#14-540 (168)

Kroh, Karen #3160

From: Ed Picchiarini <epic@wpa.net>
Sent: Tuesday, December 20, 2016 9:17 PM
To: Mochon, Julie
Cc: Thaler, Nancy; 'Patrick DeMico'; Kroh, Karen
Subject: The Provider Alliance comments on the Proposed Regulations
Attachments: The Provider Alliance Comments to Draft Regulations.docx

Hi Julie, Karen, Nancy,
Thanks very much for the opportunity to comment on the 2380, 2390, 6100, 6400 and 6500 regulations.
Have a very Merry Christmas!
Ed

3160

Kroh, Karen

From: Kroh, Karen
Sent: Wednesday, December 21, 2016 7:47 AM
To: 'Ed Picchiarini'
Subject: RE: The Provider Alliance comments on the Proposed Regulations

Hello Ed,

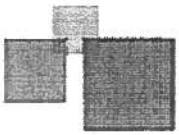
Thanks for including me at your last meeting in Cranberry. I enjoyed listening to the concerns and issues. As I stated, I am happy to come out again in March after we analyze all the public comments.

Thank you for your written comments on Regulation #14-540 – 55 Pa. Code Chapters 51, 2380, 2390, 6100, 6200, 6400 and 6500 (relating to Office of Developmental Programs Home and Community-Based Services, Adult Training Facilities, Vocational Facilities, Support for Individuals with an Intellectual Disability, Room and Board Charges, Community Homes for Individuals with an Intellectual Disability and Family Living Homes). The Department of Human Services (Department) will review and consider your comments as the final-form regulation is prepared. The Department will send you a copy of the final-form regulation at the time the regulation is submitted to the Independent Regulatory Review Commission.

Sincerely,
Karen E. Kroh/Regulatory Consultant
Department of Human Services
Office of Developmental Programs
Room 502 Health and Welfare Building
Harrisburg, Pennsylvania 17120
c-karkroh@pa.gov
Phone: 717-265-7746

From: Ed Picchiarini [mailto:epic@wpa.net]
Sent: Tuesday, December 20, 2016 9:17 PM
To: Mochon, Julie
Cc: Thaler, Nancy; 'Patrick DeMico'; Kroh, Karen
Subject: The Provider Alliance comments on the Proposed Regulations

Hi Julie, Karen, Nancy,
Thanks very much for the opportunity to comment on the 2380, 2390, 6100, 6400 and 6500 regulations.
Have a very Merry Christmas!
Ed



The Provider Alliance
SHARING IDEAS, RESOURCES, AND PURPOSE

The Provider Alliance
2423 Edgewood Drive
Pittsburgh PA 15241

December 20, 2016

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

Comments to Proposed Rulemaking per Regulation No. 14-540

Julie,
Please find enclosed comments from The Provider Alliance and its membership related to proposed rulemaking affecting the Pennsylvania Code, Title 55, chapters 2380, 2390, 6100, 6400, and 6500.

The following sections proceed in the sequence described above, and identify comments in numerical order as they appear in the proposed draft regulations. The format prescribed by ODP has been utilized to the greatest extent possible to facilitate your review.

One area that I wish to emphasize is the need for any regulation that references service fees to be indexed to a market factor to ensure that future reimbursement keeps pace with inflation and other related service costs.

Thank you for accepting and reviewing these comments, and for your time in processing the input from providers and stakeholders affected by these proposed changes.

Sincerely,

Edward Picchiarini

Edward Picchiarini

cc: Nancy Thaler, Deputy Secretary, Office of Developmental Programs
Karen Kroh, Regulatory Consultant, Office of Developmental Programs

Comments
Chapter 2380

Citation: **2380.3. Definitions**

Discussion:

Recommendation: All definitions for these regulations should be included in Chapter 2390.5, 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.

Citation: **2380.33. Program specialist**

Discussion: Aligning the requirement throughout will simplify monitoring and allow for more value placed on experience.

Recommendation: 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 persons with disabilities.

(2) A bachelor's degree from an accredited college or university and 2 years of work experience working directly with persons with disabilities.

(3) An associate's degree or 60 credit hours from an accredited college or university and 4 years of work experience working directly with persons with disabilities.

Add: Program Specialist may be counted into the ratio as long as they are able to complete their duties.

(18) Coordinating the training of direct service workers in the content of health and safety needs relevant to each individual when the needs fall outside the typical core training.

Citation: **2380.35. Staffing**

Discussion: For smaller programs a Program Specialist can complete their duties and do direct care. This is currently allowed, to prevent this from happening will increase cost.

Recommendation: The program specialist shall be responsible for the following:
(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 activities for the individuals in accordance with the PSPs.
(4) Supporting the integration of individuals in the community.
(5) Supporting individual communication and involvement with families and friends

Citation: **2380.37. Annual training plan**

Discussion: The purpose for a training plan is defeated by the idea that specific subjects will address the needs of the clients or the organization. While a minimum of training hours must be met, 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 37 and 39 into one streamlined and accountable set of standards to not only maintain the basics, but to advance our work to the next level.

Recommendation:

Citation: **2380.38. Orientation program**

Discussion: As noted in discussion section of 2380.37, the provisions included in 2380.37 (e) and (f) should be added to this section in order to clearly indicate the need for documentation and record of training.

This section is geared towards licensed providers. Remove AWC, OHCDS from the regulations and modify this section for unlicensed providers and transportation trip providers. Payment rates must be increased significantly for unlicensed providers and Transportation trip providers if they are expected to comply fully 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 need training. Also, the inclusion of volunteers, 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.

Focus on reducing the need for certain training in different levels. Open up the training of the basics to those who interact with individuals. Focus on protecting the individuals and limiting the extensive training requirements for certain positions.

If consultant has been contracted by an agency for assistance, it is assumed that the individual is already highly trained and does not need to participate in the agencies core training.

Recommendation: Within 30 days after hire, and before working directly with an individual, the following persons will complete the orientation program as described in subsection (b):

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

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

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

(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.

(2) Individual rights.

(3) Recognizing and reporting incidents.

(4) General fire safety, evacuation procedures, lock-down procedures in the event of intruders, and vehicle safety.

Citation: **2380.156**

Discussion: **Oppose Overall of the 2380.156**

Recommendation: The Rights Team should meet every 3 months on confirmed violations and a term should be set for the violation. Replacing the Restrictive Procedure Review Committee and your decision not permitting agencies to have any restrictive programming waiving the individual's rights is putting the individual and other individuals' health and safety at risk.

Citation: **2380.173. Content of Records**

Discussion:

Recommendation: delete #8 if signed in as attended this is not required and part of sc responsibility not providers

[Comments below include all chapters]

Citation: **6100.52. Rights team**
2380.156 Rights team
2390.176 Rights team
6400.196 Rights team

Discussion: The regulation is contradictory. It wants you to have a standards rights team but also an individual rights team.

Recommendation: Permit agencies to have a standards rights team that meets quarterly and when there is a specific rights violation that requires the process allow for the appropriate additional people to be included in that meeting to address that specific incident. (ex. consumer, family, etc.)

Citation: **6100.142. Orientation program**
2380.38 Orientation Program
2390.48 Orientation Program
6400.51 Orientation Program

Discussion: : Requirement for fiscal, administrative, maintenance, dietary, housekeeping ancillary, etc staff to have the same training requirements as staff who work directly with consumers.

Recommendation: The above mentioned should not be required if they do not work alone with consumers. This puts further financial burden on providers to cover the costs of training.

Citation: **6100.143. Annual training**
2380.37 and 2380.39 Annual training plan
2390.40 Annual training plan
2390.49 annual training
6400.50 Annual training plan and .52 annual training

Discussion: **Requirement for fiscal, administrative, maintenance, dietary, housekeeping ancillary, etc. staff to have the same training requirements as staff who work directly with consumers. We like that the hours required are only 8 and 24 per positions.**

Recommendation: The above mentioned should not be required if they do not work alone with consumers. This puts further financial burden on providers to cover the costs of training.

2380.121	Comment: including specific items of the approved Medication Administration Training in the regulations will not allow for changes to the training over time. The regulations should indicate in general that providers shall follow the Department's approved Medication Administration Training.
2380.123 (b)	A prescription medication may not be removed from its original labeled container more than 2 hours in advance of the scheduled administration, ***unless taken for self administration on that date by an individual assessed as able to do so.***
2380.156	Comment: Passavant Memorial Homes supports the focus and enhancement of individual rights outlined in the proposed regulations. It is critical to ensure that the concepts of Everyday Lives are implemented. The current system through the incident management process and Human Rights Committee already works as an oversight process for a violation of an individual's rights and use of any restrictive procedures. Adding additional administrative duties to this process would only add costs with no real increase in actual meaningful oversight.
2380.17 (a) 13	Recommended that the use of a restraint should remain as a 72 hour report upon discovery.

2380.21 (m)	Should be written: An individual has the right to make choices and accept risks, ***which will be documented in the PSP. Any choice documented in the PSP will be honored by the provider and will not be considered a non-compliance, even if it is contrary to the requirements of this chapter. A statement of contraindication due to health and safety is made by the PSP Team in the PSP to identify that the individual has been advised of the risks associated with their choice.***
2380.33 (b) 3	Add to the regulatory language, the highlighted word: Providing and supervising ***the implementation of*** activities for the individuals in accordance with the PSPs.

2380.3 – (Person-Centered Support Plan) – ODP should take into account the administrative cost of changing the current language similar to when MHMR was phased out.

2380.33 (Program Specialist) – In consideration of the diversification of employment, community integration, socialization, and documentation tracking, ODP should reduce the caseload of program specialists.

2380.39 – (Training) Eight hours of training in the areas listed for management, fiscal and administrative staff is excessive. In addition will add additional cost and is of no benefit to the individual receiving the HCBS service.

2380.156 (Rights Team)– This section appears to confuse the Restrictive Procedures Committee Team process that occurs at the county level and the Incident Management Process that occurs at the provider level. This lack of clarity of purpose creates an unworkable process for incident review that does not add value to the current process or provide greater protections to individuals.

The root of the problem appears to be that the Rights Team is conceived as a standing committee to review trends in rights violations and restraints and analyze systemic concerns in order to minimize or eliminate occurrences, but it is also an ad hoc committee convened to address specific incidents. The Rights Team is therefore redundant.

The state already has a very robust and thorough Incident Management system where the review of individual rights violations (6100.181-6100.186) and restraints (6100.341-6100.345) occur. In this system, providers already review and correct incidents, including unauthorized restraints and rights violations. These investigations and corrective actions are then reviewed by the county and ODP. This process includes individuals in reporting and investigation and, where necessary, the family.

In addition a well-established process exists for the oversight of systemic concerns regarding individual rights and any restrictive procedures, including restraint through the Restrictive

Procedures Committees that involve providers, counties and advocates. This committee is tasked with the minimization and elimination of restrictive procedures.

Because of the role confusion, the team's purpose is unclear and as a consequence, it is also unclear why the creation of a new "rights team" is necessary or adds any value to the actual protection of individuals' rights.

2380.182(5)(c): This, as written, seems to suggest that the program specialist has more direct involvement in the development of the PSP while in fact, unless they are the team lead, do not have such authority.

2380.184(2) It says "Enable the individual to make informed choices", we can't guarantee "enabling". We can try but can't assure it based the individual's comprehension ability.

It might be wise to have some discussion regarding "PSP Process" 2380.184(3) ". . . supports are delivered in a manner reflecting individual ***preferences***. . . "; and more particularly the following two: "Content of the PSP" 2380.185(3) and "Content of the PSP" 6100.223.11. The former stating "The individual's goals and preferences related to ***relationships, community participation,*** employment, ***income and savings, health care, wellness and education***." And the latter saying "Active pursuit of competitive, integrated ***employment as a first priority***, before other activities or supports are considered." Prioritizing the 6100 position may unfairly imbalance needs and preferences of the individual. Employment is an important cultural value that may not be the first priority value of the individual. It may not be their value at all. It may just be ours. There may also be other priorities not reflected in 185(3). A well-rounded service should not make "employment embracing" as the requirement to cross the threshold, in either direction. For many folks we serve, attending a 2380 program **IS** community participation. There is acceptance, no judgement, no criticism. There are multiple opportunities. Having to be in "the community" for increasing (at perhaps frighteningly grand percentages) of time, though not mentioned in 2380 or 6100 that I can find, could burden the individual, not yet mentioning the program, to be part of activities they do not wish to be part of. We are limiting their personal development by forcing a particular part of someone's agenda. We are building a wall and making them pay for it.

2380.184(8) Regarding "method for individual to request updates", are there any formalized thoughts on the "method" for the individual to do this?

2380.185(6) Can variability in, say, week to week occur in the schedule based on need/preference?

2380.185(8) I kind of like this. The "continued" part seems to allow for even if there are NOT new but only "continued community participation." Rates and 'depth' of participation vary according to person.

2380.185(b)10) Would this require a restrictive procedure and/or does this *mean* restrictive procedure.
Citation: 2380.3. Definitions

Discussion: Recommendation: The change of the ISP to the PSP requires a massive change to many agency documents and trainings. This is a type of change that needs more consideration as to the cost in time and money in relation to what is gained.

Citation: 2380.17. Incident report and investigation Discussion: It appears that the requirement for reporting communicable diseases is removed.

Citation: 2380.18. Incident procedures to protect the individual Discussion: This is a change from Reporting of deaths to a more detailed checklist of areas

that need considered when investigating an incident.

Citation: 2380.19. Incident Analysis

Discussion: This is a move from reporting incidents to a more detailed analysis of the incident. (3)(b) States that the facility shall review and analyze incidents and conduct a trend analysis at least every 3 months, while (e) states the facility shall analyze incident data continuously. This can be confusing. There is no wording under incident analysis to address the 2380.21 (m) an individual has the right to make choices and accept risks. I am unsure how to let individuals grow and take risks when at the same time we are asked to mitigate all risks of incidents.

Recommendation: Keep ISP in regulatory language.

Recommendation: None

Recommendation: None

Recommendation:

It may be helpful to have some part of the incident analysis cover the individual's choices and how this may affect an incident.

Citation: 2380.21. Individual Rights

Discussion: (m) This is a very important concept and more detail should be provided. Every

person grows through the risks taken and all too often individuals we serve are not given this opportunity. However, no mention here is this consideration given in the Incident reporting and analysis sections. Should we not consider that individual's choice in taking on risks may lead to an incident that needs reported or analyzed? (t) What procedure for the individuals to resolve differences and make choices should be used that will not affect (s) not violate another individual's rights.

Citation: 2380.33. Program specialist Discussion: This appears more streamlined and will allow agencies to determine the

most efficient use of Program Specialists.

Citation: 2380.151. Use of a positive intervention Discussion: The inclusion of positive interventions is appreciated.

Citation: 2380.156. Rights team

Discussion: The rights team is unclear. (a) and (c) both specify who should make up the rights team. (f) the rights team shall meet at least once every 3 months, who shall meet- team (a) or (c) are individuals and family members and advocates to meet every 3 months.

Recommendation: None

Recommendation: None

Recommendation:

Clearly define required composition of rights team and expectation for all members to meet at specified times.

Comments
Chapter 2390

Citation: **2390.33. Program specialist**

Discussion: Are the rates going to be reflective of having Program Specialists, whose qualifications range from a Master's Degree, the whole way down to an Associate's Degree?

Recommendation: Ensure rates are high enough to support a program that may have Program Specialists with Master's Degree, who expect a decent wage.

Citation: **2390.49. Annual training**

Discussion: **Additional trainings require more resources to ensure trainings and appropriate staff coverage for the consumers.**

Recommendation: Rates should be reflective of a variety of provider expectations; Program Specialists qualifications 2390.33; trainings including med administration 2390.199; Diabetes patient education 2390.199(2)

Citation: **2390.172. PSP**

Discussion: **Changing from ISP to PSP doesn't seem to make a lot of sense. It will be costly for providers to change all their paperwork and forms just as a result of a plan name change.**

Recommendation: Keep it, ISP, knowing that it is person-centered (it should have been for all these years anyway).

Citation: **2390.176. Rights team**

Discussion: A rights team seems excessive when there is already an IDT

Recommendation: Use the IDT team to handle any rights violations – we already have a million different teams for each consumer – it is absurd to think that anyone can discover and resolve the reason for an individual's behavior (iii) – A health practitioner is not going to want to be consulted regarding every restraint an individual may have (they will start to avoid providers even more than they do now).

Citation: 2390.192. Medication administration

Discussion: Direct care staff should not be responsible to be administering injections whether they are med trained or not.

Recommendation: Adjust rates to allow providers to hire staff at a high enough wage that they are willing to take on such responsibilities.

Citation: 2390.199. Medication administration training

Discussion: Providers have additional responsibilities and changes that are never ending with required additional trainings.

Recommendation: Adjust rates to provide providers the resources to meet all the regulatory and never ending requirements. A 2390 licensed facility rate is $1.82 a unit for a 1:15 staffing ratio.

***** Will all reportable incidents needs an investigation now or just the ones that currently require one?*****

2390 Proposed Rule Making Comments

Beginning in the definitions but throughout the regulations, the word "client" is utilized. Providers have moved from this language and generally utilize the word "individual". Suggest replacing "client" with "individual".

Definition of SC: Coordinator should be capitalized. Definition includes SCO. Suggest including the definition of SCO.

2390.172 – PSP: Include this in section 2390.152 – Development

2390.173 – Prohibition of restraints: Recommend definition of manual restraint be consistent with the definition of 6100.3 definition of restraint.

2390. 192 – Medication Administration: There is a possibility of an individual who is not able to self-administer and providers who do not have a licensed physician, dentist, physician's Assistance, nurse, etc. as outlined in section (b) (1) available to administer. Suggest including a person who has completed the medication administration training as specified in 2390.199.

Citation: 2390.33. Program specialist

Discussion: Are the rates going to be reflective of having Program Specialists, whose qualifications range from a Master's Degree, the whole way down to an Associate's Degree?

Recommendation: Ensure rates are high enough to support a program that may have Program Specialists with Master's Degree, who expect a decent wage.

Citation: 2390.49. Annual training

Discussion: Additional trainings require more resources to ensure trainings and appropriate staff coverage for the consumers.

Recommendation: Rates should be reflective of a variety of provider expectations; Program Specialists qualifications 2390.33; trainings including med administration 2390.199; Diabetes patient education 2390.199(2)

Citation: 2390.172. PSP

Discussion: Changing from ISP to PSP doesn't seem to make a lot of sense. It will be costly for providers to change all their paperwork and forms just as a result of a plan name change.

Recommendation: Keep it, ISP, knowing that it is person-centered (it should have been for all these years anyway).

Citation: 2390.176. Rights team

Discussion: A rights team seems excessive when there is already an IDT

Recommendation: Use the IDT team to handle any rights violations – we already have a million different teams for each consumer – it is absurd to think that anyone can discover and resolve the reason for an individual's behavior (iii) – A health practitioner is not going to want to be consulted regarding every restraint an individual may have (they will start to avoid providers even more than they do now).

Citation: 2390.192. Medication administration

Discussion: Direct care staff should not be responsible to be administering injections whether they are med trained or not.

Recommendation: Adjust rates to allow providers to hire staff at a high enough wage that they are willing to take on such responsibilities.

Citation: 2390.199. Medication administration training

Discussion: Providers have additional responsibilities and changes that are never ending with required additional trainings.

Recommendation: Adjust rates to provide providers the resources to meet all the regulatory and never ending requirements. A 2390 licensed facility rate is $1.82 a unit for a 1:15 staffing ratio.

***** Will all reportable incidents needs an investigation now or just the ones that currently require one?*****

Citation: 2390.5. Definitions

Discussion:

Recommendation: All definitions for these regulations should be included in Chapter 2390.5, 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.

Citation: 2390.33. Program specialist

Discussion: Aligning the requirement throughout will simplify monitoring and allow for more value placed on experience

Recommendation:
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 persons with disabilities.
(2) A bachelor's degree from an accredited college or university and 2 years of work experience working directly with persons with disabilities.
(3) An associate's degree or 60 credit hours from an accredited college or university and 4 years of work experience working directly with persons with disabilities.

Citation: 2390.39. Staffing

Discussion: continuity throughout 2390, 2380 and 6400 would be beneficial

Recommendation: The program specialist shall be responsible for the following: (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 activities for the individuals in accordance with the PSPs.
(4) Supporting the integration of individuals in the community.
(5) Supporting individual communication and involvement with families and friends

Citation: 2390.48. Orientation program

Discussion: Wording of what type of information that the orientation program should encompass needs to be refined. Various ancillary staff that does not interact with clients on a daily basis should not be expected to learn to support the individual in maintaining relationships, facilitate community integration or have insight as to job related knowledge and skills.
Focus on reducing the need for certain training in different levels. Open up the training of the basics to those who interact with individuals. Focus on protecting the individuals and limiting the extensive training requirements for certain positions.

Recommendation:

Citation: 2390.49. Annual training

Discussion:

Recommendation:

Citation: 2390.124. Content of records

Discussion: issuing the psp invitation this is not required under sc responsibility not providers

Recommendation: delete #8 if signed in as attended
Delete # 9-12. Re-number13 as 9 and continue. Having the PSP should contain all the above mentioned items

Citation: 2390.151. Assessment

Discussion: term ISP should be replaced with psp

Recommendation:

Citation: 2390.171. Use of a positive intervention

Discussion: A positive intervention will be used when the challenging behaviors is anticipated and/or in response to challenging behaviors to prevent escalation of behaviors, or in attempts to modify, decrease or eliminate behaviors.

Recommendation:

Citation: 2390.172. PSP

Discussion:

Recommendation: This section should be combined with Section 2390.173 in order to have continuity of thought.

Citation: 2390.173. Prohibition of restraints

Discussion:

Recommendation: The following procedures are prohibited:
(1) Seclusion, including 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, including the application of startling, painful or noxious stimuli in response to the exhibition of behavior in an effort to modify the behavior.
(3) Pressure point techniques, including the application of pain for the purpose of achieving

compliance. This does not apply to utilization as a method of intervention from approved physical management techniques in response to aggressive behavior, such as bite release.

(4) A chemical restraint, defined as including the 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, or following a medical or dental examination or treatment.

(5) A mechanical restraint, including 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, and 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 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) The term A mechanical restraint 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. may not be used for a period of more than 15 minutes within a 2-hour period without documented emergency approval by provider administrative or clinical staff. And for no longer than 30 second intervals

(7) A prone position manual physical restraint.

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

Citation: 2390.174. Permitted interventions

Discussion:

(a) Voluntary exclusion,

(b) A physical restraint may be used when an individual engages in dangerous behavior as approved in the PSP, or used in an unanticipated emergency basis

(c) A physical protective restraint may not must be used in accordance with the following provisions of this chapter:

(1) 2390.74 concerning prohibition of certain types of restrictive procedures.

(2) 2390.48 concerning annual training on use of safe and appropriate interventions.
(d) 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) A physical protective restraint 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) 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
(h) As used in this section, a "physical protective restraint" is a hands-on hold of an individual

Citation: 2390.175. Access to or the use of an individual's personal property

Discussion:

Recommendation: add to b) unless court ordered

Citation: 2390.176. Rights team

Discussion: The code states that each provider is "required to have a rights team" however all of the subsequent requirements make it clear that each individual has a rights team based on each incident. In fact the individual is ON the team. Thus a provider could potentially have dozens of rights teams – one for each individual who has a rights (or alleged rights or suspected rights) violation. To require the team to (iii) "discover and resolve the reason for an individual's behavior" is antithetical to an understanding of human behavior (an individual's behavior can be supported, understood, addressed, etc.) but NOT RESOLVED. Additionally, with rights violations – a provider is most concerned with the behavior of the "target" – the person who violated someone else's rights. No need to "blame the victim" – as if something in their behavior caused an incident or a rights violation. Meeting quarterly with the individual for something that happened in the past is not productive. Making the team a majority of persons who do not provide direct services is not helpful precisely because they are not involved in the day to day care of the individual and the dynamics between the individual and other staff or other individuals.

The individuals involved should also have the option of an independent investigator.

Recommendation: There is no need to add a separate "Rights Team." In associated licensing regulations, a long-standing and well-stablished process exists for the oversight and appropriate management for the use of any restrictive procedures, including restraint. The regulations have already established the "Restrictive Procedures Committee" and restrictive procedures process which is tasked with the same basic functions of the newly created team. By replacing a currently existing and appropriately operation expectation, unnecessary costs are added to the system. It is entirely unclear why the creation of a new "rights team" is necessary or adds any value to the actual protection of individuals' rights, but rather only would add cost and administration burden. Individuals who are not satisfied with the follow up or corrective action plan have recourse to filing a complaint or grievance.

Citation: 2390.191. Self-administration

Discussion:

Recommendation:
Add know and understand the purpose for taking the medication

Citation: 2390.192. Medication administration

Discussion: : 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 technologies 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.

