Department of Behavioral Healthcare,
Developmental Disabilities and Hospitals

Regulatory Analysis: Licensing Developmental Disability Organizations

Introduction

The Department of Behavioral Healthcare, Developmental Disabilities, and Hospitals (BHDDH) proposes to amend the rules and regulations for licensing Developmental Disability Organizations (DDOs) to be consistent with updated statutory requirements in R.I. Gen. Laws Chapter 5-20. Pursuant to the Administrative Procedures Act (APA), R.I. Gen. Laws § 42-35-2.9, the Department has conducted a regulatory analysis for the proposed regulation. The Department used the best available information at the time of publication to estimate the benefits and costs of the proposed regulatory provisions. The following analysis examines the costs and benefits of the discretionary decisions made by the Department.

Background

The Developmental Disability Organization regulations were last revised in July 2011, and subsequently amended four (4) times. It became clear over time that the regulations were no longer meeting the needs of the changing regulatory climate due to changing federal standards through the Home and Community Based Services (HCBS) requirements for Medicaid-funded entities. Additionally, the stakeholder community's continued growth in recognizing, embracing and implementing person-centered practices required that the regulations reflected that progress.

Lastly, the Governor's initiative to reduce the regulatory footprint by fifteen percent (15%) was very timely. In reviewing these regulations, it was clear that there were redundancies, areas in which the regulations exceeded its mandate, and areas in which the stated regulations could be better addressed in more appropriate formats such as policies and standards. The project to rewrite the DDO regulations was, therefore, established (1) to improve the regulations; (2) make them more accessible; and, (3) to ensure that they are reflective of actual required practice. This rewrite is a repeal-and-replace, meaning the current regulation will be repealed and a new one adopted in its place.

Regulatory Development

Prior to beginning the process of revising the regulations, the stakeholders were clear that they did not want to be presented with a near-completed draft to review and "rubber-stamp," but desired to have full involvement in the process from the beginning. In that spirit, the Department

invited key stakeholders to participate in the revision process. The stakeholder groups included representatives from participant groups; advocates; providers and representative organizations; BHDDH staff; family members; Office of Rehabilitation Services staff; and, other interested parties. A plenary group was formed and met monthly to review progress. Workgroups, that met weekly, were organized to develop identified sections of the regulations. In approaching the revision, the teams focused on participant-centered concepts, principles and language. In considering what constitutes "regulation" the teams regularly asked the question, *"Does this need to have the force and effect of law before committing the rule to the regulatory document?"* Their revisions were presented to the plenary group for comment each month. The completed drafts were reviewed by the BHDDH legal team.

Main Changes to Status Quo

While specific changes are analyzed in the section titled "Benefit-Cost Analysis by Provision," overall the proposed changes cover three areas:

First, the most significant change to the regulations is that BHDDH is no longer licensing individual I/DD services. BHDDH through regulations is licensing DDOs (providers). Licensed organizations will be approved to provide services by meeting certification standards. The regulation identifies how the certification standards are to be met and enforced. The most notable change to the status quo related to certification standards relates to quality assurance/quality improvement (described in more detail below).

Second, a significant change focuses on adding language to meet federal Home and Community Based Services (HCBS) requirements to bring the regulations, and by extension, provider requirements, into compliance with federal Medicaid standards. Person-centered, community based themes and language were addressed throughout the document. Many of these changes are not discretionary, and are, therefore, not analyzed in this analysis.

The final significant changes are to remove redundancies and language that was non-regulatory in nature. The teams worked to ensure that rules were only stated once in the document. Policy statements were removed from the document to be addressed by the appropriate oversight authority. For example, language in the regulations governing BHDDH was removed to be addressed under the Department's internal policies as regulations are not intended for agencies to regulate themselves. Similarly, all language in the regulations that exceeds the Department's regulatory mandate was removed. The changes are documented and references are made on how those changes are addressed to maintain appropriate safeguards for the population served by these regulations.

