to orientation program).

(c) The annual training plan ~~must~~ shall include training ~~aimed at~~ intended to improv~~ing~~e the knowledge, skills and core competencies of the staff persons to be trained.

~~(d) The annual training plan must include the following:~~ The plan shall address the need for training in basics such as rights, facilitating community integration, honoring choice and supporting individuals to maintain relationships and Everyday Lives.

~~(1) The title of the position to be trained.~~

~~(2) The required training courses, including training course hours, for each position.~~

(e) The plan shall explain how the provider shall assure that staff understand their responsibilities around the promotion of individual rights and the reporting of suspected rights violations, abuse or neglect in accordance with the regulations that define those rights and responsibilities.

(f) The plan shall explain how the provider shall assure that staff understand the safe and appropriate use of positive interventions, including the training in the plans which are unique for any one person served.

(g) The annual training plan shall include the following

(1) the title of the position to be trained

(2) the required training courses including the training course hours for each position

(h) Records of orientation and training including the training source, content, dates, length of training, copies of certificate receive and persons attending shall be kept.

(i) The provider shall keep a training record for each person trained

§ 6400.51. Orientation program.

Discussion 6400.51.

The proposed edits focus on reducing the need for certain training in different levels and on protecting the individuals. They otherwise limit the extensive training requirements for certain positions.

As noted in discussion section of 6400.50, the provisions included in 6400.50(e) and (f) should be added to this section to clearly indicate the need for documentation and record of training.

This section is geared towards licensed providers. Accordingly, references to AWC, OHCDS

should be deleted. Payment rates will need to be adjusted to account for the significant additional costs to be incurred by unlicensed providers and Transportation trip providers if they are expected to comply with this section. This list is not fully inclusive and infers that transportation mile individuals (OHCDS/AWC) who are reimbursed but not household members do not require training. Also, the inclusion of volunteers and management staff is problematic for unlicensed providers, transportation trip, AWC and OHCDS providers. The Department must reconsider this section as it relates to all services, provider types and service delivery models.

(a) ~~Prior to working alone with individuals, and within 30 days after hire, the following shall complete the orientation program as described in subsection (b).~~ Within 30 days after hire, and before working directly with or starting to provide service to an individual, the following persons shall complete the orientation program as described in subsection (b):

(1) Management, program, administrative and fiscal staff persons.

(2) Dietary, housekeeping, maintenance and ancillary staff persons.

(3) Direct ~~service~~ support ~~workers~~ professionals, including full-time and part-time staff persons.

(4) Volunteers who will work alone with individuals.

(5) Paid and unpaid interns who will work alone with individuals.

(6) Consultants who will work alone with individuals, except for consultants such as clinicians who are licensed by the Commonwealth of PA or other states (i.e. nurses, doctors, psychologists, MSW, etc.).

(b) The orientation program must encompass the following areas:

~~(1) The application of person-centered practices, including respecting rights, facilitating community integration, honoring choice and supporting individuals in maintaining relationships.~~

~~(2)~~(1) The prevention, detection and reporting of abuse, suspected abuse and alleged abuse in accordance with sections 701—708 of the Older Adults Protective Services Act (35 P.S. §§ 10225.701—10225.708), 23 Pa.C.S. §§ 6301—6386 (relating to Child Protective Services Law), the Adult Protective Services Act (35 P.S. §§ 10210.101—10210.704) and applicable protective services regulations.

~~(3)~~(2) Individual rights.

(4)(5) Recognizing and reporting incidents.

~~(5) Job-related knowledge and skills.~~

(c) Within 30 days after hire, and before working directly with or starting to provide service to an individual, the following persons shall also complete orientation training that incorporates application of person-centered practices such as including respecting rights, facilitating community integration, honoring choice and supporting Everyday Lives

(1) Management, program, administrative and fiscal staff persons.

(2) Direct support staff persons, including full-time and part-time staff persons.

(3) Household members who shall provide a reimbursed support to the individual.

(4) Records of orientation training, including the training source, content, dates, length of training, copies of certificates received and persons attending shall be kept.

(5) The provider shall maintain a training record for each person trained

(d) Anyone that works alone with an individual as part of an HCBS must complete orientation program, as described in subsection (b), within 30 days of hire.

§ ~~6400.52. Annual training.~~

Discussion 6400.52.
I recommend that AWC and OHCDS be removed from the regulations and that Transportation Trip and Unlicensed home and community based providers be excluded from 6100.143 as written. This list of training is geared strictly towards licensed providers and impedes the promotion of family support models of service delivery. A prescribed number of hours for training will not support appropriate training specific for the individual and does not afford the opportunity for families/participants and the unlicensed providers and Transportation trip providers that support them with the type and frequency of training that is needed for the individual. When there are established mandates to hours versus individuality, the service quality and the opportunity to support the values of ODP and Everyday Lives is lost. The current unit rates will not support the increase in training requirements. Optimally, AWC and OHCDS providers will be removed from 6100 regulations and unlicensed providers and transportation trip providers should have separate training requirements that do not include a specific number of hours. See comment under 6100.50.

~~(a) The following staff persons shall complete 24 hours of training each year:~~

~~(1) Direct service workers.~~

~~(2) Direct supervisors of direct service workers.~~

~~(3) Program specialists.~~

~~(b) The following staff persons shall complete 12 hours of training each year:~~

~~(1) Management, program, administrative and fiscal staff persons.~~

~~(2) Dietary, housekeeping, maintenance and ancillary staff persons.~~

~~(3) Consultants who work alone with individuals.~~

~~(4) Volunteers who work alone with individuals.~~

~~(5) Paid and unpaid interns who work alone with individuals.~~

~~(c) A minimum of 8 hours of the annual training hours specified in subsections (a) and (b) must encompass the following areas:~~

~~(1) The application of person-centered practices, including respecting rights, facilitating community integration, honoring choice and supporting individuals in maintaining relationships.~~

~~(2) The prevention, detection and reporting of abuse, suspected abuse and alleged abuse in accordance with sections 701—708 of the Older Adults Protective Services Act (35 P.S. §§ 10225.701—10225.708), 23 Pa.C.S. §§ 6301—6386 (relating to Child Protective Services Law), the Adult Protective Services Act (35 P.S. §§ 10210.101—10210.704) and applicable adult protective services regulations.~~

~~(3) Individual rights.~~

~~(4) Recognizing and reporting incidents.~~

~~(5) The safe and appropriate use of positive interventions if the staff person will provide a support to an individual with a dangerous behavior.~~

~~(d) The balance of the annual training hours must be in areas identified by the home in the home's annual training plan in § 6400.50 (relating to annual training plan).~~

~~(e) All training, including those training courses identified in subsections (c) and (d), must be included in the provider's annual training plan.~~

~~(f) Records of orientation and training, including the training source, content, dates, length of training, copies of certificates received and staff persons attending, shall be kept.~~

~~(g) A training record for each person trained shall be kept.~~

MEDICATIONS

Comment and Suggestion: Medication Administration

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.

