

**DEPARTMENT OF MENTAL HEALTH****NOTICE OF PROPOSED RULEMAKING**

The Director of the Department of Mental Health (“DMH”), 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.; 2012 Supp.)), hereby gives notice of his intent to publish an amendment to Chapter 22 (Standards for Supported Housing for Consumers) of Subtitle A (Mental Health) of Title 22 (Health) of the District of Columbia Municipal Regulations (DCMR).

The purpose of this amendment is to ensure that all DMH consumers are assessed to determine their housing needs, if any, and to outline the supported housing programs within the Department of Mental Health. The amended chapter enumerates the responsibilities of the Core Services Agencies in assessing consumers for housing needs, establishes application and eligibility criteria for Department of Mental Health supported housing assistance, and provides requirements for the Home First Subsidy Program.

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

**Title 22-A DCMR, Chapter 22 is replaced with a new Chapter 22 to read as follows:**

**CHAPTER 22 SUPPORTED HOUSING SERVICES FOR MENTAL HEALTH CONSUMERS****2200 GENERAL PROVISIONS**

- 2200.1 These rules establish requirements for supported housing services provided by Core Services Agencies (CSAs) and the management of supported housing assistance programs by the Department of Mental Health (Department or DMH). The Department may further implement this rule through published practice guidelines and policies.
- 2200.2 Supported housing services assist adults and children with mental illness or serious mental health problems with finding and maintaining appropriate independent housing arrangements in the community. Supported housing services include mental health services and supports provided by DMH-certified mental health providers, and direct financial assistance from the Department or DMH-certified mental health provider. Support is provided through a comprehensive continuum of care that is individualized, flexible, and recovery-based. The following are examples of supported housing services:
- (a) A Core Services Agency (CSA) may provide housing to a consumer directly or through a specialty or subprovider;

- (b) DMH, a CSA, or another government agency may provide a monetary subsidy for rent on behalf of a consumer;
- (c) A CSA, either directly or through a specialty or subprovider, may assist a consumer with locating housing;
- (d) A CSA or other provider may provide mental health services and supports in the consumer's home to assist with developing and improving activities of daily living; or
- (e) DMH or another government agency may provide funds to a business entity to develop or provide housing for consumers enrolled with DMH.

2200.3 Each business entity seeking support from DMH to provide housing or housing supports in the District of Columbia shall be a DMH-certified CSA or be affiliated with a CSA or DMH. Affiliation with a CSA or DMH shall mean that the business entity has a written agreement with a CSA or DMH, or an entity acting on behalf of DMH that describes each party's responsibilities specific to housing.

**2201. CORE SERVICES AGENCIES RESPONSIBILITIES FOR SUPPORTED HOUSING SERVICES**

2201.1 All CSAs shall assess consumers for supported housing needs as part of the treatment plan process. This includes both the development of the treatment plan and any updates and modifications based upon the status of a consumer's recovery. The purpose of the housing assessment is to evaluate and identify each individual consumer's living arrangement needs. The assessment shall adhere to this regulation and any Department policies, forms and practice guidelines related to supported housing.

2201.2 Supported housing assessments shall address, at a minimum, the following factors:

- (a) Risk of homelessness;
- (b) Risk of hospitalization;
- (c) Length of time in current housing;
- (d) Whether current housing is a product of consumer's personal choice;
- (e) Whether current living arrangement provides necessary supports for safe and successful living; and

- (f) If a change in housing is needed to support safe and successful living, the community treatment strategies to get the consumer into appropriate housing.

- 2201.3 If a consumer has been assessed as needing housing, or as needing housing at a different level than the housing currently occupied by the consumer, the mental health provider shall assist the consumer in applying for any public benefit, financial assistance, or housing assistance program for which the consumer is eligible, including but not limited to the District of Columbia Housing Authority (“DCHA”) Housing Choice Voucher Program and other supported housing services provided by or through the Department.
- 2201.4 If a consumer is receiving direct housing or a supported housing subsidy pursuant to these rules directly from a CSA or other DMH-certified mental health provider and chooses to enroll with another CSA or DMH-certified mental health provider, the provider shall not require the consumer to move from the housing because of the change in providers.
- 2201.5 The Department shall conduct targeted compliance reviews of CSAs’ supported housing assessments at least annually and report the results to each CSA under review. The Department shall incorporate the results into the Department’s annual quality improvement plan.
- 2201.6 Each CSA shall maintain and keep current, at all times, a log that lists all consumers residing in each of the CSA’s DMH supported housing as defined by these rules. This information shall be available to DMH upon request. The CSA shall provide statistical data and reports related to the provision of supported housing services as requested by the Department.

