

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 7-771.05(6)) hereby gives notice of the adoption, on an emergency basis, of amendments to section 948 of Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled “Standards for Participation of Residential Treatment Centers for Children and Youth” and section 949 of Chapter 9 of Title 29 DCMR, entitled “Reimbursement Principles and Limitations”.

This proposed rulemaking changes the name of residential treatment facilities for children under the age of twenty-two (22) to Psychiatric Residential Treatment Facilities (PRTF) to conform to guidance provided by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid (CMS). Changing the name ensures that the District will obtain the federal reimbursement for inpatient psychiatric services provided to adolescents in PRTFs. This proposed rulemaking will also modify the PRTF payment system to ensure that reimbursements for these services keep pace with the increased cost of services provided to District of Columbia Medicaid beneficiaries.

Emergency action is necessary for the immediate preservation of the health, safety and welfare of individuals under the age of twenty-two (22) who are in crisis and have an immediate need for psychiatric treatment. The proposed change in the reimbursement methodology will also expand the number of facilities providing services to this vulnerable population.

A notice of proposed rulemaking was published in the *D.C. Register* on November 21, 2008. (55 DCR 012048). These emergency and proposed rules amend the November 21st rulemaking consistent with the attendant State Plan for Medicaid Assistance (State Plan) governing PRTF. The State Plan amendment has been approved by the Council of the District of Columbia and CMS.

The emergency rulemaking was adopted on September 24, 2009 and will become effective on October 1, 2009. The emergency rules will remain in effect for one hundred and twenty (120) days or until January 21, 2010, unless superseded by publication of another rulemaking notice in the *D.C. Register*, whichever comes first.

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

Sections 948 (Standards for Participation of Residential Treatment Centers for Children and Youth) and 949 (Reimbursement Principles and Limitations) of Title 29 of the DCMR are amended to read as follows:

948 INPATIENT PSYCHIATRIC SERVICES FOR INDIVIDUALS UNDER 22 YEARS OF AGE

- 948.1 Inpatient psychiatric services for individuals under the age of 22 may be provided by:
- (a) A psychiatric hospital or an inpatient psychiatric program in a hospital accredited by the Joint Commission on Accreditation of Healthcare Organization; or
 - (b) A psychiatric residential treatment facility (PRTF).
- 948.2 Inpatient psychiatric services for individuals under the age of 22 shall be:
- (a) Provided under the direction of a physician;
 - (b) Provided in a facility or program described in §948.1;
 - (c) Provided before the individual reaches the age of twenty-two (22), or, if the individual was receiving the services immediately before reaching the age of twenty-two (22), before the earlier of the following:
 - i. The date the individual no longer requires the services; or
 - ii. The date the individual reaches twenty-two (22).
 - (d) Certified in writing to be necessary in the setting in which the services shall be provided or are being provided in emergency circumstances in accordance with 42 CFR § 441.152; and
 - (e) Meet the conditions of participation governing the use of restraint or seclusion set forth in 42 CFR 483.350 *et seq.*, if services are provided by a PRTF.
- 948.3 For each Medicaid beneficiary or applicant who is admitted to a facility or program, the certification required pursuant to §948.2(d) shall be made by an independent team that includes a physician who has competence in diagnosis and treatment of mental illness and has knowledge of the beneficiary's health status. For an individual who applies for Medicaid while in the facility or program, the certification shall be made by the team responsible for the plan of care as described in §948.6 and cover any period before application for which claims are made. For emergency admissions, the certification shall be made by the team responsible for the plan of care within fourteen (14) days after admission.
- 948.4 A PRTF shall:
- (a) Be licensed in the state where the facility is located, if required by the State;

- (b) Have a current written provider agreement with the District of Columbia Medicaid Program;
- (c) Have a written individual plan of care for each patient as described in §948.5, developed by an interdisciplinary team of physicians and other professionals as described in §948.6 in consultation with the patient and his or her parents, legal guardians, or others in whose care the patient will be released after discharge; and
- (d) Maintain appropriate administrative and medical records for a minimum of six (6) years beyond the age of twenty-two (22) years and make such records available to officials of the Department of Health Care Finance, the Department of Mental Health, Department of Health, or other governmental officials of District, State or Federal agencies, or their designees.

948.5 Each facility or program shall have a written plan of care for each patient that complies with the requirements set forth in 42 CFR 441.155 and include the following:

- (a) A certification of need for services that meets the requirements of 42 CFR 441.152;
- (b) An assessment of the beneficiary's immediate and long-range therapeutic needs, developmental priorities, and personal strengths and liabilities;
- (c) An assessment of the resources of the beneficiary's family, including parents, legal guardians, or others into whose care the beneficiary will be released after the discharge;
- (d) The establishment of treatment objectives; and
- (e) The prescribing of therapeutic modalities to achieve the plan's objectives.

