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AUG 14 2018

Independent Regulatory
Review Commission

14-546-06 3209

From: Paul Eschbach <paul@bitgroup.info>
Sent: Friday, August 10, 2018 10:54 AM
To: PW, IBHS
Subject: IBHS Regulation No. 14-546: Objections and Suggestions
Attachments: BIT Public Comment IBHS Regulation No. 14-546.docx

1. Compulsory participation in the IBHS program will harm children, youth and young adults served by ABA companies that engage the 'best practice' model as outlined by the Behavior Analyst Certification Board. If the regulations are adopted as proposed, it is expected that many companies that use the model of best practice will have to immediately close their doors and stop providing ABA Therapy of the highest standards (as per the Behavior Analysts Certification Board BACB.com). It forces us to use diminished staff credentials and massively increase administrative costs.
 - a. The financial implications have been estimated in the table below, see "Unfunded Mandates".
 - b. The only way for us to survive would be to provide sub-par therapy (high malpractice exposure) with high turnover staffing, i.e.,
 - i. Terminate all our working BCBAs and replace them with low-cost, bachelor-level ABSAs.
 1. Ethically, we would never do this because bachelor level staff are not trained to make treatment decisions.
 2. We would be overrun with parent complaints regarding subpar services
 3. We would expose ourselves to malpractice litigation.
 - ii. We would have to negotiate reimbursement fees from our MCO that are higher than the industry average, which is unlikely to occur (in order to make up for the extensive administrative costs of the proposed regulations, see chart below).
2. **Quality Assurance:** The bachelor level ABSA has no supervised experience and is not trained to make critical treatment decisions and therefore the BACB code of ethics to which BCBAs must subscribe prevents them from validating or supporting this position in the field. Imagine sending your child to a chiropractor that has a Bachelor of Science degree on his/her wall and transcript with 4 classes, 6 months of experience, meets with a board-certified chiropractor twice a month but with no formal supervised experience! This new low barrier for entry as a supervisor will be the most common and will therefore be the most economical to hire. It is highly likely that most companies will hire from this 'low standard' group.
3. **Quality Assurance:** The number of BHT-ABA supervision hours is far below the industry standard and will harm children, youth and young adults. Best practice for supervision of a behavior technician, as per the BACB, is 5% of all BHT-ABA hours provided per month PER STUDENT. For example, if a BHT-ABA works 80 hours per month with a client, they should be supervised by their BCBA, on site, with client present (this is commercial insurance standards for claim submission) at the rate of at least 4 hours. Our company has a policy of 10% of all BHT-ABA hours are supervised.
4. **Funding Concern:** As per our cost analysis, for a moderately sized company like ours of 15 BSAs (BCBA), 35 BHT-ABAs and 75 clients it would require an extra 24,760 service hours per year to break even. See breakdown in chart below. This is unsustainable unless our funding sources almost double their reimbursement rates for ABA Therapy.

5. **Funding Concern:** Tricare, Geisinger/Magellan and Capital Blue Cross/Magellan state in their medical policy (and manage through their claim submission process) that they will not reimburse supervision completed by a bachelor level staff person. This constricts many companies like ours to only use the master degreed ABSAs, thus cancelling out the advantages of generating more revenue through the use of the new role created, the bachelor level ABSA.
6. **Resulting Harm to Children, Youth and Young Adults:** To meet the great number of unfunded mandates in the new regulations, our company would have to reduce expenses. The largest expense in most companies is payroll, which is no different for us. The first two steps would be to terminate all 15 of our BCBA's and replace them with low-cost, bachelor level ABSAs, then decrease reimbursement rates for our BHT-ABAs, and third, to move all staff from fulltime to part time, thus avoiding health care costs. Results will be subpar services and high staff turnover rates, thus harming children, youth and young adults. We have strategically developed a business model to create excellent outcomes for our clients. Preeminent in that model, is hiring our BCBA's and RBT's as full-time employees with robust benefit packages to increase retention. Our staff turnover rate is very low, creating excellent outcomes for our ASD clients.

