

August 24, 2018

To Whom It May Concern:

My name is Dr. Cheryl D. Tierney-Aves and I am the Section Chief of Behavior and Developmental Pediatrics at the Penn State Hershey Children's Hospital and the President of the ABA in PA Initiative. Our group is made up of about 100 members from across the state and this letter represents our Initiative's concerns as a whole including those listed individually as cosignatories. Please accept the comments in this document herein as responses to contest the PA proposed regulations and provide suggestions for revisions for Intensive Behavior Intervention Services for children in Pennsylvania.

As an association of professionals and parents whom advocate for Applied Behavior Analysis (ABA) services for children with autism and developmental disabilities in the state of Pennsylvania, it is our opinion that the proposed regulations do not enhance or add to the ability of providers to service children in the Commonwealth of Pennsylvania but on the contrary, the regulations as proposed will reduce access to qualified providers. Further, it is our opinion that the current proposed regulations do not follow industry standards for service provision set forth by the Professional Association for Behavior Analysts (APBA) and academic associations for the industry including the Association for Behavior Analysis International (ABAI) and the Behavior Analyst Certification Board (BACB). We specifically contest these regulations as not including standards set forth from professional organizations. The standards being proposed however, will restrict access to medically necessary services which will contradict the federal standards set forth in the provision of Early Periodic Screening Diagnosis Treatment (EPSDT) requirements.

By providing ABA to those in need (where it is medically necessary) delivered by providers who are skilled to do so (as the research strongly concludes) results in an increase in capacity within the system in several ways. First, when a problem is addressed by under-skilled providers children do not improve and the need for services may increase and certainly persists over many more years than would have been necessary. Second, if the standards by which prescribers who prescribe ABA were amended to meet medical guidelines there would be intensive intervention only when and where it was needed, instead of 'over prescribing' out of caution or worry or due to other influences. It should also be noted that if you align your regulations with national standards, private insurance would assume a greater burden of the cost, leaving less cost to the State's Medicaid program. It is also my strong recommendation that agencies delivering IBHS/BHRS/ABA should not also prescribe the hours of intervention as this creates a conflict of interest; this issue should be addressed by the regulations.

Specifically, please note the detailed comments below per proposed regulation item:

§5240.2: Recommend revision in ABA definition to be consistent with BACB (Behavior Analyst Certification Board) or ABAI definitions. Recommend EBT definition to include National Autism Center (NAC) standards project & American Psychological Association (APA) Div 25 and 12 standards. Current standards have been set nationally and Pennsylvania should not be further behind than the national standards set forth by the profession and current research and best practices. Further, Behavior Analysts are not referred to as "Behavioral."

§5240.3: Requiring approval for a branch or site extension for an agency will ultimately delay services and seems unnecessary if the agency is already an approved provider. Also, we recommend using the phrase "behavior analyst or behavior specialist" to replace "behavior specialist analyst" as the latter seems to merge the two prior terms and is not a recognized profession. Then also specify LBS, BCBA, BCaBA, RBT in 1155.36. Also, BCAT and BHT are not currently recognized in the field of ABA nationally and should be reviewed and modified by industry leaders. It is important to use terms that are well established and to follow national standards therefore allowing those in the positions to identify with and follow an appropriate code of ethics. Further, terms selected should not risk violating any trademark laws documented in the references below. Using similar but not accurate or nationally recognized terms could result in misleading the public into thinking they are receiving a service they are actually not receiving. These regulations should be used as an opportunity to improve standards and enhance clarity to the public.

https://www.bacb.com/wp-content/uploads/2017/09/BACB_Newsletter_9_08.pdf

<https://www.bacb.com/terms-of-use/>

§5240.81: Staff Qualifications: The regulations currently list a variety of pathways for a Behavior Specialist Analyst to obtain certification adequate to practice in this Commonwealth. It should be noted that while 1 pathway is through holding a certification from the Behavior Analyst Certification Board (BACB) for both master's level and bachelor's-level providers, there are 3 alternative certifications or experience-only based pathways allowed under this section. These alternative mechanisms to qualify for this title (BSA) are vastly different and far inferior compared to the industry's recognized lowest qualification which is through the BACB. It should also be stated that any reliance on the PACERTBOARD for any type of ABA related certification should be removed. There is no current certification in place now and this board has no prior experience or expertise in certifying behavior analysts. Further, the PACERTBOARD is not nationally credentialed as a credentialing entity, and therefore is not qualified (as far as I can find on their website) to create and conduct this level of credentialing.

