

## **RCPA Children's Committee Meeting Wednesday, March 31, 2021 • 10:00 am – 12:00 pm**

### **Richard Edley RCPA CEO – Updates**

- New DHS Secretary Meg Smead
- American Rescue Plan to bring Billions into PA. RCPA has adjusted its budget ask to direct \$750 million of these funds to human services in lieu of a one-year budget rate increase. See full budget request at: <https://www.paproviders.org/legislative-resources-page/>
- Vaccine availability is increasing as Pa opens.
- The future of the APA's continues to be discussed with DHS and the BH MCO

### **Jack Phillips – Director, Government Affairs – Children's Legislation**

- Ongoing efforts with joint venture with PCCYFS & RCPA to address provider liability insurance reform.
- RCPA, PCCYFS and the County Commissioners Association have joined to address the skyrocketing costs of Provider Insurance Liability costs. At this time, it has become nearly impossible to garner coverage that meets the County Contract requirements in a market that lacks insurance companies to provide the required coverage.

Our efforts will look to seek tort reform to create a sustainable platform for coverage.

- [HB 200 on language for Early Intervention Bill](#)
- See links below to current Children's Legislation. Please provide all feedback and comments to [Jim Sharp](#) by April 16, 2021
  - [Children's](#)
  - [Children and Youth](#)

## **RCPA Children's Work Group Reports**

### **IBHS**

#### **OMHSAS Releases Updated IBHS FAQ**

As part of the ongoing intensive behavioral health services (IBHS) implementation, the Office of Mental Health and Substance Abuse Services (OMHSAS) has released an updated IBHS [frequently asked questions \(FAQ\) guide](#). This guide represents a composite of updated inquiries regarding the standards and will be updated as a companion piece to the implementation.

#### **OMHSAS to Host IBHS Updates Forum – Save the Date May 11, 2021**

OMHSAS will be hosting a webinar on May 11, 2021 from 1:00 pm to 3:00 pm to provide Intensive Behavioral Health Services (IBHS) updates. This webinar will provide a summary of the transition from BHRS to IBHS throughout 2020, as well as current tips, policy, and process. Anyone is welcome to attend. If you have a specific question, please familiarize yourself with the resources, frequently asked questions, and presentations already listed on the [IBHS website](#). The webinar details will be sent out shortly.

In addition, the [IBHS email](#) is always available for questions and suggested webinar topics. If you have questions or thoughts, please contact RCPA Children's Policy Director [Jim Sharp](#).

#### **OMHSAS Issues Bulletin for Home Host Treatment IBHS & CRR**

OMHSAS has released the following bulletin that applies to providers of Community Residential Rehabilitation (CRR) services that provide behavioral health treatment services in host homes to children and youth under 18 years of age in the Medical Assistance (MA), Fee-For-Service (FFS), and managed care delivery systems.

On October 19, 2019, the Department promulgated 55 Pa. Code Chapters 1155 and 5240, which codified the minimum standards for licensing and MA payment conditions for agencies that deliver Intensive Behavioral Health Services (IBHS) to children, youth, and young adults under 21 years of age with mental, emotional, and behavioral health needs.

The regulations replaced the requirements for Behavioral Health Rehabilitation Services (BHRS) previously set forth in bulletins issued by the Department. Because IBHS replaced BHRS, BHRS will not be compensable after January 17, 2021.

Specialized behavioral health treatment provided in the CRR host home setting is not considered IBHS. Because the behavioral health treatment component provided in a CRR host home setting cannot be provided through IBHS, the Department is issuing procedures for how CRR providers who provide services in a host home setting can continue to provide specialized behavioral health treatment.

Please review [OMHSAS 21-04 Home Host Treatment Bulletin](#) for guidance. There are procedural steps for existing and new providers that should be followed in accordance with this bulletin as well as identified code procedures.

There are also additional attachments related to the bulletin:

- [Attachment A](#) – Service Description Format
- [Attachment B](#) – Fee-For-Service Prior Authorization Instructions
- [Attachment C](#) – OMHSAS Contact List Regional Field Offices

## **OMHSAS Licensing visits**

OMHSAS noted that remote only inspections are intended for counties with 10% positivity testing results. There are currently 16 counties in this category for those under 5%, about 48 counties, can have a hybrid of remote and in person inspections.