**2202 HOME FIRST SUBSIDY PROGRAM FOR MENTAL HEALTH CONSUMERS**

- 2202.1 Sections 2202 through 2299 provide standards for implementing the Department’s Home First Subsidy Program and the Department’s housing wait list. The Home First Subsidy is a locally-funded rental voucher that is paid by the Department on behalf of qualifying consumers for community-based housing meeting the requirements of this regulation. The Home First Subsidy is subject to annual appropriations limits. When a consumer is eligible for a Home First Subsidy but there are inadequate funds to issue a voucher, the consumer may be placed on the Department’s housing wait list, subject to the requirements in Section 2206.
- 2202.2 Nothing in these rules shall be interpreted to mean that any subsidy provided by the Department is an entitlement. Locally-funded or administered subsidies are dependent upon the availability of funds, the needs of individual consumers, and the priority populations established by the Department.

**2203 WAIVER OF RULES**

2203.1 Upon determination of good cause, the Director may waive any provision under this chapter subject to the statutory limitations of other federal or District laws.

**2204 ELIGIBILITY CRITERIA**

2204.1 The following are the minimum eligibility requirements to apply for a Home First Subsidy through the Department:

- (a) The individual is a consumer actively engaged with a CSA or other DMH-certified provider;
- (b) The consumer is:
  - (i) eighteen (18) years of age or older and has been diagnosed with a serious and persistent mental illness as defined in Section 2299;
  - (ii) the legal guardian of a child consumer with a serious and persistent mental illness or a serious emotional disturbance, or
  - (iii) an emancipated minor consumer who has been diagnosed with a serious and persistent mental illness or a serious emotional disturbance;
- (c) The consumer is a bona fide D.C. resident;
- (d) The consumer's household income, or guardian's household income in the case of a child consumer, does not exceed the amount specified in Subsection 2204.2;
- (e) The consumer does not have any legal or equitable interest in real property;
- (f) The consumer or guardian has registered for, or has a verifiable appointment to register for, permanent housing assistance through DCHA, unless otherwise ineligible to register with DCHA or the DCHA has suspended new registrations; and
- (g) The consumer has a demonstrable need for the Home First Subsidy because no other suitable housing options are available.

2204.2 The eligible consumer's or guardian's adjusted income, as defined in Section 2299, for the sixty (60) day period immediately preceding the date of application, shall not exceed thirty percent (30%) of the Area Median Income for the Metropolitan Washington D.C. Area, as defined by the U.S. Department of Housing and Urban Development at the time of application.

2204.3 The Department may require the applicant or other household members to execute one or more authorizations to release information to verify eligibility. The release of information shall comply with D.C. Official Code § 7-1201.01 *et seq.*, and other applicable federal and local privacy laws.

2204.4 The Department's Home First Subsidy is a subsidy of last resort. The Department shall not authorize a Home First Subsidy if other permanent housing financial assistance is made available to the consumer, including, but not limited to, a Housing Choice Voucher or other federal or District housing subsidy program.

## **2205 APPLICATION PROCESS**

2205.1 Each application for a Home First Subsidy shall be submitted in a format prescribed by the Department pursuant to these rules and the Department's policies and procedures.

2205.2 Each applicant shall cooperate fully with the Department in establishing his or her eligibility, or, in the case of the applicant being a legal guardian, eligibility of the ward by providing supporting information and documentation. The application is complete when all of the information required by the Department is furnished to the Department.

2205.3 If requested by an applicant with a disability, or if the CSA or mental health provider is aware that the applicant needs assistance due to a disability, the CSA or mental health provider shall assist the applicant with any aspect of the application process necessary to ensure that the applicant with a disability has an equal opportunity to submit the application.

2205.4 Upon receipt of an application, the Department shall record the date that the application is received and shall provide a dated notice of receipt to the applicant. In the event the application is incomplete and the applicant fails to complete the application within fifteen (15) business days following notification, the Department will consider the application canceled and the CSA or mental health provider and applicant must submit a new application. The Department is not responsible for processing delays due to the applicant's failure to submit required information.

2205.5 Once an applicant is determined eligible for a Home First Subsidy, and funding is available, the Department shall send a written eligibility determination to the applicant, the CSA, and a representative payee, if appropriate. The eligibility determination shall include, at a minimum:

- (a) A statement of the eligibility determination;
- (b) Written approval to search for housing;

- (c) If the subsidy is one that is attached to a specific unit, contact information and further information for assessing the unit;
- (d) The amount of financial contribution that the eligible consumer is required to contribute per month, if any; and
- (e) The contact name and telephone number of a Department representative.

