

DEPARTMENT OF BEHAVIORAL HEALTH

NOTICE OF THIRD EMERGENCY AND 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 “Fiscal Year 2014 Budget Support Act of 2013”, effective December 24, 2013, D.C. Law 20-0061, 61 DCR 000962, hereby gives notice of the adoption, on an emergency basis, of a new Chapter 53 entitled “Treatment Planning Services Provided to Department of Behavioral Health Consumers in Institutional Settings - Description and Reimbursement”, of Subtitle A (Mental Health) of Title 22 (Health) of the District of Columbia Municipal Regulations (DCMR).

The Department certifies mental health providers to provide mental health rehabilitation services (MHRS) to Department consumers in the community. Occasionally, some consumers are hospitalized or placed in some other type of institutional setting. The public mental health providers need to work with the consumers and the institution treatment team to assist in the consumer’s transition to and continuity of care while in the institutional setting, and later in the development of a mental health service plan; that is, a plan to address discharge, treatment, and other services for the consumer after discharge to the community, and for the consumer to develop skills to transition to the community. These necessary services, when provided while the consumer is in an institutional setting, cannot be billed as a Medicaid service, which has caused consumers to go without this necessary service due to the providers having concerns about payments. Therefore, the proposed and emergency rules establish the non-Medicaid reimbursement requirements and rates for those providers who provide treatment planning services to Department consumers hospitalized or in certain other institutional settings at the time of receiving the service.

Pursuant to 1 DCMR § 311.4(e), emergency rulemakings are undertaken only for the immediate preservation of the public peace, health, safety, welfare, or morals. Issuance of these rules on an emergency basis is necessary to ensure the provision of these critical services to consumers who are in an institutional setting. Without the establishment of these codes and reimbursement rates, providers may be unable to provide the necessary coordination and treatment planning with the consumer and institutional staff to ensure continuity of care while the consumer is in the institutional setting, and for the consumer’s successful transition back into the community. Thus, emergency action is necessary for the immediate preservation of the health, welfare, and safety of adults and children, youth, and their families with mental illness in need of mental health services.

The original Emergency and Proposed Rulemaking was adopted by the Director of the Department of Mental Health, the predecessor to the Department of Behavioral Health, and became effective on June 19, 2013; it was published in the *D.C. Register* on July 5, 2013 at 60 DCR 9910. A Second Emergency and Proposed Rulemaking, which amended the first rulemaking to clarify the applicability of certain services, was adopted and became effective on October 11, 2013, and was published in the *D.C. Register* on November 29, 2013 at 60 DCR 16313. The rules were also changed to reflect the new name of the agency, the Department of Behavioral Health. This Third Emergency and Proposed Rulemaking is issued to incorporate

changes to the reimbursement rates which, as a result of a detailed review process, were determined to be needed to ensure providers could continue to provide these services. All of the rates except for H0037, CPS-Rehab Day, were significantly increased; CPS-Rehab Day was decreased. The Third Emergency Rulemaking was adopted on February 7, 2014, and will remain in effect for one hundred twenty (120) days or until May 14, 2014, unless superseded by publication of another rulemaking notice in the *D.C. Register*, whichever comes first.

The Director also gives notice of 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 third notice in the *D.C. Register*.

Title 22-A (Mental Health) of the District of Columbia Municipal Regulations is amended by adding a new Chapter 53 to read as follows:

CHAPTER 53: TREATMENT PLANNING SERVICES PROVIDED TO DEPARTMENT OF BEHAVIORAL HEALTH CONSUMERS IN INSTITUTIONAL SETTINGS - DESCRIPTION AND REIMBURSEMENT

5300 PURPOSE

5300.1 This chapter establishes the reimbursement rates for the treatment planning and supportive treatment services provided by certified Mental Health Rehabilitation Services (MHRS) providers to Department of Behavioral Health (Department) consumers while the consumer is in an institutional setting. Establishment of these reimbursement rates will allow the Department to reimburse providers using non-Medicaid local funds for continuity of care services, discharge treatment planning and transitional services while the consumer is in an institutional setting.

5300.2 Institutional settings in which these services shall be provided and may be reimbursed pursuant to this rule include: an Institute for Mental Disease (IMD); a hospital; a nursing facility (nursing home or skilled nursing facility); a rehabilitation center; a Psychiatric Residential Treatment Facility (PRTF); a Residential Treatment Center (RTC); or a correctional facility for defendants or juveniles.

