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Champa, Heidi

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From:	Mia Woods <MiaW@pccyfs.org>
Sent:	Tuesday, September 04, 2018 2:04 PM
To:	PW, IBHS
Cc:	Teri Henning
Subject:	IBHS Draft Regulations Comments
Attachments:	Comments on IBHS Draft Regulations.docx

Mia Woods, MHS, MJ
Pennsylvania Council of Children, Youth & Family Services
2040 Linglestown Road, Suite 109
Harrisburg, PA 17110
Phone: 717-651-1725
Fax: 717-651-1729
E-mail: miaw@pccyfs.org
www.pccyfs.org

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PCCYFS
Pennsylvania Council of Children, Youth and Family Services

September 4, 2018

Tara Pride, Bureau of Policy, Planning and Program Development
Office of Mental Health and Substance Abuse Services
Commonwealth Towers, 11th Floor
303 Walnut Street
Harrisburg, Pennsylvania 17105
Via email: RA-PWIBHS@pa.gov

Re: Proposed Regulations, 55 Pa. Code Chapters 1155 and 5240
Intensive Behavioral Health Services

Dear Ms. Pride:

Thank you for the opportunity to provide comments on the proposed regulations, 55 Pa. Code Chapters 1155 and 5240, relating to intensive behavioral health services (IBHS).

The Pennsylvania Council of Children, Youth and Family Services (PCCYFS) is a statewide, non-profit membership organization representing the interests of nearly 100 private human service agencies in Pennsylvania, which provide a wide range of child welfare, juvenile justice, and children's behavioral health services. Our members' services include residential, therapeutic and supportive services, ranging from prevention and treatment-focused, in-home services to foster and campus-based residential, to independent and transitional living.

On behalf of our provider network, we offer the following comments on 55 PA. Code Chapters 1155 and 5240, the proposed rulemaking for Intensive Behavioral Health Services.

General comments

As a preliminary matter, although we recognize and appreciate the positive intent behind the regulatory proposal, we are concerned that it will significantly add to the workforce and service-related difficulties already faced by service providers, without a corresponding, necessary increase in funding. It is well known that there is a healthcare professional shortage in Pennsylvania and nationally, and the difficulties experienced in recruiting and retaining qualified staff are even more severe in BHRS/IBHS programs.

Wait lists for BHRS/IBHS services are already very long, and we are concerned that increasing the certification, supervision, training and other requirements as set forth in the regulatory proposal will only exacerbate the problem and lead to a reduction in services to children and families in need. Although we have requested reconsideration of specific requirements below, we also ask for additional time to implement any final regulations that are adopted. Providers will need additional time to prepare for the regulatory changes, and time to work toward additional financial reimbursement to support the recruitment and retention of qualified staff.

We also respectfully submit that the increased costs and requirements of the proposed regulations will not be offset by any significant cost-savings or increased revenue. More specific comments are below, but we ask the Department to carefully review any new requirements that are likely to increase costs and create regulatory compliance difficulties, to ensure that they are necessary and appropriate to ensure a high level of care for children and youth.

For example, although service description changes and the elimination of the ISPT meeting should help to streamline access to services, they are not likely to reduce costs or increase revenue. At the same time, the additional costs required for organizational restructuring, certifications, training and supervision are expected to far exceed any cost savings. As mentioned above, we believe that the proposed requirements will make it significantly more difficult to hire and retain qualified staff – a problem that is already at a crisis level.

Our service providers do not believe that the cost of additional staff-related requirements would be offset by training cost decreases, due to a number of factors, including, but not limited to the following:

- Data on staff turnover has shown that when agencies lose people, it is often not to move up within the program, it is usually to move on to higher positions outside of the program.
- Costs under the new rules are expected to increase, because the set of trainings that have been eliminated is usually only about three to six hours of training; other training requirements have increased .
- Current clinical and administrative staff will have to undergo additional training and certifications, which will lead to added costs for agencies that choose to provide this benefit and the need for coverage when staff are not available to perform their duties because of continuing education and related requirements.

As mentioned above, providers are concerned that if these rules go into effect as currently written, they may negatively impact the number of children and youth that they are able to serve. They are particularly concerned about access to services for children in less populated areas.

