Rhode Island Disability Law Center, Inc.

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Gail Theriault, Esq.
RI Department of Behavioral Healthcare, Developmental Disabilities
and Hospitals
41 West Road
Cranston, RI 02920

Re: Repeal of Rules and Regulations Governing the Practices and Procedures Before The Department

Dear Attorney Theriault:

On behalf of the Rhode Island Disability Law Center, Inc., I am writing to express our opposition to the repeal of the above-referenced rule. As the state's Protection and Advocacy agency, we believe that individuals with disabilities need access to a complaint and appeals process within BHDDH to address appeals and grievances informally, as well as formally. Additionally, the Office of Health and Human Services (OHHS) rule on "Appeals Process and Procedures for EOHHS Agencies and Programs" (ERLID 9709) specifically acknowledges that BHDDH will offer a pre-hearing process prior to the OHHS hearing, as well as a separate hearing process for non-Medicaid matters. Our more specific comments follow.

Individual need for an informal process

Due to their disabilities, many individuals who rely on services provided or funded by BHDDH, will need assistance to understand agency actions and decisions, and will need an opportunity to explain their needs in a more informal way than would be available in a formal agency hearing. Both as an agency that promotes the ability of individuals with disabilities to self-advocate, and as a government entity with obligations to make their programs and services accessible for individuals with disabilities, we believe that BHDDH should continue to make an informal process available to the individuals it serves.

BHDDH will need to have an agency rule describing any informal process. Under the administrative procedures act, (APA), a rule is defined to include a description of agency procedures or practice requirements, and rules must be promulgated. Any actions involving Medicaid funded-services would also require that the BHDDH have a rule describing its procedures. *See for e.g.*, 42 C.F.R. § 431.206.

The EOHHS rule on Appeals Process and Procedures for EOHHS Agencies and Programs, 210 RICR 10-05-2, (ERLID 9709)

This rule, which becomes effective June 13, 2018, references two processes to be made available by BHDDH: a pre-hearing settlement conference process described at § 2.2.4 E; and a special hearing requirement for non-Medicaid matters referenced at § 2.3.2 H. The APA, due process considerations, and at times federal law, will require that BHDDH notify appellants of the availability of these processes, the manner in which a request to have a pre-hearing conference and/or non-Medicaid hearing can be made, and the procedures to be followed in these processes. BHDDH will need to have rules to address these procedures.

Grievance Policies for individuals

By statute, individuals served through BHDDH licensed programs have a right to file a grievance regarding violations of rights assured within a community residence, RI Gen. Laws § 40.1-24.5-8, and for violations of rights assured to individuals with developmental disabilities receiving services through a BHDDH licensed agency, RI Gen. Laws. § 40.1-26-5.

By BHDDH policy, as well as by statute (in the case of DD services) appeals through an APA process have been made available to individuals dissatisfied with the agency resolution of grievances. We believe these grievance appeals are best resolved through a BHDDH appeals process, rather than an OHHS hearing officer process, since they will involve clients' rights and conceivably licensing issues. It is also likely that these appeals will be "non-Medicaid" matters, referenced within the EOHHS rule on appeals at § 2.3.2 H.

We thank you for the opportunity to comment on this proposed rule appeal, and urge you to reconsider the need for a BHDDH rule on appeals.

Sincerely,

Anne M. Mulready

Anne M. Mulready
Supervising Attorney