Regulatory Analysis Form

(Completed by Promulgating Agency)

(All Comments submitted on this regulation will appear on IRRC's website)

INDEPENDENT REGULATORY REVIEW COMMISSION

(1) Agency
Department of Human Services

(2) Agency Number: 14-538
Identification Number:

IRRC Number: 3176

(3) PA Code Cite: 55 PA Code Chapters 1153 and 5200

(4) Short Title: Outpatient Psychiatric Services and Psychiatric Outpatient Clinics

(5) Agency Contacts (List Telephone Number and Email Address):

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(6) Type of Rulemaking (check applicable box):

☒ Proposed Regulation
☐ Final Regulation
☐ Final Omitted Regulation
☐ Emergency Certification Regulation;
  ☐ Certification by the Governor
  ☐ Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The purpose of this proposed rulemaking is to update the current regulations to allow licensed professionals to work within their scope of practice in psychiatric outpatient clinics, to increase access to medically necessary behavioral health treatment services, to include Mobile Mental Health Treatment (MMHT) in the chapters and to reduce paperwork requirements for licensed providers. The proposed changes support the principles of recovery, resiliency and self-determination by updating language to reflect a person-first philosophy, allowing consistent access to community-based services and focusing on appropriate evidence-based individual clinical interventions. Additionally, the revisions will codify the benefits offered under Medicaid expansion and the consolidation of benefit packages and reflect the same level of benefit to all eligible individuals in the child and adult eligibility categories. The proposed rulemaking will remove the limits on services, consistent with Federal regulations regarding parity under the Mental Health Parity and Addictions Equity Act of 2008.

(8) State the statutory authority for the regulation. Include specific statutory citation.

The Department of Human Services (Department) has the authority under sections 201(2) and 1021 of the Human Services Code (62 P.S. §§ 201(2) and 1021); sections 105 and 112 of the Mental Health Procedures Act (50 P.S. §§ 7105 and 7112); and section 201(2) of the Mental Health and Intellectual Disability Act of 1966 (50 P.S. § 4201(2)).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

This proposed regulation is not mandated by a Federal or State law, court order or regulation.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The proposed regulation is needed to update the current regulations which will help maintain the 279 community-based psychiatric outpatient clinic programs and their 783 satellite sites that served 325,851 publicly-funded individuals in Fiscal Year 2013-2014. Community- based outpatient clinics are a key component of the public mental health system and should be accessible to all individuals to provide an array of cost-effective clinical services and supports. Research supports the benefits of receiving community mental health services for individuals diagnosed with mental illness. Access to community psychiatric services are a cost effective alternative to institutionalization and have provided effective services to treat individuals with mental illness according to the Substance Abuse and Mental Health Services Administration (SAMHSA).

The proposed changes will allow additional licensed professionals to provide services within their scope of practice in psychiatric outpatient clinics, increase access to medically necessary services by providing services at alternative community sites and utilizing technology to ensure rural areas have access to specialty services, support recovery, and reduce paperwork requirements for providers.

The amendments to Chapters 1153 and 5200 will benefit individuals receiving psychiatric outpatient services by supporting recovery, delivering person-centered services, and increasing access to specialty services. The proposed changes align with the guiding principles of recovery developed by SAMHSA in recognizing recovery as a primary goal for behavioral health service delivery. The proposed revisions ensure compliance with federal parity requirements.

Psychiatric outpatient clinic providers will benefit from the amendments by reducing paperwork which will increase the ability to provide clinical services, allowing the use of telepsychiatry to increase access to services, increasing group therapy size to serve more individuals, and align current services with industry standards and best practice principles.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

There are no provisions that are more stringent than Federal standards.

(12) How does this regulation compare with those of the other states? How will this affect

Pennsylvania's ability to compete with other states?

Psychiatric outpatient clinic regulations published by New York, New Jersey, Maryland, Wisconsin, Minnesota, South Carolina, and Oregon were reviewed. New York, New Jersey and Maryland were reviewed due to proximity to Pennsylvania. All of the states listed provide outpatient psychiatric services under the clinic model as does Pennsylvania and were reviewed to compare proposed changes. The proposed changes to the regulations were congruent with the other state requirements for staffing patterns, psychiatric services, treatment planning, and record keeping. Pennsylvania will not be competing with other states, as this proposed regulation relates to licensure standards for psychiatric outpatient clinics within this Commonwealth only.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The proposed rulemaking will not affect existing or proposed regulations of the Department or other state agencies.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Department convened a diverse stakeholder workgroup to review and provide input to the proposed rulemaking. The workgroup held four face-to-face meetings on November 14, 2013, December 9, 2013, January 7, 2014 and January 21, 2014 to review the current regulations and provide recommendations for the proposed changes. The following groups were represented on the workgroup:

Rehabilitation and Community Providers Association, Pennsylvania Medical Society, Pennsylvania Psychiatric Society, Pennsylvania Mental Health Consumers Association, Mental Health Association of Southeastern Pennsylvania, Northern Tier Counseling, Child and Family Focus, Inc., Columbia, Montour, Snyder, and Union Behavioral Health/ Intellectual Disabilities, Value Behavioral Health- PA, and Community Care Behavioral Health Organization.

Additionally, individuals representing the Office of Mental Health and Substance Abuse Planning Council provided feedback on the proposed rulemaking, as did representatives from Dauphin County Mental Health Agency, Lancaster General Hospital and Magellan Behavioral Health.

Representatives from three psychiatric outpatient clinic programs across the state also provided input to the proposed amendments to address current challenges that impact small rural clinics in delivering quality clinical services.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation.

How are they affected?

All licensed psychiatric outpatient clinics and satellites will be affected by the regulations. There are 279 licensed psychiatric outpatient clinic programs and 783 satellite programs within the outpatient facilities. Of the 279 psychiatric outpatient clinics, 33 have approved service descriptions to provide MMHT. Of the 279 licensed outpatient clinics, 69 are for-profit businesses and receive Medical Assistance reimbursement from the Department for services rendered. Additionally, for-profit psychiatric outpatient clinics contract with private insurance companies and businesses to provide services, as well as, treat individuals who pay privately.

In Fiscal Year 2013/2014, the Department paid $274,511,550.86 in claims for psychiatric outpatient clinic services. The Department paid $2,253,063.04 in claims for MMHT services in the same Fiscal Year. Based upon a review of the Department's paid claims data for Fiscal Year 2013/2014, 67 of the 69 for-profit psychiatric outpatient clinics received less than $15 million in DHS funds which would meet the small business definition in 13 CFR, Chapter 1, Part 121.201. The Department, however, does not have access to information on the total revenue generated by each for-profit clinic that would be reported on Internal Revenue Service tax return forms. Therefore, based only upon DHS paid claims data, it is estimated that 67 of the 69 for-profit psychiatric outpatient clinics may be considered small businesses under Federal Regulation. The North American Industry Classification System (NAICS) small business size standard for outpatient mental health clinics is $15 million in annual receipts based upon the Internal Revenue Service tax return form.

