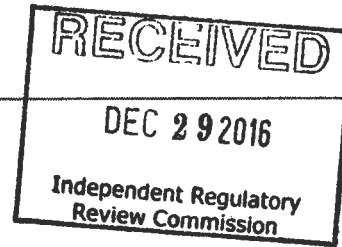


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14-540-312

Kroh, Karen

From: Mochon, Julie
Sent: Wednesday, December 21, 2016 8:59 AM
To: Kroh, Karen
Subject: FW: Comments on Proposed Regulation 6100
Attachments: Comments Cover Letter 12-20-2016.docx; Comments on Proposed Rulemaking - Emmaus Additional Comments.docx; Comments on Proposed Rulemaking - Emmaus Community Supports.pdf



From: Margaret Pollock [<mailto:mpollock@emmauspgh.org>]
Sent: Wednesday, December 21, 2016 12:00 AM
To: Mochon, Julie
Subject: Comments on Proposed Regulation 6100

Please see the attached documents. Emmaus created comments and strongly supports comments offered by RCPA.

Thank you for the opportunity to comment.

Margaret

Margaret Pollock
CFO
Emmaus Community of Pittsburgh
A Community that Serves Persons with Intellectual Disabilities and Promotes Public Awareness of Their Needs
(p) 412-381-0277
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"The spirit of a community is more than a way of life. It is a hope, an incarnation of love." --Jean Vanier

United Way of Allegheny County Contributor Choice Agency #9123
3 Rivers Combined Federal Campaign Code #34738

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December 20, 2016

Ms. Julie Mochon

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

Dear Ms. Mochon:

Thank you for the opportunity to submit comments on the proposed Chapter 6100 regulations, "Support for Individuals with an Intellectual Disability or Autism."

I have four general concerns with the proposed regulations: 1) Providers are being told how and when to perform certain functions such as Quality Management and Employee Training. Most providers in the Intellectual Disabilities forum are dedicated, hardworking providers with the best interests of each individual served at the forefront of everything they do. With loose guidelines, leeway should be given to each organization to carry out business functions; 2) Impending changes to the fee structure/payment to providers will not adequately cover the costs of these proposed regulations and provision of quality services; 3) Increased regulation and control without paying a family sustaining wage will cause Direct Support Professionals to find employment in other fields and will exacerbate the workforce crisis that exists, and 4) Many changes outlined in the proposed regulation will make an "Everyday Life" impossible for the people we serve.

It is my hope ODP will consider my suggestions and the suggestions of the many intelligent and experienced individuals who have taken time to comment on the regulations.

Sincerely,

Margaret W. Pollock

CFO

Margaret Pollock, CFO

Emmaus Community of Pittsburgh, INC.

Comments on Proposed Rulemaking – 6100

All comments are applicable to the other sections of the proposed rulemaking.

6100.45 (Quality Management)– Quality management review creates an undue burden on providers. The provider should be able to track and review turnover rates on their own – not as prescribed by ODP. It is in the provider's best interest to determine the best way to identify and plan systemic improvements.

6100.50 (Communication) – b – We agree that the use of adaptive technologies should be integral to developing effective means of communication. However, ODP needs to account for its commitment to adaptive technologies as it establishes rates of pay for providers.

6100.52 – A separate Rights Team or standing Rights Committee is unnecessary and burdensome for providers. The current ISP team (future PSP team) can be convened as often as necessary to ensure adequate review and follow-up of any rights violations or allegations.

Additionally, the current Incident Management system reviews individual rights violations. These investigations and corrective actions are then reviewed by the county and ODP. The corrective actions, particularly involving behavioral issues can when, necessary, involve outside mental health providers to assist individuals and providers.

6100.141 to 6100.144 – (Annual Training). Providers should be given the opportunity to determine the amount and nature of training required to prepare staff and administrators to provide quality care for each individual. Language in these sections is confusing as it seems to require one training plan for each individual served. Therefore, it would require staff working with several individuals to complete several training "plans". All providers provide specialized training on each individual's ISP (or PSP) and should continue to do so. ODP needs to account for the cost of training at all levels of employment through adequate fee structure.

6100.182

Rights of the Individual - (f) – While we strongly support the philosophy of this provision, please clarify how this provision is supposed to be implemented in light of the department's plan to eventually require all individuals in day program to spend at least 75% of their time outside of a licensed facility (e.g., if one person refuses, and there isn't staff to take the others, wouldn't the rights of the others be violated?). Please consider modifying the language so that, if the individual does agree to enroll in a group community participation service, then they are committing to participate in those activities. If the individual is not interested in a group activity, then he/she should reduce or discontinue services, so as not to affect programming for other individuals in that service.

6100.183

Additional Rights of the individual in a residential facility - (a) – While the philosophy of being free to make choices is supported, there are practical concerns with the how this provision will be implemented. For example, there are many documented instances of individuals who have been

taken advantage of by friends and family. There should be a process that allows the team (with the individual's input) to limit some access.

Also "at any time" makes no sense. Allowing visitors at any hour will infringe upon the other individuals' rights. While section 184 introduces the concept of "negotiating" choices, it does not address situations whereby different individuals in the home are unable to come to a resolution supported by everyone. Please clarify how an ultimate decision is to be made when negotiations are unsuccessful.

Also, please clarify how provider liability will be handled if someone is injured or abused by a visitor that the provider "allowed" the individual to be alone with.

Please consider allowing exceptions to these sections when it comes to individual health and safety and community safety.

6100.183

Additional rights in a residential facility - (d) – Please clarify how this provision is implemented if an individual has a representative payee (that person has control over how the individual spends their money).

6100.183

Additional Rights in a residential facility – (g) – There is a concern how a provider is to ensure safe and swift egress in the event of a fire or other emergency, conduct bed checks, or accommodate a roommate who cannot independently operate the lock. These issues are not adequately addressed simply by following 6100.184, negotiation of choice. This should be available if requested by an individual who can operate the lock. Not required for all.

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.

ODP must ensure that the cost of all behavior specialists and other supports are provided for in the fee structure.

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.

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) – In an everyday life, people have the freedom to live and work adjacent to or in close proximity to whomever they choose to live or work near. This discriminatory concept should be challenged at every level and should be changed to reflect the world in which we all live.

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 everyday lives an individual paying rent and utilities (for example a college student living in an off-campus apartment) must continue to pay rent and utilities even when they go home for d 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.

6100.686 (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.

RCPA – IDD Committee - 6100 Regulation Work Group – Comments & Recommendations – Dec. 16, 2016

Section	Comment / Recommendation
General comment	RCPA members of ODP’s 6100 workgroup have seen many revisions and feel that many positive changes were made in response to previous feedback from stakeholders. What was proposed by ODP November 5, 2016 are an improvement and a step in the right direction. There is a consistent focus on person-centered outcomes based on personal preferences. However, there are numerous questions, comments, and suggested edits we would like ODP to consider.
General comment	Whenever possible, please stop using the word “facility” in regulations. It is an inaccurate way to describe a community home and reinforces the thinking that community homes are institutional.
General comment	Overall, these regulations will increase paperwork, documentation and analysis. While this information may be valuable, there is significant concerns that the rates DHS is paying do not provide the level of funding to support the increased documentation and analysis.
General comment	Please consider the cumulative effect of the regulations. While DHS is making the regulations similar throughout the 2380, 2390, 6100, 6400, etc., (so that everyone is doing the same thing), there is concern that DHS did not take into account the duplicative nature of doing so. For example, all regulations would now require that clients be informed of their rights annually. If it is a person who is waiver funded, living in a residential program, and attends a day program, he or she will now have to sit through an annual review of rights 3 times. If the person attends both 2380 and 2390 day programs and lives in a residential program, he or she will have to have the rights reviewed four times. It is recommended that the regulations make it clear that such things that are required in multiple sets of regulations only have to be done one, preferably as part of the PSP so that the review of the rights and acknowledgement of the review is part of the annual plan (i.e., Done once with the person, but applicable to all services).
General comment	If you make a change based on the comments provided herein, please also make the same change to the relevant corresponding sections of the proposed licensing regulations (2380, 2390, 6400 and 6500).
GENERAL PROVISIONS	
6100.1 6100.2	Purpose - (a) and Applicability (c) – There is a concern that base-funded programs are subject to these same regulations without the ability for exceptions, given that base funds are the safety net for circumstances that require some flexibility. For example, in section 6100.221, it is required that an individual have a PSP in order to receive services. If there is an emergency that comes up with an individual previously unknown to the Administrative Entity/SCO and as a result the person does not have a PSP, how could a provider offer emergency respite services? Please give counties/AEs the authority temporarily waive sections of the regulations when necessary to meet emergency, unexpected, or extraordinary situations.
6100.3	Definition of “Corrective Action Plan” – (ii) – Consider replacing the word “made” with “completed”.
6100.3	Definition of “Family” – If there is no reason to include “natural”, please remove. Also, the definition overall is not clear. If the department wants a definition that is outside what is typical, then it needs to be clear and define who is considered family, especially when it comes to Life Sharing and who gets paid for providing services.

6100.3	Definition of “Natural Support” – Please consider changing this definition. The problem is with the word “reimbursed”. Not all natural supports are voluntary/with no reimbursed support. For example, a babysitter is a natural support but is typically paid. Volunteers often work with a paid Volunteer Coordinator. Please change the definition to “...provided to the individual with no waiver, state plan, or base funding reimbursement.”
GENERAL REQUIREMENTS	
6100.42	Monitoring Compliance – (a) – 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”. This is very open-ended. Please add the words, “department pre-approved” after “other” and before “monitoring.”
6100.42	Monitoring Compliance - (c) and (d) – Please delete references to “format required by the Department” in these two provisions. This is too restrictive. Please allow information to be provided in a reasonable format.
6100.42	Monitoring Compliance – (e) – Please strike “alleged violation”. 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.
6100.42	Monitoring Compliance - (k) – Please clarify how long documentation must be kept.
6100.43	<p>Regulatory Waiver (a) – It is a concern that waivers are not permitted for positive interventions or rights. For example, not allowing a waiver impacts services that are provided to individuals who are sexual offenders, or for people with lifelong medical conditions like Prader-Willi. When supporting people with problematic sexual behavior or someone with Prader Willi, rights must be restricted. Individuals with PBS come into the program with the understanding that they cannot access some public places or need to leave if they display behavior associated. Individuals with Prader –Willi live with food locked up.</p> <p>Another example is when supporting an individual who use their personal property to self-injure. Sometime access must be limited and use monitored. Individual who insert objects into all orifices of the body and do great damage. These objects are often their personal property and waivers are necessary to limit access.</p> <p>Please change this section to address these circumstances, and please permit for a serious health concern to which the individual and their team consent.</p>
6100.43	Regulatory waiver - (c)(2) – Please change language to recognize that there are times when a waiver may be requested that would infringe on community integration, independence, etc. because of health, safety and well-being issues.
6100.43	Regulatory waiver - (f) – This makes no sense as written. If the request involves the “immediate protection of the individual’s health and safety”, and the provider has to submit the written waiver request at least 24 hours to the individual and individual’s designee prior to actually requesting the waiver, then the provider is unable to protect the individual’s health and safety “immediately”. Immediate means immediate. Please consider adding an exception, or rewrite to allow a “presumption of waiver” with an immediate follow up to formally secure the waiver.
6400.43	(l) – Please provider greater clarity on the intent of this provision so that providers are better able to comply with it. Please explain how compliance will be tracked and monitored.