5300.3 Nothing in this chapter grants to an MHRS provider the right to reimbursement for costs of providing services to a consumer in an institutional setting. Eligibility for reimbursement for these services provided by an MHRS provider to a consumer in one of the institutional settings listed in Subsection 5300.2 is determined solely by the Human Care Agreement (HCA) contract between the Department and the MHRS provider and is subject to the availability of appropriated funds. Claims for reimbursement pursuant to this chapter must be submitted in accordance with the Department billing policy.

5301 DESCRIPTION OF REIMBURSABLE SERVICES

- 5301.1 Reimbursable “Mental Health Service – Continuity of Care Treatment Planning, Institution” services (MHS-CTPI) are services to assist consumers in institutional settings. MHS-CTPI is to be used for any mental health service not for discharge treatment planning or Rehab/Day purposes provided by an MHRS provider to any consumer, including those enrolled in Assertive Community Treatment (ACT) or Community-Based Intervention (CBI) services, in an institutional setting.
- 5301.2 In order to be eligible for reimbursement, MHS-CTPI shall only be provided by an MHRS provider through a mental health professional or credentialed worker to a Department consumer who is in an institutional setting listed in Subsection 5300.2.
- 5301.3 Mental Health Service – Discharge Treatment Planning, Institution (MHS - DTPI) is a service to develop a mental health service plan for treating a consumer after discharge from an institutional setting. It includes modifying goals, assessing progress, planning transitions, and addressing other needs, as appropriate.
- 5301.4 In order to be eligible for reimbursement, MHS-DTPI shall only be provided by an MHRS provider through a mental health professional or credentialed worker to a Department consumer who is in an institutional setting who is not enrolled in Assertive Community Treatment (ACT) or Community-Based Intervention (CBI).
- 5301.5 In order to be eligible for reimbursement, MHS-DTPI (ACT) shall be provided only by a member of an MHRS Assertive Community Treatment (ACT) team to a consumer who is enrolled in ACT services and preparing for discharge from the institution setting.
- 5301.6 In order to be eligible for reimbursement, MHS-DTPI (CBI) shall be provided only by a member of an MHRS Community-Based Intervention (CBI) Team, all levels, to a child or youth who is enrolled in CBI and preparing for discharge from the institutional setting.
- 5301.7 Community Psychiatric Supportive Treatment Program – Rehab/Day Services (CPS-Rehab/Day) is a day treatment program provided in the community designed to acclimate the consumer to community living.
- 5301.8 In order to be eligible for reimbursement, CPS-Rehab/Day Services shall only be provided by a certified MHRS Rehabilitation/Day Services provider.
- 5301.9 All services must be provided in accordance with Department policies regarding care to consumers to be eligible for reimbursement.

5302 REIMBURSEMENT RATE

5302.1 The rates for reimbursement are as set forth below:

CODE	SERVICE	RATE	UNIT	UNITS AUTHORIZED
H0032HK	Mental Health Service – Continuity of Care Treatment Planning, Institution for all MHS consumers (MHS-CTPI)	\$21.97	15 minutes	Up to 24 units within 180 days without prior authorization for continuity of care services
H0032	Mental Health Service – Discharge Treatment Planning, Institution for all consumers except those in ACT or CBI (MHS-DTPI)	\$21.97	15 minutes	Based on medical necessity at time of authorization, for discharge planning.
H0046HT	Mental Health Service – Discharge Treatment Planning, Institution - ACT consumers (MHS-DTPI(ACT))	\$38.04	15 minutes	Based on medical necessity at time of authorization for discharge planning.

CODE	SERVICE	RATE	UNIT	UNITS AUTHORIZED
H0046HTHA	Mental Health Service – Discharge Treatment Planning, Institution – CBI consumers (MHS-DTPI (CBI))	\$35.74	15 minutes	Based on medical necessity at time of authorization for discharge planning.
H0037	Community Psychiatric Supportive Treatment Program – Rehab/Day Services (CPS – Rehab/Day)	\$123.05	Per day, at least 3 hours	Based on medical necessity at time of authorization; only within sixty (60) days of discharge unless pursuant to court order.

5303 ELIGIBILITY

- 5303.1 Only a certified MHRS provider with an HCA that has provided one of these identified services to a Department consumer may be reimbursed for services billed to the Department under this chapter.
- 5303.2 Reimbursement for MHS-CTPI requires prior authorization from the Department after 24 units billed within 180 days.
- 5303.3 Reimbursement for MHS-DTPI, MHS-DTPI (ACT), MHS-DTPI (CBI) and CPS-Rehab/Day requires prior authorization from the Department.