2205.6 If an applicant is determined eligible, but no Home First Subsidy is available, the Department shall send a written eligibility determination to the applicant and the CSA. This eligibility determination shall include, at a minimum:

- (a) A statement of the eligibility determination;
- (b) A statement identifying the date that the eligible consumer will be placed on the waiting list; and
- (c) The contact name and telephone number of a Department representative.

2205.7 If an applicant is determined ineligible, the Department shall send a written determination of ineligibility to the applicant and the CSA. This ineligibility determination shall include, but is not limited to:

- (a) A statement of the denial of eligibility;
- (b) A statement of the factual basis for the denial;
- (c) A statement of the applicant's right to request that the Department review the determination pursuant to Section 2217; and
- (d) The contact name and telephone number of a Department representative.

## **2206 WAITING LIST**

2206.1 When the Department has insufficient funds to issue new Home First Subsidies, the Department may maintain a waiting list for consumers. The Department may utilize the waiting list to manage referral of consumers to any available supported housing subsidy program.

2206.2 If the Department maintains a waiting list, the Department shall place an eligible consumer on a waiting list when:

- (a) The Department has no funds to issue any new Home First Subsidies;

- (b) No unit with an attached subsidy that meets the consumer's specific needs is available;
  - (c) No other supported housing program managed by the Department is available; or
  - (d) The eligible consumer is incarcerated, or hospitalized or otherwise not available to occupy housing at the time of application.
- 2206.3 Subject to the Department's priority population in Section 2207, an eligible consumer shall be placed on the waiting list in chronological order by the date the Department receives the consumer's completed application. Placement on the waiting list does not guarantee that a consumer will ultimately receive a Home First Subsidy.
- 2206.4 The eligible consumer and CSA shall provide the Department with the eligible consumer's current mailing address and telephone number while on the waiting list. Each change of address shall be reported in writing to the Department within five (5) business days of the change.
- 2206.5 If the eligible consumer fails to ensure the Department has the consumer's current mailing address and telephone number and the Department needs to contact the consumer because a subsidy becomes available for the consumer's use, the Department will make a good faith effort to contact the consumer through the consumer's CSA. If the consumer cannot be contacted within thirty (30) calendar days of the first day of attempted contact, the Department will then contact the next person on the list for utilization of the subsidy.
- 2206.6 When an eligible consumer on the waiting list is notified that a subsidized housing unit or funding for a supported housing subsidy for his or her use in accordance with this chapter is now available, the Department shall re-determine the eligibility status of the consumer.
- 2206.7 If an eligible consumer becomes ineligible for a supported housing subsidy in accordance with the requirements of Section 2204, the consumer will be removed from the supported housing subsidy wait list. The Department will send written notice of the removal to the consumer at his or her last known address, and to the consumer's former CSA or other mental health provider. The consumer will have a right for review of the determination of ineligibility pursuant to Section 2217.

**2207 PRIORITY POPULATIONS FOR SUPPORTED HOUSING SUBSIDIES**

2207.1 The Department shall provide the following eligible consumers with priority placement for a Home First Subsidy:

- (a) Consumers pending discharge from Saint Elizabeths Hospital;

- (b) Consumers who are chronically homeless; and
- (c) Consumers moving to a less-restrictive environment;

2207.2 Nothing in this rule otherwise prohibits the Department from authorizing priority placement on a case-by-case basis, based upon compelling circumstances, for a consumer not meeting the requirements above.

**2208 HOME FIRST SUBSIDY PROGRAM**

2208.1 The Department may approve a Home First Subsidy in an amount equivalent to eighty percent (80%) of the 2011 Fair Market Rent Value calculated by the U.S. Department of Housing and Urban Development for the Metropolitan Washington D.C. area. An eligible consumer shall pay thirty percent (30%) of his or her adjusted income ("Total Consumer Rent Payment") toward the total rent due under the lease. The Department may authorize an increase in the Home First Subsidy amount, subject to available appropriations.

2208.2 For each approved Home First Subsidy, the Department shall issue the housing subsidy on a monthly basis to the landlord on behalf of the eligible consumer that is equal to the rent charged by the landlord, minus the Total Consumer Rent Payment, as determined by the Department in accordance with this chapter.

2208.3 The amount of the total rent due under a lease shall not exceed the limits set by the Department pursuant to Subsection 2208.1. If utilities are included in the total rent, a higher rent may be considered for approval on a case-by-case basis.

2208.4 Rent rates established by the Department pursuant to Subsection 2208.1 shall be effective for new leases and lease renewals that occur after the effective date of this chapter.

2208.5 Subject to Section 2208.3, all utility costs, including water, gas, electric, telephone, cable, and internet access, are the consumer's responsibility and will not be included in determining the consumer's obligation to pay thirty percent (30%) of household income towards the monthly rent.

