#3347 Remarks

Pennsylvania
Department of Human Services

Good morning,

My name is Jennifer Smith, and I am the Deputy Secretary for the Office of Mental Health and Substance Abuse Services in the Department of Human Services. I am joined today by Jill Stemple, Director of Policy, Planning and Program Development, to address any questions or concerns the commission may have regarding the Department of Human Services' psychiatric rehabilitation services (PRS) final-form regulation.

The purposes of this final-form regulation are to:

- Allow individuals who are 14 years of age or older and under 18 years of age who meet the admission requirements to access PRS;
- Eliminate the exception process for individuals who are diagnosed with posttraumatic stress disorder, bipolar disorder, major depressive disorder, or anxiety disorder;
- Clarify the documentation that will be reviewed through the exception process; and
- Revise outdated language.

I'd like to begin my remarks this morning by emphasizing that PRS is a self-directed service for an individual living in the community, which requires individual choice, individual involvement, and individual growth through identifying and setting one's own goals for skill building and self-directed participation. PRS is not clinical therapy; it is a complementary recovery service which promotes community integration and improved quality of life for persons in recovery by assisting the individual to manage mental health symptoms through the development of self-identified skills. For example, a PRS provider may assist an individual in recovery to develop job skills, find employment, and manage their mental health symptoms on the job. To assist in the understanding of the continuum of mental health services, the department has attached an illustrative document that provides the distinction between recovery supports and clinical mental health services.

Given this understanding of PRS, I'd like to address various comments received regarding consent to treatment.

The PRS regulations require consent to treatment in accordance with federal and state law—regardless of whether an adult or minor is being served. Neither the PRS regulations nor the department is asserting the authority to circumvent consent requirements under Act 65 of 2020. Consent is always required under these final-form regulations. Further, DHS is neither redefining consent under its regulations nor determining when consent is or is not required. To be clear, consent to treatment is required.

As reflected in some of the comments received on the final-form regulation, it appears that consent (the permitting of treatment to occur) is being conflated with the concept of requiring the provision of treatment.

For the past decade, the regulations promulgated under Chapter 5230 have differentiated between ***consent*** to receive services and ***eligibility or appropriateness*** to receive and participate in services. Specifically, there are existing requirements for consent to treatment and also for consent to release

information.[1] Separate and apart from those requirements, are existing admission requirements for an individual to be appropriate for and choose to receive PRS.[2]

When the department recently proposed the regulatory amendments to this chapter, it proposed removing from the eligibility requirements that an individual choose to receive PRS. However, based on the comments received from both public commentators and from IRRC regarding the voluntary nature of these services, the right to decide whether and how to participate in PRS, and the concern for the protection of public health, safety and welfare without this safeguard, the department decided to maintain this existing admission provision in the final-form regulation.[3]

As stated previously and as reflected in the comments received from both public commentators and IRRC on the proposed regulation, choosing to receive PRS is fundamental to PRS principles because PRS is a self-directed service, which requires individual choice, individual involvement and individual growth through identifying and setting one's own goals for skill building and self-directed participation.

Distinct from the requirement of actively choosing and participating in PRS, is the consent to receive treatment—which is the ***giving of permission*** to receive a type of treatment or service.[4] The department is not altering the statutory provisions regarding consent to treatment for either adults or minors. Under the final-form regulation, consent for treatment and also consent for release of information is required to be in accordance with state and federal law, including Act 65 of 2020. Regardless of who consents to receiving these rehabilitative services (be it an adult who desires to receive services, a youth, or the youth's parent consenting for the youth to receive services), these types of consumer-directed services can only be provided if an individual self-identifies their goals and the skills needing to be developed. That is, consistent with the current

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[1] *See* 55 Pa. Code § 5230.21. Content of individual record. (pacodeandbulletin.gov).

[2] *See* 55 Pa. Code § 5230.31. Admission requirements. (pacodeandbulletin.gov).

[3] *See* page 5, subsection (a)(4) at Comments of the Independent Regulatory Review Commission (state.pa.us).

[4] Act 65-2020 does not define "consent." As such, under the Rules of Statutory Construction, the term is required to be construed to its common and approved usage. 1 Pa.C.S. § 1903. In interpreting a statutory phrase, a court must first look for the meaning of a statute's word or term in that statute's definitions, then in the Statutory Construction Act, a law dictionary and, finally, a standard dictionary, in that order. Since Act 2020-65 does not define consent, the law dictionary definition is the next authority. Under Black's Law Dictionary, 7th Edition, 300 (1999), "consent" and "informed consent" are defined as follows:

> *Consent*. Agreement, approval, or permission as to some act or purpose, esp. given voluntarily by a competent person.
>
> *Informed consent*. 1. A person's agreement to allow something to happen, made with full knowledge of the risks involved and the alternatives. 2. A patient's knowing choice about treatment or procedure, made after a physician or other healthcare provider discloses whatever information a reasonably prudent provider in the medical community would provide to a patient regarding the risks involved in the proposed treatment.