There will be in person inspections for incidents that are reported. Also, there are about 150 backlogged inspections for facilities due to the delays brought on by COVID-19. These will be caught up as those possibilities become available.

Issues occurring in Licensing visits by providers.

- Lack of consistency within a region as well as across the state
- Interpretation by OMHSAS licensing staff – for example, the training topic area has been interpreted as all training for the listed employees from their employment date. (so, while it is an annual inspection, the licensing staff request includes the length of employment, in some cases decades of files that are requested)
- Increase in citations and provisional licenses
- Length of time from the beginning to the end of a review (3-4 months) upon conclusion, then 3 or more months before a report is sent back to providers.
- Development of or guidance on a consistent protocol and platform for informing providers of formal licensing actions and information regarding licensing functions impacting providers license status
- Email requests for documents are excessive and a short turnaround

The RCPA Mental Health Committee will be hosting OMHSAS to discuss licensing issues, as noted above, on April 7<sup>th</sup> at 9:30. See the RCPA events calendar for registration info. If you have a question or concern related to OMHSAs program licensing, please let Jim Sharp know in advance so it can be on the agenda.

## **Child with Complex Medical Condition**

The committee last discussed having a meeting with the Imagine Different Coalition to see where our efforts overlap. We are all advocating for very similar things. We expect that to occur in the coming weeks and will report on this at the next Children's Steering Committee meeting.

Each member shared a bit about what they have been doing to date and the progress made. We are collectively awaiting the release of action points/work plan (anticipated in April) from the OMAP recommendations and felt it best to meet again after we have had a chance to review. We felt that it may provide some clarity for developing the next priority areas based on what is identified/omitted from the recommendations. I have put it on my calendar to reach out after the recommendations are released.

We noted a collective interest in:

Care Coordination efforts (and concerns re: gaps in MCO Special Needs Unit Care Coordination)  
Nursing Related Issues

## Residential Services Work Group

### Juvenile Justice Task Force

#### ➤ Recommendations & Next Steps

A bulletin for the review of the recommendations was sent out to all members on March 18. We ask that you review the recommendations and provide feedback to be submitted to Jim Sharp for a response developed by RCPA to address the following task force recommendations.

- Reserving out-of-home placement for the most serious cases that pose a threat to community safety.
- Keep youth in out-of-home placement no longer than the timeframe supported by research.
- To incentivize both youth compliance with treatment programming and service provision o
- Curb the number of out-of-home placements youth cycle through over the course of their case.
- : Consideration should be given to reassign or repurpose skilled juvenile justice staff as the juvenile justice system further shifts away from out-of-home placement and toward community-based services.
- Reinvest averted costs from out-of-home placement reductions!
- Increase oversight and accountability of out-of-home placements for youth adjudicated delinquent.
- Ensure quality oversight of educational services at residential facilities.

## Telehealth Federal Update

- New Nominee for DHHS Xavier Becerra pushing for all current flexibilities to remain in place on permanent basis.
- 117 Congress poised to review bills and legislation this Spring. Critical areas include:

Congressional lawmakers also indicated they might act on interstate licensing regulations with two bills designed to make it easier for providers to deliver care across state lines during the pandemic. The Equal Access to Care Act (S. 3993) was first introduced in June 2020 and would temporarily allow providers who are licensed and legally authorized to provide care in their primary state to practice telehealth with a patient located in another state. The law would remain in effect until 180 days after the PHE is rescinded by the President. More recently, lawmakers reintroduced the Temporary Reciprocity to Ensure Access to Treatment Act (TREAT) as HR 708,

Some of the more comprehensive bills are reintroduced versions of legislation proposed in the 116th Congress. The Protecting Access to Post-COVID-19 Telehealth Act of 2021 ([HR 366](#)) was introduced by a bipartisan group in late January to permanently expand many of the temporary telehealth flexibilities and expansions allowed during the Public Health Emergency (PHE). A [version of this bill](#) that was introduced in July 2020 never made it out of committee. HR 366 addresses several key flexibilities:

- Eliminates Medicare's geographic restrictions starting on Dec. 31, 2021.
- Allows the home as an originating site for all eligible services starting Jan. 1, 2022.
- Grants the Department of Health & Human Services permanent disaster waiver authority to expand telehealth.
- Authorizing Centers for Medicare & Medicaid Services (CMS) to reimburse for telehealth 90 days after the PHE is rescinded.
- Require the Department of Health & Human Services to conduct a comprehensive study on telehealth utilization, costs, and geographic disparities.
- Allow FQHCs and RHCs to bill as distant site providers and clarifies that telehealth services includes a rural health clinic or FQHC service that is furnished using telehealth to the extent that payment codes correspond to the service.

