

## Comments of the Independent Regulatory Review Commission



### Department of Human Services Regulation #14-548 (IRRC #3347)

#### Psychiatric Rehabilitation Services

September 7, 2022

We submit for your consideration the following comments on the proposed rulemaking published in the July 9, 2022 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the Department of Human Services (Department) to respond to all comments received from us or any other source.

#### 1. Implementation procedures; Clarity.

The Department states this proposed regulation “will benefit all individuals who receive [psychiatric rehabilitation services (PRS)] by clarifying that PRS can be provided in the home and by removing barriers to the provision of PRS through telehealth.” While the Department states that it removes barriers to telehealth, the regulations do not directly state how the provision of PRS will be implemented through this delivery method. To this end, commentators have numerous concerns, questions and recommendations relating to telehealth, including the following:

- The use of the term “telehealth” is vague as used in the Preamble and is not used in the Annex. How will it be added to the regulations?
- The term “telehealth” should be defined and include services delivered by telephone, even if there is a limitation in the regulation on the amount of telephone services allowed.
- References to telehealth should be added to individual and group service provisions to clarify how it relates to these regulations.
- PRS agencies delivering services through telehealth must have policies that ensure that this method is utilized only when it is clinically appropriate to do so and that licensed practitioners are complying with standards of practice set by their licensing board.

We ask the Department to explain how PRS agencies will implement access to services through telehealth. In addition, the Department should consider clarifying the regulations by defining the term “telehealth” and establishing standards for delivery of services through this method.

**2. Section 5230.3. Definitions. – Clarity and lack of ambiguity; Protection of the public health, safety and welfare; Implementation procedures.**

*Functional impairment*

This term is defined as “[d]ifficulties that interfere with or limit skill development or functioning in a domain.” The Department explains in the Preamble that the definition is amended to be more specific for use by a licensed practitioner of the healing arts (LPHA) when determining admission requirements for PRS. We have two concerns. First, this definition is vague. Second, as explained by a commentator, an LPHA may be unfamiliar with assessing functioning and performance in life domains as needed to complete a recommendation. The commentator suggests adding details that may be referenced in a recommendation. We ask the Department to revise this definition to improve clarity and implementation of the regulations.

*Wellness*

This term is defined as a “domain that helps an individual to develop skills needed to improve or maintain physical and mental health.” This definition is vague. In the Preamble, the Department explains the addition of wellness as a domain will allow an individual to manage “physical and mental health needs to promote or support . . . recovery and resiliency.” Commentators support the addition of this domain but assert this definition does not reflect that wellness “is a holistic integration of activities and lifestyle intended to enhance all the life domains listed in the regulation.” Commentators also state their programs utilize the Federal Substance Abuse and Mental Health Services Administration’s wellness initiative supporting eight dimensions: physical, intellectual, emotional, social, spiritual, vocational, financial and environmental. We recommend that the definition be revised to improve clarity and protect the public health, safety and welfare.

**3. Section 5230.4. Psychiatric rehabilitation processes and practices. – Reasonableness; Need; Implementation procedures; Clarity.**

Subsection (f) expands the locations where a PRS agency may deliver service to include an individual’s home. Commentators have numerous concerns, questions and recommendations, including the following:

- The expansion of location of services is unnecessary, redundant and potentially burdensome for the Department and PRS providers. Adding home as a location will require PRS providers to resubmit service descriptions to the Department for approval and updated licenses would need to be issued.
- The home has always been considered a community location as opposed to a facility location.
- It may be useful to define “community” in Section 5230.3 (relating to definitions) as services delivered anywhere other than the licensed facility, including services delivered in the home either in-person or by telehealth.

We ask the Department to explain why it is necessary to add home as a service location. The Department should also explain the reasonableness of this addition given the regulated community's concerns regarding implementation procedures. To improve clarity, the Department should consider adding a definition of the term "community" to include the home or explain why it is unnecessary to do so.

This comment also applies to Sections 5230.15(a)(6), 5230.52(e)(2), 5230.53 and 5230.54(a).

