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MEMORANDUM

DATE: June 26, 2015

TO: Bryan Gordon, Provider Relations Unit
Division of Substance Abuse and Mental Health

DMP/KH

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

RE: 18 DE Reg. 938 (DSAMH Proposed Substance Abuse Facility Licensing Regulation)

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Substance Abuse and Mental Health's (DSAMH's) proposal to replace the existing regulations covering the licensing of substance abuse facilities. The current regulations were adopted in 2010. The revisions are intended, in part, to reflect DSAMH's adoption of the American Society of Addiction Medicine (ASAM) Level of Care Criteria. The proposed regulation was published as 18 DE Reg. 938 in the June 1, 2015 issue of the Register of Regulations. SCPD has the following observations and recommendations.

First, it is unclear to what extent these regulations cover facilities serving minors. Title 16 Del.C. §2205(3), §2206(1) and §2207 require the Department of Health & Social Services (DHSS) to collaborate with the Department of Services for Children, Youth and Their Families (DSCYF) in the licensing of substance abuse treatment programs. Cf. 16 Del.C. §§2210(c). However, the DSAMH regulation ostensibly covers facilities serving minors or adults and requires any facility providing substance abuse services to be licensed by DHSS. See §2.1, 2.2, and 4.1.1. Failure to comply is a crime. See 16 Del.C. §2209. Standards applicable to minors appear in many sections (e.g. §§5.1.2.2; 7.1.2; 15.2.2.2.4). Some sections apply only to adults (e.g. §§13.1.1.1 and 14.1.1). Most standards do not differentiate between minors and adults. In contrast, the DSCYF has its own substance abuse treatment facility regulations and requires licensing under its standards. See 16 Del.C. §2208(a) and 9 DE Admin Code 105.2.1. Section 2208(a) authorizes DHSS to delegate the licensing of substance abuse treatment facilities to the DSCY&F. However, there appear to be child standards in both the DHSS and DSCY&F

regulations. Requiring facilities to comply with inconsistent regulatory standards is confusing and somewhat dysfunctional.

Second, it is unclear to what extent these regulations cover facilities providing mental health services. The title to the regulation only refers to substance abuse facilities. However, some standards ostensibly apply to "stand-alone" mental health treatment facilities without substance abuse components. See, e.g., §3.0, definition of "applicant"; and §4.3.3 . Cf. §7.1.3 (both substance abuse and mental health bills of rights applicable). Some standards suggest that the standards only apply to mental health facilities if combined with substance abuse treatment component (§4.1.1; §1.0).

Third, in §3.0, definition of "Inactive Status", the Division may wish to correct grammar.

Fourth, in §3.0, definition of "Qualified Medical Professional (QMP)", substitute "Assistant" for "Assistants" since all other references are singular.

Fifth, in §3.0, definition of "Quality Assurance", consider substituting "the avoidance, identification and/or resolution of client care quality issues" for "to avoid, identify and/or resolve client care quality issues" since earlier references are gerunds (e.g. "monitoring" and "evaluating").

Sixth, in §3.0, definition of "Signature/signed", the criteria are somewhat "overbroad". There are individuals with physical disabilities who could not write a first and last name. Moreover, the Delaware Code is not prescriptive See 1 Del.C. §302(23) which allows individuals with limitations to sign with a mark.

Seventh, in §3.0, definition of "Substance", substitute "affect" for "affects" for proper grammar.

Eighth, "ending" punctuation has been omitted throughout §4.2.

Ninth, in §4.3.5.2, the duplicate reference to "information" should be deleted.

Tenth, §4.4.2 suggests that an unannounced inspection could only occur upon receipt of a complaint or report of an adverse event. This could be invoked by a facility to oppose an unannounced inspection. The inclusion of the limitation is unnecessary and DHSS should consider deletion. Section 4.4.3 simply allows unannounced inspections.

