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2013 APR -1 AM 9: 59

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April 1, 2013

Silvan B. Lutkewitte, III
Chairman
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Dear Chairman Lutkewitte,

I am writing to you on behalf of my client, the Pennsylvania Society for Clinical Social Work (PSCSW) in reference to Final-Form Regulation #14-521 issued by the Department of Public Welfare (DPW). Reluctantly, PSCSW must ask the Commission to disapprove the regulation and return it to DPW for amendment.

In the more than two years between the Commission's review of the proposed regulation and DPW's transmittal of the final-form regulation, many changes were made in response to comments from the Commission and other interested persons and organizations. PSCSW had no issues with the proposed regulations, but one of the changes made since that time has raised a serious issue that did not previously exist.

The change in question is the addition of a definition for the term "Licensed practitioner of the healing arts" (LPHA) on page 6 of the regulation. The definition reads: *"Licensed practitioner of the healing arts—An individual licensed by the Commonwealth to practice the healing arts, which for the purposes of this chapter shall be limited to a physician, physician's assistant, certified registered nurse practitioner and psychologist."*

In the context of the regulation, in order for an individual receiving mental health treatment to become eligible to receive psychiatric rehabilitation services (PRS) he/she must be referred and recommended for those services by an LPHA. With the term defined as it is, only persons licensed in one of those professions can make the referral or recommendation. We have no argument with the inclusion of any of the four professions. The concern of PSCSW is the omission of licensed clinical social workers (LCSWs) from the list.

Under state law, LCSWs are licensed providers of mental health services. The practice of clinical social work is defined in law as:
"Holding oneself out to the public by any title or description of services incorporating the term "licensed clinical social worker" or using any words or symbols indicating or tending to indicate that one is a licensed clinical social worker and under such description offering to render or rendering a service in which a special knowledge of social resources, human personality and capabilities and therapeutic techniques is directed at helping people to

achieve adequate and productive personal, interpersonal and social adjustments in their individual lives, in their families and in their community. The term includes person and environment perspectives, systems theory and cognitive/behavioral theory, to the assessment and treatment of psychosocial disability and impairment, including mental and emotional disorders, developmental disabilities and substance abuse. The term includes the application of social work methods and theory. The term includes the practice of social work plus additional concentrated training and study as defined by the board by regulation."

As a result, LCSWs provide mental health services to a wide variety of persons with a broad range of conditions, some of whom could benefit from receiving PRS. However, if the regulation were to be approved, an LCSW would have to first refer the patient to a psychiatrist or a psychologist. This would cost the patient in four ways:

- In many cases the LCSW knows the patient better than any other provider. Because of the nature of clinical social work practice, an LCSW often spends more face-to-face time with the patient and is thereby better able to evaluate the patient's needs.
- The patient would have to have at least one and possibly multiple appointments with a psychiatrist or psychologist. This will involve an extra time commitment from the patient and possibly a lengthy delay in the patient starting to receive PRS.
- There would be a cost increase, both because of the extra appointment(s) and the fact that psychiatrists and psychologists are more expensive providers than LCSWs. Part of the cost in most cases would be borne by the patient's health insurer, but at a time when everyone is trying to reduce the cost of health care this seems to be an unnecessary expense.
- Appointments with a psychiatrist or a psychologist may be very inconvenient for the patient because the geographic distribution of LCSWs across the state is much greater than that for either of the other two professions.

In preparing these comments we have endeavored to find out why DPW defined LPHA the way it has. Initially we were told that DPW took the language from an already existing definition in the Department of State (DOS). We have not been able to find that definition, and no one I have spoken to in DOS is familiar with it. I have requested a specific citation for the language from DPW, but as of this writing I have not received it.

We did a search of Pennsylvania statutes for the term "licensed practitioner of the healing arts" and found only two definitions. One is in the Dental Law and pertains solely to dentists and dental hygienists. That is clearly not relevant here. The other is in Title 35, Health and Safety. It defines the term as "Any person who engages in the diagnosis or treatment of disease or any ailment of the human body." That is so broad as to include any licensed health care provider and goes far beyond what DPW is proposing, and far beyond what is necessary or desirable for this regulation.

What it seems to come down to is that DPW omitted the LCSWs because the scope of practice of clinical social work (above) does not specifically say that LCSWs can refer or recommend patients for further treatment and that there is no mention of LCSWs being able to engage in diagnosis of patients. That is true, but a couple of points need to be made.

- First, while referral, recommendation and even diagnosis are not specifically allowed, they are also not specifically prohibited.
- Second, LCSWs routinely engage in all three activities. In fact in some cases failure to do so would constitute a violation of their licensure law. For example, if an LCSW encounters a patient who presents with a condition, the treatment of which is beyond the LCSW's training, education and scope of practice, the

LCSW is required by law to refer that patient to another health care provider. That requires the LCSW to engage in both diagnosis and referral.

- In a similar manner, before an LCSW can treat or provide any mental health services for a patient whose condition does fall within the scope of practice of clinical social work, the LCSW must determine what that condition is. While a variety of terms can and are used to describe this process, diagnosis is certainly one of them.
- For those patients who have insurance that covers mental health treatment, the LCSW must fill out a form to be submitted to the insurer. That form, called the DSM-IV-TR, is exactly the same form that both psychiatrists and psychologists use when seeking insurance reimbursement for their patients. The form asks the licensed mental health provider for the diagnosis of the patient's condition.
- Finally, if the standard that DPW is looking to employ requires that a professional be specifically authorized by the profession's licensure act to refer, recommend or diagnose, then the department will have to reconsider the inclusion of psychologists in the definition of LPHA. The Professional Psychologists Practice Act contains no reference to any of those activities in its definition of the "Practice of psychology".

In summary, PSCSW finds no justification for not including LCSWs in the definition of licensed practitioner of the healing arts. On the other hand, because of cost savings and improved access to care PSCSW feels that there is much to be gained by both the patients and DPW from including LCSWs in the definition.

Since we are at a point in the regulatory review process where DPW cannot simply withdraw the regulation, amend it and re-submit it without also having to start the entire process over from the beginning, we request that the Commission disapprove the final-form regulation to allow DPW the opportunity to amend it and resubmit it again in a short period of time as a final-form regulation.

On behalf of the Pennsylvania Society for Clinical Social Work, I thank you for the opportunity to comment on the final-form regulation. I anticipate that I will be in attendance at your meeting on April 4 to speak on this matter and to answer any questions you may have.

Sincerely,

R. David Tive