

# RULES AND REGULATIONS

## Title 4—ADMINISTRATION

### STATE EMPLOYEES' RETIREMENT BOARD

[ 4 PA. CODE CH. 247 ]

#### Priority of Taxation, Attachment and Assignment of Funds

The State Employees' Retirement Board (Board) adds § 247.11 (relating to priority of forfeitures, attachments and assignments of funds) to read as set forth in Annex A.

##### A. Effective Date

The final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

##### B. Contact Person

For further information, contact Robert Gentzel, Director of Communications and Policy, State Employees' Retirement System, 30 North Third Street, Suite 150, Harrisburg, PA 17101-1716, (717) 787-9657; or Brian E. McDonough, Deputy Chief Counsel, State Employees' Retirement System, 30 North Third Street, Suite 150, Harrisburg, PA 17101-1716, (717) 783-7317.

##### C. Statutory Authority

This final-form rulemaking is being made under the authority of 71 Pa.C.S. §§ 5902(h) and 5953 (relating to administrative duties of the board; and taxation, attachment and assignment of funds).

##### D. Background and Purpose

This final-form rulemaking sets priorities among conflicting demands on forfeiture, attachments and assignments of members' retirement benefits authorized by 71 Pa.C.S. Part XXV (relating to State Employees' Retirement Code). A court decision has offered partial guidance in this area. The final-form rulemaking will enable consistent application of the statute and could avoid litigation of priority issues.

##### E. Summary of Comments and Responses

Comments were received from the Independent Regulatory Review Commission (IRRC) regarding this rulemaking. The comments are mooted by revisions in the final rulemaking.

##### F. Benefits, Costs and Compliance

Executive Order 1996-1 requires a cost/benefit analysis of the regulation.

##### Benefits

The final-form rulemaking is intended to alleviate confusion and prevent possible disputes with regard to conflicting demands upon members' retirement benefits.

##### Costs

There are no costs to the Commonwealth, its citizens or State employees associated with this final-form rulemaking.

##### Compliance costs

The final-form rulemaking is not expected to impose additional compliance costs on State employees.

##### G. Sunset Review

A sunset review is not applicable.

##### H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 18, 2008, the Board submitted a copy of the notice of proposed rulemaking, published at 38 Pa.B. 2062 (May 3, 2008), to IRRC and to the House State Government Committee and the Senate Finance Committee (Committees) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on July 14, 2010, the final-form rulemaking was deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 15, 2010, and approved the final-form rulemaking.

##### I. Findings

The Board finds that:

(1) Public notice of intention to adopt this regulation was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The final-form rulemaking is necessary and appropriate for the administration of 71 Pa.C.S. Part XXV.

##### J. Order

The Board, acting under 71 Pa.C.S. § 5902(h), orders that:

(a) The regulations of the Board, 4 Pa. Code Chapter 247, are amended by adding § 247.11 to read as set forth in Annex A.

(b) The final-form rulemaking shall be submitted to the Office of Attorney General for approval as to legality as required by law.

(c) The Secretary of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

NICHOLAS J. MAIALE,  
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 4359 (July 31, 2010).)

**Fiscal Note:** Fiscal Note 31-7 remains valid for the final adoption of the subject regulations.

#### Annex A

#### TITLE 4. ADMINISTRATION

#### PART X. STATE EMPLOYEES' RETIREMENT BOARD

#### CHAPTER 247. BENEFITS

#### § 247.11. Priority of forfeitures, attachments and assignments of funds.

(a) The right of a person to any benefit or right accrued or accruing under the code, as amended from time to

time, and the moneys in the fund are subject to prior payment or forfeiture of rights, as set forth in section 5953 of the code (relating to taxation, attachment and assignment of funds), in the following sequential priority to the extent the forfeitures and competing claims exist at the time the distribution is made as determined by the Board consistent with applicable law:

(1) For pension forfeitures, fines and restitution as provided under the Public Employee Pension Forfeiture Act (43 P.S. §§ 1311—1315), as amended from time to time, or under Pa.Const. Art. V, § 16(b).

(2) To the employer after certification by the head of the employer of the amount that the member is obligated to pay, and after review and approval by the employer's legal representative or upon receipt of an assignment from the member in the amount so certified.

(3) To an alternate payee or attaching authority as set forth in an approved domestic relations order, order for support, or order for the enforcement of arrearages as described in section 5953.1 of the code (relating to approval of domestic relations orders).

(4) To the member directly or to an eligible retirement plan by way of an eligible rollover distribution.

(b) Payments from a member's retirement benefits under subsection (a)(2) shall first be made from the entire accumulated deductions then standing to the credit of the member upon entering pay status. The remaining balance, if any, of payments due under subsection (a)(2) and payments due under subsection (a)(3) for orders for support or orders for the enforcement of arrearages, or both, shall be paid out of the monthly annuity payable to or on behalf of the member at the rate of up to 50% (as determined by the System consistent with applicable law) of the gross monthly annuity until paid in full. The amount payable under subsection (a)(3) pursuant to an approved domestic relations order may be paid out of the monthly annuity paid to or on behalf of the member at the rate of up to 100% (as determined by the System consistent with applicable law) of the member's remaining monthly annuity until paid in full. Unpaid amounts remaining after termination of an annuity paid to or on behalf of the member or, after the death of the member prior to receiving an annuity, shall be paid out of the remaining initial present value then standing to the credit of the member, if any.

[Pa.B. Doc. No. 10-1581. Filed for public inspection August 27, 2010, 9:00 a.m.]

## Title 34—LABOR AND INDUSTRY

### DEPARTMENT OF LABOR AND INDUSTRY

#### [ 34 PA. CODE CH. 13 ]

#### Propane and Liquefied Petroleum Gas

Under section 16 of the Propane and Liquefied Petroleum Gas Act (act) (35 P.S. § 1329.16), the Department of Labor and Industry (Department) amends Chapter 13 (relating to propane and liquefied petroleum gas) to read as set forth in Annex A.

#### *Statutory Authority*

This final-form rulemaking is issued under the authority in section 16 of the act which provides: "The depart-

ment shall promulgate and enforce regulations to implement this act. These regulations may include setting forth minimum general standards covering the design, installation and construction of containers and pertinent equipment for the storage and handling of liquefied petroleum gases (LPG), specifying the odorization of the gases and establishing guidelines for the processes and technologies that are not covered by industry standards."

Section 5(a) of the act (35 P.S. § 1329.5(a)) also mandates that the Department establish fees by regulation for the approval of new and expansion of existing LPG facilities, permits and certification of training programs. Section 17(a)(1) of the act (35 P.S. § 1329.17(a)(1)) charges the Department with responsibility for enforcing the act and regulations promulgated under the act.

#### *Background*

LPG is a highly flammable and combustible material, which can pose a serious threat to life and property if stored or handled improperly or if a leak occurs. The Commonwealth previously adopted the act of December 27, 1951 (P.L. 1793, No. 475) (Repealed). In 2002, the Legislature replaced this repealed act with the act in an effort to bring the Commonwealth's LPG program up to current National standards of safety, training and inspection. The act's primary improvement was requiring Nationally accepted standards for and consistent application of inspections of LPG containers and facilities.

The Department published proposed rulemaking at 39 Pa.B. 4340 (July 25, 2009). As a result, the Department received written comments from John McKeown, Kathy Speaker MacNett, Esq. (on behalf of the Pennsylvania Propane Gas Association (PAPGA)) and David Scriven, Esq. (on behalf of the Pennsylvania Public Utility Commission (PUC)). The Department also received written comments from the Independent Regulatory Review Commission (IRRC). In addition to the written comments received, the Liquefied Petroleum Gas Advisory Board (Advisory Board) met on March 4, 2010, to review the final-form rulemaking and provided comments at that time.

#### *Purpose*

This final-form rulemaking is necessary to implement the act. The final-form rulemaking adopts National standards which bring the Commonwealth's program to the most current state-of-the-art in technology and safety. The final-form rulemaking applies to bulk plants, distributors and industrial users and regulates the storage, transfer, sale and use of LPG, including providing for approval of training programs for authorized attendants. The final-form rulemaking adopts fees, provides for registration and annual permits and requires facilities to maintain insurance. The final-form rulemaking sets forth the application and plan approval processes and provides for enforcement by the Department if an inspection reveals violations of the act or its regulations.

Under section 18(b) of the act (35 P.S. § 1329.18(b)), this final-form rulemaking does not apply to persons that both sell LPG and the container in which the LPG is contained if the container is not more than 2.5 pounds water capacity.

#### *Response to Comments*

IRRC commented that a more specific reference to the Code of Federal Regulations would be helpful in the definition of "cylinder" in § 13.1 (relating to definitions).

In response, the Department provided a citation to 49 CFR Part 178, Subpart C (relating to specifications for cylinders).

IRRC and PAPGA commented on the definition of “cylinder exchange cabinet” in § 13.1. IRRC suggested that the Department explain its intent for the application of the definition while PAPGA requested that the Department exclude commercial cylinder exchange cabinets. The Department did not amend the definition of “cylinder exchange cabinet” because it does not intend to exclude commercial or industrial cylinder exchange cabinets from the requirements in these regulations.

IRRC commented that the definition of “distributor” in § 13.1 is different from the statutory definition and that the definition, by statute, is a person not an inanimate object. IRRC suggested that the Department justify the second sentence of the definition. The Department added this language to the statutory definition of “distributor” to clarify that definition as including a cylinder exchange cabinet or a dispensing station. This clarity will assist the regulated community and the Department. To address IRRC’s comment regarding the nature of a “distributor,” the Department added language indicating that the definition includes the owner of a cylinder exchange cabinet or dispensing station.

IRRC commented that the definition of “industrial user” in § 13.1 includes a sentence not in the statutory definition and requested that the Department justify its inclusion. The Department added a sentence to the statutory definition consistent with its authority under section 16 of the act to clarify that a person who maintains a total storage capacity at a site of more than 2,000 gallons and whose storage tanks are not registered under a distributor is an industrial user, regardless of whether the location is residential or commercial. The term “industrial” may imply to some persons that it cannot apply to residential installations that meet the criteria of the definition. However, in the interest of safety, an industrial user should be determined based upon the amount of LPG that is stored, rather than based upon the specific nature of the property upon which it is stored. The inclusion of this sentence in the definition creates clarity for the regulated community.

In response to comments from the Advisory Board, the Department clarified that the fee for a cylinder exchange cabinet in § 13.3(a)(1)(iv) (relating to fees) applies only to retail cylinder exchange cabinets. Commercial cylinder exchange cabinets are regulated under the Department’s authority to regulate a distributor.

PAPGA requested that the Department provide for online registration in § 13.5 (relating to registration and annual permits). IRRC asked if the Department offers online registration and if registration forms are available online. The Department is not able to offer online registration at this time. Following this final-form rulemaking, the Department will make the necessary forms available for download from its web site and has included language to this effect in § 13.5. The forms are currently under development and will be updated to reflect changes in this section.

PAPGA requested that the Department repeat certain statutory language regarding the limitation on filling tanks. The Department complied with that request in § 13.8 (relating to transfer of LPG and removal of containers) with an added provision that requires owners or distributors to remove LPG containers within 30 days after notification to do so from the property owner. This

provision was added in response to complaints from property owners regarding containers that were not removed upon request. The time period was set in consultation with the Advisory Board.

PAPGA and IRRC commented that the final-form rulemaking should consistently use the term “LPG facility” as defined in § 13.1 in place of the more generic term “facility” throughout the regulations. The Department amended §§ 13.21(e) and 13.52(a)(1) (relating to LPG facilities over 400,000 gallons; and notice of deficiency) to consistently use the term “LPG facility.”

IRRC commented that the reference to “modifications” in § 13.20 (relating to application process and plan approval) needed clarification as it was not clear what degree of modification would require an application. After review, the Department elected to delete the reference to “modifications” in § 13.20. The Department determined that the requirements for modifications are appropriately governed by § 13.23 (relating to repairs and alterations to ASME vessels), which requires that repairs or alterations be performed in accordance with the National Board Inspection Code. The National Board Inspection Code provides guidance regarding what alterations or repairs are required to comply with it.

PAPGA commented that the Department should grandfather existing containers so that a manufacturer’s data report would not be required for existing tanks as specified in § 13.20. IRRC requested that the Department include an alternative compliance mechanism for older tanks. Tanks used for the storage of LPG are unfired pressure vessels and are properly governed by the Boiler and Unfired Pressure Vessel Law (35 P.S. §§ 1331.1—1331.19). The Boiler and Unfired Pressure Vessel Law and its corresponding regulations (see Chapter 3a) require that an unfired pressure vessel have either a manufacturer’s data report or be issued a Pennsylvania special number. The Department has added the option of providing a Pennsylvania special number and noted that a number is obtained under section 7 of the Boiler and Unfired Pressure Vessel Law (35 P.S. § 1331.7). The Department has also amended the definitions of “ASME Code” and “National Board Inspection Code” in § 13.1 to indicate that the applicable edition of those codes will be that adopted under the Boiler and Unfired Pressure Vessel Law.

PAPGA disagrees with the inclusion of “sidewalks, concrete aprons and parking lots at retail establishments” in the definition of “busy thoroughfares or sidewalks” in § 13.24 (relating to cylinder exchange cabinets). IRRC requested clarification regarding the need for inclusion of this provision. The Department included this provision due to safety concerns. Cylinders containing LPG are frequently placed outside of large retail establishments where there is significant vehicle and pedestrian traffic. The Department determined that it is in the public interest to protect these areas, as vehicle impact with LPG cylinders could result in significant harm.

At the request of the Advisory Board, the Department amended § 13.40(d)(5) (relating to training programs for authorized attendants) to provide that training in proper unloading of propane transports and rail cars need only be provided to attendants employed in bulk plant operations where those attendants are responsible for the activity.

Jack McKeown commented regarding the process in §§ 13.50 and 13.52 (relating to suspension of annual permit for container; and suspension of annual permit for

an owner or operator). Mr. McKeown suggests that the Department have the ability to immediately place deficient installations out of service. The procedures in Subchapter D (relating to administration) provide due process to owners or operators of LPG installations.

PAPGA commented that the act should be referenced formally in the final-form rulemaking. The act is defined in § 13.1 as PAPGA suggests.

The PUC filed comments well after the expiration of the public comment period. However, the Department will address the PUC's comments.

The PUC alleges that this final-form rulemaking creates a jurisdictional conflict between the Department and the PUC. This comment is without merit. As noted in the response to the PUC's comments filed by PAPGA, the Department has had jurisdiction over LPG since 1951 and this jurisdiction was reaffirmed by the legislature in the act. The act does not contain exclusions for public utilities.

The PUC suggests that the Department amend the definition of "distributor" in § 13.1. The PUC failed to recognize that the definition of "distributor" is in the act. The definition suggested by the PUC would not only be inconsistent with the act but would also conflict with the act and therefore would be impermissible.

The PUC next suggests that the Department is somehow required to adopt United States Department of Transportation regulations regarding LPG. However, section 16(a) of the act specifically requires the Department to "utilize the National Fire Protection Association industry standards." Additionally, the National Fire Protection Association standards adopted by the Department reference United States Department of Transportation regulations governing portable propane containers.

*Affected Persons*

This final-form rulemaking affects owners and operators of LPG bulk plants, cylinder exchange cabinets, dispensing stations, distributors and industrial users. The general public is also affected, as updating the regulations regarding LPG to National standards will increase public safety.

*Fiscal Impact*

The Commonwealth will not incur additional cost under this final-form rulemaking. The costs will be similar to costs now incurred by the Department's LPG registration and inspection program. This final-form rulemaking will not increase administrative, enforcement or legal activity.

*Reporting, Recordkeeping and Paperwork Requirements*

This final-form rulemaking will not require the creation of new forms and reporting requirements. Current forms may be updated.

*Sunset Date*

A sunset date is not appropriate for this final-form rulemaking. However, the Department will continue to monitor the impact and effectiveness of the regulations.

*Effective Date*

This final-form rulemaking will take effect upon publication in the *Pennsylvania Bulletin*.

*Contact Person*

The contact person is Jack Davenport, Bureau of Occupational and Industrial Safety, Department of Labor and Industry, 16th Floor, Labor and Industry Building, 651 Boas Street, Harrisburg, PA 17120, jacdavenpo@state.pa.us.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 9, 2009, the Department submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 4340, to IRRC and to the Senate Committee on Labor and Industry and the House Labor Relations Committee (Committees) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the Committees and the public.

Under section 5.1(j.1)—(j-3) of the Regulatory Review Act (71 P. S. § 745.5a(j.1)—(j-3)), on July 14, 2010, the final-form rulemaking was deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 15, 2010, and approved the final-form rulemaking.

*Findings*

The Department finds that:

(a) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(b) A public comment period was provided as required by law and all comments were considered.

(c) The final-form rulemaking is necessary and appropriate for the administration and enforcement of the authorizing statute.

*Order*

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 34 Pa. Code Chapter 13, are amended by adding §§ 13.8, 13.40 and 13.50; by amending §§ 13.1—13.7, 13.20—13.24, 13.41 and 13.51—13.54; and by deleting §§ 13.11—13.19, 13.25—13.29, 13.31—13.38, 13.42—13.45, 13.55—13.58, 13.61—13.68, 13.71—13.74, 13.81, 13.82, 13.91—13.96, 13.101, 13.102 and 13.111 to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to legality and form as required by law.

(c) The Secretary of the Department shall submit this order and Annex A to IRRC and the Committees as required by law.

(d) The Secretary of the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(e) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

SANDI VITO,  
*Secretary*

*(Editor's Note: The addition of § 13.8 was not included in the proposed rulemaking published at 39 Pa.B. 4340.)*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 4359 (July 31, 2010).)*

**Fiscal Note:** Fiscal Note 12-76 remains valid for the final adoption of the subject regulations.

## Annex A

## TITLE 34. LABOR AND INDUSTRY

## PART I. DEPARTMENT OF LABOR AND INDUSTRY

CHAPTER 13. PROPANE AND LIQUEFIED  
PETROLEUM GAS

## Subchapter A. LIQUEFIED PETROLEUM GAS

## GENERAL PROVISIONS

## § 13.1. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*ASME*—The American Society of Mechanical Engineers, Three Park Avenue, New York, New York, 10016-5990 or its current address.

*ASME Code*—“The Boiler and Pressure Vessel Code,” as adopted under the Boiler and Unfired Pressure Vessel Law, and any published cases and interpretations adopted by the Industrial Board under § 3a.4 (relating to adoption of National standards).

*Act*—The Propane and Liquefied Petroleum Gas Act (35 P. S. §§ 1329.1—1329.19).

*Authorized attendant*—An employee of a manufacturer, distributor or user of LPG who was trained, in a manner approved by the Department, in the proper performance of duties and who was officially recognized by the LPG facility operator to perform those duties.

*Boiler and Unfired Pressure Vessel Law*—35 P. S. §§ 1331.1—1331.19.

*Bulk plant*—

(i) An LPG storage facility which has the primary purpose of distribution of LPG and which has:

(A) A bulk storage capacity of more than 2,000 gallons.

(B) Container-filling or tank-loading facilities on the premises.

(ii) The term includes a consumer of LPG that uses storage tanks to refill the consumer’s own containers if the consumer’s storage LPG facility has a bulk storage capacity of less than 2,000 gallons and the storage tanks are not owned by a distributor.

*Certified Employee Training Program*—The “Certified Employee Training Program,” available from the Propane Education and Research Council, 1140 Connecticut Ave. NW, Suite 1075, Washington, DC 20036 or its current address.

*Container*—A vessel such as a cylinder, a tank, a portable tank and a cargo tank used for the transporting or storing of LPG.

*Cylinder*—A container constructed in accordance with United States Department of Transportation regulations, 49 CFR Part 178, Subpart C (relating to specifications for cylinders).

*Cylinder exchange cabinets*—A lockable and ventilated metal locker or rack for the storage of LPG cylinders that prevents tampering with valves and pilferage to the cylinders.

*Department*—The Department of Labor and Industry of the Commonwealth.

*Dispensing station*—Fixed equipment with an aggregate of 2,000 or less gallons of water capacity where LPG is stored and dispensed into portable containers.

*Distributor*—

(i) A person authorized by the Department to sell or transfer LPG.

(ii) The term includes the owner of a cylinder exchange cabinet or a dispensing station.

*GPS*—Global positioning system.

*Gallons*—The term shall be measured in terms of water capacity.

