

DEPARTMENT OF MENTAL HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Mental Health, pursuant to the authority set forth in sections 104 and 114 of the Mental Health Service Delivery Reform Act of 2001 (Act), effective December 18, 2001, D.C. Law 14-56; D.C. Official Code §7-1131.04 and 7-1131.14 (2001), respectively, hereby gives notice of the adoption on an emergency basis, of the following amendments to the rules governing the provision of rehabilitation/day services found in Chapter 34, of Title 22A of the D.C. Code of Municipal Regulations (DCMR), entitled Mental Health Rehabilitation Services Provider Certification Standards.

The purpose of these amendments to Title 22A DCMR, Chapter 34 is to: (1) clarify the eligibility requirements for rehabilitation/day services; (2) specify additional service requirements for providers of rehabilitation/day services; and (3) clarify the definition of a unit of service for purposes of Medicaid reimbursement.

The rules are published as emergency to comply with the requirements of the Act. The Act was enacted to comply with the Consent Order in *Dixon et al. v. Anthony A. Williams, et al.* (Consent Order). The Consent Order governs the process for transitioning the newly established Department of Mental Health back to the District of Columbia government and requires the Department of Mental Health to implement rules regarding standards for certification of mental health providers. Therefore, the rules are necessary to preserve the welfare, peace, health, and safety of the public.

These emergency rules were adopted on September 20, 2005 and will become effective upon publication. The emergency rules will expire 120 days after their publication in the D.C. Register.

The Director also gives notice of her 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. Upon adoption, the final rules will become part of Title 22A DCMR, Chapter 34.

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

Section 3420 is amended to read as follows:

3420 REHABILITATION/DAY SERVICES

3420.1 Rehabilitation/Day Services is a structured, clinical program intended to develop skills and foster social role integration through a range of social, psychoeducational, behavioral, and cognitive mental health interventions.

- 3420.2 The basic goals of Rehabilitation/Day Services are to:
- (a) Serve as a step-down or diversion from more restrictive and/or intensive settings;
 - (b) Assist the consumer in the retention or restoration of independent and community living, socialization, and adaptive skills;
 - (c) Assist the consumer in improving individual functioning and management of his or her illness to facilitate recovery; and
 - (d) Assist the consumer in achieving the fullest possible assimilation as an active and productive member of his or her family and community.
- 3420.3 Rehabilitation/Day services shall include:
- (a) Cognitive-behavioral interventions and diagnostic, psychiatric, rehabilitative, psychosocial, counseling, and adjunctive treatment;
 - (b) Facilitating the development of the consumer's independent living and social skills, including the consumer's ability to make decisions regarding self care, management of illness, life, work, and community participation, such as:
 - (i) Facilitating the consumer's further development of community living skills needed for the consumer to obtain and maintain housing and basic housing needs;
 - (ii) Assisting the consumer in understanding physical health wellness, self-care and hygiene, proper nutrition and medication self-management and supporting the consumer's role in the development of self-care skills;
 - (iii) Identifying and promoting the development of social and interpersonal skills, including assisting the consumer to regain interest and ability to make friends, maintain contact with extended family and develop and maintain a support system;
 - (iv) Identifying meaningful activities and use of leisure time, including assisting the consumer to regain interest and ability to use leisure time productively and develop social interests or become involved in community activities;

- (v) Assisting the consumer to exercise choice when pursuing educational activities, including assisting the consumer with identifying continued/adult basic education or special interest courses; or
 - (vi) Facilitating the consumer in his or her choice of pursuing or returning to vocational activities;
 - (c) Individual or group skill building activities that focus on the development of problem solving techniques, cognitive and psychosocial functional as well as preparing the consumer to cope with emotional, physiological, and physical circumstances resulting from remaining or returning to school, work or equivalent settings;
 - (d) Education on self-management of symptoms, medications and side effects; and
 - (e) Facilitating the identification of rehabilitation preferences and the setting of rehabilitation goals.
- 3420.4 DMH shall not approve Rehabilitation/Day Services for any of the following individuals:
- (a) Under the age of six (6);
 - (b) With a primary diagnosis of mental retardation or developmental disability;
 - (c) With a primary diagnosis of Alzheimer's Disease, dementia or other progressive brain disorder;
 - (d) With organic brain syndrome; or
 - (e) With traumatic brain injury.
- 3420.5 DMH shall conduct a pre-admission screen before a consumer is admitted to Rehabilitation/Day Services to ensure that consumers proposed for admission to Rehabilitation/Day Services meet eligibility requirements as described in § 3403; and:
- (a) Have been recently discharged from a psychiatric hospital, residential treatment facility or other inpatient setting; or
 - (b) Are at imminent risk of out of home placement due to crisis or exacerbation of symptoms; and

- (c) Have impaired role function that adversely affects at least three of the following functional areas:
 - (i) Community living;
 - (ii) Personal care;
 - (iii) Social/interpersonal skills;
 - (iv) Use of leisure time;
 - (v) Educational activities; or
 - (vi) Prevocational activities.

