

CDCR 16-3502

CODE OF D.C. MUNICIPAL REGULATIONS
Copyright (c) 2008 Matthew Bender & Company, Inc.
a member of the LexisNexis Group.
All rights reserved.

*** THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH
THE ***

*** D.C. REGISTER, VOL. 55, ISSUE 39, SEPTEMBER 26, 2008 ***

TITLE 16. CONSUMERS, COMMERCIAL PRACTICES, & CIVIL INFRACTIONS
CHAPTER 35. DEPARTMENT OF MENTAL HEALTH (DMH) INFRACTIONS

CDCR 16-3502 (2008)

16-3502. MENTAL HEALTH PROVIDER CERTIFICATION INFRACTIONS

3502.1 Violation of the following provisions shall be a Class 1 infraction:

(a) 22A DCMR § 3410.28(1) (failure to establish and comply with a medication policy governing the purchasing, receipt, storage, distribution, return, and destruction of medication, and failure of the policy to comply with applicable federal and District laws and regulations regarding the same);

(b) 22A DCMR § 3416.1 (failure to utilize medication/somatic treatment services needed for effective mental health treatment); or

(c) 22A DCMR § 3416.2 (failure to monitor the side effects of medication and adverse reactions and to provide education and direction for symptom and medication self-management).

3502.2 Violation of the following provisions shall be a Class 2 infraction:

(a) 22A DCMR § 3410.3 (failure to hire qualified personnel, and to comply with all applicable federal and District laws and regulations);

(b) 22A DCMR § 3401.13 (failure to notify DMH immediately of any changes in its operation, changes in ownership or control, changes in service, changes in affiliation and referral arrangements);

(c) 22A DCMR § 3402.1 (failure to offer rehabilitative or palliative services rendered by certified MHRS providers to eligible consumers who require such services);

(d) 22A DCMR §§ 3402.3, 3410.7, and 3410.8 (failure to provide MHRS by a physician or a licensed practitioner of the healing arts, and qualified practitioners and credentialed staff, under the supervision of qualified practitioners, acting within their scope of practice as identified in § 3413);

(e) 22A DCMR § 3402.7 (failure to use qualified practitioners who meet eligibility requirements described in § 3413 to render MHRS through DMH-certified MHRS providers);

- (f) 22A DCMR § 3402.8 (failure to provide service that is medically necessary, delivered by a DMH-certified MHRS provider as described in §§ 3410, 3411, and 3412, and qualified practitioners as identified in § 3413 in accordance with the approved individualized recovery plan (IRP) or individualized plan of care (IPC) and that meets other service specific standards);
- (g) 22A DCMR § 3402.10 (failure to ensure that all consumers have the right to file a grievance and receive notice of fair hearing rights);
- (h) 22A DCMR § 3403.2 (failure to ensure eligible consumers have a primary diagnosis on either Axis 1 or 2 of the DSM-IV);
- (i) 22A DCMR § 3404.2 (failure to obtain either prior authorization or re-authorization under § 3424 for required services described in §§ 3408.1 and 3424);
- (j) 22A DCMR § 3405.1 (failure to post the statement of consumer rights in strategic and conspicuous areas, and failure to provide a statement of consumer rights and responsibilities to consumers consistent with federal and District regulations);
- (k) 22A DCMR § 3405.2 (failure to document and distribute the consumer rights statement to consumers during the intake process);
- (l) 22A DCMR § 3405.4 (failure to obtain written informed consent to treatment from consumers which complies with applicable federal and District laws);
- (m) 22A DCMR § 3405.5 (failure to obtain the release of mental health information from consumers and comply with the requirements of 42 CFR Part II governing the confidentiality and release of drug and alcohol treatment record);
- (n) 22A DCMR § 3405.7 (failure to incorporate advance instructions for mental health treatment, durable power of attorney for health care, and advance directives into the IRP/IPC planning process);
- (o) 22A DCMR § 3406.1 (failure to inform consumers of the full choices of MHRS providers, qualified practitioners and other mental health service providers available, including information about peer support and family support services and groups and how to access these services);
- (p) 22A DCMR § 3406.5 to 3406.7 (failure to inform consumers of the choice of providers of MHRS available in accordance with the MHRS provider's MH Consumer Choice Policy);
- (q) 22A DCMR §§ 3407, 3408.1 to 3408.20, and 3410.12 (failure to include all required elements in the IRP/IPC);
- (r) 22A DCMR §§ 3409.1 to 3409.9 (failure of each specified subprovider, and specialty provider to follow individual service specific plan (ISSP) development and implementation guidelines as specified if the IRP/IPC requires the consumer receive such service);
- (s) 22A DCMR § 3410.12 (failure to establish and comply with policies and procedures governing the coordination of the treatment planning process, including procedures for designing, implementing, reviewing, and revising each consumer's

