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14-540-(319)

Kroh, Karen

From: PW, ODPComment
Sent: Wednesday, December 21, 2016 9:13 AM
To: Kroh, Karen
Subject: FW: Public comments for Chapter 6100 regulations
Attachments: Microsoft Word - 16.12.19.Public Comment.doc.pdf

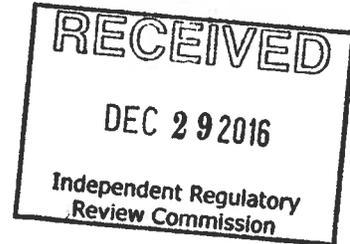
-----Original Message-----

From: Cory Sisto [<mailto:sistocm2@gmail.com>]
Sent: Tuesday, December 20, 2016 10:49 PM
To: PW, ODPComment
Subject: Public comments for Chapter 6100 regulations

Ms. Mochon,

Please see attached comments from IFC Services, Inc. Hard copy is in the mail.

Thanks,
Cory Sisto





IFC Services, Inc.
14680 Iroquois Court
Mount Union, PA 17066
Ph: 814-542-9282 Fax: 814-514-1022

To: Ms. Julie Mochon
Human Services Program Specialist Supervisor
Office of Developmental Programs
Room 502, Health and Welfare Building
625 Forster Street
Harrisburg, PA 17120

Re: Public Comment, ODP Proposed Chapter 6100, 2380, 6400 Regulations

We appreciate the considerable amount of time that you and your colleagues have put into generating the proposed regulations and soliciting input from interested stakeholders. We have been actively involved with workgroups organized by our provider organization, PAR, and emphatically support their proposed comments/amendments to each of the chapters in their entirety.

Additionally, we would like to offer the below comments to highlight specific areas of interest to our organization.

Section/Regulation: 6100.52 Rights Team

Discussion: We believe this regulation attempts to apply a solution to a problem that does not exist. Current Incident Management procedures cover rights violations including a robust peer-reviewed, certified investigation process. Additionally, providers have established restrictive review committees to review, analyze, and address the use of physical restraints among other restrictive procedures. This proposed regulation would add a financial burden to providers, AEs, and SCOs in order to comply without adding any benefit over the current system.

Recommendation: Strike this proposed regulation in total.

Section/Regulation: 6100.142 Orientation program

Discussion: The proposed regulation is inclusive of a broad swath of individuals who work for the provider, volunteers, and consultants. We do not believe that it is necessary to include licensed clinicians in the provider's orientation program as outlined in proposed regulation. For example, would a HCQU nurse be required to obtain the training from each provider? Or will the provider be responsible for maintaining the records of training provided by their base-employer? Additionally, volunteers and interns are often available on a time-limited basis. This requirement would further limit their support of our individuals. Finally, some administrative positions such as a fiscal officer may have no direct contact with individuals. This regulation, as applied to these subsets, adds a significant financial burden to providers in administration and training costs, potentially limits or discourages volunteers from supporting individuals, and is simply unnecessary in some cases.

Recommendation: Clarify these subsets to exclude consultants who are licensed clinicians, further limit the content for volunteers, and exclude administrative staff who have no direct contact or supervision of individuals.

Section/Regulation: 6100.186. Role of family and friends.

Discussion: Proposed regulation is (a) 'The provider shall facilitate and make the accommodations necessary to support an individual's visits with family, friends and others, at the direction of the individual.' The proposed language lends itself to be taken advantage of by the individual or family/friends in a way that is not cost effective or responsible. It also does not allow for consideration of the impact of those choices on other waiver participants- such as a housemate.

Recommendation: 'The provider shall facilitate and make *reasonable* accommodations necessary to support an individual's visits with family, friends and others, at the direction of the individual.'

Section/Regulation: 6100.344. Permitted interventions.