2208.6 If a consumer has a demonstrated need for assistance with payment of a security deposit, the Department may, subject to availability of funds, pay the security deposit on behalf of the consumer. The consumer must repay the Department in accordance with a payment plan established by the Department and documented in the Program Agreement. The Department will not assist a consumer with payment of an additional security deposit if the consumer still owes funds for assistance with a previously-paid security deposit.

2208.7 Once the Department has identified funds for a supported housing subsidy for an eligible consumer, the Department shall notify in writing the consumer, the CSA,

and the consumer's personal representative, if applicable, of the availability of the subsidy.

- 2208.8 Upon written notification by the Department of the availability of supported housing subsidy funds, the consumer will have ninety (90) days to submit a complete Home First Subsidy application package. The CSA is primarily responsible for ensuring the consumer completes and returns all required forms during the process. The Department shall make all forms for the supported housing subsidy package available to the CSAs. The Department may grant reasonable extensions upon a showing of good cause.
- 2208.9 An eligible consumer may only search for a Home First Subsidy-eligible housing after he or she receives written authorization to begin a housing search from the Department. The Department shall provide a monthly list of vacant units to the CSAs to assist consumers search for available housing with the understanding by all recipients that the list is not exhaustive and consumers and CSAs should not rely solely on the Department vacancy list to locate housing. Consumers and CSAs are encouraged to utilize other resources within the public domain to identify appropriate and available housing.
- 2208.10 The Department may approve a Home First Subsidy for an eligible consumer only after the following conditions are met:
- (a) The eligibility status and income of the consumer is re-determined by DMH to ensure the consumer remains eligible for the supported housing subsidy;
  - (b) A housing unit which complies with the requirements of this chapter is available;
  - (c) The amount of rent charged for the available unit is consistent with Section 2208.1;
  - (d) The housing unit has a valid business license and certificate of occupancy, as required by applicable District law;
  - (e) The eligible consumer and mental health provider submits to the Department a supported housing subsidy Package, which includes:
    - (i) A Program Agreement signed by the eligible consumer;
    - (ii) A Subsidy Approval Form signed by the landlord; and
    - (iii) A completed Housing Pre-Inspection Checklist.

- (f) The Department approves the supported housing subsidy approval form in writing; and
- (g) The eligible consumer, CSA or other mental health provider provides the Department with a copy of the executed lease agreement signed by the eligible consumer and the landlord.

- 2208.11 If the Home First Subsidy package is approved, the Department shall notify the eligible consumer and CSA or other mental health provider that the supported housing subsidy is approved by providing the eligible consumer a copy of the supported housing subsidy approval form signed by the Department.
- 2208.12 If the Home First Subsidy package is not approved due to missing information, the Department shall notify the eligible consumer and CSA or other mental health provider of the reason(s) for disapproval. The consumer and CSA have ten (10) business days to provide the Department a completed Home First Subsidy package. Failure to complete or supply the missing information may result in denial of subsidy and placement on the waiting list.
- 2208.13 The Department shall only issue an approved Home First Subsidy in the form of non-cash payment directly to the landlord.
- 2208.14 The Department shall only provide a Home First Subsidy for actual rent obligations incurred by the consumer in a manner consistent with this chapter.

## **2209 LANDLORD PARTICIPATION**

- 2209.01 Each landlord who agrees to accept a Home First Subsidy on behalf of an eligible consumer shall sign a Subsidy Agreement with the Department. The Subsidy Agreement shall require that the landlord:
- (a) Comply with all applicable District laws and regulations, including 14 DCMR Chapters 3 – 9;
  - (b) Enter into a lease agreement with an eligible consumer that complies with District law and the requirements of the Home First Subsidy program;
  - (c) Provide habitable housing in the District of Columbia in accordance with applicable federal and District laws relating to accessibility, health and safety, including compliance with Section 8100, “Housing Quality Standards” (“HQS”) of 14 DCMR Chapter 81;
  - (d) Agree that in the event the housing is not maintained in accordance with the HQS, the Department may exercise any available remedy including suspension, abatement or termination of the supported housing subsidy, unless the HQS breach is the responsibility of the consumer;

