

**HOME AND COMMUNITY-BASED SERVICES (HCBS) AND LICENSING  
DEPARTMENT OF HUMAN SERVICES REGULATION #14-540  
SUMMARY OF CHANGES MADE IN RESPONSE TO RCPA COMMENTS  
December 13, 2017**

<b>REGULATION AREA OR SECTION NUMBER</b>	<b>CHANGES MADE IN RESPONSE TO RCPA COMMENTS</b>
<b>Streamlining across 5 Chapters Chapters 2380, 2390, 6100, 6400, 6500</b>	All five chapters are now in sync across six key areas: individual rights, staff training, individual plans, restrictive procedures, incident management and medication administration. This will result in improved and better coordinated services to individuals, as well as reduced duplication of compliance monitoring efforts by the providers, the AEs and the Department. Time saved by all parties allows focus on providing quality services.
<b>Definitions § 6100.3</b>	The terms “natural person,” “family” and “natural support” are no longer used in Chapter 6100. The concept of family is converted to “persons designated by the individual” to include the individual’s friends as well as relatives. The term “natural person” is no longer used; this term is defined in 1 Pa. Code. The concept “natural support” is clarified with a new definition of “volunteer.”
<b>Monitoring Compliance - Methods § 6100.42(a)</b>	The reference to “other monitoring methods” is deleted.
<b>Monitoring Compliance - Alleged Violations § 6100.42(e)</b>	The term “alleged violation” is changed to “preliminary determination of non-compliance”; this allows a provider to challenge or dispute an initial regulatory citation through the corrective action process.
<b>Monitoring Compliance - Record Retention § 6100.42</b>	The time period for the retention of compliance documents, as well as for all other records required by Chapter 6100, is governed by § 6100.54 (relating to record keeping). The time period for record retention is generally 4 years. See the specific time lines in § 6100.54.
<b>Regulatory Waiver § 6100.43(e)-(h)</b>	Subsection (e) is revised and subsections (f), (g) and (h) are deleted; the waiver process is significantly simplified from proposed rulemaking.

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<b>Innovation Project - § 6100.44</b>	The requirements for an innovation project proposal are significantly shortened and simplified. The proposed requirement for involvement by an advisory committee is deleted. Proposed subsections/paragraphs (b)(2), (b)(14), (b)(15), (c), (e), (f) and (g) are deleted.
<b>Quality Management § 6100.45</b>	The section governing quality management is completely revised, streamlined and shortened. A specific form is no longer required. Prescriptive requirements are removed. Measurement of outcomes is not required. Reference to CFR compliance is deleted. The analysis of successful training is deleted. Staff satisfaction surveys are not required. Individual and family surveys are not required. The review frequency is extended from 2 to 3 years.
<b>Protective Services § 6100.46(b)</b>	<p>The word “involved” is added as suggested. Thank you for this clarification.</p> <p>Clarification is added that the ban ends if a report is found to be inconclusive. Thank you for this clarification.</p> <p>Nothing in this section usurps a provider’s authority and responsibility to take appropriate human resource disciplinary action with a staff person.</p>
<b>Criminal History Checks § 6100.47</b>	<p>As suggested by RCPA, (a) and (b) are collapsed and combined. Clarification is added that household members include only adults. Clarification is added to (c) (proposed (d)) regarding unpaid supports.</p> <p>Thank you for helping to refine this section.</p>
<b>Funding, Hiring, Retention and Utilization § 6100.48</b>	The Department deliberately shortened this section to reference applicable statutes and regulations including the CPSL, OAPSA and the APS Act, and their accompanying regulations. This revision requires the application of the laws in accordance with the Peake and Nixon cases, as well as any future court decisions and statutory/regulatory revisions. The ODP is not the authorized agency for interpreting these three protective services statutes; ODP relies on other state agencies and other DHS program offices to interpret the laws.
<b>Communications § 6100.50(b)</b>	Proposed subsection (b) is deleted.