The proposed changes will reduce paperwork requirements, increase the use of licensed behavioral health professionals within their scope of practice and eliminate the accreditation requirement for for-profit clinics. Small businesses will not be adversely affected by the proposed changes to the regulations.

Individuals receiving services at psychiatric outpatient clinics will be affected by the regulations. Under the regulations, psychiatric outpatient clinics will increase access to community-based mental health services, provide services at alternative community locations, utilize technology to provide specialty services, and support recovery by engaging individuals served in the treatment planning process.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

All licensed psychiatric outpatient clinics will be affected by the regulations. There are 279 licensed outpatient programs and 783 satellite programs within the outpatient facilities. All psychiatric outpatient clinics, including the 69 small businesses, must comply with the regulations to maintain their licensure to provide services in the Commonwealth.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

Psychiatric outpatient clinic providers will benefit from the proposed changes to staffing patterns which will require 2 hours of psychiatric time per week for every full time equivalent

clinical staff and allow the use of telepsychiatry with prior written approval from the Department. Additionally, 50 % of the required psychiatric time must be provided by the psychiatrist while the other 50 % may be provided by advanced practice professionals licensed to prescribe medication in this Commonwealth.

The current regulation requires 16 hours of psychiatric time weekly while the proposed changes will allow smaller clinics with less clinical staff to provide a reduced amount of psychiatric time per week within the proposed amendments. This will benefit the small outpatient clinic by alleviating the requirement of contracting for 16 hours of psychiatric time that may not be needed due to a lower volume of services being delivered.

The proposed changes will fiscally benefit for-profit psychiatric outpatient clinics by no longer requiring accreditation by the Joint Commission on Accreditation of Hospitals in addition to licensure by the Department.

The ability to utilize other licensed professionals to provide service, such as medication management, will also provide a cost-effective alternative to outpatient providers while maintaining quality treatment services.

Individuals receiving services at psychiatric outpatient clinics will benefit from the proposed language changes that support recovery, resiliency, and self-determination by utilizing person-first terminology. Additionally, the treatment planning process will require the inclusion of the individual receiving services. Research supports the importance of having individuals who receive services involved as equal partners with input into their service planning. Recovery is supported by access to mental health treatment in the community. Self-determination and self-direction are key elements of the guiding principles of recovery. Empowering individuals to make informed decisions and build on their identified strengths assists in gaining control over their lives and promotes recovery. (10 Guiding Principles of Recovery, SAMHSA 2010).

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

This proposed regulation will benefit individuals receiving services in psychiatric outpatient clinics by increasing access to specialty services by utilizing technology, providing services in alternative community sites, supporting recovery, and enhancing individualized treatment services. Psychiatric outpatient clinics will benefit by utilizing advanced practice professionals to provide services within their scope of practice, reducing paperwork requirements, and increasing access to behavioral health services. The proposed changes will not have any cost or adverse effects.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

For-profit small businesses will benefit from the proposed changes eliminating the requirement to receive accreditation by the Joint Commission. The accreditation is for a 3-year period. The fees are divided across the 3 years with an additional survey fee the first year. The actual cost depends on several factors such as the number of locations and the volume of individuals served by the clinic.

The following example of the cost for a small clinic was provided on the Joint Commission website at http://www.jointcommission.org. In the first year, approximately 60% of the fees would be paid and 20% would be paid over each of the next 2 years. A small clinic would pay approximately $1,689 in annual fees each year plus a survey fee of approximately $2,835 in the years of the on-site survey.

Based upon the estimates provided on the Joint Commission website, it is estimated that small for-profit businesses would save at a minimum $6,213 dollars every 3 years by no longer being required to have accreditation from an independent organization in addition to licensure by the Department.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

No fiscal impact is anticipated to the local governments.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

No fiscal impact is anticipated to the state government.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

No additional reporting, paperwork, or record keeping is required to comply with the proposed rulemaking. Further, treatment planning requirements have been reduced which will result in a decrease in current paperwork requirements for psychiatric outpatient clinic providers.

(22a) Are forms required for implementation of the regulation?

No.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here.** If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

Fund Code 7-7-16

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	$	$	$	$	$	$
Regulated Community	$0	$0	$0	$0	$0	$0
Local Government	$0	$0	$0	$0	$0	$0
State Government	$0	$0	$0	$0	$0	$0
Total Savings	$0	$0	$0	$0	$0	$0
COSTS:						
Regulated Community	$0	$0	$0	$0	$0	$0
Local Government	$0	$0	$0	$0	$0	$0
State Government	$0	$0	$0	$0	$0	$0
Total Costs	$0	$0	$0	$0	$0	$0
REVENUE LOSSES:						
Regulated Community	$0	$0	$0	$0	$0	$0
Local Government	$0	$0	$0	$0	$0	$0
State Government	$0	$0	$0	$0	$0	$0
Total Revenue Losses	$0	$0	$0	$0	$0	$0

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
MA-Outpatient	$0	$0	$0	$0
Mental Health Services	$0	$0	$0	$0

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

(a) An identification and estimate of the number of small businesses subject to the regulation.
(b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
(c) A statement of probable effect on impacted small businesses.
(d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

(a) Of the 279 licensed psychiatric outpatient clinics, 69 are for-profit businesses and receive Medical Assistance reimbursement from the Department for services rendered. Additionally, for-profit clinics contract with private insurance companies and businesses to provide services, as well as, accept individuals who pay privately. Based upon a review of Department's paid claims data for Fiscal Year 2013/2014, 67 for-profit psychiatric outpatient clinics received less than $15 million in DHS funds which would meet the small business size definition in 13 CFR, Chapter 1, Part 121.201. The Department does not have access to information on the total revenue generated by each for-profit clinic and can base this estimate on DHS paid claims data only. (See # 15 for more details).
(b) No additional reporting, paperwork, or record keeping is required to comply with the proposed rulemaking. The proposed rulemaking will decrease the current paperwork requirements.
(c) The regulation will not have an adverse impact on non-profit or for-profit psychiatric outpatient clinics, including any clinics meeting the definition of small businesses.
(d) There are no less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

No special provisions have been developed.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The regulations effectively provide for the health and safety of individuals receiving psychiatric outpatient clinic services as well as ensure access to quality clinical treatment including access to services in approved alternative community sites. Since there are no new reports, forms or other requirements under this regulation, it is the least burdensome alternative. Therefore, the Department did not consider any other regulatory provisions.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

a) The establishment of less stringent compliance or reporting requirements for small businesses;
b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
c) The consolidation or simplification of compliance or reporting requirements for small businesses;
d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

