

Draft Regulations and Policy Statements to Support the Proclamation of the CYFSA: CMHO's Response

Introduction

Children's Mental Health Ontario (CMHO) and our members—community-based child and youth mental health (CYMH) agencies who deliver essential mental health services to young people throughout Ontario—appreciate the opportunity to comment on the draft regulations and policy statements (draft proposals) posted to Ontario's Regulatory Registry, which are intended to support the proclamation of the *Child, Youth and Family Services Act* (CYFSA). CMHO's comments here are intended to be considered alongside our two previous submissions which we shared with the Ministry of Children and Youth Services (the Ministry), in response to the Ministry's previous CYFSA discussion guides.

Although CMHO and its members have been disappointed to see that in both the CYFSA and its supporting draft regulations and policy statements, key issues related to CYMH services remain unaddressed, we are generally supportive of the content that is included in the draft proposals. We acknowledge the CYFSA makes an effort to improve the way our province supports young people and their families, and want to do what we can to ensure the legislation's success in doing so. In our continued effort to support this process, we have used this opportunity to highlight questions we have, clarification we're seeking, and areas we need support—as well as identify two overarching concerns we have.

Overarching Concerns

Missed Opportunities

Amidst all of the proposed regulatory changes to residential licensing, there remains no commitment to ensuring children and youth requiring residential care have access to mental health services. This missed opportunity is concerning given the contexts in which these young people are requiring care, the purpose of the CYFSA, and the commitments that are made in the legislation and regulations.

One example of this missed opportunity is in section *E. Admissions* of the Ministry's summary document on the proposed changes to residential licensing regulations, where it is noted: "Currently, sections 80-85 of Regulation 70 under the CFSA set out requirements for licensees operating a children's residence upon admission of a child or young person into their care. These requirements include [...] general medical examinations of a child or young person, and the determination of any medical treatment or medication needs of a child or young person."

Even though there is already a commitment to ensuring a child or young person receives a general medical examination, and even though the Ministry has taken this opportunity to propose a range of changes and additions to the existing provisions in this section of the regulation, the Ministry has missed the opportunity to

ensure children and youth in these circumstances have access to a comprehensive mental health examination or assessment upon admission into care. While this isn't a problem in cases where young people are being admitted to residences that specifically specialize in child and youth mental health treatment (where a mental health assessment is already part of standard operations), there are lots of cases where a young person is being admitted to care in a non-treatment setting (or a setting with limited treatment capacity), where they may well have significant mental health needs that have not been identified or evaluated.

When you consider, for example, that often the reasons a Children's Aid Society is required to intervene, and the reasons a child or young person is required to go into care, can be a source of psychological trauma and can contribute to the development or persistence of significant mental health challenges, not ensuring young people have access to a mental health assessment is very problematic. Service providers—particularly those without mental health expertise—will be unable to form comprehensive picture of the child or young person's needs, and as such will be lacking critical information to inform placement decisions for that individual, and what treatment they might need.

Relatedly, in Part II of the CYFSA under "Rights of the Child", the CYFSA notes that "A child in care has a right to a plan of care designed to meet their particular needs, which shall be prepared within 30 days of the child's or young person's admission to the residential placement. [...] A child in care has a right [...] to receive medical and dental care, subject to section 14, at regular intervals and whenever required, in a community setting whenever possible." Again, this is an instance where medical care is highlighted as a right, without any parallel commitment made to mental health care.

This is all particularly concerning within the context of one of the defined purposes of the CYFSA, as it is articulated in Part I: "Services to children and young persons should be provided in a manner that [...] takes into account physical, emotional, spiritual, mental and developmental needs and differences among children and young persons." The examples above illustrate a lack of follow-through on ensuring services are, indeed, provided in a manner that takes into account the mental health needs of young people.

The Ministry still has a chance to make further revisions, and include commitments to ensuring children and youth in care can access mental health assessments and treatment as necessary. And we would be very eager to discuss with the Ministry various instances where this can be done within residential licensing regulations, and how CYMH agencies could work collaboratively with residential care providers in ensuring the mental health needs of our young people in care are met. If we do not take this opportunity to make these commitments, we are failing to fulfill a key purpose of the CYFSA, and are straightforwardly prioritizing physical health over mental health.