6100.44	<p>Innovative project - The introduction of Innovation projects is very positive, as it will allow for ideas that might not fit cleanly in the definitions. This is an excellent way to enable providers and families to pioneer new programming that could advance the development of best practice that better serve individuals with disabilities.</p> <p>Also, while it is good that the 6100s will allow innovation, it may be a moot concept if there is no permissible avenue to use waiver funding to cover the cost of the new service or program. ODP should explain how innovation projects will be paid for, either through the waivers or separate fund.</p> <p>Also, as a general matter, there is significant concern with all of the requirements spelled out that "must" be included in a project proposal. Instead of saying "must", please consider saying "must include sufficient information on which a prudent and informed decision can be made by the Deputy Secretary. As much or all of the following information should be provided:" It will be in the provider's best interest to submit as much of the information as possible. However, there may be certain information that simply is not available or not worth developing and submitting given the nature of the project. The Deputy Secretary is under no obligation to approve the project as submitted, and if he or she believes certain key information is lacking, it can be returned for fine tuning.</p>
6100.44	<p>Innovative project – (b)(8) – Please clarify that an agency's governing board or an existing board committee could satisfy this requirement. Depending on the innovative, it may add unnecessary bureaucracy to create a new committee.</p>
6100.44	<p>Innovative project – (f) – Please consider lessening the burdensome requirements in this session. It could suffocate innovation before it even gets off the ground.</p>
6100.44	<p>Innovative project – (b)(14) – Please clarify the intent of this provision, which requests a "description of who will have access to information on the innovation project?" Please clarify whether a waiver would be necessary if access to records to a partnering agency was granted by the individual.</p>
6100.45	<p>Quality Management – The proposed definition of quality management is better than the existing one because the existing definition is too open ended.</p>
6100.45	<p>Quality Management - The new EIM system currently has less dynamic reporting features than the former system. This has decreased amount and ease of access to incident trend data, and more time and resources are required to create the same trend and analysis reports previously available. It is requested that the department make enhancements to its IT system to support the additional data and analysis requirements contained in the 6100 regulations.</p>
6100.45	<p>Quality Management – General comments. Areas of performance data have been expanded in the 6100s. Although the data will be beneficial, it will require more staff time, tracking tools and sophistication for all agencies. Rates do not include the additional staff time and tracking tools. Larger agencies may have staff to provide quality management, but smaller agencies will have to add responsibilities to already overburdened staff.</p> <p>Also, these requirements are too prescriptive. Please consider using them as examples of what can go into a QM plan, but do not require them.</p> <p>Also, at a minimum, ODP training is needed for providers on trend analysis, how to analyze and successful learning and application of training, systemic improvement, and measures to evaluate the success of the plan.</p>

	<p>Also, providing examples of low-cost tracking tools or ones that are developed as a statewide initiative will be helpful.</p> <p>ODP has issued a QM Bulletin with requirements for the areas providers must address in their QM plans, and it was based on state priorities – please clarify whether that bulletin still be applicable.</p>
6100.45	<p>Quality management - (a) – Please strike the requirement to use a “form specified by the department.” Sometimes other local and state agencies already have forms that are used and required. In the interest of not creating unnecessary bureaucracy and using staff time wisely and efficiently, please change the language focus on submission of the data elements rather than using a consistent form. If the department insists on requiring a form it prescribes, please share it in draft form with stakeholders before finalizing it.</p>
6100.45	<p>Quality management – (b)(1) – This should be clarified or deleted as it is not measurable. Measuring every possible outcome contained in an individual’s PSP is impossible. There are not enough resources in the system to do this.</p> <p>Also, it is not clear how a provider would measure. It is not clear whether it need to be done for every person served by the agency. It is not clear whether it would be done by service (e.g., an individual could receive several services from one provider and make progress in residential goals, but not in their vocational goals, etc.). It is not clear whether trying to simply preserve skills as a person ages would be considered “progress.” It is not clear whether it means progress in the utilization of units or an individual’s actual progress to goal outcomes.</p> <p>Also, please clarify whether outcomes will be or should be standardized? Experience shows that SCs develop outcomes that range from “Tom has a competitive job” to “Tom will earn money to do the activities he enjoys.”</p>
6100.45	<p>Quality management - (b)(3) – Please clarify whether this will mean the provider still determines the goals in their QM plan or whether the state will now say exactly what the goals will be that the provider needs to work on.</p> <p>Also, please include the list of state assurances included in 42 CFR441.302.</p> <p>Also, please clarity how (3) is different than (9).</p>
6100.45	<p>Quality management - (b)(5) – Please include a minimum frequency standard.</p>
6100.45	<p>Quality management - (b)(6) – This should be clarified or deleted as it is not measurable – it is not clear how providers are supposed to analyze successful learning. Please clarify whether providers would be required to test adults on everything taught. Please clarify whether a test is the same as analyzing learning.</p> <p>Also, please define the core competencies so that it is not left to interpretation, and please clarify how compliance with this requirement will be evaluated.</p>
6100.45	<p>Quality management - (b)(7) – Please consider removing staff satisfaction from the regulation. Results would be very subjective, and while it may provide the agency with useful information, sometimes things that lead to staff unhappiness are really out of a provider’s control (i.e. low pay, working weekends, holidays, and nights, completing required paperwork, etc.).</p>

6100.45	Quality management – Please clarify how (c) is different than (a).
6100.46	Protective Services – (b) – Please add the word “involved” after “the” and before the second reference to “staff”.
6100.46	<p>Protective Services - (b) – In the third line, please clarify whether the word “an” should instead be “the” or “any” when referring to “individual”. As written, it is not clear which individual or individuals the provision is talking about. It is recommended that it say “any individual”, which would make it clear.</p> <p>Also, if the abuse is confirmed, this regulation as written seems to usurp the providers’ right and flexibility to determine staff disciplinary action. It is recommended that the sentence in (b) end after the word “concluded”, and the rest of that sentence be changed to read “Once concluded, the provider would initiate internal disciplinary action as appropriate.”</p> <p>Also, when it says “until...the investigating agency has confirmed that no abuse occurred”, please clarify what happens if the investigation is inconclusive, which agency is meant, and what happens in the event that different “agencies” come to different conclusions (e.g., agency doing a certified investigation vs. protective services agency).</p>
6100.46	Protective services - (c)(1-5) – Please clarify whether the reporting mechanism will still be thru HCSIS or if there be an additional method of reporting added.
6100.46	Protective services - (c)(3,4,5) – If a provider is completing a report on EIM, then this should suffice for notifications unless it is a report that needs to be submitted to APS or Office of Aging.
6100.47	Criminal history checks – (a)(1)and(b) – These two provisions overlap – the first seems to cover every single staff person imaginable. Please review what the department is trying to accomplish and rewrite to do it.
6100.47	Criminal history checks – (b)(1) – Please clarify whether there is an age requirement, since it is believed that criminal history checks may not be completed on children.
6100.47	Criminal history checks – (b)(3) – Please clarify who is responsible for getting the criminal history check if the consultant is billing ODP directly (the consultant, SC, etc.?).
6100.47	<p>Criminal history checks – (d) – Please consider rewording as follows: “Individuals providing paid or unpaid supports with direct contact with the individual in services.” If the department keeps the “natural supports” reference, please consider changing to “Individuals delivering natural supports”.</p> <p>Also, there is a concern whereby a family member (who is providing natural supports) could be a convicted sex offender but it is unknown to others – this person would seemingly be exempt from having to get a criminal history check.</p> <p>Also, natural supports can also include volunteers (e.g., a local church group helping an individual get to and from church every Sunday). Please clarify whether (b)(5) of this section would trump (d).</p>
6100.48	Funding, Hiring, Retention, and Utilization - (a) – This requires hiring in accordance with the applicable provisions of the OAPSA. However, the court held some of these hiring provisions as being unconstitutional on its face. Please provide clarity in the regulations which provisions are applicable. (Peake v. Commonwealth 2015; Nixon v. Commonwealth 2003)

6100.49	<p>Child Abuse History Certification. Rather than requiring each provider to interpret the Child Protective Services Law, please insert language in this section for what is required and not required. At a minimum, please clarify whether providers who do not provide services for individuals under age 18 need to now begin to require child abuse clearances.</p>
6100.50	<p>Communications - (b) – Please clarify who provides this assistive technology. Presumably if it is indicated in the PSP, it would be something provided and reimbursed, but the language as written does not reference the PSP. Please clarify whether each provider must provide it independently and/or regardless of the PSP, if the individual is responsible for the cost of the technology, etc.</p> <p>Also, please clarify which provider is responsible when there are multiple providers involved in supporting an individual.</p>
6100.51	<p>Grievances – There should be a definition in the regulations of a grievance.</p>
6100.51	<p>Grievances – (h) and (i) These are not realistic timeframes. Resolving a grievance in 21 days is not likely, depending on what is considered a grievance. Please consider revising.</p>
6100.51	<p>Grievances - (i) – Please clarify how a provision is to comply with this provision if a grievance is made anonymously.</p>
6100.52	<p>Rights Team – General comment – 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.</p> <p>This entire requirement is reminiscent of the requirements in ICFs. There is a concern that ODP is turning the community system into the institutional system.</p> <p>Also, this is a new requirement that will add a significant amount of time that staff are not engaged with individuals in service. The team must review each incident, alleged incident and suspected incident of a violation of individual rights, review each use of restraints, analyze systemic concerns, design positive supports as an alternative to the use of restraints and discover and resolve the reason for an individual’s behavior. This is going to require a highly trained staff (Master’s level) trained in behavioral sciences.</p> <p>Also, please consider building these requirements in to the quality management plan instead of creating something new.</p>
6100.52	<p>Rights Team – (a) - In the chapter 6400 regulation changes, the statement is made that “the home must have a human rights team”, whereas in the 6100s it says the agency must have a team. Please clarify.</p> <p>Also, the creation and role of a “Rights Team” seems to overlap if not duplicate the requirements of the Restrictive Procedure Review committee (see for example 6400.194). Please consider not creating something new. Please consider allowing providers to amend their Restrictive Procedure Committee to meet the needs of 6100.52.</p>

