

## DEPARTMENT OF MENTAL HEALTH

THIRD 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), hereby gives notice of his intent to adopt a new Chapter 23 of Title 22A of the District of Columbia Municipal Regulations (“DCMR”), entitled “Home First Subsidies for Mental Health Consumers”, and to amend sections 2205, 2207, and 2299, and subsection 2201.3 of Chapter 22 of Title 22A, in not less than thirty (30) days after the publication of this notice in the *D.C. Register*.

The purpose of the new Chapter 23 of Title 22A DCMR is to provide standards for the Home First Subsidy program. The new chapter establishes application and eligibility criteria, provides standards to determine the amount of a Home First Subsidy, annual recertification, maintenance of a waiting list, voluntary transfer to a different unit, and termination of a Home First Subsidy. Finally, the new chapter sets forth rights and responsibilities of landlords, Core Service Agencies, eligible consumers, and DMH and establishes due process procedures for Home First Subsidy recipients. This rulemaking also amends Chapter 22 of Title 22A DCMR to require Housing Safety/Quality Checklists and Home Visit Reports to be conducted monthly, instead of quarterly.

This notice supersedes the Second Notice of Proposed Rulemaking that was published in the *D.C. Register* on June 26, 2009, at 56 DCR 5083. Several changes were made to the amendments published with that prior notice in response to comments requesting, among other things, greater enumeration of consumers’ rights and landlord responsibilities.

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*.

**A new Chapter 23 is added to Title 22A DCMR to read as follows:**

**CHAPTER 23 HOME FIRST SUBSIDIES**

- 2300 HOME FIRST SUBSIDIES FOR MENTAL HEALTH CONSUMERS**
- 2300.1 These rules provide standards for the Department of Mental Health (“Department”) Home First Subsidy (“HFS”) program.
- 2300.2 The purpose of the HFS is to provide a temporary or “bridge” subsidy that will assist eligible consumers in obtaining safe and affordable permanent housing until the consumer is able to fund his or her housing through income alone, a permanent housing voucher, or other means.
- 2300.3 These rules shall not apply to temporary loan assistance granted by the Department for consumers residing in community residential facilities.

- 2300.4 Nothing in these rules shall be interpreted to mean that an HFS provided by the Department is an entitlement. The HFS program is dependent upon the availability of funds, the needs of individual consumers, and the priorities established by the Department.
- 2300.5 The Department may execute contracts and agreements and issue grants as necessary to carry out the provisions of this chapter.
- 2300.6 The Department may set aside HFS funds to use as project-based subsidies, for which these regulations may be waived pursuant to section 2301.1.
- 2300.7 The consumer always has the right to file a grievance in accordance with 22A DCMR Chapter 3 for any dissatisfaction with the HFS Program.
- 2300.8 Consumers have the right to be free from retaliation for exercising their rights, including filing grievances, requests for review or appeal, or for reporting any problems with their housing.
- 2300.9 Consumers have the right to receive services under this chapter free from unlawful discrimination.

**2301 WAIVER OF RULES**

- 2301.1 Upon determination of good cause, the Director may waive any provision under this chapter subject to the statutory limitations of other District laws. The Director shall provide each waiver in writing and shall support each waiver by documentation of the facts and the grounds upon which a waiver is based.

**2302 ALLOCATION OF FUNDS**

- 2302.1 For each annual appropriation of funds for HFS, the Director is authorized to make HFS payments consistent with this chapter.
- 2302.2 The Department may only provide HFS to extent of the annual appropriations and the availability of funds for HFS, as determined by the Director.
- 2302.3 The Department shall maintain a system to ensure that HFS payments do not exceed the total appropriations available for HFS in any fiscal year. This system may include, but is not limited to, the following:
  - (a) Providing notice of a temporary suspension of new subsidies for applicants and eligible consumers while an HFS financial audit is conducted:
    - (1) At each Core Service Agency (“CSA”);

- (2) On the Department’s website; and
  - (3) To each eligible consumer on the waiting list who has received authorization to begin a housing search in accordance with section 2317;
- (b) If applicable, providing notice that the Department is no longer approving HFS for eligible consumers due to the unavailability of HFS funds:
- (1) At each Core Service Agency (“CSA”);
  - (2) On the Department’s website; and
  - (3) To each eligible consumer on the waiting list who has received authorization to begin a housing search in accordance with section 2317.

**2303 AUTHORIZED PERSONAL REPRESENTATIVE**

2303.1 A personal representative (“authorized personal representative”) as defined in section 2399 may act on behalf of a consumer for purposes of this chapter.

**2304 APPLICATION PROCESS**

2304.1 Each application for an HFS shall be in writing on a form prescribed by the Department and signed by:

- (a) The consumer who is applying; or in the case of an authorized personal representative, the representative (hereafter known as “the applicant”); and
- (b) The Community Support Worker or other qualified practitioner at the CSA or other mental health provider agency where the consumer is actively engaged.