948.6 The interdisciplinary team consisting of physicians and other personnel that develops an individual plan of care shall:

- (a) Be employed by the facility directly or under contract;
- (b) Have demonstrated competency in child psychiatry (i.e., residency in child and adolescent psychiatry and experience in inpatient child and adolescent inpatient/residential treatment settings);
- (c) Include at a minimum:
 - (1) A Board-certified or board eligible psychiatrist; or
 - (2) A clinical psychologist who has a doctoral degree and a physician licensed to practice medicine or osteopathy; or a physician licensed

to practice medicine or osteopathy with specialized training and experience in the diagnosis and treatment of mental diseases, and a psychologist who has a master's degree in clinical psychology or who has been certified by the State or by the State psychological association; and

(d) Include one (1) of the following:

- (1) A psychiatric social worker;
- (2) A registered nurse who has specialized training or one (1) year of experience in treating mentally ill individuals;
- (3) An occupational therapist who is licensed, if required by the State, and has specialized training or one (1) year of experience in treating mentally ill individuals; or
- (4) A psychologist who has a master's degree in clinical psychology or who has been certified by the State or by the State psychological association.

948.7 Each facility or program shall not admit a D.C. Medicaid beneficiary or applicant unless the admission has been certified as medically necessary by the District of Columbia Department of Mental Health (DMH).

948.8 Each facility or program shall provide active treatment consistent with the requirements set forth in 42 CFR 441.155.

948.9 The written plan of care shall be developed within fourteen (14) days of admission and reviewed at least every thirty (30) days thereafter.

948.10 Each PRTF shall provide to the requesting District child-serving agency the initial plan of care and any subsequent treatment plan adjustments, to include all thirty (30) day reviews of the plan of care.

949 REIMBURSEMENT PRINCIPLES AND LIMITATIONS GOVERNING PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES

949.1 Each PRTF shall be reimbursed on a prospective basis at a facility-specific per diem rate.

949.2 Each PRTF located in the District of Columbia shall be reimbursed at a rate equal to the average rate paid by the State of Maryland Medicaid Program as of July 1st each year for comparable services and provider type. The reimbursement rate calculated pursuant to this section shall become effective October 1st of each year in which the average rate was determined and remain in effect for a full year.

949.3 Each PRTF located outside of the District of Columbia may be reimbursed for services provided to District Medicaid beneficiaries who are residents of the

District of Columbia. The reimbursement rates shall be determined as set forth in §§ 949.4 through 949.6.

- 949.4 If the PRTF located outside of the District of Columbia is enrolled in the Medicaid Program in the state in which the facility is located, the reimbursement rate shall be same rate paid by the state in which the facility is located as of July 1st of each year, for comparable services rendered by a comparable provider type. The reimbursement rate shall be effective October 1st of each year and remain in effect for a full year. Each PRTF shall enroll in the District's Medicaid Program and provide documentation of their enrollment in the Medicaid Program in the state in which the facility is located.
- 949.5 If the PRTF located outside of the District of Columbia is not enrolled in the Medicaid Program in the state in which the facility is located, the reimbursement rate shall be the established payment rate for services charged to other third party payers. Each PRTF shall enroll in the District's Medicaid program and be certified by the Department of Mental Health before accepting District Medicaid beneficiaries for services.
- 949.6 If the PRTF located outside of the District of Columbia is not enrolled in the Medicaid Program in the state in which the facility is located does not charge other third party payers, the reimbursement rate shall be the lowest rate charged to a self paying recipient of services. Each PRTF shall enroll in the District's Medicaid program and be certified by the Department of Mental Health before accepting District Medicaid beneficiaries for services.
- 949.7 All provider appeals shall be governed in accordance with the requirements set forth in Chapter 13 of Title 29 of the District of Columbia Municipal Regulations.

949.99 DEFINITIONS

For purposes of section 948 and 949, the following terms shall have the meanings ascribed:

Psychiatric Residential Treatment Facility- a psychiatric facility that is not a hospital and is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children, or by any other accrediting organization with comparable standards that is recognized by the State and provides inpatient psychiatric services for individuals under the age of twenty-two and meets the requirements set forth in §§ 441.151 through 441.182 of Title 42 of the Code of Federal Regulations.

Psychiatrist -A person who is licensed to practice psychiatry pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 26, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1202 *et seq.*) or licensed as a psychiatrist in the jurisdiction where the services are being provided.

Psychologist - A person who is licensed to practice psychology pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1202 *et seq.*) or licensed as a psychologist in the jurisdiction where the services are being provided.

Registered Nurse - A person who is licensed as a registered nurse pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1202 *et seq.*), or licensed as a registered nurse in the jurisdiction where the services are being provided.

Occupational Therapist - A person who is licensed or authorized to practice occupational therapy pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201 *et seq.*) or licensed as an occupational therapist in the jurisdiction where the services are provided.

Comments on the proposed rules shall be submitted in writing to Julie Hudman, Ph.D., Director, Department of Health Care Finance, 825 North Capitol Street, N.E., 5th Floor, Washington, DC 20002 within thirty (30) days from the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the same address.