



Governor's Advisory Council for Exceptional Citizens (GACEC) 516 West Lookerman St., Dover, DE 19904
302-739-4553 (voice) 302-739-6126 (fax) <http://www.gacec.delaware.gov>

June 25, 2019

James Dickinson
Division of Developmental Disabilities
Service Integrity and Enhancement
1056 South Governor's Avenue, Suite 101
Dover, DE 19904

RE: DDDS Proposed Reportable Incident Management and Corrective Measures Regulation [22 DE Reg. 989 (June 1, 2019)]

Dear Mr. Dickinson:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Developmental Disabilities Services (DDDS) proposal to create regulations to ensure the health and safety of persons served in Home and Community-Based Services (HCBS) under DDDS contracts with providers, consistent with Policy Memorandum 46 (PM 46). The proposed regulations clarify the obligations of DDDS-contracted providers of home and community-based services. Council **supports** the creation of these procedures to promote safety and quality of care for service recipients. However, we would also like to share the following observations

First, in section 3.0 Definitions, Council questions the second line in the definition of Corrective Measures. Failures should not be pluralized. Also, Council would ask that the last sentence be revisited and would suggest removing the phrase beginning with "...and revocation..." and ending with "...DHCQ..." The sentence would be clearer if it read as follows: "Additional reasons for taking corrective measures include obstruction of a DDDS investigation or failure to maintain minimum training requirements for direct service staff."

Second, in the definition of Direct Support Professional, Council suggests removing either 'with' or 'to'.

Third, in the definition of Elopement, Council questions how long an individual may be considered missing before law enforcement is contacted.

Fourth, in the definition of Incident Record, Council would suggest changing "...documenting the history of the incident from reporting to resolution..." to "...from occurrence to resolution..." The Incident Record is the report.

Fifth, in the definition of Significant Injury, Council notes that injuries from known sources are not addressed. Council feels that any areas or contusions or bruises caused by staff should be noted regardless of whether they occurred during ambulation, transport, or bathing. Injuries should not be limited to these incidences.

Sixth, in the definition of Unsubstantiated, Council would suggest referring to section 11.1.2 to indicate that additional steps will be taken.

Seventh, section 5.4 requires that any suspected criminal activity must be reported to law enforcement “immediately,” however it does not restate PM 46’s requirement that this report should be made within two hours in cases of “serious bodily injury.”

Eighth, section 8.2.1 states that the OIR Administrator will assign an investigation to either a provider or DHSS investigator. For clarity and specificity, Council suggests that “DHSS” be replaced by “DDDS,” as it is assumed from the rest of the text of Sections 8 and 9 that the investigator from DHSS would be a DDDS employee.

Ninth, in section 8.3, if DDDS is assigned to perform the investigation, the provider agency cannot conduct its own internal investigation “beyond what is immediately needed to assure the health and safety of the individual(s) served, until such time as the DDDS investigation is completed.” Apparently this is to minimize any interference with the DDDS investigation. If DDDS investigators cannot complete their reviews within the timeframes laid out by the proposed regulations, however, provider agencies could be limited in their ability to do a timely and effective internal review of an incident for their own quality assurance purposes, as witness recollections and evidence may be compromised after a certain amount of time.

Tenth, in section 9.8, the regulations make clear that all investigations, whether completed by DDDS or a provider agency, “shall be conducted in accord with DDDS approved investigator training.” Council approves of this requirement as it will encourage consistency in the methodology and quality of investigations as well as any written findings based on completed investigations. One noteworthy omission is that the regulations do not restate PM 46’s requirements as to the minimum standards for investigation reports (found in Standard K of PM 46 at part 3c), which include direct interviews with the individual service recipient involved in the incident as well as the reporter of an allegation and all potential witnesses. While this could presumably be addressed in the training required for investigators, it might make sense to also restate this in the regulations for the sake of consistency and to encourage thoroughness in the investigative process.

Eleventh, section 10.1 states that completed investigations must be reviewed by the IRP Administrator. IRP Administrator is not included in the definitions section. Multiple provisions in sections 10 through 12 refer to an “IRP Administrator.” Based on context, this is presumably intended to read “OIR Administrator” as the role of “IRP Administrator is not separately defined anywhere in the proposed regulations.

Twelfth, section 11.1 states that the IRP administrator has “the discretion to... *wave* a QIP” where presumably it was intended to say that the IRP administrator may “waive” the QIP.

Thirteenth, sections 11.1.1 and 11.2 seem to state the same thing (that a QIP may be required to explain poor documentation even when an incident is unsubstantiated) and may be duplicative.

Fourteenth, the timelines noted in sections 15.0, 16.0 and 17.0 are concerning. The days listed in section 15.0 add up to as many as 52 days and the timeframe noted in section 16.0 add up to even more days. These timelines are too long.

Fifteenth, section 17.2.4.3 states that for the third and final level of appeal of imposition of corrective measures by the CMC, DDDS must submit evidence and rationale the imposition of corrective measures in response to the receipt of an appeal request, and this submission “must identify supporting data or evidence that is new or different than what was presented in the second level of appeal.” This limit also applies to the provider agency submitting a third level appeal request, which makes more sense as presumably the evidence submitted by the provider agency at the second level of appeal was deemed insufficient to overrule the conclusions of the CMC. It seems unusual for the Division to be required to submit new evidence when their findings had been upheld at both the first and second levels of appeal, and is arguably not the best use of the Division’s resources.

Thank you for your consideration of our observations. Please contact me or Wendy Strauss at the GACEC office if you have any questions.

Sincerely,

Ann C Fisher

Ann C. Fisher
Chairperson

ACF:kpc