#14-540 (193)

Kroh, Karen #3160

From: Mochon, Julie
Sent: Tuesday, December 20, 2016 1:51 PM
To: Kroh, Karen
Subject: FW: Partners In Progress 6100 comments.
Attachments: Partners In Progress 6100 comments..doc.doc

From: Darice Cobb [mailto:daricec@partnerspip.com]
Sent: Tuesday, December 20, 2016 1:42 PM
To: Mochon, Julie <jmochon@pa.gov>
Cc: Irene Morgan <irenem@partnerspip.com>
Subject: Partners In Progress 6100 comments.

Good Afternoon, Julie:

Attached please find comments for the proposed 6100 regulations.

Thank you

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Strikethrough = text suggested to be deleted
Blue text = text suggested to be added.

GENERAL PROVISIONS

Comment and Suggestion 6100.1:

As proposed, subsection (a) omits mention of an essential and expressed principal purpose of chapter 6100 – the adoption of HCBS payment policies. Suggested text includes necessary reference to that purpose and also includes the reference to "Everyday Lives: Values in Action" (2016 edition) as adopted by the Office of Developmental Programs (ODP).

§ 6100.1. Purpose.

(a) This chapter governs the provision of and payment for home and community based services (HCBS) and base-funded services to individuals with an intellectual disability or autism. ~~The purpose of this chapter is to~~ Its various subsections specify the program and operational requirements for applicants and providers and the Department's duties and responsibilities relating to payment for HCBS and base-funded services.

(b) This chapter supports each individual with an intellectual disability or autism to achieve greater independence, choice and opportunity in his/her life as expressed in "Everyday Lives: Values in Action" (2016 edition).

(15) Summer Camp Programs.

(16) Agency with choice (AWC).

(17) OHCDS.

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

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 services to meet the specific needs of adults with autism spectrum disorders.

Agency with choice (AWC) - A type of individual-directed, financial management service in which the agency is the common law employer and the individual or his representative is the managing employer.

Allowable costs~~— Expenses considered reasonable, necessary and related to the support provided.~~ documented costs that in their nature and amount are costs incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs and are ordinary and necessary for the provision of HCBS as prescribed in this Chapter including services related to community access and community activity completion.

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 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 support* — A support funded exclusively by a grant to a county under the Mental Health and Intellectual Disability Act of 1966 (50 P.S. §§ 4101 — 4704) or Article XIV-B of the Human Services Code (62 P.S. §§ 1401-B — 1410-B).~~

Base-funded services: A service funded by state and county funds ~~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.

Centers for Medicare and Medicaid Services (CMS)

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.

Conflict of interest - A situation in which a provider or provider staff can derive a personal benefit from actions or decisions made in the delivery of HCBS.

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

Financial management service - An entity that fulfills specific employer or employer agent responsibilities for a participant that has elected to self-direct some or all of their HCBS.

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

Individual—An ~~woman, man~~ adult or child who receives ~~a~~ home and community-based intellectual disability or autism support or base-funded service or support.

Lead designated managing entity - The designated managing entity identified as the sole entity engaging in monitoring activity, audits, and conducting provider monitoring for a provider.

Mechanical restraint – use of 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, unless prescribed in the PSP.

Natural support~~—An activity or assistance that is provided voluntarily to the individual instead of a reimbursed support.~~ Not all natural supports are voluntary/ with no reimbursed support.

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

P/FDS – Person/Family Directed Support – A federally – approved waiver (under section 1915 (c) of the Social Security Act) designed to support individuals with an intellectual disability to live more independently in their homes and in their community without formal residential services and authorizes a finite amount of funds per person per year.

~~*PSP—Person-centered support plan (PSP)*~~: The comprehensive plan for each ~~participant~~ person that is ~~developed using a~~ individualized, person-centered ~~process~~ and includes HCBS.

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,

~~*Vacancy factor*—An adjustment to the full capacity rate to account for days when the *residential habilitation provider* cannot bill due to an individual not receiving supports.~~

Vendor fiscal/employer agent financial management service—A nongovernmental entity that is a fiscal agent for a participant who is self-directing using the vendor fiscal/ employer agent financial management service option.

Voluntary Exclusion - ~~The voluntary or willing removal of an individual from the immediate environment where the individual goes alone to another room or area.~~ 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

Comment and Suggestion 6100.41:

It is suggested that this section, similar to other regulatory chapters and common practice, be relocated to the end of the Chapter following the substantive program requirements. Suggested text promotes clarity.

§ 6100.41. Appeals.

Appeals related to the provisions of this chapter shall be ~~made~~ filed in accordance with 55 Pa. Code Chapter 41 (relating to Medical Assistance provider appeal procedures) and Chapter 4300 (relating to Base Funding).

(c) A provider shall complete a required corrective action plan on a form specified by the Department within 20 days of receipt of a written notice of regulatory non-compliance.

~~(f) The provider shall complete the corrective action plan on a form specified by the Department.~~

~~(g)~~ (d) The Department or the designated managing entity, after and in consultation with the provider, may issue a directed corrective action plan that compels the provider to implement specified course of action to ~~correct~~ address a ~~violation~~ finding of regulatory non-compliance ~~or alleged violation of this chapter.~~ A directed action plan is not considered a routine action and shall be authorized only upon a written justification by the Department or managing entity of the need for the plan. The terms of the plan must demonstrate the need for the directed corrective action(s) and must identify the estimated costs to the provider to implement the plan.

~~(h) The directed corrective action plan in subsection (g) may include the following:~~

~~(1) The acquisition and completion of an educational program, in addition to that required under §§ 6100.141—6100.144 (relating to training).~~

~~(2) Technical consultation.~~

~~(3) Monitoring.~~

~~(4) Audit.~~

~~(5) Oversight by an appropriate agency.~~

~~(6) Another appropriate course of action to correct the violation.~~

~~(i) The directed corrective action plan shall be completed by the provider at the provider's expense and is not eligible for reimbursement from the Department.~~

~~(j)~~ (e) ~~The~~ A provider ~~shall~~ must comply with the corrective action plan ~~and~~ or directed corrective action plan as approved by the Department or the designated managing entity.

~~(k)~~ (f) The provider ~~shall keep~~ shall maintain documentation relating to ~~an audit, provider monitoring or other monitoring method, including supporting compliance documents~~ its implementation of a corrective action plan or directed corrective action plan.

§ 6100.43. Regulatory ~~waiver~~ exceptions.

Comment and Suggestion 6100.43:

(d e) ~~The Department will specify an effective date and an expiration date for a waiver that is granted.~~ Following approval by the Department, the exception shall automatically renew annually as part of the PSP review and approval process unless circumstances have changed that require modification to or removal of the exception.

