Comments from Mental Health Advocate Megan Clingham with Reponses from BHDDH
July 17, 2023

COMMENT: F.4. Written documentation should be required from the E-MHPRR wishing to discharge a resident, this should include reasons for discharge, efforts by provider to maintain resident, steps taken to ensure safe discharge and recommended level of care upon discharge. Likewise, the Department should be required to document what the Department has done to assist the E-MHPRR to maintain the resident, reasons for agreeing to or denying the discharge, and exactly what the Department has done to effectuate a safe discharge, if request is granted. This written documentation should be made part of the medical record and be provided to the resident/family/guardian/advocate.

BHDDH RESPONSE: BHDDH agrees that when an E-MHPRR wishes to discharge a resident the provider must first submit to BHDDH a written discharge plan that includes the reasons for the discharge. BHDDH will review and either approve/modify/reject the discharge plan and respond in writing. Each case will be reviewed individually to determine appropriateness of the proposed discharge, to ensure that all alternatives have been explored and that the proposed new disposition meets the resident's clinical needs. With regard to notice to the resident, BHDDH will now amend the regulation at § 1.6.12.F.4 to state:
"Once the E-MHPRR admits a client, as a condition of the E-MHPRR to continue receiving E-MHPRR level of funding as their license allows, the E-MHPRR shall not discharge a client until the Department approves of such discharge and has identified a safe alternative placement. Any proposed discharge plan completed by an E-MHPRR shall be submitted to BHDDH within three business days of completion. BHDDH shall either approve/modify/reject in writing the proposed discharge plan within three business days following receipt of the proposed plan. The Department shall provide such written notice to the provider, who shall then provide a copy of the notice to the client or, if applicable, legal guardian. If the Department denies an E-MHPRR's request to discharge a client, the E-MHPRR and/or the client shall have the right to request an administrative hearing per EOHHS regulations. The BHDDH decision will be stayed automatically until either the appeal hearing is concluded or the filing parties have resolved the appeal by agreement. Nothing in this section shall prevent an E-MHPRR from sending a client to the hospital for any emergency or other temporary reason, but the E-MHPRR shall hold the bed open for the client until the Department approves the closing of the bed."

COMMENT: Notice should be provided to resident/family/guardian/advocate when a discharge request is initiated.

BHDDH RESPONSE: With regard to notice to family/guardian/advocate, notice must comply with federal and state confidentiality and privacy laws and regulations. With regard to notice to the resident, again, BHDDH will now amend the regulation at § 1.6.12.F.4 to state:
"Once the E-MHPRR admits a client, as a condition of the E-MHPRR to continue receiving E-MHPRR level of funding as their license allows, the E-MHPRR shall not discharge a client until the Department approves of such discharge and has identified a safe alternative placement. Any proposed discharge plan completed by an E-MHPRR shall be submitted to BHDDH within three business days of completion. BHDDH shall either approve/modify/reject in writing the proposed discharge plan within three business days following receipt of the proposed plan. The Department shall provide such written notice to the provider, who shall then provide a copy of the notice to the client or, if applicable, legal guardian. If the Department denies an E-MHPRR's request to discharge a client, the E-MHPRR and/or the client shall have the right to request an administrative hearing per EOHHS regulations. The BHDDH decision will be stayed automatically until either the appeal hearing is concluded or the filing parties have resolved the

appeal by agreement. Nothing in this section shall prevent an E-MHPRR from sending a client to the hospital for any emergency or other temporary reason, but the E-MHPRR shall hold the bed open for the client until the Department approves the closing of the bed."

COMMENT: In addition to provider's remedy of requesting an administrative hearing upon if provider disagrees with discharge decision, resident/family/guardian/advocate should likewise have this remedy.

BHDDH RESPONSE: All appeals must be conducted in accordance with the state appeals process and must comply with all federal and state law and regulations. In addition to the provider having a remedy to appeal the Department's decision regarding a resident's discharge, the resident or an appropriate representative are afforded the opportunity to appeal the decision regarding discharge through the State's administrative appeals process.

COMMENT: There should be a time frame in which the discharge request is initiated and the Department's decision is made. Notice to the resident/family/guardian/advocate should be given upon initiation of the request.

