

DEPARTMENT OF HEALTH

Amendments to Chapters 175-02, 175-14, 175-25, and 175-31
Hawaii Administrative Rules

October 18, 2010

SUMMARY

1. §11-175-02 is amended.
2. §11-175-14 is amended.
3. A new §11-175-25 is added.
4. §11-175-31 is amended.

Section 11-175-2, Hawaii Administrative Rules, is amended to read as follows:

"§11-175-02 Definitions. As used in this chapter:

"Abuse" means actual or threatened physical injury, psychological harm, or sexual violation of a consumer by another person.

"Adult mental health division" or "AMHD" means the division of the department that promotes and provides for the establishment and operation of a community-based mental health system pursuant to section 334-3, Hawaii Revised Statutes.

"Aftercare" means activities offered, in order to maintain gains received, to persons who formerly received treatment or rehabilitation services.

"Case management services" means those activities performed with consumer involvement by a single accountable individual to support the consumer and ensure that the consumer has maximal access to and receives all resources and services which can help the consumer reach and maintain an optimal level of community functioning and integration.

"Center" means the identifiable administrative unit which shall be the focal point for the development, delivery coordination of services in each service area.

"Certified substance abuse counselor" means a person who is certified as a substance abuse counselor by the Department of Health.

"Clinical record" means an individualized written transcript which documents a consumer's treatment plans, the treatment provided, response to treatment, and justification for any deviation from the treatment plan and any individual limitation of rights.

"Community based mental health and substance abuse system" means a publicly accountable and integrated array of accessible mental health and substance abuse services.

"Comprehensive treatment plan" means an individualized written design for service based on all available information and which contains goals related to identified problems, measurable objectives related to the goals methods for achieving objectives, expected achievement dates, frequency of treatment procedures, names of staff assigned, and date(s) the plan is reviewed and revised.

"Consultation services" means providing advice or assistance on matters relating to mental health or substance abuse to other service providers in their provision of services.

"Consumer" means a person who is receiving or has received mental health or substance abuse services or identifies oneself as receiving or having received such services.

"Continuing support" means continuing services designed to provide safety-net supports. The population focus is on individuals with a qualifying severe and persistent mental illness with accompanying severe functional impairment who do not have access to other mental health services.

"Contract provider" means an individual or agency providing mental health or substance abuse services by contract with the Department of Health.

"Council" means the state council on mental health and substance abuse.

"Crisis services" means time-limited services that are intensive and focused services designed to assess, stabilize, and provide linkage to treatment and other community supports, as appropriate. Crisis services are intended for individuals in mental health crisis or situational crisis and not already eligible for continuing support.

"Department" means the department of health, State of Hawaii.

"Director" means the director of health, State of Hawaii.

"Disaster" means an event of significant community impact that is outside the range of usual human experience and that would be markedly distressing to almost anyone, provoking, or expected to provoke intense helplessness, terror, or fear of serious threat to life or physical integrity, or sudden destruction of home or community infrastructure.

"Disaster services" means services that may include counseling, debriefing, or education intended to relieve or minimize the development of psychological distress or dysfunction in persons who have experienced stress from a disaster.

"Eligibility determination" or "eligibility assessment" means an assessment approved by AMHD, which is sufficient to diagnose persons with severe and persistent mental illness, individuals in an acute, severe mental health crisis, and those experiencing distress and trauma from a declared disaster, conducted in a standardized and timely manner for consumers who are applying for AMHD services to determine whether they are eligible for continuing support.

"Education services" means promotion, distribution and dissemination of relevant information on mental health and substance abuse.

"Emergency" means a circumstance or combination of circumstances which requires immediate response, the omission of which would seriously and immediately endanger the life or safety of a consumer or others. Bizarre or inappropriate behavior by a consumer without attendant dangerousness shall not constitute an emergency.

"Emergency treatment" means any treatment, the omission of which would seriously and immediately endanger the life or safety of a consumer or others.

["Evaluation services" means problem identification clinical diagnosis or diagnostic impression, assessment of the severity of each problem identified, identification of strengths and assets, and determination of treatment and rehabilitation services needed.]

["Follow-up services" means contact with consumers who have been discharged or who have discontinued affiliation with a program.]

"Global assessment of functioning" or "GAF" means a score assigned by the clinician, which is used as a criteria for psychological, social and occupational functioning on a numerical rating from 1-100 as described in the Diagnostic and Statistical Manual of Mental Disorders.

"Imminent harm" means that the staff of a psychiatric facility or residential treatment facility has reason to believe that without intervention by staff, a consumer would seriously and immediately endanger the life or safety of the consumer or others.