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.

In addition, there will be unintended consequences of requiring all medication administration to be completed on the internet. A large percentage of staff in this field use English as a second language and need the interaction of a live trainer to understand the module. This needs to be considered.

§ 6400.161. [~~Storage of medications.~~] Self-admini-stration.

~~[(a) Prescription and nonprescription medications shall be kept in their original containers, except for medications of individuals who self-administer medications and keep the medications in personal daily or weekly dispensing containers.~~

~~(b) Prescription and potentially toxic nonprescription medications shall be kept in an area or container that is locked, unless it is documented in each individual's assessment that each individual in the home can safely use or avoid toxic materials.~~

~~(c) Prescription and potentially toxic nonprescription medications stored in a refrigerator shall be kept in a separate locked container, unless it is documented in each individual's assessment that each individual in the home can safely use or avoid toxic materials.~~

~~(d) Prescription and nonprescription medications shall be stored under proper conditions of sanitation, temperature, moisture and light.~~

~~(e) Discontinued prescription medications shall be disposed of in a safe manner.~~]

(a) A home shall provide an individual who has a prescribed medication with assistance, as needed, for the individual's self-administration of the medication.

(b) Assistance in the self-administration of medication ~~includes~~ may include helping the individual to ~~remember~~ adhere to the schedule for taking the medication, offering the individual the medication at the prescribed times, opening a medication container and storing the medication in a secure place.

(c) The ~~provider~~ PSP team shall ~~provide or arrange for~~ facilitate the utilization of assistive technology to support the individual's self-administration of medications.

(d) The PSP must identify if the individual is ~~unable~~ able to self-administer medications.

(e) To be considered able to self-administer medications, an individual shall ~~do all of the following:~~

(1) Be able to recognize and distinguish the ~~individual's~~ his/her medication

(2) Know how much medication is to be taken.

(3) Know and understand the purpose for taking the medication.

(~~3~~)(4) Know when the medication is to be taken. This knowledge may include reminders of the schedule and offering the medication at the prescribed times as specified in subsection (b).

(4)(5) Be able to take or apply the ~~individual's~~ his/her own medication with or without the use of assistive technology.

§ 6400.162. **[~~Labeling of medications.~~] Medication administration.**

[~~(a) The original container for prescription medications shall be labeled with a pharmaceutical label that includes the individual's name, the name of the medication, the date the prescription was issued, the prescribed dose and the name of the prescribing physician.~~

~~(b) Nonprescription medications shall be labeled with the original label.~~]

(a) ~~A home whose staff persons or others are qualified to administer medications as specified in subsection (b) may provide medication administration for an individual who is unable to self-administer the individual's prescribed medication.~~ Persons who administer prescription medication or insulin injections to individuals shall receive training by the individual's source of healthcare or satisfactorily complete the Department's/ODP's most current Medication Training Module.

~~(b) A prescription medication that is not self-administered shall be administered by one of the following:~~

~~(1) A licensed physician, licensed dentist, licensed physician's assistant, registered nurse, certified registered nurse practitioner, licensed practical nurse or licensed paramedic.~~

~~(2) A person who has completed the medication administration training as specified in § 6400.169 (relating to medication administration training) for the medication administration of the following:~~

~~(i) Oral medications.~~

~~(ii) Topical medications.~~

~~(iii) Eye, nose and ear drop medications.~~

~~(iv) Insulin injections.~~

~~(v) Epinephrine injections for insect bites or other allergies.~~

~~(c) Medication administration includes the following activities, based on the needs of the individual:~~

~~(1) Identify the correct individual.~~

~~(2) Remove the medication from the original container.~~

~~(3) Crush or split the medication as ordered by the prescriber.~~

~~(4) Place the medication in a medication cup or other appropriate container, or in the individual's hand, mouth or other route as ordered by the prescriber.~~

~~(5) If indicated by the prescriber's order, measure vital signs and administer medications according to the prescriber's order.~~

~~(6) Injection of insulin or epinephrine in accordance with this chapter.~~

§ 6400.163. **[~~Use of prescription~~] Storage and disposal of** medications.

Discussion 6400.163.

As written, this section is far too prescriptive and subjective given the training that provider staff must complete. The suggested edits reflect clarity and brevity and are adapted from Chapter 6500.

[~~(a) Prescription medications shall only be used by the individual for whom the medication was prescribed.~~

~~(b) If a medication is prescribed to treat symptoms of a diagnosed psychiatric illness, there shall be a written protocol as part of the ISP to address the social, emotional and environmental needs of the individual related to the symptoms of the diagnosed psychiatric illness.~~

~~(c) If a medication is prescribed to treat symptoms of a diagnosed psychiatric illness, there shall be a review with documentation by a licensed physician at least every 3 months that includes the reason for prescribing the medication, the need to continue the medication and the necessary dosage.~~]

(a) Prescription and nonprescription medications shall be kept in their original labeled containers, except for medications of individuals who self-administer medications and keep their medications in personal daily or weekly dispensing containers.

(b) ~~A prescription medication may not be removed from its original labeled container more than 2 hours in advance of the scheduled administration.~~ Prescription and potentially toxic nonprescription medications shall be kept in an area or container that is locked or made inaccessible to the individuals, unless it is documented in each individual's assessment that each individual in the home can safely use or avoid toxic materials.

Comment [MR13]: PSP

(c) ~~If insulin or epinephrine is not packaged in an individual dose container, assistance with or the administration of the injection shall be provided immediately upon removal of the medication from its original labeled container.~~ Prescription and potentially toxic

nonprescription medications stored in a refrigerator shall be kept in a separate locked container or made inaccessible to the individuals, unless it is documented in each individual's assessment that each individual in the home can safely use or avoid toxic materials.

