

DISTRICT OF COLUMBIA BOARD OF EDUCATION

NOTICE OF FINAL RULEMAKING

The District of Columbia Board of Education ("Board"), pursuant to the authority generally set forth in D.C. Official Code, Section 38-101, hereby gives notice of final rulemaking action taken by the Board at its meeting held on October 18, 2006, to amend Chapter 21 of the Board Rules, Title 5 of the D.C. Municipal Regulations regarding Out-of-Boundary Transfers.

This amendment will allow students accepted for registration in a District of Columbia Public School for the 2006-2007 school year for pre-kindergarten via the out-of-boundary process with a birthday that falls between September 30, 2006 and December 31, 2006 (inclusive), that deferred registration until the 2007-08 school year to have their seats in the pre-kindergarten class reserved at the respective school for the 2007-2008 school year.

The final rulemaking will take effect upon its publication in the D.C. Register. The emergency and proposed rulemaking on this subject was published in the D.C. Register on September 8, 2006.

2106 OUT-OF-BOUNDARY TRANSFERS

Amend Section 2106.11 as follows:

- 2106.11 (a) Students who are admitted to schools outside the attendance zones established for their place of residence shall be entitled to attend these schools for the duration of their participation in the academic program except in the following circumstances:
- (1) if the student is involuntarily transferred pursuant to 5 DCMR § 2107 or;
 - (2) if the students are admitted to specialized schools, programs, or academies and the students no longer meet the criteria established for the specialized schools, programs or academies.
- (b) Pre-kindergarten students who are admitted to schools outside the attendance zones for their place of residence for the 2006-2007 school year with a birthday that falls between September 30, 2006 and December 31, 2006 (inclusive) shall be allowed to elect to proceed with registration/enrollment for the 2006-2007 school year or defer registration/enrollment until the 2007-08 school year. Eligible pre-kindergarten students electing to defer registration/enrollment will only have their seats in the pre-kindergarten class reserved at the respective school for the 2007-2008 school year. Any and all

out of boundary, pre-kindergarten spaces deferred to the 2007-2008 school year shall be deemed released on the first day of school for the 2007-2008 school year if the parent of the pre-kindergarten student has chosen not to register the pre-kindergarten student. No deferments shall be allowed for any pre-kindergarten students seeking a deferment after August 31, 2006.

Copies of this rulemaking are available from the Office of the Board of Education by calling (202) 442-4289.

DEPARTMENT OF MENTAL HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Mental Health, pursuant to the authority set forth in sections 105 and 114 of the Department of Mental Health Establishment Amendment Act of 2001 (Act), effective December 18, 2001, D.C. Law 14-56, D.C. Official Code §§ 7-1131.05 and 7-1131.14 (2005 Supp.), hereby gives notice of the adoption of the following amendments to rules governing the provision of community-based intervention (CBI) services contained in Chapter 34 of Title 22A of the District of Columbia Municipal Regulations (DCMR), entitled "Mental Health Rehabilitation Services Provider Certification Standards", Third Notice of Proposed Rulemaking, published on October 13, 2006 at *D.C. Register* 53 DCR 8331. No comments were received concerning these rules and no changes have been made since publication of the Third Notice of Proposed Rulemaking.

The purpose of these amendments is to make changes to the requirements for certification of specialty providers of community based intervention (CBI) services for children and youth. The amendments establish eligibility requirements for receipt of CBI and three (3) levels of CBI services. The amendments also clarify the authorization period for CBI services, the required membership of a CBI team of qualified practitioners and further define the population of children eligible to receive CBI services. These final rules will be effective upon publication of this notice in the *D.C. Register*.

Title 22A DCMR, Chapter 34 (Mental Health Rehabilitation Services Provider Certification Standards) is amended as follows:

Section 3422 is amended to read as follows:

3422 COMMUNITY-BASED INTERVENTION

3422.1 CBI services are time-limited, intensive, mental health services delivered to children and youth ages six (6) through twenty-one (21). CBI services are intended to prevent the utilization of an out-of-home therapeutic resource or a detention of the consumer. CBI services may be provided at the time a child or youth is identified for a service, particularly to meet an urgent or emergent need during his or her course of treatment.

3422.2 Consumers of CBI services shall have:

- (a) Insufficient or severely limited individual or family resources or skills to cope with an immediate crisis; and
- (b) Either individual or family issues, or a combination of the two, that are unmanageable and require intensive coordinated clinical and positive behavioral interventions.

