

**INDEPENDENT REGULATORY REVIEW COMMISSION
PUBLIC MEETING MINUTES**

10:00 A.M.

Thursday, August 15, 2019
14th Floor Conference Room
333 Market Street

I. CALL OF THE MEETING

The August 15, 2019 public meeting of the Independent Regulatory Review Commission (Commission) was called to order by Chairman Bedwick at 10:05 a.m. in the 14th Floor Conference Room, 333 Market Street, Harrisburg, PA.

Commissioners Present: George D. Bedwick, Chairman
 W. Russell Faber
 Murray Ufberg, Esq.

Telephone: John F. Mizner, Esq., Vice Chairman

Absent: Dennis A. Watson, Esq.

II. APPROVAL OF THE JULY 18, 2019 PUBLIC MEETING MINUTES

Chairman Bedwick asked for a motion for approval of the July 18, 2019 public meeting minutes, as submitted. Commissioner Faber made the motion and Commissioner Ufberg seconded, and the motion passed 4-0.

III. NEW BUSINESS

A. ACTION ITEMS

**1. No. 3220 Bureau of Professional and Occupational Affairs #16A-60:
Expungement; Fees**

Corinne Brandt, Regulatory Analyst, explained that this final rulemaking implements the expungement provisions of Act 6 of 2018 (Act 6) which requires the Commissioner of the Bureau of Professional and Occupational Affairs (BPOA) to expunge certain disciplinary actions upon application and payment of all costs associated with the expungement by the licensee. She explained that the type of disciplinary records that are eligible for expungement are those imposed for a violation involving failure to complete continuing education requirements and violations involving practice for six months or less or a lapsed or expired license, registration, certificate or permit. Ms. Brandt added the rulemaking sets the expungement fee at \$155. She reported one comment was received from the Pennsylvania Institute of Certified Public Accountants in support of the final-form regulation and the regulation was deemed approved by the House and Senate committees.

Jacqueline Wolfgang, Regulatory Counsel, BPOA, provided additional background on the regulation and was available to answer any questions. Ms. Wolfgang said that Act 6 provides for a one-time expungement for failure to meet continuing education requirements and for practicing with a lapsed or expired license. She explained the regulation sets for eligibility requirements; criteria for expungement; application requirements; and payment of \$155. According to Ms. Wolfgang, the Acting BPOA Commissioner believes the regulation "appropriately implements the mandates of Act 6."

Commissioner Ufberg made a motion for approval. Commissioner Faber seconded, and the motion passed 5-0, with Commissioner Watson voting by proxy.

2. No. 3209 Department of Human Services #14-546: Intensive Behavioral Health Services

Michelle Elliott, Regulatory Analyst, explained that the regulation codifies licensing and program standards, requirements for participation in the Medical Assistance (MA) Program and MA payment conditions for agencies that deliver intensive behavioral health services (IBHS) to children, youth and young adults with mental, emotional and behavioral health needs. Scott Schalles, Regulatory Analyst, added that the Commission received approximately 40 comments from providers, associations and individual mental health professionals on the final regulation. According to Mr. Schalles, most of the comments continue to raise questions about the implementation of the regulations. He said that issues relating to funding, supervision requirements, staff qualification requirements and limitations to access to services has also been raised. Mr. Schalles also said the regulation has been deemed approved by the House and Senate committees.

Valerie Vicari, Acting Deputy Secretary, Angela Douglas, Statewide Lead Licensing Representative, and Amy Kabiru, Clinical Consultant, Office of Mental Health and Substance Abuse Services, Department of Human Services (Department), were present to answer any questions.

Ms. Vicari explained to the Commissioners that IBHS includes individual services, applied behavioral analyst services, applied behavior analysis (ABA) services and group services. She further explained that the regulations will replace the requirements for behavioral health rehabilitation services (BHRS) previously set forth in bulletins issued by the Department. Ms. Vicari noted that since the publication of the bulletins, the service delivery system has become more complex and sophisticated. She stated that individuals who receive BHRS and their family members, advocates, providers and county administrators have expressed the need for revised standards for the delivery of BHRS. Ms. Vicari provided a brief overview of the Department's efforts to solicit input from stakeholders and the public in the development of the regulations including the convening of a workgroup consisting of approximately 75 individuals representing an array of individuals. She reported the workgroup held an initial face-to-face meeting in May 2016, followed by six telephone conference calls and two follow-up face-to-face/webinar meetings.

