

# **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.

#### **Comments:**

- How will efforts to include families be measured relative to PRTF effort and family availability?
- **There are significant cost implications** - Section 31.307 Non-compensable services and items explicitly excludes the cost of "transportation and living costs associated with on-campus family visits." This would make provider support for travel, family meals, and perhaps even space for visiting

and parent over night accommodations an unfunded mandate not reimbursed by MA rates.

## 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.

### Comments:

- The proposed changes will have a detrimental effect on work force development as there is limited opportunity for upward mobility.
- Staffing qualification and ratio proposals will be extremely difficult to comply with, especially in more rural areas. This is particularly true for professional medical, nursing and mental health staff.
- **There are significant cost implications** as this will also require substantial increases in compensation in order to compete in the local and regional labor markets.
- **There are significant cost implications** specific to the training requirements as proposed. Such an exhaustive listing of required areas of training dilutes the content and offers only superficial review or will require extremely high numbers of training hours. This adds additional costs not only for staffing but also connected with accessing experienced, quality individuals to conduct the training.
- The proposed listing of training requirements also limits individual program management decisions as to topics needed by PRTFs to most appropriately respond to the populations served.

## 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.

### Comments:

- **There are significant cost implications** related to the elimination of trained staff as individuals approved to administer medications.

- Restricting such administration to health care professional staff will present immediate and cost prohibitive challenges to the small community based PRTFs.
- It will be extremely difficult to comply with recruiting, retaining and compensating nursing staff especially in more rural areas.

## 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.

Comment:

- **There are significant cost implications** related to the elimination of physical restraint. These costs have been compiled by PRTF providers and can again be submitted for OMHSAS review if needed.
- This expectation cannot be supported by PRTF providers if it continues to be presented as an unfunded mandate.
- Consistency in reviewed curricula which is deemed reflective of PA DPW requirements must be addressed early in the process to ensure that provider have access to appropriate trainings and that this can be incorporated into training schedule a methodical, affordable manner.

## 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.

Comments:

- There are significant conflicts between service requirements and allowable costs. This must be resolved.
- There is a need for clear communication and access to the information used by the Department in the process of making determinations as to what are truly allowable costs elements.

- The role of managed care organizations (MCOs) and assurances that BHMCOs will be required by the Department to begin rate negotiations from a service cost level must be imposed by DPW in HealthChoices contracts.
- It will be essential for the Department to create a reality-based relationship between annual costs reflected in cost reports and the per diem rate paid by the Department or BHMCO.

### *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.

#### Comments:

- How will integration of regulations result in reduced licensing visits? What changes will support this statement?

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.

#### Comments:

- **There are significant cost implications** of these increased expectations.
- There are many concerns raised concerning this significant shift and increase in practice expectations.
- Not only are there concerns related to meeting the requirements, there are issues specific to philosophy, RTF presence in the community, service history, utilization history and outcomes experiences that must be incorporated.
- Will the allowable cost structures permit providers to include all costs for attaining and maintaining accreditation?
- Consideration of deemed status for accredited PRTFs should be explored as a more practical realistic options to reduce the overall number of on-site visits and compliance reviews.

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.

#### Comments:

- **There are significant cost implications** that must be integrated into any and all discussions related to best practice.
- Is there any indication that the proposed increased standards (qualification and ratios) represent current or evidenced based best practice?
- Is there any analysis that would determine if the current labor pool resources are available and affordable?
- RTF providers may agree that increased staff qualifications and quality trainings and professional development opportunities support improved practice but do not agree with the presentation above stating that these proposed staffing 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.

#### Comments:

- The desire to transition children to a less restrictive setting demands that there be resources allocated and support the development of appropriate, accessible and readily authorized services which are flexible and child specific.

### *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.

#### Comments:

- We respectfully note that this statement is incorrect and a misrepresentation of the depth and scope of costs that will be incurred. .
- Shorter lengths of stay and the related costs of patient turn-over, reduced occupancy related to turn-over days, larger numbers of patients served, higher costs related to the initial days of service and increased number specific to discharge and disposition planning will all INCREASE, not reduce the costs of care and the per diems.
- Successful long-term outcomes connected to PRTFs will become even more dependent upon the availability and easy access for supportive services post discharge including but not limited to OP treatment, partial hospitalization and/or day treatment programming, in-home/aftercare supports and other family based supports.

- There are numerous cross-systems challenges which must be addressed in the process of discharge planning that are not identified anywhere in these regulations. They involve a different type of discharge planning and coordination with community supports for children and families involved in child welfare and/or juvenile justice systems.

If a decision is made to require accreditation, non-accredited RTFs will experience the cost of becoming accredited.

Comments:

- How will new and on-going accreditation costs be reflected in both the FFS and HC per diems?
- How will the Department and BHMCOs use accreditation to increase efficiencies related to credentialing, licensing, etc.?

### *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.

Comments:

- Accreditation will increase much more than paperwork. It will result in increases in personnel costs related to the performance improvement monitoring process and information technology costs.
- HCSIS incident reporting initiatives may off set some costs related to multiple reporting forms and activities.

### *Effective Date*

This regulation is effective upon publication as final rulemaking.

Comment:

- There must be a period allowed for preparation for implementation following adoption and publication as final.
- Even though efforts may be initiated to support compliance well in advance of publication, costs related to changes to support compliance will not be addressed until after they become regulatory requirements and can be addressed in contract re-negotiations with the BHMCOs.

### *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.**  
[Comments on this specific item will be submitted under separate cover.](#)

### *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,