August 12, 2019

To the Department of Human Services and IRRC:

This letter is sent to express opposition to No. 3209 Department of Human Services #14-546 Intensive Behavioral Health Services. As a member of the original stakeholder group that developed the IBHS regulations and as a provider of BHRS services for over 16 years, I am disappointed that the Final Draft as proposed limits and possibly eliminates access to behavioral health services for many children, youth and young adults in Pennsylvania.

The Final Draft of the IBHS regulations will increase the administrative oversight, clinical supervision and monitoring requirements which will come at a great expense to providers. The ability to hire and retain staff will become an immediate access issue due to a focus on ABA training and certification that is unnecessary in the Individual Services section. The regulations as proposed do not adequately address or reflect the concerns and needs of families that were involved in the IBHS Work Group process or currently depend on medically necessary behavioral health services for their children.

Please take the comments and concerns below into consideration as you make the decision as to whether or not it is appropriate to move forward with Intensive Behavioral Health Services as proposed.

Sincerely,

Susan Hurd
Chief Operating Officer
Children's Behavioral Health Services, Inc.

No. 3209 Department of Human Services #14-546
Intensive Behavioral Health Services

QUESTIONS AND CONCERNS

CHAPTERS 1155 and 5240.
INTENSIVE BEHAVIORAL HEALTH SERVICES

1155.31. General payment policy and 5240.3 Provider eligibility.

- "...complies with Chapter 5240..."
    - Will agencies be expected to comply with the regulations within 90 days of promulgation or the effective date of adoption of the regulations? Are the promulgation date and effective date different dates?

    - Will agencies be expected to comply with all of the training, supervision and quality management protocols within 90 days?
        - Many agencies do not have the capability to meet these standards, especially in this short time frame, either financially or with the staff qualifications/ratio.
        - When will the Fee Schedule for IBHS be determined? Providers will need this information in order to determine whether or not they will move forward with licensure.
            - Without an immediate increase in the reimbursement rate, providers will not be able to sustain this dramatic increase in non-billable activities. Yet in the Preamble, the Department of Human Services stated that these costs won't be taken into consideration until *future* BH-MCO capitation rates are determined. (Preamble pages, 8, 9 and 19)
            - The elimination of the ISPT meeting equates to an inconsequential amount of savings, if any at all.
            - In addition, very small amounts of savings, if any at all, will be recognized with the ability to transfer staff trainings from one provider agency to another. An increasing amount of staff are leaving agencies to find higher paying jobs outside of the behavioral health field due to years of insufficient funding, not transferring to other agencies.

1155.32. Payment conditions for individual services.

- Written Order – How will the order contain the necessary clinical information and measurable improvements without the information from the assessment?
    - Currently, the Best Practice Evaluation contains all of the necessary clinical information that would be included in the IBHS written order and

assessment. A licensed psychologist or psychiatrist is able to determine service recommendations and measurable improvements based on ALL of the information collected.
    - The IBHS process (a written order without the assessment information or collection of the assessment information apart from the written order) does not appear to be the most clinically appropriate approach for a child, youth or young adult.
    - Who will provide training to all of the licensed physicians (or their physician assistants) and the others listed to enable them to appropriately determine the amount, settings and measurable improvements needed for IBHS services?

- Assessment – in the Preamble it states that the assessment must be done in the "home or community setting" (pg. 6), but does not state this in the IBHS regulations. It may be most appropriate for the family to have the assessment information at an agency's office. The Department should not disallow that setting.

- Initiation of Services – payment will be made if there is an order and a treatment plan (not ITP) for up to 45 days (75 days for ABA services 1155.33).
    - Will there be a prior authorization process?
    - Who will determine if payment will be made? Agencies do not have the financial capability to provide services without assurance of payment being rendered for services provided.
    - A definition of "treatment plan" should be provided as the regulations only define the components of an "ITP", not "treatment plan". {Also, 5240.41 (6)}

5240.6. Restrictive procedures. {Also, 5240.41. (12) (vi) }

- (8) At times it is necessary to limit an individual's access to food, drink or toilet when they are abusing access, as part of an ABA treatment plan or when the items are used to cause a danger to themselves or others.

