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Independent Regulatory Review Commission

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Independent Regulatory Review Commission
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To whom it may concern:

Thank you for the opportunity to comment on the proposed Psychiatric Residential Treatment Facility Regulations. The Bradley Center is committed to quality and evidence-based treatment for our children, youth, and their families. We have a long history of caring for those who are most vulnerable. We first opened our doors in 1905, when The United Methodist Women established an orphanage and interim housing facility for Pittsburgh-area children whose parents were separated or divorced. Originally known as The Elizabeth A. Bradley Home for Children, it was renamed as The Bradley Center in 1972. Bradley has grown to become an accredited educational and behavioral healthcare organization serving youth and families throughout Pennsylvania.

The children and youth we serve often have histories of trauma (i.e., abuse, neglect, witnessing violence, loss of parents). They have at least one, but often multiple, mental, and behavioral health diagnoses (i.e., PTSD, depression, anxiety, schizophrenia, oppositional defiant or conduct disorders). Approximately 25 percent also have intellectual/developmental disabilities. Many come from families who are impacted by poverty, addiction, mental illness, and/or criminality. Many children who live at The Bradley Center have been in multiple foster homes or other placements before coming to Bradley. Often, children arrive at Bradley with poor self-images, low self-esteem, and extreme anger issues.

Due to their histories, children often have trouble managing their emotions leading them to engage in aggressive, self-injurious, or inappropriate behaviors. They may be unsafe to themselves or to others. Bradley is often the last, best hope for this vulnerable population. When children are dealing with complex problems like trauma, unsafe behavior, or mental health difficulties, they need much more help than just firm rules or well-meaning advice. They also need comprehensive, compassionate medical and therapeutic care that is individually tailored to help them manage their own specific behavioral challenges, at their own pace. Bradley's PRTF reinforces opportunities for children and families to create and maintain healthy relationships, learn from past mistakes, exercise good decision-making, and manage mental health symptoms.

The background of our agency and the histories of the children we serve are important in understanding our concerns and recommendations for the proposed PRTF regulations. While we support improvement within our treatment program, the regulations pose a real challenge to balance between regulating care and allowing for the flexibility of care tailored toward each child's needs.

The most concerning issue with the proposed regulations is the staffing requirements. For example, the proposed staffing requirements for the Medical Director/Psychiatrist would change the scope of practice within our PRTF and create additional barriers to our already challenging

goal of hiring psychiatrists. The requirements for supervisors to be on our units during all awake hours would tax our already fragile staffing complement. The requirement to have 24 hours of onsite nursing would create a barrier that we feel we would not be able to meet. We would welcome a world in which staff were in abundance, however, even prior to the Pandemic, providers were finding it hard to recruit and retain those positions and the Pandemic exasperated our efforts. In addition to the difficulty with workforce recruitment and retention, we also feel that the costs/salaries for such positions are much higher than those suggested in what was presented in the financial analysis section.

Our other concern is that the regulations, while well meaning, will more than likely create barriers to creative and individualized programming for our children, youth, and their families rather than allowing flexibility to develop clinically sound evidence-based treatment approaches for dealing with complex needs. One example of this would be the requirements for the various individual, family, group, and psychoeducation programming. This requirement would place children at risk of treatment failure by requiring them to attend school for a full day, then come back to the program and engage in treatment. This would not allow them to decompress after school and during snacks and meals, complete homework, and participate in other prosocial activities, all of which are vital components for our children to be successful in the program. It also does not allow flexibility to titrate down those services as the child gets closer to discharge.

The changes in our transportation practices would have a significant impact on staffing, our children's ability to engage in prosocial activities, and costs. The ability for our children to be transported for therapeutic leaves by The Bradley Center would be significantly limited due to the constraints placed by the transportation requirements.

There are many required and necessary services and products listed as unallowable costs. We feel these costs, such as clothing, hygiene items, and beautician and barber services, are important and required as part of the holistic care for our children and should be allowable costs.

