2878

MHAPA
Mental Health Association in Pennsylvania
An Affiliate of Mental Health America

November 22, 2010

Stanley Mrozowski
DPW/OMHSAS
Harrisburg, PA 17105-2675
RE: Regulation #14-522; IRRC #2878
55 PA Code Chapter 23 Residential Treatment Facilities

Dear Mr. Mrozowski,

The Mental Health Association in Pennsylvania (MHAPA) works across the Commonwealth to promote mental health through advocacy, education and public policy. MHAPA has 17 local affiliates which provide local supports to residents, including families and their children, in over 30 counties, including all the major and moderate population centers, and rural and urban communities. State and local affiliate staff and volunteers have been active participants in the oversight of Pennsylvania's Children's Psychiatric Residential Facilities since their inception. The first child admitted in the Lawrence K. Settlement was the child of a MHAPA affiliate family advocate. Since that date, MHAPA and our affiliates have participated in ongoing efforts to assure that the PRTF's delivered quality care to children by assisting many thousand families to access such care, as well as being involved in systemic work including site visits and monitoring, and the drafting of now 3 versions of RTF regulations.(1993, 1999, and the current version.) We appreciate the opportunity partner with the Commonwealth once again in an effort to establish formal regulations to govern the care of children in a poignantly vulnerable placement.

We commend the Office of Mental Health and Substance Abuse Services, and particularly the Bureau of Children's Behavioral Health Services Staff for their hard work and diligence in the development of these long needed regulations, which we find reflects both the partnership with stakeholders in their creation and a commitment to objective research and evidence based practice. MHAPA believes that children are best served when they can remain in their homes and communities. Where they must be placed outside their home, there must be regulations to assure that the treatment they receive is effective and promotes their wellness and resiliency. .

Urgent Need for PRTF Regulations

It is by virtue of our direct advocacy with families of children who are considering placement or who have placed their children in Residential Treatment Facilities that we form our comments to the proposed regulations. Because the only regulations since Lawrence K. have been the*55 PA Code Chapter 3800, Child Residential and Day Treatment Facilities* 3800s, it has been frustrating and too often dangerously fruitless to advocate with families and their children, when problems with the quality of care arose. Some problems are minimal but undercut the potential benefit of the placement, such as access to phone contact between the child and parent. Other problems actually put a child's welfare in jeopardy, from a parent's inability to contact treating professionals, to a child experiencing problems with medication, and not having access to a psychiatrist for a medical review.

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Primary Concerns and Comments. (A second document accompanies this with specific changes to the regulatory language.)

PRTF Usage Reduction Must Not Jeopardize Children's Welfare

We emphasize that any reduction in use of PRTF's must be accompanied by an sufficient oversight and responsive strategies to assure that children who otherwise would have received services in PRTFs and their families can access needed services in less intrusive settings of home and community.

While there has been consistent transfer of funding to the community for adults moving out of state hospital facilities through the Community/Hospital Projects Program (CHIPPS) and other programs, no such funding reallocation followed the closing of the two children's state psychiatric facilities (Eastern State and Mayview). Indeed, MHAPA affiliate the Mental Health Association in Southeastern PA, was contracted by OHMSAS to follow children discharged at the Eastern State closing and the results were so dire that the study was never made public, with a majority of the children ending up involved with the justice or welfare system. The new PRTF regulations purport to be intended to increase quality and deter unnecessary use of PRTFs, by the use of practices that improve oversight, implementation and opportunities to align with evidence based practice. Responsible Commonwealth entities accept responsibility that any shift away from placing children in institutions, must be accompanied by diligent monitoring of the capacity of community services to meet the needs of diverted children.

Family Advocate Clarification Needed

We are proposing strengthened language for the provision requiring a family advocate in PRTFs. This has been an urgent request from families as long as there have been PRTFs in Pennsylvania. When families finally reach a MHAPA family peer advocate, they inevitably express relief at having found someone who has been through the experience, and frustration that it has taken so long to find not only a peer, but a peer who is trained to help them access the information, supports and skills they need to effectively partner in their child's care.

