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MEMORANDUM

DATE: January 30, 2012

TO: Ms. Deborah Gottschalk, Chief Policy Advisor
Department of Health and Social Services

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: 15 DE Reg. 968 [DLTCRP Proposed Neighborhood Homes for Persons with Developmental Disabilities Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Long-term Care Residents Protection's (DLTCRP), in conjunction with the Division of Developmental Disabilities Services (DDDS), proposal to amend the licensing regulation covering neighborhood homes for persons with developmental disabilities. The proposed regulation was published as 15 DE Reg. 968 in the January 1, 2012 issue of the Register of Regulations. SCPD has the following observations and recommendations.

1. In Section 2.0, the definition of "advocate" would include an individual who is "knowledgeable" about a resident but is an abuser or not well intentioned. Consider the following alternative: An advocate includes a guardian, legal representative, or knowledgeable person who seeks to promote the resident's best interests". The term "legal representative" would encompass an attorney, agent through power of attorney, or next of kin authorized to exercise rights pursuant to Title 16 Del.C. §§1121(34), 1122, and 2507.

2. In Section 2.0, definition of "co-mingling of funds", the term "contacted provider" should be corrected. Consider substituting "contractual provider".

3. In Section 2.0, definition of "HRP", substitute "device" for "devise".

4. In Section 2.0, definition of "incident", consider expansion to cover elopement, attempted suicide, event prompting law enforcement referral, and use of seclusion or restraint in excess of certain time frames. Compare 16 DE Admin Code 3225, § 19.7 See also Title 16 Del.C. §5162(a) by analogy.

5. In Section 2.0, definition of "individual", substitute "identifies" for "identify". On a conceptual level, the Division should also consider whether the definition is too narrow. In theory, there could be a licensed neighborhood home with individuals with developmental disabilities who do not receive services through DDDS. This comment would also apply to the definition of "service provider" which is limited to DDDS contractors.

6. In Section 2.0, definition of "neighborhood home", first sentence, insert with "developmental disabilities" after the word "individuals". Otherwise, the definition could literally encompass homes for individuals with mental illness or AIDS which are separately regulated by 16 DE Admin Code, Parts 3301 and 3305.

7. In Section 2.0, definition of "PROBIS", it would be preferable to include a reference to psychotropic medications. Review of such medications is the primary activity of PROBIS which is not apparent from the definition.

8. In Section 2.0, definition of "service provider", consider substituting "under contract" for "contracted".

9. In Section 3.0, it would be preferable to include a general requirement that the provider will comply with the Bill of Rights, Title 16 Del.C. §1121. See 16 DE Admin Code 3301, §4.9 ("All residents shall be afforded all protections and privileges contained in the Delaware Patients Bill of Rights"); and 16 DE Admin Code 3225, §14.1. The regulation requires "posting" of the Bill of Rights (§4.2.8.4), and compliance with DHSS policies (§4.7.3), but it lacks a section generally requiring compliance with the Bill of Rights.

10. Section 4.1.3.3 is inconsistent in referring to "services" and "service provider". Since §4.1.3 solely addresses a change in service provider, substitute "service provider" for "services".

11. Section 4.2.5 contains some "weak" and subjective references. Consider the following alternative: "Service providers are required to maintain and implement specific policies and procedures to facilitate individuals' exercise of their rights and to protect the individual's rights from either violation or restriction without due process."

12. In Section 4.2.8.1, consider adding a reference to legal representative and advocate.

13. Section 4.2.8.4 could be improved by requiring the posting to be in a "conspicuous" location as required by Title 16 Del.C. §1123. Otherwise, it could be posted in a closet or corner of the basement.

14. Section 4.3.7.4 requires the residence to maintain only a three-day supply of medications. This is too short. A weather emergency could easily prevent access to a pharmacy for 3 days or a pharmacy could have exhausted its supply of a medication. A high percentage of DDDS residential clients have seizure disorders and other life-threatening conditions being controlled by medications. SCPD suggests a requirement of seven days consistent with Citizens Corps recommendation for maintaining a seven-day supply of medications for emergency situations.

15. Section 4.3.10 could be embellished. Compare 16 DE Admin Code 3225, §8.4. Parenthetically, the criminal statute requiring medications to be in the original container has been repealed. See H.B. 19, Section 55, enacted April 20, 2011. There is some "tension" between the regulatory requirement (§4.3.9.1) of medications being kept in original containers and the prevalent use of weekly dose containers.

