

DEPARTMENT OF MENTAL HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Mental Health, pursuant to the authority set forth in sections 104 and 105 of the Mental Health Service Delivery Reform Act of 2001 (Act), effective December 18, 2001, D.C. Law 14-56; D.C. Official Code §7-1131.04 and 7-1131.05 (2001), respectively, hereby gives notice of the adoption of the following new Chapter 22 of Title 22A of the D.C. Code of Municipal Regulations, entitled Standards for Supported Housing for DMH Consumers.

Final action to adopt these rules was taken on July 15, 2005. Notice of Emergency and Proposed Rulemaking was published on June 10, 2005 (52 D.C.R. 5470). Chapter 22, Title 22A, DCMR establishes minimum requirements for all housing (other than licensed community residence facilities) that receives support from the Department of Mental Health (DMH), including access to housing support services for consumers, financial support for housing (whether directly paid for by DMH or through a fiscal intermediary), and related support services. These minimum requirements include physical plant requirements, access to transportation, monitoring, and other provisions. Comments have been received and considered. There have been no substantive changes made to the proposed rules. These rules will be effective on the publication of this notice in the D.C. Register.

These final rules: (1) address supported housing for children and youth and the required involvement of parents or guardians; (2) clarify that submission of the quarterly Safety/Quality Checklists to DMH is based on fiscal year quarters beginning October 1 and not on calendar year quarters, and require that a summary cover sheet be sent with the Checklists; (3) require documentation in a consumer's record of the assistance provided to a consumer in contacting the landlord to arrange for needed repairs; (4) change the percentage of random oversight inspections performed by DMH of consumer occupied housing from 25% to a sampling; (5) revise the definition of consumer to include child and youth; (6) add a definition of quarterly reporting to the section on definitions; and (7) increase the maximum number of blocks that housing must be near public transportation to 6 blocks from 4 blocks.

Title 22A DCMR is amended by adding the following new Chapter 22:

CHAPTER 22

STANDARDS FOR SUPPORTED HOUSING FOR CONSUMERS

2200 PURPOSE AND APPLICATION

2200.1 These rules establish the minimum requirements for all providers who support Department of Mental Health (DMH) consumers in housing, excluding private family homes and licensed community residence facilities.

2200.2 These supported housing rules are applicable to homeless adults, children and youth enrolled in DMH. The parents or guardians of children and youth shall act on their behalf for housing issues, as needed and appropriate.

2200.3 Housing support may occur as follows:

- (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 either directly to a consumer or payable to a landlord for the benefit of a consumer;
- (c) A CSA, either directly or through a specialty or subprovider, may assist a consumer with locating or arranging for the residence;
- (d) A CSA or other provider may provide mental health services and supports in the consumer's home (other than a private family home or licensed community residence facility) 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.

2200.4 Each consumer seeking support from DMH to obtain supported housing or maintain supported housing in the District of Columbia shall be enrolled with a CSA.

2200.5 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 that describes each party's responsibilities specific to housing.

2201 GENERAL PROVISIONS

2201.1 Each consumer who is receiving services from DMH through a CSA and is in need of housing or resources to secure housing shall be given choice in the type of housing (i.e., independent, congregate). The CSA with whom the consumer is enrolled shall provide supports as identified through the individualized recovery planning process to assist the consumer as needed in whatever type of housing is chosen by the consumer.

2201.2 If a consumer chooses to enroll with a CSA other than the CSA providing the housing to the consumer, the consumer shall not be required to move from any housing associated with the previous CSA if that previous CSA receives housing