Comment [MR14]: PSP

(d) ~~Prescription medications and syringes, with the exception of epinephrine and epinephrine auto-injectors, shall be kept in an area or container that is locked.~~ Prescription and nonprescription medications of individuals shall be stored under proper conditions of sanitation, temperature, moisture and light.

(e) ~~Epinephrine and epinephrine auto-injectors shall be stored safely and kept easily accessible at all times. The epinephrine and epinephrine auto-injectors shall be easily accessible to the individual if the epinephrine is self-administered or to the staff person who is with the individual if a staff person will administer the epinephrine.~~ Discontinued prescription medications of individuals shall be disposed of in a safe manner.

~~(f) Prescription medications stored in a refrigerator shall be kept in an area or container that is locked.~~

~~(g) Prescription medications shall be stored in an organized manner under proper conditions of sanitation, temperature, moisture and light and in accordance with the manufacturer's instructions.~~

~~(h) Prescription medications that are discontinued or expired shall be destroyed in a safe manner according to the Department of Environmental Protection and applicable Federal and State regulations.~~

~~(i) Subsections (a) - (d) and (f) do not apply for an individual who self-administers medication and stores the medication in the individual's private bedroom.~~

§ 6400.164. **[~~Medication log.~~] Labeling of medications.**

Discussion 6400.164.

Adapted from Chapter 6500. See above comment.

~~[(a) A medication log listing the medications prescribed, dosage, time and date that prescription medications, including insulin, were administered and the name of the person who administered the prescription medication or insulin shall be kept for each individual who does not self-administer medication.~~

~~(b) The information specified in subsection (a) shall be logged immediately after each individual's dose of medication.~~

~~(c) A list of prescription medications, the prescribed dosage and the name of the prescribing physician shall be kept for each individual who self-administers medication.~~]

~~The original container for prescription medications must be labeled with a pharmacy label that includes the following:~~

~~(1) The individual's name.~~

~~(2) The name of the medication.~~

~~(3) The date the prescription was issued.~~

~~(4) The prescribed dosage and instructions for administration.~~

~~(5) The name and title of the prescriber.~~

(a) The original container for prescription medications of individuals shall be labeled with a pharmaceutical on the original bottle or label that includes the individual's name, the name of the medication, the date the prescription was issued, the prescribed dose, the expiration date, and the name of the prescribing physician.

(b) Nonprescription medications used by individuals shall be labeled with the original label.

§ 6400.165. **[~~Medication errors.~~]** **~~Prescription medications.~~** **Use of a prescription.**

Discussion 6400.165.

Adapted from Chapter 6500

[~~Documentation of medication errors and follow-up action taken shall be kept.~~]

~~(a) A prescription medication shall be prescribed in writing by an authorized prescriber.~~

~~(b) A prescription order shall be kept current.~~

~~(c) A prescription medication shall be administered as prescribed.~~

~~(d) A prescription medication shall be used only by the individual for whom the prescription was prescribed.~~

~~(e) Changes in medication may only be made in writing by the prescriber or, in the case of an emergency, an alternate prescriber, except for circumstances in which oral orders may be accepted by a registered nurse in accordance with regulations of the Department of State. The individual's medication record shall be updated as soon as a written notice of the change is received.~~

(a) A prescription medication shall only be used by the individual for whom the medication was prescribed.

(b) If a medication is prescribed to treat symptoms of a diagnosed psychiatric illness, there shall be a written protocol as part of the PSP to address the social, emotional and environmental needs of the individual related to the symptoms of the diagnosed psychiatric illness.

(c) If a medication is prescribed to treat symptoms of a diagnosed psychiatric illness, there shall be a review with documentation by a licensed physician or a certified nurse practitioner at least every 3 months that includes the reason for prescribing the medication, the need to continue the medication and the necessary dosage.

§ 6400.166. **[~~Adverse reaction.~~] Medication record.**

Discussion 6400.166.

Adapted from Chapter 6500. See comment under 6400.166

[~~If an individual has a suspected adverse reaction to a medication, the home shall notify the prescribing physician immediately. Documentation of adverse reactions shall be kept.~~]

~~(a) A medication record shall be kept, including the following for each individual for whom a prescription medication is administered:~~

~~(1) Individual's name.~~

~~(2) Name and title of the prescriber.~~

~~(3) Drug allergies.~~

~~(4) Name of medication.~~

~~(5) Strength of medication.~~

~~(6) Dosage form.~~

~~(7) Dose of medication.~~

~~(8) Route of administration.~~

~~(9) Frequency of administration.~~

~~(10) Administration times.~~

~~(11) Diagnosis or purpose for the medication, including pro re nata.~~

~~(12) Date and time of medication administration.~~

~~(13) Name and initials of the person administering the medication.~~

~~(14) Duration of treatment, if applicable.~~

~~(15) Special precautions, if applicable.~~

~~(16) Side effects of the medication, if applicable.~~

~~(b) The information in subsection (a)(12) and (13) shall be recorded at the time the medication is administered.~~

~~(c) If an individual refuses to take a prescribed medication, the refusal shall be documented on the medication record. The refusal shall be reported to the prescriber within 24 hours, unless otherwise instructed by the prescriber. Subsequent refusals to take a prescribed medication shall be reported as required by the prescriber.~~

~~(d) The directions of the prescriber shall be followed.~~

(a) A medication log listing the medications prescribed, dosage, time and date that prescription medications, including insulin, were administered, and the name of the person who administered the prescription medication or insulin shall be kept for each individual who does not self-administer medication.

(b) The information specified in subsection (a) shall be logged immediately after each individual's dose of medication.

(c) A list of prescription medications, the prescribed dosage and the name of the prescribing physician shall be kept for each individual who self-administers medication.

§ 6400.167. **[~~Administration of prescription medications and~~ injections.] Medication errors.**

Discussion 6400.167.

Adapted from Chapter 6500

Medications errors shall be handled according to the Office of Developmental Programs' Approved Medication Administration Training.