16. In Section 4.5.1, the reference to the federal definition of assistive technology could be updated. See attached 29 U.S.C. §3002(3)(4)(5).

17. Section 4.5.4.3 could be improved. For example, it is common for DDDS clients to lose their eyeglasses or break them. Some clients are therefore provided with a set of glasses and a back-up set of glasses. It would therefore be preferable to substitute "periods of repair, replacement, cleaning or foreseeable loss."

18. Section 4.6.4, second sentence, is a "weak" statement insofar as it states the Division's "belief". This is a regulation and it would be preferable to simply state the policy. The sentence could recite as follows: "Further, employment in the community should be the first service option considered for individuals."

19. In Section 4.6.5.2, delete the comma after "goals" and insert "and".

20. In Section 4.6.6, substitute "an" for "a" after "documents".

21. The timetables in Sections 4.6.6.4 and 4.6.6.5 (60 days to convene POC meeting after initiation of services and 90 days to implement POC after initiation of services" are too long. If they are not shortened, it would be preferable to amend the latter section as follows: "The POC is implemented within the earlier of 30 days from POC meeting or 90 days from initiation of services." If a POC meeting were to be convened within 30 days of initiation of services, it should not take another 60 days to implement it.

22. SCPD endorses Section 4.6.8.2, which addresses AT.

23. Section 4.6.10 is intended to promote community-based employment. However, it could be improved.

a. For example, §4.6.10.2 presumes that an individual is either working in the community or unemployed. It ignores sheltered workshop employment. Consider adding "in a community setting" after "work" and "employment".

b. The requirement of a community-based work assessment every 3 years (§4.6.10.3) could be improved by requiring such an assessment in connection with the initial POC. This could be addressed by adding a new subsection to 4.6.6. requiring a community-based work assessment as part of the overall assessment forming the basis for the initial POC.

c. It would be preferable to amend §4.6.10.3 to refer to "at least every three years". Otherwise a provider could argue that the regulation literally disallows more frequent assessments. Likewise, it would be preferable to authorize assessment based on reasonable request of the individual or legal representative. This would result in the following substitute sentence: "If an individual is not working in a community setting, a community-based work assessment should be completed upon the individual's reasonable request and at least every three years to determine if employment within the community would be a viable option for the individual."

24. In §4.7.6.7, the requirement of a 72-hour supply of non-perishable food is too short. A weather emergency or other event could occur rendering a 3-day supply inadequate.

25. In §4.8.10.4, it would be preferable to amend the reference to "adaptive equipment or assistive technology" since the latter term is used in §4.5 and is ostensibly more encompassing.

26. In Section 6.4, it would be preferable to at least "phase in" a requirement that dishwashers include a "sanitizing cycle or capacity" whenever replaced or by a certain date (e.g. January 1, 2015) or whichever comes first. Cf. 16 DE Admin Code 3225, §17.6.3 (assisted living facilities must have sanitizing capability for dishes and utensils). See also attached articles.

27. Section 8.4 allows 75 square feet per person in 2-person bedrooms. The standard in assisted living and group homes for persons with mental illness is 80 square feet. See 16 DE Admin Code 3225, §17.5; and 16 DE Admin Code 3305, §12.2.2. The latter regulations also clarify that the room measurements do not include closets, wardrobes, alcoves, etc. It would be preferable to adopt an 80 square foot standard and clarify that it excludes closets, wardrobes, alcoves, etc.

28. Section 9.5 uses the term "handicapped". The reference should be modified.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations or recommendations on the proposed regulation.

cc: The Honorable Susan Del Pesco
Ms. Jane Gallivan
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Easter Seals
Autism Delaware
The Arc of Delaware
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15reg968 dltcrp-neighborhood homes 1-27-12

1707, provided that: "This Act [enacting this chapter] may be cited as the 'Assistive Technology Act of 1998'."

§ 3002. Definitions

In this chapter:

(1) Adult service program

The term "adult service program" means a program that provides services to, or is otherwise substantially involved with the major life functions of, individuals with disabilities. Such term includes—

(A) a program providing residential, supportive, or employment services, or employment-related services, to individuals with disabilities;

(B) a program carried out by a center for independent living, such as a center described in part C of title VII of the Rehabilitation Act of 1973 (29 U.S.C. 796f et seq.);

(C) a program carried out by an employment support agency connected to adult vocational rehabilitation, such as a one-stop partner, as defined in section 2801 of this title; and

(D) a program carried out by another organization or vender licensed or registered by the designated State agency, as defined in section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 705).