~~(e) At least 45 days prior to the submission of a request for a waiver the provider shall provide a written copy of the waiver request to the affected individuals, and to persons designated by the individuals, allowing at least 20 days for review and comment to the provider, the designated managing entity and the Department.~~

~~(f) If the request for a waiver involves the immediate protection of an individual's health and safety, the provider shall provide a written copy of the waiver request to the affected individuals, and to persons designated by the individuals, at least 24 hours prior to the submission of the request for a waiver, allowing at least 20 hours for review and comment to the provider, the designated managing entity and the Department.~~

(g)(f) The provider shall discuss and explain ~~the request for a waiver with the affected individual,~~ the outcome of the request with the affected individual(s). As necessary, modification shall be made to the individuals PSP as a result of the approval of an exception request. ~~and with persons designated by the individuals.~~

~~(h) The request for a waiver submitted to the Department must include copies of comments received by the individuals and by persons designated by the individuals.~~

~~(i) The provider shall notify the affected individuals, and persons designated by the individuals, of the Department's waiver decision.~~

~~(j) The provider shall submit a request for the renewal of a waiver at least 60 days prior to the expiration of the waiver.~~

~~(k) A request for the renewal of a waiver shall follow the procedures in subsections (a) (j).~~

~~(l) The provider shall notify an individual not previously notified under this section of an existing waiver that affects the individual.~~

~~(a) The provider shall develop and implement a quality management plan on a form specified by the Department.~~

~~(b) The provider shall conduct a review of performance data in the following areas to evaluate progress and identify areas for performance improvement:~~

~~(1) Progress in meeting the desired outcomes of the PSP.~~

(b) The provider shall adopt the following tasks as part of its quality improvement strategy:

(1) Goals that measure individual outcomes, experience, and quality of care associated with the receipt of HCBS and related to the implementation of PSP.

(2) Target objectives that support each identified goal.

(3) Performance measures the provider shall use to evaluate progress.

(4) Identity of the person(s) responsible for the quality improvement strategy and structure that support this implementation.

(5) Actions to be taken to meet the target objectives.

(c) A provider must review progress on the quality improvement strategy and update at least every 2 years.

(d) A provider shall maintain a written copy of the quality improvement strategy to be available for the Department to review as part of provider monitoring.

(e) This section does not apply to a provider of HCBS in the Adult Autism Waiver and an individual provider hired by a participant who is self-directing HCBS through the vendor fiscal/employer agent FMS option (SSW).

Comment and Suggestion 6100.47

(b) Direct contact is suggested to be moved to a position where it would apply to all of the categories for purpose of clarification.

(c) References two authorities, OAPSA and CPS, but a reference to APS has not been included. It should be included.

§ 6100.47. Criminal history checks.

Comment and Suggestion 6100.48

PAR supports the subsection as written. Except that we note again that APS is not included under subsection (a).

Comment and Suggestion 6100.50

There are significant costs associated with accommodating (a) and (b). These costs are not included within the standard rate setting process and must be paid by the Department separately at the market rate.

§ 6100.50. Communication.

~~(1) Review each incident, alleged incident and suspected incident of a violation of individual rights as specified in §§ 6100.181—6100.186 (relating to individual rights).~~

~~(2) Review each use of a restraint as defined in §§ 6100.341—6100.345 (relating to positive intervention) 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 appointed by the designated managing entity if the individual is unable to speak for himself, the individual's support coordinator or targeted support manager, a representative from the designated managing entity and a provider 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 affected PSP team.~~

~~(h) The provider shall document the rights team meetings and the decisions made at the meetings.~~

Comment and Suggestion 6100.54:

The added text clarifies the stated intent of the proposed regulation. Electronic methods of format should be considered acceptable for maintaining records. Subsection (d) has been made consistent with (c)(1).

§ 6100.54. ~~Recordkeeping~~ Maintenance of records.

(a) ~~The~~ A provider ~~shall~~ may ~~keep~~ maintain individuals' records in an electronic format, including the records of individuals. Individuals' records shall be maintained in confidence. If a provider has to keep an electronic record system, it will be an additional cost to providers.

(6) Documents required in accordance with the Patient Protection and Affordable Care Act (Pub. L. No. 111-148).

(7) Verification of successful completion of the Department's pre-enrollment provider training as specified in § 6100.142 (related to pre-enrollment training).

(8) Monitoring documentation.

~~(b) Prior to enrolling as a provider of HCBS, and on an ongoing basis following provider enrollment, the applicant or provider shall comply with the following:~~

(b) Enrolled HCBS providers must maintain:

~~(1) Chapter 1101 (relating to general provisions).~~

~~(2) The Department's monitoring documentation requirements as specified in § 6100.42 (relating to monitoring compliance).~~

~~(3) The Department's pre-enrollment provider training.~~

~~(4) Applicable licensure regulations, including Chapters 2380, 2390, 3800, 5310, 6400, 6500 and 6600, Department of Health licensure regulations in 28 Pa. Code Chapters 51, 601 and 611 (relating to general information; home health care agencies; and home care agencies and home care registries) and any other applicable licensure regulations.~~

(1) Copies of current licenses, as applicable and as specified in § 6100.81(2) (relating to provider qualifications).

(2) Verification of compliance with § 6100.46 (related to criminal history background checks).

(c) The Department shall timely review and shall approve completed applications to provide HCBS.

~~(c) Evidence of compliance with applicable licensure regulations in subsection (b)(4) is the possession of a valid regular license issued by the Department or the Department of Health.~~

~~(1) If the applicant possesses a provisional license for the specific HCBS for which the applicant is applying, the applicant is prohibited from enrolling in the HCBS program for that specific HCBS.~~

~~(2) This subsection does not prohibit a provider that possesses a provisional license from continuing participation in the HCBS program once a provider is enrolled.~~

Comment and Suggestion 6100.85:

Suggested text is added to 6100.85 to assure consistency with state law regarding the applicability and enforcement of Department policy and procedures through the adoption of regulations. Mandates that are expressed in the form of duties and obligations must be adopted in accordance with the Commonwealth's rulemaking process.

Consistent with the 5-year waiver renewal, subsection (b) is suggested to require 5-year provider qualification.

(a) ~~The~~ A provider shall comply with the ~~Department's Federally-approved waivers and waiver amendments, or the State plan, as applicable~~ provisions of applicable HCBS waivers, State Plan and amendments thereto, as the provisions of those waivers and the state plan are reflected in duly promulgated state regulations.

(b) The provider's qualifications to continue providing HCBS will be verified ~~at intervals specified in the Federally-approved waiver, including applicable Federally-approved waiver amendments, or the State plan, as applicable~~ every 5 years.