6100.52	Rights team – (a) – Please provide clarity in the regulations as to what a “county mental health and intellectual disability program rights team” is.
6100.52	<p>Rights team (b)(1) – General comment - Having a meeting of the rights team for each incident, alleged incident and suspected incident of a violation of rights is going to be problematic, because the rights are so broadly drawn. For example, 181(b) “an individual shall be continually supported to exercise the individual’s rights”, while sound philosophically, is incredibly vague and open to interpretation, and fails to take into account the individual’s functional ability. The same problem exists with (c) an individual shall be provided the support and accommodation necessary to be able to understand and actively exercise the individual’s rights. It is one of those regulations that will be almost impossible to validate for compliance without becoming extremely burdensome. Considering that violation of rights is also an incident which must be reported, the regulations would now require that an allegation of rights violation be reported as an incident, investigated by a Certified Investigator, and the reviewed by a rights team consisting of the Provider, the individual, the SC, an AE representative. Interpretations have often differed on what constitutes an incident, so in the example of 181(c), an SC could decide that a provider has allegedly violated an individual’s rights by not allowing him/her to drive a forklift as desired even though he/she is legally blind, cannot drive and would pose a hazard to others. Yet the individual has under 6100.182 (e) has the right to make choices and accept risks. While the example seems to border on the absurd, providers have had similar types of situations. One SC identifies his/her responsibility to support one particular individual without regard to how it affects others. And a lot of time, energy and money is wasted by a provider in defending themselves.</p> <p>If this section is kept intact, please replace “alleged” with “founded”. Often reports are made by disgruntled employees, or perhaps an individual who enjoys the attention paid for making allegations that are not founded. Keeping “alleged” would end up taking time and resources from needed service time, and may have an unintended result of giving more attention to a negative behavior. Such issues are best dealt with by the PSP team.</p> <p>Also, please clarify whether this section includes individual-to-individual incidents.</p>
6100.52	Rights Team – (b)(2)(i)(ii)(iii) – Please reconsider these provisions. This is not the role of a rights team. Furthermore, it would take up excessive time. This is the role of a behavioral supports professional, psychologist, etc., working with the individual, etc. A rights team is to look at rights violations. It would be better to have a provider behavioral interventions review committee to take this on (e.g., meeting every 3 months) and then have a human rights committee that reviews rights violations, any restraints in terms of rights violations, etc. (meeting every 6 months).
6100.52	Rights Team – (b)(2)(iii) - In some instances, the reason for an individual's behavior cannot be discovered. However, potential causes can be identified. Please reword to allow for more practical application of the requirement.
6100.52	Rights Team - (c) – Please consider changing this from requiring that an individual be part of the team to considering it on a case by case basis as recommended by the PSP team and/or allowing an exception if including the individual is likely to be detrimental to them. For example, including the individual in the team could re-traumatize an individual who has been abused by making them recount the experience. This should be something that is considered on a case by case situation and recommendations of the PSP team.

6100.52	Rights team - (d) – Please consider adding language that ensures the confidentiality of the individual. Having a majority of the members of the team be those who do not provide direct support to the individual will make it difficult to ensure confidentiality.
6100.52	Rights team - (f) – Please considering “if there are incidents to review” to this provision. As written, requiring the team to meet at least once every 3 months is going to be burdensome. These meetings will be in addition to the PSP meetings! This requirement is not consistent with having an “everyday life”. Nobody else in society is required to have so many meetings about their lives. Also, this is an unfeasible requirement since it will be impossible in all cases to get family members together.
6100.54	Record Keeping – general comment – Please consider making it clear that electronic records are allowed and recognized.
6100.54	Record Keeping – (c)(1) - Records retention for 4 years is a sensible timeframe
6100.54	Record Keeping – (b) – Please review this statement in the context of whether it aligns with HIPAA. For example, HIPAA requires that records be released to certain entities under certain circumstances that are not identified in this section, such as courts or other legal entities, the Department of Health, the CDC, etc.
ENROLLMENT	
6100.82	HCBS Provider Requirements – (b)(3) – There is a concern that providers are being asked to agree to this provision without knowing what such trainings are, what is involved, how much time and cost may be involved, etc.
6100.85	Ongoing HCBS Provider Qualifications – (b) – Please clarify how frequent the interval is.
6100.86	Delivery of HCBS – general comment – Please clarify that this section is not intended to limit a provider’s ability to conduct private-pay business, and that these provisions are applicable only to services funded by waiver, state plan, or base funding.
6100.86	Delivery of HCBS - (d) – Please clarify what is meant by the statement “in accordance with the individual’s PSP”. There is confusion as to whether this is a reference to the Frequency & Duration statement and/or staffing ratios in residential. Compliance may be hard to achieve without greater specificity.
TRAINING	
6100.141	General comments. It is positive that there will be greater consistency to the training requirements. Also, it is positive that the training is intended to provide more protection for the individuals served.

	<p>Also, it is positive the mandatory training requirement topics (e.g., the removal of the requirement to train on ODP's mission and vision) have been simplified and/or reduced and providers have been given greater control over the orientation and annual training plans.</p> <p>Also, there are concerns about instituting very specific requirements in relation to exact "8 hours" of training on the core areas and 12 overall. It is recommended that ODP simply require that providers meet the requirements of the core training and completing 12 hours (and remove the 8 hours on the core training specification).</p> <p>Also, there is a concern that the training requirements will discourage volunteers.</p> <p>Also, there is concern that these requirements will require additional funding and resources that ODP is not making available.</p>
6100.141	Annual Training Plan – (a) – Please clarify that this does not mean that every staff member must have a personalized training plan; rather, a provider may look collectively at the overall needs of the individuals and develop training around the greatest needs/topics based on data, overall quality management goals, etc.
6100.141	Annual Training Plan - (e) – Please define "core competencies" so that it is not left up to interpretation by the AEs.
6100.141	Annual Training Plan – (e) – Please include a timeframe when it comes to how long training-related records must be retained.
6100.142	<p>Orientation program - (a) – Please clarify if this regulation is really intending to mandate training and the tracking of training for all the listed categories of staff. If so, please clarify the purpose. It is recommended that all categories of people who do not have direct contact with individuals and/or are involved in the development or implementation of services to individuals be deleted from this requirement.</p> <p>Also, please clarify if management staff of agencies that provide other lines of services, such as behavioral health, are also included in the requirement.</p> <p>Please clarify if fiscal staff who are in a totally separate building from any client program are included in the requirement.</p> <p>Also, this entire section of the 6100s has also been inserted into the licensing regulation sections (see 6400.50-52). As such, please clarify if this mean a provider would have to produce training plans and records for all of these categories of staff during an inspection by BHSL.</p>
6100.142	Orientation program – (a)(2) – Please consider deleting this requirement, or clarifying the purpose behind requiring housekeeping and maintenance staff be trained in facilitating community integration and supporting individuals in maintaining relationships.
6100.142	Orientation program - (a)(8) – Please clarify who is responsible for assuring that consultants have training – especially those that bill directly to ODP (e.g., the SC?).
6100.142	Orientation program - (b)(1) – Please clarify whether there will there be specific training guidelines for each of the areas specified.
6100.143	Annual Training – Please clarify whether SCO training is same as other providers. The change in training requirements for Supports Coordinators from 40 hours to 24 is positive.

6100.143	<p>Annual training - (b) – Please clarify if this regulation is really intending to mandate training and the tracking of training for all the listed categories of staff. If so, please clarify the purpose. It is recommended that all categories of people who do not have direct contact with individuals and/or are involved in the development or implementation of services to individuals be deleted from this requirement.</p> <p>Also, please clarify if management staff of agencies that provide other lines of services, such as behavioral health, are also included in the requirement.</p> <p>Please clarify if fiscal staff who are in a totally separate building from any client program are included in the requirement.</p> <p>Also, this entire section of the 6100s has also been inserted into the licensing regulation sections (see 6400.50-52). As such, please clarify if this mean a provider would have to produce training plans and records for all of these categories of staff during an inspection by BHSL.</p>
6100.143	<p>Annual Training - (b) – It is recommended that if DHS insists that all non-direct care staff must have specific topics (e.g., reporting of abuse), then the regulation address the topics required, but not the amount of time. The length of time a training should be should not be specified. People learn at different rates, and the important issue is that they understand the topic, not the amount of time spent. This would be true for volunteers and interns as well, especially since they may have a limited amount of time to spend with an agency – it could discourage involvement if the amount of training time is cumbersome.</p>
6100.143	<p>Annual Training - (b)(2)(3) – Please clarify whether providers who contract with consultants that bring on volunteers will be required to show proof that the consultant and is volunteers have 24hrs of training.</p>
6100.143	<p>Annual Training - (c)(1,2,3,4,5) – Please clarify that BHSL will included these 8 hours as part of the 24 hours required for direct care and those who supervise direct care. There have been situations where licensing will not accept what they consider redundant training. If that is the case, then in effect these regulations will require 32 hours of training, which is an additional cost and resource burden on providers.</p>
INDIVIDUAL RIGHTS	
6100.182	<p>General comment – Generally and overall, the changes to these rights are positive - they were in need of being updated.</p> <p>However, there is concern that many of the rights articulated cannot be regulated because they are too subjective (e.g., dignity and respect). Providers already complete Civil Rights surveys and maintain non-discrimination policies as part of licensure and monitoring. This section could require duplicative policies, procedures, training, and documentation.</p>
6100.182	<p>Rights of the Individual – (f)(g)(i) – Please consider allowing exceptions for individuals with special circumstances when it comes to individual health and safety and community safety.</p>
6100.182	<p>Rights of the Individual - (f) – While we strongly support the philosophy of this provision, please clarify how this provision is supposed to be implemented in light of the department’s plan to eventually require all individuals in day program to spend at least 75% of their time outside of a licensed facility (e.g., if one person refuses, and there isn’t staff to take the others, wouldn’t the rights of the others be violated?). Please consider modifying the language so that, if the</p>

	<p>individual does agree to enroll in a group community participation service, then they are committing to participate in those activities. If the individual is not interested in a group activity, then he/she should reduce or discontinue services, so as not to affect programming for other individuals in that service.</p>
6100.182	<p>Rights of the Individual – (g) – While we strongly support the philosophy of this provision, there is strong concern about how, as a practical matter, this will play out in the real world. Again, please consider how a provider is supposed to meet the requests of three individuals who all want to participate in different activities in the community at the same time when the rate cannot support triple staffing. And please clarify whose rights in that case are to be honored when 3 individuals want to pursue 3 different schedules.</p>
6100.183	<p>Additional Rights of the individual in a residential facility - (a) – While the philosophy of being free to make choices is supported, there are practical concerns with the how this provision will be implemented. For example, there are many documented instances of individuals who have been taken advantage of by friends and family. There should be a process that allows the team (with the individual’s input) to limit some access.</p> <p>Also “at any time” makes no sense. Allowing visitors at any hour will infringe upon the other individuals’ rights. While section 184 introduces the concept of “negotiating” choices, it does not address situations whereby different individuals in the home are unable to come to a resolution supported by everyone. Please clarify how an ultimate decision is to be made when negotiations are unsuccessful.</p> <p>Also, please clarify how provider liability will be handled if someone is injured or abused by a visitor that the provider “allowed” the individual to be alone with.</p> <p>Please consider allowing exceptions to these sections when it comes to individual health and safety and community safety.</p>
6100.183	<p>Additional rights in a residential facility - (d) – Please clarify how this provision is implemented if an individual has a representative payee (that person has control over how the individual spends their money).</p>
6100.183	<p>Additional Rights in a residential facility – (g) – There is a concern how a provider is to ensure safe and swift egress in the event of a fire or other emergency, conduct bed checks, or accommodate a roommate who cannot independently operate the lock. These issues are not adequately addressed simply by following 6100.184, negotiation of choice.</p>
6100.183	<p>Additional Rights in a residential facility - (h) – Please clarify how this provision should be implemented if the individual has Prader Willi, or a doctor has issued orders regarding allergies, dietary limitations, etc.</p>
6100.184	<p>Negotiation of choice. This is a positive addition. It will not adequately address all situations, but it is positive.</p> <p>Please add language that addresses a situation when the negotiation fails. Please clarify who makes the ultimate decision and who rights ultimately trumps the others’ rights.</p> <p>Also, please clarify how this section is to be documented to demonstrate compliance.</p>
6100.186	<p>Role of Family and Friends - (b) – There is a concern that this implies that the provider is required to make all accommodations necessary without any acknowledgement of feasibility or</p>

