



Disability Rights

WASHINGTON

Washington's protection and advocacy system

April 20, 2018

VIA EMAIL

Cheryl Strange, Secretary
Department of Social and Health Services
PO Box 45131
Olympia WA 98504

Evelyn Perez, Assistant Secretary
Developmental Disabilities Administration
Department of Social and Health Services
PO Box 45310
Olympia WA 98504

Re: Decertification of SL Start

Dear Secretary Strange and Assistant Secretary Perez,

On April 17, 2018, Residential Care Services (RCS) decertified SL Start, a residential provider of over 200 clients of the Developmental Disabilities Administration (DDA) for significant, chronic, and pervasive failures to meet basic health and safety requirements. Detailing an array of deficient practices, RCS determined SL Start was being decertified “based on noncompliance.” See Exhibit 1. According to RCS, SL Start had accrued a long list of citations for medication errors, inadequate staffing, physical safety hazards, and failure to report abuse and neglect. RCS considered its findings to be “serious deficiencies” that “jeopardized clients’ health, safety and welfare.” *Id.* Consequently, SL Start clients have suffered injuries, illness, and death. *Id.*

However, SL Start’s umbrella corporation, Embassy Management, will be continuing to serve DDA clients in King, Snohomish, and Spokane counties under a different name, Aacres. We are writing to express our grave concerns about an unqualified provider continuing to deliver services to DDA clients without their informed consent, as well as our dismay that clients, guardians, families, as well as SL Start staff are being grossly misled.

Background

When Disability Rights Washington (DRW) received a copy of the decertification notice to SL Start, I contacted Assistant Attorney General Angela Coats McCarthy to ascertain how DDA was going to offer clients sufficient supports to ensure their health and welfare needs. I understood from our conversations that the plan was to “transition” the SL Start clients to two other providers - Community Living in Yakima County and Aacres in King, Snohomish, and Spokane counties. We requested residential addresses for the individuals transitioning to Aacres so that we could monitor this transition and provide individuals with information about their rights during that process. In particular, we were alarmed that SL Start and Aacres are owned by the

same company and share the same leadership team of Executive, Nursing, Regional, and Area Directors. See Exhibit 2.

The information we received from DDA and our conversations with clients and staff has confirmed that the same provider RCS has decertified will be continuing to serve DDA clients, but simply under a new name. Specifically, the letter from Embassy Management to clients and guardians states that there will be “absolutely no change to staff, homes, or scheduled support.” See Exhibit 3. The letter to staff stated, “[i]n summary, *nothing should change other than you becoming an Aacres employee.*” See Exhibit 4. Nothing in either letter from Embassy disclosed the decertification of SL Start, although the letter to employees referenced a claim that the “regulatory footprint is more favorable under Aacres than SL Start which is under one licensing certification statewide.” *Id.*

On April 13, the Friday before the April 17 transition was to take place, DDA sent a letter to clients to “recap” conversations with case managers that reportedly relayed a set of limited facts regarding Aacres’ assumption of services to SL Start clients. See Exhibit 5. The letter stated that DDA had “accepted SL Start’s request” to end their contract and that RCS had decertified SL Start. The letter further stated “SL Start was in a second 90-day provisional certification prior to the decertification” but did not explain that the provisional certification and decertification were the direct results of SL Start’s non-compliance and history of putting client health and safety at risk.

Over the last two days, we have visited numerous clients to talk with them and their staff. Across the board, staff and clients were strikingly unaware of the circumstances leading up to what they all repeatedly referenced as “the name change.” Only one individual had received DDA’s letter, and none had spoken to their case manager about the change to Aacres. No one had informed clients or staff that the reason for the change was due to deficiencies in their services under SL Start, and all had been led to believe this was a business consolidation unrelated to SL Start’s failure to satisfy certification standards.

Finally, the only clients who were aware of their right to choose a different provider and the referral process were the individuals who had already requested to change providers before the decertification notice and “transition” to Aacres had been announced. The only information clients reported receiving about the change to Aacres came from an SL Start manager, who according to several clients, informed them that the name of SL Start was changing to Aacres. At least one staff stated that the manager had told clients that they could choose a different provider, but no client recalled receiving that information or any other information about how to initiate a change in provider. No one had any knowledge of any effort by DDA to help find an alternative to Embassy with as little disruption as possible. Based on DDA’s letter, which merely stated, “clients always have the option of a choice of provider,” and instructed clients to call if they would like to discuss moving, it is apparent that DDA is planning no such effort.

Problems

These facts are problematic for two reasons. First, the fact that there will be “absolutely no change” other than the name of the provider raises substantial doubt that there will be changes in management practices and service quality to assure client health and welfare. Second, the fact

that Embassy Management and the Department have hidden SL Start's citation history is prohibiting clients and their decision-making supports from being able to exercise informed choice. Below is an analysis of why the Department must take immediate and aggressive action to correct each of these problems.

