

In The Matter Of:

Public Hearing on Rules and Regulations

Rules & Regulations for Behavioral Healthcare Organization

September 18, 2018



ALLIED

COURT REPORTERS, INC.

— AND —

VIDEO CONFERENCE CENTERS

ORIGINAL

Min-U-Script® with Word Index

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

 IN RE: *
 *
 RULES AND REGULATIONS FOR * (212-RICR-10-10-1)
 BEHAVIORAL HEALTHCARE *
 ORGANIZATIONS *

DATE: September 18, 2018
 TIME: 3:00 A.M.
 PLACE: Pastore Complex
 Arnold Conference Center
 111 Howard Avenue
 Cranston, Rhode Island 02920

APPEARANCES:

FOR THE DEPARTMENT OF BEHAVIORAL HEALTHCARE,
 DEVELOPMENTAL DISABILITIES & HOSPITALS:
 BY: Karen Kushnir, Behavioral Healthcare,
 Developmental Disabilities & Hospitals

ORIGINAL

E-X-H-I-B-I-T-S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT NO.	DESCRIPTION	PAGE
Exhibit 1	Public Notice of Proposed Rulemaking (2 pgs).....	3
Exhibit 2	E-mail Re: BHDDH Public Notice of Proposed Rulemaking (3 pgs)	3
Exhibit 3	Rules and Regulations for the Licensing of Behavioral Healthcare Organizations (49 pgs).....	3
Exhibit 4	212-RICR-10-10-1 (82 pgs).....	3

1 (HEARING COMMENCED AT 3:02 P.M.)

2 EXHIBITS 1-4 MARKED FOR I.D.

3 MS. KUSHNIR: We're here today regarding a
4 public hearing concerning the proposed regulations
5 entitled, "Rules and Regulations for Behavioral
6 Healthcare Organization (212 RICR-10-10-01)."

7 This hearing is being conducted under the
8 provisions of the Rhode Island General Laws,
9 Section 42-35-3. Today is Tuesday, September 18,
10 2018.

11 My name is Kathy Kushnir, and I will be
12 the Department Official for today's proceeding.
13 Before we start, and so as not to interrupt the
14 proceedings, I would ask those of you who have
15 cell phones to please turn them off at this time.

16 The purpose of the hearing today is to
17 afford interested parties an opportunity to
18 comment on the proposed regulations. This hearing
19 is intended for your participation only, and it's
20 not intended as a means of providing a forum for
21 discussing, debating, arguing, or otherwise having
22 a dialogue on the record with the members of the
23 Department of Behavioral Healthcare, Developmental
24 Disabilities and Hospitals.

25 If you would like to speak, the procedure

1 we will use is as follows:

2 Register outside of the room. I have the
3 sign-in sheet here if anybody else needs to sign
4 up.

5 Speakers will be taken in order of
6 registration.

7 Five minutes will be allowed for your
8 presentation, unless the lack of speakers allows
9 for additional time.

10 When you are called:

11 Please come to the podium in front of the
12 room.

13 Identify yourself by name and affiliation,
14 if there is any.

15 Make your presentation.

16 If you have a written copy of your
17 statement, we would appreciate having that for the
18 record.

19 After the time has elapsed for the
20 submission of written commentary, which is October
21 6th, the Department has four options under state
22 law:

23 Number 1: File "as is" with the Secretary
24 of State.

25 Number 2: File with minor changes, such

1 as spelling, punctuation, et cetera.

2 Number 3: Make major changes in what you
3 see before you today which would necessitate a new
4 public hearing.

5 Number 4: Do not file, in which case the
6 current regulations would remain in effect.

7 Unless otherwise specified by law or
8 regulation, if filed, the regulations become
9 effective 20 days after filing and have the force
10 of law.

11 Are there any questions on how the public
12 hearing will be conducted today?

13 (NO RESPONSE)

14 MS. KUSHNIR: At this time, for the
15 record, we will have a presentation of exhibits:

16 Exhibit Number 1: Notice of Proposed
17 Rulemaking dated September 6, 2018.

18 Number 2: Copy of an e-mail sent to
19 "BHDDH Public Notice of Proposed Rulemaking" open
20 stakeholder list dated September 7th, 2018,
21 noticing the 30-day comment period process.

22 Number 3: A copy of the existing
23 regulations, "Rules and Regulations for the
24 Licensing of Behavioral Healthcare Organizations
25 (212-RICR-1106)," last amended July of 2014.

1 Number 4: A copy of the proposed rule
2 entitled, "Rules and Regulations for Behavioral
3 Healthcare Organizations (212-RICR-10-10-1),"
4 dated September 2018.