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<b>Complaints</b> <b>§ 6100.51</b>	<p>The timeframe of 21 days for complaint resolution in the proposed subsection (h) is deleted.</p> <p>The timeframe in the final subsection (h) is increased to 30 days for complaint resolution and reporting. If the complainant is anonymous, no report is necessary.</p>
<b>Rights Team</b> <b>§ 6100.52</b>	<p>The proposed § 6100.52 is deleted in entirety. The concept of behavior support management is addressed in restrictive procedures, similar to the current provisions in Chapters 2380, 6400 and 6500.</p>
<b>Conflict of Interest</b> <b>§ 6100.53</b>	<p>This section is significantly reduced from the current § 51.33 (relating to conflict of interest).</p>
<b>Recordkeeping</b> <b>§ 6100.54</b>	<p>Thank you for supporting the reasonable general time frame of 4 years for record retention.</p> <p>Electronic records are permitted; however, no regulatory change is required since a written document necessarily includes electronic records. Throughout the regulation, written documents are referenced. Written does not mean “paper”, but indeed includes electronic documents as well as any form of written communication.</p> <p>This section complies with HIPAA.</p>
<b>Ongoing Provider Quals</b> <b>§ 6100.85</b>	<p>This proposed section is deleted in entirety.</p>
<b>Annual Training Plan</b> <b>§ 6100.141 (as proposed)</b>	<p>This proposed training plan requirement is deleted in entirety.</p> <p>Thank you for supporting the consistency in the training requirements across the five chapters; the improved protections for the individuals; the simplification of the mandatory training topics; and the greater control providers have over their own training program.</p>
<b>Annual Training</b> <b>§ 6100.143(c)</b>	<p>The 8-hour requirement for the specific training courses is deleted.</p>

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<b>Individual Rights - Residential § 6100.183(g)</b>	This subsection is relocated from the proposed § 6100.443 and revised to address the locking of doors as a right of an individual, rather than an absolute requirement for all doors in the home to be equipped with locks/keys. This difference, while subtle, allows the individual the choice to exercise or not to exercise her rights. The issue of easy access by staff in the event of an emergency is addressed, while still protecting the individual's privacy.
<b>Development of the Individual Plan § 6100.221</b>	Service implementation plan (see (g)), SC (see § 6100.803(a)) and TSM (see § 6100.803(b)) are defined.
<b>Individual Plan Process § 6100.222</b>	<p>Subsection (a) is clarified to add that the individual directs the plan process to the extent possible and as desired by the individual.</p> <p>The term "maximum" is deleted in paragraph (b)(4). This requirement aligns with Federal regulation. The support coordinator plans, schedules and directs the plan process. Compliance with (b)(5) is measured by interviewing the individual and other team members. No paper documentation is required. The guidelines referenced in paragraph (b)(9) are the support coordination agency's procedures to resolve disagreements. Proposed paragraph (b)(11) is deleted.</p>
<b>Content of the Individual Plan § 6100.223</b>	<p>The content of the plan is significantly reduced and simplified. Proposed paragraphs (2), (7), (9), (10), (12), (15), (16), (17), (18), (20) and (21) are deleted from the content of the plan; four of these content items (health care, choice of provider, finances and guardian) are relocated to a separate record section to be maintained by the SC. See § 6100.225(c) (relating to support coordination).</p> <p>"Active pursuit of" is removed from paragraph (11); the final language aligns with the Governor's policy. The needs and choices of older adults and children are addressed; the plan now references "individuals of employment age."</p>
<b>Support Coordination – Removal of time frames § 6100.225</b>	Time frames are removed from the individual planning process, with the exception of the annual review and update (see subsection (a)).