~~(c) The Department may require a provider's qualifications to be verified for continued eligibility at an interval more frequent than the Federally-approved waiver, including applicable Federally-approved waiver amendments, or the Medical Assistance State plan, due to one of the following:~~

~~(1) Noncompliance with this chapter as determined by monitoring as specified in § 6100.42 (relating to monitoring compliance).~~

~~(2) Noncompliance with a corrective action plan, or a directed correction action plan, as issued or approved by the designated managing entity or the Department.~~

~~(3) The issuance of a provisional license by the Department.~~

~~(4) Improper enrollment in the HCBS program.~~

(~~d~~)(c) ~~Neither a provider nor its staff persons who may come into contact with an individual may be listed on the Federal or State lists of excludable persons such as the following:~~ Providers may not employ, contract with or be governed by a person or persons listed on the Federal or Commonwealth current applicable lists of persons excluded from participation in the Medicare and Medicaid programs.

~~(1) System for award management.~~

of performance, a flexible, customized, quality focused plan will emerge. As proposed, the regulation is overly prescriptive. This new section collapses the critical elements of section 141 and 143 into one streamlined and accountable set of standards that maintain the basics, and account for changing best practices.

Interns and volunteers should not be included as required to go through the training process (originally in 6100.143 (b)(3)). The interns and volunteers are time limited, and, additionally, the information they need should already be included in the orientation. Requiring the same training plan for these positions as paid/contracted persons is not only costly to the provider but would prevent many otherwise engaged people from volunteering. Removing them from the required personnel list will cut down the training cost.

This section, as it relates to Chapter 6500, creates significant disincentives for contracted and potential lifesharers as it implicates IRS and Department of Labor requirements regarding independent contractor status.

Collapse 6100.141 and 6100.143 into one section.

(a) ~~The provider shall design an annual training plan based on the needs of the individuals as specified in the individuals' PSPs, the provider's quality management plan and other data and analysis indicating training needs.~~ The provider shall design the annual training plan as they see fit. The providers will take into consideration the individuals they serve when planning the training.

(b) The annual training plan ~~must~~ shall include the provider's orientation program as specified in § 6100.142 (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 and others to be trained. **(Define the Departments statement about core competencies)**

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

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

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

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

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

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

~~(4) Household members who will provide a reimbursed support to the individual.~~

~~(5) Life sharers.~~

~~(6) Volunteers who will work alone with individuals.~~

~~(7) Paid and unpaid interns who will work alone with individuals.~~

~~(8) Consultants who will work alone with individuals.~~

(b) The orientation program ~~must~~ shall 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 the Older Adults Protective Services Act (35 P.S. §§ 10225.101—10225.5102), 6 Pa. Code Chapter 15 (relating to protective services for older adults), 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)~~ (3) Recognizing and reporting incidents.

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

(c) Records of orientation training, including the training source, content, dates, length of training, copies of certificates received and persons attending shall be maintained for each person trained.

~~§ 6100.143. Annual training.~~

Comment and Suggestion 6100.143: Our agency recommends that Transportation Trip and Unlicensed home and community based providers be excluded from 6100.143 as written. Training list pertains to 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

~~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) Individual rights.~~

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

~~(5) The safe and appropriate use of positive interventions if the 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 provider in the provider's annual training plan in § 6100.141 (relating to annual training plan).~~

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

§ 6100.144. Natural supports.

Sections 6100.141—6100.143 (relating to annual training plan; orientation program; and annual training) do not apply to natural supports. Unless being paid for a service.

INDIVIDUAL RIGHTS

§ 6100.181. Exercise of rights.

Comment and Suggestion 6100.181

Suggested text is added for clarity. Deleted text appears redundant or otherwise unnecessary.

(a) An individual may not be deprived of rights as provided under §§ 6100.182 and 6100.183 (relating to rights of the individual; and additional rights of the individual in a residential facility) except if modifications to rights are necessary to mitigate risk, the modifications will be determined by the PSP Team and represented in the PSP.

(b) ~~An individual shall be continually supported to exercise the individual's rights.~~ An individual shall be provided services and accommodations to assist the individual to understand and to actively exercise rights as he/she chooses. The services and accommodations necessary for the individual to understand and actively exercise rights as he/she chooses 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.~~

~~(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~~)(h) An individual has the right to choose a willing and qualified provider.

~~(k) An individual has the right to choose where, when and how to receive needed supports.~~

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

~~(m)~~ (i) An individual has the right to assistive devices and support to enable communication ~~at all times~~.

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

§ 6100.183. Additional rights of the individual in a residential facility.

Consistent with an individual's PSP, individuals have the following additional rights:

(a) 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.

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

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

(d) An individual has the right to manage and access the individual's own finances.

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

(f) An individual has the right to furnish and decorate the individual's bedroom and the common areas of the home in accordance with §§ 6100.184 and 6100.444(b) (relating to negotiation of choices; and lease or ownership).

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

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

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

6100.184. Negotiation of choices.

New text is proposed to add clarity.

6100.221 (d) has been changed to be consistent with the language in the corresponding licensing chapters and to allow the PSP team sufficient time to develop a comprehensive PSP and not to delay individuals' receipt of services.

Suggest that 6100.221(g) be deleted as redundant after the proposed changes.

(a) An individual shall have one approved and authorized PSP that identifies the need for ~~supports~~ services, the ~~supports~~ services 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 individuals' opportunities in accordance with "Everyday Lives: Values in Action" (2016 edition).

(b) An individual's service implementation plan must be consistent with the PSP in subsection –**(Please define what is a service implementation plan)** (a).

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

(d) The initial PSP shall be developed ~~prior to the individual~~ within 60 days of completion of the individual's assessment ~~receiving a reimbursed support~~.

(e) The PSP shall be revised when an individual's needs or support system changes and upon the request of an individual or the individual's family or the provider.

(f) ~~The initial PSP and PSP revisions must be based upon a current assessment.~~ The PSP and PSP revisions will be developed with a current valid assessment and the input of the individual and the PSP team.

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

(~~h~~) (g) The initial PSP and PSP revisions shall be documented on a form specified by the Department.

~~§ 6100.222. The PSP process.~~

Comment and Suggestion 6100.222:

~~(11)~~ (10) Active pursuit of competitive, integrated employment as a first priority, before other activities or supports are considered, as applicable. **The collaboration with OVR is problematic due to extreme shortage of counselors and their current system to work with ODP providers. Individuals are waiting months for services through OVR.**

~~(12) Education and learning history and goals.~~

~~(13)~~ (11) The level of needed support, risk factors, dangerous behaviors and risk mitigation strategies, if applicable.

~~(14)~~ (12) 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.

~~(15)~~ (13) Health care information, including a health care history.

~~(16) The individual's choice of the provider and setting in which to receive supports.~~

~~(17) Excluded, unnecessary or inappropriate supports.~~

~~(18)~~ (14) Financial information, including how the individual ~~chooses~~ may choose to use personal funds based on history and communicated interest.

~~(19)~~ (15) ~~A back up~~ An alternative plan to identify a needed support as identified by the PSP team if the absence of the designated support person would place the individual at a health and safety risk.

~~(20)~~ (16) The person or entity responsible for monitoring the implementation of the PSP.

