



Department of Behavioral Healthcare,
Developmental Disabilities and Hospitals

Regulatory Analysis: Licensing of Organizations and Facilities

Introduction

The Department of Behavioral Healthcare, Developmental Disabilities, and Hospitals (BHDDH) proposes to amend the rules and regulations for the Licensing of Organizations and Facilities 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

This licensing regulation impacts two (2) types of agencies regulated by BHDDH: (1) Behavioral Healthcare Organizations (BHOs); and, (2) Developmental Disabilities Organizations (DDOs). Historically, each Division of BHDDH maintained all individual licensing rules and requirement within each programmatic unit. This resulted in duplication and some unnecessary redundancies between programs. The Department has elected to consolidate all licensing requirements for both in a newly adopted Licensing Regulation. While the regulation is not entirely new, it attempts to consolidate and standardize requirements across both BHOs and DDOs.

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 Licensing Regulations was, therefore, established to improve the regulations, make them more accessible and 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 This rewrite is a repeal-and-replace, meaning the current regulation will be repealed and a new one adopted.

Regulatory Development

Prior to beginning the process of revising the regulations, both stakeholders from Behavioral Health (BH) and the Individuals with Developmental Disabilities (I/DD) communities were clear that they wanted to be fully engaged with the process of Regulation development and not be presented with a near-completed draft to review and "rubber-stamp." In that spirit of collaboration, the Department invited key stakeholders to participate in the revision process. The



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stakeholder groups included representatives from: participant groups; advocates; providers and representative organizations; BHDDH staff; family members; and, other interested parties. Much time, effort and thoughtful consideration went into the process from all parties.

A plenary group was formed and met monthly to review the 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 two (2) areas.

First, the most significant change to the regulations is that BHDDH will no longer licensing individual I/DD services. Through regulations, BHDDH is licensing DDOs and BHOs (providers). Licensed providers 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 is around quality assurance/quality improvement and client safety considerations (described in more detail below).

The other significant change is the consolidation and standardization of licensing and other general regulatory requirements across both BHOs and DDOs. Significant sections of the DDO and BHO regulations were moved to these Licensing Regulations and combined into standards that apply to both entities. For example, employee criminal background check and organizational ethical requirements have been standardized for all BHDDH licensed entities. The teams worked to ensure that rules were only stated once in the document. Often times, these requirements were adapted from current language that applied only to DDOs, and was made general so as to apply to both types of providers.

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 to that the final regulations would be “participant-centered” which remained a guiding force throughout the process.



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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, in the case of DDOs, when there were options;
4. What language to keep or remove based on the determination of:
 - a. Is it regulatory in nature?
 - b. Does it 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 licensing changes 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:

- Quality Assurance;
- Licensing Process;
- Employment and Staffing; and
- Investigations.

As noted earlier, the current Licensing 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.

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.

Quality Assurance

Overview of proposed change:

Added the following language: <ul style="list-style-type: none">• "The Organization shall submit to readiness reviews and onsite visits to ensure preparedness for service provision."• "The Organization shall also be available for periodic program reviews."	<i>Citation in previous regulation:</i> N/A
	<i>Citation in new regulation:</i> 1.5.3(B), 1.13(E)
	<i>Was this change discretionary?</i> Yes

Costs of proposed change:

This change removes prescriptive requirements for quality assurance (QA) from the regulation and transfers some of those requirements (in an amended form) to certification standards. In addition, the Department plans to increase ongoing monitoring and evaluation of provider QA. The enhanced administration will create increased costs in requiring agencies to prepare and have staff available for the evaluation. These costs for DDOs are quantified below:

Cost to DDO for Additional QA	
Annual Trainings	2
Hours Per Training	2
Employees Per Agency*	75
Organizations**	40
Average Hourly Wage*	\$23.00



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<i>Total Provider Cost</i>	\$276,000
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* 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

The costs for BHOs are similar to those for DDOs. There are thirty (30) total BHO providers. The six (6) substance use providers currently licensed by the Department already undergo QA monitoring, leaving a net of twenty-four (24) providers who will experience new costs. These costs for BHOs are quantified below:

Cost to BH Providers for Additional QA	
Annual Trainings	2
Hours Per Training	2
Employees Per Agency*	124
Organizations**	24
Average Hourly Wage*	\$23.00
<i>Total Provider Cost</i>	\$273,79
	2

* 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

Additionally, the Department will see an additional fiscal cost for new staff required to implement this increased level of monitoring. There will be two staff members monitoring DDOs and two staff members monitoring BHOs. Those costs are quantified below:

BHDDH Fiscal Impact: Principal Health Facility Surveyor				
Average Salary	Average Benefits	FTEs	Overhead cost	Total cost
\$60,019	\$31,442	4.0	\$40,000	\$405,844

Benefits of proposed change:

The main benefit of improved QA is a reduction in adverse events. One of the main adverse events experienced by both the I/DD and BH populations is avoidable visits to the emergency room. The benefit of these avoided visits for each population is quantified below. A range is presented due to uncertainty around the impact of the improved QA.