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<b>Documentation of Claims and Progress Notes</b> <b>§§ 6100.226-227</b>	Clarity and specific detail is added to address the documentation requirements and the differences between claim documentation and progress notes.
<b>Access to the Community</b> <b>§ 6100.261</b>	Proposed subsections (b) and (c) are deleted.
<b>Employment</b> <b>§ 6100.262</b>	Competitive integrated employment is defined in accordance with the Governor’s Executive Order. Proposed subsections (b), (c) and (d) are deleted.  Subsection (a) is revised to add “shall provide” and “information about employment options appropriate for the individual.”
<b>Education</b> <b>§ 6100.263</b>	This proposed section is deleted in entirety.
<b>Involuntary Transfer</b> <b>§ 6100.303(a)(4)</b>	Closure of the service location is added as a fourth reason for an involuntary transfer. Thank you for this clarification.
<b>Written notice</b> <b>§ 6100.304</b>	A new subsection (b) is added to allow the DHS or the DME to authorize an early transfer to protect the health and safety of the individual.

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<b>Restraints - Reduction in the Use of Restraints; Added Individual Protections; Clarification of Permitted Mechanisms/Procedures §§ 6100.341-349</b>	<p>The restrictive procedures provisions are reviewed by an ODP clinician. The provisions align with the current requirements in the Chapters 2380, 6400 and 6500. The new restrictive procedure requirements apply to non-licensed settings (the current requirements apply only to licensed adult training, community homes and life sharing homes). The new requirements apply to vocational facilities (vocational facilities are not currently regulated relating to restraints).</p> <p>“Functional analysis” is replaced with an assessment of the behavior.</p> <p>Clarifications of permitted mechanisms and procedures such as bite release techniques, pretreatment for dental care, seat belts, helmets in certain circumstances and post-surgical care are added. Clarification is added that a protective device (e.g. helmet) that is removed upon indication by the individual is acceptable. A requirement is added to provide periodic relief from the use of mechanical devices.</p> <p>“Manual restraint” is revised to “physical restraint.” Physical restraint is allowed only in an emergency situation. A physical restraint means for any length of time—there is no 30 second exclusion as in the current licensing regulations.</p> <p>As in current licensing regulations, staff training in the use of physical restraints is required including experiencing the application of the restraint on oneself.</p> <p>A behavior support component is added to the individual plan. This plan component and process replaces the proposed Rights Team concept.</p>
<b>Access to Property § 6100.350</b>	<p>Clarification is added that a court-ordered restitution applies.</p>
<b>Types of Incidents and Timelines for Reporting § 6100.401(a)</b>	<p>The provisions re: incident reporting must be in regulation (not Bulletins); the existing ODP Bulletin/Statement of Policy will be revised to reflect the regulations.</p>

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<b>Types of Incidents and Timelines for Reporting § 6100.401(a)</b>	ER visits, medication errors, use of restraints and critical events are removed from the list of incidents to be reported in 24 hours.  Suicide, abuse, missing individuals, law enforcement and fires are further clarified.
<b>Types of Incidents and Timelines for Reporting § 6100.401(b)</b>	Medication errors and use of restraints are reported within 72 hours.  Medication errors are narrowed to include only those medications ordered by a health care practitioner. OTC medication errors are not reportable unless the health care practitioner ordered the OTC administration.
<b>Types of Incidents and Timelines for Reporting § 6100.401(c)</b>	As requested by RCPA, the time frame for notification is defined as 24 hours.
<b>Types of Incidents and Timelines for Reporting § 6100.401(e)</b>	This section is revised to allow a summary of the incident report to be provided upon request. This permits redaction of confidential or sensitive information.
<b>Incident Investigation § 6100.402</b>	This section is substantially revised from proposed rulemaking. All incidents must be investigated, but only certain types of incidents must be investigated by a Certified Investigator. See subsection (c).
<b>Final Incident Report § 6100.404(a)</b>	An extension of the time frame for the submission of a final incident report is allowed.
<b>Incident Analysis § 6100.405</b>	“Root cause” is replaced with “cause” in paragraph (a)(1).  The word “continuously” is deleted from subsection (e).
<b>Lease or Ownership Proposed § 6100.444</b>	This proposed section is deleted in entirety.
<b>Residential Location § 6100.445(a)</b>	The prohibitions for locating near a hospital, nursing facility or public/private institution are deleted.