1. Health and Welfare at Risk

The Department must be assuring the health and welfare of individuals receiving services through a Medicaid Home and Community Based Service (HCBS) waiver. 42 U.S.C §1396n(c)(2)(A). As such, assuming that most if not all SL Start clients are HCBS waiver participants, the Department is obligated to take "necessary safeguards" to protect them from harm. Federal regulations specify that these safeguards must assure "certification requirements are met for services or for individuals furnishing services that are provided under the waiver." 42 C.F.R. § 441.302(a)(2).

For at least two years, RCS has been investigating and documenting SL Start inadequacies in response to complaints and allegations of abuse, neglect, and exploitation. As a result, RCS determined that this provider should no longer be certified to provide DDA clients with residential services. Indeed, the purpose of RCS's certification process is to prevent providers who lack the capacity or will to comply with basic health and safety requirements from being funded to serve clients with intensive support needs. Nevertheless, DDA is allowing the same managers and staff to continue serving its clients under a new name, and continuing to fund the same corporation that has repeatedly failed its clients over the past two years.¹

Allowing Embassy to erase its failures eliminates provider accountability and leaves client health and safety in jeopardy. This not only disempowers the regulatory arm of the Department, but also dismantles the safeguards established under the fundamental requirement for providers to be certified. At minimum, the Department should require that if Aacres acquires SL Start's contracts, it should also acquire SL Start's 511 page citation history to accumulate with its own 332 pages of citations for RCS's consideration. RCS should further invoke its authority to impose conditions on Aacres to require specific training and additional oversight to identified staff and managers who have failed to meet regulatory standards, as well as any other conditions or sanctions that would otherwise be warranted for SL Start. Ideally, as discussed below, all SL Start clients should be offered services by another certified provider that is not associated with Embassy.

2. Lack of Informed Choice

DDA recognizes that its clients have the right to make decisions about their services and supports. WAC 388-823-1095 instructs clients that they have the right to "receive only those services you agree to," "personal privacy and confidentiality of your personal and other records," and "to make choices about your life." Individuals receiving HCBS services through DDA are

¹ Over the years, we have been made aware of providers changing their name to obtain new certifications after failing RCS surveys. In those instances, we had understood the Department to be troubled by its limited ability to identify when this is occurring or prevent it from happening. Here, DDA has been fully aware and complicit in facilitating SL Start's decision to "consolidate" with Aacres in order to mitigate "regulatory risk."

specifically entitled to a “person centered plan” that reflects their individual preferences, includes “the providers of those services and supports,” and is “finalized and agreed to, *with the informed consent of the individual in writing*, and signed by all individuals and providers responsible for its implementation.” 42 C.F.R § 441.301(c)(2).

Based on the reports by multiple clients that they had yet to have a conversation with their DDA case managers about transitioning to Aacres, we have little reason to believe that DDA has engaged in person-centered planning to obtain clients’ informed consent to participate in Aacres’ services. At least two individuals reported that they do not have a guardian but do not recall signing any consent for SL Start or DDA to release their information to Aacres, or for Aacres to serve them under a new individual support plan. See WAC 388-845-3062.

Even so, any consent or service plan that they may have signed was misinformed. Neither DDA nor Embassy disclosed SL Start’s pattern of failed practices. Instead, clients as well as staff were led to believe that SL Start could have chosen to be re-certified. Based on the litany of findings and citations in RCS’s decertification letter, we see no reason to believe this is an accurate account of RCS’s position. Yet, DDA’s letter did not explicitly correct this characterization. Accordingly, any written, oral, implied or explicit consent DDA may have obtained from clients or their guardians for Aacres to assume service delivery was based on a misrepresentation of fact.

While it is clear that Embassy desires to continue its funding to serve all SL Start clients, we hope that DDA’s goals are to ensure clients are enabled to make educated choices about which provider is most qualified to meet their needs. Instead, DDA has enabled Embassy to cloak the truth, which conveniently decreases the burden on DDA to assist clients in finding new providers. DDA should ensure case managers conduct new ISP meetings with each SL Start client, provide them and their guardians a copy of the decertification letter, and fully disclose that agreeing to supports from Aacres will mean continuing to receive services from the same company and management that had been decertified. DDA should also convene meetings with other providers in Spokane, King, and Snohomish Counties to invite them to offer services to houses so that if clients wish, they can choose new providers without having to relocate.

If you would like to further discuss any of these concerns or you have any questions, please do not hesitate to contact me.

Sincerely,



Susan Kas

CC: Candace Goehring, Director Residential Care Services
Angela Coats-McCarthy, Assistant Attorney General

Encls: Exs 1-5