MHAPA recommends that the Regulations be amended to:

1) Conform to the national standard for family peer advocacy as defined by High Fidelity Wraparound, the SAMSHA System of Care, and the National Initiative for Parent Support Providers[1], including using standards for training and parameters of duties.
2) Establish a provision that youth may access Youth Peer Specialist services as part of their PRTF treatment.
3) Establish that the duties of the Family Advocate must be focused on supporting families, and that any additional duties be provided only after family advocacy duties are met.

Establishing a family advocate service in PRTFs must conform to the children's system wide adoption evidence based quality services. It is provident that there now exists an initiative

[1] http://www.ffcmh.org/what-we-do/certification-2/faq/ , SAMSHA/National Federation of Families for Children's Mental Health

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which is working to establish standards, training and certification for family advocacy practice. MHAPA believes these regulations should adopt language and standards from The National Initiative for Parent Support Providers, a joint initiative of the US Substance Abuse and Mental Health Services Administration (SAMHSA) and the National Federation of Families for Children's Mental Health (FFCMH) definition the position and it's scope of service as follows:

Definition of "parent" for the person who applies for a parent support certificate
Parent is a person who is parenting or has parented a child experiencing mental, emotional or behavioral health disorders and can articulate the understanding of their experience with another parent or family member. This person may be a birth parent, adoptive parent, family member standing in for an absent parent or a person chosen by the family or youth to have the role of parent.

Scope of the service provided under the parent support certificate
The **focus of the service** is on empowering parents and caregivers to parent and advocate for their child or youth with serious emotional disturbance, mental health disorder or behavioral health related disorders.

The **scope of the service** involves assisting and supporting family members to navigate through multiple agencies and human service systems (e.g. basic needs, health, behavioral health, education, social services, etc.). It is strength-based and established on mutual learning from common lived experience and coaching that:

- promotes wellness, trust and hope
- increases communication and informed decision making and self-determination
- identifies and develops advocacy skills
- increases access to community resources and the use of formal and natural supports and
- Reduces the isolation that family members experience and the stigma of emotional, behavioral and mental health disorders.

Sincerely,
Wendy Luckenbill
Child Policy Coordinator
Mental Health Association in Pennsylvania

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MHAPA PRTF Comments

Specific Recommendations For Clarification Or Alteration Of Regulatory Language

November 22, 2010

Bulletin, Doc. No. 10-2002
http://www.pabulletin.com/secure/data/vol40/40-43/2002.html[11/11/2010 8:55:33 AM]

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PROPOSED RULEMAKING

[?55 PA.?CODE CHS. 23, 3800 AND 5310?]

Residential Treatment Facilities

[40 Pa.B. 6109]
[Saturday, October 23, 2010]

Accomplishments and Benefits
The proposed rulemaking benefits children under 21 years of age who need behavioral health services in the more restrictive level of care provided in an RTF (It has not been established unequivocably that the" more" intensive level of care is only available in an PRTF. The proposed rulemaking promotes quality treatment in meeting a child's needs and assisting in making the transition to a less-restrictive setting. Children and their families will benefit from the enhanced standards for behavioral health services proposed in this chapter.

§ 23.3. Definitions.

Family peer advocate—A family member with the lived experience of having a child who is currently receiving or has received behavioral health services from a child-serving system and who has the skills and knowledge to be able to support families in effective partnerships with child serving systems and services for the benefit of their child and family. Family peer advocacy is a practice that has evolved as part of children's system reform and is based on the culmulative experience of families who have identified this as a unique and critical service based in the peer to peer philosophy in all self-help fields, including adult mental health and substance abuse recovery programs.

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§ 23.4. Waivers.

(a) An RTF may submit a written request for a waiver of any provision of this chapter, except as specified
in subsection (b), on a form prescribed by the Department, and the Department may grant a waiver of one
or more provisions of this chapter if the RTF demonstrates the following:

(1) ~~(1)~~ A waiver will not jeopardize the health or safety of a child.

(2) Affected children's families are notified of the request for the waiver and are given opportunity to comment on the action.

(3) Families are given information on how why they can initiate a waiver request, where the needs of their child require such action.

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§ 23.16. Child abuse.

(c) Notice to the familyof the report and must occur within 24 of the report, in writing and by phone, with all specific information unless restricted by applicable confidentiality statutes, regulations or a court order.,

§ 23.17. Reportable incidents.