Below are additional comments on specific areas of the regulations:

§ 5330.3. Definitions

Elopement

Please provide clarification on what the Department is defining as elopement. Is there a time limit assigned to this?

Excessive Medication

Please provide clarification on what the Department defines as excessive medication and how this is determined. Who is determining this?

Independent Treatment Team

Please provide more details about what is meant by an independent treatment team. For example, does OMHSAS have an independent treatment team to review MA only for children and youth?

Intimate Body Parts

Please provide further clarification on what is deemed intimate body parts.

Intimate Sexual Contact

Please provide a definition of intimate sexual contact.

Physical Assault

Please provide a definition of physical assault.

Reportable Illness

Please provide further clarification on what is included under involuntary emergency psychiatric admission.

Search

Please provide a definition of search.

Time-out

Please provide further clarification on the definition of time out. Does this mean staff directed and/or client requested?

Visit

Please provide further clarification. We recommend including unsupervised on-ground visits with this definition.

§ 5330.11. Service Description

Clarification is needed on §5330.11 (a) (2) Is this the agency's address and phone number and website or the accreditation agency's?

Clarification is needed for §5330.11 (a) (12) What does 'expectation that will be used to encourage active involvement' mean? Please provide a specific example.

Clarification is needed for §5330.11 (a) (13) Please clarify what is being asked.

(b) We recommend that the following language be included to provide a transparent process for service description approvals. The department has 60 days from receipt of the service description to approve the updated service description. The service description will be automatically deemed approved if the provider has not received a response.

§ 5330.12 Coordination of services

(b) We request that the words 'annually or' be deleted.

(c) (a) Although children in our care requiring admission for medical care or acute psychiatric care should be admitted in a timely manner, we have very little control over other providers' abilities to do so. We appreciate the word 'reasonably' but we do raise the concern that the

Department will hold the PRTF to a standard of which they have no control. We recommend that the words “in a timely manner” be deleted from this section.

§ 5330.13 Abuse

(a) We recommend adding the following language to clarify that policies and procedures shall address staff implication in ‘alleged’ abuse in addition to actual founded abuse.

§ 5330.14 Reportable incidents

(b)(4) While we agree that many of the reportable incidents listed in this section should be reported within 12 hours, there are some that we feel would be costly and staff intensive and do not require notification within 12 hours. For example, disruption to water, heat, power, and cooling would require a reportable incident report and be completed within 12 hours when the incident is known to the PRTF. We recommend deleting this section or allowing reportable incidents to occur within 24 hours of resolution for the disruptions outlined in section (b)4)

(c) (1) Please clarify if this section includes restrictive procedures that are not performed correctly.

(c) (11) Please consider allowing 24-hour reporting of activation of the emergency preparedness plan. Planned drills should be excluded.

(c) (13) Please provide language to clarify that medication errors are while under the supervision of the PRTF staff and do not apply to medication errors that occur while on therapeutic leaves.

(f) If we submit information to the State-designated Protection and Advocacy, we may or may not be provided with the name and title of the person receiving the report if we need to leave a message. We recommend that this language be removed from this regulation.

§ 5330.15.(c) (1)

(a)(2)(3)(4) These behaviors and response occur with high frequency at this level of care. We have concerns about the regulation requiring recording of incidents, would be staff intensive and require us to hire an additional staff to perform this task.

It is not clear the intention or purpose of recording such events and how this will be monitored by OMHSAS. Because of the nature of our children’s needs, this regulation would require a full-time person to record. Please clarify the intent for this regulation on how OMHSAS staff will monitor these incidents and specific time frames in which they will be monitored.

If a child is on a visit, how or what is the expectation of the provider to assess the child while on the visit? If we contact the family every 24 hours, and there was an injury or illness, is the provider expected to report this immediately and if so, will they provide a waiver for not meeting the required 12-hour notification?