Key Alternatives Considered

Pursuant to the APA, RI Gen. Laws 42-35-2.9(b)(1), the regulatory analysis must include:

- Analysis of the benefits and costs of a reasonable range of regulatory alternatives;

- Demonstration that there is no alternative approach among the alternatives considered during the rulemaking proceeding which would be as effective and less burdensome to affected private persons as another regulation.

During the regulatory revision process described above, the Department and stakeholders considered a number of options that would meet the goals for updating the regulations to meet the current required standards, practices and federal requirements. It was critical that the final regulations would be “participant-centered” which remained a guiding force throughout the process. There are currently forty (40) licensed providers and one hundred (100) service licenses that are impacted by the changes being proposed in the regulations. Each provider has at least two (2) licenses that include an agency and at least one (1) service license. There is a range in licenses held by providers from two (2) to thirty (30) depending upon the number of services for which the provider is licensed.
When transferring some language into the certification standards, the following alternatives were considered:

1. Whether to continue to license services or to certify services under an entity licensed by BHDDH;
2. Whether a certified provider could provide services apart from a licensed entity;
3. How to comply with HCBS standards when there were options;
4. What language to keep or remove based on the determination of:
    a. Is it regulatory in nature?
    b. Does is meet the standard of requiring the “force and effect of law?”
    c. Is it within the mandate of these regulations?

More information about alternatives to specific provisions can be found in the section titled “Benefit-Cost Analysis by Provision.”

Determination

The Department has determined through its internal work, the stakeholder process, and this analysis that the benefits of the proposed DDO justify the costs, and that the proposed rule has greater net benefits than other regulatory alternatives.

Benefit-Cost Analysis by Provision

This section of the analysis looks at individual proposed changes in more detail, and discusses the benefit and costs of each change. These changes are grouped into four main categories:

- Behavioral Support Plans;
- Person-Centered Planning;
- Restrictive Intervention; and
- Safety.

As noted earlier, the current DDO regulation is being repealed and replaced with a new version. This analysis looks at the status quo for providers and participants and analyzes how this new regulation will change their experience. Some provisions from the current DDO regulation are being moved into the Licensing Regulation (see the new regulation citation to determine which changes fall into this category). This analysis still considers these shifted requirements if they were also amended, in order to provide a complete analysiof how the status quo has changed for DDOs and participants.

At the end of this section there is also a list of additional changes that were considered de minimis for the purposes of the benefit-cost analysis.

Behavioral Support Plans

Overview of proposed change:

<table>
<tr><td rowspan="3">Removes the following requirements of a Behavioral Support Plan and move them to the Licensing Regulation:
• A general crisis response plan
• A plan to address post-crisis issues</td><td>Citation in previous regulation: 30.15 (f), (g)</td></tr>
<tr><td>Citation in new regulation: Licensing Regulation 1.30.4</td></tr>
<tr><td>Was this change discretionary? Yes</td></tr>
</table>

Costs of proposed change:

No marginal economic impact since the requirements are addressed in the Licensing Regulation.

Benefits of proposed change:

No marginal economic impact since the requirements are addressed in the Licensing Regulation.

Overview of proposed change:

Removes the following requirements of a Behavioral Support Plan (BSP): • An individualized summary of the participant's needs, preferences and relationship.	*Citation in previous regulation:* 30.15 (a)
	*Citation in new regulation:*1.12.5
	Was this change discretionary? Yes

Costs of proposed change:

No marginal economic impact since the requirements are duplicative with provisions in the Individual Support Plan (ISP).

Benefits of proposed change:

Benefit would be reduction in time for drafting this narrative and review of BSP for the clinician and supporting team. Possible time saved is 30 minutes per BSP for approximately 570 tier-E consumers. Assuming a $33.36 per hour reimbursement rate for a clinician*, the annual savings is $9,508.

Rationale for proposed change:

Given that there is extensive summary of the individual's preferences, needs and relationships documented annually in the ISP as part of the person-centered planning process, there is no need for this narrative to be duplicated in the BSP.