- 3422.3 There shall be three (3) levels of CBI services available to children and youth. A provider may be certified to offer one or more level(s) of CBI services.
- 3422.4 All levels of CBI services shall consist of the services described in §3422.7, as medically necessary and clinically appropriate for the consumer.
- 3422.5 The CBI provider shall be responsible for coordinating the treatment planning process for all consumers authorized to receive CBI. CBI services shall be delivered primarily in natural settings and shall include in-home services.
- 3422.6 The basic goals of all levels of CBI services are to:
- (a) Defuse the consumer's current situation to reduce the likelihood of a recurrence, which, if not addressed, could result in the use of more intensive therapeutic interventions;
 - (b) Coordinate access to covered mental health services and other covered Medicaid services;
 - (c) Provide mental health services and support interventions for consumers that develop and improve consumer and family interaction and improve the ability of parents, legal guardians, or caregivers to care for the consumer; and
 - (d) Transition the consumer to an appropriate level of care following the end of CBI treatment services.
- 3422.7 All levels of CBI services shall include the following services, as medically necessary and clinically appropriate for the consumer:
- (a) Immediate crisis response for enrolled consumers;
 - (b) Stabilization services to:
 - (i) Reduce family conflict;
 - (ii) Stabilize the family unit;
 - (iii) Maintain the consumer in the home environment;
 - (iv) Increase family support; or
 - (v) Assure that the consumer has and is taking prescribed psychiatric medications;

- (c) Environmental assessment to:
 - (i) Identify risk factors that may endanger either the consumer or the consumer's family; and
 - (ii) Assess the strengths of the consumer and the consumer's family;
- (d) Individual and family support interventions that develop and improve the ability of parents, legal guardians or significant others to care for the consumer's serious emotional disturbance;
- (e) Skills training related to:
 - (i) Consumer self-help;
 - (ii) Parenting techniques to help the consumer's family develop skills for managing the consumer's emotional disturbance;
 - (iii) Problem solving;
 - (iv) Behavior management;
 - (v) Communication techniques, including the facilitation of communication and consistency of communication for both the consumer and the consumer's family; and
 - (vi) Medication management, monitoring and follow-up for family members and other caregivers; and
- (f) Coordination and linkage with other covered MHRS and supports and other covered Medicaid services in order to prevent the utilization of more restrictive residential treatment, including one or more of the following activities:
 - (i) Referral of consumers to other MHRS providers;
 - (ii) Assisting consumers in transition to less-intensive or more-intensive MHRS;
 - (iii) Referral of consumers to providers of other Medicaid covered services (e.g., physician); or
 - (iv) Supporting and consulting with the consumer's family or support system, which is directed exclusively to the well-being and benefit of the consumer.

- 3422.8 CBI Level I services are intended for children and youth who are experiencing serious emotional disturbance with either of the following:
- (a) A documented behavioral concern with externalizing (aggressive or violent) behaviors; or
 - (b) A history of chronic juvenile offenses that has or may result in involvement with the juvenile justice system.
- 3422.9 CBI Level I services shall not be authorized for:
- (a) Children or youth who require the safety of a hospital or other secure setting;
 - (b) Children or youth in independent living programs; or
 - (c) Children or youth without a long-term placement option.
- 3422.10 Eligible consumers of CBI Level I services shall have a permanent caregiver who is willing to participate with service providers for the duration of CBI Level I treatment services and be:
- (a) At imminent risk for out-of-home placement within thirty (30) days; or
 - (b) Currently in out-of-home placement due to the consumer's disruptive behavior, with permanent placement expected to occur within thirty(30) days.
- 3422.11 CBI Level I Service providers shall obtain prior authorization of CBI Level I services from DMH for a period not to exceed six (6) months.
- 3422.12 Re-admission to CBI level I services, after the six-month period, may be considered for prior authorization by DMH in accordance with medical necessity requirements specified by DMH.
- 3422.13 CBI Level I services shall be delivered in accordance with the Multisystemic Treatment (MST) Model. Necessary and appropriate non-Medicaid reimbursable MST therapies shall be reimbursed by DMH and shall not be billed as CBI Level I services.
- 3422.14 Eligible consumers of CBI Level II services shall have any one or combination of the following:
- a) A history of involvement with the Child and Family Services Agency (CFSA) or the Department of Youth Rehabilitation Services (DYRS);