In its explanatory comments, the Department states that it will monitor the impact the regulations through yearly licensing audits and utilization management reviews of the IBHS agencies. Can you provide more information about what utilization management audits will

entail, including the anticipated required documentation, review elements and parameters? Will OMHSAS representatives be completing the audits?

Finally, providers ask the Department to consider working with the PA Certification Board to create a statewide credential for clinical supervisors of IBHS programs.

With respect to the payment provisions, providers request the Department to consider authorizing payment for time spent performing additional administrative duties set forth in 5240, such as:

- Coordination of services, including establishing and maintaining written agreements;
- Discharge planning, including follow up phone calls; and
- Payment for MT participation in collaborative sessions.

We also request clarification on payment status when providers experience delays outside of their control, such as unavailability of a child or family when providing billable services that occur outside of the indicated timeframes.

More specific comments follow.

§ 5240.2. Definitions.

The definition of Evidence-based therapy (EBT) includes a therapy that has been "designated as a model intervention by the Department."

Can you provide additional clarification on this definition? How will a model intervention be determined? What process will be used? How can providers submit programs or therapies to be considered as model interventions?

§ 5240.6. Restrictive procedures.

We ask the Department to clarify that agencies are not required to use restrictive procedures and can choose not to. Most agencies currently providing BHRS/IBHS services have policies that promote the use verbal and non-physical de-escalation techniques when necessary. Programs may not want to add restrictive procedures into their policies for a variety of reasons, including that doing so would require significant, additional oversight, training, and resources. Providers are also concerned that implementing restrictive procedures will lead to increased liability for providers and an increase in acuity levels of the children referred to these services.

We request that language be included that clearly indicates that "if an agency chooses to utilize restrictive procedures" in this section, prior to listing the requirements for restrictive procedures.

Finally, several of the restrictive procedures requirements require more than one person present at the time of the procedure, e.g., the changing of the staff person applying a restraint,

or the requirement of a person observing and documenting. These requirements will create significant challenges in some community-based settings, where there is usually only one team member present when providing billable services. Scenarios where two team members are permitted to be present simultaneously have historically been limited for billing purposes.

5240.7. Coordination of services.

This regulation requires agencies to have written agreements to coordinate services with other service providers. We assume that such written agreements are not required when a provider performs the services listed (i.e., that a provider would not have to have written agreements within its own organization), and we request that the Department make this clear in this section.

Section (c) further requires IBHS agencies to have and update lists of community resources. These services will require additional time from administrative staff, and we ask the department to consider establishing a pay rate for this and other related case management services required to coordinate care.

STAFFING

§ 5240.11. Staff requirements.

Section (b) lists the responsibilities of the administrator director. We believe that this should make clear that the administrator is responsible for <u>oversight</u> of the listed duties and that he or she is not required to conduct every one of the specified duties him or herself. This could be accomplished by making it clear that the duties can be "overseen" by the administrative director.

As a specific example, we believe that (2) Setting work schedules to meet the needs... should be modified to read "(2) <u>Ensuring that work schedules are set</u> to meet the needs....

We also ask that the language throughout this section be modified to recognize the use of independent contractors and consultants in the provision of services and request clarification on whether the expectations listed in this section also apply to contractors/consultants.

§ 5240.12. Staff qualifications.

Under this provision, an administrative director must meet the qualifications for a clinical director or have an appropriate graduate degree. A clinical director must have at least one year relevant post-graduate experience and be licensed in Pennsylvania as set forth in the rule. sets forth specific requirements for an administrative director and a clinical director

Under these rules, current clinical and administrative staff will have to obtain additional training and/or certifications in order to meet the new qualifications set forth in the regulations.

We also ask that the language in this section be modified to recognize the use of independent contractors and consultants in the provision of services and request clarification on whether the expectations listed in this section also apply to contractors/consultants.

5240.13. Staff training plan.

The proposed training plan rules include new requirements, including oversight and documentation requirements, which will require more supervisors for direct care staff.

We also ask that the language in this section be modified to recognize the use of independent contractors and consultants in the provision of services and request clarification on whether the expectations listed in this section also apply to contractors/consultants.

SERVICE PLANNING AND DELIVERY

§ 5240.21. Assessment.

The rules require a comprehensive assessment within 15 days of "the initiation" of IBHS and prior to developing the ITP. We ask that the Department clarify exactly when services are "initiated." Is the date of "initiation of services" determined by the Department or by individual providers?