Discussion: Proposed regulation is (f) 'A physical protective restraint may not be used for more than 15 minutes within a 2-hour period.' It is reasonable to assume that with limiting the use of safe crisis management techniques, providers would be left with far more restrictive or higher risk interventions during times of crisis- namely law enforcement involvement. Often, these types of interventions can be far more disruptive and consequential for individuals than the use of physical protective restraints. This must be balanced with reducing the frequency and duration of physical protective restraints as well.

Recommendation: 'A physical protective restraint may not be used for more than 15 minutes in any single intervention and 30 minutes cumulatively within a 2-hour period.'

Section/Regulation: 6100.401. Types of incidents and timelines for reporting.

Discussion: Previously, physical restraints and medication administration errors were required to be reported within 72 hours of incident discovery. This established protocol has worked effectively.

Recommendation: Retain the reporting timeline for medication administration errors and restraints outside of the parameters of the PSP.

Section/Regulation: 6100.402. Incident investigation.

Discussion: Proposed regulation (b) would dictate an investigation for every incident within 24 hours. It is believed the intent was for the provider to begin a review or evaluation of each incident within 24 hours, however, this was not captured. Initiating an investigation for every incident would be unnecessary, extremely costly, disruptive to staffing and individual programming, and unachievable by many smaller providers.

Recommendation: Amend 6100.402 (b) to require an investigation of 'certain incidents' inclusive of:

- (1) Death
- (2) Abuse
- (3) Neglect
- (4) Exploitation
- (5) Missing person
- (6) Theft or misuse of individual funds
- (7) Violations of individuals rights

- (8) Unauthorized or inappropriate use of a restraint
- (9) Individual to individual sexual abuse and serious bodily injury.

Section/Regulation: 6100.402. Incident investigation.

Discussion: (i) 4 'action taken to protect the health, safety and well-being of the individual.'

Recommendation: 'Additional or ongoing action(s) taken to protect the health, safety and well-being of the individual.'

Section/Regulation: 6100.443. Access to the bedroom and the home.

Discussion: These proposed regulations seem to offer no exception for unique individual needs that may interfere with the ability of a provider to comply with this regulation while meeting health and safety needs. It is certainly not cost neutral in its expectation. Many individuals are vulnerable to victimization. Possession of easy access devices like access cards further increases their risk. Many individuals, regardless of the adaptations made, would not understand how or when to safely use such devices. Other individuals have behavioral issues that result in the purposeful destruction of entry doors with locking mechanisms. In these cases, modified door catches that do not lock are beneficial.

Recommendation: In (a), amend to 'Each individual has privacy in their individual sleeping or living unit: Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors unless a health or safety exception has been identified in the in the PSP.'

Section/Regulation: 6100.444. Lease or ownership.

Discussion: A myriad of challenges arise when utilizing a formal 'lease.' Most significantly is the grounds it gives to activist zoning authorities in attempts to exclude non-related parties who reside together in congregate housing.

Recommendation: Strike the section and include the protections in the already established 'Room and Board' contracts.

Section/Regulation: 6100.469. Medication administration training.

Discussion: Proposed regulation in (c)2 requires specific, annual training for the use of epi-pens. This is an additional regulatory burden on providers that will not be cost neutral. Training has not been heavily regulated in this area as to not impede the wide use of these devices in emergency situations.

Recommendation: Strike the requirement.

Section/Regulation: 6100.571. Fee schedule rates.

Discussion: A consistent theme across providers is the lack of adequate or quality staff to provide supports. The rest of the regulations are for naught without a stable and qualified system of support staff. Providers have been hampered by stagnant rates and no assurances that future rates would be tied to any standardized index. This has made it a particularly difficult environment for providers to make commitments regarding pay or benefits to staff in which all costs have continued to rise.

Recommendation: The Department shall apply the Medicare Home Health Market Basket Index to establish the FY 2017-2018 Fee Schedule Rates and thereafter.

Section/Regulation: 6100.663. Fixed assets of administrative buildings.