<p>Problematic Assumptions by the Department</p>	<p>Concern</p>
<p>(17) on page 5. "Increased costs are also expected to be offset by the ability of IBHS agencies to employ assistant behavior specialist analysts (ABSA)." P.5</p>	<p>Incorrect: Increased costs will not be offset. There are three kinds of ABSA allowed under new regulation: Masters and two kinds of bachelors. Tricare, Geisinger/Magellan and CBC/Magellan state in their medical policy that supervision of a behavior technician is performed by a master's level person. They will deny all ABSA bachelor level supervision claims, thus making supervision by the bachelor level ABSA <u>unfunded and unusable</u>. Our company will not chance that other commercial health plans will accept the form of this service delivery (supervision) by a bachelor degreed person as best practice and submit claims, hoping that we will be reimbursed. BCBA's in practice are bound by their code of ethics to avoid assuming that someone with this level of training (bachelor's degree) can perform supervision and make critical case management and treatment decisions. Lastly, using a bachelor level supervisor would expose our company to significant legal malpractice litigation since bachelor level supervisor is not endorsed by the Clinical Director's governing body, the Behavior Analyst Certification Board.</p>

<p>(17) on page 5. "However, there is expected to be a decrease in staff training costs because the proposed licensing regulations clarify that staff do not need to repeat initial or annual training when changing employment or working for more than one IBHS agency." p.5</p>	<p>Helpful, but won't make a significant material difference in the balance sheet.</p>
<p>(18) "Explain how the benefits of the regulation outweigh any cost and adverse effects." On page 6 "The proposed regulations require that IBHS are provided by trained and qualified staff who are overseen by licensed clinicians, which will provide consistency in the delivery of behavioral health services to children, youth and young adults." p.6</p>	<p>"...overseen by licensed clinicians..." The Department is going to license bachelor level supervisors who have had 4 classes and 6-months of experience and assume that they will provide quality services. Scaling out a service (IBHS) by lowering the barrier for staff credential always creates quality assurance issues and the IBHS regulations for supervision are an example.</p> <p>The lowest standards of credentialing will always contain the largest pool of candidates, which therefore will always be the cheapest to hire. It is likely most companies will maximize their profit margins by hiring ABSAs from the lowest standard, see below.</p>
<p>(19) - who can supervise an ABA case, on page 7 "...or an individual who has a bachelor's degree in psychology, social work, counseling, education or related field and at least 12 credits in ABA and six months of experience in providing ABA may be employed as an ABSA."</p>	<p>Someone making treatment decision with a bachelor's degree in an identified field, 4 classes in ABA and six months experience is a lawsuit waiting to happen and will harm children, youth and young adults.</p> <p>Please notice, this low standard has no "supervised experience" requirement as per the BCBA's ethical code below.</p> <p>BCBA's that become clinical directors will be in violation of Professional and Ethical Compliance Code 1.02 "Boundaries of Competence. (a) All behavior analysts provide services, teach, and conduct research only within the boundaries of their competence, defined as being commensurate with their education, training, and supervised experience. https://www.bach.com/wp-content/uploads/2017/09/170706-compliance-code-english.pdf Page 4</p>

(21) on page 7 & 8

"The proposed licensing regulation includes qualifications for staff that provides ABA services that are consistent with those required by private insurers, which will allow the Department to ensure that MA funds are accessed only after private insurers have fulfilled their coverage obligation for beneficiaries who also have private insurance. This may result in some savings to the Department." P.7 & 8

Incorrect:
The qualifications for staff in this document are not consistent with private insurers.

73% of our business is billed to commercial insurers for ABA services, i.e., Tricare, Capital Blue Cross/Magellan and Geisinger Magellan. They state in their medical policies that supervision of the behavior technician is a service that is delivered by someone with a master's degree, thus making the ABSA position irrelevant. Magellan guards this closely by requiring a modifier to be sent with each claim that identifies the educational level when supervision codes are used.
Tricare outlines in their Operations Manual that supervision must be performed by a BCBA, thus making the core of the business model outlined by these regulations irrelevant for Tricare, Capital Blue Cross/Magellan and Geisinger Magellan cases, which is the lion's share of our revenue.