	<p>reasonableness. It also fails to say who determines what is necessary or when it is necessary. For example, there is a big difference between connecting family and friends by Skype versus flying a family member in from across the country. This is an extreme example but it is the kind of thing that can cause a provider to end up defending themselves in legal proceedings. Please add language that requires “reasonableness” and “feasibility”.</p>
<p>PERSON-CENTERED SUPPORT PLAN</p>	
6100.221	<p>Development of the PSP – General comment - The general language change and focus on person-centered planning are very positive.</p> <p>Also, streamlining the PSP by adding “auxiliary” plans such as “restrictive” plans and behavioral plans into the PSP is very positive for coordination of services/provisions.</p> <p>Also, this section promotes individual rights to be carried out more methodically.</p> <p>However, without extensive revisions to the current format, streamlining the PSP (with its new additions and addressing multiple environments) will be overwhelming. It is very possible that it will not be feasible for all of this information can be contained in one document. The ISP is very commonly a 40-60 page document in its current format.</p>
6100.221	<p>Development of the PSP – (b) – “Service implementation plan” is not defined or mentioned anywhere. Please add definition.</p>
6100.221	<p>Development of the PSP – (c) – Please define “Supports Coordinator” and “Targeted Supports Coordinator”.</p>
6100.221	<p>Development of the PSP - (f) – Please clarify what assessment and who is responsible for this assessment. (This may be clear for residential settings who are required by 6400s to complete an assessment summary; however, it is not clear from those not in a residential setting.)</p>
6100.222	<p>The PSP Process - (b)(4) – The inclusion of the phrase “to the maximum extent possible” is very positive - this is a key phrase, useful to clarify the needs, and it would resolve many of the issues raised in other sections.</p>
6100.222	<p>The PSP Process - (b)(5) – Please clarify how providers will demonstrate compliance.</p>
6100.222	<p>The PSP Process - (b)(9) – Please clarify which guidelines.</p>
6100.222	<p>The PSP Process – (b)(11) – Please clarify how compliance will be demonstrated.</p>
6100.223	<p>Content of the PSP - General comment – Please clarify whether guidelines to the PSP following the waiver amendments will assure more consistency among AEs in approving/authorizing PSPs. Experience suggests that ISPs are very rigid and less person-centered now because of the compliance driven philosophies of the AEs.</p>
6100.223	<p>Content of the PSP - (8) - The wording “provide sufficient flexibility to provide choice by the individual” is very positive.</p> <p>It will be interesting to see how this plays out in the PSP itself, in terms of how the frequency & duration statement is written and in the monitoring of supports being provided.</p>

6100.223	<p>Content of the PSP - (8) – Experience suggests that the phrase “amount, duration and frequency” may be causing more problems for providers than any other single requirement. Some of the issues that have been raised: (1) The ISP should specify the number of units within the time frame, i.e. 125 units weekly. (2) The ISP should specify days and times of service, i.e. Monday, Tuesday Wednesday, Thursday, Friday from 9 am to 2 pm. (3) the ISP should specify Monday, Tuesday, Wednesday, Thursday, Friday, 5 hours per day. (4) The ISP should just list total units for the year i.e. 4600 units. And on and on and on. Every SC writing the ISP has their own idea as to which is more appropriate. Where this becomes a problem is the requirement that <u>any variation</u> from the schedule must be explained in the documentation. For some programs, attendance hours are often dictated by transportation or other factors that are beyond the provider’s control. For example, Tom is scheduled to attend Monday through Friday, from 9:00 am to 2:30 pm according to the ISP. Tom arrives consistently around 9:30 am and leaves by 2:00 because those are the hours his transportation provider can transport. Neither Tom nor the provider has control over this, yet the provider has to document every day why he is short 1 hour in service, because there is a variance from the amount and duration. Another example: Tom is scheduled to attend the program service Monday through Friday, but his attendance is sporadic, sometimes due to medical appointments or family obligations, and sometimes he just doesn’t show up and no information is provided. Once again, the provider has to document this because it is a variation in amount, duration and frequency. In fact, a simple attendance document is used to track this (i.e. absent or present) but it is not considered sufficient. So the provider ends up documenting not only when services are provided, but documenting when they aren’t as well. There has to be some way of resolving this so that documentation isn’t so overburdening. We have been in the situation when, as the result of our lead AE provider monitoring, we have had to change our documentation as to how to record amount, frequency and duration, only to have another AE recommend it be changed back in a subsequent monitoring. Depending on the AEs involved, it may or may not have to be changed back. It is similar in licensing - one year something is changed as the result of non-compliance, but next year it is changed back as the result of yet another non-compliance.</p>
6100.223	<p>Content of the PSP – Please clarify what (11) means relative to (10) or other items. Please clarify whether the phrase “before other activities or supports are considered” refers to those related to employment or vocational training only, or all other activities or supports.</p>
6100.223	<p>Content of the PSP – Please replace “pursuit” with “consideration.” The governor’s employment first policy requires competitive integrated employment to be the first consideration, not the first pursuit.</p>
6100.223	<p>Content of the PSP - (12) – Please define or explain education and learning history.</p>
6100.223	<p>Content of the PSP – Please clarify that, if an individual has a health and safety issue with access to food, this is where it can be described and an exception to the rights section is allowed.</p>
6100.223	<p>Content of the PSP – (17) – Please delete. It is not clear why this is included in the regulations, unless this is where the PSP team is permitted to determine that certain things otherwise required by the regulations are not appropriate or necessary for a particular individual based on their needs.</p>
6100.223	<p>Content of the PSP - (19) – This language is a better clarification of who needs a “back-up” plan than what is currently in the Chapter 51 regulations, but it is still too open-ended. For example, an argument could be made that all of our clients are “at risk” in the absence of their designated support person – so are we returning to back-up plans for all?</p>
6100.223	<p>Content of the PSP - (21) – Please clarify how signatures are included in the PSP.</p>

6100.224	Implementation of the PSP – Please clarify who the “identified” provider is in the PSP (e.g., the agency, a staff by title, a staff by name, etc.). Staff by name is very difficult because often there is more than one staff providing the support or turnover of staff is so frequent that maintaining accurate information in the PSP is impossible, requiring too many revisions.
6100.225	Support coordination and TSM - (a) - This is the first indication that a PSP will have an annual review. Earlier language just speaks to “initial and updated PSP”. Please be sure this is clearly indicated in the regulations.
6100.225	Support coordination and TSM - (6)(7)(and throughout that section). It is greatly appreciated that the timeframes were removed. This also involved removing them from the licensing tools, which would have been a challenge for providers. Great change.
6100.226	Documentation of support delivery - (b) – Please delete references to the “service implementation plan” as another plan does not need to be created. However, if the term is left in, please clarify whether there will be guidance or requirements related to the “service implementation plan” (which is also referenced in 6100.221[b]) or if the format and content of this plan will be left solely to the provider, as long as it is consistent with the PSP.
6100.226	Documentation of support delivery – (c) – Please clarify what it means to document “each time a support is delivered”. Please clarify whether it relates to the amount, frequency and duration, or if it relates to units, etc. For example, if a services is authorized in 15-minute units, the language might be interpreted to require documentation every 15 minutes. Under Act 51, a monthly progress note that reviewed the information for the past month’s services was considered sufficient when it was an ongoing service such as adult day training. There is no mention in the 6100s of a monthly progress note and the requirements for content of the support delivery documentation are significant if they must be done for every unit of service. Also, please clarify how this would apply to group home living, seeing how it would be impossible to document everything that is provided all day. Outcomes are documented, but not every single thing that staff does throughout the several-hour shift is documented.
6100.226	Documentation of support delivery – (e)(5) - Requiring documentation that reflects amount, frequency and duration for a residential service doesn’t make sense. Please clarify.
6100.226	Documentation of support delivery - (f) - This seems to be the same as the 3-month PSP review required by the licensing regulations (see 6400.186[a-b-c]), except the 3-month review in the 6100s is to be done “in cooperation with the support coordinator.” Please clarify what exactly that means and if the quarterly PSP review in the licensing regulations will satisfy the requirements of this 6100 regulation. Also, please clarify if this be considered a quarterly “progress note”. Also, in the 6400s, etc., in sections like this, the language seems to flip back and forth between ISP and PSP. Please make consistent.
EMPLOYMENT, EDUCATION, AND COMMUNITY PARTICIPATION	
6100.261 6100.262 6100.263	General comment – While it is recognized that this section is an attempt to incorporate the CMS HCBS Rule and WIOA into the 6100s, please clarify how a provider’s compliance with these will be evaluated or measured. For example, in 6100.263 – please clarify how a provider ensures that

