



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

MEMORANDUM

DATE: May 29, 2012

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

FROM: *DMP/KW*
Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: 15 DE Reg. 1603 [DLTCRP Final IBSER 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 Intensive Behavioral Support and Educational Residences (IBSER) regulations. SCPD commented on a proposed version of this regulation in a March 29th memorandum. SCPD certainly appreciates the opportunity to collaborate on this issue and is thankful that the Division effected many amendments based on Council's comments. SCPD has the following observations on the final regulation.

First, the Council noted that the regulation includes a definition of "seclusion" but no section addressing use or limitations on use of seclusion. In addition, SCPD also stressed that the licensing statute bars "involuntary seclusion". The Division responded that the definition is intended to "capture the prohibition against isolating an individual." Therefore, the Division's intent is ostensibly to bar seclusion consistent with the statute. However, there is still no operative reference to seclusion within the body of the regulation which could result in confusion on the permissible use of seclusion.

Second, the Council characterized an authorization for adults to sleep in bunk beds as not age-appropriate. The Division responded that the "grandfathering" was a compromise to enable the viability of the current operation. However, this response is not "apt" since the authorization to use bunk beds is not limited to existing facilities. It applies to all IBSER-licensed facilities, even those prospectively licensed.

Third, the Council recommended addition of a section requiring the maintenance of any video recording of an episode of restraint. The Division responded that it is "developing a policy

which will govern the use of video monitoring in all licensed facilities.” What is the timeline for development of such a policy? SCPD would be happy to participate on any committee which may address this issue or provide technical assistance.

Fourth, The Council recommended insertion of a reference to video records of incidents. The Division effected no change, commenting that “DHSS is developing a policy which will govern the use of video monitoring in all licensed facilities.” What is the timeline for development of such a policy? SCPD would be happy to participate on any committee which may address this issue or provide technical assistance.

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

cc: The Honorable Rita Landgraf
Ms. Kevin Huckshorn
Ms. Jane Gallivan
Ms. Deborah Gottschalk
Mr. Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

15reg1603 dltrcp-IBSER ty 5-12