Reduction in DD ER Visits Due to Improved QA				
FY 2017 cost per ER visit for DD population*	ER utilization per 1,000 for DD population*	Total DD consumers**	Assumed decrease in ER visits	Savings do to reduction in ER visits
\$518	2,300	3,700	5%	\$220,409
			10%	\$440,818

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

**Source: BHDDH Database DD Census & Authorizations 2017/2018



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Reduction in BH ER Visits Due to Improved QA				
FY 2017 cost per ER visit for BH population*	ER utilization per 1,000 for BH population*	Total BH consumers*	Assumed decrease in ER visits	Savings do to reduction in ER visits
\$551	2,572	4,059	5%	\$287,615
			10%	\$575,230

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

Rationale for proposed change:

This change creates a more flexible and person-centered QA system for providers, and allows the Department to have a more active role in ensuring program quality.

Other alternatives considered:

Alternative	Rationale for not selecting this alternative:
Status quo.	Does not meet the consent decree requirements for oversight.
Annual certification of quality improvement.	Unnecessarily burdensome for providers.
Triennial certification of quality improvement.	Too infrequent for initial certification.



Licensing Process

Overview of proposed change:

The application requirements and process sections were amended to generalize the language so that it could be applied to both DDOs and BHOs.	<i>Citation in previous regulation:</i> N/A
	<i>Citation in new regulation:</i> 1.5.3(A)
	<i>Was this change discretionary?</i> Yes

Costs of proposed change:

No marginal economic impact. Both DDOs and BHOs already have similar application requirements.

Benefits of proposed change:

No marginal economic impact. Both DDOs and BHOs already have similar application requirements

Rationale for proposed change:

To standardize and consolidate requirements for both DDOs and BHOs.

Other alternatives considered:

<i>Alternative</i>	<i>Rationale for not selecting this alternative:</i>
Status quo.	Would not meet the goal of streamlining the regulation and creating a consolidated Licensing Regulation.



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Overview of proposed change:

Removed language on moratorium for licensing center-based day programs.	<i>Citation in previous regulation:</i> 3.1.1
	<i>Citation in new regulation:</i> N/A
	<i>Was this change discretionary?</i> Yes

Costs of proposed change:

No marginal economic impact. Currently, there is no need for additional center-based day programs. Since the Department issues licenses based on need, the Department would not license new programs even without a moratorium.

Benefits of proposed change:

No marginal economic impact. Currently, there is no need for additional center-based day programs. Because the Department issues licenses based on need, the Department would not license new programs even without a moratorium.

Rationale for proposed change:

The federal requirement to transition to HCBS means that center-based programs are deemphasized while community-based programs are emphasized. This means that only a few center-based programs are needed in the state. This requirement is currently met and there is unlikely to be a need for any additional center-based services for the foreseeable future.

Other alternatives considered:

<i>Alternative</i>	<i>Rationale for not selecting this alternative:</i>
Status quo.	The moratorium language is unnecessary because federal requirements and state need govern whether the Department will license new center-based programs, and both factors create a de facto moratorium.



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Overview of proposed change:

Added following language: <ul style="list-style-type: none">"The procedure to renew a license is to submit a renewal application on a form provided by the Department sixty (60) days prior to the expiration of the current license."	<i>Citation in previous regulation:</i> N/A
	<i>Citation in new regulation:</i> 1.5.4(B)
	<i>Was this change discretionary?</i> Yes

Costs of proposed change:

No marginal economic impact. Currently, providers are reminded sixty (60) days before expiration to submit application renewals (which coincides with the scheduling of licensing audits).

Benefits of proposed change:

No marginal economic impact. Currently, providers are reminded sixty (60) days before expiration to submit application renewals (which coincides with the scheduling of licensing audits).

Rationale for proposed change:

State statute requires a renewal process, and this proposed change ensures timely compliance with that statute.