The regulation will not have an adverse impact on small businesses. This proposed regulation will reduce paperwork by expanding time frames for treatment plan updates, changing time frames for psychiatric sign-off on updated treatment plans to yearly, increasing access to services by the utilization of technology, and removing fiscally burdensome requirements to have accreditation from the Joint Commission on Accreditation of Hospitals (JCAH) for for-profit psychiatric outpatient clinics in addition to yearly licensure by the Department.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Outpatient psychiatric regulations published by New York, New Jersey, Maryland, Wisconsin, Minnesota, South Carolina, and Oregon were reviewed to determine the staffing patterns for other outpatient clinic models, including staff responsibilities and qualifications, psychiatric service requirements, treatment planning process and time frames, and recordkeeping requirements prior to revising Chapter 1153 and 5200. The regulations can be accessed at:

http://www.state.nj.us/humanservices/providers/rulefees/regs/

http://www.omh.ny.gov/omhweb/clinic_restructuring/part599

http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=10.21.20*

http://www.scdhhs.gov/provider-manual-list

http://www.revisor.mn.gov/rules/?id=9520

http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_309/309_019.html

http://docs.legis.wisconsin.gov/code/admin_code/dhs/030/35.pdf

In addition to the review of other states' regulations, research data was gathered to review the most recent prevalence estimates of mental illness, the national cost impact of untreated mental illness, treatment effectiveness, the impact of stigma in accessing treatment, the need for public awareness about early intervention, treatment outcomes and recovery from mental illness.

Research data was accessed via internet search and requesting journal material if relevant. The data cited was provided in reports from national entities such as the Substance Abuse and Mental Health Services Administration of the Department of Health and Human Services, the Center for Disease Control, the World Health Organization, the National Institute of Mental Health, Healthy People 2020, and the National Alliance on Mental Illness (NAMI). The data utilized can be accessed at:

http://store.samhsa.gov/shin/content//PEP14-LEADCHANGE2/PEP14-LEADCHANGE2.pdf

http://www.samhsa.gov/data/sites/default/files/NSDUHresultsPDFWHTML2013/Web/NSDUHresults2013.pdf

http://apps.who.int/iris/bitstream/10665/89966/1/9789241506021_eng.pdf?ua=1

http://www.nami.org/Learn-More/Mental-Health-By-the-Numbers

http://www.cdc.gov/nchs/healthy_people/hp2020.htm

http://www.ahrq.gov/research/findings/nhqrdr/nhdr10/index.html

http://www.cdc.gov/mentalhealthsurveillance

https://store.samhsa.gov/shin/content/PEP12-RECDEF/PEP12-RECDEF.pdf

http://www.euro.who.int/__data/assets/pdf_file/0019/74710/E82976.pdf

(29) Include a schedule for review of the regulation including:

A. The length of the public comment period: 30 days after publication of the proposed regulation

B. The date or dates on which any public meetings or hearings will be held: N/A

C. The expected date of delivery of the final-form regulation: October 2017

D. The expected effective date of the final-form regulation: Upon publication as final rulemaking

E. The expected date by which compliance with the final-form regulation will be required: Upon publication as final rulemaking

F. The expected date by which required permits, licenses or other approvals must be obtained: Not applicable

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Department will review the regulation on an ongoing basis to ensure compliance with Federal and State law and to assess the appropriateness and effectiveness of the regulation. The Department will monitor the impact of this regulation through yearly licensing audits and utilization management reviews of the psychiatric outpatient clinics. In addition, the Department will meet with stakeholder organizations, the Office of Mental Health and Substance Abuse Services Planning Council, provider organizations, and individuals receiving services in psychiatric outpatient clinics impacted by the regulations on an ongoing basis. Any issues identified will be researched and addressed as needed.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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JUL 28 2017
Independent Regulatory Review Commission

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General	Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:	Copy below is hereby approved as to form and legality. Executive or Independent Agencies
By: _____ (Deputy Attorney General)	DEPARTMENT OF HUMAN SERVICES (Agency)	BY: _____
7/7/17 Date of Approval	LEGAL COUNSEL: _____	MAR 09 2017 Date of Approval
	DOCUMENT/FISCAL NOTE NO. 14-538	(Deputy General Counsel) (~~Chief Counsel, Independent Agency~~) (Strike inapplicable title)
☐ Check if applicable Copy not approved. Objections attached.	DATE OF ADOPTION: _____ BY: _____ TITLE: SECRETARY OF HUMAN SERVICES (Executive Officer, Chairman or Secretary)	☐ Check if applicable. No Attorney General approval or objection within 30 days after submission.

NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF HUMAN SERVICES

OFFICE OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

[55 Pa.Code Chapter 1153 (Outpatient Psychiatric Services)]
[55 Pa.Code Chapter 5200 (Psychiatric Outpatient Clinics)]

Outpatient Psychiatric Services and Psychiatric Outpatient Clinics

Statutory Authority

Notice is hereby given that the Department of Human Services (Department) under the authority of Sections 201(2) and 1021 of the Human Services Code (62 P.S. §§ 201(2) and 1021); sections 105 and 112 of the Mental Health Procedures Act (50 P.S. §§ 7105 and 7112); and section 201(2) of the Mental Health and Intellectual Disability Act of 1966 (50 P.S. § 4201(2)) intends to amend the regulations as set forth in Annex A.

Purpose of Regulation

The purpose of this proposed rulemaking is to update the current regulations under Chapter 1153 (relating to outpatient psychiatric services) and Chapter 5200 (relating to psychiatric outpatient clinics) to be consistent with the requirements of the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), Pub.L. 110-343, to reflect changes in benefit packages resulting from the implementation of Medicaid expansion under the Patient Protection and Affordable Care Act (ACA), Pub.L. 111-148, and the consolidation of adult benefit packages, as well as codify the requirements for the delivery of Mobile Mental Health Treatment (MMHT) outlined in the Medical Assistance Bulletin 08-06-18, Mobile Mental Health Treatment, issued November 30, 2006. These proposed amendments will allow licensed professionals to work within their scope of practice in psychiatric outpatient clinics, increase access to medically necessary treatment services for eligible individuals including the provision of mobile treatment, and reduce the paperwork requirements for licensed providers. The changes proposed in the rulemaking support the principles of recovery, resiliency and self-determination by updating language to reflect a person-first philosophy throughout the regulations, allowing consistent access to community-based services, and focusing on appropriate

evidence-based individual clinical interventions.