~~[(a) Prescription medications and injections of a substance not self-administered by individuals shall be administered by one of the following:~~

~~(1) A licensed physician, licensed dentist, licensed physician's assistant, registered nurse or licensed practical nurse.~~

~~(2) A graduate of an approved nursing program functioning under the direct supervision of a professional nurse who is present in the home.~~

~~(3) A student nurse of an approved nursing program functioning under the direct supervision of a member of the nursing school faculty who is present in the home.~~

~~(4) A staff person who meets the criteria specified in § 6400.168 (relating to medications administration training) for the administration of oral, topical and eye and ear drop prescriptions and insulin injections.~~

~~(b) Prescription medications and injections shall be administered according to the directions specified by a licensed physician, certified nurse practitioner or licensed physician's assistant.~~]

(a) Medication errors ~~include~~ consist of the following actions:

(1) Failure to administer a medication.

(2) Administration of the wrong medication.

(3) Administration of the wrong amount of medication.

(4) Failure to administer a medication at the prescribed time, which exceeds more than 1 hour before or after the prescribed time.

~~(5) Administration to the wrong person.~~

(6) Administration through the wrong route.

(b) Documentation of medication errors~~,~~ and follow-up action taken ~~and the prescriber's response~~ shall be kept ~~in the individual's record~~.

§ 6400.168. [~~Medications administration training~~.] Adverse reaction.

Discussion 6400.168.
Adapted from Chapter 6500

~~[(a) In a home serving eight or fewer individuals, a staff person who has completed and passed the Department's Medications Administration Course is permitted to administer oral, topical and eye and ear drop prescription medications.~~

~~(b) In a home serving eight or fewer individuals, a staff person who has completed and passed the Department's Medications Administration Course and who has completed and passed a diabetes patient education program within the past 12 months that meets the National Standards for Diabetes Patient Education Programs of the National Diabetes Advisory Board, 7550 Wisconsin Avenue, Bethesda, Maryland 20205, is permitted to administer insulin injections to an individual who is under the care of a licensed physician~~

~~who is monitoring the diabetes, if insulin is premeasured by licensed or certified medical personnel.~~

~~(c) Medications administration training of a staff person shall be conducted by an instructor who has completed the Department's Medications Administration Course for trainers and is certified by the Department to train staff.~~

~~(d) A staff person who administers prescription medications and insulin injections to an individual shall complete and pass the Medications Administration Course Practicum annually.~~

~~(e) Documentation of the dates and locations of medications administration training for trainers and staff persons and the annual practicum for staff persons shall be kept.]~~

~~(a) If an individual has a suspected adverse reaction to a medication, the home shall immediately consult a health care practitioner or seek emergency medical treatment.~~

~~(b) An adverse reaction to a medication, the health care practitioner's response to the adverse reaction and the action taken shall be documented.~~

If an individual has a suspected adverse reaction to a medication, the healthcare provider shall be contacted immediately. Documentation of adverse reactions shall be kept in the individual's record.

§ 6400.169. ~~[Self-administration of medications.]~~ **Medication administration training.**

Discussion 6400.169.

This section is subsumed in section 6400.462

Epi-pen mandatory training will add a significant cost. This resource such as HCQU will be difficult to meet the needs of the agencies. There are some agencies that have had a video regarding this training; however, many regions of BHSL disagree with videos as an appropriate training.

~~[(a) To be considered capable of self-administration of medications an individual shall:~~

~~(1) Be able to recognize and distinguish the individual's medication.~~

~~(2) Know how much medication is to be taken.~~

~~(3) Know when medication is to be taken.~~

~~(b) Insulin that is self-administered by an individual shall be measured by the individual or by licensed or certified medical personnel.]~~

~~(a) A staff person who has successfully completed a Department approved medications administration course, including the course renewal requirements, may administer the following:~~

~~(1) Oral medications.~~

~~(2) Topical medications.~~

~~(3) Eye, nose and ear drop medications.~~

~~(b) A staff person may administer insulin injections following successful completion of both:~~

~~(1) The course specified in subsection (a).~~

~~(2) A Department approved diabetes patient education program within the past 12 months.~~

~~(c) A staff person may administer an epinephrine injection by means of an auto-injection device in response to anaphylaxis or another serious allergic reaction following successful completion of both:~~

~~(1) The course specified in subsection (a).~~

~~(2) Training relating to the use of an auto-injection epinephrine injection device provided by a licensed, registered or certified health care professional within the past 12 months.~~

~~(d) A record of the training shall be kept including the person trained, the date, source, name of trainer and documentation that the course was successfully completed.~~

PROGRAM

§ 6400.181. Assessment.

Discussion 6400.181.

The recommended language in 6400.181 (b) is intended to distinguish between the need for a full assessment and a partial assessment.

6400.181 (f) has been amended to provide additional time to enable a program specialist to better prepare an informed assessment.

* * * * *

(b) If the program specialist is making a recommendation to revise a service or outcome in the **[ISP as provided under § 6400.186(c)(4) (relating to ISP review and revision)] PSP**, the individual shall have an assessment specific to that recommendation completed as required under this section.

* * * * *

(f) The program specialist shall provide the assessment to the SC, as applicable, and **[plan] PSP** team members at least ~~30~~ 15 calendar days prior to **[an ISP meeting for the development, annual update and revision of the ISP under §§ 2380.182, 2390.152, 6400.182 and 6500.152 (relating to development, annual update and revision of the ISP)] a PSP meeting.**

§ 6400.182. Development**[~~, annual update and revision of the ISP~~] and revisions of the PSP.**

Discussion 6400.182.
I support this inclusion of 2380.182 (a) and supports this provision.
New text is proposed to add clarity.
Delete (g) and (f) as they are redundant now.

~~**[(a) An individual shall have one ISP.**~~

~~**(b) When an individual is not receiving services through an SCO, the residential program specialist shall be the plan lead when one of the following applies:**~~

~~**(1) The individual resides at a residential home licensed under this chapter.**~~

~~**(2) The individual resides at a residential home licensed under this chapter and attends a facility licensed under Chapter 2380 or 2390 (relating to adult training facilities; and vocational facilities).**~~

~~**(c) The plan lead shall be responsible for developing and implementing the ISP, including annual updates and revisions.**~~

~~**(d) The plan lead shall develop, update and revise the ISP according to the following:**~~

~~**(1) The ISP shall be initially developed, updated annually and revised based upon the individual's current assessment as required under §§ 2380.181, 2390.151, 6400.181 and 6500.151 (relating to assessment).**~~

~~**(2) The initial ISP shall be developed within 90 calendar days after the individual's admission date to the facility.**~~

~~(3) The ISP, annual updates and revisions shall be documented on the Department-designated form located in the Home and Community Services Information System (HCSIS) and also on the Department's web site.~~

~~(4) An invitation shall be sent to plan team members at least 30 calendar days prior to an ISP meeting.~~

~~(5) Copies of the ISP, including annual updates and revisions under § 6400.186 (relating to ISP review and revision), shall be provided as required under § 6400.187 (relating to copies).]~~

(a) ~~An individual shall have one approved and authorized PSP at a given time.~~ that identifies the need for supports, the supports to be provided and the expected outcomes. 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.

