

## DEPARTMENT OF MENTAL HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Mental Health (DMH), pursuant to the authority set forth in sections 104, and 105 of the Department of Mental Health Establishment Amendment Act of 2001, effective December 18, 2001, (D.C. Law 14-56; D.C. Official Code §§ 7-1131.04 and 7-1131.05), hereby gives notice of the adoption on an emergency basis of the following new chapter 44 of Title 22A of the District of Columbia Municipal Regulations (DCMR), entitled "Mental Health Grants."

The purpose of the new chapter 44 of Title 22A DCMR is to provide standards for the announcement, selection and issuance of non-federal grants originated by DMH. The new chapter also provides standards for financial management, monitoring and audits of grantees, standards for termination and suspension of a grantee, and a process for informal dispute resolution. Finally, the new chapter grants authority to the Director to issue sole source grants in certain circumstances, consistent with the sole source provisions applicable to subgrants in Title 1 DCMR Chapter 50.

Emergency rulemaking action is necessary for the immediate preservation of the health, safety and welfare of District residents. DMH has an immediate need to issue sole source grants to entities that provide emergency mental health services to children who are residents of the District. This emergency rulemaking was adopted on September 20, 2007 and became effective on that date. The emergency rules will expire on January 18, 2008, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

The Director also gives notice of his intent to take final rulemaking action to adopt the proposed rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

**A new Chapter 44 is added to Title 22A to read as follows:**

**CHAPTER 44 MENTAL HEALTH GRANTS****4400 GENERAL PROVISIONS**

- 4400.1 This chapter establishes uniform requirements for transferring funds appropriated to the Department, or other things of value, to recipients outside of the District government, where the Department is authorized to make grants. Subgrants of federal funds by the Department to recipients outside of the District government shall comply with  
1 DCMR, Chapter 50.

- 4400.2 The Director, or his or her designee, is authorized to make a grant where:
- (a) A District statute authorizes the Department to support or stimulate the activity of the recipient;
  - (b) The Department will not be substantially involved in the activity so supported or stimulated; and
  - (c) The Department is not acquiring any property or service of direct use to the District government.

4400.3 The Department is authorized to make grants pursuant to the Department of Mental Health Establishment Amendment Act of 2001, effective December 18, 2001 (D.C. Law 14-56; D.C. Official Code §§ 7-1131.01 *et seq.*).

#### **4401 GRANT AVAILABILITY ANNOUNCEMENTS AND APPLICATIONS**

4401.1 Except as provided in §§ 4401.3 and 4401.4, the availability of a Department grant shall be announced by one (1) of the following methods:

- (a) Publication in a newspaper of general circulation in the District of Columbia;
- (b) Publication in the District of Columbia Register; or
- (c) Any other officially established forms of notice to reach prospective grantees.

4401.2 Each grant availability announcement shall include the following:

- (a) A brief description of the project for which funds may be available;
- (b) The estimated total funds available;
- (c) A statement setting forth who is eligible to apply for the grant;
- (d) The deadline for submission of applications;
- (e) The review factors to be used in selecting grant recipients;
- (f) Source of funds and estimated time of funds availability;
- (g) An address within the Department where detailed information may be obtained and where the application may be filed; and

- (h) The time and place of a pre-application information session for prospective applicants if such a session would be useful.

4401.3 The Director may make a grant award on a sole source basis in appropriate circumstances. These circumstances include, but are not limited to, situations where:

- (a) The authorizing legislation designates the grant recipient;
- (b) The applicable District law defines eligibility in such a way that there is only one eligible applicant; or
- (c) There is a recognized coalition of service providers through which the broadest community participation may be obtained in serving the targeted clientele.

4401.4 The Director may make a sole source award to an unsolicited proposal if:

- (a) The applicant has a program or project that clearly furthers the purpose of the grant; and
- (b) The proposal reflects proprietary skills or technology that are limited in availability.

4401.5 A sole source award shall not be subject to §§ 4402 and 4403.

#### **4402 APPLICATION REVIEW**

4402.1 A review panel selected by the Department shall review each application to determine if it meets the requirements that apply to the particular grant.

