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SARAH A. REED
Children's Center
For a brighter tomorrow

Date: 11/15/2010

To Whom It May Concern:

I have some concerns about the new proposed psychiatric Residential Treatment Facility regulations. §23.54 (c) Medical Director, states the medical director shall be responsible for the following duties... There is a long list of duties, some of which are going to be performed by other psychiatrists; however, nowhere in the description does it state that another psychiatrist under the direction of the medical center director would be performing these with the exception of point 2 under item C. The remainder of them and the descriptions seem to point to the medical director performing all of these tasks, which of course is impossible.

If the meaning and intent was that the medical director would provide supervision for another psychiatrist who was actively seeing and having contact with the children, staff, family, and so on, including the preparation of written psychiatric evaluations, this would certainly be reasonable. This section is not clear regarding this matter. To have the medical director perform all those tasks single handedly is most certainly not reasonable since we also have other areas where we see children other than residential.

Sincerely,

Kirstin E. Brunner D.O.
Medical Director
Sarah A. Reed Children's Center

KEB/kd

November 22, 2010

Shaye Erhard
Office of Mental Health and Substance Abuse Services
233 Beechmont Bldg.
DGS Complex,
P. O. Box 2675
Harrisburg, PA 17105-2675

Dear Mr. Erhard,

This letter and the enclosed supporting documentation contain comments regarding some of the requirements of the state's proposed RTF regulations and their impact locally and regionally, as well as their effect on our agency, Sarah A. Reed Children's Center. We agree with the need for regulations regarding RTF's and find most of the requirements contained therein to be satisfactory. We support PCPA's and PCCYF's position on the proposed regulations. I appreciate this opportunity to respond.

Areas of concern, which are described in greater detail in the enclosed documentation include:
§23.14 Maximum Capacity – limiting an RTF to a total of 48 beds will decrease the availability of resources for children and adolescents who need this level of treatment, and increase the potential for out-of-state placements;
§23.17 Reportable Incidents – maintaining a copy of the reportable incident report for 6 years in the business office of the RTF *would violate HIPPA as business offices should not have access to confidential information;*
§23.54 Medical Director – one Medical Director who is responsible for overseeing the delivery of services and programs to children. *This holds the medical director responsible for all client care, without consideration for staff or consulting psychiatrists employed by the facility. The increased psychiatric time per child will increase costs to cover psychiatric fees, if psychiatrists are even available to hire;*
§23.56 Mental Health Professional – supervision of the Mental Health Worker *has an impact regarding those supervisors currently employed with Bachelor's degrees and RTF work experience who would be displaced, and the higher cost of additional Master's level staff;*
§23.57 Mental Health Worker and Mental Health Aide – the requirements 1 year of experience in children's behavioral health and 12 credit hours in psychology, sociology, social work, counseling, nursing, education, or theology *limits the workforce available to work in the RTF program;*

§23.58 Staff Ratios – it *is not clear if the Mental Health Aide can be counted in the ratio*;
§23.307 General Payment Policy – (b) Limitations on payment(a) (ii) payment for hospital-reserved bed days is limited to 15 days per calendar year, per child, and (c) payment is not made to an RTF for: (v) therapeutic leave, *has an economic impact in that the facility will lose the bed rate for days a child is hospitalized or on therapeutic leave (this is an important part of a child's treatment and transition to their discharge environment);*
§23.301 Allowable Costs … Effective date of coverage, *the outline structure in these sections do not conform to the structure used throughout all other segments of the proposed regulations;*
§23.301 Allowable Costs *(a)* (c) General administrative costs are limited to 13% of total MA eligible costs less…*limiting the size of a total facility to 48 beds causes a number of providers to reduce the number of beds in operation, and with fewer beds to allocate administrative costs over, the average administrative cost on each unit of service increases;*
§23.301 Allowable Costs *(*d) Compensation and staffing costs (a) Compensation for direct care, administrative, and support staff is allowable up to the combined prevailing Commonwealth salaries and benefits for functionally equivalent positions… *There is no explanation on how to access this information to manage our compensation costs;*
§23.301 Allowable Costs (i) Depreciation Allowance (d) (ii), *The regulation does not clarify if the provider is free to choose the most appropriate useful life form, and (10) through (15) are mislabeled they should be (i) through (n);*
(§23.301 Allowable Costs (i) Depreciation Allowance 12) (ii) The cost basis of the depreciable assets that are acquired as used, shall be computed by the following method: (D) Costs incurred during the construction of an asset, such as architectural, consulting, and legal fees, interest, and fund raising shall be capitalized as part of the cost of the asset. *Costs described above are costs associated with the construction of a new asset not a used asset;*
§23.312 General rate setting policy. Establishment of a per diem rate. *2.* The per diem rate for an RTF will be established by dividing the total projected operating costs by the number of days of care reported in the cost report subject to a minimum of 85% of the maximum number of days based on the number of beds specified in the RTF's Certificate of Compliance. *To manage our occupancy effectively requires more flexibility in our capacity than the target occupancy of 85% provides. If we were to adjust our license capacity to 117.6% (1 divided by 85%) of our average occupancy, we would not have the bed capacity to accommodate our peak census considering gender and diagnosis needs of our clients;*
§23.312 General rate setting policy. (b) Establishment of a per diem rate. An adjustment factor for each fiscal year, specified by the department and announced in a bulletin published by the Department annually is used to project the amount in subparagraph (i) or (ii) for each fiscal year…. The adjustment factor is applied to the total operating costs on