(b) An individual's service implementation plan must be consistent with the PSP in subsection (a).

(c) The support coordinator, targeted support manager or program specialist ~~shall coordinate the development of the PSP, including revisions, in cooperation with the individual and the individual's PSP team.~~ shall be responsible for the development of the PSP, including revisions, in collaboration with the individual and the individual's PSP team.

(d) The initial PSP shall be developed based on the individual assessment within 60 days of the individual's date of admission to the home.

(e) ~~The PSP shall be initially developed, revised annually and revised when an individual's needs change based upon a current assessment.~~ The PSP shall be evaluated for revisions 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.

~~(f) The individual and persons designated by the individual shall be involved in and supported in the development and revisions of the PSP.~~

(f) The PSP and PSP revisions are to be correlated with a current valid assessment and the individual and PSP team input.

(g) The PSP, including revisions, shall be documented on a form specified by the Department.

(h) The individual, court appointed legal guardian(s), and/or persons designated by the individual may request updates for consideration to the PSP at any time. These requests should be submitted to the supports coordinator.

§ 6400.183. ~~[Content of the ISP.]~~ **The PSP team.**

Discussion 6400.183.

Delete this section and add essential content to 6400.182 and 6400.185 as noted.

~~[The ISP, including annual updates and revisions under § 6400.186 (relating to ISP review and revision), must include the following:~~

~~(1) Services provided to the individual and expected outcomes chosen by the individual and individual's plan team.~~

~~(2) Services provided to the individual to increase community involvement, including volunteer or civic-minded opportunities and membership in National or local organizations as required under § 6400.188 (relating to provider services).~~

~~(3) Current status in relation to an outcome and method of evaluation used to determine progress toward that expected outcome.~~

~~(4) A protocol and schedule outlining specified periods of time for the individual to be without direct supervision, if the individual's current assessment states the individual may be without direct supervision and if the individual's ISP includes an expected outcome which requires the achievement of a higher level of independence. The protocol must include the current level of independence and the method of evaluation used to determine progress toward the expected outcome to achieve the higher level of independence.~~

~~(5) A protocol to address the social, emotional and environmental needs of the individual, if medication has been prescribed to treat symptoms of a diagnosed psychiatric illness.~~

~~(6) A protocol to eliminate the use of restrictive procedures, if restrictive procedures are utilized, and to address the underlying causes of the behavior which led to the use of restrictive procedures including the following:~~

~~(i) An assessment to determine the causes or antecedents of the behavior.~~

~~(ii) A protocol for addressing the underlying causes or antecedents of the behavior.~~

~~(iii) The method and timeline for eliminating the use of restrictive procedures.~~

~~(iv) A protocol for intervention or redirection without utilizing restrictive procedures.~~

~~(7) Assessment of the individual's potential to advance in the following:~~

~~(i) Residential independence.~~

~~(ii) Community involvement.~~

~~(iii) Vocational programming.~~

~~(iv) Competitive community integrated employment.~~]

~~(a) The PSP shall be developed by an interdisciplinary team including the following:~~

~~(1) The individual.~~

~~(2) Persons designated by the individual.~~

~~(3) The individual's direct care staff persons.~~

~~(4) The program specialist.~~

~~(5) The support coordinator, targeted support manager or a program representative from the funding source, if applicable.~~

~~(6) The program specialist for the individual's day program, if applicable.~~

~~(7) Other specialists such as health care, behavior management, speech, occupational and physical therapy as appropriate for the individual needs.~~

~~(b) At least three members of the PSP team, in addition to the individual and persons designated by the individual, shall be present at a PSP meeting at which the PSP is developed or revised.~~

~~(c) Members of the PSP team who attend the meeting shall sign and date the PSP.~~

§ 6400.184. [~~Plan team participation.~~] **The PSP process.**

Discussion 6400.184.

Delete section and add essential content to 2380.182 and 2380.185 as noted.

Add clarification to the 6100.184 title (Development and revisions of the PSP) and then delete all of 6100.184 but pull up specifics as noted below to represent the general focus of individual's guiding the process.

[~~(a) The plan team shall participate in the development of the ISP, including the annual updates and revisions under § 6400.186 (relating to ISP review and revision).~~

~~(1) A plan team must include as its members the following:~~

~~(i) The individual.~~

~~(ii) A program specialist or family living specialist, as applicable, from each provider delivering a service to the individual.~~

~~(iii) A direct service worker who works with the individual from each provider delivering services to the individual.~~

~~(iv) Any other person the individual chooses to invite.~~

~~(2) If the following have a role in the individual's life, the plan team may also include as its members, as applicable, the following:~~

~~(i) Medical, nursing, behavior management, speech, occupational or physical therapy specialists.~~

~~(ii) Additional direct service workers who work with the individual from each provider delivering services to the individual.~~

~~(iii) The individual's parent, guardian or advocate.~~

~~(b) At least three plan team members, in addition to the individual, if the individual chooses to attend, shall be present for an ISP, annual update and ISP revision meeting.~~

~~(c) A plan team member who attends a meeting under subsection (b) shall sign and date the signature sheet.~~]

~~The PSP process shall:~~

~~(1) Provide necessary information and support to ensure that the individual directs the PSP process to the maximum extent possible.~~

~~(2) Enable the individual to make informed choices and decisions.~~

~~(3) Be conducted to reflect what is important to the individual to ensure that supports are delivered in a manner reflecting individual preferences and ensuring the individual's health, safety and well-being.~~

~~(4) Be timely in relation to the needs of the individual and occur at intervals, times and locations of choice and convenience to the individual and to persons designated by the individual.~~

~~(5) Be communicated in clear and understandable language.~~

~~(6) Reflect cultural considerations of the individual.~~

~~(7) Include guidelines for solving disagreements among the PSP team members.~~

~~(8) Include a method for the individual to request updates to the PSP.~~

§ 6400.185. **[~~Implementation of the ISP.~~] Content of the PSP.**

Discussion 6400.185.
Text is proposed to be added or deleted to enhance clarity and avoid confusion.