- support funding from DMH as described in § 2200.3(e). The CSA providing the housing shall not require the consumer to choose it as the consumer's CSA for MHRS or Medicaid services.
- 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 quarterly, 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 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.
- 2201.4 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.
- 2201.5 For purposes of these rules, mental health services and supports include, but are not limited to, services that address clinical, environmental, and therapeutic needs identified by the consumer and the treatment team. These services include community support in the consumer's living environment (i.e., training in life skill activities, home management, and community services), crisis intervention, and assistance with self-advocacy. Support is provided through a comprehensive continuum of care that is individualized, flexible, and recovery based.
- 2202 FINANCIAL SUPPORT**
- 2202.1 Any housing for which a financial subsidy is provided shall meet the standards established in all applicable federal and District laws and regulations including, but not limited to, 14 DCMR, Subtitle A, Chapters 1-12.
- 2202.2 Nothing in this rule is intended to nullify the obligation that the CSA has to comply with all inspection and documentation requirements of the applicable subsidy program for any housing for which financial subsidy is provided.
- 2203 PHYSICAL PLANT REQUIREMENTS**
- 2203.1 All housing covered under these rules shall be in compliance with all applicable governmental regulations including, but not limited to, 14 DCMR, Subtitle A, Chapters 1-12.
- 2203.2 All housing and its furnishings shall be clean, safe, in sanitary condition, in good repair, and free from rodents and vermin.
- 2203.3 Each facility, utility, and fixture shall be properly and safely installed and shall be maintained in a safe and good working condition.

- 2203.4 Each facility for cooking, storage, or refrigeration of food shall be maintained in a sanitary, safe, and good working condition.
- 2203.5 Each kitchen sink, lavatory, and bathing facility shall be properly connected with both hot and cold water lines.
- 2203.6 Adequate facilities for heating, ventilation, and lighting shall be provided.
- 2203.7 Each consumer shall be provided with an adequate lock and key for each door used or capable of being used as an entrance to or exit from the housing.
- 2203.8 Each lock shall be kept in good repair and shall be capable of being locked from inside and outside the housing.
- 2203.9 Required fire extinguishing equipment shall be present in a conspicuous, accessible location and in an operable condition.
- 2203.10 All emergency exit doors shall be operable at all times.
- 2203.11 All fire escapes, stairways, and other egress facilities shall be maintained in a good state of repair and shall be free from obstruction.
- 2203.12 Basic amenities in all housing covered by this rule shall include: refrigerator, stove, oven, hot water, whole house heating (central, base board, or radiator), oscillating fan if no central air conditioning, secure door locks, basic furniture (bed, pillow, dresser, chair/couch, dining table, and chairs), basic kitchen set-up (plates, glasses, utensils, pots, and pans), and basic linens (bath towels, hand towels, wash cloths, sheets, blankets, pillowcases, and dish towels).

2204 ACCESS TO TRANSPORTATION

- 2204.1 Any housing for which support is provided by DMH or providers certified or licensed by DMH shall be located within a reasonable walking distance, which is six (6) blocks or less, from public transportation.

2205 TRAINING

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

2206 DMH INSPECTIONS OF HOUSING BUILT OR RENOVATED USING DMH FUNDS

2206.1 DMH shall conduct annual inspections of one hundred percent (100%) of the residences that meet both descriptions below by using the DMH Housing Safety/Quality Checklist:

- (a) The housing was built or renovated using DMH funds through the provision of a loan, grant or other financial supports in excess of \$49,999; and
- (b) No DMH enrolled consumers reside in the housing.

2206.2 If structural or environmental deficiencies exist that are the responsibility of the owner, DMH shall issue a Corrective Measure Plan (CMP) to the fiscal intermediary, individual, or business entity who received the loan, grant, or other financial support, and the owner of the residence within ten (10) business days of an inspection. For purposes of this section, the term "fiscal intermediary" refers to an organization that has a grant from or contract with DMH that allows it to develop housing or to finance housing.

2206.3 Within ten (10) business days of notice of the violation(s), the fiscal intermediary, individual, or business entity who received the loan, grant, or other financial support, and the owner of the residence shall each submit to DMH a Plan of Correction to address cited deficiencies.

2206.4 Thirty (30) calendar days after the approval of the Plan of Correction, DMH shall reinspect to determine if deficiencies have been corrected.

2206.5 If violations have not been corrected at the time DMH reinspects, DMH shall pursue any recourse available under the grant agreement or contract with the fiscal intermediary, individual, or business entity.