BHDDH RESPONSE: Section 1.6.12(F)(4) states in part that, "Once the E-MHPRR admits a client, as a condition of the E-MHPRR to continue receiving E-MHPRR level of funding as their license allows, the E-MHPRR shall not discharge a client until the Department approves of such discharge and has identified a safe alternative placement." Notification to the resident of the plan to discharge is not permitted until the Department has agreed that an acceptable discharge plan is in place. BHDDH has amended the regulation at § 1.6.12(F)(4) to reflect new timeframes as to initiation of discharge request and as to the Department's decision, and as to how notice will be provided to a resident.

COMMENT: Given that these E-MHPRRs are the highest level of care available in the community, the only facility that can provide a higher level of care is ESH; if BHDDH allows the discharge they should have to document in writing, avail to resident etc., why admission to ESH is not the safest plan if in fact admission to ESH is denied, as we have been told it will be.

BHDDH RESPONSE: All discharge decisions will be reviewed, taking into consideration the resident's health, safety, and well-being. There may be instances where the discharge from the program is due to the inability of the provider to meet the resident's needs or the resident's refusal to remain in the E-MHPRR. In such circumstances, if it is deemed appropriate, a referral may be made for admission to Eleanor Slater Hospital and the person shall be considered for admission.

COMMENT: F. 5. F. (1) (DD) (ii) and (iii) Why is a Licensed Chemical Dependency Clinical specialist allowed to be the Residential Manager of an enhanced behavioral health group home? That does not seem to meet the level of behavioral health expertise required for the job of Residential Manager or a group home for the most challenging patients.

BHDDH RESPONSE: Pursuant to § 1.6.12(F)(5)(f)(1)(DD), any LCDP Supervisor who would be a residential manager must have a bachelor's degree, and any LCDP Professional must have a bachelor's degree and must complete a BHDDH-approved course in clinical supervision. The purpose of inclusion of this category of licensed professional is to allow for development of Enhanced MHPRRs that specialize in treatment of either co-occurring disorders and/or substance use disorder. Depending upon the composition of each E-MHPRR, there may be a need to have on-site staff with expertise in substance use disorders.

COMMENT: In general, E-MHPRR should be required to apply for and receive facility status from BHDDH before admitting residents. Although a CMHC may provide treatment pursuant to a CCC, the CCC cannot mandate the resident stay at the group home. It is reasonable to expect that residents who need such a high level of care, including a CCC due to inability to voluntarily engage in treatment, would not be able to voluntarily physically stay in the group home and would be free to walk out the door. By not having facility status and requiring compliance with the group home, it is discriminatory against potential residents with such a high level of need in that either 1- a person can't be admitted if they need a CCC or 2- a person admitted without a CCC specifying compliance with the group home is not receiving an individualized treatment plan sufficient to meet their needs because if the less restrictive alternative of voluntary compliance with the CMHC isn't suitable then voluntary remaining at the group home isn't suitable. A person who needs a CCC can't be expected to have the insight to know that they also must remain at the group home or risk homelessness or worse. The group home can't discharge without BHDDH permission but the resident can self-discharge to an unsafe environment at any time. Doesn't make sense and doesn't seem safe for the residents.

I also think it would be proactive and make sense to incorporate regulations regarding locked group homes. Otherwise, it will be a Catch 22 if you are contemplating trying to get a vendor to open one; if they don't know the parameters of what will be expected then how will they know they can provide the expected services.

BHDDH RESPONSE: Currently Rhode Island has no locked group homes. For that reason, the regulations will not be amended with regard to that issue. Based on this public comment, however, BHDDH has amended § 1.6.12(F)(5)(a) to state:

> *"5. E-MHPRR Provider Requirements. In addition to the requirements for Basic MHPRRs, each E-MHPRR provider shall comply with the following:*
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> *a. Only Basic, Specialized or Enhanced MHPRRs that are in good standing with BHDDH and in compliance with all applicable MHPRR regulations contained in § 1.6.12 above, and other all state and federal regulations, may apply for and be issued an E-MHPRR license. An applicant for E-MHPRR licensure shall meet the criteria, and be approved by the Department, to provide services as a facility as defined in R.I.G.L. § 40.1-5-2(6)."*

COMMENT: Finally, and importantly, there should be a requirement that the E-MHPRR has a memorandum of understanding or some sort of agreement with the local police department around protocol of what to do if a resident is out in the community causing a "nuisance" to avoid the resident getting arrested and sent to ACI/caught up in the criminal legal system.

<u>BHDDH RESPONSE:</u> BHDDH will notify the local police department if an E-MHPRR is to operate in their city/town, and the provider agency will be encouraged to work closely with the local police to address any issues in accordance with best practices.