



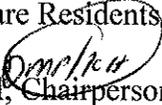
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**MEMORANDUM**

DATE: April 23, 2012

TO: The Honorable Susan Del Pesco, Director  
Division of Long Term Care Residents Protection

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

RE: 15 DE Reg. 1477 [DLTCRP Final Neighborhood Home 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) final licensing regulation covering neighborhood homes for persons with developmental disabilities. The final regulation was published as 15 DE Reg. 1477 in the April 1, 2012 issue of the Register of Regulations. SCPD submitted comments on the proposed version of this regulation in January 2012. The Division of Long-Term Care Residents Protection is now adopting a final regulation with many amendments prompted by the commentary and SCPD certainly appreciates that the Division carefully considered our comments. Council has reproduced the commentary below followed by the change, if any, highlighted by italics.

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.

*The Division adopted the recommended definition verbatim.*

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

*The correction was made.*

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

*The correction appears in the final regulation.*

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.

*Instead of amending the definition, the entire definition was stricken.*

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.

*The definition was amended to address both concerns.*

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.

*The definition was amended to include a reference to “developmental disabilities”.*

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.

*The definition was not amended.*

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

*The recommended amendment was adopted.*

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.

*The section was not amended.*

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”.

*The section is now §4.1.1.3. The text was not amended.*

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.”

*The Division commented that the section was erroneously included in the proposed regulation. At 1478. The entire section was deleted.*

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

*The section is now §4.2.3.1. The amendment was added.*

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.

*The section is now §4.2.3.4. The amendment was added.*

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.

*This section is now §4.3.4.4. No change was made.*

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. No. 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.

*This section is now §4.3.6.1. It was amended to allow individuals approved for self-administration of medications to use 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).

*The Division noted that this section was erroneously included in the proposed regulation. At 1478. It was deleted.*

17. Section 4.5.4.3 could be improved. For example, it is common for DDS 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.”

*The amendment was added.*

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.”

*The Division noted that the section was erroneously included in the proposed regulation. At 1478. It was deleted.*

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

*The section was deleted.*

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

*The amendment was not made. The improper grammar remains.*

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.

*These sections are now §§4.6.1.5 and 4.6.1.6. The references were changed from “POC” to “ELP”. The time periods were not changed.*

22. Section 4.6.8.2, which addresses AT, merits endorsement.

*The section is now §4.6.3.2. No change was made apart from substituting “ELP” for “POC”.*

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”.

*The section is now §4.6.5.2. The text was amended to add the reference to “in a community setting”.*

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.

*This section is now §4.6.5.3. No change was made apart from that described in the paragraph below.*

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.”

*This section is now §4.6.5.3. The requested substitute sentence was adopted with the exception of deleting “reasonable”.*

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.

*This section is now §4.7.5.8. No change was made.*

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.

*This section is now §4.8.9.4. The requested amendment was adopted.*

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.

*This section was amended. It now includes the following sentence: “The dishwasher must either*

*have a sanitizing cycle or the home must use a dishwasher detergent with bleach.”*

27. Section 8.2 requires each sleeping room to have an outside window. This is a favorable feature but not uniformly required in other regulated settings. It does not seem to be required in assisted living settings (16 DE Admin Code 3225, §17.5) but is required in group homes for persons with mental illness (16 DE Admin Code 3305, §12.2.1). The requirement is not inherently objectionable but could limit capacity of some homes in the absence of a waiver.

*No change was made.*

28. 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.

*This section was amended. The following sentence was added: “Neighborhood homes licensed subsequent to the implementation of these regulations shall provide at least 80 square feet per person.”*

29. Section 9.5 uses the term “handicapped”. The reference should be modified.

*The comment applied to Section 9.4. The reference was changed.*

SCPD certainly appreciates that the Division considered our comments and adopted many of the Council’s suggestions.

cc: Ms. Deborah Gottschalk  
Mr. Brian Hartman, Esq.  
Governor’s Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

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