~~[(a) The ISP shall be implemented by the ISP's start date.~~

~~(b) The ISP shall be implemented as written.~~]

The PSP, including revisions, must include the following:

(1) The individual's strengths, preferences and functional abilities.

(2) The individual's ~~individualized~~ assessed diagnoses, clinical and support needs.

(3) The individual's goals and preferences such as those related to relationships, community participation, self-determination, employment, income and savings, health care, wellness, quality and education.

(4) Individually identified, person-centered desired outcomes.

(5) Supports to assist the individual to achieve desired outcomes.

(6) The type, amount of units, duration and frequency for the support specified in a manner that reflects the assessed needs and choices of the individual. The schedule of support delivery shall be determined by the PSP team.

(7) The individual's communication mode, abilities and needs.

~~(8) Opportunities for new or continued community participation.~~

(~~9~~)(8) The level of needed support, risk factors, dangerous behaviors and risk mitigation strategies, if applicable.

(~~10~~)(9) Modification of individual rights as necessary to mitigate risks, if applicable. The PSP as approved by the PSP team is presumed to be consistent with an individual's rights and is the governing document for rights purposes.

(~~11~~)(10) Health care information, including a health care history.

~~(12)~~(11) Financial information including how the individual ~~chooses~~ may choose to use personal funds based on history and communicated interest.

~~(13)~~(12) The person or entity responsible for monitoring the implementation of the PSP.

(14) If the individual has a known behavioral support need, it must be identified in the PSP, or if a new behavior is identified, it must be added to the PSP through a revision.

§ 6400.186. **[~~ISP review and revision.~~] Implementation of the PSP.**

Discussion 6400.186.

[~~(a) The program specialist shall complete an ISP review of the services and expected outcomes in the ISP specific to the residential home licensed under this chapter with the individual every 3 months or more frequently if the individual's needs change which impacts the services as specified in the current ISP.~~

~~(b) The program specialist and individual shall sign and date the ISP review signature sheet upon review of the ISP.~~

~~(c) The ISP review must include the following:~~

~~(1) A review of the monthly documentation of an individual's participation and progress during the prior 3 months toward ISP outcomes supported by services provided by the residential home licensed under this chapter.~~

~~(2) A review of each section of the ISP specific to the residential home licensed under this chapter.~~

~~(3) The program specialist shall document a change in the individual's needs, if applicable.~~

~~(4) The program specialist shall make a recommendation regarding the following, if applicable:~~

~~(i) The deletion of an outcome or service to support the achievement of an outcome which is no longer appropriate or has been completed.~~

~~(ii) The addition of an outcome or service to support the achievement of an outcome.~~

~~(iii) The modification of an outcome or service to support the achievement of an outcome in which no progress has been made.~~

~~(5) If making a recommendation to revise a service or outcome in the ISP, the program specialist shall complete a revised assessment as required under § 6400.181(b) (relating to assessments).~~

~~(d) The program specialist shall provide the ISP review documentation, including recommendations, if applicable, to the SC, as applicable, and plan team members within 30 calendar days after the ISP review meeting.~~

~~(e) The program specialist shall notify the plan team members of the option to decline the ISP review documentation.~~

~~(f) If a recommendation for a revision to a service or outcome in the ISP is made, the plan lead as applicable, under §§ 2380.182(b) and (c), 2390.152(b) and (c), 6400.182(b) and (c), 6500.152(b) and (c) (relating to development, annual update and revision of the ISP), shall send an invitation for an ISP revision meeting to the plan team members within 30 calendar days of receipt of the recommendation.~~

~~(g) A revised service or outcome in the ISP shall be implemented by the start date in the ISP as written.~~]

The home shall implement the PSP, including any revisions.

§ 6400.187. **[~~Copies.~~] (Reserved).**

Discussion 6400.187.

[~~A copy of the ISP, including the signature sheet, shall be provided to plan team members within 30 calendar days after the ISP, annual update and ISP revision meetings.~~]

§ 6400.188. **[~~Provider services.~~] (Reserved).**

Discussion 6400.188.

[~~(a) The residential home shall provide services including assistance, training and support for the acquisition, maintenance or improvement of functional skills, personal needs, communication and personal adjustment.~~

~~(b) The residential home shall provide opportunities and support to the individual for participation in community life, including volunteer or civic-minded opportunities and membership in National or local organizations.~~

~~(c) The residential home shall provide services to the individual as specified in the individual's ISP.~~

~~(d) The residential home shall provide services that are age and functionally appropriate to the individual.]~~

[~~RESTRICTIVE PROCEDURES~~] POSITIVE INTERVENTION

§ 6400.191. **[~~Definition of restrictive procedures.~~] Use of a positive intervention.**

Discussion 6400.191.

All definitions have been moved to 6400.5

~~[A restrictive procedure is a practice that limits an individual's movement, activity or function; interferes with an individual's ability to acquire positive reinforcement; results in the loss of objects or activities that an individual values; or requires an individual to engage in a behavior that the individual would not engage in given freedom of choice.~~]

~~(a)~~ **A positive intervention shall be used ~~to prevent, modify and eliminate a dangerous behavior~~ when ~~the~~ challenging behaviors ~~is~~ are anticipated and/or ~~occurring~~ in response to challenging behaviors to prevent escalation of behaviors, or in attempts to modify, decrease or eliminate behaviors.**

~~(b) The least intrusive method shall be applied when addressing a dangerous behavior. For each incidence of a dangerous behavior, every attempt shall be made to modify and eliminate the behavior.~~

~~(c) As used in this section, the following words and terms have the following meanings, unless the context clearly indicates otherwise:~~

~~*Dangerous behavior* An action with a high likelihood of resulting in harm to the individual or others.~~

~~*Positive intervention* An action or activity intended to prevent, modify and eliminate a dangerous behavior. This includes improved communications, reinforcing appropriate behavior, an environmental change, recognizing and treating physical and behavioral health symptoms, voluntary physical exercise and other wellness practices, redirection, praise, modeling, conflict resolution and de-escalation.~~

§ 6400.192. **[~~Written policy.~~] PSP.**

Discussion 6400.192.

It is recommended that this section be deleted and content rolled to 6400.183 as specified in

the comment.