Recommendation: replace A with:
Persons who administer prescription medication or insulin injections to individuals shall receive training by the individual's source of healthcare or by the prescribed department's medication administration model as required by chapters 2380, 2390, and 6400.
Add: Medications administered via G/U tube.

Citation: 2390.193. Storage and disposal of medications

Discussion: A prescription medication may not be removed from its original labeled container more than 2 hours in advance of the scheduled administration is problematic for people going on home visits or who are out of licensed facility during times of medication for periods exceeding the 2 hour window

Recommended section replacement

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. (suggest using pharmacy service for monthly dispensing packaging, can include all information as bottles)

(b) Prescription and 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.

(c). Prescription and 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.

(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

(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 on his person or in the individual's private property, such as a purse or backpack.

Citation: 2390.194. Labeling of medications

Discussion:

Recommendation: (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

Citation: 2390.195. Prescription medications

Discussion:

Recommendation:
(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.

Citation: 2390.5. Definitions

Discussion:

Recommendation: All definitions for these regulations should be included in Chapter 2390.5, 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.

Citation: 2390.171. Use of a positive intervention thru 2390.176

Discussion: Opposed

Recommendation: The Rights Team should meet every 3 months on confirmed violations and a term should be set for the violation.

Comments
Chapter 6100

**** These comments as they refer to 6100, 6400, 2380, 2390, 6500 should be applied to each chapter where applicable.***

6100.42. Provider Performance Review

By changing the name form monitoring to Performance review, this section becomes less punitive. This will be accomplished through the removal of punitive language from this section and inserting the development of appropriate remedial actions when necessary through cooperation and collaboration by the oversight entities and providers.

6100.43. Exception Process.

Review of provider performance is customary but likewise requires adherence by oversight entities to their duty to work in cooperation with a provider. The tone and text in this section and elsewhere evinces a perspective that tends to focus on imposition of penalties as opposed to developing and implementing appropriate remedial actions when necessary. The term exception more accurately defines this process. The exception process should be granted in a timely manner by the Department. Insertion of language and time limits will ensure this occurs. Exceptions will be included as a part of the PSP for an individual and should renew annually unless circumstances have changed that require modification.

6100.52. Rights team

The concept of evaluating the potential and actual violation of rights is a necessity. Right violations are already appropriately covered in the Incident Management process which includes a thorough investigation by an investigator and a resulting corrective action plan. This is another example of duplications that occur in this chapter and unfunded mandates for providers. As part of the already well-established Incident Management system, all allegations of rights violations must be investigated. If a violation of rights is confirmed, the process already has established corrective action plan. The proposed regulatory changed in this chapter propose to increase the expectations and role of the PSP team as necessary, even further. We support the expectations that already exist to thoroughly address any rights violations and believe that the additional administrative expectation and associated costs are unnecessary, a duplication and uneconomical. According to the regulations, the "rights team" is to meet every three months, regardless of whether any actual rights violations. This simply adds an expectation by adding unnecessary cost to the system and an additional administrative task for providers.

In the licensing regulations for Chapter 2380, 2390 and 6400, a well-stablished process exists for the management of any restrictive procedures, including restraint. The regulations have already established the "Restrictive Procedures Committee" with the same basic functions of the newly created team. By replacing a currently existing process, unnecessary costs are added to the system. It is entirely unclear why a new "rights team" is necessary or adds any value to the actual protection of individuals' rights, but rather only would add cost and administration burden. This section needs to be eliminated. It is an unnecessary additional investigational procedure that already exists and an additional committee. The section should be deleted from the chapter due to redundancy and increased burden to the system through the creation and implementation of another committee.

Citation: 6100.141. Annual training plan

The training plan orientation and annual training for each provider should be unique to that provider, their mission and most importantly the consumers they support. The rigid nature of this section is very prescriptive. Require number of training hours for everyone who works for provider (dietary, maintenance, clerical etc.) should not be considered. Training on four core areas should be given to ensure a basic working knowledge should be completed. The expectation of 8 hours of training per person is again an unfunded mandate and will require numerous hours of training. The hours for training should be provided to those who work most closely with the individuals. This training should be developed according to the mission and philosophy of teach provider not ODP. This regulation is taking away the individual nature of each provider. Suggestion of core training can be provided but should not be regulated. Providers should have the latitude to know what is important training for their staff to have in order to support the needs of the individuals within the agency.

6100.181. Exercise of rights

It is imperative that this section of the regulations be changed to include language that ensures individuals receive and must be supplied with training to assist them in understanding and exercising their rights. This section makes the assumption that every individual understands and can exercise their rights on their own. It shows a lack of understanding on the part of the department to assume that each individual understands their rights fully. Language about ensuring individuals who cannot and do not understand their rights have sufficient support to exercise their rights in an appropriate manner.

6100.223 Content of the PSP

In number 11 under this section, ensuring employment as first priority before other activities or supports is not appropriate for some individuals. This philosophy is clearly discriminatory, inappropriate and did not consider in planning individuals with multiple disabilities and medical conditions. This system cannot and should not be a one size fits all model. Number 11 is in complete opposition to the title "Person-Centered" Support Plan. Every individual is not the same. Their needs and supports are drastically different. This should be deleted.

6100. 341. Positive intervention

Every Aspects of this section (341,342, 343, 344, 345) should have been developed solely by experts in the field of challenging behaviors. After being written, various stake holders on the committee could have reviewed and provided comments. The sections are not written in a behaviorally sound manner. As written, they will cause increased concern for the safety of those with significant behaviors. This section again provides poor direction, little understanding of individuals with truly dangerous behaviors and will impact them and the providers. This section needs rewritten in its entirety.

6100.446. Facility characteristics relating to size of facility

The Department should not place a size limitation on a day program. A size limit of 15 will cause an increase in the number of sites within small suburban counties. This model will require an increase in staffing ratio, vehicles and overall costs of an already strapped system. This model cannot be supported financially by provided. Additionally, in small suburban counties the pool of potential staff in far less than in larger urban areas.

6100.447. Facility characteristics relating to location of facility

The location demand of this section again does not consider small counties with numerous human service agencies. Smaller site with size limitations of 15 will require providers in these counties to locate a site that is not in close proximity to another human service day facility. This may be next to impossible. Once again, the Department is placing undue demands and limitations on providers.

Citation: 6100.571. Fee schedule rates

Discussion:

Recommendation:
The department will refresh market based data to establish fee based rates annually.

Citation: 6100.652. Compensation

Discussion:

Recommendation:
Section 6100.652 section b states that severance pay is disallowable. Section 6100.652 section c states that OMB circulars are applicable to the 6100 regulations. Circular No. A-122, attachment B Section 7k states that severance pay is allowable in certain circumstances. Therefore, sections b and c of 6100.652 contradict one another. Recommendation – remove 6100.652 b from the regulations.

Citation: 6100.653. Training

Discussion:

Recommendation: The cost of trainings related to sections 6100.141, 6100.142 and 6100.143 will not be reported in the cost report. The department will establish a separate fee based rate for required trainings. The fee will include the cost of the trainer plus staff time. Providers can bill ODP for all required training hours specified in the above sections.

Citation: 6100.660. Occupancy expenses for administrative buildings

Discussion:

Recommendation: Maintenance costs are not mentioned as allowable occupancy expense. Please specify maintenance costs as an allowable expense.

Citation: 6100.682. Support to the individual

Discussion:

Recommendation: 6200.17e2 required individuals to appeal SSI denials. This section gives the individual an option not to appeal.

Rent is based on income. If the department does not require an individual to appeal a denial of income, then the department should reimburse the provider the difference between the building's maximum rent charge and the individual's rent amount.

In addition, there is contradictory language about appealing SSI denials in section 6100.687b.

Citation: **6100.684. Actual provider room and board cost**

Discussion:

Recommendation: This section is too vague. The department should clarify the permissible elements of "documented value of room and board" calculations.

Citation: **6100.685. Benefits**

Discussion:

Recommendation: Section B is not clear and is contradictory to the other sections in 6100.685. Section B should be removed.

Citation: **6100.686. Room and board rate**

Discussion:

Recommendation:

Section a: This section needs clarification. There are multiple SSI maximums. See https://www.ssa.gov/pubs/EN-05-11150.pdf The SSI maximum category should relate to the type of residential habilitation facility. For example, an individual living in a domiciliary care certified building should be subject to the DOMCARE eligible person SSI maximum.

Section d: The amount of an individual's personal needs allowance should be either published annually in a bulletin or stated in a standard room and board residency agreement.

Citation: 6100.687. Documentation

Discussion:

Recommendation: Section 2 is in conflict with 6100.684b. See the above comments.

Citation: 6100.688. Completing and signing the room and board residency agreement

Discussion:

Recommendation: The "room and board residency agreement" should be included in the regulations.

Citation: 6100.689. Modifications to the room and board residency agreement

Discussion:

Recommendation: There are several SSI maximums. Clarification is needed. See SSI maximum comments for 6100.686.

Citation: 6100.694. Delay in an individual's income

Discussion:

Recommendation:

This section should state that rent must be billed during the time when an individual's income is delayed and that a rental back payment is required. The provider should not have the option of not billing rent to individuals without current income.

If an adjustment is not made to this section, an individual will be able to live in a residential habilitation setting indefinitely at no cost to the individual. This defeats the purpose of residential habilitation.

Citation: 6100.742. Array of sanctions

Discussion: If these are not licensing regulations, the language should not be so focused on corrective action.

Recommendation: Change title to "Remediation."

Citation: 6100.805. Base-funded support

Discussion:

Recommendation: Section b states that this chapter is not applicable to setting rates for based funded individuals. Allegheny County uses waiver cost report rates plus ineligible rates to set the rates for base funded individuals. Therefore, this chapter is relevant to base funded individuals. I am not sure how other counties set their rates. The regulations should clarify the manner in which rates are set for base funded individuals.

6100.44 (Innovation Project) – We believe the opportunity to introduce innovations into current programming is a good idea

6100.45 (Quality Management)– Quality management review seems to be catered to small providers with one or two programs and creates an undue burden on larger providers with multiple programs and large a contingent of staff. For example: Examination of Turnover rates by position and suspected causes (b8) is an organizational goal for us and it is driven through Human Resources as a part of a larger strategic plan for our company. Including it in a QM meeting becomes redundant of a larger administrative function for the organization.

b1. We have concerns about tracking "progress" because it lacks reference to maintenance outcomes. As individuals age, outcomes are often designed for maintenance or to delay the onset of physical or mental health regression, e.g. when individuals show signs of dementia.

6100.50 (Communication) – b – We agree that the use of adaptive technologies should be integral to developing effective means of communication. Individuals should be equipped to the greatest extent possible with adaptive technologies to lead their most independent lives. However given the pace of innovation and the costs of technology, ODP needs to account for its commitment to adaptive technologies as it established payment provisions. This comment applies to all areas where assistive technology is a right or required.

6100.52 – The concept of a Rights Team as it appears in this section confuses the current Human Rights Committee process and the Incident Management Process. This lack of clarity of purpose creates an unworkable process for incident review that does not add value to the current processes or provide greater protections to individuals.

The root of the problem appears to be that the Rights Team is conceived as a standing committee to review trends in rights violations and restraints and analyze systemic concerns in order to minimize or eliminate occurrences, but it is also an ad hoc committee convened to address specific incidents. The Rights Team is therefore redundant of two processes that are currently separate.

The state already has a very robust and thorough Incident Management system where the review of individual rights violations (6100.181-6100.186) and restraints (6100.341-6100.345) occur. In this system, providers already review and correct incidents, including unauthorized restraints and rights violations. These investigations and corrective actions are then reviewed by the county and ODP. This process includes individuals and families in reporting and investigation. The corrective actions, particularly involving behavioral issues can when, necessary, involve outside mental health providers to assist individuals and providers.

In addition, a well-established process also already exists for the oversight of systemic concerns regarding individual rights and any restrictive procedures and fade plans through the current use of Human Rights Committees that involve providers, counties and advocates. Lifesteps, for example, has its own internal Human Rights Committee but we also participate in the Armstrong-Indiana Human Rights Committee and the Butler County Human Rights committee. These committees are tasked with the minimization and elimination of restrictive procedures and the evaluation of fade plans.

Because of the role confusion, the Rights Team's purpose as described is unclear and as a consequence, it is also unclear why the creation of a new "rights team" is necessary or adds any value to the actual protection of individuals' rights.

6100.53 – (Conflict of Interest) We like the idea that ODP encourages providers to have an individual or family member serving on the board

6100.143 – (Annual Training). We appreciate the reduction in the administrative burden of 24 hours of training for the CEO. We also agree with the spirit behind requiring that all staff working for an organization should have a baseline understanding of the services provided. However, eight hours of training in the areas listed for management, fiscal and administrative staff is excessive, particularly so when we consider the professional training requirements these professionals require in addition to the eight mandated by the proposed regulations. The additional training will add additional cost and is of little benefit to the individual receiving the HCBS service.

6100.221(Development of the PSP) –

(d) We object to this regulation because providers cannot complete an assessment without providing services. Initial PSP can be done after the assessment and within 60 days of enrollment. The proposed language appears to suggest that we would be expected to provide unreimbursed services.

(f) Similar to D, we cannot conduct a current assessment if we aren't providing services.

6100.222 (PSP Process) – (b9) As written, the language is unclear who is responsible for developing guidelines and assisting in solving disagreements among the PSP team members.

6100.223 (Content of the PSP) – We would ask that all diagnoses are present in the PSP.

11 – We wholeheartedly embrace the commitment to competitive integrated employment for all individuals with disabilities. However, establishing competitive integrated employment as a first priority, without consideration of the individual is not person-centered since it does not take into account where the person is in their life or their goals, wants or needs.

6100.341(Use of Positive Intervention) – In our experience, communication is a key factor for establishing positive intervention strategies. We highly recommend speech therapy as an available service to individuals who may struggle and will need positive intervention and supports.

6100.342 (PSP) – 2 – Program Specialists and Behavior Specialists do not have the qualifications to conduct an analysis as the term is understood in the Behavioral Support field. The proper term is assessment.

6 – When assessing the communication needs of an individual, we highly recommend that providers would be able to utlize the services of a speech language therapist and secure regular ongoing speech therapy services

6100.343(Prohibition of Restraints) – 5i –This provision does not allow for pre-surgical or medical care needs, as a result it is insufficient in covering the exceptions.

6 – We have serious reservations regarding the 15 minute limit. It does not take into account someone with extended behavioral episodes. We have a genuine concern that as a provider we would only have 5-10 minutes to de-escalate the behavioral episode before contacting emergency services such as the 911 system. Police involvement is traumatizing to the individual, creates a negative perception of individuals by police, paramedics and community, and burdens poor municipalities. The prior limit of 30 minutes in a 2 hour period gave the provider greater opportunity for de-escalation and positive resolution to an extended behavior.

6100.444 (Lease or Ownership)– Standard Lease language is often burdensome for a highly literate person to understand, so we have genuine concerns that the lease language necessary for The Landlord and Tenant Act of 1951 would not be easily understood by an individual.

Moreover, it is necessary under the Community Rule that individuals have a legally enforceable document that offers the same responsibilities and protections from eviction as our prevailing law. To that point, 6100.444(a) is clear and direct. 6100.444(b) while describing reasonable limits, inadvertently refers to providers as "landlords" and to individuals as "tenants" and their units as "leased space". The rights conferred under the rule and as cited in 6100.444(a) do not make providers landlords. Having the same protections as provided by law does not make individuals tenants nor their spaces "leased". This language distinction is important because we need to preserve the American Disability Act's protection of community residences as homes rather than businesses which can be excluded from residentially zoned areas. This distinction will also be crucial if/when the state develops guiding language or uniform formatting for the residency or room and board agreements in the future.

6100.446 (Facility characteristics relating to size of the facility) – 2(c) We strongly object to the cap of 15 individuals for a day facility, which is arbitrarily chosen. The Community Rule does not specify an absolute cap on program size. The CMS response 441.530(a)(2)(V): "We do not believe there is a maximum number that we could determine with certainty that the setting would meet the requirements of HCB setting. The focus should be on the experience of the individual in the setting." There is therefore no federal requirement that day programs should be this small. Smaller size programs require additional staffing levels; additional facilities costs, and contribute to the workforce shortage. (DHS itself has recently approved larger census programs for individuals with medical needs.)

In order to adequately support individual's needs, program capacity in residential facilities should be adjusted automatically to match the number of individuals residing in the home, so that providers are not penalized for vacancies due to individual preference, program need or death. Instead, providers should be incentivized to fill vacancies based upon the needs and compatibilities of the individuals residing in the homes.

6100.447(Facilities characteristics relating to location of the facility) – We have serious reservations regarding the term "close proximity." It is too vague and does not account for rural vs. urban or small towns where close proximity is not an option. It also does not take into account the need for commercial facilities to be located in commercial districts. Also, non-contiguous has never been an issue for facility based services in the past.

6100.483 (Title of a Residential Building) – This section would preclude an everyday life. This would not allow for an individual to remain in their home, choose another provider, and allow providers to agree to transfer title or enter into an agreement of sale. As a business, providers sometimes need to sell properties that are no longer able to meet the needs of individuals in supports or to meet ODP regulations.

6100.571 (Fee Schedule Rates)– Rather than a market based approach, the Department should use a nationally recognized market based index such as CPI or the Medicare Home Health Market Basket Index to establish and update the rates to reflect actual costs a provider incurs to meet the needs of their waiver program individuals.
In addition, a vacancy factor should be included in the residential ineligible fee schedule to cover fixed costs i.e., rent/mortgage, etc., that are still incurred when an individual is out of the home.

6100.646 (Cost based rates for residential habilitation) – Vacancy factor assessment and percentage should be based on current and historical individual billed data of the provider. As the population of a provider ages, 4% might not be adequate for providers as a whole to cover medical related leaves. Rate determination should also be transparent to providers.

6100.664 (Residential habilitation vacancy) – A provider should not be penalized when an individual is out of program on a therapeutic or medical leave. A vacancy factor should be

included in the residential ineligible fee schedule to cover fixed costs i.e., rent/mortgage, etc., that are still incurred when an individual is out of the home. Moreover, in order to adequately support individual's needs, program capacity should be adjusted automatically to match the number of individuals residing in the home.

6100.682 (Support to the individual)– b – An individual's SSI is used to pay for their room and board. If "desired by the individual" is not consistent with landlord tenant agreements as referenced in 6100.444 which binds a lessee through a contract to pay rent that is billed through room and board.

6100.685 (Benefits) – Because utilities are in the provider's name, energy assistance cannot generally be applied for and then offset as expenses for a provider.

An individual is entitled to a rent rebate just like any other income, so rent rebates should not figure into provider income and matching expenses. They are income for the individuals and are not part of the cost or expense of the provider.

Both of the utilities and the rent rebate provisions in 6100.685(b) are in contradiction with 6100.685 (c).

6100.686 (Room and Board rate)– d – The Department should establish the minimum monthly amount, i.e., similar to the 6200 regulations stating no less than $30.

6100.688 (Completing and signing the room and board residency agreement) – a – The form should be specified as in the 6200 regulations.

6100.692 (Hospitalization)– While we believe that it is appropriate not to bill eligible costs when an individual is out of program or a vacancy occurs, we also believe that the ineligible portion should continue to be billed to cover fixed costs. In addition, during hospitalizations, the direct service workers are often the most knowledgeable about an individual and are an appropriate and effective support. If the individual is hospitalized, the provider should have the capacity to be reimbursed for a limited amount of staff-time spent to support the individual during the stay and through discharge. We understand this is not allowable under Federal funding; however, this could be included in an ineligible rate since that rate is covered by the state.

6100.711 (Fee for the ineligible portion of residential habilitation)– A provider should not be penalized when an individual is out of program on a therapeutic or medical leave. A vacancy factor should be included in the residential ineligible fee schedule to cover fixed costs i.e., rent/mortgage, etc., that are still incurred when an individual is out of the home.

Rather than a market based approach, the Department should use a nationally recognized market based index such as CPI or the Medicare Home Health Market Basket Index to establish

and update the rates to reflect actual costs a provider incurs to meet the needs of their waiver program individuals.

In addition, a vacancy factor should be included in the residential ineligible fee schedule to cover fixed costs i.e., rent/mortgage, etc., that are still incurred when an individual is out of the home.
In order to adequately support individual's needs, program capacity should be adjusted automatically to match the number of individuals residing in the home.

Citation: **6100.1. Purpose (a)**

Discussion: **wording is confusing**

Recommendation:
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.

Citation: **6100.2. Applicability**

Discussion: **Licensing and the regulations put forth here sometimes conflict.**

Recommendation: Add "In the event of a conflict between the regulations set out in this Chapter and related but separate licensing regulations, the licensing regulations apply and supersede this Chapter."

Citation: **6100.42. Monitoring compliance**

Discussion: **Having multiple AEs complete monitoring is time consuming and costly and frankly unnecessary. Re: corrective action plan: it does not seem reasonable to be required to have a CAP for an "alleged violation" if the allegation turns out to be FALSE.**

Recommendation: Specify that only ONE AE should be allowed / required to complete provider monitoring

Do not require CAPs for false allegations.

Citation: **6100.43. Regulatory waiver**

Discussion: When a waiver is requested it is very rarely due to a temporary condition. It is almost always due to a permanent need the individual has. An annual request is a costly and redundant exercise.

Recommendation: Allow waivers to renew automatically UNLESS there is a life changing event that warrants it's revocation.

Citation: **6100.45. Quality management**

Discussion: While quality management is important, the new chapter poses several nearly impossible requirements such as "individual and family satisfaction surveys *and informal comments by individuals, families and others"* or "analyzing the successful learning and application of training in relation to established core competencies." (VERY general and VERY vague and VERY cumbersome) Providers have only had 3 years of experience under the newly required QM under Chapter 51. The extent of changes is not necessary.

Recommendation: A provider will implement an evidenced based, quality improvement strategy that includes continuous improvement process, monitoring, remediation, measurement performance and experience of care.
(a) When developing a quality improvement strategy, a provider must take into account the following:
(1) The provider's performance data and available reports in Department's information reporting system.
(2) The results from provider monitoring and SCO monitoring.
(3) The results of licensing and provider monitoring.
(4) Incident management data, including data on incident target(s), repeated or serious incidents, root cause analyses, and quarterly review of incidents.
(5) Results of satisfaction surveys and reviews of grievances.
(b) The provider will include 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. Absent criteria established by the U.S. Health and Human Services Secretary, providers will establish goals based on identified need within their programs.
(2) Target objectives that support each identified goal.
(3) Performance measures the provider will use to evaluate progress.
(4) The person responsible for the quality improvement strategy and structure supporting this implementation.
(5) Actions to be taken to meet the target objectives.
(e) A provider must review progress on the quality improvement strategy and update at least every 2 years.
(f) A provider will maintain a written copy of the quality improvement strategy to be available for the Department to review as part of provider monitoring.
(g) This section does not apply to an SSW provider and to a provider of HCBS in the Adult Autism Waiver."

Citation: **6100.50. Communication**

Discussion: **It is sometimes difficult, if not impossible, to truly ascertain whether or not, or how much an individual understands.**

Recommendation: add language such as "Written, oral and other forms of communication with the individual, and persons designated by the individual, shall occur in a language and means of communication *as best and to the extent understood* by the individual or a person designated by the individual.

Citation: 6100.51. Grievances

Discussion: An employer, cannot and will not tolerate retaliation. However, and employer cannot "assure" that another employee or co-worker or family member or individual will not act in a retaliatory way. The types of grievances should be spelled out (addressed here and in the waiver).

Recommendation: Consider rewording to "will not tolerate...."
Re: 6100.51 (i) add "if known" (because the initiator might not be known)

Re: 6100.51 (i) – add wording to prohibit the contents of written notice from violating anyone's confidentiality. (those who file complaints sometimes demand or expect more information than they are entitled to)

The department must address / spell out the types of grievances that this waiver intends. It is not uncommon across the state, for family members to refuse to accept services from staff person if they do not like the color of their skin or because of their sexual orientation. Family members must understand that by accepting a Medicaid waiver for their loved one, they must also adhere to federal law prohibiting discrimination.

Citation: 6100.52. Rights team

Discussion: Providers work very hard to honor and protect individuals' rights. When someone's rights are violated, an incident is reported and investigated. This new requirement cannot be implemented as written for the following reasons: The code states that each provider is "required to have a rights team" however all of the subsequent requirements make it clear that *each individual* has a rights team based on each incident. In fact the individual is ON the team. Thus a provider could potentially have dozens of rights teams – one for each individual who has a rights (or alleged rights or suspected rights) violation. To require the team to (iii) "discover and resolve the reason for an individual's behavior" is antithetical to an understanding of human behavior (an individual's behavior can be supported, understood, addressed, etc) but NOT RESOLVED. Additionally, with rights violations – a provider is most concerned with the *behavior* of the "target" – the person who violated someone else's rights. No need to "blame the victim" – as if something in their behavior caused an incident or a rights

violation. Meeting quarterly with the individual for something that happened in the past is not productive. Making the team a majority of persons who do not provide direct services is not helpful precisely *because* they are not involved in the day to day care of the individual and the dynamics between the individual and other staff or other individuals.