(3) A child's unauthorized absence from the premises, if police have been notified..

(i) An RTF shall notify the child's parent and, when applicable, the child's guardian or custodian, as soon
as possible, and in no case later than 24 hours after a reportable incident relating to a specific child, by phone and in writing, with all specific information unless restricted by applicable confidentiality statutes, regulations or a court order

(2) An RTF shall document in the child's record that the death was reported to the CMS regional office.

(k) An RTF shall notify the child's parent and, when applicable, the child's guardian or custodian of a
child who has been restrained as soon as possible after the initiation of each emergency safety intervention, by phone and in writing, but no longer than 24 hours.~~.~~

(l) A report of a serious occurrence must comply with the following:

(4) The ~~In the case of a minor, an~~ RTF shall notify the child's parent in phone and in writing and, when applicable, legal guardian or

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custodian as soon as possible, and in no case later than 24 hours after the serious occurrence. In the case of a resident who has reached the age of majority, the RTF shall have record of consent to notify a contact designated by the resident in the case of any emergency or serious, or reportable incident.

§ 23.18. Recordable incidents.

An RTF shall maintain for 6 years in the business office of the RTF, a record of the following:
(8) Notice to the familyof the incident and must occur within 24 of the report, in writing and by phone, with all specific information unless restricted by applicable confidentiality statutes, regulations or a court order..

§ 23.20. Consent to treatment.

(a) An RTF shall comply with the following statutes and regulations relating to consent to treatment, to the
extent applicable:
(1) 42 Pa.C.S. §§ 6301—6365 (relating to the Juvenile Act).
(2) The Mental Health Procedures Act (50 P.?S. §§ 7101—7503).
(?) No child shall be told at age 14 that they have the exclusive right to consent or decline mental health treatment, in conformation with the specifics of consent in the Mental health Proceedures Act and Act 147.
(b) The following consent requirements apply, unless in conflict with the requirements of the statutes and
regulations specified in subsection (a):
(3) These consents do not absolve the RTF from reporting to the family routine and nonroutine health care to the family within one week of it being provided, and when it is scheduled should notify the family on the same day as it is scheduled. All notice shall be in writing, and document the date of care, the type of care, and any planned follow-up.
(43) Consent for emergency care or treatment is not required.

§ 23.21. Confidentiality of records.

(a) An RTF shall comply with the following statutes and regulations relating to confidentiality of records,
to the extent applicable.

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(1) The Child and Family shall receive sufficient expl23 Pa.C.S. §§ 6301—6386 (relating to the Child Protective Services Law).
(2) 23 Pa.C.S. §§ 2101—2910 (relating to Adoption Act).

CHILD RIGHTS

§ 23.31. Notification of rights, grievance procedures and consent to treatment protections.

(b) A copy of a child's rights, the grievance procedures and a list of organizations that can assist in lodging grievances, and applicable consent to treatment protections shall be posted in ~~a~~a ll conspicuous and public places at the RTF.

§ 23.32. Specific rights.

(a) Complete notice of the child and family rights shall be clearly posted in all common rooms, and be provided in writing on admission, at any planning meeting, at any event concerning an infraction or incident, and at discharge. This notice shall also list applicable agencies where the child or the family may call to receive assistance in understanding and accessing their rights.
(?)A child may not be discriminated against because of race, color, religious creed, disability, handicap, ancestry, sexual orientation, national origin, age or sex.
(e) A child has the right to communicate with others by telephone subject to RTF policy approved by the Department, and written instructions from the CCYA, JPO or court regarding circumstances, frequency, time, payment and privacy of telephone calls.
(?) A child may have the use of a personal cellular phone, as provided by their family. Use of such a device must be addressed within their Individual Service Plan, with specific conditions where such use is appropriate, where the phone shall be stored, and how the use shall occur.
(g) A child has the right to receive and send mail. The facility may also allow safe and responsible use of email.
(3) Incoming mail from persons other than those specified in paragraph (2), may not be opened or read by

Comment [W1]: In 2010, It is important to address the ability of a child to have responsible and safe access to a personal cell phone. Such a device can eliminate the barrier in the past that calls to home is a cost to the RTF. It can also be used as part of the therapeutic process to support communication between the child and the family.