4402.2 The review panel shall advise the Department Grant Officer and the Director of all those applications which satisfy the applicable grant requirements and shall recommend awards based on the review factors and available funding.

#### **4403 REVIEW FACTORS**

4403.1 The recommendations of the review panel and the award decisions of the Director shall be based on the following criteria:

- (a) Feasibility of the project;
- (b) Soundness of research design, statistical technique, and procedures and methodology, if appropriate;

- (c) Theoretical and technical soundness of the proposed plan of operation including the extent to which:
  - (1) The objectives of the proposed project are clearly defined and clearly stated;
  - (2) The proposed project activities appear likely to reach objectives;
  - (3) The proposed project would contribute to the achievement of the grant's stated policy objectives; and
  - (4) Provisions are made for adequate evaluation of the effectiveness of the project and for determining the extent to which the objectives are accomplished;
- (d) Sufficiency of size, scope, and duration of the project to secure productive results;
- (e) Expertise to perform the work, including past performance;
- (f) Adequacy of resources;
- (g) Reasonableness of estimated cost in relation to anticipated results; and
- (h) Other factors as identified in writing by the Director prior to the award of the grant.

**4404 DISPOSITION OF PROPOSAL**

4404.1 The Director shall make the final selection of the grant award.

4404.2 To ensure that the Department has followed the competitive process specified above, the Department Grant Officer shall review each proposed grant award before it can become final. The Grant Officer shall review:

- (a) A list of proposed awards by grant number, name of organization, name of project, and award amount;
- (b) A copy of the grant availability announcement issued pursuant to § 4401.1;
- (c) A copy of the responses submitted for Department consideration;
- (d) Recommendations from the review process; and

- (e) Justifications, if applicable, for awards not consistent with review panel's scores.

4404.3 In instances of proposed awards not based on competitive solicitation, the Grant Officer shall review only the name of the proposed grantee, name of the project, award amount, and justification for the absence of competition.

4404.4 The Grant Officer shall review the submitted documents within five (5) business days of submission. If the procedures have been followed and no other review is required, the Grant Officer shall recommend to the Director that the Department issue the grant(s).

4404.5 If a proposed award was not based on a competitive solicitation, the Grant Officer shall submit within five (5) business days the proposed award to the Department Fiscal Officer for review and approval prior to making a recommendation to the Director.

4404.6 Based on his or her review, the Director shall:

- (a) Approve the application, in whole or in part, for such amount of funds and subject to such conditions as he or she considers necessary or desirable for the completion of the approved project;
- (b) Disapprove the application; or
- (c) Defer action on the application for reasons such as lack of funds, a need for further review, or any other reason.

4404.7 The Grant Officer appointed by the Director shall notify the awardee in writing of the Director's decision.

4404.8 The Director's decision shall be final.

#### **4405 GRANT AGREEMENT**

4405.1 Each grant award shall be in the form of a written grant agreement between the Director and the awardee that is consistent with those statutes and regulations that apply to the grant.

4405.2 The grant agreement shall include, but not be limited to, the following:

- (a) A statement of the purpose of the grant;
- (b) The amount of the grant award;
- (c) The term of the project;

- (d) Reference to provisions of statutes, rules, and regulations (including provisions of this chapter) particularly applicable to the grantee, as well as a statement that the grantee shall comply with all applicable federal and District laws and regulations;
- (e) The scope of work for the grant, a description of any service or products required to be delivered under the grant, and a schedule of expected performance;
- (f) Reporting requirements, both program and financial;
- (g) A payment schedule;
- (h) The name, address and telephone number of the Grant Officer in the Department, and of the agent for the grantee;
- (i) The address to which all written communications from the Department to the grantee may be sent, including periodic payments due under the grant; and
- (j) A provision that the grant may be modified by agreement of both parties.

