

## DEPARTMENT OF BEHAVIORAL HEALTH

**NOTICE OF SECOND 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 Department of Behavioral Health Establishment Act of 2013, effective December 24, 2013 (D.C. Law 20-61; D.C. Official Code §§ 7-1141.06 and 7-1141.07 (2014 Supp.)), hereby gives notice of the adoption, on an emergency basis, of a new Chapter 57, entitled “Mental Health Community Residence Facility Per Diem”, of Subtitle A (Mental Health) of Title 22 (Health) of the District of Columbia Municipal Regulations (“DCMR”).

The Department of Behavioral Health licenses Mental Health Community Residence Facilities pursuant to Title 22-B DCMR Chapter 38. Mental Health Community Residence Facilities (“MHCRFs”) are defined as “publicly or privately owned community residence facility . . . that houses individuals eighteen (18) or older: (a) With a primary diagnosis of mental illness; and (b) who require twenty-four hour (24 hr.) on site supervision, personal assistance, lodging and meals.” Title 22-B DCMR Chapter 38 enables the Department to license three levels of MHCRFs: Supported Residence MHCRFs (formerly known as Independent CRFs), which provide the necessary level of care and staffing to over 440 individuals with serious mental illness who, as a result of their mental illness, require the support of twenty-four hour a day supported housing; Supported Rehabilitative Residence MHCRFs (formerly known as contracted CRFs), which provide clinical support services in addition to the twenty-four hour care and staffing; and Intensive Residence MHCRFs, which have the capacity to provide some nursing services in addition to the other required services to assist those with medical needs as well as mental illness. The Department determines the level of care that each individual needs and authorizes admission to the appropriate level of MHCRF. These MHCRFs play a critical role in caring for residents with serious mental illness and helping them live in the least restrictive community environment. The availability of this resource is also important in providing community living arrangements for those individuals leaving nursing homes and psychiatric hospitalizations.

The Department recently completed a rate review to determine the appropriate per diem reimbursement rates for each level of MHCRFs. These per diem rates were set to ensure the MHCRF providers could provide the necessary support in accordance with the level of care determination issued by the Department, and also ensured that Department resources were appropriately utilized in order to ensure that these MHCRFs can continue to provide the necessary care without any disruption in services due to the change in rates and renewal of contracts. The Department has determined that an emergency rulemaking is necessary to provide immediate financial support to its MHCRF network to preserve the health, welfare, and safety of those residents with serious mental illness.

The emergency rule establishes a locally-funded per diem to be paid to all MHCRFs licensed by the Department in accordance with their level of licensure (Supported Residence, Supported Rehabilitative Resident, and Intensive Residence). To be eligible for the per diem, an MHCRF

shall be required to enter into a contract with the Department. The per diem will be paid per resident and billed to the Department. The per diem is subject to availability of funds.

The first Notice of Emergency and Proposed Rulemaking, which established a per diem rate for the Supported Residence (then known as Independent) MHCRFs, was adopted and became effective on April 7, 2014, and was effective until August 5, 2014. The first rulemaking was published in the *D.C. Register* on June 6, 2014 at 61 DCR 5795. This second emergency rulemaking was adopted on September 24, 2014 and became effective on that date. The emergency rules shall remain in effect for one hundred and twenty (120) days, or until January 22, 2015, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director also gives notice of the intent to take final rulemaking action to adopt these 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, MENTAL HEALTH, of the DCMR is amended by adding a new Chapter 57 to read as follows:**

**CHAPTER 57 MENTAL HEALTH COMMUNITY RESIDENCE FACILITY PER DIEM**

**5700 PURPOSE**

5700.1 This chapter establishes the reimbursement rates for the Mental Health Community Residence Facility (MHCRF) Per Diem for the care and support of individuals with serious mental illness residing in these facilities. Establishment of this locally-funded per diem will allow the Department of Behavioral Health (the Department) to support the MHCRF network and ensure the continued availability of this critical housing resource.

5700.2 Nothing in this chapter grants to an MHCRF operator the right to reimbursement for costs of MHCRF services. Eligibility for reimbursement for supportive services is determined solely by the contract between the Department and the MHCRF operator and is subject to the availability of appropriated funds.

5700.3 MHCRFs may only operate if licensed by the Department pursuant to Title 22-B DCMR Chapter 38. MHCRFs may be licensed as Supported Residences; Supported Rehabilitative Residences; or Intensive Residences. The type of license held by the MHCRF shall determine the per diem reimbursement as set forth below.

5700.4 Because individuals who are hearing-impaired may require additional accommodations, a separate rate is established for those Supported Rehabilitative Residence MHCRFs adapted for residents who are hearing impaired.

**5701 REIMBURSEMENT RATE**

5701.1 The MHCRF Per Diem rates effective October 1, 2014, are as set forth below:

SERVICE	CODE	RATE	UNIT
Supported Residence MHCRF Per Diem	SR01	\$54.13	Daily
Supported Rehabilitative Residence MHCRF Per Diem	SRR01	\$90.92	Daily
Supported Rehabilitative Residence MHCRF Per Diem – Hearing Impaired	SRR02	\$111.43	Daily
Intensive Residence MHCRF Per Diem	IR01	\$136.13	Daily

**5702 ELIGIBILITY**

- 5702.1 Only a licensed MHCRF operator who has entered into a contract with the Department will be eligible for reimbursement under this chapter. An MHCRF shall not be eligible to receive a per diem under this chapter if the MHCRF is receiving District of Columbia contract or grant funds under a separate program.
- 5702.2 Only a licensed Supported Rehabilitative Residence MHCRF operator who has entered into a contract for housing individuals who are hearing impaired is eligible for the SRR02 reimbursement rate.

**5703 SUBMISSION OF CLAIM; PAYMENT OF INVOICE**

- 5703.1 The licensed MHCRF operator shall submit all per diem claims under the contract, pursuant to this chapter and the terms of the contract.
- 5703.2 The licensed independent MHCRF operator shall submit appropriate documentation to support all claims under its contract with the Department.
- 5703.3 The Department will reimburse a licensed MHCRF operator for a claim that is determined by the Department to be eligible for reimbursement pursuant to the terms of the contract between the Department and the licensed MHCRF operator, subject to the availability of appropriated funds.
- 5703.4 No MHCRF operator shall submit claims in excess of its contract with the Department.

**5704 AUDITS**

- 5704.1 A licensed MHCRF operator shall, upon the request of the Department, cooperate in any audit or investigation concerning the MHCRF Per Diem program.

**5799 DEFINITIONS**

5799.1 When used in this chapter, the following terms shall have the meaning ascribed:

**Mental Health Community Residence Facility (MHCRF)** - a publicly or privately owned residence licensed in accordance with 22-B DCMR Chapter 38, that houses individuals, eighteen (18) or older, with a principal diagnosis of mental illness and who require twenty-four hour (24 hr.) on-site supervision, personal assistance, lodging, and meals and who are not in the custody of the District of Columbia Department of Corrections.

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](mailto:Suzanne.Fenzel@dc.gov). Copies of the proposed rules may be obtained from [dbh.dc.gov](http://dbh.dc.gov) or from the Department of Behavioral Health at the address above.