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Part II

This part contains the
Proposed Rulemakings



PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 59a]

Milk Sanitation

The Department of Agriculture (Department) proposes to amend § 59a.402 (relating to raw milk; prohibitions) to read as set forth in Annex A.

Authority

This proposed rulemaking is authorized under the act of July 2, 1935 (P.L. 589, No. 210) (31 P.S. §§ 645—660g), known as the Milk Sanitation Law (act), which establishes the powers and duties of the Department with respect to milk sanitation. Section 19 of the act (31 P.S. § 660c) authorizes the Department to adopt the regulations necessary to administer the act. This proposed rulemaking is also authorized under 3 Pa.C.S. §§ 5721—5737 (relating to Food Safety Act), which: 1) authorize the Department to promulgate regulations and food standards necessary for enforcement of 3 Pa.C.S. §§ 5721—5737; 2) define certain “Federal acts” as including the Federal Food, Drug, and Cosmetic Act (21 U.S.C.A. §§ 301—399i); and 3) encourage consistency among the Department’s food safety regulations and the defined Federal acts and their attendant regulations. See 3 Pa.C.S. §§ 5722, 5733(a) and 5736(a) (relating to definitions; rules and regulations; and construction of subchapter).

Need for this Proposed Rulemaking

The United States Food and Drug Administration’s (FDA) regulations in 21 CFR Part 133, Subpart B (relating to requirements for specific standardized cheese and related products) were promulgated under authority of the Federal Food, Drug, and Cosmetic Act, and establish standardized definitions and requirements for 72 different kinds of cheese. These Federal regulations allow for 57 standardized cheeses to be produced from raw (unpasteurized) milk.

Section 59a.402 addresses the types of cheese that can be produced from raw milk and is more restrictive than 21 CFR Part 133, Subpart B. The Department is satisfied that the FDA’s raw milk cheese standards are reasonable and represent the current state of food science with respect to the safe production of raw milk cheeses. There is no practical reason for the Department’s raw milk cheese standards to be any more stringent than the FDA’s raw milk cheese standards. The proposed rulemaking will also further the objective of 3 Pa.C.S. §§ 5721—5737 to make the Department’s food regulations consistent with the FDA’s food safety regulations.

This proposed rulemaking would bring the Commonwealth into alignment with FDA standards and allow the manufacture and sale of cheese from raw milk to the full extent allowed under the FDA standards. It would also allow manufacturers of raw milk cheese to market a greater variety of raw milk cheeses and provide consumers a wider selection of these cheeses.

Summary of this Proposed Rulemaking

Section 59a.402 is proposed to be amended to allow the holder of a raw milk permit to obtain an additional permit from the Department authorizing the manufacture and sale of cheese from raw milk if: 1) the type of cheese that is being produced is a standardized cheese under the

FDA’s standards; and 2) the FDA’s standards allow that type of standardized cheese to be produced from raw milk.

Persons Likely to be Affected

The beneficiaries of this proposed rulemaking will be cheese manufacturers in this Commonwealth who produce cheese from raw milk. There are approximately 90 manufacturers. These manufacturers will be able to market a greater variety of raw milk cheeses and able to better compete with counterparts from other states. This proposed rulemaking will also benefit consumers to the extent there will be a wider variety of Pennsylvania-produced raw milk cheeses in the marketplace.

Fiscal Impact

Commonwealth

This proposed rulemaking would not have fiscal impact on this Commonwealth.

Political subdivisions

This proposed rulemaking would not have fiscal impact on political subdivisions.

Private sector

This proposed rulemaking would have some fiscal impact on the private sector. In particular, businesses that manufacture raw milk cheese (of which there are approximately 90 businesses) would benefit from being able to market a greater variety of raw milk cheeses.

General public

This proposed rulemaking would not have appreciable impact on the general public, other than to make a greater variety of Pennsylvania-made raw milk cheeses available to consumers.

Paperwork Requirements

This proposed rulemaking will not add to paperwork requirements for any entity or the Department. The persons who are currently making raw milk cheese under authority of Department-issued permits are the same group that will be producing the expanded variety of standardized raw milk cheeses when the final-form rulemaking is promulgated. New permits or paperwork will not be necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on July 25, 2018, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the rulemaking by the Department, the General Assembly and the Governor.

Effective Date

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Lydia Johnson, Ph.D., Director, Bureau of Food Safety and Laboratory Services, Department of Agriculture, 2301 North Cameron Street, Harrisburg, PA 17110-9408, (717) 787-4315 within 30 days of the publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

Contact Person

The contact person for technical questions regarding this proposed rulemaking is Lydia Johnson, Ph.D., Director, Bureau of Food Safety and Laboratory Services, Department of Agriculture, 2301 North Cameron Street, Harrisburg, PA 17110-9408, (717) 787-4315.

RUSSELL C. REDDING,
Secretary

Fiscal Note: 2-191. No fiscal impact; (8) recommends adoption.

Annex A**TITLE 7. AGRICULTURE****PART III. BUREAU OF FOOD SAFETY AND LABORATORY SERVICES****Subpart B. LIQUID FOODS****CHAPTER 59a. MILK SANITATION****Subchapter F. RAW MILK FOR HUMAN CONSUMPTION****§ 59a.402. Raw milk; prohibitions.**

(a) *Sale of raw milk without permit.* A person may not sell raw milk for human consumption without having a current raw milk permit issued by the Department. The term "sell" includes the selling, exchanging, delivering or having in possession, care, control or custody with intent to sell, exchange, or deliver or to offer or to expose for sale.

(b) *Actions authorized under a raw milk permit.* A raw milk permit authorizes the permitholder to lawfully produce and sell (within this Commonwealth) raw whole milk for human consumption. It also authorizes the permitholder to obtain an additional permit, issued by the Department under authority of [**21 CFR 133.150 (relating to hard cheeses), authorizing the sale of aged cheese manufactured from raw milk.**] **21 CFR Part 133 (relating to cheese and related cheese products), authorizing the sale of cheese manufactured from raw milk if all of the following apply:**

(1) The cheese is a standardized cheese identified in 21 CFR Part 133, Subpart B (relating to requirements for specific standardized cheese and related products).

(2) The standards for that cheese allow for it to be manufactured from raw milk.

(c) *Compliance with testing and documentation requirements.* A person may not sell raw milk for human consumption without being in compliance with the testing and documentation requirements of this section.

[Pa.B. Doc. No. 18-1221. Filed for public inspection August 3, 2018, 9:00 a.m.]

DEPARTMENT OF HUMAN SERVICES**[55 PA. CODE CHS. 1155 AND 5240]
Intensive Behavioral Health Services**

The Department of Human Services (Department), under the authority of sections 201(2) and 1021 of the Human Services Code (62 P.S. §§ 201(2) and 1021) and section 201(2) of the Mental Health and Intellectual Disability Act of 1966 (50 P.S. § 4201(2)), proposes to add Chapters 1155 and 5240 (relating to intensive behavioral health services) to read as set forth in Annex A.

Purpose

The purpose of this proposed rulemaking is to codify the minimum licensing standards and program requirements for participation in the Medical Assistance (MA) Program and MA payment conditions for agencies that deliver intensive behavioral health services (IBHS) to children, youth and young adults under 21 years of age with mental, emotional and behavioral health needs. IBHS includes individual services, applied behavioral analysis (ABA) services, evidence-based therapy (EBT) services and group services.

This proposed rulemaking will support children, youth and young adults with mental, emotional and behavioral health needs by improving their functioning, promoting their resiliency and enhancing their quality of life, which will allow the children, youth and young adults to live and participate in the community with their families. This proposed rulemaking will replace the requirements for behavioral health rehabilitation services (BHRS) previously set forth in bulletins issued by the Department. It also adds a requirement for a separate and distinct license for agencies that deliver these services and additional oversight of services. This proposed rulemaking eliminates redundancies in bulletins, streamlines the admission process for IBHS, provides a process for the reinitiation of services within 60 days of discharge if the condition of the child, youth or young adult regresses, establishes training requirements and qualifications for staff delivering each IBHS, and includes provisions to protect the health and safety of a child, youth or young adult receiving services.

Background

BHRS were developed in response to the Omnibus Budget Reconciliation Act of 1989 (Pub.L. No. 101-239), which amended section 1905(r)(5) of the Social Security Act (42 U.S.C.A. § 1396d(r)) to require states to provide "necessary health care, diagnostic services, treatment, and other measures described in [the Social Security Act] . . . whether or not such services are covered under the State plan." BHRS are individualized services provided in the home, school or community to meet the needs of children, youth and young adults under 21 years of age with mental, emotional and behavioral health needs. The Department has issued bulletins to inform providers of

the policies and procedures governing BHRS, many of which were issued when these services were new in the continuum of care. The service delivery system has become more complex and sophisticated. Individuals and family members of individuals who receive BHRS, advocates, providers and county administrators have also expressed the need for revised standards for the delivery of BHRS. In response, the Department engaged a diverse group of stakeholders to provide input into the development of regulations that would address the delivery of IBHS.

Requirements

Proposed Chapter 1155 contains the MA payment conditions for IBHS. Proposed Chapter 5240 identifies the minimum program and operational standards for an agency to obtain a license to provide one or more IBHS.

Following is a summary of the major provisions of each chapter included in this proposed rulemaking.

Chapter 1155. Intensive behavioral health services

General provisions and scope of benefits—§§ 1155.1, 1155.2 and 1155.11

This proposed rulemaking establishes the requirements for MA payment for covered IBHS when the services are medically necessary and provided to children, youth and young adults under 21 years of age with mental, emotional and behavioral health needs.

Provider participation in the MA Program—§ 1155.21

This proposed rulemaking requires that for participation in the MA Program the IBHS agency is licensed under Chapter 5240 as an IBHS agency, has a written provider agreement with the Department and is enrolled in the MA Program.

Payment for IBHS—§§ 1155.31—1155.37

This proposed rulemaking establishes the conditions for MA payment for IBHS, which include that services be medically necessary and that there be a written order for the service based on a face-to-face interaction with the child, youth or young adult from a licensed professional whose scope of practice includes the diagnosis and treatment of behavioral health disorders; a comprehensive face-to-face assessment completed after the initiation of services; and an individual treatment plan (ITP) based upon the written order and the assessment. The requirements are consistent for each IBHS included in Chapter 1155 to avoid more stringent requirements creating barriers to access for one service or confusion for parents or caregivers of children, or a youth or young adult seeking the service. A written order can include more than one IBHS, which eliminates the need for duplicative evaluations for the child, youth or young adult. Previously, a psychological or psychiatric evaluation prescribing BHRS, an interagency service planning team (ISPT) meeting and documentation of the ISPT meeting, and a plan of care were required for MA payment for BHRS. Stakeholders have expressed concerns about the time it takes to convene an ISPT meeting and the impact this has had on the initiation of services. This proposed rulemaking makes changes to the MA payment requirements to ensure prompt delivery of the services based upon the written order. This proposed rulemaking also establishes the types of IBHS eligible for MA payment and limitations on MA payment for IBHS.

Chapter 5240. Intensive behavioral health services

General provisions—§§ 5240.1—5240.7

This proposed rulemaking requires that an IBHS agency obtain a license from the Department prior to

beginning operations and describes the services that an agency may provide under an IBHS license. It also allows an IBHS agency that holds an outpatient psychiatric clinic, a psychiatric partial hospitalization program or a family based mental health license issued by the Department to continue to provide IBHS until that license expires and then obtain an IBHS license. To aid in the overall readability of this chapter, the provisions that apply to all licensed agencies, regardless of which IBHS they provide, are included in the first sections of Chapter 5240.

This proposed rulemaking requires IBHS agencies to have an administrative director, clinical director and staff. As part of their initial licensing application package, IBHS agencies will also be required to submit to the Department for review and approval a written description of the services the agency will provide. IBHS agencies can include all services in one service description that will be reviewed and approved as part of the licensing process. Previously, agencies were required to submit the service description for each service to the Department for review and approval.

This proposed rulemaking includes specific requirements related to the use of restrictive procedures. Manual restraints may only be used in an emergency situation by trained staff to prevent injury to the child, youth, young adult or others when other less intrusive interventions have been tried but have failed. This proposed rulemaking prohibits the use of any restrictive procedures other than manual restraints and prohibits manual restraints that use a prone position or that apply pressure or weight on a child's, youth's or young adult's respiratory system.

IBHS agencies will be required by this proposed rulemaking to have written agreements to coordinate services with other service providers, which shall be updated at least every 5 years. Coordination of care was a key issue discussed by stakeholders. Additionally, the agency shall have a list of community resources that provide behavioral health services that the agency can provide to parents or caregivers or individuals receiving services upon request.

Staffing and supervision—§§ 5240.11—5240.14, 5240.72, 5240.81, 5240.82 and 5240.102

This proposed rulemaking establishes the minimum staffing requirements for IBHS agencies and includes the minimum qualifications for an IBHS agency's administrative director and clinical director and the responsibilities of IBHS agencies' administrative directors and clinical directors. The staffing qualifications for the administrative director are intended to allow an agency to have an administrative director provide oversight for more than one IBHS agency.

This proposed rulemaking also establishes the minimum qualifications for an individual that supervises staff that provide individual services, ABA services and group services. Supervision requirements have been included in this proposed rulemaking to ensure that staff providing IBHS have the knowledge and skill to carry out the specific procedures and interventions that are identified in the ITP. The qualifications of a supervisor and the amount of supervision a staff person receives depends on the staff position and the qualifications of the individual

providing services. Professionals with graduate degrees and clinical training are required to receive less supervision than individuals without these qualifications and are not required to receive supervision prior to the delivery of IBHS independently. Supervision can be provided individually or in group sessions as well as in person or through secure audio or visual technology to provide a variety of options to meet the supervision requirements. To ensure the health and safety of children, youth and young adults receiving IBHS, a supervisor shall be available to consult with all staff during all hours the IBHS agency provides services. If the IBHS agency employs nine or less full-time equivalent staff and provides individual services or ABA services, the clinical director may provide supervision. This will allow small agencies to employ one individual as both the clinical director and supervisor when one staff person could fill both roles without compromising the quality of service delivery.

Additionally, this proposed rulemaking requires the supervisor to document that supervision was provided. In addition to ensuring documentation of all required supervision, this provides a record that can be utilized to develop an individualized training plan that will assist the staff person with developing skills that are specific to the staff person's job. This proposed rulemaking also clarifies that staff do not have to repeat completed training when working for more than one IBHS agency or changing employment. This clarification will allow individuals who have received training and changed jobs to immediately begin providing IBHS. Stakeholders indicated that this not only was an unnecessary cost to agencies, but also that staff could not provide services until the additional training was completed.

This proposed rulemaking also requires IBHS agencies to have policies and procedures in place to ensure that staff having contact with children or youth comply with 23 Pa.C.S. §§ 6301–6386 (relating to Child Protective Services Law), including mandatory reporter and training requirements. This requirement will protect the health, safety and well-being of children and youth receiving IBHS.

Service planning and delivery—§§ 5240.21–5240.23, 5240.85, 5240.86, 5240.92, 5240.105 and 5240.106

This proposed rulemaking requires that IBHS be provided in accordance with each child's, youth's or young adult's ITP in a community-based, clinically appropriate setting as identified in the written order for each service and the ITP. The ITP is to be based upon a comprehensive individualized face-to-face assessment process. The assessment process is the same for individual services, EBT services and group services. There are some differences in the assessment process for ABA services to address the need for completion of standardized assessment tools and the compilation of observational data to identify developmental, cognitive, communicative, behavioral and adaptive functioning across home, school and community settings, which are needed to design appropriate interventions for the ITP. This proposed rulemaking includes time frames for completion of the initial assessment and for the review and update of the assessment to ensure that accurate information is utilized in the development and update of the ITP.

In addition to being based on the assessment, the ITP for all services will be required to include the recommendations from the licensed professional who completed the written order for services; be strength-based with individualized goals, objectives and interventions to address the identified therapeutic needs, skill deficits or targeted

behaviors for the child, youth or young adult to function at home, school or in the community; and include the assistance, if any, parents or caregivers may require to address the therapeutic needs of the child, youth or young adult and be developed in collaboration with the child, youth or young adult, and parents or caregivers as appropriate. This proposed rulemaking also contains the time frame for review and update of the ITP and the staff qualified to develop the ITP. The components of the ITP are similar for each service, consistent with current practices and include the components that were discussed with stakeholders.

Service initiation—§§ 5240.74, 5240.84, 5240.91 and 5240.104

This proposed rulemaking requires an IBHS agency to provide IBHS in accordance with the written order for the services and requires the IBHS agency to obtain prior to the initiation of services written consent to receive the services identified in the written order from the youth, young adult, or parent or caregiver of a child or youth.

Discharge—§§ 5240.31 and 5240.32

This proposed rulemaking establishes the criteria for discharging a child, youth or young adult from IBHS including the assurance that other clinical services be in place prior to discharge if needed to ensure continuity of care. An IBHS agency is required to complete at least two telephone contacts within the first 30 days after discharge to monitor the child's, youth's or young adult's maintenance of treatment progress. Stakeholders advocated for follow up contact for a period of time after discharge.

This proposed rulemaking also allows an IBHS agency to continue to serve a child, youth or young adult after the child, youth or young adult is discharged for 90 days if the youth, young adult, parent or caregiver of the child or youth requests within 60 days after a child, youth or young adult is discharged that services be reinitiated for 90 days when the condition of the child, youth or young adult has regressed and impacts the child's, youth's or young adult's ability to function in the home, school or community and when there is a written order for services. This will allow services to be provided expeditiously to stabilize and maintain a child's, youth's or young adult's treatment progress. This provision addresses concerns identified by stakeholders.

Records—§§ 5240.41–5240.43

This proposed rulemaking addresses the elements that must be included in each individual record and the IBHS agency's records and how these records shall be maintained. In addition to other requirements, the individual record must include specific documentation of each IBHS provided to the child, youth or young adult as well as documentation of any use of a manual restraint procedure. Additionally, IBHS agency records must include, among other items, documentation of staffs' credentials and qualifications to provide IBHS to ensure that staff meet the minimum qualifications to provide IBHS; criminal history checks and child abuse certifications for all staff required to have a completed criminal history check or child abuse certifications to ensure the health and safety of each child, youth or young adult receiving services; and an approved service description for all IBHS provided by the agency. A review of IBHS agency records and individual records is included in the yearly licensure process for the Department to ensure the health and safety of children, youth and young adults receiving IBHS.

Nondiscrimination—§ 5240.51

This proposed rulemaking prohibits an IBHS agency from discriminating against staff, or children, youth or young adults receiving services on the basis of race, color, creed, disability, religious affiliation, ancestry, gender, gender identity or expression, sexual orientation, national origin or age and requires an IBHS agency to comply with all applicable Federal and State statutes and regulations.

Quality improvement—§ 5240.61

This proposed rulemaking includes requirements that promote quality services, including the requirement that an IBHS agency have a written quality improvement plan that provides for an annual review of the quality, timeliness and appropriateness of services, and identifies the type of review and the methodology for the review. The IBHS agency is required to prepare a report of the findings of the annual review and make this report available to the public upon request and shall notify the youth, young adult, or parent or caregiver of a child, youth or young adult that the report may be requested upon admission to services.

Individual services—§§ 5240.71, 5240.73 and 5240.75

Individual services are intensive one-to-one therapeutic interventions and supports that are used to reduce and manage identified therapeutic needs, increase coping strategies and support skill development to promote positive behaviors with the goal of stabilizing and maintaining a child, youth or young adult in the home, school or community setting. Individual services are provided by behavior specialists, mobile therapists and behavioral health technicians (BHT).

This proposed rulemaking includes qualifications for behavior specialists, mobile therapists and BHTs, formerly known as therapeutic staff support (TSS) workers, that are generally consistent with the bulletins. Individuals with graduate-level certifications in behavior analysis from a Nationally-recognized certification board can be behavior specialists and individuals with graduate degrees in psychology, ABA, social work, education, counseling or related field that includes a clinical or mental health direct service practicum and a minimum of 1 year of full-time experience in providing mental health direct services to children, youth or young adults can be behavior specialists. In addition, licensed behavior specialists are qualified to be behavior specialists. If the behavior specialist provides individual services to a child diagnosed with autism spectrum disorder for the treatment of autism spectrum disorder, the behavior specialist shall have the same qualifications as a behavior specialist analyst that provides ABA services. Changes to the qualifications of behavior specialists were made to address stakeholders' concerns about the knowledge and skills of individuals providing services. Mobile therapists shall continue to meet the requirements provided for in the bulletins.

An individual can be a BHT if the individual has or obtains within 18 months of being hired by an IBHS agency as a BHT or within 2 years after the effective date of adoption of this proposed rulemaking, whichever is later, a behavior analysis certification from a Nationally-recognized certification board or the Pennsylvania Certification Board. If the individual does not have the required certification, the individual can be a BHT for 18 months after being hired by an IBHS agency as a BHT or for 2 years of the effective date of adoption of this proposed rulemaking, whichever is later, if the individual has a

bachelor's degree in psychology, social work, counseling, sociology, education or related field, or is licensed as a registered nurse and has a minimum of 1 year of full-time experience in providing mental health direct services to children, youth or young adults. A BHT that does not have the required certification but has an associate's degree or at least 60 credits towards a bachelor's degree and 1 year of full-time experience in providing mental health direct services to children, youth or young adults can also provide individual services for 18 months after being hired by an IBHS agency as a BHT or for 2 years after the effective date of adoption of this proposed rulemaking, whichever is later. Previously an individual was required to have 3 years of full-time work experience in a job that involved direct contact with children, youth or young adults to provide services. The Department will be engaging the Pennsylvania Certification Board to develop State specific certifications as required by this proposed rulemaking.

This proposed rulemaking includes training requirements for behavior specialists and mobile therapists who are not required to complete continuing education units as part of their professional licensure. These staff will be required to complete at least 16 hours of Department-approved training annually related to their specific job functions. Training requirements for BHTs are similar to what was previously required for TSS workers. BHTs will be required to receive 30 hours of Department-approved training prior to working independently with a child, youth or young adult. Previously TSS workers had been required to receive 24 hours of training prior to working independently with a child, youth or young adult. Stakeholders recommended the 6-hour increase to allow sufficient time to receive training on the array of training topics that have been required in bulletins and included in this proposed rulemaking. In addition, BHTs shall complete at least 24 hours of Department-approved training within the first 6 months of employment and at least 20 hours of Department-approved training annually that is related to the BHT's specific job functions. BHTs who have a behavior analysis certification may count hours of training and completed coursework required for obtaining and maintaining certification towards the training requirements. In addition, equivalent college coursework may be counted.

The services behavior specialists, mobile therapists and BHTs can provide are also generally consistent with the bulletins. Behavior specialists can assess the behavioral needs of children, youth and young adults; design and direct the implementation of behavioral interventions in the ITP; identify behavioral goals and select appropriate interventions for inclusion in the ITP; and review, analyze and interpret data to determine any changes to goals and objectives included in the ITP; consult with mobile therapists or BHTs on behavioral management protocols and review clinical outcomes for the behavioral interventions being implemented in the treatment plan with the youth, young adult, or parent or caregiver of the child to determine effectiveness of the individual services on a monthly basis. Mobile therapists can provide individual and family therapy; assess the strengths and therapeutic needs of a child, youth or young adult and family or caregiver; and develop the ITP and provide assistance with crisis stabilization and addressing problems a child, youth or young adult has encountered. As part of implementing the ITP, BHTs support children's, youths' or young adults' problem solving skill development; instruct children, youth or young adults on how to understand, direct, interpret, manage and control feelings and emo-

tional responses to situations; assist parents or caregivers with addressing the therapeutic needs of a child, youth or young adult; provide psychoeducational services related to mental health, including the development of improved decision making skills to manage a child's, youth's or young adult's behavior; assist with a child's, youth's or young adult's development of social skills and socially acceptable behaviors; and provide instruction on stress reduction techniques. BHTs are also responsible for collecting data; providing behavioral stabilizations and interventions to children, youth and young adults that support services provided by behavior specialists or mobile therapists; and for making referrals to other necessary services and supports.