In contrast, "participation" is defined as "the act of taking part in something, such as a partnership." Black's Law Dictionary, 7th Edition, 1141 (1999).

regulatory requirement under Section 5230.31, an individual must actively choose to participate in order to be eligible for services.

For these specific recovery services, in order for the services to be provided and received, the following are currently required:

- Consent for treatment.
- Documentation of consent for release of information in accordance with applicable laws.
- Eligibility and referral for PRS, including applicable diagnosis.
- Choosing to participate/active participation.
- Collaborative assessment (between staff and individual) that identifies the specific skills, supports and resources the individual needs and prefers to accomplish the individual's stated goals.
- Joint development of an individual rehabilitation plan (by staff and individual), which identifies goals, method of services, the frequency and duration of participation, the service location, and action steps.[5]

Stated another way, consent to treatment is only one component of several necessary for an individual to receive PRS services. In addition to the consent to permit treatment to occur, the other requirements must be met. If an individual refuses to participate, self-directed participation cannot occur and, therefore, not all requirements are being met for the appropriateness of the services. In short, consent (permission) and active participation are distinct requirements, but equally important, for an individual to receive PRS.[6] Further, the previously stated requirements for participation are neither the abrogation nor subversion of consent. As discussed, ***consent to permit treatment*** to occur is the fundamental, informed permission to receive any medical treatment; however, this is ***not the same as the appropriateness to receive those services.***[7]

During the public comment period, the department received a legislative comment inquiring as to the department's authority to permit a youth to consent to treatment, absent parental authority. As the department explained in the preamble to the final-form regulation, the authority for a youth to consent to treatment without parental authority is existing law under Act 65 of 2020 and this final-form regulation does not challenge that position. Specifically, Act 65 includes the authority for a youth to consent to medical treatment.[8] However, in order to avoid potential conflicts with any future change in statute, the department revised the proposed language that permitted consent by either the youth's parent or the youth (which mirrored state law), and, instead, simplified the final-

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[5] *See* 55 Pa. Code §§ 5230.21, 5230.31, 5230.61 and 5230.62. Under the statutory authority of §§ 911 and 1021 of the Human Services Code (62 P.S. §§ 911 and 1021), the Department of Human Services is authorized to supervise and adopt the minimum standards, not only for building and equipment, but also for *the operation, care, program and services* for the issuances of licenses).

[6] In addition, "there is no legal authority to compel a healthcare provider to administer a treatment contrary to the provider's professional judgment and outside the standard of care." Shoemaker v. UPMC Pinnacle Hosps., 283 A.3d 885, 896–97 (Pa. Super. 2022).

[7] *See also In re Fiori*, 652 A.2d 1350, 1354 (Pa. Super. 1995), aff'd, 673 A.2d 905 (Pa. 1996) (other than in an emergency, medical treatment *may not* be given without the informed consent of the patient.)

[8] *See* 35 P.S. § 10101.1(a)(2).

form language to require a PRS agency to document consent to receive PRS in accordance with Federal and state laws and regulations.[9]

In addition, there have been legislative inquiries regarding the dynamics between a youth and a parent who disagree about mental health treatment. As specifically detailed under Act 65 of 2020, state statute addresses the various scenarios where a youth and a parent do not agree about the youth's mental health treatment. For example, a youth may consent to treatment without approval by a parent or legal guardian. Under state statute, the parent or legal guardian of the youth may not abrogate the consent given by the youth.[10] Similarly, a youth may not abrogate the parent's or legal guardian's consent.[11] The final-form regulations are consistent with these provisions of Act 65.

In addition to these considerations around consent and eligibility mentioned earlier, the provision of any health care services needs to be appropriate, and the provider (facility) selected must be capable of providing the desired treatment.[12] In the context of PRS, to be appropriate an individual (adult or minor) must be willing and able to self-direct the individual's participation in this consumer-driven model of services. If an individual does not actively choose to participate, a PRS facility is not the appropriate facility because it cannot provide PRS to an unwilling participant. In this case, a different facility with a different level of care is needed.

In closing, we thank the Commission for their consideration of this final-form regulation, which the department asserts is in the public interest. We are available to answer any questions you may have. Thank you.

