

Proposed Final Language PRTF Regulations IRRC #3417 Comment Review



January 3, 2025

The Independent Regulatory Review Commission (IRRC) has submitted to the Office of Mental Health and Substance Abuse Services (OMHSAS) comments on the proposed rulemaking published in the November 2, 2024, Pennsylvania Bulletin. The IRRC's comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the Department of Human Services (Department) to respond to all comments received from the IRRC and any other source – including RCPA, who submitted, on behalf of its members, the RCPA Proposed PRTF Regulatory Recommendations.

RCPA has developed the following overview of the IRRC comments for members. If you have any questions, please contact RCPA COO and Mental Health Policy Director [Jim Sharp](#) or RCPA Policy Associate [Emma Sharp](#).

IRRC #3417 Proposed PRTF Regulations: IRRC Comment Review

1. Determining whether the regulation is in the public interest; economic or fiscal impacts; protection of the public health, safety, and welfare; clarity, feasibility, and reasonableness; need; implementation procedures and timetables for compliance.

IRRC asks the following of DHS:

- *Address the need for and fiscal impacts of specific staffing provisions in the preamble and RAF of the final regulation.*
- *Provide information supporting the expectation that provider rates will be adjusted to reflect the increased PRTF costs.*
- *Address reasonableness and fiscal impacts of requirements related to treatment standards in the final regulation.*
- *Explain how the final regulation balances the feasibility and fiscal impacts of treatment standards with protection of the public health, safety, and welfare.*

Consensus: Stakeholders need information regarding the ability for providers to comply with these regulations, especially considering this regulatory package is significantly more stringent than federal standards. Concerns raised by legislators and commenters are significant enough that it would be in the public interest for DHS to issue an Advance Notice of Final Rulemaking to assist in reaching consensus with stakeholders before moving to final form regulation.

2. Section 1330.2. Definitions.

IRRC asks the following of DHS:

- *Clarify “elopement” as the term relates to Section 1330.33(b) (relating to limitation on payments) which states MA will pay for “up to two days of elopement from a PRTF” per calendar year for each child, youth, or young adult, and Section 5330.14(c)(4) (relating to reportable incidents) which requires an incident report for a child’s, youth’s, or young adult’s elopement from a PRTF.*
- *Clarify the term “visit.” Does the term “visit” include scenarios when a child, youth, or young adult is under approved temporary supervision of an individual on the premises of the PRTF? Does the term include therapeutic leave?*

3. Section 1330.31. General payment – Reasonableness of requirements, implementation, procedures, and timetables for compliance.

- Commenters express concern about the reasonableness of a 12-month timeframe for providers to come into full compliance in order to be paid in the MA setting. There is also concern for the

regulations requiring extra psychiatric, clinical, and nursing hours despite a well-documented national shortage of these providers.

- *The IRRC asks DHS to reconsider the timetable and explain why it is reasonable.*

4. Section 1330.38. Nonallowable costs – Economic or fiscal impacts; clarity, feasibility, and reasonableness.

- Commenters raise questions and express concerns about PRTFs having to absorb additional administrative costs that DHS will not reimburse.
 - *The IRRC asks DHS to explain the reasonableness and fiscal impacts of non-allowable costs.*
- Fundraising costs are excluded from the operating costs, described in Section 1330.34 (relating to allowable costs) and are not included in a PRTF’s per diem rate. Section 1330.35(7) states that in an annual cost report, the PRTF shall report income from “fundraising efforts restricted from allowable costs.” If amounts raised through fundraising are being counted to offset allowable costs under Section 1330.35(7), why are costs associated with fundraising prohibited from inclusion of allowable costs under Section 1330.38(a)(9)(vi)?
 - *The IRRC asks DHS to clarify the treatment of fundraising efforts in these two sections.*

5. Section 1330.39 Annual cost reporting and independent audit – Clarity.

- There is a lack of clarity in the use of the term “affiliate.”
 - *The IRRC asks DHS to clarify the final regulation by using the defined term “related party” rather than affiliate.*

6. Section 1330.40. Rate setting – Economic or fiscal impacts; clarity, feasibility, and reasonableness.

- This section provides for the establishment of per diem rates based on certain criteria. Commenters have expressed concern about certain provisions, such as the absence of any kind of adjustment of rates for unexpected expenses and the expectation that providers finance items and activities that are necessary for client self-care and basic needs.
 - *The IRRC asks DHS to explain the reasonableness and fiscal impacts of the per diem rates.*

7. Section 5330.14. Reportable incidents.

Section 5330.15. Recordable incidents – Economic or fiscal impacts; protection of the public health, safety, and welfare; clarity and lack of ambiguity; need; reasonableness of requirements, implementation procedures, and timetables for compliance.