*Industrial Board*—The Industrial Board of the Department established under sections 445 and 2214 of The Administrative Code of 1929 (71 P. S. §§ 155 and 574), which hears requests for variances and extensions of time and appeals of Department interpretations regarding LPG matters.

*Industrial user*—A person who is the consumer of LPG and who maintains a total storage capacity at a site of more than 2,000 gallons and whose storage tanks are not registered under a distributor. This consumer may be a residential or a commercial location.

*LPG—Liquefied petroleum gas*—A material in liquid form that is composed predominately of any of the following hydrocarbons or their mixtures:

(i) Propane.

(ii) Propylene.

(iii) Normal butane or isobutane.

(iv) Butylenes.

*LPG facility*—Distributors, bulk plants and industrial users.

*NFPA*—National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02269.

*NFPA 54*—The “National Fuel Gas Code,” 2009 edition, issued by the NFPA.

*NFPA 58*—The “Liquefied Petroleum Gas Code,” 2008 edition, issued by the NFPA.

*NPGA*—National Propane Gas Association, 1150 17th Street, NW, Suite 310, Washington, DC 20036-4523 or its current address.

*National Board*—National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229 or its current address.

*National Board Inspection Code*—The “National Board Inspection Code,” as adopted under the Boiler and Unfired Pressure Vessel Law, issued by the National Board of Boiler and Pressure Vessel Inspectors.

*Person*—An individual, firm, partnership, unincorporated association, corporation, political subdivision or authority, including the Commonwealth.

*Secretary*—The Secretary of Labor and Industry of the Commonwealth or an authorized deputy or representative.

*Tank*—A portable or stationary ASME-approved vessel used to store liquefied petroleum gas.

*Transfer*—To cause LPG to pass from any pipeline, tank, container, tank truck, receptacle or storage location to a similar or different type of pipeline, tank, container, tank truck, receptacle or storage location.

**§ 13.2. Scope.**

This chapter applies to:

- (1) The registration and permitting of bulk plants, distributors, industrial users, dispensing stations and cylinder exchange cabinets.
- (2) The storage, transfer, sale and use of LPG.
- (3) The design, construction, location, operation and inspection of tanks, cylinders, equipment, piping and appliances used in the handling, storage and use of LPG.
- (4) The approval of training programs for authorized attendants who transfer LPG.

**§ 13.3. Fees.**

(a) The following fees apply to LPG facility applications, plan approvals, permits and training program certifications. Fees are nonrefundable.

- (1) Annual permit and registration fees:
  - (i) Bulk plants with the following storage capacities:
    - (A) 30,000 gallons or less ..... \$ 90
    - (B) 30,001 to 90,000 gallons..... \$135
    - (C) 90,001 gallons or more ..... \$180
  - (ii) Industrial users with the following storage capacities:
    - (A) 2,001 to 30,000 gallons ..... \$ 45
    - (B) 30,001 to 180,000 gallons..... \$ 90
    - (C) 180,001 gallons or more ..... \$180
  - (iii) Distributors, other than cylinder exchange cabinets, having the following number of customers:
    - (A) Less than 1,000..... \$112.50
    - (B) 1,000 to 2,999 ..... \$235
    - (C) 3,000 to 5,999 ..... \$337.50
    - (D) 6,000 or more ..... \$450
  - (iv) Retail cylinder exchange cabinet location.. \$ 50 (per physical address)
- (2) Application and plan review, including Fire Safety Analysis review, for new LPG facilities exceeding 400,000 gallons and existing LPG facilities expanded to exceed 400,000 gallons in total capacity ..... \$500
- (3) Application and plan review fee:
  - (i) For a LPG facility 4,001 to 400,000 gallons in total capacity ..... \$150
  - (ii) For a LPG facility less than 4,001 gallons in total capacity ..... \$ 50
- (4) Duplicate permit fee..... \$ 25
- (5) Authorized attendant training program approval ..... \$200
- (6) Request for Industrial Board variance, appeals and extensions of time ..... \$100

(b) The Department will invoice bulk plant owners, industrial users and distributors annually for each location of usage. Payment is due within 30 days of invoice date.

**§ 13.4. Adoption of National standards.**

(a) The Department adopts the following standards and any of the standards' published cases, interpretations or tentative interim amendments approved by the Industrial Board under this chapter and the act. Other authorities

referenced in these standards are adopted if the authority is not excluded in subsection (b):

- (1) NFPA 54.
- (2) NFPA 58.
- (b) The Department will not adopt the following NFPA 58 provisions:
  - (1) Chapter 9 (relating to vehicle transportation).
  - (2) Chapter 13 (relating to marine shipping and receiving).
  - (c) The following NFPA 58 provisions which will take effect on the enumerated dates:
    - (1) Chapter 5, section 5.2.3 regarding the requalification of cylinders filled onsite, effective January 1, 2013.
    - (2) Chapter 6, section 6.25.3.2 regarding fire safety analysis for existing installations, effective January 1, 2012.
    - (3) Chapter 5, section 5.7.4.2(D) regarding the installation of valves for existing installations, effective January 1, 2018.
    - (4) Chapter 6, section 6.11 regarding the installation of internal valves for existing installations, effective January 1, 2018.
    - (d) The Industrial Board may also approve any NFPA 54 and 58 published cases, interpretations or tentative interim amendments as standards for use under the act and chapter. Provisions enumerated in subsection (b) may not be approved.

**§ 13.5. Registration and annual permits.**

(a) An operator of an LPG bulk plant, a distributor and an industrial user shall annually register with the Department on a registration form provided by the Department. The Department will make the necessary form available on its web site at [www.dli.state.pa.us](http://www.dli.state.pa.us).

(b) An applicant for registration shall submit a completed registration form, the annual fee required under § 13.3 (relating to fees) and a valid copy of an industry standard insurance certificate equal to or greater than the amount of liability insurance required under § 13.6 (relating to insurance).

(c) The Department will issue an annual permit. The permit shall be posted at the location of each bulk plant, distributor and industrial user.

**§ 13.6. Insurance.**

LPG facilities shall obtain and maintain policies of liability insurance in the following amounts:

- (1) An LPG facility with a storage capacity of not more than 9,000 gallons shall maintain minimum liability coverage of \$250,000.
- (2) An LPG facility with a storage capacity in excess of 9,000 gallons shall maintain minimum liability coverage of \$1 million per incident and \$2 million in the aggregate.

**§ 13.7. Transfer by authorized attendant and supply.**

Both of the following apply to LPG transfer and supply:

- (1) Only authorized attendants may transfer LPG.
- (2) A distributor may not supply LPG to any bulk plant, industrial user or other distributor unless the distributor has a current annual permit.

**§ 13.8. Transfer of LPG and removal of containers.**

(a) A person may not transfer, sell, fill, deliver or permit to be delivered any LPG or use an LPG container unless authorized to do so by the owner of the LPG container and authorized by the Department to do so or authorized to do so by emergency response agencies.

(b) A person acting on behalf of an authorized emergency response agency who transfers LPG or disconnects any LPG container shall notify the container owner within 5 days after that action.

(c) A person who disconnects an LPG container shall secure the LPG container in a safe fashion.

(d) Owners or distributors of LPG containers shall remove the containers within 30 days of notification from the property owner to do so.

**§§ 13.11—13.19. (Reserved).****REQUIREMENTS FOR FACILITIES,  
TANKS AND CYLINDERS****§ 13.20. Application process and plan approval.**

(a) The following shall submit an application to the Department before installation:

(1) An owner or operator of an LPG tank exceeding 2,000 gallons capacity.

(2) An owner or operator of a fixed location with aggregate capacity exceeding 4,000 gallons.

(3) An owner or operator of a dispensing station or a cylinder exchange cabinet location.

(b) The application must contain the following:

(1) A completed registration form and proof of valid insurance required under § 13.5 (relating to registration and annual permit).

(2) The appropriate fee required under § 13.3 (relating to fees).

(3) Plans that contain the following information:

(i) Equipment to be installed.

(ii) Distances of equipment to buildings and property lines.

(iii) Security measures provided.

(iv) Fire protection measures provided.

(v) Vehicle protection measures provided.

(4) A fire safety analysis required by NFPA 58, Chapter 6, section 6.25.

(5) A manufacturer's data report (U1-A) or Pennsylvania special number for each unfired pressure vessel.

(c) A Department-provided notice of intent to install form may be submitted instead of the plans required under subsection (b)(3) for the following:

(1) A distributor installing or expanding a bulk plant with a capacity of less than 9,000 gallons.

(2) An industrial user with a total storage capacity of less than 9,000 gallons.

(d) The Department will inspect applicants under subsection (a) and (c) for compliance with the plans or notice of intent to install before issuance of the initial annual permit.

(e) If the inspection reveals a violation of the act or this chapter, the Department will issue a written notice of deficiency to the owner or operator. The written notice of deficiency will contain a certification to be completed by

the owner or operator certifying that the deficiencies were corrected. The Department will not issue an annual permit unless the certification is executed by the owner or operator and returned to the Department after the deficiencies are corrected.

(f) An owner or operator may not operate an LPG tank, fixed location, dispensing station or cylinder exchange cabinet until it receives an annual permit issued by the Department.

(g) A manufacturer shall register a data report (U1-A) for each unfired pressure vessel with the National Board. If an U1-A is not available, the manufacturer shall obtain a Pennsylvania special number in accordance with section 7 of the Boiler and Unfired Pressure Vessel Law (35 P. S. § 1331.7) and Chapter 3a (relating to boiler and unfired pressure vessel regulations).

**§ 13.21. LPG facilities over 400,000 gallons.**

(a) The owner or operator of a new LPG facility in excess of 400,000 gallons or an existing LPG facility expanded to exceed 400,000 gallons shall submit an application to the Department which includes the following:

(1) A completed registration form required under § 13.5 (relating to registration and annual permits) and a completed application required under § 13.20 (relating to application process and plan approval).

(2) Documentation and plans providing the following information:

(i) Storage quantities.

(ii) Proximity to populated areas and public ways.

(iii) The impact of any rejection from the Department upon the LPG facility's ability to service current and anticipated consumer needs and upon the LPG facility's business investment.

(iv) The risk to and from existing adjacent facilities.

(v) Topography of the site.

(vi) Access for emergency vehicle response.

(vii) Public and private utilities.

(viii) Requirements for receipt or shipment of products.

(ix) Compliance with local land use ordinances.

(x) The safety plan proposed by the LPG facility, such as emergency systems, spill containment, fire protection, fencing and lighting.

(3) Proof of notification to the municipality required in subsection (b). The Department will accept a copy of the notification and signed certified mail receipt card as proof of notification to the municipality.

(4) The appropriate fee required under § 13.3 (relating to fees).

(b) The applicant shall notify the municipality where the LPG facility is located by certified mail that an application is being filed with the Department.

(c) The Department will publish notice of the application in the *Pennsylvania Bulletin* within 10 business days of receipt of the application. An aggrieved party may file a protest with the Department 45 days from the publication of the notice. A municipality or county may file written comment with the Department within 45 days from publication of the notice.

(d) Within 90 days of publication of the notice, the Department will issue a written determination containing the approval or disapproval of the application. The Department will send a copy of the determination by certified mail to the applicant and to all parties who filed a notice of protest or submitted written comments.

(e) The LPG facility owner or operator may not install or operate the LPG facility or the expanded portion of the LPG facility until it has received an annual permit issued by the Department.

**§ 13.22. Underground tanks.**

(a) Underground tanks shall be installed in accordance with NFPA 58.

(b) A distributor shall keep records of installation locations, including their location by GPS coordinates, for individual underground LPG tanks exceeding 2,000 gallons water capacity.

**§ 13.23. Repairs and alterations to ASME vessels.**

Repairs and alterations to ASME vessels shall be performed in accordance with the National Board Inspection Code.

**§ 13.24. Cylinder exchange cabinets.**

(a) A retailer or location using a cylinder exchange cabinet shall comply with section 8.4.1 of NFPA 58.

(b) The term “busy thoroughfares or sidewalks” contained in section 8.4.1.2(3) of NFPA 58 includes sidewalks, concrete aprons and parking lots at retail establishments.

**§§ 13.25—13.29. (Reserved).**

**§§ 13.31—13.38. (Reserved).**

**TRAINING PROGRAMS**

**§ 13.40. Training programs for authorized attendants.**

(a) An individual shall satisfactorily complete a Department-approved training program to become an authorized attendant to transfer LPG.

(b) Programs must include training on the following:

- (1) Physical properties and combustion characteristics of propane.
- (2) Propane industry standards, safety codes and regulations.
- (3) Basic parts of propane tanks, cylinders and bulk storage installations.
- (4) Proper use of safety and protective equipment.
- (5) Maintenance of safe working environment.

(c) Programs for attendants who will deliver LPG must include the following training in addition to the training enumerated in subsection (b):

- (1) Proper inspection, maintenance and operation of bulk propane delivery vehicles.
- (2) Proper inspection and filling of propane storage containers.
- (3) Proper delivery of propane, including exchange and filling of LPG containers.

(d) Programs for attendants who are employed in bulk plant operations must include the following training in addition to the training enumerated in subsection (b):

- (1) Identification and installation of valves in propane storage containers.

(2) Identification and installation of gauges in propane storage containers.

(3) Safe removal of propane from tanks and cylinders at the plant and at the container site.

(4) Inspection, maintenance and filling of propane tanks and cylinders at the plant and at the container site.

(5) Proper unloading of propane transports and rail cars, if the employee is responsible for this activity.

**§ 13.41. Training program approval.**

(a) The Department will approve LPG facility operator-provided training programs. An LPG facility operator that has individuals who transfer LPG shall submit a completed application for training program approval to the Department with a detailed description of its training program for authorized attendants and the appropriate fee under § 13.3 (relating to fees).

(b) The Department will issue a program approval to each approved training program or inform the LPG facility operator in writing of its reasons for rejecting a training program.

(c) An LPG facility operator shall notify the Department in writing of changes in an approved training program.

(d) Instead of developing and submitting a training program for authorized attendants, an LPG facility operator may utilize the Propane Education and Research Council training programs. The LPG facility shall notify the Department in writing that it is using a Propane Education and Research Council training program.

(e) An LPG facility operator shall maintain training records for an authorized attendant as long as the authorized attendant is employed by the LPG facility. The records must contain the following information:

- (1) The date of training.
- (2) The name of authorized attendant.
- (3) The name of course.
- (4) The name of trainer or supervisor.

(f) The Department may revoke approval of any training program that does not comply with § 13.40 (relating to training programs for authorized attendants) or this section. Actions will be taken subject to the right of notice, hearing and adjudication in accordance with 2 Pa.C.S. (relating to administrative law and procedure).

**§§ 13.42—13.45. (Reserved).**

**ADMINISTRATION**

**§ 13.50. Suspension of annual permit for container.**

The Department will suspend the annual permit for an LPG container and seal an LPG container that is unsafe or when there are violations of this act or chapter. A person, firm, partnership or corporation operating an LPG container with a suspended annual permit or system containing an LPG container with a suspended annual permit is subject to the penalties of section 17 of the act (35 P. S. § 1329.17).

**§ 13.51. Suspension of annual permit for an owner or operator.**

(a) The Department may suspend an owner’s or operator’s annual permit for any of the following reasons:

- (1) Failure to pay the required registration fee in § 13.3 (relating to fees).
- (2) Violation of the act or this chapter.



**§ 13.52. Notice of deficiency.**

(a) The Department will use the following procedures to suspend an annual permit or for alleged violations of the act or this chapter:

(1) The Department will issue a written notice of deficiency to the owner or operator of the container or LPG facility. The notice will contain a description of the deficiency, an order requiring repairs and correction of the deficiency and a compliance date. The notice will contain a certification to be completed by the owner or operator certifying that the required repairs were completed and the deficiency was corrected.

(2) The owner or operator shall execute the certification and submit it to the Department immediately after the required repairs are completed and the deficiency is corrected.

(3) If the owner or operator does not correct the deficiency within the period of time allowed in the notice of deficiency or fails to return the certification, the Department may issue an order to show cause under 1 Pa. Code § 35.14 (relating to orders to show cause).

(i) The order to show cause will contain a statement of the grounds for the action, the alleged violations of the act and this chapter and notification that the container or LPG facility may be placed out of service. The order to show cause will contain notification that the owner or operator shall submit a written answer within 30 days. The Department will serve the order to show cause upon the owner or operator.

(ii) The owner or operator may file a written answer to the order to show cause with the Department within 30 days following service of the order to show cause under 1 Pa. Code § 35.37 (relating to answers to orders to show cause). The answer must contain specific admissions or denials of the allegations contained in the order to show cause and set forth the specific facts, matters of law or regulation interpretation relied upon by the owner or operator. The answer may contain a request for a variance, an extension of time for compliance or an appeal. The Department will forward requests for variances, extensions of time or appeals regarding interpretations of this chapter to the Industrial Board.

(b) The Department will consider the request for variance, extension of time or appeal as a stay to an enforcement action.

(c) The Department will inspect the container or LPG facility at the expiration of an extension of time or other time period granted for compliance under this section. If the container or LPG facility violates the act or this chapter following inspection, the Department may seal the container or LPG facility.

(d) The Department will issue an order to discontinue operation to the owner or operator for a violation that was not corrected. The Department will serve the order upon the owner or operator by certified mail or personal service. The order to discontinue operation will require the owner or operator to discontinue the use of the container or LPG facility within 24 hours.

(e) After the container or LPG facility is sealed, it may not be returned to service until the violations have been corrected, the repairs have been made and the Department removes the seal.

(f) A party aggrieved by a notice of deficiency or a notice to discontinue operation may appeal the order to the Industrial Board within 30 days of the issuance of the order. Appeals from the Industrial Board's order may be filed with the Commonwealth Court within 30 days of the date of the order.

(g) This section supplements 1 Pa. Code §§ 35.14 and 35.37.

**§ 13.53. Notice and hearing.**

Actions of the Department relating to notice of deficiency, a notice to discontinue operation or suspension of annual permit under §§ 13.50—13.52 (relating to suspension of annual permit for container; suspension of annual permit for an owner or operator; and notice of deficiency) will be taken subject to the right of notice, hearing and adjudication under 2 Pa.C.S. (relating to administrative law and procedure). Proceedings will be conducted under 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure).

**§ 13.54. Municipal preemption.**

The Department has the sole right and ability to regulate all matters related to the operation of the LPG industry under section 15 of the act (35 P. S. § 1329.15).

(1) A municipality or other political subdivision may not adopt or enforce an ordinance or regulation which differs from or conflicts in whole or in part with the act or this chapter regarding permits, licensing standards, fees, construction, installation, maintenance, operation, inspection, location or placement of LPG containers or LPG facilities or any other matters related to this industry within this Commonwealth.

(2) A municipality may not prohibit placement of any LPG container in any existing yard setback area except to establish an absolute setback of 10 feet from a residential property line.

(3) A municipality may retain the right, under local zoning ordinances, to require an LPG facility to locate within approved residential, industrial commercial or other zones and to require an LPG facility to obtain zoning permits, pay zoning fees and undergo inspections related to the zoning of the LPG facility. Any building at an LPG facility must be in compliance with the municipal standards applied to primary structures.

§§ 13.55—13.58. (Reserved).

§§ 13.61—13.68. (Reserved).

§§ 13.71—13.74. (Reserved).

§ 13.81. (Reserved).

§ 13.82. (Reserved).

§§ 13.91—13.96. (Reserved).

§ 13.101. (Reserved).

§ 13.102. (Reserved).

§ 13.111. (Reserved).

[Pa.B. Doc. No. 10-1582. Filed for public inspection August 27, 2010, 9:00 a.m.]

# Title 55—PUBLIC WELFARE

## DEPARTMENT OF PUBLIC WELFARE

[ 55 PA. CODE CHS. 2380, 2390, 6400 AND 6500 ]

### Individual Support Plan for Individuals with Mental Retardation

The Department of Public Welfare (Department) amends Chapters 2380, 2390, 6400 and 6500 to read as set forth in Annex A under sections 911 and 1021 of the Public Welfare Code (code) (62 P. S. §§ 911 and 1021). Notice of proposed rulemaking was published at 38 Pa.B. 1937 (April 26, 2008).