§5240.81 Sets out the following staff levels & qualifications: Administrative Director, Clinical Director, Behavior Specialist Analyst, Associate Behavior Specialist Analyst, BHT-ABA. There currently is no such title in either academia or national professional organizations for a "Behavior Specialist analyst" or "Associate..." or "BHT-ABA". It is clear the national standards or best practices were not referenced for these regulations as no such professional title exists in the literature or national standards for Applied Behavior Analysis. It is recommended to utilize current job titles and descriptions that are the national standard. Behavior Analyst, Behavior technician (Registered or not) & Behavior Analyst Assistant. Creating new titles and language specific to Pennsylvania will confuse consumers and practitioners. There is an internationally recognized standard with titles that should be used and the qualifications to use these terms should be strictly adhered.

§5240.81(b) Qualifications state that the director must be PA licensed so until PA adopts a license for BCBA's, they cannot serve as clinical director unless they also have a license in another unrelated specialty. In addition, this director must also be: a BCBA or hold a graduate degree in ABA + 1 year experience in ABA and then obtain board certification (BCBA) within 3 years. Our organization objects to allowing people to serve as clinical directors before they obtain their BCBA certification as the current license does not require specialization or expertise (as defined by any national standards) for the science of behavior. Further, directors with only 1 year experience are unqualified to serve as a director to provide services to fragile and vulnerable children in Pennsylvania. The criterion should be increased to current standards provided by the BACB and/or by guidelines of our professional organization APBA.

Considering that the Clinical Director is going to be supervising the provision of ABA services, and that the BCBA credential is considered the minimum credential necessary by the national certification board in order to be an ABA practitioner, it seems problematic that the IBHS regulations would allow a Clinical Director (someone who supervises ABA practitioners) a 3-year window to obtain his/her BCBA certification. Allowing a person to supervise ABA therapy who has not met the minimum standards of certification will not improve the quality of services and puts children at risk for poor service delivery and outcomes. Additionally, if the clinical director is presumably the highest ranking BCBA in the organization this leaves no other internal BCBA's to supervise the Clinical Director so he/she can get their BCBA certification. The BACB prohibits a subordinate from supervising their supervisor for certification.

§5240.81(c) Behavior Specialist Analyst (BSA) refers to competency of ABA services from an unrecognized association with no ties to, or knowledge of, the field of behavior analysis. That is to say, this Board (<https://www.pacertboard.org>) currently certifies addiction counselors & mental health peer specialists and has no reference or requirements for expertise in Applied Behavior Analysis. As noted above, PACERTBOARD is not itself a credentialed entity. Any attempt to rely on the PACERTBOARD for any certification should be removed. Further, there is no requirement for competency in ABA to qualify as a service provider of Applied Behavior

Analysis. Whether chosen accidentally and unknowingly or deliberately, the only certifying body that should be involved in ABA regulations should be the BACB.

§5240.81 (d) ABSA Qualification: Throughout this document the regulations promote the reduced cost of hiring ABSAs to BSAs and that by creating a tiered model for service delivery, it will improve the capacity of the system so that more children can receive services. This is not true. No private insurance company allows for bachelor's level staff to supervise direct care staff or be the qualifying practitioner (this position is for a Master's level licensed individual). Supervision is to be carried out by a Master's level certified clinician only. Additionally, going against private insurance standards will certainly drastically increase costs to Medicaid by increasing third party liability and cost to the state as private insurance will deny these services. Further, while Private ABA agencies are necessary to support capacity needs, none of the cost savings will be realized for them.