(24) "For any regulation that may have an adverse impact on small businesses..." on page 11

"The paperwork requirements in the proposed regulations reflect some changes from current practices." P.11

Incorrect: The paperwork requirements in the proposed regulations reflect SIGNIFICANT changes from current practices outlined by the governing body of our 15 BCBA's (BACB.com).

For example: The internal development of a training and quality assurance program at both the individual staff level and overall agency level need to be created and monitored to pass yearly audits to avoid recoupments.

Office staff will need to be hired to;

1. Oversee and manage yearly training of BHT-ABA (more staff and document management to meet new regulations)
2. Manage individual training plans for BHT-ABA (more staff and document management to meet new regulations)
3. Evaluate each BSA caseload to determine that maximum FTE caseload of 9 supervisees is not broached on a monthly basis (more staff and document management to meet new regulations)
4. Manage and assure that company-wide quality assurance measures are being recorded. (more staff and document management to meet new regulations)
5. Call families and manage customer satisfaction surveys and reports. (more staff and document management to meet new regulations)
6. Clinical director will have to report on monthly staff meetings. (more staff and document management to meet new regulations)
7. New hired staff will have to send organizational flow chart changes to the department within 10 days. (more staff and document management to meet new regulations)

(24) "For any regulation that may have an adverse impact on small businesses...(c) The proposed regulations will affect all IBHS agencies equally." P.11

Incorrect.
We will be forced to use a master's level ABSA, which will severely limit the revenue increase that was assumed to be covered by the low entry criteria of the ABSA (Bachelor, 4 classes and 6-months experience) and at the same time, be held to the same standards as other companies that accept the very low barrier to entry as an ABA supervisor.

	<p>As a company that invoices commercial health plans for services, the bachelor level ABSA position is unavailable since a bachelor level person cannot perform supervision of the BHT as per medical policy – Tricare, Capital Blue Cross/Magellan and Geisinger/Magellan.</p>
<p>Accomplishments and Benefits “The proposed rulemaking benefits children, youth and young adults under 21 years of age with mental, emotional and behavioral health needs by promoting quality services...” P.52</p>	<p>Incorrect: Allowing a bachelor level person to provide supervision (make critical treatment decisions) is far below the acceptable industry standards, unethical and will harm children, youth and young adults.</p> <p><u>Imagine sending your child to a chiropractor that has a bachelor's degree. 4 classes in chiropractic care and 6 months of experience?</u></p> <p><i>ABA Therapy is part of the Mental Health Parity Act, which equates the therapy with medical treatment. Can you imagine getting medical treatment from someone with a bachelor's degree?</i></p> <p>Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA)</p>
<p>Fiscal Impact It is anticipated that the ability of an IBHS agency to provide an array of IBHS may offset these costs. P.53</p>	<p>Incorrect:</p> <ol style="list-style-type: none"> 1. Because commercial health plans will not reimburse for supervision services provided by bachelor level staff, no increase in revenue will be realized for ABA Services company to offset the increase in staffing (directors), training, supervision of supervisors, monthly staff meetings, quality assurance activities, all the internal record keeping associated with each of the above activities, ongoing internal audits required to pass yearly external HR, company-wide quality assurance and clinical audits. 2. Our company will not be utilizing the other arrays of services and should not be expected to engage in business activities for which it is not trained or in its mission statement.