Eleventh, programs with independent accreditation "will be granted a license which is valid for up to three (3) years" and "be exempt for the period of their license from Division monitoring pursuant to these regulations, except for complaint based investigations and corresponding actions by the Division." See §§4.11.3 and 4.11.4. This exemption should be reconsidered. It violates 16 Del.C. §2207(b) which requires DHSS to conduct inspections "periodically" and "at

least every 2 years". Moreover, it makes little sense for the Division to "tie its hands" with respect to inspections. By analogy, the Delaware Psychiatric Center was JCAHO-accredited for many years. That did not equate to "state of the art" treatment as documented in findings of a legislative task force and U.S. DOJ investigation. Moreover, an agency could be "on probation", have "conditional accreditation", or have many deficiencies identified by an accrediting body and DSAMH would be barred from all monitoring in the absence of a complaint. Cf. §§4.11.6 and 4.11.8 (DSAMH receives notice of deficiencies but cannot monitor).

Twelfth, §4.12.3 is "brittle" in making the term of any waiver equal the term of the agency's license. There may be short term situations (natural disaster; fire; HVAC breakdown) which may justify a short-term waiver but not a long-term waiver. Some licenses last for 3 years (§4.11.2). It would be preferable to authorize waivers to be in effect for a period which shall not "exceed" the term of the applicant's current license.

Thirteenth, in §5.0, it would be preferable to require training in the applicable bills of rights identified in §7.1.3 as well as PM46 and abuse/neglect reporting. For example, §5.1.2.3 could be amended as follows: "Policies and procedures regarding clients' rights and protections, including those identified in §7.0." The current regulation curiously requires training in reporting "child" abuse/neglect but not adult abuse/neglect. See §5.2. This anomaly should be addressed.

Fourteenth, in §6.3.1.3, the term "may be" should be substituted for "maybe".

Fifteenth, in §8.2.1.10.5, it would be preferable to include a "sign off" by the client's guardian, if applicable. Cf. §15.2.2.2.4.2.

Sixteenth, the sections on discharge planning (§8.2.1.12 and 8.2.1.13) would benefit from the incorporation of input from anticipated post-discharge providers. Compare 16 Del.C. §5161(b)(4).

Seventeenth, in §8.2.1.13.2.11, it would be preferable to include a "sign off" by the client's guardian, if applicable. Cf. §15.2.2.2.4.2.

Eighteenth, in §10.1.4., substitute "Review by" for "Be reviewed by" for proper grammar and consistency with preceding subparts.

Nineteenth, in §11.1.1.1, subparts sometimes end with a period, sometimes end with a semicolon, and sometimes have no terminal punctuation.

Twentieth, in §15.5.1.1.3, substitute "the client's" for "their" since there is otherwise a plural pronoun with a singular antecedent.

Twenty-first, there is some "tension' between §15.8.5.2 and §15.5.1.3. The former disallows an initial dose of Methadone to exceed 30 mg while the latter disallows an initial dose of Methadone for pregnant clients to exceed 40 mg. This is also counterintuitive, i.e., a pregnant client could receive a higher initial dose of Methadone than anyone else. Finally, capping an initial dose in the regulation may not be clinically prudent. Logically, a 350 lb. client might qualify for a higher dose than a 115 lb. client.

Twenty-second, §15.14.3 categorically disallows the admission of a client for more than two detoxification treatments episodes in one year. This is unduly brittle. For example, a client with an unsuccessful detoxification treatment in January and March could not be admitted in December despite clinical "readiness" and changed circumstances. The categorical limit is an unrealistic burden on access to treatment.

Twenty-third, there are several sections which cite to "Title 16 Delaware Administrative Code 6001". See §16.1.3.4; §16.1.3.8; §17.1.4.7; §19.1.4.3; §19.1.4.5; §20.1.4.3; and §20.1.4.5. That is the reference to the current regulation. The individual references should be to the relevant section of the current regulation or simply refer to the current regulation. For example, the references to recovery plans could read as follows: "Individualized interdisciplinary Recovery Plan, consistent with ~~Title 16 Delaware Administrative Code 6001~~ §8.2.1.9, completed within X hours of admission."

Twenty-fourth, §20.1.4.8 reads as follows: "Referral and assistance shall be provided as needed for the client to gain access to other." Obviously, some words have been omitted at the end. Based on the similar §19.1.4.8, SCPD assumes the following words were omitted: "needed SUD or mental health services."

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

cc: Gerard Gallucci, M.D., Acting Director, DSAMH
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