2304.2 Each application form shall include the Department’s Consumer Rights Statement.

2304.3 Each applicant shall sign a document acknowledging receipt of the Department Consumer Rights Statement and a release of information that allows the Department to obtain or verify information necessary to determine eligibility for an HFS. The release of information shall be consistent with D.C. Official Code § 7-1201.01, *et seq.*

2304.4 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, of the ward. The

applicant shall provide documentation required by the Department, including, but not limited to, evidence of:

- (a) The consumer's serious and persistent mental illness ("SPMI");
- (b) Annual Income;
- (c) Registration, or verification of an appointment for registration, at the District of Columbia Housing Authority ("DCHA") for any permanent housing assistance for which the applicant may be eligible (unless the applicant is ineligible to register with DCHA); and
- (d) Enrollment with a CSA.

- 2304.5 An applicant's CSA shall encourage and assist the applicant in applying for any public benefit for which he or she may be eligible.
- 2304.6 The application is complete when all of the information required by the Department is furnished to the Department.
- 2304.7 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 where an applicant is actively engaged 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.
- 2304.8 An applicant or CSA may submit a completed application to the Department for review. The Department shall record the date that the completed application is received and shall provide a dated notice of receipt to the applicant.
- 2304.9 If the Department determines that an application is not complete, the Department shall notify the applicant and the CSA or other mental health provider in writing within five (5) business days of receiving the incomplete application. The notice shall identify the additional information needed to process the application.
- 2304.10 The Department will retain an incomplete application for fifteen (15) business days following notification to the applicant that the application is incomplete. The CSA or applicant shall submit the required documents and/or information within fifteen (15) business days of notification. If the required information is not submitted by the required date, the Department will consider the application canceled and the CSA and applicant must submit a new application.
- 2304.11 The Department shall determine each applicant's eligibility no later than fifteen (15) business days after the date a complete application is received. The Department shall not be responsible for delays caused by:

- (a) The applicant's failure to supply information to verify facts stated in the application, without which the Department is not able to determine eligibility;
- (b) The inability to contact the applicant or authorized personal representative by written correspondence and by telephone;
- (c) Evidence of misrepresentation in the application that may result in further investigation; or
- (d) Any other delay in receipt of information or documentation necessary to complete the application over which the CSA, mental health provider, Department, or consumer has no control.

2304.12 If a housing emergency occurs during the application process, the CSA or other mental health provider, and the Department shall take reasonable steps to process the completed application within five (5) business days of receiving notification of the housing emergency. Examples of housing emergencies include, but are not limited to:

- (a) Incidents of domestic violence or abuse at the applicant's current housing;
- (b) Witnessing or becoming the victim of crime at the housing location;
- (c) Loss of housing pursuant to Title 14 DCMR, Section 115.1;
- (d) Receipt of a notice to quit or vacate;
- (e) A medical emergency or substantial change in medical condition that requires a change in unit location or configuration; or
- (f) Any other situation that the Director on a case-by-case basis qualifies as an emergency, based upon the consumer's health or safety issues, or as required to comply with applicable laws.

2304.13 Once an applicant is determined eligible for an HFS pursuant to section 2305, and an HFS becomes available, the Department shall send a written eligibility determination to the applicant, CSA or other mental health provider, 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 in accordance with section 2317;

- (c) The amount of financial contribution that the eligible consumer is required to contribute per month; and
  - (e) The contact name and telephone number of a Department representative.
- 2304.14 If an applicant is determined eligible, but no HFS is available, the Department shall send a written eligibility determination to the applicant, CSA or other mental health provider. 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.
- 2304.15 If an applicant is determined eligible, but no HFS is available due to a lack of funding, the Department shall place the eligible consumer on a waiting list pursuant to section 2306.
- 2304.16 If an applicant is determined ineligible, the Department shall send written determination of ineligibility to the applicant, CSA or other mental health provider. 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 2323; and
  - (d) The contact name and telephone number of a Department representative.

## **2305 ELIGIBILITY CRITERIA**

- 2305.1 The Department may determine an applicant is eligible to receive an HFS, if he or she:
- (a) Is a consumer of mental health services, as defined in D.C. Official Code § 7-1131.02(2) who is actively engaged with a CSA, or other mental health provider as defined in subchapter 2399;
  - (b) Has a serious and persistent mental illness (“SPMI”);

- (c) Is eighteen (18) years of age or older or is the legal guardian of a child receiving mental health services as defined in D.C. Official Code § 7-1131.02(18) and is residing with the child;
  - (d) Demonstrates that his or her household income does not exceed the amount specified in section 2305.2;
  - (e) Demonstrates that the applicant has registered for, or has a verifiable appointment to register for permanent housing assistance through DCHA, unless the applicant is ineligible to register with DCHA; and
  - (f) Has a demonstrable need for the HFS because no other suitable housing options are available for the consumer.
- 2305.2 The eligible individual's adjusted income, as defined in section 2399, in 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.
- 2305.3 The Department may require the applicant or other household members to execute one or more Department Authorizations that authorize a federal, state or private source of information to release to the Department information necessary to verify eligibility. The release of information shall be consistent with D.C. Official Code § 7-1201.01 *et seq.*, and other applicable federal and local privacy laws.
- 2306 WAITING LIST**
- 2306.1 A determination of eligibility shall be sufficient to place an eligible consumer on the waiting list, in the manner described in this section.
- 2306.2 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 pursuant to section 2302;
  - (b) The eligible consumer does not submit the HFS Package identified in subsection 2309.4(d) to the Department within the required timeframe pursuant to subsection 2317.4; or
  - (c) The eligible consumer is incarcerated, or hospitalized.
- 2306.3 An eligible consumer shall be placed on the waiting list in chronological order by the date the Department receives the consumer's completed application.

