

AGENDA

BAY ARENAC BEHAVIORAL HEALTH BOARD OF DIRECTORS PROGRAM COMMITTEE MEETING

Thursday, November 14, 2024 at 5:00 pm

Room 225, Behavioral Health Center, 201 Mulholland Street, Bay City, MI 48708

Committee Members: Chris Girard, Ch Sally Mrozinski, V Ch Jerome Crete Toni Reese	Present _____ _____ _____ _____	Excused _____ _____ _____ _____	Absent _____ _____ _____ _____	Committee Members: Pam Schumacher Robert Pawlak, Ex Off Richard Byrne, Ex Off	Present _____ _____ _____	Excused _____ _____ _____	Absent _____ _____ _____	Others Present: BABH: Heather Beson, Joelin Hahn, Chris Pinter, Melaine Corrion, and Sara McRae Legend: M-Motion; S-Support; MA-Motion Adopted; AB-Abstained
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	Agenda Item	Discussion	Motion/Action
1.	Call To Order & Roll Call		
2.	Public Input (Maximum of 3 Minutes)		
3.	Clinical Program Review 3.1) Adult Intellectual/Developmental Disability Team Update, M. Corrion		
4.	Requests for Clinical Privileges 4.1) Mary Holbrook, PMHNP-BC – Renewal privileges for a three-year term expiring 11/30/2027 4.2) Casey Binkley, LP, PsyD – Renewal privileges for a three-year term expiring 12/31/2027		4.1-4.2) Consideration of motion to refer the clinical privileges to the full Board for approval
5.	Unfinished Business 5.1) None		
6.	New Business 6.1) Conflict Free Access & Planning Update, C. Pinter 6.2) Regional Contract Update, C. Pinter		6.1) No action necessary 6.2) No action necessary

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Page 2 of 2

	6.3) Rose Home Update, H. Beson		6.3) No action necessary
	6.4) Program Committee Changes 2025, S. McRae		6.4) No action necessary
7.	Adjournment	M -	S - pm MA



BEHAVIORAL HEALTH

November 5, 2024

Chief Executive Officer
Christopher Pinter

Board of Directors
Richard Byrne, Chair
Robert Pawlak, Vice Chair
Patrick McFarland, Treasurer
Christopher Girard, Secretary
Tim Banaszak
Patrick Conley
Jerome Crete
Sally Mrozinski
Kathy Niemiec
Carole O'Brien
Marie (Toni) Reese
Pamela Schumacher

Board Administration
Behavioral Health Center
201 Mulholland
Bay City, MI 48708
800-448-5498 Access Center
989-895-2300 Business

Arenac Center
PO Box 1188
1000 W. Cedar
Standish, MI 48658

North Bay
1961 E. Parish Road
Kawkawlin, MI 48631

William B. Cammin Clinic
1010 N. Madison
Bay City, MI 48708

Wirt Building
909 Washington Ave.
Bay City, MI 48708

www.babha.org

Kristen Jordan, Director
Bureau of Specialty Mental Health Services
MI Department of Health and Human Services (MDHHS)
PO Box 30195
Lansing, MI 48909

Dear Ms. Jordan:

Thank you so much for the follow-up communication dated September 11, 2024 addressing concerns raised by the Arenac and Bay County Commissions regarding federal Conflict Free Access and Planning requirements. In particular, the clarification that **“CMS has determined the safeguards currently in place in Michigan’s specialty behavioral health system are not sufficient, and that with limited exception, a direct service provider cannot also be responsible for service planning or determining financial or service eligibility”** was very insightful.

It is important to note that none of the Community Mental Health Service Programs (CMHSPs) in Michigan are responsible for determining Medicaid *financial eligibility* (this is completed by MDHHS) and that the overwhelming majority, i.e. 43 of the 46 CMHSPs, do not perform 1915i *service eligibility* (this is completed by the 7 regional Pre-paid Inpatient Health Plans (PIHPs)). The only possible conflict related to service eligibility is limited to the 3 single county PIHPs for Macomb, Oakland and Wayne and then, only if they provide direct 1915i services. A compliance strategy targeted at the unique nature of these 3 specific PIHPs and consistent within the larger recommendations below should be given consideration to resolve these conflict of interest concerns without unnecessary state-wide application.

In regard to the broader issue of the federal conflict of interest concerns related to direct service provision and service planning, MDHHS had proposed pursuing an “only willing and qualified provider” exception as permitted under 42 CFR 441.301(c)(1)(vi). The exception would be predicated on the provider being located in a rural county, the provider being the only entity offering service planning in the area, and the provider delivering Home and Community Based Services (HCBS) due to a lack of other service providers in the area.