ABA—§§ 5240.81—5240.83 and 5240.87

This proposed rulemaking separately identifies ABA as an IBHS that can be provided by qualified staff to children, youth or young adults with autism spectrum disorder and other behavioral health disorders. ABA is the design, implementation and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior or to prevent loss of attained skill or function. ABA can be used for skill development and to target behaviors that impact the ability of the child, youth or young adult to function in the home, school or community setting.

This proposed rulemaking includes qualifications, training and supervision requirements for individuals who deliver ABA services to ensure that staff providing ABA have adequate knowledge, skills and experience. This proposed rulemaking includes additional requirements for the clinical director of an IBHS agency that provides ABA. All clinical directors of IBHS agencies shall be licensed or certified, but the clinical director of an IBHS agency that provides ABA shall either have a current certification as a board-certified behavior analyst (BCBA) from the Behavior Analyst Certification Board or other graduate-level certification in behavior analysis from a Nationally-recognized certification board, or a graduate degree in ABA and a minimum of 1 year of full-time experience in the provision of ABA and obtain BCBA certification or other graduate-level certification in behavior analysis from a Nationally-recognized certification board within 3 years from starting work as the clinical director for any IBHS agency. Based upon discussion and input from stakeholders, this proposed rulemaking allows individuals 3 years to obtain a BCBA or other graduate-level certification in behavior analysis from a Nationally-recognized certification board to ensure that there is adequate qualified staff to perform the functions of the clinical director in an IBHS agency providing ABA services when this proposed rulemaking becomes effective. The 3-year time frame accounts for the requirements for certification which include a graduate degree with specific coursework related to ABA, experience, supervision hours and testing.

ABA can be provided by a behavior specialist analyst, assistant behavior specialist analyst (ABSA) and a BHT-ABA. The qualifications for a behavior specialist analyst, formerly a behavior specialist consultant, have been changed from the requirements included in the bulletins. Behavior specialist analysts shall be licensed as a psychologist, professional counselor, marriage and family therapist, clinical social worker, social worker or behavior specialist, and have a graduate or undergraduate-level certification in behavior analysis from the Behavior Analyst Certification Board or other Nationally-recognized

certification board, or a current certification as a behavior specialist analyst with a competency in ABA from the Pennsylvania Certification Board, or a minimum of 12 credits in ABA and 1 year of full-time experience in the provision of ABA, or a minimum of 1 year of full-time experience in the provision of ABA under the supervision of an individual with a graduate-level certification in behavior analysis.

The qualifications for a BHT-ABA, formerly a TSS worker, have also been changed to ensure that staff providing ABA have adequate training and skills to provide ABA services to children, youth and young adults with mental, emotional and behavioral health needs. A BHT-ABA shall have or obtain within 18 months of being hired by an IBHS agency as a BHT-ABA or within 2 years after the effective date of adoption of this proposed rulemaking, whichever is later, a behavior analysis certification from a Nationally-recognized certification board or the Pennsylvania Certification Board. If an individual does not have the required certification, the individual can be a BHT-ABA for 18 months after being hired by an IBHS agency as a BHT-ABA or for 2 years after the effective date of adoption of this proposed rulemaking, whichever is later, if the individual has a bachelor's degree in psychology, social work, nursing, counseling, education or related field or if the individual has an associate's degree or at least 60 credits towards a bachelor's degree with 12 credits in providing ABA and a minimum of 1 year of full-time experience in the provision of ABA. The Department will be engaging the Pennsylvania Certification Board to develop a State-specific certification in ABA for BHTs based upon the recommendations of stakeholders.

This proposed rulemaking also includes a staff position that allows a professional who meets all of the requirements for licensure as a behavior specialist under 49 Pa. Code § 18.524 (relating to criteria for licensure as behavior specialist) with the exception of the experience requirement to be employed as an ABSA. This will provide a path for an ABSA to gain the required hours of experience for licensure while providing ABA under the supervision of a qualified individual. This will increase the availability of ABA services while ensuring that ABA services are provided by qualified and appropriately supervised individuals. An individual who has a bachelor's degree in psychology, social work, counseling, education or related field and an undergraduate-level certification in behavior analysis or at least 12 credits in ABA and 6 months of experience in providing ABA can also be employed as an ABSA.

Supervision requirements have been included in this proposed rulemaking to ensure staff providing ABA services have the knowledge and skill to carry out the specific procedures and interventions that are identified in the ITP. Supervision includes direct observation of the provision of ABA to a child, youth or young adult during the implementation of the ITP goals. Supervision requirements are based upon staff qualifications, skills and job functions. Documentation of supervision is consistent with other IBHS supervision requirements and provides a mechanism to design the individual training plan for each staff.

This proposed rulemaking requires all staff providing ABA to have initial and ongoing training related to ABA with the number of hours of training varying based upon staff qualifications, credentials, experience and job function. Behavior specialist analysts who are licensed as behavior specialists will be required to complete at least

45 hours of training related to ABA that is approved by the Behavior Analyst Certification Board or the Department before independently providing ABA services to children, youth or young adults. ABA training completed prior to obtaining licensure as a behavior specialist may be counted towards the 45 hours of training related to ABA. In addition, behavior specialist analysts shall complete at least 16 hours of training annually that is approved by the Behavior Analyst Certification Board or the Department and related to the behavior specialist analyst's specific job functions. An ABSA who does not have a graduate or undergraduate certification in behavior analysis shall complete at least 20 hours of training related to ABA that is approved by the Behavior Analyst Certification Board or the Department before independently providing ABA services to a child, youth or young adult and at least 20 hours of training annually that is approved by the Behavior Analyst Certification Board or the Department and related to the ABSA's specific job functions. Finally, a BHT-ABA who does not have an undergraduate certification in behavior analysis shall complete the initial training requirements for a BHT that provides individual services and the training requirements a BHT shall complete during the BHT's first 6 months of employment. In addition, a BHT-ABA who does not have an undergraduate certification in behavior analysis shall complete at least 20 hours of training related to ABA that is approved by the Behavior Analyst Certification Board or the Department before independently providing ABA services to a child, youth or young adult and at least 20 hours of training annually that is approved by the Behavior Analyst Certification Board or the Department that is related to the BHT-ABA's specific job functions.

EBT—§ 5240.93

EBT is behavioral health therapy that uses scientifically established behavioral health interventions. This proposed rulemaking requires that an IBHS agency be licensed or certified from the entity that developed or owns the EBT that is being provided if required to provide the EBT. An IBHS agency can also use a model intervention that it has developed and that has been designated by the Department as a model intervention. This will provide IBHS agencies with the opportunity to expand the service array to meet the therapeutic needs of children, youth and young adults. Staff that provide EBT shall meet the qualifications and receive supervision as set forth in the EBT.

Group services— §§ 5240.101 and 5240.103—5240.108

This proposed rulemaking provides for group services for children, youth or young adults with mental, emotional and behavioral health needs that may benefit from a group intervention format that includes psychotherapy, structured therapeutic activities and community integration activities to address a child's, youth's or young adult's identified treatment needs. The services assist the child, youth or young adult to learn skills and strategies in a group format that will improve functioning in the home, school or community setting. Individual interventions may be provided to address therapeutic needs identified in the written order for group services. Group services are intended to replace summer therapeutic activities programs (STAP) and this proposed rulemaking incorporates the elements of STAP, although it expands the ability of IBHS agencies to provide group services. Group services can be provided for longer lengths of time than STAP and be provided in the school setting and at the IBHS agency site if approved in the service description. Stakeholders indicated that engaging in group activities may help the

child, youth or young adult transfer and maintain skills in an array of different settings. This input was the impetus for including agency sites as places where group services may be delivered.

This proposed rulemaking requires that in addition to an administrative and clinical director, an IBHS agency that provides group services shall have a mental health professional. A mental health professional is required to have the same qualifications as a mobile therapist that provides individual services. Staff of an IBHS agency that provides group services may also include mental health workers and BHTs. A mental health worker that provides group services shall have either a bachelor's degree in a recognized clinical discipline including social work, psychology, nursing, rehabilitation or activity therapies, or have a graduate degree in a clinical discipline. A BHT shall have the qualifications of a BHT who provides individual services. If staff provides specialized therapies such as music, dance and movement, play or occupational therapies, the staff person shall be Nationally certified in the specific therapy, a mental health professional with at least 12 graduate-level credit hours in the specialized therapy and at least 1 year of supervised experience in the use of the specialized therapy technique or a mental health professional supervised by a Nationally-credentialed activities therapist.

Training requirements are established for each staff to ensure qualified staff provide group services. Mental health professionals who do not have a current professional license will be required to complete at least 16 hours of Department-approved training annually related to the mental health professional's specific job functions, mental health workers will be required to complete at least 20 hours of Department-approved training annually related to the mental health worker's specific job functions and BHTs who provide group services will be required to complete the same annual training as BHTs who provide individual services.

A mental health professional can provide individual, group and family psychotherapy. A mental health professional can also design psychoeducational group activities, assess the strengths and therapeutic needs of a child, youth or young adult, and develop a child's, youth's or young adult's ITP. A mental health worker can assist the mental health professional with conducting group psychotherapy; facilitate psychoeducational group activities; assist a child, youth or young adult to achieve a goal by implementing the child's, youth's or young adult's ITP; support a child, youth or young adult with the development of appropriate behaviors and interpersonal relationships in the community; and help a child, youth or young adult develop coping skills to aid in the development of age appropriate interpersonal relationships with peers. A BHT can assist with the facilitation of psychoeducational group activities; provide instruction on how to manage and control emotional responses in a group setting; provide behavioral stabilization and interventions to children, youth and young adults that support the child, youth or young adult in community settings; and model problem solving skills.

As with all other IBHS addressed in this chapter, this proposed rulemaking requires a written order prior to the initiation of group services, a comprehensive face-to-face assessment after the initiation of services with the same elements required for individual services, and the development of a strength-based ITP to address the therapeutic needs identified in the written order and the assessment. The time frames for the completion of the assessment and ITP are different for group services than

for other services because group services may be provided for a specific period of time based upon the approved service description and the written order.

This proposed rulemaking includes additional requirements for group services that are provided in a school setting. These include that there be a written agreement with the authorized representative of the school that delineates the roles and responsibilities of the school staff and IBHS agency staff and assures a collaborative relationship between school staff and IBHS agency staff.

Waivers—§ 5240.111

This proposed rulemaking allows an IBHS agency to submit a written request to the Department for a waiver of a specific requirement of Chapter 5240. The Department may grant a waiver unconditionally or subject to conditions that shall be met and may revoke a waiver if conditions required by the waiver are not met. The Department will grant a waiver only in exceptional circumstances and if the waiver does not jeopardize the health and safety of the children, youths or young adults served by the IBHS agency; the waiver will not adversely affect the quality of services provided by the IBHS agency; the intent of the requirement to be waived will still be met; children, youth or young adults will benefit from the waiver of the requirement; and the waiver does not violate any Federal or State statute or other regulation.

Affected Individuals and Organizations

This proposed rulemaking affects children, youth and young adults with mental, emotional or behavioral health needs currently receiving BHRS and their families and caregivers and the agencies that provide these services. Approximately 228 agencies are enrolled in the MA Program and currently provide BHRS to approximately 60,000 children, youth and young adults. This proposed rulemaking will also affect providers that serve children, youth and young adults with a behavioral health diagnosis, including autism spectrum disorder, that are not currently enrolled in the MA Program.

The Department engaged in an active community participation process throughout the development of this proposed rulemaking to ensure that children, youth and young adults under 21 years of age that need IBHS and their families and the agencies that provide the services had the opportunity to provide input, express concerns and participate in the drafting process.

A total of 75 individuals were involved in a stakeholder workgroup that provided input on this proposed rulemaking, including providers of BHRS, advocates for individuals with autism spectrum disorder, physicians, family members of children receiving BHRS including ABA services, county administrators and representatives from provider associations, the Office of Mental Health and Substance Abuse Services Planning Council, the Pennsylvania Mental Health Consumers Association, the Pennsylvania Health Law Project, Disability Rights Pennsylvania and MA behavioral health managed care organizations. From May to September 2016, the Department participated in face-to-face meetings, telephone conference calls and webinars with stakeholders. The purpose of the workgroup meetings was for the Department to gather input and listen to concerns from interested parties regarding the development of a set of regulations for the licensure of agencies that will be providing IBHS.

Each of the major sections of the draft rulemaking were reviewed and discussed by members of the workgroup through a series of six telephone conference calls and

webinars and two face-to-face meetings. One of the initial recommendations from the stakeholder workgroup was to change the name of the service from BHRS to IBHS. Key sections of this proposed rulemaking were the focus of the discussion during each of the telephone calls. Areas discussed with the stakeholder workgroup included the array of services to be included in the regulations, staff qualifications and training requirements for each service, service planning, the coordination of care and requirements for provider eligibility. Workgroup members were provided with notes and drafts of the regulations after each call or webinar. A dedicated e-mail account was established for workgroup members to submit written comments between meetings. Workgroup members were requested to gather input and feedback from other interested parties during the drafting of this proposed rulemaking. In addition, information on the draft rulemaking was provided at meetings with organizations and committees, including the Rehabilitation Community Providers Association, including its Mental Health Committee and Children's Committee; committees sponsored by the County Commissioner's Association of Pennsylvania, including the County Administrator's Advisory Committee, the Mental Health Committee and the HealthChoices Committee; county Mental Health Administrators and Child and Adolescent Service System Program Coordinators; the Managed Care Subcommittee of the Medical Assistance Advisory Committee; and the Mental Health Planning Council. Numerous edits were made to the draft rulemaking based upon the comments received from workgroup members and other interested parties.

The stakeholder workgroup again met from January to March 2017 to provide input on Chapter 1155, the companion payment regulations. There were again face-to-face meetings, telephone conference calls and webinars with stakeholders and workgroup members who provided comments and feedback on Chapter 1155, the payment regulations, and additional comments and feedback on Chapter 5240, the licensing regulations. The draft rulemaking was revised after each meeting to reflect the input of workgroup members. Workgroup members were able to provide written comments between meetings using the e-mail account.

The Department appreciates the workgroup members' expertise, time and commitment to the draft rulemaking and the helpful comments which guided the drafting of this proposed rulemaking.

The Department intends to reconvene the stakeholder workgroup to review the comments received and to consider any edits to this proposed rulemaking based upon the analysis of the formal public comments, comments from the Independent Regulatory Review Commission (IRRC), and comments from the House Human Services Committee, the House Health Committee and the Senate Committee on Health and Human Services.

Accomplishments and Benefits

This proposed rulemaking benefits children, youth and young adults under 21 years of age with mental, emotional and behavioral health needs by promoting quality services by establishing a minimum standard for licensure of IBHS agencies, minimum requirements for IBHS agencies to enroll in the MA Program and conditions for the MA Program to pay for IBHS. Additionally, the supervision and training requirements included in this proposed rulemaking will contribute to the development of a qualified IBHS workforce to deliver treatment services, which will also help to improve clinical outcomes for children, youth and young adults receiving IBHS.

This proposed rulemaking will also improve the accessibility of behavioral health care for children, youth and young adults under 21 years of age by eliminating requirements that have been identified as barriers to accessing services by workgroup members such as convening an ISPT meeting prior to the delivery of services and completing a comprehensive evaluation prior to a referral for services. In addition, this proposed rulemaking promotes the use of additional evidence-based practices and ABA services, which may reduce the need for higher levels of care or out-of-home placements for children, youth and young adults.

Fiscal Impact

It is anticipated that the implementation of this proposed rulemaking may result in an initial increase in costs for IBHS agencies as a result of changes to staff requirements and qualifications, which will vary based upon the services provided by the agency and the current organizational structure of the agency. The exact fiscal impact is unknown because staffing requirements are similar to the current staffing patterns for agencies that provide BHRS with the exception of the addition of the requirement that the clinical director of an IBHS agency that provides ABA services shall have a graduate-level certification in behavior analysis and BHTs shall be certified or obtain certification within 18 months of being hired by an IBHS agency or within 2 years of the effective date of adoption of this proposed rulemaking, whichever is later. It is anticipated that the ability of an IBHS agency to provide an array of IBHS may offset these costs.

It is also anticipated that IBHS agencies' training costs will decrease as this proposed rulemaking clarifies that staff do not need to repeat initial or annual training when changing employment to a different IBHS agency. Additionally, college coursework on topics that staff shall receive training on, training required for licensure and training related to certification requirements may be substituted for the required trainings, which may decrease the training costs for some staff.

Costs to the Department, local government and individuals receiving IBHS are not anticipated.

Paperwork Requirements

This proposed rulemaking will result in increased paperwork because it requires IBHS agencies to develop additional policies and procedures, and includes a new requirement that IBHS agencies develop quality improvement plans, staff training plans and written agreements to coordinate care with other agencies. The elimination of the requirement for an ISPT meeting will decrease the paperwork required to document the meeting.

Effective Date

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*. IBHS agencies that hold an outpatient psychiatric clinic, a psychiatric partial hospitalization program or family based mental health license and currently provide IBHS are required to comply with the final-form rulemaking as of its effective date and are required to obtain a license under Chapter 5240 upon expiration of their current license. IBHS agencies that are approved to provide ABA services as of the effective date of adoption of this proposed rulemaking are required to comply with the final-form rulemaking as of its effective date and are required to obtain a license under Chapter 5240 within 180 days of the effective date of Chapter 5240. IBHS agencies that do not currently hold an outpatient psychi-

atric clinic, a psychiatric partial hospitalization program or a family based mental health license or are not approved to provide ABA are required upon the effective date of the final-form rulemaking to obtain a license under Chapter 5240 if they are providing IBHS.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Tara Pride, Bureau of Policy, Planning and Program Development, Commonwealth Towers, 11th Floor, P.O. Box 2675, 303 Walnut Street, Harrisburg, PA 17105, RA-PWIBHS@pa.gov within 30 calendar days after the date of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference Regulation No. 14-546 when submitting comments. Individuals with a disability who require an auxiliary aid or service may submit comments by using the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on July 18, 2018, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the Chairpersons of the House Human Services Committee, the House Health Committee and the Senate Health and Human Services Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the rulemaking by the Department, the General Assembly and the Governor.

TERESA D. MILLER,
Secretary

Fiscal Note: 14-546. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 55. HUMAN SERVICES
PART III. MEDICAL ASSISTANCE MANUAL
CHAPTER 1155. INTENSIVE BEHAVIORAL
HEALTH SERVICES
GENERAL PROVISIONS

- Sec.
- 1155.1. Policy.
- 1155.2. Definitions.

SCOPE OF BENEFITS

- 1155.11. Scope of benefits.

PROVIDER PARTICIPATION

- 1155.21. Participation requirements.
- 1155.22. Ongoing responsibilities of providers.

PAYMENT FOR INTENSIVE BEHAVIORAL
HEALTH SERVICES

- 1155.31. General payment policy.
- 1155.32. Payment conditions for individual services.
- 1155.33. Payment conditions for ABA.
- 1155.34. Payment conditions for EBT.
- 1155.35. Payment conditions for group services.
- 1155.36. Covered services.
- 1155.37. Limitations.

UTILIZATION REVIEW

1155.41. Scope of claims review procedures.

ADMINISTRATIVE SANCTIONS

1155.51. Provider misutilization.

GENERAL PROVISIONS**§ 1155.1. Policy.**

(a) The MA Program provides payment for IBHS when the service is medically necessary and provided to eligible children, youth or young adults under 21 years of age with behavioral health diagnoses by licensed IBHS agencies enrolled in the MA Program as providers under this chapter.

(b) Payment for IBHS is subject to the provisions in this chapter, Chapter 1101 (relating to general provisions), the limitations in Chapter 1150 (relating to MA Program payment policies) and the MA Program fee schedule.

(c) This chapter does not apply to individual licensed practitioners or group arrangements of licensed practitioners that bill only for services provided by the licensed practitioners.

§ 1155.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

ABA—Applied behavioral analysis—The design, implementation and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior or to prevent loss of attained skill or function, which includes all of the following:

(i) The use of direct observation, measurement and functional analysis of the relations between environment and behavior.

(ii) The attempt to address one or more behavior challenges or skill deficits using evidence-based principles and practices of learning and behavior.

(iii) The analysis of the relationship between a stimulus, consequence or other variable. The changes of stimuli, consequences or other variables may occur individually, as a combination or in relationship with each other. The change of stimuli, consequences or other variables may be external or internal to the person whose behavior is being analyzed.

Caregiver—An individual with responsibility for the care and supervision of a minor.

Child—A person under 14 years of age.

Consequence—A resulting directly measurable change of a child's, youth's or young adult's behavior produced by a change in a stimulus or stimuli.

DSM—Diagnostic and Statistical Manual of Mental Disorders.

Department—The Department of Human Services of the Commonwealth.

EBT—Evidence-based therapy—Behavioral health therapy that uses scientifically established behavioral health interventions and meets one of the following:

(i) Categorized as effective in the Substance Abuse and Mental Health Services Administration's National Registry of Evidence-based Programs and Practices.

(ii) Categorized as Model or Model Plus in the Blueprints for Healthy Youth Development registry.

(iii) Categorized as well-established by the American Psychological Association's Society of Clinical Child and Adolescent Psychology.

(iv) Rated as having positive effects by the Institute of Education Sciences What Works Clearinghouse.

(v) Designated as a model intervention by the Department.

Group services—Therapeutic interventions provided primarily in a group format through psychotherapy, structured activities and community integration activities that address a child's, youth's or young adult's identified treatment needs. When included in a child's, youth's or young adult's ITP, group services may include individual interventions.

IBHS—Intensive behavioral health services—An array of therapeutic interventions and supports provided to a child, youth or young adult in the home, school or other community setting.

IBHS agency—An entity that provides one or more IBHS.

ICD—International Classification of Diseases.

ITP—Individual treatment plan—A detailed written plan of treatment services specifically tailored to address each child's, youth's or young adult's therapeutic needs that contains the type, amount, frequency, setting and duration of services to be provided and the specific goals, objectives and interventions for each service.

Individual services—Intensive one-to-one therapeutic interventions and supports that are used to reduce and manage identified therapeutic needs, increase coping strategies and support skill development to promote positive behaviors with the goal of stabilizing, maintaining or maximizing functioning of a child, youth or young adult in the home, school or other community setting.

MA—Medical Assistance.

Stimulus—An event, circumstance or condition that can be changed or does change based upon the behavior specialist analyst's manipulation.

Variables—An observed or manipulable condition that can be changed or does change and a directly measurable change of a child's, youth's or young adult's behavior produced by the change.

Young adult—A person 18 years of age or older but under 21 years of age.

Youth—A person 14 years of age or older but under 18 years of age.

SCOPE OF BENEFITS**§ 1155.11. Scope of benefits.**

Children, youth or young adults under 21 years of age with behavioral health diagnoses are eligible for the full range of covered IBHS.

PROVIDER PARTICIPATION**§ 1155.21. Participation requirements.**

In addition to the participation requirements in Chapter 1101 (relating to general provisions), an IBHS agency shall meet all of the following requirements to participate in the MA Program:

(1) Have a current license as an IBHS agency issued by the Department.

(2) Enter into a written provider agreement with the Department.

(3) Be enrolled by the Department.