~~(21)~~ (17) Signatures of the PSP team members and the date signed.

(18) 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.

(19) The individual's participation in community employment and other integrated services will be based on the PSP process.

§ 6100.224. Implementation of the PSP.

Comment and Suggestion 6100.224:
Text has been revised to clarify responsibility regarding implementation of the PSP.

51.16 (d) (1) – (7). The Department recognizes that it is inappropriate to require such documentation each time a service is provided, rather than on a monthly basis.

Subsection (f) is suggested to be deleted as it is an unnecessary task and is overly prescriptive.

Suggest replacing "for" with "of" in 6100.226 to more clearly state that a service must be documented for billing purposes.

(a) Documentation ~~of~~ for ~~support~~ service delivery related to the individual shall be prepared by the provider for the purposes of substantiating a claim.

(b) Documentation ~~of~~ for ~~support~~ service delivery must relate to the implementation of the PSP rather than the individual's service implementation plan as specified in § 6100.221(b) (relating to development of the PSP).

~~(c) The provider shall document support delivery each time a support is delivered.~~

(~~d~~) (c) Documentation ~~of~~ for ~~support~~ service delivery may be made on the same form if multiple ~~supports~~ services are provided to the same individual, by the same provider and at the same location.

~~(e) Documentation of support delivery must include the following:~~

~~(1) The name of the individual.~~

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

~~(3) The date, name, title and signature of the person completing the documentation.~~

~~(4) A summary documenting what support was delivered, who delivered the support, when the support was delivered and where the support was delivered.~~

~~(5) The amount, frequency and duration of the support as specified in the PSP.~~

~~(6) The outcome of the support delivery.~~

~~(7) A record of the time worked, or the time that a support was delivered, to support the claim.~~

~~(f) The provider, in cooperation with the support coordinator or the targeted support manager and the individual, shall complete a review of the documentation of support delivery for each individual, every 3 months, and document the progress made to achieving the desired outcome of the supports provided.~~

and retain employment in competitive, integrated settings though the provision of information and education about employment opportunities, including the availability of OVR services.

(b) Authorization for a new prevocational support for an individual who is under 25 years of age shall be permitted only after a referral is made to the OVR and the OVR either determines that the individual is ineligible or closes the case.

(c) ~~At the annual PSP revision, the individual~~ Eligible individuals shall be offered appropriate opportunities related to the individual's skills and interests, and encouraged to seek competitive, integrated employment, at each annual PSP review. Including but not limited to transitional work services, vocational skills building through Supported Employment, ongoing OVR counseling in a pre-vocational facility, and participation in career club activities offered through community habilitation programs.

~~(d) The support coordinator or targeted support manager shall provide education and information to the individual about competitive, integrated employment and the OVR services.~~

§ 6100.263. Education.

If identified in the individual's PSP as necessary to support the individual's pursuit of a competitive, integrated employment outcome or identified in the individual's PSP for employment approved by the OVR, an individual shall have access to a full range of options that support participation in the following post-secondary education and the SC shall assist the individual to obtain the funding source for such options:

(1) Technical education.

(2) College and university programs.

(3) Lifelong learning.

(4) Career development.

6100.301- (a) please add Supports coordinator to the definition.

§ 6100.303. Reasons for a transfer or a change in a provider.

Comment and Suggestion 6100.303:

As drafted, this section does not reflect common experiences of providers. Providers work with individuals and their families to develop and maintain services in accordance with each individual's PSP as the individual's needs change and preferences change. When the provider believes it cannot meet the individuals' needs or expectations the provider notifies ODP to

~~(2) The individual.~~

~~(3) Persons designated by the individual.~~

~~(4) The PSP team members.~~

~~(5) The designated managing entity.~~

~~(6) The support coordinator or targeted support manager.~~

(b) ~~If the provider is no longer able or willing to provide a support for an individual in accordance with § 6100.303 (relating to reasons for a transfer or a change in a provider), the provider shall provide written notice to the following at least 45 days prior to the date of the proposed change in support provider or transfer:~~ For service providers such as transportation, homemaker and vendor services, a PSP Team meeting may not be necessary. The SC shall assist the individual to make such changes in those circumstances.

~~(1) The individual.~~

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

~~(3) The PSP team members.~~

~~(4) The designated managing entity.~~

~~(5) The support coordinator or targeted support manager.~~

~~(6) The Department.~~

~~(c) The provider's written notice specified in subsection (b) must include the following:~~

~~(1) The individual's name and master client index number.~~

~~(2) The current provider's name, address and master provider index number.~~

~~(3) The support that the provider is unable or unwilling to provide or for which the individual chooses another provider~~.

(c) If a provider is no longer able or willing to provide a support(s)for an individual in accordance with the provisions specified in § 6100.303 (relating to reasons for a change in a provider or a transfer), the provider shall provide written notice to the individual, guardian(s), the individual's family, the PSP team members, the designated managing entity, the SC or TSM and the Department, at least 30 days prior to the date of the proposed change in service provider or transfer.

~~§ 6100.306. Transition planning.~~

Comment and Suggestion 6100.306:

This section should be included within section 6100.302

~~The support coordinator or targeted support manager shall coordinate the transition planning activities, including scheduling and participating in all transition planning meetings during the transition period.~~

~~§ 6100.307. Transfer of records.~~

Comment and Suggestion 6100.307:

This section should be included within section 6100.302

~~(a) The provider shall transfer a copy of the individual record to the new provider prior to the day of the transfer.~~

~~(b) The previous provider shall maintain the original individual record in accordance with § 6100.54 (relating to recordkeeping).~~

POSITIVE INTERVENTION

§ 6100.341. Use of a positive intervention.

Comment and Suggestion 6100.341:

This section can be incorporated into 6100.343

~~(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 restrictive intervention shall be applied will be utilized 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:~~

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.

~~(g) A physical protective restraint may only be used by a person who is trained as specified in § 6100.143(c)(5).~~

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

§ 6100.345. Access to or the use of an individual's personal property.

Comment and Suggestion 6100.345

There are individuals who understand the consequences of having to make restitution for damages they cause to the property of other persons. In those cases, there should be a mechanism for this natural consequence to occur, in coordination with the PSP team.

(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.

INCIDENT MANAGEMENT

§ 6100.401. Types of incidents and timelines for reporting.

Comment and Suggestion 6100.401:

It is suggested that subsection (a) (13) & (16) be moved to a newly proposed subsection (b), and to allow the provider more time to report the incident.

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

(1) Death.

(c) 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.

§ 6100.402. Incident response and investigations.

Comment and Suggestion 6100.402:

Individual to individual abuse [(b)(9)] was determined to require certified investigation in the event of serious injury and/or sexual violation.

As written, subsection (c) requirement would significantly expand the number and types of investigations that would be required to be investigated and add significant cost without data demonstrating the need to expand the types of incidents requiring investigation.

