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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

February 15, 2011

Honorable Patricia H. Vance, Majority Chairman
Senate Public Health and Welfare Committee
168 Main Capitol
Harrisburg, PA 17120

Re: Regulation #14-521 (IRRC #2879)
Department of Public Welfare
Psychiatric Rehabilitation Services

Dear Senator Vance:

On December 22, 2010, we delivered our comments on the above-captioned regulation to Honorable Michael Nardone, then Acting Chairman, Department of Public Welfare. Because the General Assembly had adjourned *sine die*, we were precluded from providing you with a copy at that time.

Enclosed is a copy of our comments. If you have any questions, please contact me.

Sincerely,

Kim Kaufman
Executive Director
sfh
Enclosure

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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

February 15, 2011

Honorable Shirley M. Kitchen, Minority Chairman
Senate Public Health and Welfare Committee
463 Main Capitol
Harrisburg, PA 17120

Re: Regulation #14-521 (IRRC #2879)
Department of Public Welfare
Psychiatric Rehabilitation Services

Dear Senator Kitchen:

On December 22, 2010, we delivered our comments on the above-captioned regulation to Honorable Michael Nardone, then Acting Chairman, Department of Public Welfare. Because the General Assembly had adjourned *sine die*, we were precluded from providing you with a copy at that time.

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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

February 15, 2011

Honorable Gene DiGirolamo, Majority Chairman
House Human Services Committee
49 East Wing
Harrisburg, PA 17120

Re: Regulation #14-521 (IRRC #2879)
Department of Public Welfare
Psychiatric Rehabilitation Services

Dear Representative DiGirolamo:

On December 22, 2010, we delivered our comments on the above-captioned regulation to Honorable Michael Nardone, then Acting Chairman, Department of Public Welfare. Because the General Assembly had adjourned *sine die*, we were precluded from providing you with a copy at that time.

Enclosed is a copy of our comments. If you have any questions, please contact me.

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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

February 15, 2011

Honorable Mark B. Cohen, Minority Chairman
House Human Services Committee
127 Irvis Office Building
Harrisburg, PA 17120

Re: Regulation #14-521 (IRRC #2879)
Department of Public Welfare
Psychiatric Rehabilitation Services

Dear Representative Cohen:

On December 22, 2010, we delivered our comments on the above-captioned regulation to Honorable Michael Nardone, then Acting Chairman, Department of Public Welfare. Because the General Assembly had adjourned *sine die*, we were precluded from providing you with a copy at that time.

Enclosed is a copy of our comments. If you have any questions, please contact me.

Sincerely,

Kim Kaufman
Executive Director
sfh
Enclosure

Comments of the Independent Regulatory Review Commission

Department of Public Welfare Regulation #14-521 (IRRC #2879)

Psychiatric Rehabilitation Services

December 22, 2010

We submit for your consideration the following comments on the proposed rulemaking published in the October 23, 2010 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Department of Public Welfare (Department) to respond to all comments received from us or any other source.

1. Fiscal impact.

This proposed regulation adds Chapter 5230 to Title 55 of the Pa. Code, which adopts minimum standards for the issuance of licenses for psychiatric rehabilitative services (PRS) in facilities operated in this Commonwealth. According to the Preamble, the Department anticipates that "the implementation of PRS will not have fiscal impact on the Commonwealth, as the reduction in more costly traditional mental health treatments and improved clinical and social outcomes will offset the cost of PRS."

However, several commentators indicate that this statement overlooks the implementation costs imposed on the regulated community, in particular relating to staff training and the required general staffing patterns.

In the final-form regulation, the Department needs to provide a more detailed cost-benefit and fiscal impact analysis of the regulation that addresses the potential implementation costs anticipated by commentators.

2. Section 5230.3. Definitions. – Statutory authority; Consistency with federal law; Need; Implementation procedures; Clarity.

Fidelity

This term is used to classify the degree to which a PRS adheres to best practices. The Wedge Medical Center questions how a PRS is expected to

measure "fidelity." We agree and recommend that the final-form regulation explain how the Department expects a PRS to quantify this term.