#### *Purpose of Final-Form Rulemaking*

This final-form rulemaking codifies the current process for developing and implementing an Individual Support Plan (ISP) for an individual who is attending a facility licensed under Chapters 2380, 2390, 6400 and 6500. The ISP is the comprehensive document that identifies the services needed by an individual to support the achievement of the expected outcomes chosen by an individual. This final-form rulemaking also replaces the terms “Individual Program Plan” (IPP) and “Individual Written Program Plan” (IWPP) with ISP, the current terminology. In addition, this final-form rulemaking reorganizes the existing regulatory language to provide consistent and uniform language of the programs sections in Chapters 2380, 2390, 6400 and 6500.

This final-form rulemaking is also needed to clarify the provider’s role in developing and implementing the ISP when an individual is not receiving services through a supports coordination organization (SCO). A provider is a person or entity that enters into a contract with the Department to deliver services to an individual. An SCO is a provider that is responsible for locating, coordinating and monitoring services provided to an individual. When an individual is receiving services through an SCO, the supports coordinator (SC) will develop and implement the ISP. However, in instances when an individual is not receiving services through an SCO, the plan lead will develop and implement the ISP. The plan lead is the program specialist or family living specialist at the licensed facility where the individual receives services.

#### *Background*

Current regulations specify that a provider shall develop and implement an IPP or IWPP. Until 2002, the IPP and IWPP were the sole documents used by providers to develop and implement services provided to an individual. Each provider developed and implemented an IPP

or IWPP for each individual served in the provider’s facility. Therefore, an individual could have several plans: one for the residential program, one for the vocational program and one for the day program. In some cases, individuals and families attended multiple meetings to update each plan and the multiple plans would conflict with each other.

As part of the regulatory development process, the Office of Developmental Programs (ODP) convened an individual and family-focused workgroup. The workgroup was comprised of an individual receiving service through the ODP service system, families, providers, provider associations and administrative entity representatives. The workgroup offered suggestions for the regulatory amendments, some of which are incorporated in this final-form rulemaking.

In 2002, the Office of Mental Retardation (now ODP) implemented the ISP to resolve these multiple plan issues by replacing multiple plans with one ISP document. The individual and his family or friends, as applicable, meet with all providers delivering services to the individual at the same time to discuss and determine how to best address the needs of the individual. This meeting promotes consistency and ensures that everyone is working together to address the individual’s needs.

When an individual is receiving services through an SCO, the ISP is developed and implemented by the SC. The SC is responsible for developing and implementing one ISP involving the multiple providers governed by the various regulation chapters.

As plan improvements transitioned from the creation of multiple provider-directed plans or IWPPs to a single ISP, which is person-centered and focuses on all the needs of the individual, these ISP improvements initiated the need to amend these chapters.

The Department needed to provide a process to develop an ISP when an individual is not receiving services through an SCO and, therefore, does not have an assigned SC. The final-form rulemaking is needed to require the development of one comprehensive ISP identifying the services needed by an individual and the expected outcomes chosen by an individual. Depending on the type of facility where the individual receives services, the plan lead, who will be responsible to develop and implement the ISP, will be either the program specialist or the family living specialist.

The following list identifies which program specialist or family living specialist will take the lead on ISP development and implementation when an individual is not receiving services through an SCO:

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#### *Hierarchy Type of Facility*

- |   |  |
|---|--|
| 1 | Community Home for Individuals with Mental Retardation |
| 2 | Family Living Home                                     |
| 3 | Adult Training Facility                                |
| 4 | Vocational Facility                                    |

#### *Plan Lead*

- |                                       |
|---------------------------------------|
| Chapter 6400 Program Specialist       |
| Chapter 6500 Family Living Specialist |
| Chapter 2380 Program Specialist       |
| Chapter 2390 Program Specialist       |
- 

For example, if an individual is living in a family living home and also attending a vocational facility, the family living specialist at the family living home would be the plan lead. The plan lead is responsible for developing the ISP.

The ISP is available in the Home and Community Services Information System (HCSIS). For providers

without the ability to access HCSIS, the ISP is available through a link on the Department’s web site at <http://www.dpw.state.pa.us/PartnersProviders/MentalRetardation/003679539.htm>.

#### *Affected Individuals and Organizations*

The ISP is the comprehensive document that identifies the needed services and expected outcomes for an indi-

vidual. These services are provided in facilities licensed under Chapters 2380, 2390, 6400 and 6500. Because this final-form rulemaking eliminates the need for each provider to have a separate ISP document, individuals and families benefit by having only one annual ISP meeting to attend. At this ISP meeting, all providers delivering services to the individual to support the individual's outcomes are required to be present. In the past, some individuals and families were asked to attend separate meetings with various providers, which created an unnecessary hardship.

In addition, providers will also benefit by not having to write separate ISPs. An ISP will be written coordinating all aspects of an individual's life into one document. Providers and individuals will benefit from the combined knowledge of all involved parties. Providers that deliver multiple services at different types of facilities will benefit by having consistent requirements for each facility.

#### *Accomplishments and Benefits*

This final-form rulemaking codifies the current process for developing and implementing the ISP. In addition, this final-form rulemaking replaces the terms IPP and IWPP with ISP, the current terminology, and reorganizes the existing regulatory language to provide consistent and uniform language of the program sections in Chapters 2380, 2390, 6400 and 6500.

#### *Fiscal Impact*

A cost is not associated with codifying existing ISP practices for the Commonwealth, local government or individuals receiving services. There may be minimal cost to providers regarding copies of ISP review documentation and assessments that are required to be provided to the plan team members. Previously, this information was only provided to the SC and the individual. Electronic distribution of materials to families is permitted if the family has a means to receive and read information in electronic form and as long as the electronic distribution of the materials is completed in a secure and protected manner and is in compliance with the act of August 21, 1996 (Pub. L. 104-191, 110 stat. 1936), known as the Health Insurance Protection and Portability Act of 1996 (HIPPA) requirements. These possible mailing and copying costs should be minimal for providers.

Since this final-form rulemaking also requires providers to use one ISP, the cost of staff time in creating a second document will be eliminated, thereby creating a financial savings for the provider.

#### *Paperwork Requirements*

Providers will need to provide copies of an individual's assessment and documentation of ISP reviews to plan team members. If the individual is not receiving services through an SCO, the provider will also have to provide copies of the ISP, including annual updates and revisions, to the plan team members. The amount of paperwork will depend on the page count of each provider's document and whether or not the individual is receiving services through an SCO. This final-form rulemaking permits electronic distribution of the ISP, including annual updates and revisions, as long as the electronic distribution of these materials are completed in a secure and protected manner and in compliance with HIPPA requirements.

The final-form rulemaking requires that the provider shall forward the assessment to the plan team members 30 calendar days before these meetings. The final-form rulemaking also adds a 30 calendar day time frame

following the ISP meetings for providers to send the ISP, annual updates and revisions to plan team members. The ISP is to be documented on the Department-designated form, which is located in HCSIS and will also be available through a link on the Department's web site at <http://www.dpw.state.pa.us/PartnersProviders/MentalRetardation/003679539.htm>.

#### *Public Comment*

Following publication of the proposed rulemaking, the Department received comments from five commentators during the 30-day public comment period and comments from one commentator after the close of the public comment period. The comments received came from Allied Services, Comhar Incorporated, JEVS Human Services, Woods Services, Pennsylvania Association of Resources and the Philadelphia Alliance. The Department also received comments from the Independent Regulatory Review Commission (IRRC).

As stated previously, prior to publication of the proposed rulemaking, the Department held two sessions with the individual and family-focused workgroup representing a variety of stakeholders, including an individual receiving services, families, providers, provider associations and administrative entity representatives. The workgroup made suggestions for the regulatory revisions, some of which were incorporated.

#### *Discussion of Comments and Major Changes*

Following is a summary of the comments received within the public comment period following publication of the proposed rulemaking and the Department's responses to those comments. A summary of major changes from the proposed rulemaking is also included.

#### *General—Statutory authority*

IRRC commented that the Department has indicated that its statutory authority for promulgating this regulation stems from Articles IX and X of the code (62 P. S. §§ 90—922 and 1001—1087). IRRC requested that with its submittal of the final-form rulemaking, the Department should clarify its statutory authority, particularly with regard to nonprofit institutions governed under Article IX of the code.

#### *Response*

The Department clarified the statutory authority for this final-form rulemaking. Section 911 of the code provides the Department with the statutory authority to promulgate and enforce regulations for institutions for adults with mental retardation. Further, section 1021 of the code provides the Department the authority to adopt regulations for the minimum standards for mental health facilities. The statutory definitions in Articles IX and X of the code do not distinguish between for-profit and nonprofit institutions for adults with mental retardation and mental health facilities.

#### *General—Single plan*

Several commentators addressed the lack of clarity provided in the preamble regarding the plan. One commentator stated that it is not clear whether there is to be a single individual plan document for each individual or whether there is to be a single individual plan document for each type of service. The commentator requested clarification if there will be a single plan in effect and if the plan will encompass all areas of the individual's life. The commentator also identified that the chapters had different time frames for plan development which would need to be coordinated for there to be a single plan. The commentator went on to suggest that there should be a

single coordinator of the plan services to help ensure the various services are working in a consistent manner on behalf of the individual.

This commentator also suggested that the Department discontinue the use of acronyms in relation to the plan. The commentator suggested the Department use simple English rather than an acronym and call the individual plan a “plan.” Another commentator suggested the use of the language currently in use “ISP—Individual Support Plan.”

IRRC commented that the proposed rulemaking used the term “IP” and practically identical requirements and procedures in the four chapters. However, there is nothing to indicate that the services and outcomes regulated by two or more different chapters must be coordinated and unified into a single plan.

IRRC also commented that the Department needs to formalize the process for unifying two or more chapters into one plan. This is necessary to make the process clear to providers and the individuals it serves. The final-form rulemaking should set forth procedures and requirements for unifying the individual’s plan when an individual is receiving services covered by two chapters or more.

*Response*

The Department agreed with these comments and added additional language to clarify its intent to have one comprehensive ISP per individual in §§ 2380.182(a), 2390.152(a), 6400.182(a) and 6500.152(a) (relating to development, annual update and revision of the ISP). This single ISP will include the needed services and expected outcomes for an individual.

Chapters 2380, 2390, 6400 and 6500 have also been amended to provide consistent time frames for the ISP and ISP-processes throughout all four chapters. The Department also clarified the procedures and requirements for unifying the ISP when an individual attends one or more of the facilities licensed under §§ 2380.182, 2390.152, 6400.182 and 6500.152.

Although in the proposed rulemaking the Department used the term “Individual Plan (IP)” to mean the single plan, upon further review, the Department determined to continue to use ISP, the current term.

*General—Chapters*

IRRC commented that different types of individuals are served by the four chapters. Chapters 6400 and 6500 (relating to community homes for individuals with mental retardation; and family living homes) are limited to clients with mental retardation. Chapters 2380 and 2390 (relating to adult training facilities; and vocational facilities), however, cover clients with different types of disabilities, including mental retardation. How would a provider know which clients are receiving services licensed under another chapter?

*Response*

A provider would confirm the information in its records with the family and update the records based on that conversation. The provider can also confirm information with the entity that is funding the individual at its facility to determine if that same entity is funding the individual in another licensed program.

In addition, the Department intends to provide training to providers and families on gathering and providing this information.

*General—SC*

IRRC and a commentator commented since the preamble to the proposed rulemaking indicated that the SC develops and implements the individual plan, one might assume that the SC would take responsibility for arranging one individual plan involving two or more chapters. IRRC commented that the proposed rulemaking did not indicate that the SC must do this.

Another commentator asked will individuals who are funded directly by the Commonwealth have an SC. This commentator suggested the regulations could be enhanced by clarifying who is supposed to have an SC. The commentator also suggested that either the use of SCs be stopped or be limited to working for individuals who are funded under a Centers for Medicare and Medicaid Services (CMS)—approved waiver.

*Response*

Supports coordination services are available to individuals registered for mental retardation services through the Department’s ODP. The choice of a qualified and willing SCO provider is available for the supports coordination service, as it is for all CMS waiver services. The SCO provider is responsible to deliver the supports coordination services of locating, coordinating and monitoring services to an individual.

The Department, however, does not regulate SCs. Instead, the SCOs, under contract with the Department, are contractually obligated to provide the supports coordination services to individuals, including ISP development and implementation. Further, the Department provides training to the SCs regarding ISP development and implementation.

*General—Program and family living specialist*

IRRC and a commentator commented on provisions that place the responsibility for the individual plan on a program or family living specialist when there is not an assigned SC. IRRC commented that the “specialists” are employees of the providers and there is not an indication how they would coordinate a single plan with other providers. Another commentator asked if the day services program specialist be required to coordinate the development of the plan when the individual lives in an intermediate care facility for the mentally retarded (ICF/MRs). IRRC also questioned if there is one individual plan for the activities or services governed by two or more of the four chapters, who is responsible for coordinating the individual ISP with the different providers.

*Response*

The Department agreed with the suggestions regarding the need for clarification and added a definition for “plan lead.” A plan lead is the program specialist or family living specialist who develops and implements the ISP, including ISP-related processes when the individual does not have an assigned SC. If an individual is receiving services through an SCO, the individual will have an assigned SC. The assigned SC is then responsible for the development and implementation of the ISP.

This final-form rulemaking does not amend the chapters regarding ICF/MRs. When an individual resides in an ICF/MR and also attends a day services facility licensed under Chapter 2380 or 2390, the day services program specialist is not required to coordinate the development of the ISP with the ICF/MR. If the program specialist is the plan lead, the program specialist will write the ISP as applicable to the day services facility.

The Department also added definitions for “plan lead,” “SC—Supports coordinator” and “SCO—Supports coordination organization” to §§ 2380.3, 2390.5, 6400.4 and 6500.4 (relating to definitions). The Department also amended §§ 2380.182, 2390.152, 6400.182 and 6500.152 to clarify which provider’s program specialist or family living specialist would become the plan lead when services in an ISP are governed by more than one of the four chapters.

*General—Review meeting*

IRRC and a commentator inquired whether there would be one joint review meeting with the individual and the different providers governed by two or more chapters. Who will be responsible for coordinating the timing and location of the meeting if there is not an assigned SC?

Another commentator inquired if there could be one joint review meeting which would be presided over by one of the residential providers when the individual is served by more than one provider.

*Response*

There will not be one joint review meeting. Each program specialist or family living specialist, as applicable, from each provider that is delivering services to the individual will conduct a review of the ISP with the individual every 3 months. The program specialist shall provide documentation from this review meeting to the plan team members. However, if there is a recommendation for a revision to a service or outcome, the plan lead is required to send an invitation for an ISP revision meeting to plan team members under §§ 2380.186(f), 2390.156(f), 6400.186(f) and 6500.156(f) (relating to ISP review and revision).

*General—Fiscal Impact—SC*

A few commentators commented that the proposed rulemaking could impose additional costs on providers and others in the regulated community. One example was a concern with the high turnover rate of SCs. IRRC commented that this situation could be exacerbated by this rulemaking since more will be required of specialists and other provider staff if an SC is missing or in transition. One commentator stated that provider agencies have to assist in the plan process beyond what they are required to get the plans completed.

IRRC commented that this possible fiscal impact raises several questions. IRRC inquired into the frequency of situations when there is not an assigned SC or the position is in transition. IRRC also inquired what will be the fiscal impact of the rulemaking on providers if their specialists have to take the lead in developing and writing the individual plan.

*Response*

A provider’s program specialist is not required to take over responsibilities of an SC at any time. The only time a program specialist or family living specialist is responsible for the ISP process is when the individual is not receiving services through an SCO. If an individual is receiving services through an SCO, the individual has an assigned SC. The assigned SC is then responsible for the ISP process.

It is current practice for providers to write the ISP when an individual it serves is not receiving services through an SCO. Providers that are currently writing separate ISPs for all individuals will be saving money by the implementation of one ISP and not duplicating the work of other providers. The final-form rulemaking re-

quires only one provider’s program specialist or family living specialist, as applicable, to write the ISP and for that ISP to be used by each provider that delivers services to that individual.

*General—Fiscal Impact—Staff ratios*

Commentators also commented regarding potential cost increases regarding giving individual plan teams control of staff-to-client ratios rather than using the minimum staff requirements in the existing regulation. One commentator also had concerns regarding providing the staffing levels required in a plan when staff happen to call off sick or other emergencies. The commentator stated that the amendments force the provider to guarantee a staffing level. The commentator suggested that the Department establish minimum staffing ratios and hold the providers accountable to these minimum ratios.

IRRC further commented that the Department should include a detailed fiscal impact analysis that addresses the issues and questions regarding impact on SC and staff-to-client ratios.

*Response*

The Department revised §§ 2380.35, 2390.39, 6400.45 and 6500.44 to clarify the minimum staffing requirements and ratios. The minimum staffing requirements are for the provider’s facility. Whereas, the staffing requirements stated in an individual’s ISP are what the plan team members determine is required for the individual. The staffing requirements identified in the ISP shall be implemented in addition to or above what is a minimum requirement under §§ 2380.35(e), 2390.39(e), 6400.45(f) and 6500.44(e).

The focus is on creating person-centered ISPs, which will identify what services an individual needs, rather than what services the provider is willing to offer. Prior to a provider stating it is willing to provide a service in an ISP, the provider is informed at the ISP meeting what staffing levels the individual requires. If the provider is not capable of supplying the staff required by the individual, the provider can decline to provide the service.

The provider shall plan for staff calling off sick and emergencies and is still required to deliver services as required by regulations and as written in the ISP. While the final-form rulemaking calls for minimum staffing ratios, the provider is still responsible to deliver services as written in an ISP when the provider accepted to be authorized in an individual’s ISP to provide a service.

Staffing ratios and appropriately credentialed staff are based upon the individuals’ assessed needs. Likewise, the funding an individual receives is based upon the individual’s assessed needs. Therefore, funding levels support the staffing level required.

*General—Language usage*

One commentator suggested that rather than using the term “mental retardation,” that the Department begin using the term “intellectual disabilities,” which is gaining acceptance as the currently politically correct term.

*Response*

Mental retardation is the current language which is used in State and Federal law and regulation. Until State and Federal law and regulation amend this language, the Department is unable to deviate from using the term “mental retardation” within its regulations.

*General—HCSIS use*

One commentator questioned why HCSIS could not be used to send out notifications and documents to all interested parties within the time frames required.

*Response*

HCSIS is a secure internet system which serves the Department, providers and others who have been given proper security access to it. HCSIS, however, is not utilized by all persons that may be a plan team member, such as the individual and the individual's family members. Therefore, HCSIS is not able to provide the documents and notifications to all required persons as suggested by the commentator.

§§ 2380.3, 2390.5, 6400.4 and 6500.4. *Definitions—“Documentation”*

IRRC commented that the terminology “document,” “documenting” and “documentation” are used in several provisions in the proposed rulemaking. However, it is unclear what is entailed in “documenting.” IRRC asked if this simply entails a staff person making a note or keeping a record or does it mean gathering evidence and independent verification. IRRC commented the final-form rulemaking should either define the term or specify the types or forms of documentation required for each provision.

*Response*

The Department agreed the documentation language was unclear and added a definition for “documentation” in §§ 2380.3, 2390.5, 6400.4 and 6500.4. “Documentation” is written statements that accurately record details, substantiate a claim or provide evidence of an event. Depending on the situation, it may be a note in a record or may be gathered evidence and independent verification. For example, documentation of having witnessed a service being performed could be a direct service worker's initials in a box on a form or it could be the direct service worker's statement. In addition, the Department intends to provide future training on what constitutes proper documentation.

§§ 2380.3, 2390.5, 6400.4 and 6500.4. *Definitions—“Outcome”*

IRRC and a commentator commented the term “outcome” is used throughout the proposed rulemaking. It appears to be a “term of art” for mental health professionals with a definition that is somewhat different from the standard definition for this word in most dictionaries. IRRC suggested the final-form rulemaking include a definition for the term in each of the four chapters.

*Response*

The Department agreed with the suggested recommendation. The Department added a definition of “outcomes” in §§ 2380.3, 2390.5, 6400.4 and 6500.4. “Outcomes” is defined as goals the individual and individual's plan team choose for the individual to acquire, maintain or improve.

§§ 2380.3, 2390.5, 6400.4 and 6500.4. *Definitions—“SC—Supports coordinator”*

IRRC commented the use of the term “individual” within the definition of “SC—Supports coordinator” is inconsistent with how the term “individual” is defined in the existing provisions of three of the four chapters. IRRC suggested that the word “individual” in the definition of “SC—Supports coordinator” be changed to “person” in the relevant sections of the final-form rulemaking.

