

Developmental Disabilities Program Policy and Procedures Manual

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Subject: Quality Assurance and Compliance

Introduction

The State of Montana in the provision of developmental disabilities services through the Developmental Disabilities Program must assure that the services it purchases on behalf of the recipients of the services are appropriate for them in quality. The Department of Public Health & Human Services in order to assure the quality of developmental disabilities services it purchases requires that providers of those services meet certain standards in the delivery of the services and are subject to certain review procedures for that purpose. An entity may not become or remain a provider of developmental disabilities services unless designated by the Department as a qualified provider. A provider, once determined by the Department to be a qualified provider, must continue to be in compliance with the standards for quality assurance in order to remain a qualified provider of services and receive payments for the delivery of such services.

The following procedures along with the referenced criteria are used by the Department to determine whether the services delivered by the provider meet the standards for quality assurance.

Qualified Provider Process: Scope Of Review Process Generally

The qualified provider process, known as the Quality Assurance Review, includes:

- The submittal to the Department, for review and approval, of an initial application that contains the assurances and information necessary for an entity to be determined by the Department to be a qualified provider of developmental disabilities services;
- A full review of service delivery, inclusive of onsite reviews, conducted by the Department within 9 months of the initiation of services;
- An annual full review of service delivery, inclusive of an onsite review, conducted by the Department; and
- Other onsite reviews and visits, conducted by the Department, in the regular course of administrative activities or as the department in its discretion may determine to be necessary.

The initial determination that an entity may deliver services as a qualified provider is a determination by the Department made in accordance with the Qualified Provider Standards and Procedures adopted by the Department.

A Quality Assurance Review may encompass reviews of any aspect of service delivery by the provider at any site and is inclusive of access to policies, consumer records and other materials as may be necessary at administrative sites. The reviews may involve discussions with provider board members, provider administrative personnel, provider direct care staff, consumers, family and friends of the consumers, advocates for the consumers, community organizations, other service providers for the consumers, legal authorities, and other persons and organizations as the Department may determine are appropriate.

Qualified Provider Process: Quality Assurance Teams

A Quality Assurance Team may be comprised of one or more of the following:

- Developmental Disabilities Program staff inclusive of Quality Improvement Specialists, a Regional Manager, the Quality Assurance Specialist, and Waiver Training Specialist;
- A consumer;
- An advocate; and
- Any appropriate professional.

The size and composition of the Team is within the discretion of the Department to determine.

The lead member for the Team is generally the Quality Improvement Specialist assigned to work with the provider.

Qualified Provider Process: Time lines For Annual Reviews

In order to accommodate for scheduling problems the time line, during a Quality Assurance Review, of the onsite visit may be extended up to two months. If the provider desires an extension, the provider must make a request in writing to the Regional Office that provides an acceptable justification for the extension. If the Quality Assurance Team cannot complete the annual Quality Assurance Review within the annual time frame, the Regional Office for the Developmental Disabilities Program notifies the provider organization in writing of the extension of the date for the onsite review.

Qualified Provider Process: Other Onsite Reviews

The Department, in its discretion, will conduct announced or unannounced visits to any provider service setting as may be appropriate whether as an aspect of a Quality Assurance Review or other administrative oversight activity.

Other visits may occur for a variety of reasons. Those reasons may include but are not limited to:

- The provision of training and technical assistance;
- The regular course of departmental administrative activities;
- The maintenance of an ongoing presence onsite to ensure compliance with DDP contract compliance;
- The maintenance of compliance with licensing standards for community home services;
- The response to complaints or observations of concern received from consumers or others; and
- Direction or suggestions received from legal authorities.

Qualified Provider Process: Basic Standards Of Compliance

The basic standards for determining whether a provider is delivering quality services are:

- Conformance in service delivery for consumers with their Individual Plans;
- Assurances of consumer well-being and satisfaction based upon self-reporting, observations and other indicators;
- Compliance with state and federal regulatory requirements, particularly the Qualified Provider Standards adopted by the Department that are applicable to the services being delivered by the

provider; and

- Achievement of accreditation where applicable.