Recommendation: Delete this section. There is no need to add a separate "Rights Team." In associated licensing regulations, a long-standing and well-stablished process exists for the oversight and appropriate management for the use of any restrictive procedures, including restraint. The regulations have already established the "Restrictive Procedures Committee" and restrictive procedures process which is tasked with the same basic functions of the newly created team. By replacing a currently existing and appropriately operation expectation, unnecessary costs are added to the system. It is entirely unclear why the creation of a new "rights team" is necessary or adds any value to the actual protection of individuals' rights, but rather only would add cost and administration burden. Individuals who are not satisfied with the follow up or corrective action plan have recourse to filing a complaint or grievance.

Citation: 6100.81. HCBS provider requirements

Discussion: The regulation wording under provider requirements should more accurately match *the actual* requirement for provider enrollment (for example – a license from the Dept. of Health" is mentioned in 6100.81 (c) – but is NOT in fact required for most facilities. This is VERY important, because provider enrollment has historically been extremely slow and is often held up because providers miss one or two documents – that were NOT listed correctly / clearly in the published directions. This then caused LONG delays for providers and worse – for individuals waiting to receive services.

Recommendation: Include wording that matches the actual provider requirements:
A provider enrollment application, on a form specified by the Department.
A medical assistance provider agreement, on a form specified by the Department.
A home and community-based waiver provider agreement, on a form specified by the Department.
Verification of compliance with § 6100.81(2) (relating to pre-enrollment provider qualifications).
Verification of compliance with § 6100.476 (related to criminal history background checks).
Documents required in accordance with the Patient Protection and Affordable Care Act (Pub. L. No. 111-148).
Verification of successful completion of the Department's pre-enrollment provider training as specified in § 6100.142 (related to pre-enrollment training).
Monitoring documentation
Copies of current licenses, if applicable, as specified in § 6100.81(2) (relating to provider qualifications).
Verification of compliance with § 6100.46 (related to criminal history background checks).
Prior to applying for participation in the HCBS program, the applicant shall complete the Department's pre-enrollment provider training.

Additionally: 6100.81 (c) 1 & 2 seem to contradictory or confusing. Please clarify.

Citation: 6100.141. Annual training plan

Discussion:
Because of the unique needs of the many individuals served by providers – not ALL positions will require the same courses (6100.141 d(2), Some DSPs need a lot of training on aging issues, others on medical issues, and other on behavioral health issues – to name a few. there needs to be some flexibility. This requirement seems to be asking that every staff member has an annual training plan – that must – at a minimum cover certain topics.

Recommendation: Re; 6100.141(c) Please list the core competencies so that system wide expectations are clear.

Citation: 6100.142. Orientation program

Discussion: When a provider hires a consultant, it is usually because the consultant possesses some professional expertise that the provider does not have. Adding a training / orientation requirement for consultants will add hours and cost to consulting agreement. Additionally, the topics identified (abuse, rights, incident reporting and job related skills) are often (though not always) way outside of a consultant's responsibility. The provider is still ultimately left with the responsibility of reporting, addressing and following up on all such matters.

Recommendation: Consultants should not be required to receive such detailed orientation because 1. They are competent professionals 2) there is too much time and cost involved – and sometimes individuals and agencies need help quickly and 3) Consultants who are used by more than one agency – by this definition would need to be "orientated" by every agency they work for.

Recommend *the Department* develop and administer a training for consultants so that providers are not re-inventing the wheel – all mandated topics are statewide. This would mean NO COST to the providers.

Recommend that for all non-DSP / program staff – orientation and training focus on "Everyday Lives" – a code of ethics, and the "big picture" rather than on specific policies and procedures which they most likely will never have to act on.

Citation: 6100.143. Annual training

Discussion: As written, the regulations are confusing. It would make more sense to address orientation first, and then move on the annual training plan and annual training. It is "splitting hairs" to make these separate – since there is so much overlap.

Specifying that 8 of 12 hours must be on certain, listed topics is unnecessary, because the items that MUST be covered will take at LEAST 12 hours if done correctly.

Additionally, while the topics listed in the waiver are important and necessary – and presumably the rates will be built to meet the 12 & 24 hour requirement, providers are still required to cover many training topics that are not listed such as: medication administration (16 -24 hours alone!), fraud waste and abuse prevention, compliance issues, handling grievances and complaints, proper documentation of service delivery, safe vehicle use, safeguarding client resources, quality management, professionalism, interacting with family members, ODP monitoring requirements, emergency medical treatment, fire safety, first aid, CPR and more.

The Department must understand that providers are required – whether mandated by regulation – or by best practice – or by agency requirement, to provider extensive training that goes way beyond 24 hours of narrowly focused requirement. And must set rates accordingly. Compliance with bare minimum standards will not ensure system wide quality.

Recommendation: AWC and OHCDS should 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 quality is a lost and the opportunity to supporting 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 6100.141.

Citation: 6100.181. Exercise of rights

Discussion: The language in 6100.181 (b) – is very vague: "shall be continually supported to exercise" his or her rights.

Recommendation: Please specify exactly what is meant by "continually supported to exercise" rights. Explain how that is done, how it is documented, how it is proven or measured.

Citation: 6100.182. Rights of the individual

Discussion: Re: 6100.182 (b) If individuals have the right to speak freely, then they should also have the right to be free from allegations of and investigations

of verbal abuse every time they say something that offensive to another individual.

Recommendation: If this right is left as written, recommend adding that the individual will be held accountable for "speaking freely" if another individual, a staff person, a behavior specialist, or a consultant, feels that the speech is abusive or allegedly abusive.

Same recommendation for (e) – If a person makes a choice and "accepts" risks, then they should be free from accusations based on another individual's interpretation of that behavior. Currently - as related to incident management – providers are being required to enter incidents based on the values and perceptions of staff and other "outside" individuals and NOT on the individuals' words and actions or on the perceptions / understanding of the indivdual.

Recommend adding individuals have a right to be educated about the consequences for violating another's rights (perhaps addressed in 6100.183)

Citation: 6100.183. Additional rights of the individual in a residential facility

Discussion: It needs to be made clear that individuals have the right NOT to exercise all of their rights (ie: they have a right not to have a lock on their door if they so choose) In an everyday life – we all have the right to vote – but many choose not to. Additionally – many individuals have limited financial management abilities. A "right' to unrestricted access to telecommunications – could be interpreted as a right to a data / coverage plan that one cannot afford.

Recommendation: Make clear that individuals rights can not conflict with regulation, with others' rights, or with documented health and safety information in the ISP. (ie: access to food at any time is clearly contraindicated for a person with Prader Willi)

Citation: 6100.184. Negotiation of choices

Discussion: The title here is mis-leading. The regulation is NOT referring to individuals' choices but rather to individuals' rights. Ie: the rights of one can not trump the rights of another.

In group home / living situations – negotiation of choice is not an isolated "event" or a single conversation...but rather an ongoing dialogue and constant revision and compromise. Choice negotiation is extremely subjective – and based on many many variables. No one procedure can be expected to resolve differences to everyone's satisfaction.

Recommendation: Since "rights" should be non-negotiable – the wording should reflect more accurately that which is intended by this regulation:

Suggest: Responsible exercising of rights

Citation: 6100.186. Role of family and friends

Discussion: Family and friends are by definition "natural supports." It is unreasonable to "regulate" that role. There is way too much variance in family roles / dynamics to mandate a provider role in "facilitating" and making "accommodations necessary."

If all activity here is under the direction of the individual, then the provider has a very limited role to play – and again that role should NOT be regulated.

Recommendation: delete this section.

Citation: 6100.221. Development of the PSP

Discussion: An ISP is by definition a Person Centered Support Plan. The "plan" has undergone several title changes over the past 20 years, but the content remains virtually the same. Changing the language for the sake of a few updated / nuanced additions is un called for. Additionally it will required tremendous time and cost statewide at all levels.

Recommendation: Continue to call the plan an ISP. Update content as desired.

Define what the "service implementation plan" is. (ie: is this a separate "plan" from the ISP?)

Re: 6100.221 (f) – please define what constitutes a "current assessment"

Citation: 6100.222. The PSP process

Discussion: Please define how the individual "directs" the PSP process. Ie: What are they expected to do? How will they know what the PSP process is? What if they are not capable for directing the PSP process or they do not want to "direct" the process?

Recommendation: Rewording is needed:

6100.222 (b) (1) ....A PSP process does not invite and include individuals....An individual must identify and include individuals. Please describe extactly WHO is doing (b) 1-11.

Citation: 6100.223. Content of the PSP

Discussion: More information is needed:

Recommendation: include information on behavioral supports needed.

Re: (14) – consider adding this to 6100.184 – re: negotiation of rights / balanced w/ risk. Or refer to THIS reg under .184.

Citation: 6100.225. Support coordination and TSM

Discussion:

Recommendation: Change the word "assure" to "ensure"

Citation: 6100.226. Documentation of support delivery

Discussion:

Recommendation: ODP should develop a statewide mandated form for use by all providers. This will greatly reduce "violations" due to variance among providers.

Citation: 6100.261. Access to the community

Discussion: Somewhere in this regulation – the department needs to make it clear that – as in all everyday lives – individuals have to plan community outings "according to their means" (ie: they may want / desire / chose to have season tickets to the Pirates, but they can only afford to go to 3 games per year. Additionally, ODP must be willing to pay for the staff portion of "access to the community" because of the required role in facilitating it....and keeping people safe.

Recommendation:

Citation: 6100.262. Employment

Discussion: Many of our individuals are living good long lives. Providers have been saying for years that folks should have the right to retire. There is no mention of people at or near retirement age.

Recommendation: Add a provision for retirement – which is a valid component of an " Everyday life"

Citation: 6100.263. Education

Discussion: Higher education is very expensive.

Recommendation: Please describe where the funding comes from for (1-4)

Citation: 6100.303. Reasons for a transfer or a change in a provider

Discussion: Discussion 6100.303:
This section is defined too narrowly to be practicable to the point that it contradicts other portions of the chapter and are unable to execute the residency agreement. There are many circumstances such as program closure, safety of others, Megan's Law, eminent domain, court or other legal actions, eviction by a landlord of the provider, natural disasters, provider closure which may require transfer or change in spite of individuals' wishes. This list is not exhaustive – they regulation needs to allow for unforeseen occurrences.

What if exercising rights impinge on others, is that grounds for transfer? What if rights place the individual or others at risk? 6100.184(a) states, "An individual's rights shall be exercised so that another individual's rights are not violated."

Recommendation: Change (a) to read: A change in provider, against the individual's wishes will be made only in for serious reasons including:.....

Citation: 6100.304. Written notice

Discussion: There are 3 main parties involved in notice of a provider no longer being "willing or able" to provide a service: The SC, the individual / family, and the provider." There are many PSP team members who do not need to be informed of a change in one provider of one service. The Department and the AE will find out about the change when a critical revision or update is made. Since they have NO role in the decision about he change – they do not need notice of it.

Recommendation:

Citation: 6100.305. Continuation of support

Discussion: There is a fundamental lack of understanding on ODPs part as to why it is sometimes impossible for a provider to continue providing services. The workforce is simply 1) not large enough (too many vacancies) or 2) qualified

enough. When individuals have complicated medical or behavioral healthcare needs - a provider cannot simply pull staff out of thin air. Nor can a provider force staff to stay in a situation that they feel unsafe in or unqualified for. Even with additional funding – the enormous amount of pre-service training that is required makes replacing staff a very long process.

Recommendation:

Citation: 6100.342. PSP

Discussion: Title "PSP' here will be confusing when also referenced in 6100.221
This section is only about a very narrow piece of the PSP namely "dangerous behavior"

Recommendation: move this section to the PSP section Strongly recommend finding a different term than "dangerous behavior" – which sounds predatory and has a tone that harkens back to the days of institutionalization ….and society's fears of people with IDD as "dangerous" Consider: Risky behavior or potentially harmful behavior.

Citation: 6100.343. Prohibition of restraints

Discussion: Title can be misleading to appear that no restraints are allowed, ever

Recommendation: Change title to "Prohibition of certain types of restraints."

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

Discussion:

Recommendation:

Citation: **6100.401. Types of incidents and timelines for reporting**

Discussion: **Med errors should not need to be reported w/in 24 hours, but rather 72 hours as listed in**

Recommendation: re: individual to individual incidents: Require incidents to reported not just on the victim but on the "target" – There are many individuals who are the initiators of incidents – yet their behavior and support and corrective action plans and ongoing need for therapy – is NEVER captured or recorded.

Citation: **6100.402. Incident investigation**

Discussion: **The Department already has a mandated training for certified investigators – and they are trained on who to ask and what to consider. The entire process is comprehensive and thorough. There is no need for an additional "type" of investigation – ie: with a small "i". However – all incidents are indeed analyzed – both on an individual basis and quarterly – in relation to all other incidents.**

Recommendation: Move 6100.405 to 6100.403 – do not use the word "investigating" in any other way than when intended as "Certified Investigation"....this is more practical and useful to providers.

Citation: **6100.441. Request for and approval of changes**

Discussion: **There are many situations within which individuals would benefit from rapid placement. These situations include natural disasters, program closures, and removal from abuse. It is important that this chapter allow the department to develop an expedited capacity change process to accommodate individual's needs in their everyday lives.**

Recommendation:

Citation: **6100.442. Physical accessibility**

Discussion: **This item can create remarkable costs. The department needs to develop capacity to compensate providers for these costs in their rate-setting process.**

Recommendation:

Citation: **6100.443. Access to the bedroom and the home**

Discussion: **This proposed regulation, while presumably aimed at ensuring privacy, does NOT align in any way with an everyday life. Most citizens do not live in a house where they need a key to access their own bedroom. Additionally – in meeting individuals every day needs, staff may need to enter bedrooms many times per shift for many many non-emergency or non "life safety" reasons: helping to get dressed, assisting with bed making, collecting laundry or putting away clean clothes, helping to fix someone's hair, assisting with bed time routines or personal hygiene. Staff are always expected to treat the entering of individuals' rooms with respect – to ensure dignity and privacy – but to prohibit entry without "express permission" for each incidence of access – demonstrates a serious lack of understanding of the amount of personal assistance our staff are providing on a daily – hourly basis. Further, documenting or proving that "Required express permission of each incidence of access" was granted or denied will be impossible....and if not impossible – it makes a homelike environment seem very much like an institution. Staff who enter bedrooms on a regular basis are not strangers to the individuals. They are kind, caring and dedicated Direct Support Professionals who spend their hours, days, weeks and years building relationships with the individuals they support in a dignified manner.**

Recommendation: If an individual desires, chooses or requests that a lock be put on their bedroom door, then a provider will ensure that it happens.

Re: (e) Please specify who decides who is "authorized" – by name? by title? By position? Recommend language: The rights of the individual to privacy in his/her bedroom should be respected in accordance with sections 6100.181-183, with consideration for the needs of the health, safety, and welfare of the individual as determined in the PSP, or as needed in an unforeseen or emergency circumstance.

Recommend – addressing individual complaints or accusations of violation of privacy – as needed.

Recommend working to reflect language from the Community Rule: Each individual has privacy in their individual sleeping or living unit: Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

Citation: 6100.444. Lease or ownership

Discussion: It is necessary under the Community Rule that individuals have a legally enforceable document that offers the same responsibilities and protections from eviction as our prevailing law. To that point, 6100.444(a) is clear and direct. 6100.444(b) while describing reasonable limits, inadvertently refers to providers as "landlords" and to individuals as "tenants" and their units as "leased space". The rights conferred under the rule and as cited in 6100.444(a) do not make providers landlords. Having the same protections as provided by law does not make individuals tenants nor their spaces "leased". This language distinction is important in that we need to preserve the American Disability Act's protection of community residences as homes rather than businesses which can be excluded from residentially zoned areas. This distinction will also be crucial if/when the state develops guiding language or uniform formatting for the residency or room and board agreements in the future.

Additionally – it has already been made clear in regulation 6100.303 regarding the conditions that are grounds for transferring (ie: discharging) an individual.

Recommendation: Remove reference to the Landlord and Tenant Act of 1951. It is not nuanced enough for the actual purpose of an enforceable agreement between a provider and an individual with IDD.

Citation: 6100.446. Facility characteristics relating to size of facility

Discussion: It is not clear whether or not this new regulation is legal or not. The use of a maximum number seems – by the Department's own admission – completely arbitrary, and should therefore be omitted. Capping a number of participants working or living near one another seems contrary to ADA and Everyday Lives. The Community Rule does not specify an absolute cap on program size and so neither should Pennsylvania.

Recommendation: Do no place an arbitrary maximum number of participants into the regs.

Citation: 6100.447. Facility characteristics relating to location of facility

Discussion: 6100.447 (a) 1 & 2 & 5 are redundant

It seems that someone with compromised health, or aging needs, or a chronic behavioral or physical healthcare need –could benefit from living in "close proximity" to a hospital. No need to disallow it. Lots of people *without* disabilities live in close proximity to hospitals and nursing facilities – people with IDD should be "allowed" to too. Otherwise – expressly define "close proximity" as it is extremely vague – and could mean one thing in an urban area and another thing in a rural area.

The system has been moving away from institutionalization and segregated living for decades. As more and more programs and services open up IN the COMMUNITY – there will be closer proximity to one another. It seems that this regulation is trying to tix something that is NOT broken. Unless the Department can provide evidence that people are being served in super-congregate settings, or show some evidence based research / data that shows the trend is heading that way, then COMMUNITY providers should have more flexibility in where they develop COMMUNITY based services.

Additionally – regarding the waiver renewal and the addition of people with Autism, the Department should be aware of a movement TOWARDS congregate living – in an effort to foster acceptance and share resources (see http://www.ahdcp.org/)

The regs should be careful not to single out people with IDD as SO DIFFERENT than everyone else – that this set of regs could never apply to another population.....especially while purporting to reflect the values of Everyday Lives.

Recommendation: Consider how discriminatory and limiting this regulation is.

Citation: 6100.462. Medication administration

Discussion: Discussion: Medication Administration
There are two extremely important issues concerning the proposed new regulations pertaining to medication administration. These need to be addressed to prevent unintended negative consequences.

1. Codifying content that requires modifications over time into regulations will lock a crucial component of service provision into temporal practices which will become obsolete as new information, prevailing practices and technology emerge. Duplicating content which is as detail-specific as the proposed five-and-a-half pages of regulation across 5 sets of regulations when the state already has an externally -accepted training module invites discrepancy between the regulations and the training manual and prohibits the training module from staying current as new information, prevailing practices and technology emerge.

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

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

This discrepancy is instructive both to the specific issue regarding LPN's and to the process issue of codifying Nursing Practices content which changes from time to time according to authorities outside of the Department. It is noted that the provider system needs LPN's to be able to do all that state law provides for them to do. In the second case, we need regulations which do not lock providers to standards which may soon become obsolete due to new and emerging best practices and advances.
A second example of the problem with trying to maintain this content in multiple places is that there are already discrepancies between the proposed 6100's and the Department's Approved Medication Administration Training. The training's required checklist for medication self-administration has discrepancies with the proposed regulation. There is also a notable practice discrepancy regarding pre-

pouring of medications. We should avoid such confusion by maintaining this content in just one place, namely the Medication Administration Training module and not regulations.

Recommendation: Keep the current medication policies and procedures in place.

Do NOT cover 6500s in this regulation.

Citation: 6100.463. Storage and disposal of medications

Discussion: If it isn't broken, don't fix it. It is unclear why there are so many changes recommended under the medication section. It is also unclear as to how these changes will, if at all, improve or enhance quality.

Recommendation: Keep the current medication policies and procedures in place.

Citation: 6100.464. Labeling of medications

Discussion: If it isn't broken, don't fix it. It is unclear why there are so many changes recommended under the medication section. It is also unclear as to how these changes will, if at all, improve or enhance quality.

Recommendation: Keep the current medication policies and procedures in place.

Citation: 6100.465. Prescription medications

Discussion: If it isn't broken, don't fix it. It is unclear why there are so many changes recommended under the medication section. It is also unclear as to how these changes will, if at all, improve or enhance quality.

Recommendation: Keep the current medication policies and procedures in place.

Citation: **6100.466. Medication records**

Discussion: **If it isn't broken, don't fix it. It is unclear why there are so many changes recommended under the medication section. It is also unclear as to how these changes will, if at all, improve or enhance quality.**

Recommendation: Keep the current medication policies and procedures in place.

Citation: **6100.467. Medical errors**

Discussion: **If it isn't broken, don't fix it. It is unclear why there are so many changes recommended under the medication section. It is also unclear as to how these changes will, if at all, improve or enhance quality.**

Recommendation: Keep the current medication policies and procedures in place.

Citation: **6100.468. Adverse reaction**

Discussion: **If it isn't broken, don't fix it. It is unclear why there are so many changes recommended under the medication section. It is also unclear as to how these changes will, if at all, improve or enhance quality.**

Recommendation: Keep the current medication policies and procedures in place.

Citation: **6100.469. Medication administration training**

Discussion: **If it isn't broken, don't fix it. It is unclear why there are so many changes recommended under the medication section. It is also unclear as to how these changes will, if at all, improve or enhance quality.**

Recommendation: Keep the current medication policies and procedures in place.

Citation: **6100.470. Exception for family members**

Discussion: **Family members should however, be expected to administer medications in the proper way (correct dose, route, time/s, etc.) failure to do so sometimes both compromises the individuals' health and also puts the provider – which knowledge of such mistakes (or intentional decision to not follow doctor's orders)...at risk. Elderly parents often forget...or sometimes have different ideas of what their child / relative actually needs. Or might believe in cutting the pills in half to make them last longer (like they do for themselves). Or they have been given "discretion" by the doctor to "up" or "down" the dose according to observations...etc. Discretion that our staff do not have. This is a difficult situation for providers. Some clarification would be helpful here.**

Recommendation:

6100.44 Innovation Project Please define within the regulations, "innovation project".

6100.52(2) ii) Discover and resolve the reason for an individual's behavior
This is absolutely the goal and idealistic in nature, however, not realistic in all circumstances. Recommended rule: "Attempt to discover and resolve, when possible, the reason for an individual's behavior."

6100.52(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.

These members that are specified in the proposed regulations implies that everyone would have to have a different rights team, which would be extremely difficult to coordinate. It is strongly recommended to allow for one rights team for all individuals, being able to add the parent and the SC.

6100.182(g) Right of the Individual to control their own schedule.
A sentence should be added that states "in accordance with the individual's PSP". Staffing is not always available for the individual to control their own schedule. Individual needs to control schedule within the confines of what services/staffing are provided. If an individual wanted to control their own schedule to go out at 3AM and there was only one staff in the home for two individuals being supported and the other individual was sleeping a provider would be in an impossible situation. The only way full control could be granted to individuals would be if the Department funded 1 to 1 support for everyone.

6100 182(h)& 6100 182(i) Rights of privacy of person and possessions.
There needs to be an exception process specified within the regulations. An individual should not have rights to privacy of person and possessions when those possessions may put others in harm's way. This should be amended to state unless the health and safety of others is being jeopardized then the individual has the right to privacy of person and possessions

6100.183(a) Right to have unscheduled and scheduled visitors at any time.
There needs to be an exception process defined as the provider's responsibility is to ensure the individual's health and safety. For example, the individual invites a person they have been talking to online to the home at 2:00am. The person could be dangerous, and the individual could he putting themselves, their housemates and supporters at risk. To align with the ideals of an everyday life, the individual must adhere to any home owner association rules as well as good neighbor practice. There are rules to live in any community and if we are teaching and striving for our individuals to have an everyday life, they are not exempt from these rules. With rights also come responsibilities, which is part of any member of a community

6100.183(i) Individual has the right to make informed health care decisions.
There must be an exception process. If the individual makes the informed health care decision to not adhere to doctor recommendations, or to not attend their regulatory required appointments (for example, their annual physicals, 90-day psychiatric medication review, annual mammogram, etc.), not only are they putting themselves at risk, but the provider is liable for these decisions and associated risks, it should be specified within these regulations that it is the providers right to discharge the individual from services based upon dangerous decisions that are made. If the individual has the right to informed healthcare decisions, this should discontinue the regulation of a needed desensitization plan for any health care decisions that are made, including refusals.

6100.261 Access to the community
6100.261(c) Although this ideal, this is really an idea of best practice, and does not have a place within regulations. There is no way to measure or comply with this regulation as every person has a different view of what degree of community access should be required, This, is extremely subjective, which would open providers to many areas of noncompliance based upon the view of each individual auditor. If this regulation is stating that individuals would have the right to

community outings on demand, this would require 1:1 staffing support for all, which providers would need to be compensated for.