Background

The 2014 National Survey on Drug Use and Health (NSDUH) report provided estimates of the prevalence of adult mental illness in the United States. The analysis was based upon the data collected from an annual survey of the civilian, noninstitutionalized population of the United States aged 12 years old or older. (Substance Abuse and Mental Health Services Administration, Department of Health and Human Services, September 4, 2014). The report presents estimates of mental health issues separately for adolescents aged 12 to 17 based upon a variation in questions. The data collected is limited to major depressive episodes (MDE) for adolescents not an overall indication of mental health issues as is collected for adults. The results indicate that 1 in 10 adolescents reported a MDE representing an estimated 2.6 million adolescents in this country having a MDE during the reporting year. Nationally, an estimated 43.8 million adults 18 years of age or older experienced any mental illness in the past year, corresponding to a rate of 18.5% of the adult population. "Any mental illness" is defined by the Substance Abuse and Mental Health Services Administration (SAMHSA) of the Department of Health and Human Services (DHHS) as "the presence of any mental, behavioral, or emotional disorder in the past year that met the Diagnostic and Statistical Manual of Mental Disorders (DSM) criteria." (The NSDUH Report, September 4, 2014). "Serious mental illness (SMI)" is defined as a mental disorder causing substantial functional impairment (such as substantial interference with or limitation in one or more major life activities) and individuals with SMI have the most urgent need for treatment. (The NSDUH Report, September 4, 2014). There were an

estimated 10 million adults 18 years of age or older with SMI in the past year which represents 4.2% of all adults in this country. Nationally, 62.9% of adults with SMI received treatment in the past 12 months while only 41% of adults with any mental illness received mental health treatment in the past year.

Mental illness is a major public health concern in the United States. It is a primary cause of disability and carries a high financial cost. Depression accounts for 4.3% of the global burden of disease and is among the largest single cause of disability worldwide, particularly for women. (World Health Organization, Mental Health Action Plan, 2013-2020). According to the Center for Disease Control (CDC) and the World Health Organization (WHO), mental illness accounts for more disability in developed countries than any other group of illnesses, including cancer and heart disease. Mood disorders, including major depression, dysthymic disorder and bipolar disorder, are the third most common cause of hospitalization in the United States for adults 18 to 44 years of age. (Agency for Healthcare Research and Quality, Department of Health and Human Services, 2009). The economic burden of mental illness in the United States was approximately $300 billion in 2002. (Mental Illness Surveillance Among U.S. Adults, Center for Disease Control, 2011). Additionally, SMI costs the country approximately $193.2 billion in lost earnings per year. (Insel, T.R. (2008). "Assessing the Economic Costs of Serious Mental Illness." *The American Journal of Psychiatry*, 165(6), 663-5.) Mental illness is also associated with increased occurrence of chronic diseases such as cardiovascular disease, diabetes, obesity, asthma, epilepsy and cancer. (Mental Illness Surveillance Among U.S. Adults, Center for Disease Control, 2011). It is associated with lower use of medical care, reduced adherence to treatment for chronic diseases, and

higher risk of adverse health effects. Many mental illnesses can be managed successfully and increasing access to mental health services could substantially reduce the associated morbidity. Treatment of mental illness can improve both outcomes.

Access to community psychiatric services is not only a cost-effective alternative to institutionalization, but can produce improved outcomes for individuals with mental illness, including the population identified with SMI. The most common types of treatment accessed are outpatient services and prescription medication according to the 2008 SAMHSA survey data. SAMHSA Administrator, Pamela S. Hyde, stated: "Although mental illness remains a serious public health issue, increasingly we know that people who experience it can be successfully treated and can live full and productive lives. Like other medical conditions, such as cardiovascular disease or diabetes, the key to recovery is identifying the problem and taking active measures to treat it as soon as possible." (SAMHSA Data Survey, 2008). Community-based psychiatric outpatient clinics are a key component of the public mental health system, and should be accessible to all individuals to provide an array of cost-effective clinical services and supports. In recognition of the importance of mental well-being, the overall goal of the World Health Organization (WHO) Mental Health Action Plan 2013-2020 is to promote mental health, prevent mental disorders, provide access to care, enhance recovery, and reduce mortality, morbidity and disability for persons with mental disorders by providing comprehensive, integrated and responsive mental health services in community-based settings. WHO recommends the development of comprehensive community-based mental health services. Community-based mental health service delivery should encompass a recovery-based approach that supports

individuals with mental illness to achieve their own goals. The core services should include listening and responding to an individual's needs, working with the individual as an equal partner, offering choices of treatment and therapies, and the use of peer support staff to support recovery, all of which can be provided by licensed outpatient psychiatric clinics in the community. Another key element of the WHO plan is to be responsive to the needs of vulnerable and marginalized individuals to ensure community-based services are widely available.

Additionally, SAMHSA's strategic plan for 2015-2018 includes the goal of increasing access to effective treatment and support for recovery. To recover, individuals need access to affordable, accessible and high-quality behavioral health care. The expansion of access to MMHT for individuals with a broader array of diagnoses and for individuals under 21 years of age will broaden access to treatment services by allowing more individuals that would not be able to attend treatment at a traditional outpatient psychiatric clinic to receive services in alternative community settings. This will assist in engaging vulnerable individuals and reducing stigma.

The MHPAEA requires that health insurance coverage for mental health and substance use services have benefit limitations that are no more restrictive than the medical benefits offered by the plan. The proposed revisions will provide the same level of benefits to all eligible individuals by removing limits on the services or scope of covered services consistent with the approved State plan and the MHPAEA.

Requirements

The following is a summary of the specific provisions in the proposed rulemaking:

§1153.1 *(relating to policy).*

The Department proposes to revise the title of the chapter to reflect broadening of its application with the inclusion of MMHT services provided by psychiatric outpatient clinics.

§1153.2 *(relating to definitions).*

The Department proposes to add a definition for "adult" to identify individuals that are 21 years of age or older receiving services under this chapter.

The Department proposes to revise the definitions of "adult partial hospitalization program" and "children and youth partial hospitalization program", as well as, "psychiatric outpatient clinic provider" and "psychiatric outpatient partial hospitalization program" to recognize the current name of the Office of Mental Health and Substance Abuse Services by adding "Substance Abuse Services" to the name. Additionally, the term "psychiatric outpatient clinic provider" has been changed to "psychiatric outpatient clinic" for consistency with use throughout the chapter.

Additionally, in response to requests by stakeholders, the Department proposes to revise references to the term "patient" in the definitions of "collateral family psychotherapy", "inpatient", "intake", "outpatient", "psychotherapy" and "treatment institution" to the term "individual" to distinguish the difference between an individual receiving services and an illness. For consistency in the chapter, the term "individual" has replaced any references to "patient" or "person."

The Department proposes to add a definition for "facility" that clarifies the use of the term throughout the chapter as inclusive of establishments primarily focused on the diagnosis, treatment, care and rehabilitation of individuals with mental illness or emotional disturbance. The definition is congruent with the term used in Chapter 5200.

The Department proposes to revise the definition of "family psychotherapy" by removing the term "mental disorder" and replacing the language with "mental illness or emotional disturbance" to be congruent with the current federal language. The terms mental illness and emotional disturbance have also been defined in this chapter using the federal definitions.

