

DEPARTMENT OF MENTAL HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Mental Health (Department), 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 (2008 Repl.)), hereby gives notice of the final rulemaking to amend chapter 34 (Mental Health Rehabilitation Services Provider Certification Standards) of subtitle A (Mental Health) of title 22 (Health) of the District of Columbia Municipal Regulations (DCMR).

The purpose of these amendments is to implement the eligibility requirements for locally-funded Mental Health Rehabilitation Services (MHRS) in conformity with the “Mental Health Services Eligibility Act of 2011” of the Budget Support Act of 2011. The proposed rules limit eligibility for locally-funded MHRS (MHRS not reimbursed through Medicaid) to those District residents who are not eligible for Medicaid, Medicare or any other third-party insurance program with countable income below designated percentages of the federal poverty level. Specifically, eligible consumers nineteen (19) years of age and older must live in households with a countable income of less than two hundred percent (200%) of the federal poverty level and eligible consumers under nineteen (19) years of age must live in households with a countable income of less than three hundred percent (300%) of the federal poverty level.

The proposed rulemaking was published on March 30, 2012, in the *D.C. Register* at 59 DCR 2465. No comments were received and no changes have been made to the proposed rule as published. The Department of Mental Health took final action on the rule on May 1, 2012. This amendment will become effective on the date of publication of this notice in the *D.C. Register*.

Chapter 34 of subtitle A of title 22 of the DCMR is amended as follows:**Sections 3403 and 3404 are amended to read as follows:****3403 ELIGIBLE CONSUMERS**

- 3403.1 Consumers eligible for Medicaid-funded MHRS must meet the following requirements:
- (a) Be enrolled in Medicaid, or be eligible for enrollment and have an application pending;
 - (b) Be a bona fide resident of the District, as defined in D.C. Official Code § 7-1131.02(29) (2008 Repl.);
 - (c) Be a child or youth with mental health problems, as defined in D.C. Official Code § 7-1131.02(1), or an adult with mental illness as defined in D.C. Official Code § 7-1131.02(24); and

- (d) Be certified as requiring MHRS by a qualified practitioner.
- 3403.2 Eligible consumers of MHRS shall have a primary diagnosis on either Axis 1 or 2 of the DSM-IV.
- 3403.3 Persons with a primary substance abuse diagnosis only are not eligible consumers of MHRS.
- 3403.4 Subject to subsection 3403.5, consumers eligible for locally-funded MHRS are those individuals who are not eligible for Medicaid or Medicare or are not enrolled in any other third-party insurance program except the D.C. HealthCare Alliance, and who meet the following requirements:
- (a) Be a bona fide resident of the District, as defined in D.C. Official Code § 7-1131.02(29);
- (b) Be a child or youth with mental health problems, as defined in D.C. Official Code § 7-1131.02(1), or an adult with mental illness as defined in D.C. Official Code § 7-1131.02(24);
- (c) Be certified as requiring MHRS by a qualified practitioner; and
- (d) For individuals nineteen (19) years of age and older, live in households with a countable income of less than two hundred percent (200%) of the federal poverty level, and for individuals under nineteen (19) years of age, live in households with a countable income of less than three hundred percent (300%) of the federal poverty level.
- 3403.5 Consumers eligible for Medicare remain eligible for the following locally-funded MHRS only to the extent these services are not otherwise covered by Medicare:
- (a) Community support; and
- (b) Specialized services identified in subsection 3414.3.
- 3403.6 Providers shall not bill Medicaid and/or the Department for MHRS provided to any consumer that does not meet the eligibility requirements set forth above.
- 3403.7 For new enrollees and those enrollees whose Medicaid certification has lapsed, there is an eligibility grace period of ninety (90) days from the date of first service for new enrollees, or from the date of eligibility expiration for enrollees who have a lapse in coverage, until the date the Economic Security Administration makes an eligibility or recertification determination. In the event the consumer appeals a denial of eligibility or recertification by the Economic Security Administration, the Director may extend the ninety (90)-day eligibility grace period until the

appeal has been exhausted. The ninety (90)-day eligibility grace period may also be extended in the discretion of the Director for other good cause shown. Upon expiration of the eligibility grace period, MHRS services provided to the consumer are no longer reimbursable by DMH. Nothing in this section alters the Department’s timely-filing requirements for claim submissions.

3404 AUTHORIZATION AND RE-AUTHORIZATION OF MHRS

- 3404.1 Initial authorizations for new MHRS enrollees and for those enrollees whose Medicaid certification has lapsed are limited to ninety (90) days, subject to subsection 3403.6. Prior authorization and re-authorization requirements are further described in section 3424.
- 3404.2 Upon receiving an authorization plan request, DMH shall determine whether MHRS are medically necessary and issue a service authorization decision to the CSA.
- 3404.3 As part of the service authorization process, DMH may review the consumer's IRP/IPC or other clinical material if additional clinical information is required in order to evaluate consumer needs and make a level of care determination.

Section 3499, Definitions, subsection 3499.1, is amended by adding a new term:

“Economic Security Administration” or “ESA” – the unit within the District of Columbia Department of Human Services that determines eligibility for medical assistance programs for District residents.