- (e) Hold harmless and release the Department from any and all claims, actions, judgments and attorney fees arising from any damage or necessary repairs to the unit or property;
- (f) Agree that the Department shall not pay any claim by the landlord against the tenant;
- (g) Accurately report to the Department the date of scheduled move in, move out, the contract rent of each eligible consumer, and if the eligible consumer stops paying rent, the date of the most recent rent payment;
- (h) Allow DMH or its designee to conduct annual inspections of the unit;
- (i) Make necessary repairs identified during the annual inspection, or any other repairs necessary to remedy any housing code violations, within thirty (30) days of notification, to avoid Department remedies including suspension, abatement or termination of the supported housing subsidy;
- (j) Make repairs to life-threatening HQS or other housing code violations within twenty-four (24) hours of notice to the landlord, or the Department may suspend, abate or terminate the supported housing subsidy;
- (k) Notify the Department within five (5) calendar days if the consumer is no longer living in a unit receiving the Home First Subsidy;
- (l) Accept a Home First Subsidy from the Department as late as the 15<sup>th</sup> day of each month and waive penalties and fees for late payments if received by the 15<sup>th</sup> of each month;
- (m) Not levy fines or penalties against the consumer, or take action against the consumer to terminate the tenancy, for late or non-payment of the Home First Subsidy or while the Department and the landlord are actively working to resolve verification and payment issues;
- (n) Notify the Department as well as the consumer when initiating any legal action against the consumer;
- (o) Participate in a mediation program before taking any adverse action against the consumer, if the eligible consumer also agrees to participate;
- (p) Agree that the Department, in addition to other remedies, may deduct the amount of a subsidy overpayment from any amounts due the owner, including amounts due under any other supported housing subsidy payment; and

- (q) Provide the Department, upon request, with a list verifying current occupancy and tenancy status for all consumers receiving a Home First Subsidy.

- 2209.02 A landlord shall neither demand nor accept any rent payment from the eligible consumer in excess of the Total Consumer Rent Payment, *i.e.*, the amount approved by the Department in writing.
- 2209.03 A landlord who accepts a supported housing subsidy for a consumer who is no longer a tenant of the property, shall return the supported housing subsidy to the Department within fifteen (15) calendar days of receipt.
- 2209.04 If a landlord fails to comply with a provision of these rules, the Department and the District may exercise any of its rights and remedies under the law including recovery of overpayment, or abatement or suspension of subsidy payments.
- 2209.05 Nothing in this chapter shall be construed to create any legal rights, substantive or procedural, by a landlord in any matter, administrative, civil or criminal against the District. The Department's payment of a supported housing subsidy shall not be deemed to create a relationship of partnership, joint venture, or agency between the Department, consumer, and participating landlord. The Department shall not be held liable as a result of the Department's payment of a supported housing subsidy for the unit for any damage to the unit caused by the consumer.

## **2210 RECERTIFICATION**

- 2210.1 The Department or its designee shall recertify the eligibility status of each consumer receiving a Home First Subsidy at least annually, or whenever there is a change in the consumer's eligibility status, including change in income.
- 2210.2 The annual re-certification date shall be the anniversary date of the first day of the month in which the eligible consumer began receiving a Home First Subsidy.
- 2210.3 The Department or its designee will also examine and re-determine the eligibility status and annual income of a consumer as necessary, such as if a consumer has a change in income or in household composition prior to his or her annual re-certification date.
- 2210.4 The Department or its designee will examine and re-determine the Home First Subsidy payment when an increase in the rent has been proposed by the landlord and approved by the Department.
- 2210.5 The Department shall send written notice of the re-certification requirement and the required documentation and information and an appointment date and time for re-certification, to each eligible consumer who is receiving a Home First Subsidy

through his or her CSA, at least ninety (90) calendar days before the annual re-certification date.

- 2210.6 If the consumer fails to appear for the first appointment, a second appointment will be scheduled within the ninety (90) day period. If the consumer fails to appear for the second scheduled appointment, absent good cause, the Home First Subsidy may be terminated in accordance with Subsection 2216.
- 2210.7 Each consumer shall complete written authorizations to allow the Department to obtain information necessary to verify continuing eligibility for the Home First Subsidy.
- 2210.8 The Department shall continue providing Home First Subsidy payments during the re-certification process.
- 2210.9 If the re-certification process is not completed within ninety (90) calendar days of the re-certification date due to a delay caused by an eligible consumer, the Department will notify the consumer that the Home First Subsidy will be terminated in thirty (30) days unless the re-certification process is completed before that time.
- 2210.10 If a consumer is receiving a Home First Subsidy and the Department moves to terminate the subsidy, the Department shall provide an eligible consumer, his or her CSA and any authorized representative, written notice of the proposed termination. An eligible consumer may appeal the proposed termination pursuant to Section 2216.
- 2210.11 The Department shall provide written notification to each consumer, his or her CSA and any authorized representative if the consumer's Home First Subsidy supported housing subsidy is terminated as a result of the annual re-certification. A consumer may appeal termination of a subsidy pursuant to Section 2218.
- 2210.12 A re-certification that results in decrease in the amount of the Home First Subsidy (if applicable) shall be effective thirty (30) calendar days after written notice is provided to an eligible consumer. The Department shall provide written notification to each consumer, his or her CSA and any authorized representative, if the consumer's Home First Subsidy is decreased as a result of the re-certification. The eligible consumer may appeal the reduction in the amount of the supported housing subsidy pursuant to Section 2218.
- 2210.13 A re-certification that results in an increase in the amount of the Home First Subsidy (if applicable) shall be effective the first day of the month following the completion of the re-certification process. The Department shall provide written notification to each consumer, his or her CSA and any authorized representative, if the consumer's supported housing subsidy is increased as a result of the any re-certification.