DISTRICT OF COLUMBIA REGISTER

- b) A history of negative involvement with schools for behavioral-related issues; or
 - (c) A history of either chronic or recurrent episodes of negative behavior that have or may result in out-of-home placement.
- 3422.15 CBI Level II services shall not be authorized for children or youth who require the safety of a hospital or other secure setting.
- 3422.16 CBI Level II service providers shall obtain prior authorization of CBI Level II services from DMH for a period not to exceed six (6) months.
- 3422.17 Re-admission to CBI level II services, after the six-month period, may be considered for prior authorization by DMH in accordance with medical necessity requirements specified by DMH.
- 3422.18 CBI Level II services shall be delivered in accordance with the Intensive Home and Community-Based Services (IHCBS) model as adopted by DMH. IHCBS services, activities and interventions that are not required under § 3422.7 shall not be billed as CBI Level II services.
- 3422.19 A consumer shall be eligible for CBI Level III services if the consumer:
- (a) Has situational behavioral problems that require short-term, intensive treatment;
 - (b) Is currently dealing with stressor situations such as trauma or violence and requires development of coping and management skills;
 - (c) Recently experienced out of home placement and requires development of communication and coping skills to manage the placement change;
 - (d) Is undergoing transition from adolescence to adulthood and requires skills and supports to successfully manage the transition; or
 - (e) Is an adult parent or caregiver with a clinically significant mental health concern and the parent or caregiver will be parenting a child or youth returning from a residential treatment center within the next ninety (90) days.
- 3422.20 CBI Level III services shall not be authorized for children or youth who require the safety of a hospital or other secure setting.
- 3422.21 CBI Level III service providers shall obtain prior authorization for CBI Level III services from DMH for a period not to exceed ninety (90) days.

- 3422.22 Re-admission to CBI level III services, after the ninety-day period, may be considered for prior authorization by DMH in accordance with medical necessity requirements specified by DMH.
- 3422.23 CBI Level III services shall be delivered in accordance with the IHCBS model as adopted by DMH. IHCBS services, activities and interventions that are not required under § 3422.7 shall not be billed as CBI Level III services.
- 3422.24 Discharge from all levels of CBI services shall occur when the consumer's level of functioning has improved with respect to the goals outlined in the IPC and ISSP or the consumer no longer benefits from CBI services. Discharge decisions shall be based on one or a combination of the following:
- (a) The consumer is performing reasonably well in relation to goals contained in the IPC and ISSP and discharge to a lower level of care is indicated (e.g., the consumer is not exhibiting risky behaviors or family functioning has improved);
 - (b) The consumer, the consumer's family or caregiver has developed the skills and resources needed to step down to a less intensive service;
 - (c) The consumer is not making progress or is regressing, and all realistic CBI treatment options have been exhausted;
 - (d) A family member or caregiver requests discharge and the consumer is not imminently dangerous to self or others;
 - (e) The consumer requires a higher level of care (e.g., inpatient hospitalization or psychiatric residential treatment facility); or
 - (f) The consumer no longer resides in the District.
- 3422.25 Eligible providers of CBI Level I services shall:
- (a) Meet the specialty service provider requirements in § 3412;
 - (b) Be licensed MST providers in good standing and utilize the MST treatment model;

- (c) Have the capacity to provide or arrange for the non-Medicaid reimbursed wraparound services required by eligible consumers;
- (d) Have the capacity to deliver CBI Level I services to four (4) to six (6) consumers for each full time team member; and
- (e) Be available to consumers twenty-four (24) hours per day, seven (7) days per week.

3422.26 Eligible providers of CBI Level II services shall:

- (a) Meet the specialty service provider requirements in § 3412;
- (b) Utilize the IHCBS treatment model adopted by DMH to deliver CBI Level II services;
- (c) Meet CBI Level II training requirements specified by DMH;
- (d) Have the capacity to provide or arrange for the non-Medicaid reimbursed wraparound services required by eligible consumers;
- (e) Have the capacity to deliver CBI Level II services to at least four (4) to six (6) consumers for each full-time team member; and
- (f) Be available to consumers twenty-four (24) hours per day, seven (7) days per week;

3422.27 Eligible providers of CBI Level III services shall:

- (a) Meet the specialty service provider requirements in § 3412;
- (b) Utilize the IHCBS treatment model adopted by DMH to deliver CBI Level III services;
- (c) Meet CBI Level III training requirements specified by DMH;
- (d) Have the capacity to provide or arrange for the non-Medicaid reimbursed wraparound services required by eligible consumers;
- (e) Have the capacity to deliver CBI Level III services to at least four (4) to six (6) consumers for each full-time team member; and
- (f) Be available to consumers twenty-four (24) hours per day, seven (7) days per week.