Licensed practitioner of the healing arts

The proposed regulation defines this term as "those professional staff currently recognized by the Department as qualified to recommend an individual for service." Several commentators indicate that this term is unclear, as it does not explain which staff the Department "recognizes." We agree and suggest that the final-form regulation specify who the Department would consider a "licensed practitioner of the healing arts." In addition, several commentators indicate that the source of this term may be federal requirements relating to medical assistance. If so, then we recommend that the Department also include a cross-reference to these federal provisions in the final-form regulation.

Natural support

In this definition, how does the Department intend for a person or organization to provide "validation" to an individual? The final-form regulation should clarify this issue.

PRS facility

This term is defined as "an agency or organization...licensed...to deliver PRS." However, both the PA Community Providers Association (PCPA) and the Philadelphia Coalition commented that including the word "facility" is confusing since it is normally associated with an actual building not an agency or organization. In addition, what is the Department's statutory authority for defining this term as an agency or organization when the statute defines it as various locations? *See* 62 P.S. § 1001. The Department should explain why the term "facility" is appropriate.

Psychiatric rehabilitation principles

This definition references "Nationally-recognized professional associations," but does not identify these associations. The final-form regulation should provide a list of the professional associations that apply.

3. Section 5230.14. Physical site requirements. – Implementation procedures; Clarity.

This section addresses the physical site requirements for a PRS facility. We raise two issues.

First, Paragraph (2) requires "space for the PRS distinct from other services offered simultaneously." Several commentators state that this will prevent various recovery programs from operating as blended outpatient and PRS services. The final-form regulation should be clarified to allow PRS facilities to offer integrated services, or the Department should explain why such a clarification is unnecessary.

Second, Paragraph (6) requires compliance with Occupational Safety and Health Administration (OSHA). To improve clarity, the final-form regulation should include a cross-reference to the appropriate OSHA standard.

4. Section 5230.22. Record security, retention and disposal. – Reasonableness; Need; Clarity.

This section establishes standards for maintenance of individual records. We have three concerns.

First, Paragraph (2) states that "the record must identify the individual on each page." The Wedge Medical Center states that this requirement is too excessive and will result in an increase in time spent by staff on paperwork. The Department should explain the need for this requirement.

Second, Paragraph (3) states that "entries shall be signed and dated by the responsible licensed provider." Several commentators indicate that use of the term "licensed provider" is unclear, as not all staff are licensed. The final-form regulation should clarify whether the Department intended for only licensed staff to sign these entries.

Finally, Paragraph (4) requires a record of progress on each day of service. What is the need for such records to be created daily?

5. Section 5230.31. Admission requirements. – Reasonableness; Need; Implementation procedures; Clarity.

This section details the patient eligibility requirements for admission into a PRS. However, several commentators note that existing PRS standards contain an exception process for admission that is not contained in the proposed rulemaking. Commentators argue that the proposed regulation only permits admission into a PRS for specific illnesses listed in Paragraph (2), and that a PRS needs the flexibility to review other mental health diagnosis for admission, as circumstances arise. The Department should explain why the regulation does not permit an admission exception process for other diagnoses not contained in Paragraph (2).

6. Section 5230.51. Staff qualifications. – Reasonableness; Need; Implementation procedures; Clarity.

This section establishes qualifications for a PRS director, a psychiatric rehabilitation specialist, a psychiatric rehabilitation worker, and a psychiatric rehabilitation assistant. We have two concerns.

First, several commentators state that the qualifications for a PRS director are too stringent. Some argue that they may result in recruiting issues, since commentators believe PRSs will not be able to find applicants with these qualifications. Conversely, the PA Chapter of the National Association of Social Workers recommends raising the qualifications for both a PRS director and a psychiatric rehabilitation specialist. The Department should explain how it established the qualifications for both the PRS director and the psychiatric rehabilitation specialist.

Second, the regulation requires both a PRS director and a psychiatric rehabilitation specialist to have a CPRP (Certified Psychiatric Rehabilitation Practitioner) certification within two years of hire. The PA Association of Psychiatric Rehabilitation Services believes that it may take some individuals more time to complete these requirements, and recommends a waiver or exception process. Commentators also question whether existing staff without this credential but with a certain amount of experience could be "grandfathered." Has the Department considered these options?

