

DEPARTMENT OF BEHAVIORAL HEALTH**NOTICE OF PROPOSED RULEMAKING**

The Director of the Department of Behavioral Health (“the Department”), pursuant to the authority set forth in Sections 5113, 5115, 5117 and 5118 of the “Department of Behavioral Health Establishment Act of 2013,” effective December 24, 2013 (D.C. Law 20-0061; 60 DCR 12472, 12523 (September 6, 2013)), and any similar succeeding legislation, hereby gives notice of the intent to amend Chapter 34, entitled “Mental Health Rehabilitation Services Provider Certification Standards,” in Subtitle A (Mental Health) of Title 22 (Health) of the District of Columbia Municipal Regulations (DCMR).

These amendments will clarify the use of Corrective Measures Plans during the Mental Health Rehabilitation Services (MHRS) certification process and period of certification, and create a decertification process for MHRS providers that fail to comply with Chapter 34 or the provider’s Human Care Agreement.

The Director gives notice of the 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*.

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

Subsection 3401.4 is amended to read as follows:

3401.4 The Department may conduct an on-site survey at the time of certification application or certification renewal, or at any other time during the period of certification with appropriate notice.

Subsection 3401.5 is amended to read as follows:

3401.5 During an on-site survey, the Department shall have access to all records necessary to verify compliance with certification standards, and may conduct interviews with staff, others in the community, and consumers with consumer permission.

Subsection 3401.6 is amended to read as follows:

3401.6 An applicant or certified MHRS provider that fails to comply with the certification standards or its Human Care Agreement, or is in non-compliance with federal or District law, shall receive a Corrective Measures Plan (CMP) from the Department. The CMP shall describe the areas of non-compliance, suggest actions needed to bring operations into compliance, and set forth a timeframe for the provider’s submission of a written Corrective Action Plan (CAP). The issuance of a CMP is a separate process from the issuance of a Notice of Infraction under 16 DCMR Chapter 35. The Department is not required to utilize

the CMP process and may proceed directly to decertification under Section 3426 when, in the Department's discretion, the nature of the violations present a threat to the health or safety of consumers.

Subsection 3401.7 is amended to read as follows:

3401.7 An applicant or certified MHRS provider's CAP shall describe the actions to be taken and specify a timeframe for correcting the areas of non-compliance. The CAP shall be submitted to DBH within ten (10) working days after receipt of the CMP from DBH.

Subsection 3401.11 is amended to read as follows:

3401.11 Certification as an MHRS provider shall be for one (1) calendar year for new applicants, and two (2) calendar years for existing providers seeking renewal. Certification shall start from the date of issuance of certification by the Department, subject to the MHRS provider's continuous compliance with these certification standards. Certification shall remain in effect until it expires, is renewed, or is revoked pursuant to Section 3426. The Certification shall specify the effective date of the certification, whether the MHRS provider is certified as a CSA, sub-provider, or specialty provider, and the types of services the MHRS provider is certified to provide.

Subsection 3401.14 is amended to read as follows:

3401.14 The Director may deny certification if the applicant fails to comply with any certification standard. The Director may revoke certification of an MHRS provider through the decertification process in accordance with Section 3426 of this chapter.

Subsection 3401.16 is added to read as follows:

3401.16 Nothing in these rules shall be interpreted to mean that certification is a right or an entitlement. Certification as an MHRS provider depends upon the Director's assessment of the need for additional providers(s) and availability of funds.

Subsection 3401.17 is added to read as follows:

3401.17 In addition to utilizing the CMP process in Subsection 3401.6 during the certification and recertification stage, the Director may utilize the same procedures at any other time to address violations of this chapter, a provider's Human Care Agreement, or a violation of federal or District law. The Department is not required to utilize the CMP process and may proceed directly to decertification under Section 3426 when, in the Director's discretion, the nature of the violations present a threat to the health or safety of consumers.

A new Section 3426 is added as follows:

3426 DECERTIFICATION PROCESS

- 3426.1 Decertification is the revocation of the certification issued by the Director to an organization or entity as an MHRS provider. A decertified MHRS provider shall not be entitled to provide any MHRS services and shall not be eligible for reimbursement for any services as a MHRS provider.
- 3426.2 Grounds for revocation include a provider's failure to comply with the certification requirements contained in this chapter, the provider's breach of its Human Care Agreement, violations of federal or D.C. law, or any other action that constitutes a threat to the health or safety of consumers. Nothing in this chapter requires the Director to issue a CMP prior to revoking certification.
- 3426.3 If grounds for revocation have been met, the Director will issue a written notice of revocation setting forth the factual basis for the revocation, the effective date, and right to request an administrative review.
- 3426.4 The provider may request an administrative review from the Director within fifteen (15) business days of the date on the notice of revocation.
- 3426.5 Each request for an administrative review shall contain a concise statement of the reason(s) why the provider should not have the certification revoked and include any relevant supporting documentation.
- 3426.6 Each administrative review shall be conducted by the Director and shall be completed within fifteen (15) business days of the receipt of the provider's request.
- 3426.7 The Director shall issue a written decision and provide a copy to the provider. If the Director approves the revocation of the provider's certification, the provider may request a hearing under the D.C. Administrative Procedure Act, D.C. Official Code §§ 2-501, *et seq.*, within fifteen (15) business days of receipt of the Director's written decision. The administrative hearing shall be limited to the issues raised in the administrative review request. The revocation shall be stayed pending resolution of the hearing.
- 3426.8 Once certification is revoked, the MHRS provider shall not be allowed to reapply for certification for a period of two (2) years following the date of the order of revocation. If a provider reapplies for certification, the provider must reapply in accordance with the established certification standards for the type of services provided, and show evidence that the grounds for the revocation have been corrected.

The following definitions in Section 3499 are amended to read as follows:

“Department” - the Department of Behavioral Health, the successor in interest to the Department of Mental Health, pursuant to the Department of Behavioral Health Establishment Act of 2013, effective December 24, 2013 (D.C. Law 20-0061; 60 DCR 12523).

“Director” – the Director of the Department of Behavioral Health, the successor in interest to the Department of Mental Health, pursuant to the Department of Behavioral Health Establishment Act of 2013, effective December 24, 2013 (D.C. Law 20-0061; 60 DCR 12523).

“DMH” – all references to DMH shall refer to the Department of Behavioral Health, the successor in interest to the Department of Mental Health, pursuant to the Department of Behavioral Health Establishment Act of 2013, effective December 24, 2013 (D.C. Law 20-0061; 60 DCR 12523).

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 *D.C. Register*. Comments should be filed with Matthew Caspari, Department of Behavioral Health, 64 New York Avenue, N.E., Third Floor, Washington, D.C. 20002, or at matthew.caspari@dc.gov. Additional copies of these rules are available from the Office of the General Counsel, Department of Behavioral Health.