- 2306.4 If the Department establishes preferred selection pursuant to section 2307, the Department may place an eligible consumer who meets the preferred selection criteria at the top of the waiting list.
- 2306.5 The eligible consumer or CSA shall provide the Department with the eligible consumer's current mailing address and telephone number. Each change of address shall be reported in writing to the Department within five (5) business days of the change.
- 2306.6 If the eligible consumer fails to ensure the Department has the consumer's current mailing address and/or telephone number and the Department needs to contact the consumer because a subsidy is now 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 30 calendar days of the first day of attempted contact, the consumer will move to the end of the waiting list and the next person on the list will be contacted for utilization of the subsidy. The Department shall document all attempted contacts.
- 2306.7 When an eligible consumer is notified that funding for an HFS for his or her use in accordance with this chapter is now available, the Department shall re-determine the eligibility status and income of the consumer.

**2307 PREFERRED SELECTION**

- 2307.1 Consistent with the Mental Health Establishment Amendment Act of 2001 and D.C. Official Code § 21-501 *et seq.*, the Director may establish priorities for receipt of an HFS for eligible consumers.
- 2307.2 Consumers who are being discharged from a hospital pursuant to D.C. Official Code § 21-526(e) will have highest priority for receipt of an HFS if one is available and the consumer qualifies for it, in order to ensure the person is timely discharged.
- 2307.3 The Director may, as necessary, consider the following factors when establishing priorities:
- (a) Discharge from St. Elizabeths Hospital;
  - (b) Homeless consumers;
  - (c) Consumers with critical health care needs or requirements;
  - (d) Consumers who are children or have children with special needs; and
  - (e) Emergency situations involving the health or safety of the consumer or consumer's family.

**2308 COMPUTATION OF PAYMENT**

- 2308.1 The Department shall determine the amount of each HFS payment made on behalf of an eligible consumer based on:
- (a) The eligible consumer's adjusted income reported in the application or the most recent re-certification; and
  - (b) Rental rates established by the Department. The Department may approve an HFS in an amount not to exceed eighty percent (80%) of the annual Fair Market Rent Value calculated by the U.S. Department of Housing and Urban Development for the Metropolitan Washington D.C. area.
- 2308.2 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.
- 2308.3 For each approved HFS, the Department shall issue the HFS 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.
- 2308.4 The amount of the total rent due under a lease shall not exceed the limits set by the Department pursuant to subsection 2308.1(b). If utilities are included in the total rent, a higher rent may be considered for approval. The HFS, however, will be based on the rent limit set by the Department pursuant to subsection 2308.1(b) and not on the actual rent charged by the landlord which includes a utility fee. The difference between the Department limits and the higher rent will not exceed the amounts in the *U.S. Housing and Urban Development, Section 8 Housing Allowances for Tenant Furnished Utilities and Other Services* schedule, or its replacement schedule, as maintained by the District of Columbia Housing Authority, in effect at the time of lease-up.
- 2308.5 Rent rates established by the Department pursuant to subsection 2308.1(b) shall be effective for new leases and lease renewals that occur after the effective date of this chapter.

**2309 HOME FIRST SUBSIDY PAYMENT**

- 2309.1 The Department shall not provide an HFS if permanent housing that does not require the eligible consumer to relocate is available. Permanent housing may include, but is not limited to, a Housing Choice Voucher or other permanent housing assistance pursuant to a federal or District housing subsidy program.
- 2309.2 Once the Department has identified funds for an HFS 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.

- 2309.3 Upon written notification by the Department of the availability of HFS funds, the consumer will have ninety (90) days to submit a complete HFS package (described below in subsection 2309.5(d)). The consumer, CSA or authorized representative may request up to three thirty (30) day extensions in which to submit a completed HFS package in accordance with subsection 2317.5.
- 2309.4 The Department may approve an HFS 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 HFS;
  - (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 subsection 2308.1(b);
  - (d) The housing unit has a valid business license and certificate of occupancy, as required by applicable District law;
  - (e) The eligible consumer, CSA or other mental health provider submits to the Department an HFS Package, which includes:
    - (1) A Program Agreement signed by the eligible consumer;
    - (2) A Subsidy Approval Form signed by the landlord;
    - (3) A completed Housing Pre-Inspection Checklist; and
  - (f) The Department approves the HFS Subsidy Approval Form in writing.
- 2309.5 The Department shall render its initial response to the HFS package within ten (10) days of receipt.
- 2309.6 If the HFS package is approved, the Department shall notify the eligible consumer and CSA or other mental health provider that the HFS is approved by providing the eligible consumer a copy of the HFS Subsidy Approval Form signed by the Department.
- 2309.7 If the HFS 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 or other mental health provider have ten (10) business days to provide the Department a completed HFS package or the Department may deny the HFS package, and the consumer will be placed back on the waiting list.

- 2309.8 The Department may authorize payment of an HFS for an eligible consumer only after 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.
- 2309.9 The Department shall issue an approved HFS in the form of non-cash payment directly to the landlord.
- 2309.10 The Department shall only provide an HFS for actual rent obligations incurred by the consumer in a manner consistent with this chapter.