The Department proposes to revise the definition of "group psychotherapy" by increasing the allowable maximum group size from 10 to 12 individuals. The most prominent published text on group psychotherapy is *Theory and Practice of Group Psychotherapy* by Irvin D. Yalom (1995), which states "the ideal size of an interactional therapy group is approximately 8 to as high as 12. Since it is likely that one or possibly two patients will drop out of the group in the course of treatment, it is advisable to have a slightly larger group than the preferred size." The proposed increase will conform to industry standards and clinical best practice. Further, this proposed change will allow more individuals to be served in psychiatric outpatient clinics and reduce wait times to access outpatient treatment.

The Department proposes to delete the term "home visit" due to the addition of MMHT services to the chapter. Services provided by psychiatric outpatient clinics outside the clinic setting are provided as MMHT rehabilitation services.

The Department proposes to add the term "Licensed Practitioner of the Healing Arts" (LPHA) to define who may order MMHT. MMHT is in Pennsylvania's Medical Assistance State Plan as a rehabilitation service and pursuant to Federal regulation, rehabilitation services must be "recommended by a physician or other licensed practitioner of the healing arts, within the scope of his practice under State law" (42 CFR § 440.130(d)). The proposed LPHA definition allows a broad array of licensed professionals to order this service within their scope of practice under state law.

The term "mental disorder" has been deleted due to outdated terminology and the Department proposes to replace it with "mental illness or emotional disturbance." Mental illness or emotional disturbance is a mental or emotional disorder that meets the diagnostic criteria in the current version of the Diagnostic and Statistical Manual (DSM) or the International Classification of Diseases (ICD) with reference to an individual's level of functioning in various life domains. References to "mental disorder" through the chapter have been replaced with "mental illness or emotional disturbance" including in the terms "family psychotherapy", "group psychotherapy", "individual psychotherapy", "psychiatric outpatient clinic services", and "psychiatric outpatient partial hospitalization provider".

The Department also proposes to revise the definitions of "mental health professional" and "mental health worker" to specify the required credentials.

The Department is proposing to add a definition of MMHT to the regulations. MMHT services include assessment, individual, group, family therapy, and medication visits provided in an individual's residence or approved community site to reduce the disabling

effects of mental or physical illness for individuals who have encountered barriers to or have been unsuccessful in receiving services at a psychiatric outpatient clinic. The purpose of this service is to provide therapeutic treatment to reduce the need for more intensive levels of service, including crisis intervention or inpatient hospitalization by offering services in the community or home setting. These rehabilitation services may only be provided by a licensed outpatient clinic with an approved service description for MMHT.

The Department proposes a revised definition of "psychiatric clinic medication visit" and "psychiatric clinic clozapine monitoring and evaluation visit" to update the outdated term "recipient" and replace it with "individual" and include certified registered nurse practitioners and physician assistants in the list of professionals who may provide the visit.

The Department proposes to expand the definition of "psychiatric evaluation" to include the provision of real-time, two-way interactive audio-video transmission in licensed psychiatric outpatient clinics. This proposed change will increase access to this service, especially in rural areas of the state.

The Department also proposes to revise the definition of "psychiatric outpatient clinic services" to remove the outdated language of "a mentally disordered outpatient" and replace it with "individuals with mental illness or emotional disturbance." The change delineates the difference between an illness and the individual with the illness by using person first language.

The definition of "psychiatric partial hospitalization" has been revised to remove the limits on the service consistent with the MHPAEA.

The Department is proposing to revise the definition of "psychiatric outpatient partial hospitalization provider" to remove outdated language of "mental disorders" and replace it with "mental illness or emotional disturbance" and update the program office names to reflect their current titles.

§1153.11 and §1153.12 (*relating to types of services covered and outpatient services*).

The proposed rulemaking adds MMHT as a type of covered service that can be provided under this chapter. These services were added to the MA Program Fee Schedule in 2006. MMHT services can only be provided by a licensed outpatient clinic with an approved service description for MMHT.

§1153.14 *(relating to noncovered services).*

The proposed rulemaking revises the time frame for the psychiatrist's review of assessments and treatment plans to up to 30 calendar days following intake. The change from the current 15 calendar day limit allows the individual receiving services and the mental health professional to develop a treatment plan based upon a comprehensive intake and assessment process. Additionally, the proposed amendments include the codification of MMHT services, which allows licensed outpatient clinics to provide services in a home or community location to improve access.

§1153.21 *(relating to scope of benefits for children under 21 years of age).*

The Department is proposing to revise this section to reflect the changes under Medicaid expansion and the consolidation of the current benefit packages to revise the scope of benefits section to provide the same level of benefits to all eligible children under the age of 21.

§1153.22 *(relating to scope of benefits for adults 21 years of age or older).*

The Department is proposing to revise this section to reflect the changes under Medicaid Expansion and the consolidation of the current benefit packages to provide the same level of benefits to all eligible adults. Specifically, the proposed changes will amend the amount, duration and scope variations between categories of eligibility to comply with Federal regulations and the MHPAEA.

§1153.23 *(relating to scope of benefits for State Blind Pension recipients).*

The Department proposes to delete this section to reflect that with Medicaid Expansion and the consolidation of the current benefit packages, the State Blind Pension recipient category is no longer a benefit category.

§1153.24 *(relating to scope of benefits for General Assistance recipients).*

The Department proposes to revise the scope of benefits sections to codify the benefits under the Medicaid expansion and provide the same level of benefits to all eligible adults. The General Assistance category is no longer included in the chapter.

§1153.41 *(relating to participation requirements).*

The Department proposes to revise this section to recognize the scope of practice of advanced practice professionals in the Commonwealth. This revision will allow Certified Registered Nurse Practitioners (CRNP), and Physician Assistants (PA), within their

scope of practice and applicable law, to prescribe medication in psychiatric outpatient clinics. A requirement for psychiatric outpatient clinics to have service description for MMHT approved by the Department to be a MMHT provider was codified and outdated language was updated throughout the section.

§1153.42 *(relating to ongoing responsibilities of providers).*

The proposed rulemaking revises outdated language, clarifies licensure and MA enrollment requirements and codifies MMHT services.

§1153.51 *(relating to general payment policy).*

The Department proposes to codify MMHT services under the payment policy for outpatient psychiatric services. MMHT services were added to the MA Program Fee Schedule in November of 2006 for adults 21 years of age or older. These services were also recently amended in the MA State Plan and the MA Program Fee Schedule for children under 21 years of age.

§1153.52 *(relating to payment conditions for various services).*

The proposed rulemaking revises this section to also allow a psychiatric clinic medication visit to be provided by an advanced practice professional licensed in the Commonwealth, recognizing the scope of practice for CRNPs and PAs. Additionally, the Department proposes to allow a psychiatric evaluation to be performed by real-time, two-way interactive audio-video transmission.

