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House of Representatives
Commonwealth of Pennsylvania
Harrisburg

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September 3, 2024

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Pennsylvania Independent Regulatory Review Commission
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Via Electronic Mail to irrc@irrc.state.pa.us

Via Electronic Mail to RA-PWDHS-OGC-Mail@pa.gov

Dear Members of the Independent Regulatory Review Commission:

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

In our capacity as members of the House of Representatives and as members of the House Health Committee, we have reviewed the above final-form regulation as submitted by the Department of Human Services (Department) concerning psychiatric rehabilitation services (PRS). We are writing to express our concerns about certain issues that the final-form regulation will raise if promulgated as written.

Section 5230.52 (General staffing requirements)

Preamble starting at p. 43 of the regulatory package; Annex starting at p. 79

We are concerned about the inclusion of additional mandatory certification and staffing ratios for PRS providers in the final-form regulation. While we understand that there are ratios in the current regulation and that this addition is specific to patients between 14 and 18 years of age, mandatory ratios are often accompanied by unintended consequences that can negatively impact entire communities by limiting access to care.

Requiring that PRS providers adhere to one-size-fits-all ratios would prove unnecessarily burdensome to a critically important area of specialized healthcare providers. Introducing new ratios amid a known workforce shortage crisis increases the likelihood of providers being sanctioned for failing to meet the new standards, thus exacerbating provider shortages and decreasing the availability of PRS for constituents who need it. Sanctions that will be retained by DHS and not targeted to meeting these ratios only exacerbate the inability of providers to meet these ratios by diverting funds from the providers to DHS.

We have continued to hear about the workforce shortage not only in this Commonwealth but across the country. Mandated ratios should be debated within the legislature and not before a regulatory agency that seeks to introduce new ratios in a comprehensive regulatory package.

Section 5230.21 (Content of individual record)

Preamble starting at p. 33 of the regulatory package; Annex starting at p. 70

We raise continued concerns that certain provisions included in the final-form regulation extend beyond the Department's authority to regulate in that they contradict existing statute. Under the Regulatory Review Act, in determining whether a proposed, final-form, final-omitted or existing regulation is in the public interest, the commission shall, first and foremost, determine whether the agency has the statutory authority to promulgate the regulation and whether the regulation conforms to the intention of the General Assembly in the enactment of the statute upon which the regulation is based. In making its determination, the commission shall consider written comments submitted by the committees and current members of the General Assembly, pertinent opinions of Pennsylvania's courts and formal opinions of the Attorney General. 71 P.S. 745.5b(a). If the Commission finds that the regulation is consistent with the statutory authority, it then must look at several factors, including economic/fiscal impacts, protection of public health, the clarity/feasibility of the regulation, and other factors. 71 P.S. 745.5b(b).

During the proposed stage of this regulatory package, Representative Rapp sought clarification concerning the consent provisions in this regulation and how they comport with current state and federal laws. In the preamble of the final-form regulation, the Department states, "*While pursuant to Act 2020-65, a parent or guardian may also consent to a youth receiving services even if the youth objects, because an individual's consent to receive PRS is fundamental to PRS's principles, PRS may not be provided if the youth objects to receiving PRS*" (emphasis added; see p. 19 of the preamble/p. 34 of the regulatory package).

While we understand the difficult balance between minors being able to consent to their own treatment and the rights of parents to be able to oversee their child's care, as stated, the Commission must ascertain whether an agency's regulation comports with statutory authority. It

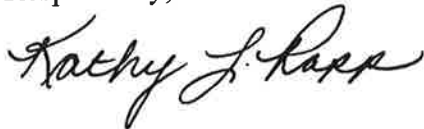
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is our position that while the Department has a difficult balancing act to maintain, the Department's own admission in the preamble clearly provides that it is not following the law by prohibiting parents from providing consent for their minor child's treatment. This prohibition is a clear violation of Act 2020-65. Thus, under the requirements of the Regulatory Review Act, the Commission should disapprove the regulation.

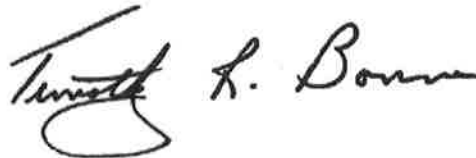
Furthermore, we maintain additional concerns about the content of the aforementioned regulation change. The Department has not yet provided satisfactory answers regarding how providers would be expected to navigate the difficult dynamics between a minor and a parent who disagree about the course of PRS treatment. We are deeply concerned that the final-form regulation would prove detrimental to parent-child relationships amid particularly vulnerable moments in a minor's life.

Thank you for taking the time to consider our concerns. Please do not hesitate to reach out to us if you have any questions.

Respectfully,



Kathy L. Rapp
65th Legislative District



Timothy R. Bonner
17th Legislative District



Marla Brown
9th Legislative District



Joanne Stehr
107th Legislative District



David H. Zimmerman
99th Legislative District

cc: The Honorable Dan K. Williams, Chair of the Subcommittee on Drugs and Alcohol, House Human Services Committee
The Honorable Doyle Heffley, Minority Chair, House Human Services Committee
The Honorable Michele Brooks, Majority Chair, Senate Health & Human Services Committee
The Honorable Art Haywood, Minority Chair, Senate Health & Human Services Committee
The Honorable Bryan Cutler, Leader, House Republican Caucus
The Honorable Timothy O'Neal, Caucus Chair, House Republican Caucus
The Honorable Joshua Kail, Policy Committee Chair, House Republican Caucus