<p>Fiscal Impact</p> <p>The exact fiscal impact is unknown because staffing requirements are similar to the current staffing patterns for agencies that provide BHRS with the exception of the addition of the requirement that the clinical director of an IBHS agency that provides ABA services must have a graduate level certification in behavior analysis and BHTs must be certified or obtain certification within 18 months of being hired by an IBHS agency or two years after the effective date of these regulations, whichever is later. P.53</p>	<p>Incorrect:</p> <p>As a company, we have calculated that our clinical director who supervises our supervisors (all of which are BCBAs) will incur significant cost that will not be offset by the new role (ABSA) which is unusable to our company.</p> <p>Costs below assumes an agency employs 15 BSAs and 1 Clinical Director</p> <p>Included in expenses: 1:1 supervision, time spent driving for both parties (not billing), documentation of event(s).</p> <p>Cost per month: \$4,230</p> <p>Cost per Year: \$50,760</p> <p>Yearly Expense per BSA: \$3,384</p> <p>As a side note, any company can estimate what costs are related to these regulations – see our estimations in the chart below.</p>
<p>§ 5240.11. Staff requirements</p> <p>The administrative director's responsibilities shall include setting work schedules to meet the needs of the children, youth and young adults served and that accommodate their parents or caregivers schedule P.86</p>	<p>It's quite irregular that the administrative director would set the work schedule. The administrative director should oversee scheduling operations.</p>
<p>§ 5240.11. Staff requirements</p> <p>(f) "The clinical director's responsibilities shall include ... (2) Providing one hour of supervision to all staff that supervise other staff at least two times a month."</p>	<p>BSA's in our company are all BCBAs. The activity of the Clinical Director supervising BCBAs is quite redundant and expensive. BCBAs with over 3 years of experience should be exempt from supervision by the Clinical Director.</p>
<p>§ 5240.82 Supervision</p> <p>(1) "One hour of supervision each week if the BHT-ABA works at least 37.5 hours per week or one hour of supervision two times a month if the BHT-ABA works less than 37.5 hour a week."</p>	<p>Supervision standards for maintaining the RBT credential are far more extensive than IBHS minimum standards in section §5240.82.</p> <p>It is worrisome that the workgroup may have not referenced the best practice standards as outlined by the BACB.</p>

Unfunded Mandates	
Unfunded Mandates Included in Department IBHS Regulations	Yearly Cost Totals
Assumes 15 BSAs 35 BHT's 75 Clients	
Monthly staff meetings	\$30,000 (50 staff, one hour per month in meeting, and one hour driving and not billing).
Clinical Director supervising supervisors (BCBAs) twice per month \$5240.82	\$50,760
Addition of graduate level Administrative Director \$ 5240.4	\$70,000
Recordkeeping and management of initial and ongoing staff trainings: Individual \$ 5240.13	\$9,000 - 1 hour per month per staff (50 staff) at \$15/hr
Recordkeeping and management of companywide quality assurance programming and creation of report(s) \$5240.10, \$5240.42, \$5240.61	\$45,000 - 2 hours per month per member (75 clients) and per staff (50 staff) at \$15/hr
Management of ongoing internal audits to pass yearly external HR audit	\$18,000 - 2 hours per month per staff (50 staff) at \$15/hr
Management of ongoing internal audits to pass yearly external Clinical audit	\$27,000 - 2 hours per month per member (75 members) at \$15/hr
Total Reoccurring Yearly expenses: Assumes 15 BCBAs 35 RBTs 75 Clients	\$249,760*
*hidden costs are the fee recoupments as a result of audits.	
<u>If a net profit margin of \$10 an hour was realized, it would take an extra 24,760 hours of service per year to pay for these costs.</u>	

Alternative suggestion:

A carve-out within the IBHS license is created for ABA companies that use the "Practice Guidelines for Healthcare Funders and Managers " model i.e., https://www.bacb.com/wp-content/uploads/2017/09/ABA_Guidelines_for_ASD.pdf This is the highest level of care and considered 'Best Practice' in the industry and because of its high standards, is *accepted across the board by all funding sources.*

Rationale:

1. Cases are supervised at significantly higher levels (5% minimum of all RBT hours worked) by BCBAs, on site with client present. This also means there are massive amounts of RBT training. Case reviews (§ 5240.82 Supervision) and all other supervision requirements exceed IBHS minimums.
 2. Cases are served by the highest standard of credential, the BCBA, BCaBA/Qasp and RBT.
 3. BCBAs are supervisors in their own right, and 'supervising the supervisor' (§ 5240.11 Staff Requirements) is quite redundant.
- We would warn all BCBAs who will be Clinical Directors to be careful of ethical violations by putting bachelor level supervisors with no formal supervised experience in charge of treatment decisions.

We look forward to your feedback,

Sincerely,

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