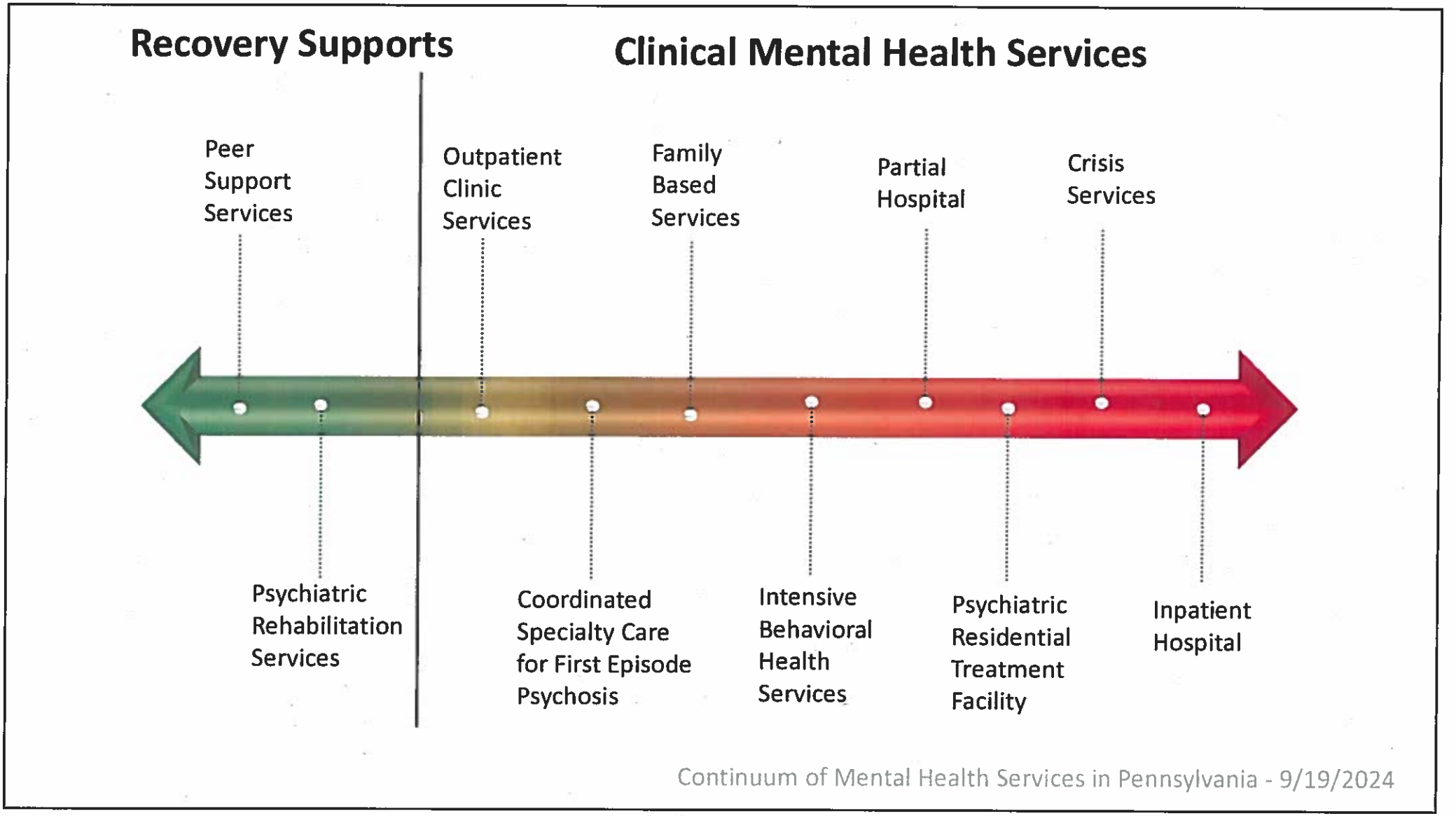
Attachment

[9] *See* Section 5230.21(4); page 10 of the Annex of the Final-form regulation.

[10] Absent an emergency, no medical treatment may be given absent consent. *In re Fiori*, 652 A.2d 1350, 1354 (Pa. Super. 1995), aff'd, 673 A.2d 905 (Pa. 1996).

[11] 35 P.S. § 10101.1(a)(3).

[12] *See also* 35 P.S. § 10101.1(a)(7)(in considering a minor's objection to inpatient treatment, the court considers, among other things, whether the minor's mental disorder can be treated in the particular facility and whether the treatment is medically appropriate).



Continuum of Mental Health Services in Pennsylvania - 9/19/2024

#3347 Public Remarks

RCPA
REHABILITATION & COMMUNITY PROVIDERS ASSOCIATION

September 13, 2024

Chairperson George D. Bedwick
Vice Chairperson John F. Mizner, Esq.
Commissioner John J. Soroko, Esq.
Commissioner Murray Ufberg, Esq.
Commissioner Dennis A. Watson, Esq.
Pennsylvania Independent Regulatory Review Commission
333 Market Street, l4th Floor
Harrisburg, PA 17101

Via email to the IRRC

Re: Rulemaking #14-548: Psychiatric Rehabilitation Services IRRC #3347

Dear Members of the Independent Regulatory Review Commission:

The Rehabilitation and Community Providers Association (RCPA) is submitting the following comments on behalf of its membership, related to *Rulemaking #14-548: Psychiatric Rehabilitation Services IRRC #3347*. While RCPA fully supports the Final Form regulations pertaining to Psychiatric Rehabilitation Services (Chapter 5230) from the Office of Mental Health and Substance Abuse Services (OMHSAS), we wanted to clarify our positions with the following comments.