the cost report in (i) or (ii) above. *This subpart refers to subparts (i) and (ii) which do not exist in section 23.312.*

The economic impact on Sarah A. Reed Children's Center after conducting an in-depth financial analysis:

- Without being able to identify the potential impacts on labor costs for regulations that will serve to limit the available labor pool, our facility reasonably expects to incur additional costs in the range of $466,000 to $776,000 per year. This represents a cost increase of 7.7% to 13% if the regulations are enacted as proposed.
- In addition to the above cost increase, we could loose between $300,000 and $600,000 in revenue annually. This represents a revenue reduction of 6% to 16% which we cannot replace by reducing costs because we would then be in violation of the staffing requirements; (77% of our operating costs are for labor).

Please review the entire content of this reply including the addendum. It contains additional commentary regarding the impact of the proposed regulations. There are also additional comments in the addendum, of importance to our agency and community, not included in the Executive Summary.

Thank you for the opportunity to comment on the proposed DPW regulations for Residential Treatment Facilities. I hope our reply is helpful toward the completion of the regulatory process.

Sincerely,

James D. Mando
President & CEO

Cc: IRRC; Senator Jane Earll; Shari Gross; Honorable Patrick J. Harkins; Honorable Florindo J. Fabrizio; County Executive Barry Grossman; John Hornaman; Connell O'Brien, Bernadette Bianchi

Addendum:

Regulatory Analysis Form
(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

Protection of the public health, safety and welfare:
- Will out of state providers be held to the same standards as PA providers must meet to be certain that PA providers are not at a competitive disadvantage to out of state providers?

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

Since accreditation is proposed to be a requirement for participation in the MA program, Some RTFs that currently participate in the MA program may incur greater costs as a result of the proposed accreditation requirements, number of units per facility, staffing ratios, higher staff qualifications, and increased training requirements, but the rate-setting policies address the additional costs associated with these requirements

The economic impact of this regulation:
- Without being able to identify the potential impacts on labor costs for regulations that will serve to limit the available labor pool, our facility reasonably expects to incur additional costs in the range of $466,000 to $776,000 per year. This represents a cost increase of 7.7% to 13% if the regulations are enacted as proposed.
- In addition to the above cost increase, we could loose between $300,000 and $600,000 in revenue annually. This represents a revenue reduction of 6% to 16% which we cannot replace by reducing costs because we would then be in violation of the staffing requirements; (77% of our operating costs are for labor).

Requirements (from the introduction to the proposed rule making document)
§§23.11-23.22
These sections address the general licensing and approval requirements for an RTF, including maximum capacity, fire safety, reportable and recordable incidents, consent to treatment and confidentiality of records. Section 23.14 (relating to maximum capacity) specifically provides for a maximum number of beds per unit and a maximum number of units per facility. RTFs that currently exceed the proposed maximums will have the opportunity to develop and implement a transition plan to reduce the number of beds.

The clarity, feasibility and reasonableness of this regulation:
- While this introductory discussion of the proposed regulation asserts that providers will be given the opportunity to develop a plan to come into compliance on the capacity limitation, there are no provisions included that outline how this process is to work; no time frame given for development of a plan; and no specification of the length of time allowed to meet full compliance.
- The bed capacity provision is the only provision for which any hint of an allowance for coming into compliance. There is no such provision made for any other changes. There also is no guideline provided to identify penalties for noncompliance.

§23.14 Maximum Capacity

(a) An RTF shall not exceed 4 units of 12 beds each for a total of 48 beds.

The economic impact of this regulation:

- Decrease in RTF employees will decrease the work force within the community.
- The decrease in the available RTF services may also result in an increase in children being admitted to acute care facilities which is more costly.
- Recently Erie County lost a facility which served the female population. An additional decrease in resources will only add to the potential shortage.
- Decreasing available RTF resources increase the risk of out-of-state placements.