**4. Section 5230.15. Agency service description. – Implementation procedures; Clarity.**

Subsection (a)(3)(ii) requires a PRS agency to submit to the Department a service description of the population served specifying the "[a]ge range and age groupings, including information on how different age groups will be separated while services are provided through the scheduling of services, providing services in different locations in the PRS facility's physical space and other procedures." We have two issues. First, a commentator asks for clarification on how different age groups are expected to be separated. Second, a PRS agency is required to describe "other procedures" in the document. We ask the Department to explain the implementation procedures for separation of age groups and the other procedures a PRS agency is expected to describe. Further, the Department should consider revising this subparagraph to improve clarity.

**5. Section 5230.21. Content of individual record. – Statutory authority; Consistency with statute; Protection of the public health, safety and welfare; Implementation procedures; Clarity.**

Paragraph (4) requires a PRS agency develop and maintain a record for an individual, including a signed set of documents providing:

(i) Documentation of an individual's consent to receive PRS **or**, if the individual is 14 years of age or older but under 18 years of age, documentation of an individual's consent to receive PRS **or** documentation of consent by the individual's parent or legal guardian for the individual to receive PRS.

(ii) Documentation of an individual's consent to release information to other providers and natural supports, including family members, **or**, if the individual is 14 years of age or older but under 18 years of age, documentation of the individual's consent to release information to other providers and natural supports, including family members, **or**, if the parent or legal guardian has provided the consent to receive PRS, documentation of consent by the individual's parent or legal guardian to release information to other providers and natural supports, including family members.

[Emphasis added.]

Representative Kathy Rapp supports the initiative to expand services but expresses concerns about parental rights to determine what is in the best interest of a child. She asks the "Department to clarify whether there are specific statutory provisions, whether state or federal,

that provides the Department with authority to promulgate regulations regarding minors receiving PRS without needing parental consent.” The letter also asks for clarification of paragraph (4)(i). Who does the Department intend to authorize to provide consent given the use of the conjunctive “or”? Specifically, does the Department mean to authorize PRS to individuals at least 14 years of age without requiring parental consent? She expresses concern “about the scenario that may develop when a minor and a parent disagree as to the proposed route of treatment. If the minor consents to treatment, but the parent does not, or the minor does not want PRS, but the parent provides consent to having his or her child receive PRS, how will that disagreement be resolved?” Relating to this concern, how will admission requirements under Section 5230.31 (relating to admission requirements) be handled if a parent disagrees with having a minor child admitted when there is a written recommendation from an LPHA? Regarding paragraph (4)(ii), Representative Rapp asks when “the minor child has consented to receive PRS, are there provisions or situations in which a parent may access their minor child’s records without the minor child’s consent, or may the parent only receive this access if the parent provided the initial consent for the minor child to receive PRS?”

Commentators from the regulated community oppose a parent or legal guardian providing consent for an individual 14 years of age or older but under 18 years of age to receive PRS, explaining that a person other than the individual being treated agreeing to access PRS is in opposition to the voluntary nature of psychiatric rehabilitation.

A commentator asks how paragraph (4)(i) and (ii) conforms with the act of July 23, 2020 (P.L. 647, No. 65) (Act 65), which enables certain minors to consent to medical, dental and health services, as well as providing for mental health treatment and release of medical records.

We ask the Department to state the statutory authority for the consent provisions in paragraph (4)(i) and (ii) and address consistency with other statutes addressing consent for mental health services, including Act 65. The Department should explain how the authorization provisions will be implemented for individuals 14 years of age or older but under 18 years of age, as well as parents and legal guardians, and explain how these provisions protect the public health, safety and welfare. Finally, the Department should consider revising these subparagraphs to improve the clarity of the consent provisions so that they are more easily understood by the regulated community.

**6. Section 5230.31. Admission requirements. – Protection of the public health, safety and welfare; Implementation procedures; Need; Feasibility; Clarity.**

*Subsection (a)(2)*

Subsection (a) requires an LPHA to write a recommendation for an individual to be eligible for PRS. The documentation must include one of the diagnoses in paragraph (2)(i) – (ix). Commentators address the following two issues.

First, commentators ask the Department to consider adding autism spectrum disorder to the list of diagnoses in subsection (a)(2) that do not require review through the exception process in subsection (c), as PRS has been shown to benefit autistic individuals. A commentator states that

people with autism “do not have barrier-free nor open access to PRS.” This commentator also feels that these individuals “deserve parity in services in order to develop skills needed to live, learn, socialize, and work in equal measure to peers” with the listed diagnoses.