"Information services" means informing the public of available mental health, substance abuse and related services and how they may be obtained.

"Informed consent" means a voluntary, knowledgeable decision to allow any procedure, release of information, or other action, made by the patient or consumer, or the patient or consumer's attorney-in-fact, or guardian, based on a full disclosure and understanding of facts needed to make the decision and with appropriate documentation including the signature of the person who made the decision.

"Initial treatment plan" means an individualized written design for service used during the period from admission to completion of a comprehensive treatment plan.

"Intervention" means assisting individuals in using the system's services; and assuring that individuals and families receive immediate and appropriate services in a crisis.

Intervention shall include:

- (1) "Crisis services" which means activities provided at any location where the needs of the individuals can best be met to assure that individuals and families receive immediate and appropriate attention in an emergency, maintaining to the greatest degree possible, the consumer's status as a functioning community person. Emergency services include but are not limited to around-the-clock telephone service, availability of on-call trained personnel, outreach,

counseling of individuals and families, and short term admission to a crisis or psychiatric facility for stabilization, and short term planning to arrange linkages to needed services.

- (2) "Non-crisis services" which means activities which assist consumers to enter or make use of the service delivery system in a non-emergency situation.

"Least restrictive level of service" means treatment modalities and service settings which are the most therapeutic alternatives available for a consumer and which allow the consumer the greatest possible effective exercise of liberty.

"Long-term" care or long-term treatment" for the purpose of these rules, means care or treatment in a psychiatric facility exceeding 30 days or in a residential treatment facility exceeding 60 days.

"Neglect" means actual or potential physical injury psychological harm, or sexual violation of a consumer as the result of omission by a person with a duty to act.

"Non-indigent" means that a person has been determined to have the financial ability to pay a portion or all of the fees for care and treatment.

"Non-residential settings" means sites where consumers do not live and where mental health and substance abuse services are provided to those consumers.

"Outreach services" means actively seeking out persons at risk or in need of mental health or substance abuse services in non-treatment settings, alerting them and their families to the availability of resources, and motivating them to seek help.

"Paraprofessional" means a person working in a mental health or substance abuse program as part of a treatment team whose position does not require a professional degree or certification.

"Prevention" means activities which create conditions, opportunities and experiences designed to encourage and develop healthy self-sufficiency, increase personal competence, and reduce excessive stress, or assist in managing stress more effectively. Prevention occurs before a person loses the ability to function and before a person needs remedial services.

"Primary provider of service" means a staff member who is assigned primary responsibility for treatment of a consumer.

"Private provider" means an individual or agency providing mental health or substance abuse services which are not provided by or under contract with the department of health.

"Program" for the purpose of these rules, means the only or smallest distinct unit within a service setting offering treatment or care.

"Provider" of mental health, substance abuse, or other health services means:

- (1) For the purpose of the state council and service area board membership, an individual whose training, purpose, or primary current activity, or identified affiliation is in the direct provision or administration of mental health, substance abuse, or other health services;
- (2) Otherwise, it means an individual or agency providing mental health and substance abuse services.

"Qualified interpreter" means a person who has demonstrated competence in both English and the other language for which interpretation is to be provided and who has within the last 12 months participated successfully in a course approved by the department dealing with ethics, practices, and consumer rights related to mental health and substance abuse services.

"Qualifying diagnosis" means one of the following diagnoses listed in the Diagnostic and Statistical Manual of Mental Disorders - DSM-IV-TR (The numeral preceding each diagnosis reflects the corresponding number in the DSM-IV-TR.):

295.xx Schizophrenia

- i. 295.10 Disorganized Type
- ii. 295.20 Catatonic Type
- iii. 295.30 Paranoid Type
- iv. 295.60 Residual Type
- v. 295.90 Undifferentiated Type

295.70 Schizoaffective Disorder

296.34 Major Depression, Recurrent Type, Severe with Psychotic Features

296.xx Bipolar Disorder

- i. 296.0x Single Manic Episode
- ii. 296.4x Most Recent Episode Manic
- iii. 296.5x Most Recent Episode Depressed
- iv. 296.6x Most Recent Episode Mixed
- v. 296.7 Most Recent Episode Unspecified

296.89 Bipolar II Disorder

297.1 Delusional Disorder.

"Referral services" means providing information about services not available through the service area center or its contract agencies or information to persons not eligible for available services, and linking individuals with needed services.

"Rehabilitation" means psychosocial services which assist individuals to develop daily and community living skills, to set goals for themselves, to learn problem solving to handle social relationships, and to utilize self-help group experiences and prevocational services including educational and experiential

activities, arrangements for linkages with vocational and volunteer programs and job placement services.