Protection of the public health, safety and welfare:

- Decreasing available beds will most certainly force children to be served in settings that cannot appropriately meet their needs. (private homes, foster homes, CRR, etc.)
- Decreasing available beds may result in inadequate treatment resources which could result in over utilization of shelters or detention settings

§23.17 Reportable Incidents

(h) A copy of the reportable incident report shall be maintained for 6 years in the business office of the RTF.

The clarity, feasibility and reasonableness of this regulation:

- This would violate HIPPA as the business office should not have access to confidential client information.
- This does not consider that many facilities are moving to an "electronic record system" with regards to the location and access of client records.
- This regulation is already covered in §23.242, (1) (8), maintaining the information in the client case record.

§23.54 Medical Director

(a) There shall be one medical director who is responsible for overseeing the delivery of services and programs to children.

(b) The medical director shall be responsible for the following duties:

(1) Regular and ongoing contact with children and ore frequent contact for a child on medication, ensuring at least 2 hours per week of psychiatric time for every 5 children.

(2) Ensuring a psychiatric face-to-face visit with a child on psychotropic medication as deemed clinically appropriate, but not less frequently than every 30 days by the medical director or psychiatrist working under the direction of the medical director.

(3) Regular and ongoing contact with treatment staff to formulate and monitor the implementation of the child's treatment plans.

(4) Regular and ongoing face-to-face or phone contact with a child's family.

(5) Regular and ongoing contact, as appropriate, with external, community agencies and natural supports important to a child's life, including formal networking and face-to-face participation in ISPT and treatment team meetings.

(6) Preparation of formal, written psychiatric evaluations as required.

(7) Coordination and supervision of RTF staff on clinical and medial matters including the prescription and monitoring of psychotropic and other medications.

The clarity, feasibility and reasonableness of this regulation:

- The medial director is being held responsible for all client care. There is no consideration for staff or consulting psychiatrists employed by the facility.
- There is no definition of a psychiatrist therefore no guidance for a non-medical director position.

The economic impact of this regulation:

- Requiring psychiatric time per child will increase costs to cover psychiatric fees if the psychiatrists are even available to hire. The cost of the additional psychiatric hours we would need to add would be in the range of $30,000 to $40,000 providing we are able to contract for those hours at current rates.

§23.56 Mental Health Professional

(a) The mental health professional shall have the following duties:
  (1) Participating on the treatment team.
  (2) Ensuring the implementation of the treatment interventions, therapeutic activities, and schedule for the children.
  (3) Supervision of mental health worker.

(b) The mental health professional hall have the following:
  (1) A graduate degree in a generally recognized clinical, mental health discipline such as psychiatry, social work, psychology, counseling, nursing, rehabilitation or activities therapy.
  (2) At least 1 year of clinical experience working with children in a behavioral health program whose principles were in accordance with CASSP principles.

The clarity, feasibility and reasonableness of the regulation:

- Where are the therapists in this model? Previously the therapist provided individual, group and family therapy.
- The focus of roles/responsibilities has changed with these regulations. The focus of delivery of psycho- therapy services is lost. There is an increased focus on Supervision rather than direct clinical services. The Commonwealth just sponsored trainings for therapists to be trained in TFBCT. Additionally this raises concerns regarding training and ability to attract/retain clinical staff. Further the cost to hire well trained/skilled clinical supervisors to work across shifts.
- This regulation insults the staff members in place who have been promoted to supervisory levels.
- This position of 16 mental health professionals to supervise 24 mental health workers.
- What would be the specific role of the clinical supervisors during this supervisory time? What are the expectations of the supervisors?

The economic impact:

- This regulation will increase the cost of staff due to the educational requirements and the supervisory role.
- This regulation will increase the need for staffing this position to 16 master level professionals for 48 beds which will raise our costs by $126,000 annually.

§23.57 Mental Health Worker and Mental Health Aide

(a) The mental health worker shall be responsible for implementing therapeutic interventions.

(b) The mental health worker shall meet one of the following requirements:
  (1) Have at least 1 year of experience in a children's behavioral health program whose operating principles were in accordance with CASSP principles and a bachelor's degree, with at least 12 credit hours of education in psychology, sociology, social work, counseling, nursing, education or theology.
  (2) Be a licensed registered nurse and have at least 1 year of experience in a children's behavioral health program whose operating principles were in accordance with CASSP principles.

(3) Have a high school diploma or equivalent and at least 4 years of experience in a children's behavioral health program whose operating principles were in accordance with CASSP principles.

(c) A mental health aid shall have a high school diploma or general education development certificate.