6100.345 Access to or the use of an individual's personal property.
6100 345(b)(1) For people who have an understanding the individual's funds should be able to be used as a natural consequence to pay for damages that they cause. This supports the ideals of an everyday life. if a person without IDD breaks the television in their home, they are not entitled to a new one, they should pay for a new television as a natural consequence to their actions. Whether the individual would be able to understand this and benefit from this type of natural consequence should be a PSP team decision and be part of the PSP.
61 00.345(b)(2) The provider should be included as part of the people present during consent being obtained. Revise for providers being able to state the facts of the case, Example: "Billy, you caused $5,000 of damages by breaking the heater and people now do not have heat in the home." Providers should be able to state to the individual "you have the right to break things, however it then becomes your responsibility to pay for them." This is part of everyday living!

6100.571 Fee schedule rates.
6100.571(b) Specify exactly what market based data is being used. Although we do like the system of refreshing the rates every 3 years, we feel as if this should be done annually.

Citation: **6100.46. Protective services**

Discussion: **Unclear if EIM satisfies the dept. and county reporting requirement**

Recommendation: Clarify if additional reporting beyond electronic system reporting will be required.

Citation: **6100.51. Grievances**

Discussion: It's unclear at what point a phone call with a concern becomes a grievance.

Recommendation: Define grievance.

Citation: **6100.52. Rights team**

Discussion: Redundant...no value added. These issues are addressed through EIM and Investigation Peer review committee. Counties couldn't manage to attend these for all providers.

Recommendation: Roll the review of rights violations and abuse as a requirement of the Restrictive Procedure/Human Rights Committee (dual committee). Require invitation to attend specific portion of the meeting for individuals/families of any effected person.

Citation: 6100.55. Reserved capacity

Discussion: Costly if not funded.

Recommendation: Fund vacancies held for individuals while out of a residential program.

Citation: 6100.141. Annual training plan

Discussion: Training requirement for administrative and ancillary staff is too long. While these employees should be trained on the philosophy, the 8 of required and 12 total hour requirement is beyond what would be necessary. Job skill training for administrative staff should not be mandated.

Recommendation: 4 annually training hours for admin staff on Everyday Lives, abuse, etc. No job skills training requirement is necessary.

Citation: 6100.143. Annual training

Discussion: Training requirement for administrative and ancillary staff is too long. While these employees should be trained on the philosophy, the 8 of required and 12 total hour requirement is beyond what would be necessary. Job skill training requirement should not be mandated

Recommendation: 4 hours annually on Everyday Lives, abuse, etc. No job skills training requirement should be mandated for administrative/ancillary staff.

Citation: 6100.303. Reasons for a transfer or a change in a provider

Discussion: Discharge may be necessary if an individual's behavior causes undue stress or extreme disruption to the other individuals in the home.

Recommendation: Add language that would allow for the rights of the others in the home in the case of someone who may be causing an unhealthy, stressful environment.

Citation: 6100.304. Written notice

Discussion:

Recommendation:

Citation: 6100.305. Continuation of support

Discussion: This can be an incredible burden when no willing provider is located within a reasonable time. We supported an individual for two years post discharge notice (his request). This was detrimental to his happiness as well as for his housemates.

Recommendation: Provide an alternative for individuals who are unable to find a willing provider within a designated time period.

Citation: 6100.341. Use of a positive intervention

Discussion: Support. Good change of title from "Safe Behavior Management"

Recommendation:

Citation: 6100.343. Prohibition of restraints

Discussion: Title can be misleading to appear that no restraints are allowed, ever

Recommendation: Change title to "Prohibition of certain types of restraints."

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

Discussion:

Recommendation:

Citation: 6100.401. Types of incidents and timelines for reporting

Discussion: #16 Moving medication errors to a 24 hour reporting requirement creates yet another reason for direct care staff to contact managers during their personal time (weekends/holidays). This is an unnecessary burden since serious errors would result in an emergency room visit which would then be reportable in EIM within 24 hours. Lesser errors should continue to be reportable within 72 hours.
#17 is too nebulous. "A critical health and safety event" is open to interpretation leaving providers vulnerable to the whims of monitors.

Recommendation:
#16 Medication errors should not be on the 24 hour list...72 hours is sufficient.
#17 "Critical health and safety event" should be removed.

Citation: 6100.402. Incident investigation

Discussion: It appears that all reportable incidents require an investigation.

Recommendation: Clarify which incidents require investigating or specify where to find such information.

Citation: 6100.443. Access to the bedroom and the home

Discussion: What about fire emergencies? While the regulation states that emergency access should be immediate, I'm not sure how that's possible. Staff are sometimes evacuating multiple people and don't need to be unlocking more doors than necessary---they're already dealing with hoards of keys and some individuals who need physical assistance to evacuate. If an individual chooses to not use the lock, they shouldn't be required to have the key...although they can choose to have the key. Requiring permission for each access unless it's a life threatening emergency is unrealistic. What about changing linens or entering because of a leak in the ceiling while the individual is out of the home?

Recommendation: Change to "lockable" doors on bedrooms for individuals who choose to lock their door. Staff will wait for permission to enter (non-emergency) when the individual is home. Written consent for necessary access while the individual is away.

Citation: 6100.446. Facility characteristics relating to size of facility

Discussion: I think this regulation may catch in its net the VERY INTEGRATED semi independent, unlicensed apartment programs of some providers. It also violates the rights of individuals who want to live near their friends and staff. It shouldn't matter how many apartments are in a building as long as the building is well integrated in a community that serves a mostly non-disabled population (non-campus setting—fewer than 10% of units). These individuals navigate the community on their own and are competitively employed. They come and go as they please. Having the group within close proximity allows for a level of oversight that maximizes these opportunities for independence. Some of these individuals may lose independence if they are forced to live further away from their support circle. I'm not clear on the definition of facility. If each apartment is billed separately (2 person unlicensed) is it a different "facility" than the apartment across the hall?

Recommendation: Carve out semi-independent unlicensed apartment programs within a larger integrated complex/community (non-campus setting). Clarify what constitutes a facility.

Citation: **6100.462. Medication administration**

Discussion: **Including life sharing providers seems excessive. The life sharing model is the most inclusive, natural model offered. Having these providers adhere to storage and documentation requirements is counterproductive to this most natural support.**

Recommendation: Define some less stringent medication training for life sharing providers.

Citation: **6100.470. Exception for family members**

Discussion: **Support this....include life sharing providers.**

Recommendation: Include Life sharing providers in this section.

Citation: **6100.571. Fee schedule rates**

Discussion: More of a commitment needs to be made to keeping fees in line with rising costs. (b) The Department will refresh the market-based data used in subsection (a) to establish fee schedule rates at least every 3 years.

Recommendation: Adhere to methodology that utilizes Medicare Home Health Market Basket Index to adjust fees every year.

Citation: **6100.652. Compensation**

Discussion: (b) A bonus or severance payment, that is part of a separation package, is not an allowable cost.
This is a cost of doing business and should be allowable. However, under a fee based system, these costs are irrelevant to the state.

Recommendation: Change bonus or severance packages to "allowable".

Citation: **6100.662. Motor vehicles**

Discussion: (2) The provider shall keep a daily log detailing the use, maintenance and services activities of vehicles.
The "maintenance and services activities" is onerous to providers. Other oversight (state inspection, etc.) assure the safety of vehicles in PA.

Recommendation: Change to include only usage.

Citation: **6100.663. Fixed assets of administrative buildings**

Discussion: (c) The provider shall receive prior written approval from the Department for a planned major renovation of an administrative building with a cost above 25% of the original cost of the administrative building being renovated.
The "prior written approval" for "25% of the original cost" does not factor in real estate appreciation for buildings held for decades and adds to the administrative burden of providers.

Recommendation: Remove or change to 25% of current building value.

Citation: **6100.665. Indirect costs**

Discussion: (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.
Providers are already required to follow the Federal Super Circular and GAAP for indirect cost allocation. This section is redundant and not necessary.

Citation: 6100.672. Cap on start-up cost

Discussion: (a) A cap on start-up cost will be established by the Department.
Currently, the state only has $200,000 in a fund to reimburse up to $5,000 per new individual for start up costs on a first come, first serve basis. If the state is not planning to fund every provider's start up costs at a high enough amount, this cap will not be an incentive for providers to open new homes.

Recommendation: Increase cap and fund this more realistically.

Citation: 6100.711. Fee for the ineligible portion of residential habilitation

Discussion: (c) The Department will refresh the market-based data used in subsection (a) to establish Department-established fees at least every 3 years.

Recommendation: Use Medicare Home Health Market Basket Index and adjust fees annually.

Citation: 6100.742. Array of sanctions

Discussion: If these are not licensing regulations, the language should not be so focused on corrective action.

Recommendation: Change title to "Remediation."

Citation: 6100.___ _____42_____

Discussion: Monitoring. Each provider should be monitored by their "home" AE and not each AE in the counties they offer services. The burden of this system lies not in the trust of AE one to another, but for the provider to meet the demands which are often different from each of the counties. Example, 1 policy and you deliver services in 4 different counties you have the potential to change that one policy differently for each of the 4 counties as they do not accept the ruling/monitoring decision of the lead AE. In essence, 1 policies written 4 different ways to appease each AE.

Recommendation: Only the lead AE will review the provider and each additional AE accepts their monitoring findings...without making additional adjustments or judgements.

Citation: 6100.___ ___52_____

Discussion: Rights Team. The beginning portion reads as if this is a team approach but then it changes to read the rights team for the "affected" individual. This is confusing and misleading. In a program of 100 individuals it would appear there is a separate and individualized team for each which would be 100 rights teams. I'm sure that isn't what was intended.

Recommendation: Rights team to review all complaints/incidents of rights violations within the provider agency.

Citation: 6100.___ _____141_____

Discussion: Annual training plan. Once orientation is completed, annual hours will require 8 for specific ODP requirements, the rest of the hours "specified in an individual's PCP." This would indicate that the provider would need to have an individualized training plan for each staff person based on the client with which they work. In a day program that could be a variety of 100 people. So the staff person would need to complete 100 training plans?

Recommendation: Instead of specific to the PCP, specific to needs/challenges of someone with a disability which covers general areas.

Citation: 6100.___ ___571_____

Discussion: No refresh. To make this system viable in the future, you ODP and the State, need to commit to making it a workforce where people can afford to stay and gain the experience and expertise to work with someone with a disability. The lack of staff needed to fulfill your mission is growing thin. The salaries and lack of ongoing increases force people to leave the field and take their expertise with them.

Recommendation: Annual market adjustments or COLAs to keep the system running in the manner expected.

Citation: 6100.___ ____226_____

Discussion: Documentation. Currently providers use the mandatory monthly note report form for documentation. This section I find a little confusing. It does not mention the mandatory note form but mentions "each time the service is delivered" with information needed on the report as well as an ISP review every 3 months. Does this documentation mean the monthly note will be used for service delivery and then included in the 3-month review? Filling out the monthly note and all the information that contains, there is little to actually include on a 3-month review. Unless this is a totally new kind of documentation process and you are eliminating the monthly note, it does not make sense to me.

Recommendation: Clearly state what paperwork is required and what is no longer required.

6100.261 (a)	Add the highlighted section:The provider shall provide the individual with the support necessary to access the community in accordance with the individual's PSP **and receive the necessary funding to implement the community access plan.**
6100.262 (a)	Add the highlighted section: **Supports Coordinators will offer ongoing information about the Office of Vocational Rehabilitation services so** the individual **will** have active and ongoing opportunities and the supports necessary to seek and retain employement and work in competitive, integrated settings.
6100.42 e	It should read: The provider should complete a corrective action plan for **non-compliance** or alleged **non-compliance** with this chapter in the time frame required by the Department. Comment: Provider performance review is very important and language that assists the Department and provider agencies to work in cooperation would be helpful in facilitating remedial actions to correct non-compliance.
6100.443 (a)	Recommended change to section: **In a residential facility, an individual shall have privacy in their bedroom and an entrance door lockable by the individual.**
6100.443 (f)	Recommended change to section: **Access to the individual's bedroom shall be provided only in a health and safety emergency or with express permission by the individual.**
6100.462	Recommended to delete the entire section and add: **The provider will adhere to the Department's appoved, current medication admisitration training. Also, due to Life Sharing providers not being employees it is not possible to have them adhere to specific training schedules. They are currently not required to complete Medication Administration under the 6500 regulations and should remain exempt.**
6100.52	Comment: Passavant Memroial Homes supports the focus and enhancement of individual rights outlined in the proposed regulations. It is critical to ensure that the concepts of Everyday Lives are implemented. The current system through the incident management process and Human RIghts Committee already works as an oversight process for a violation of an individual's rights and use of any restrictive procedures. Adding additonal administrative duties to this process would only add costs with no real increase in acutal meaningful oversight.
6100.672 (a)	Recommended change to the section: **The Department set a cap of $40,000 for apporved start -up costs.**

Citation: 6100.42. Monitoring Compliance

Discussion: (a), (b), and (c) – This states that the department and the designated managing entity may monitor compliance with this chapter at any time through an audit, provider monitoring or "other monitoring method". (e) and (g.) - It is not clear why a provider would have to do a plan of correction for something that was merely alleged. If the allegation is unfounded, then there is nothing to correct. Monitoring Compliance – (h 5) and (h6) - It is unclear what is meant by the word "appropriate"

Citation: 6100.43. Regulatory Waiver

Discussion: (e) - There are not a clear number of days that will elapse before a provider will be issued a response by the individual or their designated person. (f) It is unclear what is meant by "immediate" in the expectation to protect the health and safety of the individual.

Recommendation: (e) Provide clear a clearer timeline for when a response may be received by the provider from individual and designated person. As an example, please change language to indicate "at least 20 days for review but no more than 45 days for review". This allows the individual and provider to know the latest date by which there will be a response with regard to submitting the waiver request. (f) Once again please state a specific timeline that is congruent with what is intended by "immediate".

Citation: 6100.45. Quality Management

Discussion: (a) Additional data collection and reporting tools/requirements will be an additional cost as well time spent completing staff training if providers go outside using their selected quality management process. (e) A minimum expectation should be given with regard to how often the QM plan is updated. The way it reads now indicates the plan is to be devised every two years.

Recommendation: (a) Please consider allowing each provider to use their QM Tool that is consistent across their programs. (e) Please add "at least" before every 2 years.

Citation: 6100.341. Use of a Positive Intervention Discussion: (b) It is unclear how "least intrusive methods" are determined and assessed

between considered methods.

Citation: 6100.343. Prohibition of Restraints

Discussion: Title can be misleading to appear that no restraints are allowable. Some brief appropriately applied restraints are necessary to prevent risk of injury and harm to the individual.

Citation: 6100.401. Types of incidents and Timelines for Reporting

Discussion: (a) (17) It is unclear how "a significant behavioral event" and "trauma" are defined and what magnitude needs to be present of the behavior or trauma to necessitate reporting.

Recommendation: (b) Clarify how "least intrusive methods" may be assessed/differentiated from other considered methods to document compliance.

Recommendation: Change title to "Prohibition of Certain Types of Restraints."

Citation: 6100.403. Individual Needs Discussion: (b) It is unclear if the provider needs to maintain documentation for review

with regard to subsequent monitoring

Recommendation: (b) Indicate documentation that would need to be kept to show "monitoring" occurred and when it may be stopped if there are no subsequent incidents in a specified timeframe.

Citation: 6100.481. Department Rates and Classifications Discussion: "the department will establish a rate"

Recommendation: Please consider incorporating transparency into the rate setting process to include publication of the methodology, factors used, etc.

Citation: Discussion:

Citation: Discussion:

6100.571. Fee Schedule Rates

Metrics used in rate setting

6100.648. Donations

Donations are included as revenue

Recommendation: Should include factual data such as the Department of Labor, Consumer Price Index (CPI)

Recommendation: Should be removed. Providers cannot expect or rely on donations being made on a consistent or repeated basis or in the same amount from one year to the next.

Citation: 6100.652. Compensation Discussion: Benefit Packages

Recommendation: Recommend change to "including but not limited to pension....". It is normal and customary for businesses to offer life and disability insurances, tuition reimbursement, etc.

Citation: Discussion:

6100.658. Communication

Reimbursable Expenses.

6100.742. Array of Sanctions

If these are not licensing regulations, the language should not be so focused on corrective action.

Recommendation: The list should be expanded to allow for existing (i.e. webex, skype for business) and future possible innovations.

Citation: Discussion:

Recommendation: Change title to "Remediation."

Citation: 6100.42. Monitoring Compliance

Discussion: (a), (b), and (c) – This states that the department and the designated managing

entity may monitor compliance with this chapter at any time through an audit, provider monitoring or "other monitoring method". (e) and (g.) - It is not clear why a provider would have to do a plan of correction for something that was merely alleged. If the allegation is unfounded, then there is nothing to correct. Monitoring Compliance – (h 5) and (h6) - It is unclear what is meant by the word "appropriate"

Citation: 6100.43. Regulatory Waiver

Discussion: (e) - There are not a clear number of days that will elapse before a provider will be issued a response by the individual or their designated person. (f) It is unclear what is meant by "immediate" in the expectation to protect the health and safety of the individual.

Recommendation: (e) Provide clear a clearer timeline for when a response may be received by the provider from individual and designated person. As an example, please change language to indicate "at least 20 days for review but no more than 45 days for review". This allows the individual and provider to know the latest date by which there will be a response with regard to submitting the waiver request. (f) Once again please state a specific timeline that is congruent with what is intended by "immediate".

Citation: 6100.45. Quality Management

Discussion: (a) Additional data collection and reporting tools/requirements will be an additional cost as well time spent completing staff training if providers go outside using their selected quality management process. (e) A minimum expectation should be given with regard to how often the QM plan is updated. The way it reads now indicates the plan is to be devised every two years.

Recommendation: (a) Please consider allowing each provider to use their QM Tool that is consistent across their programs. (e) Please add "at least" before every 2 years.

Citation: 6100.341. Use of a Positive Intervention Discussion: (b) It is unclear how "least intrusive methods" are determined and assessed

between considered methods.

Citation: 6100.343. Prohibition of Restraints

Discussion: Title can be misleading to appear that no restraints are allowable. Some brief appropriately applied restraints are necessary to prevent risk of injury and harm to the individual.

Citation: 6100.401. Types of incidents and Timelines for Reporting

Discussion: (a) (17) It is unclear how "a significant behavioral event" and "trauma" are defined and what magnitude needs to be present of the behavior or trauma to necessitate reporting.

Recommendation: (b) Clarify how "least intrusive methods" may be assessed/differentiated from other considered methods to document compliance.

Recommendation: Change title to "Prohibition of Certain Types of Restraints."

Citation: 6100.403. Individual Needs Discussion: (b) It is unclear if the provider needs to maintain documentation for review

with regard to subsequent monitoring

Recommendation: (b) Indicate documentation that would need to be kept to show "monitoring" occurred and when it may be stopped if there are no subsequent incidents in a specified timeframe.

Citation: 6100.481. Department Rates and Classifications Discussion: "the department will establish a rate"

Recommendation: Please consider incorporating transparency into the rate setting process to include publication of the methodology, factors used, etc.

Citation: Discussion:

Citation: Discussion:

6100.571. Fee Schedule Rates

Metrics used in rate setting

6100.648. Donations

Donations are included as revenue

Recommendation: Should include factual data such as the Department of Labor, Consumer Price Index (CPI)

Recommendation: Should be removed. Providers cannot expect or rely on donations being made on a consistent or repeated basis or in the same amount from one year to the next.

Citation: 6100.652. Compensation Discussion: Benefit Packages

Recommendation: Recommend change to "including but not limited to pension....". It is normal and customary for businesses to offer life and disability insurances, tuition reimbursement, etc.

Citation: Discussion:

6100.658. Communication

Reimbursable Expenses.

6100.742. Array of Sanctions

If these are not licensing regulations, the language should not be so focused on corrective action.

Recommendation: The list should be expanded to allow for existing (i.e. webex, skype for business) and future possible innovations.

Citation: Discussion:

Recommendation: Change title to "Remediation."

Citation: 6100.1. Purpose (a)

Discussion:

Recommendation: Subsection (a) omits mention of an essential purpose of chapter 6100 – the adoption of HCBS payment policies. As redrafted, (a) succinctly reflects the broad purpose of Chapter 6100. Language must be consistent with the CMS Community Rule for Home and Community Based Services (HCBS). CMS uses the term "services." The proposed regulations use the term "supports." Services indicates a contractual agreement for payment, while supports could be and often are unpaid

Citation: **6100.2. Applicability**

Discussion: **addition of autism to ID waiver**

I recommend amending Autism waiver to meet the needs of people with autism
So the needs of those with autism without id needs can be met. By adding another population the only thing this will do is increase the waiting list in pa. I have concerns that a person with autism may not access these services due to the perception of needing ID. The current PUNS and SIS process will not translate well into the specific needs of a person with autism by using the same criteria it may actually decrease the amount of services they will actually receive

Citation: **6100.3. Definitions**

Discussion:

Recommendation: All definitions for these regulations should be included in Chapter 2390.5, 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.

Citation: **6100.41. Appeals**

Discussion: "may" implies choice "will" implies a requirement

Recommendation: anytime an agency is required to do something will should be used otherwise it implies there is a choice for compliance

Citation: **6100.42. Monitoring compliance**

Discussion: Department and managing entity leads to multiple counties and dept. monitoring same things, often with different interpretations. Monitoring should be meaningful and focus on quality and health and safety especially as it relates to an individual as opposed to the focus being so heavy on "documentation"

Recommendation: a) by designating either Dept. or lead AE to do monitoring it reduces duplication of monitoring decreasing not only ae and Dept. staff but agency staff tied up with repeating the same process numerous times often leading to conflicting reports and findings

C) timeline should be defined and qualitative (recommend 30 days)

e) The Department or the designated managing entity, after and in consultation with the provider, may issue a directed corrective action plan to direct the provider to complete a specified course of action to address non-compliance. A directed action plan is not considered a routine action and will 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 particular corrective action(s) and must identify the cost to the provider to implement the plan.

2)Technical consultation should be removed as it is subjective and leads to confusion

j) Provider shall should be replaced with must or is required to it does not seem reasonable to be required to have a CAP for an "alleged violation" if the allegation turns out to be FALSE.

Do not require CAPs for false allegations.

Citation: **6100.43. Regulatory waiver**

Discussion: regulatory waivers should be granted to allow for individual choice to allow for a quality of life which is directed and meaningful to the individual allowing them the opportunity to remain connected and have relationships with whom and where they chose

Recommendation: the word waiver should be replaced with " exception" to avoid confusion with the specific Medicaid waivers and they should not be limited on the specific items,
Time line for dept. should be determined recommend 30 days for response
4) "additional items deemed appropriate" needs defined to limit subjective decisions
d) department should specify start date but should renew with annual PSP as to not cause a delay in services for individuals
The individual and individual's team have fully reviewed and documented the benefits and risks associated with the proposed exception. Benefits that may result from granting the exception may include increased person-centeredness, integration, independence, safety, choice or community opportunities for an individual or a group of individuals

Citation: **6100.44. Innovation project**

Discussion:

Recommendation:

Citation: **6100.45. Quality management**

Discussion: quality management should be developed by individual providers of service unless the department or AE sees evidence repeat and prolonged issues regarding compliance or monitoring

Recommendation: A provider will implement an evidenced based, quality improvement strategy that includes continuous improvement process, monitoring, remediation, measurement performance and experience of care.
(a) When developing a quality improvement strategy, a provider must take into account the following:
(1) The provider's performance data and available reports in Department's information reporting system.
(2) The results from provider monitoring and SCO monitoring.
(3) The results of licensing and provider monitoring.
(4) Incident management data, including data on incident target(s), repeated or serious incidents, root cause analyses, and quarterly review of incidents.
(5) Results of satisfaction surveys and reviews of grievances.
(b) The provider will include 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. Absent criteria established by the U.S. Health and Human Services Secretary, providers will establish goals based on identified need within their programs.
(2) Target objectives that support each identified goal.
(3) Performance measures the provider will use to evaluate progress.
(4) The person responsible for the quality improvement strategy and structure supporting this implementation.
(5) Actions to be taken to meet the target objectives.
(e) A provider must review progress on the quality improvement strategy and update at least every 2 years.
(f) A provider will maintain a written copy of the quality improvement strategy to be available for the Department to review as part of provider monitoring.

