

14-546-76

**Champa, Heidi**

---

**From:** Robena Spangler <rspangler@paproviders.org>  
**Sent:** Tuesday, September 04, 2018 1:29 PM  
**To:** PW, IBHS  
**Subject:** RCPA IBHS Comments  
**Attachments:** RCPAIBHSComment090418Final.docx

3209

Thank you for the opportunity to submit written feedback on the proposed IBHS, 55 Code Chapters 1155 and 5240. R

**Robena L. Spangler, MS**  
Director, Children's Division



REHABILITATION & COMMUNITY  
PROVIDERS ASSOCIATION

**Main:** 717-364-3280  
**Direct:** 717-963-3614  
**Cell:** 717-525-4097  
**Fax:** 717-364-3287

777 E Park Dr, Ste 300  
Harrisburg, PA 17111-2754  
Website | Facebook | Twitter





3209



REHABILITATION & COMMUNITY  
PROVIDERS ASSOCIATION

September 4, 2018

Via electronic submission to [tpride@pa.gov](mailto:tpride@pa.gov)

Tara Pride  
Bureau of Policy, Planning and Program Development  
Commonwealth Towers  
11<sup>th</sup> Floor, P.O. Box 2675  
303 Walnut Street  
Harrisburg, PA 17105



RE: Comments on Proposed Rulemaking

Dear Ms. Pride:

On behalf of the Rehabilitation and Community Providers Association (RCPA), we are submitting comments on the proposed regulations, 55 PA. Code Chapters 1155 and 5240, Intensive Behavioral Health Services (IBHS) developed by the Department of Human Services and published in the August 4, 2018 issue of the PA Bulletin (Vol. 48, No. 31).

RCPA represents the full spectrum of health and human service providers and non-profit organizations, including mental health, drug and alcohol, intellectual and development disabilities, medical rehabilitation, brain injury, vocational and residential services for children and adults.

RCPA commends the Department for the work done to codify minimum licensing standards and program requirements for the delivery of intensive behavioral health services for children, youth and young adults under the age of 21 with mental, emotional and behavioral needs. The proposed standards also include individual services, Applied Behavioral Analysis (ABA), evidence-based services (EBT) and group services. In addition to standards for delivery of IBHS, the proposed regulations provide program requirements for participation in the medical assistance (MA) program and MA payment conditions for agencies that deliver intensive behavioral health services (IBHS).

RCPA is fully supportive of proposed regulatory standards that will replace the program requirements for behavioral health rehabilitation services (BHRS). Historically, BHRS has been a valuable component of community-based mental services for children and families. These services have been provided in home, school and communities for over 20 years in Pennsylvania. Over the years, providers of BHRS have experienced financial losses and program closures due to rate stagnation, challenges with workforce recruitment and retention and the lack of credible, evidence-based outcomes to justify rate increases. The proposed regulations contain requirements that could remedy the aforementioned issues.

Seventeen (17) of our BHRS provider agencies have committed time and resources for over one year to the BHRS/IBHS work group. The work group meets bi-monthly to discuss and strategize ways to improve the continuum of care and preserve community-based mental health services for children and families. The work group also includes staff from OMHSAS and the Bureau of Policy and Planning by invitation.

The work group comments are offered as follows:

5240.1-5240.7

#### **General Provisions**

The definition of Applied Behavioral Analysis is broad and the language is limiting; meaning that ABA is the only recognized treatment service for children with Autism throughout the proposed regulations.

Providers would like assurances that the service description process will be efficient and collaborative; technical assistance will be offered to improve the length of the review process.

5240.11-5240.14

#### **Staffing**

1. Can an Administrative Director possess a bachelor's degree plus experience required? We believe that it isn't necessary to have a master's level individual providing day-to-day management of the program.
2. Remove the 7.5 hours per week standard.
3. Can LBS be included in the qualification for a Clinical Director? It is included in ABA services, but not in Individual services.
4. Can the Clinical Director carry a caseload if needed?
5. Department-approved training-what is the purpose? And what would the process be? Will the department have topic-specific trained individuals employed to complete the approval process?
6. Remove the date of hire language from the Individual Staff Training requirement. Each staff members training should be individualized annually.