2210.14 The Department may pursue all remedies against a consumer including recoupment and referral to the appropriate authorities for civil or criminal prosecution if it is determined that a consumer has concealed income or otherwise knowingly violated the certification requirements for the Home First subsidy or other supported housing programs.

2210.15 Consumers receiving supported housing subsidies from another source are required to comply with the recertification requirements of that program.

## 2211 CONSUMER PARTICIPATION

2211.1 Each applicant and eligible consumer may exercise rights granted pursuant to applicable District laws and regulations, including but not limited to the Department of Mental Health Consumers' Rights Protection Act of 2001, D.C. Official Code § 7-1231.01 *et seq.*

2211.2 As a condition of receiving a supported housing subsidy, each consumer shall sign a Program Agreement that includes the following requirements:

- (a) If receiving a Home First Subsidy, maintain registration for permanent housing assistance through the DCHA (unless ineligible);
- (b) Comply with the terms of the lease as required by District law;
- (c) Provide required proof of annual income;
- (d) Attend an orientation session scheduled by the Department within the first three (3) months of occupancy;
- (e) Pay the Total Consumer Rent Payment (if applicable) for which he or she is responsible;
- (f) Permit the CSA or other mental health provider access to his or her housing unit on a monthly basis as required for completing a Housing Safety/Quality Checklist and Home Visit Report pursuant to Subsection 2207.3;
- (g) Notify the Department and CSA of any change in annual income or household composition within fifteen (15) calendar days of the change, so that re-certification and recalculation of the Home First Subsidy (if applicable), if necessary, can occur pursuant to Section 2210;
- (h) Report any damages or problems in the housing unit to the landlord and CSA immediately after occurrence;

- (i) Refrain from illegal activities or other acts that endanger the health or safety of the consumer or any other individual on the premises;
- (j) Maintain the unit in a clean, safe, and habitable condition;
- (k) Provide to the Department and the landlord at least thirty (30) calendar days in advance, a written notice of intent to terminate a lease or relocate from the premises;
- (l) Absent a written waiver from the Department, maintain enrollment with a CSA or other mental health provider while receiving a supported housing subsidy; and
- (m) Notify his or her representative payee of eligibility for and receipt of an supported housing subsidy, if applicable.

2211.3 The consumer is not responsible for payment of the portion of the rent owed to the Landlord that is to be paid through the Home First Subsidy as enumerated in the subsidy approval between DMH and the landlord.

2211.4 Each consumer shall be responsible for damages he or she causes to a unit or any common area, in accordance with the terms of the lease. Damages do not include normal wear and tear.

2211.5 If the consumer is receiving a supported housing subsidy other than the Home First Subsidy, the consumer must also comply with all of the requirements of that particular subsidy program.

## **2212 ELIGIBLE UNITS**

2212.1 The Department may only provide a supported housing subsidy for units that comply with this section, and 14 DCMR Chapters 3 - 9 as applicable.

2212.2 The following units shall not be eligible for a Home First Subsidy:

- (a) Units that do not comply with 14 DCMR Chapters 3 - 9;
- (b) Units in which the consumer, consumer's personal representative, or consumer's family member has a legal or equitable interest;
- (c) Units owned by Department employees, employees of the Department's designee, or employees of any organization or entity that has administrative responsibility for the supported housing subsidy;
- (d) Units owned by an individual employee of a CSA or a mental health provider in the DMH network;

- (e) Units on the grounds of educational institutions or units that are available only to students, staff or faculty of an educational institution;
- (f) Any unit where a consumer has no actual or legal responsibility to pay rent; and
- (g) Nursing homes.

2212.3 Additionally, supported housing subsidy programs other than the Home First Subsidy program may be limited to units with additional requirements.

**2213 VOLUNTARY RELOCATION IF RECEIVING A HOME FIRST SUBSIDY**

2213.1 To request relocation to another housing unit while receiving a Home First Subsidy, an eligible consumer shall submit a written request for relocation to his or her assigned CSA, other mental health provider, or Department.

