



Association of Developmental
Disabilities Providers

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**Comments for Regulatory Review Listening Session on Disabilities
November 9, 2015
Boston, Massachusetts**

Thank you for the opportunity to comment. My name is Tara Hopper Zeltner and I am the Director of Governmental Affairs for The Association of Developmental Disabilities Providers (ADDP). My address and contact information are below.

My comments are provided in the format recommended on the website,
<http://www.mass.gov/anf/regreview.html>.

**808 CMR 1.00: Compliance, Reporting and Auditing for Human and Social Services; 1.03 (7)
General Provisions, Not-for-Profit Contractor Surplus Revenue Retention**

Theme: Not-for-Profit Contractor Surplus Revenue Retention

Affiliated Agency: Division of Purchased Services (DPS)

Current DDS Regulation: 808 CMR 1.03 (7), says, in part:

"If, through cost savings initiatives implemented consistent with programmatic and contractual obligations, a non-profit Contractor accrues an annual net surplus from the revenues and expenses associated with services provided to Departments which are subject to 808 CMR 1.00, the Contractor may retain, **for future use, a portion of that surplus not to exceed 5% of said revenues. The cumulative amount of a Contractor's surplus may not exceed 20% of the prior year's revenues from Departments.**"

Issue: This regulation was originally promulgated in the early 1990's, based on the concern that with the proliferation of individually negotiated rates for services, a provider could potentially manage to negotiate rates that built in substantial surpluses, and therefore some kind of protection was necessary to limit and restrict the use of surpluses deemed "excessive." Fifteen years later the state formally reviewed the financial results of the contracting system, and it was clear that state purchasing department not only managed to avoid inflated rates, they often level-funded a contract from one year to the next with no increase at all. When EOHHS issued the 2007 report, "The Financial Health of Providers in the Massachusetts Human Service System" nearly 60 percent of providers had cumulative deficits on their Commonwealth activities, and almost one-third of provider agencies experienced organization-wide deficits each year.

Fortunately the Commonwealth and its provider system have been on the road to recovery these last few years, and financial positions have stabilized. The state has chosen by statute to systemically eliminate the practice of purchasing services through individually negotiated rates. The possibility of negotiating inflated rates no longer exists; standardized rates are now set by EOHHS. The situation that seemingly required the protection of such a cap is no longer present. In addition, it should be noted that the current structure is one in which rates are not set annually, they are fixed for a minimum of two years. Thus, to plan for increases to wages, or



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increased costs of health care or other outside costs in the second year, the provider needs to achieve some additional savings in the first year of a two-year rate. The existing regulation was enacted to control rates that were being individually negotiated every year, and it did not envision the current structure of fixed rates set by EOHHS every two years, so it needs to be brought into alignment with the current financial environment.

The original policy indicated that it was important to encourage non-profit providers to achieve some savings. Human Service Providers, overwhelmingly not-for-profit organizations, should not aim for "break-even," to be starting over from zero every year. Deficits are harmful, and cumulative deficits erode stability. By encouraging savings, providers would reduce dependency on borrowing, would ensure stability for public services, and would invest in capital improvements, property acquisition and improved infrastructure (similar goals to those of local and state governments), all within the boundaries of their charitable mission. The language of the regulation, however, includes a lifetime cap of accumulative surplus of 20% of the prior year's budget. Thus, after a 1% surplus each year for 20 years (that perhaps has been already used in many ways), no further surpluses would be allowed, only deficits. If a surplus then occurs, all surplus funds must be returned. This kind of situation often results in the development of a "use it or lose it" mentality, which can encourage last minute spending on items of questionable necessity, instead of thoughtful infrastructure investment.

Suggested change to support the original intent within the current environment, the regulation should be revised along the following lines:

"If, through cost savings initiatives implemented consistent with programmatic and contractual obligations, a non-profit Contractor accrues an annual net surplus from the revenues and expenses associated with services provided to Departments which are subject to 808 CMR 1.00, the Contractor may retain ***such surplus for future use, providing that it must be able to demonstrate that all uses of such surplus are directed to Massachusetts activities within its charitable mission.***"

115 CMR 5.00: Standards to Promote Dignity; 5.04 (2) Other Rights of Individuals

Theme: Rights of Individuals with Disabilities

Affiliated Agency: Department of Developmental Services (DDS)

Current DDS Regulation: 5.04 (2), "The right to be protected from private and commercial exploitation including: the right not to be exposed to public view by photograph, film, videotape, interview, or other means unless prior written consent of the individual or guardian is obtained *for each occasion of release*; and the right not to be identified publicly by name or address without the prior written consent of the individual or guardian."

Issue: Formal written consent is required for each use of an image of adults receiving services. As the use of social media has expanded, the requirement for written consent for every social media post is an unreasonable restriction of individual's access to participate in self-advocacy, community engagement and communication activities and places an unnecessary burden on staff time. There have also been occasions where providers have invested significant costs to



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the production and editing of a film or videotape, and according to the current ability to rescind the consent at any time for this type of production, it would need to be redone and be very costly.

Suggestions:

Revise the regulation to allow an annual consent for use of images and participation within the scope of specific social media, advocacy, training and/or other agency publications with the right to rescind this consent at any time. We believe that the way the regulation is currently written discourages participation in educational and informational information and is an unintended consequence of this regulation. The consent form should state that providers can use this media only within the scope of authorization provided within the consent form. Also, in the case of a provider creating a video or movie production, we suggest that an individual should always provide a specific release for this specific production that cannot be rescinded after completion of the production due to the associated costs that were accumulated while consent had been provided.

Respectfully Submitted,



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