*Response*

The Department agreed with this comment. The Department changed “individual” to “a supports coordination organization employee” in the definition of “SC—Supports coordinator” in §§ 2380.3, 2390.5, 6400.4 and 6500.4.

§§ 2380.3, 2390.5, 6400.4 and 6500.4. *Definitions—“SC—Supports coordinator”—Case management functions*

IRRC also inquired about “case management functions.” The term is used in the definition of “SC—Supports coordinator” but it is not defined. IRRC suggested there be a definition for this term.

*Response*

The Department deleted “case management functions” from the definition of “SC—Supports coordinator” because it was confusing. An SC is an SCO employee whose primary job functions are to locate, coordinate and monitor services provided to an individual when the individual is receiving services from an SCO.

§§ 2380.33, 2390.33, 6400.44 and 6500.43. *Program specialist/Family living specialist—Plan meeting*

IRRC commented that §§ 2380.33(b)(5), 2390.33(b)(5), 6400.44(b)(5) and 6500.43(d)(5) indicate that the appropriate specialist shall be responsible for providing the completed assessment and individual plan prior to the plan meeting and this information shall be sent to the appropriate persons “within 30 days following the receipt of notification of the plan meeting.” However, these sections do not make clear whether the plan meeting could occur within this 30-day time frame. Thus, the relevant information may not be received in time. IRRC requested that the Department clarify that the plan meeting would occur after the 30-day deadline.

One commentator also suggested 30 days was too lengthy and recommended that reports be provided 15 days in advance of the plan meeting.

*Response*

Sections 2380.181, 2390.151, 6400.181 and 6500.152 of the final-form rulemaking have been revised to require the completed assessment to be provided to the plan team members at least 30-calendar days prior to the meeting. The Department did not agree with the commentator that 15 days would be sufficient advance notice since there could be possible postal delays or a family member being away on vacation.

§§ 2380.33, 2390.33, 6400.44 and 6500.43. *Program specialist/Family living specialist—Content discrepancy*

IRRC commented that §§ 2380.33(b)(6)(i) and (ii), 2390.33(b)(6)(i) and (ii), 6400.44(b)(6)(i) and (ii) and 6500.43(d)(6)(i) and (ii) use the term “content discrepancy.” However, it is unclear how the Department would determine whether the discrepancy exists. IRRC suggested that the final-form rulemaking include examples of when this would occur.

*Response*

The Department agreed that content discrepancy should be clarified. A definition of “content discrepancy” was added to §§ 2380.3, 2390.5, 6400.4 and 6500.4. “Content discrepancy” is a difference between what was determined at the ISP meeting by the plan team and what is documented in the written ISP. The Department would determine if a discrepancy existed through the following sequence of events.

If a detail in the ISP is different than what was determined by the plan team members at the ISP meet-

ing, then the program specialist or family living specialist would report this content discrepancy to the SC or plan lead as applicable as required under §§ 2380.33(b)(7), 2390.33(b)(7), 6400.44(b)(7) and 6500.43(d)(7). Content discrepancies are required to be kept in the individual's record as required under §§ 2380.173(9), 2390.124(12), 6400.213(11) and 6500.182(10) (relating to content of records). When the Department conducts State licensing inspections, the Department would see in the individual's record that there was a content discrepancy.

§§ 2380.33, 2390.33, 6400.44 and 6500.43. *Program specialist/Family living specialist—SC*

Several commentators stated that one role of the program specialist appears to be quality control for the work of the SC even though the program specialist does not have control over the SC. One commentator made several comments regarding this issue, including that provider agencies are held accountable for the work of an SC even though the provider agency does not supervise the SC. The commentator suggested that the regulations specify that a provider cannot be held accountable for the work of the SC.

#### *Response*

The Department understands that a provider cannot supervise an SC. As a provider does not have control over the actions of an SC, the Department will not hold the provider accountable for content discrepancies in the ISP and other activities conducted by the SC, as long as the program specialist or family living specialist, as applicable, reports these content discrepancies to the SC, plan lead and the team members as required under §§ 2380.33(b)(7), 2390.33(b)(7), 6400.44(b)(7) and 6500.43(d)(7) and documentation is kept to verify that it was reported as required under §§ 2380.173(9), 2390.124(12), 6400.213(11) and 6500.182(10).

Further, the Department will not hold a provider responsible for other activities conducted by the SC, as long as the provider agency has reported the issues it is having with the SC to the administrative entity or the Department and can substantiate that it attempted to remediate the situation.

§§ 2380.33(c), (d) and (e), 2390.33(c), (d) and (e), 6400.44(c), (d) and (e) and 6500.43(e) and (1). *SCs*

IRRC commented that proposed §§ 2380.33(c), (d) and (e), 2390.33(c), (d) and (e), 6400.44(c), (d) and (e) and 6500.43(e) mention individuals that do not have SCs. However, the proposed rulemaking did not indicate how the specialist would determine whether or not there is an assigned SC. IRRC suggested that the final-form rulemaking clarify this process. IRRC also inquired whether the Department considered combining these three subsections.

#### *Response*

The Department agreed with IRRC's suggestion and combined subsections (c) and (d) together in §§ 2380.182(b) and (c), 2390.152(b) and (c), 6400.182(b) and (c) and 6500.152(b) and (c). Further, subsection (e) is addressed in §§ 2380.187, 2390.157, 6400.187 and 6500.157 (relating to copies).

Both the provider and program specialist would know whether or not the individual has an assigned SC based upon whether or not the individual is receiving services through an SCO. If the individual is receiving services through an SCO, the SC would make the referral for the individual to the provider, so the provider would know there is an SC.

Based on comments received, the Department made several changes to clarify who is responsible for the ISP under different scenarios. In addition, definitions of "plan lead" and "SCO—Supports coordination organization" were added and the definition of "SC—Supports coordinator" was amended in §§ 2380.3, 2390.5, 6400.4 and 6500.4.

§§ 2380.33, 2390.33, 6400.44 and 6500.43. *Program specialist/Family living specialist—Supports coordination agencies*

One commentator suggested the Department develop regulations for supports coordination agencies.

#### *Response*

At this time, the Department is not considering developing separate regulations for supports coordination agencies.

§§ 2380.33(b)(8), 2390.33(b)(8) and 6400.44(b)(8). *Program specialist/Family living specialist—Direct support professionals*

IRRC inquired what are "direct support professionals" in §§ 2380.33(b)(8), 2390.33(b)(8) and 6400.44(b)(8) (relating to program specialist). IRRC suggested that the final-form rulemaking should include a definition for this term.

#### *Response*

The Department incorrectly used the term "direct support professional." The current terminology used is "direct service worker." The Department added a definition of "direct service worker" in §§ 2380.3, 2390.5, 6400.4 and 6500.4. A "direct service worker" is a person whose primary job function is to provide services to an individual who attends the provider's facility.

§§ 2380.33(b)(10) and (11), 2390.33(b)(10) and (11), 6400.44(b)(10) and (11) and 6500.43(d)(10) and (11). *Documentation*

IRRC and a commentator commented that it appears that §§ 2380.33(b)(10) and (11), 2390.33(b)(10) and (11), 6400.44(b)(10) and (11) and 6500.43(d)(10) and (11) required both monthly and quarterly documentation of the "individual's participation and progress for individual plan outcomes." Another commentator suggested quarterly submission of documentation.

IRRC suggested that the final-form rulemaking explain the need for both types of documentation, in particular, why the regulation "ensures" monthly documentation, but is "providing" quarterly documentation. IRRC also suggested that the Department explain why the regulation states that quarterly documentation should be submitted to "the SC, individual and if appropriate, the individual's parent, guardian or advocate," but does not include the same for monthly documentation.

#### *Response*

Under §§ 2380.33(b)(10), 2390.33(b)(10), 6400.44(b)(10) and 6500.43(b)(10), a program specialist or a family living specialist is required to review, sign and date monthly documentation of an individual's participation and progress toward ISP outcomes. There is no monthly meeting attended by the plan team to discuss this monthly documentation, so there is not a need for the plan team to receive the monthly documentation. The documentation, however, does need to be maintained monthly to complete the quarterly ISP review. After the program specialist or the family living specialist has completed the quarterly ISP review with the individual, which requires a review of the monthly documentation,

the program specialist is required to submit the ISP review documentation to the SC or plan lead, as applicable, and the plan team members as required under §§ 2380.186(d), 2390.156(d), 6400.186(d) and 6500.156(d). Providing the ISP review documentation is to keep plan team members informed of both the individual's monthly and quarterly progress and for the plan team to determine if revisions to the ISP are necessary. This quarterly documentation shall be provided as the review of this information by the plan team might necessitate an ISP revision meeting.

§§ 2380.33(d), 2390.33(d) and 6400.44(d). *Plan format*

IRRC commented that §§ 2380.33(d), 2390.33(d) and 6400.44(d) provided that without an assigned SC, "the program specialist shall prepare the individual plan using the Department approved format." However, the regulations do not describe the approved format or how to obtain copies. A commentator stated that the Department-approved format seems unnecessarily limiting since various individuals with different types of disabilities are serviced in a Chapter 2390 facility.

IRRC suggested that the final-form rulemaking indicate whether it will be available online or identify the appropriate bureau or division to contact with questions regarding the format.

*Response*

The Department-designated form is available in HCSIS and will be available through a link on the Department's web site at <http://www.dpw.state.pa.us/PartnersProviders/MentalRetardation/003679539.htm>. In addition, the Department will issue an alert to the field indicating when and how to obtain the designated ISP document as well as provide training on obtaining and utilizing the Department's designated ISP document.

§§ 2380.35 and 6400.45. *Staffing*

IRRC commented that the proposed rulemaking amended both sections by adding language stating that "direct staff support" and "staffing ratios" shall be implemented as written and "specified in the individual ISP." However, existing subsection (a) in both sections specifies minimum required ratios for staff and individuals. Two commentators raised similar concerns regarding subsection (a) and the new language in § 2380.35(e) and (f) (relating to staffing). One of these commentators requested that the staffing ratios not be determined by the team members. The commentator went on to note that similar staffing language is also included in § 6400.45(d) and (e) (relating to staffing).

IRRC also suggested the Department determine whether the minimum ratios prescribed in subsection (a) apply to the staff ratios set up by the individual ISPs or whether the Department should revise subsection (a). In addition, the final-form rulemaking should clarify resulting conflicts including whether the exceptions in the original regulation in § 2380.35(a) are allowed (that is, "except while staff persons are attending meetings or training at the facility"). IRRC and a commentator inquired as to the difference between the phrase "direct staff support as specified in the individual plan shall be implemented as written" and the phrase "staffing ratios specified in the individual ISP shall be implemented as written."

*Response*

Since subsection (a) is still applicable, including the exceptions regarding attendance at meetings and train-

ing, the Department did not propose to amend § 2380.35(a) and did not amend this subsection in its final-form rulemaking.

The minimum staffing requirements are for the provider's facility. Whereas, the staffing requirements stated in an individual's ISP are what the plan team members determine is required for the individual. The staffing requirements identified in the ISP shall be implemented in addition to or above what is a minimum requirement under §§ 2380.35(e), 2390.39(e), 6400.45(f) and 6500.44(e).

Based on the comments received and in the interest of lessening confusion, the Department determined not to introduce new definitions and, instead, deleted the definitions and use of the term "direct staff support." The Department also revised the language in §§ 2380.35(e), 2390.39(e), 6400.45(d) and 6500.44(e) and clarified that the ISP shall be implemented as written, including when the staff ratio is greater than required by subsections (a), (b) and (c).

§ 6500.43. *Family living specialist*

IRRC commented that in the new language in subsection (d)(10), the words "participation progress" appear together. IRRC asked if the word "and" should be between these two words. The phrase "participation and progress" is used in subsection (d)(11). IRRC suggested that the Department review the regulation and make the appropriate changes to the final-form rulemaking, if necessary.

*Response*

The Department reviewed § 6500.43(d)(10) and (11). These paragraphs were amended for clarity. Subsection (d)(10) now reads "reviewing, signing and dating the monthly documentation of an individual's participation and progress toward outcomes." Subsection (d)(11) now reads "reporting a change related to the individual's needs to the SC, as applicable, and plan team members."

§§ 2380.101 and 2390.91. *Program activities*

IRRC and a commentator commented that originally these sections required that "program activities" shall be provided as specified in each individual plan. The proposed rulemaking added that "services" shall also be provided. However, the proposed rulemaking did not define "services," nor did it explain the need for including this term. IRRC suggested that a definition for this term should be included in the final-form rulemaking.

*Response*

The term "services" is presently used in the field and is, therefore, being added in the final-form rulemaking. "Services" will replace the term "activities." The Department added a definition of "services" in §§ 2380.3, 2390.5, 6400.4 and 6500.4. "Services" are defined as "actions or assistance provided to the individual to support the achievement of an outcome."

§§ 2380.103, 2390.95, 6400.122 and 6500.112. *Invitation to ISP meeting*

One commentator expressed that if there is an SC, the SC and not the program specialist should be the one sending out the invitations to the plan meeting.

*Response*

The Department agrees with this suggestion. The Department stated that an invitation shall be sent to plan team members at least 30 calendar days prior to the ISP meeting required under §§ 2380.182(d)(4), 2390.152(d)(4), 6400.182(d)(4) and 6500.152(d)(4). Although the Depart-



ment does not regulate SCs, SCOs are contractually obligated to deliver supports coordination services per Department policies and regulations. When the individual is receiving services through an SCO, all ISP processes, including the sending of the invitations, shall be conducted by the SC.

When the individual does not have an SC, all ISP processes, including the sending of the invitations, shall be conducted by the plan lead as provided under §§ 2380.182(b) and (c), 2390.152(b) and (c), 6400.182(b) and (c) and 6500.152(b) and (c).

§§ 2380.103, 2390.95, 6400.122 and 6500.112. *Medical specialist*

One commentator stated that medical specialist shall be listed as team members and all team members receive a copy of the plan. The commentator wanted the regulations to specify that medical specialists do not have to be provided with a copy of the plan unless they specifically request to be copied.

*Response*

The Department determined upon review that a medical specialist does not have to be a plan team member, but may be a plan team member if the person plays a role in the individual's life under §§ 2380.184(a)(2), 2390.154(a)(2), 6400.184(a)(2) and 6500.154(a)(2) (relating to plan team participation).

The Department also considered the possibility of allowing a medical specialist to request a copy of the ISP without attending the ISP meeting, but determined not to include this in the final-form rulemaking. The Department determined that if the medical specialist attended the ISP meeting, the medical specialist shall be provided with a copy of the ISP following the ISP meeting.

§§ 2380.103, 2390.95, 6400.122 and 6500.112. *Development of the plan*

IRRC commented that in proposed § 2380.103(2), the new time period for completion of the individual plan is "within 30 days after the individual's admission date." IRRC and a commentator questioned why not use "30 individual attendance days," which is used in the existing regulation, or "60 days" or "90 days," as proposed in other chapters. One commentator suggested the adoption of a 60-day time frame to develop the ISP; another commentator suggested "within 60 attendance days" time frame.

IRRC questioned whether the measurement of "attendance days" is being deleted in the proposed regulation. IRRC also questioned what happens if the individual is absent for a prolonged period. IRRC suggested that the Department explain not only the need for, but also provide for, possible exceptions to this deadline.

*Response*

The Department deleted the language "attendance" days for consistency and uniformity among the chapters. In addition, the Department clarified that an ISP shall be completed within 90 calendar days in §§ 2380.182(d)(2), 2390.152(d)(2), 6400.182(d)(2) and 6500.152(d)(2), rather than 30 or 60 calendar days. This 90-day requirement conforms to the current requirement in § 6500.152 and is also for consistency and uniformity among the chapters.

There are no exceptions to this requirement. If the individual is absent from the provider facility for an extended period of time, but the individual is authorized to receive services from the provider, the provider is still responsible to develop the individual's ISP and be in compliance with all regulation requirements. Only when

the provider discontinues being identified on the individual's ISP as delivering services to the individual, is the provider able to discontinue compliance with the regulations in reference to that individual.

§§ 2380.103, 2390.95, 6400.122 and 6500.112. *Development of the plan; plan review*

IRRC inquired what type of change to the individual's needs would prompt the individual plan team to review an individual plan more frequently than every 3 months. Regarding this, a commentator suggested that a common time frame be identified for all reviews unless a specific need is identified for more frequent reviews.

*Response*

The plan team does not meet to review the ISP on a quarterly basis. The program specialist or family living specialist, as applicable, reviews the ISP with the individual and then sends ISP review documentation to the plan team members. If during the ISP review, the program specialist or family living specialist recommends that a service or outcome in the ISP should be revised, added or deleted, at that time, the plan team would be invited to an ISP revision meeting as required under §§ 2380.186(f), 2390.156(f), 6400.186(f) and 6500.156(f) when the recommendations would be discussed and the ISP could be revised.

Based on the comments received, the Department clarified the language regarding more frequent reviews of the ISP in §§ 2380.186(a), 2390.156(a), 6400.186(a) and 6500.156(a). A review of the ISP shall occur more frequently than every 3 months if the individual's needs have changed impacting the services as specified in the current ISP. The language in each chapter includes a common time frame of every 3 months.

§ 2380.103. *Development of the plan—“Declines”*

One commentator suggested changing "denies" and "denial" to "declines" and "declination" in proposed § 2380.103.

*Response*

The Department agreed with the comment and made the suggested change to §§ 2380.33(b)(15), 2390.33(b)(15), 6400.44(b)(15) and 6500.43(b)(15).

§ 2390.96. *Content of the plan—Combined language*

One commentator suggested that the language in this proposed section be combined to read that the program specialist shall document and report all missing or incomplete items from the ISP.

*Response*

The Department determined it was not necessary to mention both actions within the same section in the regulations. The Department changed the language in § 2390.33(b)(7) to read that the program specialist is responsible to report content discrepancies to the SC or plan lead and the plan team members. In § 2390.124(12), the Department requires that content discrepancy in the ISP, including annual updates and revisions, is to be maintained in the individual's record.

§§ 2380.104, 2390.97, 6400.123 and 6500.113. *Review of the ISP*

Proposed § 2380.104(a) stated that the review of each individual's progress can be completed "every 3 months, or more frequently if the individual's needs change." One commentator questioned if the review is moved up before the 3-month mark, will subsequent reviews be recalibrated to be 3 months from the earlier date or from

the original date for the 3-month review. IIRC also commented the Department should clarify this issue in the final-form rulemaking.

*Response*

If a review was completed prior to the 3-month mark, a subsequent review would be completed 3 months from the date of the previous completed review, unless there was a change in the individual's needs impacting services as specified in the current ISP. This language was clarified in §§ 2380.186(a), 2390.156(a), 6400.186(a) and 6500.156(a).

§§ 2380.104(c)(1), (2) and (3), 2390.97(d)(1), (2) and (3), 6400.123(c)(1), (2) and (3) and 6500.113(c)(1), (2) and (3). *Review of the plan*

IIRC commented that proposed §§ 2380.104(c)(1), (2) and (3), 2390.97(d)(1), (2) and (3), 6400.123(c)(1), (2) and (3) and 6500.113(c)(1), (2) and (3) provided various circumstances for when an individual plan shall be revised. IIRC questioned who is responsible for making these determinations. Is it the provider, the individual plan team or the Department? If there is a disagreement between a provider and a client or client's family or representative, what is the process for resolving the difference.

*Response*

The plan team is expected to develop the individual's ISP, including annual updates and revisions, as required under §§ 2380.184(a), 2390.154(a), 6400.184(a) and 6500.154(a). Ultimately, if the individual, individual's plan team members and provider cannot agree on an ISP or the services in an ISP, the individual and individual's plan team can choose a new provider or the provider can decline to provide the services being requested.

§§ 2380.186, 2390.156, 6400.186 and 6500.156. *Outcomes*

One commentator presented concerns regarding an outcome being revised if progress on an outcome has not been made. The commentator is concerned that the determination of "no progress" can be subjective and should be left up to the ISP team members to decide.

*Response*

Based upon the comment received, the Department agreed and determined that an outcome or services to support the achievement of an outcome may be revised by the plan team as required under §§ 2380.184(a), 2390.154(a), 6400.184(a) and 6500.154(a). Therefore, §§ 2380.186(c)(4), 2390.156(c)(4), 6400.186(c)(4) and 6500.156(c)(4) have been revised to provide that a recommendation shall come from the program specialist or family living specialist for the deletion, addition or modification of an outcome or service to support the achievement of an outcome based on the ISP review. If a recommendation for a revision to a service or outcome is made, the plan lead is required to send an invitation to the plan team members for an ISP revision meeting.