On the Medicare front, HR 366 would be a major shift from business as usual prior to the pandemic since beneficiaries would now be permitted to receive telehealth services from their homes regardless of the rural or urban designation once fully implemented.

### **Private Insurance Telehealth**

We continue to monitor this and work with the PA Department of Insurance and providers on this. Right now, continued coverage across most private companies runs from no limit to month-by-month coverage. RCPA has created a white paper for review by PA Legislators, PA Insurance Commissioner J Altman as well as DHS. Meeting sated with PID Friday March 12

RCPA and Woods Services are involved in a joint research project that is aimed to build off the RCPA telehealth survey of last year. With the federal and PA entities still working through what flexibilities are to become permanent, we think there are key pieces of data that will support the wide range of telehealth guidelines that we continue to support on behalf of our members.

Some of these include:

- Audio only/telephonic.
- Flexibility on locations where telehealth can be delivered.
- Flexibilities on who can deliver the services.
- The rate equity in face-to-face and virtual/telehealth; and
- The element of choice for consumers (face-to-face/virtual or a hybrid mix).

Many of these have been supported by the work of the PA DHS/OMHSAS telehealth steering committee. That group now is waiting the for the draft bulletin for review.

## **Pa Telehealth**

OMHSAS released recent Telehealth Survey overview report.

Attached is a .pdf copy of the OMHSAS Telehealth Survey Report and [here is a link to the OMHSAS Telehealth Survey Report on OMHSAS's Telehealth webpage.](#)

DHS Telehealth bulletin draft will be out for public comment towards the back half of the Summer. RCPA continues to work with OMHSAS and BH MCO on support of telehealth flexibilities consistent with the Task Force recommendations.

### **RCPA and Wood Services Telehealth Survey**

To gain Pennsylvania specific information regarding the use of telehealth procedures, RCPA in partnership with Woods Services that utilized telehealth as part of their behavioral health and consumer engagement strategies during the pandemic. After a year of implementing telehealth as a primary mode of service delivery, the responses support the initial success of this modality – although there are ongoing challenges.

See link to [Executive Summary](#)

## **OMHSAS**

OMHSAS Perri Rosen

- Update on Student Assistance Programs and intersect with School Based Behavioral Health , Districts and Providers
- Guidance document to be released to better articulate the relationship with the SAP process and students receiving services.
- SAP Training is available at [PA Approved SAP Training Provider \(pnsas.org\)](https://pnsas.org)
- The Garrett Lee Smith Youth Suicide Prevention Grant team is pleased to announce a free virtual suicide prevention training series which will begin next Tuesday, April 6th. This is a repeated series with the same offerings from the spring and fall of 2020. Additional information and registration can be accessed by visiting <https://www.preventsuicidepa.org/webinars/>. Please feel free to share this information widely.

Scott Talley OMHSAs Children's Bureau Director

- IBHS Updates ( See IBHS Section Above)
- Trauma Aware initiative continues and OMHSAS now has 6 trainers to provider Trauma 101 and 102 trainings.
- Reengaging in complex care issues and providers will be contacted for feedback.

## **OCYF**

Jon Rubin OCYF Deputy Secretary

- There will be money funneled into OCYF from the American Rescue Plan and being reviewed.

- RCPA asked about the possibilities of Pa providers being involved in Federal Relocation efforts for children at the border. Jon has recently met with the Federal entities and there is a possibility if those services will be needed. If any RCPA members are interested in possibly providing services for this population to contact Jim Sharp
- FBI Fingerprinting
- There continues to be delays in options CPSL required FBI Fingerprints. Several meetings with DHS and OCYF to review timelines processes were discussed and from most indications these fingerprints re being turned around at Identogo and OCYF within 7-10 day. Delays seem to be tied more to US Mail and address issues.
- If you have staff that have been waiting more than 4 weeks, please have them call this number to get a status report or reissuance of a fingerprint certification the phone number is: 18773715422.
- The Family First is still on track to start October 1, 2021.
- The 3800 Regulations Re Write Drafts currently being reviewed internally.