2213.2 The Department may provide written approval of an eligible consumer's request to relocate with a Home First Subsidy only if:

- (a) The request was submitted for approval before relocating;
- (b) The consumer has not yet relocated;
- (c) The consumer is not in arrears of the lease, unless there are housing code violations as determined by DCRA or by a court in the current housing unit;
- (d) The consumer will not incur penalties under the lease, or has reached an agreement with the landlord for the relocation;
- (e) The unit is not damaged or in need of repairs beyond normal wear and tear due to the consumer's actions;
- (f) The rental amount for the new unit is consistent with the Department's rates in accordance with Subsection 2208.1; and
- (g) The Home First Subsidy recipient is in good standing and is not currently in violation of any obligations under this chapter.

2213.3 The Department may waive the requirements above upon a showing of good cause.

**2214 TEMPORARY ABSENCES**

- 2214.1 If an eligible consumer is absent from the unit for more than thirty (30) calendar days, he or she shall provide notification to the Department, CSA or other mental health provider as soon as possible, but no later than the thirtieth (30th) day of his or her absence.
- 2214.2 Upon receiving proper notification of an absence, the Department may continue to provide a Home First Subsidy during a temporary absence of up to ninety (90) calendar days, if the absence is a result of:
- (a) Short-term placement in an assisted living facility, nursing home or mental health facility;
  - (b) Short-term inpatient treatment;
  - (c) Incarceration;
  - (d) Family emergency; or
  - (e) Other circumstances for which the Director has determined that the absence is necessary or appropriate.
- 2214.3 The Department may approve in writing an extension of no more than thirty (30) additional days of absence on a case by case basis.
- 2214.4 The Department may terminate a Home First Subsidy if:
- (a) The Department does not receive notification of a temporary absence of more than thirty (30) days from a housing unit;
  - (b) The absence is for a period of time beyond ninety (90) calendar days, or the date a Department approved extension expires; or
  - (c) The absence does not result from the conditions set forth in Subsection 2217.2.
- 2214.5 The Department shall provide written notification at least sixty (60) days before termination to each consumer whose Home First Subsidy is subject to termination pursuant to Subsection 2216. A consumer may appeal a written notice of termination of a subsidy pursuant to Section 2218.
- 2214.6 Consumers who receive a supported housing subsidy other than a Home First Subsidy are subject to the requirements of that particular subsidy program for temporary absences.

**2215 EVICTIONS AND LEASE TERMINATIONS BY LANDLORDS**

2215.1 Landlords receiving a supported housing subsidy may only terminate a program participant's tenancy in accordance with lease terms and applicable District law.

2215.2 The Department may terminate Home First Subsidy payments to the landlord when the tenancy is terminated by the landlord in accordance with the lease and applicable District law. The consumer remains a program participant unless and until the Department terminates the Home First Subsidy pursuant to Section 2216.

## **2216 TERMINATION OF ASSISTANCE**

2216.1 If a consumer is receiving a supported housing subsidy other than a Home First Subsidy pursuant to this chapter, the program owner of the subsidy will determine when and under what circumstances a consumer's subsidy assistance may be terminated.

2216.2 The Department may terminate a Home First Subsidy for any of the following reasons:

- (a) The consumer no longer meets the Home First Subsidy eligibility requirements described in this chapter;
- (b) The consumer was offered a Housing Choice Voucher Program voucher or other permanent housing assistance through any other federal or District program or private source that allows choice in where the consumer may live;
- (c) The consumer was offered and accepted other permanent housing assistance through any other federal or District program or private source;
- (d) The consumer failed to permit the CSA or other mental health provider to conduct an in-home visit to his or her housing unit as required for completing a Housing Safety/Quality Checklist and Home Visit Report;
- (e) The consumer fraudulently misrepresents eligibility for assistance, annual income, or other information, with the intention of obtaining unauthorized assistance;
- (f) The consumer is absent from the unit, as set forth in Subsection 2214 or no longer resides in the unit, including situations in which the consumer relocates from his approved unit without prior approval from the Department;
- (g) The consumer is evicted from an approved unit more than once while receiving a supported housing subsidy;

- (h) The consumer voluntarily withdraws from the Home First Subsidy program; or
- (i) The death of a consumer.