5 At this time, I would like to call the
6 first speaker, Owen Heleen.

7 MR. HELEEN: Thank you, Kathy. I'm Owen
8 Heleen. I'm vice president for Strategy at the
9 Providence Center. Thank you for the opportunity
10 to offer comments on these proposed regulations.
11 The Providence Center will submit a fuller set of
12 written comments by the October 6th deadline.

13 The Providence Center is concerned by some
14 important issues in these proposed regulations and
15 about the potential of the required staffing to
16 add substantial costs to programs, costs that are
17 otherwise currently unfunded.

18 The Providence Center has serious concerns
19 about the regulations effect of adding to the
20 overall regulatory burden on behavioral healthcare
21 organizations, especially in areas in which the
22 proposed regulations mandate staffing levels. In
23 some cases, the proposed staffing levels would
24 increase cost substantially putting the viability
25 of programs to treat vulnerable populations very

1 much at risk.

2 We are also concerned about the
3 regulations uneven approach to mandating staffing
4 levels across these proposed regulations. We
5 understand that one of the purposes of regulation
6 is to establish a minimum level of service to
7 protect consumers, but in behavioral health, in
8 most cases, one size does not fit all.

9 We're concerned that these regulations
10 have been developed with minimal input from the
11 groups that pay for the services delivered,
12 particularly from insurers. If implemented, one
13 of the effects of these regulations will be that
14 behavioral healthcare organizations may exit the
15 marketplace unable to increase their revenue to
16 meet the additional costs these regulations
17 impose.

18 Overall, these regulations seem to
19 decrease the regulatory burden on the Department
20 while increasing the burden on organizations. Our
21 specific concerns begin with Section 1.3.14 under
22 "Definitions," in which the definition of CMHC or
23 CMHO is focused on an organization that delivers
24 services "within a specific geographic area."

25 Nothing in the statute restricts the MHOs

1 (sic) from providing services beyond the
2 designated service area. In response to consumer
3 interests, some groups provide such services in
4 addition to their responsibilities for their
5 assigned geographic area. It would be helpful to
6 have these proposed regulations clarified at this
7 point.

8 In Section 1.6 C, "Clinical Supervisors,"
9 it seems that licensed mental health counselors,
10 LMHCs, have been left out of the list of licensed
11 independent practitioners who can provide clinical
12 supervision. LMHCs are included in a definition
13 in 1.6.C.1E. (It would be wonderful if the
14 Department could put page numbers on it's stuff),
15 but it would be helpful if they were added
16 specifically to the list in C.1.A.

17 In the Section 1.6.2: "Biopsychosocial
18 Assessment," Section H, which requires that the
19 biopsychosocial assessment shall be rewritten in
20 its entirety every 60 months. This requirement is
21 not compatible with how electronic health records
22 work. In most EHRs, the assessment is not a block
23 of texts that gets written and rewritten. If this
24 section could be redrafted to reflect how EHRs --
25 modern EHRs work, it would be helpful.

1 Section 1.6.7: "Outpatient Services and
2 Programs" under .7 requires that each CMHC and
3 licensed hospital must provide the Department with
4 a list of qualified mental health professionals,
5 QMHPs and their supervisors. However, the first
6 page of the proposed regulations clarifies that
7 these regulations do not pertain to hospitals
8 licensed by the Department of Health.

9 We believe that these proposed regulations
10 are inconsistent in how they address required
11 staffing across programs. The approach to
12 prescribing staffing patterns varies widely. As
13 examples, for intensive outpatient programs, the
14 regulations have "an interdisciplinary team of
15 addiction professionals," staffing the IOP. For
16 Partial Hospitalization programs, the regulations
17 call for "an interdisciplinary team of
18 credentialed addiction or mental health
19 professionals, including counselors,
20 psychologists, social workers and board-certified
21 physicians" with required staff to patient ratios.

22 For programs with persons with mental
23 health and substance-related disorders, staff with
24 the following credentials are recommended. And
25 then finally, the regulations prescribe staffing

1 requirements per integrated health home and
2 assertive community treatment programs with little
3 flexibility without prior approval.

4 The Department should take a consistent
5 approach to how it prescribes or recommends
6 staffing for different types of programs. We
7 recommend an approach that provides for the
8 maximum degree of flexibility perhaps through
9 requested waivers.

10 These regulations specifying staff
11 composition are problematic because they sometimes
12 conflict with staffing required to contract with
13 health insurers. We'd like to recommend that the
14 Department consult with Medicaid managed care
15 organizations to reach consensus on the degree of
16 flexibility or prescription required. Without
17 this agreement, organizations have one set of
18 rules to follow in regulation and another in
19 contrast and guide how they're paid.