**4406****CERTIFICATION OF A DRUG-FREE WORKPLACE**

## 4406.1

By submission of its application, the grantee, if other than an individual, certifies and agrees that with respect to all its employees under the grant it shall, no later than thirty (30) calendar days after grant award (unless a longer period is agreed to in writing), for a grant of thirty (30) calendar days or more performance duration; or as soon as possible for a grant of less than thirty (30) calendar days performance duration, but in any case, by a date prior to when the performance is expected to be completed:

- (a) Publish a statement notifying such employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- (b) Establish a drug-free awareness program to inform such employees about the following:
  - (1) The dangers of drug abuse in the workplace;
  - (2) The grantee's policy of maintaining a drug-free workplace;

- (3) Any available drug counseling, rehabilitation and employee assistance programs; and
  - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Provide all employees engaged in performance of the grant with a copy of the statement required in paragraph (a) of this provision;
  - (d) Notify such employees in the statement required by paragraph (a) of this provision that as a condition of continued employment on the grant resulting from this solicitation, the employee shall do the following:
    - (1) Abide by the terms of this statement; and
    - (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) calendar days after notice of such conviction;
  - (e) Notify the Grant Officer in writing within ten (10) days after receiving notice under paragraph (d) (2) of this provision, from an employee or otherwise receiving actual notice of such conviction;
  - (f) Within thirty (30) calendar days after receiving notice under paragraph (d) of this provision of a conviction, take one (1) of the following actions with respect to any employee who is convicted of drug abuse violations occurring in the workplace:
    - (1) Take appropriate personnel action against such employee up to and including termination; or
    - (2) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by the federal, State, or local health, law enforcement, or other appropriate agency; and
  - (g) Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (a) through (f) of this section.

4406.2

By submission of its application, the grantee, if an individual who is applying for a grant of any dollar value, certifies and agrees not to engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in the performance of the grant.

4406.3 The grantee's failure to comply with the requirements of §§ 4406.1 and 4406.2 may, pursuant § 4413, render the grantee subject to suspension of grant payments, termination of the grant or other available legal remedies.

**4407 FINANCIAL MANAGEMENT BY GRANTEES**

4407.1 Each grantee shall make accurate, current, and complete disclosure of the financial results of each project or program in accordance with the financial reporting requirements of the grant agreement.

4407.2 Each grantee shall maintain records which identify adequately the source and application of funds for grant supported activities.

4407.3 The grantee's records shall contain information identifying the following:

- (a) Grant awards;
- (b) Any subgrant awards made by the Grantee, if authorized by the grant agreement;
- (c) Authorizations;
- (d) Obligations;
- (e) Unobligated balances;
- (f) Assets;
- (g) Outlays; and
- (h) Income.

4407.4 Each grantee shall maintain effective control and accountability for all grant or subgrant assets, including cash and real personal property.

4407.5 Each grantee shall adequately safeguard all property and shall assure that it is used solely for authorized purposes.

4407.6 Each grantee's records shall compare the actual and budgeted amounts of expenditures for each grant or subgrant.

4407.7 If required by the grant officer, the grantee shall relate financial information to performance or productivity data, including the production of unit cost information.

- 4407.8 The grantee shall establish procedures to minimize the time elapsing between the advance of District grant funds and their disbursement by the grantee.
- 4407.9 Grantees advancing cash to subgrantees shall conform substantially to the same standards of timing and amount of advances as apply to advances by the District to grantees, including requirements for timely reporting of cash disbursements and balances.
- 4407.10 Each grantee shall establish procedures for determining the reasonableness, allowability, and allocability of costs in accordance with the applicable cost principles prescribed in OMB Circular A-122.
- 4407.11 Grantee accounting records shall be supported by source documentation such as canceled checks, paid bills, payrolls, contract and subgrant award documents.
- 4407.12 Each grantee shall follow a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

**4408 MONITORING BY GRANTEES**

- 4408.1 Each grantee shall monitor grant and subgrant supported activities by reviewing each program, function or activity to assure that adequate progress is being made towards achieving the goals of the grant or subgrant.
- 4408.2 Each grantee shall submit an annual performance report unless the grant agreement requires more frequent reports.
- 4408.3 The grantee's final performance report shall be due ninety (90) days after the expiration or termination of grant support.
- 4408.4 The Grant Officer may waive the requirement for any performance report which is not needed, except the final report.
- 4408.5 The content of performance reports shall conform to any instructions issued by the Grant Officer including, to the extent appropriate to the particular grant, a brief presentation of the following for each program, function, or activity involved:
- (a) A comparison of actual accomplishments to the goals established for the period;
  - (b) A statement of reasons if established goals are not being met;
  - (c) An analysis and explanation of unexpectedly high costs; and
  - (d) Any other pertinent information.