**2310 ANNUAL TENANT RE-CERTIFICATIONS**

- 2310.1 The Department or its designee shall examine and re-determine the eligibility status and annual income of each eligible consumer receiving an HFS at least annually, to ensure that HFS are provided to consumers who continue to meet the eligibility requirements.
- 2310.2 The annual re-certification date shall be the anniversary date of the first day of the month in which the eligible consumer began receiving an HFS.
- 2310.3 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.
- 2310.4 The Department shall re-determine the eligibility status and income of a consumer who is on the waiting list at the time an HFS becomes available for the consumer.
- 2310.5 The Department shall send written notice of the re-certification requirement and an appointment date and time for re-certification, to each eligible consumer who is receiving an HFS, and his or her CSA or mental health provider, at least ninety (90) calendar days before the annual re-certification date.
- 2310.6 If the consumer fails to appear for the first appointment, a second appointment will be scheduled within the 90-day period. If the consumer fails to appear for the second scheduled appointment, absent good cause, the HFS may be suspended in accordance with subsection 2310.9.
- 2310.7 Each eligible consumer shall sign a Department Authorization to authorize the Department to obtain information necessary to verify continuing eligibility for the HFS.
- 2310.8 The Department shall continue providing HFS payments during the re-certification process.

- 2310.9 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 may suspend an HFS until the re-certification process is finished.
- 2310.10 The Department shall provide an eligible consumer, his or her CSA and any authorized representative, written notice of a suspension. An eligible consumer may appeal the suspension pursuant to section 2324.
- 2310.11 If an HFS is suspended pursuant to subsection 2310.9, the Department shall not retroactively pay the suspended amount of the HFS when the re-certification process is finished.
- 2310.12 The Department shall provide written notification to each consumer, his or her CSA and any authorized representative if the consumer's HFS is terminated as a result of the annual re-certification. A consumer may appeal termination of a subsidy pursuant to section 2324.
- 2310.13 Termination of the HFS because the consumer's income exceeds 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, will occur when the consumer's average income for the previous 12 months exceeds the 30% threshold.
- 2310.14 A re-certification that results in a decrease in the amount of the HFS shall be effective thirty (30) calendar days after written notice is provided to an eligible consumer. The eligible consumer may appeal the reduction in the amount of the HFS pursuant to section 2324.
- 2310.15 A re-certification that results in an increase in the amount of the HFS 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 HFS is increased as a result of the annual re-certification.

## **2311 CONSUMER PARTICIPATION**

- 2311.1 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.*
- 2311.2 Each program participant shall:
- (a) 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 proof of annual income required pursuant to subsection 2304.4(b);
- (d) Attend an orientation session scheduled by the Department within the first three (3) months of occupancy;
- (e) Pay the Total Consumer Rent Payment 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 HFS, if necessary, can occur pursuant to section 2310;
- (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, unless emergency conditions exist pursuant to subsection 2319.3;
- (l) Maintain active engagement with a CSA or other mental health provider while receiving an HFS;
- (m) Notify his or her representative payee of eligibility for and receipt of an HFS, if applicable; and
- (n) Execute and comply with a Program Agreement with the Department, which shall incorporate the rules in this chapter.

2311.3 The consumer is not responsible for payment of the portion of the rent owed to the Landlord that is to be paid through the HFS as covered in the Subsidy Approval between DMH and the Landlord.

2311.4 The consumer shall not be required to pay any additional rent to the Landlord than what is required as the Total Consumer Rent Payment in the lease.

2311.3 If an eligible consumer fails to comply with any paragraph of subsection 2311.2, the Department and CSA shall utilize all available means to engage the consumer and ensure compliance.

**2312 CORE SERVICE AGENCY AND OTHER MENTAL HEALTH PROVIDER RESPONSIBILITIES**

2312.1 Each CSA or other mental health provider shall:

- (a) Designate at least one (1) staff member to coordinate activities for supportive housing and attend monthly housing meetings scheduled and facilitated by the Department's Housing Program;
- (b) Make available to the public HFS applications provided by the Department and accept applications from applicants who request an HFS;
- (c) Advise each applicant of the eligibility requirements before submitting an application;
- (d) Ensure that each applicant signs a Department Consumer Rights Statement and a release of information that allows the Department to obtain or verify information necessary to process an application and determine eligibility. The CSA or other mental health provider shall include the signed Department Consumer Rights Statement and release of information form in the application package submitted to the Department;
- (e) Submit each completed application to the Department for review and processing;
- (f) Provide the Department with a monthly Housing Safety/Quality Checklist and Home Visit Report, for each eligible consumer receiving an HFS no later than the fifth (5<sup>th</sup>) day of the subsequent month, in accordance with subsection 2207.3;
- (g) Ensure proper documentation is provided to the Department within fifteen (15) calendar days of notification by an eligible consumer of any change in benefits, income, or family composition;
- (h) Notify the Department when it becomes aware of any change in the consumer's benefits, income, or household composition;
- (i) Provide statistical data and reports related to the HFS as requested by the Department;

- (j) Inform the Department of any change in the applicant's or eligible consumer's CSA or other mental health provider and provide the Department a copy of the transition plan;
- (k) Ensure supportive housing services are specific to each eligible consumer's rehabilitation needs and treatment or recovery plan; and
- (l) Assist the consumers in applying for emergency rental assistance when needed.

