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14-540-337

Kroh, Karen

From: Mochon, Julie
Sent: Tuesday, December 20, 2016 4:04 PM
To: Kroh, Karen
Subject: FW: PA 6100 proposed changes comments from East Suburban Citizen Advocacy
Attachments: ESCA comments chapter 6100.docx



From: esca15632@aol.com [mailto:esca15632@aol.com]
Sent: Tuesday, December 20, 2016 3:55 PM
To: Mochon, Julie
Subject: PA 6100 proposed changes comments from East Suburban Citizen Advocacy

Please find East Suburban Citizen Advocacy's comments regarding the PA 6100 proposed changes.

Thank you,

Dreama Bartolacci
East Suburban Citizen Advocacy
Advocacy Coordinator

Dreams-Comments Template

Chapter 6100

Citation: 6100.1. Purpose (a)

Discussion:

Recommendation: The language should be consistent with the CMS Community Rule for Home and Community Based Services (HCBS).

Citation: 6100.2. Applicability

Discussion: addition of autism to ID waiver

We recommend changing the Autism Waiver to meet the needs of people that have autism so that the needs of those with autism without ID can be served.

Citation: 6100.3. Definitions

Discussion:

Recommendation: It would be better if all the definitions for these regulations would be included in Chapter 2390.5, and the definitions would be the same across Chapter 6100 and all the licensing regulations.

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: clear and defined timeline of 1 month

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:

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: 6100.46. Protective services

Discussion:

Recommendation:

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 enter and remain in the field, loan forgiveness, health care or education stipend, encourage states to develop education programs and possibly certifications.

*At East Suburban Citizen Advocacy we have personally witnessed instances of abuse and neglect when dishonest family members were hired to provide services to a family member. We are advocating that safeguards be implemented to protect individuals which have family members as paid caregivers

Citation: 6100.49. Child abuse history certification

Discussion:

Recommendation:

Citation: 6100.50. Communication

Discussion:

Recommendation:

Citation: 6100.51. Grievances

Discussion: An employer cannot and will not tolerate retaliation. However, an 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-established 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 change 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-established 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: 6100.54. Recordkeeping

Discussion:

Recommendation:

Citation: 6100.55. Reserved capacity

Discussion:

Recommendation:

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: 6100.82. HCBS documentation

Discussion:

Recommendation:

Citation: 6100.83. Submission of HCBS qualification documentation

Discussion:

Recommendation:

Citation: 6100.84. Provision, update and verification of information

Discussion:

Recommendation:

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-1

(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 as 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 inmate 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 by 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 facilities 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 roster 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 consequences 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 retent 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: 6100.464. Labeling of medications

Discussion:

Recommendation:

Citation: 6100.465. Prescription medications

Discussion:

Recommendation:

Citation: 6100.466. Medication records

Discussion:

Recommendation:

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

Citation: 6100.467. Medical errors

Discussion:

Recommendation:

Citation: 6100.468. Adverse reaction

Discussion:

Recommendation:

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

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

Citation: 6100.482. Payment

Discussion:

Recommendation:

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: 6100.486. Bidding

Discussion:

Recommendation:

Citation: 6100.487. Loss or damage to property

Discussion:

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 Fee 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: 6100.641. Cost-based rate

Discussion:

Recommendation:

Citation: 6100.642. Assignment of rate

Discussion:

Recommendation:

Citation: 6100.643. Submission of cost report

Discussion:

Recommendation:

Citation: 6100.644. Cost report

Discussion:

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: 6100.647. Allowable costs

Discussion:

Recommendation:

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: 6100.649. Management fees

Discussion:

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: 6100.651. Governing board

Discussion:

Recommendation:

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: 6100.653. Training

Discussion:

Recommendation:

Citation: 6100.654. Staff recruitment

Discussion:

Recommendation:

Citation: 6100.655. Travel

Discussion:

Recommendation:

Citation: 6100.656. Supplies

Discussion:

Recommendation:

Citation: 6100.657. Rental equipment and furnishing

Discussion:

Recommendation:

Citation: 6100.658. Communication

Discussion:

Recommendation:

Citation: 6100.659. Rental of administrative space

Discussion:

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

Citation: 6100.660. Occupancy expenses for administrative buildings

Discussion:

Recommendation:

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: 6100.665. Indirect costs

Discussion:

Recommendation:

Citation: 6100.666. Moving expenses

Discussion:

Recommendation:

Citation: 6100.667. Interest expense

Discussion:

Recommendation:

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: 6100.670. Start-up cost

Discussion:

Recommendation:

Citation: 6100.671. Reporting of start-up cost

Discussion:

Recommendation:

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: 6100.681. Room and board applicability

Discussion:

Recommendation:

Citation: 6100.682. Support to the individual

Discussion:

Recommendation:

Citation: 6100.683. No delegation permitted

Discussion:

Recommendation:

Citation: 6100.684. Actual provider room and board cost

Discussion:

Recommendation:

Citation: 6100.685. Benefits

Discussion:

Recommendation:

Citation: 6100.686. Room and board rate

Discussion:

Recommendation:

Citation: 6100.687. Documentation

Discussion:

Recommendation:

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

Discussion:

Recommendation:

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

Discussion:

Recommendation:

Citation: 6100.690. Copy of room and board residency agreement

Discussion:

Recommendation: Dept. issued format would ensure compliance and consistency

Citation: 6100.691. Respite care

Discussion:

Recommendation:

Citation: 6100.692. Hospitalization

Discussion:

Recommendation:

Citation: 6100.693. Exception

Discussion:

Recommendation:

Citation: 6100.694. Delay in an individual's income

Discussion:

Recommendation:

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: 6100.744. Additional conditions and sanctions

Discussion:

Recommendation:

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: 6100.803. Support coordination, targeted support management and base-funded support coordination

Discussion:

Recommendation

Citation: 6100.804. Organized health care delivery system

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 oversight or guidance

Recommendation:

Citation: 6100.806. Vendor goods and services

Discussion:

Recommendation:

cc: Nancy Thaler, Deputy Secretary, Department of Human Services, ODP