Creating an Effective Residential Treatment System: Responding to the CYFSA Discussion Guide

Executive Summary

CMHO welcomes the new legislative approach of the Child, Youth and Family Services Act (CYFSA), and is eager to contribute to this ongoing process, in collaboration with the Ministry of Children and Youth Services (the Ministry), our members, other service providers, and children, youth, and families.

We have identified key themes and issues that require consideration as the Ministry develops regulations and policies with respect to the CYFSA. Specifically, we have put forward the following issues:

- Treatment vs. Care: There is a fundamental difference between the services being delivered in a residential care setting versus a residential treatment setting. We identify several ways that a commitment to treatment can be made in policy and regulations related to the CYFSA, through establishing this distinction in the licensing system, ensuring young people are provided with a standardized assessment as needed, and developing a comprehensive set of quality standards.
- Balancing Oversight with Quality: The CYFSA makes an effort to further accountability, but does so by bolstering existing oversight mechanisms and creating news ones. In addition to these mechanisms, it is important that there are also commitments made in policy or regulations that the Ministry will collaborate with providers in improving quality more robustly.
- Service Equity Across the Province: Given the shift in focus of the CYFSA to emphasize the rights of children and youth, we believe there should be a commitment—in policy or regulations—to their rights to mental health treatment, and equitable access to these services, despite where in Ontario they live.

We have also responded to select questions from the following sections of the Ministry's Discussion Guide:

- Children's Residential Licensing
- Other Related Regulations for Licensed Residential Services for Children and Young Persons
- Residential Placement Advisory Committees
- The Use of Physical Restraints by Services Providers and Foster Parents
- Mechanical Restraints in Secure Treatment Programs

CMHO and its members appreciate the Ministry engaging us in the development of regulations and policies for, and the implementation of, the CYFSA. We have taken this as an opportunity to highlight core issues in the child and youth mental health sector that are relevant to the CYFSA and prospective regulations and policy that accompany the legislation. A significant first step in improving the residential service system would be formally acknowledging the difference between care and treatment settings, and developing standards for them separately, in light of those differences.

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Introduction

Children's Mental Health Ontario (CMHO) and its members—child and youth mental health agencies who deliver essential mental health services to young people throughout Ontario—appreciate the Ministry of Children and Youth Services' (the Ministry) efforts to engage stakeholders in the development of regulations and policies for, and the implementation of, the Child, Youth and Family Services Act (CYFSA). CMHO welcomes the new legislative approach of the CYFSA, and is eager to contribute to this ongoing process, in collaboration with the Ministry, our members, other service providers, and children, youth, and families.[1]

In this document, we have identified select sections and questions from the Ministry's Discussion Guide to which we have responded. We appreciate the Ministry has purposefully chosen its questions, and so we have attempted to focus our responses within the context of those questions, in order to be helpful.

We begin, however, by identifying key themes and issues that require consideration as the Ministry develops regulations and policies with respect to the CYFSA—even if these issues do not correspond to particular questions posed by the Ministry.

There are foundational issues that CMHO has raised on various occasions and through various means over the last several years—for example, the critical importance of formally distinguishing between residential care and residential treatment. As this and other issues remain unaddressed, we present these concerns again to emphasize the importance of being acted upon.

It is essential that Ontario endeavors to reimagine how we serve children and youth with the most severe and complex mental health and addictions issues. Historically, children and youth with such needs have received residential care or treatment, even when this might not actually have been what was in their best interests or the best interests of their families. We must reframe what has been perceived as a client's need for residential treatment as, instead, a need for intensive treatment, in order to identify the range of services that should be available, and ultimately, what services the province should invest in. Whenever possible we should be trying to keep young people with their families. Leveraging intensive treatment options other than residential treatment—for example, by instead using in-home and expanded day treatment—increases the chances of being able to do so, while avoiding the traumatic experience of young people being taken out of their homes. And in cases where young people do require placements in group or foster homes with some level of mental health support, but not at the level of intensive treatment, we need to determine the best ways of wrapping services around them. Though this paper is not focused on the re-imagining process, we hope the ideas presented here can serve as a catalyst for that discussion.

[1] "Families" include parents, kin, kith, adoptive families, group care etc.—depending on the child's individual life context.