Discussion 6100.45:

Citation: **6100.47. Criminal history checks**

Discussion:

Recommendation:
a) criminal history should be required and should use will or required
B) suggest the word "paid" be added
1) household member who are being paid but not all household members Dept. does not have authority on who lives with another individual
3) consultants who do not have direct unsupervised time with individuals should not be subject to these requirements
5)volunteers should be number of hours assigned to this group and if not left unsupervised should not be required
If we are requiring individuals to be in the community we cannot mandate everyone they have contact with have clearances and training and agency cannot be expected to monitor non employed persons
d) this conflicts with item 1

Citation: **6100.48. Funding, hiring, retention and utilization**

Discussion: quality of staff is the most important element of any program, it has long been proven that staff turnover is both costly and detrimental to the individuals, if we value relationships, quality stability and health and safety this needs to be addressed

Recommendation: need to develop method of payment incentives for direct care staff to both enter and remain in the field, loan forgiveness, health care or education stipend, encourage states to develop education programs and possibly certifications

Citation: **6100.51. Grievances**

Discussion: An employer cannot and will not tolerate retaliation. However, and employer cannot "assure" that another employee or co-worker or family member or individual will not act in a retaliatory way. The types of grievances should be spelled out (addressed here and in the waiver).
"

Recommendation: The department must address / spell out the types of grievances that this waiver intends. It is not uncommon across the state, for family members to refuse to accept services from staff person if they do not like the color of their skin or because of their sexual orientation. Family members must understand that by accepting a Medicaid waiver for their loved one, they must also adhere to federal law prohibiting discrimination.

I) Add or designee

Citation: 6100.52. Rights team

Discussion:

Confusion as to agency rights team vs individuals' rights team

There is no need to add a separate "Rights Team." In associated licensing regulations, a long-standing and well-stablished process exists for the oversight and appropriate management for the use of any restrictive procedures, including restraint. The regulations have already established the "Restrictive Procedures Committee" and restrictive procedures process which is tasked with the same basic functions of the newly created team. By replacing a currently existing and appropriately operation expectation, unnecessary costs are added to the system. It is entirely unclear why the creation of a new "rights team" is necessary or adds any value to the actual protection of individuals' rights, but rather only would add cost and administration burden. Individuals who are not satisfied with the follow up or corrective action plan have recourse to filing a complaint or grievance.

Recommendation:

Discussion 6100.52:

The values represented in Everyday Lives are the core elements of encouraging increased individual participation in community, and exercising their choice, control, and rights. This will add an unnecessary layer to the operation of providers, including families. Where the Department stated an intended goal to streamline processes and eliminate duplication, this accomplishes neither. In addition, it does not appear that any gaps in the current system exist that the addition of this new and additional expectation will fill.

The concept of evaluating the potential and actual violation of rights is absolutely a necessity, and one that is already appropriately covered in the Incident Management process which includes a thorough investigation by an investigator who has been certified in the Department-approved training. As part of the already well-established and robust Incident Management system, all allegations of rights violations must be investigated. If a violation of rights is confirmed, the process already has established corrective action expectations. The proposed regulatory changed in this chapter propose to enhance those expectations, and role of the PSP team as necessary the additional administrative expectation and associated costs are unnecessary, inefficient and uneconomical.

According to the regulations, the "rights team" is to meet every three months, regardless of whether any actual rights violations. This simply adds an expectation that it occur every three months, adding unnecessary cost to the system and an additional administrative task.

A second stated purpose of the "rights team" is to review any and all uses of restraint through the full convening of the rights team, including the use of techniques which are used for emergency scenarios in dangerous situation, and even part of a PSP.

In associated licensing regulations, a long-standing and well-stablished process exists for the oversight and appropriate management for the use of any restrictive procedures, including restraint. The regulations have already established the "Restrictive Procedures Committee" and restrictive procedures process which is tasked with the same basic functions of the newly created team. By replacing a currently existing and appropriately operation expectation, unnecessary costs are added to the system. It is entirely unclear why the creation of a new "rights team" is necessary or adds any value to the actual protection of individuals' rights, but rather only would add cost and administration burden.

Restraints are already investigated and documented through incident management. This role is and should continue to be a responsibility of restrictive procedures committee Currently individual not sit on this committee but case is reviewed and approval or recommendations made to individuals team every 6 months a mandatory 3 month review seems overly burdensome and not efficient

Citation: **6100.53. Conflict of interest**

Discussion:

Recommendation:
C) add relationship should be disclosed

Citation: 6100.81. HCBS provider requirements

Discussion:
The regulation wording under provider requirements should more accurately match *the actual* requirement for provider enrollment (for example – a license from the Dept. of Health" is mentioned in 6100.81 (c) – but is NOT in fact required for most facilities. This is VERY important, because provider enrollment has historically been extremely slow and is often held up because providers miss one or two documents – that were NOT listed correctly / clearly in the published directions. This then caused LONG delays for providers and worse – for individuals waiting to receive services.

If providers a current provider of hcbs services there is no need for them to resubmit documentation already on file

Recommendation: Include wording that matches the actual provider requirements:
A provider enrollment application, on a form specified by the Department.
A medical assistance provider agreement, on a form specified by the Department.
A home and community-based waiver provider agreement, on a form specified by the Department.
Verification of compliance with § 6100.81(2) (relating to pre-enrollment provider qualifications).
Verification of compliance with § 6100.476 (related to criminal history background checks).
Documents required in accordance with the Patient Protection and Affordable Care Act (Pub. L. No. 111-148).
Verification of successful completion of the Department's pre-enrollment provider training as specified in § 6100.142 (related to pre-enrollment training).
Monitoring documentation
Copies of current licenses, if applicable, as specified in § 6100.81(2) (relating to provider qualifications).
Verification of compliance with § 6100.46 (related to criminal history *background* checks).
Prior to applying for participation in the HCBS program, the applicant shall complete the Department's pre-enrollment provider training.

Additionally: 6100.81 (c) 1 & 2 seem to contradictory or confusing. Please clarify.

Citation: **6100.85. Ongoing HCBS provider qualifications**

Discussion:
In section d contact is vague and may not be made aware of persons is on excludable list until hire

Recommendation: d) change to providers may not employee contract or be governed by a person on the federal or state list of people to be excluded from Medicare and Medicaid programs

Citation: **6100.86. Delivery of HCBS**

Discussion: dept. should do provider qualification to provide consistency should not decide who can provide serves just who or what they will be paid for

Recommendation: a) delete designated managing entity
provider will only be rein versed for and deliver services authorized is psp

Citation: **6100.141. Annual training plan**

Discussion: 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 141 and 143 into one streamlined and accountable set of standards to not only maintain the basics, but to advance our work to the next level.

Recommendation :) Please list the core competencies so that system wide expectations are clear.

The plan will explain how the provider will assure that staff understands 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.
The plan will explain how the provider will assure that staff understands the safe and appropriate use of positive interventions, including the training in the plans which are unique for any one person served.
(The plan will include the following positions
(1) paid staff with client contract;
(2) paid and unpaid interns who provide reimbursed supports to an individual and work alone with individuals;
(3) Volunteers who provide reimbursed supports to an individual and who work alone with individuals.
(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
(i) Records of orientation and training including the training source, content, dates, length of training, and copies of certificate receive and persons attending shall be kept.
(j) The provider shall keep a training record for each person trained

annual training plans should be determined on needs of the individuals they serve and include items identified by the quality management plan or monitoring or licensing non compliance

Citation: **6100.142. Orientation program**

Discussion: this should be required only of licensed providers

Recommendation: remove AWC and transportation providers as an agency's orientation is not applicable

Citation: **6100.143. Annual training**

Discussion:
Same issues as 142

Recommendation: same as 142

Citation: **6100.144. Natural supports**

Discussion: the use of the term "natural support" should not be used to replace a person need for paid supports especially in regards to health and safety of individual, true relationships should be encouraged and supported without the assumption that a person is expected to give or receive "support"

Recommendation:

Citation: **6100.181. Exercise of rights**

Discussion: an individual cannot be continually supported to exercise individual's right

Recommendation

:b)should be amended to read an individuals will be informed and supported on exercising their individual rights as they desire The services, supports, and accommodation necessary for the individual to understand and activity exercise rights as they choose will be funded by the Department as part of the PSP.

C) add as desired by the individual

G) if the individual was determined to be incapacitated and requires a legal guardian the individual rights as well as decision making ability shall be directed by said order
H) on behalf of individual should be deleted and add to provide support to the individual

Citation: **6100.182. Rights of the individual**

Discussion:
Consideration of court ordered legal guardians should be reflected, a person's right to choose where they live and work and form ongoing relationships should not be dictated by where the department or ae dictate or define success and meaningful

Recommendation: b) add except when otherwise directed by court order

c) the ability to make decisions and accept risks should be determined by legal guardian when individual has been declared incapacitated and should be indicated in sections f-l

(d) ~~-~~An individual has the right to make informed choices and accept personal risks that do not pose a threat to the individual's and/or another person's health, safety, or well-being.

Citation: 6100.183. Additional rights of the individual in a residential facility

Discussion: It needs to be made clear that individuals have the right NOT to exercise all of their rights (i.e.: they have a right not to have a lock on their door if they so choose) in an everyday life – we all have the right to vote – but many choose not to. Additionally – many individuals have limited financial management abilities. A "right' to unrestricted access to telecommunications – could be interpreted as a right to a data / coverage plan that one cannot afford.

Recommendation: the persons rights should at all times take into account the individuals and housemates need supports around issues of health and safety and psp should have clear documentation on why there needs to be a restriction for health or safety reasons and should be presented and approved annually or as a change is documented to restrictive procedures committee and again legal guardianship must be considered

Citation: 6100.184. Negotiation of choices

Discussion: negotiation between individuals will be difficult to document

Recommendation: should be an avenue to which achieve this as well as to document when differences cannot be resolved

Citation: 6100.185. Informing of rights

Discussion: maybe more effective if provider of service not be the one doing this individual may feel safer and more secure in voicing concerns to outside party

Recommendation: supports coordinating agency when involved should be presenting this information at least annually at psp mtg ad in independent and impartial person

Citation: **6100.186. Role of family and friends**

Discussion: Family and friends are by definition "natural supports." It is unreasonable to "regulate" that role. There is way too much variance in family roles / dynamics to mandate a provider role in "facilitating" and making "accommodations necessary."

If all activity here is under the direction of the individual, then the provider has a very limited role to play – and again that role should NOT be regulated need to protect an individual's right to privacy

Recommendation: add requirement of signed release of information

Citation: **6100.221. Development of the PSP**

Discussion: An ISP is by definition a Person Centered Support Plan. The "plan" has undergone several title changes over the past 20 years, but the content remains virtually the same. Changing the language for the sake of a few updated / nuanced additions is un called for. Additionally it will require tremendous time and cost statewide at all levels.

Recommendation: a) agree that person should only have one approved plan but should not be mandated which form is used OLTL has plan but we are required to recreate a separate plan

a) The psp should reflect individuals choice and value their input as well as the people who they individual identifies as a member of the support team they should be valued and involved to the to the extent they direct. A person's communication mode and needs and meeting location and times should be valued and supported. The health and safety and quality of life and individuals values must always be primary focus.
b) Services should be written in a flexible manner to allow for an individual's everyday life and not prescriptive in nature
c) The sc should be responsible for facilitating plan development and revisions with the individual and their team and notifying team regarding changes and sending documentation to all team members outlining exact changes and effective date
d) I would suggest the initial psp have an avenue to develop an abbreviated plan until such time an assessment be completed and 60 days of admission date have some flexibility based in number of days in services to get an accurate and true assessment.
e) At least annually should be added as well as at the request of guardian or any other team member

Citation: **6100.222. The PSP process**

Discussion: needs updated to reflect current values

Recommendation: additions to form to document that address the and encourage at the very least discussion around the everyday lives principals

Citation: **6100.223. Content of the PSP**

Discussion: psp must be flexible to meet individual's needs as well as reflect personal choice allowing for success

Recommendation: 3) choice of healthcare should be amended to choice of healthcare providers
7) natural supports should be changed to reflect personal relationships and not focus on support
8) suggest amount frequency and duration of services be documented in a way to allow for greatest flexibility, suggest using phrases like not to exceed annual authorized units
10) community participation should be directed by individual
11) competitive integrated employment should be first but allow for an individual right to choose employment which is meaningful to the individual allowing for health and safety and success not be measured on persons definition not imposed by others
Need to be mindful that people needs and values are different and should be reflected in services and location of supports
12 modification of rights should be required to be documented and reviews by restrictive procedure committee
17) any support or need identified by individual should never be considered unnecessary could not be funded but should be documented
18 financial information should include source of income for financial planning and benefits counseling i.e. Ssi vs Ssd
19 behavioral supports needs and services should be documented in psp

Citation: **6100.224. Implementation of the PSP**

Discussion: not all things are in providers control and should be made an allowance for such as individual not attending as scheduled, community based services employment or others can change without notification to service provider

Recommendation: addition to be made to document if unable to provide service due to factors outside the providers control especially as it is reflective of an individual's choice

Citation: **6100.225. Support coordination and TSM**

Discussion:

Recommendation: a) would add during monitoring visits
5) add or disagreement as we should not assume everyone will be in agreement
9) addition of notification requirement and include and document specific changes just not a notification that there was a change

Citation: **6100.226. Documentation of support delivery**

Discussion:

Recommendation: ODP should develop a statewide mandated form for use by all providers. This will greatly reduce "violations" due to variance among providers.

Citation: **6100.261. Access to the community**

Discussion: resources of the individual as well as the provider in response to assigned rates need to be considered something may be identified as a desire may be unrealistic to provide especially are being provided to more than one individual at time, resources regarding staff availability and agency provided transportation must be considered unless funding for a one on one staff and private transportation is going to be funded. Just locating a person in the "community" doesn't necessarily mean relationships, or partnerships or a quality of meaningful participation will be achieved. ODP must be willing to pay for the staff portion of "access to the community" because of the required role in facilitating it....and keeping people safe.

Recommendation:
b) Opportunity and an individual choice should be documented and there should be documentation on the quality, relationships and meaningful participation based on an individual's preference as communicated by the individual and support team.
B and) opportunity and choice are key and should be documented in psp

Citation: **6100.262. Employment**

Discussion: dept. should not have ability to dictate that the only employment that us valued and meaningful should not be based on preconceived and pre imposed values such as location, value, meaningfulness, success or quality but these should be an individual's right and choice

Recommendation: The Department will ensure the funding necessary for individuals to access the community in accordance with the individual's PSP.

A) the psp team and sc should educate and provide information regarding competitive employment supports and services at psp or when requested by individual or designee
B) requiring referral or closure of over for people under 25 will eliminate the opportunity for young adult to acquire skills to gain successful employment and dept. funded waivers have always been payee of last resort
C) Individual will be offered and provided with information on services and supports regarding appropriate opportunities for competitive employment at least annually or at the request of an individual or their designee.
Add a provision for retirement – which is a valid component of an " Everyday life

Citation: **6100.263. Education**

Discussion: believe that ongoing education is vital to all peoples growth and development

Recommendation: addition of resources to support retention and development of ongoing functional skills as an addition to those listed

Citation: **6100.301. Individual choice**

Discussion: Individual's choice should include where how and by whom services and supports are provided

Recommendation: a) would include Sc, ae or other team member in addition to provider

Citation: **6100.302. Transition to a new provider**

Discussion: transition to a new provider should be responsibility of sc as well as all psp team members, communication, planning should be focus to assure health and safety needs are met as well as stability and success

Recommendation: b) transportation to visit new provider should not be responsibility of current provider but should be coordinated by sc or family as appropriate
Upon signature of permission to release of information should be provided to the new provider prior to start of services to assist in continuation of supports and services as needed, SC should be responsible for monitoring of this process during transition.
Upon request individual should be provided with any documentation regarding medical information developed by provider but not responsible for release of any third party developed information

Citation: **6100.303. Reasons for a transfer or a change in a provider**

Discussion: health and safety of individuals and others must be for most consideration, secondary to a person individual choice and should reflect and consider an individual's willingness and ability to be responsible for choices and requirements related to transfers

Recommendation: This section is defined too narrowly to be practicable to the point that it contradicts other portions of the chapter-and are unable to execute the residency agreement. There are many circumstances such as program closure, safety of others, Megan's Law, eminent domain, court or other legal actions, eviction by a landlord of the provider, natural disasters, provider closure which may require transfer or change in spite of individuals' wishes. This list is not exhaustive – they regulation needs to allow for unforeseen occurrences.
What if exercising rights impinge on others is that grounds for transfer? What if rights place the individual or others at risk? 6100.184(a) states, "An individual's rights shall be exercised so that another individual's rights are not violated."
1 &2) Add as documented by psp team, provider, legal guardian and sc or medical professional
3) add or agency value and mission to list of things that should not be required to be significantly altered as well us unfounded mandates or support changes
Consideration and allowance for unanticipated emergencies must be made as well as consideration that any others persons including support staff are not violated as a result of the rights of another

Citation: **6100.304. Written notice**

Discussion:

Recommendation: a) the sc should be responsible for providing of written notice of transfer to all team members at least 30 days prior to effective date of transfer unless 30 day requirement is waived and documented by individual and sending and receiving provider
b) provider should be required to held to 30 day notice as above
Consideration and service changes should be documented by SC as all of the information listed in b1-6 and c 1-3 is already documented in PSP and is not necessary to be "documented" (c) If a provider is no longer able or willing to provide a service(s)for an individual in accordance with the provisions specified in § 6100.303 (relating to reasons for a change in a provider or a transfer), the provider shall provide written notice to the individual, guardian(s), persons designated by the individual, the PSP team members, the designated managing entity and the support coordinator or targeted support manager and the Department, at least 30 days prior to the date of the proposed change in service provider or transfer

Citation: **6100.305. Continuation of support**

Discussion:

Recommendation:

Citation: **6100.306. Transition planning**

Discussion: provider cannot assume personal or fiscal liability during transition period at the cost of others or the program or agency

Recommendation: provider shall continue to provide services during transition period but an immediate mechanism for supplemental funding must be developed dept. or designee should be responsible for securing and funding interim placement to meet an individual's health and safety needs on a temporary basis not to exceed 30 days unless and extension is requested and agreed upon by psp team and dept.

Citation: **6100.307. Transfer of records**

Discussion: seems as this is a duplication and should be addressed in section .302

Recommendation: delete section .306 and. 307 as this is repetitive

Citation: **6100.341. Use of a positive intervention**

Discussion: Support. Good change of title from "Safe Behavior Management"

Recommendation: a) positive interventions will be used when a challenging behavior is occurring or to prevent escalation of a behavior to decrease frequency, intensity and duration of behaviors in an attempt to identify teach replacement and coping skills to individuals which are problematic to the health and safety of the individuals or to others.

Citation: **6100.342. PSP**

Discussion: documentation of behavioral needs services and supports are necessary and important any part of psp

Recommendation:

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

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.

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.

1) delete word "dangerous"
2) add proposed or perceived in front of reason for behavior
5) benchmarks should be developed to achieve desired outcomes
Addition of restrictive review committee as appropriate and necessary to assure health and safety and provide for quality of life and individually defined success

Citation: **6100.343. Prohibition of restraints**

Discussion: Title can be misleading to appear that no restraints are allowed, ever

Recommendation: Change title to "Prohibition of certain types of restraints" and include provision for protection of imamate health and safety of individual and others

1) Delete verbally directed
3) Dept. approved de-escalation and intervention designed to induce a release or bite should be defined and permitted in this section

4) Clarification on exclusion of medication used to control episodic aggressive behavior ordered by healthcare professional as all medication administered by provider must be ordered my medical professional

ii) medically ordered seizure protective device "easily removed by individual" needs to be considered on an individual basis

Citation: **6100.344. Permitted interventions**

Discussion:

Recommendation:

a) Allowance for a verbal prompt should be permitted as a suggestion that a person can voluntarily choose to exclude themselves
b) Delete only in accordance and replace with " when an individual engages in dangerous behavior as identified and approved in psp or in an unanticipated emergency basis"

f. Not to exceed 30 second intervals needs to be added

Citation: **6100.345. Access to or the use of an individual's personal property**

Discussion: individuals need to take responsibility for choice; competency must be implied unless otherwise documented by legal or medical professionals

Recommendation:

b) Addition of court ordered restitution
1) avenue should be part of psp for restitution to be required as a result of an act deliberately intended to destroy another property

Citation: **6100.401. Types of incidents and timelines for reporting**

Discussion:

Recommendation:

a) Replace discovery with having knowledge of an incident or alleged incident. Also provider should only be required to report incidents which occur in their program or in their care, all others incidents should be reported to sc and reported by the sc

5) urgent care fa cities should be added to emergency room visits

8) "missing" person should be individually defined as time permitted as unsupervised in psp

12) emergency closure for weather should not be required to be reported unless it happens while individual is on site (closure due to weather prior to program start should not be required)

16) medication errors should be moved to the 72 hour requirement unless immediate medical attention is required

b) immediately should be defined as within 2 hours

d) incident report will be provided to individual, designee or legal guardian immediately upon finalization

Citation: **6100.402. Incident investigation**

Discussion: requirement of investigation of all incidents or alleged incident is unnecessary costly and intrusive

Recommendation: b) of "an incident" should be replaced with
Incidents listed below within 24 hours:
Death
Abuse
Neglect
Exploitation
Missing person as defined in psp
Theft or misuse of funds
Violations of individuals rights
Unauthorized or inappropriate use of restraints
Rights violation
Individual to individual physical and sexual abuse

Citation: **6100.403. Individual needs**

Discussion:

Recommendation: provider shall review all reportable incidents to identify patterns and identify possible reductions quarterly as part of the providers quality management review process, including possible preventative measures to decrease numbers and severity of reoccurring incidents

Citation: **6100.404. Final incident report**

Discussion: is directed and governed by dept. incident reporting polices

Recommendation:
a) within 30 days should be added unless an extension is filed

Citation: **6100.405. Incident analysis**

Discussion: this is required under quarterly quality man agent requirements and is a duplication

Recommendation: A provider will review and analyze all reportable incidents at least every three months.
As part of the review, a provider will 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 will 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.

Citation: **6100.441. Request for and approval of changes**

Discussion: an avenue for emergency placement should be developed to address emergency situations

Recommendation: develop format and process for requests emergency situations to accommodate an individuals need

Citation: **6100.442. Physical accessibility**

Discussion: if these accommodations are required to meet the needs of an individual these should be a billable service to dept. or through vendor services if these costs are not reflected in current rate setting process

Recommendation:

Citation: **6100.443. Access to the bedroom and the home**

Discussion: This proposed regulation, while presumably aimed at ensuring privacy, does NOT align in any way with an everyday life. Most citizens do not live in a house where they need a

key to access their own bedroom. Additionally – in meeting individuals every day needs, staff may need to enter bedrooms many times per shift for many non-emergency or non "life safety" reasons: helping to get dressed, assisting with bed making, collecting laundry or putting away clean clothes, helping to fix someone's hair, assisting with bed time routines or personal hygiene. Staff is always expected to treat the entering of individuals' rooms with respect – to ensure dignity and privacy – but to prohibit entry without "express permission" for each incidence of access – demonstrates a serious lack of understanding of the amount of personal assistance our staff is providing on a daily – hourly basis. Further, documenting or proving that "Required express permission of each incidence of access" was granted or denied will be impossible....and if not impossible – it makes a homelike environment seem very much like an institution. Staffs who enter bedrooms on a regular basis are not strangers to the individuals. They are kind, caring and dedicated Direct Support Professionals who spend their hours, days, weeks and years building relationships with the individuals they support in a dignified manner.

Recommendation: a

a) Each individual has the right to privacy in their bedroom and locks provided except for when there is a documented health and safety risk identified in psp.

c)The right to privacy should be balanced with need for health and safety and document in psp or as needed in an emergency

f) residential staff should request permission to enter private bedroom before entering unless there is an emergency or health and safety reason

Citation: **6100.444. Lease or ownership**

Discussion: caution should be used in referring provider as "landlord" and individual as "tenants" as that does not reflect the provisions of a service provider

Recommendation: dept. should develop a "lease" that is a model or format that can be used to meet requirements. Ensuring protection to individual, provider and other residents in licensed facility

Citation: **6100.445. Integration**

Discussion: as a person with a disability no one dictates where or by whom I Live and I believe that same right and choice should be afforded to hcbs participants

Recommendation:

Citation: **6100.446. Facility characteristics relating to size of facility**

Discussion: Community Rule does not specify an absolute cap on program size. Smaller size programs require additional staffing levels; additional facility costs, and contributes to the workforce shortage. (DHS itself has recently approved larger census programs for individuals with medical needs.) The CMS response 441.530(a)(2)(V): "We do not believe there is a maximum number that we could determine with certainty that the setting would meet the requirements of HCB setting. The focus should be on the experience of the individual in the setting."

