

## RCPA IBHS Regulatory Review Request

November 29, 2022

Dear Executive Director Sumner,

On behalf of the RCPA IBHS providers and the children and families of Pennsylvania that they serve, we respectfully request the Independent Regulatory Review Commission (IRRC) to reopen for review Regulation #14-546: Intensive Behavioral Health Services, based on section 8.1 of the Regulatory Review Act (71 P.S. § 745.8a).

The premise of our recommendations addresses the challenges and barriers IBHS providers have faced in creating the staffing infrastructures and meeting the burdensome operational protocols for regulatory compliance. The overreaching nature of the regulations, coupled with the impact of the pandemic, has caused great strain on an already depleted behavioral health workforce. These system stressors limit the ability to provide vital, quality services to children and families. Due to the prohibition for the use of waiting lists, it is difficult to capture the true number of children and families going without these essential services. We contend there are thousands of children across the Commonwealth with unmet treatment needs and written orders for IBHS services who await care.

The current lack of access to care is a result of the workforce crisis and operational requirements of implementing the regulations. We feel these access issues and children waiting for services are compelling reasons, in the interest of the public, to merit a review of the regulations.

The COVID-19 DHS regulatory flexibilities provided initial relief for providers, and OMHSAS continues to offer waivers to agencies experiencing critical staffing shortages. Providers are grateful for these temporary solutions; however, these waivers do not address the long-term impacts of the current regulatory requirements. Providers continue to struggle to hire qualified staff and contend with burdensome operational requirements, many of which negatively contribute to the efficiency of care delivery.

The expressed purpose of the IBHS regulations was to ensure access to quality care in a consistent and efficient manner. Conversely, the result has been a labyrinth of regulatory and operational interpretations, differentiated reimbursement for the same services, and a human services workforce crisis with no upcoming relief.

Again, we thank you and the Commission for their willingness to consider this request. We believe these recommendations, if implemented, can address the barriers identified without compromising the original vision for high quality services and broad access to care.

Sincerely,

[Jim Sharp](#)

Policy Director

RCPA Mental Health Division

# RCPA IBHS Regulatory Recommendations

## STAFFING

### § 5240.12. Staff Qualifications

(b) A clinical director of an IBHS agency shall have a minimum of 1 year of full-time postgraduate experience in the provision of mental health direct services to children, youth or young adults and meet one of the following:

(2) Be licensed in this Commonwealth as a behavior specialist and have a graduate degree that required a clinical or mental health direct service practicum from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation or have an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(3) Be licensed in this Commonwealth as a social worker and have a graduate degree that required a clinical or mental health direct service practicum from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation or have an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(4) Be licensed in this Commonwealth as a professional with a scope of practice that includes overseeing the provision of IBHS and have a graduate degree that required a clinical or mental health direct service practicum from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation or have an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

### **Current Regulatory Impact:**

This regulatory requirement for the Clinical Director to have completed a practicum for his/her graduate degree has proven to eliminate numerous professionals in the field from being eligible for this position since the implementation of the regulation.

Professionals who have years of experience as direct service providers and as supervisors of mental health programming are eliminated from consideration due to the practicum requirement.

Many of these professionals completed their coursework from accredited Pennsylvania Universities at a time when internships and practicums were not a requirement for a degree.

In turn, professionals just 1 year out of graduate school are eligible for this position. There is no single standard across universities, so likely quality of practicum experience and preparedness for Clinical Director role without actual work experience could vary significantly. Additionally, during COVID-19, universities suspended these practicums, creating another gap in individuals coming into the workforce. This requirement has had additional unintended negative consequence:

- Excluded Clinical Professionals who have decades of mental health and supervisory experience;
- Limited providers' abilities to recruit and retain qualified IBHS Clinical Directors in an already limited staffing environment; and
- Further reduced access to care and increased the demand on Family-Based Mental Health and costly higher levels of care unnecessarily.

