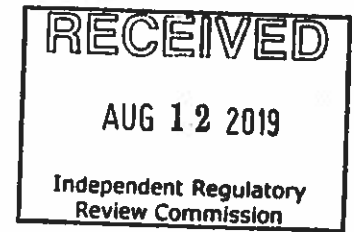


3209



**MOVING AGENCIES TOWARD EXCELLENCE**



8/12/2019

Via electronic mail submission at: [irrc@irrc.state.pa.us](mailto:irrc@irrc.state.pa.us) and [cmalecki@pa.gov](mailto:cmalecki@pa.gov)

**RE: MAX Association Comments on No. 3209 Department of Human Services #14-546:  
Intensive Behavioral Health Services**

To: IRRC and Ms. Malecki

I am presenting on behalf Moving Agencies Towards Excellence (MAX Assoc), an association of human service providers in Southeast Pennsylvania. My comments are on behalf of those members organizations who provide what will be the Intensive Behavioral Health Services.

Thank you for the opportunity to provide comments to the commission on Regulation 14-546 "Intensive Behavioral Health Services".

In short, MAX Association urges the Commission to approve this regulation. While there are concerns, MAX applauds the Department for drafting a comprehensive regulation for these services rather than monitoring with a collection of bulletins. This approach, we believe, will lead to clearer, more consistent statewide service delivery and licensing expectations

Philosophically, MAX members support the increased safety and improved clinical measures this regulation is proposing. MAX members are ready and excited about raising the bar of quality. However, this regulation has no assurance that the funding will match those improved services. This regulation calls for increased staffing, increased supervision, increased staff training and increased staff qualifications. Each of these would greatly enhance quality of services which MAX members strongly support; however, cost has been an obstacle to providers moving forward with these changes on their own.

The greatest concern is that there appears to be an expectation that the implementation of this regulation will be budget neutral and will not require additional funding. MAX agrees with the IRRC and 25% of the previous commentators to the Department to the draft regulation about this financial assumption. The Department's response in the Preamble indicates a recognition that "any increased costs will be taken into consideration when the Department determines future BH-MCO capitation rates." MAX urges the Commission to strongly encourage the Department to raise the capitation rates to cover anticipated increased costs. Furthermore, MAX advocates

that these rate increases be directly passed onto the organizations providing these services. Without these increased rates for additional staff, additional supervision, additional staff training and additional staff qualifications, providers will not have the current capacity to offer this service which MAX fears will lead to decreased numbers of children receiving this service.

Another area about which we urge the state to remain vigilant is access to care. Beyond the statement in the previous paragraph about insufficient funding diminishing capacity, MAX believes that the tenets of Section 5240.7, requiring certain increased qualifications for staff serving all individuals on the autism spectrum, could inadvertently lead to access limitations for individuals on the spectrum who do not necessarily require Applied Behavioral Analysis (ABA). MAX questions the Department's response to this and urges the Commission to request that the Department revisit how they will implement this provision of the regulation without limiting access for all children on the autism spectrum.

One more concern that MAX has with the passage of this regulation is how the Department is defining staff. DHS provides the following definition in the final form regulation:

“Staff- Any individual, including an independent contractor or consultant who works for an IBHS agency.”

Currently, many service providers use independent contractors for IBHS. These providers must adhere to the Department of Labor's mandates and definitions of independent contractors. MAX urges the Commission to request a clarification that complies with both the DHS and DOL mandates in this area.

Finally, MAX members are excited about the evolution this regulation will cause in IBHS for children. It is a fundamental shift which will raise the bar and dramatically increase the quality of services. This regulation represents a redesign of services and necessary organizational infrastructure rather than “doing business the way we always have.” In some cases, this may mean a reorganization for providers which will require an adequate transition period to “ramp up” including hiring and training additional staff. MAX urges the Commission to comment to the Department about recognition of the need for an extended transition period.

Again, thank you for the opportunity to provide comment on the IBHS final form regulation.

Sincerely,  
Diane Conway, Ph.D.  
Executive Director