**4409 AUDITS AND DISALLOWANCES**

- 4409.1 Appropriate District or federal personnel may conduct fiscal and program audits of the grantee.
- 4409.2 Each grantee shall have an annual audit performed by an auditor who is independent of the staff person who authorizes expenditure of project funds.
- 4409.3 Whenever an audit shows that an expenditure not allowable under the grant has been charged to the grant or that the grantee has otherwise failed to discharge its obligation to account for the expenditure of grant funds, the Grant Officer shall disallow the expenditure of the funds.

**4410 PAYMENT OF FUNDS BY GRANTEE**

- 4410.1 As a condition of each grant awarded, the grantee shall agree to do the following:
- (a) Repay the District for final audit disallowances within thirty (30) days from receipt of notification by a disallowance letter; and
  - (b) Pay interest at the most recent rate prescribed by the U.S. Department of the Treasury from the date of the disallowance letter if the repayment is not complete within the thirty (30) day period.
- 4410.2 A grantee may request informal dispute resolution of any disallowance determination by a Grant Officer by requesting, within thirty (30) days of the date of the disallowance notification letter, that the Director conduct a review.
- 4410.3 If the Director sustains the finding of the Grant Officer, interest shall be charged on the amount to be repaid as of the date of the disallowance letter.
- 4411 CLOSE-OUT**
- 4411.1 The Grant Officer shall close-out the grant when he or she determines that all applicable administrative actions and all required work of the grant have been completed.
- 4411.2 Upon termination or close-out of the grant, the Grant Officer shall promptly provide an accounting of the funds expended, obligated, and remaining under the grant to the Department fiscal officer.
- 4411.3 Within ninety (90) days after expiration or termination of the grant, the grantee shall submit all financial, performance, and other reports required as a condition of the grant. The Grant Officer may extend this deadline upon request of the grantee.

- 4411.4 The District shall make prompt payment to the grantee for allowable reimbursable costs.
- 4411.5 The grantee shall immediately refund to the District any balance of unobligated cash advanced that is not authorized to be retained for use on other grants.
- 4411.6 The close-out of a grant shall not affect the following:
- (a) The Grant Officer's authority to disallow costs and recover funds on the basis of a later audit or other review;
  - (b) The grantee's obligation to return any funds due as a result of later refunds, correction or other transactions; or
  - (c) The grantee's duty under section 4412 to retain and make records available to the District for review.

**4412 RECORD RETENTION AND ACCESS**

- 4412.1 The grantee shall retain all records for a period of at least three (3) years following final close-out of the grant, if no other period is specified in the grant agreement.
- 4412.2 The grantee shall make all records available to the Director for audit by the Grant Officer, other District officials, and federal officials as necessary.

**4413 TERMINATION AND SUSPENSION PROCEDURES**

- 4413.1 If a grantee has materially failed to comply with the terms of a grant agreement, the Grant Officer may, after giving reasonable written notice to the grantee, do the following:
- (a) Suspend the grant in whole or in part;
  - (b) Terminate the grant for cause; or
  - (c) Take any other remedial action that may be legally available.
- 4413.2 The notice of suspension shall state the reasons for the suspension, any corrective action required of the grantee, and the effective date.
- 4413.3 The suspension may be made effective at once if a delayed effective date would be unreasonable considering the Grant Officer's responsibilities to protect the District government's interest.

4413.4 The Grant Officer may reinstate a suspended grant if the grantee has taken corrective action satisfactory to the Grant Officer, or given satisfactory evidence that corrective action will be taken.

4413.5 The Grant Officer may terminate the grant before the date of expiration if:

- (a) The grantee has materially failed to comply with the terms of the grant agreement and appropriate corrective actions have not been taken during the period of suspension; or
- (b) The failure to comply with the terms of the grant agreement is so serious that immediate termination is in the best interest of the District government.

4413.6 The notice of termination shall state, in writing, the reasons for the termination, together with the effective date.

4413.7 A grant may be terminated at the request of the grantee upon notification to the Grant Officer, in accordance with the provisions of the grant.

