ADDP Association of Developmental Disabilities Providers

Community for Living. Community for Life.

August 25, 2016

Office of the General Counsel, Department of Developmental Services
500 Harrison Avenue
Boston, MA 02118

Re: 115 CMR 2.00: Definitions and 115 CMR 5.00: Standards to Promote Dignity

To Whom It May Concern:

Thank you for considering our comments regarding the proposed amendments to *115 CMR 2.00: Definitions and 115 CMR 5.00: Standards to Promote Dignity*. On behalf of the 134 human service providers who offer services for individuals with intellectual and developmental disabilities (I/DD) and acquired brain injuries across the Commonwealth, ADDP submits the following comments.

ADDP strongly stands behind the overall principles of Positive Behavior Supports and is committed to positive outcomes for individuals served. We look forward to our continued collaboration with DDS to implement PBS, and we will continue to provide trainings on this subject for our members as necessary. We wish to express our appreciation to Commissioner Elin Howe, and her staff, for their support and assistance with our PBS training efforts. We believe these joint efforts result in improved quality of service for the individuals we both wish to support.

While we endorse we the overall goals and principles of PBS, we respectfully ask you to consider our concerns regarding the proposed amendments and the potential impact they may have on our community. Many ADDP providers serve individuals with autism and cognitive delays, who can express significant behavioral challenges. ADDP providers are concerned the proposed regulations will impact their ability to apply evidence-based interventions and skilled use of Applied Behavior Analysis, which have shown to be effective for the population many providers serve. Providers concerns have been broken down by section, in order.

5.07: *Legal Competency, Guardianship, and Conservatorship*
ADDP providers are concerned with the proposed change to section 5.07(2)(a) only listing Health Care Proxy and Power of Attorney. **ADDP providers suggest Supported Decision Making, the least restrictive alternative to any type of guardianship, should be included as well.**

5.10: *Possession (and Funds) (3)(c)(4)*
The revision to this section, replacing the wording "*A plan for*" with "*The ISP goal pertaining to,*" implies that the "plan for the money management responsibilities which includes a training plan, "as stated in the guidelines for **Licensing Indicator L67**, is no longer required. The revised regulations state "The ISP

goal and strategies to achieve the goal shall constitute the plan." Providers would like to know if Licensing Indicator L67 still applies in licensure and certification.

5.11: *Crisis Prevention, Response, and Restrictive Procedures*

(1) Definition of Terms

Providers have shown concern with the proposed change, which seems to imply that a physical escort can no longer be used. Some providers have witnessed successful outcomes using physical escorts as a proactive means of de-escalation and preventing the need for restraint. Providers would like clarification if physical escorts are permitted.

5.11(3)(a)(1)(iii)(c) Debriefing

ADDP providers are concerned with the requirement of a restraint debriefing to be completed within one business day. This timeline specifically presents logistical challenges for overnight staff in residential programs and the availability of a qualified clinician on short notice. ADDP recommends a revision stating providers must complete a restraint debriefing within three days of the date the restraint occurred.

5.11(3)(a)(1)(iv) Least Restrictive Alternative

Some ADDP providers are concerned with this proposed amendment, as some individuals with behavioral challenges have a history of escalating rapidly without antecedents. Providers state these situations do not always allow time for less restrictive procedures without compromising safety. ADDP providers recommend revising this section to include a caveat for situations that do not allow time for less restrictive alternatives to be used.

5.11(3)(a)(2)(c) Frequent Restraints

Some ADDP providers are concerned with this proposed amendment only allowing the PBS leadership team to review restraints and develop intervention strategies for individual plans. ADDP providers recommend a revision allowing the PBS leadership team to designate a subgroup to review frequent restraints.

5.12(2): *Health Related Supports and Protections*

Providers would like clarification on the definition of an "authorized clinician."

5.13: *RESERVED (formerly Transportation Restraints)*

Some providers are concerned with the prohibition of transportation restraints. These restraints are typically used as a last resort for individuals who have demonstrated dangerous behavior while riding in vehicles, which require a more supported environment. This behavior can put the individual, staff, and others at risk up to and including death. Some providers state the prohibition of transportation restraints may result in the inability for some individuals to access programs in the community and potentially limit access to health care services. Furthermore, providers feel the prohibition of transportation restraints will increase funds necessary to prevent incidents. For example, if a seatbelt more difficult to open (considered a transportation restraint) is prohibited from use for an individual who has demonstrated dangerous behavior while riding in a vehicle, additional staff would need to be present in the vehicle to prevent an incident from occurring. ADDP recommends this section be revised to consider the possible implications it can have on individuals being served who have demonstrated dangerous behaviors.

