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VIA EMAIL

May 22, 2023

Brian Macdaid
Bureau of Human Services Licensing
Department of Human Services
Office of Administration
625 Forster Street, Room 631
Harrisburg, PA 17120

RE: Adult Protective Services Proposed Regulations Regulation No. 14-543

The Arc of Greater Pittsburgh, a member of the Achieva Family of Organizations, provides information, resources, technical assistance, advocacy and support for families of children and adults with disabilities. Achieva's disability advocates have experience as family members of children and adults with disabilities and complex medical issues. They advocate with people with disabilities and families to ensure that children and adults have access to quality education and community services. Advocates also work to ensure that policymakers and state and federal legislators are informed about disability issues.

As one of the organizations at the forefront of drafting the legislation and advocating for the passage of Act 70 in 2010, the Arc of Greater Pittsburgh/Achieva is providing these comments on the draft regulations for Adult Protective Services (APS) in hopes that the APS system in Pennsylvania will be strengthened in order to protect some of our most vulnerable citizens. Our comments are as follows:

General Comments:

1. For consistency, we recommend that throughout the regulations, abuse, neglect, abandonment and exploitation be listed for consistency.
2. We recommend that a section be added to include information on the Advisory Committee on Adult Protective Services, including membership, terms of service, responsibilities, and reporting requirements.
3. We recommend that an Annual Report be produced, made easily accessible on the Department of Human Services (DHS) or the "Department" website and annually presented to the Advisory Committee on Adult Protective Services and the Office of Developmental Programs' (ODP) Information, Sharing and Advisory Committee. The report should include data on the number of APS reports (no need, priority, and non-priority) by county and region, the number of APS staff by region, the number of guardianship petitions and guardianships granted by county and region, costs for services, and other data as requested by the Advisory Committee on Adult Protective Services.
4. For consistency, throughout the regulations, we recommend the term "primary caregiver or family" rather than "caregiver" be used.

General Provisions:

The Arc of Greater Pittsburgh/Achieva proposes that the regulations include specific statements on some important principles that impact the lives of people with disabilities.

1. Dignity of risk: The APS Act provides that people with disabilities have the right to make choices regarding their lives, even when those choices present risks to themselves or their property. While there are times, such as emergencies, when the decisions of adults with disabilities are not honored in order to provide protective services, staff should weigh all options prior to not allowing a person with a disability to make their own decisions.
2. Least restrictive alternatives and guardianship: The APS Act provides that protective services should be offered using the least restrictive alternative. Therefore, guardianships which are not the least restrictive alternative, should not be appointed if an adult is able to make their own decisions and all other alternatives to guardianships (including powers of

attorney, health care representatives, representative payees and supported decision making) have been considered. When a guardianship is under consideration for an adult with a disability, it should be time limited and limited in scope. The APS Act also provides that institutionalization is the alternative of last resort.

§ 15.1. Scope

In (b), we recommend adding “guardians”.

§ 15.2: Definitions: We offer the following suggestions for definitions.

Abuse: “Unreasonable confinement” should be more clearly defined. And, acts that are “reckless” should be added to the definition of abuse.

Care: Residential habilitation should be added as a service.

Desertion: “Reckless” failure should be added to “willful failure”.

Exploitation: The definition should more clearly define financial exploitation and should include exploitation with or without the consent of the adult.

Informed Consent: This definition should more clearly define “reasonable attempt to provide information”. We recommend the requirements of the Americans with Disabilities Act to ensure effective communication.

Mandatory Reporting- The definition does not include abandonment and exploitation. In fact, we recommend that throughout the regulations, abuse, neglect, abandonment and exploitation be listed for consistency.

§ 15.3: Waivers: As drafted, the Department will permit waivers of these regulations so long as they do not jeopardize health or safety. However, the regulations do not stipulate when a waiver would be permissible. We recommend that when a waiver is granted, that there be written approval that is maintained by the Department and made available to the public on the Department’s website.

§ 15.11: Administrative Functions and responsibilities of the Department

(5) We recommend adding “child and adult protective services.”

§ 15.26: Screening and Referrals of Reports: Under Section 15.26(b)(4)(l)(B), reports to APS can be deemed “no need or not eligible for protective services” if it involves an individual under 18 or older than 59. Sections 15.26(b)(4)(ii) and 15.42(a)(3)(ii) provide that caseworkers have until the next business day to review “no need/not eligible” reports and, if the report involves a person outside the age limits of APS, the caseworker should “immediately” send it to, as relevant, the child protective services agency or older adult protective services agency. The problem is that if the substance of the report is such that it would be deemed a “priority” if it involved a person falling within the age parameters of APS, an investigation may be delayed by several days because it may not be referred to the appropriate agency until the “next business day” after the report. It should be straightforward to determine the age of the alleged victim. As such, we recommend that if the report reveals that the age of the alleged victim is under 18 or over 59 the agency should refer it immediately upon receipt to, respectively, the child protective services agency or older adult protective services agency.