IRP/IPC and ISSPs that comply with the requirements of §§ 3407, 3408, 3409.9, and 3410.12);

(t) 22A DCMR § 3410.15 (failure to establish and comply with policies and procedures for handling routine, urgent, and emergency situations);

(u) 22A DCMR §§ 3410.16 to 3410.19 (failure to establish and comply with policies for clinical record documentation, security, and confidentiality of consumer and family information, clinical records retention, maintenance, purging and destruction, and for disclosure of consumer and family information, and informed consent that comply with applicable federal and District laws and regulations);

(v) 22A DCMR § 3410.24 (failure to document how the provider respects consumers' and families' right to privacy and confidentiality when services are provided in natural settings);

(w) 22A DCMR § 3410.26 (failure to establish and comply with anti-discrimination policies and procedures relative to hiring, promotion, and provision of services to consumers that comply with applicable federal and District laws and regulations);

(x) 22A DCMR § 3410.27 (failure to establish and comply with a written Quality Improvement (QI) plan describing the objectives and scope of its QI program and requiring MHRS provider staff, consumer, and family involvement in the QI program);

(y) 22A DCMR §§ 3410.28(a) to 3410.28(k) (failure to comply with the requirements for facilities management);

(z) 22A DCMR § 3410.30 (failure to establish and comply with policies and procedures governing the retention, maintenance, purging and destruction of the provider's business records and failure to include all other required elements);

(aa) 22A DCMR § 3410.31 (failure to comply with requirements for maintaining certification, provider status, and contracts);

(bb) 22A DCMR § 3410.32 (failure to obtain and maintain minimum insurance coverage as required by District laws and regulation);

(cc) 22A DCMR § 3410.37 (failure to operate according to all applicable federal and District laws and regulations relating to fraud and abuse in health care, the provision of mental health services, and the Medicaid program);

(dd) 22A DCMR § 3410.38 (failure to comply with DMH approved plan for ensuring corporate compliance with applicable federal and District laws and regulations);

(ee) 22A DCMR § 3410.42 (failure to manage information in compliance with the confidentiality requirements contained in applicable federal and District laws and regulations);

(ff) 22A DCMR § 3410.43 (failure to establish and comply with a disaster recovery plan for maintaining the security of data and information);

(gg) 22A DCMR § 3411.1 (failure of CSA to comply with the general certification

standards described in § 3410);

(hh) 22A DCMR § 3411.2 (failure of CSA to provide clinical managers and clinical management for consumers and to ensure the development/approval of IRPs/IPC);

(ii) 22A DCMR § 3411.3 (failure of CSA to satisfy minimum staffing requirements);

(jj) 22A DCMR § 3411.4 (failure of CSA to comply with clinical operations requirements);

(kk) 22A DCMR § 3411.5 (failure of CSA to comply with service accessibility requirements);

(ll) 22A DCMR § 3411.6 (failure of CSA to have a QI program directed by a QI Committee comprised of qualified practitioners that comply with § 3410.27);

(mm) 22A DCMR § 3413.1 (failure to use qualified practitioners as authorized to provide MHRS);

(nn) 22A DCMR § 3413.2 (failure to use qualified practitioners and credentialed staff with supervision as authorized);

(oo) 22A DCMR § 3414.1 (failure to comply with service specific MHRS standards);