- 3422.28 Providers of CBI services shall meet the staffing requirements applicable to the level of services offered in order to render CBI Level I, Level II or Level III services.
- 3422.29 Providers of all levels of CBI services shall:
- (a) Individually design CBI services for each consumer and family to minimize intrusion and maximize independence;
 - (b) Provide more intensive services at the beginning of treatment and decrease the intensity of treatment over time as the strengths and coping skills of the consumer and family develop;
 - (c) Provide services utilizing a team approach;
 - (d) Maintain appropriate back-up coverage for team member absences and facilitate substitution of team members as necessary;
 - (e) Conduct face-to-face transition planning with consumers and families no later than thirty (30) days prior to the anticipated discharge date, including meetings with providers of more intensive or less intensive services;
 - (f) Conduct continuity of care planning with consumers and families prior to discharge from any level of CBI services, including facilitating follow-up mental health appointments and providing telephonic support until follow-up mental health services occur;
 - (g) Provide all of the components of treatment specified in §3422.7, as appropriate, based on each consumer's needs;
 - (h) Provide CBI services with a family-focus;
 - (i) Assist the consumer and his or her family with the development of mental health relapse prevention strategies and plans, if none exist;
 - (j) Assist the consumer and his or her family with the development of a safety plan to address risk factors identified during the environmental assessment;
 - (k) Have policies and procedures included in its Service Specific Policies that address the provision of CBI (CBI Organizational Plan) which include the following:
 - (i) A description of the particular treatment models utilized, types of intervention practiced, and typical daily curriculum and schedule;

- (ii) A description of the staffing pattern and how staff are deployed to ensure that the required staff-to-consumer ratios are maintained, including how unplanned staff absences and illnesses are accommodated; and
 - (iii) A description of how the ISSP is modified or adjusted to meet the needs specified in each consumer's IPC;
- (l) Directly conduct or arrange for the provision of Diagnostic/Assessment services within thirty (30) days before or after the initiation of CBI services through either an agreement with a CSA or a CSA's affiliated sub-provider. DMH may approve alternative sources to serve as the diagnostic assessment instrument if similar assessments have been conducted within the past twelve (12) months of an individual's referral to CBI services.
- (m) Collect and submit clinical outcome data using the process, timeline and tools specified or approved by DMH.

3422.30 Each CBI Level I team shall include:

- (a) A full-time clinical supervisor;
- (b) A full-time team leader; and
- (c) Four (4) to six (6) CBI clinicians.

3422.31 The CBI Level I team clinical supervisor shall be a Master's level qualified practitioner experienced in providing individual, group, marital or family counseling or psychotherapy in accordance with applicable District laws and regulations, with a minimum of two (2) years of post-graduate experience working with behaviorally challenged youth and their families in community-based settings.

3422.32 The CBI Level I team leader shall be a Master's level clinician with a minimum of one (1) year of post-graduate experience working with behaviorally challenged youth and their families in community-based settings.

3422.33 The CBI Level I team clinicians shall be either Master's level clinicians or Bachelor's level clinicians with a minimum of one (1) year of experience working with behaviorally challenged youth and their families in community-based settings.

3422.34 Each CBI Level II team shall include:

- (a) A full-time clinical supervisor; and

(b) Four (4) to six (6) clinicians.

- 3422.35 The CBI Level II team clinical supervisor shall be a Master's level qualified practitioner experienced in providing individual, group, marital or family counseling or psychotherapy in accordance with applicable District laws and regulations, with a minimum of two (2) years of post-graduate experience working with behaviorally challenged youth and their families in community-based settings.
- 3422.36 The CBI Level II team clinicians shall be either Master's level clinicians or Bachelor's level clinicians with a minimum of one (1) year of experience working with behaviorally challenged youth and their families in community-based settings.
- 3422.37 Each CBI Level III team shall include:
- (a) A full-time clinical supervisor; and
- (b) Four (4) to six (6) clinicians;
- 3422.38 The CBI Level III team clinical supervisor shall be a Master's level qualified practitioner experienced in providing individual, group, marital or family counseling or psychotherapy in accordance with applicable District laws and regulations, with a minimum of two (2) years post-graduate experience working with behaviorally challenged youth and their families in community-based settings.
- 3422.39 The CBI Level III team clinicians shall be either Master's level qualified practitioners or Bachelor's level clinicians with a minimum of two (2) years of experience working with behaviorally challenged youth and their families in community-based settings.
- 3422.40 Providers of all levels of CBI services shall ensure the availability and provision of alcohol and other drug addiction treatment services as well as services to facilitate consumers' transition from adolescence to adulthood, as medically necessary for consumers.
- 3422.41 Prior authorization from DMH is required for enrollment in all levels of CBI services.
- 3422.42 CBI shall not be billed on the same day as Rehabilitation/Day Services, Intensive Day Treatment or ACT.
- 3422.43 CBI shall not be billed on the same day as Counseling without the prior approval of DMH.