Additional/ deleted text added for clarity.

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

(b) The provider 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 an individual's funds
(7) Violations of individuals rights
(8) Unauthorized or inappropriate use of a restraint
(9) Individual to individual sexual abuse and serious bodily injury.

(c) A Department-certified incident investigator shall conduct the incident investigation of the incident listed in 6100.401 subsection (a) as currently required under the Department's existing Incident Management Policy.

§ 6100.403. Individual needs in incident investigation.

as waiting for lab results or a police report.

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

(b) ~~The~~ A provider 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.

§ 6100.405. Incident analysis.

Comment and Suggestion 6100.405:

(b) As proposed, this mandates a fourfold increase from the current requirement of annual review.

(a) A ~~The~~ provider 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 individual.

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

Additional individuals funded through any funding source, including private-pay, may not live in the home to exceed the Department-approved program capacity.

(d) A copy of the written request specified in subsections (a) and (b) shall be provided to the affected individuals, and persons designated by the individuals, prior to the submission to the Department.

(e) A copy of the Department's response to the written request specified in subsections (a) and (b) shall be provided to the affected individuals, and persons designated by the individuals, within 7 days following the receipt of the Department's response.

§ 6100.442. Physical accessibility.

Comment and Suggestion 6100.442

This item can cause providers to incur significant and non-recognized costs. The Department must develop capacity to compensate providers for these costs in the rate-setting process.

(a) The provider shall provide for or arrange for physical site accommodations and assistive equipment to meet the health, safety and mobility needs of the individual.

(b) Mobility equipment and other assistive equipment shall be maintained in working order, clean, in good repair and free from hazards.

(c) The Department shall recognize the necessary costs incurred by providers to comply with (a) and (b) above.

§ 6100.443. Access to the bedroom and the home.

Comment and Suggestion 6100.443:

6100.443 (a) has been modified to reflect applicable direction from the Community Rule.

(a) ~~In a residential facility, an individual shall have a lock with a key, access card, keypad code or other entry mechanism to unlock and lock the individual's bedroom door and the entrance of the home~~ Each individual enjoys privacy in their individual sleeping or living unit. Units shall have entrance doors that the individual may lock, with only staff authorized in the PSP having keys to the doors.

(b) Assistive technology, as ~~needed~~ necessary, shall be used to allow the individual to open and lock the door without assistance.

Text is suggested to add clarity to the regulation.

A setting in which a ~~support~~ service is provided shall be integrated ~~in~~ into the community and the individual shall have the same degree of community access as reasonably possible consistent with the individual's needs and choice as would an individual who is similarly situated in the community who does not have a disability and who does not receive an HCBS.

§ 6100.446. Facility characteristics relating to size of facility.

Comment and Suggestion 6100.446:

The relocation of a residential facility of 8 to another residential facility of 8 must be approved upon a provider's reasonable demonstration of comparability of service provision and cost.

The Community Rule does not impose an absolute cap on program size. Consideration must be given to additional staffing levels required, additional facility costs, and workforce shortage. Federal regulation expressly provides: "We do not believe there is a maximum number that we could determine with certainty that the setting would meet the requirements of HCBS setting. The focus should be on the experience of the individual in the setting." [79 Fed. Reg. 2968 (January 16, 2014)]

What is ODP's rationale for imposing the specific limit of 15 persons? What analysis and data is ODP relying on to establish a 15-person limit? Has ODP calculated the operational and fiscal consequences that will arise due to the imposition of a 15-person limit?

(a) A residential facility that serves primarily persons with a disability, which was funded in accordance with Chapter 51 prior to _____ (*Editor's Note*: The blank refers to the effective date of adoption of this proposed rulemaking.), may not exceed a program capacity of eight persons.

(1) A duplex, two bilevel units and two side-by-side apartments are permitted as long as the total in both units does not exceed a program capacity of eight persons.

(2) ~~With the~~ The Department~~'s written approval,~~ shall approve the relocation of a residential facility with a program capacity of eight ~~may move~~ to a new location and retain the program capacity of eight so long as the move is consistent with the PSPs of the affected individuals.

~~(b) A residential facility that serves primarily persons with a disability, which is newly funded in accordance with this chapter on or after _____ (*Editor's Note*: The blank refers to the~~

(a) A residential or day facility, which is newly-funded in accordance with this chapter on or after _____ (*Editor's Note*: The blank refers to the effective date of adoption of this proposed rulemaking.), may not be located adjacent ~~or in close proximity~~ to the following:

(1) Another human service residential facility.

(2) Another human service day facility serving primarily persons with a disability.

(3) A hospital.

(4) A nursing facility.

(5) A health or human service public or private institution.

(b) No more than ~~10%~~ of the units in an apartment, condominium or townhouse development may be funded in accordance with this chapter.

(c) ~~With the Department's written approval, a~~ A residential or day facility that is licensed in accordance with Chapter 2380, 2390, 6400 or 6500 prior to _____ (*Editor's Note*: The blank refers to the effective date of adoption of this proposed rulemaking.), and funded in accordance with Chapter 51 prior to _____ (*Editor's Note*: The blank refers to the effective date of adoption of this proposed rulemaking.), ~~may~~ shall continue to be eligible for HCBS participation.

(d) ~~With the Department's written approval, an~~ An intermediate care facility for individuals with an intellectual disability licensed in accordance with Chapter 6600 (relating to intermediate care facilities for individuals with an intellectual disability) with a licensed capacity of eight or less individuals ~~may~~ shall be eligible for HCBS participation.

MEDICATION ADMINISTRATION

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,

~~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.

(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.

§ 6100.462. Medication administration.

Comment and Suggestion 6100.462:

It appears that there was an inadvertent problem created by the inclusion of standardized medications content across these four program areas that includes the 6500 regulations. If the 6500 LifeSharing programs are included in this requirement, significant unintended consequence are likely to arise and cause severe negative impact on the viability and expansion of this program – a program that the Department has repeatedly stated it desires to expand. A consequence as well for the inclusion of this provision for 6500 programs will be more institutional style program expectations in a program which should increasingly exemplify the ideals of Everyday Lives principals in an integrated and typical family fashion to the retest degree. LifeSharing (6500) service providers are not currently required to complete the ODP Medication Training Module. The Module is necessarily a very detailed training requiring at least two full days of training plus four subsequent observations. This level of intensive training is possible in 2380, 2390 and 6400 programs because they have staff who are employees with employer-controlled schedules and they have centralized access to administrative supports, in perhaps a less intrusive way than entering a family's home. These conditions do not exist and are not desirable for LifeSharing. LifeSharing is provided

treatments.

~~(a) A provider 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. Currently the approved ODP Medication Training Module only covers oral medications.

~~(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 § 6100.469 (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 into the individual's hand, mouth or other route as ordered by the prescriber.~~

~~(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.~~

§ 6100.464. Labeling of medications.

Comment and Suggestion 6100.464:

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.

