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14-583-08

Champa, Heidi

From: Geri <geraldinehudson55@comcast.net>
Sent: Sunday, August 27, 2017 4:40 PM
To: PW, OPCRegs
Cc: geraldinehudson55@comcast.net
Subject: FW: Behavioral Health Regulation #14-538 (IRRC #3176)

Hello, I am sorry if you receive this letter more than once. The e-mail was returned undeliverable.

Geraldine Greany-Hudson, DNP, PMHNP-BC, FNP-BC, AGPCNP-BC
206 Round Hill Lane
Lancaster, PA 17603

August 27, 2017

Michelle Rosenberger Department of Human Services
Office of Mental Health and Substance Abuse Programs
Bureau of Policy, Planning and Program Development
Commonwealth Towers, 11th Floor
303 Walnut Street, P.O. Box 2675 Harrisburg, PA 17105-2675

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Dear Ms. Rosenberger:

I am writing to you in order to provide comments about the proposed changes to Behavioral Health Regulation #14-538 (IRRC #3176) <http://www.pabulletin.com/secure/data/vol47/47-32/1339.html>). I am a psychiatric nurse practitioner who provides behavioral health services to individuals. I am seriously concerned that the proposed changes will block an individual's access to mental health services and jeopardize the safety of care. Please consider the current wait time at Penn State Health is four to six months for a new psychiatric evaluation and 12 months for an evaluation for autism. The new changes will dramatically increase wait time because only a physician may perform a new evaluation. The poor who are dependent on Medicaid will suffer the most from the changes. In addition, the proposed changes require physicians to supervise nurse practitioners and their clinical decisions. This requirement is dangerous and unsafe because the physician is not the person providing care; it is the nurse practitioner. A physician cannot direct clinical decisions "by directing from the sideline" and from outside a therapeutic relationship. Personally, I find it unacceptable that a physician with whom I have no knowledge of or have a trusting relationship will direct my care. Please consider the evidence that "Physicians and other researchers at the National Academy of Medicine thoroughly investigated NP care for the landmark 2010 report "The Future of Nursing." The National Academy of Medicine determined that NPs provide safe, high-quality care." In addition, the state of Pennsylvania is moving towards full practice authority for nurse practitioners. The Senate passed SB Bill 25 in April 2017 with a 39-to-10 vote to grant full practice authority for nurse practitioners. The House of Representatives is expected to review Bill HB100 that grants full practice authority to NPs" in the near future (Pennsylvania Coalition of Nurse Practitioners, 2017).

The proposed Behavioral Health Regulation #14-538 (IRRC #3176) include an inaccurate interpretation and application of *the Social Security Act (42 U.S.C.A. § 1396d(a)(9)) and 42 CFR 440.90 (relating to clinic services. that services furnished at the clinic be provided by or are under the direction of a physician.*

5200.31. Treatment planning.

"This proposed amendment maintains compliance with definitions in section 1905(a) (9) of the Social Security Act (42 U.S.C.A. § 1396d (a) (9)) and 42 CFR 440.90 (relating to clinic services) that services furnished at the clinic be provided by or are under the direction of a physician. To meet this requirement, a physician shall see the individual, prescribe the type of care provided and periodically review the need for continued care.

"The definition of "advanced practice professional" is proposed to be added in recognition of CRNPs with a mental health certification or PAs with either a mental health certification or at least 1 year of experience working in a behavioral health setting working under the supervision of a physician. This proposed definition will allow these licensed professionals to provide services within their scope of practice in psychiatric outpatient clinics, thereby expanding clinical resources."

The actual regulation specifically cites **services furnished under the direction of a physician**. Nurse practitioners do not practice or provide services under the direction of a physician. However, a physician assistant does practice and provide services under the direction of a physician. **Nurse practitioners collaborate with physicians, practice under their own license, and practice according the Pennsylvania Board of Nursing regulations.**

Social Security Act (42 U.S.C.A. §1396d(a)(9))

Clinic services furnished by or under the direction of a physician, without regard to whether the clinic itself is administered by a physician, including such services furnished outside the clinic by clinic personnel to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address;

42 CFR 440.90

440.90 Clinic services.

Clinic services means preventive, diagnostic, therapeutic, rehabilitative, or palliative services that are furnished by a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. The term includes the following services furnished to outpatients:

(a) Services furnished at the clinic by or under the direction of a physician or dentist.

(b) Services furnished outside the clinic, by clinic personnel under the direction of a physician, to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.

The Pennsylvania State Board of Nursing, under Chapter 21, regulates the practice of professional nursing. **Nurse practitioners practice with a prescriptive authority collaborative agreement**, Chapter 21, § 21.285. The collaborative agreement details the requirements for a nurse practitioner to "prescribe and dispense drugs and other medical therapeutic or corrective measures, as set forth in § 21.283." **Collaboration is not equivalent to supervision**. A nurse practitioner uses independent clinical judgment and evidence based guidelines to make a clinical decisions. **A physician does not direct nursing practice or the clinical decisions of a nurse practitioner**. The Centers for Medicare & Medicaid Services (2015) also defines **collaboration with a nurse practitioner, not physician supervision**. A nurse practitioner is a

*"registered professional nurse authorized by the State in which the services are furnished to practice as a NP in accordance with State law." A nurse practitioner with a "Master's degree in nursing or a Doctor of Nursing Practice Doctoral degree is legally authorized and qualified to furnish the services in the State where they are performed; Services are the type considered physicians' services if furnished by a MD or a DO; Services are performed in **collaboration** with a physician. A nurse practitioner may personally perform diagnostic psychological and neuropsychological tests in **collaboration** with a physician as required under the NP benefit and to the extent permitted under State law."*

Services by a physician assistant *“are performed under the general supervision of a MD or a DO” and may “personally perform diagnostic psychological and neuropsychological tests under the general supervision of a physician as required under the PA benefit and to the extent permitted under State law.”*

Please address the restrictive changes and safety concerns with the proposed Behavioral Health Regulation #14-538 (IRRC #3176). There is no Federal or state requirement that a nurse practitioner must practice or provide services under the direction of a physician. This requirement establishes unnecessary barriers to care and affects safe care. The goal is to use mental health providers to the maximum effect that their education and state regulations allow. Thank you for putting Pennsylvania residents first. Please feel free to contact me if you feel I can be of any help to your initiatives. My cell number is 717-333-5296.

Very respectfully,

Geraldine Greany-Hudson, DNP, PMHNP-BC, FNP-BC, AGPCNP-BC