In addition, when a report is transferred to another agency, we recommend that it must be transferred by email with a required confirmation of receipt.

§ 15.42: Standards for Initiating and Conducting Investigations:

§ 15.42(a)(1): As drafted, the standard is for caseworkers to “make every effort” to ensure the immediate safety of an individual in need of protective services, is subjective. The requirement should be that the caseworker must ensure the immediate safety of individuals in need of protective services.

§ 15.42(3)(b): We recommend that no agency have discretion about what constitutes a conflict of interest. We recommend that all reports involving a conflict of interest be referred to the Department.

§ 15.42(3)(e): In §15.42(3)(e) the Department recognizes that agencies may not be able to conduct satisfactory investigations and authorizes the Department to take over an investigation. We

recommend more clarity regarding when the Department will intervene in an investigation.

§ 15.44(b) Resolution of substantiated reports: If an individual wishes to refuse an assessment to determine whether they are in need of protective services, we recommend that agency staff should be required to note this refusal in the record by having the individual sign a document affirming their refusal.

§ 15.45: Investigations of Reports Involving State-Licensed and State-Operated Facilities: The section is confusing because it refers to both state licensed and state operated facilities. We recommend more clarity.

Section 15.45(a)(1)-(2) are confusing as to the responsibilities of the APS agency and state licensing agency. We recommend clear language that states the APS agency has the duty to investigate and it cannot defer to another agency's investigation.

Section 15.45(c) seems to allow the state agency that runs a facility to do the investigation. We recommend that the APS agency conduct investigations involving state-operated facilities.

§ 15.46 and §15.73: APS Staff Accompanying Police: Sections 15.46(e) and 15.73 provide that forcible entry may be made following a court order by a police officer and that the officer "may be accompanied by a representative of the agency." We recommend that an APS agency representative always accompany police during such entries unless the police determine that the APS staff may be at risk.

§ 15.71(c)(1): Involuntary Intervention by Emergency Court Order: Legal Representation Notification: We recommend that APS agencies be required to inform adults that they have the right to counsel appointed at public expense and that this be in writing and signed by the adult that it has been received.

§ 15.72: Petition: We recommend that documents that contain personal information about an adult not be accessible to the public in order to protect the adult from further risk.

§ 15.75 Non-restrictive setting: We recommend that when an agency considers relocating an adult in need of protective services to a long-term care facility, it should be required to prove to the court that less restrictive settings were considered and justify why those settings could not ensure the health and safety of the individual.

§ 15.81: Individual Rights:

We suggest adding the following provisions to Section 15.81:

An adult in need of protective services has the right to receive protective services in the least restrictive setting appropriate to their needs. An adult in need of protective services should not be placed in an institutional setting, including a nursing facility, until all other options have been reviewed with DHS and signed off by the Secretary or Deputy Secretary. If an institutional placement is the only option, it shall be temporary and discharge planning shall begin the day of admission. No APS case can be closed while an adult is institutionalized.

Since guardianships restrict a person's rights, the APS agency may only seek a guardianship that is limited in scope and time.

§15.92: Assessment: Section 15.92(b) lists the items to be included in the assessment. We recommend that the agency must be required to do a face-to-face visit with the adult as part of the assessment.

§15.93: Service Plan: We recommend including home and community-based Medicaid waiver services that the adult is eligible for or may be eligible for. We recommend that the family and/or primary caregiver be involved with the development of the plan, unless the adult does not give permission. This must include assistance by the agency with making application and ensuring the receipt of services. Service plans should not include institutional services, except as a last resort and only when reviewed and signed off by the Secretary or Deputy Secretary.

§15.122: Training of Protective Services Staff: We recommend training on Pennsylvania's guardianship statute as well as less restrictive alternatives to guardianship, including powers of attorney, health care representatives, representative payees and supported decision making. Training must enforce the expectation that guardianship is the option of last resort. We also recommend that staff receive annual training on confidentiality requirements and family dynamics.

Thank you for your consideration of our comments. Please contact Nancy Murray, Senior Vice President of Achieva and President, The Arc of Greater Pittsburgh, at nmurray@achieva.info or 412.995.5000 x 424 with any questions.