The economic impact of this regulation:

- A decrease the available workforce within the community.
- Severely restricting the work pool from which the agency may hire; obviously, any environmental factors that reduce the supply of available workers cause an increase in the cost of retaining and attracting workers from that pool.
- The areas of focus and credit hours required will eliminate many potential candidates.

§23.58 Staff Ratios

(c) Staff to child ratios.

(1) There shall be at least one mental professional available either onsite or by telephone when a child is at the RTF.

(2) During awake hours, 1 mental health worker shall be present with every 4 children.

(4) For RTFs serving 6 or more children, whenever 6 or more children are present at the RTF, there shall be at least one mental health professional for every 6 children Present at the RTF during awake hours.

The clarity, feasibility and reasonableness of the regulation:

- It is not clear if the mental health aid can be counted in the staff ratio. Is the aid only counted on third shift?

The economic impact of this regulation:

- Hiring a properly degreed individual who does not have the year experience will function as an "aide" and cannot be counted in the staff ratio therefore the agency must increase the number of staff to cover this deficiency. The estimated additional cost to schedule the 10 to 20 new hires for one full year before they can be counted in our staff ratios is $300,000 to $600,000 per year.

§23.301 to §23.31 Allowable Costs ... Effective date of coverage

The clarity, feasibility and reasonableness of the regulation:

- Numerous formatting and section numbering errors need to be corrected.
- Outline structure with subsection (a) being followed by (a) is unnecessarily confusing.
- The outline structure in these sections do not conform to the structure used throughout all other segments of this proposed regulation

§23.301 Allowable Costs

(a) (c) General administrative costs are limited to 13% of the total MA eligible costs less general administrative costs and less depreciation and interest on capital indebtedness.

The clarity, feasibility and reasonableness of the regulation:

- There is no clear rationale for establishing a percentage limit on administrative costs. There is no reference to any studies conducted that arrived at this limit as a best practice or comparatively efficient operation for a maximum 48-bed program.

The economic impact of this regulation:

- By limiting the size of a total facility to 48 beds, this proposal causes many providers to reduce the number of beds in operation. With fewer beds to allocate administrative costs over, there is an inevitable increase in the average administrative cost on each remaining service unit.

§23.301 Allowable Costs
(d) Compensation and staffing costs
(a) Compensation for direct care, administrative, and support staff is allowable up to the combined prevailing Commonwealth salaries and benefits for functionally equivalent positions…

The clarity, feasibility and reasonableness of the regulation:
- There is no explanation as to how access to this data will be made available to providers to enable us to manage our compensation costs within this structure.

The economic impact of this regulation:
- Without access to this current data, we are unable to calculate the potential impact from this cost limitation and are likewise unable to effectively manage our compensation programs considering this limitation.

§23.301 Allowable Costs
(i) Depreciation Allowance
(d) (ii) The useful life may not be less than the relevant useful life published by the Internal Revenue Service or the Uniform Chart of Accounts and Definitions for Hospitals published by the American Hospital Association for the particular asset on which depreciation is claimed.

The clarity, feasibility and reasonableness of the regulation:
- The regulation does not clarify if a provider is free to choose the most appropriate useful life form these two sources, or will the Department have the latitude of consistently adopting the longer life despite any prevailing facts & circumstances.

The economic impact of this regulation:
- AHA useful lives are notoriously long. Since the regulations proposed at 23.301(i) (11) states any "losses on the sale or disposal of fixed or moveable assets will not be reimbursed under the program" providers are at significant risk of losing reimbursement of the cost of assets that wear out prematurely or that simply do not last as long as the proscribed life.

§23.301 Allowable Costs
(i) Depreciation Allowance

The clarity, feasibility and reasonableness of the regulation:
- (10) through (15) are all mislabeled. They should be (i) through (n) unless all section codes are revised to conform to the rest of the document.

§23.301 Allowable Costs
(i) Depreciation Allowance
(10) Gains on the sale of fixed and moveable assets are considered to be equal to the salvage value which shall be established prior to the sale of the item. Gains on the sale of fixed and moveable assets shall offset allowable costs for the period in which the gain was realized. Losses incurred on the sale or disposal of fixed or moveable assets will not be reimbursed under the program.

The clarity, feasibility and reasonableness of the regulation:
- Salvage value in accounting is a value determined at acquisition of an asset and is not recovered through depreciation allowances but by the ultimate sale of the asset. The target value of an asset at disposition is more commonly referred to as fair market value. The concepts are different enough that the intent needs to be clarified. The guidance should encourage disposal of an asset at fair market value with at least any salvage value recognized at acquisition being excluded from the proceeds that are subject to offset against costs.