Ms. Vicari stated that the regulations will benefit children, youth and young adults with mental, emotional or behavioral health needs who currently receive BHRS by establishing minimum standards for licensure of IBHS agencies, minimum requirements for IBHS agencies to enroll in the MA Program and conditions for the MA program to pay for IBHS. She added that the supervision and training requirements included in the regulations will "contribute to the development of a qualified IBHS workforce to deliver treatment services, which will also help to improve clinical outcomes for children, youth and young adults receiving IBHS." Ms. Vicari also outlined the benefits of the regulations. She reported that while reviewing the comments received regarding the final-form rulemaking, the Department identified two regulatory provisions that need to be revised.

According to Ms. Vicari, many commentators pointed out the regulations require a practitioner who provides behavioral consultation services for the treatment of autism spectrum disorder to have a license and need additional certification and experience requirement. She said Act 62 of 2008 (Act 62) requires the practitioners who provide behavior specialist services to individuals with autism spectrum disorder be licensed. Ms. Vicari said the Department does not intend to impose requirements other than those imposed by Act 62 and it will request that this inconsistency be resolved during the final legal review of the regulations. She also reported commentators pointed out sections of the regulation that address the supervision of individuals that provide behavioral health technician services and behavioral health technicians ABA services contain an internal inconsistency that some commentators have interpreted as prohibiting group supervision. Ms. Vicari said the Department intends to allow both group and individual supervision of behavioral health technicians. She added the Department will also request that this inconsistency be resolved during the final legal review.

Commissioner Ufberg said that many of the comments he reviewed expressed concern with the fiscal impact of the regulations on providers. He asked if there are going to be any changes in compensation. Ms. Vicari responded that the Department expects there will be a fiscal impact and they intend to address that as they look at the capitation rates with their managed care companies. She pointed out the Department cannot address increased costs until they know what the actual fiscal impact will be. Commissioner Ufberg said there seems to be questions that have been raised by some of the commentators. Ms. Vicari said what will be helpful is the Department is developing a Frequently Asked Questions flyer which will be handed out to address some of those concerns.

Chairman Bedwick asked if the Department is asking the Commission to approve the regulation in its current form. Ms. Vicari responded, "Correct." Counsel explained that the Department is going to request the two issues previously mentioned be resolved during the Attorney General's final legal review. Chairman Bedwick suggested he would have had a longer effective date on the final regulation so the regulated community would have the opportunity to comment on the reimbursement issue. He asked if the Department will have some certainty about reimbursements during the 90-day period as provided in the regulation. Ms. Vicari said, "Yes."

Chairman Bedwick announced a brief recess in order for the Commissioners to consult with Leslie Lewis Johnson, Chief Counsel.

The Commission reconvened. Chairman Bedwick explained that the Commissioners had to consult with Ms. Johnson to discuss whether they would have to disapprove the regulation because of the Department's comments on the need to make two changes. Ms. Johnson said it is her understanding that the Department's proposed changes are found under section 5240.71(b) and section 5240.72(b)(1). She also said it is her understanding these are clarifications are not substantive changes. The Department agreed.

Jim Sharp, Rehabilitation and Community Providers Association, said his group has submitted its comments and recommendations to the Commission and to the Department. He expressed his continued concerns around the language and the 90-day implementation. Mr. Sharp said he is not familiar with the Attorney General's process but he is worried providers will not be there to provide their input.

Diane Conway, Max Association, told the Commissioners, "These regulations are a catalyst in raising the bar so children receive stellar services." She urged approval of the regulation. Ms. Conway urged the Commission to encourage the Department to raise the capitation rates to cover anticipated costs and the rate increases be directly passed onto the organization providing the services. She also expressed concern with the regulation having the unintended consequence of limiting access to service.

Audra Nihart, Access Services, Inc., expressed support for the overall regulation but expressed concern with its financial impacts. She also expressed concern with the potential negative impact on access and costs.

Rachel Mann, Disability Rights Pennsylvania, expressed support for the regulations. She argued, "The new qualifications should greatly enhance the quality of care received by children."

Chairman Bedwick encouraged the Department to come back to the Commission with a change in the regulation with a longer timeframe if the Department finds they cannot complete everything within the initial 90-day time period.

Commissioner Ufberg made a motion for approval. Commissioner Faber seconded, and the motion passed 5-0, with Commissioner Watson voting by proxy.

IV. OTHER BUSINESS

Approval of Vouchers

Commissioner Faber made motions to approve vouchers and expenses for the period June 21, 2019 through July 18, 2019. Commissioner Ufberg seconded, and the motions passed 4-0.

V. DATE AND PLACE OF SUBSEQUENT MEETING

Chairman Bedwick announced the next public meeting is scheduled for Thursday, September 19, 2019, at 10:00 a.m. in the 14th Floor Conference Room, 333 Market Street, Harrisburg.

VI. EXECUTIVE SESSION ANNOUNCEMENTS

Chairman Bedwick announced that no executive session would be held.

VII. ADJOURNMENT

Chairman Bedwick announced the meeting adjourned at 11:32 a.m.