	<p>an individual has “access to a full range of options...in...post-secondary education”, unless the provider only needs to be concerned with (3) Lifelong learning.</p> <p>Also, the department should ensure the funding necessary for individuals to access the community in accordance with the individual’s PSP.</p>
6100.262	<p>Employment - (a) – After the word “shall”, please insert “be given information about competitive, integrated employment as well as information about resources that could assist the individual in their pursuit of competitive, integrated employment. If the individual wishes to pursue competitive, integrated employment, the individual shall”</p>
6100.262	<p>Employment - (b) – As written, this reflects current service definitions. As proposed, ODP’s waiver renewals will no longer have prevocational as a service. Either strike the provision and leave it for the waiver, or insert after “prevocational” the words “, pre-employment, or skill development”, and after “support” insert “provided in a licensed facility such as a vocational facility”.</p>
6100.263	<p>Education - In the third line, please change “have access to” to “be given information about, and supported if chosen,”</p>
TRANSITION	
6100.301	<p>Individual Choice – (a) – Add “or supports coordinator” in addition to provider.</p>
6100.302	<p>Transition to a New Provider – (b)(1) - Transportation should be part of mutual agreement between the current and new provider. Each provider should take some responsibility for this. It could be added to the transition plan, including specific dates.</p>
6100.302	<p>Transition to a New Provider - (b)(2) - We agree with the requirement that transportation be arranged if included in the service for a person to visit potential new providers. To implement the Everyday Lives’ value of choice, it is essential that the current provider participate and assist in making a transition smooth without adding additional barriers.</p>
6100.303	<p>Reasons for a Transfer or a Change in Provider – (a) - Discharges and transfers have occurred due to irreconcilable differences with family members. This section should either be changed to allow transfers when there are conflicts with family that are detrimental to the individual and/or other program participants and reasonable efforts to resolve the conflict have been exhausted, or language should be added somewhere else in the regulations that enable the provider to take steps to mitigate the detrimental effects the family is having on the individual and/or other program participants.</p>
6100.303	<p>Reasons for a Transfer or a Change in Provider – (a)(2) – Add clarity who determines if the individual’s needs are not being meet.</p>
6100.303	<p>Reasons for a Transfer or a Change in Provider - (a) – There needs to be a clause that allows the provider as an autonomous entity to refuse service without having to prove it meets one of the grounds listed. There are numerous possibilities as to when an individual may choose something that the provider is unwilling to provide for any number of reasons beyond “requiring a significant alteration of the provider’s program or building” as listed in (3). Liability is a major one, but not the only one.</p>

6100.303	Reasons for a Transfer or a Change in Provider – (b) – Add clarity as to what is considered a “support provider”.
6100.303	Reasons for a Transfer or a Change in Provider – (b) – Do not agree with this statement as written. This would mean the provider cannot change a direct support professional or behavioral support professional or transfer to another home without individual’s permission? Instead, it should say that the provider will make every effort to accommodate the wishes of an individual; however, changes in location of services or those performing the service may occur and the provider shall make every effort to assist the individual in the transition.
6100.303	Reasons for a Transfer or a Change in Provider – Another reason should be added, which is that the provider is closing the home and there is no available place to transfer within the agency.
6100.303	Reasons for a Transfer or a Change in Provider – (b) – Consider moving the word “retaliation” from the third line to the second line, replacing “response”.
6100.304	Written Notice – Overall, this requirement is excessive. It makes much more sense to require a PSP review team meeting to discuss the issues of the individual’s service needs and the appropriate changes. All of the items identified as requirements in the written notice would be better handled as part of a team meeting under 306 (transition planning). Then all that is required for notification is that the provider contacts the SC, and the SC sets the meeting.
6100.304	Written Notice (a) – Please add clarity as to who on the PSP team is responsible for writing the letter when the individual initiates or chooses the transition. It should be clear that the current provider is not responsible even though it is a member of the PSP team. Consider saying the SC should be the designated party and/or that the SC will support the individual in writing the letter.
6100.304	Written notice – (a) – It is positive that the individual has to give a 30-day notification.
6100.304	Written notice – (a) and (b) – There should no difference between how many days an individual must give and how many a provider must give. Change to make it consistent – 30 days for an individual and 30 days for a provider.
6100.304	Written notice – (b) – Add language that says the x-number of day notification does not apply to emergency situations and/or where an individual’s immediate health and safety may be at risk and/or where that individual’s actions could be an immediate health and safety issue for other program participants.
6100.305	<p>Continuation of support – While we agree that the current provider continuing support during the transition period is essential for assuring the person’s needs are being met without lapses in service and a smooth transition, please include a reasonable limit as to how long a provider is forced to continue services after they have given notice. There would have to be a very good reason why a provider is giving notice in the first place and to then be required to continue supports in a difficult, perhaps dangerous situation is not fair to the provider.</p> <p>Also, this should include an exception for circumstances where the individual is a threat to self or others, or the provider is unable to meet the needs of the individual jeopardizing the health and safety of the individual. Without such an exception, it puts the provider in the position of continuing to provide services after having acknowledged that the provider cannot guarantee safety while doing so, placing full liability on the provider if someone is injured.</p> <p>Also, there needs to be a process outlined for requesting the “directive” from the department or managing entity.</p>

	<p>Also, based on the phrasing, there is no requirement on the part of the Department or designated managing entity to make a decision quickly. Please add language requiring the department to make a decision in a timely manner.</p> <p>Also, criteria should be spelled out that indicates on what basis the department will make their decision, as well as what the appeal process will be.</p> <p>Also, in situations where the provider has to continue providing services for an extended period of time, the provider's cost should be covered even if an exception to the normal rate process is necessary.</p>
6100.307	Transfer of Records – (a) - Recommend adding "Upon receipt of signed releases", before "The provider shall transfer a copy of the individual record..."
6100.307	Transfer of Records – As written, this section implies that a copy of the entire record has to be provided to the new provider. An individual's record can include items not generated by the agency (e.g., a copy of a psychiatric evaluation if one was conducted). In such a case, the provider does not have the legal right to give a copy of the document since it does not "own it." There are also additional concerns under HIPAA that affect how information can be released that would impact this requirement. Finally, since the ISP and the ISP reviews (as the primary documentation) are maintained by the SC, and given that the SC should be providing this to any provider chosen by the individual, there should be no need for every provider to transfer copies of their files to new providers.
6100.307	Transfer of Records – Add clarity as to what parts of the record and how far back they should go. This could be an exceptional amount of information and providers do not have the right to give any information to another provider unless the individual signs a release.
POSITIVE INTERVENTION	
General comment	Overall, this section should be reviewed and rewritten by a person with a clinical background. As written, it is lacking best practice. Please define as much of the terminology as possible.
6100.341	Use of Positive Intervention – Please do not use the word "dangerous" behavior – it is very stigmatizing. Consider using "unsafe" instead.
6100.342	PSP – Please be sure the department provides instruction or a format as to how this information is to be entered to the PSP? It is not clear whether this replaces the SEEP or crisis or behavior plan.
6100.342	PSP - Character limits will need to be expanded in the PSP in order to accommodate the level of detail required in items 1-5. At present, ISP field length for the BSP is 8000 characters. The limitation requires the SC to edit down to the character limits or split the information into different sections of the ISP, both of which would challenge compliance with this section.
6100.342	PSP – (2) "Functional analysis" is a clinical term. It is unclear whether the language as written requires a formal functional analysis by someone certified or specially trained. It might not be reasonable in all circumstances; for example, the person who endangers him/herself by eating non-edibles because of Pica. Please either define functional analysis and suggest instead "analysis", as this can then include genetics, trauma, sensory, social stressors, mental illness, medication effects, etc. We need to move toward a multimodal approach to supporting individuals.

6100.342	PSP – This section is missing baseline of behavior - missing what has been attempted and results.
6100.342	PSP – (7) – It is not clear what this means (e.g., in regard to the behavior?). This is confusing.
6100.343	Prohibition of Restraints - It is commendable that PA is taking an assertive position regarding the use of restraints. We support the inclusion of the Positive Intervention section, but especially value the prohibition of restraints in this section.
6100.343	Prohibition of Restraints – (1) - This section defines seclusion as when the individual is verbally directed from leaving an area. It is possible that, to keep an individual safe from someone else, staff may need to be verbally request/redirect an individual not to leave an area of the home or program. The definition of positive intervention includes “redirection” as a positive intervention. Something does not seem right about this section.
6100.343	Prohibition of Restraints – (3) - The language should be clarified so that a compliance issue is not founded because of interpretation. For example, bites are typically released by pressing on the jaw – there are not a lot of ways to release a bite – either hold nose or press jaw at joint. This may be considered “application of pain” by a compliance person.
6100.343	Prohibition of restraints – (5)(i) – “support of the achievement of functional body position” is a good addition – while this should cover things like seat belts in wheelchairs that are designed to keep the person from falling out of the chair because of balance issues, etc., please add a reference to seatbelts as allowable for use in wheelchairs for safety to avoid future interpretation issues.
6100.343	Prohibition of Restraints - (5)(i and ii) – Please consider and clarify how the prohibition against a mechanical restraint interacts with restrictive procedures? (In other words, will mechanical restraints (such as bed rails), which are currently allowed to be used as long as there is a restrictive procedure plan, still be allowed?)
6100.343	Prohibition of Restraints – (5)(ii) – As written, devices such as a helmet for drop seizures, or seatbelts for balance, would only be allowed if the individual “can easily remove the device”. In reality, many individuals do not have the physical skills to remove such things as a helmet.
6100.343	Prohibition of Restraints – (6) - Wording is not correct – a manual restraint defined as a . . . or “for more than 15 minutes with a 2 hour period”. Should read “for more than 30 seconds.” Then add – “A manual restraint cannot be used “for more than 15 minutes in any 2-hour period””
6100.344	Permitted interventions – (a) – Please add clarity whether staff giving verbal prompts would make it involuntary.
6100.344	Permitted Interventions – Out of this entire section, it seems only voluntary exclusion and physical protective restraint are the only permitted interventions. There are many others. This section is not written well. Please consider adding clarity.
6100.344	Permitted Interventions – (g) – While this mentions that physical protective restraint can only be used by a staff who has completed the annual training requirements and the content of the PSP, language elsewhere is lacking that states what the staff must be trained in, what exactly physical protective restraints are, how to use them safely, and how to safely end the protective restraint. Please consider adding such information.

6100.344	Permitted Interventions - (b) through (g) refers to a “physical protective restraint” - this is defined in (h) but it also seems to be the same as a “manual restraint” as defined in 6100.343(6). It would be better and less confusing if the same term throughout was used.
6100.344	Permitted interventions – (c) and (g) seem to be redundant.
6100.345	Access to or the Use of an Individual’s Personal Property - (b) - Personal funds or property should be used if it is ordered as part of a legal proceeding; e.g., an individual causes damages to a hotel room - the hotel presses charges and the individual is ordered to make restitution. In this instance, it should be the individual who bears the cost as a natural consequence of the behavior. A caveat would be if the individual is not able to understand the ramifications of the situation, but that is not the same as consent.
6100.345	Access to or the Use of an Individual’s Personal Property - (b) - Unless this is applied specifically to provider-owned or operated property, this will be a challenging section to enforce and could function to push matters to the legal system for recourse by property owners. In a situation where damage has occurred to privately-owned property, 6100.345(b)(2) also challenges the SC role by requiring their presence to obtain consent for the individual to make restitution. That should be the role of the individual's representative payee. Also, add clarifying language that indicates what happens when the representative payee and the SC are in disagreement regarding payment of restitution by the individual.
6100.345	Access to or the Use of an Individual’s Personal Property - At times access to personal items may need to be limited as using them may involve self-harm or harm to others. While the language says that access may not be used as a “reward” or “punishment”, the worry is that this will be interpreted to violate rights. Please add clarity to avoid misinterpretation.
INCIDENT MANAGEMENT	
6100.401-405	General comment: Incident Management detail should be in policy and procedure rather than regulation so that necessary adjustments can be made in a reasonable manner and with reasonable timeliness. Does the information in this section currently reconcile with both ODP and BAS IM policy & procedures?
6100.401	Types of Incidents and Timelines for Reporting – (a) - <i>Suspected incident</i> needs to be defined.
6100.401	Types of Incidents and Timelines for Reporting – (a)(16) – Please clarify. Medical errors are currently reported and finalized within 72 hours. Including this incident type in this list will mandate the report within 24 hours and because of the way the EIM system works the finalization would be done at the same time (or, would it still be 72 hours for finalization, or would it be the same 30 days as required for all other incident types – 6100.404(a)?).
6100.401	Types of incidents and timelines for reporting – (a)(16) – If an over-the-counter medication is not prescribed by a physician, then it is not clear how it can be an error. If it is prescribed, then is it should not be necessary to specify over the counter medication. Also, please clarify whether this supersedes the regulation already found in PA Code 6000.901 Subchapter Q.
6100.401	Types of incidents and timelines for reporting – (a)(16) Adds medication administration errors to be reported in the 24 hour time frame. But this entire list is mentioned in the next section 6100.402 to be investigated. Please