A program quality cannot and should not be defined by numbers of persons served, nor should person ability to choice to live or work with a specific number of people be imposed. The focus should be on person's experiences. By mandating size requirements you will be drastically decreasing number of willing and able providers decreasing choice and ultimately lowering quality of being more isolating as services. The increased cost associated with this is going to have the effect of services will be more costly and unavailable requiring people to remain in their homes in in the community without necessary supports and service needed to assure health and safety. There needs to consideration of meaningful activities in a person's day and if and individual requires these services to be in a facility to provide them with the stability, health and safety need, ongoing relationship facilitation with people of their choice.

Recommendation:

b) new day facility licensed as 2380 and 2390 limits of 15 is dramatically going to increase the cost per unit/ individual to the inability to divide program and mandated services over a greater number making services more costly and decreasing amount of services provided under the Pfds waiver cap. (this will also dramatically be effected by community participation requirements)

A distinction between program licensing rooster capacity and daily attendance capacity. But strictly using licensing capacity the dept. will force providers to not allow for an individual's right to attend part time.

Citation: **6100.447. Facility characteristics relating to location of facility**

Discussion: people receiving HCBS services should not be limited in choice by the proximity of a program or facility's location

Recommendation: this section should be deleted and compliance to the Community Rule be met by the offering of a variety of setting and location as per CMS requirements
B) as by law you are not permitted to ask about a person's disability this cannot be achieved or monitored so should be removed

Citation: **6100.461. Self-administration**

Discussion:

Recommendation:
5)be able to apply or take his or her on medication with or without the use of assistive technology

Citation: **6100.462. Medication administration**

Discussion: 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 technologies 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.

Regarding 1
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. Title 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 maintaining this content in just one place, namely the Medication Administration Training module and not regulations.

If the 6500 LifeSharing programs are included in this requirement, significant unintended consequence are likely to severely impact the viability and expansion of this program; one which the Department has repeatedly stated they desire 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 is 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.

Recommendation:
Vi) addition of medication administered via G/U tube

Citation: 6100.463. Storage and disposal of medications

Discussion:

Recommendation:
a) if individual requires or prefers personal daily weekly or monthly dispensing containers and medication is taken or stored in a licensed facility a pharmacy/ medical facility should package and abide by labeling requirements on original prescriptions containers
b) allowances should be made if a person is leaving licensed facility or on a home visit for a period of time that exceeds 2 hour proposed limits
C) medication storage should be stored under proper conditions as defined by manufacturers or prescribing physician
D) medication storage and locked container requirements should follow dept. approved medication administration guidelines and dictated by person's psp if living alone or in family living. If person have housemates all medications should be stored in secure location

Citation: **6100.466. Medication records**

Discussion:

Recommendation:
c) addition of notification of legal guardian immediately if medication is refused

Citation: **6100.470. Exception for family members**

Discussion: if parent or family member is paid then medication documentation should be required and monitored. exception for family living providers should be considered

Recommendation: dept. developed form for paid caregiver or family living provider to document medication administration should be required for monitoring purposes

Citation: **6100.481. Department rates and classifications**

Discussion: these are a list of possible payment options and serves no regulatory or enforceable or ability to appeal rights.

Recommendation:
This should be adapted to reflect dept. authority to adopt regulations and provision of services

I) should be deleted unless willful misconduct has been proven by dept.

Citation: **6100.483. Title of a residential building**

Discussion:

Recommendation: removal of a "debt free"

Citation: **6100.484. Provider billing**

Discussion:

Recommendation: d) should be amended to read provider will not submit a claim for service not authorized in psp

Citation: **6100.485. Audits**

Discussion: Providers have the right to know the precise standards that will govern an audit of payments received under this Chapter 6100

Recommendation:

Citation: **6100.645. Rate setting**

Discussion:

Recommendation: The Department will use each provider's most recently approved cost report, as adjusted by the most recent Medicare Home Health Market Basket Index, to establish the provider's cost based rates in each fiscal year.

The approved cost, as adjusted by the most recent Medicare Home Health Market Basket Index, report will be used as the initial factor in the rate setting methodology to develop the allowable costs for cost-based services. to establish a Provider's cost based rates.

A provider will complete the cost report in accordance with this chapter prospectively.

The cost data submitted by a provider in an approved cost report, as adjusted by the Medicare Home Health Market Basket Index, will establish the provider's cost based rates.

The Department, upon the publication of advance public notice and after consideration of public comments, may adjust the cost report form and instructions based on changes in the support definitions in the Federally-approved waivers and waiver amendments from the prior cost reporting period.

Prior to the effective date of the cost based rates, the Department will publish ~~as~~ a notice in the *Pennsylvania Bulletin* that explains the cost-based rate setting methodology for the fiscal year.

Citation: **6100.646. Cost-based rates for residential habilitation**

Discussion:

Recommendation: c) residential approved days should reflect an individual's needs and individual desired time to have or spend time with family or other people important to them, providers rates should not be impacted negatively when they support and encourage family stability and relationships.
D)a provider can request additional funding for staff if the current dept. approved staffing does not meet the current needs of an individual especially if a new individual enters the program or needs of individual significantly changes

Citation: **6100.648. Donations**

Discussion: a system that does not rein versed providers full costs should not be permitted to impose limits on donations

Recommendation:

Citation: **6100.650. Consultants**

Discussion:

Recommendation: 3) delete if provider and contractor agree there is no need for dept. to be notified in method of payment

Citation: **6100.652. Compensation**

Discussion:

Recommendation: b) bonus pay should be allowable cost as it is means of retaining and compensating good staff especiasaly since the rates have not increased in many years and a provider has no idea how to plan for following years budget

Citation: **6100.659. Rental of administrative space**

Discussion:

Recommendation: c) minimum should be deleted
E) 2) management fees should be an allowable cost

Citation: **6100.661. Fixed assets**

Discussion:

Recommendation: h 3 4 6 and k2 should be deleted

Citation: **6100.662. Motor vehicles**

Discussion:

Recommendation:

Citation: **6100.663. Fixed assets of administrative buildings**

Discussion:

Recommendation: c) delete as renovation to providers building should not require approval of dept.
F) deleted unless dept. is going to assume liability they should not be eligible to recoup "funded equity"
1&2 deleted as well as it refers to f

Citation: **6100.664. Residential habilitation vacancy**

Discussion: home/ family visitation should be encouraged and supported not be financially disincentives by supporting this

Recommendations:
B) should be based on individual use age not agency

Citation: **6100.668. Insurance**

Discussion: minimum should be removed adequate insurance should be encouraged and supported

Recommendation:

Citation: **6100.669. Other allowable costs**

Discussion:

Recommendation: provider legal fees should be recognized when a settlement is reached to discourage litigation which is costly and time consuming

Citation: **6100.672. Cap on start-up cost**

Discussion:

Recommendation:

A) start up fees will be capped at $40,000 for approved startup costs

Citation: **6100.690. Copy of room and board residency agreement**

Discussion:

Recommendation: Dept. issued format would ensure compliance and consistency

Citation: **6100.711. Fee for the ineligible portion of residential habilitation**

Discussion:

Recommendation: 7 should be deleted

Citation: **6100.741. Sanctions**

Discussion:

Recommendation: The Department may assure compliance with the provisions of this chapter through the imposition of the remedies described in this section and The specific remedy will be determined by the nature and scope of the regulatory infraction.

Citation: **6100.742. Array of sanctions**

Discussion: If these are not licensing regulations, the language should not be so focused on corrective action.

Recommendation: Change title to "Remediation.

Upon the determination, after affording a provider the opportunity to challenge any propose sanction under 55 Pa Code Chapter 41, that a provider has committed a regulatory violation, the Department may apply the following remedies:

Citation: **6100.743. Consideration as to type of sanction utilized**

Discussion:

Recommendation:
A &b should be deleted
C) change may to will and change sanction to remedy
1-3 change condition to infraction

Citation: **6100.801. Adult autism waiver**

Discussion: Would suggest amending current autism waiver to meet needs of all people with autism, revisit service definition to align with odp and rates that are equal to those for similar services under ID waivers to entice more qualified providers

Recommendation:

Citation: **6100.802. Agency with choice**

Discussion:

Recommendation:

Citation: **6100.805. Base-funded support**

Discussion: same standards of services should apply to base funds as well as ae interpretations vary and are detrimental to client when there is no oversite or guidance

Recommendation:

Citation: **6100.1. Purpose (a)**

Discussion: The purpose of the proposed regulations is to assist in implementing the MH/ID Act of 1966 which has not had substantive changes since its adoption. The proposed regulations cannot attempt to expand beyond the statute,

Recommendation: Each proposed regulation should be referenced to the corresponding section of the statute.

Citation: 6100.2. Applicability

Discussion:

Recommendation: The terms "Funded equity", "recoup", "fixed asset" and "refresh" should be defined and determined whether they should be included in the definition section.

Citation: 6100.3. Definitions

Discussion: There are a number of phrases that are contained in the proposed regulations that do not appear in the proposed definitions. One example is the phrase "funded equity" contained in proposed 6100.663 which states that "funded equity" "As used in this subsection..." Since the Department proposes to use this phrase to "recoup" the value of property over the liability on the property, the definition is critical. The term "recoup" also does not appear in the definition subsection. A second issue with definitions is that the proposed definition defines "Fixed asset" as excluding real estate but the proposed subsection 6100.663 treats administration buildings which are clearly real estate as fixed assets. The term "Geographic costs" is used several times including 6100.571c7 yet no definition is included. In the Department's current waiver application for HCBS, the Department chose not to request a waiver of statewideness, According to 4© of the waiver application, Geographic limitations can only be granted if a waiver to statewideness has been requests and granted. "Refresh" is not included in the proposed definitions yet it appears in 6100.571. Since the documents to be refreshed will determine fee schedule rates, it will directly impact the funds used to provide supports to individuals. Will "refresh" mean a readjustment of the fee schedule based on specific indices and if so, those indices should be specified. Simply adjusting all fees based on a standard adjustment will continue the historical inequities cited by CMS.

Recommendation: The right to appeal by the individual, the provider and other parties with standing is not limited to chapter 41 and the proposed section should only state that the individual, the provider and other parties with standing shall have the right to appeal.

Citation: **6100.41. Appeals**

Discussion: The proposed regulation states that appeals shall be made in accordance with Chapter 41 but the Departments HCBS waiver application indicates that the individual must file with the agency that made the determination being questioned. Appendix F-1. The subsection does not address other bases of appeal such as the Administrative Agency Law nor is it clear whether Chapter 41 covers individuals and providers.

Citation: **6100.52. Rights team**

Discussion: The feasibility to have a rights team for all individuals served is not realistic. Having a team get together every three months will not be successful we have difficulty getting a meeting for the restrictive procedures which is every 6 months. Restraints are currently reviewed by the county and ODP through the EIM process this should be adequate.

Recommendation: Develop one rights team for all individuals. Review all incidents every 6 months and make recommendations. Rely on The Behavior Supports Person to analyze the behavior and develop solutions. They can inform team of any findings and recommendations.

Citation: **6100.82. HCBS documentation**

Discussion: Two very important rights which are included in the waiver application have not been included in the proposed regulations. The individual has a free choice of any willing and qualified provider. The second important right which is in Appendix B-2 is that the state does not apply an individual cost limit

Recommendation: Include the individual's right of choice of provider and that no individual cost limit applies in Pennsylvania.

Citation: **6100.221. Development of the PSP**

Discussion: This section refers to an individual's service implementation plan but there is no definition of the service implementation plan. Also the support coordinator or targeted support manager is responsible for developing the PSP which is required before the individual can receive reimbursed support. The AE is responsible for ensuring that service plans are complete and accurate before approving service plans and authorizing services. (Waiver application) The provider identified in the PSP is required to implement, including revisions. (6100.224) The design of the PSP supports and services unfortunately makes the provider responsible for the provision of supports but the provider can only be reimbursed when the AE has the services are approved and authorized. The provider is punished if the AE fails to act. The sanctions should be imposed on the AE if liability occurs.

Recommendation: Include a definition of Service Implementation plan and state that sanctions should be authorized against the AE when the AE actions or inactions cause liability.

Citation: **6100.341. Use of a positive intervention**

Discussion:

Recommendation: Support use of a positive intervention. Good change of title from "Safe Behavior Management"

Citation: **6100.343. Prohibition of restraints**

Discussion: **Title can be misleading to appear that no restraints are allowed, ever**

Recommendation: Change title to "Prohibition of certain types of restraints."

Citation: 6100.344. Permitted interventions

Discussion: (6) nonemergency basis or for 15 minutes in a 2 hour period. People have different definitions on nonemergency basis. Restraints should only be utilized in an emergency basis. The 15 minutes in a 2 hour period does not coincide with the 6400 regulations which is 30 minutes in a 2 hour period. However, the system should be looked at to support our individuals who are in crisis. The allotted time frames are not realistic. Once an individual has been restrained for 15 minutes and are not calm, what is our recourse? Sure we can call law enforcement and risk our individual be tazed and taken to the local hospital. Once at the hospital they will be evaluated and a bed search will begin. The individual will remain in the ER for at least 24 hours or longer until a bed is found across the state which at times has been 6 hours away from all of their support team. This regulation will also prevent providers from serving difficult people. In my opinion, this regulations leads to providers not reporting restraints.

Recommendation: When an individual is in crisis develop an individualized approach to help get though the crisis. Sending people with IDD to Psychiatric Hospitals are not productive and leads to a whole host of problems. Allow the team to work through the crisis with the person. Develop an individualized time for restraints based upon the person past history and have it approved through rights committee. Most crisis do not last more than 24 hours. This will enable the team who knows the individual best to support them through the crisis not strangers in a hospital.

Citation: 6100.444. Lease or ownership

Discussion: In the Department's waiver application for HCBS it states the Requirements for Provider-owned or Controlled Home and Community Based Residential Settings. The Federal Requirements restated as 42CFR441.301©(4)(vi)(A) For provider units owned, rented or occupied by an individual receiving services, there must be a legally enforceable document particularly dealing with eviction. Proposed section 6100.55requires the provider to retain the residential habilitation for some unspecified period of time. Section 6100.345 provides that the individual's personal funds or property may not be used as payment for damages unless the individual consents. One of the stated

purposes of these sections is to have services in the same manner as anyone in the community. The current proposed regulation creates an artificial landlord/ tenant process.

Recommendation: Proposed section 6100.444 should be deleted.

Citation: 6100.481. Department rates and classifications

Discussion: There is a major inconsistency in determining what must occur regarding public review and comment versus merely providing notice of the Departments action. Proposed 6100.571(d) provides the Department will publish as a notice in the Pennsylvania Bulletin the factors used to establish the rates and the fee schedule rates for public review and comment. 6100.645 states that prior to the effective date of the rates, the Department will publish as a notice in the Pennsylvania Bulletin the cost-based rate setting methodology. 6100.711(e) provides that the Department will publish as a notice in the Pennsylvania Bulletin a notice of the factors used to establish the rates for public review and comment. 6100.481(b) states that the Department will establish a fee per unit as a Department established fee by publishing a notice in the Pennsylvania Bulletin. Proposed 6100.481(b) makes no provision for public review and comment. Subsection (a)(6) proposes a method established in accordance with a Federally-approved waiver, including a Federally-approved waiver amendment. This appears to be an attempt to disregard the requirements of adoption of regulations.

Recommendation: All actions by the Commonwealth should require public notice, review and comment. Subsection (a)(6) should be deleted.

Citation 6100.483 Title of a residential building

Discussion: This subsection has several concerns. The proposed language deals only with debt-free residential building, and does not state how non debt free properties will be treated. The property cannot be treated as a fixed asset since the definition of fixed asset specifically excludes real estate. Traditionally stating the title would remain with provider would be sufficient but proposed section 6100.663 states that the Department can recoup "funded equity" after the title has remained with the enrolled provider.

Recommendation: The Department has no claim to property purchased by the provider and the proposed subsection must be amended to reflect ownership by the provider.

Citation: 6100.571. Fee schedule rates

Discussion: The proposed subsection provides that the fee schedule will "refresh" the market based approach based on current data and independent data sources at least every 3 years. This does not supply sufficient information to determine what, if any, increase will be made. The subsection should state that "refresh" is replaced with "a reputable cost of living index". The proposed language includes the term "geographic costs" but the term is not defined. Clear definitions are necessary to determine whether the proposal violates statutes dealing with class of counties. It should be noted that in the waiver proposal the Commonwealth chose not to request statewideness (Application for a 1915© Home and Community-Based Service Waiver section 4(©) According to the section, geographic limitation are only available if a waiver from statewideness is granted. Since the Commonwealth did not request a waiver from statewideness, geographic limitations cannot be granted,

Recommendation: Refresh should be replaced with a reputable cost of living index and geographic costs should be deleted.

Citation: 6100.661. Fixed assets

Discussion: As previously noted, the definition of "fixed assets" in proposed section 6100.3 specifically excludes real estate but 6100,661 includes real estate as a fixed asset.

Recommendation: The sections should be consistent.

Citation: 6100.663. Fixed assets of administrative buildings

Discussion: There are a number of concerns with this subsection. The title of the subsection is fixed assets of administrative buildings but the definition of fixed assets specifically excludes real estate. The proposed subsection states that if an administrative building was acquired prior to June 30, 2009 that has an

outstanding original loan term of 15 years or more is an allowable expense. The proposed language does not explain the significance of the June 30, 2009 nor does it explain how administrative buildings purchased after June 30, 2009 or without a 15 year loan are to be treated. Subsection e states that donated property cannot claim a depreciation allowance which is counter productive. By obtaining property by donation, the Department reduces the cost to the entire system. The proposed language instructs the provider to use a depreciation methodology relating to fixed assets even though the definition of "fixed asset" excludes real estate. The language of (f) contains two terms that are not included 6100.3 (definitions) Recoup and "funded equity" are not defined but are an attempt to have a "taking" of real and personal assets of the provider. Property, administrative and residential are usually purchased with a mix of private, county, state and federal funds. It appears that the Commonwealth is attempting to "recoup" funds which transferred to the provider without any written document preserving a right to recoupment.

Recommendation: Since the MH/ID Act of 1966 has not had any substantive amendments since its passage, there is no basis for substantive changes by regulations. The entire section 6100.663 should be discarded.

Citation: 6100.711. Fee for the ineligible portion of residential habilitation

Discussion: There are several concerns with this subsection. As previously documented for section 6100.571, geographic limitations can only occur if the state was given a waiver from statewideness and Pennsylvania has stated in its waiver application that it is not requesting a waiver of statewideness. As previously documented in subsection 6100.571, there is no definition of "refresh". If the purpose of "refresh" is to have an adjustment of fees, then the section should make reference to a reputable cost of living index

Recommendation: Delete geographic costs and refresh. Replace refresh with a reputable cost of living index.

Citation: 6100.742. Array of sanctions

Discussion: If these are not licensing regulations, the language should not be so focused on corrective action.

Recommendation: Change title to "Remediation."

6100 Proposed Rule Making Comments

6100.3 - Definitions: Recommend definition of restraint be consistent with the definition of manual restraint in 2390.173. Also suggest including the definition of "household members".

6100.47 – Criminal history checks: Clarification needed on who is considered a household member. Would this include biological families? If so, do not feel that families/household members should be required to have background checks as they are not licensed programs.

6100.52 – Rights team: Individual rights are of utmost importance and providers assure that rights are protected through an ODP approved Risk Management Committee that fulfills the functions of a Rights Team. Concerned about the efficiency in having a team meeting every three months. This process could potentially become time consuming and costly. It also anticipates that issues will continue. If it has already been finalized through the certified investigation process, what is the necessity of continued meetings? Suggest that there be stipulations and a timeline established when meetings can cease.

6100.143 – Annual training: Question who household members are and if members are biological families do not feel they should be required to have specified trainings as they are not a licensed program.

6100.183 – Additional rights of the individual in a residential facility: section (a) – Agree that individuals should have the right to receive scheduled/unscheduled visitors but should somehow reflect that the unscheduled visits do not impact the rights of other housemates/roommates. Suggest that something be included stating that visits should not infringe on other's rights.

(h) Access to food at any time: need to consider if there are dietary considerations as defined in the PSP.

6100.261 – Access to the community: Transportation is often a needed support for access into the community; funds need to be available if providers are transportation source if no other means are available.

6100.302 – Transition to a new provider: Section (b) (2) - It should not be the current provider's responsibility to make transportation arrangements for an individual to visit a new provider.

Feel that that should fall on the responsibility of the SC. Suggest changing it to read that the provider shall assist the SC in arranging transportation.

6100.303 – Reasons for a transfer or a change in a provider: Suggest including that if a team meeting was held and all support members are in agreement with the transfer of program.

6100.305 – Continuation of support: Need to consider the extra supports and cost that may be required to fully support the individual's needs. Suggest including that the continuation of support is contingent on an agreed discharge plan so that things do not become stagnant with transition.

6100.307 – Transfer of records: Need to define who is responsible for the cost for copy of records. If it is the new provider requesting, are they responsible for payment; if the individual is requesting are they responsible?

6100.341 – Use of positive intervention: Positive intervention can seem vague when relating to a behavioral issue. Suggest considering using behavioral intervention verses positive intervention as it is more direct to the issue at hand. This basically defines the need for a behavioral support plan as it is currently referred to.

6100.401 – Types of incidents and timelines for reporting: Currently, medication errors do not need to be reported in 24 hours; they are reported within 72 hours. Suggest making a side note of this unless this is going to be changing.

6100.461 – Self-administration: Suggest including under the supervision of a person who has participated in an approved medication administration training.

6100.571 – Fee schedule rates: Suggest the department will consider the cost/expense a provider will incur due to the increase need for additional staff, vehicles, etc. that will be required to meet the new community participation requirements. Also, there are various levels of Program Specialist, i.e. Master's Degree, Bachelor's Degree, Associates degree. Suggest that rate setting take into account the level of education as wages for a Master's would be higher than that of a Bachelor's and Associate's subsequently. Providing quality services and quality staff to provide the services will increase cost to providers. Suggest an increase in rates to assure that support is given to providers to support the needs of individuals and quality of services provided.

Citation: **6100.1. Purpose (a)**

Discussion:

Recommendation: Subsection (a) omits mention of an essential purpose of chapter 6100 – the adoption of HCBS payment policies. As redrafted, (a) succinctly reflects the broad purpose of Chapter 6100. Language must be consistent with the CMS Community Rule for Home and Community Based Services (HCBS). CMS uses the term "services." The proposed regulations use the term "supports." Services indicates a contractual agreement for payment, while supports could be and often are unpaid

Citation: **6100.2. Applicability**

Discussion: **addition of autism to ID waiver**

I recommend amending Autism waiver to meet the needs of people with autism
So the needs of those with autism without id needs can be met. By adding another population the only thing this will do is increase the waiting list in pa. I have concerns that a person with autism may not access these services due to the perception of needing ID. The current PUNS and SIS process will not translate well into the specific needs of a person with autism by using the same criteria it may actually decrease the amount of services they will actually receive

Citation: **6100.3. Definitions**

Discussion:

Recommendation: All definitions for these regulations should be included in Chapter 2390.5, 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.

Citation: **6100.41. Appeals**

Discussion: "may" implies choice "will" implies a requirement

Recommendation: anytime an agency is required to do something will should be used otherwise it implies there is a choice for compliance

Citation: **6100.42. Monitoring compliance**

Discussion: Department and managing entity leads to multiple counties and dept. monitoring same things, often with different interpretations. Monitoring should be meaningful and focus on quality and health and safety especially as it relates to an individual as opposed to the focus being so heavy on "documentation"

Recommendation: a) by designating either Dept. or lead AE to do monitoring it reduces duplication of monitoring decreasing not only ae and Dept. staff but agency staff tied up with repeating the same process numerous times often leading to conflicting reports and findings

C) timeline should be defined and qualitative (recommend 30 days)

e) The Department or the designated managing entity, after and in consultation with the provider, may issue a directed corrective action plan to direct the provider to complete a specified course of action to address non-compliance. A directed action plan is not considered a routine action and will 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 particular corrective action(s) and must identify the cost to the provider to implement the plan.

2)Technical consultation should be removed as it is subjective and leads to confusion

j) Provider shall should be replaced with must or is required to it does not seem reasonable to be required to have a CAP for an "alleged violation" if the allegation turns out to be FALSE.

Do not require CAPs for false allegations.