Implementation and the Impact on Service Capacity

In just this first phase of regulation development related to the CYFSA, 45 proposals have been put forward. These proposals contain a significant number of potential regulatory changes and additions.

Among these changes and additions are some very valuable and worthwhile commitments. For example,

consider the proposal titled “Diversity and Inclusion” (17-CYS057). In addition to laying out service providers’ various responsibilities with respect to collaboratively working with a young person and their family (or advocates) to determine how the young person identifies and how that identity can be taken into account in service provision, it’s also noted that service providers must ensure their staff complete training related to identity factors. These are, no doubt, important new requirements and will serve to better support young people and their families. But, these process changes and the training that must accompany them will certainly require additional resources and / or a re-allocation of resources.

Indeed, there are a wide array of reasonable process or procedural changes that will add work to standard operations. A small sampling of examples includes:

- The Ministry is proposing that employees who work in a residence be required to review policies and procedures not just at the start of their employment, but annually.
- The Ministry is proposing a new requirement for all licensees (children’s residences and foster care) to develop a fire safety plan, for each location that operates under the license.
- The Ministry is proposing a new requirement for a debriefing process to be offered to other persons, including other children or young persons, who witness the use of a physical restraint.
- The Ministry is proposing a new requirement for service providers to notify the child or young person’s parent when a physical restraint occurs, with appropriate consent.
- The Ministry is proposing the addition of provisions which would create new requirements for service providers to maintain a detailed record of physical restraint use.

We don’t dispute the value of these additions and changes. Our members will, of course, implement them as they are required. And individually, any one of these sorts of changes can often be made with little to no disruption in direct service delivery.

However, we would be remiss to not emphasize the potential impact that the numerous proposed regulatory additions and changes will *collectively* have on the service capacity of CYMH agencies. Generally speaking, without additional resourcing or capacity added, an increase in operational or administrative responsibilities will often result in a corresponding decrease in direct service time (i.e., time spent providing counselling and other valuable forms of treatment to children and families). And this is especially true within the broader context of the CYMH sector right now, wherein:

- CYMH Lead Agencies and core service providers are continuing to implement *Moving on Mental Health* (including Program Guidelines and Requirements #01);
- The implementation of the *Fair Workplaces, Better Jobs Act* is adding significant fiscal pressure for many CYMH agencies (particularly those delivering residential services); and
- The new increase in the age of protection from 16 to 18, under the CYFSA, is leading to a higher level of referrals from the child welfare sector to the CYMH sector.¹

¹ There are already high referral levels from the child welfare sector to the CYMH sector. With the age of protection increase, the number of young people who the child welfare sector is responsible for has increased, and as such, we are likely to see a corresponding

Without having been given new ongoing resourcing to support these changes, the CYMH sector is already over capacity. Indeed, as the Ministry reported last year, the average wait time for counselling and therapy services at CYMH agencies is already nearly 80 days; for intensive treatment the average wait is nearly 100 days. Even just for brief services, the average wait is five weeks. And while these are provincial averages, we know that in some parts of the provinces, waits for services can exceed a year and a half. Wait times serve as an indicator of timely access to care. And clearly, CYMH agencies' efforts to ensure timely access to mental health treatment are being severely hindered.

There are likely a range of reasons for this, but certainly a primary cause has been diminishing resourcing for community-based child and youth mental health services in Ontario over the last 25 years. As funding has remained close to 1992 levels, inflation has increased, demand has increased, the cost of service delivery has increased, and as is being compounded here, service requirements have increased. Effectively, community-based child and youth mental health agencies are being asked to do more with less, and the result is that agencies are less able to provide timely access to care.

Given the context of the sector, CYMH agencies are not in a position to absorb the impact of all of the regulations currently being proposed. As such, to prevent the regulatory additions and changes being put forward from further limiting timely access to treatment, service providers need additional resourcing, and implementation support wherever possible.