The Department is aware that progress may occur at different times for each individual, but progress towards an outcome an individual wishes to achieve should always be determined and measured. The Department has required that the plan team shall determine the individual's current status in relation to an outcome and develop a method of evaluation to determine progress toward expected outcomes at §§ 2380.183(3), 2390.153(3), 6400.183(3) and 6500.153(3) (relating to content of the ISP). That way, the plan team has a consistent method for measuring progress. If there is no progress towards a

desired outcome, the services to support the achievement of the outcome may be flawed and may need to be revised or the plan team may determine that the outcome is unattainable as written and may need to be revised or deleted.

§§ 2380.186, 2390.156, 6400.186 and 6500.156—*Review of the plan. Supports coordinator*

One commentator suggested that the SC rather than the program specialist should be responsible for conducting all reviews—monthly, quarterly and all program reviews.

*Response*

The Department determined in §§ 2380.186(a), 2390.156(a), 6400.186(a) and 6500.156(a) that it should be the program specialist or family living specialist who conducts the ISP review with the individual on a quarterly basis or more frequently if the need of the individual has changed which impacts a service or outcome in the current ISP. The program specialist or family living specialist reviews the monthly documentation of an individual's progress toward ISP outcomes as required under §§ 2380.33(b)(10), 2390.33(b)(10), 6400.44(b)(10) and 6500.43(b)(10).

The Department determined it would not be feasible for an SC to produce all ISPs for each individual in the SC's caseload and then hold monthly and quarterly reviews with each individual in the SC's caseload.

The SC will be kept up to date regarding the monthly and quarterly ISP review as the program specialist or family living specialist is responsible to provide documentation of the quarterly ISP review to the SC or plan lead, as applicable, and plan team members under §§ 2380.186(d), 2390.156(d), 6400.186(d) and 6500.156(d). The quarterly ISP review is to include a review of the monthly documentation from the prior 3 months as required under §§ 2380.186(c)(1), 2390.156(c)(1), 6400.186(c)(1) and 6500.156(c)(1).

§§ 2380.186, 2390.156, 6400.186 and 6500.156. *Review of the plan—Copies*

A commentator provided an example of a potential fiscal impact of having to provide copies of the quarterly review documents. The commentator recommended when two providers are involved, the residential provider takes the lead role for this assignment rather than the two providers duplicating their efforts.

*Response*

The Department determined that each program specialist or family living specialist would conduct a quarterly review of the individual's progress towards outcomes specific to the facility in §§ 2380.186(a), 2390.156(a), 6400.186(a) and 6500.156(a). The Department determined this is the best way to provide an effective review of the individual's ISP, as the program specialist or family living specialist at a particular provider's facility has more knowledge of the effectiveness and progress of a service within their own facility than a program specialist or family living specialist from another provider's facility.

§§ 2380.106, 2390.96, 6400.125 and 6500.115. *Content of the plan*

IIRC commented that the topics and their sections are not necessarily in the same order in each chapter. For example, the section on "content of the individual plan" comes before the section on "review" in Chapter 2390, but there is a different order in the other chapters. IIRC

suggested that the Department review the numerical order of their sections and, if appropriate, make the necessary changes.

*Response*

The Department agreed with this comment. Based on IIRC's comment to review the order of the sections, the Department renumbered and reordered the program-related sections in all four chapters.

§§ 2380.106(5), 2390.96(5), 6400.125(5) and 6500.115(6).  
*Supervision*

One commentator asked how formal the schedule of periods of time to be without supervision needs to be within the content of an individual's plan.

*Response*

The Department clarified the language in §§ 2380.183(4), 2390.153(4), 6400.183(4) and 6500.153(4). The Department is requiring a schedule that outlines the amount of time an individual is to be without direct staff supervision. This does not mean that the individual's ISP should state "from 4 o'clock to 5 o'clock every Monday the individual must be without direct supervision." Instead, this means the schedule should state how long the individual may be without direct supervision. For example, the individual should have 1 hour, once a week, when the individual is without direct supervision. In addition, the Department intends to provide training regarding all final-form rulemaking amendments, including this requirement.

§§ 2380.106(a)(5), 2390.96(a)(5), 6400.125(a)(5) and 6500.115(a)(6). *Content of the plan*

One commentator requested that the Department define that outcomes should be objective, observable and measurable. IIRC commented that in proposed §§ 2380.106(a)(5), 2390.96(a)(5), 6400.125(a)(5) and 6500.115(a)(6) the phrase "greater level of independence" was vague. It is unclear how specialists determine whether an individual had achieved a greater level. IIRC suggested the Department provide examples of how this is observed or measured. IIRC also requested that the final-form regulation clarify whether the term "assessment" refers to an individual's initial or periodic assessment.

*Response*

Based on comments received, the Department revised §§ 2380.183(3), 2390.153(3), 6400.183(3) and 6500.153(3) to require that the ISP, including annual updates and revisions, include the individual's current status in relation to an outcome and method of evaluation used to determine progress toward that expected outcome. This requirement allows a plan team to determine how to best measure an individual's current condition and progress in relation to an outcome.

The Department also added language to §§ 2380.181(a), 2390.151(a), 6400.181(a) and 6500.151(a) (relating to assessment) to provide for an initial assessment that is updated annually.

§§ 2380.106(a)(7) and (8), 6400.125(a)(7) and (8) and 6500.115(a)(7) and (8). *Maladaptive behavior*

IIRC inquired what is "maladaptive behavior" in proposed §§ 2380.106(a)(7) and (8), 6400.125(a)(7) and (8) and 6500.115(a)(7) and (8). IIRC suggested that the final-form rulemaking include a definition for this term.

In addition, a commentator suggested that the Department use a different term other than "maladaptive behav-

ior." The commentator suggested using terms such as "challenging, socially devalued, socially unacceptable, dangerous or assaultive."

*Response*

The Department deleted this term since it is outdated. The language was replaced with "symptoms of a diagnosed psychiatric illness." "Maladaptive behavior" was subjective and could be broadly defined. "Symptoms of a psychiatric illness" are determined by medical professionals and defined in medical definitions. Therefore, these medical definitions are less subject to varying interpretation.

§§ 2380.106(a)(8), 6400.125(a)(8) and 6500.115(a)(8). *Restrictive procedures*

IIRC asked for examples of "restrictive procedures" in proposed §§ 2380.106(a)(8), 6400.125(a)(8) and 6500.115(a)(8). IIRC suggested that the final-form rulemaking include a definition for this term.

*Response*

Restrictive procedures are currently defined in §§ 2380.151, 6400.191 and 6500.161 (relating to definition of restrictive procedures). However, Chapter 2390 currently does not have an existing section defining "restrictive procedures." For consistency and clarity, the definition of "restrictive procedures" was added in § 2390.5.

In addition, the Department added §§ 2380.183(6), 2390.153(6), 6400.183(6) and 6500.153(6) requiring ISPs to include a protocol to eliminate the use of restrictive procedures if they are being utilized.

One commentator also suggested that the best way to reduce the need for restrictive procedures is to reduce the frequency of the behavior that required the use of restrictive procedures.

*Response*

The Department agreed with this suggestion and added language in §§ 2380.183(6)(i)—(iv), 2390.153(6)(i)—(iv), 6400.183(6)(i)—(iv) and 6500.153(6)(i)—(iv) to clarify that if restrictive procedures are utilized, there must be a protocol developed to: assess the cause of the behavior; address the underlying causes of the behavior which led to the use of restrictive procedures; determine the method and time line for restrictive procedures elimination; and determine a protocol for intervention or redirection without utilizing restrictive procedures.

§ 2390.94. *Initial assessment*

IIRC and a commentator commented that proposed § 2390.94 required an "initial assessment" of the individual within 20 attendance days of admission. IIRC asked how often assessments will be performed after the first one. Where is this specified in the regulation? IIRC commented that proposed § 2390.97 required a review of the individual ISP every 3 months, but it did not specifically mention an assessment. IIRC recommended the timing of new assessments or reassessments should be specified in the final-form rulemaking.

*Response*

The Department agreed with the comment and amended §§ 2380.181, 2390.151, 6400.181 and 6500.151 in the final-form rulemaking. An initial assessment shall be performed within 60 calendar days following the individual's admission date to the facility. An updated assessment must be performed annually thereafter.

§ 2390.99. *Interdisciplinary team responsibility for individual written program plan*

IRRC commented this section is among the existing provisions in Chapter 2390. However, it was not included in the proposed rulemaking even though its title included the term “individual written program plan,” which is being deleted elsewhere in this chapter. The section reads: “The interdisciplinary team is responsible for ensuring that the client needs specified in the plan are met.” IRRC asked if this section is to be retained, should the title be revised and the term “plan” in the text be replaced with the new acronym “IP” in the final-form rulemaking.

*Response*

The Department rescinded § 2390.99 so that it was consistent within and across the four chapters in this final-form rulemaking. This section was not in any of the other three chapters applicable to this final-form rulemaking and was no longer required due to these regulatory amendments.

The Department also identified existing §§ 2380.174, 6400.214 and 6500.183 (relating to record location), which needed to be revised to match the amendments in the final-form rulemaking in §§ 2380.173, 2390.124, 6400.213 and 6500.182.

§ 6400.12. *Copies of the plan*

IRRC inquired what will happen to the existing language in subsection (b), which included the current acronym of IPP. It appeared that the proposed rulemaking would move this existing language to new subsection (d) unaltered.

*Response*

The Department redesignated § 6400.127 as § 6400.187. Section 6400.187 does not use IPP.

§ 2380.187. *Copies of the plan*

One commentator requested real time access to the plan.

*Response*

The plan team, which includes the provider, shall have access to the ISP within 30 calendar days following the ISP meeting as required under §§ 2380.187, 2390.157, 6400.187 and 6500.157.

*Chapter 2390, Appendix A*

Appendix A is entitled “Vocational Facilities Licensing Inspection Instrument.” IRRC commented that in a few places, this appendix referred to the “individual written program plan” or IWPP. IRRC asked when will this appendix be updated to refer to the individual plan.

*Response*

The Department determined to rescind Appendix A (relating to licensing inspection instrument for vocational facilities—statement of policy) and not codify the revisions to this licensing inspection instrument. Currently, the licensing inspection instruments, licensing weighting systems and licensing indicator system are issued as Department bulletins. Due to this regulatory amendment, the Department will designate these Department bulletins as obsolete and will post the revised documents on the Department’s web site. The revised documents will be available at a link on the Department’s web site at <http://www.dpw.state.pa.us/PartnersProviders/MentalRetardation/003679539.htm>.

*Regulatory Review Act*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 16, 2008, the Department submitted a copy of the notice of proposed rulemaking, published at 38 Pa.B. 1937, to IRRC and to the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare (Committees) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the Committees and the public.

Under section 5.1(j.1) and (j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.1) and (j.2)), on July 14, 2010, the final-form rulemaking was deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 15, 2010, and approved the final-form rulemaking.

*Findings*

The Department finds that:

(1) The public notice of intention to adopt the administrative regulations was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of this final-form rulemaking in the manner provided by this order is necessary and appropriate for the administration and enforcement of the code.

*Order*

The Department, acting under the authority of sections 911 and 1021 the code, orders that:

(a) The regulations of the Department, 55 Pa. Code Chapters 2380, 2390, 6400 and 6500, are amended by amending §§ 2380.3, 2380.33, 2380.35, 2380.123, 2380.173, 2380.174, 2390.5, 2390.33, 2390.39, 2390.124, 6400.4, 6400.44, 6400.45, 6400.163, 6400.213, 6400.214, 6500.4, 6500.43, 6500.44, 6500.133, 6500.182 and 6500.183; by deleting §§ 2380.101—2380.108, 2390.91—2390.100 and 6400.121—6400.130 and 6500.111—6500.118; and by adding §§ 2380.181—2380.188, 2390.151—2390.159, 6400.181—6400.190 and 6500.151—6500.160 to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this order and Annex A to the Offices of General Counsel and Attorney General for approval as to legality and form as required by law.

(c) The Secretary of the Department shall certify and deposit this order and Annex A with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon final publication in the *Pennsylvania Bulletin*.

HARRIET DICHTER,  
*Secretary*

*(Editor’s Note:* For a statement of policy relating to this statement of policy, see 40 Pa.B. 4974 (August 28, 2010).)

*(Editor’s Note:* For the text of the order of the Independent Regulatory Commission relating to this document, see 40 Pa.B. 4359 (July 31, 2010).)

**Fiscal Note:** Fiscal Note 14-512 remains valid for the final adoption of the subject regulations.

## Annex A

## TITLE 55. PUBLIC WELFARE

## PART IV. ADULT SERVICES MANUAL

Subpart D. NONRESIDENTIAL  
AGENCIES/FACILITIES/SERVICES

## CHAPTER 2380. ADULT TRAINING FACILITIES

## GENERAL PROVISIONS

## § 2380.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Adult*—A person 18 years of age or older.

*Adult training facility or facility*—A building or portion of a building in which services are provided to four or more individuals, who are 59 years of age or younger and who do not have a dementia-related disease as a primary diagnosis, for part of a 24-hour day, excluding care provided by relatives. Services include the provision of functional activities, assistance in meeting personal needs and assistance in performing basic daily activities.

*Content discrepancy*—A difference between what was determined at the ISP meeting by the plan team and what is documented in the written ISP.

*Department*—The Department of Public Welfare of the Commonwealth.

*Direct service worker*—A person whose primary job function is to provide services to an individual who attends the provider's facility.

*Documentation*—Written statements that accurately record details, substantiate a claim or provide evidence of an event.

*Firesafety expert*—A local fire department, fire protection engineer, State certified fire protection instructor, college instructor in fire science, county or State fire school, volunteer fire person trained by a county or State fire school or an insurance company loss control representative.

*ISP—Individual Support Plan*—The comprehensive document that identifies services and expected outcomes for an individual.

*Individual*—An adult with disabilities who receives care in an adult training facility and who has developmental needs which require assistance to meet personal needs and to perform basic daily activities. Examples of adults with disabilities include adults who exhibit one or more of the following:

(i) A physical disability such as blindness, visual impairment, deafness, hearing impairment, speech or language impairment or a physical handicap.

(ii) A mental illness.

(iii) A neurological disability such as cerebral palsy, autism or epilepsy.

(iv) Mental retardation.

(v) A traumatic brain injury.

*Outcomes*—Goals the individual and individual's plan team choose for the individual to acquire, maintain or improve.

*Plan lead*—The program specialist or family living specialist, as applicable, when the individual is not receiving services through an SCO.

*Plan team*—The group that develops the ISP.

*Provider*—An entity or person that enters into an agreement with the Department to deliver a service to an individual.

*SC—Supports coordinator*—An SCO employee whose primary job functions are to locate, coordinate and monitor services provided to an individual when the individual is receiving services from an SCO.

*SCO—Supports coordination organization*—A provider that delivers the services of locating, coordinating and monitoring services provided to an individual.

*Services*—Actions or assistance provided to the individual to support the achievement of an outcome.

## STAFFING

## § 2380.33. Program specialist.

(a) At least one program specialist shall be assigned for every 30 individuals, regardless of whether they meet the definition of individual in § 2380.3 (relating to definitions).

(b) The program specialist shall be responsible for the following:

(1) Coordinating and completing assessments.

(2) Providing the assessment as required under § 2380.181(f) (relating to assessment).

(3) Participating in the development of the ISP, including annual updates and revisions of the ISP.

(4) Attending the ISP meetings.

(5) Fulfilling the role of plan lead, as applicable, under §§ 2380.182 and 2380.186(f) and (g) (relating to development, annual update and revision of the ISP; and ISP review and revision).

(6) Reviewing the ISP, annual updates and revisions under § 2380.186 (relating to ISP review and revision), for content accuracy.

(7) Reporting content discrepancy to the SC or plan lead, as applicable, and plan team members.

(8) Implementing the ISP as written.

(9) Supervising, monitoring and evaluating services provided to the individual.

(10) Reviewing, signing and dating the monthly documentation of an individual's participation and progress toward outcomes.

(11) Reporting a change related to the individual's needs to the SC or plan lead, as applicable, and plan team members.

(12) Reviewing the ISP with the individual as required under § 2380.186.

(13) Documenting the review of the ISP as required under § 2380.186.

(14) Providing the documentation of the ISP review to the SC or plan lead, as applicable, and plan team members as required under § 2380.186(d).

(15) Informing plan team members of the option to decline the ISP Review documentation as required under § 2380.186(e).

(16) Recommending a revision to a service or outcome in the ISP as provided under § 2380.186(c)(4).

(17) Coordinating the services provided to an individual.

(18) Coordinating the training of direct service workers in the content of health and safety needs relevant to each individual.

(19) Developing and implementing provider services as required under § 2380.188 (relating to provider services).

(c) A program specialist shall have one of the following groups of qualifications:

(1) A master's degree or above from an accredited college or university and 1 year of work experience working directly with persons with disabilities.

(2) A bachelor's degree from an accredited college or university and 2 years of work experience working directly with persons with disabilities.

(3) An associate's degree or 60 credit hours from an accredited college or university and 4 years of work experience working directly with persons with disabilities.

**§ 2380.35. Staffing.**

(a) A minimum of one direct service worker for every six individuals shall be physically present with the individuals at all times individuals are present at the facility, except while staff persons are attending meetings or training at the facility.

(b) While staff persons are attending meetings or training at the facility, a minimum of one staff person for every ten individuals shall be physically present with the individuals at all times individuals are present at the facility.

(c) A minimum of two staff persons shall be present with the individuals at all times.

(d) An individual may be left unsupervised for specified periods of time if the absence of direct supervision is consistent with the individual's assessment and is part of the individual's ISP, as an outcome which requires the achievement of a higher level of independence.

(e) The staff qualifications and staff ratio as specified in the ISP shall be implemented as written, including when the staff ratio is greater than required under subsections (a), (b) and (c).

(f) An individual may not be left unsupervised solely for the convenience of the facility or the direct service worker.

**§§ 2380.101—2380.108. (Reserved).**

**MEDICATIONS**

**§ 2380.123. Use of prescription medications.**

(a) Prescription medications shall only be used by the individual for whom the medication was prescribed.

(b) If a medication is prescribed to treat symptoms of a diagnosed psychiatric illness, there shall be a written protocol as part of the ISP to address the social, emotional and environmental needs of the individual related to the symptoms of the psychiatric illness.

**RECORDS**

**§ 2380.173. Content of records.**

Each individual's record must include the following information:

(1) Personal information including:

(i) The name, sex, admission date, birthdate and social security number.

(ii) The race, height, weight, color of hair, color of eyes and identifying marks.

(iii) The language or means of communication spoken or understood by the individual and the primary language used in the individual's natural home, if other than English.

(iv) Religious affiliation.

(v) A current, dated photograph.

(2) Unusual incident reports related to the individual.

(3) Physical examinations.

(4) Assessments as required under § 2380.181 (relating to assessment).

(5) A copy of the invitation to:

(i) The initial ISP meeting.

(ii) The annual update meeting.

(iii) The ISP revision meeting.

(6) A copy of the signature sheet for:

(i) The initial ISP meeting.

(ii) The annual update meeting.

(iii) The ISP revision meeting.

(7) A copy of the current ISP.

(8) Documentation of ISP reviews and revisions under § 2380.186 (relating to ISP review and revision), including the following:

(i) ISP review signature sheets.

(ii) Recommendations to revise the ISP.

(iii) ISP revisions.

(iv) Notices that the plan team member may decline the ISP review documentation.

(v) Requests from plan team members to not receive the ISP review documentation.

(9) Content discrepancies in the ISP, the annual update or revision under § 2380.186.

(10) Restrictive procedure protocols and records related to the individual.

(11) Copies of psychological evaluations, if applicable.

**§ 2380.174. Record location.**

(a) The record information required in § 2380.173(1) (relating to content of records) shall be kept at the facility.

(b) The most current copies of record information required in § 2380.173(2)—(11) shall be kept at the facility.

(c) The record information required in § 2380.173(2)—(11), that is not current shall be kept at the facility or at the facility's administrative office.

**PROGRAM**

**§ 2380.181. Assessment.**

(a) Each individual shall have an initial assessment within 1 year prior to or 60 calendar days after admission to the facility and an updated assessment annually thereafter.

