

# 14-540-437

Kroh, Karen

From: Murray, Nancy <nmurray@achieva.info>  
Sent: Thursday, October 05, 2017 5:45 PM  
To: Kroh, Karen  
Subject: Re: Chapter 6100 Regulation Work Group Document  
Attachments: Comments from Nancy Murray.docx

# 3160

Karen,  
Attached are my comments, since I will not be attending the meeting.  
Nancy

Nancy Murray  
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*"When it is obvious that the goals cannot be reached, don't adjust the goals, adjust the action steps." -Confucius*

On Wed, Sep 27, 2017 at 1:49 PM, Kroh, Karen <[c-karkroh@pa.gov](mailto:c-karkroh@pa.gov)> wrote:

Good afternoon Regulation Work Group Members:

As promised, attached is an **Unofficial Version of the Final-Form Chapter 6100 Regulation**. To ease readability, this unofficial version does not include the mark-ups from proposed rulemaking to the final-form language. The attached regulation version includes the sections to be reviewed with the Regulation Work Group on October 18, 2017. A briefing agenda is attached.

At the briefing the Department will summarize the public comments received on each issue, explain the rationale for the changes from proposed rulemaking and describe the planned implementation for the regulation. Deputy Thaler asks that you come prepared to discuss your regulation implementation questions and suggestions.

The Department asks that you not share the attached unofficial version of selected sections of the final regulation with others outside the Regulation Work Group, as this may create confusion as to the scope, purpose, status and implementation of the document. We appreciate your cooperation.

As always, let me know if you have any special requests or questions. I look forward to seeing you once again on October 18<sup>th</sup>.

Best regards,

Karen E. Kroh/Regulatory Consultant

Department of Human Services

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**From:** Kroh, Karen

**Sent:** Wednesday, September 20, 2017 9:23 AM

**To:** Ahrens, Kristin <[kahrens@pa.gov](mailto:kahrens@pa.gov)>; 'Bob Will' <[bobw@barberinstitute.org](mailto:bobw@barberinstitute.org)>; 'Carol Ferenz' <[cferenz@cparc.org](mailto:cferenz@cparc.org)>; Cherpes, Gregory <[gcherpes@pa.gov](mailto:gcherpes@pa.gov)>; 'Clara Thompso' <[clara.thompson@jevs.org](mailto:clara.thompson@jevs.org)>; 'Colleen McLaughlin' <[colleen.mclaughlin@temple.edu](mailto:colleen.mclaughlin@temple.edu)>; 'Dani Killinger' <[Wolfrider1990@gmail.com](mailto:Wolfrider1990@gmail.com)>; 'Debbie Robinson' <[debbie@speaking.org](mailto:debbie@speaking.org)>; 'Dee Coccia' <[acoccia@visionforequality.org](mailto:acoccia@visionforequality.org)>; 'Dennis Felty' <[dfelty@keystonehumanservices.org](mailto:dfelty@keystonehumanservices.org)>; 'Donna Welch (Killinger)' <[dwelch@fbhi.net](mailto:dwelch@fbhi.net)>; 'Dr. Richard Edley' <[redley@paprovers.org](mailto:redley@paprovers.org)>; 'Ed Picchiarini' <[epic@wpa.net](mailto:epic@wpa.net)>; 'Elise Westcott' <[elisewestcott@yahoo.com](mailto:elisewestcott@yahoo.com)>; 'Fran Shade' <[fshade49@yahoo.com](mailto:fshade49@yahoo.com)>; 'Gary Entrekin' <[gentrekin@chesco.org](mailto:gentrekin@chesco.org)>; 'Greg Miller' <[gmliller@penn-mar.org](mailto:gmliller@penn-mar.org)>; 'Gwen Schuit' <[gschuit@friendshipcommunity.net](mailto:gschuit@friendshipcommunity.net)>; 'Harry Franks' <[harryfranks@fcbha.org](mailto:harryfranks@fcbha.org)>; 'Jacqui Beilharz' <[jbeilharz@drmpa.org](mailto:jbeilharz@drmpa.org)>; 'Jeff Cooper' <[jcooper@ucpcentralpa.org](mailto:jcooper@ucpcentralpa.org)>; 'Jeff Wilush' <[jeff.wilush@hhinc.org](mailto:jeff.wilush@hhinc.org)>; 'Joel Goldberg' <[jgoldberg@qualityprogressions.org](mailto:jgoldberg@qualityprogressions.org)>; 'John DiMattio' <[jdimattio@eriecountygov.org](mailto:jdimattio@eriecountygov.org)>; 'Kathy Gingerich'

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Subject: Chapter 6100 Regulation Work Group Invitation

Good morning Chapter 6100 Regulation Work Group Members:

Office of Developmental Programs Deputy Secretary Nancy Thaler invites you to join her on Wednesday, October 18, 2017 from 10:00 AM until 3:00 PM to participate in a briefing to review eight key regulatory areas of the final-form Chapter 6100 regulations. The briefing will be at the Pennsylvania Child Welfare Resource Center, 403 E. Winding Hill Road, Mechanicsburg, PA 17055, (717) 795-9048. Directions to the briefing site are attached. Lunch will not be provided for the Regulation Work Group members; however, you may pack a lunch or purchase lunch at an outside location and bring it back to the briefing site for a working lunch.