Although we appreciate the efforts of MDHHS to identify an alternative compliance strategy, it ultimately falls short due to the fact that the majority of Michigan’s 83 counties are rural and many likely would qualify, making this approach more of a **rule** than an **exception**. In addition, this proposed exception strategy, while appearing to be practical, continues to seriously mischaracterize the actual foundations of both the CMHSP and county-based public mental health system in Michigan.

The CMS standards were put in place in 2014 to ensure that conflicts of interest do not compromise the integrity of decisions concerning a person's eligibility for HCBS or decisions about the specific services to be included in the related service plan. This is the basis for prohibiting direct service providers from also being responsible for service planning or determining financial or service eligibility.

As discussed above, most CMHSPs in general **do not** determine financial or service eligibility for specialty behavioral health services. However, nearly all of the CMHSPs perform **both** service planning and direct service provision to some extent and ***it has absolutely no relationship to the financial or pecuniary conflict of interest concerns as defined in the federal Conflict Free Access & Planning standards.*** For example, CMHSPs are not often just the only willing and qualified agents to perform service planning and direct services in a specific geographic area, CMHSPs are the ***only agent required by law to provide both planning and direct services to any resident meeting the priority population requirements of the geographic area.*** This includes specific prohibitions currently in Michigan Compiled Laws (MCL) 330.1800-1842 against making **any** service planning or delivery decisions on the basis of insurance or ability to pay.

In addition, the CMHSP and PIHPs are prepaid on a capitated basis through a shared regional risk contract with the State, preventing any direct pecuniary relationships from assessment, planning, case management and/or the volume of services delivered, ***even if we were not already prohibited by state law from making decisions in this manner.*** CMHSPs are essentially local non-state entities that, by statutory design, are unable to benefit financially from being a provider of HCBS. As a result, any financial conflict of interest concerns for CMHSPs beyond those specifically detailed in 42 CFR 441.730(b)(1-4) are unfounded and unnecessary.

Recommendation

CMS makes it clear in initial guidance related to 42 CFR 441.730(b) that conflict of interest mitigation strategies are not intended to preempt an "individual's right to obtain services from any willing and qualified provider"¹. It also suggests that administrative safeguards should reflect each state individually and consider the ***"...unique characteristics and needs of each state and include conflict free protections that address the development of the plan and choice of providers with an emphasis on individual preferences"***. Unfortunately, a literal application of the 441.730(b)(5) requirements in Michigan, even with the proposed exception, contradicts these principles.

In order to reaffirm the primary role of the individual's right to exercise choice and preference of providers, preserve the governmental safety net provider responsibilities of CMHSPs in Michigan law, and remain consistent with the actual intent of the federal conflict of interest requirements, the following safeguards should be given consideration as a mitigation strategy:

- All CMHSPs and PIHPs are required to fully comply with the conflict of interest requirements of 42 CFR 441.730(b)(1-4).

¹ Federal Register / Vol. 79, No. 11 / Thursday, January 16, 2014 / Rules and Regulations, pg. 2991-2992.

- All CMHSPs are required to use uniform formats to disclose **any** financial conflict of interests between eligibility, planning and service provision for any providers available to the consumer. This includes disclosure of the shared-risk nature of the PIHP Medicaid contract, protections against financial interest decisions by CMHSPs in MCL 330.1800-1842, the CMHSP reimbursement mechanisms and any other provider financial interests that may compromise 1915i HCBS provision².
- Persons facilitating the service planning process cannot be providers of any 1915i HCBS to those with whom they facilitate the planning process.
- The consumer has the right to choose an independent facilitator (not employed by or affiliated with the CMHSP/PIHP) to facilitate the service planning process, and/or their case manager/supports coordinator (employed by a CMHSP or contract agency) to the maximum extent possible.
- The consumer has the right to choose to have their 1915i services managed and delivered through a self-directed care arrangement with no CMHSP involvement in direct service provision.
- Any consumer or guardian concerns related to eligibility, service planning, independent facilitation, choice of case manager/supports coordinator, access to self-directed options or choice of 1915i HCBS provider are subject to Medicaid grievance and appeal/fair hearing requirements and state recipient rights protections.
- **As long as all of the requirements noted above have been met, the consumer retains the right to formally waive the specific conflict of interest requirements of 42 CFR 441.730(b)(5) and receive both service planning and provision from the agent of their choice.**

These combined mitigation strategies build on the foundation of empowering consumers to make planning and service delivery decisions from their vantage point of lived experience, incentivize CMHSPs to respect consumer choice as much as possible, and offer multiple remediation pathways in the event the consumer perceives a pecuniary conflict of interest. This will also avoid the bifurcation of required planning and provider responsibilities at the county CMHSP level often necessary for protecting the health & safety of vulnerable persons in our communities.