2312.2 If requested by an eligible consumer, or if aware of the eligible consumer's need for assistance, each CSA or mental health provider shall:

- (a) Assist each applicant with applying for any public benefits for which he or she may be eligible;
- (b) Assist each applicant with registering for any housing assistance program for which he or she may be eligible, including but not limited to the DCHA Housing Choice Voucher Program and Public Housing, if requested;
- (c) Assist each applicant with completing an HFS application form;
- (d) Assist each applicant with completing an HFS request for voluntary relocation form;
- (e) Assist an applicant with gathering documentation necessary to establish proof of:
  - (1) Annual Income; and
  - (2) Registration or an appointment to register at DCHA for a Housing Choice Voucher;
- (f) Submit in a timely manner a completed HFS package to the Department;
- (g) Accompany an eligible consumer to an orientation session scheduled by the Department;
- (h) Use community resources available to assist each eligible consumer in locating housing that complies with sections 2203 and 2318;
- (i) Assist consumers in obtaining any necessary reasonable accommodations;
- (j) Assist each eligible consumer with moving into or relocating to an available housing unit after written approval is provided by the Department;

- (k) Accompany each eligible consumer to sign the lease; and
- (l) Intervene on the consumer's behalf to resolve disputes between the consumer and landlord whenever possible through non-adversarial process involving negotiation, mediation and conciliation. The CSA may refer the consumer and landlord to the Department for additional dispute resolution resources.

**2313 LANDLORD PARTICIPATION**

2313.1 Each landlord who agrees to accept an HFS on behalf of an eligible consumer shall:

- (a) Execute a lease agreement with an eligible consumer that complies with applicable District laws;
- (b) Execute a Subsidy Approval Form with the Department, and agree to comply with the rules in this chapter;
- (c) Provide habitable housing in the District of Columbia in accordance with applicable federal and District laws relating to accessibility, health and safety;
- (d) Agree to 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;
- (e) 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;
- (f) Agree to allow DMH to conduct annual inspections of the unit;
- (g) Agree to 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 abatement of the HFS;
- (h) Notify the Department within five (5) calendar days if an HFS recipient is no longer living in a unit;
- (i) Agree to accept an HFS 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;
- (j) Agree to not levy fines or penalties against the consumer, or take action against the consumer to terminate the tenancy, for late payment of the HFS;

- (k) Notify the Department as well as the consumer when initiating any legal action against the consumer;
- (l) Participate in a mediation program before initiating a notice to quit, if an eligible consumer also agrees to participate.

- 2313.2 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.
- 2313.3 A landlord shall not take adverse action against an HFS recipient who is a tenant of the property while the Department and the landlord are actively working to resolve verification and payment issues.
- 2313.4 A landlord who accepts an HFS for a consumer who is no longer a tenant of the property, shall return the HFS to the Department within fifteen (15) calendar days of receipt.
- 2313.5 Nothing in this chapter shall be construed to create any rights, substantive or procedural, enforceable at law by a landlord in any matter, administrative, civil or criminal against the District.

#### **2314 DEPARTMENT RESPONSIBILITIES**

- 2314.1 The Department shall:
- (a) Administer the HFS in accordance with this chapter;
  - (b) Facilitate a housing meeting with CSA's and other mental health providers at least monthly;
  - (c) Provide application forms to each CSA, other mental health providers, and to the public;
  - (d) Provide a written determination of eligibility to each applicant, and his or her CSA or other mental health provider, within fifteen (15) business days of receiving a complete application, as described in section 2304;
  - (e) In case of an adverse decision as to eligibility, provide each applicant with notice of the right to file a grievance pursuant to , and the right to appeal pursuant to section 2323;
  - (f) Provide a housing vacancy list at least monthly to each CSA, other mental health provider, and other agency acting on behalf of an eligible consumer, with the understanding by all recipients that the list is not exhaustive and

consumers and mental health providers should not rely solely on the Department vacancy list to locate housing;

- (g) Inspect each unit prior to authorization of an HFS;
- (h) Conduct, or have its designee conduct, housing code inspections of the unit annually, and upon request of the consumer or landlord;
- (i) If requested and appropriate, refer a landlord, CSA, other mental health provider, or eligible consumer to available dispute resolution services;
- (j) Determine, in its sole discretion, whether to enter into or dissolve a Subsidy Agreement with a landlord;
- (k) Maintain a waiting list in accordance with section 2306;
- (l) Review and approve requests for reasonable accommodations;
- (m) Process annual and interim recertifications, unless that task has been designated to another agency or designee; and
- (n) Provide notice to consumers of the right to review, in accordance with Section 2323, if they are determined to be ineligible for an HFS; and of their right to appeal, in accordance with Section 2324, if their HFS is reduced, suspended or terminated.

## **2315 DAMAGE TO PROPERTY**

- 2315.1 Each eligible 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.
- 2315.2 An eligible consumer, CSA, or landlord may request that the Department arrange an inspection, by an agency other than the Department, to assess the nature and extent of the damage identified by the landlord or consumer.
- 2315.3 The Department's payment of an HFS 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 an HFS for the unit for any damage to the unit caused by the consumer.

