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MEMORANDUM

To: Interested Parties

From: DMH Regulations

Date: February 15, 2018

Re: Notice of Final Promulgation – 104 CMR 27.00, 104 CMR 28.00 & 104 CMR 30.00

The Department of Mental Health has filed for final promulgation amendments to the following sets of regulations:

104 CMR 27.00 - Licensing and Operational Standards for Mental Health Facilities
104 CMR 28.00 - Licensing and Operational Standards for Community Services
104 CMR 30.00 - Fiscal Administration

All three sets of regulations were previously published for public comment and were the subject of public hearings. Comments have been reviewed and incorporated where appropriate. The revised regulations will be published in the Massachusetts Register on February 23, 2018, and will be effective on that date, subject to transitional provisions, if any. Unofficial copies of the revised regulations can be found on the DMH website, under the link for Proposed Regulations. The links under DMH Regulations will be updated when the regulations are published.

Highlights of the revised regulations are as follows:

104 CMR 27.00 - Licensing and Operational Standards for Mental Health Facilities

The amendments:

- Establish the requirement that any facility seeking a license to operate an inpatient psychiatric facility will meet the needs of the Commonwealth, as determined by the Department. This will help ensure that newly licensed facilities, and those seeking license renewals, will provide services to individuals and specialty populations currently

underserved and most likely to spend time boarding in emergency rooms waiting for placement.

- Require facilities to have adequate staffing y to meet the needs of their current operating capacity, and, if it is not operating at its licensed capacity, to demonstrate its plans to staff to its licensed capacity. This will mitigate circumstances in which facilities refuse to take admissions due to inadequate staffing, even though they may be operating below licensed capacity.
- Explicitly prohibit facilities from having admission exclusion criteria that would call for refusal of admission of any individual meeting commitment criteria under GL. c. 123, §12(b) or (e), while providing for preferential admission to facilities that provide specialty population care, and permitting refusal if the accepting such an admission would cause the facility to operate above its licensed capacity or beyond its capability to care for a specific patient.
- Update the existing provisions regarding DMH action in response to licensing deficiencies, using language that is consistent with DPH's licensing regulations.

The amendments contain several other significant revisions:

- Simplify application of privacy rules by applying federal HIPAA standards for disclosures for purposes of "treatment, payment and operations."
- New language allowing for alternative technology, such as telemedicine, previously approved by waiver.
- Clarify current licensing practice regarding DMH action in response to licensing application, plans of correction, staff training, notices to DMH from licensed facilities.
- Repeal out-dated section on behavior management.

In response to written and testimonial comments, DMH adopted further revisions, the most significant of which are:

- Clarified that required notice to DMH of inspections or surveys by accrediting entities be made as soon as possible after the initiation of an unannounced inspection or survey.
- Deleted language in proposed amendments referencing "medical clearance" for admissions, and to include individuals determined to meet statutory criteria for admission under M.G.L. C. 123 s. 12(e) among those whose admission is expected.
- Replaced the term "organic disorders" with "psychiatric or behavioral disorders or symptoms due to another medical condition," consistent with new DSM V nomenclature.
- Amended provisions regarding collection of admission data to clarify expectations for protecting patient-identifiable information in admission process, consistent with HIPAA.
- Amended language stipulating that after a pre-admission examination conducted via telemedicine, the patient shall be examined by a designated physician as soon as possible and no later than the next calendar day following the admission.
- Amended language to resolve confusion with BSAS regulations. Outdated BSAS definitions removed. Regulation simplified to refer to BSAS standards and to encompass

general detox of any substance use disorder, including alcohol withdrawal and opioid related disorders.

- Amended language to maintain the M.G.L. c. 123 legal status during emergent medical care of a patient who temporarily admitted to a medical facility;
- Removed "isolated area of a facility" from the definition of Seclusion;
- Clarified language regarding restraint or seclusion being used only in an emergency by adding "provided, however that physical restraint may be used if it is determined to be necessary to safely administer court authorized treatment";
- Reverted to existing language regarding duration of restraints to 2-hour limit for an adult and 1-hour limit for a child younger than 9 years old;
- Clarified that deprivation of food or sleep as required for medical procedures or treatment is not included in the prohibition on the use of corporal punishment, infliction of pain or physical discomfort;
- Clarified language concerning documentation of routine and emergency searches, particularly in emergency situations where a patient is not present during a search of the patient's personal property;
- Updated language concerning certain substance use disorder treatment, consistent with revised BSAS regulations and definitions;
- Revised timeline for implementation of proposed regulations to give providers adequate time to come into compliance

104 CMR 28.00 - Licensing and Operational Standards for Community Services

The amendments simplify application of privacy rules by applying federal HIPAA standards for disclosures for purposes of "treatment, payment and operations," in a manner consistent with amendments to 104 CMR 27.00

104 CMR 30.00 - Fiscal Administration

Principle changes:

- In-patient client funds: DMH clarified that the requirement to evaluate patients to determine if they can manage their facility held funds applies to both DMH facilities and DMH contracted units. DMH also added controls with regard to accounting for client funds.
- Community client funds: DMH limited the types of program that may hold funds on behalf of clients to those that provide clients with housing or supported services designed to assist the client in maintaining his or her residence. Except as to programs that serve as representative payee, the regulation was changed to limit the amount of funds that can be maintained in a group account for the client and to clarify that shared or delegated management of community client funds may only be done with client consent. It also eliminates the ability to establish client bank accounts in DMH or provider names. DMH also added controls to ensure proper accounting of funds. Reduced the burden on

licensed-only community programs by clarifying that DMH oversight of client fund management applies only to DMH operated or contracted programs

- Charges for Care: DMH changed the process for client appeals of charges to make them less onerous and to be consistent with DDS's process.
- Room and Board: DMH has determined to retain the room and board regulations as they currently exist, pending implementation of DMH's new adult community service model, ACCS.
- Canteen operations. DMH tightened restrictions regarding the use of canteen funds and added requirements regarding the tracking and reporting of such funds