"Residential settings" means non-hospital sites where consumers live and where mental health or substance abuse services are provided to those consumers.

"Residential treatment facility" means a facility which provides a structured therapeutic residential program for two or more consumers identified as needing mental health or substance abuse services and which provides, in addition to room and board, treatment and rehabilitation/habilitation services within the context of a group living experience to each consumer based on an individual treatment plan.

["Screening services" means determining an individual's possible need for mental health and substance abuse services and eligibility for service area center services.]

"Seclusion" means placing a consumer alone in a room or other enclosed space with the door locked or held closed.

"Service area" means a defined geographical area for which there is designated responsibility for the delivery of mental health and substance abuse services to persons residing, working or attending school within the area.

"Service area center" means the identifiable administrative unit which shall be the focal point for the development, delivery and coordination of mental health and substance abuse services in each service area.

"Severe and persistent mental illness" or "SPMI" means that a person has been assessed with the presence of a qualifying diagnosis for the previous 12 months, or will be expected to demonstrate the presence of a qualifying diagnosis for the next 12 months, and that person demonstrates functional impairment that seriously limits the person's ability to function independently in an appropriate and effective manner, as evidenced by a score of 50 or lower on the GAF.

"Substance abuse" means a pattern of alcohol or drug use which impairs physical, social or occupational functioning and has a minimal duration of disturbance of at least one month.

"Target population" means a group of persons at risk or in need of mental health or substance abuse services.

"Training services" means increasing job-related knowledge and skills of administrative, professional and support personnel or others providing mental health and substance abuse services.

"Treatment" means activities intended to alleviate or reduce the duration and severity of mental illness and substance abuse problems.

"Work" means the performance of tasks in exchange for fair monetary compensation at the prevailing minimum wage in compliance with state and federal requirements or, if below the

minimum wage in compliance with applicable requirements of the Fair Labor Standards Act, excluding, for the purpose of these rules, care of personal belongings, light tasks appropriate to group activities and to small group working and living arrangements designed as part of a treatment program, and unpaid work in recognized volunteer program."

[Eff 12/19/89, am and comp DEC 30 1988; comp []
(Auth: HRS §§334-9) (Imp: HRS §§334-2, 334-3)

2. Section 175-14, Hawaii Administrative Rules, is amended to read as follows:

"§11-175-14 Service elements, standards and minimum levels. (a) Elements of the mental health and substance abuse system shall include, but are not limited to the following services and each service area shall ensure adherence to the following standards and availability of the specific minimum levels of service to persons eligible for services in that service area.

- (b) Information services shall:
 - (1) Be publicized annually through brochures, newspapers, telephone directories, and one other medium
 - (2) Include special efforts such as auxiliary aids and bilingual resources to ensure that ethnic minority groups and other special populations are provided knowledge of and easy access to the service area center's services.
- (c) Educational services shall:
 - (1) Increase understanding of the nature of mental illness and substance abuse;
 - (2) Impart knowledge and skills to prevent, treat, or ameliorate the effects of mental illness and substance abuse;
 - (3) Provide knowledge to reduce the stigma of mental illness and substance abuse;
 - (4) Impart knowledge to the general public regarding problems of vulnerable, high risk persons, the need for community involvement in programs designed to address the problems outside of institutional settings, and the resources available or needed to help such programs succeed;
 - (5) Be provided to lay and to professional groups at least annually and upon request and shall include:
 - (A) At least one contact per year with each public school and police station in the service area to assess mental health and substance abuse education needs;
 - (B) Offering one educational program responsive to identified needs to each school district and police station in the service area;
 - (6) Be provided by trained and qualified individuals.
- (d) Consultation services shall:
 - (1) Be announced each year to the judiciary, health, welfare and educational agencies in each service area;

- (2) Be provided at least monthly, on request, to a judiciary agency, a health agency, a welfare agency, and to public schools;
- (3) Be provided by trained and qualified personnel as required by the respective disciplines;
- (4) Be provided by a mutually agreed upon consultant.
- (e) Training services shall:
 - (1) Be provided for each staff person of the service area center and contract providers;
 - (2) Total at least 12 hours per year for each staff person providing clinical services;
 - (3) Include orientation for all new service area center personnel, including volunteers and advisory board members;
 - (4) Be recorded individually for each person trained including the date of training, subject of training, and total time involved with an outcome evaluation on the education and training received.
- (f) Outreach services shall:
 - (1) Include aggressive and persistent efforts to invoice resistant individuals in other needed services;
 - (2) Provide easily understandable communications to individuals and target populations about the available services and their locations;
 - (3) Identify and be systematically offered to at least one target population each year;
 - (4) Involve as many organizations, agencies, and individuals as may be in contact with the target population, and alert relevant agencies and individuals to the importance of early problem detection and to their role as case finders.
- [(g) Screening services shall:
 - (1) Be provided to every person who seeks assistance or who is referred for services. This includes family members or other persons in the support system of a person with mental health or substance abuse problems;
 - (2) Not be limited by the ability to pay;
 - (3) Be provided by personnel qualified and trained in interviewing techniques and knowledgeable about available services in the community.
- (h)] (g) Evaluation determination services shall:
 - (1) [Be provided to every person screened except those found to be in need of prevention services and result in one of the following actions:] Be performed by a professional mental health worker;
 - [(A) Provision of appropriate service;
 - (B) Referral to appropriate service;