**Recommended Change:** It is recommended that the requirement for a practicum be removed and consideration for alternate requirements be added to the regulations that place value on expertise in the field that is equal to or greater than the value of a practicum during a graduate degree. Suggested language is as follows:

(b) A clinical director of an IBHS agency shall meet one of the following:

- (1) Be licensed in this Commonwealth as a physician practicing psychiatry, psychologist, professional counselor, marriage and family therapist, certified registered nurse practitioner with a mental health certification, or clinical social worker.
- (2) Have a minimum of 1 year of full-time postgraduate experience in the provision of mental health direct services to children, youth, or young adults, be licensed in this Commonwealth as a behavior specialist or social worker, and have a graduate degree that required a clinical or mental health direct service practicum from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation, or have an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.
- (3) Have a minimum of 2 years of full-time postgraduate experience in the provision of mental health direct services to children, youth, or young adults, have 1 year of full-time postgraduate supervisory experience of mental health programming, and have a graduate degree from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation, or have an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

**Change Impact:** The anticipated positive impact of the language change includes:

- The one year experience will better prepare individuals for their role as the Clinical Director;
- There will be a reduction of children and families languishing on service waiting lists without access to care;
- There will be increased access to lower levels of community-based care to prevent potentially more pensive services and/or costly out-of-home placements; and
- It will create viable pathways to maintain and grow a sustainable IBHS workforce.

## SERVICE PLANNING AND DELIVERY

### § 5240.21. Assessment

(a) Within 15 days of the initiation of services and prior to completing an ITP, a face-to-face assessment shall be completed for the child, youth, or young adult by an individual qualified to provide behavior consultation services or mobile therapy services.

#### **Advanced Behavioral Analysis (ABA) Group**

**Current Impact:** When providing group ABA services and ABA Individual Services, there are two different time periods for the completion of an assessment. For Group ABA, it is 15 days. For Individual ABA, it is 30 days.

**Recommended Change:** The timeframe for the completion for all ABA Assessments, both Individual and Group services, should be 30 days.

**Change Impact:** This impact would allow adequate time to conduct a Functional Behavioral Analysis (FBA) and the Verbal Behavior Milestones Assessment and Placement Program (VBMAPP) for all ranges of clients to ensure accurate and effective treatment plans for children.

### § 5240.21. Assessment

(8) The cultural, language or communication needs and preferences of the child, youth or young adult and the parent, legal guardian or caregiver.

(e) The assessment shall be reviewed and updated at least every 12 months or if one of the following:

(5) The child, youth, or young adult has not made significant progress toward the goals identified in the ITP within 90 days from the initiation of the services.

**Current Impact:** At the initiation of services, the staff has to build a therapeutic alliance with the treatment team (child/adolescent, family/caregiver) not only for “buy in” but also for effective response to treatment.

The current time period of 90 days is not sufficient to determine significant progress towards goals when considering the therapeutic alliance or rapport building with the treatment team across domains, which may vary to make such determinations.

**Recommended Change:** To extend the time period from 90 days to 120 days to allow for a reasonable timeframe and for a more accurate determination of progress towards goals within specific or across domains. For instance, child/family dynamics/family self-protective factors may delay understanding the root causes of behaviors and timely adaptive treatment responses.

**Recommended Change:** Provide a better definition of “significant progress,” as there is a conflict in interpretation of this from one BH-MCO to another.

## INDIVIDUAL SERVICES

### § 5240.71. Staff Qualifications for Individual Services

(a) Except as set forth in subsection (b), individuals who provide individual services through behavior consultation services must meet one of the following:

(4) Have a minimum of 1 year of full-time experience in providing mental health direct services to children, youth, or young adults and a graduate degree in psychology, social work, education, or counseling from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation, or an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(5) Completed a clinical or mental health direct service practicum and have a graduate degree in psychology, social work, education, counseling or a related field from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation, or have an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(c) Individuals who provide individual services through mobile therapy services shall meet one of the following:

(4) Completed a clinical or mental health direct service practicum and have a graduate degree with a least nine credits specific to clinical practice in psychology, social work, education, counseling or a related field from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation, or have an equivalent degree from a foreign college or

university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(d) By January 1, 2021, individuals who provide individual services through Behavioral Health Technician (BHT) services shall meet one of the following:

(6) Have a minimum of 2 years of experience in the provision of behavioral health services.

**Current Impact:** The requirements for a mental health practicum have clearly presented a significant barrier to hiring. This standard has created a prejudicial process against older clinicians who graduated from accredited universities in human services programs that did not require a practicum or internship. It is inconceivable that these individuals be required to return to school 20 or more years removed from their graduation.

Additionally, when staff had 2 years of experience, auditors still required the mental health practicum. The 9 credits that were needed in specific areas was not clearly defined.