	clarify whether the intent is to now investigate every medication error. We hope it is not.
6100.401	<p>Types of incidents and timelines for reporting – (a)(17) This is a new addition to reportable incidents in EIM (there is not currently a category in EIM where “critical health and safety event that requires immediate intervention such as a significant behavioral event or trauma” are reported). This could be interpreted many ways - and it would also be included in the list of incidents that would need to be investigated. Please be very judicious when comes to determining new types of incidents that need investigated. The emphasis needs to be on the types that truly need to be investigated to protect health and safety and improve quality rather than inefficiently using staff time.</p> <p>Also, this would require that a certified investigator conducts the investigation. Most agencies would consider the review of a critical behavioral incident “debriefing” and it would be done by the behavior specialist and/or program specialist. It seems unnecessary and an administrative burden to require a CI. In addition, in homes or day programs designed for individuals with challenging behaviors, conducting a certified investigation would slow things down considerably.</p> <p>Also, as written, it is too abstract (“critical health and safety event”) – develop and stick to a list so as not to miss things that need to be done or waste time doing things that do not need to be done.</p> <p>Also, please clarify what is meant by “trauma”. It will be necessary to have this specifically defined in order to avoid conflicting interpretations. Clarify whether this supersedes the regulation already found in PA Code 6000.901 Subchapter Q.</p> <p>Also, there seems to be a typo – seems that “as” is missing.</p>
6100.401	Types of Incidents and Timelines for Reporting - (b) – “Immediately” is not possible. Please include a time frame, such as 2 or 4 or 6 hours.
6100.401	<p>Types of Incidents and Timelines for Reporting - (d) - requires incident reports to be shared if requested. Please either delete or rewrite considering the amount of confidential information that is contained in some reports (especially when staff are involved).</p> <p>Also, notification to the individual and family when an incident is discovered and notification of the conclusion of an investigation is the current practice. Experience suggests that very few if any requests for incident reports are made by families but this requirement may “open the floodgates”.</p> <p>Also, the family is often the target of many of the reports SCOs complete, and giving them a copy of the report will be a problem.</p> <p>Also, provider reports of allegations that are not found to be confirmed would be a concern. Those completing the reports may hesitate to include confidential information in these reports. To require families to get a copy of all reports would be an unreasonable risk due to the fact that all allegations are reported regardless of whether there are facts to support them. The standard for what is reportable will need to be modified.</p> <p>Also, the system will need be set up so that it is possible to print a report with redacted information.</p>
6100.402	Incident Investigation – (b) and (c) - the two together imply that every incident must be investigated by a certified investigation since it specifically states incidents listed in 401(a) without exclusion. At this time, only certain incidents require investigation by a CI; to have every

	<p>incident investigated by a CI will be unreasonably burdensome on the provider. It is not reasonable to require that every injury, fire alarm requiring the fire department (which currently includes false alarms); emergency closure (even when due to weather), every medication error, etc. to be investigated by a Certified Investigator, with (presumably) an investigation report. Certainly they should be reviewed as part of quality management, but not investigated.</p>
6100.403	<p>Individual Needs – (a) – Please clarify. The phrase “investigating an incident” is used, which could mean these requirements are being added to a certified investigation. Even if they are not, this section could be really overwhelming if site-level incidents are included such as fire or law enforcement. Recently, the state has interpreted the notification of family in all incidents to include site level such as false alarm/fire department response. In a day program setting, that can mean 30 or more individual notifications, which have to be individually listed in the EIM notification screen. The way 403(a) reads, all eight of these “needs of the individuals” would have to be reviewed for each individual involved in a site level incident by a certified investigator with a formal report.</p> <p>Also, this section could be added to the ODP Certified Investigator’s manual, CI training, and review report tool for the review team instead of adding this as a regulation. By adding this as a regulation, it will have implications for monitoring that will result in each provider creating similar checklists or forms to “document” that individual needs were reviewed and “considered” even when it might not be necessary.</p> <p>Also, please clarify the purpose and expected outcome of the “review and consider” language.</p>
6100.403	<p>Individual Needs - (b) – This seems unnecessary since corrective action plans already have to be implemented, and 6100.405 requires analysis of incidents both individually and in aggregate.</p> <p>Also, please clarify who decides whether either action is appropriate. If it is left to the provider to decide, then it is not necessary to add this as a regulation to eventually be monitored. Also, please clarify whether this duplicates or supersedes the regulation already found in PA Code 6000.901 Subchapter Q.</p>
6100.403	<p>Individual Needs - (c) – Please delete. This entire statement seems unnecessary. This already occurs as part of the corrective action and PSP process. Therefore, adding it here adds more documentation requirements and a burden for the provider to show that they “cooperated.”</p>
6100.404	<p>Final incident report – Please add a bullet allowing for an extension due to external concurrent investigation or inability to get witness statements, etc.</p>
6100.405	<p>Incident Analysis - Many of the activities listed here for incident analysis should really be the function of the individual’s PSP team who is most familiar with the individual and what might help reduce incidents.</p>
6100.405	<p>Incident analysis – (a) – Please replace “incident” with “investigation”. The term “confirmed incident” is not a term that is commonly used or defined. And, if “confirmed” is simply struck and incident kept, then this section would require an analysis on all incidents, which is unreasonable.</p>
6100.405	<p>Incident analysis - (a)(1) – Concern that “analysis to determine the root cause” may be confused with “root cause analysis”, which is a technical term and has specific meaning. It would not be a good use of provider resources and time to perform a root cause analysis for each confirmed incident, nor would it be possible to do so. In fact, ODP gives specific guidance explaining this in its Risk Management Module, which covers the Core Functions of Risk Management and Root</p>

	Cause Analysis as a Preventive Strategy. A link to the transcript is here: http://documents.odpconsulting.net/alfresco/d/d/workspace/SpacesStore/018521be-cd4a-4d90-b75e-48f61b017558/Core Function 3 Preventive Strategies Transcript.pdf
6100.405	Incident Analysis – (a)(2) - Sometimes a corrective action is not appropriate, but required anyway. For example, an individual has a seizure that lasts six minutes. His PSP specifies that if the seizure is longer than five minutes, 911 should be called. At the 5-minute mark, staff call 911; who arrives shortly thereafter, administer 5 mg. Valium per ER orders to stop the seizure and transport him to the hospital, where he recovers quickly and is released to go home. What is there to correct? Everyone did what they were supposed to do, but it was still a reportable incident. But it makes no sense to require a corrective action. Another example: An individual turned blue and collapsed without warning. Staff called 911, started CPR and kept it up until 911 arrived. They were able to clear food from his throat. He was revived at the ER. Even though staff action was prompt and thorough, a corrective action had to be added. The corrective action? Put up posters of the symptoms of choking, even though the individual had not exhibited any of the warning signs of choking, such as coughing, struggling for breath, grabbing at his throat.
6100.405	Incident Analysis – (b) – It is hoped that ODP will provide more tools such as training or EIM feature enhancements that support this requirement.
6100.405	Incident Analysis - (b) and (e) – one says “shall review and analyze incidents every three months” and the other says “continuously”. Please clarify which it is. Also, the word “continuously” is problematic. It is not clear how providers will demonstrate compliance. Also, continuous incident analysis and constant efforts to mitigate risks seem contradictory to ensuring greater integration and community participation and an Everyday Life. Also, this mandate is duplicative and unnecessary and should be deleted. ODP’s IM/RM/QM system is exceptional. More effort could be better placed on creating a more integrated system rather than over-analyzing incidents or micro-managing a process that is already working. When providers are given the tools and opportunities, they will use them to improve analysis and quality, where needed. Adding these types of mandates wastes time on unnecessary application, documentation, and oversight.
PHYSICAL ENVIRONMENT	
6100.441	Request for and approval of changes – The current language uses waiver “capacity” language (program capacity). It is suggested that department-approved <u>licensed capacity</u> be used so that these 2 processes can remain differentiated. This is already very confusing for providers. The home could be licensed for 4 (licensed capacity) but only 3 are living there (program capacity).
6100.441	Request for and approval of changes - (d) and (e) – These reference “persons designated by the individual”. Please clarify who these persons might be (e.g., the full support team? Do the provider ask the individual?). Please clarify how it is to be documented that this information was requested (to prove that the request was sent to everyone required by the regulation).
6100.442	Physical accessibility - (a) – Please add the phrase, “as described in the PSP.”