5240.21-5240.23

#### **Service Planning and Delivery**

Under 5240.21:

1. The language regarding the assessment in 8.(d) should indicate treatment "input" instead of "recommendations" from health care providers, school or other service providers.
2. If a child is not progressing within 90 days, can this be addressed in the ITP only without the need to complete a new assessment also?
3. Need clarification and definition of "initiation of IBHS"

Under 5240.22:

1. (d) (8) Consider removing the language, "each setting" to allow for flexibility to meet individual therapeutic needs.
2. Clarify the intent of a Transition Plan as part of the Safety/Crisis Plan.

5240.31-5240.32

### Discharge

Under 5240.31

1. Will a new written order be required for re-initiation of services?

Under 5240.32

1. Change language to accommodate documentation of 2 telephone contact **attempts**

5240.41

### Records

(b) (3) This language/requirement should be moved under 5240.61 Quality Improvement as this would support the method for establishing sample size, frequency of reviews and staff qualifications for individuals performing the reviews.

5240.51

### Nondiscrimination

No comments.

5240.61

### Quality Improvement

(2) (b) Need clarification of the information that needs to be shared with the public related to annual quality reports.

5240.71-5240.75

### Individual Services

Under 5240.71

1. Currently, there is no BHT certification in PA. What is the scope of certification for BHT? Related costs? Requirements for reimbursement?
2. (a) (1) and (c) (1) and (2) should be the same language
3. Need clarification on what constitutes "experience in providing mental health direct services to children, etc." Previously, working with children in a school, daycare or other CASSP system qualified toward experience.
4. BSC's who are licensed should be able to provide Individual Services to children who are diagnosed with ASD without meeting the qualifications under 5240.81 (c) because they can provide non-ABA services.
5. Under BHT (d) (3) remove full-time experience so that internship experience can meet the requirement. Also remove mental health specific requirement due to the limited pool of candidates available to fill these positions.

Under 5240.72

1. (2) and (3) We believe this is cumbersome and not cost effective. 30 minutes/every 3 months/each IBHS staff person is intrusive. Direct observation for this timeframe tells us very little about fidelity to practice. Are there other ways to monitor adherence to fidelity for example, case reviews?
2. "Each IBHS staff person" - who are the individuals that this applies to? If this applies to master's level staff, it creates an excessive amount of supervision which requires an infrastructure that will actually decrease access to treatment and increase costs.
3. Need consistency around who can provide supervision in both Individual Services and ABA Services.
4. (

Under 5240.73

1. Department approval of training doesn't allow the flexibility needed to ensure training is cost-effective and timely.

Under 5240.74

1. No comments.

Under 5240.75

1. (a) Behavior Specialist consultation should be expanded to include all necessary treatment team members.
2. BSC should be able to do all activities provided by the BHT.
3. Add supervision requirements language to the BSA section.
4. MT's should be able to consult with all necessary treatment team members and permitted to do all activities provided by the BHT.
5. BSC's and MT's should be able to develop, design and direct an ITP. There is inconsistency around this activity and the language.
6. (c) (9) Referrals should not be the role of the BHT; this expertise is more appropriate for the BSC and MT roles.

5240.81-5240.87

**Applied Behavioral Analysis**

Under 5240.81

1. Add a minimum qualification of Bachelor's Degree to the Administrative Director qualifications.
2. Need consistency with the defined timeframes for achieving the proper credential to provide the service. This is unknown because there is no certification developed by PA Certification Board.

Under 5240.82

1. What is the difference between service delivery of the ABSA and the BSA? The roles need to be clarified.
2. Is a BSA required on each case?

Under 5240.87

1. How are ABSA services authorized? Are they prescribed at the discretion of the agency?
2. Add consultation language same as BSC; add observation and collection of data.
3. The BSA should be able to carry out the same duties as the ABSA and the BHT-ABA.

5240.91-5240.93

**Evidence-Based Therapy**

No comments.