Other alternatives considered:

Alternative	*Rationale for not selecting this alternative:*
Status quo.	Results in duplication and additional work in the requirements of the ISP and BSP.

* BHDDH Database, Provider HR: 2017-2018

Overview of proposed change:

Adds language: • "Behavioral Support Plans written by clinicians that serve as intervention guidelines, simple problem-solving strategies or teaching recommendations do not fall within the scope of Behavioral Support Plans to ameliorate negative behavior."	*Citation in previous regulation:* 30.12 *Citation in new regulation:* 1.12.5 (A)(3) *Was this change discretionary?* Yes

Costs of proposed change:

No marginal economic impact because the change is a clarification of the definition of a Behavioral Support Plan and should not impact the provider or participant.

Benefits of proposed change:

No marginal economic impact because the change is a clarification of the definition of a Behavioral Support Plan and should not impact the provider or participant.

Rationale for proposed change:

This provision clarifies what constitutes a Behavioral Support Plan that meets the standards outlined in this regulation.

Other alternatives considered:

Alternative	*Rationale for not selecting this alternative:*
Status quo.	Could cause confusion between plans and strategies created by clinicians but that fall outside the scope of BSPs as defined in this regulation.

Overview of proposed change:

Removes language from regulation on prescriptions and physicians' reviews for psychotropic medications for behavior management.	*Citation in previous regulation:* 30.11
	Citation in new regulation: 1.11.4(F)
	Was this change discretionary? Yes

Costs of proposed change:

No marginal economic impact because the change is redundant with other requirements found in the regulation or statute.

Benefits of proposed change:

No marginal economic impact because the change is redundant with other requirements found in the regulation or statute.

Rationale for proposed change:

BHDDH does not regulate physician prescribing. Regulations for DDOs regarding healthcare requirements address these required physician orders for all medications as well as the requirement for DDOs for the coordination of physician oversight of all prescribed medications. This change removes confusion of special status of psychotropic medication and clarifies that all medication is prescribed by a physician.

Other alternatives considered:

Alternative	*Rationale for not selecting this alternative:*
Status quo.	BHDDH cannot regulate physician prescribing.

Overview of proposed change:

Reduces DDO responsibility for ensuring participants follow Medicaid guidelines for employment and earned income.	*Citation in previous regulation:* 21.6
	Citation in new regulation: 1.3.2
	Was this change discretionary? Yes

Costs of proposed change:

This change does not result in additional societal cost. The provider is still mandated to provide these services as requested by the participant.

Benefits of proposed change:

Reduction in administrative burden for the provider and the decrease of unnecessary oversight of the client stems from the elimination of unwarranted meeting time from providers and participants.

Rationale for proposed change:

Allows for greater participant choice and independence in accordance with HCBS standards. Participant is responsible for their Medicaid financial eligibility per Federal Medicaid regulation. The participant must report income changes to the Single State Agency for Medicaid Eligibility. Additionally, Medicaid does monthly electronic "income verification" queries on all eligibles therefore this regulation was no longer required.

Other alternatives considered:

Alternative	*Rationale for not selecting this alternative:*
Status quo.	Status quo provided no marginal benefit compared to chosen alternative.

Person-Centered Planning

Overview of proposed change:

Added the following language to documentation that organizations must make available for inspection and review by the Department: • "5. Monitoring and ongoing support in evidence-based and positive behavioral support plans. • 6. Supervision will occur to ensure that the requirements are implemented and documented."	*Citation in previous regulation:* 30.7 *Citation in new regulation:* 1.12.2(A)(5) *Was this change discretionary?* Yes

Costs of proposed change:

This change may increase costs to providers by increasing administrative burden of training, supervision and documentation to ensure adequate monitoring of BSPs.