3420.6 Eligibility for continued stay for Rehabilitation/Day services shall be determined by DMH and may be approved if any one of the following situations exists:

- (a) The desired outcome or level of functioning or skills development of the consumer has not been restored, improved or sustained over the time frame outlined in the ISSP; or
- (b) The consumer continues to be at risk for relapse based on history; or
- (c) Any one of the following apply:
 - (i) Consumer continues to be at-risk for out of home placement and there is reasonable expectation that the consumer will continue to make progress in reaching ISSP goals within the first sixty (60) days of continued treatment;
 - (ii) Consumer has achieved initial ISSP goals and additional goals are indicated;
 - (iii) Consumer is not making progress and the ISSP must be modified to identify more effective interventions; or
 - (iv) Consumer is regressing and the ISSP must be modified to identify more effective interventions.

3420.7 Discharge from Rehabilitation/Day services shall occur when the consumer's level of functioning has improved with respect to the goals

outlined in the ISSP or the consumer no longer benefits from Rehabilitation/Day services. Discharge decisions shall be based on one of the following:

- (a) Consumer has acquired skills and resources needed for discharge or step down to a lower level of care;
- (b) Consumer is not making progress or is regressing, and all realistic treatment options within this MHRs service have been exhausted;
- (c) The consumer or family or caregiver requests discharge and the consumer is not imminently dangerous to self or others; or
- (d) The consumer requires a higher level of care (e.g., inpatient hospitalization or psychiatric treatment residential facility).

3420.8 Eligible providers of Rehabilitation/Day services shall:

- (a) Meet the requirements for specialty service providers described in § 3412;
- (b) Have a minimum of one (1) full-time equivalent staff for every ten (10) consumers, based on average daily attendance;
- (c) Have at least one (1) qualified practitioner present and onsite at all times;
- (d) Have a clinical supervisor or director who is a qualified practitioner on site at least thirty (30) hours per week;
- (e) Provide adequate space, equipment, and supplies to ensure that services can be provided effectively, which shall be separate and distinct from other services offered within the same service site(s);
- (f) Have policies and procedures included in its Service Specific Policies addressing the provision of Rehabilitation/Day Services (Rehabilitation/Day Services Organizational Plan) which include:
 - (i) A description of the particular rehabilitation 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 IRP/IPC.

3420.9 Rehabilitation/Day Services shall:

- (a) After a pre-admission screening by DMH, be approved by DMH for an initial period not to exceed ninety (90) days with eligibility for continued stay approval reauthorization available after continued stay review by DMH for periods not to exceed sixty (60) days;
- (b) Not be billed on the same day as ACT;
- (c) Only be provided at an MHRS provider's service site;
- (c) Be founded on the principles of consumer choice and the active involvement of each consumer in the consumer's mental health recovery;
- (d) Provide both formal and informal structures through which consumers can influence and shape service development;
- (e) Promote the use of resources to integrate the consumer into the community; and
- (f) Be offered most often in group settings, and may be provided individually.

3420.10 Each consumer of Rehabilitation/Day services shall:

- (a) Choose a full-time staff member to assist the consumer in assessing the consumer's needs and progress toward achievement of Rehabilitation/Day Services Treatment Goals; and
- (b) Participate in at least three (3) hours of Rehabilitation/Day Services per day, in order for the services to be reimbursable.

3420.11 For purposes of reimbursement, a unit of Rehabilitation/Day Services is one (1) day of services that must involve at least three (3) hours of services to the consumer. DMH shall not reimburse an MHRS provider for more than one (1) unit of Rehabilitation/Day Services provided to an individual consumer within a calendar day. The consumer must participate in at least three (3) hours of Rehabilitation/Day Services per day, in order for the MHRS provider to receive reimbursement for one unit of service. DMH shall not reimburse for partial units of Rehabilitation/Day Services.

3420.12 Qualified practitioners of Rehabilitation/Day Services are:

- (a) Psychiatrist;
- (b) Psychologist;
- (c) LICSW;
- (d) APRN;
- (e) RN;
- (f) LPC;
- (g) LISW; and
- (h) Addiction counselor.

3420.13 Credentialed staff shall be authorized to provide Rehabilitation/Day Services under the supervision of a qualified practitioner as set forth in §3413.3.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the Register. Comments should be filed with Anne M. Sturtz, General Counsel, Department of Mental Health, 64 New York Ave, N.E., Fourth Floor, Washington, D.C. 20002 or anne.sturtz@dc.gov. Additional copies of these rules are available from the Office of the General Counsel, Department of Mental Health.