§5240.81(e): Behavioral Health Technician- ABA. The standards set forth herein will reduce access to services by providing obscure and unrelated qualifications along with arbitrary requirements. The BCAT currently maintains 2911 certificates in the entire country, well below the number of required staff for the state of Pennsylvania. In addition, BCAT is not currently recognized in the academic or practice circles in the field of ABA nationally and its inclusion in the regulations should be reviewed and modified by industry leaders. This group maintains that the requirements for the RBT from the BACB regulations be followed. The BHT (Behavioral Health Technician) with competency in ABA from the PA Certification Board (<https://www.pacertboard.org>) should be removed as any qualification for treatment of autism or implementing ABA as this is not currently a standard in the field of ABA. Again, the PACERTBOARD is not recognized in the field of behavior analysis and holds no expertise or way to certify this.

§5249.82(a) The training requirements for behavior specialist analysts state the following: Must have 45 hours ABA training approved by BACB or DHS before independently providing services then 16 hours annually. It is recommended that Pennsylvania follow the standard set forth from the national association for training in behavior analysis. 61 hours of training is not industry standard. Further, there is no requirement for practice or residency training for said providers. Please follow the BACB guidelines for certification. It is further warranted to state that required trainings include administrative and regulatory trainings that are unpaid or unreimbursed by funders. The required trainings under the proposed regulation will restrict access to smaller providers and increase cost for all providers. This will result in an increase in administrative burden that will reduce wages for qualified professionals and hence reduce overall access to professionals and paraprofessionals alike. Further, the state does not have access to standardized trainings that are approved and instead provides top level guidance and hours associated with training. This emphasis on time served as opposed to skills obtained will reduce quality of training and service delivery. It is recommended by this group that Pennsylvania accept the national standard for the provision of services in Pennsylvania. The academic and professional organizations have accepted language for initial and ongoing training requirements and other than some regulatory requirements, PA should adopt the BACB training requirements and ongoing continuing education requirements on the certification cycle.

§5240.87: Proposed regulations include "skill deficits" in the definition of ABA and in the section on ABA services provision (§5240.87) but there is currently no reference to interventions that address impairments in communication, social skills or skills for performing daily living skills. Compare that with OMHSAS-17-02 Bulletin which states: "It [ABA] can also be used to reduce or ameliorate the presence of a child's or adolescent's maladaptive or restricted behaviors, impairments in communication, or impairments in social interactions or relationships or assist a child or adolescent with achieving or maintaining the skills needed for maximum functional capacity in performing activities of daily living." P.2

In conclusion, the ABA in PA initiative recommends that the regulations be revised to include the National Standards set forth from the Association for Professional Behavior Analysts as well as the International Academic Standards set forth for the field by the Association for Behavior Analysis International and the practice standards from the Behavior Analyst Certification Board. The training and supervision requirements provided herein should be modified per industry best practice standards to serve children in the Commonwealth who are our most fragile

and vulnerable population. Without maintaining standards generally accepted by the academic and professional practices themselves, the state will be setting standards of practice outside and well below the industry for ABA services. This will not only fail to provide effective care for the constituents of Medicaid in Pennsylvania, it will also most assuredly expose the State to malpractice and fraud.

To help highlight the implications attached to regulations that are sub-industry standard, the state should expect and plan for financially the following:

- Increased costs to our already taxed education system for increased need for special education and support services.
- Increased reliance on psychotropic medications over the lifespan which are themselves associated with negative health outcomes and increased healthcare costs
- Increased need for psychiatric hospitalizations, partial programs and day programs.
- Failure to meet developmental potential leading to an over-reliance on paid support staff to provide daily care and supervision.
- Increased reliance on government assistance and financial support services
- Increased need for supervised care into adulthood
- Significantly reduced ability to obtain employment and give back to society

If during your revision process you wish to consult with academic experts in the field, we would be happy to provide guidance in this regard. It is our strong feeling that any regulations that are put forth include direct input from known experts in the field in which you are working. We look forward to reviewing your revised guidelines and regulations for Applied Behavior Analysis for the Commonwealth of Pennsylvania.

Sincerely,

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