(pp) 22A DCMR § 3414.2 (failure to provide covered core services);

(qq) 22A DCMR § 3414.3 (failure to provide covered specialty services);

(rr) 22A DCMR §§ 3415.1 to 3415.9 (failure to provide diagnostic/assessment services as required);

(ss) 22A DCMR §§ 3416.3 to 3416.6 (failure to provide medication/somatic treatment services as required);

(tt) 22A DCMR § 3417.1 (failure to provide counseling and psychotherapy services as defined);

(uu) 22A DCMR § 3417.2 (failure to include skill building techniques as necessary to access community resources and support systems, interpersonal skills, and restoration or enhancement of the family unit and support of the family);

(vv) 22A DCMR §§ 3418.1 to 3418.8 (failure to provide community support services as required);

(ww) 22A DCMR §§ 3419.1 to 3419.6 (failure to provide crisis/emergency services as required);

(xx) 22A DCMR §§ 3420.1 to 3420.8 (failure to provide rehabilitation services as required);

(yy) 22A DCMR §§ 3421.1 to 3421.12 (failure to provide intensive day treatment services as required);

(zz) 22A DCMR §§ 3422.1 to 3422.11 (failure to provide community- based interventions services as required);

(aaa) 22A DCMR §§ 3423.1 to 3423.10 (failure to provide assertive community treatment as required; and

(bbb) 22A DCMR § 3405.3 (failure to establish and comply with a well-publicized complaint and grievance system); or

(ccc) Violation of any of the following requirements to become certified by the Department of Mental Health (DMH), as required by the Department of Mental Health Establishment Amendment Act of 2001, effective December 18, 2001 (D.C. Law 14-56; D.C. Official Code § 7-1131.01 et seq.), to provide mental health services in the District:

1. 22A DCMR § 3400 (providing community based mental health rehabilitation services (MHRS) in the District without obtaining certification from DMH as a core services agency (CSA), subprovider or specialty provider of MHRS);

2. 29 DCMR § 706 (operating Medicaid day treatment programs for consumers of mental health services and mental health supports without obtaining mental health certification from DMH);

3. 29 DCMR § 800 (operating free standing mental health clinics without obtaining mental health certification from DMH);

4. 29 DCMR § 948 (operating a residential treatment center for children and youth without obtaining mental health certification from DMH); and

5. 29 DCMR § 4600 (operating mobile community outreach treatment teams without obtaining mental health certification from DMH).

3502.3 Violation of the following provisions shall be a Class 3 infraction:

(a) 22A DCMR § 3401.4 (failure to allow an on-site survey to be conducted at the time of certification application or certification renewal, or at any other time and failure to allow access to all records necessary to verify compliance with certification standards);

(b) 22A DCMR § 3402.9 (failure to ensure that all consumers have a free choice of MHRS providers and free choice of qualified practitioners delivering services through a DMH-certified MHRS provider, as described in § 3406);

(c) 22A DCMR § 3403.3 (failure to ensure that persons with a primary substance abuse diagnosis only are not receiving MHRS);

(d) 22A DCMR § 3410.21 (failure to make language interpreters available as needed for persons who do not use English as a first language or use a non-primary language for communication);

(e) 22A DCMR § 3410.22 (failure to ensure supervision by an interpreter certified by the National Registry of Interpreters for the Deaf and ongoing training in sign language interpreting);

- (f) 22A DCMR § 3410.23 (failure to provide or utilize a TTY communication line (or an equivalent))
- (g) 22A DCMR §§ 3401.1 and 3401.15 (failure to renew certification at least ninety (90) days prior to the termination of current certification);
- (h) 22A DCMR § 3410.1 (failure to maintain a certificate of good standing to conduct business in the District of Columbia);
- (i) 22A DCMR § 3411.11 (failure of CSA to submit or update IRP/IPC information to the DMH contract management system at least every ninety (90) days); or
- (j) 22A DCMR §§ 3412.1 to 3412.10, and 3412.13 to 3412.17 (failure of subprovider or specialty provider to comply with specified provider requirements).