The following final-form regulation sections will be shared with you at least two weeks prior to the meeting:

1. **Section 45. Quality management.** You will recall that there was considerable discussion at the January 2017 Regulation Work Group meeting about the appropriate extent of the regulation regarding quality management planning. This section is considerably relaxed and reduced from the proposed rulemaking, providing flexibility for the provider to design and implement its own quality management system and tools.
2. **Section 6100.55. Reserved capacity.** This is a substantive revision to address the numerous public comments regarding section 6100.692 (relating to hospitalization) as contained in the Room and Board section of the proposed rulemaking. Section 6100.55 is amended to address the public comments about payment for an individual's reserved placement during an extended hospital or therapeutic leave period.
3. **Section 6100.56. Children's services.** This is a new section developed in response to numerous public comments requesting that the regulations address applicability to children. Public commentators asked that permanency planning be addressed. You will recall this issue was discussed at length at the Regulation Work Group meeting in January 2017 and that the group concurred that it is appropriate to add this new section.
4. **Sections 6100.141-143. Staff training.** This section of the proposed rulemaking elicited the greatest number of public comments, with the great variance of opinions among the commentators. The annual training plan as specified in proposed rulemaking is eliminated. Ancillary staff who are not employed by the provider and certain consultants are exempt. Annual training relating to the individual plan is

added if the staff person provides an HCBS. Annual training in the safe use of behavior supports is required for a staff person who works directly with an individual. The requirement that 8 hours of the annual training plan must be in certain areas is **deleted**.

5. **Sections 6100.181-186. Individual Rights.** This section addresses public comments relating to the locking of doors, modification of rights and facilitating personal relationships.
6. **Sections 6100.221-227. Individual Plan.** This section: a) significantly reduces the content of the individual plan by eliminating some of the proposed content and by relocating some proposed content to a new subsection on recordkeeping; b) clarifies risk factors and modification of rights; and c) clarifies claim documentation and progress notes.
7. **Sections 6100.341-350. Restrictive procedures.** While the intent to create an overarching rights team to independently review the provider's use of restraints and potential rights violations was laudable, the proposed regulations duplicated and overlapped other sections of the regulations and confused the concept of a broader, independent team v. an individual team. In response to overwhelming public comment, proposed section 6100.52 (relating to rights team) is eliminated. Instead of the Rights Team, as suggested by public comments, the Department retains and incorporates the existing Chapters 6400, 6500 and 2380 Restrictive Procedures team and related requirements into Chapter 6100. The definition of restrictive procedures, appropriate use, individual team, individual plan and staff training have been modified and incorporated into Chapter 6100. The list of prohibited restraints in proposed rulemaking remains similar, with clarifications about bite release, an ongoing program of medication, a drug prescribed in response to a time-limited stressful event, bedrails, use of seat belts, wound care and other medical conditions. A requirement was added to require the removal of a physical device to allow for periodic freedom of movement. Prohibited and permitted procedures are separated and clarified. Physical restraint use is increased from 15 to 30 cumulative minutes in a 2-hour period (same as current Chapter 6400). The emergency use of a physical restraint is addressed as in the existing Chapter 6400.
8. **Sections 6100.401-405. Incident management.** Changes have been made from proposed rulemaking to eliminate reporting of emergency room visits, critical events and certain medication errors. The regulation permits a longer reporting time of 72 hours for the use of a restraint and medication errors. Suicide, abuse, a missing individual, law enforcement activity and fire services are further clarified. The scope of the requirement for a certified investigator to investigate an incident is narrowed.
9. **Sections 6100.444-445. Physical size and locality.** The maximum number of individuals at a day service location is increased from 15 to 25; as proposed, this regulation is applied liberally based on the number of individuals present in the facility at any one time (not the number served throughout a day). As proposed, this section applies only to facilities newly funded on or after March 17, 2019. Also revised in response to public comment is the proposed 10% unit limit in an apartment, condominium or townhouse development. The % is increased to 25% based on HUD provisions. This applies to a building, rather than to a development. You will recall that the work group suggested a different % calculation for a small building with fewer than 10 units; however, this is not necessary as the 25% will be applied and rounded up for purposes of calculating the maximum limit—for example, a building with 8 units may have 2 units funded under this chapter. A building with 5 units may have 1 unit funded under this chapter. A cross-reference to the allowance for bi-levels and side-by-side units is added.
10. **Section 6100.461-469. Medication administration.** This section includes a few amendments. You will recall the concerns expressed at the Work Group meeting that the regulations for medication practice may change and become outdated over time as the Pennsylvania Department of State and other related laws and regulations change. The Department has identified and revised three sections that may likely change over time related to the content of a pharmacy label, the ability to accept oral orders and

the types of medications/procedures that may be administered by trained, non-medically licensed professionals. A few other changes were made in response to public comment. A modified (not the full) medication course is required for certain programs. Exemptions for respite and job coaching are added. Changes to the Department's medication administration course modules have been made to eliminate the conflicts between the course and the regulations.

Thank you very much for your assistance in reviewing these final-form regulation sections at this briefing with Deputy Thaler. At the briefing the Department will explain the rationale for the changes from proposed rulemaking and describe the planned implementation for the regulation. Deputy Thaler asks that you come prepared to discuss your regulation implementation questions and suggestions.

Best regards,

Karen E. Kroh/Regulatory Consultant

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**Comments from Nancy Murray:**

**1. 6100.183(e)**

An individual has the right to choose persons with whom to share a bedroom **or not to share a bedroom**. Not everyone wants to share a bedroom, which most people consider to be a very private space.

**2. 6100.185 (b)**

The provider shall keep a statement signed by the individual, or the individual's court-appointed legal guardian, acknowledging receipt of the information on individual rights and shared with **the team upon approval of the individual**. Many people with ID do not understand what they are asked to sign, so it is important for family members and SC's to know what documents have been signed.

**3. 6100.221(a)**

An individual shall have one approved and authorized individual plan that identifies the need for services and supports, the services and supports to be provided **and by whom**, and the expected outcomes. The regulations refer to providers but not in this statement.

**4. 6100.221 (b)**

I recommend replacing the word, cooperation, with **collaboration**, which invokes a sense of partnership and shared responsibility.