§ 1155.22. Ongoing responsibilities of providers.

(a) Ongoing responsibilities of IBHS agencies are in Chapters 1101 and 5240 (relating to general provisions; and intensive behavioral health services).

(b) Recordkeeping requirements for IBHS agencies are in §§ 1101.51(e), 5240.41 and 5240.42 (relating to ongoing responsibilities of providers; individual records; and agency records).

(c) A licensed IBHS agency shall have a current license for each branch location or satellite location.

(d) Each branch location or satellite location of a licensed IBHS agency shall be enrolled by the Department.

(e) An IBHS agency shall notify the Department, in writing, of a change in name, address or services provided prior to the effective date of the change.

PAYMENT FOR INTENSIVE BEHAVIORAL HEALTH SERVICES

§ 1155.31. General payment policy.

(a) Except as provided in subsection (b), payment is made to licensed IBHS agencies for medically necessary IBHS provided by qualified individuals under the supervision and direction of a clinical director that meets the qualifications in § 5240.12(b) or § 5240.81(b) (relating to staff qualifications), subject to the conditions and limitations in this chapter and Chapters 1101 and 1150 (relating to general provisions; and MA Program payment policies) and the MA Program fee schedule.

(b) Payment will be made to an IBHS agency that holds an outpatient psychiatric clinic, a psychiatric partial hospitalization program or a family based mental health license issued by the Department as of _____ (*Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.*), and the license has not expired.

(c) Payment will not be made for a compensable IBHS if payment is available through a third party. Providers shall comply with § 1101.64 (relating to third-party medical resources (TPR)).

(d) Payment will not be made for services rendered at an IBHS agency's branch or satellite location if the branch or satellite location is not licensed and enrolled.

§ 1155.32. Payment conditions for individual services.

Payment will be made to a licensed IBHS agency for individual services if all of the following conditions are met:

(1) There is a written order for services based on a face-to-face interaction with the child, youth or young adult that meets all of the following:

(i) Written within 6 months prior to the initiation of IBHS.

(ii) Written by a licensed physician, licensed psychologist, certified registered nurse practitioner or other licensed professional whose scope of practice includes the diagnosis and treatment of behavioral health disorders.

(iii) Includes a behavioral health disorder diagnosis listed in the most recent edition of the DSM or ICD.

(iv) Orders one or more IBHS for the child, youth or young adult and includes all of the following:

(A) The clinical information to support the medical necessity of each service ordered.

(B) The maximum number of hours of each service each month.

(C) The settings where services may be provided.

(D) The measurable improvements in the identified therapeutic needs that indicate when services may be reduced, changed or terminated.

(2) A comprehensive face-to-face assessment has been completed by a behavior specialist or mobile therapist within 15 days of the initiation of individual services and prior to developing the ITP in accordance with § 5240.21 (relating to assessment), or a comprehensive face-to-face assessment has been reviewed and updated within the last 6 months or a comprehensive face-to-face assessment has been reviewed and updated because one of the following has occurred:

(i) A parent or caregiver of a child or youth requests an update.

(ii) A young adult or youth requests an update.

(iii) A child or youth experiences a change in living situation that results in a change of the child's or youth's primary caregivers.

(iv) The child, youth or young adult completes an ITP goal.

(v) The child, youth or young adult is not progressing towards the goals identified in the ITP within 90 days from the initiation of services identified in the ITP.

(vi) The child, youth, young adult or the family experiences a crisis event.

(vii) An IBHS agency staff person, primary care physician, other treating clinician, case manager or other professional involved in the child's, youth's or young adult's services determines an update is needed.

(3) The assessment and all updates have been signed by the IBHS agency staff person that completed the assessment and the supervisor of the staff person that completed the assessment.

(4) An ITP based upon the assessment and the written order for services has been developed within 30 days after the initiation of services in accordance with § 5240.22 (relating to individual treatment plan), or an ITP has been reviewed and updated within the last 6 months or an ITP has been reviewed and updated because one of the following has occurred:

(i) An ITP goal is completed.

(ii) No significant progress is made within 90 days from the initiation of services identified in the ITP.

(iii) A youth or young adult requests a change.

(iv) A parent or caregiver of a child or youth requests a change.

(v) The child, youth or young adult experiences a crisis event.

(vi) The ITP is no longer clinically appropriate for the child, youth or young adult.

(vii) An IBHS agency staff person, primary care physician, other treating clinician, case manager or other professional involved in the child's, youth's or young adult's services recommends a change.

(5) The ITP and all updates have been reviewed and signed by the youth, young adult, or at least one parent or caregiver of the child or youth, the staff person who developed the ITP and the supervisor of the staff person who developed the ITP.

(6) For continued individual services, a child, youth or young adult shall have an order written in the last 6 months that complies with paragraph (1)(ii)—(iv).

(7) For individual services reinitiated after a child, youth or young adult is discharged, payment will be made for up to 90 days if reinitiation of services was requested within 60 days after discharge and there is a written order that complies with paragraph (1)(ii)—(iv).

§ 1155.33. Payment conditions for ABA.

Payment will be made to a licensed IBHS agency for ABA services if all of the following conditions are met:

(1) There is a written order for ABA services based on a face-to-face interaction with the child, youth or young adult that meets all of the following:

(i) Written within 12 months prior to the initiation of ABA.

(ii) Written by a licensed physician, licensed psychologist, certified registered nurse practitioner or other licensed professional whose scope of practice includes the diagnosis and treatment of behavioral health disorders.

(iii) Includes a behavioral health disorder diagnosis that is listed in the most recent edition of the DSM or ICD.

(iv) Orders ABA services for the child, youth or young adult and includes all of the following:

(A) The clinical information to support the medical necessity of each ABA service ordered.

(B) The maximum number of hours of each ABA service each month.

(C) The settings where ABA services may be provided.

(D) The measurable improvements in targeted behaviors or skill deficits that indicate when services may be reduced, changed or terminated.

(2) A comprehensive face-to-face assessment has been completed by a behavior specialist analyst prior to the development of the ITP in accordance with § 5240.85 (relating to assessment), or a comprehensive face-to-face assessment has been reviewed and updated within the last year or a comprehensive face-to-face assessment has been reviewed and updated because one of the following has occurred:

(i) A parent or caregiver of a child or youth requests an update.

(ii) A youth or young adult requests an update.

(iii) A child or youth experiences a change in living situation that results in a change of the child's or youth's primary caregivers.

(iv) The child, youth or young adult completes an ITP goal.

(v) The child, youth or young adult is not progressing towards the goals identified in the ITP within 90 days from the initiation of the ABA services identified in the ITP.

(vi) The child, youth, young adult or the family experiences a crisis event.

(vii) The behavior specialist analyst, ABA clinical director, primary care physician, other treating clinician, case manager or other professional involved the child's, youth's or young adult's services determines an update is needed.

(3) The assessment and all updates have been signed by the behavior specialist analyst that completed the assessment and the ABA clinical director.

(4) An ITP based upon the assessment and the written order for ABA services has been developed within 30 days after the initiation of ABA services in accordance with § 5240.86 (relating to individual treatment plan), or an ITP has been reviewed and updated within the last 6 months or an ITP has been reviewed and updated because one of the following has occurred:

(i) An ITP goal is completed.

(ii) No significant progress has been made within 90 days from the initiation of ABA services identified in the ITP.

(iii) A youth or young adult requests a change.

(iv) A parent or caregiver of a child or youth requests a change.

(v) The child, youth or young adult experiences a crisis event.

(vi) The ITP is no longer clinically appropriate for the child, youth or young adult.

(vii) A behavior specialist analyst, ABA clinical director, primary care physician, other treating clinician, case manager or other professional involved in the child's, youth's or young adult's services recommends a change.

(5) The ITP and all updates have been reviewed and signed by the youth, young adult, or at least one parent or caregiver of the child or youth, the behavior specialist analyst who developed the ITP and the ABA clinical director.

(6) For continued ABA services, a child, youth or young adult shall have an order written in the last 12 months that complies with paragraph (1)(ii)—(iv).

(7) For ABA services reinitiated after a child, youth or young adult is discharged, payment will be made for up to 90 days if reinitiation of services was requested within 60 days after discharge and there is a written order that complies with paragraph (1)(ii)—(iv).

§ 1155.34. Payment conditions for EBT.

Payment will be made to a licensed IBHS agency for EBT services if all of the following conditions are met:

(1) There is a written order for EBT services that meets the requirements of § 1155.32(1) (relating to payment conditions for individual services).

(2) A comprehensive face-to-face assessment has been completed by a staff person with the qualifications required by the EBT within 15 days of the initiation of the service and prior to developing the ITP in accordance with § 5240.92 (relating to assessment and individual treatment plan), or a comprehensive face-to-face assessment has been reviewed and updated within the last 6 months or a comprehensive face-to-face assessment has been reviewed and updated because one of the following has occurred:

(i) A parent or caregiver of a child or youth requests an update.

(ii) A young adult or youth requests an update.

(iii) A child or youth experiences a change in living situation that results in a change of the child's or youth's primary caregivers.

(iv) The child, youth or young adult completes an ITP goal.

(v) The child, youth or young adult is not progressing towards the goals identified in the ITP within 90 days from the initiation of services identified in the ITP.

(vi) The child, youth, young adult or the family experiences a crisis event.

(viii) An IBHS agency staff person, primary care physician, other treating clinician, case manager or other professional involved in the child's, youth's or young adult's services determines an update is needed.

(3) The assessment and all updates have been signed by a staff person with the qualifications required by the EBT and the staff person's supervisor.

(4) An ITP based upon the assessment and the written order for services has been developed within 30 days of the initiation of services in accordance with § 5240.92, or an ITP has been reviewed and updated within the last 6 months or an ITP has been reviewed and updated because one of the following has occurred:

(i) An ITP goal is completed.

(ii) No significant progress is made within 90 days from the initiation of the EBT service identified in the ITP.

(iii) A youth or young adult requests a change.

(iv) A parent or caregiver of a child or youth requests a change.

(v) The child, youth or young adult experiences a crisis event.

(vii) The ITP is no longer clinically appropriate for the child, youth or young adult.

(viii) An IBHS agency staff person, primary care physician, other treating clinician, case manager or other professional involved in the child's, youth's or young adult's services recommends a change.

(5) The ITP and all updates have been reviewed and signed by the youth, young adult, or at least one parent or caregiver of the child or youth, the staff person who developed the ITP and the supervisor of the staff person who developed the ITP.

(6) For continued EBT services, a child, youth or young adult shall have an order written in the last 6 months that complies with § 1155.32(1)(ii)—(iv).

(7) The IBHS agency has a current certification or licensure from the National certification organization or entity that developed or owns the EBT provided or the EBT has been designated by the Department as a model intervention.

(8) The IBHS agency delivers the services in accordance with the specific EBT.

(9) For EBT services reinitiated after a child, youth or young adult is discharged, payment will be made for up to 90 days if reinitiation of services was requested within 60 days after discharge and there is a written order that complies with § 1155.32(1)(ii)—(iv).

§ 1155.35. Payment conditions for group services.

Payment will be made to a licensed IBHS agency for group services if all of the following conditions are met:

(1) There is a written order for group services that meets the requirements of § 1155.32(1) (relating to payment conditions for individual services).

(2) A comprehensive face-to-face assessment has been completed by a mental health professional within 5 days of the initiation of group services and prior to developing the ITP in accordance with § 5240.105 (relating to assessment), or a comprehensive face-to-face assessment has been reviewed and updated within the last 6 months or a comprehensive face-to-face assessment has been reviewed and updated because one of the following has occurred:

(i) A parent or caregiver of a child or youth requests an update.

(ii) A young adult or youth requests an update.

(iii) A child or youth experiences a change in living situation that results in a change of the child's or youth's primary caregivers.

(iv) The child, youth or young adult completes an ITP goal.

(v) The child, youth or young adult is not progressing towards the goals identified in the ITP within 90 days from the initiation of services identified in the ITP.

(vi) The child, youth, young adult or the family experiences a crisis event.

(vii) An IBHS agency staff person, primary care physician, other treating clinician, case manager or other professional involved in the child's, youth's or young adult's services determines an update is needed.

(3) The assessment and all updates have been signed by the mental health professional that completed the assessment and the mental health professional's supervisor.

(4) An ITP based upon the assessment and written order for group services has been developed within 10 days after the initiation of services in accordance with § 5240.106 (relating to individual treatment plan), an ITP has been reviewed and updated within the last 6 months or an ITP has been reviewed and updated because one of the following has occurred:

(i) An ITP goal is completed.

(ii) No significant progress is made within 45 days from the initiation of group services identified in the ITP.

(iii) A youth or young adult requests a change.

(iv) A parent or caregiver of a child or youth requests a change.

(v) The child, youth or young adult experiences a crisis event.

(vi) The ITP is no longer clinically appropriate for the child, youth or young adult.

(vii) An IBHS agency staff person, primary care physician, other treating clinician, case manager or other professional involved in the child's, youth's or young adult's services recommends a change.

(5) The ITP and all updates have been reviewed and signed by the youth, young adult, or at least one parent or caregiver of the child or youth, the mental health professional who developed the ITP and the IBHS clinical director.

(6) For continued group services, a child, youth or young adult shall have an order written in the last 6 months that complies with § 1155.32(1)(ii)—(iv).

(7) For group services reinitiated after a child, youth or young adult is discharged, payment will be made for up to 90 days if reinitiation of services was requested within 60 days after discharge and there is a written order that complies with § 1155.32(1)(ii)—(iv).

§ 1155.36. Covered services.

The Department will pay for all of the following IBHS when the services are medically necessary:

- (1) Individual services, which include:
 - (i) Services provided by a behavior specialist.
 - (ii) Services provided by a mobile therapist.
 - (iii) Services provided by a behavioral health technician.
- (2) ABA services, which include:
 - (i) Services provided by a behavior specialist analyst.
 - (ii) Services provided by an assistant behavior specialist analyst.
 - (iii) Services provided by a behavioral health technician-ABA.
- (3) EBT.
- (4) Group services.
- (5) Services approved through the program exception process under § 1150.63 (relating to waivers).

§ 1155.37. Limitations.

Payment is subject to all of the following limitations:

- (1) Services provided to a child, youth or young adult must be included in the agency's approved service description.
- (2) Services provided to a child, youth or young adult residing in a 24-hour residential facility will not be paid for unless the IBHS is ordered in accordance with § 1155.32(1) or § 1155.33(1) (relating to payment conditions for individual services; and payment conditions for ABA) and are provided within 60 days of discharge from the facility to assist in a child's, youth's or young adult's transition to the home or community setting, and the service does not duplicate services included in the facility's rate.

UTILIZATION REVIEW

§ 1155.41. Scope of claims review procedures.

Claims submitted for payment under the MA Program are subject to the utilization review procedures in Chapter 1101 (relating to general provisions).

ADMINISTRATIVE SANCTIONS

§ 1155.51. Provider misutilization.

If an IBHS agency is determined to have billed for services inconsistent with MA Program regulations, to have provided services outside the scope of customary standards of clinical practice or to have otherwise violated the standards in the provider agreement, the IBHS agency is subject to the sanctions in Chapter 1101 (relating to general provisions).

PART VII. MENTAL HEALTH MANUAL

Subpart D. NONRESIDENTIAL AGENCIES/FACILITIES/SERVICES

CHAPTER 5240. INTENSIVE BEHAVIORAL HEALTH SERVICES

GENERAL PROVISIONS

Sec.	
5240.1.	Scope.
5240.2.	Definitions.
5240.3.	Provider eligibility.
5240.4.	Organizational structure.
5240.5.	Service description.
5240.6.	Restrictive procedures.
5240.7.	Coordination of services.

STAFFING

5240.11.	Staff requirements.
5240.12.	Staff qualifications.
5240.13.	Staff training plan.
5240.14.	Criminal history checks and child abuse certification.

SERVICE PLANNING AND DELIVERY

5240.21.	Assessment.
5240.22.	Individual treatment plan.
5240.23.	Service provision.

DISCHARGE

5240.31.	Discharge.
5240.32.	Discharge summary.

RECORDS

5240.41.	Individual records.
5240.42.	Agency records.
5240.43.	Record retention and disposal.

NONDISCRIMINATION

5240.51.	Nondiscrimination.
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QUALITY IMPROVEMENT

5240.61.	Quality improvement requirements.
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INDIVIDUAL SERVICES

5240.71.	Staff qualifications.
5240.72.	Supervision.
5240.73.	Staff training requirements.
5240.74.	Individual services initiation requirements.
5240.75.	Individual services provision.

APPLIED BEHAVIORAL ANALYSIS

5240.81.	Staff qualifications.
5240.82.	Supervision.
5240.83.	Staff training requirements.
5240.84.	ABA initiation requirements.
5240.85.	Assessment.
5240.86.	Individual treatment plan.
5240.87.	ABA services provision.

EVIDENCE-BASED THERAPY

5240.91.	EBT initiation requirements.
5240.92.	Assessment and individual treatment plan.
5240.93.	EBT requirements.

GROUP SERVICES

5240.101.	Staff requirements and qualifications.
5240.102.	Supervision.
5240.103.	Staff training requirements.
5240.104.	Group services initiation requirements.
5240.105.	Assessment.
5240.106.	Individual treatment plan.
5240.107.	Group services provision.
5240.108.	Requirements for group services in school settings.

WAIVERS

5240.111.	Waivers.
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GENERAL PROVISIONS

§ 5240.1. Scope.

(a) This chapter applies to all entities that provide IBHS, as defined in this chapter, to children, youth or

young adults under 21 years of age and provides the minimum requirements that shall be met for an agency to obtain a license to provide one or more IBHS.

(b) This chapter does not apply to individual licensed practitioners or group arrangements in which only licensed practitioners provide IBHS.

§ 5240.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise:

ABA—*Applied behavioral analysis*—The design, implementation and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior or to prevent loss of attained skill or function, which includes all of the following:

(i) The use of direct observation, measurement and functional analysis of the relations between environment and behavior.

(ii) The attempt to address one or more behavior challenges or skill deficits using evidence-based principles and practices of learning and behavior.

(iii) The analysis of the relationship between a stimulus, consequence or other variable. The changes of stimuli, consequences or other variables may occur individually, as a combination or in relationship with each other. The change of stimuli, consequences or other variables may be external or internal to the person whose behavior is being analyzed.

ABSA—Assistant behavior specialist analyst.

ASD—*Autism spectrum disorder*—A pervasive neurodevelopmental disorder present from early childhood which involves maladaptive or restrictive behaviors, impairments in communication, and impairments in social interactions and relationships as described in the diagnostic criteria in the most recent edition of the *Diagnostic and Statistical Manual of Mental Disorders*.

BCaBA—*Board-certified assistant behavior analyst*—An undergraduate-level professional certified by the Behavior Analyst Certification Board to provide ABA services.

BCAT—*Board-certified autism technician*—A paraprofessional certified by the Behavioral Intervention Certification Council to provide ABA services.

BCBA—*Board-certified behavior analyst*—A graduate-level professional certified by the Behavior Analyst Certification Board to design and provide ABA services. BCBA refers to both master's (BCBA) and doctoral level credentials (BCBA-D).

BHT—Behavioral health technician.

BHT-ABA—Behavioral health technician-applied behavioral analysis.

Caregiver—An individual with responsibility for the care and supervision of a minor.

Child—A person under 14 years of age.

Consequence—A resulting directly measurable change of a child's, youth's or young adult's behavior produced by a change in a stimulus or stimuli.

Department—The Department of Human Services of the Commonwealth.

EBT—*Evidence-based therapy*—Behavioral health therapy that uses scientifically established behavioral health interventions and meets one of the following:

(i) Categorized as effective in the Substance Abuse and Mental Health Services Administration's National Registry of Evidence-based Programs and Practices.

(ii) Categorized as Model or Model Plus in the Blueprints for Healthy Youth Development registry.

(iii) Categorized as well-established by the American Psychological Association's Society of Clinical Child and Adolescent Psychology.

(iv) Rated as having positive effects by the Institute of Education Sciences What Works Clearinghouse.

(v) Designated as a model intervention by the Department.

Formal support—An agency, organization or person that provides assistance or resources to a child, youth or young adult within the context of an official role.

Full-time equivalent—37.5 hours per week of staff time.

Group services—Therapeutic interventions provided primarily in a group format through psychotherapy, structured activities and community integration activities that address a child's, youth's or young adult's identified treatment needs. When included in a child's, youth's or young adult's ITP, group services may include individual interventions.

IBHS—*Intensive behavioral health services*—An array of therapeutic interventions and supports provided to a child, youth or young adult in the home, school or other community setting.

IBHS agency—An entity that provides one or more IBHS.

ITP—*Individual treatment plan*—A detailed written plan of treatment services specifically tailored to address each child's, youth's or young adult's therapeutic needs that contains the type, amount, frequency, setting and duration of services to be provided and the specific goals, objectives and interventions for each service.

Individual services—Intensive one-to-one therapeutic interventions and supports that are used to reduce and manage identified therapeutic needs, increase coping strategies and support skill development to promote positive behaviors with the goal of stabilizing, maintaining or maximizing functioning of a child, youth or young adult in the home, school or other community setting.

Manual restraint—A physical hands-on technique that restricts the movement or function of a child, youth or young adult, or a portion of a child's, youth's or young adult's body. A manual restraint does not include the use of hands-on assistance when needed to enable a child, youth or young adult achieve a goal or objective identified in the ITP.

Mental health direct service—Working directly with a child, youth or young adult to provide a mental health service.

Natural support—An agency, organization or person that provides support to a child, youth or young adult in a personal or nonprofessional role.

RBT—*Registered behavior technician*—A paraprofessional certified by the Behavior Analyst Certification Board to implement an ITP that includes ABA services.

Restrictive procedure—A practice that limits or restricts a child's, youth's or young adult's freedom of movement, activity or function.

Stimulus—An event, circumstance or condition that can be changed or does change based upon the behavior specialist analyst's manipulation.

Systems of care principles—Guiding philosophies that form the essential elements of a coordinated network of community-based services and supports that is organized to meet the challenges of children, youth and young adults with serious mental health needs and their families that is family-driven and youth-guided and includes interagency collaboration, individualized strengths-based care, cultural and linguistic competence, community-based services and accountability.

Trauma—The result of an event, series of events or set of circumstances that is experienced by a child, youth or young adult as physically or emotionally harmful or threatening and that has lasting effects on the child's, youth's or young adult's functioning and physical, social, emotional or spiritual well-being.

Trauma-informed approach—Recognizes the widespread impact of trauma including the signs and symptoms of trauma and potential paths for recovery by integrating knowledge about trauma into policies, procedures and practices that avoids retraumatization.

Variables—An observed or manipulable condition that can be changed or does change and a directly measurable change of a child's, youth's or young adult's behavior produced by the change.

Young adult—A person 18 years of age or older but under 21 years of age.

Youth—A person 14 years of age or older but under 18 years of age.

§ 5240.3. Provider eligibility.

(a) An IBHS agency shall obtain a license from the Department prior to beginning operations.

(b) An IBHS agency that holds an outpatient psychiatric clinic, a psychiatric partial hospitalization program or a family based mental health license issued by the Department as of _____ (*Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.*), is required to comply with this chapter as of that date.

(c) An IBHS agency that holds an outpatient psychiatric clinic, a psychiatric partial hospitalization program or a family based mental health license issued by the Department as of _____ (*Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.*), is required to obtain a license under this chapter when that license expires.

(d) An IBHS agency that is approved to provide ABA services shall be required to obtain a license under this chapter within 180 days of _____ (*Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.*).

§ 5240.4. Organizational structure.

(a) An IBHS agency shall have an administrative director, clinical director and staff.