~~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.

~~(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.~~

§ 6100.470. Exception for family members.

Comment and Suggestion 6100.70

What happens in the instance of a family member who becomes a life sharer? Does the exemption in 6100.407 still apply?

Sections 6100.461—6100.463 and 6100.466—6100.469 do not apply to an adult relative of the individual who provides medication administration. An adult relative of the individual may administer medications to an individual without the completion of the Department-approved medications administration course.

GENERAL PAYMENT PROVISIONS

§ 6100.481. Departmental established HCBS rates. ~~rates and classifications~~.

Comment and suggestion 6100.481 – 6100.641:

Pennsylvania's ability to provide necessary supports and services to over 50,000 Pennsylvanians with an intellectual disability or autism depends on a fair and rational rate methodology. The Medical Assistance Program is the sole payer of ID services in Pennsylvania and Medical Assistance eligible clients comprise 100% of the HCBS population. The state and federal governments have recognized that the principal cost driver for ID/A (intellectual disability and autism) services is the workforce, accounting for approximately 80-85% of the total HCBS costs and that workforce stability is threatened by the inability of providers to offer competitive, family sustaining wages. High staff turnover and vacancy rates, in turn, impact access to and quality of care. The proposed rate setting regulations require specifics that assure that Department-established payment rates and the actual incurred costs of providing mandated services are and will be consistently, fairly and reasonably aligned. This is particularly so given that services are provide under a single payer system, i.e., a system that is wholly dependent on Medical Assistance payments.

The Department, apart from its Notice of proposed rulemaking, has announced its intent to rebase its current fee schedule rates effective July 1, 2017, and to convert cost based services to fee schedule rates effective January 1, 2018. All of the necessary specifics concerning the

calculations relied on in establishing payment rates.)

The Department, under state law, must follow the rule making requirements set forth in the Commonwealth Documents Law, 45 P.S. §§1102 et seq., the Regulatory Review Act, 71 P.S. §§7451, et. seq., and the Commonwealth Attorneys Act, 71 P.S. §§732 – 101 et. seq. And, in complying with these procedural provisions, it must formulate regulations that permit providers to have a reasonable and fair understanding of what is required of them if they seek to render HCBS and the methodology for the rates at which they will be paid for their services. It is simply not sufficient for the Department, as it proposes to do under 6100.481 – 647, to list generic, non-specific "factors" that it will "consider" and otherwise assume extraordinary discretion to pay rates that it determines to be appropriate. Rather, it must explain in detail the methods and procedures and methodologies that it will actually utilize in setting payment rates. Transparency in this regulation is essential.

Under the proposed 6100.571(c), the Department explains how it will "consider" (in contrast to "utilize) a list of generic "factors" to create its "market based data" to establish fee schedule rates. Among the referenced factors are "staff wages" and "staff related expenses" and "productivity" and "administration related expenses." Specifics regarding these and the other "factors" are notably excluded from the regulation. Equally inappropriate, the factors include "determinations made [by whom?] about cost components [such as?] that reflect costs necessary and related to the delivery of each HCBS" (6100.571 (c)(8)). The draft regulation further contemplates a "review of the cost of implementing Federal, state, and local statutes, regulations and ordinances" (6100.571 (c) (9)). How this review might be accomplished and precisely what costs will be considered are unstated. And, finally, the regulation even includes as a factor what is defined as "[o]ther criteria that impact costs" (6100.571(c)(10). In other words, the Department may elect to unilaterally apply whatever undisclosed criteria that it may choose on an ad hoc basis.

It is essential to understand the constraints that apply to the Department's HCBS rate setting duties and obligations. In its response to paragraph (9) of the IRRC Regulatory Analysis Form that asks the Department to identify state or federal law or court order that mandates the adoption of the proposed regulations and whether "there are any relevant state or federal court decisions" to consider, the Department responded that: (1) the HCBS regulations "are mandated by 42 C.F.R §§441 – Service Requirements and Limits Applicable to specific Services"; and (2) "there are [n]o relevant court decisions."

The Department's responses to the IRRC forget applicable federal and state statute and case law that prescribe the requirements that the Department must adhere to in establishing payment rates for HCBS services. The fact that the HCBS regulations and payment rates relate to "waiver programs" does not excuse the Department from compliance with the federal

protection afforded to HCBS providers from the adoption of arbitrary and capricious rate setting policies such as has occurred under the discredited Chapter 51 regulations.

The Department will establish payment rates for HCBS as specified in subsections 6100.482 – 6100.711. Payment rates constitute the maximum payment for a particular HCBS.

(a) An HCBS will be paid based on one of the following:

(1) Fee schedule rates.

(2) Cost-based rates.

(3) Department-established fees for the ineligible portion of residential habilitation.

(4) Managed care or other capitated payment methods.

(5) Vendor goods and services.

~~(6) A method established in accordance with a Federally-approved waiver, including a Federally-approved waiver amendment.~~

~~(b) The Department will establish a fee per unit of HCBS as a Department-established fee by publishing a notice in the *Pennsylvania Bulletin*.~~

~~(c) The fee is the maximum amount the Department will pay.~~

~~(d) The fee applies to a specific location and to a specific HCBS.~~

MOVE SUBSECTION (e) TO 6100.482 (j). ~~(e) The provider may not negotiate a different fee or rate with a county mental health and intellectual disability program if there is a fee or rate for the same HCBS at the specific HCBS location.~~

(i) The provider may not negotiate a different fee or rate with a county mental health and intellectual disability program if there is a fee or rate for the same HCBS at the specific HCBS location. MOVED FROM 6100.481 SUBSECTION (e) TO 6100.482 (j).

Comment and Suggestion 6100.663:

6100.483 is unnecessary because title to real estate acquired by the provider clearly remains with the provider that owns it

§ 6100.483. Title of a residential building.

~~The title of a debt-free residential building owned by an enrolled provider shall remain with the enrolled provider.~~

§ 6100.484. Provider billing.

(a) The provider shall submit payment claims consistent with the provisions of the chapter and in accordance with § 1101.68 (relating to invoicing for services).

(b) The provider shall use the Department's information system~~,~~ and forms specified by the Department~~,~~ to submit payment claims.

(c) The provider shall ~~only~~ submit payment claims ~~that are substantiated by documentation~~ as specified in § 6100.226 (relating to documentation of support delivery).

~~(d) The provider may not submit a claim for a support that is inconsistent with this chapter, inappropriate to an individual's needs or inconsistent with the individual's PSP.~~

Comment and Suggestion 6100.485: The auditing standards listed in this section are numerous, extreme and could be open to multiple interpretations. This will create confusion , at best, for Providers and additional expense for multiple or many layered audits, at worst.

What is the purpose of requiring costly audits of a fee schedule rate based payment system?

§ 6100.485. Provider Audits.