1. That, if promulgated, the implementation of these standards by the Heath Choices Primary Contractors and Behavioral Health Managed Care Organizations (BH-MCOs) are directed by OMHSAS in a manner that promotes consistency in its interpretation, and application through one operational practice. All too often, the final regulations are operationalized differently by each Primary Contractor (County) and BH-MCO, leading to inconsistent, uneven, and in some cases inequitable service functioning across the BH-MCO organizations. This consistency aids in implementation, tracking, and supports service delivery agencies who operate these services across multiple regions of the commonwealth.

2. (5230.21) Minors consent
RCPA supports a minor's ability to consent for services with or without parental consent, as it is consistent with current PA Act 65. The Act ensures minors, under the statute, be allowed to make this decision without parental consent, and consistent with the Act that parental consent does not supersede the minor's consent should the minor choose not to engage in the service.

3. 5230.31(a)(2) Regarding the expansion of diagnostic criteria to include ASD and ADHD
RCPA supports the expansion of the diagnostic criteria as it supports the ongoing efforts to create a full continuum of care. The State has expanded its scope of cross systems reengineering and identification of needs and services for this complex population, and this supports those ongoing efforts.

5. 5230.56(2) Staff training requirements
RCPA recommends a 6-month post promulgation time period to complete all required staff trainings.

Additionally, OMHSAS and OCYF have done a very good job in creating free training opportunities for these types of trainings, and we hope there is a continued partnership to assist in making these resources available.

In closing, RCPA thanks the Independent Regulatory Review Commission and DHS/OMHSAS for this opportunity to respond, as we offer our full support in the promulgation and thoughtful implementation of *Rulemaking #14-548: Psychiatric Rehabilitation Services IRRC #3347.*

Sincerely,

James Sharp
COO & Director, Mental Health Services, BH Division
RCPA

#3347 Public Remarks

Madison Brame

From: Ralph Kabakoff <RKabakoff@trsinc.org>
Sent: Monday, September 16, 2024 8:35 PM
To: IRRC
Subject: Request to speak

To whom it may concern,

I'm writing to request attendance and time to speak at the upcoming IRRC Public meeting 9/19/24. I would like to speak in favor of passage of the first action item: No. 3347 Department of Human Services #14-548: Psychiatric Rehabilitation Services
My planned remarks are as follows:

I would like to speak in support of passing the proposed regulation changes for psychiatric rehabilitation services. Specifically, I'm endorsing the changes to the documentation that would require only a weekly note. In my experience as a Psychiatric Rehabilitation Worker, Clubhouse Advisory Board member for two Clubhouses, Director of two Clubhouses and Vice President of the Pennsylvania Clubhouse Coalition, I have come to conclude that these changes would benefit the delivery of services for individuals attending our programs. I have spoken at the PA Association Psychiatric Rehabilitation Services, the Pa Clubhouse Coalition Conference and with multiple Clubhouses and Clubhouse members individually throughout the state. These meetings with important stakeholders, staff and members were met with broad support of the change from daily to weekly notes and excitement about the implications to building a more meaningful environment. The members who have spoken to me understand that they would still have the right to record progress toward their goals daily, should they choose.

While this change toward the documentation may lead to MORE collaboration between the individuals receiving services, it will most definitely lead to more time that can be allotted to working side by side with the individual, developing relationships and working toward goals. The overall goal of a Clubhouse is to create a safe environment for members to come and recover from their symptoms to discover and realize their potential in their community. Staff at the Clubhouses that I've worked with understand this vision and want to have a meaningful role in that goal, but they spend on average two hours daily working on documenting these daily notes. It becomes between 500 and 800 hours a

year spent writing notes that the members typically are not interested in, and the auditing agencies may read a handful of each year. That's just at one Clubhouse. There are over 100 Psychiatric Rehabilitation Services provided around that state. Imagine the amount that could be accomplished if the staff at all these locations could stop staring at their computer to type a note and could lead a workshop, present to the community, pursue a job opportunity, help with interviewing skills, tutor on getting a license etc. The goal of the weekly note is to reduce that time significantly so that our agencies can shine and live up to the quality that our members deserve.

I know there has been some push back on some of the changes listed in the regulations. Those concerns are real, but we have been working for two years to update our documentation and we may never reach a perfect change that makes everyone completely satisfied, but what we have before us today, are regulation changes that can significantly improve the work environment for many many individuals across the state of Pennsylvania and I fully endorse its passage today.