The Department also proposes to require initial treatment plans to be developed within 30 days of intake, with updates of the treatment plans being required at least

every 180 days, or more frequently based upon clinical need. Stakeholders representing the provider community and individuals receiving services stated this time frame is reasonable for the development of a comprehensive treatment plan based upon clinical assessment, history and input from the individual receiving services. Individuals are seen at various time frames on an outpatient basis which impacts when treatment plans should be updated. This proposed change is similar to outpatient clinic regulations related to treatment planning in Maryland, South Carolina, Minnesota, and Oregon.

The proposed rulemaking also revises the time frame for the psychiatrist to review, approve, and sign the treatment plans. The psychiatrist will be responsible for reviewing and approving the initial treatment plan, in conjunction with the mental health professional and the individual receiving services, within 30 days of intake. The psychiatrist will review and approve the updated treatment plans within one year of the previous psychiatric review and approval.

The Department proposes to revise the psychiatric clinic clozapine monitoring and evaluation provisions for congruence with the program changes related to prescribing and monitoring clozapine treatment. Clozapine is associated with severe neutropenia and must be monitored by blood testing throughout the course of treatment. The regulations have been revised to include absolute neutrophil count (ANC) testing as part of the treatment protocols.

The proposed rulemaking establishes the conditions and limitations for the provision of MMHT services in the home or community. MMHT expands the ability of outpatient psychiatric clinics to provide services to individuals of any age in approved alternative

settings based upon specific clinical criteria and a written order from a licensed practitioner of the healing arts. MMHT will provide access to psychiatric services, psychotherapy and medication visits for individuals who are unable to attend treatment in a traditional outpatient psychiatric clinic setting due to documented mental or physical illness. The Department proposes to delete subsection (e) because it is no longer necessary with the addition of MMHT to the chapter. Outdated conditions and limitations were revised.

§1153.53 *(relating to limitations on payment).*

The Department proposes to revise this section to remove the limitations on services.

§1153.53a *(relating to requests for waivers of hourly limits).*

The Department proposes to delete this section. The proposed revisions to the limitations on services will eliminate the need for this section.

§5200.1 *(relating to legal base).*

The Department proposes to revise the outdated language of the "Mental Health and Mental Retardation Act of 1966" to reflect the legislative change of its short title to the "Mental Health and Intellectual Disability Act of 1966".

§ 5200.2 *(relating to scope).*

The Department proposes to revise the outdated language of "the mentally ill or the emotionally disturbed" to "individuals that have a mental illness or emotional disturbance". This proposed change delineates the difference between an illness and the individual who has a specific treatable illness by supporting person first language.

The New Freedom Commission on Mental Health, Final Report, July 2003, recognized that the stigma surrounding mental illness can be reduced by reinforcing the hope of recovery for every individual with mental illness and providing person-centered treatment options that are readily accessible in every community. In SAMHSA's "Leading Change: A Plan for SAMHSA's Roles and Action" published in 2011, it was reported that one in five Americans still believe that individuals with mental illness are dangerous. Based upon the ongoing public perception related to mental illness, SAMHSA has included a strategic initiative targeted at public awareness and support. The goal of the initiative is to increase public understanding about mental and substance use disorders, the reality that people recover and how to access treatment and recovery supports for behavioral health conditions.

Additionally, the Department proposes to include the term "public entities" to recognize facilities that are operated by a Federal, State, or local governmental entity and licensed as psychiatric outpatient clinics. Facilities are identified as public or private facilities by the Department.

§ 5200.3 *(relating to definitions).*

The proposed rulemaking adds new definitions and revises existing definitions. Significantly, the proposed rulemaking defines the term "advanced practice professional" in recognition of certified registered nurse practitioners with a mental health certification or physician assistants with either a mental health certification or at least a year of experience working in a behavioral health setting working under the supervision of a physician. This new definition will allow these licensed professionals to

provide services within their scope of practice in psychiatric outpatient clinics, thereby expanding clinical resources.

In recognition of the codification of MMHT in this chapter, a variety of definitions were added. The term "assessment" provides a description of the face-to-face interview to evaluate clinical needs of the individual. The proposed rulemaking includes the definition of "Licensed Practitioner of the Healing Arts" (LPHA). MMHT is in Pennsylvania's Medical Assistance State Plan as a rehabilitation service and pursuant to Federal regulation, rehabilitation services must be "recommended by a physician or other licensed practitioner of the healing arts, within the scope of his practice under State law" (42 CFR § 440.130(d)). The LPHA definition allows a broad array of licensed professionals to order this service within their scope of practice under state law. MMHT includes an array of treatment services to reduce the disabling effects of a mental or physical illness for individuals who have encountered barriers to or have been unsuccessful in receiving services in a traditional outpatient setting due to a physical or psychological condition. The ability to provide clinical treatment to individuals in an alternative setting such as a home or community-based environment increases access to outpatient treatment services potentially decreasing the utilization of higher levels of care.

The Department proposes to revise the definition of "facility" to remove the outdated terminology "mentally disabled persons" which does not distinguish the individual from the illness and replace the terminology with "individuals with mental illness or emotional disturbance". This language has been replaced in the definition of "psychiatric outpatient

clinic" for congruence in the chapter. The term "psychiatric outpatient clinic" has been revised throughout the chapter for consistency with the title of the chapter.

The proposed rulemaking proposes to remove the phrase "staff time" from the definition of "full-time equivalent" as recommended by the stakeholder workgroup. A person employed for thirty-seven and one half hours by a psychiatric outpatient clinic is considered a full-time employee.

The Department proposes to add the term "mental illness or emotional disturbance" for consistency with federal language and to support a person first approach for identifying an illness rather than the use of the outdated term "mentally disturbed person". Mental illness or emotional disturbance is a mental or emotional disorder that meets the diagnostic criteria in the current version of the Diagnostic and Statistical Manual (DSM) or the International Classification of Diseases (ICD) with reference to an individual's level of functioning in various life domains. References to "mental disorder" through the chapter have been replaced with "mental illness or emotional disturbance."

The proposed rulemaking revises the definition of "psychiatrist" to recognize that a residency in psychiatry is "at least 3 years".

The Department proposed to change the definition for "quality assurance program" to remove the outdated terminology of patient and replace the term with "individuals receiving services" for consistency with other language changes in the chapter.

The proposed rulemaking also adds the definition of "telepsychiatry" to allow for the utilization of technology to provide clinical services. Telepsychiatry will improve access to mental health care in underserved, rural, and remote areas of the state, as well as,

offer specialized clinical services that may only be available in urban regions. According to research reviewed by the American Telemedicine Association, the majority of telemental health services are provided in the outpatient setting. It has been demonstrated that individuals receiving services can be reliably assessed, diagnosed, and treated with pharmacology in outpatient clinics via telepsychiatry (Evidence-Based Practice for Telemental Health, July 2009).