Second, a commentator explains that subsection (a)(2)(i) – (ix) lists both entire diagnostic groups and certain specified diagnoses within a group. This commentator suggests clarifying these diagnoses by using select groupings in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM), including “Depressive Disorders” and “Trauma and Stressor-Related Disorders,” to broaden categories and eliminate the need for additional exceptions.

We ask the Department to consider revising paragraph (2) to include autism spectrum disorder and clarifying the list of diagnoses to protect the public health, safety and welfare.

#### *Subsection (a)(4)*

Current subsection (a)(4) requires an individual to choose to receive PRS to be eligible for this service. This paragraph is proposed to be deleted. We have two concerns. First, the Department did not explain the rationale for deleting this requirement. Second, commentators oppose this deletion, explaining that PRS is a voluntary service and individuals have a right to decide whether and how to participate in PRS. We ask the Department to explain the rationale for deleting this requirement and how the regulation continues to protect the public health, safety and welfare without this safeguard.

#### *Subsection (c)*

Subsection (c) sets forth the exception process for an individual who does not have a diagnosis in subsection (a)(2). Under paragraph (3), an LPHA is required to document “the anticipated benefit that PRS will provide for the individual.” Commentators oppose this requirement given that an LPHA may not have experience using interventions. Further, commentators express concern that an LPHA identifying the anticipated benefit of PRS has the potential to take away from the individual’s ability to set rehabilitation goals with the PRS provider. We ask the Department to explain the need for this documentation, the feasibility and reasonableness of requiring an LPHA to complete this assessment, and how this step of the exception process will protect the public health, safety and welfare.

#### *Subsection (d)*

Subsection (d) requires a PRS agency, upon an individual’s admission, to complete an initial functional impairment screening to confirm moderate to severe functional impairment in at least one domain identified in the LPHA’s written recommendation. Commentators oppose this subsection, noting the term “screening” means a process that searches for existence of impairment when there are no clear symptoms. They further draw attention to Section 5230.61 (relating to assessment), which requires an assessment at the start of service as a collaborative process with PRS staff and the individual, along with supports, to identify services and resources that may be needed to assist an individual. Commentators suggest this process does not need to be duplicated as part of the admission process.

We ask the Department to explain why the screening is needed given the implementation procedures in Section 5230.61. Should the Department determine this step of the admission process is necessary, we ask it to clarify this provision by revising “screening” to “assessment” or explain why it is not necessary to do so.

**7. Section 5230.32. Continued stay requirements. – Protection of the public health, safety and welfare.**

“Skill deficit,” as assessed while determining eligibility for continued stay, is proposed to be deleted from subsection (b)(2)(i). We have two concerns. First, the Department did not explain why this assessment is proposed to be deleted. Second, commentators oppose this deletion, explaining “this is specific to if the goal was accomplished” and it “better describes the need for an individual’s continued stay.” We ask the Department to explain why “skill deficit” is deleted and how the regulation continues to protect the public health, safety and welfare without this assessment.

**8. Section 5230.51. Staff qualifications. – Implementation procedures; Protection of the public health, safety and welfare; Clarity.**

This section sets forth staff qualifications for PRS agencies that serve individuals over 18 years of age in subsections (a) and (b) and PRS agencies that serve individuals 14 years of age or older but under 18 years of age in subsections (e) and (f).

Commentators ask for clarification of how subsections (a), (b), (e) and (f) will be implemented by a PRS agency who serves both individuals over 18 years of age and individuals 14 years of age or older but under 18 years of age. Will a staff member be required to maintain dual certification as a Child and Family Resiliency Practitioner (CFRP) and a Certified Psychiatric Rehabilitation Practitioner? In addition, a commentator asks why qualifications for psychiatric rehabilitation workers and psychiatric rehabilitation assistants in subsections (c) and (d), respectively, are not updated to include staff members who work with individuals 14 years of age or older but under 18 years of age.

We ask the Department to explain implementation procedures for a PRS agency who serves both populations. The Department should consider revising this section to improve clarity for the regulated community. Further, the Department should explain why the staff requirements in subsections (c) and (d) are not amended and how this protects the public health, safety and welfare.