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staff, unless the RTF has reasonable suspicion that contraband, or other information that may jeopardize
the child's health, safety, or well-being, may be enclosed. If the RTF has reasonable suspicion that
contraband, or other information that may jeopardize the child's health, safety, or well-being may be
enclosed, mail may be opened by the child in the presence of staff.

(m)The family and child shall have ultimate right to consent or refuse medication, per the consent to treatment laws and regulations in § 23.20

(?)A child shall be free from excessive medication.

(n) A child may not be subjected to ~~unusual or extreme~~ methods of discipline which may cause psychological or physical harm to the child.

§ 23.33. Prohibition against deprivation of rights.

(c) A child's visits with family may not be used as a reward or sanction.

(d) Per Mental Health Act and Act 147, child or family may not be deprived of their rights, including discontinuation of parts or the entirety of treatment where there is disagreement of components, including administration of medications. Where a RTF believes that such disagreement has made benefit unobtainable, then the RTF must demonstrate written documentation of efforts to reach consensus, and where that is not achieveable, the RTF must demonstrate written documentation of alternatives that the family and child may access to ensure that any interruption of services is not detrimental to the child.

§ 23.34. Notification of RTF restraint policy.

At admission, an RTF shall:

(1) Inform in writing and verbally both the child, the child's parent and, when applicable, the guardian or custodian, of the RTF's
policy regarding the use of restraint during an emergency safety situation that may occur while the child is

at the RTF. This policy shall also list applicable agencies where the child or the family may call to receive assistance in understanding and accessing their rights regarding restraints.

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(5) Provide contact information, including the phone number and mailing address, for the federally designated state Protection and Advocacy System (Disabilities Rights Network of Pennsylvania or its counterpart)
(6) The restraint policy shall also be posted in all common rooms, and available in writing to the child or family upon request at any time.

FAMILY PARTICIPATION

§ 23.41. Family participation in the treatment process.

An RTF shall ensure that a child's family is given the opportunity to participate fully in the planning for
delivery of services to the child as evidenced by the following:
(3) Demonstrated opportunities for frequent and regular family contact including daily telephone calls and
at least weekly visits at the family home or at the RTF, as well as community activities with the family
within and outside the RTF to be determined as part of the treatment planning. Where consistant with treatment goals, these visits may be daily.
(4) ~~(4)~~ Demonstrated strategies and opportunities for the family and child to engage in positive interactions with each other which strengthen and enhance their relationship.
(5) Family therapy for the benefit of the child, as well as parent support and education groups involving
parents and, when applicable, guardians or custodians, as appropriate, shall be provided on behalf of the ~~to a~~ child as part
of the overall treatment offered in the RTF and documented in the child's record.
(5) Efforts to link the child and family with community resources, both formal human service systems and
informal community supports. An RTF shall base the choice of community linkages outside the RTF on
the planned expectation that the child will be returning to the community and will need support to assist a
child in making a smooth transition. Community linkages shall reflect the strengths, interests, and needs of the child and family, be culturally appropriate and relevant, accessible and of quality. These linkages may be identified by the family, child, and community support agencies.
(7) Participation of the family in making appropriate decisions about the child's goals, activities and schedule.

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(8) Having a formal process for families to resolve disagreements about the treatment plan or the delivery
of service, including referral to entities with oversight responsibility.
(9) An RTF shall ensure that an onsite meeting with the parents and, when applicable, the guardians or custodians, is arranged within the first 7 days of the child's admission including day of admission, unless the family is present on the day of admission. The following information shall be discussed with the family at the time of the onsite visit:
PA Bulletin, Doc. No. 10-2002
http://www.pabulletin.com/secure/data/vol40/40-43/2002.html[11/11/2010 8:55:33 AM] Where the family is unable to travel, the RTF shall hold a meeting at a place and time convient to the family. The facility may convene a meeting via internet video, where no other alternative is available. Reasons for not meeting onsite shall be clearly documented in the child's record, and be based on the needs of the family, not the facility.
(i) Family expectations regarding the child's treatment and goals post discharge.
(ii) The need to jointly develop a written family participation plan that identifies specific goals for family
participation in the child's ongoing treatment, to be reviewed and updated at least monthly, based on input from the family and child, as well as guidance from the treatment staff and others legally mandated to participate.. ~~,~~
(v) Information about child, youth and family advocacy and civil rights organizations, local youth and family advocacy projects and consumer satisfaction teams that are available to assist in the lodging of grievances.