**Recommended Change:** The practicum requirement should be removed and a standard of qualification be developed that is inclusive of education and career experience. In addition, all auditors should implement the same standards when evaluating coursework in psychology, social work, education, counseling, or a related field.

**Change Impact:** Due to the staffing crisis, hiring qualified staff is impacted; this would increase our pool of potential clinicians. Having more qualified staff members would increase the amount of families that can be served and reduce the number of families who cannot access individual services due to agencies being at capacity.

## **§ 5240.72. Supervision of Staff Who Provide Individual Services**

(a) An individual who meets the qualifications of a clinical director shall provide the following supervision to individuals who provide behavior consultation services and mobile therapy services:

(3) Thirty minutes of direct observation of services being provided every 6 months.

### **Current Impact:**

- The direct observation requirements create barriers with Mobile Therapy service delivery. For example, schools are not permitting multiple staff into classrooms to observe in that setting. It is also therapeutically inappropriate for someone else to sit in on a therapy session.
- The IBHS requirements for supervision are more stringent than the PA licensing boards.

### **Recommended Change:**

- The direct observation should only be required for Behavioral Health Technician (BHT) staff, not for the Mobile Therapist or Behavior Consultant. The requirement of direct observation should be based on experience in the field and/or license status.
- For Behavioral Consultants (BC) and Mobile Therapists (MT) who are licensed, their licensing board requirements for supervision should be followed and used as the criteria for IBHS regulation compliance.
- The BHT requirement for one hour of direct observation every 6 months should be included in the regular supervision hours and not in addition to.

**Change Impact:**

- Clinicians would have more time to devote to delivering direct services.

**§ 5240.73. Training Requirements for Staff Who Provide Individual Services**

(a) An IBHS agency that provides individual services shall ensure that staff complete initial and annual training requirements.

(b) An individual who provides behavior consultation services or mobile therapy services shall complete at least 16 hours of Department-approved training annually that is related to the individual's specific job functions and is in accordance with the individual training plan required under § 5240.13 (relating to staff training plan).

(c) If the individual has not previously provided BHT services, the individual shall complete at least 30 hours of Department-approved training prior to providing services independently that includes the following topics...

(d) If an individual has not previously provided BHT services, the individual shall complete at least 24 hours of Department-approved training within the first 6 months of providing BHT services that includes the following topics...

(g) An individual who is certified may count hours of training required to maintain certification towards the training requirement in subsections (b)—(e).

(h) An individual who is licensed in this Commonwealth may count hours of training required to maintain licensure towards the training requirements in subsections (b)—(e).

**Current Impact:**

- The amount of training is overwhelming for newly-hired employees.
- This is especially difficult with BHT staff. There are no exceptions for BHT staff who have a degree.
- There is a large investment in time and resources initially without receiving reimbursement for services provided.

**Recommended Change:**

- If someone has a license, their licensure training requirements should meet the IBHS training requirements.
- The training hours should be spread out over the first 12 months.
- The college coursework should be defined as to what is acceptable to address a training topic.

**Change Impact:**

- The decrease of training hours required prior to providing services would decrease the initial financial burden on agencies.
- Increasing the length of time for completing the training requirements will allow staff to retain the knowledge of the information and be able to apply this to their current caseload.
- This will increase retention of employees.

**§ 5240.75. Individual Services Provision**

(a) Behavior consultation services consist of clinical direction of services to a child, youth, or young adults; development and revision of the ITP; oversight of the implementation of the ITP; and consultation with a child's, youth's, or young adult's treatment team regarding the ITP.

(b) Mobile therapy services consist of individual therapy, family therapy, development and revision of the ITP, assistance with crisis stabilization, and assistance with addressing problems the child, youth, or young adult has encountered.

(c) BHT services consist of implementing the ITP.

(d) An individual who provides BHT services may not provide interventions requiring skills, experience, credentials, or licensure that the individual does not possess.

**Current Impact:**

- Mobile Therapists are not able to consult with the team and have oversight of ITP implementation.

**Recommended Change:**

- The Mobile Therapist role should be expanded to include the oversight and implementation of the ITP, as it is for the BC. The Mobile Therapist would be supervised by the Clinical Director.

**Change Impact:**

- Families would be able to be serviced more quickly and appropriately.
- The need for two clinicians to address behaviors and therapeutic needs would be reduced.