(b) If the program specialist is making a recommendation to revise a service or outcome in the ISP as provided under § 2380.186(c)(4) (relating to ISP review and revision), the individual shall have an assessment completed as required under this section.

(c) The assessment shall be based on assessment instruments, interviews, progress notes and observations.

(d) The program specialist shall sign and date the assessment.

(e) The assessment must include the following information:

(1) Functional strengths, needs and preferences of the individual.

(2) The likes, dislikes and interests of the individual, including vocational and employment interests.

(3) The individual's current level of performance and progress in the following areas:

(i) Acquisition of functional skills.

(ii) Communication.

(iii) Personal adjustment.

(iv) Personal needs with or without assistance from others.

(4) The individual's need for supervision.

(5) The individual's ability to self-administer medications.

(6) The individual's ability to safely use or avoid poisonous materials, when in the presence of poisonous materials.

(7) The individual's knowledge of the danger of heat sources and ability to sense and move away quickly from heat sources which exceed 120° F and are not insulated.

(8) The individual's ability to evacuate in the event of a fire.

(9) Documentation of the individual's disability, including functional and medical limitations.

(10) A lifetime medical history.

(11) Psychological evaluations, if applicable.

(12) Recommendations for specific areas of training, vocational programming and competitive community-integrated employment.

(13) The individual's progress over the last 365 calendar days and current level in the following areas:

(i) Health.

(ii) Motor and communication skills.

(iii) Personal adjustment.

(iv) Socialization.

(v) Recreation.

(vi) Community-integration.

(14) The individual's knowledge of water safety and ability to swim.

(f) The program specialist shall provide the assessment to the SC or plan lead, as applicable, and plan team members at least 30 calendar days prior to an ISP meeting for the development, annual update and revision of the ISP under §§ 2380.182, 2390.152, 6400.182 and 6500.152 (relating to development, annual update and revision of the ISP).

**§ 2380.182. Development, annual update and revision of the ISP.**

(a) An individual shall have one ISP.

(b) When an individual is not receiving services through an SCO and does not reside in a home licensed under Chapter 6400 or 6500 (relating to community homes for individuals with mental retardation; and fam-

ily living homes), the adult training facility program specialist shall be the plan lead when one of the following applies:

(1) The individual attends a facility licensed under this chapter.

(2) The individual attends a facility licensed under this chapter and a facility licensed under Chapter 2390.

(c) The plan lead shall be responsible for developing and implementing the ISP, including annual updates and revisions.

(d) The plan lead shall develop, update and revise the ISP according to the following:

(1) The ISP shall be initially developed, updated annually and revised based upon the individual's current assessment as required under §§ 2380.181, 2390.151, 6400.181 and 6500.151 (relating to assessment).

(2) The initial ISP shall be developed within 90 calendar days after the individual's admission date to the facility.

(3) The ISP, annual updates and revisions shall be documented on the Department-designated form located in the Home and Community Services Information System (HCSIS) and also on the Department's web site.

(4) An invitation shall be sent to plan team members at least 30 calendar days prior to an ISP meeting.

(5) Copies of the ISP, including annual updates and revisions under § 2380.186, shall be provided as required under § 2380.187 (relating to copies).

**§ 2380.183. Content of the ISP.**

The ISP, including annual updates and revisions under § 2380.186 (relating to ISP review and revision), must include the following:

(1) Services provided to the individual and expected outcomes chosen by the individual and individual's plan team.

(2) Services provided to the individual to increase community involvement, including work opportunities as required under § 2380.188 (relating to provider services).

(3) Current status in relation to an outcome and method of evaluation used to determine progress toward that expected outcome.

(4) A protocol and schedule outlining specified periods of time for the individual to be without direct supervision, if the individual's current assessment states the individual may be without direct supervision and if the individual's ISP includes an expected outcome which requires the achievement of a higher level of independence. The protocol must include the current level of independence and the method of evaluation used to determine progress toward the expected outcome to achieve the higher level of independence.

(5) A protocol to address the social, emotional and environmental needs of the individual, if medication has been prescribed to treat symptoms of a diagnosed psychiatric illness.

(6) A protocol to eliminate the use of restrictive procedures, if restrictive procedures are utilized, and to address the underlying causes of the behavior which led to the use of restrictive procedures including the following:

(i) An assessment to determine the causes or antecedents of the behavior.

(ii) A protocol for addressing the underlying causes or antecedents of the behavior.

(iii) The method and timeline for eliminating the use of restrictive procedures.

(iv) A protocol for intervention or redirection without utilizing restrictive procedures.

(7) Assessment of the individual's potential to advance in the following:

(i) Vocational programming.

(ii) Community involvement.

(iii) Competitive community-integrated employment.

**§ 2380.184. Plan team participation.**

(a) The plan team shall participate in the development of the ISP, including the annual updates and revisions under § 2380.186 (relating to ISP review and revision).

(1) A plan team must include as its members the following:

(i) The individual.

(ii) A program specialist or family living specialist, as applicable, from each provider delivering a service to the individual.

(iii) A direct service worker who works with the individual from each provider delivering a service to the individual.

(iv) Any other person the individual chooses to invite.

(2) If the following have a role in the individual's life, the plan team may also include as its members, as applicable, the following:

(i) Medical, nursing, behavior management, speech, occupational or physical therapy specialists.

(ii) Additional direct service workers who work with the individual from each provider delivering services to the individual.

(iii) The individual's parent, guardian or advocate.

(b) At least three plan team members, in addition to the individual, if the individual chooses to attend, shall be present for an ISP, annual update and ISP revision meeting.

(c) A plan team member who attends a meeting under subsection (b) shall sign and date the signature sheet.

**§ 2380.185. Implementation of the ISP.**

(a) The ISP shall be implemented by the ISP'S start date.

(B) The ISP shall be implemented as written.

**§ 2380.186. ISP review and revision.**

(a) The program specialist shall complete an ISP review of the services and expected outcomes in the ISP specific to the facility licensed under this chapter with the individual every 3 months or more frequently if the individual's needs change which impact the services as specified in the current ISP.

(b) The program specialist and individual shall sign and date the ISP review signature sheet upon review of the ISP.

(c) The ISP review must include the following:

(1) A review of the monthly documentation of an individual's participation and progress during the prior 3 months toward ISP outcomes supported by services provided by the facility licensed under this chapter.

(2) A review of each section of the ISP specific to the facility licensed under this chapter.

(3) The program specialist shall document a change in the individual's needs, if applicable.

(4) The program specialist shall make a recommendation regarding the following, if applicable:

(i) The deletion of an outcome or service to support the achievement of an outcome which is no longer appropriate or has been completed.

(ii) The addition of an outcome or service to support the achievement of an outcome.

(iii) The modification of an outcome or service to support the achievement of an outcome in which no progress has been made.

(5) If making a recommendation to revise a service or outcome in the ISP, the program specialist shall complete a revised assessment as required under § 2380.181(b) (relating to assessment).

(d) The program specialist shall provide the ISP review documentation, including recommendations, if applicable, to the SC or plan lead, as applicable, and plan team members within 30 calendar days after the ISP review meeting.

(e) The program specialist shall notify the plan team members of the option to decline the ISP review documentation.

(f) If a recommendation for a revision to a service or outcome in the ISP is made, the plan lead as applicable, under §§ 2380.182(b) and (c), 2390.152(b) and (c), 6400.182(b) and (c), 6500.152(b) and (c) (relating to development, annual update and revision of the ISP), shall send an invitation for an ISP revision meeting to the plan team members within 30 calendar days of receipt of the recommendation.

(g) A revised service or outcome in the ISP shall be implemented by the start date in the ISP as written.

**§ 2380.187. Copies.**

A copy of the ISP, including the signature sheet, shall be provided to plan team members within 30 calendar days after the ISP annual update and ISP revision meetings.

**§ 2380.188. Provider services.**

(a) The facility shall provide services including assistance, training and support for the acquisition, maintenance or improvement of functional skills, personal needs, communication and personal adjustment.

(b) The facility shall provide opportunities and support to the individual for participation in community life, including work opportunities.

(c) The facility shall provide services to the individual as specified in the individual's ISP.

(d) The facility shall provide services that are age and functionally appropriate to the individual.

**CHAPTER 2390. VOCATIONAL FACILITIES**

**GENERAL PROVISIONS**

**§ 2390.5. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:



*Abusive act*—An act or omission of an act that willfully deprives a client of rights or which may cause or causes actual physical injury or emotional harm to a client.

*Certificate of compliance*—A document issued to a legal entity permitting it to operate a vocational facility at a given location, for a specific period of time, according to appropriate regulations of the Commonwealth.

*Chief executive officer*—The staff person responsible for the general management of the facility. Other terms such as “program director” or “administrator” may be used as long as the qualifications specified in § 2390.32 (relating to chief executive officer) are met.

*Client*—A disabled adult receiving services in a vocational facility.

*Competitive employment*—A job in a regular work setting with an employee-employer relationship, in which a disabled adult is hired to do a job that other nondisabled employees also do.

*Content discrepancy*—A difference between what was determined at the ISP meeting by the plan team and what is documented in the written ISP.

*Criminal abuse*—Crimes against the person such as assault and crimes against the property of the client such as theft or embezzlement.

*Department*—The Department of Public Welfare of the Commonwealth.

*Direct service worker*—A person whose primary job function is to provide services to a client who attends the provider’s facility.

*Disabled adult*—

(i) A person who because of a disability requires special help or special services on a regular basis in order to function vocationally.

(ii) The term includes persons who exhibit any of the following characteristics:

(A) A physical disability, such as visual impairment, hearing impairment, speech or language impairment or other physical handicap.

(B) Social or emotional maladjustment.

(C) A neurologically based condition such as cerebral palsy, autism or epilepsy.

(D) Mental retardation.

*Documentation*—Written statements that accurately record details, substantiate a claim or provide evidence of an event.

*Handicapped employment*—A vocational program in which the individual client does not require rehabilitation, habilitation or ongoing training in order to work at the facility.

*ISP—Individual Support Plan*—The comprehensive document that identifies services and expected outcomes for a client.

*Individual written program plan*—A plan that is developed for a client on the basis of assessment data that specifies specific objectives and program services for the clients.

*Interdisciplinary team*—A group of persons representing one or more service areas relevant to identifying a client’s needs, including at a minimum the county casemanager if the client is funded through the county mental health and mental retardation program, the client and the program specialist.

*Outcomes*—Goals the client and client’s plan team choose for the client to acquire, maintain or improve.

*Plan lead*—The program specialist or family living specialist, as applicable, when the client is not receiving services through an SCO.

*Plan team*—The group that develops the ISP.

*Provider*—An entity or person that enters into an agreement with the Department to deliver a service to a client.

*Restrictive procedure*—A practice that limits a client’s movement, activity or function; interferes with a client’s ability to acquire positive reinforcement; results in the loss of objects or activities that a client values; or requires a client to engage in a behavior that the client would not engage in given freedom of choice.

*SC—Supports coordinator*—An SCO employee whose primary job functions are to locate, coordinate and monitor services provided to a client when the client is receiving services from an SCO.

*SCO—Supports coordination organization*—A provider that delivers the services of locating, coordinating and monitoring services provided to a client.

*Services*—Actions or assistance provided to the client to support the achievement of an outcome.

*Sheltered employment*—A program designed to enable the client to move out of the vocational facility into competitive employment or into a higher level vocational program focusing on the development of competitive worker traits and using work as the primary training method.

*Training*—

(i) Occupational training that follows a specific curriculum and is designed to teach skills for a specific occupation in the competitive labor market.

(ii) The term also includes personal and work adjustment training that is designed to develop appropriate worker traits and teach an understanding of the expectations of a work environment to enable the client to progress into a higher level rehabilitation program or into competitive employment.

*Vocational evaluation*—The use of planned activities, systematic observation and testing to accomplish a formal assessment of a client, including an identification of program needs, potential for employment and identification of employment objectives.

*Vocational facility (facility)*—A premise in which rehabilitative, habilitative or handicapped employment or employment training is provided to one or more disabled clients for part of a 24-hour day.

*Work activities center*—A program focusing on working and behavioral/therapeutic techniques to enable clients to attain sufficient vocational, personal, social and independent living skills to progress to higher level vocational programs.

*Work performance review*—An assessment of the client’s skill level.

## STAFFING

### § 2390.33. Program specialist.

(a) A minimum of one program specialist for every 45 clients shall be available when clients are present at the facility.

(b) The program specialist shall be responsible for the following:

- (1) Coordinating and completing assessments.
- (2) Providing the assessment as required under § 2390.151(f) (relating to assessment).
- (3) Participating in the development of the ISP, including annual updates and revisions of the ISP.
- (4) Attending the ISP meetings.
- (5) Fulfilling the role of plan lead, as applicable, under §§ 2390.152 and 2390.156(f) and (g) (relating to development, annual update and revision to the ISP; and ISP review and revision).
- (6) Reviewing the ISP, annual updates and revisions for content accuracy.
- (7) Reporting content discrepancy to the SC or plan lead, as applicable, and plan team members.
- (8) Implementing the ISP as written.
- (9) Supervising, monitoring and evaluating services provided to the client.
- (10) Reviewing, signing and dating the monthly documentation of a client's participation and progress toward outcomes.
- (11) Reporting a change related to the client's needs to the SC or plan lead, as applicable, and plan team members.
- (12) Reviewing the ISP with the client as required under § 2390.156.
- (13) Documenting the review of the ISP as required under § 2390.156.
- (14) Providing documentation of the ISP review to the SC or plan lead, as applicable, and plan team members as required under § 2390.156(d).
- (15) Informing plan team members of the option to decline the ISP review documentation as required under § 2390.156(e).
- (16) Recommending a revision to a service or outcome in the ISP as provided under § 2390.156(c)(4).
- (17) Coordinating the services provided to a client.
- (18) Coordinating the training of direct service workers in the content of health and safety needs relevant to each client.
- (19) Developing and implementing provider services as required under § 2390.158 (relating to provider services).

(c) A program specialist shall meet one of the following groups of qualifications:

- (1) Possess a master's degree or above from an accredited college or university in Special Education, Psychology, Public Health, Rehabilitation, Social Work, Speech Pathology, Audiology, Occupational Therapy, Therapeutic Recreation or other human services field.
- (2) Possess a bachelor's degree from an accredited college or university in Special Education, Psychology, Public Health, Rehabilitation, Social Work, Speech Pathology, Audiology, Occupational Therapy, Therapeutic Recreation or other human services field; and 1 year experience working directly with disabled persons.
- (3) Possess an associate's degree or completion of a 2 year program from an accredited college or university in Special Education, Psychology, Public Health, Rehabilitation, Social Work, Speech Pathology, Audiology, Occupa-

tional Therapy, Therapeutic Recreation or other human services field; and 3 years experience working directly with disabled persons.

(4) Possess a license or certification by the State Board of Nurse Examiners, the State Board of Physical Therapists Examiners, or the Committee on Rehabilitation Counselor Certification or be a licensed psychologist or registered occupational therapist; and 1 year experience working directly with disabled persons.

**§ 2390.39. Staffing.**

(a) A minimum of two staff shall be present at the facility when 10 or more clients are present at the facility.

(b) A minimum of one staff shall be present at the facility when fewer than 10 clients are present at the facility.

(c) If 20 or more clients are present at the facility, there shall be at least one staff present at the facility who meets the qualifications of program specialist.

(d) A client may be left unsupervised for specified periods of time if the absence of direct supervision is consistent with the client's assessment and is part of the client's ISP, as an outcome which requires the achievement of a higher level of independence.

(e) The staff qualifications and staff ratio as specified in the ISP shall be implemented as written, including when the staff ratio is greater than required under subsections (a), (b) and (c).

(f) A client may not be left unsupervised solely for the convenience of the facility or the direct service worker.

**§§ 2390.91—2390.100. (Reserved).**

**CLIENT RECORDS**

**§ 2390.124. Content of records.**

Each client's record must include the following information:

- (1) The name, sex, admission date, birthdate and place, social security number and dates of entry, transfer and discharge.
- (2) The name, address and telephone number of parents, legal guardian and a designated person to be contacted in case of an emergency.
- (3) The name and telephone number of a physician or source of health care.
- (4) Written consent from the client, parent or guardian for emergency medical treatment.
- (5) Physical examinations.
- (6) Assessments as required under § 2390.151 (relating to assessment).
- (7) A copy of the vocational evaluations, if applicable.
- (8) A copy of the invitation to:
  - (i) The initial ISP meeting.
  - (ii) The annual update meeting.
  - (iii) The ISP revision meeting.
- (9) A copy of the signature sheet for:
  - (i) The initial ISP meeting.
  - (ii) The annual update meeting.
  - (iii) The ISP revision meeting.
- (10) A copy of the current ISP.
- (11) Documentation of ISP reviews and ISP revisions under § 2390.156 (relating to ISP review and revision), including the following:

- (i) ISP Review signature sheets.
- (ii) Recommendations to revise the ISP.
- (iii) ISP revisions.
- (iv) Notices that the plan team member may decline the ISP review documentation.
- (v) Requests from plan team members to not receive the ISP review documentation.
- (12) Content discrepancy in the ISP, the annual update or revision under § 2390.156.
- (13) Restrictive procedure protocols and records related to the client.
- (14) Unusual incident reports related to the client.
- (15) Copies of psychological evaluations, if applicable.
- (16) Vocational evaluations as required under § 2390.159.

### PROGRAM

#### § 2390.151. Assessment.

(a) Each client shall have an initial assessment within 1 year prior to or 60 calendar days after admission to the facility and an updated assessment annually thereafter.

(b) If the program specialist is making a recommendation to revise a service or outcome in the ISP as provided under § 2390.156(c)(4) (relating to ISP review and revision), the client shall have an assessment completed as required under this section.

(c) The assessment shall be based on assessment instruments, interviews, progress notes and observations.

(d) The program specialist shall sign and date the assessment.

(e) The assessment must include the following information:

(1) Functional strengths, needs and preferences of the client.

(2) The likes, dislikes and interest of client, including vocational and employment interests of the client.

(3) The client's current level of performance and progress in the following areas:

- (i) Acquisition of vocational functioning skills.
- (ii) Communication; ability to receive, retain and carry out instructions.
- (iii) Personal adjustment.
- (iv) Personal needs with or without assistance from others.

(4) The client's need for supervision.

(5) The client's ability to self-administer medications.

(6) The client's ability to safely use or avoid poisonous materials, when in the presence of poisonous materials.

(7) The client's knowledge of the danger of heat sources and ability to sense and move away quickly from heat sources which exceed 120° F and are not insulated.

(8) The client's ability to evacuate in the event of a fire.

(9) Documentation of the client's disability, including functional and medical limitations.

(10) A lifetime medical history.

(11) Psychological evaluations, if applicable.

(12) Recommendations for specific areas of vocational training or placement and competitive community-integrated employment.

(13) The individual's progress over the last 365 calendar days and current level in the following areas:

- (i) Health.
- (ii) Motor and communication skills.
- (iii) Personal adjustment.
- (iv) Socialization.
- (v) Vocational skills.

(f) The program specialist shall provide the assessment to the SC or plan lead, as applicable, and plan team members at least 30 calendar days prior to an ISP meeting for the development, annual update and revision of the ISP under §§ 2380.182, 2390.152, 6400.182 and 6500.152 (relating to development, annual update and revision of the ISP).

#### § 2390.152. Development, annual update and revision of the ISP.

(a) A client shall have one ISP.

(b) When a client is not receiving services through an SCO and is not receiving services in a facility or home licensed under Chapters 2380, 6400 or 6500 (relating to adult training facilities; community homes for individuals with mental retardation; and family living homes), the vocational facility program specialist shall be the plan lead.

(c) The plan lead shall be responsible for developing and implementing the ISP, including annual updates and revisions.

(d) The plan lead shall develop, update and revise the ISP according to the following:

(1) The ISP shall be initially developed, updated annually and revised based upon the client's current assessment as required under §§ 2380.181, 2390.151, 6400.181 and 6500.151 (relating to assessment).

(2) The initial ISP shall be developed within 90 calendar days after the client's admission date to the facility.

(3) The ISP, annual updates and revisions shall be documented on the Department-designated form located in the Home and Community Services Information System (HCSIS) And also on the Department's web site.

(4) An invitation shall be sent to plan team members at least 30 calendar days prior to an ISP meeting.