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<b>Residential Location § 6100.445(b)</b>	The capacity limit for congregate housing such as apartments, condos and townhomes is revised from 10% as proposed to 25%, based on HUD standards. This provision applies only to newly-funded residential service locations.
<b>Medication Management - Life Sharing Homes §§ 6100.461-469 §§ 6500.131-138</b>	A new DHS-developed, modified medication administration course is available for life sharers and non-licensed settings. The modified course is shorter and simpler.
<b>Labeling of Medications Proposed § 6100.464</b>	This proposed section is deleted in entirety.
<b>Prescription Medications § 6100.464(e)</b>	Oral orders may be accepted by any health care professional who is licensed, certified or registered by the Department of State to accept oral orders; this includes an LPN.
<b>Medication Records § 6100.465(c)</b>	This section is revised based on RCPA comments; medication refusal must be reported to the prescriber only as directed by the prescriber, and, if there is harm to the individual. Not all medication refusals must be reported.
<b>Medication Training §§ 6100.462 and 468</b>	Trained staff may administer Narcan in accordance with state statute and regulation.
<b>Exception for Life Sharers § 6100.469</b>	The DHS has designed a shortened and simplified medication administration course for life sharers.
<b>Loss or Damage to Property § 6100.485</b>	This section is revised to include only damage or loss as a result of a provider's action or inaction. Repair of items is permitted.



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<b>Fee schedule Rates</b> <b>§ 6100.571</b>	<p>In subsection (b), benefits, training, supervision and recruitment of staff are added to the staff expense factor.</p> <p>In subsection (b), “productivity” and “occupancy” are defined.</p> <p>In subsection (c), the Department will update the data at least every 3 years; as opposed to no mandated update in Chapter 51.</p> <p>In subsection (d), the Department will publish a description of its rate setting methodology including a discussion of the use of the factors, a discussion of the data and data sources and the fee schedule.</p> <p>In subsection (e), the Department will make available to the public a summary of the public comments and the Department’s response to those comments.</p>
<b>Donations</b> <b>Proposed § 6100.648</b>	<p>The proposed section is deleted in entirety.</p>
<b>Rental of Admin Space</b> <b>§ 6100.659</b>	<p>Paragraph (a)(1) is revised as requested; the difference between related and unrelated parties is removed.</p> <p>Paragraph (a)(2) is deleted in entirety.</p> <p>Subsection (c) is revised to delete the reference to the minimum amount of space necessary.</p>
<b>Administrative Buildings</b> <b>§ 6100.663</b>	<p>Proposed subsection (f) regarding funded equity is deleted in entirety.</p> <p>Proposed subsection (g) regarding the title of a building is deleted.</p>
<b>Moving Expenses</b> <b>§ 6100.666</b>	<p>There is no longer a requirement to require written approval for moving expenses.</p>
<b>Start-up Costs</b> <b>§ 6100.670</b>	<p>Start-up costs now include opening a new location and conducting business in a new location.</p>

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<b>Cap on Start-up Costs § 6100.672</b>	The cap on start-up costs is removed.
<b>Room and Board Applicability § 6100.681</b>	This section is revised to clarify the applicability of the room and board requirements to provider owned or leased residential service locations and in life sharing homes that are not owned or leased by the individual.
<b>Room and Board Rate § 6100.686</b>	Proration of board occurs after an individual is on leave for a consecutive period of 8 days or more.
<b>Completion of Room and Board Residency Agreement § 6100.687</b>	The Room and Board Residency Agreement takes the place of the lease (as proposed); no lease is required.
<b>Respite Care § 6100.690</b>	The 30-day qualifier is removed.
<b>Hospitalization § 6100.691</b>	Significant change is made through the revisions to § 6100.55 (relating to reserved capacity) that permits an adjustment to the provider's program capacity for therapeutic, medical or hospital leave.
<b>Enforcement §§ 6100.741-744</b>	The provider's right to appeal under Chapter 41 is clearly stated under General Requirements, § 6100.41.