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Office of the General Counsel
Department of Developmental Services
500 Harrison Avenue
Boston, MA 02118

December 12, 2014

Comments re:

115 CMR 7.00: Standards for All Services and Supports
115 CMR 8.00: Certification, Licensing and Support

Dear Sir or Madam:

We have reviewed proposed changes to the Department of Developmental Services (DDS) Certification, Licensing and Support regulations (115 CMR 8.00), and Standards for All Services and Supports regulations (115 CMR 7.00).

Thank you for giving us the opportunity comment on these proposed regulatory changes. We have numerous concerns about many of them. Our concerns regarding added, rewritten, and removed language in each regulation are as follows:

Proposed changes to 115 CMR 8.00: Certification, Licensing and Support

1. Under Section 8.06, the rewritten regulation introduces a "Targeted Review and Self-Assessment Process" as part of the provider licensure renewal process, which appears to give the providers at least partial say in whether their licenses are renewed and at what levels.

Under this new section, a provider with a two-year license would be eligible to renew that license through the targeted review and self-assessment process. The targeted review is to be conducted by the Department and the self-assessment is to be conducted by the provider.

The following sentence in this section seems to describe a key aspect of this new process: "Ratings from the targeted review and self-assessment [done by both the Department and the provider] will be combined to determine...the licensure levels for the provider."

Department of Developmental Services

December 12, 2014

Page 2 of 5

Based on this language, it appears as though the provider is expected to be involved in making the decision whether the provider will be granted a full renewal of its license or a conditional license or whether it will receive some other licensure requirement. This seems to us to constitute a clear conflict of interest and to defeat the purpose of the licensure process, which is to provide an outside assessment of the provider's ability to provide adequate supports and assessments, and to make licensure decisions that are independent of influence from the entity being licensed.

In particular, the provider is given the authority to review licensure and certification "indicators" that it was found in surveys not to have met. We strongly oppose these changes to the current regulation.

2. In what appears to be an improvement to the regulation, language was added under what is now Section 8.13 that the Department may suspend, revoke, or deny a license if the provider is convicted of any crime which directly or indirectly relates to the provision of services and supports by the provider. We support this change.

3. Under Section 8.03: Licensure and Certification Survey, the rewritten regulation adds a requirement that the Department give providers at least 30 days notice of planned licensure visits or surveys to their residences. Currently, there is an advance notification requirement, but there is no timetable scheduled. Under the new language, the provider has a month to get ready. Once again, this allowance appears to defeat the purpose of the licensure survey process, which is to assess the provider's day-to-day ability to provide adequate services in a facility that meets expectations for services.

If a provider knows a month ahead of time exactly when a two-year licensing survey of its facilities will take place, the provider will have an incentive to bring its facilities into compliance with licensing standards at that particular time, but not necessarily at any other time. We oppose this change.

In the same section, the rewrite removes current language stating that notification of the survey must also be given to guardians, family members, individuals, and service coordinators. It seems doubly inappropriate to us that the providers receive a month's advance notice of planned survey visits, but guardians and families will apparently no longer be told about those visits. We cannot think of any legitimate justification for eliminating that notification to families and guardians other than a desire to keep them in the dark about the Department's licensure and provider monitoring efforts. We oppose this change.

Department of Developmental Services

December 12, 2014

Page 3 of 5

4. Under the rewrite, the notification of the specific sites and individuals in the survey sample must be given to the provider on the first day of the survey. The Department of 2 does continue to reserve the right to visit provider sites without notice. We are pleased to see that the Department reserves the right to visit sites without notice; and while we are not in favor of notification of specific sites on the first day of the survey, this notice requirement is better, in our view, than providing longer notice.

5. The rewrite removes a statement that the survey team may review the provider's system for conducting Criminal Offender Record Information (CORI) checks on all persons whose paid responsibilities may bring them into direct contact with individuals served. We do not understand the rationale for removing this common-sense requirement, and oppose this change.

6. The rewrite removes language stating that in cases in which a provider fails to correct conditions that place residents' lives in jeopardy, those services will not be licensed or certified until such time as corrective action has been taken. We do not understand the rationale for removing this common-sense requirement, and oppose this change.