**9. Section 5230.52. General staffing requirements. – Implementation procedures; Clarity.**

*Subsection (h)*

Subsection (h) requires a minimum of 25% of a PRS agency’s staff, based on the number of full-time equivalent positions, to meet the qualifications of a psychiatric rehabilitation specialist in Section 5230.51(b) or (f) (relating to staff qualifications). [Emphasis added.] Section 5230.51(b) applies to psychiatric rehabilitation specialists who work with individuals over 18

years of age. Section 5230.51(f) applies to psychiatric rehabilitation specialists who work with individuals 14 years of age or older but under 18 years of age. How will a PRS agency that serves both populations implement this staffing requirement? We ask the Department to explain the implementation procedures and consider clarifying this subsection as needed.

*Subsections (h) – (i.1)*

Subsections (h) – (i.1) require a minimum of 25% of the staff based on the number of full-time equivalent positions to meet qualification and certification standards. A commentator asks if this requirement applies to all available positions (including any current program vacancies) versus all currently-staffed positions. We ask the Department to explain how a PRS agency should implement these subsections and further ask the Department to clarify these requirements to establish a clear standard for the regulated community.

**10. Section 5230.54. Group services. – Implementation procedures; Protection of the public health, safety and welfare; Clarity.**

*Subsection (a)*

Subsection (a)(3) specifies that when an individual receives group service in the home, other individuals must be in another location. We have two issues.

First, the Department states in the Preamble that this paragraph limits “group services in the home to services provided only through telehealth.” As addressed in Comment #1, this paragraph does not directly include the provision of service through telehealth. The Department should explain how group services will be implemented through telehealth and consider clarifying this paragraph accordingly.

Second, commentators oppose the requirement for individuals to be in separate locations to receive group services, noting this does not meet psychiatric rehabilitation goals, values and principles, and fails to adequately accommodate individuals who live in the same residence. The Department should address these concerns and consider revising this paragraph to protect the public health, safety and welfare.

*Subsection (f.1)*

Subsection (f.1) limits group services delivered in the community to only individuals who receive services from a PRS agency. The Department explains in the Preamble that this protects confidentiality. Commentators express concern with this requirement, stating it excludes participation from natural supports and peers working on the same goals. We ask the Department to consider clarifying this subsection to address the stated intent of protecting confidentiality. The Department should also consider allowing participation by natural supports and peers working on the same goals to protect the public health, safety and welfare.

**11. Section 5230.56. Staff training requirements. – Protection of the public health, safety and welfare; Implementation procedures; Clarity.**

Paragraph (2) requires staff at a PRS agency to complete 18 hours of training annually, with separate requirements for an agency serving individuals over 18 years of age in subparagraph (i) and individuals 14 years of age or older but under 18 years of age in subparagraph (ii). There are two concerns with this paragraph. First, a commentator states there should be more consistency with the training requirement, with all staff members, regardless of the population served, receiving training in resiliency and recovery practices. Second, commentators express confusion regarding how the training hours are to be allocated among the required topics. We ask the Department to explain how the required topics for each population protect the public health, safety and welfare, and how a PRS agency will be expected to implement these requirements. The Department should consider clarifying this paragraph to establish standards that are understood by the regulated community and protect the public health, safety and welfare.

**12. Section 5230.57. Criminal history checks and child abuse certification. – Protection of the public health, safety and welfare.**

Subsection (d) requires a PRS agency that serves individuals 14 years of age or older but under 18 years of age to develop and implement written policies and procedures regarding personnel decisions in accordance with 23 Pa.C.S. §§ 6301—6388 (relating to Child Protective Services Law) and Chapter 3490 (relating to protective services). Why are criminal history background checks not included in this subsection? We ask the Department to include these checks to protect the public health, safety and welfare or explain why it is not necessary to do so.

**13. Section 5230.61. Assessment. – Protection of the public health, safety and welfare; Implementation procedures; Need; Reasonableness; Clarity.**

*Subsection (b)*

Under subsection (b), a PRS agency is required to complete an assessment collaboratively and as directed by an individual, with formal and natural supports, including family members. The assessment identifies services and resources needed to assist the individual. Commentators express concern with the addition of supports and family members, which they state may delay and interfere with the assessment process, demean the individual and violate confidentiality. The Department should explain how the requirement to include supports and family members will be implemented as to not delay the process to develop an individual rehabilitation plan (IRP). Further, the Department should explain how including additional persons in the assessment process protects the health, safety and welfare of individuals receiving PRS.