We also request clarification and more detail on the written order process and how that affects the timing and development of the written assessment. When is medical necessary established, and who is responsible for documenting it? What is the ongoing role of the psychiatrist or psychologist in the assessment process and subsequent actions.

Providers are also concerned that the 15-day limit is too short, in light of the challenges they can face with scheduling families and related concerns. We ask the Department to considering extending this timeframe under certain circumstances.

§ 5240.22. Individual treatment plan.

The written ITP is required to be developed within 30 days after the "initiation of service...."

See the question above regarding "initiation" of services.

Providers are concerned that the 30-day time limit may be too short in some circumstances, given the challenges they can face with scheduling families and related concerns. . We ask the Department to considering extending this timeframe under certain circumstances.

DISCHARGE

§ 5240.31. Discharge.

The discharge rules provide for the reinitiation of services under certain circumstances when requested within 60 days after the child, youth or young adult has been discharged from services.

The reinitiation rules raise a number of questions and concerns from providers regarding the process and expectations of the Department. As a practical matter, it may be very difficult to re-engage the same team, as members will receive new cases after discharge and before any reinitiation is requested.

Providers also request that the rules provide for re-assessment of the child, youth or young adult to ensure that there is a need for reinitiation of services and/or to facilitate an update of treatment plan goals and objectives

§ 5240.32. Discharge summary.

Among other things, this section requires documentation of at least two telephone contacts within 30 days of discharge. We request that this language be modified to require "attempted contacts," as it can be difficult in some circumstances to contact families after discharge.

INDIVIDUAL SERVICES

§ 5240.71. Staff qualifications.

This section sets forth the requirements for behavior specialists, mobile therapists, and behavioral health technicians (BHTs) who provide individual services.

As a general note, the rules, as proposed, would require IBHS staff to obtain additional training and certifications in order to meet the new qualifications, which will increase agency costs.

We request that the department consider increasing the timeframe by which BHTs must obtain the RBT, BCAT or other behavior analysis certification to a minimum of 24 months.

In addition, we note that when BHTs obtain an RBT or other listed certification, they will be required to be supervised by BCBAs. Agencies will therefore need to hire additional BCBA level staff (which presents its own challenges) and will also occur additional administrative costs to cover the additional duties of supervision and monitoring and tracking training. Has the department considered the option of allowing BHTs to meet the requirements of the RBT, without the need to obtain the certification?

We also ask that the language in this section be modified to recognize the use of independent contractors and consultants in the provision of services and request clarification on whether the expectations listed in this section also apply to contractors/consultants.

§ 5240.72. Supervision.

This section sets forth supervision requirements for all staff providing individual services, including requirements for specific amounts of face-to-face supervision. Additional training hours for staff will require additional oversight and more supervisors for direct care staff positions

Current supervision standards for mental health professionals allow for group supervision. Agencies with a high volume of Behavior Specialist Consultants and Mobile Therapists under the current rules schedule several sessions of group supervision throughout the month to ensure that they are meeting the supervision requirements. The new standard requiring an hour of face-to-face for each IBHS staff person per month will require significant, additional time and resources. We respectfully request reconsideration of this requirement and retention of current standards.

Although the rules permit face-to-face supervision to be delivered through secure, real-time, two-way audio and video transmission that meets technology and privacy standards required by HIPAA, some providers do not have the resources to allow use of the option. In addition some locations in Pennsylvania, with limited phone and internet service, will prevent this from being a viable option for some.

Finally, we ask that the language in this section be modified to recognize the use of independent contractors and consultants in the provision of services, and request clarification on whether the expectations listed in this section also apply to contractors/consultants.

§ 5240.73. Staff training requirements.

Among other things, this section requires BHTs to complete at least 30 hours of Department-approved training before providing services. The additional hours of required training for this role seem to negate efforts made by the department to alleviate training issues by removing the need for staff to meet the training requirements when working for more than one employer or moving to a new provider.

Additional training hours for staff will also require additional oversight and more supervisors for direct care staff positions. We request that the department maintain current standards.

We also ask that the language in this section be modified to recognize the use of independent contractors and consultants in the provision of services, and request clarification on whether the expectations listed in this section also apply to contractors/consultants.