## **2316 UTILITY EXPENSE**

- 2316.1 The Department may approve an HFS for a unit that includes utility costs paid for by a landlord as part of the rent rate, only if payment of utilities by the landlord is

evidenced by the lease agreement and the total rent rate does not exceed the Department approved rent rate pursuant to subsection 2308.5.

2316.2 Utility costs are the consumer's responsibility and will not be included in determining the consumer's obligation to pay 30% of household income towards the monthly rent.

2316.3 The Department shall not pay utility costs incurred by any consumer. These costs include(s) water, gas, electric, telephone and cable.

## **2317 HOUSING SEARCH**

2317.1 An eligible consumer may only search for HFS-eligible housing after he or she receives written authorization to begin a housing search from the Department.

2317.2 The Department shall provide at least monthly each CSA and other mental health providers a list of vacant units, with the understanding by all recipients that the list is not exhaustive and consumers and mental health providers should not rely solely on the Department vacancy list to locate housing. Consumers and mental health providers are encouraged to utilize other resources within the public domain to identify appropriate and available housing.

2317.3 Consumers who have been notified that an HFS is available, pursuant to section 2309.2, shall also be provided a list of vacant units.

2317.4 In addition to reviewing the list of vacant units provided by the Department, each eligible consumer, with the assistance of his or her CSA or other mental health provider, if requested, shall use other available community resources to find a unit of the size and rent that meets the criteria set forth in this chapter.

2317.5 If an eligible consumer does not locate housing within ninety (90) calendar days of receiving Department authorization to begin a housing search, the eligible consumer shall be placed on the waiting list in chronological order by the date the ninety (90) day timeline expires.

2317.6 A consumer, CSA, or authorized representative may request an extension of time to search for housing from the Department based on the eligible consumer's needs. An extension shall not exceed thirty (30) days. No more than three (3) thirty (30) day extensions may be granted. If the consumer does not submit an HFS Package to the Department by the extension deadline, the eligible consumer shall be placed on the waiting list in chronological order by the date the extension expired.

## **2318 ELIGIBLE UNITS**

2318.1 The Department may only provide an HFS for units that comply with this section, sections 2203, 2204, and 14 DCMR, Subtitle A, Chapters 1-12, as applicable.

- 2318.2 The following units shall not be eligible for an HFS:
- (a) Units that do not comply with this section, sections 2203, 2204, and 14 DCMR, Subtitle A, Chapters 1-12;
  - (b) Units owned by the eligible consumer's personal representative;
  - (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 HFS;
  - (d) Units owned by an individual employee of a CSA;
  - (e) Units owned by a treating mental health provider as defined in section 2399;
  - (f) Units on the grounds of educational institutions or units that are available only to students, staff or faculty of an educational institution; and
  - (g) Nursing homes.

2318.3 The Director may waive for good cause upon the request of a consumer.

### **2319 VOLUNTARY RELOCATION**

2319.1 To request relocation to another housing unit, an eligible consumer shall submit a written request for relocation to their assigned CSA, other mental health provider, or Department. The Department shall approve or deny each request for relocation in writing no later than fifteen (15) business days after the date a complete written request for relocation is received.

2319.2 The Department may provide written approval of an eligible consumer's request to relocate with an HFS 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 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 and 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 2308.1; and
- (g) The HFS recipient is in good standing and is not currently in violation of any obligations under this chapter.

2319.3 The Department may approve a transfer that does not meet the conditions specified in subsection 2319.2, if the Department determines that:

- (a) An emergency situation exists pursuant to subsection 2304.11;
- (b) The landlord is in violation of the lease, housing code, or requirements of this chapter, and continued occupancy in the unit jeopardizes the safety or health of the consumer;
- (c) The Department has terminated its Subsidy Approval with the landlord; or
- (d) The Director determines that unusual circumstances warrant relocation.

2319.4 If a transfer or relocation request is approved, an HFS Package, completed in accordance with subsection 2309.2, for the eligible consumer's new location must be submitted to the Department and approved prior to the consumer moving to the new location.

## **2320 TEMPORARY ABSENCES**

2320.1 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.

2320.2 Upon receiving proper notification of an absence, the Department may continue to provide an HFS 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.

2320.3 The Department may approve in writing an extension of no more than thirty (30) additional days of absence on a case by case basis.

2320.4 The Department may terminate an HFS 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 2320.2.

2320.5 The Department shall provide written notification at least thirty (30) days before termination to each consumer whose HFS is subject to termination pursuant to subsection 2320.4. A consumer may appeal a written notice of termination of a subsidy pursuant to section 2324.

## **2321 EVICTIONS AND LEASE TERMINATIONS BY LANDLORDS**

2321.1 Landlords receiving an HFS may only terminate a program participant's tenancy in accordance with lease terms and applicable District law.

2321.2 The Department may terminate HFS 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 HFS pursuant to sections 2322 - 2324.