~~[A written policy that defines the prohibition or use of specific types of restrictive procedures, describes the circumstances in which restrictive procedures may be used, the persons who may authorize the use of restrictive procedures, a mechanism to monitor and control the use of restrictive procedures and a process for the individual and family to review the use of restrictive procedures shall be kept at the home.]~~

~~If the individual has a dangerous behavior as identified in the PSP, the PSP must include the following:~~

~~(1) The specific dangerous behavior to be addressed.~~

~~(2) A functional analysis of the dangerous behavior and the plan to address the reason for the behavior.~~

~~(3) The outcome desired.~~

~~(4) A description of the positive intervention aimed at preventing, modifying or eliminating the dangerous behavior and the circumstances under which the intervention is to be used.~~

~~(5) A target date to achieve the outcome.~~

~~(6) Health conditions that require special attention.~~

§ 6400.193. ~~[Appropriate use of restrictive procedures.]~~ **Prohibition of restraints.**

Discussion 6400.193.

All definitions have been moved to 6100.3

"Camisole" has been deleted, upon the advice of experts in the field of Intellectual Disability Services, from the definition of "mechanical restraint" because they do not restrict movement. The definition notes that the use of geriatric chairs is sometimes prescribed by an individual's PSP.

~~[(a) A restrictive procedure may not be used as retribution, for the convenience of staff persons, as a substitute for the program or in a way that interferes with the individual's developmental program.~~

~~(b) For each incident requiring restrictive procedures:~~

~~(1) Every attempt shall be made to anticipate and de-escalate the behavior using methods of intervention less intrusive than restrictive procedures.~~

~~(2) A restrictive procedure may not be used unless less restrictive techniques and resources appropriate to the behavior have been tried but have failed.]~~

The following procedures are prohibited:

(1) Seclusion~~, defined as involuntary confinement of an individual in a room or area from which the individual is physically prevented or verbally directed from leaving~~.

(2) Aversive conditioning~~, defined as the application of startling, painful or noxious stimuli~~.

(3) Pressure point techniques~~, defined as the application of pain for the purpose of achieving compliance~~.

(4) A chemical restraint~~, defined as use of drugs or chemicals for the specific and exclusive purpose of controlling acute or episodic aggressive behavior. A chemical restraint does not include a drug ordered by a health care practitioner or dentist to treat the symptoms of a specific mental, emotional or behavioral condition, or as pretreatment prior to a medical or dental examination or treatment~~.

(5) A mechanical restraint~~, defined as a device that restricts the movement or function of an individual or portion of an individual's body. Mechanical restraints include a geriatric chair, handcuffs, anklets, wristlets, camisole, helmet with fasteners, muffs and mitts with fasteners, restraint vest, waist strap, head strap, papoose board, restraining sheet, chest restraint and other locked restraints.~~

~~**(i) The term does not include a device prescribed by a health care practitioner that is used to provide post-surgical care, proper balance or support for the achievement of functional body position.**~~

~~**(ii) The term does not include a device prescribed by a health care practitioner to protect the individual in the event of a seizure, as long as the individual can easily remove the device.**~~

(6) A ~~manual~~ physical restraint~~, defined as a hands-on physical method that restricts, immobilizes or reduces an individual's ability to move his arms, legs, head or other body parts freely, on a nonemergency basis, or for more than 15 minutes within a 2-hour period. A manual restraint does not include physically prompting, escorting or guiding an individual to a support as specified in the individual's PSP.~~

(7) A prone position ~~manual~~ physical restraint.

(8) A ~~manual~~ physical restraint that inhibits digestion or respiration, inflicts pain, ~~causes embarrassment or humiliation~~, causes hyperextension of joints, applies pressure on the chest or joints, or allows for a free fall to the floor.

(9) A physical restraint may not be used as a substitute for positive behavioral interventions, or as retribution, punishment, noncompliance, or for the convenience of staff persons.

§ 6400.194. **[~~Restrictive procedure review committee.~~] Permitted interventions.**

Discussion 6400.194.
Definitions moved to 6400.5
(h) has been incorporated into (e)
Text added and deleted for clarity

[~~(a) If a restrictive procedure is used, there shall be a restrictive procedure review committee.~~

~~(b) The restrictive procedure review committee shall include a majority of persons who do not provide direct services to the individual.~~

~~(c) The restrictive procedure review committee shall establish a time frame for review and revision of the restrictive procedure plan, not to exceed 6 months between reviews.~~

~~(d) A written record of the meetings and activities of the restrictive procedure review committee shall be kept.~~]

(a) Voluntary exclusion~~, defined as an individual voluntarily removing himself from his immediate environment and placing himself alone to a room or area, is permitted in accordance with the individual's PSP.~~

(b) The least intrusive intervention shall be used to deescalate the dangerous behaviors when the behavior is occurring.

(c) A physical restraint may be used in the case of a dangerous behavior to prevent an individual from injuring the individual's self or others.

(d) If the individual has a known dangerous behavior, it must be identified and addressed in the PSP, or if a new dangerous behavior is identified it should be added to the PSP through a revision.

~~(b) A physical protective restraint may be used § 6400.193(6)(8) (relating to prohibition of restraints).~~

~~(c) A physical protective restraint may not ust be used until §§ 6400.52(c)(5) and 6400.185(9) (relating to annual training; and content of the PSP) are met.~~

~~(d)~~(e) **A physical protective restraint may only be used in the case of an emergency to prevent an individual from injuring the individual's self or others.**

(e)(f) **A physical protective restraint (i.e. a hands-on hold of an individual) may not be used as a behavioral intervention, consequence, retribution, punishment, for the convenience of staff persons or as a substitution for individual support.**

~~(f)~~(g) **A physical protective restraint may not be used for more than 15 minutes within a 2-hour period.**

~~(g) A physical protective restraint may only be used by a staff person who is trained as specified in § 6400.52.~~

~~(h) As used in this section, a "physical protective restraint" is a hands-on hold of an individual.~~

§ 6400.195. **[~~Restrictive procedure plan.~~] Access to or the use of an individual's personal property.**

Discussion 6400.195.

There are some individuals who understand the consequences of making restitution for damages to others' property. In these cases, there should be a mechanism for this natural consequence to occur, such as a team approved proposed plan, restrictive procedure committee review and approval, etc.

Regulation must take into account legal orders secondary to adjudication of conviction of a crime that results in the need for some type of restitution.