§ 5330.17 Consent to treatment

(a)For transparency purposes, we request that all Federal and State Laws, regulations, and Department policies regarding consent be listed in this regulation.

(d) Please clarify if consent to treatment also includes medication consent. We ask this because there are times that the family and youth will agree to the clinical treatment, however, may refuse medication as treatment.

§ 5330.18 Confidentiality of records

(a)Must include the exception of Treatment, Payment, and Operations

§ 5330.20 Visits

(a) We recommend that the following words be added to distinguish between onsite and offsite visits. "A PRTF shall develop an onsite and/or off-site visit plan for a child, youth, or young adult when the child, youth, or young adult when not under the supervision of a PRTF staff that includes…"

(b)(g) Please provide language that offers flexibility for the contact method which shall include phone, text, email, and other means of communication preferred by the contact person. Since the plan in (c) includes phone numbers for crisis and the PRTF, the family has the ability to reach out to check in or for assistance. If this is to occur, it should specify if an attempt is made. There should not be an expectation to continue to make attempts if there is no answer/response.

§ 5330.31 Rights

(5) We agree that the child has the right to clean and seasonal clothing and it often falls to the provider to ensure the child has this clothing. We also believe because it is regulation, the provider should be able to include this in their allowable costs. Please see comments § 5330 related to cost.

(6) We agree that all children and youth should be free of excessive medication. Please provide a definition of what is meant by excessive medication.

(17) This regulation is overly broad. Please clarify the intent of this regulation.

(18) This regulation is of concern because unless there is a court order, we are not permitted to prohibit the parent, legal guardian, or caregiver from visiting the child. We recommend adding the language that includes "…if court ordered, the parent, legal guardian, or caregiver will not be permitted…"

(19) Unless the parent or guardian has approved visitors, we are not permitted to allow the visit. Please add language that clarifies the parent, or guardian must approve the visit.

(d)(2) The treatment team can not prohibit contact with parent/guardian without a court order.

(d)(3) The treatment team can not prohibit contact or participation in treatment with parent/guardian without a court order.

(24) Please clarify the intent and meaning of "To peacefully assemble…"

§ 5330.32 Grievance procedures

(d) Should state before admission or on the day of admission. This would allow us to send it out with admission paperwork.

(e) contradicts (d)

§ 5330.41 Supervision of Staff

The Bradley Center believes and engages in strong supervision efforts. We are genuinely concerned, however, in the requirements for the psychiatrist to not only provide direct therapy for at least one hour per month, but to also include one hour of face-to-face direct supervision per month and 20 minutes of direct observation of the RN, clinical director, or APP.

We also request clarification on supervision methods that are allowable and recommend that group supervision be added.

§ 5330.42 Staff requirements

We are in support of the intent of this section, however, are concerned that the increase in staffing requirements may have significant effects on our ability to hire and retain staff based on the increased regulatory requirements.

In addition, language in § 5330.42 (c) (2) suggests staff should always, during awake hours, be within auditory and visual range of children, youth, or young adults. We recommend that rather than using the term within visual range, the term 'within proximal range' be used. There are times when youth, particularly youth who are close to discharge, may be afforded the opportunity to spend time in their room to read, write or engage in other independent activities. To suggest that staff will be within visual range will not allow for this independent activity. Also, there are times when privacy is required such as changing clothing, showering, and using the bathroom facilities.

§ 5330..42 (e) (1)(2) This section would require our agency to hire more than an additional eight (8) staff per shift. This would require more than 8 additional staff supervisors to be able to meet the regulatory obligations. At a time when the workforce is already stressed, this would create barriers and access to care. We recommend that this section be re-evaluated based on the staffing and workforce struggles.

§ 5330.44 Treatment team leader

We recommend that the term implementation in § 5330.44 (b) (2) be deleted and the term oversight replace this term.