Discussion: (f) requires the recoupment of funded equity. The state does not require that bridge contractors who purchase heavy equipment to fulfill the contracts they have with the state to return any proceeds from the sale of that heavy equipment or a share of their office proceeds should they sell the asset. What makes provider agencies different? Current safeguards are in place to prevent excesses or inappropriate use of waiver dollars in the establishment of provider office space. Providers assume all of the risk with the establishment of this private asset, and as such, should have total control over the asset and its gains at time of disposal. A compromise may be if the state was willing to reimburse the provider for 'funded negative-equity' at the time of disposal.

Recommendation: Strike (f) and subsections.

Section/Regulation: 6100.465. Prescription medications

Discussion: (e) changes the standard for receiving oral orders to not allow for LPNs to carry out this function. Most providers will not have the ability to offer this level of support in terms of crisis. This regulation is not consistent with the Department's current training module. Many of the regulations within the medication administration sections are not consistent with the Department's current training module. This is one significant change that will severely hamper supports offered to our individuals.

Recommendation: Make this regulation consistent with department training module or revise the bulk of the medication administration sections to point back to the Department's established training modules and allow for best practice evolution rather than codifying.

Section/Regulation: 6400.181(e)(13)(iv) Assessment

Discussion: This regulation is a duplicate of 181(e)(3)(iii).

Recommendation: Strike 6400.181(e)(13)(iv)

Section/Regulation: 2380.181(e)(13)(iii) Assessment

Discussion: This regulation is a duplicate of 181(e)(3)(iii).

Recommendation: Strike 2380.181(e)(13)(iii)

Section/Regulation: 6400.107 Fire Safety

Discussion: This regulation prohibits the use of space heaters. Individual preference, particularly within personal living spaces, is arbitrarily limited with this blanket regulation. It is believed that an appropriate balance between safety and individual choice can be established.

Recommendation: UL-listed portable, electric space heaters with protective screens and automatic shut-off features are permitted.

Section/Regulation: 6400.107 Fire Safety

Discussion: This regulation prohibits the use of space heaters. Individual preference, particularly within personal living spaces, is arbitrarily limited with this blanket regulation. It is believed that an appropriate balance between safety and individual choice can be established.

Recommendation: UL-listed portable, electric space heaters with protective screens and automatic shut-off features are permitted.

Section/Regulation: 6100.485. Audits

Discussion: Why are all these standards being applied to providers? This will only increase costs to Providers. Audits should only be necessary for cost based payments.

Recommendation: (a) The following audit requirements apply to cost based payments.

(1) 2 CFR Part 200 (related to uniform administrative requirements, cost principles, and audit requirements for Federal awards).

(2) The Single Audit Act of 1984.

The rest of the requirements should be deleted.

Section/Regulation: 6100.661 Fixed Assets

Discussion: Section (h) It appears the department is using fixed assets –typically associated with ineligible costs - to apply to eligible costs.

Recommendation: eliminate section (h)

Section/Regulation: 6100.672 Cap on Start-up cost.

Discussion: One of the difficulties providers face in starting up new programs is the amount of unfunded costs associated with start-up, as well as the length of time the provider must carry those expenses prior to any payment.

Recommendation: Eliminate (a) and replace with: The Department shall pay up to \$40,000 for approved start-up costs.

Section/Regulation: 6100.711. Fee for the ineligible portion of residential habilitation.

Discussion: Whatever market-based approach the Department has been using simply is not working, and it is suggested they apply additional factors than those listed. Most occupancy and maintenance costs are higher than the average home, not only based on regulations that require higher standards, but also adaptations based on individual health and safety needs, property destruction, and repairs due to significant behavioral concerns. Additionally, related to occupancy, ineligible expenses are constant, whether the consumer is present or not, and yet the provider cannot bill for those days not present. When a typical family goes on vacation, they still must pay their mortgage and utility bills.

Recommendation: The Department should adopt a fee schedule methodology using a process that is reasonable, considers more than simple budgetary factors and results in payments sufficient to meet a consumers needs.