7. Section 5230.52. General staffing patterns. – Reasonableness; Need; Implementation procedures; Clarity.

Subsection (c)

Subsection (c) states that "when a service is delivered in a facility, a PRS facility shall have an overall complement of one FTE [full-time equivalent] staff for every ten individuals (1:10), based upon average daily attendance." Several commentators suggest that a complement based on attendance during each shift is more feasible than average daily attendance. How did the Department determine that measuring the average daily attendance was the appropriate option?

Subsections (h) and (i)

Subsections (h) and (i) each require a minimum of 25% of the FTE staff complement to have the specialist criteria and the CPRP credential within a certain period after initial licensing. PCPA states that because this will require staff to earn these credentials or be trained, these provisions will be costly for the providers, and may result in non-compliance if staff turnover is too high. An individual commentator also questions how PRS licenses would be

accurately evaluated and audited in the years when facilities would be unable to reach compliance. The Department should explain the need for the 25% ratio.

In Subsection (h), what is "specialist criteria?" The final-form regulation should explain this term.

8. Section 5230.54. Group services. – Reasonableness; Need; Clarity.

Subsection (a)(2) states that "when a service is delivered in the community, one staff may serve a group of two to five (2:5) ratio individuals." Several commentators question whether the ratio includes two to five individuals per staff or two staff per five individuals. We agree that this phrase is vague and recommend that the Department clearly distinguish between staff and individuals in the final-form regulation.

9. Section 5230.55. Supervision. – Reasonableness; Need; Implementation procedures; Clarity.

Subsection (c) requires a PRS director or specialist to "meet with staff individually, face-to-face, no less than two times per calendar month." Several commentators note that this requirement is too prescriptive. The Department should explain the need for this requirement.

10. Section 5230.61. Assessment. – Implementation procedures; Clarity.

Subsection (b)(7) requires assessments to "be updated annually and when one of the following occurs...." Several commentators are concerned that writing an entirely new assessment in each circumstance would affect the flow of treatment. HOPE @ Allegheny COMHAR, Inc. indicates that this may even result in redundancy with the Individual Rehabilitation Plan (IRP). To improve clarity, the final-form regulation should explain whether to "update" means to rewrite the assessment completely or simply provide relevant updates to the existing plan.

11. Section 5230.62. Individual rehabilitation plan. – Reasonableness; Need: Implementation procedures; Clarity.

Subsection (c) requires "a PRS facility and an individual shall review and revise the IRP at least every 90 days...." and under certain conditions. Both the Philadelphia Community Collaborative (PCC) and NHS Human Services (NHS) raise concerns about this process for review and revision. Both commentators state that "the IRP is a comprehensive and often times sequential document....therefore when the objective is achieved...there are several more objectives...to address collaboratively." PCC further states that "to spend time addressing revisions would interrupt the flow of the psychiatric rehabilitation

process...." What is the need for including this "review and revise" requirement? The final-form regulation should clarify this issue.

Similar to the comments regarding assessments, NHS also questions whether a completely new IRP is necessary with each revision, or if it can simply include the relevant updates. Like Subsection 5230.61(b)(7), the final-form regulation should specifically explain what "revision" encompasses for an IRP.

12. Section 5230.63. Daily entry. – Reasonableness; Need.

This section requires daily entries by PRS staff for each day services are provided. These entries include description of the service, any documentation, and the signature of the individual and the staff member. The majority of the commentators object to this section, stating that writing these entries is disruptive and takes staff away from spending time with patients, and that it is often difficult to have the document signed by both staff and the individual. The Latino Members of COMHAR HOPE are concerned about the difficulty surrounding preparing and signing these entries for patients who are subject to language barriers. Has the Department considered these concerns? In the Preamble to the final-form regulation, the Department should explain the need for daily entries.

13. Section 5230.71. Discharge. – Implementation procedures.

This section explains the process for discharging a patient. Subsections (e) and (f) discuss the process and plan for individuals who voluntarily terminate from a PRS. However, PCPA notes the difficulty in establishing a plan for patients who terminate participation by not returning to the program. The final-form regulation should explain how the Department intends for PRS staff to develop discharge plans in these circumstances. Similar concerns apply to the requirements for a discharge summary in Section 5230.72.