§ 5330.45 Clinical Director

(b)(1)(2)(3) The oversight and review should occur but the provider should have the flexibility to determine which role(s) are responsible as long as the individual(s) has the proper qualifications.

§ 5330.46 Program Director

In this section, we recommend that the terms 'clinical field work' and 'lived experience' be added to this section to support the flexibility to hire students, young adults, and those that have lived experience in mental health and behavioral health but do not meet the currently proposed requirements.

(b)(1)(2)(3)(4)(5) the oversight and review should occur but the provider should have the flexibility to determine which role(s) are responsible as long as the individual(s) has the proper qualifications.

§ 5330.47 Registered Nurse

We support the requirements listed in this section, however, due to the staffing shortages, particularly in nursing, this regulatory requirement would create a barrier to our ability to provide services. We recommend that the requirement that the RN have at least one year treating children be eliminated from the regulation.

§ 5330.49 Mental health workers

(c) This should allow an exception of 1 year experience if the worker has a high level of education.

§ 5330.50 Additional staff positions

We appreciate the list of additional staff positions allowed in a PRTF setting. We continue to stress that finding APPs and LPNs continues to be as much of a challenge as finding qualified RNs.

§ 5330.51 Initial staff training

The Bradley Center prides itself on the training and professional development opportunities we provide for our staff. With that in mind, we are extremely concerned about § 5330.51 (d). We are particularly concerned about the requirements to require the medical director to complete the training set forth in subsection (c) prior to working directly with children, youth, and adults. This will create a barrier to hiring psychiatrists who, because of the nature of their work and degree, would already have the required training to work with our youth. We recommend that § 5330.51 (d) be deleted.

§§ 5330.52 Annual staff training

The Bradley Center prides itself on the training and professional development opportunities we provide for our staff. With that in mind, we are extremely concerned about § 5330.51 (d). We are particularly concerned about the requirements to require the medical director to complete the training prior to working directly with children, youth, and adults. This will create a barrier to hiring psychiatrists who, because of the nature of their work and degree, would already have the required training to work with our youth. We recommend that § 5330.52 (c) should not include Medical Director. The Medical Director is an expert in mental health diagnosis, child development, ethics, trauma-informed care etc.

§ 5330.68 Surfaces

There should be an exception for areas that have had recent property damage to allow time for repair.

§ 5330.77 First Aid Supplies

(b)This is overly precautious. First Aid supplies are readily accessible, and nursing staff is available. Our staff are encouraged to participate in activities with the residents and the first aid supplies would then be left unguarded and in an unlocked location.

(f) AEDs are supposed to be in obvious locations and easily accessible. This requirement contradicts this.

§ 5330.92 unobstructed egress

(b)(c) These 2 regulations contradict each other. Delayed locking systems can be equipped with keys or electronic card operation.

§ 5330.131 Daily meals

(e) Providing a meal at a later time is not always feasible. There may not be anyone in food service to provide the meal. The meal should not be saved for a resident at time of refusal due to food safety issues associated with storage. The time frame should be established to also ensure the requests for the initially refused meal come after bedtime.

§ 5330.141 Treatment Planning requirement

(b) The treatment team leader does not have the time/capacity to ensure training occurs. This is the responsibility of our training department.

§ 5330.143 Maintenance of treatment plan

(a) Revised should be changed to reviewed. A team could review and update with progress but that is not necessarily a revised plan.

§ 5330.144 Copies of treatment plans

(1) The word provided should be replaced with presented in regards to the child, youth, or young adult.

§ 5330.145 Treatment services

(c)(1) The treatment team leader/psychiatrist may not have scope to offer individual therapy.

(f) 2-way audio and video transmission. Families may not have the necessary equipment and may only have access to a phone.

§ 5330.14 Education

(a)Education decisions are not made only by the educational host district. This needs to include guardians' decision and then expressed in the IEP

§ 5330.147 Discharge

(g) Revised to include a 30-day supply of prescribed medication or prescriptions.