## APPLIED BEHAVIOR ANALYSIS

### § 5240.81. Staff Qualifications for ABA Services

(c) By July 1, 2022, a clinical director of an IBHS agency that provides ABA services shall meet one of the following:

(1) Be licensed in this Commonwealth as a physician practicing psychiatry, psychologist, certified registered nurse practitioner, professional counselor, marriage and family therapist, clinical social worker, behavior specialist, social worker, or other professional with a scope of practice that includes overseeing the provision of ABA services and have a certification as a BCBA or other graduate-level certification in behavior analysis that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute and a minimum of 2 years of experience in providing ABA services.

**Current Impact:** Staffing this position is difficult, and if an agency loses a BCBA, current regulations do not allow a transition plan to hire a new Clinical Director to prevent program closures or disruptions.

#### **Recommended Change:**

- Allow for a graduate degree with the applicable behavior analytic coursework (as prescribed by the BACB)
- 1 year ABA experience
- Complete the 8 hours BACB supervision training
- Complete the required supervision hours as required by the BACB
- Obtain their BCBA within 3 years of commencement of the clinical director position

#### **Change Impact:**

- This change would allow more possibilities to staff the position and provide transition planning, as well as preventing program closures.

### § 5240.81. Staff Qualifications for ABA Services

(g) By July 1, 2020, individuals who provide ABA services through BHT-ABA services shall meet one of the following:

(1) Have a certification as a BCaBA.

(2) Have a certification as an RBT.

(3) Have a certification as a BCAT.

(4) Have a behavior analysis certification from an organization that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute.

(5) Have a high school diploma or the equivalent of a high school diploma and have completed a 40-hour training covering the RBT Task List as evidenced by a certification that includes the name of the responsible trainer, who is certified as a BCBA or BCaBA.

(6) Have a minimum of 2 years of experience in providing ABA services and a minimum of 40 hours of training related to ABA approved by the Department or provided by a continuing education provider approved by the Behavior Analyst Certification Board.

**Current Impact:**

- Creates delays in hiring highly qualified staff to start working with the requirement to complete the 40 hours of RBT training; this is duplicative of coursework in their degree.

**Recommended Change:**

- Add a number (7) for qualifications for “Bachelor's degree in ABA,” as there is sufficient coursework in the BA program.

**Change Impact:**

- Create more viable pathways to hire.
- Reduce waiting lists for service access.

**§ 5240.81. Staff Qualifications for ABA Services**

(f) Individuals who provide ABA services through assistant behavior consultation — ABA services shall meet one of the following...

**Current Impact:**

- IBHS regs created an A-BC ABA position to create a career path that bridges the gap between a BHT and a BCBA; however, it is funded at the BHT level despite requiring higher qualifications.
- This has led to providers not utilizing this position as intended and therefore not promoting the pathway for more BCBAs. There is no benefit to ABA services with the creation of this position.

**Recommended Change:**

- Implement a fee structure that supports the career or remove it as a service.
- Provide better definitions of the role of the A-BC.

**Change Impact:**

- Increase the number of people coming into the profession and provide a pathway for those seeking a career as a BCBA.

**§ 5240.82. Supervision of Staff Who Provide ABA Services**

(a) An individual who meets the qualifications of a clinical director shall provide the following supervision to individuals who provide behavior analytic services and behavior consultation—ABA services...

**Comment:**

- Those staff that meet the requirements of the BA-ABA should meet the requirements to conduct peer review or peer-led supervision.
- The staffing requirements of the clinical director to provide supervision and review ITPs is unnecessary and limits access to ABA services.
- Operationally, this is perhaps excessive, and there are not enough BCBA's in the state to support this.
- Individuals with their ABA degree are competent and do not require direct observation every 6 months. This is burdensome, expensive to administer, and unnecessary.

**Recommended Change:**

- Implement 5240.81(g) (7) above or if not, then those with an BA in ABA are required to have direct observation every 4 months.

**Change Impact:**

- Reduce costs and administrative burden.

**§ 5240.82. Supervision of Staff Who Provide ABA Services**

(a) An individual who meets the qualifications of a clinical director shall provide the following supervision to individuals who provide behavior analytic services and behavior consultation—ABA services:

(1) One hour of individual face-to-face supervision per month that includes oversight of the following...

**Current Impact:**

- The amount of supervision for those staff that have one or few cases is excessive.
- This requires more supervisors than needed and is a financial strain on providers.
- This reduces the amount of direct care due to the need for this amount of supervision.
- The amount of supervision should match the number of clients and the complexity of the cases.