General Considerations

Treatment vs. Care

A long-standing problem in the child and youth services landscape is the often-ignored distinction between the *care* of children and youth—for example, within the context of residential child welfare services—and child and youth mental health *treatment*. This is a problem that remains unaddressed in the CYFSA.

Without access to specialized treatment delivered by inter-disciplinary teams in well-supervised settings, children and youth with complex mental health needs are at risk of receiving residential care (e.g., housing) when they require treatment. When this happens, a young person's mental illness may remain undiagnosed and untreated, which may persist and intensify, resulting in adverse outcomes in the short-term and an increased likelihood of requiring more intrusive, intensive, and expensive supports in the long-term, and as they transition into adulthood.

Similarly, sometimes residential mental health treatment programs receive pressure to use treatment beds for care or placements or relief for families—even in cases where a young person doesn't have mental health treatment needs (though they may have other types of care or treatment needs).

Separating residential care from residential treatment fits directly with the government's broader agenda of achieving an effective and efficient service delivery system. This is accomplished by providing the right service, at the right place, at the right time, by the right provider.

We believe it is of crucial importance that the role and responsibilities of child and youth mental health treatment agencies are clearly established; we list some ways that a commitment to treatment can be made in policy and regulations related to the CYFSA.

1. Tiers of Service

There is a fundamental difference between the services being delivered in a child and youth group home versus a child and youth mental health treatment agency—the needs of their clients are different and so their approaches to meeting those needs must be different as well. Residential settings that provide safe and caring environments to children in care are not necessarily equipped with the capacity or expertise needed to provide effective mental health treatment or interventions.

On the other hand, child and youth mental health treatment agencies exist to provide effective mental health treatment to children and youth with assessed mental health needs. They are expert mental health treatment providers with the primary function of delivering crucial mental health interventions.

Even among child and youth mental health treatment agencies, organizations vary with respect to their ability to serve different populations of children and youth. Some focus their services on children and youth with the most significant and complex mental health treatment needs. Others focus on serving kids with

more moderate mental health needs. By contrast, homes that essentially just offer care don't have meaningful capacity to support mental health needs almost at all. Importantly, recognizing that the mental health needs of children and youth exists on a continuum is consistent with current Ministry policy, embedded in its Program Requirements and Guidelines for child and youth mental health agencies.[2]

As such, a formal mechanism should be established to recognize these differences, and these distinctions should be a determining factor in where children and youth receive care or treatment. One way to do this would be to differentiate tiers or classes of licenses in the licensing regime: a class for agencies or homes that primarily offer care and a class for agencies that focus on delivering mental health treatment. Within Ministry policy, further distinctions could be made to differentiate among treatment-based organizations, based on their capacity to deliver mental health treatment at various levels of intensity. As is discussed below, there are clear opportunities in the Discussion Guide developing this sort of framework.

2. Standardized Assessment

Recognizing that each child or youth, and their families, have unique needs, and that, as articulated above, different organizations have different capacities, a young person must be entitled to receive a standardized mental health assessment when decisions are being made about whether they may need residential care or residential treatment—or potentially some other form of intensive treatment, such as intensive mental health therapy based in the home.

A standardized assessment—that evaluates the young person's mental health treatment needs and the family's strengths, capacities, and challenges—will determine what sort of treatment environment or approach is best suited to meeting those needs. Then, decisions about where clients receive care or treatment can be made such that the intensity and profile of a client's needs is matched to a child and youth mental health treatment agency, based on its license or classification (which itself would be based on capacity to meet varying need-intensity levels), as well as on other relevant considerations, such as unique sub-specialities a given organization may possess. And should an assessment determine that a young person does not have significant mental health needs, it may suggest they are more appropriately suited to a care-based setting (in some cases with more moderate mental health supports supplementing their care).

Importantly, by ensuring that children and youth are matched to the right setting and receive the right level of service based on their assessed need, we increase the cost-effectiveness of government expenditures—both in avoiding unnecessarily costly treatments for young people with less complex and significant needs, and avoiding the long-term costs associated with non-treatment.

Committing to providing children and youth who seeking mental health treatment, and their families, with a standardized assessment, can be built into policies or regulations that support the CYFSA.