5.14: Positive Behavior Supports (PBS)

5.14(2) Definitions

ADDP providers are concerned the definition of "*restrictive procedures"* is too vague, specifically defining a restrictive procedure as an individual doing something they do not want to do. Using this definition, providers state that beneficial tasks (i.e. brushing teeth, bathing, attending day programs, etc) would be considered a restrictive procedure. **ADDP providers request further guidance or better clarification defining what it means to "require a client to do something which they do not want to do…"**

5.14(11) Qualified Clinician

Some providers state the definition and qualifications of a "qualified clinician" in the proposed amendment need to be clearer. Providers have also noted the proposed regulation does not include clinicians who are currently working towards licensure. **ADDP providers suggest revising the proposed amendment to include clinicians currently working towards licensure or creating another category of "clinician" to include these individuals.**

5.14(14)(b) Human Rights Committee Review. Frequency of review

Some providers are concerned the language used for the proposed amendment applies to a Peer Review Committee, not a Human Rights Committee. **ADDP providers suggest the proposed amendment be reviewed and revised accordingly.**

5.15(15)(c) Restrictive Procedures. Response blocking.

Some providers are concerned with the restriction of response blocking as it is a well-researched, evidence-based practice commonly used in behavior support plans. Providers state response blocking is not a painful or unpleasant procedure and is often one of the least restrictive interventions used to teach replacement behaviors. This procedure does not include active resistance from an individual. Providers often use response blocking for self-injurious behaviors, for example: skin picking, trichotillomania (compulsive hair pulling), and ingesting life threatening materials. **ADDP providers suggest reconsidering the proposed amendment due to the effectiveness of response blocking**.

5.14(16): *Prohibited Practices. Procedures that are not permitted under any circumstances*.

ADDP providers have expressed several concerns with section, which proposes banning certain types of physical restraints and evidence-based interventions that have shown to be effective for the population many providers serve.

5.14(16)(f) overcorrection

Concern has been expressed for the proposed change prohibiting overcorrection as a response due to its successful impact on current support plans that promote and sustain positive behavior. Positive Practice, a form of overcorrection, is commonly used in Dialectical Behavior Therapy (DBT) programs. For example, if an individual misses their daily DBT session because they fell asleep early, it would not be counted against them if they make up for it by doing a few extra DBT sessions.

5.14(16)(g) any physical restraint which causes pressure or weight on the lungs, diaphragm or sternum causing chest compression including, but not limited to, physical restraint in a prone position (i.e., the individual is lying on their stomach), physical restraint in a supine position (i.e. where the head is in a fixed position and is lying on their back), or basket hold in a seated position on the floor

ADDP providers who serve individuals with significant behavior challenges have expressed concern for the proposed ban of certain physical restraints listed in this section. Some individuals served are much larger and physically stronger than the providers interacting with them, and providers feel that some of these restraint techniques are absolutely necessary to maintain a safe environment for staff and individuals being served. Some providers have expressed the proposed regulations will result in turning away new participants, as well as discharging individuals currently served. ADDP suggests reconsidering the prohibition of restraints mentioned in this section for individuals who express behavioral challenges.

5.14(16)(h) removing, withholding, or taking away money, tokens, points, or activities that an individual has previously earned

The proposed prohibition of removing earned items or activities is concerning to many providers. This strategy, often referred to as response cost, is frequently used in behavior management and has proven to be more successful than other forms of treatment. When necessary to implement, ADDP providers have found these strategies to be effective in helping individuals maintain appropriate behavior and feel the complete prohibition of them will be detrimental to individuals served.

ADDP recommends reconsidering the complete prohibition of strategies mentioned in 5.14(16). One possible solution is to add language to the amendment allowing these strategies to be used with greater oversight or including a requirement that the procedures can be used if implemented by a BCBA or LABA.

5.15(4): *Medication Incidental to Treatment*

The removal of language referring to Medication Treatment Plans has direct implications on Licensing Indicator L63 ("*medication treatment plans are in written format with required components*.") and Licensing Indicator L64 ("*medication treatment plans are reviewed by the required groups*." Guidelines include "*medication treatment plans . . . need review by the ISP team.*") With no mention of anything related to Medication Treatment Plans, providers would like clarification on whether Licensing Indicators L63 and L64 still apply.

ADDP providers appreciate the effort to fully implement Positive Behavior Supports, and there is a consensus that the overall principles will have a positive impact on the individuals served. We hope the concerns expressed in this testimony, specifically regarding the impact the proposed regulations will have on individuals with significant behavioral challenges and the staff who serve them, will be taken into consideration.

Thank you again for the opportunity to submit comments.

Sincerely,

Adam Berman
Manager of Member Services