3502.4 Violation of the following provisions shall be a Class 4 infraction:

- (a) 22A DCMR § 3410.2 (failure to maintain the MHRS clinical operations policies and procedures as required);
- (b) 22A DCMR § 3410.4 (failure to establish and comply with policies and procedures for the selection or hiring of staff);
- (c) 22A DCMR § 3410.5 (failure to establish and comply with the requirement to have written job descriptions for all positions including the job responsibilities and reporting relationships);
- (d) 22A DCMR § 3410.6 (failure to establish and comply with the policies and procedures on periodic evaluation of clinical and administrative staff performance);
- (e) 22A DCMR § 3410.9 (failure to orient staff on the MHRS during the first three (3) months of employment and on an ongoing basis);
- (f) 22A DCMR § 3410.10 (failure to establish and comply with the annual training plan for staff);
- (g) 22A DCMR § 3410.25 (failure to provide an in-service training program for all staff regarding sensitivity to cultural issues, increasing cultural competence of all staff, and treating consumers with dignity and respect);
- (h) 22A DCMR § 3410.33 (failure to establish and comply with policies and procedures governing billing and payment according to the certification standards);
- (i) 22A DCMR § 3410.34 (failure to submit claims for consumers within ninety (90) days of the date of service, or thirty (30) days after a secondary or third party payer has adjudicated a claim for this service);
- (j) 22A DCMR § 3410.35 (failure to establish a sliding fee schedule covering each of the MHRS and not impose additional charges for services beyond Medicaid payment);
- (k) 22A DCMR § 3411.7 (failure of CSA to make a play area available for children in the waiting room area);

(l) 22A DCMR § 3411.8 (failure of CSA to have a full-time controller, chief financial officer, or a designated individual responsible for executing or overseeing the financial operations of the CSA);

(m) 22A DCMR § 3411.9 (failure of CSA to have an annual audit by a CPA firm or failure to submit the audit to DMH within one hundred-twenty (120) days after close of the CSA's fiscal year);

(n) 22A DCMR § 3411.10 (failure of CSA to enter into an affiliation agreement with its subproviders and/or specialty providers that specifies the responsibilities of the parties);

(o) 22A DCMR § 3411.13 (failure of CSA to have an affiliated provider policy, subcontractor policy, consumer and family education policy, on-call system policy and outreach policy, reviewed and approved by DMH);

(p) 22A DCMR § 3412.11 (failure of a subprovider or specialty provider with total annual revenues exceeding three hundred thousand dollars (\$ 300,000) to have an annual audit by a certified public accounting firm in accordance with generally accepted auditing standards and to submit a copy of the audit report ninety (90) days after the end of its fiscal year);

(q) 22A DCMR § 3412.12 (failure of a subprovider or specialty provider with total annual revenues less than three hundred thousand dollars (\$ 300,000) to submit a financial statement reviewed by an independent certified public accounting firm one hundred twenty (120) days after the end of its fiscal year); or

(r) 22A DCMR § 3401.7 (failure to describe the action to be taken and the timeframes for correcting the areas of non-compliance and to submit a written plan of correction within ten (10) working days after receipt of the written statement of non-compliance).

3502.5 Violation of any provision of the Mental Health Rehabilitation Services Provider Certification Standards, 22 DCMR, Chapter 34, in which the provision or rule is not cited elsewhere in this chapter, shall be a Class 4 infraction.

History of Regulations since Last Compilation by Agency (July 1998)

May 27, 2005 new at 52 DCR 4903 by the Department of Consumer and Regulatory Affairs, the Office of Planning, The Department of Health, the Department of Mental Health, and the Department of Insurance, Securities and Banking; statutory authority D.C. Code §§ 2-1802.04, 6-1110, 7-731, 7-1131.14, 31-103, Mayors Orders 79-50, 83-25, 82-119, 86-38, 99-141, 2002-103, 2004-46

Source: [Legal](#) > / . . . / > DC - Weil's Code of D.C. Municipal Regulations 

View: Full

Date/Time: Thursday, November 13, 2008 - 11:37 AM EST