- 3422.44 CBI shall not be billed on the same day as Community Support unless the Community Support services are provided within thirty (30) days prior to the consumer's discharge from CBI.
- 3422.45 CBI shall be provided in:
- (a) MHRS provider service sites; or
 - (b) Natural settings, including the consumer's home or other community setting.
- 3422.46 Qualified practitioners of CBI are:
- (a) Psychiatrists;
 - (b) Psychologists;
 - (c) LICSWs;
 - (d) APRNs;
 - (e) RNs;
 - (f) LPCs;
 - (g) LISWs; and
 - (h) Addiction counselors.
- 3422.47 All credentialed staff, including recovery specialists, shall be authorized to provide CBI under the supervision of a qualified practitioner as set forth in §3413.3.
- 3422.48 CBI services shall typically not exceed thirty-two (32) units in a twenty-four (24) hour period. DMH may conduct clinical record reviews to verify the medical necessity of services provided.

Section 3424.4 is amended to read as follows:

MHRS	LIMITATIONS AND SERVICE SETTING	BILLABLE UNIT OF SERVICE
Diagnostic/ Assessment	<ul style="list-style-type: none"> • One (1) every six (6) months • Additional units allowable when pre-authorized for periodic assessment, pre-hospitalization screening, neuropsychological assessment and re-admission to Rehabilitation/Day Services • Shall not be billed the same day as ACT • Provided only in a community-based MHRS provider or other community setting, or residential facility of sixteen (16) beds or less 	An assessment, which is at least three (3) hours in duration
Medication/ Somatic Treatment	<ul style="list-style-type: none"> • No annual limit • Shall not be billed the same day as ACT • Provided only in a community-based MHRS provider or other community setting, or residential facility of sixteen (16) beds or less 	Fifteen (15) minutes
Counseling	<ul style="list-style-type: none"> • One hundred sixty (160) units per year • Additional units allowable with prior authorization by DMH • Shall not be billed the same day as Rehabilitation/Day Services, Intensive Day Treatment or ACT • Shall not be billed on the same day as CBI, without prior approval from DMH • Shall be rendered face-to-face, when consumer is present, unless there is adequate documentation to justify why the consumer was not present during the session • May be provided in individual on-site, individual off-site or group • Provided only in a community-based MHRS provider or other community setting, or residential facility of sixteen (16) beds or less 	Fifteen (15) minutes
Community Support	<ul style="list-style-type: none"> • No annual limits • Shall not be billed on the same day as ACT • May be provided individually or in a group • Provided only in a community-based MHRS provider or other community setting, or residential facility of sixteen (16) beds or less 	Fifteen (15) minutes
Crisis/ Emergency	<ul style="list-style-type: none"> • No annual limits • Provided only in a community-based MHRS provider or other community setting, or residential facility of sixteen (16) beds or less 	Fifteen (15) minutes

MHRS	LIMITATIONS AND SERVICE SETTING	BILLABLE UNIT OF SERVICE
Rehabilitation/ Day Services	<ul style="list-style-type: none"> • Prior authorization from DMH required for enrollment • Shall not be billed on the same day as Counseling or ACT • Provided only in a community-based MHRS provider or other community setting, or residential facility of sixteen (16) beds or less 	One (1) day (which shall consist of at least three (3) hours)
Intensive Day Treatment	<ul style="list-style-type: none"> • Seven (7) days • Additional units allowable after seven (7) days or for the second and any additional episodes of care within a twelve (12) month period with prior authorization by DMH • Shall not be billed on the same day as any other MHRS, except for Crisis/Emergency, Community Support or CBI • Up to three (3) hours of Diagnostic/Assessment may be billed during each episode of Intensive Day Treatment • Provided only in a community-based MHRS provider -- Intensive Day Treatment Facility 	One (1) day (which shall consist of at least five (5) hours)
CBI	<ul style="list-style-type: none"> • Prior authorization to the CBI provider from DMH required for enrollment • Shall not be billed on the same day as ACT or Intensive Day Treatment • Shall not be billed on the same day as Counseling, without prior approval from DMH • Shall not be billed on the same day as Community Support, unless the Community Support services are provided within thirty (30) days of discharge from CBI • Provided only in a community-based MHRS provider or other community setting, or residential facility of sixteen (16) beds or less 	Fifteen (15) minutes not to exceed thirty-two (32) units in a twenty-four (24) hour period
Assertive Community Treatment	<ul style="list-style-type: none"> • Prior authorization from DMH required for enrollment • Shall not be billed on the same day as any other MHRS, except for Crisis/Emergency with retrospective authorization 	Fifteen (15) minutes