20 On another issue, we believe that these
21 proposed regulations interfere in one instance
22 with the scope of practice for physicians as
23 defined by the Department of Health. Section
24 1.6.9.5.A.8b states, "A pregnancy test must be
25 given to all women of childbearing age." We do

1 not believe it's in the purview of these proposed
2 regulations to require physicians to order any
3 particular medical test.

4 In addition, the requirement to test every
5 woman in a broad age range will lead to
6 unnecessary testing. Any test should be
7 undertaken when medically indicated in taking the
8 input of the patient into consideration.

9 On another issue, the staffing
10 requirements for Integrated Health Home programs
11 require each IHH team to have one full-time
12 equivalent hospital liaison with one hospital
13 liaison for every IHH team statewide, this would
14 result in an unmanageable number of hospital
15 liaisons seeking conversations with hospital
16 staff. To make this role meaningful, the
17 Department should investigate how the hospital
18 liaison position can be defined in terms of the
19 number of hospitals in the service area or some
20 other factors that will provide consistent points
21 of contact for hospital management.

22 On another issue we're required that the
23 required staffing levels in the residential
24 services section, including the requirement to
25 have a nurse on-site 24/7, and to make one-to-one

1 staffing available when a resident is in crisis in
2 a mental health psychiatric rehabilitative
3 residence, and the minimum standards staffing
4 pattern and residential programs for substance use
5 disorders, which will add substantial cost to the
6 operation of these programs, costs that exceed the
7 revenue available through insurance reimbursement
8 and state contracts.

9 Again, these regulations need to be
10 cross-walked with the requirements of contracts to
11 avoid unintended consequences and possible program
12 closure. We estimate that the minimum staffing
13 requirement for residential programs for SUD
14 treatment alone will bring approximately \$500,000
15 in, in additional cost to the Providence Center's
16 men's and women's residential treatment programs.

17 This will endanger the sustainability of
18 these programs at a time when the state
19 desperately needs this SUD treatment capacity.
20 That's the conclusion of the comments. Again,
21 we'll have full written comments for you by the
22 October 6th deadline. I thank all the staff of
23 the Department for their hard work on this, and
24 thank you for your attention to all these issues.

25 MS. KUSHNIR: Thank you. That concludes

1 the individuals that we have signed up to testify.
2 Would anybody else want to testify? Is there
3 anybody who wants to testify?

4 (NO RESPONSE)

5 MS. KUSHNIR: If there are no other people
6 who are present here and would like to make a
7 statement concerning the proposed regulations, you
8 are reminded that the submission of any written
9 commentary on the post-regulations will be
10 accepted until the close of business on Saturday,
11 October 6th. Comments can be posted online with
12 the Secretary of State's site. We are accepting
13 comments there. We thank you for your attendance,
14 and at this time the hearing is now closed.

15 (HEARING CONCLUDED AT 3:18 P.M.)

16

17

18

19

20

21

22

23

24

25

C-E-R-T-I-F-I-C-A-T-I-O-N

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PROVIDENCE, SC.

I, SALLY BRASSARD, do hereby certify that
the foregoing is a true, accurate, and complete
transcript of my notes taken at the above-entitled
proceeding.

IN WITNESS WHEREOF, I have hereunto set my
hand this 28th day of September, 2018.