[2] Ministry of Children and Youth Services (2015). Community-Based Child and Youth Mental Health - Program Requirements and Guidelines #01: Core Services and Key Process. The diagram on page 6 represents this continuum of need and corresponding services.

3. Quality Standards

What counts as "quality" in a care setting is fundamentally different than in a treatment setting, since the goals of different types of organizations are, themselves, fundamentally different. There is a unique quality lens through which the clinical services in a child and youth mental health residential treatment agency must be evaluated, which is not relevant in a care-based setting, where treatment is not being delivered.

The mental health services and treatment being delivered in a child and youth mental health treatment agency should be subject to evaluation, relative to a set of agreed-upon quality standards. Standards themselves—which would reasonably be more or less extensive depending on an agency's license or class—need not be prescribed in regulations. But, policies that support the CYFSA could establish the need for child and youth mental health treatment agencies to meet the expectations set out in clear and consistent standards of treatment that are developed by the Ministry in collaboration with service providers—and agencies must be empowered and supported by the Ministry to meet these standards.

Balancing Oversight with Quality

The CYFSA makes an effort to further accountability, but does so by bolstering existing oversight mechanisms and creating news ones. Regional program supervisors have extensive monitoring and inspection responsibilities. New residential licensing inspectors also could initiate and conduct inspections with or without warrants. And, of course, the Office of the Provincial Advocate for Children and Youth has significant investigative powers as well. We appreciate the value of inspections and investigations. However, these measures will be insufficient for enhancing accountability and quality in a meaningful way as their focus is on identifying problems and not to contributing to a plan for how services can be improved.

CMHO and our members are intent on providing high-quality residential treatment but remain concerned that the heightened focus on inspections establishes or reinforces a punitive and confrontational dynamic between the Ministry and residential service providers. Given our common agenda, child and youth mental health agencies strongly believe that working in partnership and collaboration with the Ministry is key to achieving a service continuum that is responsive to the needs of the child and youth with complex mental illnesses. Further, to the extent that Lead Agencies have a role and responsibility to lead quality improvement in their service areas, clarity is needed to understand how this role intersects with other quality and accountability mechanisms.

If we are striving for enhanced accountability in the interest of improving quality, then we must recognize the need to support quality improvement in our organizations. The identification of failures (or successes) through inspections can be helpful as a measure of how organizations are performing; they may serve as a deterrent for intentional or avoidable failures to comply with legislative or other requirements. But they will not, in themselves, advance quality within organizations or the sector. If we make the fair assumption that failures to perform properly are not the result of a lack of desire to do so, but because of challenges the organization or workers are facing, we very quickly see the limits of inspections.

As such, in addition to the inspection mechanisms included in the CYFSA, it is important that there are also commitments made in policy or regulations that the Ministry will collaborate with providers in improving quality more robustly, through comprehensive quality measurement, evaluation, and planning. And, funding must accompany efforts to address quality (e.g., supporting agencies in developing evaluation and data analysis expertise, acquiring improved technology, and providing support for enhanced staff training among other things), given that underfunding over the course of the last 25 years is a primary driver of the sector's inability to deliver the level of quality that is necessary to meet the needs of children, youth, and families. Without such commitments, we will continue to identify and hear about the problems in the child and youth mental health treatment system, without taking the action needed to make things better.

Service Equity Across the Province

Over the past 20 years, there has been a substantial contraction in treatment programs in the North. Current funding does not support the financial challenges of serving a widely-dispersed population over sprawling geography. As a result, when children or youth from northern, rural and/or remote communities require residential treatment, they are regularly sent out of community, typically to Toronto, where they often face long wait times. Where waiting for treatment is not a viable option, families may seek treatment in a private residential setting. But, without funding to access these services, families often turn to the child welfare system, where funding for treatment can be accessed—despite the fact that these services are often insufficient and unable to meet the needs of the young person. This is especially critical given the ongoing unmet needs of Indigenous populations in the North.

With this in mind, a concerning omission from the CYFSA is a lack of commitment to ensuring service equity to child and youth mental health services across the province. Given the shift in focus of the legislation to emphasize the rights of children and youth, we believe there should be a commitment—in policy or regulations—to their rights to mental health treatment, and equitable access to these services, despite where in Ontario they live.