Cost to Providers for Monitoring	
Annual Trainings	2
Hours Per Training	1
Employees Per Agency*	75
Organizations**	40
Average Hourly Wage*	$23.00
Total Provider Cost	$138,000

* Hourly wage is an average of a supervising clinician, direct care clinician, direct care worker (Source: BHDDH: Provider HR Reporting System, 2018)
** Source: BHDDH: Licensing Database P550, 2017/2018

Benefits of proposed change:

The change enhances the potential of clients reaching best outcomes and avoiding negative behavioral health events). To quantify this benefit, this analysis considers the benefit of avoided utilization of psychiatric inpatient services. A range is presented due to uncertainty around the impact of the improved monitoring.

Reduction in Psychiatric Inpatient Utilization Due to Improved Monitoring				
FY 2017 cost per admission DD population*	**Inpatient utilization per 1,000 for DD population***	**Total DD consumers**	**Assumed decrease in admissions**	**Savings do to reduction in inpatient admissions**
$9,032	87	3,700	5%	$145,370

			10%	$290,740

*Source: ACE Claims Report 3/16/2018 from Medicaid, RI EOHHS

Rationale for proposed change:

Adding this language strengthens BHDDH federal and state statutory compliance for the oversight of the DD service delivery system and to ensure best outcomes for persons served.

Other alternatives considered:

Alternative	*Rationale for not selecting this alternative:*
Status quo.	Status quo would not meet federal standards.

Overview of proposed change:

Amended language that required organizations to adopt financial plans dealing with continuity of services. New language requires organizations to adopt financial plans that discuss securing appropriate funding streams to carry out the purpose for which the provider is licensed.	*Citation in previous regulation:* 6.3(d)
	Citation in new regulation: Licensing Regulation 1.22.1(B)(1)(d)
	Was this change discretionary? Yes

Costs of proposed change:

No marginal economic impact.

Benefits of proposed change:

No marginal economic impact.

Rationale for proposed change:

On its face, this change removes some liability on providers to ensure continuity of care regardless of funding. Pragmatically, continuity of care is driven by funding sources, and this change reflects that reality. This change requires providers to develop a process to access available funding to ensure continuity of care (e.g. Medicaid Managed Care, etc.).

Other alternatives considered:

Alternative	*Rationale for not selecting this alternative:*
Status quo.	Does not reflect the reality of provider financial planning ability.

Overview of proposed change:

Removes language designating specific roles and responsibilities during a transition for the new DDO and transitioning DDO.	*Citation in previous regulation:* 28.01
	Citation in new regulation: 1.7, 1.8
	Was this change discretionary? Yes

Costs of proposed change:

There is a potential cost due to participants who refuse transition support and may have benefited from that support. This change also increases liability and oversight for this Department when approving transition plans due to less prescriptive regulation.

Benefits of proposed change:

There is a benefit to providers who no longer are required to provide transition support that is not wanted. There are approximately 24* participant transitions between providers per year.

Rationale for proposed change:

New language meets HCBS standards. Having strict tasks in regulation prohibits the flexibility needed for person-centered care. Each situation and transition must be coordinated individually between transitioning parties.

Other alternatives considered:

Alternative	*Rationale for not selecting this alternative:*
Status quo.	Status quo does not meet HCBS standards.

* BHDDH P550 database

Overview of proposed change:

Removes details of quality improvement planning and reporting from regulation and adds requirement for DDOs to meet certification standards. Added language: • "that addresses the quality requirements of the BHO and DDO regulations." Deleted section detailing minimum standards for content and reporting frequency for quality assurance plans. Annual report about quality improvement no longer required.	*Citation in previous regulation:* 8.1 *Citation in new regulation:* Licensing Regulation 1.23 *Was this change discretionary?* Yes

Costs of proposed change:

See *Regulatory Analysis: Licensing of Organizations and Facilities*, section titled "Quality Assurance."

Benefits of proposed change:

See *Regulatory Analysis: Licensing of Organizations and Facilities*, section titled "Quality Assurance."

Rationale for proposed change:

See *Regulatory Analysis: Licensing of Organizations and Facilities*, section titled "Quality Assurance."