Other alternatives considered:

<i>Alternative</i>	<i>Rationale for not selecting this alternative:</i>
Status quo.	Would not meet Rhode Island General Law requirements.



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Overview of proposed change:

Changed language regarding the Department issuing provisional licensing from “will be issued” to “may be issued.”	<i>Citation in previous regulation:</i> 7.1
	<i>Citation in new regulation:</i> 1.7.1(A)
	<i>Was this change discretionary?</i> Yes

Costs of proposed change:

No marginal economic impact. The Department was already exercising discretion in the issuing of provisional licenses.

Benefits of proposed change:

No marginal economic impact. The Department was already exercising discretion in the issuing of provisional licenses.

Rationale for proposed change:

The Department has discretion and the regulation should reflect that discretion.

Other alternatives considered:

<i>Alternative</i>	<i>Rationale for not selecting this alternative:</i>
Status quo.	Would not reflect the ability of the Department’s discretion.



Overview of proposed change:

Added to original language regarding plans of correction: "The plan shall include evidence of compliance for each resolution or a plan for how evidence will be presented upon resolution."	<i>Citation in previous regulation:</i> 11.1 (a) - (j)
	<i>Citation in new regulation:</i> 1.14(C)
	<i>Was this change discretionary?</i> Yes

Costs of proposed change:

There is a de minimis cost to providers who need to expend staff time following up and sending evidence to the Department. In addition, there is also a marginal cost to a subset of providers who will now follow through on timely compliance with the plans of correction (who may not have followed through in the past). However, this marginal cost was always mandatory and this proposed change should increase compliance.

Benefits of proposed change:

More timely compliance with plans of correction, which benefits participants in the facilities. These plans and the anticipated benefits were always required and this proposed change should only increase compliance.

Rationale for proposed change:

To increase compliance with plans of correction.

Other alternatives considered:

<i>Alternative</i>	<i>Rationale for not selecting this alternative:</i>
Status quo.	Some providers were not complying in a timely manner.



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Overview of proposed change:

Added language to variance section requiring organization to demonstrate that meeting the regulation as written will cause undo harm.	<i>Citation in previous regulation:</i> N/A
	<i>Citation in new regulation:</i> 1.15(C)
	<i>Was this change discretionary?</i> Yes

Costs of proposed change:

There is a de minimis cost to providers who need to expend staff time writing up a description of how the regulation as written will cause undo harm. There are approximately twenty (20) variances per year. This proposed change is not expected to change the overall number of variances approved.

Benefits of proposed change:

No marginal economic impact. This proposed change is not expected to change the overall number of variances issued annually.

Rationale for proposed change:

Change will create consistency in how variances are determined and granted.

Other alternatives considered:

<i>Alternative</i>	<i>Rationale for not selecting this alternative:</i>
Status quo.	Current variance process lacks consistency.



Employment and Staffing

Overview of proposed change:

Shifts responsibility from the board of directors to the organization for determining employment eligibility for individuals who have background checks with positive findings. Child abuse or a felony for sexual or physical assault remain automatic disqualifiers.	<i>Citation in previous regulation:</i> 11.6, 11.8, BHO 8.5.4
	<i>Citation in new regulation:</i> Licensing Regulation 1.20(D)
	<i>Was this change discretionary?</i> Yes

Costs of proposed change:

No marginal economic impact.

Benefits of proposed change:

No marginal economic impact.

Rationale for proposed change:

Revised requirements of monitoring employment eligibility by the board of directors, allows board members to focus on client and organizational issues. This option brings this process into alignment with other human service agencies.

Other alternatives considered:

<i>Alternative</i>	<i>Rationale for not selecting this alternative:</i>
Status quo.	Status quo provided no marginal benefit compared to chosen alternative.



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Overview of proposed change:

Added clarifying language regarding background checks for independent contractors. Background checks are only required for contractors with direct contact with individuals. Current DDO regulation incorrectly included "contractors" with staff, although they are not staff. Current BHO regulation did not address contractor background checks.	<i>Citation in previous regulation:</i> DDO 7.2, BHO 20.0
	<i>Citation in new regulation:</i> 1.20(C)(2), 1.3(A) (32)
	<i>Was this change discretionary?</i> Yes

Costs of proposed change:

There is cost to any BHOs who have not been obtaining background checks for contractors who have direct contact with individuals. The actual cost of the background check is covered by the state. The only cost is a de minimis cost of staff time spent procuring the background check.