	<p>Also, please add the word “reasonable” in front of “physical site accommodation.” As written, this makes it seem like a provider is required to make any and all site accommodations without regard for what is reasonable or whether it would require a significant alteration to the building.</p> <p>Please add language that makes it clear that this section must be viewed in the context of section 6100.303(3), which allows a person to be transferred if a major alteration to the building is required.</p> <p>Also, as written, there is concern that the integration mandate will be interpreted as including any “physical site” in the community, even when they are not under the control of the provider. Please clarify that it does not.</p>
6100.443	<p>Access to bedroom and home – Please add clarification language that these requirements are applicable only to the extent that the individual desires them. Please include language that allows documentation that demonstrates when a person was given the option and made an informed choice to decline any requirement listed.</p> <p>Also, add clarification language as to how these requirements are to be implemented in the context of potential risks for fire evacuation or other emergencies which may be created as a result of these requirements (e.g., if staff have to find the keys to rooms to get individual out).</p> <p>Also, please add clarification whether the PSP may include language that documents when an individual is not capable of handling the responsibility for securing a home (particularly one with multiple residents) and is thus prevented from having the means to open the entrance to the home.</p> <p>Also, please add exceptions to the bedroom door key provision for forensic populations and/or health and safety risks.</p>
6100.443	<p>Access to Bedroom and the Home - (b) – Please clarify why opening or locking a door “without assistance” is a critical issue, particularly when supporting individuals who cannot dine or take care of personal needs without assistance.</p>
6100.443	<p>Access to Bedroom and the Home - (f) – While requiring staff to ask before entering an individual’s room is supported, please clarify what is meant by “express” permission. Some individuals are unable to answer even basic yes or no questions.</p> <p>Also, please allow exceptions when there are ongoing concerns of health and safety such as in cases of hoarding or illegal activities. There is a concern people will be lost in fires, etc. Please allow the PSP team to address this and permit exceptions.</p> <p>Also, it is not practical to secure express permission for each instance when accessing an individual’s bedroom. E.g., Many individuals require assistance with personal care, which may be required every day to ensure health and safety of the individual. Many individuals require monitoring throughout the night for their health and safety, sometimes as often as every 15 minutes. If express permission is not received, are the regulations saying the staff would be prohibited from providing the necessary care? Please allow exceptions for such instances.</p>
6100.444	<p>Lease or Ownership - Along with the legally enforceable agreement that assure rights for the individual, the language needs to be changed to make sure the landlord’s rights are also protected.</p>

	<p>Also, consider removing language that refers to providers as a “landlord”. This term introduces zoning and occupancy permit issues. It is recommended that references to the Landlord/Tenant Act be removed and instead a simple agreement that complies with HCSB rule be developed. ODP should develop and make available a model agreement that is acceptable to CMS (not mandatory, though).</p> <p>Also, responsibilities to individuals are stressed in this section, but it is contradicted when individuals have to agree to restitution, when it may be a part of a legal responsibility to pay for property damages. Please clarify.</p> <p>Also, please add tenant responsibilities or add language that allows tenant responsibilities permitted under Landlord/Tenant Act.</p> <p>Also, please clarify how the “protection from eviction” under the Landlord/Tenant Act applies in the context of section 6100.303 – transfer to a new provider against the individual’s wishes. If the individual poses a danger to self or others, but does not agree to leave the current residence, the provider would be placed in a situation whereby the provider would have to go through formal eviction procedures to remove the resident. Please address this conflicting language.</p>
6100.444	<p>Lease or Ownership - (a) – It is requested that the department provide guidance and/or a template for this “lease”.</p> <p>Also, please clarify whether the lease replaces the room & board contract required in section 6100.688.</p>
6100.446	<p>Facility Characteristics Relating to Size of Facility – A great concern is that funding will not keep up with the changes in capacity.</p>
6100.446	<p>Facility Characteristics Relating to Size of Facility – (c) - The number 15 is arbitrary and is not sufficient to sustain a facility. If the department’s intent is to not have any new facilities, then it should simply state that no new facilities will be licensed after the March 17, 2019 deadline. Otherwise, conduct an analysis to determine what the smallest size would be that can be sustained. Given the new Community Participation Service description, a provider would need anywhere from 5 to 15 direct care staff, a program specialist, and administrative staff.</p> <p>Also, please clarify whether this section means the entire program. A 2380 Program Specialist currently can have 30 on their caseload, a 2390 can have 45. So, please clarify whether this section means both may only have 15? If no, maybe a short description of program capacity should be provided (i.e. – total number of individuals attending, on site, during program operations). If yes, given that a 2380 licensing capacity has a 1:6 ratio and a 2390 a 1:15, rates will have to be significant to support either type of facility.</p> <p>Also, please define “program capacity”. Clarify whether it will permit having more than 15 admitted to the program/facility as long as schedules are managed so that no more than 15 are physically in the building at any one time.</p> <p>Also, please add a provision that will allow “legacy” day and prevocational programs to move after 3/17/19 and still maintain their original capacity, similar to what is allowed for residential programs in section 6100.446(a)(2)</p> <p>Also, if the goal is supposed to be community integration and ODP is defining that in their waiver proposals by how much time is spent outside of a facility, then the size of the facility is a moot point. As the waiver renewals indicate, the service definition proposes to limit the amount of</p>

	<p>time a person spends in a facility to 25% of their time. Therefore, it really makes no difference whether the facility is serving 15, 100, or 200 people.</p> <p>Also, it is recommended that all provisions in the proposed regulations be removed because such facility size limits are better suited for waiver service definitions.</p> <p>Also, please be sure licensing ratios change to correspond to these changes.</p>
<p>6100.446 6100.447</p>	<p>Facility Characteristics (Size and Location) – Please clarify the language so that it is clear whether a provider supporting up to 8 in an apartment complex currently will be able to continue that service, just not open new ones.</p>
<p>6100.447</p>	<p>Facility Characteristics Relating to Location of Facility – Please exempt life-sharing. Otherwise, this language will inhibit life sharing, as there are neighborhoods where there are several life sharers.</p> <p>Also, as written, a person’s home could not be next to a VA hospital, an outpatient clinic, or a foster home. This is overly restrictive of people’s rights. Deciding where a person’s home can be located without exception should anathema to anyone who supports self-determination. This language should be changed.</p> <p>Also, please define “close proximity”.</p>
<p>6100.447</p>	<p>Facility Characteristics Relating to Location of Facility - (b) – This section needs rewritten so that some common sense can prevail.</p> <p>First, if an apartment building only has fewer than 10 units, then it would be impossible to achieve 10%, thus relegating people controlled by the 6100s to large apartment complexes, which seems counterintuitive to the goal of meaningful community participation and individual choice as espoused in “Everyday Lives – My Life My Way”.</p> <p>Second, some townhouse developments are quite large. It seems unnecessary and punitive to prohibit a person from living in such a development if they are the one who would go over the 10% limit.</p> <p>Third, the 10% figure is not only arbitrary but illogical. The estimates in terms of the percentage of people in society who have disabilities varies depending on how disability is defined, but if one merely looks at the data used when the Americans with Disabilities Act was passed, about 19% of people have a disability.</p> <p>Finally, it seems like a violation of law to tell a person that they’re prohibited from living in an apartment, condominium, or townhouse development that has “too many people with disabilities.”</p> <p>Please modify the language to require that such limits are merely guidelines and individuals’ PSPs shall document what efforts were undertaken to find the most integrated housing and/or that the individual made an informed choice to live where they are living, even their housing choice include more people with disabilities than recommended by ODP.</p> <p>Also, please clarify who will keep count of the 10% percent, how it will be enforced, will people be forcibly removed if they have already moved in, and which person will be removed if there are multiple people living in a development and only one person needs to be removed to satisfy the ten percent limit.</p>

6100.447	Facility Characteristics Relating to Location of Facility – (c) – Please clarify what criteria will be used by the department to render its decision, whether it will be shared with providers, how the department will determine whether to give written approval, and what the appeal process will be.
MEDICATION ADMINISTRATION	
General comment as it relates to the 6500s	This entire section should be reviewed and changes considered in the context of how this section applies to life-sharing providers. The existing training is burdensome for life-sharing providers and is not consistent with the entire philosophy of life-sharing. Please consider an exception for life-sharing providers or an alternative approach with respect to the training requirements yet ensures the same standard.
6100.461	Self-Administration – (b) – Please review and clarify. This is not self-administration – this is medication administration. Sections (b) and (e)(1-4) may be in conflict.
6100.461	Self-Administration - (c) – Please add more explanation. Please consider adding the statement “as described in the PSP”.
6100.463	Storage and Disposal of Medications – (b) – Please consider rewriting to require that meds be administered immediately (because a 2-hour wait is not safe; they may be mislabeled, improperly stored, or missed altogether). Also, as this section is rewritten, please consider how it is a person who is self-administering would not be able to remove medicine from original bottle and place in reminder containers. This defeats the ability to self-administer and remember when and if something was taken. Everyone uses those daily reminder containers and so the regulations should not inhibit their use since they help all of us remember when to take medicine and/or if medicine has been taken.
6100.463	Storage and Disposal of Medications - (d) and (e) - allowing for epinephrine and epinephrine auto injectors to be kept unlocked. This is a very positive change.
6100.463	Storage and disposal of medications – (h) – Please add clarity as to who is responsible for the disposal of medications.
6100.465	Prescription Medications – (e) - It states that changes in medications by oral order can be taken by Registered Nurses. This should be expanded to include Licensed Practical Nurses (LPN), otherwise there will be a cost to moving from LPNs to RNs. It is our understanding that taking doctor’s oral orders is well within the scope of an LPN.
6100.466	Medication Records - (c) – Please reconsider whether it is necessary to have the first refusal of every medication reported to the prescriber.
6100.467	Medication Errors (b) and (c) – Please change to require contacting the prescriber only if there are no instructions from the prescriber in the case of an error. (Some prescribers do not want to be contacted and thus give written instructions if one of these types of med error occurs.)
6100.469	Medication Errors – (c)(1) and(2) - It does not seem safe that only those who have completed the Med. Admin. Training can administer an epinephrine injection in an emergency. For instance, staff in a pre-vocational program may not be med-admin trained but clients in that program may have epi-pens. In most circumstances, those clients can self-administer but in a case where the client is unconscious, staff trained in the use of the epi-pen should be able to administer.

	Also, the department should consider provisions that will permit trained staff to administer Narcan.
6100.470	Exception for Family Members – Please consider adding an exception for Life Sharing providers as well. Many life sharers will be lost as the department’s med admin training is becoming very difficult to pass.
GENERAL PAYMENT PROVISIONS	
6100.482	Payment - (c) – There should be an allowance for flexibility in the frequency and duration statement.
6100.482	Payment - (c) - There should be a provision for services provided in an emergency (like respite) that are not yet authorized.
6100.482	Payment - (c) – There should be a provision for back-dating an authorization or frequency and duration change.
6100.482	Payment – (c) – It says the Department will only pay for reimbursable HCBS up to the maximum amount, duration and frequency. There should be greater clarity how this will be tracked or enforced.
6100.482	Payment - (h) - In the second sentence, it should say “or” instead of “and”.
6100.484	Provider Billing - (c) - see comments related to 6100.226 – we need specific and clear guidance on “documentation of support delivery”.
6100.487	Loss or Damage to Property - This should be clarified that the provider would replace the property if it is determined to be as a result of staff negligence, or some fault of the provider, and also allow for the repair of the item instead of requiring that items must be replaced.
FEE SCHEDULE	
6100.571	Fee Schedule Rates - (a) - The language should be written to obligate the department to actually use rates that reflect whatever changes result from the refresh discussed in (b) (i.e., as written, the department seems to be able to refresh the data but then keep rates the same).
6100.571	Fee Schedule Rates (b) – RCPA is pleased that the department has proposed language that requires it to refresh the market-based data used to develop rates. However, instead of every three years, it should be done every year. Also, the word “refresh” should be changed to “rebase” or “rebased”.
6100.571	Fee Schedule Rates - (c) - Language should be added that requires the department to be transparent about the method it used to “consider” the factors indicated. Also, language should be added that requires the department to be transparent about the sources of data and information used. Also, if the department does not include language requiring an annual refresh (or rebasing) of market data, then the language ought to say the department will apply a cost-of-living-adjustment based on the federal home health market basket index.
6100.571	Fee Schedule Rates – (c)(2) - Language should be added that requires the department to consider US Department of Labor and PA Department of Labor and Industry statistics for relevant