## **2322 TERMINATION OF ASSISTANCE**

2322.1 The Department may terminate an HFS for an eligible consumer for any of the following reasons:

- (a) The consumer no longer meets the HFS eligibility requirements described in this chapter;
- (b) The consumer was offered, and accepted, permanent housing assistance through any other federal or District program or private source;
- (c) The consumer fails to permit the CSA or other mental health provider to conduct an in-home visit to his or her housing unit on a monthly basis as required for completing a Housing Safety/Quality Checklist and Home Visit

Report, and repeated attempts by the CSA and Department to work with the eligible consumer to allow visits to his or her housing unit have failed;

- (e) The tenant 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 2320.3 or no longer resides in the unit;
- (g) The consumer voluntarily relinquishes the HFS; or
- (h) The death of a consumer.

2322.2 The Department shall provide a consumer written notice of 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 2324, or file a grievance in accordance with 22A DCMR Chapter 3.

2322.3 Termination of the subsidy is effective immediately upon notification of a consumer's death.

2322.3 If the Department suspects tenant fraud, it may refer the case to the proper authorities for investigation.

2322.4 If a consumer has an HFS terminated, he or she may re-apply for the HFS in accordance with section 2304, and upon determination of eligibility will be placed on the waiting-list pursuant to section 2306.

### **2323 RIGHT TO REVIEW**

2323.1 The Department may afford an applicant the opportunity to seek review of the Department's decision to deny eligibility for an HFS.

2323.2 An applicant may request a review within fifteen (15) business days of the Department's denial of eligibility.

2323.3 Each request for a review shall contain a concise statement of the reason why the applicant should be determined eligible to receive an HFS, with supporting documentation, if available.

2323.4 Each administrative review shall be conducted by the Director and shall be completed within fifteen (15) business days of the receipt of the applicant's request.

2323.5 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 applicant in implementing the decision.

#### **2324 RIGHT TO A HEARING**

2324.1 A consumer who is receiving an HFS may request a hearing from the Department within thirty (30) business days of receiving written notice of reduction, suspension or termination of an HFS.

2324.2 A timely request for a hearing shall automatically stay the Department's decision to reduce, terminate or suspend an HFS pending the completion of a hearing.

2324.3 Each request for a hearing shall contain a concise statement of the reason why the HFS should not be reduced, terminated or suspended.

2324.4 During the course of the hearing, the appellant 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 appellant's expense.

2324.5 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.

2324.6 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.

2324.7 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.

#### **2399 DEFINITIONS**

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

Actively Engaged - a consumer interacts with or is provided services from a CSA or other mental health provider at least once every thirty (30) days, or in accordance with the consumer's individual recovery plan.

Application - the Department's Home First Subsidy Application, which determines whether or not a consumer is eligible to receive a home First Subsidy

Authorized personal representative - either of the following:

- (a) An individual, whether or not an attorney, designated by a consumer of mental health services to represent the consumer's personal interests with regard to his or her mental health and housing needs, for whom the Department has received a completed and signed Department Authorization to Use or Disclose Protected Health Information; or
- (b) An individual specifically authorized by a court of competent jurisdiction as the legal representative or guardian of a consumer, for whom the Department has received a copy of the court authorization.

Annual Income - annual income as defined in Title 24 of the Federal Code of Regulations, Subtitle A, Part 5, Subpart F.

Adjusted Income - adjusted income as defined in Title 14, DCMR subsection 6099.1.

Community Residence Facility - a licensed residence which provides twenty four (24) hour on-site supervision, lodging, and meals in a supportive, homelike environment for individuals who require supervision within a structured environment that can include specialized services such as medical, psychiatric, nursing, behavioral, vocational, social, or recreational services.

Consumer - a person 18 years of age or older eligible to receive mental health services and mental health supports as defined in § 102 of the Act (D.C. Official Code § 7-1131.02(18) and (19)).

Core Services Agency or CSA - a community-based provider of mental health services and mental health supports that is certified by DMH in accordance with rules published in the D.C. Municipal Regulations, and acts as the clinical home for consumers of mental health services by providing a single point of access and accountability for mental health rehabilitation services.

Department Authorization to Use or Disclose Protected Health Information or Department Authorization - a document prepared and distributed by the Department of Mental Health which is signed by a consumer to allow the Department and other service providers to share specific protected health information. For purposes of this chapter, the Department Authorization may be

used to verify income and eligibility requirements necessary to apply for and receive an HFS.

Department Consumer Rights Statement - a document prepared and distributed by DMH to all Mental Health providers which describes all the consumer rights and protections available under federal and District laws and regulations.

Director - The Director of the District of Columbia Department of Mental Health.

District of Columbia Housing Authority or DCHA - The agency of the District of Columbia to whom authority and responsibility for the implementation and enforcement of Title 14 has been delegated by the Mayor.

DMH or Department - the District of Columbia Department of Mental Health.

Eligible Consumer - a consumer who the Department determines is eligible for an HFS pursuant to section 2305.

HFS Application Package - the documents necessary to apply for participation in the DMH housing subsidy program to become an "eligible consumer."

HFS Approval Package - the documents necessary to initiate payment of the subsidy to the landlord, once the eligible consumer has been notified that a subsidy is available.

Homeless Consumer - a consumer who:

- (a) Lacks a fixed, regular, and adequate nighttime residence; or
- (b) Has a primary nighttime residence that is:
  - (1) 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);
  - (2) an institution that provides a temporary residence for individuals intended to be institutionalized; or
  - (3) 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. Any persons representing the actual owner shall be bound to comply with the terms of this chapter, and any notice or rules and regulations issued pursuant to this chapter, to the same extent as if he or she were the landlord.