Thank you for your attention regarding this important matter. If you have any questions regarding this correspondence, please feel free to contact me anytime at (989) 415-4422.

Sincerely,



Christopher Pinter
Chief Executive Officer

² U.S. DHHS, Aging and Long-Term Care Policy, The use of 1915(i) Medicaid Plan Option for individuals with Mental Health and Substance Use Disorders, November 2016, pg. 23.

Program Committee
 Monthly Meeting
 SLT Facilitator: Joelin Hahn/Heather Beson

	January	February	March	April	May	June	July	August	September	October	November	December
Items:												
Clinical Program Reviews	x	x	x	x	x	x	x	x	x	x	x	x
Policies	x	x	x	x	x	x	x	x	x	x	x	x
Clinical Privileges	x	x	x	x	x	x	x	x	x	x	x	x
PNOQMT Notes	x	x	x	x	x	x	x	x	x	x	x	x
Quality Assessment & Performance Improvement Plan										x		
Quality Improvement Quarterly Reports			x			x			x			x
Quality Survey Results/Outcomes (Employee/Provider/Consumer)	x											
MDHHS Waiver Review												x
Infection Control Plan												
Medical Staff Plan												
Strategic Initiatives/Dashboard Review	x			x			x			x		

Other coordination with Board Office:

January 2025 BABH Board of Directors

DRAFT

January 2025							February 2025						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
5	6	7	1	2	3	4	2	3	4	5	6	7	1
12	13	14	8	9	10	11	9	10	11	12	13	14	8
19	20	21	15	16	17	18	16	17	18	19	20	21	15
26	27	28	22	23	24	25	23	24	25	26	27	28	22

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Dec 29	30	31	Jan 1, 25 New Year's Day/BABH Offices Closed	2 5:00pm Personnel & Compensation Committee	3	4
5	6 5:00pm Recipient Rights Advisory & Appeals Committee	7	8 5:00pm Finance Committee	9 5:00pm Program Committee	10	11
12	13 5:00pm Audit Committee	14	15	16 5:00pm REGULAR BOARD MEETING	17	18
19	20 Martin Luther King, Jr. Day/BABH Offices Closed	21	22	23	24	25
26	27	28	29	30	31	Feb 1

February 2025 BABH Board of Directors

DRAFT

February 2025							March 2025						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
2	3	4	5	6	7	8	2	3	4	5	6	7	8
9	10	11	12	13	14	15	9	10	11	12	13	14	15
16	17	18	19	20	21	22	16	17	18	19	20	21	22
23	24	25	26	27	28		23	24	25	26	27	28	29
							30	31					

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Jan 26	27	28	29	30	31	Feb 1
2	3	4	5	6 5:00pm Corporate Compliance Committee	7	8
9	10 5:00pm Recipient Rights Advisory & Appeals Committee	11	12 5:00pm Finance Committee	13 5:00pm Program Committee	14	15
16	17 President's Day/BABH Offices Closed 5:00pm Audit Committee	18	19	20 5:00pm REGULAR BOARD MEETING	21	22
23	24	25	26	27	28	Mar 1

March 2025 BABH Board of Directors

DRAFT

March 2025							April 2025						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
2	3	4	5	6	7	1	6	7	1	2	3	4	5
9	10	11	12	13	14	8	13	14	8	9	10	11	12
16	17	18	19	20	21	22	20	21	22	23	24	25	26
23	24	25	26	27	28	29	27	28	29	30			
30	31												

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Feb 23	24	25	26	27	28	Mar 1
2	3	4	5	6 5:00pm Facilities & Safety Committee	7	8
9	10 5:00pm Recipient Rights Advisory & Appeals Committee	11	12 5:00pm Finance Committee	13 5:00pm Program Committee	14	15
16	17 Saint Patrick's Day 5:00pm Audit Committee	18	19	20 5:00pm REGULAR BOARD MEETING	21	22
23	24	25	26	27	28	29
30	31	Apr 1	2	3	4	5