- (f) Trained person shall observe and document every 10 minutes.
    - In some situations a "trained" individual is not available as staff are able to provide this service in the home and community settings. How can agencies provide for the well-being of a child, youth or young adult in these situations?
    - DHS has determined that a member of the treatment team could be considered "trained". (Preamble page 74) If a treatment team individual has not participated in the agency's training, how can that individual be considered as trained?

- (h) Treatment team notification within 24 hours
  - Who is considered to be a part of the treatment team? Teacher, BH-MCO, prescriber, etc.?
  - It's unreasonable, and possibly unnecessary, to require that ALL of the treatment team members be notified in 24 hours. It *would be* reasonable to expect that the parent/guardian and staff supervisor would be contacted within 24 hours of a manual restraint.

5240.7. Coordination of services.

- (e) Written referral process and documentation of referrals for children whose needs cannot be served by the agency.
  - Clarification is needed as to whether this refers to families *seeking services* for their child's needs and/or children, youth and young adults in services with a *current authorization* that cannot be filled or have needs beyond those that the agency can provide for.

5240.11. Staff requirements.

- (b)(2) Agencies should be required to ***attempt*** to accommodate parents', legal guardians or caregiver's schedules. It is not always possible to provide services at times or locations beyond staffing capabilities or with a short amount of notification of change.

- (e) In order to have the sufficient number of staff to comply with *increased* administrative oversight, clinical supervision and monitoring requirements, a reimbursement rate would need to be adequate to cover these costs. Provider agencies will not be able to comply with or be licensed in IBHS without appropriate compensation to cover the costs of all of these required regulatory activities.

- (f) An IBHS agency must employ a sufficient number of staff to provide the maximum number of service hours identified in the written order and the ITP.
  - Due to the current staffing crisis caused in part by the low reimbursement rates, agencies will not be able to comply with this component of the regulation.
  - What will happen to agencies that are not able to fully staff the ***maximum*** number of service hours?
  - It is stated in other places that the ITP can recommend fewer hours and a new order is not needed. Will the provider still need to have staffing adequate to meet the ***maximum*** hours in the written order?
  - These requirements, and others like them, throughout these regulations, can be taken to extreme by a BH-MCO in a value-based payment arrangement to cause an already ill-funded system to collapse.

5240.13. Staff training plan.

- (3) The agency training plan should be based on service outcomes and staff performance evaluations.
    - As service outcomes are individualized to each child and staff performance and training plan needs are specific to each staff, what does the Department mean by an annual review and update of the agency training plan?

- (7) {Also 5240.73, 5240.83, 5240.93} What will the process be to approve all of the necessary trainings that agencies will require in a timely fashion? The Department has already stated a cost of over $400,000 to appropriately license agencies. Has the Department stated the cost of additional staff to approve trainings?
    - Many providers already utilize on-line training systems like Relias Learning Management Systems. Will these resources still be able to be utilized?
        - As providers must enter into contracts with these platforms (or already have), when will the Department provide notification as to whether or not these will be acceptable?
    - How will the Department approve each agencies Employee Orientation program which would be specific to that agency?

5240.21. Assessment. {Also 5240.85, 5240.95}

- (5) and (f)(2)...child has not made significant progress in 90 days from initiation.
    - What is considered "significant"?
    - Who makes that determination?
    - As the assessment contains primarily biopsychosocial information, why would an updated assessment be required each time the ITP is updated in accordance with the regulations?

5240.22. Individual treatment plan. {Also, 5240.86, 5240.96}

- (6) Settings where services may be provided.
- (7) Number of hours of service at each setting.
    - Stakeholders, including families, had expressed the need for flexibility in service provision. These requirements are more restrictive and are not client-centered.