5240.101-5240.108

**Group Services**

Under 5240.102

1. Can another professional other than the Clinical Director provide supervision to the MHP's?

Under 5240.107

1. Is there any place for ABA to be done as part of the group services? This is not listed under either the MHP or the MHW.
2. (a) Can the MHP provide consultation with the client's team?

Under 5240.108

1. (3) Need clarification on what is meant by "assurances"?
2. (5) (1) Need clarification around the continuity of services when school is not in session.

5240.111

**Waivers**

No comments.

## Funding and Payment

Our BHRS providers have significant concerns about the proposed regulations and the impact they will have on service delivery, staffing, and program budgets. It has been stated that the changes proposed in the new IBHS regulations will be "cost neutral", however, the unfunded mandates proposed will create additional administrative, supervision and staffing costs. Increases in operational costs for publicly-funded programs requires action to appropriate more funding. RCPA is extremely concerned that the regulations as proposed will have negative consequences for many providers and the children they serve.

Since the 1990's, funding for these types of programs have not kept up with cost of living increases which has resulted in more restricted access to services as providers discontinue programs. It is difficult to fiscally analyze the regulations without knowing the funding levels. An anticipated outcome of the IBHS regulations and final promulgation is the need for funding reform and consistency in rate methodology.

The notion of this being a cost-neutral change is not consistent with what is required in the regulations.

RCPA providers fully supports the idea of quality service provision, higher qualifications for staff and increased supervision. The concern is that these requirements are unfunded mandates that may not lead to increased reimbursement based on actual costs, therefore, inadequate funding and payment for IBHS will result in less access to services for those with the highest need.

### Unfunded Mandates

#### Additional training requirements

- BHT from 39 training hours to 54 training hours in the first 6 months
- RBT / BCAT initial certification costs and ongoing recertification
- MT/BSC 16 hours/year (currently not required)
- Additional costs of staff time for the higher supervision requirements
- Individual training plans based on hire date rather than annual date determined by the agency.
- Trainings having to be approved by the Department; this will require additional administrative time and costs.
- Costs associated with proposed certifications being created through the PA Certification Board for ABSA and BSA.

#### Supervision requirements

- Onsite quarterly supervision requirement for all IBHS staff in addition to regular supervision hours – this can be significant depending on the number of staff
- Can't bill for supervision under Individual BSC but it is listed as a duty under ABA. Can this be a billable service as it is listed as a duty under a particular role?

- Additional supervision requirements mean hiring additional staff. Since supervision is not funded, this is a significant added expense for providers.
- Travel expenses for onsite supervision (time and mileage)

#### Staff Qualification Requirements

- A master's level Administrative Director will increase costs and may be difficult to recruit due to current workforce challenges.
- The proposed requirement states that providers need more than one clinical director to meet qualifications for different IBHS programs housed in the same agency. Using clinical staff to meet this standard removes them from the possibility of providing billable services. Higher qualifications will also require a higher pay level.
- In addition, the number of supervisors required to meet the standards of supervision will add a cost and remove clinical staff from the direct provision of services.
- BCBA's are paid significantly more in private practice, public sector industries and educational institutions. Traditionally, state-funded programs, like BHRS, or the proposed IBHS cannot compete with these salaries. This will make recruitment and retention difficult and may increase waitlists for services. Retention of this level of staff could be a significant financial cost for providers.

#### Quality Requirements

The following are time and labor intensive without additional funding. Providers will be required to hire additional administrative staff in order to be in compliance.

- Annual reporting – both the internal requirements and public report
- Level of auditing – frequency of record reviews
- Community resource list to be maintained and updated annually
- Clinical Director signing off on all ITP's – this will also require review time
- Discharge follow up calls – if this is post discharge it is not billable.
- Annual licensing requirements. This will be multiplied if each site requires a separate license and annual licensing visit.
- Update of the organizational chart sent within 10 days rather than presented at the next licensing visit.

#### Other issues:

- Individual site licensing, initially and annually.
- Program descriptions for each location, even if the same service is going to be provided in all locations and the amount of time this duplication will require.