Other mental health provider - a subprovider, specialty provider, or free standing mental clinic that is certified by and receives funds from the Department of Mental Health, or a mental health professional or mental health entity that enters into a written agreement with the Department which describes each party's responsibilities specific to housing.

Program Agreement - a document signed by the Program participant which outlines the responsibilities of the consumer receiving an HFS.

Program Participant - a consumer currently receiving an HFS.

Project-based subsidy - a subsidy that is attached to a specific unit, regardless of who resides in that unit.

Serious and Persistent Mental Illness or "SPMI" - a diagnosable mental, behavioral or emotional disorder which substantially impairs the mental health of the person or is of sufficient duration to meet diagnostic criteria with the Diagnostic and Statistical manual of Mental Disorders - IV ("DSM-IV") or its International Classification of Diseases, Ninth Revision, Clinical Modification ("ICD-9-CM") equivalent with the exception of DSM-IV "V" codes, substance abuse disorders, mental retardation and other developmental disorders, or seizure disorders, unless those exceptions co-occur with another diagnosable mental illness.

Specialty provider - a community-based organization MHRS provider certified by DMH to provide specialty services either directly or through contract. Each specialty provider shall enter into an affiliation agreement with each DMH-certified CSA.

Subprovider - a community-based organization certified by DMH to provide one or more core service(s) through an affiliation agreement with a CSA.

Unit - any habitable room or group of habitable rooms located within a residential building and forming a single unit which is used or intended to be used for living, sleeping, and the preparation and eating of meals.

Utility - water, electricity, gas or other fuels, sewer or refuse service.

**Subsection 2201.3 of Chapter 22 of Title 22A DCMR is deleted in its entirety and amended to read as follows:**

- 2201.3 Each CSA providing housing support, either directly or through a specialty or subprovider, shall notify, in writing, each consumer receiving housing support of the need for the CSA to conduct initial, and thereafter monthly, inspections in compliance with the requirements of this rule. This notification must include provision of a copy of the DMH provided Housing Safety/Quality Checklist and Home Visit Report that is used to evaluate housing. Other housing inspection forms, such as those required for subsidy programs, may be substituted at the sole discretion of DMH.

**Section 2205 of Chapter 22 of Title 22A DCMR is deleted in its entirety and amended to read as follows:**

**2205 TRAINING**

- 2205.1 DMH shall provide training to persons who are responsible for completing the DMH Housing Safety/Quality Checklist and Home Visit Report.
- 2205.2 Each person who completes the checklist and report shall attend mandatory DMH Housing Safety/Quality Training prior to monitoring housing and shall attend annual refresher training.

**Section 2207 of Chapter 22 of Title 22A DCMR is deleted in its entirety and amended to read as follows:**

**2207 HOME INSPECTIONS BY CORE SERVICES AGENCIES**

- 2207.1 The CSA with which the consumer is enrolled for individual recovery planning shall evaluate all DMH supported housing by using the DMH Housing Safety/Quality Checklist before the consumer enters into the lease. If the consumer enters a lease prior to the CSA's knowledge, the CSA shall evaluate the housing as soon as it becomes aware that the consumer has entered a lease. The consumer, or parent or guardian for children and youth as appropriate, shall hold the lease for housing that receives DMH subsidized rents for any type of housing arrangement covered by these rules.
- 2207.2 Conversion to consumer held leases as new consumers are housed and as leases come up for renewal shall commence within six (6) months of adoption of these rules.
- 2207.3 Each CSA with which the consumer is enrolled shall complete the Housing Safety/Quality Checklist and Home Visit Report at least monthly beginning from

the date that the lease is secured, or the date that mental health housing supports are initiated for a consumer already in housing, and on an as needed basis.

- 2207.4 Each CSA, in order to assist with developing and improving activities of daily living, shall monitor the housing of its enrolled consumers who live in housing directly provided by the CSA, receive a rental subsidy, receive assistance from the CSA in locating or arranging for the residence, receive community supports from or through the CSA in the consumer's home (other than a private family home or licensed community residence facility) or live in housing developed or provided by DMH funding.
- 2207.6 The completed Housing Safety/Quality Checklists and Home Visit Report shall be filed in the consumer's clinical record at the CSA.
- 2207.7 Each CSA shall submit copies of all completed Housing Safety/Quality Checklists with a brief summary cover sheet to the DMH Office of Accountability no later than fifteen (15) business days following the end of each quarter. Each quarter is based on the fiscal year which begins on October 1.
- 2207.8 Each CSA shall submit original Home Visit reports to the DMH Housing Office no later than ten (10) business days following the last day of the calendar month.

**Section 2299 of Chapter 22 of Title 22A DCMR is amended by deleting the definition of "Quarterly Reporting".**

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 Suzanne Fenzel, Assistant Attorney General, Office of General Counsel for the Department of Mental Health at 64 New York Avenue, N.E., 4<sup>th</sup> Floor, Washington, D.C. 20002, or e-mail [Suzanne.Fenzel@dc.gov](mailto:Suzanne.Fenzel@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.