



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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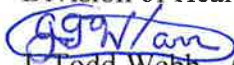
The Honorable John Carney
Governor

John A. McNeal
Director

MEMORANDUM

DATE: April 30, 2019

TO: Ms. Renee Purzycki, DHSS
Division of Healthcare Quality (DHCQ)

FROM:  J. Todd Webb – Chairperson
State Council for Persons with Disabilities

RE: 22 DE Reg. 839 [DHCQ Proposed Regulations: Intensive Behavioral Support and Educational Residence (IBSER) (April 1, 2019)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Division of Healthcare Quality's (DHCQ) proposed to amend its Intensive Behavioral Support and Educational Residence (IBSER) regulations. The proposed regulation was published as 22 DE Reg. 839 in the April 1, 2019 issue of the Register of Regulations. SCPD endorses the proposed regulations as they provide more specificity and clarity to DHCQ's requirements for IBSERs, as well as additional language emphasizing behavioral interventions should be individualized. Council has the following observations in support of the amended regulations.

An IBSER is defined by the current regulations as “a residential facility which provides services to residents with autism, and/or developmental disabilities, and/or severe mental or emotional disturbances and who also have specialized behavioral needs.” 16 Del. Admin. C. § 3320-1.0. The proposed amended regulatory definition is more or less the same, but makes clear that the services are to be provided to residents 18 years and over, and that an IBSER should have no more than ten residents.

The proposed regulations are more detailed as far as licensing requirements and procedures. Additionally, in the proposed regulations, Section 3.0 adds specific requirements for an IBSER to “maintain and comply with a written policy and procedure manual” (3.1). These policies and procedures must include “behavior support that uses person-centered positive behavior support techniques” (3.2.2) and “implementation and documentation of the person centered plan” (3.2.7).

Systems for the reporting and processing of critical incidents (3.2.4) as well as tracking data from these reports to assess trends and “help prevent further incidents” (3.2.3) are also required. The specific requirement of these practices would seem to be a positive development in terms of both ensuring resident safety and providing individualized support that is based on data.

Section 5.0 of the proposed regulations provides specific guidelines for incident reporting and what must be included. Additions in the proposed regulations include more specific requirements for follow-up action, as laid out in 5.5.1.8, and the provision at 5.9 that all reportable incidents must be thoroughly investigated by the IBSER and a written report sent to the department within five days, which mirrors the language in DHSS PM 46. Section 7.0 more explicitly spells out that the residents’ rights provisions of the Long-Term Care statute apply to the residents of IBSEs.

Section 8.0 more clearly lays out the resident services to be provided by the IBSER. It specifies that the Specialized Behavior Support (SBS) plan must be developed “within 5 days of admission to the IBSER.” This seems like another positive development as it ensures that a personalized plan is in place as soon as possible, and gives residents and any advocates or representatives a deadline they can hold staff to as far as development of a plan. Also, in the existing regulations, the requirements for the SBS plans are mixed in the same subsection with the rules about restraint, and it makes much more sense to have them covered separately as in the new drafted regulations.

As referenced above, Section 8.6 separately discusses procedures for the use of restraint and reporting of restraints. While the proposed regulations contain mostly identical language as the existing regulations, there is some change at 8.6.13, where the new regulations state that “[a]ny physical intervention not in the approved physician intervention procedure and training manual is prohibited.” 8.6.14 then states “[t]he use of any physical intervention technique that is medically contraindicated for a resident is prohibited.” This language replaces a list of prohibited techniques provided in the existing regulations at 20.11. This more general language allows for future developments in the evidence and professional standards, but ideally training provided to staff might still cover why some of the particular prohibited techniques are unsafe and not allowed.

Section 9.0 describes requirements for personnel qualifications. The existing regulations differentiate between direct care supervisors and services supervisors, and service supervisors and service workers (see Section 13.0 in existing regulations). The proposed regulations would have uniform requirements for supervisory positions, and do not define “service workers” separately from direct care workers. SCPD is not aware of the original reason for separately categorizing certain types of employees, but the new wording and requirements are more straightforward, and still contain essentially the same requirements as far as educational degrees and experience. Section 9.0 also updates the required staffing ratios to reflect that IBSEs are only permitted to have ten or fewer residents. The updated regulations also do not define ratios depending on how many residents are present in the home at a particular time (as compared with the existing regulations at 13.5). The new requirement is that a minimum of 2 direct care workers

must be on site and awake at all times, but the number of workers on duty should be “based upon assessment of the residents’ needs.” (9.4.6)

At 9.5, the proposed regulations increase the minimum number of hours of orientation training for new hires and volunteers from 15 hours (found at 14.1 in existing regulations) to 40 hours. This makes sense given the challenges presented in the provision of individualized services in this type of setting. The proposed regulations also set a uniform requirement for 40 hours of additional training annually regardless of an employee’s position, whereas currently, there are different requirements for staff based on how many hours they are working per week. While generally more training for staff is a positive, it is possible that part-time staff could find these training requirements onerous, and staff retention is always a big concern.

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

cc: Mary Peterson, Director
Ms. Laura Waterland, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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