- Commenters question the need for and the fiscal impacts of reducing the timeframe from the current 24 hours to 12 hours in the proposed regulation, and argue that it would result in an administrative burden.
 - *The IRRC asks DHS to explain how the timeframe in the final regulation balances protection of the public health, safety, and welfare with the reasonableness and fiscal impacts of the requirements.*
- There is ambiguity in the phrase “State-designated protection and advocacy system.”
 - *The IRRC asks DHS to clarify what is meant by the phrase “State-designated protection and advocacy system” in subsections (e), (f), and (g).*

8. Section 5330.18. Confidentiality of records – Clarity and lack of ambiguity.

- Paragraph (a)(11) requires a PRTF to comply with “other applicable statutes and regulations” to the extent applicable.
 - *The IRRC asks DHS to specify any other statutes and regulations that are applicable.*

9. Section 5330.20. Visits – Economic or fiscal impacts; clarity, feasibility, and reasonableness; need.

- Subsection (g) requires a PRTF to contact the child’s, youth’s, or young adult’s parent, legal guardian, or caregiver at least once every 24 hours if a visit lasts more than 24 hours to check on

the safety, health, and well-being of the child, youth, or young adult. However, there is no definition for the term “contact,” and does not clarify whether documentation of contact is necessary. Commenters are concerned by the administrative burden that would be created from such a requirement.

- *The IRRC asks DHS to explain the need for and reasonableness of requiring contact every 24 hours, and clarify implementation procedures of any contact requirement in the final regulation. They also ask for DHS to address the fiscal impacts of this requirement.*

10. Section 5330.31. Rights – Economic or fiscal impacts; clarity, feasibility, and reasonableness.

- Commenters assert that DHS elevates the clients’ need to clean and appropriate clothing to that of a child’s right in paragraph (b)(5) while designating clothing and shoes for children, youths, or young adults receiving services in the PRTF as a nonallowable cost for MA reimbursement in Section 1330.38(a)(9)(xviii).
 - *The IRRC asks DHS to explain how requiring the PRTFs to provide clothing without reimbursement is reasonable and address the fiscal impacts.*
- In paragraph (b)(6) there is ambiguity in the term “excessive medication.”
 - *The IRRC asks DHS to clarify the term “excessive medication.”*

11. Section 5330.41. Supervision of staff – Economic or fiscal impacts; protection of the public health, safety, and welfare; clarity, feasibility, and reasonableness.

- There are extensive requirements in staff supervision, and commenters expressed concern that the new supervision requirements will significantly add to the cost of care and service delivery with no clinical or operational benefit. Additionally, medical directors could have to work outside of their scope of work while providing supervision, detracting from the amount of time a medical director has available to serve as a treatment team leader and provide medication management.
 - *The IRRC asks DHS to explain how the requirements for staff supervision are reasonable and how the Department balances protection of the public health, safety, and welfare with the fiscal impacts of staff supervision requirements.*

12. Section 5330.42. Staff requirements – Protection of the public health, safety, and welfare; clarity, feasibility, and reasonableness; implementation of procedures.

- Subsection (a) requires staff working in a PRTF to be 21 years of age or older, but commenters argue that this age restriction would prevent PRTFs from developing an employee pipeline through clinical field experiences, such as practicums or internships, for students at local colleges and universities.
 - *The IRRC asks DHS to explain how the minimum age requirement for staff is reasonable and protects the public health, safety, and welfare.*
- Subsection (b) requires at least two PRTF staff persons who are trained in the use of manual restraints to be present and available at the PRTF at all times. Commenters argue that this provision negates the ratio provided in paragraph (c)(1), which requires at least one mental health worker or a PRTF staff person who meets the qualifications of a mental health worker to provide supervision to every six children, youths, or young adults during the PRTF’s awake hours. Commenters believe this rule would require two staff trained to implement manual restraints to remain with six or fewer clients at the facility.
- Commenters also assert that two individuals trained in the use of manual restraints would be required to be available during all sleeping hours, negating the proposed ratio of at least one mental health worker or PRTF staff person who meets qualifications of a mental health worker to provide supervision to every 12 children, youths, or young adults found in paragraph (d)(1).
 - *The IRRC asks DHS to ensure the supervision provisions in the final regulation are protective of the public health, safety, and welfare.*
- Subsection (c), paragraph (c)(2), PRTF staff providing supervision are required to always be within auditory and visual range of children, youths, or young adults. Commenters state that this is not feasible and is inherently unworkable because clients have the right to privacy while changing their clothing and using the bathroom.