- 2216.3 The Department shall provide a consumer written notice of Home First Subsidy termination, effective sixty (60) calendar days from the date the Department issues the notification. A consumer may appeal a written notice of termination pursuant to Section 2218, or file a grievance in accordance with Title 22A, District of Columbia Municipal Regulations, Chapter 3.
- 2216.4 Termination of the subsidy is effective no later than the first of the month following the consumer's death.
- 2216.5 If the Department suspects fraud, it will refer the case to the proper authorities for investigation.
- 2216.6 If a consumer's Home First Subsidy is terminated, he or she may re-apply for the in accordance with Section 2205, and upon determination of eligibility will be placed on the waiting-list pursuant to Section 2206.

**2217 RIGHT TO REVIEW**

- 2217.1 The Department may afford a consumer the opportunity to seek review of the Department's decision to deny eligibility for a supported housing subsidy.
- 2217.2 A consumer may request a review within fifteen (15) business days of the Department's denial of eligibility.
- 2217.3 Each request for a review shall contain a concise statement of the reason why the consumer should be determined eligible to receive a supported housing subsidy, with supporting documentation, if available.
- 2217.4 Each administrative review shall be conducted by the Director and shall be completed within fifteen (15) business days of the receipt of the consumer's request.
- 2217.5 The Director shall issue a written decision which sets forth his or her evaluation and resolution of the denial and describes the actions required of the Department and actions required of the consumer in implementing the decision.

**2218 RIGHT TO A HEARING IF RECEIVING A HOME FIRST SUBSIDY**

- 2218.1 A consumer who is receiving a Home First Subsidy may request a hearing, meeting the requirements of the D.C. Administrative Procedure Act, from the

Department within thirty (30) business days of receiving written notice of reduction, suspension or termination of a supported housing subsidy.

- 2218.2 A timely request for a hearing shall automatically stay the Department's decision to reduce, terminate or suspend a Home First Subsidy pending the completion of a hearing.
- 2218.3 Each request for a hearing shall contain a concise statement of the reason why the supported housing subsidy should not be reduced, terminated or suspended.
- 2218.4 During the course of the hearing, the consumer shall have the right to:
- (a) Present any testimony, witnesses or other evidence, both orally and in writing;
  - (b) Cross-examine any witness presented by the Department; and
  - (c) Be represented by counsel, a relative, or other authorized personal representative at the consumer's expense.
- 2218.5 The recommendation of the hearing officer shall be issued in writing within thirty (30) business days of the hearing and shall include findings of fact based exclusively on evidence presented at the hearing and conclusions of law.
- 2218.6 The Director shall review the recommendations of the hearing officer and render a final decision within fifteen (15) business days of receiving the hearing officer's recommendations. The Director shall describe the actions required of the Department and actions required of the consumer in implementing the decision.
- 2218.7 The Director may overrule the hearing officer in instances where he or she does not agree with findings, conclusions or recommendations presented for decision. In such cases, the reasons for the Director's decision shall be specified in writing.

## **2299 DEFINITIONS**

When used in this chapter, the following terms and phrases shall have the meanings ascribed:

"Actively Engaged" – a consumer is provided mental health rehabilitation services from a CSA or other DMH-certified mental health provider at least once every thirty (30) days pursuant to a treatment plan.

"Adjusted Income" – as defined in Title 14 DCMR Subsection 6099.1.

"Annual Income" -- as defined in Title 14 DCMR Subsection 6099.1.

“Consumer” – adult, child or youth who seeks or receives mental health services or mental health supports funded or regulated by the Department.

“Core Services Agency” or “CSA” – a DMH-certified community-based mental health provider that has entered into a Human Care Agreement with DMH to provide specified mental health rehabilitation services.

“Director” – the Director of the District of Columbia Department of Mental Health.

“Department” – the District of Columbia Department of Mental Health.

“Homeless consumer” – an individual that meets the definition of consumer above and:

- (a) Lacks a fixed, regular, and adequate nighttime residence; or
- (b) Has a primary nighttime residence that is:
  - (i) a supervised, publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);
  - (ii) an institution that provides a temporary residence for individuals intended to be institutionalized; or
  - (iii) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; or
- (c) Is institutionalized with no home to return to upon discharge.

“Landlord” – any person who, alone or jointly or severally with others, meets either of the following criteria:

- (a) Has legal title to any building arranged, designed, or used (in whole or in part) to house one or more habitations; or
- (b) Has charge, care, or control of any building arranged, designed or used (in whole or in part) to house one or more habitations, as owner or agent of the owner, or as a fiduciary of the estate of the owner or any officer appointed by the court.

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 Ms. Laressa Poole at 64 New York Avenue, N.E., 3rd Floor, Washington, D.C. 20002 or [Laressa.Poole@dc.gov](mailto:Laressa.Poole@dc.gov). Copies of the proposed

rules may be obtained from [www.dmh.dc.gov](http://www.dmh.dc.gov) or from the Department of Mental Health at the address above.