- Offsetting gains and disallowing losses encourages the use of shorter useful lives to avoid losing legitimate payment for capital costs; a better approach would be to at least offset gains & losses within a reporting period; also the Medicare HIM-15 rules allow losses on disposal by recalculating depreciation at the shorter life confirmed by the asset's disposal.

§23.301 Allowable Costs
(i) Depreciation Allowance
(12) (ii) The cost basis of the depreciable assets that are acquired as used, shall be computed by the following method:
(D) Costs incurred during the construction of an asset, such as architectural, consulting, and legal fees, interest, and fund raising shall be capitalized as part of the cost of the asset.

The clarity, feasibility and reasonableness of the regulation:
- The costs described above are costs associated with the construction of a new asset not a used asset.
- Capitalization of the identified costs in conjunction with the acquisition of a used asset contradicts generally accepted accounting principles.
- This part should be eliminated.

§23.301 Allowable Costs
(k) Rental Costs
(c) Exceptions to paragraph (2) are allowed if the rental costs are based on a fair market rental appraisal as outlined in paragraph (5), or documented costs of ownership, except that return on equity is not permitted....

The clarity, feasibility and reasonableness of the regulation:
- The references to paragraph (2) and later to paragraph (5) are references to numbers not used anywhere in section 23.301. Should these refer to paragraphs (b) and (e) respectively?
- Part (k)(c) says return on equity is not permitted then (k)(f)(ii) & (iii) explains the return on equity calculation. No rationale is provided for not allowing a return on equity.
- There are several suggestions to use appraisals to determine allowable costs for assets used in the RTF; it would be helpful if the regulation affirms that all the recommended appraisals are allowable capital costs.

§23.301 Allowable Costs
(l) Vehicle costs.
(f) Daily logs detailing use of vehicles as well as the maintenance activities and cost shall be maintained by the RTF.

The clarity, feasibility and reasonableness of the regulation:
- Maintaining a daily log of vehicle use for vehicles garaged at the facility is not required to identify non-business use. A log of non-business use is sufficient to determine the non-allowable miles of the total miles used during the year.

§ 23.302 Income and offsets to allowable costs.
(a) (6) If a child is eligible to participate in the Supplemental Nutrition Program (SNAP), it is the RTF's responsibility to contact the local county assistance office and utilize food stamps accordingly.

The clarity, feasibility and reasonableness of the regulation:

- Based on my conversation with the Statewide Customer Service Center, a person who is institutionalized and receiving more than 50% of their meals from that institution is not eligible for food stamps. Furthermore, a child cannot apply for benefits on his or her own. Benefits must be applied for as a family unit and the family allowance cannot be split.
- Based on the above explanation of federal and state laws, this provision violates existing law and there fore should be eliminated..

§23.307 General Payment Policy

(b) Limitations on payment.

(a) Payment for hospital-reserved bed days:

(ii) Payment for hospital-reserved bed days is limited to 15 days per calendar year, per child, whether the child was in continuous or intermittent treatment at one or more RTFs during the calendar year.

(c) Payment is not made to an RTF for:

(b) A day of care during which the child was absent from the facility:

(v) Therapeutic leave.

The economic impact of this regulation:

- A facility will lose the bed rate for every day the child is hospitalized ($10,000 for our facility)
- A facility will lose the bed rate for every day that a child is on a therapeutic leave, which is an important component of the child's transition back to their discharge living environment. The revenue loss to our facility could be $300,000 to $825,000 if 10% to 25% of our clients are on therapeutic leave on any given weekend.

§23.312 General rate setting policy.

(a) Establishment of a per diem rate.

2. The per diem rate for an RTF will be established by dividing the total projected operating costs by the number of days of care reported in the cost report subject to a minimum of 85% of the maximum number of days based on the number of beds specified in the RTF's Certificate of Compliance.

The clarity, feasibility and reasonableness of the regulation:

- To manage our occupancy effectively requires more flexibility in our capacity than the target occupancy of 85% provides. If we were to adjust our license capacity to 117.6% (1 divided by 85%) of our average occupancy, we would not have the bed capacity to accommodate our peak census considering gender and diagnosis needs of our clients.

§23.312 General rate setting policy.

(b) Establishment of a per diem rate.

3 b. (iii) An adjustment factor for each fiscal year, specified by the department and announced in a bulletin published by the Department annually is used to project the amount in subparagraph (i) or (ii) for each fiscal year.... The adjustment factor is applied to the total operating costs on the cost report in (i) or (ii) above....

The clarity, feasibility and reasonableness of the regulation:

- This subpart refers to subparts (i) and (ii) which do not exist in section 23.312.