[~~(a) For each individual for whom restrictive procedures may be used, a restrictive procedure plan shall be written prior to use of restrictive procedures.~~

~~(b) The restrictive procedure plan shall be developed and revised with the participation of the program specialist, the individual's direct care staff, the interdisciplinary team as appropriate and other professionals as appropriate.~~

~~(c) The restrictive procedure plan shall be reviewed, and revised, if necessary, according to the time frame established by the restrictive procedure review committee, not to exceed 6 months.~~

~~(d) The restrictive procedure plan shall be reviewed, approved, signed and dated by the chairperson of the restrictive procedure review committee and the program specialist,~~

~~prior to the use of a restrictive procedure, whenever the restrictive procedure plan is revised and at least every 6 months.~~

~~(e) The restrictive procedure plan shall include:~~

~~(1) The specific behavior to be addressed and the suspected antecedent or reason for the behavior.~~

~~(2) The single behavioral outcome desired stated in measurable terms.~~

~~(3) Methods for modifying or eliminating the behavior, such as changes in the individual's physical and social environment, changes in the individual's routine, improving communications, teaching skills and reinforcing appropriate behavior.~~

~~(4) Types of restrictive procedures that may be used and the circumstances under which the procedures may be used.~~

~~(5) A target date for achieving the outcome.~~

~~(6) The amount of time the restrictive procedure may be applied, not to exceed the maximum time periods specified in this chapter.~~

~~(7) Physical problems that require special attention during the use of restrictive procedures.~~

~~(8) The name of the staff person responsible for monitoring and documenting progress with the plan.~~

~~(f) The restrictive procedure plan shall be implemented as written.~~

~~(g) Copies of the restrictive procedure plan shall be kept in the individual's record.~~]

(a) Access to or the use of an individual's personal funds or property may not be used as a reward or punishment.

(b) An individual's personal funds or property may not be used as payment for damages unless legally ordered or the individual consents to make restitution for the damages as follows:

(1) A separate written consent is required for each incidence of restitution.

(2) Consent shall be obtained in the with the support of the individual, a person designated by the individual and in the presence of and with the support of the support coordinator or targeted support manager.

(3) There may not be coercion in obtaining the consent of an individual.

§ 6400.196. **[~~Staff training.~~] Rights team.**

Discussion 6400.196.

[~~(a) If restrictive procedures are used, there shall be at least one staff person available when restrictive procedures are used who has completed training within the past 12 months in the use of and ethics of using restrictive procedures including the use of alternate positive approaches.~~

~~(b) A staff person responsible for developing, implementing or managing a restrictive procedure plan shall be trained in the use of the specific techniques or procedures that are used.~~

~~(c) If manual restraint or exclusion is used, a staff person responsible for developing, implementing or managing a restrictive procedure plan shall have experienced use of the specific techniques or procedures directly on themselves.~~

~~(d) Documentation of the training program provided, including the staff persons trained, dates of training, description of training and training source shall be kept.]~~

~~(a) The home shall have a rights team. The home may use a county mental health and intellectual disability program rights team that meets the requirements of this section.~~

~~(b) The role of the rights team is to:~~

~~(1) Review each incident, alleged incident and suspected incident of a violation of individual rights as specified in §§ 6400.31—6400.34 (relating to individual rights).~~

~~(2) Review each incidence of the use of a restraint as specified in §§ 6400.191—6400.194 to:~~

~~(i) Analyze systemic concerns.~~

~~(ii) Design positive supports as an alternative to the use of a restraint.~~

~~(iii) Discover and resolve the reason for an individual's behavior.~~

~~(c) Members of the rights team shall include the affected individual, persons designated by the individual, a family member or an advocate if the individual is unable to speak for himself, the individual's support coordinator, a representative from the funding agency and a home representative.~~

~~(d) Members of the rights team shall be comprised of a majority who do not provide direct support to the individual.~~

~~(e) If a restraint was used, the individual's health care practitioner shall be consulted.~~

~~(f) The rights team shall meet at least once every 3 months.~~

~~(g) The rights team shall report its recommendations to the individual's PSP team.~~

~~(h) The home shall keep documentation of the rights team meetings and the decisions made at the meetings.~~

(*Editor's Note*: As part of this proposed rulemaking, the Department is proposing to rescind §§ 6400.197—6400.206 which appear in 55 Pa. Code pages 6400-61—6400-65, serial pages (381985)—(381989).)

§§ 6400.197—6400.206. (Reserved).

Discussion 6400.197.

INDIVIDUAL RECORDS

§ 6400.213. Content of records.

Discussion 6400.213.

Each individual's record must include the following information:

(1) Personal information including:

(i) The name, sex, admission date, birthdate and **[~~social security~~] Social Security** number.

(ii) The race, height, weight, color of hair, color of eyes and identifying marks.

(iii) The language or means of communication spoken or understood by the individual and the primary language used in the individual's natural home, if other than English.

(iv) The religious affiliation.

(v) The next of kin.

(vi) A current, dated photograph.

(2) **[Unusual incident] Incident** reports relating to the individual.

(3) Physical examinations.

(4) Dental examinations.

(5) Dental hygiene plans.

(6) Assessments as required under § 6400.181 (relating to assessment).

[~~(7) A copy of the invitation to:~~

~~(i) The initial ISP meeting.~~

~~(ii) The annual update meeting.~~

~~(iii) The ISP revision meeting.~~

~~(8) A copy of the signature sheets for:~~

~~(i) The initial ISP meeting.~~

~~(ii) The annual update meeting.~~

~~(iii) The ISP revision meeting.~~

~~(9) A copy of the current ISP.~~

~~(10) Documentation of ISP reviews and revisions under § 6400.186 (relating to ISP review and revision), including the following:~~

~~(i) ISP review signature sheets.~~

~~(ii) Recommendations to revise the ISP.~~

~~(iii) ISP revisions.~~

~~(iv) Notices that the plan team member may decline the ISP review documentation.~~

~~(v) Requests from plan team members to not receive the ISP review documentation.~~

~~(11) Content discrepancy in the ISP, The annual update or revision under § 6400.186.~~]

(7) PSP documents as required by this chapter.

~~[(12) Restrictive procedure protocols and~~] **(8) Positive intervention records** related to the individual.

[(~~13~~)] **(9)** Copies of psychological evaluations, if applicable.

[(~~14~~)] **(10)** Recreational and social activities provided to the individual.