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Independent Regulatory
Review Commission

Ohio and Pennsylvania
Leadership Team

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This letter is in reference to regulation No. 3209 Department of Human Services #14-546: Intensive Behavioral Health Services. Youth Advocate Programs, Inc (YAP) provides 7,000 hours per month of BSC, MT and TSS services to over 1,000 families across 20 counties in Pennsylvania. As an agency, we are concerned that the regulations, should they be implemented in their current version, will immobilize access to behavioral health services to many youth and families across the state and end services for thousands of other families who currently receive services. The recent changes in the regulations will further constrain access to services for youth on the autism spectrum.

We have many concerns and objections to these regulations in their current form. Concerns relate to the unrealistic timeframe that new regulations are expected to be followed (i.e.: within 90 days of promulgation). Further it appears as if there is a lack of family choice in the type of treatment modality specifically for families of youth with autism. There are additional training requirements or experience related to ABA that is required, even if the family and child with autism is not seeking ABA services. Finally, the financial hardship that many of the new quality improvement, supervision and staff qualification standards place upon providers is enormous. Additional funding not being considered until future BH-MCO capitation rates are determined does not allow providers to evaluate whether or not rates will address the myriad increased costs for service provision and allow for sound business decisions.

Listed below are the specific areas of concern and questions that we have identified.

1155.31. General payment policy and 5240.3 Provider eligibility.

- As the regulations currently read, it appears that agencies are expected to be in compliance with all training, supervision and quality management protocols within 90 days. Given the current limited availability of staff to not only provide and oversee current BHRS services, it is not a realistic timeframe to allow providers the opportunity to identify both internal staff and recruit staff to meet new standards. Further, without an increase in the reimbursement rates, there is no ability to assess for accommodations related to the increased costs of non-billable time.

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- The identified areas of cost savings to providers are cancelled out by the cost of other requirements. The elimination of ISPT meetings and the transfer of training hours among agencies narrowly compares to the increased administrative oversight, clinical supervision and quality management monitoring costs for requirements that will also be expected of providers.
- In the current version of the regulations it appears that there is not a prior authorization process for services. Will MCOs determine if a payment will be made for services and if so, within what timeframe? It is unrealistic to expect providers to conduct services without confirmation that services will be reimbursed.

5240.11. Staff requirements.

- It is impractical to expect any agency to ensure that staff schedules always are an exact match for the children, youth and young adults served and accommodate parents, legal guardians or caregivers' schedules. It would be more realistic to expect that agencies make every attempt to accommodate the requests of family schedules.
- The requirement for the IBHS agency to employ a sufficient number of staff to provide the maximum number of service hours identified in the written order and the ITP is unattainable and unrealistic. In the month of April 2019, an average 800 hours of service per week was not provided by YAP due to a lack of staff being available to fulfill the hours. Because lack of staff will continue to be an ongoing issue, the family should have the ability to choose an agency even if they are only able to provide a portion of the hours.

5240.71. Staff qualifications for individual services.

- **Behavior Consultation Services**
Individuals who provide behavior consultation services to children diagnosed with Autism *must meet the additional training requirements or experience in ABA even though the Individual Services section does not apply to ABA.* This change in the regulations will further impede access to services for youth on the autism spectrum. It is common knowledge that there is a staffing crisis in behavioral health services across the state of Pennsylvania. It is also widely known that there are not enough individuals within the state that would meet these new and stringent qualifications. Requiring this qualification in ABA related fields (when ABA services are not being requested) is cost prohibitive to potential staff and agencies. Stakeholders have specifically and consistently expressed concerns about access to treatment for individuals on the spectrum that did not mandate a specific modality and this requirement does just that. Further, training certification for the Behavior Health Technician also appears to require certification or training conducted by a BCBA. If services are not specific to ABA, what is the rationale for administering related ABA certifications for BHT services?
- The five criteria identified for BHT services may allow time for current staff to obtain the required experience, yet it is prohibitive to new staff entering the behavioral health workforce given that a limited type of degrees will provide the training or certification necessary to begin direct service work. Once again, the cost of training is not addressed within an identifiable timeframe in order for to agencies to determine if they can sustain the continued accrual of associated costs.

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5240.72. Supervision of staff who provide individual services.

- The requirement for individual supervision on a monthly basis for Behavioral consultation and mobile therapy, as well as the additional hour of supervision given oversight of BHT services, is excessive in terms of the necessity for a master's level and/or licensed clinician. Further, it is cost prohibitive to agencies.
- Additionally, the BHT requirement of one hour of individual supervision is excessive and cost prohibitive. Weekly group supervisions, including individual supervision on an as needed basis, are more than sufficient to meet the support needs of staff.

In summary, there are myriad areas identified above where the new regulations impose barriers to services for youth and families. Further, provider agencies cannot determine their ability to even provide services given the lack of information or clear expectations regarding reimbursement rates. Unless the areas identified are addressed with realistic expectations, the already fragile system in place, with its widespread staffing shortage, will be further overwhelmed and prohibit care to vulnerable youth and families.

Sincerely,



Jeff Fleischer
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