(5) Copies of the ISP, including annual updates and revisions under § 2390.156, shall be provided as required under § 2390.157 (relating to copies).

#### § 2390.153. Content of the ISP.

The ISP, including annual updates and revisions under § 2390.156 (relating to ISP review and revision) must include the following:

(1) Services provided to the client and expected outcomes chosen by the client and client's plan team.

(2) Services provided to the client to develop the skills necessary for promotion into a higher level of vocational programming or into competitive community-integrated employment as required under § 2390.158 (relating to provider services).

(3) Current status in relation to an outcome and method of evaluation used to determine progress toward that expected outcome.

(4) A protocol and schedule outlining specified periods of time for the client to be without direct supervision, if the client's current assessment states the client may be without direct supervision and if the client's ISP includes an expected outcome which requires the achievement of a higher level of independence. The protocol must include the current level of independence and the method of evaluation used to determine progress toward the expected outcome to achieve a higher level of independence.

(5) A protocol to address the social, emotional and environmental needs of the client, if medication has been prescribed to treat symptoms of a diagnosed psychiatric illness.

(6) A protocol to eliminate the use of restrictive procedures, if restrictive procedures are utilized, and to address the underlying causes of the behavior which led to the use of restrictive procedures including the following:

- (i) An assessment to determine the causes or antecedents of the behavior.
- (ii) A protocol for addressing the underlying causes or antecedents of the behavior.
- (iii) The method and timeline for eliminating the use of restrictive procedures.
- (iv) A protocol for intervention or redirection without utilizing restrictive procedures.

(7) Assessment of the client's potential to advance in the following:

- (i) Vocational programming.
- (ii) Competitive community-integrated employment.

**§ 2390.154. Plan team participation.**

(a) The plan team shall participate in the development of the ISP, including the annual updates and revisions under § 2390.156 (relating to ISP review and revision).

(1) A plan team must include as its members the following:

- (i) The client.
- (ii) A program specialist or family living specialist, as applicable, from each provider delivering a service to the client.
- (iii) A direct service worker who works with the client from each provider delivering a service to the client.
- (iv) Any other person the client chooses to invite.

(2) If the following have a role in the client's life, the plan team may also include as its members, as applicable, the following:

- (i) Medical, nursing, behavior management, speech, occupational or physical therapy specialists.
- (ii) Additional direct service workers who work with the client from each provider delivering services to the client.
- (iii) The client's parent, guardian or advocate.

(b) At least three plan team members, in addition to the client, if the client chooses to attend, shall be present for the ISP, annual update and ISP revision meetings.

(c) A plan team member who attends an ISP meeting under subsection (b) shall sign and date the signature sheet.

**§ 2390.155. Implementation of the ISP.**

- (a) The ISP shall be implemented by the ISP's start date.
- (b) The ISP shall be implemented as written.

**§ 2390.156. ISP review and revision.**

(a) The program specialist shall complete an ISP review of the services and expected outcomes in the ISP specific to the facility licensed under this chapter with the client every 3 months or more frequently if the client's needs change which impacts the services as specified in the current ISP.

(b) The program specialist and client shall sign and date the ISP review signature sheet upon review of the ISP.

(c) The ISP review must include the following:

(1) A review of the monthly documentation of a client's participation and progress during the prior 3 months toward ISP outcomes supported by services provide by the facility licensed under this chapter.

(2) A review of each section of the ISP specific to the facility licensed under this chapter.

(3) The program specialist shall document a change in the client's needs, if applicable.

(4) The program specialist shall make a recommendation regarding the following, if applicable:

- (i) The deletion of an outcome or service to support the achievement of an outcome which is no longer appropriate or has been completed.
- (ii) The addition of an outcome or service to support the achievement of an outcome.
- (iii) The modification of an outcome or service to support the achievement of an outcome in which no progress has been made.

(5) If making a recommendation to revise a service or outcome in the ISP, the program specialist shall complete a revised assessment as required under § 2390.151(b) (relating to assessment).

(d) The program specialist shall provide the ISP review documentation, including recommendations if applicable, to the SC or plan lead, as applicable, and plan team members within 30 calendar days after the ISP review meeting.

(e) The program specialist shall notify the plan team members of the option to decline the ISP review documentation.

(f) If a recommendation for a revision to a service or outcome in the ISP is made, the plan lead, as applicable, under §§ 2380.182(b) and (c), 2390.152(b) and (c), 6400.182(b) and (c), 6500.152(b) and (c) (relating to development, annual update and revision of the ISP), shall send an invitation for an ISP revision meeting to the plan team members within 30 calendar days of receipt of the recommendation.

(g) A revised service or outcome in the ISP shall be implemented by the start date in the ISP as written.

**§ 2390.157. Copies.**

A copy of the ISP, ISP annual update and ISP revision, including the signature sheet, shall be provided to plan team members within 30 calendar days after the ISP, ISP annual update and ISP revision meetings.

**§ 2390.158. Provider services.**

(a) The facility shall provide services including work experience and other developmentally oriented, vocational training designed to develop the skills necessary for promotion into a higher level of vocational programming or competitive community-integrated employment.

(b) The facility shall provide opportunities and support to the client for participation in community life, including competitive community-integrated employment.

(c) The facility shall provide services to the client as specified in the client's ISP.

(d) The facility shall provide services that are age and functionally appropriate to the client.

**§ 2390.159. Vocational evaluation.**

If the facility provides vocational evaluation, the following apply:

(1) The vocational evaluator shall perform the evaluations.

(2) A copy of the written evaluation shall be kept in the client's record.

(3) The written evaluation must include the following information:

(i) The client's current level of vocational functioning.

(ii) The employment objectives for the client.

(iii) The vocational interests of the client.

(iv) The client's level of personal and social adjustment.

(v) The client's work attitude.

(vi) The client's fatigue levels.

(vii) The client's ability to receive, retain and carry out instructions.

(viii) Recommendations for specific areas of training or placement.

(4) The facility shall ensure the client and the client's parent, guardian or advocate, as applicable, are informed of the results of the evaluation.

(i) The client and the client's parent, guardian or advocate, as applicable, shall sign a statement acknowledging receipt of the evaluation results.

(ii) The signed statement acknowledging receipt of the evaluation results shall be kept in the client's record.

**PART VIII. MENTAL RETARDATION MANUAL**

**Subpart E. RESIDENTIAL AGENCIES/FACILITIES/SERVICES**

**ARTICLE I. LICENSING/APPROVAL**

**CHAPTER 6400. COMMUNITY HOMES FOR INDIVIDUALS WITH MENTAL RETARDATION**

**GENERAL PROVISIONS**

**§ 6400.4. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Agency*—A person or legally constituted organization operating one or more community homes for people with mental retardation serving eight or fewer individuals.

*Community home for people with mental retardation home*—A building or separate dwelling unit in which residential care is provided to one or more individuals with mental retardation, except as provided in § 6400.3(f)

(relating to applicability). Each apartment unit within an apartment building is considered a separate home. Each part of a duplex, if there is physical separation between the living areas, is considered a separate home.

*Content discrepancy*—A difference between what was determined at the ISP meeting by the plan team and what is documented in the written ISP.

*Department*—The Department of Public Welfare of the Commonwealth.

*Direct service worker*—A person whose primary job function is to provide services to an individual who resides in the provider's residential home.

*Documentation*—Written statements that accurately record details, substantiate a claim or provide evidence of an event.

*Fire safety expert*—A local fire department, fire protection engineer, State certified fire protection instructor, college instructor in fire science, county or State fire school, volunteer fire person trained by a county or State fire school or an insurance company loss control representative.

*ISP—Individual Support Plan*—The comprehensive document that identifies services and expected outcomes for an individual.

*Individual*—A person with mental retardation who resides, or receives residential respite care, in a home and who is not a relative of the owner of the home.

*Mental retardation*—Subaverage general intellectual functioning which originates during the developmental period and is associated with impairment of one or more of the following:

(i) Maturation.

(ii) Learning.

(iii) Social adjustment.

*Normalization*—A principle designed to ensure for every person with mental retardation and the person's family the right to live a life as close as possible to that which is typical for the general population.

*Outcomes*—Goals the individual and individual's plan team choose for the individual to acquire, maintain or improve.

*Plan lead*—The program specialist, when the individual is not receiving services through an SCO.

*Plan team*—The group that develops the ISP.

*Provider*—An entity or person that enters into an agreement with the Department to deliver a service to an individual.

*Relative*—A parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, half brother, half sister, aunt, uncle, niece or nephew.

*SC—Supports coordinator*—An SCO employee whose primary job functions are to locate, coordinate and monitor services provided to an individual when the individual is receiving services from an SCO.

*SCO—Supports coordination organization*—A provider that delivers the services of locating, coordinating and monitoring services provided to an individual.

*Services*—Actions or assistance provided to the individual to support the achievement of an outcome.

**STAFF**

**§ 6400.44. Program specialist.**

(a) A minimum of one program specialist shall be assigned for every 30 individuals. A program specialist shall be responsible for a maximum of 30 people, including people served in other types of services.

(b) The program specialist shall be responsible for the following:

- (1) Coordinating and completing assessments.
- (2) Providing the assessment as required under § 6400.181(f) (relating to assessment).
- (3) Participating in the development of the ISP, ISP annual update and ISP revision.
- (4) Attending the ISP meetings.
- (5) Fulfilling the role of plan lead, as applicable, under §§ 6400.182 and 6400.186(f) and (g) (relating to development, annual update and revision of the ISP; and ISP review and revision).
- (6) Reviewing the ISP, annual updates and revisions under § 6400.186 (relating to ISP review and revision) for content accuracy.
- (7) Reporting content discrepancy to the SC, as applicable, and plan team members.
- (8) Implementing the ISP as written.
- (9) Supervising, monitoring and evaluating services provided to the individual.
- (10) Reviewing, signing and dating the monthly documentation of an individual's participation and progress toward outcomes.
- (11) Reporting a change related to the individual's needs to the SC, as applicable, and plan team members.
- (12) Reviewing the ISP with the individual as required under § 6400.186.
- (13) Documenting the review of the ISP as required under § 6400.186.
- (14) Providing the documentation of the ISP review to the SC, as applicable, and plan team members as required under § 6400.186(d).
- (15) Informing plan team members of the option to decline the ISP review documentation as required under § 6400.186(e).
- (16) Recommending a revision to a service or outcome in the ISP as provided under § 6400.186(c)(4).
- (17) Coordinating the services provided to an individual.
- (18) Coordinating the training of direct service workers in the content of health and safety needs relevant to each individual.
- (19) Developing and implementing provider services as required under § 6400.188 (relating to provider services).

(c) A program specialist shall have one of the following groups of qualifications:

- (1) A master's degree or above from an accredited college or university and 1 year work experience working directly with persons with mental retardation.
- (2) A bachelor's degree from an accredited college or university and 2 years work experience working directly with persons with mental retardation.

(3) An associate's degree or 60 credit hours from an accredited college or university and 4 years work experience working directly with persons with mental retardation.

**§ 6400.45. Staffing.**

(a) A minimum of one staff person for every eight individuals shall be awake and physically present at the home when individuals are awake at the home.

(b) A minimum of one staff person for every 16 individuals shall be physically present at the home when individuals are sleeping at the home.

(c) An individual may be left unsupervised for specified periods of time if the absence of direct supervision is consistent with the individual's assessment and is part of the individual's ISP, as an outcome which requires the achievement of a higher level of independence.

(d) The staff qualifications and staff ratio as specified in the ISP shall be implemented as written, including when the staff ratio is greater than required under subsections (a), (b) and (c).

(e) An individual may not be left unsupervised solely for the convenience of the residential home or the direct service worker.

**§§ 6400.121—6400.130. (Reserved).**

**MEDICATIONS**

**§ 6400.163. Use of prescription medications.**

(a) Prescription medications shall only be used by the individual for whom the medication was prescribed.

(b) If a medication is prescribed to treat symptoms of a diagnosed psychiatric illness, there shall be a written protocol as part of the ISP to address the social, emotional and environmental needs of the individual related to the symptoms of the diagnosed psychiatric illness.

(c) If a medication is prescribed to treat symptoms of a diagnosed psychiatric illness, there shall be a review with documentation by a licensed physician at least every 3 months that includes the reason for prescribing the medication, the need to continue the medication and the necessary dosage.

**PROGRAM**

**§ 6400.181. Assessment.**

(a) Each individual shall have an initial assessment within 1 year prior to or 60 calendar days after admission to the residential home and an updated assessment annually thereafter. The initial assessment must include an assessment of adaptive behavior and level of skills completed within 6 months prior to admission to the residential home.

(b) If the program specialist is making a recommendation to revise a service or outcome in the ISP as provided under § 6400.186(c)(4) (relating to ISP review and revision), the individual shall have an assessment completed as required under this section.

(c) The assessment shall be based on assessment instruments, interviews, progress notes and observations.

(d) The program specialist shall sign and date the assessment.

(e) The assessment must include the following information:

- (1) Functional strengths, needs and preferences of the individual.

- (2) The likes, dislikes and interest of the individual.
- (3) The individual's current level of performance and progress in the following areas:
- (i) Acquisition of functional skills.
  - (ii) Communication.
  - (iii) Personal adjustment.
  - (iv) Personal needs with or without assistance from others.
  - (4) The individual's need for supervision.
  - (5) The individual's ability to self-administer medications.
  - (6) The individual's ability to safely use or avoid poisonous materials, when in the presence of poisonous materials.
  - (7) The individual's knowledge of the danger of heat sources and ability to sense and move away quickly from heat sources which exceed 120° F and are not insulated.
  - (8) The individual's ability to evacuate in the event of a fire.
  - (9) Documentation of the individual's disability, including functional and medical limitations.
  - (10) A lifetime medical history.
  - (11) Psychological evaluations, if applicable.
  - (12) Recommendations for specific areas of training, programming and services.
  - (13) The individual's progress over the last 365 calendar days and current level in the following areas:
    - (i) Health.
    - (ii) Motor and communication skills.
    - (iii) Activities of residential living.
    - (iv) Personal adjustment.
    - (v) Socialization.
    - (vi) Recreation.
    - (vii) Financial independence.
    - (viii) Managing personal property.
    - (ix) Community-integration.
  - (14) The individual's knowledge of water safety and ability to swim.
  - (f) The program specialist shall provide the assessment to the SC, as applicable, and plan team members at least 30 calendar days prior to an ISP meeting for the development, annual update and revision of the ISP under §§ 2380.182, 2390.152, 6400.182 and 6500.152 (relating to development, annual update and revision of the ISP).

**§ 6400.182. Development, annual update and revision of the ISP.**

- (a) An individual shall have one ISP.
- (b) When an individual is not receiving services through an SCO, the residential program specialist shall be the plan lead when one of the following applies:
  - (1) The individual resides at a residential home licensed under this chapter.
  - (2) The individual resides at a residential home licensed under this chapter and attends a facility licensed under Chapter 2380 or 2390 (relating to adult training facilities; and vocational facilities).

(c) The plan lead shall be responsible for developing and implementing the ISP, including annual updates and revisions.

(d) The plan lead shall develop, update and revise the ISP according to the following:

(1) The ISP shall be initially developed, updated annually and revised based upon the individual's current assessment as required under §§ 2380.181, 2390.151, 6400.181 and 6500.151 (relating to assessment).

(2) The initial ISP shall be developed within 90 calendar days after the individual's admission date to the facility.

(3) The ISP, annual updates and revisions shall be documented on the Department-designated form located in the Home and Community Services Information System (HCSIS) and also on the Department's web site.

(4) An invitation shall be sent to plan team members at least 30 calendar days prior to an ISP meeting.

(5) Copies of the ISP, including annual updates and revisions under § 6400.186, shall be provided as required under § 6400.187 (relating to copies).

**§ 6400.183. Content of the ISP.**

The ISP, including annual updates and revisions under § 6400.186 (relating to ISP review and revision), must include the following:

(1) Services provided to the individual and expected outcomes chosen by the individual and individual's plan team.

(2) Services provided to the individual to increase community involvement, including volunteer or civic-minded opportunities and membership in National or local organizations as required under § 6400.188 (relating to provider services).

(3) Current status in relation to an outcome and method of evaluation used to determine progress toward that expected outcome.

(4) A protocol and schedule outlining specified periods of time for the individual to be without direct supervision, if the individual's current assessment states the individual may be without direct supervision and if the individual's ISP includes an expected outcome which requires the achievement of a higher level of independence. The protocol must include the current level of independence and the method of evaluation used to determine progress toward the expected outcome to achieve the higher level of independence.

(5) A protocol to address the social, emotional and environmental needs of the individual, if medication has been prescribed to treat symptoms of a diagnosed psychiatric illness.

(6) A protocol to eliminate the use of restrictive procedures, if restrictive procedures are utilized, and to address the underlying causes of the behavior which led to the use of restrictive procedures including the following:

(i) An assessment to determine the causes or antecedents of the behavior.

(ii) A protocol for addressing the underlying causes or antecedents of the behavior.

(iii) The method and timeline for eliminating the use of restrictive procedures.

(iv) A protocol for intervention or redirection without utilizing restrictive procedures.

(7) Assessment of the individual's potential to advance in the following:

- (i) Residential independence.
- (ii) Community involvement.
- (iii) Vocational programming.
- (iv) Competitive community-integrated employment.

**§ 6400.184. Plan team participation.**

(a) The plan team shall participate in the development of the ISP, including the annual updates and revisions under § 6400.186 (relating to ISP review and revision).

(1) A plan team must include as its members the following:

- (i) The individual.
- (ii) A program specialist or family living specialist, as applicable, from each provider delivering a service to the individual.
- (iii) A direct service worker who works with the individual from each provider delivering services to the individual.

(iii) Any other person the individual chooses to invite.

(2) If the following have a role in the individual's life, the plan team may also include as its members, as applicable, the following:

- (i) Medical, nursing, behavior management, speech, occupational or physical therapy specialists.
- (ii) Additional direct service workers who work with the individual from each provider delivering services to the individual.
- (iii) The individual's parent, guardian or advocate.

(b) At least three plan team members, in addition to the individual, if the individual chooses to attend, shall be present for an ISP, annual update and ISP revision meeting.

(c) A plan team member who attends a meeting under subsection (b) shall sign and date the signature sheet.

**§ 6400.185. Implementation of the ISP.**

(a) The ISP shall be implemented by the ISP's start date.

(b) The ISP shall be implemented as written.

**§ 6400.186. ISP review and revision.**

(a) The program specialist shall complete an ISP review of the services and expected outcomes in the ISP specific to the residential home licensed under this chapter with the individual every 3 months or more frequently if the individual's needs change which impacts the services as specified in the current ISP.

(b) The program specialist and individual shall sign and date the ISP review signature sheet upon review of the ISP.

(c) The ISP review must include the following:

(1) A review of the monthly documentation of an individual's participation and progress during the prior 3 months toward ISP outcomes supported by services provided by the residential home licensed under this chapter.

(2) A review of each section of the ISP specific to the residential home licensed under this chapter.

(3) The program specialist shall document a change in the individual's needs, if applicable.

(4) The program specialist shall make a recommendation regarding the following, if applicable:

(i) The deletion of an outcome or service to support the achievement of an outcome which is no longer appropriate or has been completed.

(ii) The addition of an outcome or service to support the achievement of an outcome.

(iii) The modification of an outcome or service to support the achievement of an outcome in which no progress has been made.

(5) If making a recommendation to revise a service or outcome in the ISP, the program specialist shall complete a revised assessment as required under § 6400.181(b) (relating to assessments).

(d) The program specialist shall provide the ISP review documentation, including recommendations, if applicable, to the SC, as applicable, and plan team members within 30 calendar days after the ISP review meeting.

(e) The program specialist shall notify the plan team members of the option to decline the ISP review documentation.

(f) If a recommendation for a revision to a service or outcome in the ISP is made, the plan lead as applicable, under §§ 2380.182(b) and (c), 2390.152(b) and (c), 6400.182(b) and (c), 6500.152(b) and (c) (relating to development, annual update and revision of the ISP), shall send an invitation for an ISP revision meeting to the plan team members within 30 calendar days of receipt of the recommendation.

(g) A revised service or outcome in the ISP shall be implemented by the start date in the ISP as written.

**§ 6400.187. Copies.**

A copy of the ISP, including the signature sheet, shall be provided to plan team members within 30 calendar days after the ISP, annual update and ISP revision meetings.