- *The IRRC asks DHS to clarify the provision to ensure that the final regulation protects the public health, safety, and welfare and is feasible.*
- Subsection (c), paragraph (c)(3), requires a mental health professional to be present at the PRTF during the PRTF's awake hours. Commenters assert that requiring non-traditional hours will make recruiting and retention of mental health professionals more difficult.
 - *The IRRC asks DHS to explain the reasonableness of the requirements for awake hours in the final regulation and how the regulation balances reasonableness with protection of the public health, safety, and welfare.*

13. Section 5330.51. Initial staff training.

Section 5330.52. Annual staff training – Economic or fiscal impacts; protection of the public health, safety, and welfare; clarity, feasibility, and reasonableness.

- These sections provide for training requirements, including new behavioral health training areas, with which PRTF staff must comply. Commenters express concern about the fiscal impacts of these sections and question whether it is reasonable for these requirements to be applied to all PRTF staff and volunteers who may have very little direct contact with PRTF clients.
 - *The IRRC asks DHS to explain how initial and annual training requirements are reasonable, and how the regulation balances the fiscal impacts of staff training requirements with protection of the public health, safety, and welfare.*

14. Section 5330.77. First aid supplies – Economic or fiscal impacts; protection of the public health, safety, and welfare; clarity, feasibility, and reasonableness.

- Subsection (a) requires that a first aid kit be available to staff on every floor of the PRTF, and that the first aid kits must have an opioid overdose reversal medication. Commenters are concerned with the additional costs this may incur.
 - *The IRRC asks DHS to explain how the regulation balances reasonableness and fiscal impacts of these first aid kit requirements with the protection of the public health, safety, and welfare.*

15. Section 5330.92. Unobstructed egress – Protection of the public health, safety, and welfare; clarity, feasibility, and reasonableness.

- This section requires stairways, hallways, doorways, passageways, and egress routes from rooms and from a PRTF to be unlocked and unobstructed unless certain conditions are met, including doors with delayed egress having to be equipped with a mechanism that unlocks after no more than a 15-second delay. Commenters are concerned about the 15-second delay requirement, arguing that it would pose additional safety risks to PRTF patients.
 - *The IRRC asks DHS to explain how the delay timeframe for doors with delayed egress is reasonable and protects the public health, safety, and welfare.*

16. Section 5330.141. Treatment planning requirements – Economic or fiscal impacts; clarity, feasibility, and reasonableness.

- Subsection (b) states that a treatment leader shall ensure that **only** PRTF staff who are trained and experienced in the use of the modalities proposed in the treatment plan participate in its development, implementation, and review.
 - *The IRRC asks DHS to explain the reasonableness of excluding non-professionals, such as parents, youths, and childcare staff, from this process.*
- Subsection (d) requires PRTF staff to maintain a communication log for each child, youth, or young adult that includes daily notes about the child's, youth's, or young adult's behaviors and observations about the child, youth, or young adult that can be used by the treatment team in the treatment planning process. Commenters express concerns about duplication of recordkeeping and raise the question of the unknown impacts that these and other new administrative burdens may have on client care.

- *The IRRC asks DHS to clarify for the regulated community whether subsection (d) is a duplication of recordkeeping, and, if it is, to address the reasonableness and fiscal impacts of maintaining a communication log for each child, youth, or young adult.*

17. Section 5330.142. Treatment plans – Clarity, feasibility, and reasonableness; need; implementation procedures and timetables for compliance.