Responding to Discussion Guide

Children's Residential Licensing

Should requirements across residential settings (e.g., plan of care requirements, requirements related to the physical environment and reporting requirements, etc.) be harmonized where possible and appropriate? Can you provide examples?

Young people accessing residential services across the province should experience consistent—and high-quality—services, regardless of what community or region they live in. And so, it is important that requirements across residential settings be harmonized where possible and appropriate.

Quality standards, on which requirements ought to be based, exist in various categories—for example, basic facility or physical environment standards; service standards such as those with respect to wait times;

and clinical standards regarding what type of treatment is delivered, how, and by whom.

As has been discussed, it is critical that the differences between residential care and residential treatment are formally recognized. Quality standards should be defined for every aspect of residential care and residential treatment (e.g., staffing resources, comprehensive interdisciplinary assessments, and intake process). For some standards, it is reasonable for them to extend across both types of services (i.e., care and treatment). Requirements with respect to the physical environment (at least in many dimensions) may be a good example of this. However, other requirements would be unique to treatment settings—for example, clinical treatment standards.

Though not within the context of licensing, it is important that Ministry policy commits to developing quality standards in each of the areas articulated above.

How can transitions of children and young person be better supported upon admission to residential care, between services and out of residential care?

Privacy and Client Information

Sharing information is a critical component of seamless integrated client care. It is therefore important to strike a balance between the intention of privacy legislation and regulations to ensure the client's right to the collection, use, and disclosure of their personal health information along with the service provider's needs to plan and co-ordinate care by engaging other agencies and accessing available resources.

Standardized Assessment

As we have advocated for earlier in this document, young people potentially in need of residential services should be entitled to receive a standardized mental health assessment. A standardized assessment of young people and their families can help determine a young person's clinical needs and can identify the living, care, and treatment circumstances in which they are most likely to succeed.

One way to support the transitions of young people—into services, between services, and out of services—is to properly evaluate and identify their needs before making determinations about where they should be receiving services. By helping to ensure young people start their journey in the right place, we stand a better chance to make sure the path they take is one that is conducive to their needs.

Notably, this aligns with the potential regulations and policies mentioned in this section of the Ministry's Discussion Guide: "Govern procedures for the admission to and discharge of children or youth from children's residences or other places where residential care is provided under the authority of a licence" (as well as potential policies and regulations highlighted in the subsequent section of the Discussion Guide).

Further, as the challenges of many young people who enter the child and youth mental health system are misunderstood, resulting in ineffective treatment planning, in addition to standardized mental health assessment, all children should also have access to other specialized assessments as needed, including

occupational therapy and speech language pathology assessments.

After-Care Support

For young people who require mental health treatment, it is essential that they receive after-care support when they leave services. After-care supports are integral to maintaining the gains achieved during intensive treatment. This is true for all forms of intensive treatment—but it is particularly true for children and youth who are leaving residential treatment and transitioning back to less restrictive or home-based environments (including group and foster homes).

Transitioning out of residential treatment can be an incredibly difficult experience and without continued professional support and monitoring, children and youth can relapse quickly—resulting in lost progress and wasted investments. Instead, treatment approaches that provide gradual transitions, for example part-time residential options or access to respite, help to minimize risks during this transitional period and help to protect treatment gains.

The need for after-care is also an important argument supporting the value of intensive home-based treatment. Providing intensive mental health treatment in the home, either instead of or following residential treatment, can help to ensure that families are equipped to support their child or youth to manage their illness successfully. Again, treatment outcomes are more likely to be sustained when families are involved and empowered to support them.

How should the ministry enhance existing licensing requirements to improve the quality of care in residential settings?

As has been discussed, the current licensing system does not recognize the fundamental difference between residential care and residential treatment. Given that these are different types of services, with different goals, and different approaches for meeting the needs of clients—since the needs of clients in these two settings are unique—the licensing system should reflect these differences.

One straightforward way to enhance existing licensing requirements to improve the quality of care in residential settings is to acknowledge this difference—between care and treatment, and develop licensing requirements appropriate to each type of setting and service.