§ 23.43. Space onsite for family visits.

An RTF shall have at least one designated area onsite for family visits that offers privacy for the child and
Family and is developmentally and culturally appropriate~~.~~

STAFFING

§ 23.51. Child abuse and criminal history checks.

Child abuse and criminal history checks shall be completed for all staff in accordance with 23 Pa.C.S. §§
6301—6386 (relating to the Child Protective Services Law) and Chapter 3490 (relating to child protective
services) prior to the staff having direct contact with the children residing in the facility~~.~~

§ 23.53. RTF director.

(c) The director shall have one of the following:

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(3) A working knowledge of the PA Children's Systems of Care, and promising and evidence based practices currently available or emerging in the Commonwealth.

§ 23.54. Medical director.

(c) The medical director shall be responsible for the following duties:
(3) Regular and ongoing contact with treatment staff to formulate and monitor the implementation of the
child's treatment plans. (needs specifics- such as – No less than 15 minutes a month for every child currently on medication or being considered to for a medication regime)
(4) Regular and ongoing face-to-face or phone contact with a child's family. – No less than 15 minutes a month for every child currently on medication or being considered to for a medication regime).
(8) A working knowledge of the PA Children's Systems of Care, and promising and evidence based practices currently available or emerging in the Commonwealth.

§ 23.55. Clinical director.

(b) The clinical director shall be a masters level licensed psychologist, a masters level -licensed clinical social worker, or a masters level licensed marriage and family therapist, with at least 2 years of experience providing therapeutic interventions to
children with serious emotional or behavioral disorders.
(d) A working knowledge of the PA Children's Systems of Care, and promising and evidence based practices currently available or emerging in the Commonwealth.

§ 23.56. Mental health professional.

(b) The mental health professional shall have the following:

(3) A working knowledge of the PA Children's Systems of Care, and promising and evidence based practices currently available or emerging in the Commonwealth.

§23.60. Family advocacy.

(a) For every 48 children, an RTF shall have on staff, or contract for the services of, a full-time equivalent family advocate. If an RTF serves fewer than 48 children, the RTF shall have on staff, or contract for the services of, a family advocate whose work hours are pro-rated according to the number of children in the RTF.
(b) The responsibilities of the family advocate include the following:

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~~(1) Participating in quality improvement activities.~~
~~(2) Ensuring restraint reduction activities.~~
(1~~3~~) Promoting the observance of children's and families rights within the facility and across all the child serving systems..
(2~~4~~) Reviewing of grievances from families and children.
(3~~5~~) (7) Facilitating family involvement plans.
(4) Participating in ISPT meetings at family request.
(5) Meeting with families and children regularly
(6)Ensuring availability to families and children as requested.
(7~~6~~) Monitoring of general conditions within the facility for safety and capacity to support children's health, wellness and dignity.
~~(7) Facilitating family involvement plans.~~
~~(8) Participating in ISPT meetings at family request.~~
~~(9) Meeting with children regularly~~
(8)) Supporting families and children to effectively access community resources and the use of formal and natural supports.
(9~~1~~) Participating in quality improvement activities within the facility.
(10) Participating in restraint reduction activities within the facility.

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Erhard, E. Shaye 14-522-30

From: wendy luckenbill [wluck@comcast.net]
Sent: Monday, November 22, 2010 3:08 PM
To: smrozowksi@state.pa.us; Erhard, E. Shaye
Subject: MHAPA RTF Comments (2)
Attachments: MHAPA PRTF Comments 2010.docx; MHAPA PRTF Comments- Specific reg changes 2010.docx

Dear Stan and Shaye,

Attached are my general comments, and also suggested changes to regulatory language, in track changes.

Thank you, Wendy

Wendy Luckenbill
Child Policy Coordinator
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