Compliance with state and federal regulatory requirements, in addition to the applicable Qualified Provider Standards, includes, but is not limited to, all pertinent matters inclusive of requirements for federal and state Medicaid and other funding sources, Developmental Disabilities Program rules, facility and professional licensing, fiscal management, reporting, and labor laws.

In accordance with ARM 37.34.1801 and 1802, the Department requires certain providers to be accredited for the delivery of services by national accreditation organizations for providers of developmental disabilities services. Compliance with this requirement, where applicable, is a feature of the quality assurance process.

The Qualified Provider Standards that are applicable to a type of service setting do not provide a vehicle for reviewing and applying the requirements specific to the accreditation and licensing processes since those are applied to the provider through other review processes. A requirement that appears in the accreditation or licensing processes may be stated as well in the Qualified Provider Standards and as appropriate may be applied by the Quality Assurance Team.

Qualified Provider Process: Scope Of Review

A Quality Assurance Review includes review of consumer, provider, and departmental documentation maintained over time, interviews with consumers and others involved in or familiar with service delivery to consumers, and direct observations at the service delivery locations.

In addition to the quality assurance related documentation and direct observations onsite, the Quality Assurance Team may rely upon, though it is not limited to, the following types of information in arriving at its findings concerning compliance:

- Concerns raised in the individual planning processes for consumers;
- Incident reports;
- Reports of the Adult Protective Services investigations or other authorities;
- Consumer and public complaints;
- The reports for quarterly and other visits of Developmental Disabilities Program staff to the provider's services; and
- Previously recorded observations and findings from the quality assurance process.

Qualified Provider Process: Quality Assurance Review Features

A Quality Assurance Team and other departmental staff as appropriate, based upon the Qualified Provider Standards pertinent to the type of services provided by a provider and upon other pertinent authoritative materials, reviews each type of service provided by a provider and records significant information, observations and findings in relation to the standards applicable for that type of service. A provider may be designated as qualified to deliver one or more types of developmental disabilities services.

A provider is in conformance with the Quality Assurance Standards when the Department determines based upon the Quality Assurance review that the provider is in compliance with the standards. A finding as to performance is recorded as acceptable or deficient. All findings, inclusive of acceptable and unacceptable performance, are to be recorded, with respect to any of the standards.

The review must include specific reviews of service delivery for at least 10% of the consumers served. There must be a review of at least one consumer in each of the provider's programs. The specific reviews may include interviews with a consumer, the consumer's guardian, if there is one, the consumer's family, if involved, the consumer's advocate, if there is one, and other parties serving the person or familiar with the person's needs. The case management contacts for the consumers are reviewed.

The Department sends notice of the onsite review to the provider corporation through a letter of confirmation two weeks in advance of its onsite review.

Qualified Provider Process: Considerations In A Determination That A Provider Is Not In Compliance

A provider may be determined to not be in compliance with the quality assurance standards in the provision of a type of services if the provider does not adequately comply with most of the specific quality assurance standards that are applicable to that type of service or exhibits over time a pattern of continuing failures to comply with many of the standards.

A provider may also be determined to not be in compliance for purposes of quality assurance if the team determines that the provider in the delivery of services is posing a probable risk of harm to its consumers or the provider exhibits a lack of appropriate services and practices that are not in the best interests of consumers.

Failings in service delivery may be identified in relation to the provision of services, the promotion of consumer-valued outcomes, and the safeguarding of consumers. Failings due to a lack of appropriate services and practices may occur throughout the provider organization or in a particular type of service offered to consumers by the provider.

Probable risk of harm is any circumstance in which conditions or practices exist that have resulted in substantive physical or mental harm to one or more consumers or, if allowed to continue, may have a high probability of causing substantive physical or mental harm to one or more consumers.