Section 3499.1 is amended as follows:**The following definitions are added:**

“Authorized” - MHRS services that are prior authorized or reauthorized by DMH, in accordance with these standards.

“Behavioral concern” – A behavioral and emotional disorder of childhood and adolescence that manifests by children acting out aggressively, expressing anger inappropriately, and engaging in a variety of antisocial and destructive acts, including violence towards people and animals, destruction of property, lying, stealing, truancy, and running away from home.

“Child and Family Services Agency” or “CFSA” – The District agency responsible for the coordination of foster care, adoption and child welfare services and services to protect children against abuse or neglect.

“Clinical supervisor” – The qualified practitioner responsible for monitoring consumer welfare, ensuring compliance with professional standards of service delivery, monitoring clinical performance and professional development of team members, and evaluating team members for performance, service delivery and credentialing purposes.

“Clinician” – An individual with either a Bachelor’s or Master’s degree in social work, counseling, psychology, family therapy or related social science or appropriate therapeutic experience with the target population. Clinicians are credentialed staff.

“Department of Youth Rehabilitative Services” or “DYRS” - The District agency responsible for providing security, supervision and residential and community support services for committed and detained juvenile offenders and juvenile persons in need of supervision.

“Foster home” – a residence in which a foster parent is licensed by the District to provide care to a foster child in accordance with the requirements of Title 29, DCMR Chapter 60.

“Independent Living Program” – A residential program licensed by the District in accordance with Title 29 DCMR Chapter 63, Licensing of Independent Living Programs for Adolescents and Young Adults.

“Intensive Home and Community-Based Services” or “IHCBS” – an intensive model of treatment adapted by DMH to prevent the utilization of out-of-home treatment resources by emotionally disturbed children and youth.

“Long-term placement option” – either a permanent caregiver or permanent home. A group home or other residential placement is not a long-term placement option.

“Multisystemic therapy” or “MST” – an intensive model of treatment based on empirical data and evidence-based interventions that target specific behaviors with individualized behavioral interventions.

“Permanent caregiver” – a natural or adoptive family or foster home that has cared for the consumer for at least six (6) consecutive months within the twelve (12) month period immediately preceding the referral for CBI. A group home or other residential placement is not a permanent caregiver.

“Permanent home” – a natural or adoptive family or foster home where the consumer has lived for at least six (6) consecutive months within the twelve month (12) month period immediately preceding the referral to CBI with a permanent caregiver. A group home or other residential placement is not a permanent home.

“Out of home therapeutic resource” – a psychiatric hospital or psychiatric residential treatment facility.

“Prior authorization” – approval by DMH in advance for the initiation of MHRS to a consumer, including the commencement of services such as Diagnostic/Assessment or Crisis Emergency services before a consumer is enrolled in the MHRS program.

“Psychiatric residential treatment facility” – shall have the meaning ascribed in 42 CFR Subpart G, Section 483.352.

“Reauthorized” – having received approval by DMH for the continued provision of medically necessary MHRS that are time-limited, such as Rehabilitation/Day Services, Intensive Day Treatment, CBI or ACT.

“Residential placement” – a psychiatric residential treatment center, group home, independent living program or other residence where children or youth are temporarily receiving services. A permanent home is not a residential placement.

The following definitions are amended to read as follows:

“Community-Based Intervention” or “CBI” – Time-limited, intensive mental health services delivered to children and youth ages six (6) through twenty-one (21) and intended to prevent the utilization of an out-of-home therapeutic resource or a detention of the consumer. CBI is primarily focused on the development of consumer skills to promote behavior change in the child or youth’s natural environment and empower the child or youth to cope with his or her emotional disturbance.