Citation: **6100.43. Regulatory waiver**

Discussion: regulatory waivers should be granted to allow for individual choice to allow for a quality of life which is directed and meaningful to the individual allowing them the opportunity to remain connected and have relationships with whom and where they chose

Recommendation: the word waiver should be replaced with " exception" to avoid confusion with the specific Medicaid waivers and they should not be limited on the specific items,
Time line for dept. should be determined recommend 30 days for response
4) "additional items deemed appropriate" needs defined to limit subjective decisions
d) department should specify start date but should renew with annual PSP as to not cause a delay in services for individuals
The individual and individual's team have fully reviewed and documented the benefits and risks associated with the proposed exception. Benefits that may result from granting the exception may include increased person-centeredness, integration, independence, safety, choice or community opportunities for an individual or a group of individuals

Citation: **6100.44. Innovation project**

Discussion:

Recommendation:

Citation: **6100.45. Quality management**

Discussion: quality management should be developed by individual providers of service unless the department or AE sees evidence repeat and prolonged issues regarding compliance or monitoring

Recommendation: A provider will implement an evidenced based, quality improvement strategy that includes continuous improvement process, monitoring, remediation, measurement performance and experience of care.
(a) When developing a quality improvement strategy, a provider must take into account the following:
(1) The provider's performance data and available reports in Department's information reporting system.
(2) The results from provider monitoring and SCO monitoring.
(3) The results of licensing and provider monitoring.
(4) Incident management data, including data on incident target(s), repeated or serious incidents, root cause analyses, and quarterly review of incidents.
(5) Results of satisfaction surveys and reviews of grievances.
(b) The provider will include 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. Absent criteria established by the U.S. Health and Human Services Secretary, providers will establish goals based on identified need within their programs.
(2) Target objectives that support each identified goal.
(3) Performance measures the provider will use to evaluate progress.
(4) The person responsible for the quality improvement strategy and structure supporting this implementation.
(5) Actions to be taken to meet the target objectives.
(e) A provider must review progress on the quality improvement strategy and update at least every 2 years.
(f) A provider will maintain a written copy of the quality improvement strategy to be available for the Department to review as part of provider monitoring.

Discussion 6100.45:

Citation: **6100.47. Criminal history checks**

Discussion:

Recommendation:
a) criminal history should be required and should use will or required
B) suggest the word "paid" be added
1) household member who are being paid but not all household members Dept. does not have authority on who lives with another individual
3) consultants who do not have direct unsupervised time with individuals should not be subject to these requirements
5)volunteers should be number of hours assigned to this group and if not left unsupervised should not be required
If we are requiring individuals to be in the community we cannot mandate everyone they have contact with have clearances and training and agency cannot be expected to monitor non employed persons
d) this conflicts with item 1

Citation: **6100.48. Funding, hiring, retention and utilization**

Discussion: quality of staff is the most important element of any program, it has long been proven that staff turnover is both costly and detrimental to the individuals, if we value relationships, quality stability and health and safety this needs to be addressed

Recommendation: need to develop method of payment incentives for direct care staff to both enter and remain in the field, loan forgiveness, health care or education stipend, encourage states to develop education programs and possibly certifications

Citation: **6100.51. Grievances**

Discussion: An employer cannot and will not tolerate retaliation. However, and employer cannot "assure" that another employee or co-worker or family member or individual will not act in a retaliatory way. The types of grievances should be spelled out (addressed here and in the waiver).
"

Recommendation: The department must address / spell out the types of grievances that this waiver intends. It is not uncommon across the state, for family members to refuse to accept services from staff person if they do not like the color of their skin or because of their sexual orientation. Family members must understand that by accepting a Medicaid waiver for their loved one, they must also adhere to federal law prohibiting discrimination.

II) Add or designee

Citation: 6100.52. Rights team

Discussion:

Confusion as to agency rights team vs individuals' rights team

There is no need to add a separate "Rights Team." In associated licensing regulations, a long-standing and well-stablished process exists for the oversight and appropriate management for the use of any restrictive procedures, including restraint. The regulations have already established the "Restrictive Procedures Committee" and restrictive procedures process which is tasked with the same basic functions of the newly created team. By replacing a currently existing and appropriately operation expectation, unnecessary costs are added to the system. It is entirely unclear why the creation of a new "rights team" is necessary or adds any value to the actual protection of individuals' rights, but rather only would add cost and administration burden. Individuals who are not satisfied with the follow up or corrective action plan have recourse to filing a complaint or grievance.

Recommendation:

Discussion 6100.52:

The values represented in Everyday Lives are the core elements of encouraging increased individual participation in community, and exercising their choice, control, and rights. This will add an unnecessary layer to the operation of providers, including families. Where the Department stated an intended goal to streamline processes and eliminate duplication, this accomplishes neither. In addition, it does not appear that any gaps in the current system exist that the addition of this new and additional expectation will fill.

The concept of evaluating the potential and actual violation of rights is absolutely a necessity, and one that is already appropriately covered in the Incident Management process which includes a thorough investigation by an investigator who has been certified in the Department-approved training. As part of the already well-established and robust Incident Management system, all allegations of rights violations must be investigated. If a violation of rights is confirmed, the process already has established corrective action expectations. The proposed regulatory changed in this chapter propose to enhance those expectations, and role of the PSP team as necessary the additional administrative expectation and associated costs are unnecessary, inefficient and uneconomical.

According to the regulations, the "rights team" is to meet every three months, regardless of whether any actual rights violations. This simply adds an expectation that it occur every three months, adding unnecessary cost to the system and an additional administrative task.

A second stated purpose of the "rights team" is to review any and all uses of restraint through the full convening of the rights team, including the use of techniques which are used for emergency scenarios in dangerous situation, and even part of a PSP.

In associated licensing regulations, a long-standing and well-stablished process exists for the oversight and appropriate management for the use of any restrictive procedures, including restraint. The regulations have already established the "Restrictive Procedures Committee" and restrictive procedures process which is tasked with the same basic functions of the newly created team. By replacing a currently existing and appropriately operation expectation, unnecessary costs are added to the system. It is entirely unclear why the creation of a new "rights team" is necessary or adds any value to the actual protection of individuals' rights, but rather only would add cost and administration burden.

Restraints are already investigated and documented through incident management. This role is and should continue to be a responsibility of restrictive procedures committee Currently individual not sit on this committee but case is reviewed and approval or recommendations made to individuals team every 6 months a mandatory 3 month review seems overly burdensome and not efficient

Citation: **6100.53. Conflict of interest**

Discussion:

Recommendation:
C) add relationship should be disclosed

Citation: **6100.81. HCBS provider requirements**

Discussion:
The regulation wording under provider requirements should more accurately match *the actual* requirement for provider enrollment (for example – a license from the Dept. of Health" is mentioned in 6100.81 (c) – but is NOT in fact required for most facilities. This is VERY important, because provider enrollment has historically been extremely slow and is often held up because providers miss one or two documents – that were NOT listed correctly / clearly in the published directions. This then caused LONG delays for providers and worse – for individuals waiting to receive services.

If providers a current provider of hcbs services there is no need for them to resubmit documentation already on file

Recommendation: Include wording that matches the actual provider requirements:
A provider enrollment application, on a form specified by the Department.
A medical assistance provider agreement, on a form specified by the Department.
A home and community-based waiver provider agreement, on a form specified by the Department.
Verification of compliance with § 6100.81(2) (relating to pre-enrollment provider qualifications).
Verification of compliance with § 6100.476 (related to criminal history background checks).
Documents required in accordance with the Patient Protection and Affordable Care Act (Pub. L. No. 111-148).
Verification of successful completion of the Department's pre-enrollment provider training as specified in § 6100.142 (related to pre-enrollment training).
Monitoring documentation
Copies of current licenses, if applicable, as specified in § 6100.81(2) (relating to provider qualifications).
Verification of compliance with § 6100.46 (related to criminal history *background* checks).
Prior to applying for participation in the HCBS program, the applicant shall complete the Department's pre-enrollment provider training.

Additionally: 6100.81 (c) 1 & 2 seem to contradictory or confusing. Please clarify.

Citation: **6100.85. Ongoing HCBS provider qualifications**

Discussion:
In section d contact is vague and may not be made aware of persons is on excludable list until hire

Recommendation: d) change to providers may not employee contract or be governed by a person on the federal or state list of people to be excluded from Medicare and Medicaid programs

Citation: **6100.86. Delivery of HCBS**

Discussion: dept. should do provider qualification to provide consistency should not decide who can provide serves just who or what they will be paid for

Recommendation: a) delete designated managing entity
provider will only be rein versed for and deliver services authorized is psp

Citation: **6100.141. Annual training plan**

Discussion: 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 141 and 143 into one streamlined and accountable set of standards to not only maintain the basics, but to advance our work to the next level.

Recommendation: Please list the core competencies so that system wide expectations are clear.

The plan will explain how the provider will assure that staff understands 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.
The plan will explain how the provider will assure that staff understands the safe and appropriate use of positive interventions, including the training in the plans which are unique for any one person served.
(The plan will include the following positions
(1) paid staff with client contract;
(2) paid and unpaid interns who provide reimbursed supports to an individual and work alone with individuals;
(3) Volunteers who provide reimbursed supports to an individual and who work alone with individuals.
(The annual training plan shall include the following
(2) the title of the position to be trained
(2) the required training courses including the training course hours for each position
(i) Records of orientation and training including the training source, content, dates, length of training, and copies of certificate receive and persons attending shall be kept.
(j) The provider shall keep a training record for each person trained

annual training plans should be determined on needs of the individuals they serve and include items identified by the quality management plan or monitoring or licensing non compliance

Citation: **6100.142. Orientation program**

Discussion: this should be required only of licensed providers

Recommendation: remove AWC and transportation providers as an agency's orientation is not applicable

Citation: **6100.143. Annual training**

Discussion:
Same issues as 142

Recommendation: same as 142

Citation: **6100.144. Natural supports**

Discussion: the use of the term "natural support" should not be used to replace a person need for paid supports especially in regards to health and safety of individual, true relationships should be encouraged and supported without the assumption that a person is expected to give or receive "support"

Recommendation:

Citation: **6100.181. Exercise of rights**

Discussion: an individual cannot be continually supported to exercise individual's right

Recommendation

:b)should be amended to read an individuals will be informed and supported on exercising their individual rights as they desire The services, supports, and accommodation necessary for the individual to understand and activity exercise rights as they choose will be funded by the Department as part of the PSP.

C) add as desired by the individual

G) if the individual was determined to be incapacitated and requires a legal guardian the individual rights as well as decision making ability shall be directed by said order
H) on behalf of individual should be deleted and add to provide support to the individual

Citation: **6100.182. Rights of the individual**

Discussion:
Consideration of court ordered legal guardians should be reflected, a person's right to choose where they live and work and form ongoing relationships should not be dictated by where the department or ae dictate or define success and meaningful

Recommendation: b) add except when otherwise directed by court order

c) the ability to make decisions and accept risks should be determined by legal guardian when individual has been declared incapacitated and should be indicated in sections f-l

(d) ~~-~~An individual has the right to make informed choices and accept personal risks that do not pose a threat to the individual's and/or another person's health, safety, or well-being.

Citation: 6100.183. Additional rights of the individual in a residential facility

Discussion: It needs to be made clear that individuals have the right NOT to exercise all of their rights (i.e.: they have a right not to have a lock on their door if they so choose) in an everyday life – we all have the right to vote – but many choose not to. Additionally – many individuals have limited financial management abilities. A "right' to unrestricted access to telecommunications – could be interpreted as a right to a data / coverage plan that one cannot afford.

Recommendation: the persons rights should at all times take into account the individuals and housemates need supports around issues of health and safety and psp should have clear documentation on why there needs to be a restriction for health or safety reasons and should be presented and approved annually or as a change is documented to restrictive procedures committee and again legal guardianship must be considered

Citation: 6100.184. Negotiation of choices

Discussion: negotiation between individuals will be difficult to document

Recommendation: should be an avenue to which achieve this as well as to document when differences cannot be resolved

Citation: 6100.185. Informing of rights

Discussion: maybe more effective if provider of service not be the one doing this individual may feel safer and more secure in voicing concerns to outside party

Recommendation: supports coordinating agency when involved should be presenting this information at least annually at psp mtg ad in independent and impartial person

Citation: **6100.186. Role of family and friends**

Discussion: Family and friends are by definition "natural supports." It is unreasonable to "regulate" that role. There is way too much variance in family roles / dynamics to mandate a provider role in "facilitating" and making "accommodations necessary."

If all activity here is under the direction of the individual, then the provider has a very limited role to play – and again that role should NOT be regulated need to protect an individual's right to privacy

Recommendation: add requirement of signed release of information

Citation: **6100.221. Development of the PSP**

Discussion: An ISP is by definition a Person Centered Support Plan. The "plan" has undergone several title changes over the past 20 years, but the content remains virtually the same. Changing the language for the sake of a few updated / nuanced additions is un called for. Additionally it will require tremendous time and cost statewide at all levels.

Recommendation: a) agree that person should only have one approved plan but should not be mandated which form is used OLTL has plan but we are required to recreate a separate plan

g) The psp should reflect individuals choice and value their input as well as the people who they individual identifies as a member of the support team they should be valued and involved to the to the extent they direct. A person's communication mode and needs and meeting location and times should be valued and supported. The health and safety and quality of life and individuals values must always be primary focus.
h) Services should be written in a flexible manner to allow for an individual's everyday life and not prescriptive in nature
i) The sc should be responsible for facilitating plan development and revisions with the individual and their team and notifying team regarding changes and sending documentation to all team members outlining exact changes and effective date
j) I would suggest the initial psp have an avenue to develop an abbreviated plan until such time an assessment be completed and 60 days of admission date have some flexibility based in number of days in services to get an accurate and true assessment.
k) At least annually should be added as well as at the request of guardian or any other team member

Citation: **6100.222. The PSP process**

Discussion: needs updated to reflect current values

Recommendation: additions to form to document that address the and encourage at the very least discussion around the everyday lives principals

Citation: **6100.223. Content of the PSP**

Discussion: psp must be flexible to meet individual's needs as well as reflect personal choice allowing for success

Recommendation: 3) choice of healthcare should be amended to choice of healthcare providers
7) natural supports should be changed to reflect personal relationships and not focus on support
8) suggest amount frequency and duration of services be documented in a way to allow for greatest flexibility, suggest using phrases like not to exceed annual authorized units
10) community participation should be directed by individual
11) competitive integrated employment should be first but allow for an individual right to choose employment which is meaningful to the individual allowing for health and safety and success not be measured on persons definition not imposed by others
Need to be mindful that people needs and values are different and should be reflected in services and location of supports
12 modification of rights should be required to be documented and reviews by restrictive procedure committee
17) any support or need identified by individual should never be considered unnecessary could not be funded but should be documented
18 financial information should include source of income for financial planning and benefits counseling i.e. Ssi vs Ssd
19 behavioral supports needs and services should be documented in psp

Citation: **6100.224. Implementation of the PSP**

Discussion: not all things are in providers control and should be made an allowance for such as individual not attending as scheduled, community based services employment or others can change without notification to service provider

Recommendation: addition to be made to document if unable to provide service due to factors outside the providers control especially as it is reflective of an individual's choice

Citation: **6100.225. Support coordination and TSM**

Discussion:

Recommendation: a) would add during monitoring visits
5) add or disagreement as we should not assume everyone will be in agreement
9) addition of notification requirement and include and document specific changes just not a notification that there was a change

Citation: **6100.226. Documentation of support delivery**

Discussion:

Recommendation: ODP should develop a statewide mandated form for use by all providers. This will greatly reduce "violations" due to variance among providers.

Citation: **6100.261. Access to the community**

Discussion: resources of the individual as well as the provider in response to assigned rates need to be considered something may be identified as a desire may be unrealistic to provide especially are being provided to more than one individual at time, resources regarding staff availability and agency provided transportation must be considered unless funding for a one on one staff and private transportation is going to be funded. Just locating a person in the "community" doesn't necessarily mean relationships, or partnerships or a quality of meaningful participation will be achieved. ODP must be willing to pay for the staff portion of "access to the community" because of the required role in facilitating it....and keeping people safe.

Recommendation:
b) Opportunity and an individual choice should be documented and there should be documentation on the quality, relationships and meaningful participation based on an individual's preference as communicated by the individual and support team.
B and) opportunity and choice are key and should be documented in psp

Citation: **6100.262. Employment**

Discussion: dept. should not have ability to dictate that the only employment that us valued and meaningful should not be based on preconceived and pre imposed values such as location, value, meaningfulness, success or quality but these should be an individual's right and choice

Recommendation: The Department will ensure the funding necessary for individuals to access the community in accordance with the individual's PSP.

A)the psp team and sc should educate and provide information regarding competitive employment supports and services at psp or when requested by individual or designee
B) requiring referral or closure of over for people under 25 will eliminate the opportunity for young adult to acquire skills to gain successful employment and dept. funded waivers have always been payee of last resort
C) Individual will be offered and provided with information on services and supports regarding appropriate opportunities for competitive employment at least annually or at the request of an individual or their designee.
Add a provision for retirement – which is a valid component of an " Everyday life

Citation: **6100.263. Education**

Discussion: believe that ongoing education is vital to all peoples growth and development

Recommendation: addition of resources to support retention and development of ongoing functional skills as an addition to those listed

Citation: **6100.301. Individual choice**

Discussion: Individual's choice should include where how and by whom services and supports are provided

Recommendation: a) would include Sc, ae or other team member in addition to provider

Citation: **6100.302. Transition to a new provider**

Discussion: transition to a new provider should be responsibility of sc as well as all psp team members, communication, planning should be focus to assure health and safety needs are met as well as stability and success

Recommendation: b) transportation to visit new provider should not be responsibility of current provider but should be coordinated by sc or family as appropriate
Upon signature of permission to release of information should be provided to the new provider prior to start of services to assist in continuation of supports and services as needed, sc should be responsible for monitoring of this process during transition.
Upon request individual should be provided with any documentation regarding medical information developed by provider but not responsible for release of any third party developed information

Citation: **6100.303. Reasons for a transfer or a change in a provider**

Discussion: health and safety of individuals and others must be for most consideration, secondary to a person individual choice and should reflect and consider an individual's willingness and ability to be responsible for choices and requirements related to transfers

Recommendation: This section is defined too narrowly to be practicable to the point that it contradicts other portions of the chapter-and are unable to execute the residency agreement. There are many circumstances such as program closure, safety of others, Megan's Law, eminent domain, court or other legal actions, eviction by a landlord of the provider, natural disasters, provider closure which may require transfer or change in spite of individuals' wishes. This list is not exhaustive – they regulation needs to allow for unforeseen occurrences.
What if exercising rights impinge on others is that grounds for transfer? What if rights place the individual or others at risk? 6100.184(a) states, "An individual's rights shall be exercised so that another individual's rights are not violated."
1 &2) Add as documented by psp team, provider, legal guardian and sc or medical professional
3) add or agency value and mission to list of things that should not be required to be significantly altered as well us unfounded mandates or support changes
Consideration and allowance for unanticipated emergencies must be made as well as consideration that any others persons including support staff are not violated as a result of the rights of another

Citation: **6100.304. Written notice**

Discussion:

Recommendation: a) the sc should be responsible for providing of written notice of transfer to all team members at least 30 days prior to effective date of transfer unless 30 day requirement is waived and documented by individual and sending and receiving provider
b) provider should be required to held to 30 day notice as above
Consideration and service changes should be documented by sc as all of the information listed in b1-6 and c 1-3 is already documented in psp and is not necessary to be "documented" (c) If a provider is no longer able or willing to provide a service(s)for an individual in accordance with the provisions specified in § 6100.303 (relating to reasons for a change in a provider or a transfer), the provider shall provide written notice to the individual, guardian(s), persons designated by the individual, the PSP team members, the designated managing entity and the support coordinator or targeted support manager and the Department, at least 30 days prior to the date of the proposed change in service provider or transfer

Citation: **6100.305. Continuation of support**

Discussion:

Recommendation:

Citation: **6100.306. Transition planning**

Discussion: provider cannot assume personal or fiscal liability during transition period at the cost of others or the program or agency

Recommendation: provider shall continue to provide services during transition period but an immediate mechanism for supplemental funding must be developed dept. or designee should be responsible for securing and funding interim placement to meet an individual's health and safety needs on a temporary basis not to exceed 30 days unless and extension is requested and agreed upon by psp team and dept.

Citation: **6100.307. Transfer of records**

Discussion: seems as this is a duplication and should be addressed in section .302

Recommendation: delete section .306 and. 307 as this is repetitive

Citation: **6100.341. Use of a positive intervention**

Discussion: Support. Good change of title from "Safe Behavior Management"

Recommendation: a) positive interventions will be used when a challenging behavior is occurring or to prevent escalation of a behavior to decrease frequency, intensity and duration of behaviors in an attempt to identify teach replacement and coping skills to individuals which are problematic to the health and safety of the individuals or to others.

Citation: **6100.342. PSP**

Discussion: documentation of behavioral needs services and supports are necessary and important any part of psp

Recommendation:

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

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.

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.

1) delete word "dangerous"
2) add proposed or perceived in front of reason for behavior
5) benchmarks should be developed to achieve desired outcomes
Addition of restrictive review committee as appropriate and necessary to assure health and safety and provide for quality of life and individually defined success

Citation: **6100.343. Prohibition of restraints**

Discussion: Title can be misleading to appear that no restraints are allowed, ever

Recommendation: Change title to "Prohibition of certain types of restraints" and include provision for protection of imamate health and safety of individual and others

2) Delete verbally directed
6) Dept. approved de-escalation and intervention designed to induce a release or bite should be defined and permitted in this section

7) Clarification on exclusion of medication used to control episodic aggressive behavior ordered by healthcare professional as all medication administered by provider must be ordered my medical professional

ii) medically ordered seizure protective device "easily removed by individual" needs to be considered on an individual basis

Citation: **6100.344. Permitted interventions**

Discussion:

Recommendation:

c) Allowance for a verbal prompt should be permitted as a suggestion that a person can voluntarily choose to exclude themselves
d) Delete only in accordance and replace with " when an individual engages in dangerous behavior as identified and approved in psp or in an unanticipated emergency basis"

f. Not to exceed 30 second intervals needs to be added

Citation: **6100.345. Access to or the use of an individual's personal property**

Discussion: individuals need to take responsibility for choice; competency must be implied unless otherwise documented by legal or medical professionals

Recommendation:

c) Addition of court ordered restitution
2) avenue should be part of psp for restitution to be required as a result of an act deliberately intended to destroy another property

Citation: **6100.401. Types of incidents and timelines for reporting**

Discussion:

Recommendation:

b) Replace discovery with having knowledge of an incident or alleged incident. Also provider should only be required to report incidents which occur in their program or in their care, all others incidents should be reported to sc and reported by the sc

8) urgent care fa cities should be added to emergency room visits

8) "missing" person should be individually defined as time permitted as unsupervised in psp

12) emergency closure for weather should not be required to be reported unless it happens while individual is on site (closure due to weather prior to program start should not be required)

16) medication errors should be moved to the 72 hour requirement unless immediate medical attention is required

b) immediately should be defined as within 2 hours

d) incident report will be provided to individual, designee or legal guardian immediately upon finalization

Citation: **6100.402. Incident investigation**

Discussion: requirement of investigation of all incidents or alleged incident is unnecessary costly and intrusive

Recommendation: b) of "an incident" should be replaced with
Incidents listed below within 24 hours:
Death
Abuse
Neglect
Exploitation
Missing person as defined in psp
Theft or misuse of funds
Violations of individuals rights
Unauthorized or inappropriate use of restraints
Rights violation
Individual to individual physical and sexual abuse

Citation: **6100.403. Individual needs**

Discussion:

Recommendation:provider shall review all reportable incidents to identify patterns and identify possible reductions quarterly as part of the providers quality management review process, including possible preventative measures to decrease numbers and severity of reoccurring incidents

Citation: **6100.404. Final incident report**

Discussion: is directed and governed by dept. incident reporting polices

Recommendation:
b) within 30 days should be added unless an extension is filed

Citation: **6100.405. Incident analysis**

Discussion: this is required under quarterly quality man agent requirements and is a duplication

Recommendation: A provider will review and analyze all reportable incidents at least every three months.
As part of the review, a provider will 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 will 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.

Citation: **6100.441. Request for and approval of changes**

Discussion: an avenue for emergency placement should be developed to address emergency situations

Recommendation: develop format and process for requests emergency situations to accommodate an individuals need

Citation: **6100.442. Physical accessibility**

Discussion: if these accommodations are required to meet the needs of an individual these should be a billable service to dept. or through vendor services if these costs are not reflected in current rate setting process

Recommendation:

Citation: **6100.443. Access to the bedroom and the home**

Discussion: This proposed regulation, while presumably aimed at ensuring privacy, does NOT align in any way with an everyday life. Most citizens do not live in a house where they need a key to access their own bedroom. Additionally – in meeting individuals every day needs, staff may need to enter bedrooms many times per shift for many non-emergency or non "life safety" reasons: helping to get dressed, assisting with bed making, collecting laundry or putting away clean clothes, helping to fix someone's hair, assisting with bed time routines or personal hygiene. Staff is always expected to treat the entering of individuals' rooms with respect – to ensure dignity and privacy – but to prohibit entry without "express permission" for each incidence of access – demonstrates a serious lack of understanding of the amount of personal assistance our staff is providing on a daily – hourly basis. Further, documenting or proving that "Required express permission of each incidence of access" was granted or denied will be impossible....and if not impossible – it makes a homelike environment seem very much like an institution. Staffs who enter bedrooms on a regular basis are not strangers to the individuals. They are kind, caring and dedicated Direct Support Professionals who spend their hours, days, weeks and years building relationships with the individuals they support in a dignified manner.