(b) The organizational structure of the IBHS agency must be specified in an organizational chart and the IBHS agency shall notify the Department within 10 days of a change in the organizational structure of the IBHS agency.

§ 5240.5. Service description.

(a) As part of the initial licensing application, the IBHS agency shall submit to the Department for review

and approval a written description of services to be provided that must include all of the following:

(1) Identification and description of each service offered by the IBHS agency.

(2) Purpose of the service being offered by the IBHS agency, expected duration of the service and expected outcomes for children, youth or young adults.

(3) Identification of the target population served by each service, including age range and presenting issues, which may include specific diagnoses.

(4) The days and hours each service is available.

(5) Identification of the counties where the IBHS agency provides each service.

(6) Description of admission criteria.

(7) Description of discharge criteria.

(8) Description of any exclusionary criteria.

(9) Staffing ratios for each service offered by the IBHS agency.

(10) Maximum number of children, youth or young adults that may be assigned to a BHT or BHT-ABA, if a BHT or BHT-ABA will be providing services.

(11) Treatment modalities.

(12) Locations where the service are offered.

(b) Prior to the IBHS agency changing its services or if the information in the service description is otherwise no longer accurate, the IBHS agency shall submit an updated service description to the Department for review and approval.

§ 5240.6. Restrictive procedures.

(a) A restrictive procedure shall only be used in an emergency situation to prevent self-injury or to prevent injury to others by a child, youth or young adult and after all of the following:

(1) Every attempt has been made to anticipate and de-escalate the behavior using methods of intervention that are less intrusive than a restrictive procedure.

(2) Less intrusive techniques and resources appropriate to the behavior have been tried but have failed.

(b) A manual restraint is the only restrictive procedure that may be used and may not:

(1) Apply pressure or weight on a child's, youth's or young adult's respiratory system.

(2) Use a prone position.

(c) The position of the manual restraint or the staff person applying a manual restraint shall be changed at least every 10 minutes during the application of the manual restraint.

(d) A staff person who is not applying the manual restraint procedure shall observe and document the physical and emotional condition of the child, youth or young adult at least every 10 minutes during the application of the manual restraint.

(e) A manual restraint shall be discontinued when the child, youth or young adult demonstrates the ability to regain self-control.

(f) An IBHS agency shall have policies and procedures for the use of manual restraints that include all of the following:

(1) Appropriate use of the manual restraint procedure, including all prohibitions on the use of a manual restraint.

(2) Required use of less intrusive techniques and resources appropriate to the behavior prior to the use of a manual restraint procedure.

(3) Immediate discontinuation of the manual restraint procedure when the child, youth or young adult demonstrates the ability to regain self-control.

(g) An IBHS agency shall require yearly training for each staff person who administers a manual restraint procedure that includes all of the following:

(1) De-escalation techniques and strategies.

(2) Proper use of the specific manual restraint procedure that is appropriate for the age and weight of the child, youth or young adult.

(3) Demonstrated experience in the proper use of the manual restraint procedure on other staff.

(4) A testing process to demonstrate the ability to properly apply the specific manual restraint procedure.

(h) An IBHS agency shall keep a record of each staff person's training in the use of manual restraint procedures.

(i) An IBHS agency shall document the use of any manual restraint procedure in the child's, youth's or young adult's individual record in accordance with § 5240.41(a)(11) (relating to individual records).

§ 5240.7. Coordination of services.

(a) An IBHS agency shall have written agreements to coordinate services with other service providers, including all of the following:

(1) Psychiatric inpatient facilities.

(2) Partial hospitalization programs.

(3) Psychiatric outpatient clinics.

(4) Crisis intervention programs.

(5) Mental health and intellectual or developmental disability case management programs.

(b) An IBHS agency shall update the written agreements with other service providers at least every 5 years.

(c) An IBHS agency shall have a list of community resources that provide behavioral health services that is available upon request by a parent or caregiver of a child or youth, or a youth or young adult receiving services that includes all of the following:

(1) The name of the program or organization.

(2) Description of the services provided.

(3) Address and phone number of the program or organization.

(d) An IBHS agency shall update the community resource list annually.

(e) An IBHS agency shall have a written referral process for children, youth and young adults whose therapeutic needs cannot be served by the agency. The IBHS agency shall document in the records of the IBHS agency the referrals made for a child, youth or young adult the IBHS agency could not serve.

(f) An IBHS agency that provides group services is not required to comply with subsections (a) and (b).

STAFFING

§ 5240.11. Staff requirements.

(a) An IBHS agency shall have an administrative director and a clinical director.

(b) The administrative director's responsibilities shall include all of the following:

(1) The overall daily management of the agency.

(2) Setting work schedules to meet the needs of the children, youth and young adults served and that accommodate their parents' or caregivers' schedules.

(3) Ensuring compliance with staff qualifications and training requirements.

(4) Monitoring the IBHS agency's compliance with this chapter.

(5) Developing and monitoring the quality improvement plan for the agency.

(c) The administrative director may also be the clinical director if the person meets the qualifications for both positions.

(d) When an entity operates more than one IBHS agency, the administrative director may be responsible for more than one IBHS agency that is licensed under this chapter.

(e) The administrative director shall dedicate a minimum of 7.5 hours each week for each IBHS agency that he directs.

(f) The clinical director's responsibilities shall include all of the following:

(1) Ensuring supervision is provided to all staff in accordance with this chapter.

(2) Providing 1 hour of supervision to all staff that supervise other staff at least two times a month.

(3) Maintaining clinical oversight of all IBHS provided.

(4) Ensuring staff that provide IBHS have access to supervisory staff during all hours that IBHS are provided, including evenings and weekends.

(5) Conducting and documenting monthly staff meetings.

(6) Completing and documenting a clinical record review for quality of the services provided and compliance with this chapter and documenting the outcomes of the review on a quarterly basis.

(7) Ensuring that training for IBHS agency staff is being provided as required by this chapter.

(g) An IBHS agency shall employ a sufficient number of qualified staff to comply with the administrative oversight, clinical supervision and monitoring requirements of this chapter.

(h) An IBHS agency shall employ a sufficient number of qualified staff to provide the maximum number of service hours identified in the written order and the ITP for each child, youth or young adult admitted to services.

§ 5240.12. Staff qualifications.

(a) An administrative director of an IBHS agency shall meet one of the following:

(1) The qualifications for a clinical director in subsection (b).

(2) Have a graduate degree in psychology, social work, counseling, education, human services, public administra-

tion, business administration or related field from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation.

(3) Have an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(b) A clinical director of an IBHS agency shall meet all of the following:

(1) Have a minimum of 1 year of full-time postgraduate experience in the provision of mental health direct service to children, youth or young adults.

(2) Be licensed in this Commonwealth as a psychiatrist, psychologist, professional counselor, marriage and family therapist, or clinical social worker, or be licensed in this Commonwealth as a certified registered nurse practitioner and have a mental health certification or be licensed in this Commonwealth as a social worker with a graduate degree that required a clinical or mental health direct service practicum.

(c) This section does not apply to ABA services.

§ 5240.13. Staff training plan.

(a) An IBHS agency shall develop and implement a written plan that ensures initial and annual training requirements are met which includes all of the following:

(1) A written individual training plan that is:

(i) Updated annually based on the date of hire for each staff person.

(ii) Based upon the staff person's educational level, experience, current job functions and performance reviews.

(iii) Appropriate to the staff person's skill level.

(2) An overall plan to ensure that staff receive training in accordance with this chapter to provide IBHS in a manner that is consistent with the policies and procedures of the IBHS agency.

(3) An annual review and update of the IBHS agency training plan based on service outcomes and staff performance evaluations.

(b) An IBHS agency shall keep documentation of the completed initial and annual training requirements in each staff person's personnel file in accordance with § 5240.42(b)(2) (relating to agency records).

(c) An IBHS agency shall accept documentation of the completion of initial or annual training requirements from a college, university, National training organization, training entity accepted by a professional licensing organization or the Department.

(d) An IBHS agency may choose to not require a staff person to complete additional training if the staff person has completed the required initial or annual training while working for another IBHS agency.

(e) An IBHS agency shall keep records of all initial and annual trainings that it provides to staff that includes documentation of all of the following:

(1) The date, time and location of the training.

(2) The name of the person who conducted the training and the person's qualifications to conduct the specific training.

(3) The names of IBHS agency staff who participated in the training.

(4) The specific topics addressed at the training.

(5) A copy of any written materials distributed to participants.

(6) A copy of any written materials that were used during the training.

(7) Department approval of the training.

§ 5240.14. Criminal history checks and child abuse certification.

(a) Criminal history checks and child abuse certification shall be completed in accordance with 23 Pa.C.S. §§ 6301—6386 (relating to Child Protective Services Law) and Chapter 3490 (relating to protective services).

(b) An IBHS agency shall have policies and procedures to ensure that staff having contact with children or youth comply with 23 Pa.C.S. §§ 6301—6386 and Chapter 3490, including mandatory reporter and training requirements.

SERVICE PLANNING AND DELIVERY

§ 5240.21. Assessment.

(a) A comprehensive face-to-face assessment shall be completed by a behavior specialist or mobile therapist for each child, youth or young adult within 15 days of the initiation of IBHS and prior to developing the ITP.

(b) The assessment shall be completed in collaboration with the youth, young adult, or parent or caregiver of the child or youth, and the child as appropriate.

(c) The assessment shall be individualized and include all of the following:

(1) The strengths and needs across developmental and behavioral domains of the child, youth or young adult.

(2) The strengths and needs of the family system in relation to the child, youth or young adult.

(3) Existing and needed natural and formal supports.

(4) The specific services, skills, supports and resources the child, youth or young adult requires to address the child's, youth's or young adult's identified therapeutic needs.

(5) The specific supports and resources, if any, the parent or caregiver of the child, youth or young adult requires to assist in addressing the child's, youth's or young adult's identified therapeutic needs.

(6) Clinical information that includes all of the following:

(i) Treatment history.

(ii) Medical history.

(iii) Developmental history.

(iv) Family structure and history.

(v) Educational history.

(vi) Social history.

(vii) Trauma history.

(viii) Other relevant clinical information.

(7) The child's, youth's or young adult's level of developmental, cognitive, communicative, social and behavioral functioning across the home, school and other community settings.

(8) The cultural, language or communication needs and preferences of the child, youth or young adult and the parent or caregiver.

(d) The assessment shall include a summary of the treatment recommendations received from health care providers, school or other service providers involved with the child, youth or young adult.

(e) The assessment shall be reviewed and updated at least every 6 months and if one of the following occurs:

(1) A parent or caregiver of a child or youth requests an update.

(2) A young adult or youth requests an update.

(3) A child or youth experiences a change in living situation that results in a change of the child's or youth's primary caregivers.

(4) The child, youth or young adult completes an ITP goal.

(5) The child, youth or young adult is not progressing towards the goals identified in the ITP within 90 days from the initiation of services identified in the ITP.

(6) The child, youth, young adult or the family experiences a crisis event.

(7) An IBHS agency staff person, primary care physician, other treating clinician, case manager or other professional involved in the child's, youth's or young adult's services determines an update is needed.

(f) The assessment and all updates shall be signed and dated by the IBHS agency staff person that completed the assessment and the supervisor of the staff person that completed the assessment.

(g) This section does not apply to ABA services.

(h) Subsection (a) does not apply to EBT or group services.

§ 5240.22. Individual treatment plan.

(a) A written ITP shall be developed within 30 days after the initiation of a service and be based on the assessment completed in accordance with § 5240.21 (relating to assessment).

(b) The ITP must include the recommendations from the licensed professional who completed the written order for the IBHS in accordance with § 1155.32(1) (relating to payment conditions for individual services).

(c) The ITP shall be strength-based with individualized goals and objectives to address the identified therapeutic needs for the child, youth or young adult to function at home, school or in the community.

(d) The ITP must include all of the following:

(1) Service type and the number of hours of each service.

(2) Whether and how parent or caregiver participation is needed to achieve the identified goals and objectives.

(3) Safety plan to prevent a crisis, a crisis intervention plan and a transition plan.

(4) Specific goals, objectives and interventions to address the identified therapeutic needs with definable and measurable outcomes.

(5) Type of staff providing the services.

(6) Time frames to complete each goal.

(7) Settings where services may be provided.

(8) Number of hours of service at each setting.

(e) The ITP shall be developed in collaboration with the youth, young adult, or at least one parent or caregiver of a child.

(f) The ITP shall be reviewed and updated at least every 6 months and if:

(1) An ITP goal is completed.

(2) No significant progress is made within 90 days from the initiation of the services identified in the ITP.

(3) A youth or young adult requests a change.

(4) A parent or caregiver of a child or youth requests a change.

(5) The child, youth or young adult experiences a crisis event.

(6) The ITP is no longer clinically appropriate for the child, youth or young adult.

(7) An IBHS agency staff person, primary care physician, other treating clinician, case manager or other professional involved in the child's, youth's or young adult's services recommends a change.

(g) An ITP update must include the elements in subsection (d) and all of the following:

(1) A description of progress or lack of progress toward the goals and objectives.

(2) A description of any new goals, objectives and interventions.

(3) A description of any changes made to the goals, objectives or interventions.

(4) A description of the new interventions to be used to reach previously identified goals and objectives.

(h) The ITP and all updates shall be reviewed, signed and dated by the youth, young adult, or at least one parent or caregiver of a child or youth, and the IBHS staff person who developed the ITP.

(i) The ITP and all updates shall be reviewed, signed and dated by the supervisor of the staff person who developed the ITP.

(j) This section does not apply to all of the following:

(1) ABA services.

(2) Group services.

§ 5240.23. Service provision.

(a) IBHS shall be provided in accordance with each child's, youth's or young adult's ITP.

(b) IBHS shall be delivered in community-based, clinically appropriate settings as identified in the written order and ITP.

(c) IBHS shall be provided in accordance with the IBHS agency's approved service description under § 5240.5 (relating to service description).

DISCHARGE

§ 5240.31. Discharge.

(a) An IBHS agency may discharge a child, youth or young adult when one of the following occurs:

(1) The child, youth or young adult has completed the goals and objectives in the ITP and no new goals or objectives have been identified.

(2) The child, youth or young adult is not progressing towards the identified goals as described in the ITP after 180 days from the initiation of the IBHS and other clinical services are in place to provide continuity of care.

(3) The child, youth or young adult requires a more restrictive service to meet the child's, youth's or young adult's needs.

(4) The parent or caregiver of a child or youth who provided consent to receive services requests to discontinue services.

(5) The youth or young adult requests to discontinue services.

(b) An IBHS agency shall provide all of the following information to the youth, young adult, or at least one parent or caregiver of the child upon discharge:

(1) If the child, youth or young adult has been referred to other services, contact information for each service.

(2) Contact information for the local crisis intervention service.

(c) An IBHS agency may continue to serve a child, youth or young adult after the child, youth or young adult is discharged for up to 90 days if the youth, young adult, or parent or caregiver of the child or youth requests reinitiation of services within 60 days after the child, youth or young adult has been discharged from services when:

(1) The condition of the child, youth or young adult has regressed and impacts the child's, youth's or young adult's ability to maintain functioning at home, school or in the community.

(2) The written order meets the requirements in § 1155.32(1)(ii)—(iv) or § 1155.33(1)(ii)—(iv) (relating to payment conditions for individual services; and payment conditions for ABA).

§ 5240.32. Discharge summary.

(a) An IBHS agency shall complete a discharge summary for each child, youth or young adult that includes all of the following:

(1) Summary of the service outcomes.

(2) Reason for discharge.

(3) Referral for services other than IBHS if needed.

(4) Documentation of at least two telephone contacts within the first 30 days after discharge to monitor the status of maintaining treatment progress.

(b) An IBHS agency shall ensure that the discharge summary is:

(1) Completed within 45 days after the date of discharge.

(2) Reviewed and signed by the IBHS agency's clinical director.

(3) Provided to the youth, young adult, or at least one parent or caregiver of the child.

RECORDS

§ 5240.41. Individual records.

(a) An IBHS agency shall maintain a record for each child, youth or young adult served which includes all of the following:

(1) Identifying information.

(2) A written order for IBHS in accordance with § 1155.32(1) or § 1155.33(1) (relating to payment conditions for individual services; and payment conditions for ABA).

(3) An assessment in accordance with § 5240.21, § 5240.85, § 5240.92 or § 5240.105.

(4) Presenting problems.

(5) The ITP and any updates in accordance with § 5240.22, § 5240.86, § 5240.92 or § 5240.106.

(6) Documentation of any efforts to coordinate care with other services and community supports if needed.

(7) Documentation of each service provided that includes all of the following:

(i) Date and time services were provided, duration of services and setting where services were provided.

(ii) Identification of the service provided to address a goal in the ITP.

(iii) Description of the outcome of the services provided.

(iv) Signature of the staff person providing the service.

(8) If services are not provided in accordance with the ITP and written order, an explanation of the reason why services were not provided in accordance with the ITP and written order.

(9) Consent to treatment and consent to release information forms.

(10) Discharge summary in accordance with § 5240.32 (relating to discharge summary).

(11) Documentation of any use of a manual restraint procedure and a description of how the use of the manual restraint procedure was in accordance with § 5240.6 (relating to restrictive procedures) and used to prevent self-injury or to prevent injury to others by a child, youth or young adult, including all of the following:

(i) The specific behavior addressed.

(ii) The less intrusive methods of intervention used to address the behavior prior to initiating the manual restraint procedure used.

(iii) The specific manual restraint procedure used.

(iv) The name of the staff person who used the manual restraint procedure.

(v) The duration of the manual restraint procedure.

(vi) The name of the staff person who observed the child, youth or young adult during the application of the manual restraint procedure.

(vii) The child's, youth's or young adult's condition following the manual restraint procedure.

(viii) The date and time the manual restraint procedure was used.

(b) The record shall be maintained as follows:

(1) Legible.

(2) Signed and dated by the staff member writing in the record.

(3) Reviewed for quality at least every 6 months by the administrative director, clinical director or designated quality improvement staff. After initial review, subsequent reviews may be limited to new additions to the record since the prior review.

(c) The record shall be maintained for a minimum of 10 years after the last date of service.

§ 5240.42. Agency records.

(a) An IBHS agency shall maintain records that contain all of the following:

(1) Inspection reports, certifications or licenses issued by State and local agencies.

(2) A detailed agency service description in accordance with § 5240.5 (relating to service description).

(3) A written emergency plan that includes, at a minimum, a plan for natural disasters, inclement weather and medical emergencies.

(4) Human resources policies and procedures that address all of the following:

(i) Job descriptions for staff positions.

(ii) Staff work schedules and time sheets.

(iii) Criminal history checks, child abuse certifications and training on and compliance with the mandated reporter requirements in 23 Pa.C.S. §§ 6301—6386 (relating to Child Protective Services Law).

(5) Written agreements to coordinate services in accordance with § 5240.7 (relating to coordination of services).

(6) Daily schedules for group services if providing group services.

(7) Quality improvement plans in accordance with § 5240.61 (relating to quality improvement requirements).

(b) An IBHS agency shall maintain staff personnel records that include all of the following:

(1) Documentation of staff's credentials or qualifications.

(2) Documentation of completion of required training for all staff, including completion of continuing education credits required for professionally licensed staff to maintain licensure in accordance with the applicable professional regulations.

(3) All criminal history checks and child abuse certifications.

(4) The staff's individual training plan in accordance with § 5240.13 (relating to staff training plan).

§ 5240.43. Record retention and disposal.

An IBHS agency shall ensure that all records that contain protected health information, both written and electronic, are secured, maintained and disposed of in accordance with all applicable Federal and State privacy and confidentiality statutes and regulations.

NONDISCRIMINATION

§ 5240.51. Nondiscrimination.

An IBHS agency may not discriminate against staff or children, youth or young adults receiving services on the basis of race, color, creed, disability, religious affiliation, ancestry, gender, gender identity or expression, sexual orientation, national origin or age, and shall comply with all applicable Federal and State statutes and regulations.

QUALITY IMPROVEMENT

§ 5240.61. Quality improvement requirements.

(a) An IBHS agency shall establish and implement a written quality improvement plan that meets all of the following requirements:

(1) Provides for an annual review of the quality, timeliness and appropriateness of services that includes all of the following:

(i) Individual record reviews.

(ii) Review of individual and family satisfaction information.

(iii) Assessment of the outcomes of services delivered and if ITP goals have been completed.

(iv) An evaluation of compliance with the agency's service description and licensure requirements.

(2) Identifies the type of review and the methodology for the review that includes all of the following:

(i) Method for establishing sample size.

(ii) Frequency of review.

(iii) Staff's qualifications to perform the review.

(b) An IBHS agency shall prepare a report that includes all of the following:

(1) Documentation and analysis of the findings of the annual review required under subsection (a).

(2) Identification of the actions to address annual review findings.

(c) An IBHS agency shall make annual quality reports available to the public upon request.

(d) An IBHS agency shall provide written notification that a copy of the annual quality report may be requested by the youth, young adult, or parent or caregiver of a child, youth or young adult upon admission to services.

INDIVIDUAL SERVICES

§ 5240.71. Staff qualifications.

(a) Except as set forth in subsection (b), a behavior specialist who provides individual services shall meet one of the following:

(1) Be licensed in this Commonwealth as a behavior specialist.

(2) Have a current certification as a BCBA from the Behavior Analyst Certification Board or other graduate-level certification in behavior analysis that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute.

(3) Have a graduate degree in psychology, ABA, social work, education, counseling or related field that includes a clinical or mental health direct service practicum from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation and a minimum of 1 year of full-time experience in providing mental health direct services to children, youth or young adults.

(4) Have an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services and a minimum of 1 year of full-time experience in providing mental health direct services to children, youth or young adults. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(b) Behavior specialists who provide individual services to children diagnosed with ASD for the treatment of ASD shall meet the qualifications for a behavior specialist analyst in § 5240.81(c) (relating to staff qualifications).

(c) A mobile therapist who provides individual services shall meet one of the following:

(1) Be licensed in this Commonwealth as a psychologist, professional counselor, marriage and family therapist, or clinical social worker.

(2) Be licensed in this Commonwealth as a social worker with a graduate degree that required a clinical or mental health direct service practicum.

(3) Have a graduate degree in psychology, social work, education or related field from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation and a minimum of 1 year of full-time experience in providing mental health direct services to children, youth or young adults.

(4) Have an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services and a minimum of 1 year of full-time experience in providing mental health direct services to children, youth or young adults. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(d) A BHT who provides individual services shall have or obtain within 18 months of being hired by an IBHS agency as a BHT or by _____ (*Editor's Note: The blank refers to 730 days after the effective date of adoption of this proposed rulemaking.*), whichever is later, a current RBT, BCAT or other behavior analysis certification that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute, or a current BHT certification from the Pennsylvania Certification Board. If the BHT does not have the required certification, the BHT can provide individual services for 18 months after being hired by an IBHS agency as a BHT or by _____ (*Editor's Note: The blank refers to 730 days after the effective date of adoption of this proposed rulemaking.*), whichever is later, if the BHT meets one of the following:

(1) Has a bachelor's degree in psychology, social work, counseling, sociology, education or related field from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation.

(2) Has an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(3) Has an associate's degree or at least 60 credits towards a bachelor's degree and a minimum of 1 year of full-time experience in providing mental health direct services to children, youth or young adults.

(4) Has a Pennsylvania license as a registered nurse and a minimum of 1 year of full-time experience in providing mental health direct services to children, youth or young adults.

§ 5240.72. Supervision.

(a) Supervision shall be provided by an IBHS supervisor to all staff that provide individual services. Supervision shall include all of the following:

(1) One hour of supervision of behavior specialists and mobile therapists two times a month.

