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MEMORANDUM

To: DBHDS Licensed Providers

From: Taneika Goldman, State Human Rights Director

Date: January 25, 2022

RE: Uses of isolation, quarantine, and seclusion

During this time of heightened awareness regarding the worldwide COVID pandemic, in an effort to support all DBHDS licensed providers and in keeping with our mission to promote the basic precepts of human dignity, the following is being issued on behalf of the Office of Human Rights (OHR). The information provided in this Memo is regarding the use of isolation and quarantine relative to provider policies and the Human Rights Regulations, 12VAC35-115-10 et seq.

Previous guidance issued by OHR on the use of "isolation" as "seclusion" was based on a waiver by the DBHDS Commissioner to the Human Rights Regulations. That waiver, and Executive Order 51 making seclusion permissible for this reason, expired on June 10, 2020. While seclusion, isolation, and quarantine have similarities in that they all involve separating an individual from others, there are also key differences, which will be addressed in this memo.

According to the Centers for Disease Control and Prevention, “isolation” and “quarantine” help protect the public by preventing exposure to people who have or may have a contagious disease. Isolation separates sick people with a contagious disease from people who are not sick, while quarantine separates and restricts the movement of people who were exposed to a contagious disease to see if they become sick.

Seclusion, on the other hand, refers to the involuntary placement of an individual in a room that is locked, or otherwise secured, so that the individual cannot leave. Seclusion is generally employed for behavioral issues rather than preventing illness. In addition, seclusion by definition is involuntary, while isolation and quarantine are not necessarily so. Pursuant to the Human Rights Regulations, seclusion is only allowed in inpatient hospitals or licensed children’s residential facilities, in an emergency.

To facilitate voluntary cooperation with isolation or quarantine, it is recommended that providers establish clear policies that describe what they are, under what circumstances they will be utilized, as well as the alternatives that are available should an individual refuse to agree to isolation or quarantine. These policies should be discussed with individuals and their authorized representatives in advance, along with any concerns or objections that they may have, to facilitate understanding and cooperation should isolation or quarantine become necessary.

A "restriction" under the Human Rights Regulations is anything that limits or prevents an individual from freely exercising his rights and privileges. This may include the right to move within the services setting. Providers do have authority, however, to restrict an individual's freedom to the extent necessary to maintain a safe and orderly environment, and other individuals receiving services from a provider have a right to be protected from harm and live in an environment that is safe and sanitary. If a restriction is implemented pursuant to the Human Rights Regulations, certain requirements must be met. By nature, isolation and quarantine are restrictive, but they are being done in accordance with public health guidance. If a provider isolates an individual or an individual is placed in quarantine while receiving a licensed service, the provider should:

- Explain how the isolation or quarantine will be implemented in the licensed program to the individual and their Authorized Representative, if applicable, and the circumstances that will end the isolation or quarantine;
- Document a conversation with the qualified healthcare professional recommending isolation or quarantine for the individual in the individual's services record;
- Indicate the symptoms or circumstances that warrant isolation or quarantine;
- Notify DBHDS via email to the Regional Advocate; and
- Comply with any internal emergency/infectious disease policies.

In the event that a provider is not able to enlist the voluntary agreement of an individual to isolate or quarantine, and the isolation or quarantine cannot be enforced without locking the individual in a defined space alone, it would technically meet the definition of seclusion in the Human Rights Regulations. In such circumstances, providers should endeavor to meet all of the regulatory requirements for seclusion.

If the instance of isolation or quarantine is not voluntary and lasts longer than 7 days, the provider must document the need for the restriction in the individual's services record and seek review by the Local Human Rights Committee per 12VAC35-115-100.

Provider Policies

All providers are required to develop and implement policies and procedures that address emergencies. Emergency is defined as a situation that requires a person to take immediate action to avoid harm, injury, or death to an individual or to others [12VAC35-115-30]. As such, provider policies and procedures that address emergencies shall:

- Identify what caregivers may do to respond to an emergency;
- Identify qualified clinical staff who are accountable for assessing emergency conditions and determining the appropriate intervention;
- Require that the director immediately notify the individual's authorized representative and the advocate if an emergency results in harm or injury to any individual; and
- Require documentation in the individual's services record of all facts and circumstances surrounding the emergency [12VAC35-115-60].

Providers anticipating the need to use isolation or quarantine should update their policies to include information about their use. Any policy change that impacts the rights of individuals receiving services will require review by OHR in accordance with 12VAC35-115-260(A)(9). Isolation, quarantine, and seclusion are distinct actions used for different purposes, and it is best if providers make the distinction among them in their policies, protocols and communications, to the greatest extent possible.

In any instance described herein, any individual or Authorized Representative, if applicable, who believes his or her rights have been violated can make a complaint directly with the licensed provider or through the Human Rights Advocate.

Definitions

"Isolation" means the physical separation, including confinement or restriction of movement, of an individual or individuals who are infected with or are reasonably suspected to be infected with a communicable disease in order to prevent or limit the transmission of the communicable disease to other uninfected and unexposed individuals. 12VAC5-90-10

"Quarantine" means the physical separation, including confinement or restriction of movement, of an individual or individuals who are present within an affected area or who are known to have been exposed or may reasonably be suspected to have been exposed to a communicable disease and who do not yet show signs or symptoms of infection with the communicable disease in order to prevent or limit the transmission of the communicable disease of public health threat to other unexposed and uninfected individuals. 12VAC5-90-10

"Seclusion" means the involuntary placement of an individual alone in an area secured by a door that is locked or held shut by a staff person, by physically blocking the door, or by any other physical or verbal means, so that the individual cannot leave it. 12VAC35-115-30

We appreciate your continued commitment to the safety of the individuals you support and your staff, and we acknowledge your ongoing flexibility during the COVID pandemic. If you have questions regarding the information in this memo, please contact your Human Rights Advocate.