**§ 6400.188. Provider services.**

(a) The residential home shall provide services including assistance, training and support for the acquisition, maintenance or improvement of functional skills, personal needs, communication and personal adjustment.

(b) The residential home shall provide opportunities and support to the individual for participation in community life, including volunteer or civic-minded opportunities and membership in National or local organizations.

(c) The residential home shall provide services to the individual as specified in the individual's ISP.

(d) The residential home shall provide services that are age and functionally appropriate to the individual.

**§ 6400.189. Day services.**

(a) Day services such as competitive community-integrated employment, education, vocational training, volunteering, civic-minded and other meaningful opportunities shall be provided to the individual.

(b) Day services shall be provided at a location other than the residential home where the individual lives, unless one of the following applies:

(1) There is written annual documentation by a licensed physician that it is medically necessary for the individual to complete day services at the residential home.



(2) There is written annual documentation by the plan team that it is in the best interest of the individual to complete day services at the residential home.

**§ 6400.190. Recreational and social activities.**

(a) The residential home shall provide recreational and social activities, including volunteer or civic-minded opportunities and membership in National or local organizations at the following locations:

- (1) At the residential home.
- (2) Away from the residential home.

(b) Time away from the residential home may not be limited to time in school, work or vocational, developmental and volunteer facilities.

(c) Documentation of recreational and social activities shall be kept in the individual's record.

**INDIVIDUAL RECORDS**

**§ 6400.213. Content of records.**

Each individual's record must include the following information:

- (1) Personal information including:
  - (i) The name, sex, admission date, birthdate and social security number.
  - (ii) The race, height, weight, color of hair, color of eyes and identifying marks.
  - (iii) The language or means of communication spoken or understood by the individual and the primary language used in the individual's natural home, if other than English.
  - (iv) The religious affiliation.
  - (v) The next of kin.
  - (vi) A current, dated photograph.
- (2) Unusual incident reports relating to the individual.
- (3) Physical examinations.
- (4) Dental examinations.
- (5) Dental hygiene plans.
- (6) Assessments as required under § 6400.181 (relating to assessment).
- (7) A copy of the invitation to:
  - (i) The initial ISP meeting.
  - (ii) The annual update meeting.
  - (iii) The ISP revision meeting.
- (8) A copy of the signature sheets for:
  - (i) The initial ISP meeting.
  - (ii) The annual update meeting.
  - (iii) The ISP revision meeting.
- (9) A copy of the current ISP.
- (10) Documentation of ISP reviews and revisions under § 6400.186, including the following:
  - (i) ISP review signature sheets.
  - (ii) Recommendations to revise the ISP.
  - (iii) ISP revisions.
  - (iv) Notices that the plan team member may decline the ISP review documentation.
  - (v) Requests from plan team members to not receive the ISP review documentation.

(11) Content discrepancy in the ISP, The annual update or revision under § 6400.186.

(12) Restrictive procedure protocols and records related to the individual.

(13) Copies of psychological evaluations, if applicable.

(14) Recreational and social activities provided to the individual.

**§ 6400.214. Record location.**

(a) Record information required in § 6400.213(1) (relating to content of records) shall be kept at the home.

(b) The most current copies of record information required in § 6400.213(2)—(14) shall be kept at the residential home.

(c) Record information required in § 6400.213(2)—(14) that is not current shall be kept at the residential home or the administrative office.

**CHAPTER 6500. FAMILY LIVING HOMES**

**GENERAL PROVISIONS**

**§ 6500.4. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Agency*—A person or legally constituted organization administering one or more family living homes.

*Content discrepancy*—A difference between what was determined at the ISP meeting by the plan team and what is documented in the written ISP.

*Department*—The Department of Public Welfare of the Commonwealth.

*Direct service worker*—A person whose primary job function is to provide services to an individual who resides in the provider's family living home.

*Documentation*—Written statements that accurately record details, substantiate a claim or provide evidence of an event.

*Family living home or home*—

(i) The private home of an individual or a family in which residential care is provided to one or two individuals with mental retardation, except as provided in § 6500.3(f) (relating to applicability).

(ii) The term does not include a home if there are more than two individuals, including respite care individuals, living in the home at any one time who are not family members or relatives of the family members.

(iii) If relatives of the individual live in the home, the total number of people living in the home at any one time who are not family members or relatives of the family members may not exceed four.

*ISP—Individual Support Plan*—The comprehensive document that identifies services and expected outcomes for an individual.

*Individual*—

(i) A person with mental retardation who resides, or receives residential respite care, in a family living home and who is not a relative of the owner of the family members.

(ii) The term does not include family members.

*Mental retardation*—Subaverage general intellectual functioning which originates during the developmental period and is associated with impairment of one or more of the following:

- (i) Maturation.
- (ii) Learning.
- (iii) Social adjustment.

*Outcomes*—Goals the individual and individual’s plan team choose for the individual to acquire, maintain or improve.

*Plan lead*—The family living specialist, when the individual is not receiving services through an SCO.

*Plan team*—The group that develops the ISP.

*Provider*—An entity or person that enters into an agreement with the Department to deliver a service to an individual.

*Relative*—A parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, half brother, half sister, aunt, uncle, niece or nephew.

*Respite care*—Temporary family living care not to exceed 31 calendar days for an individual in a calendar year.

*SC—Supports coordinator*—An SCO employee whose primary job functions are to locate, coordinate and monitor services provided to an individual when the individual is receiving services from an SCO.

*SCO—Supports coordination organization*—A provider that delivers the services of locating, coordinating and monitoring services provided to an individual.

*Services*—Actions or assistance provided to the individual to support the achievement of an outcome.

**STAFFING**

**§ 6500.43. Family living specialist.**

- (a) There shall be a family living specialist for each individual.
- (b) A family living specialist shall be assigned to no more than 8 homes.
- (c) A family living specialist shall be responsible for a maximum of 16 people, including people served in other types of services.
- (d) The family living specialist shall be responsible for the following:
  - (1) Coordinating and completing assessments.
  - (2) Providing the assessment as required under § 6500.151(f) (relating to assessment).
  - (3) Participating in the development of the ISP, including annual updates and revisions of the ISP.
  - (4) Attending the ISP meetings.
  - (5) Fulfilling the role of plan lead, as applicable, under §§ 6500.152 and 6500.156(f) and (g) (relating to development, annual update and revision of the ISP; and ISP review and revision).
  - (6) Reviewing the ISP, annual updates and revisions for content accuracy.
  - (7) Reporting content discrepancy to the SC, as applicable, and plan team members.
  - (8) Implementing the ISP as written.
  - (9) Supervising, monitoring and evaluating services provided to the individual.
  - (10) Reviewing, signing and dating the monthly documentation of an individual’s participation and progress toward outcomes.

(11) Reporting a change related to the individual’s needs to the SC, as applicable, and plan team members.

(12) Reviewing the ISP with the individual as required under § 6500.156.

(13) Documenting the review of the ISP as required under § 6500.156.

(14) Providing the documentation of the ISP review to the SC, as applicable, and plan team members as required under § 6500.156(d).

(15) Informing plan team members of the option to decline the ISP review documentation as required under § 6500.156(e).

(16) Recommending a revision to a service or outcome in the ISP as provided under § 6500.156(c)(4).

(17) Coordinating the services provided to an individual.

(18) Coordinating the support services for the family.

(19) Coordinating the training of direct service workers and the family in the content of health and safety needs relevant to each individual.

(20) Developing and implementing provider services as required under § 6500.158 (relating to provider services).

(e) A family living specialist shall have one of the following groups of qualifications:

- (1) A master’s degree or above from an accredited college or university and 1 year work experience working directly with persons with mental retardation.
- (2) A bachelor’s degree from an accredited college or university and 2 years work experience working directly with persons with mental retardation.
- (3) An associate’s degree or 60 credit hours from an accredited college or university and 4 years work experience working directly with persons with mental retardation.
- (4) A high school diploma or general education development certificate and 6 years work experience working directly with persons with mental retardation.

**§ 6500.44. Supervision.**

- (a) An individual may be left unsupervised for specified periods of time if the absence of direct supervision is consistent with the individual’s assessment and is part of the individual’s ISP, as an outcome which requires the achievement of a higher level of independence.
- (b) An individual requiring direct supervision may not be left under the supervision of a person under the age of 18.
- (c) There shall be a family living specialist or designee accessible when the individual is in the home.
- (d) Supervision as specified in the ISP shall be implemented as written when the supervision specified in the ISP is greater than required under subsections (a), (b) and (c).
- (e) The staff qualifications and staff ratio as specified in the ISP shall be implemented as written, including when the staff ratio is greater than required under subsections (a), (b) and (c).
- (f) An individual may not be left unsupervised solely for the convenience of the family or direct service worker.

§§ 6500.111—6500.118. (Reserved).

### MEDICATIONS

§ 6500.133. Use of prescription medications.

(a) A prescription medication shall only be used by the individual for whom the medication was prescribed.

(b) If a medication is prescribed to treat symptoms of a diagnosed psychiatric illness, there shall be a written protocol as part of the ISP to address the social, emotional and environmental needs of the individual related to the symptoms of the diagnosed psychiatric illness.

(c) If a medication is prescribed to treat symptoms of a diagnosed psychiatric illness, there shall be a review with documentation by a licensed physician at least every 3 months that includes the reason for prescribing the medication, the need to continue the medication and the necessary dosage.

### PROGRAM

§ 6500.151. Assessment.

(a) Each individual shall have an initial assessment within 1 year prior to or 60 calendar days after admission to the family living home and an updated assessment annually thereafter. The initial assessment must include an assessment of adaptive behavior and level of skills completed within 6 months prior to admission to the family living home.

(b) If the program specialist is making a recommendation to revise a service or outcome in the ISP as required under § 6500.156(c)(4) (relating to ISP review and revision), the individual shall have an assessment completed as required under this section.

(c) The assessment shall be based on assessment instruments, interviews, progress notes and observations.

(d) The family living specialist shall sign and date the assessment.

(e) The assessment must include the following information:

(1) Functional strengths, needs and preferences of the individual.

(2) The likes, dislikes and interest of the individual.

(3) The individual's current level of performance and progress in the areas:

(i) Acquisition of functional skills.

(ii) Communication.

(iii) Personal adjustment.

(iv) Personal needs with or without assistance from others.

(4) The individual's need for supervision.

(5) The individual's ability to self-administer medications.

(6) The individual's ability to safely use or avoid poisonous materials, when in the presence of poisonous materials.

(7) The individual's knowledge of the danger of heat sources and ability to sense and move away quickly from heat sources which exceed 120° F and are not insulated.

(8) The individual's ability to evacuate in the event of a fire.

(9) Documentation of the individual's disability, including functional and medical limitations.

(10) A lifetime medical history.

(11) Psychological evaluations, if applicable.

(12) Recommendations for specific areas of training, programming and services.

(13) The individual's progress over the last 365 calendar days and current level in the following areas:

(i) Health.

(ii) Motor and communication skills.

(iii) Activities of residential living.

(iv) Personal adjustment.

(v) Socialization.

(vi) Recreation.

(vii) Financial independence.

(viii) Managing personal property.

(ix) Community integration.

(14) The individual's knowledge of water safety and ability to swim.

(f) The program specialist shall provide the assessment to the SC, as applicable, and plan team members at least 30 calendar days prior to an ISP meeting for the development of the ISP, the annual update, and revision of the ISP under §§ 2380.182, 2390.152, 6400.182 and 6500.152 (relating to development, annual update and revision of the ISP).

§ 6500.152. Development, annual update and revision of the ISP.

(a) An individual shall have one ISP.

(b) When an individual is not receiving services through an SCO, the family living program specialist shall be the plan lead when one of the following applies:

(i) The individual resides at a family living home licensed under this chapter.

(ii) The individual resides at a family living home licensed under this chapter and attends a facility licensed under Chapter 2380 or 2390 (relating to adult training facilities; and vocational facilities).

(c) The plan lead shall be responsible for developing and implementing the ISP, including annual updates and revisions.

(d) The plan lead shall develop, update and revise the ISP according to the following:

(1) The ISP shall be initially developed, updated annually and revised based upon the individual's current assessments as required under §§ 2380.181, 2390.151, 6400.181 and 6500.151 (relating to assessment).

(2) The initial ISP shall be developed within 90 calendar days after the individual's admission date to the family living home.

(3) The ISP, annual updates and revisions shall be documented on the Department-designated form located in the Home and Community Services Information System (HCSIS) and also on the Department's web site.

(4) An invitation shall be sent to plan team members at least 30 calendar days prior to an ISP meeting.

(5) Copies of the ISP, including annual updates and revisions under § 6500.156 (relating to ISP review and revision), shall be sent as required under § 6500.157 (relating to copies).

**§ 6500.153. Content of the ISP.**

The ISP, including annual updates and revisions under § 6500.156 (relating to ISP review and revision) must include the following:

(1) Services provided to the individual and expected outcomes chosen by the individual and individual's plan team.

(2) Services provided to the individual to increase community involvement, including volunteer or civic-minded opportunities and membership in National or local organizations as required under § 6500.158 (relating to provider services).

(3) Current status in relation to an outcome and method of evaluation used to determine progress toward that expected outcome.

(4) A protocol and schedule outlining specified periods of time for the individual to be without direct supervision, if the individual's current assessment states the individual may be without direct supervision and if the individual's ISP includes an expected outcome which requires the achievement of a higher level of independence. The protocol must include the current level of independence and the method of evaluation used to determine progress toward the expected outcome to achieve the higher level of independence.

(5) A protocol to address the social, emotional and environmental needs of the individual, if medication has been prescribed to treat symptoms of a diagnosed psychiatric illness.

(6) A protocol to eliminate the use of restrictive procedures, if restrictive procedures are utilized, and to address the underlying causes of the behavior which led to the use of restrictive procedures including the following:

(i) An assessment to determine the causes or antecedents of the behavior.

(ii) A protocol for addressing the underlying causes or antecedents of the behavior.

(iii) The method and time line for eliminating the use of restrictive procedures.

(iv) A protocol for intervention or redirection without utilizing restrictive procedures.

(7) Assessment of the individual's potential to advance in the following:

(i) Residential independence.

(ii) Community involvement.

(iii) Vocational programming.

(iv) Competitive community-integrated employment.

**§ 6500.154. Plan team participation.**

(a) The plan team shall participate in the development of the ISP, including the annual updates and revision under § 6500.156 (relating to ISP review and revision).

(1) A plan team shall include as its members the following:

(i) The individual.

(ii) A program specialist or family living specialist, as applicable, from each provider delivering a service to the individual.

(iii) A direct service worker who works with the individual from each provider delivering services to the individual.

(iv) Any other person the individual chooses to invite.

(2) If the following have a role in the individual's life, the plan team may also include as its members, as applicable, the following:

(i) Medical, nursing, behavior management, speech, occupational or physical therapy specialists.

(ii) Additional direct service workers who work with the individual from each provider delivering a service to the individual.

(iii) The individual's parent, guardian or advocate.

(b) At least three plan team members, in addition to the individual, if the individual chooses to attend, shall be present for the ISP, annual update and ISP revision meeting.

(c) Plan team members who attend a meeting under subsection (b) shall sign and date the signature sheet.

**§ 6500.155. Implementation of the ISP.**

(a) The ISP shall be implemented by the ISP's start date.

(b) The ISP shall be implemented as written.

**§ 6500.156. ISP review and revision.**

(a) The family living specialist shall complete an ISP review of the services and expected outcomes in the ISP specific to the family living home licensed under this chapter with the individual every 3 months or more frequently if the individual's needs change, which impacts the services as specified in the current ISP.

(b) The family living specialist and individual shall sign and date the ISP review signature sheet upon review of the ISP.

(c) The ISP review must include the following:

(1) A review of the monthly documentation of an individual's participation and progress during the prior 3 months toward ISP outcomes supported by services provided by the family living home licensed under this chapter.

(2) A review of each section of the ISP specific to the family living home licensed under this chapter.

(3) The family living specialist shall document a change in the individual's needs, if applicable.

(4) The family living specialist shall make a recommendation regarding the following, if applicable:

(i) The deletion of an outcome or service to support the achievement of an outcome which is no longer appropriate or has been completed.

(ii) The addition of an outcome or service to support the achievement of an outcome.

(iii) The modification of an outcome or service to support the achievement of an outcome in which no progress has been made.

(5) If making a recommendation to revise a service or outcome in the ISP, the family living specialist shall complete a revised assessment as required under § 6500.151(b) (relating to assessment).

(d) The family living specialist shall provide the ISP review documentation, including recommendations if applicable, to the SC, as applicable, and plan team members within 30 calendar days after the ISP review meeting.

(e) The family living specialist shall notify the plan team members of the option to decline the ISP review documentation.

(f) If a recommendation for a revision to a service or outcome in the ISP is made, the plan lead as applicable, under §§ 2380.182(b) and (c), 2390.152(b) and (c), 6400.182(b) and (c), 6500.152(b) and (c) (relating to development, annual update and revision of the ISP), shall send an invitation for an ISP revision meeting to the plan team members within 30 calendar days of receipt of the recommendation.

(g) A revised service or outcome in the ISP shall be implemented by the start date in the ISP as written.

**§ 6500.157. Copies.**

A copy of the ISP, including the signature sheet, shall be provided to plan team members within 30 calendar days after the ISP, annual update and ISP revision meetings.

**§ 6500.158. Provider services.**

(a) The family living home shall provide services including assistance, training and support for the acquisition, maintenance or improvement of functional skills, personal needs, communication and personal adjustment.

(b) The family living home shall provide opportunities to the individual for participation in community life, including volunteer or civic-minded opportunities and membership in National or local organizations.

(c) The family living home shall provide services to the individual as specified in the individual's ISP.

(d) The family living home shall provide services that are age and functionally appropriate to the individual.

**§ 6500.159. Day services.**

(a) Day services such as employment, education, training, volunteer, civic-minded and other meaningful opportunities shall be provided to the individual.

(b) Day services and activities shall be provided at a location other than the family living home where the individual lives, unless one of the following exists:

(1) There is written annual documentation by a licensed physician that it is medically necessary for the individual to complete day services at the family living home.

(2) There is written annual documentation by the plan team that it is in the best interest of the individual to complete day services at the family living home.

**§ 6500.160. Recreational and social activities.**

(a) The family living home shall provide recreational and social activities, including volunteer or civic-minded opportunities and membership in National or local organizations at the following locations:

(1) The family living home.

(2) Away from the family living home.

(b) Time away from the family living home may not be limited to time in school, work or vocational, developmental and volunteer facilities.

(c) Documentation of recreational and social activities shall be kept in the individual's record.

**INDIVIDUAL RECORDS**

**§ 6500.182. Content of records.**

(a) A separate record shall be kept for each individual.

(b) Entries in an individual's record must be legible, dated and signed by the person making the entry.

(c) Each individual's record must include the following information:

(1) Personal information, including:

(i) The name, sex, admission date, birthdate and Social Security number.

(ii) The race, height, weight, color of hair, color of eyes and identifying marks.

(iii) The language or means of communication spoken or understood by the individual and the primary language used in the individual's natural home, if other than English.

(iv) The religious affiliation.

(v) The next of kin.

(vi) A current, dated photograph.

(2) Unusual incident reports relating to the individual.

(3) Physical examinations.

(4) Dental examinations.

(5) Assessments as required under § 6500.151 (relating to assessment).

(6) A copy of the invitation to:

(i) The initial ISP meeting.

(ii) The annual update meeting.

(iii) The ISP revision meeting.

(7) A copy of the signature sheet for:

(i) The initial ISP meeting.

(ii) The annual update meeting.

(iii) The ISP revision meeting

(8) A copy of the current ISP.

(9) Documentation of ISP reviews and revisions under § 6500.156 (relating to ISP review and revision), including the following:

(i) ISP review signature sheets

(ii) Recommendations to revise the ISP.

(iii) ISP revisions.

(iv) Notices that the plan team member may decline the ISP review documentation.

(v) Requests from plan team members to not receive the ISP review documentation.

(10) Content discrepancy in the ISP, the annual updates or revisions under § 6500.156.

(11) Restrictive procedure protocols related to the individual.

(12) Restrictive procedure records related to the individual.

(13) Recreational and social activities provided to the individual.

(14) Copies of psychological evaluations and assessments of adaptive behavior, as necessary.

**§ 6500.183. Record location.**

Copies of the most current record information required in § 6500.182(c)(1)–(14) (relating to individual records) shall be kept in the family living home.

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