(2) One individual face-to-face session a month for each IBHS staff person.

(3) Thirty minutes of direct observation of services being provided by each IBHS staff person every 3 months.

(4) Case reviews for each IBHS staff person each month that include all of the following:

(i) The interventions being implemented.

(ii) ITP implementation status.

(iii) Adjustments needed to the ITP goals.

(iv) Staff person's skill in implementing the ITP interventions.

(b) In addition to the requirements in subsection (a)(2)—(4), an IBHS supervisor shall provide a BHT with the following supervision:

(1) Six hours of onsite supervision during the provision of services to a child, youth or young adult prior to providing services independently.

(2) Onsite supervision during the provision of services to a child, youth or young adult at least quarterly for a minimum of 30 minutes.

(3) One hour of supervision each week if the BHT works at least 37.5 hours per week or 1 hour of supervision two times a month if the BHT works less than 37.5 hours a week.

(c) An IBHS supervisor shall meet one of the following:

(1) Be licensed in this Commonwealth as a psychologist, professional counselor, marriage and family therapist, or clinical social worker.

(2) Be licensed in this Commonwealth as a certified registered nurse practitioner and have a mental health certification.

(3) Be licensed in this Commonwealth as a social worker with a graduate degree that required a clinical or mental health direct service practicum.

(4) Have a graduate degree in psychology, ABA, social work, education or a related field that includes a clinical or mental health direct service practicum from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation and a minimum of 1 year of full-time experience in providing mental health direct services to children, youth or young adults.

(5) Have an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services and a minimum of 1 year of full-time experience providing mental health direct services to children, youth or young adults. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(d) An IBHS supervisor may supervise a maximum of nine full-time equivalent BHT staff.

(e) Group supervision may be provided to no more than nine mobile therapists, behavior specialists and BHTs in each session.

(f) Face-to face supervision may be delivered through secure, real-time, two-way audio and video transmission that meets technology and privacy standards required by

the Health Insurance Portability and Accountability Act of 1996 (Pub.L. No. 104-191, 110 Stat. 1936).

(g) An IBHS supervisor shall maintain documentation which includes all of the following of all supervision sessions as part of each staff's personnel file:

- (1) The date of the supervision session.
- (2) The location and modality of the session, such as in-person or through secure audio or video medium.
- (3) The format of the session, such as individual, group or onsite.
- (4) The start and end time of the supervision session.
- (5) A narrative summary of the points discussed during the session.
- (6) The dated signature of the supervisor and the staff person receiving supervision.
- (h) An IBHS supervisor shall be available to consult with staff during all hours that individual services are being provided, including evenings and weekends.

(i) The clinical director may provide supervision if the IBHS agency employs nine or less full-time equivalent staff that provide individual services and have no staff that meet the qualifications of an IBHS supervisor.

§ 5240.73. Staff training requirements.

(a) An IBHS agency that provides individual services shall ensure that all staff complete initial and annual training requirements.

(b) A behavior specialist who is licensed in this Commonwealth or who does not have a current professional license shall complete at least 16 hours of Department-approved training annually that is related to the behavior specialist's specific job functions and is in accordance with the behavior specialist's individual training plan as required under § 5240.13 (relating to staff training plan).

(c) A mobile therapist who is not licensed in this Commonwealth as a psychologist, professional counselor, marriage and family therapist, clinical social worker or social worker shall complete at least 16 hours of Department-approved training annually that is related to the mobile therapist's specific job functions and is in accordance with the mobile therapist's individual training plan as required under § 5240.13.

(d) A BHT shall complete at least 30 hours of Department-approved training before independently providing services to a child, youth or young adult that includes all of the following topics:

- (1) Sections 6301—6386 of 23 Pa.C.S. (relating to Child Protective Services Law) and mandated reporting requirements.
- (2) Crisis intervention skills, including risk management, de-escalation techniques and safety planning.
- (3) Behavior management skills and coaching.
- (4) Child and adolescent development.
- (5) Overview of serious emotional disturbance and other behavioral and psychosocial needs of the individuals with whom the BHT works.
- (6) Professional ethics, conduct and confidentiality.
- (7) First aid, universal precautions and safety.
- (8) Psychotropic medications, including common side effects.

(e) Within the first 6 months of employment as a BHT, the BHT shall complete at least 24 hours of Department-approved training that includes all of the following topics:

- (1) Documentation skills.
- (2) Systems of care principles.
- (3) Overview of functional behavioral assessment.
- (4) Ethnic, cultural and linguistic considerations of the community served.
- (5) Strategies and interventions to engage children, youth or young adults and parents or caregivers in services, including family systems theory.
- (6) Skills and techniques for working with families.
- (7) Overview of community resources and child and youth-serving systems and processes.
- (8) Cross-systems collaboration.
- (9) Communication and conflict resolution skills.
- (10) Basic individual education plan and special education information.
- (11) Safe use of restrictive procedures in accordance with § 5240.6 (relating to restrictive procedures).

(f) A BHT who has a current RBT, BCAT or other behavior analysis certification that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute may count hours of training required for certification towards the training requirements in subsections (d) and (e).

(g) A BHT who is certified as a BHT through the Pennsylvania Certification Board is deemed to have completed and is exempt from the training requirements in subsections (d) and (e).

(h) A BHT may substitute completed college coursework for any of the required training topics in subsection (d) or (e) by providing an official transcript and if needed other documentation to the IBHS agency that reflects that the coursework addressed a required training topic.

(i) A BHT shall complete at least 20 hours of Department-approved training annually that is related to the BHT's specific job functions and is in accordance with the BHT's individual training plan required under § 5240.13.

(j) A BHT who has a current RBT, BCAT or other behavior analysis certification that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute may count hours of continuing training required to maintain the BHT's certification towards the continuing training requirement in subsection (i).

§ 5240.74. Individual services initiation requirements.

(a) An IBHS agency shall provide individual services to a child, youth or young adult in accordance with a written order under § 1155.32(1) (relating to payment conditions for individual services).

(b) Prior to the initiation of individual services, the IBHS agency shall obtain written consent to receive the individual services identified in the written order from the youth, young adult, or parent or caregiver of a child or youth.

§ 5240.75. Individual services provision.

(a) A behavior specialist shall provide only the following services:

- (1) Assessment of behavioral needs.
- (2) Design and direction of the implementation of behavioral interventions in the ITP.
- (3) Identification of behavioral goals in measurable terms and selection of appropriate interventions for inclusion in the ITP.
- (4) Review, analysis and interpretation of data to determine any changes to goals and objectives included in the ITP.
- (5) Consultation to mobile therapists or BHTs on behavioral management protocols.
- (6) Review of clinical outcomes for the behavioral interventions being implemented in the treatment plan with the youth, young adult, or parent or caregiver of the child to determine effectiveness of the individual services on a monthly basis.

(b) A mobile therapist shall provide only the following services:

- (1) Individual therapy.
- (2) Family therapy.
- (3) Assessment of the strengths and therapeutic needs of the child, youth or young adult and family or caregiver.
- (4) ITP development.
- (5) Assistance with crisis stabilization.
- (6) Assistance with addressing problems the child, youth or young adult has encountered.

(c) A BHT shall provide only the following services as part of implementing the ITP:

- (1) Support of problem solving skill development.
- (2) Instruction on how to understand, direct, interpret, manage and control feelings and emotional responses to situations.
- (3) Assistance to the parent or caregiver to address the therapeutic needs of the child, youth or young adult.
- (4) Psychoeducational services related to mental health, including the development of improved decision making skills to manage behavior.
- (5) Assistance with the development of social skills and socially acceptable behaviors.
- (6) Instruction on stress reduction techniques.
- (7) Collection of data.
- (8) Behavioral stabilization and interventions to support services provided by a behavior specialist or mobile therapist.
- (9) Referrals to other necessary services and supports.

(d) A BHT may not provide interventions requiring skills, experience, credentials or licensure that the BHT does not possess.

(e) A BHT may not develop or revise the ITP goals, objectives or interventions.

APPLIED BEHAVIORAL ANALYSIS

§ 5240.81. Staff qualifications.

(a) An administrative director of an IBHS agency that provides ABA services shall have one of the following:

(1) A graduate degree in ABA, psychology, social work, counseling, education, public administration, business administration or related field from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation.

(2) An equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(b) A clinical director of an IBHS agency that provides ABA services shall be licensed in this Commonwealth as a psychiatrist, psychologist, certified registered nurse practitioner, professional counselor, marriage and family therapist, clinical social worker, behavior specialist, social worker or as a professional who within the scope of the licensed professional's practice may provide or supervise the provision of ABA. If the clinical director is licensed as a certified registered nurse practitioner, the clinical director shall have a mental health certification. If the clinical director is licensed as a social worker, the clinical director shall have a graduate degree that required a clinical or mental health direct service practicum. A clinical director shall also have one of the following:

(1) A current certification as a BCBA from the Behavior Analyst Certification Board or other graduate-level certification in behavior analysis that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute.

(2) A graduate degree or graduate certificate in ABA from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation and a minimum of 1 year of full-time experience in the provision of ABA, provided that the clinical director obtains a BCBA certification from the Behavior Analyst Certification Board or other graduate-level certification in behavior analysis that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute within 3 years of the date the individual starts working as a clinical director for any IBHS agency.

(3) An equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services and a minimum of 1 year of full-time experience in the provision of ABA, provided that the clinical director obtains a BCBA certification from the Behavior Analyst Certification Board or other graduate-level certification in behavior analysis that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute within 3 years of the date the individual starts working as a clinical director for any IBHS agency. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(c) A behavior specialist analyst who provides ABA services shall have a Pennsylvania license as a psychologist, professional counselor, marriage and family therapist, clinical social worker, social worker or behavior specialist and have one of the following:

(1) A current certification as a BCBA from the Behavior Analyst Certification Board or other graduate-level

certification in behavior analysis that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute.

(2) A current certification as a BCaBA from the Behavior Analyst Certification Board or other undergraduate-level certification in behavior analysis that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute.

(3) A current certification as a behavior specialist analyst with a competency in ABA from the Pennsylvania Certification Board.

(4) A minimum of 12 credits in ABA from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation and 1 year of full-time experience in the provision of ABA.

(5) A minimum of 1 year of full-time experience in the provision of ABA under the supervision of a professional with a certification as a BCBA from the Behavior Analyst Certification Board or other graduate-level certification in behavior analysis that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute.

(d) An ABSA who provides ABA services shall meet one of the following:

(1) Have all of the qualifications for licensure as a behavior specialist under 49 Pa. Code § 18.524 (relating to criteria for licensure as behavior specialist) except the experience required under subsection (c).

(2) Have a bachelor's degree in psychology, social work, counseling, education or related field from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation and a current certification as a BCaBA from the Behavior Analyst Certification Board or other undergraduate-level certification in behavior analysis that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute.

(3) Have an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services and a current certification as a BCaBA from the Behavior Analyst Certification Board or other undergraduate-level certification in behavior analysis that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(4) Have a bachelor's degree in psychology, social work, counseling, education or related field from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation and at least 12 credits in ABA from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation and 6 months of experience in providing ABA.

(5) Have an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services and at least 12 credits in ABA from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of

Credential Evaluation Services and 6 months of experience in providing ABA. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(e) A BHT-ABA who provides ABA services shall have or obtain within 18 months of being hired by an IBHS agency as a BHT-ABA or by _____ (*Editor's Note: The blank refers to 730 days after the effective date of adoption of this proposed rulemaking.*), whichever is later, a current RBT, BCAT or other behavior analysis certification that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute or a current BHT certification with a competency in ABA from the Pennsylvania Certification Board. If the BHT-ABA does not have the required certification, the BHT-ABA can provide ABA services for 18 months after being hired by an IBHS agency as a BHT-ABA or by _____ (*Editor's Note: The blank refers to 730 days after the effective date of adoption of this proposed rulemaking.*), whichever is later, if the BHT-ABA meets one of the following:

(1) Has a bachelor's degree in psychology, sociology, social work, nursing, counseling, education or related field from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation.

(2) Has an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(3) Has an associate's degree or at least 60 credits towards a bachelor's degree with 12 credits in providing ABA and a minimum of 1 year of full-time experience in the provision of ABA.

§ 5240.82. Supervision.

(a) The ABA clinical director shall provide supervision to all behavior specialist analysts that includes all of the following:

(1) One hour of supervision two times a month.

(2) One individual face-to-face session each month.

(3) Case reviews each month that include all of the following:

(i) The specific ABA interventions being implemented.

(ii) ITP implementation status.

(iii) Adjustments needed to the ITP goals.

(iv) Staff person's skills in implementing the interventions in the ITP that use ABA.

(b) A behavior specialist analyst shall provide supervision to all ABSA staff that include all of the following:

(1) One hour of supervision each week if the ABSA works at least 37.5 hours per week or 1 hour of supervision two times a month if the ABSA works less than 37.5 hours a week.

(2) One individual face-to-face session a month.

(3) Six hours of onsite supervision during the provision of ABA services to a child, youth or young adult prior to providing ABA services independently.

(4) Thirty minutes of direct observation of the provision of ABA services to a child, youth or young adult during the implementation of the ITP goals every 3 months.

(5) Case reviews each month that include all of the following:

- (i) The specific ABA interventions being implemented.
- (ii) ITP implementation status.
- (iii) Adjustments needed to the ITP goals.

(iv) Staff person's skills in implementing the interventions in the ITP that use ABA.

(c) A behavior specialist analyst or an ABSA who has a current BCaBA from the Behavior Analyst Certification Board or other undergraduate-level certification in behavior analysis that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute shall provide supervision to all BHT-ABA staff that includes all of the following:

(1) One hour of supervision each week if the BHT-ABA works at least 37.5 hours per week or 1 hour of supervision two times a month if the BHT-ABA works less than 37.5 hour a week.

(2) One individual face-to-face session a month.

(3) Six hours of onsite supervision during the provision of ABA services to a child, youth or young adult prior to providing ABA services independently.

(4) One hour of direct observation of the provision of ABA services to a child, youth or young adult during the implementation of the ITP goals every 3 months.

(5) Case reviews each month that include all of the following:

- (i) The specific ABA interventions being implemented.
- (ii) ITP implementation status.
- (iii) Adjustments needed to the ITP goals.

(iv) Staff person's skills in implementing the interventions in the ITP that use ABA.

(d) The clinical director may provide supervision if an IBHS agency that provides ABA employs nine or less full-time equivalent ABSA and BHT-ABA staff.

(e) Group supervision may be provided to no more than nine behavior specialist analysts, ABSAs and BHT-ABAs in each session.

(f) A behavior specialist analyst or an ABSA who meets the qualification to provide supervision in subsection (c) may supervise a maximum of nine full-time equivalent BHT-ABA staff.

(g) A supervisor shall be available to consult with staff during all hours that ABA services are being provided, including evenings and weekends.

(h) Face-to face supervision may be delivered through secure, real-time, two-way audio and video transmission that meets technology and privacy standards required by the Health Insurance Portability and Accountability Act of 1996 (Pub.L. No. 104-191, 110 Stat. 1936).

(i) A supervisor shall maintain documentation which includes all of the following of all supervision sessions as part of each staff's personnel file:

(1) The date of the supervision session.

(2) The location and modality of the session, such as in-person or through a secure audio or video medium.

(3) The format of the session, such as individual, group or onsite.

(4) The start and end time of the supervision session.

(5) A narrative summary of the points discussed during the session.

(6) The dated signature of the supervisor and the staff person receiving supervision.

§ 5240.83. Staff training requirements.

(a) An IBHS agency that provides ABA services shall ensure that all staff complete initial and annual training requirements.

(b) A behavior specialist analyst who is licensed in this Commonwealth as a behavior specialist shall complete all of the following:

(1) At least 45 hours of training related to ABA that is approved by the Behavior Analyst Certification Board or the Department before independently providing ABA services to a child, youth or young adult. ABA training completed prior to obtaining licensure as a behavior specialist may be counted towards the 45 hours of training related to ABA.

(2) At least 16 hours of training annually that is approved by the Behavior Analyst Certification Board or the Department that is related to the behavior specialist analyst's specific job functions and is in accordance with the behavior specialist analyst's individual training plan as required under § 5240.13 (relating to staff training plan).

(c) An ABSA who does not have a certification as a BCBA or BCaBA from the Behavior Analyst Certification Board, a certification as a BCAT from the Behavioral Intervention Certification Council, or another graduate or undergraduate certification in behavior analysis that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute shall complete all of the following:

(1) At least 20 hours of training related to ABA that is approved by the Behavior Analyst Certification Board or the Department before independently providing ABA services to a child, youth or young adult.

(2) At least 20 hours of training annually that is approved by the Behavior Analyst Certification Board or the Department that is related to the ABSA's specific job functions and is in accordance with the ABSA's individual training plan as required under § 5240.13.

(d) A BHT-ABA who does not have a certification as a BCaBA or RBT from the Behavior Analyst Certification Board, a certification as a BCAT from the Behavioral Intervention Certification Council, BHT certification from the Pennsylvania Certification Board, or another undergraduate certification in behavior analysis that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute shall complete all of the following:

(1) Training in accordance with § 5240.73(d), (e) and (h) (relating to staff training requirements).

(2) At least 20 hours of training related to ABA that is approved by the Behavior Analyst Certification Board or the Department before independently providing ABA services to a child, youth or young adult.

(3) At least 20 hours of training annually that is approved by the Behavior Analyst Certification Board or the Department that is related to the BHT-ABA's specific

job functions and is in accordance with the individual training plan as required under § 5240.13.

§ 5240.84. ABA initiation requirements.

(a) An IBHS agency shall provide ABA services to a child, youth or young adult in accordance with a written order under § 1155.33(1) (relating to payment conditions for ABA).

(b) Prior to the initiation of ABA services, the IBHS agency shall obtain written consent to receive the ABA services identified in the written order from the youth, young adult, or parent or caregiver of a child or youth.

§ 5240.85. Assessment.

(a) A comprehensive face-to-face assessment shall be completed by a behavior specialist analyst for each child, youth or young adult prior to developing the ITP.

(b) The assessment shall be completed in collaboration with the youth, young adult, or parent or caregiver of the child or youth, and child as appropriate.

(c) The assessment shall be individualized and include all of the following:

(1) The strengths and needs across developmental and behavioral domains of the child, youth or young adult.

(2) The strengths and needs of the family system in relation to the child, youth or young adult.

(3) Existing and needed natural and formal supports.

(4) Clinical information that includes all of the following:

(i) Survey data gathered from a parent or caregiver.

(ii) Treatment history.

(iii) Medical history.

(iv) Developmental history.

(v) Family structure and history.

(vi) Educational history.

(vii) Social history.

(viii) Trauma history.

(ix) Adaptive skills assessment.

(x) Other relevant clinical information.

(5) Completion of standardized behavioral assessment tools as needed.

(6) Compilation of observational data to identify developmental, cognitive, communicative, behavioral and adaptive functioning across the home, school and other community settings.

(7) Identification and analysis of skill deficits or targeted behaviors, or both, in measurable terms to address needs.

(8) The cultural, language or communication needs and preferences of the child, youth or young adult and the parent or caregiver.

(d) The assessment shall include a summary of the treatment recommendations received from health care providers, school or other service providers involved with the child, youth or young adult.

(e) The assessment shall be reviewed and updated at least annually and when one of the following occurs:

(1) A parent or caregiver of a child or youth requests an update.

(2) A youth or young adult requests an update.

(3) A child or youth experiences a change in living situation that results in a change of the child's or youth's primary caregivers.

(4) The child, youth or young adult completes an ITP goal.

(5) The child, youth or young adult is not progressing towards the goals identified in the ITP within 90 days from the initiation of the ABA services identified in the ITP.

(6) The child, youth, young adult or the family experiences a crisis event.

(7) The behavior specialist analyst, ABA clinical director, primary care physician, other treating clinician, case manager or other professional involved the child's, youth's or young adult's services determines an update is needed.

(f) The assessment and all updates shall be signed and dated by the behavior specialist analyst that completed the assessment and the ABA clinical director.

§ 5240.86. Individual treatment plan.

(a) A written ITP shall be developed by the behavior specialist analyst within 30 days after the initiation of ABA services and be based on the assessment completed in accordance with § 5240.85 (relating to assessment).

(b) The ITP must include the recommendations from the licensed professional who completed the written order for ABA services in accordance with § 1155.33(1) (relating to payment conditions for ABA).

(c) The ITP must be strength-based with individualized goals and objectives to address the identified skill deficits or target behaviors, or both, for the child, youth or young adult to function at home, school or in the community.

(d) The ITP must include all of the following:

(1) Service type and number of hours for each service.

(2) Specific measurable long, intermediate and short-term goals and objectives to address socially significant behaviors or skill deficits, or both.

(3) Delineation of the frequency of baseline behaviors, the treatment planned to address behaviors or skill deficits, or both, and the frequency at which the child's, youth's or young adult's progress in achieving each goal is measured.

(4) Time frames to complete each goal.

(5) Whether and how parent or caregiver training, support and participation is needed to achieve the identified goals and objectives.

(6) ABA interventions that are tailored to achieving the child's, youth's or young adult's goals and objectives.

(7) Type of staff providing the services.

(8) Settings where services may be provided.

(9) Number of hours of service at each setting.

(e) The ITP shall be developed in collaboration with the youth, young adult, or at least one parent or caregiver of a child.

(f) The ITP shall be reviewed and updated at least every 6 months and if:

(1) An ITP goal is completed.

(2) No significant progress is made within 90 days from the initiation of ABA services identified in the ITP.

- (3) A youth or young adult requests a change.
- (4) A parent or caregiver of a child or youth requests a change.
- (5) The child, youth or young adult experiences a crisis event.
- (6) The ITP is no longer clinically appropriate for the child, youth or young adult.
- (7) A behavior specialist analyst, ABA clinical director, primary care physician, other treating clinician, case manager or other professional involved in the child's, youth's or young adult's services recommends a change.
- (g) An ITP update must include the elements in subsection (d) and all of the following:
- (1) A description of progress or lack of progress toward the goals and objectives.
 - (2) A description of any new goals, objectives and interventions.
 - (3) A description of any changes made to goals, objectives or interventions.
 - (4) A description of any new interventions to be used to reach previously identified goals and objectives.
- (h) The ITP and all updates shall be reviewed, signed and dated by the youth, young adult, or at least one parent or caregiver of a child or youth, and the behavior specialist analyst who developed the ITP.
- (i) The ITP and all updates shall be reviewed, signed and dated by the ABA clinical director.

§ 5240.87. ABA services provision.

(a) A behavior specialist analyst utilizes behavioral interventions and environmental modifications to reduce or eliminate problem behaviors or skill deficits to achieve a positive change in the targeted behavior or skill deficit. A behavior specialist analyst shall provide only the following services:

- (1) Assessment of skill deficits and behavioral needs.
 - (2) ITP goals and objectives development to address the identified skill deficits and targeted behaviors.
 - (3) Selection and design of the appropriate behavioral interventions for the implementation of ABA services.
 - (4) Review, analysis and interpretation of data to determine any changes to selected behavioral interventions that may be needed to achieve identified goals and objectives.
 - (5) Supervision of staff providing ABA to the child, youth or young adult.
 - (6) Implementation of the ITP to assist the child, youth or young adult in achieving the goals of the ITP.
- (b) An ABSA assists a behavior specialist and provides face-to-face behavioral stabilization and behavioral interventions. An ABSA shall provide only the following services:
- (1) Assistance to the behavior specialist analyst with the development of goals and objectives to address the skill deficits and targeted behaviors and the selection of appropriate behavioral interventions.
 - (2) Data collection.
 - (3) Review, analysis and interpretation of data to determine any changes to selected behavioral interventions under the supervision of a behavior specialist analyst.