There are also some additional OCYF releases on the CPSL, which this group has covered. We will review these in the state updates shortly.

## **RCPA Updates**

### **21 Century Cares Act**

#### **21<sup>st</sup> Century Cures Act**

In April 2021 the [21<sup>st</sup> Century Cures Act](#) will be implemented Nationally, as it weaves together Access, HIPAA, and the Electronic Health Information (EHI) Exchange.

The new laws work with existing HIPAA rights to simplify how health care providers can meet individual requests for access to electronic health information.

As the Cures Act ensures patient access to their Electronic Health Record (EHR), several questions have been raised regarding its applicability to children's treatment.

Many have asked if this access would include a parent's access to confidential therapy notes. Upon consultation with the National Council on Behavioral Health, the Cures Act will not contravene the Pennsylvania Privacy Laws.

[Pennsylvania Chapter 5100: Mental Health Procedures](#) outlines the confidentiality of mental health records.

## CONFIDENTIALITY OF MENTAL HEALTH RECORDS

- 5100.31. [Scope and policy.](#)
- 5100.32. [Nonconsensual release of information.](#)
- 5100.33. [Patient's access to records and control over release of records.](#)
- 5100.34. [Consensual release to third parties.](#)
- 5100.35. [Release to courts.](#)
- 5100.36. [Departmental access to records and data collection.](#)
- 5100.37. [Records relating to drug and alcohol abuse or dependence.](#)
- 5100.38. [Child or patient abuse.](#)
- 5100.39. [Release of records.](#)

It is important to note that there are differences between protected health information and encounter treatment notes and the types of access and protections afforded that information for children ages 14 and older.

### Access Overview

#### Access to Records

HIPAA gives patients access to protected health information but not psychotherapy notes Protected health information, date and times of treatment, summary of treatment, results of evaluations and medications, etc. EXCEPT if doing so would be life-endangering

Under Pennsylvania Mental Health Confidentiality Laws., any information acquired by a licensed mental health professional during treatment is privileged under Pennsylvania law and may not be released without patient authorization or court order.

#### Protected Health Information

"Medication, prescribing and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests and any summary of the following items: diagnosis, functional status, the treatment plan, prognosis and treatment to date."

#### Psychotherapy Notes

Notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversations during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record" 45 CFR §164.501.

#### Access to Psychotherapy Notes

Access required in for services provided in hospitals or facilities governed by Mental Health Procedures Act. Patients have access unless "that disclosure of specific information concerning treatment will constitute substantial detriment to the patient's treatment" or "when disclosure of specific information



will reveal the identity of persons or breach the trust of confidentiality of persons who have provided information upon an agreement to maintain their confidentiality” (55 Pa. Code 5100.33 (c))

Psychotherapy notes include the contents of confidentiality communications with mental health professional. Access to psychotherapy notes is controlled by state law.

Under the 21<sup>st</sup> Century Cures Act there are also exceptions criteria for blocking information. In Section 4004 of the 21st Century Cures Act defines practices that constitute information blocking and authorizes the Secretary of Health and Human Services (HHS) to identify reasonable and necessary activities that do not constitute information blocking (referred to as “exceptions”). Access to those exceptions can be found [here](#).

The Disabilities Rights Network of Pa has also published a [fact sheet](#) you may find useful.

## DISCLAIMER

RCPA shall not provide its members with specific legal or technical guidance for the purpose of carrying out day-to-day operations. Questions and/or guidance of this nature should be directed to the member’s internal or contracted professionals such as Human Resource Director, Confidentiality Officer, Solicitors, or other applicable legal counsel or professional.

## Diversity, Equity, & Inclusion

### Update on Progress Toward Identified Priorities and Targets for Completion

1. Resource Repository on RCPA Website Update
2. Assist Organizations to Create/Evaluate Diversity Policy
  - FAQ Sheet/Article Summary Draft
  - Additional Articles
3. Baseline Data Collection
  - Survey Draft
4. Legal Consideration and DEI Policy/Initiatives – Co-chairs to invite speakers to discuss with the group for future meeting.
5. Discussed *How to be an Anti-Racist* book as a resource for our organizations. We will investigate funding for purchase for group members.
6. The Legislative efforts agenda is being developed.