Sally Brassard
Notary Public



SALLY BRASSARD, CSR/RPR
NOTARY PUBLIC
MY COMMISSION EXPIRES: 1/16/21

full (1) 12:21	6:24;7:15	6:22,23;7:4;11:23	9:3;10:24	
fuller (1) 6:11	increasing (1) 7:20	liaison (3) 11:12,13,18	N	P
full-time (1) 11:11	independent (1) 8:11	liaisons (1) 11:15	necessitate (1) 5:3	page (2) 8:14;9:6
G	indicated (1) 11:7	licensed (4) 8:9,10;9:3,8	need (1) 12:9	paid (1) 10:19
geographic (2) 7:24;8:5	individuals (1) 13:1	Licensing (1) 5:24	needs (1) 12:19	Partial (1) 9:16
gets (1) 8:23	input (2) 7:10;11:8	list (4) 5:20;8:10,16;9:4	new (1) 5:3	particular (1) 11:3
given (1) 10:25	instance (1) 10:21	little (1) 10:2	Notice (2) 5:16,19	particularly (1) 7:12
groups (2) 7:11;8:3	insurance (1) 12:7	LMHCs (2) 8:10,12	noticing (1) 5:21	patient (2) 9:21;11:8
guide (1) 10:19	insurers (2) 7:12;10:13	M	Number (8) 5:2,5,16,18,22;6:1; 11:14,19	pattern (1) 12:4
H	integrated (2) 10:1;11:10	major (1) 5:2	numbers (1) 8:14	patterns (1) 9:12
hard (1) 12:23	intensive (1) 9:13	managed (1) 10:14	nurse (1) 11:25	pay (1) 7:11
health (12) 7:7;8:9,21;9:4,8, 18,23;10:1,13,23; 11:10;12:2	interdisciplinary (2) 9:14,17	management (1) 11:21	O	people (1) 13:5
Healthcare (4) 5:24;6:3,20;7:14	interests (1) 8:3	mandate (1) 6:22	October (3) 6:12;12:22;13:11	per (1) 10:1
hearing (4) 5:4,12;13:14,15	interfere (1) 10:21	mandating (1) 7:3	offer (1) 6:10	perhaps (1) 10:8
Heleen (3) 6:6,7,8	into (1) 11:8	marketplace (1) 7:15	one (7) 7:5,8,12;10:17,21; 11:11,12	period (1) 5:21
helpful (3) 8:5,15,25	investigate (1) 11:17	maximum (1) 10:8	one-to-one (1) 11:25	persons (1) 9:22
home (2) 10:1;11:10	IOP (1) 9:15	may (1) 7:14	online (1) 13:11	pertain (1) 9:7
hospital (7) 9:3;11:12,12,14,15, 17,21	issue (3) 10:20;11:9,22	meaningful (1) 11:16	on-site (1) 11:25	physicians (3) 9:21;10:22;11:2
Hospitalization (1) 9:16	issues (2) 6:14;12:24	Medicaid (1) 10:14	open (1) 5:19	PM (1) 13:15
hospitals (2) 9:7;11:19	J	medical (1) 11:3	operation (1) 12:6	point (1) 8:7
I	July (1) 5:25	medically (1) 11:7	opportunity (1) 6:9	points (1) 11:20
IHH (2) 11:11,13	K	meet (1) 7:16	order (1) 11:2	populations (1) 6:25
implemented (1) 7:12	Kathy (1) 6:7	men's (1) 12:16	organization (1) 7:23	position (1) 11:18
important (1) 6:14	KUSHNIR (3) 5:14;12:25;13:5	mental (5) 8:9;9:4,18,22;12:2	Organizations (7) 5:24;6:3,21;7:14, 20;10:15,17	possible (1) 12:11
impose (1) 7:17	L	MHOs (1) 7:25	otherwise (2) 5:7;6:17	posted (1) 13:11
included (1) 8:12	last (1) 5:25	minimal (1) 7:10	out (1) 8:10	post-regulations (1) 13:9
including (2) 9:19;11:24	law (2) 5:7,10	minimum (3) 7:6;12:3,12	Outpatient (2) 9:1,13	potential (1) 6:15
inconsistent (1) 9:10	lead (1) 11:5	modern (1) 8:25	overall (2) 6:20;7:18	practice (1) 10:22
increase (2)	left (1) 8:10	months (1) 8:20	Owen (2) 6:6,7	practitioners (1) 8:11
	level (1) 7:6	most (2) 7:8;8:22		pregnancy (1) 10:24
	levels (4)	much (1) 7:1		prescribe (1) 9:25
		must (2)		prescribes (1) 10:5