(a) ~~The provider shall comply with the~~ The following audit requirements apply to cost based payments:

~~(h) The Department, a designated managing entity, an authorized Federal agency or an authorized State agency may direct the provider to have a performance audit conducted in accordance with the standards in subsection (c).~~

~~(i) A provider that is not required to have a single audit during the Commonwealth fiscal year shall keep records in accordance with subsection (c).~~

~~(j) The Department or the designated managing entity may perform a fiscal review of a provider.~~

Comment and Suggestion 6100.486:

If a provider is paid according to a fee schedule, why should the provider be compelled to obtain bids for services or supplies?

§ 6100.486. Provider Bidding Requirements.

~~(a) For a supply or equipment over $10,000, the provider shall obtain the supply or equipment using a process of competitive bidding or written estimates.~~

~~(b) The cost for will not exceed that. must be the best price made by a prudent buyer.~~

~~(c) If a sole source purchase is necessary, the provider shall keep records supporting the justification for the sole source purchase.~~

~~(d) As used in this section, a "sole source purchase" is one for which only one bid is obtained.~~

FEE SCHEDULE

§ 6100.571. Fee schedule rates.

Comment and Suggestion 6100.571:

Providers are entitled to predictability, reliability, and accountability in the rate setting process. Reliance on statements about "review" and "consider" along with the vague reference to "criteria that impacts costs" are imprecise and contrary to the Department's legal obligation to develop payment rates that are sufficient to meet the obligations and requisite costs that providers must incur related to the needs of individuals who are receiving their services through the waiver programs. And see comment and suggestion to 6100.481

~~(d) The Department will publish as a notice in the *Pennsylvania Bulletin* the factors in subsection (c) used to establish the rates and the fee schedule rates for public review and comment.~~

~~(e) The Department will pay for fee schedule supports at the fee schedule rate determined by the Department.~~

(d) For Fiscal Year 2018-2019, the Department shall update the data base that it relies on to establish fees so as to reflect providers' current costs. On or before December 1, 2017, the Department shall publish its rate setting methodology for Fiscal Year 2018-2019 in the *Pennsylvania Bulletin* for public review and comment. The proposed rate setting methodology shall describe the provider costs, assumptions, presumptions, and indexes relied on by the Department to establish the proposed rates. The Department shall apply the most recent CMS Home Health Market Basket Index in establishing the fee schedule rates.

(e) On or before June 1, 2018, the Department shall publish in the *Pennsylvania Bulletin* the Fiscal Year 2018-2019 fee schedule rates, the details of the rate setting methodology used to establish the rates and its responses to all comments received regarding the proposed rates and rate and rate setting methodology.

(f) The Department shall update the cost data that it relies upon to establish Fee Schedule Rates every three years, and shall follow and comply with the rate setting and publication requirements in subsection (d).

(g) In every fiscal year after FY 2018-2019, in years when the Department does not update the cost data base, it shall apply the most current version of the Home Health Market Basket in establishing the annual fee schedule rates.

§ 6100.644. Cost report.

(a) The provider shall complete the cost report to reflect the actual costs and the allowable administrative costs of the HCBS provided to Waiver Program consumers and Base funded individuals.

Comment and Suggestion 6100.645:

The last two subsections were switched in order to more accurately reflect the chronology.

§ 6100.645. Cost based rate setting.

the program who has above-average staffing needs or if an individual's needs have changed significantly as specified in the individual's PSP.

§ 6100.647. Allowable costs.

Comment and Suggestion 6100.647:
This section is replaced by the definition under 6100.3 of "allowable cost." The proposed regulation is unnecessarily complex and vague. The suggested text incorporates the objective of the proposed regulation in reliance on 2 C.F.R 200.

~~(a) A cost must be the best price made by a prudent buyer.~~

~~(b) A cost must relate to the administration or provision of the HCBS.~~

~~(c) A cost must be allocated and distributed to various HCBS or other lines of business among cost categories in a reasonable and fair manner and in proportion with the benefits provided to the HCBS or other lines of business among cost categories.~~

~~(d) Allowable costs must include costs specified in this chapter and costs that are in accordance with the Department's Federally-approved waivers and waiver amendments.~~

~~(e) To be an allowable cost, the cost must be documented and comply with the following:~~

~~(1) Applicable Federal and State statutes, regulations and policies.~~

~~(2) Generally Accepted Government Auditing Standards and applicable Departmental procedures.~~

~~(f) A cost used to meet cost sharing or matching requirements of another Federally-funded program in either the current or a prior period adjustment is not allowable.~~

~~(g) Transactions involving allowable costs between related parties shall be disclosed on the cost report.~~

Comment and Suggestion 6100.648: In a single payer system, which does not reimburse a Provider's full allowable cost, why does the Department seek to impose limitations on donations?

§ ~~6100.648. Donations.~~

~~(c) The provider may not include benefits as an allowable cost for a consultant.~~

Comment and Suggestion 6100.652: The provisions in (b) are covered in (c)

§ 6100.652. Compensation.

(a) Compensation for staff persons, including pension, health care and accrued leave benefits, is an allowable cost.

~~(b) A bonus or severance payment, that is part of a separation package, is not an allowable cost.~~

(c)(b) Internal Revenue Service statutes and regulations and applicable Office of Management and Budget Circulars and related applicable guidance as issued by the United States Office of Management and Budget apply regarding compensation, benefits, bonuses and severance payments.

§ 6100.657. Rental equipment and furnishing.

Rental of equipment or furnishing(s) is an allowable cost if the rental is ~~more~~ as cost-efficient ~~than~~ as purchasing.

§ 600.661. Fixed assets.

~~(4) Document discrepancies between physical inventories or fixed asset ledgers.~~

~~(6) Offset the provider's total depreciation expense in the period in which the asset was sold or retired from service by the gains on the sale of assets.~~

~~(2) Participation amounts shall be used for maintaining assets, reinvestment in the program or restoring the program due to an unforeseen circumstance.~~

§ 6100.662. Motor vehicles.

The cost of the purchase or lease of motor vehicles and the operating costs of the vehicles is an allowable cost in accordance with the following:

(1) The cost of motor vehicles through depreciation, participation allowance, expensing or amortization of loans for the purchase of a vehicle is an allowable expense. Depreciation and lease payments are limited in accordance with the annual limits established under section 280F of the Internal Revenue Code (26 U.S.C.A. § 280F).

(2) The provider shall keep a daily log detailing the use~~, maintenance and services activities~~ of vehicles.

(3) The provider shall analyze the cost differences between leasing and purchase of vehicles and the most practicable economic alternative shall be selected. **Clarification is needed on how often the analyzes should occur? Annually, at the end of a lease? Should this be required in a fee base schedule?**

(4) The provider shall keep documentation of the cost analysis.

(5) The personal use of the provider's motor vehicles is prohibited unless a procedure for payback is established and the staff person reimburses the program for the personal use of the motor vehicle.