Questions, Points of Clarification, and Training Support Required

Lead Agencies

We support the intent of the proposal focused on CYMH lead agencies (17-CYS018), and we don't anticipate any issues with the regulations that will accompany the CYFSA. However, the proposal does not actually include the drafted regulation itself. As such, we are requesting that the draft regulation be shared with CMHO and its members (many of which are lead agencies) so that we can fully review the regulation and ensure there is:

- More detail about the accountability mechanisms being proposed, including those which will dictate how lead agency plans should be developed and what they should include;
- More information as to when and why the Ministry might issue directives with respect to financial and administrative matters, and performance;
- Consistency between the regulations and existing policy under Moving On Mental Health; and,
- Greater clarity with respect to what the Ministry expects of lead agencies in terms of performance management, and how performance will be measured.

increase in child welfare referrals for CYMH services. Unfortunately, given existing capacity issues in the CYMH sector, more referrals at this time are likely only to lengthen already long wait times.

Personal Information

Our understanding is that organizations that count as Health Information Custodians (HICs) under the *Personal Health Information Protection Act, 2004* (PHIPA) are exempt from much of Part X of the CYFSA (where the topics addressed in Part X are already addressed within PHIPA). However, we also understand that select parts of Part X will apply to all child and youth service providers, including HICs. These parts, we believe, are sections 283, 284, 285, 293, and 294, and the regulations related to these sections.

While at least the majority of our members are HICs within the context of their mental health treatment programs, many of our members deliver a range of services, including services in which they are not acting as HICs (e.g., child welfare services). As such, we are hoping for clarification or support in four respects:

- Confirming that HICs are exempt from Part X except select sections.
- Confirming whether there are sections in Part X other than 283, 284, 293, and 294 that apply to HICs.
- Providing members who *are* HICs with guidance and training on how to adjust agency practices to ensure compliance with the sections of Part X that will apply to them.
- Providing members who *are not* HICs (or who deliver certain services under which they are not operating as HICs) with guidance and training on how to adopt and implement Part X in its entirety.

CMHO is eager to work with the Ministry—and with the Office of the Information and Privacy Commissioner as appropriate—to support our members in adapting to the new legislation and regulations.

Physical Restraint

We note the Ministry's proposal to make regulatory provisions related to physical restraint under the CYFSA apply to all service providers and foster parents—and not just residential licensees. We understand the reasons for these changes, and expect the Ministry will support agencies who are newly subject to these provisions, as they work to align their practices with these provisions.

We are seeking clarity on how the new requirements to maintain a record of the physical restraint, including specified information—outlined in *F. Documentation* in the Ministry's summary document—differs from how such instances are documented within the context of Serious Occurrence Reports (SORs). Can SORs dually serve this purpose? Or at very least, can the same content be used? Or is the nature of the reporting and documentation unique?

Additionally, it is important to take this opportunity to re-iterate a key point that we have expressed previously. Clearer policies and regulations with respect to physical restraint use—though important—are unlikely to be an effective means of reducing instances of physical restraint use. 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.

Rights of Children and Young Persons

We are supportive of the provisions related to the rights of children and young person. To ensure we are successful in implementation, we are seeking clarification about their application. While the proposal titled “Rights of Children and Young Persons” (17-CYS050) clearly applies to all service providers, does “New and Proposed Changes to Regulations Related to Intervals for Informing Children in Care of their Rights, and Complaints Procedures for Alleged Violation of these Rights under the Child, Youth and Family Services Act, 2017” (17-CYS024) apply only to residential licensees, or to all transfer payment agencies delivering services to children and youth?

Summary Documents

The summary documents attached to certain proposals—for example, those related to residential licensing and physical restraints—are very helpful for enumerating the various and specific proposed regulatory additions and changes. We are hoping that updated versions of these documents will be circulated to service providers once the proposed regulatory additions and changes are finalized, as they serve as a helpful guide for changing expectations.

Likewise, we hope that any regulatory additions and changes not currently articulated within such summary documents be included in new summary documents to help service providers ensure successful implementation. We also ask that complete drafts of regulations to be shared with the sector for comment prior to their approval.

Conclusion

CMHO and our members appreciate the opportunity to comment on the draft regulations and policy statements posted to Ontario’s Regulatory Registry. We are supportive of the intent of the CYFSA and its accompanying regulations, and will work to do what we can to ensure the success of this new legislation.

As described, we do have two key overarching concerns: that the impact of implementation will not be taken into account in how CYMH agencies are resourced, further impeding CYMH agencies’ ability to deliver services, and the fact that there remain significant missed opportunities to ensure children and youth requiring residential care can access appropriate mental health services. We are eager to discuss these issues further with the Ministry and hope to receive responses to the various questions we have posed within this document.