(4) Implementation of the ITP to assist the child, youth or young adult in achieving the goals of the ITP.

(5) Training for the BHT-ABA or family in the implementation of behavioral interventions.

(c) A BHT-ABA implements the ITP by providing face-to-face behavioral stabilization and support interventions, which includes only the following services:

- (1) Collection of data under the direction of a behavior specialist analyst.
 - (2) Model interventions needed to assist the parent or caregiver to address the child's, youth's or young adult's goals and objectives specified in the ITP.
 - (3) Instruction on how the child, youth or young adult can direct, manage and control targeted behaviors.
 - (4) Assistance with the development of socially acceptable behaviors.
 - (5) Problem solving skill development to address skill deficits.
 - (6) Referrals to other necessary services and supports.
- (d) An ABSA and BHT-ABA may not provide interventions requiring skills, experience, credentials or licensure that the ABSA or BHT-ABA does not possess.

EVIDENCE-BASED THERAPY

§ 5240.91. EBT initiation requirements.

(a) An IBHS agency shall provide EBT to a child, youth or young adult in accordance with a written order under § 1155.34(1) (relating to payment conditions for EBT).

(b) Prior to the initiation of EBT service, the IBHS agency shall obtain written consent to receive the EBT services identified in the written order from the youth, young adult, or parent or caregiver of a child or youth.

§ 5240.92. Assessment and individual treatment plan.

(a) A comprehensive face-to-face assessment shall be completed by a staff person with the qualifications required by the EBT for each child, youth or young adult within 15 days of the initiation of the service in accordance with § 5240.21(b)—(d) and (f) (relating to assessment) and prior to developing the ITP.

(b) The assessment shall be reviewed and updated in accordance with § 5240.21(e) and (f).

(c) A written ITP shall be developed, reviewed and updated in accordance with § 5240.22 (relating to individual treatment plan).

§ 5240.93. EBT requirements.

(a) An IBHS agency shall have a certification or license from the National certification organization or entity that developed or owns the EBT if required to provide the EBT.

(b) An IBHS agency shall ensure that EBT is provided by staff that meet the qualifications and receive supervision as set forth in the EBT.

(c) An IBHS agency that is using an EBT shall have written policies and procedures to measure all of the following:

- (1) The adherence to the implementation of the specific EBT.
- (2) The outcomes of the EBT that incorporate review standards associated with the EBT.

(d) An IBHS agency using an EBT shall continuously monitor the fidelity to the EBT.

(e) An IBHS agency shall ensure that procedures related to and decisions about continuing services and discharge are made in accordance with the specific EBT.

(f) An IBHS agency that does not meet the standards of the EBT that is provided shall do all of the following:

(1) Have a corrective action plan that is approved by the National certification organization or the Department.

(2) Track the corrective action plan to ensure that the plan has been implemented.

(3) Complete the corrective action plan to meet the standards of the EBT within the time frame identified in the corrective action plan.

GROUP SERVICES

§ 5240.101. Staff requirements and qualifications.

(a) In addition to the staff required under § 5240.11 (relating to staff requirements), an IBHS agency that provides group services shall have a mental health professional.

(b) A mental health professional shall meet the qualifications for a mobile therapist in § 5240.71(c) (relating to staff qualifications).

(c) A mental health worker who provides group services shall have one of the following:

(1) A bachelor's degree in a recognized clinical discipline including social work, psychology, nursing, rehabilitation or activity therapy from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation, or an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or equivalency.

(2) A graduate degree in a recognized clinical discipline from a college or university accredited by an agency recognized by the United States Department of Education or Council for Higher Education Accreditation, or an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or equivalency.

(d) A BHT who provides group services shall meet the qualifications in § 5240.71(d).

(e) An IBHS agency that provides group services which include specialized therapies such as music, dance and movement, play or occupational therapies shall use clinical staff to provide the specialized therapies that meet one of the following:

(1) Nationally certified in the specific therapy.

(2) Mental health professionals with at least 12 graduate-level credit hours in the specialized therapy and at least 1 year of supervised experience in the use of the specialized therapy technique.

(3) Mental health professionals supervised by a Nationally credentialed activities therapist.

§ 5240.102. Supervision.

(a) Supervision shall be provided to all staff that provide group services and include all of the following:

(1) The clinical director shall provide 1 hour of face-to-face supervision to each mental health professional at least two times a month.

(2) A mental health professional shall provide 1 hour of supervision each week for each mental health worker that works at least 37.5 hours per week and 1 hour of supervision two times a month for each mental health worker that works less than 37.5 hours a week.

(3) A mental health professional shall provide 1 hour of supervision each week for each BHT that works at least 37.5 hours per week, 1 hour of supervision two times a month for each BHT that works less than 37.5 hours a week and 6 hours of onsite supervision during the provision of group services to a child, youth or young adult prior to the BHT providing services independently.

(4) One individual face-to-face session each month for each IBHS staff person that provides group services.

(5) Group supervision may be provided to no more than nine IBHS staff that provide group services in each session.

(6) Case reviews for each IBHS staff person each month that include all of the following:

(i) The interventions being implemented.

(ii) ITP implementation status.

(iii) Adjustments needed to ITP goals.

(iv) Staff person's skills in implementing the ITP interventions.

(b) A mental health professional may supervise a maximum of nine full-time equivalent IBHS staff providing group services.

(c) A mental health professional shall be available to consult with staff during all hours that group services are provided, including evenings and weekends.

(d) Face-to face supervision may be delivered through secure, real-time, two-way audio and video transmission that meets technology and privacy standards required by the Health Insurance Portability and Accountability Act of 1996 (Pub.L. No. 104-191, 110 Stat. 1936).

(e) A mental health professional shall maintain documentation which includes at least the following of all supervision sessions as part of each staff person's personnel file:

(1) The date of the supervision session.

(2) The location and modality of the session, such as in-person or through secure audio or video medium.

(3) The format of the session, such as individual, group or onsite.

(4) The start and end time of the supervision session.

(5) A narrative summary of the points discussed during the session.

(6) The dated signature of the supervisor and the staff person receiving the supervision.

§ 5240.103. Staff training requirements.

(a) An IBHS agency that provides group services shall ensure that all staff complete initial and annual training requirements.

(b) A mental health professional that is not licensed in this Commonwealth as a psychologist, professional counselor, marriage and family therapist, clinical social worker or social worker shall complete at least 16 hours of Department-approved training annually that is related to the mental health professional's specific job functions and is in accordance with the mental health professional's individual training plan as required under § 5240.13 (relating to staff training plan).

(c) A mental health worker shall complete at least 20 hours of Department-approved training annually that is related to the mental health worker's specific job functions and is in accordance with the mental health worker's individual training plan as required under § 5240.13.

(d) A BHT shall complete training in accordance with § 5240.73(d)—(j) (relating to staff training requirements) and the individual training plan as required under § 5240.13.

§ 5240.104. Group services initiation requirements.

(a) An IBHS agency shall provide group services to a child, youth or young adult in accordance with a written order under § 1155.35(1) (relating to payment conditions for group services).

(b) Prior to the initiation of group services, the IBHS agency shall obtain written consent to receive the group services identified in the written order from the youth, young adult, or parent or caregiver of a child or youth.

§ 5240.105. Assessment.

(a) A comprehensive face-to-face assessment shall be completed by a mental health professional for each child, youth or young adult within 5 days of the initiation of group services in accordance with § 5240.21(b)—(d) and (f) (relating to assessment) and prior to developing the ITP.

(b) The assessment shall be reviewed and updated in accordance with § 5240.21(e) and (f).

§ 5240.106. Individual treatment plan.

(a) A written ITP shall be developed by the mental health professional within 10 days after the initiation of group services and be based on the assessment completed in accordance with § 5240.105 (relating to assessment).

(b) The ITP must include the recommendations from the licensed professional who completed the written order for group services in accordance with §§ 1155.32(1) and 1155.35(1) (relating to payment conditions for individual services; and payment conditions for group services).

(c) The ITP shall be strength-based with individualized goals and objectives to address the identified therapeutic needs for the child, youth or young adult to function at home, school or in the community.

(d) The ITP must include all of the following:

(1) Specific goals and objectives to address the identified therapeutic needs with definable and measurable outcomes.

(2) Whether and how parent or caregiver participation is needed to achieve the identified goals and objectives.

(3) Structured therapeutic activities, community integration activities and individual interventions to address identified therapeutic needs for the child, youth or young adult to function in the home, school or community.

(4) Type of staff providing the services.

(5) Time frames to complete each goal.

(6) Settings where group services may be provided.

(7) Number of hours that group services will be provided to the child, youth or young adult.

(e) The ITP shall be developed in collaboration with the youth, young adult, or at least one parent or caregiver of a child.

(f) The ITP shall be reviewed and updated at least every 6 months and if:

(1) An ITP goal is completed.

(2) No significant progress is made within 45 days from the initiation of the services identified in the ITP.

(3) A youth or young adult requests a change.

(4) A parent or caregiver of a child or youth requests a change.

(5) The child, youth or young adult experiences a crisis event.

(6) The ITP is no longer clinically appropriate for the child, youth or young adult.

(7) An IBHS agency staff person, primary care physician, other treating clinician, case manager or other professional involved in the child's, youth's or young adult's services recommends a change.

(g) An ITP update must include the elements in subsection (d) and all of the following:

(1) A description of progress or lack of progress towards the goals and objectives.

(2) A description of any new goals, objectives and interventions.

(3) A description of any changes made to the goals, objective or interventions.

(4) A description of new interventions to be used to reach previously identified goals and objectives.

(h) The ITP and all updates shall be reviewed, signed and dated by the youth, young adult, or at least one parent or caregiver of a child or youth, and the mental health professional who developed the ITP.

(i) The ITP and all updates shall be reviewed, signed and dated by the IBHS clinical director.

§ 5240.107. Group services provision.

(a) A mental health professional shall provide only the following services:

(1) Individual psychotherapy.

(2) Group psychotherapy.

(3) Family psychotherapy.

(4) Design of psychoeducational group activities.

(5) Assessment of the strengths and therapeutic needs of the child, youth or young adult.

(6) ITP development.

(b) A mental health worker shall provide only the following services:

(1) Assistance in conducting group psychotherapy.

(2) Facilitation of psychoeducational group activities.

(3) Implementation of the ITP to assist the child, youth or young adult achieve a goal.

(4) Support of the child, youth or young adult with the development of appropriate behaviors and interpersonal relationships in the community.

(5) Help for the child, youth or young adult to develop coping skills to aid in the development of age appropriate interpersonal relationships with peers.

(c) A BHT shall provide only the following services:

(1) Assistance with the facilitation of psychoeducational group activities.

(2) Instruction on how to manage and control emotional responses in group settings.

(3) Behavioral stabilization and interventions that support the child, youth or young adult in community settings.

(4) Problem solving skills modeling.

(d) Group services shall be structured to address the goals and objectives identified in each child's, youth's or young adult's ITP.

(e) Group services shall be provided in a school or other community setting and may be provided in an IBHS agency site if approved in the service description in accordance with § 5240.5(a)(12) (relating to service description).

(f) An IBHS agency that provides group services and ABA services shall also comply with §§ 5240.81—5240.87 (relating to applied behavioral analysis).

(g) An IBHS agency that provides group services and EBT shall comply with §§ 5240.91—5240.93 (relating to EBT initiation requirements; assessment and individual treatment plan; and EBT requirements).

§ 5240.108. Requirements for group services in school settings.

A licensed IBHS agency that provides group services and identified a school as a location where services will be provided in its approved service description shall meet all of the following requirements:

(1) Have a written agreement with the authorized representative for each school location in which it provides group services that includes all of the following:

(i) Identification of the IBHS agency's and the school's lead contacts and their contact information.

(ii) Delineation of roles and responsibilities of the school staff and the IBHS agency staff.

(iii) Assurances of the collaborative relationship between school staff and IBHS agency staff.

(iv) A requirement for quarterly meetings between IBHS staff and school administration to review performance, collaboration issues and the written agreement.

(v) Crisis management protocols.

(vi) Procedures for school staff to refer students for group services.

(vii) Identification of the space and equipment allocated for use by IBHS agency staff.

(viii) Process for revising or updating the written agreement.

(2) IBHS agency staff and the school staff involved with the child, youth or young adult receiving group services shall meet on a quarterly basis to discuss the student's behavioral health services and progress related to school performance.

(i) A youth, young adult, or parent or caregiver of the child or youth shall be invited to participate in the quarterly meeting.

(ii) Other professionals as requested by a youth, young adult, or parent or caregiver of the child or youth shall be invited to participate in the quarterly meeting.

(3) An IBHS agency shall document the outcome of the quarterly meeting and include all of the following:

(i) Attendance.

(ii) Date of meeting.

(iii) Summary of the discussion.

(iv) Recommendations for any change in group service participation if discussed.

(v) Reason a meeting was not convened as required.

(4) An IBHS agency providing group services shall keep the child's, youth's or young adult's records in accordance with § 5240.41 (relating to individual records).

(5) An ITP for group services provided in school settings shall be developed in accordance with § 5240.106 (relating to individual treatment plan) and include all of the following:

(i) Continuity of services when school is not in session.

(ii) Interventions that specifically address the child's, youth's or young adult's functioning in school.

(iii) Input from the teachers and guidance counselor directly involved with the child, youth or young adult receiving group services.

(6) An IBHS agency that provides group services and ABA services and provides the services in school settings shall comply with §§ 5240.81—5240.87 (relating to applied behavioral analysis).

(7) An IBHS agency that provides group services and EBT and provides the services in school settings shall comply with §§ 5240.91—5240.93 (relating to EBT initiation requirements; assessment and individual treatment plan; and EBT requirements).

WAIVERS

§ 5240.111. Waivers.

(a) An IBHS agency may submit a written request to the Department for a waiver of a specific requirement in this chapter.

(b) The Department may grant a waiver unconditionally or subject to conditions that shall be met. The Department may revoke a waiver if conditions required by the waiver are not met.

(c) A waiver request will be granted only in exceptional circumstances and if all of the following are met:

(1) The waiver does not jeopardize the health and safety of the children, youths or young adults served by the IBHS agency.

(2) The waiver will not adversely affect the quality of services provided by the IBHS agency.

(3) The intent of the requirement to be waived will still be met.

(4) Children, youth or young adults will benefit from the waiver of the requirement.

(5) The waiver does not violate any Federal or State statute or other regulation.

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PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 63 AND 64]

[L-2018-3001391]

Competitive Classification of Telecommunication Retail Services; Advanced Notice of Proposed Rulemaking

Public Meeting held
July 12, 2018

Commissioners Present: Gladys M. Brown, Chairperson, statement follows; Andrew G. Place, Vice Chairperson, statement follows; Norman J. Kennard; David W. Sweet; John F. Coleman, Jr., statement follows

Rulemaking to Comply with the Competitive Classification of Telecommunication Retail Services Under 66 Pa.C.S. § 3016(a); General Review of Regulations 52 Pa. Code, Chapter 63 and Chapter 64; L-2018-3001391

Advanced Notice of Proposed Rulemaking Order

By the Commission:

The Public Utility Code (Code) gives the Commission broad authority to “supervise and regulate all public utilities doing business within this Commonwealth” as well as the power to “make such regulations, not inconsistent with law, as may be necessary or proper in the exercise of its powers or for the performance of its duties.” 66 Pa.C.S. § 501(b). Historically, the Commission has promulgated Regulations to respond to changes in law, technology and the economy in order to meet the essential needs of the public and the utilities we regulate. Today we are initiating a rulemaking to respond to changes in competitive market conditions in the telecommunications industry and, in particular, to address whether the increases in competition and competitive alternatives warrant the elimination of certain Regulations on a permanent industry-wide basis for competitive wire centers.

I. INTRODUCTION

On March 4, 2015, the Commission partially granted a petition filed by Verizon Pennsylvania LLC and Verizon North LLC¹ (Petition) to reclassify certain wire centers as competitive and waive certain regulations. Joint Petition of Verizon Pennsylvania LLC and Verizon North LLC for Competitive Classification of All Retail Services in Certain Geographic Areas and for a Waiver of Regulations for Competitive Services, Docket Nos. P-2014-2446303 and P-2014-2446304 (Order entered March 4, 2015) (Reclassification Order).² As part of our Reclassification Order, the Commission also granted for Verizon’s competitive wire

¹ Individually “Verizon PA” and “Verizon North”; collectively “Verizon.”

² See also the Tentative Implementation Opinion and Order at Joint Petition of Verizon Pennsylvania LLC and Verizon North LLC for Competitive Classification of All Retail Services in Certain Geographic Areas and for a Waiver of Regulations for Competitive Services, Docket Nos. P-2014-2446303 and P-2014-2446304 (Order entered June 1, 2015) (Tentative Implementation Order) and the Final Implementation Opinion and Order at Joint Petition of Verizon Pennsylvania LLC and Verizon North LLC for Competitive Classification of All Retail Services in Certain Geographic Areas and for a Waiver of Regulations for Competitive Services, Docket Nos. P-2014-2446303 and P-2014-2446304 (Order entered September 11, 2015) (Final Implementation Order).

centers a five-year waiver of certain of the Commission’s Chapter 63 and Chapter 64 Regulations, pending a rulemaking to determine the status of these Regulations in competitive and noncompetitive wire centers on a permanent and industry-wide basis. To that end, this Advance Notice is being issued primarily to solicit public input regarding the status of the Commission’s Chapter 63 and 64 Regulations, including whether to make permanent the waivers granted in the Reclassification Order to any wire center in Pennsylvania that is currently classified as competitive or becomes classified as competitive in the future under applicable law, whether to rescind or amend any Chapter 63 and 64 Regulations for non-competitive wire centers in Pennsylvania, and whether to create a separate chapter in our Regulations to address service provided in competitive wire centers.

The Reclassification Order addressed a number of complex regulatory issues of first impression. This Advance Notice will enable us to gather further input from the industry, consumer groups, and advocates before drafting the proposed revisions. Moreover, the Advance Notice will give us the opportunity to resolve any issues of implementation that remain and will lead to a clear, cohesive, thorough, and analytically sound proposed rulemaking order.

II. HISTORY OF THE PROCEEDING

These proceedings began as a result of Verizon’s Joint Petition for competitive classification of all retail services in certain geographic areas pursuant to Section 3016(a) of the Code, 66 Pa.C.S. § 3016(a), and for an eleven-year waiver of parts of Chapter 63 and all of Chapter 64 of our Regulations in Title 52 of the *Pennsylvania Code* (Regulations), Regulations that would be concomitant with a competitive designation of basic local exchange service in those wire center areas. Finally, Verizon requested that the Commission grant any other waivers and/or approval of alternative regulation to achieve the result requested in its Petition.

The Petition was filed on October 6, 2014, pursuant to 66 Pa.C.S. § 3016(a)(2), 66 Pa.C.S. § 501, and 52 Pa. Code § 5.43, and specifically sought a Commission determination that basic local exchange service in 194 wire centers in or adjacent to Verizon’s Philadelphia, Erie, Scranton/Wilkes-Barre, Harrisburg, Pittsburgh, Allentown, and York service territories was competitive.

Section 3016(a) of the Code permits the Commission, after a review of all relevant evidence presented, to determine a “protected service” is competitive where an incumbent local exchange carrier (ILEC) has demonstrated the availability of like or substitute services or other business activities provided or offered by alternative service providers. On March 4, 2015, the Commission issued its Reclassification Order, which, inter alia, concluded that 153 of the 194 wire centers included in the Petition met the statutory criteria for a competitive determination and were so reclassified. Reclassification Order at 63-64. The Reclassification Order also concluded that forty-one of the wire centers did not meet the statutory test for a competitive classification, and the request was denied as to those wire centers.

We found that the evidence in that case established that consumers have numerous competitive choices offered by cable and wireless providers that are like or substitute services for Verizon’s basic local exchange service. Accordingly, we concluded that, regardless of any

technological or economic differences that may exist between basic local exchange service and the competing cable and wireless voice services, consumers considered these competing services adequate replacements for basic local exchange service. *Id.*

Our analysis on availability of competing services was conducted on a per-wire center basis and required widespread availability of both cable telephony and wireless voice service in each wire center determined to be competitive. The record evidence showed that in each wire center determined to be competitive, at least 97 percent or more of the households had access to cable, while wireless voice service is also ubiquitously available throughout each wire center. *Id.*

The Reclassification Order also granted, in part, waivers of certain of the Commission's Chapter 63 and Chapter 64 Regulations, 52 Pa. Code §§ 63.1, et seq., 52 Pa. Code §§ 64.1, et seq., in competitive wire centers.³ The waivers were conditioned upon the collection of data and a contemplated, future rulemaking proceeding to address the status of our Chapter 63 and 64 Regulations on a permanent and industry-wide basis, consistent with the discussion contained in the Opinion and Order. See Reclassification Order at 127 (Ordering Paragraph 17). This Advanced Notice is the initiation of that rulemaking proceeding. The purpose of the conditional waivers was to afford us time to collect data, for a period of two years, to aid in our assessment of the market conditions present in the aftermath of the competitive reclassification, particularly in the areas of affordability and quality of service. See Reclassification Order at 56, 76, 104. The Commission granted a waiver period of five years. Reclassification Order at 76, 103.

The Reclassification Order, while granting the Petition in part, confirmed Verizon's statutory duty to provide "adequate, efficient, safe, and reasonable service and facilities" as well as service that is "reasonably continuous and without unreasonable interruptions or delay" under 66 Pa.C.S. § 1501 in the entirety of its service territory. Reclassification Order at 7 (Ordering Paragraph 5). Under that same Code provision, and regardless of the competitive classification of any wire center, Verizon retained the carrier of last resort (COLR) obligation throughout its service territory. *Id.* (Ordering Paragraph 6).

No party sought reconsideration of any aspect of the Reclassification Order, and no party appealed the Order. Based on the foregoing, the unchanged directives of the Reclassification Order became the final and the binding action of this Commission. In the Reclassification Order, we provided a more detailed history of the proceeding, recitation of the record, and legal analysis supporting our conclusion on the threshold issue whether the protected or retail noncompetitive service Verizon provides was competitive under the standards set forth in Section 3016(a) of the Code. Reclassification Order at 9—13.

On June 1, 2015, we issued a Tentative Implementation Order, under authority of Sections 501 and 703(g) of the Code, 66 Pa.C.S. §§ 501 and 703(g), to clarify certain issues necessary to facilitate implementation of the Reclassification Order and to achieve a more efficient transition of basic service to a competitive service in the relevant areas. The clarification of certain matters in the Reclassification Order pertained to the following matters: (1) the application of Verizon's Product Guide; (2)

Verizon's COLR obligations; (3) the application of reporting requirements under 52 Pa. Code § 64.201; and (4) the waiver of Chapter 64's Subchapters E, F and H concerning suspension, termination, and restoration of service rules in competitive wire centers, 52 Pa. Code §§ 64.61—111, 64.121—123, and 64.181-182.

On May 20, 2015, we issued a Secretarial Letter titled "VERIZON COMPETITIVE CLASSIFICATION DATA COLLECTION REQUEST FOR COMMENTS AND REPLY COMMENTS." The purpose of the Secretarial Letter was to identify a detailed list of the data to be collected and submitted to help assess the market conditions in competitive wire centers and elicit comments and reply comments on the specific data, form, and reporting schedules for inclusion.