Examples of circumstances that place persons at probable risk of harm include, but are not limited to, the following:

- Incidents of actual or threatened physical, emotional or sexual harm;
- Incidents of exploitation;
- No plan is implemented to address the behaviors of a consumer exhibiting a pattern of dangerous behaviors or staff members lack direction and training as to how to work with the person;
- A staff member who mistreats or neglects consumers has not been subject to corrective action or, if posing a continuing threat to consumers, is allowed to continue to work with or be in the presence of consumers;
- Hot water temperature in bathing areas exceeds 120 degrees Fahrenheit;
- Presence of decubiti and frequent hospitalizations for fecal impaction and/or dehydration;
- Failure to train and guide staff in adequately anticipating and responding to medical, behavioral,

- or other personal care needs;
- Failure to employ appropriate staff and maintain adequate staffing levels to provide appropriate services to persons with serious behavioral problems, with intensive personal care needs or self-injurious behaviors;
- Inadequate oversight and involvement in the provision of necessary care to ameliorate medical and other physical and mental conditions; or
- Presence of frequent medication errors and/or lack of appropriate documentation of medications received.

Deficiencies due to a lack of appropriate services and practices or a pattern of continuing deficiencies with respect to one or more standards include, but are not limited to, the following:

- Consumers do not attend or rarely attend meetings to develop their program plans nor are other provisions made for them to participate in program development;
- Habilitation plans are only sporadically implemented for the majority of people;
- The follow-up to incidents is often inadequate in that either reports on incidents are not timely or thorough or the reporting process does not comply with state and/or provider organization requirements;
- Opportunities for consumers to participate in the life of the community, including using stores, banks, libraries, parks, restaurants, movies, etc., are limited or unnecessarily restricted;
- Service supports fail to teach consumers needed skills for participation in community life;
- Consumers have limited opportunities to make choices about any aspect of their lives and habilitation or to participate productively in the life of the home and practice skills;
- There is failure to follow or implement internal policies and state administrative rules and codes regarding reporting abuse, neglect or exploitation;
- Access to and the provision of needed medical and other speciality services is not arranged on a timely basis, appropriately facilitated; and accomplished;
- A facility is insect or rodent infested; or
- A staff member who mistreats, neglects consumers, or fails to appropriately deliver services and care has not been subject, as appropriate, to training and corrective action.

Qualified Provider Process: Quality Assurance Review Report

The Quality Assurance Team, upon completion of the review, compiles a preliminary report that denotes the observations and findings of the compliance review.

If the Quality Assurance Team determines that the types of services provided meet the applicable quality assurance standards and that the consumers of the provider's services are not otherwise inappropriately served by the provider, the Team recommends to the Developmental Disabilities Program Director that the provider be confirmed as a qualified provider with respect to the types of developmental disabilities services the provider offers.

A provider may be found by a Team, with respect to the types of services offered by the provider, to be in conformance with the applicable quality assurance standards as to only some of the types of developmental disabilities services the provider offers.

A final determination as to whether the types of services delivered by a provider are acceptable is made by the Developmental Disabilities Program Director based upon review of the responsible Quality Assurance Team's report and of other pertinent information.

The Developmental Disabilities Program Director may determine that the report of a Quality Assurance Team is inadequate, inaccurate or inappropriate with respect to its scope, content or its findings and recommendations. Upon making such a determination the Developmental Disabilities Program Director is to request that the Team take appropriate measures to correct the failings or to constitute a new quality assurance team to redo the review.

Upon acceptance by the developmental disabilities Program Director of a Quality Assurance Team's report, the report is finalized and submitted to the provider and made available for consumer reference.

The Program Director, based upon the quality assurance review and resulting report, determines whether a provider may be designated as qualified to deliver the types of services available through the provider. A determination may be made that a provider while offering several services is only qualified to deliver some of those services.

Qualified Provider Process: Plan Of Correction Process

If the Quality Assurance Team determines that there are deficiencies in the provision of services that necessitate corrective action, the Team, in collaboration with the Regional Manager of the Developmental Disabilities Program, must provide the preliminary report to the Regional Manager along with proposed measures for a plan of correction to be undertaken by the provider. The Regional Manager is to review the Team's report and the proposed measures for a corrective action plan. If the Regional Manager concurs with the report and the proposed measures for a corrective action plan, the Regional Manager is to request that the provider submit a proposed plan of correction to the Department.