Benefits of proposed change:

There is a benefit to DDOs who no longer must obtain background checks for contractors who do not have direct contact with individuals. The actual cost of the background check is covered by the state. The only benefit is a de minimis cost of staff time spent that no longer must be spent procuring the background check.

Rationale for proposed change:

All staff with direct contact with individuals should have background checks. Requiring background checks of other contractors who have no direct contact with individuals (for example, a plumber fixing a toilet) adds burden without a clear benefit.

Other alternatives considered:

<i>Alternative</i>	<i>Rationale for not selecting this alternative:</i>
Status quo.	Status quo is unclear and would leave conflicting requirements for DDOs compared to BHOs.



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Overview of proposed change:

Added a list of new disqualifying information regarding criminal background checks. The current regulation contains a less comprehensive list of disqualifiers. There is now longer list, which is divided into Category One and Category Two information. Category One disqualifiers are automatic disqualifiers, while Category Two disqualifiers require a provider to come to the Department and make a case why they want to hire that person.	<i>Citation in previous regulation:</i> DO 11.5.1, BHO 8.5.4
	<i>Citation in new regulation:</i> 1.20(D)
	<i>Was this change discretionary?</i> Yes

Costs of proposed change:

There is a potential increase in labor costs due to a smaller pool of potential applicants. However, this list is expected to minimally impact the current hiring practices at these providers. There is also a cost to providers who need to use staff time to go through the approval process to hire a person with Category Two disqualifiers.

Benefits of proposed change:

There is a benefit of the potential avoidance of harm to participants caused by inappropriate staffing decisions.

Rationale for proposed change:

The more comprehensive list provides clarity, while still giving organizations some discretion in hiring people with certain disqualifying information.

Other alternatives considered:

<i>Alternative</i>	<i>Rationale for not selecting this alternative:</i>
Status quo.	Status quo lacks clarity and does not conform to industry standards.
Considered a shorter list of disqualifying information	The Department determined that using an industry standard list was the best option.

Investigations

Overview of proposed change:

The current regulatory language governing the internal investigation protocol used by DDOs is included in this regulation. These requirements now also apply to BHOs. While the current BHO regulation establishes that Organizations must protect participant's rights and investigate adverse incidents, this new language establishes a more formal process of reporting and providing written recommendations to the Department.	<i>Citation in previous regulation:</i> DDO 26.5
	<i>Citation in new regulation:</i> 1.25(A)
	<i>Was this change discretionary?</i> Yes

Costs of proposed change:

The main cost to this proposed change is the time now required of BHOs to investigate and report on serious reportable incidents. While these internal investigations are current being performed by BHOs, they are not required by current regulations. This analysis assumes that these internal investigations are a new requirement, and uses data about BHDDH investigations at BHOs as a proxy for the number of internal investigations conducted by providers themselves. This annual cost is quantified below:

Cost to BH Providers for Internal Investigation Reporting	
Annual Investigations*	174
Additional Hours Per Investigation and Report	2
Organizations**	30
Average Hourly Wage***	\$23.00
<i>Total Provider Cost</i>	\$240,120

* Source: BHDDH Occurrence Reporting System (ORS)

** Source: BHDDH Licensing Database, 2017/2018

*** Hourly wage is an average of a supervising clinician, direct care clinician, direct care worker (Source: RIBHDDH: Provider HR Reporting System, 2018)

Benefits of proposed change:

The benefit of stricter investigation and reporting requirements are quality improvements made by organizations in response to these investigations and reports. Overall, this will lead to greater protections for the human rights of participants. This improved quality assurance goes along with the changes discussed and quantified in the "Quality Assurance" section above.

Rationale for proposed change:

The goal was to create uniform requirements for DDOs and BHOs, and the current language used in the DDO regulation was determined to be effective.



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Other alternatives considered:

<i>Alternative</i>	<i>Rationale for not selecting this alternative:</i>
Status quo.	Would not standardize investigation requirements across both DDOs and BHOs.



De Minimis Changes

- Removed redundant language that was repeated in either the DDO or BHO regulation and the current Licensing Regulation.
- Clarified that the Department provides application forms which must be used by providers (this is already the status quo).
- Removed examples of violations. Examples were non-regulatory language. (References Section 1.9, the Department's authority in emergencies, and Section 1.12, the Organizations right to appeal).
- Removed requirement that the Department distribute BHO regulations annually.
- Added that option that evidence of compliance with the requirement for Board participation by individual and family member may be done confidentially (as opposed to publicly) to the Department.
- Added language (taken directly from state statute) to address alterations to facilities.