- (C) Provision of a written statement as to why the service area center cannot provide the appropriate service;]
- (2) [Be performed by professional mental health workers or certified substance abuse counselors;] Determine eligibility for:
 - (A) Crisis services, which are limited to 5 days after initiation of those services;
 - (B) Disaster services, which are limited to 60 days after initiation of those services; or
 - (C) Continuing support, which are not limited in duration, but may be found ineligible after resolution of qualifying criteria;
- (3) [Include documenting that a physical examination was done within the past six months or that provision has been or will be made for such an examination.]
Consider the eligible population for crisis services for adults in need of emergent (within 24 hours) or urgent (within 24-72 hours) intervention who are exhibiting symptoms of a mental health crisis, or individuals suspected of having a primary mental illness with an associated situational crisis;
- (4) Consider the eligible population for disaster services for adults who have experienced a disaster and for whom a disaster has been officially declared by the State of Hawaii of the AMHD chief after having received and approved a request for disaster services from legitimate community leadership, such as a school administrator, state or county official, or religious, social or business organization;
- (5) Consider the eligible population for continuing support for adults who have been diagnosed with a qualifying diagnosis, who have co-occurring mental and substance use disorders, and those who are legally encumbered;
- (6) Determine eligible for crisis services adults who:
 - (A) Have had a brief telephone or face-to-face assessment to determine immediacy of needs;
 - (B) In the assessment are found to be exhibiting symptoms of significant degree of functional impairment in the areas of self protection, impulse control, or social judgment, or high risk of harm to self or others or both; or
 - (C) In the assessment are suspected of having a primary mental illness and exhibiting symptoms of significant clinical distress and some degree of

functional impairment expected to worsen because of the situation;

- (7) Determine eligible for disaster services adults who:
 - (A) Have had a screening completed that indicates the individual is a member of the identified and designated community or social system that has suffered from a disaster; and
 - (B) Need not have a mental health diagnosis, but is assessed to have the presence or risk of significant distress or dysfunction.
- (8) Determine eligible for continuing support adults who:
 - (A) Have participated in an approved clinical eligibility assessment sufficient to establish a qualifying diagnosis and severe functional impairment; and
 - (B) In the eligibility assessment are found to have a qualifying diagnosis; have demonstrated the presence of the disorder for the last 12 months, or will be expected to demonstrate the disorder for the next 12 months; and have demonstrated functional impairment that seriously limits the person's ability to function independently in an appropriate and effective manner, as evidenced by a GAF score of 50 or lower at the time of the eligibility; and
 - (C) In the eligibility assessment are found to live in Hawaii and be a citizen of, or have permanent resident status in the United States of America; and
 - (D) In the eligibility assessment are found not to have access to mental health services through health plan benefits, or have financial means or resources to obtain mental health services privately; or
 - (E) Have been found to be detained by Hawaii courts for forensic examination, or committed to certain psychiatric facilities under the care and custody of the director for appropriate placement by the family courts, district courts, or circuit courts; placed on conditional release or released on conditions by a judge in Hawaii courts; or are involved in mental health court or a jail diversion program.
- (9) Be conducted:
 - (A) At least once every two calendar years from the initial determination of eligibility; or

(B) Upon the discovery of credible information that calls into question the continuing eligibility of the person.

[(i)] (h) Referral services shall:

- (1) Be provided to every person who has been [screened, or] evaluated for services, and who has been found not to be eligible for services at the service area center or contract agencies;
- (2) Include at least one follow up contact[:]to determine if a service linkage has been made.

[(j)] (i) Treatment shall:

- (1) Be provided by, or under the supervision of professional or certified personnel;
- (2) Be provided to every person screened, admitted, and evaluated who has been determined to be in need of treatment at the service area center or contract agencies, unless lack of service area center resources or the unavailability of a service needed by a consumer prevent provision of the service.