	industries, such as the health care industry, as well as labor statistics for non-health care or human service industries with which ODP-funded HCBS providers are in direct competition for workers (e.g., fast food, retail, etc.).
COST-BASED RATES AND ALLOWABLE COSTS	
6100.646	Cost-Based Rates for Residential Habilitation - (b) – Clarify what happens when a unit cost is identified as an outlier.
6100.646	Cost-Based Rates for Residential Habilitation – (c) - The Department will apply a vacancy factor to residential habilitation rates. The statement is pretty open ended. The department should include language that spells out how it will be calculated so that stakeholders can make an informed decision about whether to support the 6100 regulations.
6100.647	Allowable Costs - (a) – Language should be added to define “prudent buyer” and requires the department to be transparent about how “best price” is determined.
6100.648	Donations - (c)(3) – This should be deleted. Providers should not have to disclose donated items. It should not impact a cost report since it is not cash that would reduce expenses. The value should not be used against the legitimate costs of providing services.
6100.652	Compensation - (b) - Recommend allowing bonuses or severance payments for a separation package “not to exceed three month’s salary”. This is normal and customary business practice. Three month’s pay is reasonable.
6100.659	Rental of Administrative Space - (a)(1) and (2) - There should not be a difference in allowable cost for administrative space due to the relationship with the lessor – it should be the same as the rental charge of similar space whether the lessor is a related party or not.
6100.659	Rental of Administrative Space - (c) – It is unclear how the “minimum amount of space necessary” will be determined. As written, it may restrict the ability for expansion of services if limits are placed on the amount of space allowable.
6100.661	Fixed Assets – (h) – Delete this in its entirety. It does not make sense.
6100.661	Fixed Assets – (i)(2) – After “asset” and before “by” insert “related to eligible waiver program”.
6100.661	Fixed Assets - (i)(3) – Remove or modify this provision. An annual physical inventory is extremely burdensome to complete.
6100.662	Motor Vehicles - (3) – Please clarify how often a provider must analyze the cost differences between leasing and purchasing vehicles. Please make it reasonable or delete altogether.
6100.663	Fixed Assets of Administrative Building - (c) – Delete this provision. A provider should not have to get permission from department to make improvements to their administrative facility. (On what basis will an approval or denial be made? Will such criteria be included in the 6100s? Will appeal rights be included and spelled out?)
6100.663	Fixed Assets of Administrative Building - (f) - This should read that “funded equity” is equity that was built “using department funds”. This provision should not apply to equity built or acquired through donations, fundraising, etc.

6100.666	Moving Expenses – RCPA supports the fact that the department removed the statement from the Chapter 51 regulations that required written approval.
6100.670	Start-Up Cost - (a) - Start-up costs for new locations and conducting business in a new geographic area is positive and will assist in assuring there are meaningful options available in more locations. The amount for the start-up costs has to be reasonable.
6100.672	Cap on Start-Up Cost – (a) – The removal of the \$5000 cap included in the Chapter 51 regulations is positive if the intent is to base the cap individually on the needs of the individual.
ROOM AND BOARD	
General comment	More details or guidelines are needed to explain what is included and not included in room and board rates.
6100.681	Room and Board Applicability – This should only apply to licensed group home settings - not to unlicensed settings or apartment settings. As written, it will make utilizing HUD vouchers very difficult for individuals who are living in supported living arrangements.
6100.684	Actual Provider Room and Board Cost - (a) and (b) – More clarity is needed to define “actual”.
6100.684	Actual Provider Room and Board Cost - (b) - Recommend that the provider do it annually instead of each time an individual signs a room and board contract.
6100.684	Actual Provider Room and Board Cost – (c) – Recommend greater clarity on whether the review of annual actual room and board costs is done per site or in the aggregate. It is recommended that it can be done in aggregate.
6100.685	Benefits – Recommend adding a new provision requiring that the provider shall inform the individual's representative payee and Supports Coordinator if energy assistance, rent rebates, food stamps, or similar benefits are received.
6100.686	Room and Board Rate – (a)(2) – Proration of board after 8 consecutive absence days is better than what we have now (proration for all absences). Thank you.
6100.686	Room and Board Rate - (a)(2) - Proration of board being changed from every day an individual is away to consecutive period of 8 days or more is an improvement. Thank you.
6100.688	Completing and Signing the Room and Board Residency Agreement – (a) – Recommend greater clarity on whether this agreement is still required (and, if so, why) given that a lease will be required pursuant to Section 6100.444.
6100.690	Copy of Room and Board Residency Agreement – (a) - Add a provision that requires a copy of Room and Board contract be given to the Representative Payee and Supports Coordinator.
6100.691	Provide greater clarity on whether this means providers may charge room and board for respite in excess of 30 days. (The respite rate supposedly includes room and board already.)
6100.692	Hospitalization – Delete this provision. If an individual is hospitalized for more than 30 consecutive days, they are placed in reserved capacity, their belongings remain in the home, and the provider is not able to serve someone else in that room, then the provider should be able to continue to charge room/rent for that time period since the space is not able to be used. It is no

	different than any tenant having to continue to pay their rent or mortgage even if they are away for an extended period of time.
6100.693	Exception - Add language at the end, "unless the provider is paying for the food/nutritional supplement."
DEPARTMENT-ESTABLISHED FEE FOR INELIGIBLE PORTION	
6100.711	Fee Schedule Rates - (a) - The language should be written to obligate the department to actually use rates that reflect whatever changes result from the refresh discussed in (b) (i.e., as written, the department seems to be able to refresh the data but then keep rates the same).
6100.711	Fee Schedule Rates (b) – RCPA is pleased that the department has proposed language that requires it to refresh the market-based data used to develop rates. However, instead of every three years, it should be done every year. Also, the word "refresh" should be changed to "rebase" or "rebased".
6100.711	Fee Schedule Rates - (c) - Language should be added that requires the department to be transparent about the method it used to "consider" the factors indicated. Also, language should be added that requires the department to be transparent about the sources of data and information used. Also, if the department does not include language requiring an annual refresh (or rebasing) of market data, then the language ought to say the department will apply a cost-of-living-adjustment based on the federal home health market basket index.
6100.711	Fee Schedule Rates – (c)(2) - Language should be added that requires the department to consider US Department of Labor and PA Department of Labor and Industry statistics for relevant industries, such as the health care industry, as well as labor statistics for non-health care or human service industries with which ODP-funded HCBS providers are in direct competition for workers (e.g., fast food, retail, etc.).
ENFORCEMENT	
6100.741	Sanctions - (b)(1) – Please clarify over what time period the "one or more regulatory violations of this chapter" applies.
6100.741 & 742	Sanctions/Array of Sanctions – As written, 741(b)(1) and 742(1) and (2) would allow the department refuse to pay or close a facility because a provider violated one regulation. This needs to be changed. Please consider adding a weight to particular regulations. (e.g., not having a light bulb that works is not the same as protecting someone from abuse.)
6100.741	Sanctions - (b)(2) – Please give consideration to extending the time frame. Ten days is often too short of a time to come up with a reasonable, effective corrective action plan, particularly when the lead AE cannot provide a solid list of non-compliances because the lead is waiting for information from other AEs. For example, during the exit interview, the lead AE gives the provider the list of non-compliances found during the audit. However, the lead AE has not yet received reports from other AEs that audited in different counties. So, when the formal list of non-compliances is received by the provider, there are items that weren't included. The provider

	then has to scramble to identify the causes of the non-compliances and how to correct them in ten days. And the fact is that not every AE provides a complete list of issues in an exit interview. Finally, there are real situations where the lead AE and another AE come up with differing (if not contradictory, outright) findings. That should be resolved prior to the plan of correction.
6100.741	Sanctions – (b)(5) – Please rewrite the “failure to provide free and full access to the department” section recognizing that some things require legal approval or subpoenas. Consider adding “free and full legal and authorized access”. Also, as worded, it is confusing to whom access is being prevented. Perhaps the intent was really to say that a sanction could be applied for “failure to provide the Department, designated managing entity, or other authorized federal or state officials free and full access.”
6100.741, 742, 743,744	Enforcement – If the 6100s codify the sanctions possible based on the 1101 sanctions under Medicaid fraud, then the 6100s should reference a provider’s right to appeal and the Chapter 41 (or other pertinent) process.
6100.741 – 744	Enforcement – This section should be revised to require the department to utilize a graduated approach to applying sanctions to achieve compliance. It should not be a one-size-fits-all approach. If compliance is the goal, depending on the nature of the violation and the extent to which the provider is a first-time or repeat offender, different variations of the sanctions may be effective at achieving compliance. The regulations should specifically require the department to employ such an approach. Also, the regulations should allow and spell out an appeal process that permits a provider to appeal a sanction that seems excessive relative to the violation(s).
6100.742(6)	Array of Sanctions – (6) - If a provider does not have other funds available to cover these costs, it could result in a closure. Please provide clarification surrounding what sorts of violations would require this level of sanction.
SPECIAL PROGRAMS	
6100.803	SC, TSM, and Base-Fund Support Coordination - (e)(1) - note training requirements for the 1 st year (i,ii,iii,iv,v) for a Supports Coordinator - these trainings are in addition to the provider required orientation training in section 143 as well as all mandated SC trainings that had been or will be offered by ODP in that year. This would surely demand a Supports Coordinator in their first year have more than 24 hours of training. Please be sure this is considered in rate setting for the expense of additional non-billing time for new staff.
6100.803	SC, TSM, and Base-Fund Support Coordination – (2) – Please clarify whether the standard for incident reporting changed has changed. Incidents reported to SCs will only be reportable if directly observed or if SC is directly involved in an incident. Please clarify if that means that only incidents reaching the standard of protective services would be reported upon discovery from another source. If so, that interpretation is supported.
6100.803 (3) and (4)	SC, TSM, and Base-Fund Support Coordination – (3) and (4) - While Supports Coordination will no longer have to do the 6-month review for residential, it looks like they are being required to document the continued need every 6 months. Please clarify where and how. Please clarify whether a service note is acceptable or doing something more in the plan is required. Section (4) goes through enhanced staffing – please clarify if ODP is doing away with the checklist altogether and if this will be the criteria followed. It is similar to what is being done now – please clarify the method to be used to answer these questions.

Text block 1: Initial paragraph of text, possibly containing a title or introductory sentence.

Text block 2: Second paragraph of text, continuing the narrative or discussion.

Text block 3: Third paragraph of text, further developing the content.

Text block 4: Fourth paragraph of text, providing more detail or context.

Text block 5: Fifth paragraph of text, possibly a transition or a new point.

Text block 6: Sixth paragraph of text, continuing the flow of information.

Text block 7: Seventh paragraph of text, further elaboration on the subject.

Text block 8: Eighth paragraph of text, possibly a summary or conclusion of a section.

Text block 9: Ninth paragraph of text, providing additional insights or data.

Text block 10: Tenth paragraph of text, final paragraph on the page.