“Medical necessity” or “medically necessary” – those services contained in an approved IRP/IPC reasonably calculated to prevent the worsening of, alleviate, correct, cure, or ameliorate an identified mental health condition that endangers life, causes suffering or pain, causes physical deformity or bodily malfunction, threatens to cause or aggravate a disability, or results in an illness or infirmity. For children through age twenty (20),

services reasonably calculated to promote the development or maintenance of age-appropriate functioning are also considered medically necessary.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than fifteen (15) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Deon C. Merene, Assistant Attorney General, Department of Mental Health, 64 New York Ave, N.E., Fourth Floor, Washington, D.C. 20002 or deon.merene@dc.gov. Additional copies of these rules are available from the Office of the General Counsel, Department of Mental Health.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND**

Z.C. ORDER NO. 05-43

Z.C. Case No. 05-43

(Text Amendment – 11 DCMR)

**(Text Amendment to include Squares 344, 373, 374, and Reservation 174 in the Housing
Priority Area of the Downtown Development Overlay District)**

September 11, 2006

The Zoning Commission for the District of Columbia (the "Commission"), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2001 ed.)), having held a public hearing as required by § 3 of the Act (D.C. Official Code § 6-641.03); and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to Section 492 of the District Charter; hereby gives notice of the adoption of the following amendments to Section 1706 of the Zoning Regulations (Title 11 DCMR) to include the property formerly occupied by the old Convention Center within the Housing Priority Area of the Downtown Development Overlay District and to designate the site as being within Housing Priority Area B for the purpose of the combined lot development location requirements of § 1708.

The Notice of Proposed Rulemaking which contained the Zoning Commission's proposal to amend § 1706 was published in the *D.C. Register* on July 7, 2006 at 53 DCR 5536 for a 30-day notice and comment period. No comments were received. The Commission made one, non-substantive change to the text when it took final action, as discussed below.

The Commission took final action to adopt the amendments at a public meeting held on September 11, 2006.

The final rulemaking is effective upon publication in the *D.C. Register*.

Description of Text Amendment

This action amends § 1706.2 to include the subject site (Squares 344, 373, 374, and National Park Service Reservation 174) within the Housing Priority Area, and to refer to a new map showing the expanded Housing Priority Area.

This action also amends § 1706.8 of the Zoning Regulations to include the site within the Downtown District's Housing Priority Area B.

The subject site is zoned DD/C-3-C. The DD/C-3-C classification, without inclusion in a housing priority area, permits a maximum density of 6.5 floor area ratio ("FAR") as a matter-of-right. Including the subject site within Housing Priority Area B permits construction up to 9.5 FAR. Each DD/C-3-C lot located in the Housing Priority Area "must provide or account off-site in a combined lot development, no less than 3.5 FAR of residential use." 11 DCMR § 1706.5(b). A lot located in a Housing Priority sub-area (A, B, or C) may only engage in a combined lot development with a lot located in that same sub-area. 11 DCMR § 1708.1(c).

Relationship to Comprehensive Plan

As noted, the subject site is in the Downtown Development ("DD") overlay and is zoned DD/C-3-C. It is located in the central business district and is immediately adjacent to the southwest corner of Mount Vernon Square. It is bounded by New York Avenue on the north, and 9th, H and 11th Streets on the east, south and west. It contains the former rights of way of 10th and I Streets, N.W.

The DD overlay is applied to the core of the downtown. The purpose of the DD overlay is set forth in §1700.2 of the Zoning Regulations and provides that:

The purpose of the DD Overlay District is to help accomplish the land use and development policies of the Comprehensive Plan relating to the affected Downtown sectors. The adopted planning policies for this area are primarily contained in 10 DCMR, chapter 9, entitled "Downtown Plan Element," and 10 DCMR, chapter 11, entitled "Land Use Element," as amended.

The Comprehensive Plan Generalized Land Use Map identifies the site for a mix of high-density residential and commercial uses along with local public facilities. Inclusion within a housing priority area will allow for flexibility in the allocation of uses through combined lot developments. Including the subject site in Housing Priority Area B will allow for flexibility in the allocation of uses through combined lot developments.

Including the subject site in the Housing Priority Area is not inconsistent with many elements of the Comprehensive Plan and specifically advances the objectives established by the Downtown Plan Element. The Downtown Plan Element of the Comprehensive Plan calls for a:

balanced mixture of uses to attract a variety of persons, such as District residents, suburban residents, and out-of-town visitors. The most important uses are retail, hotel, residential, and arts and culture. Although private office space will also be important, the concept of the "Living Downtown" recognizes that special efforts will be needed to attract the other desired uses.