The provider must provide the requested proposed plan of correction to the Department within 10 calendar days. Failure of a provider to submit a plan of correction results in the provider's termination as a provider of developmental disabilities services unless the provider can document good cause for not having done so.

The plan of correction submitted by the provider must contain specific measures and time lines for correction of the deficiencies. The plan of correction must conform with any direction as to its content and particulars that the Department may direct the provider to include.

The plan of correction is submitted to the Regional Manager and Quality Improvement Specialist for the Developmental Disabilities Program. The Regional Manager and Quality Improvement Specialist, in writing, either accept the plan of correction, as proposed, or request that further revisions be made to the proposed plan and specify a time for the re-submittal.

For a deficiency that the Department determines places or contributes to placing consumers or other persons at probable risk of harm, the Department may impose upon the provider immediate measures of correction or may immediately end the provision of the services by the provider and undertake the removal of the affected consumers either for an interim period or permanently. The matter is also subject to investigation and action by the State's Adult Protective Services system.

If a provider disagrees with a deficiency finding, a written request for a re-review of the particular deficiency finding at issue can be sent to the Community Services Bureau Chief. The Department will make a final determination on the matter within 10 calendar days of the request. If the Department determines the deficiency finding exists, a plan of correction is to be submitted to the Regional Manager and Quality Improvement Specialist within 10 calendar days.

Any finding made in the course of Quality Assurance Review that is pertinent to compliance with applicable licensing standards, relates to possible abuse or neglect; or relates to possible civil or criminal law violations is provided to the appropriate authorities.

Sanctions

A provider that refuses to participate in any aspect of a Quality Assurance Review, refuses or fails to implement corrective actions, as requested by the Department, to correct deficiencies noted in a Quality Assurance Review, fails after corrective action measures to be in compliance with the pertinent quality assurance standards, or poses a probable risk of harm to staff, residents and others may be subjected within the Department's discretion to a variety of sanctions up to and including termination of the contractual relationship.

Sanctions may include but are not limited to:

- Imposition of training and accountability measures;
- Imposition of further review measures; or
- Imposition of further performance requirements;
- Imposition of a moratorium wherein the provider may not serve any additional consumers in existing openings or participate in any expansion activities;
- Suspension of contractual payments, in whole or part, for a specified time or amount; or
- Withdrawal of qualified provider status and termination of the contractual relationship;

The imposition of licensing or protective services measures by the Department or other responsible authorities does not preclude the imposition of sanctions by the Department acting through the Developmental Disabilities Program under the statutory, rule and contractual authority of the program.

Contingency Planning

The Department may, as it chooses within its discretion, implement such planning and measures as are necessary to assure the continuity of service provision to consumers whose service provider is the subject of quality assurance provider sanctions. Contingency planning includes the provision of services by the Department or other providers.

DUE PROCESS APPEALS IN QUALITY ASSURANCE DETERMINATIONS

A provider of services that is suspended or terminated as a provider of one or more developmental disabilities services by the Department resulting from a Quality Assurance Review may appeal the determination by submitting an appeal request to the Program Director for the Developmental Disabilities Program. The appeal must be submitted within 15 calendar days of the date of the determination. Any

materials and information that the entity believes supports its position that the determination was not correct must be submitted at the time of the appeal request.

The Program Director for the Developmental Disabilities Program reviews the Department's determination along with pertinent documentation and reviews the materials and information submitted by the entity. The Program Director must enter a written determination within 15 calendar days of receipt of the appeal.

If the entity remains unsatisfied with the Program Director's determination upon appeal, the entity may request a review and determination be made by the Administrator of the Disability Services Division. No additional materials or information may be provided at this stage of the appeal. The Administrator must enter a written determination within 15 calendar days of the receipt of the appeal. The determination of the Administrator is a final administrative decision in the matter. If the entity remains dissatisfied, it may seek appropriate judicial review of the matter.

Jeff Sturm (signed)_____

Director, Developmental Disabilities Program

2/14/03_____

(Date)