For example, in this section of the Discussion Guide, the Ministry notes that one area for potential regulation and policy development would be to "specify and govern classes of licence that may be assigned." Similarly, in the next section of the Discussion Guide (i.e., "Other Related Regulations for Licensed Residential Services for Children and Young Persons") it is noted that regulations and policies could be developed to "Describe classes of licences."

Such potential regulations and policies present strong opportunities for implementing our recommendation to differentiate classes of licenses in the licensing regime: a class for agencies or homes that primarily offer care and a class for agencies that focus on delivering mental health treatment.

Other Related Regulations for Licensed Residential Services for Children and Young Persons

Do you have any additional feedback to provide about the areas for regulation development listed above?

In the list of regulations and policies that could be developed, one option is "Prescribe the qualifications, powers and duties of persons supervising children in children's residences or other places where residential care is provided under the authority of a license." Potentially, this could lead to the regulation of additional professions—for example, child and youth care practitioners, which could be a very positive development for those professionals and for protecting the children and youth who they serve. However, along with the benefits of such potential regulation, it is important to recognize that this may also present new and reasonable demands from such professions, for example, with respect to increased compensation for those staff—which is particularly relevant in light of the significant wage gap that currently exists between the child and youth mental health sector and other sectors in our social service, health, and education systems. The Ministry will have to be prepared for this.

Residential Placement Advisory Committees

How can further clarity be provided about the RPACs jurisdiction?

There are two key ways in which we hope to acquire greater clarity about the jurisdiction of Residential Placement Advisory Committees: how the responsibilities of RPACs fit with the responsibilities of other accountability mechanisms; and how expanding responsibilities for RPACs is feasible given recent funding reductions for RPACs.

- In one example shared by a member, youth at their agency expressed that, during the course of an inspection, they felt as though they were being monitored or listened in on, which made them feel less comfortable in their living setting.

  We raise this to highlight the importance of making sure there are clear lines of responsibilities between RPACs (particularly with respect to their performance of discretionary reviews of existing or proposed residential placements), regional program supervisors, residential licensing inspectors, and the investigative function of the Advocate's Office. As we've acknowledged, we understand the importance of inspections, reviews, investigations and other oversight and accountability mechanisms. And we understand that the nature of RPACs' functioning is somewhat unique, and that they do not perform inspections. But, both for the sake of resource efficiency in terms of minimizing unnecessary duplication in the performance of these accountability functions, and minimizing disruption for clients receiving services, it is important that all parties are clear on the respective and differing responsibilities of these various mechanisms.

- Our understanding is that RPAC funding—at least in one region—was recently reduced. And so, the

very straightforward question our members have asked is: how will a potentially increased scope of responsibilities for RPACs be successfully implemented within the context of more limited resources? In general, members question the value of RPACs in light of recent funding reductions, and suggested that instead RPACs would need to be better resourced in order to feel as though they could perform their duties properly.

The Use of Physical Restraints by Services Providers and Foster Parents

Is there a need for clarity respecting the circumstances in which a physical restraint can be used or to further clarify the circumstances in which physical restraint may be appropriate?

The potential policies and regulations outlined in the Discussion Guide with respect to the use of physical restraint by services providers seem reasonable and appropriate. But there several brief considerations it is important to highlight.

- An emphasis on understanding whatever regulations and policies are developed should be embedded in relevant training and education programs with respect to the use of physical restraint. Fundamental to staff and clinicians developing sound judgment in determining when it is or is not permissible or appropriate to use physical restraint (or other restraints), is a clear understanding of the regulatory rules and restrictions.

- Physical restraint is unnecessary particularly in cases where it is acceptable and safe for a young person to leave the residence (by their own volition) for some period of time, if they feel a need to cool off. However, regulations and policies should reflect the reality it may not be safe for certain clients—with particularly complex mental health and / or other health or other special needs—to have that flexibility or freedom to leave in such cases.

- As the Discussion Guide specifies, one of requirements of using physical restraints it that the service provider must subsequently complete a Serious Occurrence Report. CMHO and its members are in favor of Serious Occurrence Reporting, but feel that the current system is ineffective. The form of reporting does not lend itself well to providing a clear understanding of how or why physical restraint was used, which makes it harder to evaluate whether it was appropriate, and if there are any problematic instances or patterns of use of physical restraint. And it is felt that the Ministry has not made good use of these reports—perhaps because the existing methodology is not effective. So, it is important that the Serious Occurrence Reporting methodology is revised, such that the process can be more meaningful, and can allow for better evaluation of whether there are problematic instances or patterns of use of physical restraint—and if so, how to remedy such cases.