prescribing (1) 9:12		8:4	10:11	team (4) 9:14,17;11:11,13
prescription (1) 10:16	R	restricts (1) 7:25	speaker (1) 6:6	terms (1) 11:18
present (1) 13:6	range (1) 11:5	result (1) 11:14	specific (2) 7:21,24	test (4) 10:24;11:3,4,6
presentation (1) 5:15	ratios (1) 9:21	revenue (2) 7:15;12:7	specifically (1) 8:16	testify (3) 13:1,2,3
president (1) 6:8	reach (1) 10:15	rewritten (2) 8:19,23	specified (1) 5:7	testing (1) 11:6
prior (1) 10:3	recommend (2) 10:7,13	risk (1) 7:1	specifying (1) 10:10	texts (1) 8:23
problematic (1) 10:11	recommended (1) 9:24	role (1) 11:16	spelling (1) 5:1	today (2) 5:3,12
process (1) 5:21	recommends (1) 10:5	rule (1) 6:1	staff (5) 9:21,23;10:10; 11:16;12:22	treat (1) 6:25
professionals (3) 9:4,15,19	record (1) 5:15	Rulemaking (2) 5:17,19	staffing (15) 6:15,22,23;7:3; 9:11,12,15,25;10:6, 12;11:9,23;12:1,3,12	treatment (4) 10:2;12:14,16,19
program (1) 12:11	records (1) 8:21	Rules (3) 5:23;6:2;10:18	stakeholder (1) 5:20	types (1) 10:6
programs (15) 6:16,25;9:2,11,13, 16,22;10:2,6;11:10; 12:4,6,13,16,18	redrafted (1) 8:24	S	standards (1) 12:3	U
Proposed (14) 5:16,19;6:1,10,14, 22,23;7:4;8:6;9:6,9; 10:21;11:1;13:7	reflect (1) 8:24	Saturday (1) 13:10	state (2) 12:8,18	unable (1) 7:15
protect (1) 7:7	regulation (3) 5:8;7:5;10:18	scope (1) 10:22	statement (1) 13:7	under (2) 7:21;9:2
provide (4) 8:3,11;9:3;11:20	regulations (27) 5:6,8,23,23;6:2,10, 14,19,22;7:3,4,9,13, 16,18;8:6;9:6,7,9,14, 16,25;10:10,21;11:2; 12:9;13:7	Secretary (1) 13:12	states (1) 10:24	undertaken (1) 11:7
Providence (5) 6:9,11,13,18;12:15	regulatory (2) 6:20;7:19	Section (8) 7:21;8:8,17,18,24; 9:1;10:23;11:24	State's (1) 13:12	uneven (1) 7:3
provides (1) 10:7	rehabilitative (1) 12:2	seeking (1) 11:15	statewide (1) 11:13	unfunded (1) 6:17
providing (1) 8:1	reimbursement (1) 12:7	seem (1) 7:18	statute (1) 7:25	unintended (1) 12:11
psychiatric (1) 12:2	remain (1) 5:6	seems (1) 8:9	Strategy (1) 6:8	Unless (1) 5:7
psychologists (1) 9:20	reminded (1) 13:8	sent (1) 5:18	stuff (1) 8:14	unmanageable (1) 11:14
public (3) 5:4,11,19	requested (1) 10:9	September (3) 5:17,20;6:4	submission (1) 13:8	unnecessary (1) 11:6
punctuation (1) 5:1	require (2) 11:2,11	serious (1) 6:18	submit (1) 6:11	up (1) 13:1
purposes (1) 7:5	required (7) 6:15;9:10,21; 10:12,16;11:22,23	service (3) 7:6;8:2;11:19	substance (1) 12:4	use (1) 12:4
purview (1) 11:1	requirement (4) 8:20;11:4,24;12:13	services (6) 7:11,24;8:1,3;9:1; 11:24	substance-related (1) 9:23	V
put (1) 8:14	requirements (3) 10:1;11:10;12:10	set (2) 6:11;10:17	substantial (2) 6:16;12:5	various (1) 9:12
putting (1) 6:24	requires (2) 8:18;9:2	shall (1) 8:19	substantially (1) 6:24	viability (1) 6:24
Q	residence (1) 12:3	sic (1) 8:1	SUD (2) 12:13,19	vice (1) 6:8
QMHPs (1) 9:5	resident (1) 12:1	signed (1) 13:1	supervision (1) 8:12	vulnerable (1) 6:25
qualified (1) 9:4	residential (4) 11:23;12:4,13,16	site (1) 13:12	Supervisors (2) 8:8;9:5	W
	RESPONSE (3) 5:13;8:2;13:4	size (1) 7:8	sustainability (1) 12:17	waivers (1) 10:9
	responsibilities (1)	social (1) 9:20	T	wants (1) 13:3
		sometimes (1)		

widely (1) 9:12	5:21			
within (1) 7:24	4			
without (2) 10:3,16	4 (2) 5:5;6:1			
woman (1) 11:5	6			
women (1) 10:25	6 (1) 5:17			
women's (1) 12:16	60 (1) 8:20			
wonderful (1) 8:13	6th (3) 6:12;12:22;13:11			
work (3) 8:22,25;12:23	7			
workers (1) 9:20	7 (1) 9:2			
written (4) 6:12;8:23;12:21; 13:8	7th (1) 5:20			
1				
1 (1) 5:16				
1.3.14 (1) 7:21				
1.6 (1) 8:8				
1.6.2 (1) 8:17				
1.6.7 (1) 9:1				
1.6.9.5A8b (1) 10:24				
1.6C1E (1) 8:13				
2				
2 (1) 5:18				
20 (1) 5:9				
2014 (1) 5:25				
2018 (3) 5:17,20;6:4				
212-RICR-10-10-1 (1) 6:3				
212-RICR-1106 (1) 5:25				
24/7 (1) 11:25				
3				
3 (2) 5:2,22				
3:18 (1) 13:15				
30-day (1)				