[(k)] (j) Rehabilitation shall:

- (1) Be provided through activities intended to reduce the residual effects of mental, emotional, and substance abuse disabilities;
- (2) Be provided to every person screened, admitted, and evaluated who has been determined to be in need of rehabilitation at the service area center or contract agencies, unless lack of service area center resources or the unavailability of a service needed by a consumer prevent provision of the service;
- (3) Enhance the capacity of the consumer for self-sufficiency and productive community living;
- (4) Provide opportunities to learn about paid and volunteer work;
- (5) Develop the attitudes required of workers and volunteers.

[(1)] (k) Case management services shall:

- (1) Be provided to every person evaluated who has been determined to need case management services and who has been found eligible for crisis services, disaster services, or continuing support;
- (2) Be provided to enhance the natural support system and to ensure continuity of care, continuing service responsibility, overall coordination and integration of all relevant services and linkages to applicable agencies[:];
- (3) Be the responsibility of a professional mental health worker or a certified individual[:];

- (4) Be provided by non-professional staff or non-certified personnel only under the supervision of professional or certified personnel.
- [(m) Follow-up services shall:
 - (1) Be provided within three months of discharge or discontinuance of services to every consumer who has received treatment or rehabilitation services from a state psychiatric facility, service area center or contract agency:
 - (2) Be for the purpose of gathering information about current status of former consumers, their satisfaction or dissatisfaction with the services provided, and arranging additional services if required.] [Eff. and comp DEC 30 1988; comp] (Auth: HRS §334-9) (Imp: HRS §334-3)

3. Chapter 11-175, Hawaii Administrative Rules, is amended by adding a new section 11-175-25 to read as follows:

"§11-175-25 Changes or reductions in services. In the event of budget restrictions, budget reductions, reductions in force, or similar measures limiting the department's available resources, the director may change or reduce community mental health services. The following are among the criteria to be considered:

- (1) Whether the service is required by statute or rule;
- (2) Whether the service is a minimum level of accessible services;
- (3) The role of the service in the statewide plan;
- (4) The need for the service, including the severity of the condition it serves;
- (5) The effectiveness of the service;
- (6) The cost of the service compared with its benefit;
- (7) Whether the service is or will be duplicated elsewhere in the department's programs.
- (8) The availability of the service through other sources, including but not limited to other government entities, and private or public insurance plans;
- (9) Whether providers are available to provide the services; or
- (10) Any other relevant criteria." [Eff] (Auth: HRS §334-9) (Imp.: HRS §334-3)

§§11-175-26 to 11-175-29 (Reserved)

4. Chapter 11-175-31, Hawaii Administrative Rules, is amended by amending subsection (a) to read as follows:

"(a) Information in the clinical record of a consumer shall be confidential and shall not be shared outside the mental health division, outside a contract program, or by a private provider, except information shall be disclosed:

- (1) When there is an emergency which requires immediate sharing of information; however a consumer of substance abuse services shall not be identified directly or indirectly as a substance abuser;
- (2) When it is determined that a consumer poses a serious danger or threat of violence toward another. Information shall be released in keeping with the duty to exercise reasonable care to protect foreseeable victims; however, a consumer of substance abuse services shall not be identified directly or indirectly as a substance abuser;
- (3) When there is suspected abuse or neglect of a minor as provided in chapter 350, HRS, and when there is suspected abuse or neglect of an elderly or vulnerable adult as provided in chapter 349C, HRS; however, any person named in such a report who is a consumer of substance abuse services shall not be identified directly or indirectly as a substance abuser;
- (4) When disclosure is deemed necessary by the director or the administrator of a private psychiatric facility to carry out the provisions of chapter 334, HRS, and after justification has been placed in the consumer's clinical record[, except for consumers of substance abuse services, for which informed consent to release of information is required];
- (5) When specific information is ordered to be disclosed by a court, and is deemed by the court to be necessary in connection with the proceedings before it;
- (6) For management information purposes to the mental health division by the department's direct and contract services;
- (7) For monitoring purposes to authorized mental health division monitors by the department's direct and contract services;
- (8) When required by federal or state statutes; or
- (9) When the holder of the record has obtained informed consent to release of information from the consumer or the consumer's legal guardian."

5. Material, except source notes, to be repealed is bracketed. New material is underscored.

6. Additions to update source notes to reflect these amendments are not underscored.

7. These amendments to chapter 175-02, 175-14, 175-25, and 175-31, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on October , 2010, and filed with the Office of the Lieutenant Governor.

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Director of Health

APPROVED AS TO FORM:

Deputy Attorney General