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 at least quarterly (every ninety (90) days) 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 quarter is based on the fiscal year which begins on October 1. Depending on when the lease is secured or housing supports begin, the first Housing Safety/Quality Checklist may not cover a full quarter, but must be submitted for the period covered. Each successive reporting period shall cover a full quarter.
- 2207.5 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 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 along 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.
- 2208 CORE SERVICES AGENCY ACTIONS TO CORRECT HOUSING PROBLEMS**
- 2208.1 If housing problems exist that are the responsibility of the landlord, the CSA with which the consumer is enrolled for individual recovery planning shall assist the consumer with contacting the landlord to arrange for needed repairs and maintenance. Assistance provided to the consumer shall be documented in the consumer's clinical record.
- 2208.2 If the deficiencies put the consumer in imminent danger, the consumer, with assistance from the CSA if needed, shall request that the landlord correct them immediately. If the deficiencies cannot be corrected immediately, the CSA shall provide the consumer, within twenty-four (24) hours, the opportunity and assistance to move to appropriate housing. If the consumer refuses to move, documented efforts by the CSA should continue as described in § 2208.4, and the

CSA shall assist the consumer in immediately notifying the housing authority described in § 2208.3.

- 2208.3 If the situation is not life threatening and the landlord does not provide needed repairs and maintenance within fifteen (15) days from the date the request was made, the CSA shall assist the consumer with contacting the Housing Regulations Administration of the Department of Consumer and Regulatory Affairs (DCRA/HRA) to file a formal complaint.
- 2208.4 If the above actions do not result in amelioration of the problems within sixty (60) days from the date the request was made, or if the consumer refuses to pursue the above actions, the CSA shall provide information to the consumer concerning his/her rights and options regarding housing. This shall include efforts by the CSA to show the consumer other available housing that meets all applicable governmental regulations. Documented efforts by the CSA should continue over time until the consumer secures housing that is in compliance with these rules.
- 2208.5 If problems exist that are the responsibility of the consumer, the CSA shall provide additional supports as identified through the individualized recovery planning process to assist the consumer in taking responsibility for correcting these problems, and shall document the offered services in the consumer's clinical record.
- 2208.6 Each CSA shall report unusual incidents in accordance with DMH unusual incident reporting procedures.
- 2209 OVERSIGHT AND MONITORING BY DMH**
- 2209.1 The DMH Office of Accountability has the primary responsibility for overseeing compliance with this rule and shall provide the Housing Safety/Quality Checklists and summary cover sheet to providers for use.
- 2209.2 Oversight shall include monitoring of CSA consumer clinical records, as needed, to ensure that the Housing Safety/Quality Checklist is completed as required prior to securing housing for the consumer and quarterly thereafter.
- 2209.3 Oversight shall include annual random inspections of a sampling of the supported housing as defined in § 2200.3. Increased levels of inspections may occur for housing that is subsidized or provided through a contractual arrangement with DMH. These inspections refer to housing that is occupied by DMH enrolled consumer(s).
- 2209.4 DMH may perform additional inspections of supported housing based upon complaints from consumers, families, or other interested parties regarding the safety or quality of the supported housing.

2210 DMH ACTIONS TO CORRECT HOUSING AND/OR HOUSING MONITORING PROBLEMS

- 2210.1 When consumers are in imminent danger as a result of housing conditions, the DMH Office of Accountability shall issue a Corrective Measure Plan (CMP) and direct the CSA to take action to correct the situation immediately, and shall notify the Director of DMH immediately.
- 2210.2 If deficiencies are life threatening and cannot be corrected immediately, the DMH Office of Accountability shall direct the CSA to provide consumers, within twenty-four (24) hours, the opportunity and assistance to move to appropriate housing.
- 2210.3 When serious environmental deficiencies are found in supported housing that is supported by a contract with DMH, DMH shall pursue the actions identified in §§ 2210 and 2212 against the organization that has the contract with the DMH.
- 2210.4 When deficiencies are not life threatening, the DMH Office of Accountability shall notify the CSA by issuing a CMP indicating any violation of these rules within ten (10) business days of an inspection.
- 2210.5 Within ten (10) business days of notice of the violation(s), the CSA shall submit a Plan of Correction to address cited deficiencies to the DMH Office of Accountability.
- 2210.6 Thirty (30) calendar days after the approval of the Plan of Correction, the DMH Office of Accountability shall reinspect to determine if deficiencies have been corrected.

2211 COMPLAINTS

- 2211.1 A consumer or someone acting on behalf of a consumer may file a grievance in accordance with 22A DCMR Chapter 3. The consumer may contact the DMH Office of Consumer and Family Affairs at the Mental Health Authority regarding the DMH grievance process.