APPLIED BEHAVIORAL ANALYSIS

§ 5240.81. Staff qualifications.

See comments in section 5240.71, above, relating to the additional expense resulting from these proposed rules, extending the time for a BHT-ABA to obtain a certification to 24 months, and consideration of allowing BHTs to meet the requirements of certification.

If these rules are adopted, current clinical and administrative staff will be required to obtain additional training and/or certifications in order to meet the new qualifications set forth in the regulations, at significant cost and time to agencies.

We also ask that the language in this section be modified to recognize the use of independent contractors and consultants in the provision of services and request clarification on whether the expectations listed in this section also apply to contractors/consultants.

§ 5240.82. Supervision.

See comments in section 5240.72, above, relating to face-to-face supervision and use of two-way secure video communications. Additional training hours for staff will require additional oversight and more supervisors for direct care staff positions

We also ask that the language in this section be modified to recognize the use of independent contractors and consultants in the provision of services and request clarification on whether the expectations listed in this section also apply to contractors/consultants.

GROUP SERVICES

§ 5240.102. Supervision.

See comments in 5240.72 and 5240.82, relating to supervision.

§ 5240.108. Requirements for group services in school settings.

We request clarification on this section to make clear whether the services include Community School Based Behavioral Health (CSBBH) and other similar services currently occurring in the school setting.

55 Pa.Code Ch. 1155

SCOPE OF BENEFITS

PAYMENT FOR INTENSIVE BEHAVIORAL HEALTH SERVICES

§ 1155.32. Payment conditions for individual services.

This provision requires a written order to be written by "a licensed physician, licensed psychologist, certified registered nurse practitioner or other licensed professional whose scope of practice includes the diagnosis and treatment of behavioral health disorders."

We request clarification on how the Department defines "other licensed professional whose scope of practice includes the diagnosis and treatment of behavioral health disorders." The language seems vague and some are concerned that it could minimize the role of the psychiatrist/psychologist in the process of recommending and prescribing services. Specific concerns raised by members were that professionals in some disciplines may not have the appropriate background and training to provide the differential diagnosis and recommendations that occur under current practices and that broadening this too much could lead to a loss of clinical expertise. Our members believe that current practice should be continued.

Alternatively, the utilization of "other licensed professionals" could require oversight and review from a psychiatrist/psychologist to ensure the quality of the work.

Question: How will this work in counties where there are independent prescribers who are authorized by the Behavioral Health Managed Care Organization?

With respect to the use of the term "initiation of services" and the 15-day and 30-day requirements, please see our comments under 5240.21 and 5240.22. We ask that the Department clarify exactly when services are "initiated." Is the date of "initiation of services" determined by the Department or by individual providers?

Providers are also concerned that the 15-day and 30-day limits are too short, in light of the challenges they can face with scheduling families and related concerns. We ask the Department to considering extending this timeframe under certain circumstances.

Finally, we request clarification on terms for payment when an assessment or ITP is not completed within the indicated timeframes, where there is documentation indicating reasonable provider efforts and the reason for the delay.

With respect to reinitiation of services, please see our comments under 5240.31. The reinitiation rules raise a number of questions and concerns from providers regarding the process and expectations of the Department. As a practical matter, it may be very difficult to

re-engage the same team, as members will receive new cases after discharge and before any reinitiation is requested.

Providers also request that the rules provide for re-assessment of the child, youth or young adult to ensure that there is a need for reinitiation of services and/or to facilitate an update of treatment plan goals and objectives – and that this service and related activities be billable.

§ 1155.33. Payment conditions for ABA.

With respect to reinitiation of services, please see our comments above, under 1155.32.

§ 1155.34. Payment conditions for EBT.

With respect to reinitiation of services, please see our comments above, under 1155.32.

§ 1155.35. Payment conditions for group services.

With respect to reinitiation of services, please see our comments above, under 1155.32.

In addition, we request clarification on whether these services will include include Community School Based Behavioral Health (CSBBH) and other similar services currently occurring in the school setting.

Thank you again for the opportunity to comment on these important issues and for your consideration of our concerns. If you have any questions, or if we can provide you with any additional information, please contact me at miaw@pccyfs.org or (717) 651-1725.

Sincerely,

Mia Woods
Behavioral Health Member Specialist

cc: Teri Henning, Executive Director