7. The rewrite removes language that the Department must follow up on all matters which have been identified as "raising significant issues of rights and dignity or of personal well-being." Instead, the new language says the Department must follow up when "any indicator in a licensure or certification standard" is not met. This is similar to the removal of the term "dignity" from the other provider regulation that is being rewritten (115 CMR 7.00), as we note below. We do not understand the rationale for removing the words "dignity" and "well-being" from the regulations. These concepts provide important guidance in interpreting the intent of these regulations.

8. Similarly, the rewrite of the licensure and certification regulation (115 CMR 8.00) removes language stating that the Department can recommend revocation or a denial of a license when a provider receives a rating of "not achieved" in either of the "quality of life areas for personal well-being or rights." Instead, the new language refers to standards or critical indicators not being met. We oppose this change for the same reasons as stated in Item 7 above.

9. Under Section 8.04, the rewrite changes the requirement for a two-year license from "complete achievement" of licensure standards to "substantial achievement" of those standards. Substantial achievement seems to be a lower standard to meet than complete achievement. We therefore oppose this change.

Department of Developmental Services

December 12, 2014

Page 4 of 5

10. The rewrite also increases the length of term of a "conditional license" granted when there is only "partial achievement" of licensing standards or "critical indicators" from one year to two years. Thus, even if a provider is only able to partially meet licensing standards, the provider will still receive the same two-year term for its license as providers that are able to meet all the standards. We oppose that change.

11. The rewrite removes Section 8.32, which states that the Department may issue a compliance order to a provider that is found to be in violation of a law or regulation, either for the correction of the deficiency or the suspension of the license. Since the whole section has been removed, there does not appear to be any language replacing this statement. We therefore oppose the removal of that section.

Proposed changes to 115 CMR 7.00: Standards for All Services and Supports

1. In defining and discussing both Residential and Individualized Home Supports in Section 7.02, the rewritten language in this regulation removes the word "dignity" in discussing client outcomes. For the reasons we stated in our comments above, we oppose this change.

2. The word "dignity" is also taken out of Section 7.03 Outcomes for Individuals. The wording is replaced by language stating that providers "shall operate in a manner that supports *positive outcomes* for individuals in all of the services and supports offered..." (our emphasis). We oppose this change.

3. In defining Family Supports, the rewrite eliminates the phrase that these supports should "enable the family to stay together." We cannot think of any legitimate justification for removing that phrase. We oppose that change.

4. Section 7.06 Staffing Standards takes out a reference to providers having sufficient staff with enough training to ensure "quality of life outcomes delineated in the provider's mission statement..." For the reasons we have given in previous comments, we oppose that change.

5. In the same section, the rewrite takes out a requirement that there be at least two staff persons on duty in homes where three or four individuals live and in which three or more individuals require assistance to evacuate within 2½ minutes. We oppose any change, such as this one, that reduces staffing requirements in DDS-funded or operated facilities.

Department of Developmental Services

December 12, 2014

Page 5 of 5

In addition, the rewrite of this section takes out a requirement that at least one "overnight awake" staff person be on duty at night in homes in which at least one individual requires assistance to evacuate within 2 1/2 minutes. We oppose this change.

6. The rewrite adds a section (7.09) called Standards for Employment and Day Supports, which appears to be in line with the effort by DDS to move from sheltered workshops to "integrated" work. In fact, the rewritten regulation appears to advocate the opportunity of integrated or mainstream work opportunities for all persons with developmental disabilities, apparently no matter how low-functioning they are.

For instance, the new language states the following: "Integrated, individual employment is the preferred service option and outcome for adults of working age...All individuals are to be encouraged and supported in seeking and securing employment or becoming engaged on a pathway to employment."

We believe the Department needs to recognize that there are differences in the levels of ability and achievement potential in different people. The new language in this section reflects an ideological blindness to those differences and does a disservice to all persons with developmental disabilities. We oppose this new language.

Thank you for your consideration.

Sincerely,

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