



Governor's Advisory Council for Exceptional Citizens (GACEC) 516 West Lookerman St., Dover, DE 19904
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September 27, 2019

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

RE: 23 DE Reg. 182 [DDDS Proposed Reportable Incident Management and Corrective Measures Regulation (September 1, 2019)]

Dear Mr. Dickinson:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the revised version of the regulations clarifying the obligations of DDDS-contracted providers of home and community-based services under Delaware Health and Social Services Policy Memorandum 46 and DDDS internal processes for investigation of reportable incidents and imposing corrective action. The original regulations were published in the June 2019 issue of the Delaware Register of Regulations but were updated due to public comments received on the proposed regulations at that time. Council would like to thank DDDS for accepting many of our earlier recommendations and making changes to the proposed regulations; however, we would like to share observations on a few remaining concerns.

First, throughout the regulations DDDS has replaced the language "as advised by the DDDS Deputy Attorney General" with the broader language "only information permitted by state law or DDDS policies" when referring to the contents of certain records and conditions for disclosure to a service recipient or a third party. While this makes sense as far as releasing information to individuals outside of the agency, it is somewhat confusing when used with respect to DDDS internal records pertaining to incidents (as indicated in the definition of "Incident Record" in 3.0). It is not totally clear what limitations state law or DDDS policy would impose on information contained in DDDS internal records of critical incidents, which would presumably need to contain personally identifying information, health information protected under HIPAA, and personnel information.

Second, in Section 9.0 ("Conduct of Investigations") DDDS has added minimum requirements at 9.1 as to what investigations should include in addition to being "conducted in accord with DDDS-approved investigator training." These include direct interviews with the service

recipient, the reporter of the incident, and potential witnesses, as well as written statements from other involved parties and the review of documents and physical evidence. The DDDS approved training provided by Labor Relations Alternatives (LRA) is very thorough; however, Council would encourage more explicit requirements to ensure there is consistent understanding among investigators of what must be done to complete an effective investigation. In this way, staff and administrators within DDDS who have not completed the investigator training will also know what to look for when reviewing a completed investigation.

Again, we thank DDDS for responding and adopting many of our earlier recommendations and look forward to your thoughtful review of our current comments. 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