### DEI Policies: Frequently Asked Questions Document

The RCPA Diversity, Equity, & Inclusion (DEI) Committee created [this resource](#) to answer frequently asked questions regarding DEI policy development and refinement. Following a survey of available resources, this compilation was developed as a guide for interested parties and is intended as a springboard to further research with links to additional resources to aid their DEI policy development process. Please send questions or feedback to [Cindi Hobbes](#) or [Jim Sharp](#).

## **RCPA & PACHC Receive Delta Center Grant**

State Associations Focusing on Community Health Secure \$250,000 Grant to Advance Equity in Telehealth Care

HARRISBURG, Pa. (March 29, 2021) --- The Rehabilitation and Community Providers association (RCPA) and the Pennsylvania Association of Community Health Centers (PACHC) have secured a \$250,000 grant as part of a national initiative to cultivate health policy and a care system that is more equitable and better meets the needs of individuals and families.

The collaboration will focus on increasing access to care and developing a comprehensive policy framework and health-care plan for consumers with the use of telehealth.

“The confluence of pandemic-related restrictions and consumer needs presented a real care challenge. Without being able to meet face to face in many cases, telehealth platforms quickly became the service delivery vehicle for providers, consumers, stakeholders, and payors,” said RCPA President and CEO Richard S. Edley, Ph.D. “As with every crisis, these challenges opened our eyes to new opportunities. But we still have a long way to ensure telehealth expands in an equitable way for providers and the communities we serve.”

“The integration of physical and behavioral health is critical to the future success of delivering high quality health care services to the patients of Federally Qualified Health Centers (FQHC) and behavioral health providers across the commonwealth,” said Cheri Rinehart, PACHC President and CEO. “The incorporation of telehealth services in the delivery of care was essential throughout the pandemic and will continue to be a crucial tool for providers to use in delivering whole person care for the communities they serve.”

The two-year grant to RCPA and PACHC is among six spanning eight states. It was awarded by the Delta Center for a Thriving Safety Net, which brings together primary care associations and behavioral health state associations to advance policy and practice change. The Delta Center project is supported by the National Council for Behavioral Health, the Robert Wood Johnson Foundation, and the National Association of Community Health Centers.

RCPA and PACHC will focus creating planes of equity for telehealth access, with goals that include:

- Using consumer and advocate voices to drive policy and practice change that ensure access to quality physical and behavioral health services and improve integrated care via telehealth.
- Partnering with legislators and stakeholders to develop telehealth standards in Pennsylvania that ensure sustained equity, access, and viabilities for consumers and practitioners.
- Supporting actionable strategies to address the social determinants of health.
- Sharing consumer feedback to develop training and technical assistance, health literacy campaigns, and language supports.

The collaboration between RCPA and PACHC brings together two of the largest community-based physical and behavioral health associations in the commonwealth.

RCPA is one of the largest and most diverse health and human services state associations in the country. With more than 350 member agencies, RCPA and its member agencies support more than 1 million Pennsylvanians in need of mental health, drug and alcohol, intellectual and developmental disabilities, children's, brain injury, medical rehabilitation, and physical disabilities and aging services.

PACHC represents and supports more than 350 Federally Qualified Health Centers (FQHC) delivery sites in Pennsylvania. FQHCs provide health care to more than 900,000 people, or 1 in 14

Pennsylvania residents annually. With sites in 52 of the 67 counties across the state, FQHCs have a presence in both rural and urban communities. In total, 47 community health center organizations comprise the largest network of primary care providers in the commonwealth.

Their work on this effort will help to build regulatory and policy structures to ensure expansion of telehealth practices while also developing metrics on consumer and practitioner experiences to impact regulatory and service platform considerations. Policies must reflect the diverse and inclusive needs of the communities each organization serves, and funding equity for face-to-face and telehealth visits must be considered in payments to providers to ensure success.

Besides Pennsylvania, teams from Alaska, Kansas and Oklahoma are involved in the study, as is a bi-state region team of New Hampshire and Vermont and a Gulf Coast Region team of Louisiana and Mississippi. Central to the grant program is that each team is comprised of a state behavioral health association and a primary care association (PCA).

For more information, visit <https://deltacenter.jsi.com/>.