As noted in the Tentative Implementation Order:

The Reclassification Order addressed a number of complex regulatory issues of first impression for this Commission and the telecommunications industry in Pennsylvania as a whole. Chapter 30 of the Code is clear that the primary impact of the competitive status is that: (1) Verizon may price the service at its discretion; and (2) Verizon may maintain a price list for a competitive service rather than maintaining a Commission-approved tariff. In the absence of a tariff, Verizon's "Product Guide" will be the governing document to memorialize the terms and conditions of stand-alone basic local telephone service in competitive wire centers.

* * *

Because of the compressed timeframe established pursuant to the provisions of Section 3016(a)(1) of the Code, 66 Pa.C.S. § 3016(a)(1), in which the Commission was mandated to issue an Order within 150 days of the Petition, upon further review, we believe it is necessary to issue a Tentative Implementation Opinion and Order clarifying certain issues related to the reclassification. Clarification in the following areas is necessary to facilitate implementation of the Reclassification Order and to achieve a more efficient transition of basic service to a competitive service in the relevant areas.

Tentative Implementation Order at 3-4.

Our Final Implementation Order was issued on September 11, 2015, and addressed the clarifications raised in the Tentative Implementation Order. The Commission clarified: (1) that a Product Guide is not "legal authority" and does not have the same force and effect of law as a tariff; (2) that Verizon must continue to maintain COLR obligations; (3) that the waivers and clarifications in the Tentative Implementation Order concerning the revision of the Companies' suspension, termination, and restoration of service rules were adopted as the final Commission action.

Also, on September 11, 2015, we issued an Order implementing Ordering Paragraphs 15 and 16 of the March 4, 2015 Reclassification Order and our May 20, 2015 Secretarial Letter. Order Implementing Paragraphs 15 and 16. This Order established the specific data, form, and reporting schedules required by Ordering Paragraphs 15 and 16 and this Commission's obligations under the Code.⁴ The data collection required here provided for the appropriate implementation and evaluation of the market-based regulatory goals of the Reclassification Order, and intended to: (1) help assess the market in

³ The waivers were granted to Verizon as well as to Competitive Local Exchange Carriers (CLECs) operating in the 153 wire centers determined to be competitive. Reclassification Order at 124 (Ordering Paragraph 4).

⁴ See 66 Pa.C.S. §§ 3015(f) and 3019(b)(2) and (3); see also 66 Pa.C.S. § 1501.

competitive areas, including the impact of our decision on affordability of basic service and quality of service in those areas and (2) provide guidance for this rulemaking. In other words, the data collection was intended to assist the Commission in making a determination as to the status of the waived Regulations in the competitive wire centers going forward. September 11, 2015 Order at 5.

III. REGULATORY IMPACT OF A COMPETITIVE DETERMINATION

According to Chapter 30, the primary impact of a competitive determination is that: (1) Verizon may price the service at its discretion; and (2) Verizon may maintain a price list of a competitive service rather than maintaining a Commission-approved tariff.⁵ However, a finding that the market is competitive is not equivalent to nor does it require a complete deregulation of the service.⁶

The Commission has retained authority under the Code over certain aspects of landline telecommunications services determined to be competitive, including retaining jurisdiction over quality of service standards that address the safety, adequacy, reliability, and privacy of telecommunications services and the ordering, installation, suspension, termination, and restoration of any telecommunication service.⁷ According to Chapter 30, our jurisdiction is only limited to the extent that competitive services' rates may not be regulated by the Commission,⁸ and the Commission may not require tariffs for competitive services. However, the Commission may require that a price list for competitive services be maintained at the Commission,⁹ an outcome similar to the principle of detariffing, which is the elimination of the requirement to file and maintain tariffs, including not only the rates for service set by the regulatory authority but also the terms and conditions of service approved by the regulatory authority.¹⁰

A. Reclassification Order Waivers

In its Petition, Verizon requested waiver, until December 31, 2025, of the following Subchapters of Chapter 63 of the Commission's Regulations: Subchapter B (Services and Facilities); Subchapter C (Accounts and Records); Subchapter E (Quality of Service); Subchapter F (Extended Area Service); and Subchapter G (Public Coin Services). Verizon also requested an eleven-year waiver for the entirety of Chapter 64 of the Commission's Regulations.

We concluded that many of the monopoly-era Regulations in Chapters 63 and 64 that do not apply to Verizon's competitors no longer make sense in a competitive marketplace and that sufficient competition existed in certain wire centers subject to the Petition to substantially reduce our regulation. Reclassification Order at 75.

Accordingly, we waived specific Regulations for a period of five years, pending data collection and completion of a

⁵ See 66 Pa.C.S. §§ 3016(d) and (e).

⁶ "Deregulation" is the pervasive elimination of all regulation, including both price and service regulation.

⁷ See 66 Pa.C.S. § 3019(b)(2); see also 66 Pa.C.S. § 1501.

⁸ 66 Pa.C.S. § 3016(e)(1) ("Subject to the requirements of subsection (d)(1) [establishing cost of service as the price floor], a local exchange telecommunications company may price competitive services at the company's discretion.")

⁹ 66 Pa.C.S. § 3016(d)(4) ("The commission may require a local exchange telecommunications company to maintain price lists with the commission applicable to its competitive services. Price changes that are filed in a company's tariff for competitive services will go into effect on a one-day notice.")

¹⁰ Tariffs are defined under 66 Pa.C.S. § 102 as including not only rates and rate schedules but also "rules, regulations and practices" of the utility. Moreover, the Commission's Regulation at 52 Pa. Code § 53.25 specifies that a telephone utility's tariff shall set forth "all rules and regulations" which apply generally to all classes of services. Therefore, we interpret the Section 3016(d)(2) language specifying that the Commission may not require tariffs for competitive services as applying to not only rates but also terms and conditions of service. In the event rates, services, or other conditions are detariffed, consumer protections are invoked under the Consumer Protection Act, 73 P.S. §§ 201-1 to 9.

rulemaking to address the status of these chapters for noncompetitive and competitive services on a permanent and industry-wide basis. In the Reclassification Order, we specifically addressed the enumerated Regulations set forth in Subchapters B, C, E, F, and G. See Reclassification Order at 79. All remaining portions of Chapter 63 remained in full force in the wire centers determined to be competitive in this proceeding, including Subchapter K. Competitive Safeguards, Subchapter L. Universal Service, and Subchapter M. Changing Local Service Providers.

We shall now review the conditional waivers made in the Reclassification Order and open these dispositions for comment with respect to their implementation on a permanent industry-wide basis. Reclassification Order at 77—103.

1. Select Subchapters of Chapter 63

Subchapter B (Services and Facilities)

52 Pa. Code §§ 63.12—63.24

We specifically waived the following Subchapter B Regulations: Section 63.12 (Minimizing interference and inductive effects); Section 63.16 (Traffic measurements); Section 63.17 ([Reserved]); Section 63.18 (Multiparty line subscribers); Section 63.19 (Interoffice lines); Section 63.21 (Directories); Section 63.23 (Construction and maintenance safety standards); and 63.24 (Service interruptions). Reclassification Order at 79—81.

We concluded that this Subchapter includes provisions that are outdated, such as Section 63.23, which requires compliance with National Electrical Safety Code standards from 1981. Our waiver of Section 63.23 was conditioned upon the requirement that Verizon construct and maintain its public utility equipment, facilities, and wire or cable crossings in accordance with the safety standards as set forth in the most up-to-date version of the National Electrical Safety Code.¹¹ Because this Regulation addressed safety and reliability, the goal of this provision continued to be relevant in the current market.

Subchapter B also includes provisions relating to services that no longer exist, as a practical matter, including multiparty lines and provisions relating to traffic measurements and record keeping that are largely manual in nature and predate the use of computers. Reclassification Order at 79-80. Moreover, regarding directories, the Commission has since granted relief to both Verizon and CenturyLink to end saturation delivery of paper copies of residential white pages, business white pages, and business yellow pages directories—except for those customers who are likely to use the directories or who specifically request them.¹²

With respect to the Section 63.24 provision requiring bill credits for service outages, we found in the Reclassification Order that for those wire centers we determined to be competitive, a dissatisfied customer could obtain service from other providers if Verizon's service quality to the customer was unacceptable. Moreover, Verizon's applicable Product Guide addressed this issue by also providing credits for service interruptions.

We retained 52 Pa. Code § 63.13 (Periodic inspections), and 52 Pa. Code § 63.14 (Emergency equipment and personnel), because we concluded that these Regulations

¹¹ We have authority to condition a waiver of our Regulations pursuant to Sections 501, and 1501 of the Code.

¹² Joint Petition and Notice of The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink, Verizon Pennsylvania LLC and Verizon North LLC and Dex Media, Inc. to Reduce Distribution of Print Telephone Directories and Transition to Digital Publication or, Alternatively, for Relief of 52 Pa. Code § 64.191(g), Docket No. P-2017-2610359 (Order entered August 31, 2017).

were not outdated and remained relevant in a competitive world. We also retained 52 Pa. Code § 63.15 (Complaint procedures), and 52 Pa. Code § 63.22 (Service records), finding that they remained relevant to the Commission-approved complaint process that was retained in competitive wire centers.

Subchapter C (Accounts and Records)
52 Pa. Code §§ 63.31—63.37

Given that most of the Regulations in Subchapter C are applicable under rate base/rate of return regulation, we specifically waived Section 63.31 (Classification of public utilities); Section 63.32 (System of accounts); Section 63.33 (Integrity of service accounts to be preserved); Section 63.34 (Reclassification of telephone plant to original cost); and Section 65.35 (Preservation of records).

However, we retained Section 63.36 (Filing of annual financial reports) since determining that a wire center is competitive did not change the statutory reporting mandates in Section 3015(e) of Chapter 30, which requires LECs to file an annual financial report with the Commission.

We retained § 63.37 to ensure the accuracy of the cost allocation process related to the funding obligations of jurisdictional local exchange carriers pursuant to the Universal Telecommunications and Print Media Access Act, 35 P.S. §§ 6701.1—6701.4, (UMPTA). UMPTA provides for the Pennsylvania Telecommunications Relay Service and the Telecommunications Devices for the Deaf Program which address equivalent access to telecommunications services for the deaf, hard of hearing, speech-impaired, and others with disabilities. UMPTA also provides for the Print Media Access System Program which is a reading service for persons with certain vision and physical disabilities.

Subchapter E (Telephone Quality of Service Standards)
52 Pa. Code §§ 63.51—63.65

Subchapter E contains the provisions related to quality of service, i.e., the performance standards for trouble reports, service installations, operator calls, dial tone connection, completion of correctly dialed calls, as well as a safety program for its employees. We specifically waived the following Subchapter E regulations: Section 63.51 (Purpose); Section 63.52 (Exceptions); Section 63.53 (General provisions); Section 63.54 (Record retention); Section 63.56(a)—(e) (Measurements); Section 63.58 (Installation of service); Section 63.59 (Operator-handled calls);¹³ Section 63.60 (Automatic Dialing Announcing Devices (ADAD)); Section 63.61 (Local dial service); Section 63.62 (Direct distance dial service); Section 63.63 (Transmission requirements and standards); Section 63.64 (Metering inspections and tests); and Section 63.65 (Safety).

As we did for bill credits for outages, we found that the market was sufficiently competitive that a customer could obtain service from other providers if Verizon's service quality was unacceptable. These customers also retain the option to complain to the Commission about poor service since waiving the regulations of Subchapter E did not, in any way, modify Verizon's statutory obligation under the Code to provide "adequate, efficient, safe, and reasonable service" to customers in competitive wire centers or impact the Commission's ability to adjudicate a customer complaint alleging poor service quality. Verizon remains

statutorily required to provide reasonable service in competitive areas. Notwithstanding any regulatory waivers, our Section 1501 statutory jurisdiction and authority remain a regulatory back-stop on quality of service.

In addition, we found no reason to continue our enforcement of Section 63.65 as this provision was enforceable by other agencies in charge of such standards. Again, the Commission retained its jurisdiction and authority under Section 1501 of the Code to address an allegation that a violation of Federal Communications Commission and/or Occupational Safety and Health Administration workplace safety regulations also violate Section 1501. Reclassification Order at 85—87.

With respect to a Section 63.58 (Installation of service), we determined that information on the timing of service installations should be readily available to customers in some form other than a regulation. This will help manage reasonable customer expectations on the subject. Thus, we granted a waiver of Section 63.58 conditioned upon the requirement that Verizon include in its Product Guide applicable to competitive services its rules regarding service installations. *Id.*

In order to maintain certain consumer protections related to service outages during this transition to an unprotected competitive service, we chose to retain the following Regulations: Section 63.55 (Surveillance levels); Section 63.56(f) and (g) (Measurements); and Section 63.57 (Trouble reports). We found these Regulations necessary to assist the Commission in ensuring continued compliance with Section 1501 of the Code and to manage reasonable customer expectations regarding service outages even in a competitive market. *Id.*

Section 63.57(b) language provides sufficient flexibility responding to outage calls that are non-emergency in nature, since Section 63.57(b) expressly permits a utility and its customer to "agree to another arrangement." That flexibility made sense in a competitive environment, particularly for those customers who have wireless service and may prefer to schedule a repair appointment at a more convenient time than within twenty-four hours of reporting the trouble. *Id.*

Subchapter F (Extended Area Service)
52 Pa. Code §§ 63.71—63.77

Subchapter G (Public Coin Service)
52 Pa. Code §§ 63.91—63.98

We waived the following Subchapter F Regulations regarding Extended Area Service: Section 63.71 (Definitions); Section 63.72 (Traffic usage studies); Section 63.72a (InterLATA traffic studies); Section 63.73 (Optional calling plans); Section 63.74 (EAS polls); Section 63.75 (Subscriber polls); Section 63.76 (EAS complaints); and Section 63.77 (Evaluation criteria). We also waived the following Subchapter G Regulations regarding Public Coin Service: Section 63.91 (Purpose); Section 63.92 (Definitions); Section 63.93 (Conditions of service); Section 63.94 (Coin telephone requirements); Section 63.95 (Sufficiency of public telephone service); Section 63.96 (Service requirements for coin telephones); Section 63.97 ([Reserved]); and Section 63.98 (Compliance).

We found the Regulations of Subchapters F and G to be outdated and serving no purpose in today's regulatory environment. Our extended area service Regulations were no longer enforced by the Commission, having been rendered useless in part, by their success, which led to the more expansive local calling, and by the competition

¹³ Pursuant to a prior ruling, we note that we have already granted a waiver for Verizon PA for Section 63.59(b)(2) related to customer calls to the business office. That waiver is in place until a rulemaking is undertaken. See Pa. Public Utility Commission, Law Bureau Prosecutory Staff v. Verizon Pennsylvania, Inc., Docket No. M-2008-2077881 (Order entered October 12, 2012) at 32—35, Ordering ¶ 4 (Quality of Service Order).

that has evolved in the telecommunications market through state and federal statutory changes. Reclassification Order at 89-90.

Similarly, the competitive telecommunications market eliminated the need for payphone service in Pennsylvania and throughout the nation. Verizon noted that it no longer provided payphone services in Pennsylvania and that payphones also had been rendered obsolete, particularly due to the proliferation of wireless services across the Commonwealth. *Id.* at 90.

2. Chapter 64

Verizon requested a waiver of the entire Chapter 64 of our Regulations, 52 Pa. Code §§ 64.1—64.213, addressing Standards and Billing Practices for Residential Telephone Service. Reclassification Order at 90—103. Chapter 64 contains Regulations pertaining to telephone utility interactions with customers, including billing and payment, credit and deposit, suspension, termination, and restoration of service, and complaint handling among other items. The consumer protections of Chapter 64 were necessary in a monopoly market, but the importance of some of these Regulations had diminished in areas where the competitive market provided sufficient incentive for a company to meet reasonable customer expectations. And again, in waiving certain Chapter 64 Regulations we did not abandon our oversight of billing and collections practices because utilities were still required to abide by Section 1501 of the Code to provide reasonable service. Additionally, we are not precluded from hearing a customer complaint on certain billing-related issues not involving price.

We concluded that some protections may be necessary even in a competitive market. Therefore, we granted, in part, and denied, in part, Verizon's request to waive our Chapter 64 Regulations in those wire centers determined to be competitive.¹⁴

Subchapter A (Preliminary Provisions) 52 Pa. Code §§ 64.1 And 64.2

Section 64.1 is the statement of purpose and policy regarding Chapter 64. Section 64.2 contains definitions. We concluded that most of Section 64.1 remained relevant even in a competitive wire center, so we waived the first sentence but retained the rest of the statement of policy.¹⁵ Section 64.2 was retained to the extent certain provisions elsewhere were retained and that retention implicated the definitions contained in Section 64.2.

Subchapter B (Payment and Billing Standards) 52 Pa. Code §§ 64.11—64.24

Subchapter B governs payment and billing. Specifically, we waived the following Subchapter B Regulations as no longer needed in a competitive environment: Section 64.11 (Method of payment); Section 64.12 (Due date for payment); Section 64.13 (Billing frequency); Section 64.14 (Billing information); Section 64.15 (Advance payments); Section 64.16 (Accrual of late payment charges); Section 64.17 (Partial payments for current bills); Section 64.18 (Application of partial payments between past and current bills); Section 64.19 (Rebilling); Section 64.20 (Transfer of accounts); Section 64.21 ([Reserved]); and Section 64.22 (Billing service for interexchange carriers). In granting the waiver, we noted that Verizon's Product Guide, Section 1 Original Sheets 5 and 6, applicable to

basic local exchange services in competitive wire centers addressed several of Subchapter B payment-related issues, including method of payment and late payment charges.

We also recognized that Subchapter B included some important consumer protections related to slamming and cramming that remained relevant in a competitive market. Therefore, we retained Section 64.23 (cramming/slamming) obligations.

At the same time, Section 64.24, which addresses preservation of basic local exchange service upon the termination of a bundled package, contained an important consumer protection that remained relevant in a competitive market where there has been a proliferation of bundled service packages. Accordingly, we denied Verizon's waiver request for this specific Regulation.

Subchapter C (Credit and Deposit Standards Policy) 52 Pa. Code §§ 64.31—64.41

Subchapter C governs credit and deposit standards. Specifically, we waived the entirety of Subchapter C Regulations: Section 64.31 (LEC credit and deposit policies); Section 64.32 (Credit standards); Section 64.33 (Payment of outstanding balance); Section 64.34 (Written procedures); Section 64.35 (Deposit requirements for existing customers); Section 64.36 (Method of making deposit); Section 64.37 (Refund of deposits); Section 64.38 (Application of deposit to bills); Section 64.39 (Periodic review); Section 64.40 (Refund statement); and Section 64.41 (Interest).

We recognized that there was value in ensuring that interested customers had access to relevant information about their services, including Verizon's credit and deposit standards. We believed that making this information readily available would help to manage reasonable customer expectations. We took notice of Verizon's Product Guide, which applies to competitive services and specifies that Verizon will use a credit check to determine creditworthiness. To the extent that the Product Guide did not address Verizon's policies and procedures for service to applicants who are not deemed creditworthy, we concluded this information should be added to the Product Guide. We granted a waiver of this Subchapter conditionally upon the requirement that Verizon provide information in its Product Guide concerning the consequences if an applicant for service is not deemed to be creditworthy.

Subchapter D (Interruption and Discontinuation of Service) 52 Pa. Code §§ 64.51—64.53

Subchapter D governs temporary service interruptions and discontinuation of service. Specifically, we waived the following Subchapter D Regulations: Section 64.52 (Refunds for service interruptions) and Section 64.53 (Discontinuance of service). We recognized that Verizon's Product Guide, Section 1 Original Sheet 6, applicable to basic local exchange services in competitive wire centers in both Verizon service territories in Pennsylvania, addressed refunds for service interruptions and customer-initiated discontinuation of service.

We concluded that Section 64.51, which allows a utility to interrupt service to a customer under emergency conditions and for critical maintenance purposes, should be retained. The Regulation requires utilities to give notice to customers (if possible) and to keep the interruption as short as possible. Even under competitive conditions, local exchange companies must have the ability to

¹⁴ The complete list of our Chapter 64 Regulations for which we granted Verizon a temporary waiver was attached in Appendix E to the Reclassification Order.

¹⁵ The sentence waived was the following: "The purpose of this chapter is to establish and enforce uniform, fair and equitable residential telephone service standards governing account payment and billing, credit and deposit practices, suspension, termination and customer complaint procedures."

interrupt service to perform essential maintenance or repair work, and should make sure that work is done quickly and safely.

Subchapter E (Suspension of Service)
52 Pa. Code §§ 64.61—64.111

Subchapter E governs grounds for suspension of service and notice procedures prior to suspension of service, including Section 64.61 (Authorized suspension of service); Section 64.62 (Days suspension or termination of service are prohibited); Section 64.63 (Unauthorized suspension of service); Section 64.71 (General notice provisions); Section 64.72 (Suspension notice information); Section 64.73 (Notice when dispute pending); Section 64.74 (Procedures upon customer contact before suspension); Section 64.75 (Exception for suspension based on occurrences harmful to person or property); Section 64.81 (Limited notice upon noncompliance with report or order); Section 64.101 (General provision); Section 64.102 (Postponement of suspension pending receipt of certificate); Section 64.103 (Medical certification); Section 64.104 (Length of postponement); Section 64.105 (Restoration of service); Section 64.106 (Duty of customer to pay bills); Section 64.107 (Suspension upon expiration of medical certification); Section 64.108 (Right of LEC to petition the Commission); Section 64.109 (Suspension prior to expiration of medical certification); and Section 64.111 (Third-party notification).

The Commission waived the following Subchapter E Regulations pertaining to grounds for suspension of service and certain notice procedures: Section 64.61 (Authorized suspension of service); Section 64.63 (Unauthorized suspension of service), except for subsection (10) relating to medical certificates; Section 64.72 (Suspension notice information); Section 64.73 (Notice when dispute pending); Section 64.74 (Procedures upon customer contact before suspension); and Section 64.81 (Limited notice upon noncompliance with report or order).

We noted that grounds for suspension and termination of service were addressed in Verizon's Product Guide applicable to competitive services in both service territories in Pennsylvania at Section 1, Original Sheets 4 and 4.1, while termination of service was addressed in Section 29 of the Product Guide.

We retained application of the following Subchapter E Regulations, which we believed remained relevant and should apply in a competitive environment: Section 64.62 (Days suspension or termination of service is prohibited); Section 64.63(10) relating to medical certificates; Section 64.71 (General notice provisions); Section 64.75 (Exception for suspension based on occurrences harmful to persons or property); and the emergency provisions at Sections 64.101—64.111, given the potential impacts of suspension of service on customers with serious medical conditions.

Subchapter F (Termination of Service)
52 Pa. Code §§ 64.121—64.123

Subchapter F governs grounds for termination of service and the termination process, including Section 64.121 (Authorized termination of service); Section 64.122 (Unauthorized termination of service when dispute pending); and Section 64.123 (Termination notice).

We waived all provisions in Subchapter F. We concluded that these provisions were no longer necessary in a competitive telecommunications market. However, we did note that Verizon's grounds for suspension and termination of service were addressed in its Product Guide.

Subchapter G (Disputes; Informal and Formal Complaints)
52 Pa. Code §§ 64.131—64.171

Subchapter G governs disputes and the informal and formal complaint procedures. We declined to waive Subchapter G and recognized that customers have a right to file either an informal complaint or a formal complaint with the Commission about their service.¹⁶ We reasoned that maintaining these regulations would ensure that a process remained in place to handle complaints.

Subchapter H (Restoration of Service)
52 Pa. Code §§ 64.181 and 64.182

Subchapter H governs restoration of service, including Section 64.181 (Restoration of service after suspension) and Section 64.182 (Restoration of service after termination).

We waived all provisions in Subchapter H. We concluded that these provisions were no longer necessary in a competitive telecommunications market. We also noted that Verizon's grounds for suspension and termination of service and procedure for restoration were addressed in its Product Guide.