§ 5330.151 Transportation

(a)and (d) These requirements will limit the amount of off grounds activities, outings, and transportation assistance for families that are available. Most vans fit seven passengers. With these regulations, the van would be full with one staff to drive, four children, and two staff for supervision. It will require two staff to take one child to a medical appointment.

5330.164 -§ 5330.51 167 Medication log, medication error, adverse reaction

We are concerned with the amount of information that appears to be expected on the medication log, which defeats the purpose of such a log. All of this information can be stored on a medication information sheet and filed in the child's medical records. We recommend that this section be more clearly defined noting a difference between what is kept in the medical record versus the medication log.

(a) Notification of the treatment team leader when a medication is refused if the resident is going to experience an extreme adverse reaction or need medical treatment based on refusal. If that is not the case, it can be reported at the next treatment team meeting.

§ 5330.181 Use of manual restraints

(a) Restrictive procedures should also include escort and time out greater than 30 minutes.

(f) Update to state prior to or on day of admission

§ 5330.182 Ordering a manual restraint

(h) Notifying the treatment team leader within 48 hours if a different individual ordered the restraint is counter intuitive as the treatment team leader would have someone covering for them so they could be off or not on call (coverage for weekends or vacations)

(i) Having a maximum time of 30 minutes increases risks to the individual and staff by ending a restraint before the individual has calmed down.

§ 5330.184 Restrictive procedure plans

(c) It is not realistic to have all team members sign the restrictive procedure plan every 30 days. The child and the therapist would be appropriate.

§ 5330.185 Application of a manual restraint

(c)(1) The word released should be changed to change of staff positions

(k) Within 1 hour of the end of the restrictive procedure, required guardian notification does not take into account the guardian's wishes. The guardian should have a choice as to how and when to be notified. For example, they may wish to be notified when at home and not during their workday.

§ 5330.187 Documentation of a manual restraint

(10) This is significantly more documentation with little to no added benefit. There is a staff debriefing where this is documented rather than each individual creating a written statement.

§ 5330.188 Debriefing

(b)(2) (3) A life space interview is conducted with the child. The treatment team and parent, legal guardian or caregiver are part of the follow up debriefing. As written, it would be challenging to organize and facilitate with that many individuals in a 24 hour period.

(c) The type or extent of injury that requires that staff to meet with supervisory staff should be included. Recommend, any injury that requires more than first aid.

§ 5330.189 Time out

Often our children and youth will take their own 'time out' as a coping skill or calming down tool. Please provide language that identifies the ability for self-directed time out which does not require direct supervision.

§ 5330.211 – 214 Records

§ 5330.211(c) Please provide further clarification of what is meant by "…when the child is not at the PRTF." Taking the emergency contact information for all children on outings poses a risk of a HIPAA violation as the staff should be focused on the care of the children and not trying to secure their records. If an incident occurs when not at the PRTF, the staff would call emergency personnel and the facility. The facility would contact the guardian, as the staff member not at the PRTF would be handling the situation.

§ 5330.212 (b)(1)(i-iv)

The Bradley Center gathers as much identifying information as possible and keeps this information secure in the child's medical record. There are times when the information required in this section is not always available, such a social security number, but may instead be presented with a birth certificate. We ask that this section add language that allows for flexibility in what shall or may be included in the child's records.

§ 5330.212 (2)

Please clarify what is meant by independent certification of need for PRTF services and whether the ISPT will be completed prior to this or after the meeting occurs.

§ 5330.212 (7) (i-iv)

This section related to documentation is confusing. Does this section relate to only PRTF services or is this also related to medical, dental, and other services?

We thank you again for the opportunity to provide our comments on the proposed Psychiatric Residential Treatment Facility regulations and look forward to continued collaborative efforts to improve the care for the children, youth, young adults, and their families.

Sincerely,

Beth Hines
Chief Program Officer
The Bradley Center