#### **4414 INFORMAL DISPUTE RESOLUTION**

4414.1 The provisions contained in this section and in section 4415 shall establish an informal procedure for resolution of disputes between the grantee and the Director.

4414.2 The procedure shall apply to the following adverse determinations made by the Grant Officer:

- (a) Suspension or termination of a grant in whole or in part or a refusal to reinstate a suspended grant;
- (b) A disallowance of expenditures; and
- (c) A denial of a noncompeting continuation of a grant award if the denial is for failure to comply with the terms of the award.

4414.3 The Grant Officer shall notify the grantee, in writing, of any adverse determination, state the reasons for the determination in sufficient detail to enable the grantee to respond, and give the grantee notice that the grantee may request a review of the adverse determination.

4414.4 A grantee may request a review of the adverse determination by submitting a written request for review to the Director no later than thirty (30) days after receipt of the notice of determination.

- 4414.5 The grantee's request for a review of the adverse determination shall include the following:
- (a) A copy of the Grant Officer's determination;
  - (b) Identification of the issue in dispute;
  - (c) A full statement of the grantee's position regarding the issue in dispute and the pertinent facts and reasons in support of the grantee's position; and
  - (d) Copies of any documents supporting the grantee's claim.
- 4414.6 If the grantee submits a request for review, the Director shall conduct an informal hearing in accordance with the requirements of this section or he or she shall appoint a hearing officer to conduct the hearing.
- 4414.7 The Director shall send by certified mail a written notice to the grantee of the time and place scheduled for the informal hearing within fifteen (15) calendar days from the receipt of the grantee's request to the Department for a hearing.
- 4414.8 The grantee may be accompanied or represented at the informal hearing by legal counsel or other person chosen by the grantee.
- 4414.9 If a hearing officer conducts the hearing, he or she shall render a written recommendation to the Director regarding whether to sustain or overrule the adverse determination of the Grant Officer.

#### **4415 DECISION OF THE DIRECTOR**

- 4415.1 The Director may require informal, non-binding mediation between the parties before issuing a final decision if, due to the nature of the dispute, the Director considers it to be in the best interests of the District.
- 4415.2 The Director shall appoint one (1) or more individuals who have not participated substantially in the matter in dispute to conduct the mediation described in subsection 4415.1.
- 4415.3 The Director shall make a final written decision based upon the grant file, other documents filed by the parties, and the testimony and evidence presented at the hearing in accordance with applicable laws and regulations.
- 4415.4 The final decision of the Director shall include the following:
- (a) A description of the dispute;
  - (b) Reference to the pertinent grant terms, regulations or statutes;

- (c) A statement of the factual areas of agreement and disagreement;
- (d) A determination sustaining or overruling the determination of the Grant Officer, in whole or in part, with the reason for the determination; and
- (e) If all or any part of the Grant Officer's determination has been determined to be valid, a determination of any monetary settlement, the grant adjustment to be made, or other relief to be granted.

4415.5 The Director shall deliver or send by certified mail, a copy of the final decision to the grantee, and shall provide a copy to the Grant Officer for inclusion in the grant file.

**4499 DEFINITIONS**

4499.1 When used in this chapter, the following terms shall have the meanings ascribed:

Controlled Substance - a controlled substance in schedules I through V or Section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined, in regulation, at 21 CFR 1308.11-1308.15.

Conviction - a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of federal, state or District criminal drug statutes (criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance).

Department - the D.C. Department of Mental Health.

Director - the Director of the D.C. Department of Mental Health.

Drug-free Workplace - a site for the performance of work done in connection with a specific grant at which employees of the grantee are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

Employee - an employee of a grantee directly engaged in the performance of work under a District government grant.

Grantee - the recipient of a grant from the District government.

Grant Officer - an employee of the Department of Mental Health designated by the Director to manage the specified grant program in accordance with these regulations.

Individual - a grantee that has no more than one (1) employee including the grantee.

Persons who wish to comment on these proposed rules may do so in writing no later than thirty (30) days after the publication of this notice in the *D.C. Register*. Comments should be

forwarded to the Office General Counsel, Department of Mental Health, 64 New York Avenue, N.E., 4<sup>th</sup> Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained from the Office of General Counsel at the address stated above.