Subchapter I (Public Information; Record Maintenance)
52 Pa. Code §§ 64.191 and 64.192

Subchapter I contains two provisions: Section 64.191 (Public information) and Section 64.192 (Record maintenance). We waived Subsections 64.191(f) and (g)¹⁷ and Section 64.192 as no longer necessary in a competitive environment. However, we retained Subsections 64.191(a)—(d) as these regulatory provisions govern applications for service and specify what the LEC must disclose to a potential customer about its available services. We believed these subparts remained relevant in a competitive environment and was similar to the requirement of fair marketing, which we also required of electric generation suppliers and natural gas suppliers.¹⁸

Subchapter J (Annual Reporting Requirements)
52 Pa. Code §§ 64.201 And 64.202

Subchapter J contains two provisions: Section 64.201 (Reporting requirements) and Section 64.202 (Petition for waiver). We waived parts of Section 64.201 as no longer necessary in a competitive environment but believed that the parts of this Regulation requiring the reporting of certain information related to basic local exchange service remained relevant and should continue to apply in competitive wire centers. Therefore, in competitive wire centers we continued to require Verizon to comply with Section 64.201(a) and the following Section 64.201(b) provisions: (b)(2)(i), (b)(4)(i), (b)(5), (b)(6), (b)(7), (b)(8)(i), (b)(9)(i), and (b)(10)(i). However, all remaining Section 64.201(b) provisions were waived.

Given that we retained some Chapter 64 Regulations, we also retained Section 64.202 as a means to seek waiver due to hardship.

¹⁶ See 66 Pa.C.S. § 308.1 (The Commission shall promulgate regulations by which a consumer may make informal complaints). See also 66 Pa.C.S. § 701 ([A]ny person, corporation, or municipal corporation having an interest in the subject matter, or any public utility concerned, may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the Commission.).

¹⁷ The Commission had previously granted Verizon a waiver of Section 64.191(e) pertaining to toll presubscription based on the same competitive market realities of increasing competition that were the basis for the Petition. Joint Petition of Verizon Pennsylvania, Inc. and Verizon North, Inc. for a Waiver of the Commission's Order Dated May 9, 1997, et al., Docket Nos. I-00940034 and P-00072348 (Tentative Order entered September 24, 2008, made Final Order effective October 6, 2008, by Secretarial Letter dated January 22, 2009).

¹⁸ See, e.g., 52 Pa. Code §§ 54.43(1) and 62.114(1).

Subchapter K (General Provisions)
52 Pa. Code §§ 64.211—64.213

Subchapter K contains three provisions: Section 64.211 (Availability of normal Commission procedures); Section 64.212 (Applications for modification or exception); and Section 64.213 (Repealers). We waived the general provision section allowing customers to pursue other Commission procedures in cases not described in Chapter 64. However, we denied waiver of Sections 64.212 and 64.213 because certain Chapter 64 provisions are retained. Section 64.212, governing waiver requests, and Section 64.213, governing the effect of tariff provisions that are inconsistent, potentially remained useful.

B. Implementation Order Clarifications

As indicated previously, we issued Implementation Orders, in both Tentative and Final forms to clarify certain issues related to the reclassification and implementation of our Reclassification Order. Our Tentative Implementation Order addressed the following matters: (1) the application of Verizon's Product Guide; (2) Verizon's COLR obligations; (3) the application of reporting requirements in Section 64.201 of our Regulations, 52 Pa. Code § 64.201; and (4) the waiver of Chapter 64's Subchapters E, F and H concerning suspension, termination and restoration of service rules in competitive wire centers, 52 Pa. Code §§ 64.61—111, 64.121—123, and 64.181-182. Through our Final Implementation Order, we analyzed the comments filed and addressed the clarifications raised in the Tentative Implementation Order.

Legal Status of Product Guide

We held that the Product Guide did not have the force and effect of law as did a tariff. Final Implementation Order at 12; See, e.g., Reclassification Order at 64. We reasoned that the Product Guide could not take precedence over the Code or the retained Regulations in competitive wire centers. We then clarified the Tentative Implementation Order to provide that the final legal authorities to govern informal and formal complaints for customers located in competitive wire centers were as follows:

- (1) Whether Verizon's conduct is reasonable under Section 1501 of the Code, 66 Pa.C.S. § 1501;
- (2) The Regulations retained by the Reclassification Order; and
- (3) What is reasonable based on the facts presented in a case in accordance with Section 1501 of the Code, which may include consulting the Product Guide for any guidance that it may offer on whether Verizon's conduct is reasonable.

Final Implementation Order at 13. We clarified that, regardless whether a Regulation or applicable provision of the Product Guide applied, a utility's conduct in a consumer complaint case would always be subject to review for compliance with Section 1501 of the Code. *Id.*

Advance Filing Requirement for the Product Guide

In the Final Implementation Order, we required Verizon to file a copy of its Product Guide applicable to basic local exchange service, including all future changes, with Commission Staff and directed Verizon to provide such copies on or before their effective date. We concluded that the Product Guide should be treated consistent with, if not less burdensome than, our statutorily-authorized treatment of price lists for basic local exchange service. With respect to potential conflicts with Verizon's statutorily-based COLR obligation, the Product Guide

governs in competitive wire centers only when it does not conflict with the Code or with Commission Regulations retained in competitive wire centers. If there was a conflict, the Code or Regulations controlled.

Carrier of Last Resort Obligations

Designating certain wire centers as competitive did not affect Verizon's COLR obligation. We determined that the statutorily-based COLR obligation remains and cannot be contractually removed or abandoned. Tentative Implementation Order at 7-8.

Section 64.201 Reporting

In adjusting reporting requirements, we waived some Section 64.201 residential account data reporting requirements in competitive wire centers but retained others in those wire centers based on the belief that we would keep in place certain of the Section 64.201 reporting requirements that could assist us with assessing the impact of the reclassification on stand-alone basic local telephone service rates in competitive wire centers. Tentative Implementation Order at 8.

In the Final Implementation Order, we modified our proposal in the Tentative Implementation Order and limited our waiver of the reporting requirements in 52 Pa. Code § 64.201 to the 153 wire centers that were determined to be competitive classification. Final Implementation Order at 26—28. In our Tentative Implementation Order, we also proposed that certain information be reported in light of the Commission's waiver. The Commission proposed that each Verizon Company continue to report all information required under Section 64.201 except for the information set forth under Section 64.201 (b)(2)(ii)—(iv), (b)(4)(ii)—(iv), (b)(5), and (b)(8)—(11). Tentative Implementation Order at 8.

In the wire centers determined to be competitive, we held that the reporting of information beyond basic service under the retained subparts of Section 64.201(b) would not gather the information necessary to evaluate the affordability of basic service as prescribed in Ordering Paragraph No. 15 of the Reclassification Order.

While the scope of that case did not permit us to extend a waiver of the reporting requirements to other wire centers, we invite comment on the issue in this docket.

Suspension/Termination/Restoration of Service Rules in Competitive Wire Centers

For competitive wire centers, we determined in our Reclassification Order that Subchapters F and H of Chapter 64 governing termination and restoration of service as well as parts of Subchapter E governing suspension of service, including Section 64.72 governing suspension notice information, would be waived. However, Section 64.71 was not waived, and this Regulation requires Verizon to provide seven days' advanced written notice to the customer prior to suspending service.¹⁹ The Commission also did not waive Section 64.75 (Exception for suspension based on occurrences harmful to person or property)²⁰ and Section 64.62 (Days suspension or termi-

¹⁹ Section 64.71 requires a LEC to provide seven days' advanced written notice to the customer prior to suspending service unless the grounds for the suspension is failure to comply with the material terms of a payment agreement for toll or non-basic telephone service, or both. If this exception applies, the LEC must comply with Section 64.81 (relating to limited notice upon noncompliance with report or order). However, the Commission in the Reclassification Order waived Section 64.81 in competitive wire centers. In furtherance of the Commission's intent, we clarify that the retention of Section 64.71 is limited to the first sentence only: "The LEC shall mail or deliver written notice to the customer at least 7 days before the date of proposed suspension regardless of the grounds upon which suspension is sought."

²⁰ Under Section 64.75 of the Commission's Regulations, which was also retained in competitive wire centers, no written notice is required if the suspension and/or termination of service is based on a safety issue.

nation of service are prohibited). Tentative Implementation Order at 9-10.

Rather than a two-tier notification process (a notice prior to suspension and a notice prior to termination), we intended to create a one-tier notification process:

Upon further review, we find that it is necessary to provide guidance on the implementation of the one-tier notification process in competitive wire centers. First, Verizon is required to provide at least thirty days' advanced notice to the Commission, in writing, prior to implementing the one-tier advanced written notice process applicable to suspension/termination of service in competitive wire centers. As part of this advanced notice to the Commission, Verizon must provide the relevant details regarding how it intends to implement the one-tier notification process, including the date that the one-tier notification process is to take effect and a copy of the written notice to be provided to customers. Until such a filing is made and is effective, Verizon shall follow the existing two-tier suspension/termination process in competitive wire centers.

Additionally, we clarify the following in connection with the customer notice requirements for the one-tier notice process available in competitive wire centers:

(1) The advanced written notice must advise the customer that once service has been suspended for at least five days, service may be terminated without any additional notice being provided. We add this requirement as a condition to waiving Subchapter F and parts of Subchapter E in Chapter 64 for competitive wire centers.

(2) The advanced written notice must include, at a minimum, the reason for the proposed suspension/termination, the amount the customer must pay to avoid suspension/termination (if applicable), the earliest date that service will be affected, and information where the customer can contact Verizon about the matter to discuss avoiding suspension/termination. The advanced written notice also must include language that is the same or substantially similar to the language appearing in the medical emergency notice in Appendix A of the Commission's Chapter 64 Regulations. The Commission adds these requirements as a condition to waiving Section 64.72 and Sections 64.121—64.123 of its Regulations.

To resolve any ambiguity that may arise, we make the following additional clarifications regarding the one-tier notice process available in competitive wire centers:

(1) When a LEC suspends service for nonpayment prior to the expiration of a medical certificate, Section 64.109 requires the LEC to follow the suspension notice procedures at Sections 64.71—74 of the Commission's Regulations. Because Sections 64.72 through 63.74 [sic] have been waived in competitive wire centers, the Commission clarifies that when suspending service under Section 64.109 in competitive wire centers, Verizon must comply with Section 64.71 and the requirements established in a final Order resulting from this Tentative Order.

(2) Prior to Verizon suspending stand-alone basic local telephone service in a competitive wire center in accordance with Section 64.24(c) of the Commission's

Regulations, bundled bill customers are to receive the same notice as stand-alone basic local exchange customers.

Final Implementation Order at 30-31.

We invite comments whether a similar process could work for all suspension/termination notifications.

IV. ADDITIONAL WAIVERS OF CHAPTERS 53, 63 AND 64 REGULATIONS

In addition to the waivers granted within the context of Verizon Reclassification Petition, the Commission has granted various waivers to several carriers over the years, including for certain provisions of Chapter 53 of our Regulations. Many of these carriers sought permanent waivers. Although permanent waivers were not granted, the Commission suggested rule changes could be made, eventually. Indeed, in several instances, these waivers were granted until such time as the Commission examined Chapters 63 and 64 and amended its rules.

Carriers that now enjoy these waivers are invited to propose amendment or removal of specific regulations. These carriers may make their cases for permanent rule changes in their comments at this docket.

V. COMMENTS

The Commission issues this Advanced Notice of Proposed Rulemaking primarily to seek input on what the Commission's Chapter 63 and Chapter 64 Regulations should look like, going forward, which should help the Commission in preparing proposed revised Regulations applicable to competitive and noncompetitive wire centers.

The obvious regulatory impact of reclassification is that we now have competitive wire centers as well as wire centers that remain noncompetitive, and certain regulations may no longer be necessary in a competitive market. Therefore, we seek comments on any waiver of a Chapter 63 or 64 Regulation currently granted, including whether the waivers should be made permanent via the rulemaking process in any wire center in Pennsylvania for which basic local exchange service has been determined to be competitive pursuant to Section 3016(a) of the Code or is so determined under applicable law.

In addition, the Commission has retained, and will continue to retain, existing regulations that remain pertinent to and necessary for noncompetitive wire centers. However, some of these Regulations may be outdated or obsolete. Therefore, we invite comments whether any of our Chapter 63 and 64 Regulations not waived and that continue to be applicable in noncompetitive wire centers should be amended or rescinded.

One possible approach to addressing these competitive and noncompetitive wire centers is for the Commission to create a separate chapter to address local exchange telephone service for competitive versus noncompetitive wire centers. Under this approach, existing chapters could be retained to reflect retail service in noncompetitive wire centers, except, again, for any Regulations we have found or may find to be outdated or obsolete as part of this rulemaking. We adopted a similar approach in our implementation of our Chapter 14 Regulations. See, e.g., 52 Pa. Code § 56.1 (Statement of purpose and policy). The Commission invites comment supporting this approach.

We also invite interested parties to propose for consideration any reasonable alternative Regulations or regula-

tory structure/scheme for competitive and noncompetitive wire centers other than those proposed in this Advance Notice.

We note that the Commission is seeking comments on this matter from all telecommunication utilities that may be subject to these subchapters and any other interested parties, particularly in light of any current or recent proceedings, including those that addressed waivers outside the context of the Verizon Petition proceeding.

Finally, we invite interested parties to offer proposed language for our consideration in drafting any revised or new regulatory provisions.

VI. CONCLUSION

Following careful review and consideration of the comments received in response to this Advance Notice, the Commission intends to issue a formal Notice of Proposed Rulemaking with proposed revised Regulations.

This is an Advanced Notice of Proposed Rulemaking Order and is in addition to the normal rulemaking procedures for publication and comment established under the Commonwealth Documents Law, 45 P.S. §§ 1201, et seq. Accordingly, pursuant to Sections 501, 504, 505, 506, 1301, and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 505, 506, 1301, and 1501, and the Commonwealth Documents Law, 45 P.S. §§ 1201, et seq., and the Regulations promulgated thereunder; *Therefore*,

It Is Ordered That:

1. An Advanced Notice of Proposed Rulemaking is hereby instituted at this docket to consider revisions of the Regulations primarily appearing in 52 Pa. Code Chapters 63 and 64, relating to telephone service and standards and billing practices for residential telephone service.

2. The Secretary shall duly certify this Advance Notice and deposit it with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

3. Written comments referencing Docket No. L-2018-3001391 be submitted within 60 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn: Secretary, P.O. Box 3265, Harrisburg, PA 17105-3265, while written reply comments referencing Docket No. L-2018-3001391 be submitted within 90 days of publication in the *Pennsylvania Bulletin*. Comments and reply comments may also be filed electronically through the Commission's e-File System.

4. This Order proposing to revise the Regulations appearing in Title 52 of the *Pennsylvania Code* Chapters 63 and 64 (relating to Telephone Service and Standards and Billing Practices for Residential Telephone Service), be served on all jurisdictional incumbent local exchange carriers and competitive local exchange carriers, the public advocates, and all parties to the proceeding captioned Joint Petition of Verizon Pennsylvania LLC and Verizon North LLC for Competitive Classification of All Retail Services in Certain Geographic Areas and for a Waiver of Regulations for Competitive Services, Docket Nos. P-2014-2446303 and P-2014-2446304.

5. A copy of this Advance Notice shall be posted on the Commission's website.

6. The contact persons for this matter are Melissa Derr, Bureau of Technical Utility Services, (717) 783-6171, mderr@pa.gov; and Terrence Buda, Law Bureau, (717) 783-3459, tbuda@pa.gov.

ROSEMARY CHIAVETTA,
Secretary

Public Meeting held
July 12, 2018

Joint Petition of Verizon Pennsylvania LLC and Verizon North LLC for Competitive Classification of All Retail Services In Certain Geographic Areas And For A Waiver Of Regulations for Competitive Services; 3001391-LAW; Doc. No. P-2014-2446303; Doc. No. P-2014-2446304

Rulemaking to Comply with Competitive Classification of Telecommunications Retail Services Under 66 Pa.C.S. § 3016(a); General Review of Regulations, 52 Pa. Code Chapters 63 and 64; Doc. No. L-2018-3001391

Statement of Chairperson Gladys M. Brown

On March 4, 2015, the Commission entered an Opinion and Order reclassifying 153 of Verizon's 194 wire centers as competitive pursuant to Section 3016(a) of the Public Utility Code, 66 Pa.C.S. § 3016(a). That decision, which I dissented from, also granted a five-year waiver of certain of the Commission's Chapters 63 and 64 regulations in the 153 wire centers classified as competitive, pending a rulemaking to address the status of the regulations applicable to noncompetitive and competitive wire centers.

This rulemaking proceeding will consider the regulations applicable to competitive and non-competitive wire centers. The regulations adopted for non-competitive wire centers are distinct from the regulations applicable to wire centers classified as competitive under Section 3016(a). For the record, I would like to clarify it is my view that the Commission cannot develop rules for competitive wire centers and apply them to non-competitive wire centers without the prior reclassification determination required for non-competitive wire centers under Section 3016(a).

GLADYS M. BROWN,
Chairperson

Public Meeting held
July 12, 2018

Rulemaking to Comply with the Competitive Classification of Telecommunications Retail Services Under 66 Pa.C.S. § 3016(a); General Review of Regulations 52 Pa. Code, Chapter 63 and 64; 3001391-LAW; Doc. No. L-2018-3001391

Statement of Vice Chairperson Andrew G. Place

This Advanced Notice of Proposed Rulemaking (ANOPR) proceeding is largely rooted at the Commission's 2015 landmark Verizon Reclassification Order²¹ where the Commission classified the basic local exchange services in 153 wire centers of Verizon Pennsylvania LLC and Verizon North LLC (collectively Verizon), as competitive under the statutory requirements of Section 3016(a) of the Public Utility Code, 66 Pa.C.S. § 3016(a). The potential expansion and applicability for the waivers of our regulations that are contemplated in the ANOPR can and will have impacts in matters where the Commission exercises regulatory oversight such as the quality and reliability of service and consumer protection. I note that in the context of its Verizon Reclassification decisions the Commission directed the collection and evaluation of certain data:

The data required here will provide for the appropriate implementation and evaluation of the market-based regulatory goals of the [Verizon] Reclassifica-

²¹ Joint Petition of Verizon Pennsylvania LLC And Verizon North LLC for Competitive Classification of all Retail Services in Certain Geographic Areas and for a Waiver of Regulations for Competitive Services, Docket Nos. P-2014-2446303 and P-2014-2446304, Order entered March 4, 2015 (Verizon Reclassification Order); see also Final Implementation Opinion and Order, and Order (Data Collection and Reporting Order), Docket Nos. P-2014-2446303 and P-2014-2446304, both entered September 11, 2015.

tion Order. Specifically, the data collection is intended to: (1) help assess the market in competitive areas, including the impact of our decision on affordability of basic service and quality of service in those areas, and (2) provide guidance for the rulemaking discussed in the [Verizon] Reclassification Order.

Data Collection and Reporting Order, Docket Nos. P-2014-2446303 and P-2014-2446304, entered September 11, 2015, at 1.

It is my sincere hope that consistent with all the applicable Commission Orders in the Verizon Reclassification proceeding, the interested parties will properly utilize the data submitted by Verizon in conjunction with their respective comments on the contemplated extension and permanent application of the waivers at issue for the Verizon wire centers. Furthermore, similar data that has been elicited in other proceedings, inclusive of follow-up reports, should also be utilized for the same purpose.²²

I would also like to invite comments on this ANOPR explaining how other states have recently chosen to modernize their respective regulations governing the provision of retail telecommunications services, with special emphasis on regulations that deal with reliability and quality of service, and consumer protections.

Finally, I note that the competitive classification of protected basic local exchange services that are provided by incumbent local exchange carrier telephone companies with carrier of last resort obligations is subject to the statutory requirements of Section 3016(a), including appropriate findings of sufficiently competitive markets and the presence of substitute telecommunications services. This can materially affect the process and the future applicability of certain regulation waivers that were the subject of the Verizon Reclassification Order.

ANDREW G. PLACE,
Vice Chairperson
 Public Meeting held
 July 12, 2018

Rulemaking to Comply with the Competitive Classification of Telecommunications Retail Services Under 66 Pa.C.S. § 3016(a); General Review of Regulations 52 Pa. Code, Chapter 63 and Chapter 64; 3001391-LAW; Doc. No. L-2018-3001391

Statement of Commissioner John F. Coleman, Jr.

In February 2015, the Commission reclassified stand-alone basic local telephone service as competitive in parts of the Verizon service territories in Pennsylvania.²³ As

part of that decision, the Commission also granted Verizon a 5-year waiver of certain of our Chapter 63 and Chapter 64 regulations in competitive wire centers.²⁴ The waiver was granted, pending a rulemaking to address the status of these regulations in both competitive and non-competitive wire centers on both a permanent and industry-wide basis.

To initiate the rulemaking, I support issuing an Advanced Notice of Proposed Rulemaking or ANOPR to solicit input from interested parties. This ANOPR, combined with certain data to be collected,²⁵ should help the Commission in preparing revised regulations and in making an informed and well-reasoned decision here.

The ANOPR seeks input in four main areas regarding our Chapter 63 and 64 regulations: (i) whether to make the previously-granted waivers permanent in any wire center currently classified as competitive or that may be classified as competitive in the future; (ii) whether there are any obsolete or outdated regulations in noncompetitive wire centers that should be modified or eliminated, (iii) whether to create separate chapters in our regulations for competitive versus noncompetitive wire centers; and (iv) whether there are any reasonable alternative regulations or regulatory structure/scheme, other than what is being proposed here, that the Commission should consider.

I view this rulemaking as a continuation of our efforts to modernize how we regulate telecommunications in Pennsylvania. The telecommunications marketplace continues to be a dynamic and fast changing segment of the economy. The communications options for consumers have expanded beyond traditional voice-only service offered by incumbent carriers. With the proliferation of service bundles and the rise of alternative wireline providers and wireless providers offering competing products and services, consumers have a wide array of choices to meet their communications needs. The initiation of this rulemaking is an important step towards ensuring that our regulations keep pace with these market realities.

JOHN F. COLEMAN, Jr.,
Commissioner

[Pa.B. Doc. No. 18-1223. Filed for public inspection August 3, 2018, 9:00 a.m.]

²² Petition of Communications Workers of America for a Public, On-the-Record Commission Investigation of the Safety, Adequacy, and Reasonableness of Service Provided by Verizon Pennsylvania LLC, Docket No. P-2015-2509336, Certificate of Satisfaction and Withdrawal of Complaint, June 2, 2017.

²³ Verizon Pennsylvania LLC and Verizon North LLC (collectively Verizon) filed a petition requesting a competitive classification in 194 of their wire centers in Pennsylvania. The Commission granted the request for 153 of the wire centers. The Commission's decision changed how basic service is regulated in competitive areas in two main ways. First, Verizon no longer is required to maintain a tariff at the Commission containing the rates, terms and conditions of basic service offered in competitive areas. Second, the price that Verizon charges for basic service in competitive areas no longer is subject to Commission approval.

²⁴ The waiver also applies to competitive local exchange carriers operating in the 153 competitive wire centers.

²⁵ To help assess the impact of our reclassification decision, the Commission required Verizon to report certain data, including data on quality of service. See Joint Petition of Verizon Pennsylvania LLC and Verizon North LLC for Competitive Classification of All Retail Services in Certain Geographic Areas and for a Waiver of Regulations for Competitive Services, Docket Nos. P-2014-2446303 and P-2014-2446304 (Order entered September 11, 2015).