5240.61. Quality improvement requirements.

- Annual Review - (iii) Assessment of the outcomes of services delivered and if ITP goals have been completed.
    - Wouldn't this be specific to each individual child not the agency?
    - Will this be done for each child in the Annual Review or will a sample of individual records be sufficient?

- (2)(i) Seems to indicate that a sample would be sufficient. There appears to be contradictions in other portions of the regulations at 5240.41(b)(3) and 5240.11 (d)(4)

5240.71. Staff qualifications for individual services.

- Behavior Consultation Services
  - (b) Individuals who provide behavior consultation services to children diagnosed with ASD must meet the additional training requirements or experience in ABA even though the Individual Services section does not apply to ABA. This requirement will decrease treatment access to children with ASD who ARE NOT seeking ABA services. This requirement should be removed from the Individual Services section and be replaced with the ACT 62 requirement of licensure.

- BHT – Behavior Health Technician (by January 1, 2021)
  - The certifications required are all based on ABA even though this section applies to Individual Services. Therefore, the Department is mandating training and certification in a specific treatment modality.

  - (5) 40-hour training covering the RBT List – certification – BCBA or BCaBA as trainer {Also 5240.81 (5)}
    - During stakeholder discussions, access to services was stressed. Certifications that require a BCBA as a trainer and supervisor are going to limit access and are not necessary in the Individual Services section. As this service is NOT listed under the ABA services, ABA certifications should not be a requirement for a BHT.
    - Recommendation: the 40-hour training covering the RBT Task List is available through many venues including on-line training platforms. Individuals with a high school diploma who have successfully completed the 40 hours of training should be qualified for hire as a BHT. Instead, this section should read "completion certificate(s)" of the 40-hour training covering the RBT Task List and should <u>not</u> require a trainer who is a BCBA or BCaBA. This is inferred in the preamble on page 18, but stated very differently in the regulations.

  - (6) Have a minimum of 2 years of experience in the provision of behavioral health services.
    - While this may allow for a transition of current Therapeutic Staff Support workers, access will become an immediate issue for <u>all</u> children, not just ASD. It will be extremely difficult to hire new BHT staff who have one of the five certifications listed.

5240.72. Supervision of staff who provide individual services. {Also 5240.82, 5240.92}

- Supervision of BC and MT
  - (1) and (2) - One hour of individual supervision per month plus an additional one hour of supervision if supervisor of BHT services.
    - This is an excessive amount of supervision for graduate-level and/or licensed individuals.
  - (3) Mobile therapists should not have direct observation of services being provided during therapy sessions.
  - The increased amount of Supervision provided ***individually*** to individuals who provide behavior consultation services and mobile therapy services will dramatically increase the costs to providers.

- Supervision of BHT
  - (1) Each full-time BHT will require one hour of individual supervision that includes only the supervisor and the BHT. This ***individual*** supervision should be required monthly (as in past BHRS bulletins). Weekly supervision should be allowed as group supervision as outlined in 5240.72. (4)(d). This increased amount of ***individual*** supervision will dramatically increase the costs to providers.

- (4)(d) Group supervision? When will Group Supervision meet supervision requirements in the regulation as most require *only* the individual and the supervisor? Clarification from the Department is required.

5240.75. Individual services provision.

- (a) Behavior consultation services – assistance with crisis stabilization should be included in this provision as well as in the Mobile Therapist description. Not all children will require 2 graduate level professionals; the Behavior Consultant should be able to assist in crisis stabilization if needed.

5240.81. Staff qualifications for ABA services.

- Clinical Director – ABA – BHRS providers have expressed the concern that this requirement may be impossible to staff. There are a limited amount of BCBA's in the state and psychologists may not see the necessity to get additional credits or training to act in a supervisory role.

5240.111. Waivers.

- Are waivers only for specific requirements within these regulations or can a program be considered for a Waiver? (i.e. Program Exceptions in the past.)