Comment and Suggestion 6100.663:

Subsection (f) must be deleted. The Department does not have the authority to retroactively create an entitlement to equity in real estate it does not own.

Subsection (g) is unnecessary. Title to real estate acquired by the provider clearly remains

§ 6100.663. Fixed assets of administrative buildings.

(~~d~~)(b) The grounds for a change in a provider or a transfer of an individual against the individual's wishes under § 6100.303 (relating to reasons for a transfer or a change in a provider) do not apply to a transfer under subsection (e).

(~~e~~)(c) The provider may not transfer an individual due to the individual's absence until after the provider has received written approval from the Department.

§ 6100.665. Indirect costs.

(a) An indirect cost is an allowable cost if the following criteria are met:

(1) The provider shall have a cost allocation plan.

(2) Costs are authorized in accordance with applicable Office of Management and Budget Circulars and related applicable guidance as issued by the United States Office of Management and Budget and § 6100.647 (relating to allowable costs).

(b) The provider shall consider the reason the cost is an indirect cost, as opposed to a direct cost, to determine the appropriate cost allocation based on the benefit to the HCBS.

(c) If a cost is identified as an indirect cost, the cost will remain an indirect cost as long as circumstances remain unchanged.

~~(d) The provider shall select an allocation method to assign an indirect cost in accordance with the following:~~

~~(1) The method is best suited for assigning a cost with a benefit derived.~~

~~(2) The method has a traceable cause and effect relationship.~~

~~(3) The cost cannot be directly attributed to an HCBS.~~

~~(e) The provider shall allocate a general expense in a cost group that is more general in nature to produce a result that is equitable to both the Department and the provider.~~

§ 6100.666. Moving expenses.

(a) The actual cost associated with the relocation of a waiver support location is allowable.

~~(b) Moving expenses for an individual is allowable if the provider receives approval from the Department or the designated managing entity prior to the move.~~

§ 6100.668. Insurance.

as its members, or is affiliated with an organization that represents, individuals or entities that are not self-advocates or advocates.

(b) Legal fees for prosecution of claims against the Commonwealth and expenses incurred for claims against the Commonwealth are ~~not~~ allowable ~~unless~~ in full if the provider prevails ~~at the~~ hearing. In the event the Commonwealth and the Provider amicably resolve the Provider's claim(s), one-half of the provider's documented legal fees are allowable costs.

§ 6100.671. Reporting of start-up cost.

(a) A start-up cost that has been reimbursed by the Department shall be reported as income.

(b) A start-up cost within the scope of Standard Operating Procedure 98-5 shall be expensed as the costs are incurred, rather than capitalized.

§ 6100.672. ~~Cap on~~ Start-up cost(s).

(a) ~~A cap on start-up cost will be established by the Department.~~ The Department shall pay a provider its allowable costs relating to the start-up of a new location.

(b) A request for a waiver in accordance with § 6100.43 (relating to regulatory waiver) may be requested if the waiver conditions in § 6100.43 and one of the following conditions are met:

(1) The start-up cost provides greater independence and access to the community.

(2) The start-up cost is necessary to meet life safety code standards.

(3) The cost of the start-up activity is more cost effective than an alternative approach.

§ 6100.688. Completing and signing the room and board residency agreement.

(a) The provider shall ensure that a room and board residency agreement, on a form ~~specified~~ approved by the Department (or where applicable, another government agency, e.g. Housing and Urban Development), is completed and signed by the individual annually.

§

Comment and Suggestion 6100.692: This provision is acceptable as long as it is understood that the Department is responsible for payment after 30 consecutive days' absence.

§ 6100.692. Hospitalization.

~~(2) Staff wages.~~

~~(3) Staff-related expenses.~~

~~(4) Productivity.~~

~~(5) Occupancy.~~

~~(6) Custodial and maintenance expenses.~~

~~(7) Geographic costs.~~

~~(8) A review of approved HCBS definitions and determinations made about cost components that reflect costs necessary and related to the delivery of each HCBS.~~

~~(9) A review of the cost of implementing Federal, State and local statutes, regulations and ordinances.~~

~~(10) Other criteria that impact costs.~~

~~(e) The Department will publish as a notice in the *Pennsylvania Bulletin* the factors in subsection (d) used to establish the rates and the fee schedule rates for public review and comment.~~

~~(f) The Department will pay for Department-established fee supports at the fees determined by the Department.~~

~~ENFORCEMENT~~ COMPLIANCE

Comment and Suggestion 6100.741:

Text has been added/deleted to reflect clarity, brevity and reasonableness. Terminology such as "enforcement" and "sanctions" and "array of sanctions" is outdated and not reflective of the purpose and intent of this section.

§ 6100.741. ~~Sanctions~~ Imposition of remedies.

(a) The Department ~~has the authority to~~ will ~~enforce~~ assure compliance with the provisions of this chapter through ~~an array of sanctions~~ the imposition of the remedies described in this section and 55 Pa Code § 1101.74 – 1101.77. The specific remedy that may be imposed will depend on facts relating to the regulatory infraction.

~~§ 6100.743. Consideration as to type of sanction utilized.~~

Comment and Suggestion 6100.743: The Department, in determining the nature and scope of a particular remedy, may not act in capricious disregard of the facts that underlie the regulatory violation. The Department's notion that it "may" consider "variables" in determining a remedy is unsupported in law. Here again, the Department wrongly presumes unfettered discretion in its application of regulations. The Department is duty-bound to act in accordance with actual facts and must avoid the contrary, untenable and mistaken view that it possesses "full discretion" to take any action in an otherwise regulated environment.

~~(a) The Department has full discretion to determine and implement the type of sanction it deems appropriate in each circumstance specified in § 6100.741(b) (relating to sanctions).~~

~~(b) The Department has the authority to implement a single sanction or a combination of sanctions.~~

~~(c)~~ 6100.742 (b) The Department ~~may~~ shall consider the following ~~variables~~ facts when determining and implementing ~~a sanction or combination of sanctions~~ a remedy:

(1) The seriousness of the ~~condition~~ infraction~~. specified in § 6100.741(b).~~

(2) The ~~continued nature~~ duration of the ~~condition~~ infraction ~~in § 6100.741(b).~~

(3) The repeated nature of the ~~condition~~ infraction ~~in § 6100.741(b).~~

~~(4) A combination of the conditions specified in § 6100.741(b).~~

~~(5) The history of provisional licenses issued by the Department.~~

~~(6) The history of compliance with this chapter, Departmental regulations such as licensure regulations and applicable regulations of other State and Federal agencies.~~

Comment and Suggestion 6100.744: This section was incorporated into §6100.741.

~~**§ 6100.744. Additional conditions and sanctions.**~~

~~In addition to sanctions and sanction conditions specified in this chapter, the provider is subject to the following:~~

~~(1) Sections 1101.74, 1101.75, 1101.76 and 1101.77.~~