5304 SUBMISSION OF CLAIM

- 5304.1 In order for claims to be eligible for reimbursement, the MHRS provider shall:
 - (a) Submit claims through the Department’s electronic billing system pursuant to this chapter, the Department billing policy, and the terms of the HCA between the Department and the MHRS provider; and
 - (b) Complete appropriate documentation to support all claims under its HCA with the Department and shall retain such documentation for a minimum

of six (6) years or longer if necessary to ensure the completion of any audit.

- 5304.2 The Department will reimburse an MHRS provider for a claim that is determined by the Department to be eligible for reimbursement pursuant to the terms of this chapter, applicable Department policies, and the HCA between the Department and the MHRS provider, subject to the availability of appropriated funds.

5305 AUDITS

- 5305.1 An MHRS provider shall, upon the request of the Department, cooperate in any audit or investigation concerning claims for the provision of these services. Failure to cooperate or to provide the necessary information and documentation shall result in recoupment of the reimbursement and may result in other actions available to the Department pursuant to applicable policies and the HCA.

5399 DEFINITIONS

- 5399.1 When used in this chapter, the following terms shall have the meaning ascribed:

Assertive Community Treatment or “ACT” - Intensive, integrated rehabilitative, crisis, treatment, and mental health rehabilitative community support provided by an interdisciplinary team to adults with serious and persistent mental illness by an interdisciplinary team. ACT is provided with dedicated staff time and specific staff to consumer ratios. Service coverage by the ACT team is required twenty-four (24) hours per day, seven (7) days per week. ACT is a specialty service.

Consumer - Adult, child, or youth who seeks or receives mental health services or mental health supports funded or regulated by the Department.

Community-Based Intervention or “CBI” - Time-limited, intensive mental health services delivered to children and youth ages six (6) through twenty-one (21) and intended to prevent the utilization of an out-of-home therapeutic resource or a detention of the consumer. CBI is primarily focused on the development of consumer skills to promote behavior change in the child or youth's natural environment and empower the child or youth to cope with his or her emotional disturbance.

Continuity of Care services – Coordination of services towards the stability of consumer-provider relationships over time.

Correctional facility - A prison, jail, reformatory, work farm, detention center, or any similar facility maintained by either federal, state or local authorities for the purpose of confinement or rehabilitation of adult or juvenile criminal offenders or suspected offenders.

Hospital - A facility equipped and qualified to provide inpatient care and treatment for a person with a physical or mental illness by, or under, the supervision of physicians to patients admitted for a variety of medical conditions.

Institute for Mental Disease or "IMD" - A hospital, nursing facility, or other institution with more than 16 beds which is primarily engaged in providing diagnosis, treatment or care of persons with mental illnesses, including medical attention, nursing care and related services.

Mental Health Rehabilitation Services or "MHRS" - Mental health rehabilitative or palliative services provided by a Department-certified community mental health provider to consumers in accordance with the District of Columbia State Medicaid Plan, the provider's Human Care Agreement with the Department, and Chapter 34 of this title.

MHRS provider - An organization certified by the Department to provide MHRS. MHRS provider includes CSAs, sub-providers, and specialty providers.

Nursing facility - A facility that primarily provides to residents skilled nursing care and related services for the rehabilitation of injured, disabled or sick persons, or on a regular basis, health-related care services above the level of custodial care to other than individuals with developmental disabilities.

Psychiatric Residential Treatment Facility or "PRTF" - A psychiatric facility that (1) is not a hospital and (2) 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 in which it is located and (3) provides inpatient psychiatric services for individuals under the age of twenty-two (22) and meets the requirements set forth in §§ 441.151 through 441.182 of Title 42 of the Code of Federal Regulations, and is enrolled by the District of Columbia Department of Health Care Finance (DHCF) to participate in the Medicaid program.

Rehabilitation facility - An inpatient facility that provides comprehensive rehabilitation services under the supervision of a physician to inpatients with physical disabilities. Services include physical therapy, occupational therapy, speech pathology, social or psychological services, and orthotics or prosthetics services.

Residential Treatment Center or "RTC" - A facility which houses youth with significant psychiatric or substance abuse problems who have proven to be

too ill or have such significant behavioral challenges that they cannot be housed in foster care, day treatment programs, and other nonsecure environments but who do not yet merit commitment to a psychiatric hospital or secure correctional facility.

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 the Suzanne Fenzel, Deputy Director, Office of Strategic Planning, Policy and Evaluation, Department of Behavioral Health, at 64 New York Ave., NE, 3rd Floor, Washington, D.C. 20002, or e-mailed to Suzanne.Fenzel@dc.gov. Copies of the proposed rules may be obtained from dmh.dc.gov or from the Department of Behavioral Health at the address above.