(2) American Indian consortium

The term "American Indian consortium" means an entity that is an American Indian Consortium (as defined in section 102 of Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002)), and that is established to provide protection and advocacy services for purposes of receiving funding under subtitle C of title I of such Act (42 U.S.C. 15041 et seq.).

(3) Assistive technology

The term "assistive technology" means technology designed to be utilized in an assistive technology device or assistive technology service.

(4) Assistive technology device

The term "assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

(5) Assistive technology service

The term "assistive technology service" means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes—

(A) the evaluation of the assistive technology needs of an individual with a disability, including a functional evaluation of the impact of the provision of appropriate assistive technology and appropriate services to the individual in the customary environment of the individual;

(B) a service consisting of purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities;

(C) a service consisting of selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, replacing, or donating assistive technology devices;

(D) coordination and use of necessary therapies, interventions, or services with assistive technology devices, such as therapies, interventions, or services associated with education and rehabilitation plans and programs;

(E) training or technical assistance for an individual with a disability or, where appropriate, the family members, guardians, advocates, or authorized representatives of such an individual;

(F) training or technical assistance for professionals (including individuals providing education and rehabilitation services and entities that manufacture or sell assistive technology devices), employers, providers of employment and training services, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities; and

(G) a service consisting of expanding the availability of access to technology, including electronic and information technology, to individuals with disabilities.

(6) Capacity building and advocacy activities

The term "capacity building and advocacy activities" means efforts that—

(A) result in laws, regulations, policies, practices, procedures, or organizational structures that promote consumer-responsive programs or entities; and

(B) facilitate and increase access to, provision of, and funding for, assistive technology devices and assistive technology services, in order to empower individuals with disabilities to achieve greater independence, productivity, and integration and inclusion within the community and the workforce.

(7) Comprehensive statewide program of technology-related assistance

The term "comprehensive statewide program of technology-related assistance" means a consumer-responsive program of technology-related assistance for individuals with disabilities, implemented by a State, and equally available to all individuals with disabilities residing in the State, regardless of their type of disability, age, income level, or location of residence in the State, or the type of assistive technology device or assistive technology service required.

(8) Consumer-responsive

The term "consumer-responsive"—

(A) with regard to policies, means that the policies are consistent with the principles of—

(i) respect for individual dignity, personal responsibility, self-determination, and pursuit of meaningful careers, based on informed choice, of individuals with disabilities;

(ii) respect for the privacy, rights, and equal access (including the use of accessible formats) of such individuals;

Food Safety and Environmental Services

Food Equipment Cleaning and Sanitizing: Water Chemistry and Quality (Page 3)

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Enzyme Ingredients
Enzyme-based detergents, which are amended with enzymes such as amylases and other carbohydrate- degrading enzymes, proteases, and lipases, are finding acceptance in specialized food industry applications. The primary advantages of enzyme detergents are that they are more environmentally friendly and often require less energy input (less hot water in cleaning). Uses of most enzyme cleaners are usually limited to unheated surfaces (e.g., cold-milk surfaces). However, new generation enzyme cleaners (currently under evaluation) are expected to have broader application. Fillers Fillers add bulk or mass, or dilute dangerous detergent formulations which are difficult to handle. Strong alkalis are often diluted with fillers for ease and safety of handling. Water is used in liquid formulations as a filler. Sodium chloride or sodium sulfate are often fillers in powdered detergent formulations.

Miscellaneous Ingredients
Additional ingredients added to detergents may include: corrosion inhibitors, glycol ethers, and butylcellosolve (improve oil, grease, and carbon removal).

Sanitizing
Thermal Sanitizing
As with any heat treatment, the effectiveness of thermal sanitizing is dependant upon a number of factors including: initial contamination load, humidity, pH, temperature, and time.

Steam
The use of steam as a sanitizing process has limited application. It is generally expensive compared to alternatives, and it is difficult to regulate and monitor contact temperature and time. Further, the byproducts of steam condensation can complicate cleaning operations.