10 DCMR §900.3.

The inclusion of the site in the Housing Priority Area furthers the objectives of the Residential Land Use and Convention Center sections of the Downtown Plan Element by providing opportunity for a significant residential community and by encouraging development of residential, hotels, entertainment, restaurants, shops, and convention-related uses.

The proposal also furthers the goals of the Downtown Action Agenda, a report published by the Office of Planning in November, 2000, which lists its first objective as maximizing and concentrating downtown housing, and specifically mentions the inclusion of housing on the old Convention Center site as a core strategy for achieving that objective.

Setdown, Public Hearing, and Proposed Action

The Zoning Commission setdown this case for a public hearing at its public meeting held on January 9, 2006.

The Commission held a public hearing on this case on June 8, 2006. The Office of Planning testified at the hearing that inclusion of the subject site within the Housing Priority Area would provide the maximum opportunity for housing and design flexibility, and would further many of the goals set for downtown in the Comprehensive Plan, helping to produce a critical mass of residents needed to support healthy retail businesses, and create a safe and vibrant urban center.

At the conclusion of the hearing, the Commission took proposed action to approve the text amendment. The Zoning Commission published a Notice of Proposed Rulemaking in the *D.C. Register* on July 7, 2006 at 53 DCR 5536 for a 30-day notice and comment period.

The proposed rulemaking was also referred to the National Capital Planning Commission ("NCPC") under the terms of § 492 of the District of Columbia Charter. NCPC, by report to the Office of Zoning on July 5, 2006, determined that there is no adverse impact to the Federal interests in the District.

No other comments were received.

Final Action

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on September 11, 2006. No substantive changes were made to the advertised prepared text.

The Zoning Commission deleted a reference in § 1706.8 of the proposed text that stated that Reservation 174 was only included in the Housing Priority Area if the National Park Service transferred jurisdiction to the District of Columbia. The National Park Service transferred jurisdiction to the District of Columbia for convention center purposes in 1979. The Zoning Commission believes that the area should be included in the Housing Priority Area in the event the Park Service agrees to transfer additional authority to the District for its use and/or disposition of the property.

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia and consistent with the purpose of the Zoning Regulations and the Zoning Act.

The Office of the Attorney General has determined that this rulemaking is legally sufficient.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to the Zoning Regulations, Title 11 DCMR. Deleted wording is shown in strikethrough lettering and added wording is shown **bolded** and underlined:

1. Section 1706.2 is amended to read as follows:

1706.2 The housing requirements and incentives of this section shall be applicable only in the Housing Priority Area that is depicted in Map B **attached to the Office of Planning memorandum dated June 7, 2006** filed in Zoning Commission Case No. ~~99-3Z~~**05-43**, which may be viewed in the Office of Zoning, and that is described by squares in § 1706.8, provided that the transferable development rights provisions of § 1706.3 shall be applicable throughout the DD Overlay District. Map B is incorporated by reference.

2. Section 1706.8(b) is amended to read as follows:

1706.8 For the purposes of permitting and governing combined lot developments as provided by § 1708, the Housing Priority Area is divided into three (3) subareas as follows:

(b) Housing Priority Area B, the Mount Vernon Square South area, comprises the DD/C-2-C and DD/C-3-C zoned properties that are located south of Massachusetts Avenue, including squares and parts of squares numbered 247, 283, 284, 316, 317, 342, 343, **344**, 371, 372, **373, 374**, 427, 428, 452, 453, 485, 486, 517, and 529, **National Park Service Reservation 174**, and the commercial and underdeveloped properties in square 247 with an approved plan unit development on or before January 18, 1991, for so long as the planned unit development approval remains valid; and

The Zoning Commission voted to **APPROVE** the proposed rulemaking at the close of the public hearing on June 8, 2006 by a vote of 3-0-2 (Anthony J. Hood, Gregory N. Jeffries, and Michael G. Turnbull to approve; Carol J. Mitten and John G. Parsons not present, not voting.)

The Zoning Commission at its public meeting on September 11, 2006 **ADOPTED** this Order by a vote of 3-0-2 (Anthony J. Hood, Gregory N. Jeffries, and Michael G. Turnbull to approve; Carol J. Mitten and John G. Parsons absent).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is on _____.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING**

AND

Z.C. ORDER NO. 05-43

Z.C. Case No. 05-43

(Text Amendment – 11 DCMR)

**(Text Amendment to include Squares 344, 373, 374, and Reservation 174 in the Housing
Priority Area of the Downtown Development Overlay District)**

September 11, 2006

The full text of this Zoning Commission order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.