In addition, the Department explains in the Preamble that this subsection “allows for documentation that the assessment was reviewed with the individual to allow for the provision of PRS through telehealth.” This subsection does not address telehealth. As addressed in Comment #1, we ask the Department to explain how a PRS agency will provide services through telehealth and revise this subsection accordingly.



### *Subsection (b)(3)*

Current subsection (b)(3) includes health care facilities as an existing and needed support. These facilities are proposed to be deleted. Commentators oppose the deletion given the “importance that health care facilities have on an individual’s physical wellness.” We ask the Department to explain why this deletion is necessary and consider retaining this current requirement in the final-form regulation.

### *Subsection (b)(7)*

Subsection (b)(7)(i.1) requires a PRS agency to update an IRP when the “individual’s diagnosis and identified needs change.” Commentators oppose the inclusion of diagnosis and have numerous concerns with this this subparagraph, including the following:

- An LPHA may change a diagnosis and not report it to the PRS agency.
- A diagnosis change may not have a direct impact on the functioning of the individual.
- It is unclear if an update is needed when a combination of the diagnosis and identified needs change or either the diagnosis or identified needs changes.
- A change in diagnosis is not relevant to the delivery of PRS as the focus is on changes in functioning.

Given these concerns, we ask the Department to explain the need for and reasonableness of the IRP update. Further, we ask the Department to revise the regulation to address implementation procedures and improve clarity to ensure the protection of the public health, safety and welfare.

### **14. Section 5230.62. Individual rehabilitation plan. – Implementation procedures; Protection of the public health, safety and welfare; Clarity.**

Subsections (a)(7) and (d)(5) provide for an individual to sign an IRP or for documentation of the individual’s consent and the date it was provided. The Preamble explains this allows for verbal consent when the individual is not able to sign the IRP in person. We have two concerns. First, what is acceptable documentation of consent? Second, commentators oppose the option for consent without a signature, noting concern that this may provide for individuals not being actively involved and present during the recovery planning process. The Department should explain how this provision will be implemented, including how consent is documented. We ask the Department to clarify these provisions by specifying verbal consent. In addition, the Department should address the concerns regarding active involvement and how this protects the public health, safety and welfare.

This comment also applies to Section 5230.61(b)(6).

**15. Section 5230.63. Daily entry. – Implementation procedures; Protection of the public health, safety and welfare.**

Paragraph (4) currently requires an individual to sign the daily record or documentation of the reason why it was not signed. The Department explains this provision is proposed to be deleted to “remove an unnecessary burden on staff and the individual.” Commentators oppose the deletion of this requirement, as a signature promotes active participation in PRS. However, they support an option for verbal consent. We ask the Department to consider retaining this provision and adding verbal consent to protect the public health, safety and welfare, or explain why it is not necessary to do so.

**16. Economic or fiscal impacts.**

The Department explains in the Preamble that PRS agencies who serve individuals 14 years of age or older but under 18 years of age may have a “small initial increase in costs” to implement this rulemaking “because the director, psychiatric rehabilitation specialist and 25% of the full-time equivalent staff complement will need to obtain CFRP certification, and the PRS agencies will need to obtain child abuse certifications for staff.” As reported in RAF Question #19, the costs for regulatory requirements per staff member are as follows: CFRP certification is estimated to be \$395 (registration and examination); Pennsylvania State Police child abuse clearance is \$13; and a Federal Bureau of Investigation criminal history background check is \$22.60. Commentators add there are additional costs relating to training, dual certification as required by Section 5230.51(e), and recertification.

However, the Department does not include an estimate of the fiscal impact on PRS agencies in Regulatory Analysis Form Question #23. Accordingly, we ask the Department to include an estimate of the total costs to the entire regulated community in Regulatory Analysis Form Questions #19 and #23, including training, certification, recertification and clearance requirements.

**17. Miscellaneous clarity.**

- The Preamble states that definitions for “associate’s degree” and “bachelor’s degree” are added in Section 5230.3. These definitions are not included in Section 5230.3 but degree standards are stated in Section 5230.51(g). We ask the Department to revise the Preamble to the final-form regulation to reflect the regulation where degree standards are explained;
- The definitions of “DSM” and “ICD” should be clarified in Section 5230.3 by adding the publishers of these documents; and
- Section 5230.13 (relating to agency records) should be revised to require a PRS agency to maintain copies of criminal history background checks for staff members.