The proposed rulemaking also distinguishes between "mental health professional" and "mental health worker" by clarifying qualifications and incorporating language that recognize the scope of practice of licensed behavioral health professionals. The definitions of "psychiatric nurse" and "psychiatric social worker" are no longer necessary as a result of this change and the Department proposes to delete them.

Finally, the Department proposes to delete all service durations from the definitions, since the required unit of service for each service is specified in the procedure code, technically known as the Current Procedural Terminology ("CPT") code, for the service and therefore does not need to be included in the definition of the service, which could become outdated as CPT codes are revised.

§ 5200.4 *(relating to provider eligibility)*

The proposed rulemaking clarifies that this chapter is not intended to regulate individual or group private practices that provide mental health services.

§5200.5 *(relating to application and review process).*

The proposed rulemaking removes the outdated language related to programs operating under a preexisting approval to meet the requirements of the chapter and includes the current annual inspection information.

§ 5200.6 *(relating to objective).*

The Department proposes to revise this section to support the ongoing transition to a recovery-oriented system of care by including language that recognizes individuals can, and do, recover from mental illness and emotional distress. The New Freedom Commission on Mental Health, reports that "too many individuals are unaware that mental illnesses can be treated and recovery is possible." ("Achieving the Promise: Transforming Mental Health Care in America," July 2003). SAMHSA has included a strategic initiative in the 2015-2018 plan to promote home and community-based services that avoid unnecessary institutionalization and out-of-home placements. The strategic plan emphasizes that recovery provides the common and motivating goal for individuals and families – that people can and do overcome behavioral health problems to live full and productive lives in the community of their choice. Recovery often includes ongoing community-based treatment and support.

§ 5200.7 *(relating to program standards).*

Based upon stakeholder input, the Department proposes to remove the requirement that for-profit facilities seeking licensure or approval shall have Joint Commission on Accreditation of Hospitals accreditation. This requirement is cost-prohibitive for small psychiatric outpatient clinics, resulting in the Department issuing numerous waivers of this standard.

§5200.11 *(relating to organization and structure).*

The Department proposes to revise the language to include a clinical supervisor and a director as part of the psychiatric clinic structure and staffing pattern. The director may provide clinical supervision based upon qualifications and structure of the clinic. The director is responsible for the overall daily management of the clinic while the clinical supervisor is responsible for the clinical oversight of service delivery.

§ 5200.12 *(relating to linkages with mental health service system).*

The proposed rulemaking clarifies the requirement for written documentation describing the accessibility and availability of services provided by other parts of the mental health service system. Emergency services, an integral resource, is specified in the proposed rulemaking to ensure access to services to support individuals in crisis in the community. Ready access to emergency assistance is important not only because it holds the promise of reducing the intensity and duration of the individual's distress, but also as the crisis escalates, options for effective interventions decrease ("Practice Guidelines: Core Elements in Responding to Mental Health Crises," SAMHSA, 2009).

Additionally, the language "Mental Health/Mental Retardation (MH/MR)" is revised to "Mental Health/Intellectual Disability (MH/ID)" to be congruent with previous legislative language changes.

§ 5200.21 *(relating to qualifications and duties of the director/clinical supervisor).*

The Department proposes to revise this section to require a clinical supervisor and a director, who may be the same person, to be employed by the psychiatric outpatient clinic to provide oversight and supervision for all clinical services provided at the clinic.

This proposed revision will ensure that clinical staff will have access to daily supervision to support treatment services.

§ 5200.22 *(relating to staffing pattern).*

The Department proposes to change the current requirement that a clinic have four full-time equivalent (FTE) mental health professionals. Instead, the Department proposes that 50% of the psychiatric clinic treatment staff be mental health professionals. This proposed change will allow new clinics to provide clinical services while they build capacity and hire qualified staff. It will also ensure that larger clinics employ adequate professional staff to provide clinical services.

Additionally, the Department proposes to change the 16-hour psychiatric time requirement to 2 hours of psychiatric time per week for each FTE treatment staff. The psychiatrist must provide 50% of this psychiatric time per week in-person, while the other 50% of the psychiatric time can be provided either by advanced practice professionals licensed to prescribe medication who specialize in behavioral health or using telepsychiatry with prior written approval of the Department, or a combination of both, to meet the time requirement. This proposed change allows for the use of current technology and other licensed professionals. The proposed changes are also congruent with other states' regulations. In review of other states' outpatient clinic regulations, New York, New Jersey, Wisconsin, South Carolina, and Oregon allow other licensed professionals within their scope of practice to provide services in the clinics. The state of Maryland mandates the amount of time a psychiatrist must be at the clinic, while the majority of regulations require adequate time to provide services based upon clinic size and other licensed professionals employed at the clinic. This proposed change will

recognize the scope of practice of other licensed professionals within the Commonwealth and allow clinics to maximize the utilization of psychiatric time to provide clinical oversight and direct care to individuals with complex needs receiving services at the clinic.

Additionally, the Department proposes to revise the language related to licensure for psychiatric residents. The terminology "unrestricted license" has been included to reflect that a third year resident is granted an unrestricted license to practice medicine while first and second year residents receive a "member in training" license.

§ 5200.23 *(relating to psychiatric supervision).*

The proposed rulemaking changes the outdated language of "patient" to "clinic" population as suggested by the stakeholder community.

§5200.24 *(relating to criminal history and child abuse certification).*

The Department proposes to add a section addressing the current requirements under the Child Protective Services Law, 23 Pa.C.S. §§ 6301-6386, for background checks for any staff or volunteers having direct contact with an individual receiving outpatient psychiatric services in the clinic or community setting.

§ 5200.31 *(relating to treatment planning).*

The proposed rulemaking revises this section to increase the time frame for the development of the initial treatment plan from the current 15 days to 30 days. This proposed change will allow the individual receiving services and the mental health professional more time to identify key goals and objectives for the treatment plan based

upon clinical need. The initial treatment plan shall be signed by the mental health professional, the psychiatrist, and the individual receiving services.

The Department also proposes to change the frequency of treatment plan updates from every 120 days or 15 visits to every 180 days to allow additional time to address the identified goals and objectives of the initial plan. The updated treatment plan shall be reviewed and signed by the mental health professional and the individual receiving treatment.

The proposed rulemaking requires the psychiatrist to review and approve the treatment plan within one year of the previous review and approval. This proposed revision will reduce paperwork burden for the psychiatrist by changing review and sign off to yearly rather than every 120 days. This proposed change maintains compliance with definitions in Section 1905(a)(9) of the Social Security Act, 42 U.S.C. § 1396d(a)(9) and in 42 CFR § 440.90 (relating to clinic services), that services furnished at the clinic be provided by or are under the direction of a physician. To meet this requirement, a physician must see the individual, prescribe the type of care provided and periodically review the need for continued care.