2212 LEVYING OF SANCTIONS

- 2212.1 If violations have not been corrected at the time of the reinspection by DMH, DMH may pursue any or all of the following actions:
- (a) Impose civil fines issued pursuant to 16 DCMR, section 3502, based on violation of MHRS standards related to requirements of this rule.
 - (b) Impose sanctions provided for in contractual arrangements with the DMH; and/or

(c) Decertification of the CSA and its affiliates, as applicable.

2212.2 A CSA that is sanctioned under these rules may seek review by the Director of the DMH.

2299 DEFINITIONS

2299.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

“Affiliation” – means there is a written agreement between a business entity and a CSA or DMH that describes each party’s responsibilities specific to housing.

“Business Entity” – any entity that has responsibilities specific to housing or who is involved in activities related to provision of housing for DMH consumers and who is either a DMH certified CSA or has a written agreement with a CSA or DMH.

“Community Residence Facility” – a licensed residence which provides 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.

“Community Support” – rehabilitation and environmental supports considered essential to assist the consumer in achieving rehabilitation and recovery goals that focus on building and maintaining a therapeutic relationship with the consumer.

“Congregate” – a living setting where more than one individual with mental illness lives and which provides on-site staff supervision.

“Consumer” – as used in this chapter, an adult, child or youth who seeks or receives mental health services or mental health supports funded or regulated by the Department of Mental Health.

“Contract” – the written agreement that may be used for the procurement of housing, education or special education, health, human or social services, or other assistance, to be provided directly to individuals who are disabled, disadvantaged, displaced, elderly, indigent, mentally ill, physically ill, unemployed, or minors in custody of the District of Columbia. Contracts include Human Care Agreements for purposes of this rule.

“Core Services Agency” (CSA) – a DMH-certified community-based MHRS provider that has entered into a Human Care Agreement with DMH to provide specified MHRS.

“Corrective Measure Plan (CMP)” - the CMP is a written statement of non-compliance that describes the areas of non-compliance, suggests actions needed to bring the situation or violation into compliance with the standards, and sets forth a timeframe for submitting a written plan of correction.

“DMH” – the Department of Mental Health, the successor in interest to the District of Columbia Commission on Mental Health Services.

“Fiscal Intermediary” - an organization that has a grant from or contract with DMH that allows it to develop housing or to finance housing.

“Housing” – the dwelling where a person resides, either alone or with others, which is not a private family home, a licensed community residence facility, a crisis bed, a shelter, a residential treatment center, or St. Elizabeths Hospital.

“Imminent danger” - imminent danger is a situation in which the provider’s non-compliance with one or more DMH standards has caused, or is likely to cause, serious injury, harm, impairment, or death to a consumer. Imminent danger is interpreted as a crisis situation in which the health and safety of consumers are at risk.

“Independent” – a living setting where an individual with mental illness lives alone or with roommates of choice which does not provide on-site staff supervision.

“Mental Health Rehabilitation Services” (MHRS) - mental health rehabilitative or palliative services provided by a DMH-certified community mental health provider to consumers in accordance with the District of Columbia State Medicaid Plan, the MAA/DMH Interagency Agreement, and this chapter.

“Mental health services and supports”- means the services and supports funded or regulated by the Department for the purpose of addressing mental illness or mental health problems.

“Plan of Correction” - the provider’s written plan of correction that describes the actions to be taken and the timeframe for correcting the areas of non-compliance with standards in response to the Corrective Measure Plan issued by DMH.

“Private family home” – a residence with one (1) or more persons related by blood, marriage, or adoption, or not more than six (6) persons who are not so related, living together as a single house-keeping unit and which is not provided under a Human Care Agreement with the DMH.

“Provider” - (a) any individual or entity, public or private, that is licensed or certified by the District of Columbia to provide mental health services or mental

health supports, or (b) any individual or entity, public or private, that has entered into an agreement with DMH or a certified CSA to provide mental health services or mental health supports.

“Quarterly Reporting” – Copies of all completed Housing Safety/Quality Checklists along with a brief summary cover sheet are submitted by each CSA 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 and not on calendar year quarters.

“Subsidy Program” – This category includes these programs: Home First II, Shelter Plus Care, DMH Rental Subsidy Program, Section 8, and any other rental subsidy program developed by DMH.

“Utility” – water, electricity, gas or other fuels, sewer or refuse service.