- It is important to acknowledge that clearer policies and regulations—though important—are unlikely to be an effective means of reducing instances of physical restraint use. Rather, use of physical restraint is perhaps better understood as an indicator of effective treatment planning. The more effective a treatment plan, the more successful a client's experience is likely to be, the better

the client's outcomes are likely to be, and the less likely an occurrence will arise where, rightly or wrongly, physical restraint appears to be a necessary course of action. As such, if the Ministry is committed to reducing use of physical restraint, it is important that they invest in agencies to enhance their capacity to engage in effective treatment planning with clients.

- Further, to this point, in order to effectively follow treatment plans, an agency must be able to properly balance the size and profile of its client-base with the size and quality of its staff. Again, being able to succeed in striking this balance is largely a function of being resourced sufficiently to attract, retain, and empower the high-quality staff.

- Some members who employ school-based staff have also shared with us a concern that there is nothing in the CYFSA that speaks to the use of physical restraint of secure "time out" in schools, and that they have observed used of these measures in concerning ways.

Mechanical Restraints in Secure Treatment Programs

Given that Secure Treatment programs are intended to be programs where treatment is provided for children with mental health conditions, what clinical or other considerations should be brought to bear on the use of mechanical restraints?

It is important to take into account the following considerations in developing policy and regulations with respect to use of restrain in secure treatment:

- In light of the intrusive nature of mechanical restraint (or any type of restraint, including physical or chemical), the operative reason for choosing to use a restraint must be to maintain the safety and security of secure treatment clients, other clients, and staff working with them.

- Though not a form of treatment, the use of restraint should be a component of any secure treatment client's treatment plan—in terms of how and when it is appropriate to be used—taking into account both operational considerations (e.g., safety and security) and clinical considerations (e.g., clinical profile, associated triggers, history of trauma, sensitivity to pressure and touch that exacerbates rather than mitigates behaviour, etc.)

- It is the duty of organizations to develop and pursue treatment plans in collaboration with clients, and to generally foster a treatment environment, that are most likely to minimize risk of encountering these types of situations; and it is the duty of the Ministry to support and empower agencies to be able to meet these obligations.

More generally, a significant concern for our members who deliver secure treatment is the absence of any current program or policy framework from the Ministry regarding the delivery of secure treatment. In turn, there would be concerns with the introduction of further regulation with respect to secure treatment in the absence of an up-to-date policy or program framework from the Ministry.

Conclusion

CMHO and its members appreciate the Ministry engaging us in the development of regulations and policies for, and the implementation of, the Child, Youth and Family Services Act (CYFSA). We have made an effort to respond to key questions posed by the Ministry in its Discussion Guide, in hopes that our answers will be accepted as constructive feedback on what to consider in the development of policy and regulations that support the CYFSA.

We have also taken this as an opportunity to highlight core issues in the child and youth mental health sector that are relevant to the CYFSA and prospective regulations and policy that accompany the legislation. A significant first step in improving the residential service system would be formally acknowledging the difference between care and treatment settings, and developing standards for them separately, in light of those differences.

Given the breadth, knowledge and expertise in service delivery, CMHO members confirm our strong interest in working in partnership with the Ministry to improve quality and equitable access to care for children and youth with significant and complex mental health issues. Our membership is ready and keen to actively participate in the next phases of implementation including the development of regulations.

We also would like to request that ongoing opportunities for consultation and discussion are initiated by the Ministry, including sector trainings such as webinars, teleconferences, telecasts and / or in-person sessions in order to relay information in easy-to-understand formats and seek meaningful feedback. We value this Discussion Guide for the clear language and practical questions it has posed and we request that this type of dialogue continue.

We are very optimistic that the new legislative approach of the CYFSA, and believe there is a tremendous opportunity for us to look back years from now, and identify this as a significant accomplishment in having successfully built a child-centered system of care.