

## **PREAMBLE – PROPOSED RULEMAKING**

### **DEPARTMENT OF PUBLIC WELFARE [55 Pa. CODE CHAPTER 31]**

#### *Statutory Authority*

Notice is hereby given that the Department of Public Welfare (Department), under the authority of Section 201(2) and 403(b) of the Public Welfare Code, Act of June 13, 1967, PL 31, No. 21(62 P.S. §§ 201(2), 403(b) and 42 U.S.C.A. §1396 d(r)(5), intends to adopt the regulation set forth in Annex A.

#### *Purpose of Proposed Rulemaking*

The purpose of this proposed rulemaking is to codify Department clinical, health and safety and Medical Assistance payment conditions policy for residential treatment facility services. These services are provided to children under 21 years of age with a diagnosed mental illness or severe emotional disorder or severe substance abuse condition and mental illness when medically necessary.

#### *Need for Proposed Rulemaking*

The proposed regulation will combine existing practice and policy across three offices within the Department of Public Welfare into one document, thereby assuring that interested parties may find all Department rules and related requirements for residential treatment facility services in one document.

This proposed regulation provides information across program offices for Children, Youth and Families, Medical Assistance, and Mental Health and Substance Abuse to providers who seek licensure under this chapter for behavioral health treatment of children who have severe emotional disturbances, mental illness, or a severe substance abuse condition and mental illness as defined by the Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association. It addresses all applicable health and safety issues currently covered in 55 Pa. Code Chapter 3800, prior Medical Assistance Bulletins and program requirements for comprehensive, culturally competent, medically necessary behavioral health treatment in a 24-hour setting of an accredited RTF or a non-accredited RTF and is based upon numerous stakeholder meetings and comments to draft proposals prior to publication.

## *Background*

In 1989, Congress amended the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) provisions of the federal Medicaid statute to require states to provide "necessary health care, diagnostic services, treatment, and other measures described in (the statute) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State plan." 42 U.S.C. § 1396d (r) (5) ("OBRA '89") (emphasis added). In order to provide ongoing direction to the provider community, the Office of Medical Assistance Programs (OMAP) issued guidelines whereby all medically necessary mental health services or health-related services are eligible for medical assistance reimbursement, when provided to eligible individuals, whether or not those services are listed on the Medical Assistance Program Fee Schedule or otherwise covered in the State Medicaid Plan, as long as the services are authorized under the federal Medicaid statute (MAB 01-95-12).

## *Regulatory Development Process*

Stakeholders including families, advocates, providers, county and state government representatives have been meeting to establish clinical guidelines and program standards for RTF programs for the past decade in a variety of contexts with a variety of outcomes. The requirements listed in this proposed regulation combines the accumulated best thinking over those years.

## *Requirements*

### FAMILY PARTICIPATION

§§ 31.41 – 31.44. (relating to family participation)

These sections require RTF providers to make efforts to include families in the planning and implementation of their child's treatment by providing adequate information and assisting with scheduling visits, therapy sessions, travel arrangements, and medical appointments, as well as providing adequate comfortable space for visiting.

### STAFFING

§§ 31.51 – 31.60. (relating to staffing)

These sections related to staff qualifications, education, experience, staffing ratios, and staff training require higher level credentials, more intense staffing ratios and more clinically oriented training topics than the health and safety focused Chapter 3800 requirements.

#### MEDICATIONS

§§ 31.181 – 31.189. (relating to medications)

These sections address the storage, use, and administration of medications with more emphasis on the information provided to the child and family regarding the effects and side effects of psychotropic medication and limit the administration of medications to licensed medical personnel.

#### RESTRICTIVE PROCEDURES

§§ 31.201 – 31.206. (relating to restrictive procedures)

These sections focus on the requirements for all RTFs, not just accredited RTFs to use de-escalation approaches and other alternatives to coercive treatment in order to reduce or eliminate the need to use restrictive procedures.

#### SERVICES

§§ 31.221 – 31.230. (relating to services and individual service planning)

These sections address the requirements to individualize the planning with an emphasis on the behavioral health treatment needs of the children.

#### PAYMENT FOR RESIDENTIAL TREATMENT FACILITY SERVICE

§§ 31.281- 31.351 (relating to payment policy)

These sections address the requirements for RTFs licensed under this chapter to be reimbursed for the provision of the treatment services.

*Affected Individuals and Organizations*

Families, children, and advocates have been requesting many of the requirements for the higher standards addressing behavioral health treatment proposed in this chapter and will therefore be positively impacted.

Providers will welcome the incorporation of all the licensing requirements for health and safety, program standards, and payment conditions into one chapter so that they do not have multiple licensing visits. Initially, some of the non-accredited providers may have concerns about meeting some of the requirements that the accredited providers are already expected to meet. All RTF providers may have some concerns about the more intense staffing ratios, higher staff qualifications, and increased training topics, but all would agree that these requirements are best practice.

#### *Accomplishments and Benefits*

The proposed regulation benefits children under 21 years of age who need mental health services that provide a more intensive level of care than is available in community settings. RTFs provide this level of care and serve as an alternative to hospitalization. The proposed regulation promotes quality treatment beyond the time of acute crisis, more appropriately meeting the child's needs and assisting in making the transition to a less restrictive setting.

#### *Fiscal Impact*

Although the increased cost to RTF providers to meet some of the higher expectations of staffing requirements may initially create an increase in the per diem rate, the reduction in length of stay due to higher quality behavioral health treatment will offset that impact. If a decision is made to require accreditation, non-accredited RTFs will experience the cost of becoming accredited.

#### *Paperwork Requirements*

There will be additional paperwork for provider agencies that choose to become accredited. Requirements vary by accrediting organization. There will be additional paperwork for non-accredited facilities in relation to documentation of restraint policies and restraint activities. It is estimated that most organizations will entail several hours per week for one staff person. The accredited facilities are currently doing this paperwork.

#### *Effective Date*

This regulation is effective upon publication as final rulemaking.

#### *Sunset Date (Optional)*

There is no sunset date. The effectiveness of the regulation will be reviewed and evaluated on an ongoing basis.

### *Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Department at the following address: [ra-rtfcomments@state.pa.us](mailto:ra-rtfcomments@state.pa.us) .

**The Department of Public Welfare is considering requiring accreditation for all RTFs and is explicitly inviting comment on this issue.**

### *Regulatory Review Act*

Under § 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on [*leave blank space to fill in date*] the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. In addition to submitting the proposed rulemaking, the Department has provided the IRRC and the Committees with a copy of a Regulatory Analysis Form prepared by the Department. A copy of this form is available to the public upon request.

Under § 5(g) of the Regulatory Review Act, if the IRRC has any comments, recommendations or objections to any portion of the proposed regulation, it may notify the Department and the Committees within 30 days after the close of the public comment period. Such notification shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review by the Department, the General Assembly and the Governor, of any comments, recommendations or objections raised,