- Subsection (a), paragraph (a)(1), states that a multi-disciplinary assessment and screening must be completed within 48 hours of a child’s, youth’s, or young adult’s admission to the PRTF. Commenters state that clients often undergo significant emotional adjustments during the process of being admitted into a PRTF, so requiring them to submit to multiple screenings within a 48-hour window is excessive and not trauma informed in certain circumstances. Commenters also question how compliance is to be met if a youth is admitted to a PRTF on a Friday afternoon and relevant staff do not work over the weekend.
 - *The IRRC asks DHS to explain the need and reasonableness of the timeframe for completing an assessment and screening in the final regulation.*
- Commenters also ask questions related to the phrase “multi-disciplinary assessment and screening” in paragraph (a)(1).
 - *The IRRC asks DHS to clarify this phrase in final-form regulation.*

18. Section 5330.145. Treatment services – Economic or fiscal impacts; protection of the public health, safety, and welfare; clarity, feasibility, and reasonableness; need; acceptable data.

- Subsection (c) requires each child, youth, or young adult to attend a minimum of ten hours of various forms of therapy per week or per month. Commenters point out that DHS has provided no validation, evidence-based, or best practice reference as to why these proposed treatment standards are in the best interest of patients. Commenters believe the amount and type of therapeutic support and intervention should be driven by each individual’s needs rather than regulation.
 - *The IRRC asks DHS to explain the need for and reasonableness of the minimum number of treatment hours in the final regulation and to provide data to support the treatment requirements.*
- Paragraph (c)(1) requires a PRTF to provide at least one hour each month of individual therapy with the child’s, youths, or young adult’s treatment leader. According to Section 5330.44(c) (relating to a treatment team leader), the treatment team leader shall meet the qualifications of a medical director specified in Section 5330.43(c) (relating to medical director). This requires the medical director to be licensed in this Commonwealth as a physician practicing psychiatry and be a board-certified or board-eligible psychiatrist. Commenters emphasize the critically low number of psychiatrists proficient in providing individual therapy.
 - *The IRRC asks DHS to explain how the regulation balances the protection of the public health, safety, and welfare with the reasonableness and fiscal impacts of this requirement for the one hour each month of individual therapy with the child’s, youth’s, or young adult’s treatment team leader.*
- Paragraph (c)(2) also requires at least two hours of individual therapy with the child’s, youth’s, or young adult’s mental health professional. Commenters argue that research shows that being engaged in individual therapy with multiple clinicians is contraindicated due to the potential of confused messaging it provides the clients.
 - *The IRRC asks DHS to explain the reasonableness of requiring at least two hours each week of individual therapy with a mental health professional, and how this provision protects the public health, safety, and welfare.*
- Paragraph (c)(3) requires children, youths, and young adults to attend at least three hours each week of group therapy, and paragraph (c)(5) requires a PRTF to provide at least three hours each week of psychoeducation group therapy. Commenters suggest that the increasing demands for group and psychoeducation group therapy may be stressful for the residents who already attend

school and other therapy sessions. There is also concern for the fiscal impacts due to a need for increased staffing.

- *The IRRC asks DHS to explain the reasonableness of requiring at least three hours each week of group therapy and at least three hours each week of psychoeducation group therapy.*
- *They also ask DHS to explain how it balances the fiscal impacts of these requirements with protection of the public health, safety, and welfare.*

19. Section 5330.147. Discharge – Clarity and lack of ambiguity; reasonableness of requirements, implementation procedures, and timetables for compliance.

- Commenters note that this section does not account for discharges that occur against medical advice or circumstances which the PRTF does not control.
 - *The IRRC asks DHS to clarify implementation procedures related to discharges that are out of the PRTF's control or occur against medical advice.*

20. Section 5330.166. Medication refusal – Reasonableness of requirements, implementation procedures, and timetables for compliance.

- Subsection (c) states that a PRTF must inform the client's treatment team leader of the refusal to take prescription medication as soon as possible, but no later than one hour after the refusal. Commenters assert that this timeframe is excessively restrictive as it does not account for the possibility of the nursing staff to be pulled away to observe a restraint or other crisis. Commenters also note that the overall administration of medication can sometimes exceed an hour.
 - *The IRRC asks DHS to explain the reasonableness of the timeframe for notification of medication refusal in the final regulation.*

21. Section 5330.181. Use of manual restraint – Clarity and lack of ambiguity.

- Subsection (e) lacks clarity.
 - *The IRRC asks DHS to clarify what is meant by "approved State protection and advocacy organization" in paragraph (e)(4).*

22. Section 5330.182. Ordering a manual restraint – Economic or fiscal impacts; protection of the public health, safety, and welfare; reasonableness of requirements, implementation procedures, and timetables for compliance.