Other alternatives considered:

See *Regulatory Analysis: Licensing of Organizations and Facilities*, section titled "Quality Assurance."

Restrictive Intervention

Overview of proposed change:

Removes peer review committee from groups that must approve restrictive intervention.	*Citation in previous regulation:* 32.3.1 (a)–(g)
	Citation in new regulation: 1.12(A)(2)
	Was this change discretionary? Yes

Costs of proposed change:

No marginal economic impact. A participant can still request a peer take part in the approval process, and the remaining groups named in the regulation provide adequate protection for the rights of the participant.

Benefits of proposed change:

There is a reduction in the administrative burden for providers when completing the approval process, but this cost savings is expected to be de minimis.

Rationale for proposed change:

A peer is not always available for review, and that absence (if required) can hinder completion of the process. This change does not disallow the peer from participating in the process at the request of the participant.

Other alternatives considered:

Alternative	*Rationale for not selecting this alternative:*
Status quo.	The status quo offers no more protection for participants while potentially delaying the approval process.

Overview of proposed change:

Removes role of Department in monitoring restrictive interventions.	*Citation in previous regulation:* 32.2
	Citation in new regulation: 1.12.7(B)
	Was this change discretionary? Yes

Costs of proposed change:

This change reflects the status quo because the Department does not currently directly monitor the use of restrictive intervention. No marginal economic impact.

Benefits of proposed change:

This change reflects the status quo because the Department does not currently directly monitor the use of restrictive intervention. No marginal economic impact.

Rationale for proposed change:

Change reflects status quo.

Other alternatives considered:

Alternative	*Rationale for not selecting this alternative:*
Department retains language and starts to monitor the use of restrictive intervention.	This alternative is cost prohibitive and does not reflect the appropriate oversight role of the Department. The direct monitoring of restrictive interventions is a direct care function.

Safety

Overview of proposed change:

<table>
<tr><td rowspan="3">Details about the participant's emergency information (required to be included in an Emergency Management Plan) are moved into the Licensing Regulations.

Requirement for the Emergency Management Plan to include a provision to provide behavior support needs anticipated during an emergency or disaster is moved to the Licensing Regulations.

Requirement for adequate staffing to meet life-sustaining needs of the participant during an emergency is moved into the Licensing Regulations.</td><td>Citation in previous regulation: 18.3.1 (v)(a)</td></tr>
<tr><td>Citation in new regulation: Licensing Regulation 1.30.4</td></tr>
<tr><td>Was this change discretionary? Yes</td></tr>
</table>

Costs of proposed change:

No marginal economic impact for the following reasons:

- *Emergency information:* This was duplicative language that is covered in another part of the Licensing Regulation.
- *Planning for behavior support needs:* This requirement was broadened to require the provider to plan for all of a patient’s needs, not just behavioral support needs. This is not expected to burden providers who, by the nature of their overall responsibility to the client, were already complying with this broader standard.
- *Adequate staffing:* This was duplicative with the general requirement that the provider must provide adequate staffing at all times.

Benefits of proposed change:

There may be a small reduction in the administrative burden for providers who no longer must comply with more specific requirements, but this cost savings is expected to be de minimis.

Rationale for proposed change:

The current requirements were either duplicative or overly specific.

Other alternatives considered:

Alternative	*Rationale for not selecting this alternative:*
Status quo.	Duplicative and overly specific regulations can cause confusion for the regulated community and make enforcement harder for the Department.

De Minimis Changes

- Definitions were updated, added, and deleted to coincide with changes in the regulations and to better reflect current understanding and use of terminology.
- Language throughout the document was updated to reflect current practice and understanding of terms.
- Redundancies in the regulations were removed to eliminate inconsistencies and provide clarity to the users of the document.
- Hyperlinks were added to the document to assist users in navigating the document and its supporting authorities.
- Areas outside of the specific regulatory mission and jurisdiction of these standards were removed.
- Non-discretionary changes per Federal and State statutory and regulatory requirements were made but not analyzed for costs or benefits