Recommendation: a

c) Each individual has the right to privacy in their bedroom and locks provided except for when there is a documented health and safety risk identified in psp.

c)The right to privacy should be balanced with need for health and safety and document in psp or as needed in an emergency

l) residential staff should request permission to enter private bedroom before entering unless there is an emergency or health and safety reason

Citation: **6100.444. Lease or ownership**

Discussion: caution should be used in referring provider as "landlord" and individual as "tenants" as that does not reflect the provisions of a service provider

Recommendation: dept. should develop a "lease" that is a model or format that can be used to meet requirements. Ensuring protection to individual, provider and other residents in licensed facility

Citation: **6100.445. Integration**

Discussion: as a person with a disability no one dictates where or by whom I Live and I believe that same right and choice should be afforded to hcbs participants

Recommendation:

Citation: **6100.446. Facility characteristics relating to size of facility**

Discussion: Community Rule does not specify an absolute cap on program size. Smaller size programs require additional staffing levels; additional facility costs, and contributes to the workforce shortage. (DHS itself has recently approved larger census programs for individuals with medical needs.) The CMS response 441.530(a)(2)(V): "We do not believe there is a maximum number that we could determine with certainty that the setting would meet the requirements of HCB setting. The focus should be on the experience of the individual in the setting."

A program quality cannot and should not be defined by numbers of persons served, nor should person ability to choice to live or work with a specific number of people be imposed. The focus should be on person's experiences. By mandating size requirements you will be drastically decreasing number of willing and able providers decreasing choice and ultimately lowering quality of being more isolating as services. The increased cost associated with this is going to have the effect of services will be more costly and unavailable requiring people to remain in their homes in in the community without necessary supports and service needed to assure health and safety. There needs to consideration of meaningful activities in a person's day and if and individual requires these services to be in a facility to provide them with the stability, health and safety need, ongoing relationship facilitation with people of their choice.

Recommendation:

d) new day facility licensed as 2380 and 2390 limits of 15 is dramatically going to increase the cost per unit/ individual to the inability to divide program and mandated services over a greater number making services more costly and decreasing amount of services provided under the Pfds waiver cap. (this will also dramatically be effected by community participation requirements)

A distinction between program licensing rooster capacity and daily attendance capacity. But strictly using licensing capacity the dept. will force providers to not allow for an individual's right to attend part time.

Citation: **6100.447. Facility characteristics relating to location of facility**

Discussion: people receiving HCBS services should not be limited in choice by the proximity of a program or facility's location

Recommendation: this section should be deleted and compliance to the Community Rule be met by the offering of a variety of setting and location as per CMS requirements
B) as by law you are not permitted to ask about a person's disability this cannot be achieved or monitored so should be removed

Citation: **6100.461. Self-administration**

Discussion:

Recommendation:
5)be able to apply or take his or her on medication with or without the use of assistive technology

Citation: **6100.462. Medication administration**

1. **Discussion:** : 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 technologies 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.

Regarding 1
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. Title 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 maintaining this content in just one place, namely the Medication Administration Training module and not regulations.
If the 6500 LifeSharing programs are included in this requirement, significant unintended consequence are likely to severely impact the viability and expansion of this program; one which the Department has repeatedly stated they desire 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 is 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.

Recommendation:
Vi) addition of medication administered via G/U tube

Citation: **6100.463. Storage and disposal of medications**

Discussion:

Recommendation:
c) if individual requires or prefers personal daily weekly or monthly dispensing containers and medication is taken or stored in a licensed facility a pharmacy/ medical facility should package and abide by labeling requirements on original prescriptions containers
d) allowances should be made if a person is leaving licensed facility or on a home visit for a period of time that exceeds 2 hour proposed limits
C) medication storage should be stored under proper conditions as defined by manufacturers or prescribing physician
D) medication storage and locked container requirements should follow dept. approved medication administration guidelines and dictated by person's psp if living alone or in family living. If person have housemates all medications should be stored in secure location

Citation: **6100.466. Medication records**

Discussion:

Recommendation:
c) addition of notification of legal guardian immediately if medication is refused

Citation: **6100.469. Medication administration training**

Discussion:

Recommendation:

Citation: **6100.470. Exception for family members**

Discussion: if parent or family member is paid then medication documentation should be required and monitored. exception for family living providers should be considered

Recommendation: dept. developed form for paid caregiver or family living provider to document medication administration should be required for monitoring purposes

Citation: **6100.481. Department rates and classifications**

Discussion: these are a list of possible payment options and serves no regulatory or enforceable or ability to appeal rights.

Recommendation:
This should be adapted to reflect dept. authority to adopt regulations and provision of services

II) should be deleted unless willful misconduct has been proven by dept.

Citation: **6100.483. Title of a residential building**

Discussion:

Recommendation: removal of a "debt free"

Citation: **6100.484. Provider billing**

Discussion:

Recommendation: d) should be amended to read provider will not submit a claim for service not authorized in psp

Citation: **6100.485. Audits**

Discussion: Providers have the right to know the precise standards that will govern an audit of payments received under this Chapter 6100

Recommendation:

Citation: **6100.571. Fee schedule rates**
Discussion:

Recommendation:

(a) Fee schedule rates, which include fees for residential ineligible services, will be established annually by the

(b) For Fiscal Year 2017-2018 the Department will apply the Medicare Home Health Market Basket Index to each fee schedule rate for each year from FY 2012-2013 through FY 2017-2018 to establish the FY 2017-2018 Fee Schedule Rates.

(c) On or before May 1, 2017, the Department will publish in the Pennsylvania Bulletin a notice that: (1) identifies the FY 2017-2018 Fee Schedule Rates; (2) explains in sufficient detail the FY 2017-2018 rate setting methodology; and (3) solicits public comments for 30 days.

(d) On or before September 1, 2017, after review and consideration of the public comments it received, and consistent with subsection (b) above, the Department, by publication of notice in the Pennsylvania Bulletin, will publish the final FY 2017-2018 Fee Schedule Rates and rate setting methodology along with its responses to each comment received regarding the proposed FY 2017-2018 Feed Schedule and rate methodology.

(e) For Fiscal Year 2018-2019, the Department will update the cost data base it relies on to establish fees so as to reflect providers' current cost experience and rate setting methodology that it relies on to establish the FY 2018-2019 Fee Schedule Rates to include the application of the Medicare Home Health Market Basket Index applicable to FY 2018-2019.

(f) The Department will annually update the cost data that it relies upon to establish Fee Schedule Rates.

(g) In every fiscal year after FY 2017-2018, The Department will follow the process and procedures described in subsections (c) above relating to the publication of proposed and adoption of final Fee Schedule Rates.

Citation: **6100.645. Rate setting**

Discussion:

Recommendation: The Department will use each provider's most recently approved cost report, as adjusted by the most recent Medicare Home Health Market Basket Index, to establish the provider's cost based rates in each fiscal year.

The approved cost, as adjusted by the most recent Medicare Home Health Market Basket Index, report will be used as the initial factor in the rate setting methodology to develop the allowable costs for cost-based services. to establish a Provider's cost based rates~~.~~

A provider will complete the cost report in accordance with this chapter prospectively.

The cost data submitted by a provider in an approved cost report, as adjusted by the Medicare Home Health Market Basket Index, will establish the provider's cost based rates.

The Department, upon the publication of advance public notice and after consideration of public comments, may adjust the cost report form and instructions based on changes in the support definitions in the Federally-approved waivers and waiver amendments from the prior cost reporting period.

Prior to the effective date of the cost based rates, the Department will publish ~~as~~ a notice in the *Pennsylvania Bulletin* that explains the cost-based rate setting methodology for the fiscal year.

Citation: **6100.646. Cost-based rates for residential habilitation**

Discussion:

Recommendation: c) residential approved days should reflect an individual's needs and individual desired time to have or spend time with family or other people important to them, providers rates should not be impacted negatively when they support and encourage family stability and relationships.
D)a provider can request additional funding for staff if the current dept. approved staffing does not meet the current needs of an individual especially if a new individual enters the program or needs of individual significantly changes

Citation: **6100.648. Donations**

Discussion: a system that does not rein versed providers full costs should not be permitted to impose limits on donations

Recommendation:

Citation: **6100.650. Consultants**

Discussion:

Recommendation: 3) delete if provider and contractor agree there is no need for dept. to be notified in method of payment

Citation: **6100.652. Compensation**

Discussion:

Recommendation: b) bonus pay should be allowable cost as it is means of retaining and compensating good staff especiasaly since the rates have not increased in many years and a provider has no idea how to plan for following years budget

Citation: **6100.659. Rental of administrative space**

Discussion:

Recommendation: c) minimum should be deleted
E) 2) management fees should be an allowable cost

Citation: **6100.661. Fixed assets**

Discussion:

Recommendation: h 3 4 6 and k2 should be deleted

Citation: **6100.662. Motor vehicles**

Discussion:

Recommendation:

Citation: **6100.663. Fixed assets of administrative buildings**

Discussion:

Recommendation: c) delete as renovation to providers building should not require approval of dept.
F) deleted unless dept. is going to assume liability they should not be eligible to recoup "funded equity"
1&2 deleted as well as it refers to f

Citation: **6100.664. Residential habilitation vacancy**

Discussion: home/ family visitation should be encouraged and supported not be financially disincentives by supporting this

Recommendations:
B) should be based on individual use age not agency

Citation: **6100.668. Insurance**

Discussion: minimum should be removed adequate insurance should be encouraged and supported

Recommendation:

Citation: **6100.669. Other allowable costs**

Discussion:

Recommendation: provider legal fees should be recognized when a settlement is reached to discourage litigation which is costly and time consuming

Citation: **6100.672. Cap on start-up cost**

Discussion:

Recommendation:

A) start up fees will be capped at $40,000 for approved startup costs

Citation: **6100.690. Copy of room and board residency agreement**

Discussion:

Recommendation: Dept. issued format would ensure compliance and consistency

Recommendation: The Department may assure compliance with the provisions of this chapter through the imposition of the remedies described in this section and The specific remedy will be determined by the nature and scope of the regulatory infraction.

Citation: **6100.742. Array of sanctions**

Discussion: If these are not licensing regulations, the language should not be so focused on corrective action.

Recommendation: Change title to "Remediation.

Upon the determination, after affording a provider the opportunity to challenge any propose sanction under 55 Pa Code Chapter 41, that a provider has committed a regulatory violation, the Department may apply the following remedies:

Citation: **6100.743. Consideration as to type of sanction utilized**

Discussion:

Recommendation:
A &b should be deleted
C) change may to will and change sanction to remedy
1-3 change condition to infraction

Citation: **6100.801. Adult autism waiver**

Discussion: Would suggest amending current autism waiver to meet needs of all people with autism, revisit service definition to align with odp and rates that are equal to those for similar services under ID waivers to entice more qualified providers

Recommendation:

Citation: **6100.805. Base-funded support**

Discussion: same standards of services should apply to base funds as well as ae interpretations vary and are detrimental to client when there is no oversite or guidance

Recommendation:

Citation: 6100.52(f)

Discussion: Opposed

Recommendation: It is the Incident Management Committee's responsibility to review incidents and determine what incidents are confirmed and which are not confirmed.The Rights Team should meet once every 3 months for confirmed incidents and a term should be added. Once an incident has been corrected with a proven track record, the Rights Team should no longer be required to meet every 3 months.

Citation: 6100.53. Conflict of interest

Discussion:

Recommendation:

Citation: 6100.81. (c)(1) HCBS provider requirements

Discussion: Opposed

Recommendation: Further explanation is needed on this as it is not clear.

Citation: 6100.142 thru 6100.143 Orientation program

Discussion: Opposed

Recommendation: If funding is not available a provider should not be obligated to provide orientation training to consultants and vendors if non-direct billing isn't permitted.

Citation: 6100.341. Use of a positive intervention

Discussion: Support. Good change of title from "Safe Behavior Management"

Recommendation:

Citation: 6100.343. Prohibition of restraints

Discussion: Title can be misleading to appear that no restraints are allowed, ever

Recommendation: Change title to "Prohibition of certain types of restraints."

Citation: 6100.345(b) Access to or the use of an individual's personal property

Discussion: Opposed

Recommendation: This is in conflict with a typical community lease agreement. The tenant would be responsible for any damages made by them beyond normal wear and tear.

Citation: 6100.443(a) Access to the bedroom and the home

Discussion: Opposed

Recommendation: Funding must be available for the replacement of keeys or access cards.

Citation: 6100.447(b) Facility characteristics relating to location of facility

Discussion: Opposed

Recommendation: Individuals should have the right to pick and choose what apartment complex that they want to live in regardless of who lives there. As a provider we would not have the right to ask if other tenants have a disability.

Citation: 6100.462(b) Medication administration

Discussion: ADDITION

Recommendation: Add rectal medications to medication administration.

Citation: 6100.691. Respite care

Discussion: Opposed

Recommendation: The rates need to be sufficient to cover the increase in the food budget if room and board is not a viable revenue source from respite services.

Citation: 6100.742. Array of sanctions

Discussion: If these are not licensing regulations, the language should not be so focused on corrective action.

Recommendation: Change title to "Remediation."

Citation: 6100.743. Consideration as to type of sanction utilized

Discussion:

Recommendation:

Citation: 6100.744. Additional conditions and sanctions

Citation: 6100.802.(d) Agency with choice

Discussion: Opposed

Recommendation: This is in conflict with the Managing Employers contract. If they can't meet the responsibilities in the contract, then a new Managing Employer or Supports Broker should be hired.

Citation: 6100.806. Vendor goods and services

Discussion: **Opposed**

Recommendation: The Vendor Fiscal Provider does not have the ability to assure that the vendor has met all the requirements. That should lie with the Supports Coordinator if a Vendor Fiscal Provider is only responsible for writing check

Comments
Chapter 6400

We appreciate that Adult Autism Waiver is now covered with these regulations.

6400-.52 (Annual Training) - Eight hours of training in the areas listed for management, fiscal and administrative staff is excessive. In addition will add additional cost and is of no benefit to the individual receiving the HCBS service.

6400.196 (Rights Team) – This section appears to confuse the Restrictive Procedures Committee Team process that occurs at the county level and the Incident Management Process that occurs at the provider level. This lack of clarity of purpose creates an unworkable process for incident review that does not add value to the current process or provide greater protections to individuals.

The root of the problem appears to be that the Rights Team is conceived as a standing committee to review trends in rights violations and restraints and analyze systemic concerns in order to minimize or eliminate occurrences, but it is also an ad hoc committee convened to address specific incidents. The Rights Team is therefore redundant.

The state already has a very robust and thorough Incident Management system where the review of individual rights violations (6100.181-6100.186) and restraints (6100.341-6100.345) occur. In this system, providers already review and correct incidents, including unauthorized restraints and rights violations. These investigations and corrective actions are then reviewed by the county and ODP. This process includes individuals in reporting and investigation and, where necessary, the family.

In addition a well-established process exists for the oversight of systemic concerns regarding individual rights and any restrictive procedures, including restraint through the Restrictive Procedures Committees that involve providers, counties and advocates. This committee is tasked with the minimization and elimination of restrictive procedures.

Because of the role confusion, the team's purpose is unclear and as a consequence, it is also unclear why the creation of a new "rights team" is necessary or adds any value to the actual protection of individuals' rights.

6400.161	Comment: including specific items of the approved Medication Administration Training in the regulations will not allow for changes to the training over time. The regulations should indicate in general that providers shall follow the Department's approved Medication Administration Training.
6400.18 (a) (13)	Recommended that the use of a restraint should remain as a 72 hour report upon discovery.

6400.195	Comment: Passavant Memorial Homes supports the focus and enhancement of individual rights outlined in the proposed regulations. It is critical to ensure that the concepts of Everyday Lives are implemented. The current system through the incident management process and Human Rights Committee already works as an oversight process for a violation of an individual's rights and use of any restrictive procedures. Adding additional administrative duties to this process would only add costs with no real increase in actual meaningful oversight.

Citation: **6400.1. Introduction**

Discussion: **1.** Word choice re: design of service should convey obligation in
Our current system does not meet the needs of all people with ID, and it is unclear how adding another population will make things better for anyone.
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 is made with the individual's unique needs in mind so that the service can facilitate the person's ongoing growth and development.

Recommendation:

Citation: **6400.3. Applicability**

Discussion:

Recommendation:

. Replace shall with must in section b and d
2. (d) The Department will inspect each home serving nine or more individuals every year. Every home must have an individual certificate of compliance specific to the home.
e) When an agency operates one or more homes serving eight or fewer individuals, ~~shall~~ the Department will conduct a sample of agency's homes.

(f) Add entities after following

(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.

Citation: **6400.4. Definitions**

Discussion: 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. : Chapter 6100 and the licensing regulations promotes clarity, consistency, and reduces administrative burden across applicable services and programs

Recommendation. Realign all definations throu out 6100, 2380, 2390, 6400 and 6500

Citation: **6400.15. Self-assessment of homes**

Discussion:

Recommendation: term psp should be used consistently throughout

Citation: **6400.18. [Reporting of unusual incidents.] Incident report and investigation**

Discussion: Procedures for Incident Management already established, regulations should simply support that process

Recommendation: . .

] Incident report and investigation. (a) A provider will report the following incidents, and alleged incidents through the Department's information management system within 24 hours of 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 if missing for more than 24 hours or if the individual is in immediate jeopardy if missing for any period of time.

(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 an inappropriate or unnecessary restraint.

(14) Theft or misuse of individual funds.

(15) A violation of individual rights.

(b) . A home will 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.

). 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 identification of an incident, alleged incident and/or suspected incident.

(f) The home will initiate an investigation of 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) Rights violation
(10) Individual to individual sexual abuse and serious injury

(g) ~~).~~ The incident investigation will be thorough and conducted by a Department-certified incident instructor.

(h) The home will 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 the occurrence or discovery of the incident unless an extension is filed.

(i) A home will 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

Citation: **6400.44. Program specialist**

Discussion: Aligning the requirement through out will simplify monitoring and allow for more value placed on experience

Recommendation: 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 persons with disabilities.

(2) A bachelor's degree from an accredited college or university and 2 years of work experience working directly with persons with disabilities.

(3) An associate's degree or 60 credit hours from an accredited college or university and 4 years of work experience working directly with persons with disabilities.

Citation: **6400.45. Staffing**

Discussion:

Recommendation The program specialist shall be responsible for the following: (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 activities for the individuals in accordance with the PSPs.
(4) Supporting the integration of individuals in the community.
(5) Supporting individual communication and involvement with families and friends
:

Citation: **6400.50. Annual training plan**

Discussion: Training plan should be comprehensive, but needs flexibility
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 141 and 143 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.

Recommendation:

(a) The home will 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 will include the orientation program as specified in § 6400.51 (relating to orientation program).

(c) The annual training plan will include training intended to improve the knowledge, skills and core competencies of the staff persons to be trained.

(d) The plan shall address the need for training in basics such as rights, facilitating community integration, honoring choice and supporting individuals to maintain relationships.

(e) The plan will explain how the provider will 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 will explain how the provider will 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 plan will include the following positions

(1) paid staff with client contract;

(2) paid and unpaid interns who provide reimbursed supports to an individual and work alone with individuals;

(3) volunteers who provide reimbursed supports to an individual and who work alone with individuals.

(h) 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

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

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

Citation: **6400.51. Orientation program**

Discussion: Focus on reducing the need for certain training in different levels. Open up the training of the basics to those who interact with individuals. Focus on protecting the individuals and limiting the extensive training requirements for certain positions.

Recommendation:

Citation: **6400.52. Annual training**

Discussion: Focus on reducing the need for certain training in different levels. Focus on protecting the individuals and limiting the extensive training requirements for certain positions. It seems contradictory for the regulations to demand extensive training for all staff/people remotely connected to a licensed provider when the emphasis is to have all individuals with intellectual disabilities completely integrated in their local communities where no one has any training. The far reaching scope of the training proposed is a wonderful ideal, but should not be a mandate

Recommendation: 12/24 hour training requirements should be reserved for staff who work directly with individuals receiving services through a provider. Other staff indicated could receive an annual review of critical topics.

Citation: **6400.213. Content of records**

Discussion:

Recommendation: delete #8 if signed in as attended this is not required and part of sc responsibility not providers

Citation: **6400.196**

Discussion: **Opposed**

Recommendation: The Rights Team should only be reviewing confirmed violations and a term should be set for the violation. Replacing the Restrictive Procedure Review Committee and your decision not permitting agencies to have any restrictive programming waiving the individual's rights is putting the individual and other individuals' health and safety at risk. Removal of current language regarding use of restrictive programming and being reviewed every 6 months by the Restrictive Procedure Review Committee should be re-considered to be continued for individuals with difficult behaviors that present a danger to themselves and to others when all interventions have failed.

Comments
Chapter 6500

Citation: **6500.132(B)(2) AND 6500.139**

Discussion: **Opposed**

Recommendation: Life Sharing families should not be mandated to complete and pass the Department's approved medication administration course. Over regulating Life Sharing families will deter families away and puts more barriers to achieving an Everyday Life for individuals.

Citation: 6500.3. Applicability Discussion: (f) (1) Relative providing care

Citation: 6500.4. Definitions Discussion: (i) Individual

Citation: 6500.20. Self-assessment of homes Discussion: Reporting to IMS within 24 hours/ Life Sharing families do not currently utilize

HCSIS/EIM

Citation: 6500.42. Chief Executive Officer Discussion: The CEO of the company technically is over all programs by default

---

Recommendation: Include persons providing care to a relative with an intellectual disability/autism. This allow

Sharing.

Recommendation: Exclusion should be removed to allow distant family members to participate in Life Sharing.

Recommendation: The agency will report the following incidents. Remove the family from reporting, except directly to the Life Sharing Specialist.

Recommendation: Change to COO or department head.

Comments on Chapter 6500 – Community Homes for Individuals with an Intellectual Disability or Autism Page 2 of 3

Citation: 6500.45. [Training.] CPR, first aid and Heimlich maneuver training Discussion: Regulation states annually/ licensing states or as long as certificate is active

without expiring.

Citation: 6500.48. Annual training Discussion: Remove mandatory 24 hours, make more client focused

Citation: 6500.69. Indoor temperature Discussion: Temperature requirements seem low

Citation: 6500.76. Furniture Discussion: Licensing tool states outlined requirements only apply to client owned furniture

Recommendation: Primary caregiver shall be trained every two years. This prevents any loopholes of over extending training, or paying for unnecessary training

Recommendation: Training will include all orientation trainings and core trainings (8 hours) yet allow flexibility to complete training related to the unique needs of individuals served by the Family Living provider.

Recommendation: a) Should not be less than 65 degrees. b) Should not be less than 62 degrees.

Recommendation: Reconcile with the licensing expectations

Comments on Chapter 6500 – Community Homes for Individuals with an Intellectual Disability or Autism Page 3 of 3

Citation: 6500.139. Medication administration training

Discussion: Department approved medication administration training is a 2 day training. The training time may be more intensive to some Life Sharing providers than is needed. Consider alternatives to training given the scope of administration covered and the unique needs of the individual in the home.

Citation: 6500.151. Assessment Discussion: (d) Assessment should be inclusive and individual should sign.

Citation: 6500.183. Record Location Discussion: Original records should not be kept in the family home yet in agency medical

records

Recommendation: Life Sharing providers/respite care providers will be trained on any injection medications by a doctor, nurse or CNP in lieu of Department approved medication administration trainings.

Recommendation: d) The specialist and the individual will sign and date the assessment.

Recommendation: Copies of any record content shall be made available to the Life Sharing home.

6500.131	Comment: including specific items of the approved Medication Admisnistration Training in the regulations will not allow for changes to the training over time. The regulations should indicate in general that providers shall follow the Department's approved Medication Administration Training. Also, currently the Life Sharing providers are not required to complete the Department's Medication Administration Training. It is recommended that they continnue to not be required due 1) the Life Sharing providersare not employees of the agency provider but contracted supports. The agency provider cannot dictate schedules to non-employees and therefore cannot require providers to act like employees as directed by the Department of Labor.
6500.166	Comment: Passavant Memroial Homes supports the focus and enhancement of individual rights outlined in the proposed regulations. It is critical to ensure that the concepts of Everyday Lives are implemented. The current system through the incident management process and Human RIghts Committee already works as an oversight process for a violation of an individual's rights and use of any restrictive procedures. Adding additonal administrative duties to this process would only add costs with no real increase in acutal meaningful oversight.
6500.20(i) (13)	Recommended that the use of a restraint should remain as a 72 hour report upon discovery.