- Subsection (i) states that an order for a manual restraint and the application of a manual restraint may not exceed 30 minutes. Commenters assert that this proposed rule is far more stringent than Federal regulations, and creates an unnecessary safety risk to both the staff and client. They further explain that in such a scenario, the requirement would necessitate the creation of a second restraint form, resulting in additional reporting and debriefing requirements.
 - *The IRRC asks DHS to explain how the timeframe of an order for a manual restraint and application of a manual restraint is reasonable and protects the public health, safety, and welfare. If this timeframe is unchanged from the proposed regulation, the IRRC asks that DHS address the fiscal impacts of additional reporting and debriefing requirements.*

23. Section 5330.184. Restrictive procedure plan – Reasonableness of requirements, implementation procedures, and timetable compliance.

- Subsection (a) requires a restrictive procedure plan to be written within 24 hours of a client's admission to a PRTF and prior to the use of a manual restraint. Commenters state that requiring a restrictive procedure plan to be written at the time of admission will result in the lack of individualization of the plan, as the facility will have no time to observe the client.
 - *The IRRC asks DHS to explain the reasonableness of the timeframe in the final regulation for writing a restrictive procedure plan.*

24. Section 5330.185. Application of a manual restraint – Economic or fiscal impacts; protection of the public health, safety, and welfare; clarity, feasibility, and reasonableness; need; implementation procedures, and timetable compliance.

- Subsection (a) states that a PRTF shall have at least two PRTF staff persons present during the application of a manual restraint. Commenters agree that having two persons is ideal, but not always possible.
 - *The IRRC asks DHS to explain the need for and reasonableness of requiring at least two staff persons during the application of manual restraint, and how the regulation balances protection of the public health, safety, and welfare.*
- Subsection (i) requires that within 30 minutes of initiation of a manual restraint or immediately after a manual restraint is removed, a treatment team leader, physician, advanced practice professional, or RN, who is certified in the use of manual restraints, shall conduct a face-to-face assessment. Commenters state that the proposed rule halves the Federal standard of a one-hour window for the face-to-face assessment to occur, and that it is likely that the clients may not be sufficiently deescalated after the restraint to cooperate. Commenters also note that this standard could be impossible to meet if multiple restraints occur on campus. Additionally, they assert that it will be more challenging for on-call registered nurses to respond on time to complete a face-to-face assessment, especially in rural areas or in cases of inclement weather.
 - *The IRRC asks DHS to explain the need for and reasonableness of requiring a face-to-face assessment within 30 minutes of initiation of manual restraint or immediately following the removal of a manual restraint. They also ask that DHS explains how the regulation balances the feasibility of this requirement with protection of the public health, safety, and welfare.*
- Subsection (k) states that a PRTF shall notify the child's, youth's, or young adult's parent, legal guardian, or caregiver of the manual restraint within one hour after the manual restraint has ended. Commenters assert that this will create an unrealistic burden on the PRTF staff as the requirement does not account for multiple clients being dysregulated at the same time, nor does it account for the subsequent administrative tasks that follow.
 - *The IRRC asks DHS to explain the need for and reasonableness of the one-hour timeframe for notification and how the regulation balances protection of the public health, safety, and welfare with the feasibility of this provision.*

25. Section 5330.188. Debriefing – Clarity and lack of ambiguity; need; reasonableness of requirements, implementation procedures, and timetables for compliance.

- Subsection (b) requires a face-to-face discussion with the client to occur within 24 hours after the use of a manual restraint and to include representatives from the client's treatment team. Commenters note that requiring representatives of the treatment team (who are frequently not scheduled on weekends) to participate, in addition to the PRTF staff involved in the restraint, creates an administrative burden that would make it difficult for the debrief to occur within 24 hours.
 - *The IRRC asks DHS to explain the need for and reasonableness of the 24-hour timeframe, as well as the need for and reasonableness of requiring representatives from the treatment team to attend.*
- Subsection (d) requires a debrief within 24 hours after the use of a manual restraint conducted by the PRTF staff involved in the manual restraint, and supervisory and administrative staff.
 - *The IRRC asks DHS to clarify who are the "supervisory" and "administrative staff" that are required to participate in the debrief.*
- Commenters express concern about the availability of certain staff if the 24 hours occurs during a weekend.
 - *The IRRC asks DHS to address the need for and reasonableness of a 24-hour timeframe, as well as the need for and reasonableness of who is required to attend.*