Hot Water
Hot-water sanitizing -- through immersion (small parts, knives, etc.), spray (dishwashers), or circulating systems -- is commonly used. The time required is determined by the temperature of the water. Typical regulatory requirements (Food Code 1995) for use of hot water in dishwashing and utensil sanitizing applications specify: immersion for at least 30 sec. at 77°C (170°F) for manual operations; a final rinse temperature of 74°C (165° F) in single tank, single temperature machines and 82°C (180°F) for other machines. Many state regulations require a utensil surface temperature of 71°C (160°F) as measured by an irreversibly registering temperature indicator in ware washing machines. Recommendations and requirements for hot-water sanitizing in food processing may vary. The Grade A Pasteurized Milk Ordinance specifies a minimum of 77°C (170°F) for 5 min. Other recommendations for processing operations are: 85°C (185°F) for 15 min., or 80°C (176°F) for 20 min. The primary advantages of hot-water sanitization are: relatively inexpensive, easy to apply and readily available, generally effective over a broad range of microorganisms, relatively non-corrosive, and penetrates into cracks and crevices. Hot-water sanitization is a slow process which requires come-up and cool-down time; can have high energy costs; and has certain safety concerns for employees. The process also has the disadvantages of forming or contributing to film formations, and shortening the life of certain equipment or parts thereof (gaskets, etc.).

Chemical Sanitizing
The ideal chemical sanitizer should:

- be approved for food contact surface application
- have a wide range or scope of activity
- destroy microorganisms rapidly
- be stable under all types of conditions
- be tolerant of a broad range of environmental conditions
- be readily solubilized and possess some detergency
- be low in toxicity and corrosivity
- be inexpensive

No available sanitizer meets all of the above criteria. Therefore, it is important to evaluate the properties, advantages, and disadvantages of available sanitizer for each specific application.

Regulatory Considerations
The regulatory concerns involved with chemical sanitizers are: antimicrobial activity or efficacy, safety of residues on food contact surfaces, and environmental safety. It is important to follow regulations that apply for each chemical usage situation. The registration of chemical sanitizers and antimicrobial agents for use on food and food product contact surfaces, and on nonproduct contact surfaces, is through the U.S. Environmental Protection Agency (EPA). (Prior to approval and registration, the EPA reviews efficacy and safety data, and product labeling information. The U.S. Food and Drug Administration (FDA) is primarily involved in evaluating residues form sanitizer use which may enter the food supply. Thus, any antimicrobial agent and its maximum usage level for direct use on food or on food product contact surfaces must be approved by the FDA. Approved no-rinse food contact sanitizes and nonproduct contact sanitizers, their formulations and usage levels are listed in the *Code of Federal Regulations* (21 CFR 178.1010). The U.S. Department of Agriculture (USDA) also maintains lists of antimicrobial compounds (i.e., *USDA List of Proprietary Substances and Non Food Product Contact Compounds*) which are primarily used in the regulation of meats, poultry, and related products by USDA's Food Safety and Inspection Service (FSIS.).

The #1 Tool to Avoid Food Poisoning

By Reader's Digest Magazine
Digest By Reader's Digest Magazine | Healthy Living – Thu, Dec 22, 2011 1:09 PM EST

Posts

You always knew your dishwasher was convenient. But did you also know that it's one of your best allies in keeping your kitchen safe from contaminants? The dishwasher sanitizes everything that goes in it, says Bonnie Richmond, senior lecturer in food safety and sanitation at the Hotel School at Cornell University, if you use the dry cycle. During that cycle, the internal temperature of the dishwasher reaches 170°F, which is required for sanitizing. (Sanitizing is the process of reducing harmful microbes to an acceptable level. Sterilizing is the process of removing all living organisms - something we can't aspire to in our own homes.)

Here's Richmond's first rule of thumb: Run anything through the dishwasher that can go into it, including plateware, glassware, flatware, plastic cutting boards, and sponges. Anything that touches raw meat and fish, or their juices or blood, should be placed in the dishwasher immediately. That means if you use a sponge to wipe up the counter where meat juices have spilled, you should toss it right in the dishwasher and get out a clean one. At the very least, your sponges should go into the dishwasher every time you run it. Be sure to keep a backup supply on hand so you are not tempted to use a dirty one.

PLUS: 8 Places Germs Hide in Your Home

One thing you can't put through the dishwasher is your hands. Always keep a bar of soap or soap dispenser next to the kitchen sink. To ensure that you are not spreading contaminants, wash your hands thoroughly whenever you enter the kitchen, between each kitchen task, and before you leave the kitchen.