**Recommended Change:**

- Less than 10 hours per month of direct care or less than 5 cases should need only 30 minutes per month of face-to-face supervision.

**Change Impact:**

- More flexibility.
- More direct care time.
- Reduce costs.

**§ 5240.82. Supervision of staff who provide ABA services.**

(a) An individual who meets the qualifications of a clinical director shall provide the following supervision to individuals who provide behavior analytic services and behavior consultation—ABA services:

(2) If the individual who provides behavior analytic services or behavior consultation—ABA services supervises an individual who provides assistant behavior consultation—ABA services or BHT-ABA services, the individual shall receive an additional hour of face-to-face supervision per month that includes a discussion of the assistant behavior consultation—ABA services or BHT-ABA serviced being provided.

**Current Impact:**

- The amount of supervision for those staff that have 5 or fewer RBTs is excessive.
- This requires more supervisors than needed.
- Financial strain on providers.
- Reduces the amount of direct care due to the need for this amount of supervision.
- The amount of supervision should match the number of RBTs and the complexity of the cases.

**Recommended Change:**

- Less than 5 RBT that are supervised by the person providing BA or BC services need only an additional 30 minutes per month of face-to-face supervision.

**Change Impact:**

- More flexibility.
- More direct care time.
- Reduced costs due to the smaller number of RBTs this reduced supervision time would not impact quality of care, as there would be sufficient time to have comprehensive case discussions.

**§ 5240.82. Supervision of Staff Who Provide ABA Services**

(c) An individual who meets the qualifications of a clinical director or is qualified to provide behavior analytic services or behavior consultation—ABA services or an individual who is qualified to provide assistant behavior consultation—ABA services and has a BCaBA or other undergraduate-level certification in behavior analysis that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute shall provide the following supervision to individuals who provide BHT-ABA services:

(1) One hour of supervision each week if the individual who provides BHT-ABA services works at least 37.5 hours per week or 1 hour of supervision two times a month if the individual who provides BHT-ABA services works less than 37.5 hours a week. An individual who provides BHT-ABA services must receive 1 hour of individual face-to-face supervision each month.

(2) If the individual has not previously provided BHT-ABA services, 6 hours of onsite supervision during the provision of ABA services to a child, youth or young adult prior to providing ABA services independently.

(3) One hour of direct observation of the provision of ABA services to a child, youth or young adult during the implementation of the ITP every 4 months, unless the individual meets the qualifications to provide BHT-ABA services included in § 5240.81(g)(5) (relating to staff qualifications for ABA services). If the individual meets the qualifications to provide BHT-ABA services included in § 5240.81(g)(5), the individual shall receive 1 hour of direct observation of the provision of ABA services to a child, youth or young adult during the implementation of the ITP every 2 months.

### **Current Impact:**

- The required amount of supervision is far more than is needed.
- Any on site supervision should count as face-to-face. Direct Observation should be included in supervision hours, not in addition to supervision hours.
- This reduces the amount of direct care clinicians can provide direct care because they have to do more supervision.

### **Recommended Change:**

- On-site should count as face-to-face. Direct Observation should be included in supervision hours, not in addition to supervision hours.

### **Change Impact:**

- The change matches the national codes for the level of supervision.
- Provides better supervision by being in-situ.
- Increases the amount of direct care.
- This would not reduce the quality, as on-site supervision is superior to offsite supervision.

## **GROUP SERVICES**

### **§ 5240.95. Assessment**

(a) A face-to-face assessment shall be completed by a graduate-level professional for a child, youth, or young adult within 15 days of the initiation of group services in accordance with § 5240.21(b)—(d) and

(f) (relating to assessment) and prior to completing the ITP.

### **§ 5240.96. Individual Treatment Plan**

(a) A written ITP shall be completed by a graduate-level professional within 30 days after the initiation of group services and be based on the assessment completed in accordance with § 5240.95 (relating to assessment).

#### **Current Impact:**

- 15 days for the assessment and the requirements for the full assessment and ITP are burdensome for a shorter summer program.

#### **Recommended Change:**

- For groups services operating less than 3 months, assessments, and ITP may be considered complete within 30 days.

#### **Change Impact:**

- The reduced burden will allow more direct care time.
- Group rates do not cover the cost of providing the services contrary to OMHSAS position at promulgation IRRC Hearing.