Additionally, the proposed rulemaking specifies that the individual receiving services shall be actively involved in the creation of the treatment plan and updates which shall include both strengths and needs. In 2010, SAMHSA convened the leaders in the behavioral health field, to develop a unified definition of recovery. Based upon this work, "recovery" is defined as "a process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential."

("SAMHSA's Working Definition of Recovery," Department of Health and Human Services, February 2012). One of the major dimensions to support a life in recovery is overcoming or managing one's disease or symptoms by making informed choices to support emotional and physical well-being. Self-determination and self-direction are critical as individuals exercise choice of services and supports that will assist in their recovery. Person-driven services are one of the 10 guiding principles of recovery developed by SAMHSA. ("SAMHSA's Working Definition of Recovery," Department of Health and Human Services, February 2012). Further, active involvement in treatment planning and goal setting is a key element in designing a unique pathway to recovery.

Lastly, the Department proposes to include a requirement that treatment be provided according the individual's treatment plan to ensure that the services are being provided to help individuals meet their goals and according to their needs. This addition is consistent with the Departments' requirements for other behavioral health services.

§ 5200.32 *(relating to treatment policies and procedures).*

The Department proposes to change "patients" to "individuals" for consistency with changes in other sections of the proposed rulemaking.

§ 5200.41 *(relating to records).*

The proposed rulemaking revises this section to update terminology and include the requirements for securing written and electronic records in accordance with all applicable federal and state privacy and confidentiality laws and regulations.

§ 5200.42 *(relating to medications).*

The Department proposes to revise this section to recognize advanced practice professionals licensed to prescribe medication in this Commonwealth. This section also clarifies the term "written" to include prescriptions that are handwritten or recorded and transmitted by electronic means, and the requirements for transmitting electronic prescriptions. Additionally, this section will require documentation of any medications prescribed in the individual medical record.

§ 5200.43 *(relating to fee schedule).*

The proposed rulemaking removes the requirement that fee schedules be submitted to the Department for informational purposes to reduce paperwork requirements for providers. Additionally, the outdated terminology of referring to an individual receiving services as a patient has been revised to be consistent with other sections of this chapter.

§ 5200.44 *(relating to quality assurance program).*

The proposed rulemaking changes the term "patients" to "individuals" for consistency in each section of the regulation and adds a requirement to include MMHT services as part of the quality assurance plan.

§ 5200.45 *(relating to physical facility).*

The term "patient" has been revised to "individual". Additionally, the regulation includes physical site requirements that recognize the importance of an engaging and culturally-competent environment in the clinic for individuals receiving services. As part of the 10 guiding principles of recovery developed by SAMHSA, culture in all its diverse representations are keys in determining a person's unique pathway to recovery.

("SAMHSA's Working Definition of Recovery," Department of Health and Human Services, February 2012).

§ 5200.46 *(relating to notice of nondiscrimination).*

The term "client" has been changed to "individual" for consistency with other sections of the proposed rulemaking. Additionally, the nondiscrimination language is being updated to reflect current terminology addressing nondiscrimination.

§ 5200.48 *(relating to waiver of standards).*

The Department proposes to revise this section to allow greater flexibility for the duration and renewal of waivers to be granted where the development of specialty psychiatric clinic services would be severely limited by the standards. The waivers would continue to be subject to approval by the Department.

MOBILE MENTAL HEALTH TREATMENT

§5200.51 *(relating to provider service description).*

The proposed rulemaking requires that licensed outpatient clinics develop a service description for MMHT services that will be provided, including the age range of the population to be served. Prior to the delivery of MMHT, the service description must be approved by the Department.

§5200.52 *(relating to treatment plans).*

The Department proposes to include specific elements in the MMHT treatment plan in addition to the requirements outlined in Section 5200.31 (relating to treatment planning). The additional elements provide information on the services to be provided, duration of

the service, location of the service provision, and the professional responsible for the delivery of the services.

§5200.53 *(relating to discharge).*

The proposed rulemaking identifies discharge planning requirements for MMHT services.

Affected Individuals and Organizations

The proposed rulemaking will affect individuals receiving psychiatric outpatient clinic services by increasing access to needed services, including the ability to receive outpatient services at alternative locations, allowing the use of telepsychiatry, requiring the involvement of individuals receiving services in planning their treatment, and expanding the categories of professionals who may provide services by adding advanced practice professionals licensed to prescribe medications in this Commonwealth.

In addition, all licensed psychiatric outpatient clinics that are enrolled in the Medical Assistance Program will be affected. The proposed rulemaking will reduce paperwork requirements, increase the utilization of licensed professionals within their scope of practice, and increase access to services in rural areas by allowing use of telepsychiatry. The proposed rulemaking will help maintain the 279 community-based psychiatric outpatient clinic programs and their 783 satellite sites that served approximately 325,851 individuals in fiscal year 2013/2014.

Accomplishments and Benefits

The proposed rulemaking will benefit individuals seeking outpatient psychiatric services by increasing access through the use of telepsychiatry, requiring involvement of each individual in the planning of individualized treatment services, expanding the utilization of MMHT, supporting recovery, and increasing the role of advance practice professionals licensed to prescribe medication in the clinics.

The National Survey on Drug Use and Health report published by SAMHSA in 2014 states that mental illness is a major public health concern in the United States as a primary cause of disability. The Agency for Healthcare Research and Quality cites a cost of $57.5 billion in 2006 for mental health care in the United States, equivalent to the cost of cancer care. Much of the economic burden of mental illness is not the cost of care, but the loss of income due to unemployment, expenses for social supports, and a range of indirect costs due to a disability that begins early in life. SMI costs the United States $193.2 billion in lost earnings per year (Kessler, R.C. "The individual-level and societal-level effects of mental disorders on earnings in the United States: Results from the National Comorbidity Survey Replication." *American Journal of Psychiatry*, 165(6), 703-711). Mental health is essential to a person's well-being, healthy family and interpersonal relationships, and the ability to live a full and productive life according to the research done by Healthy People 2020. Research has shown that many mental illnesses can be treated successfully, and increasing access to community mental health services could substantially reduce the associated morbidity. ("Mental Illness Surveillance among Adults in the U.S.," Centers for Disease Control, September 2011). Increasing access to community-based services with early detection, treatment and recovery supports may have significant positive cost implications for the

Commonwealth. There is strong consensus in many countries that outpatient clinics offer an efficient way to assess and treat mental illness by providing sites that are accessible to the local population. (Thornicroft G., Tansella M. "What are the arguments for community-based mental health care?," World Health Organization, Health Evidence Network Report, August 2003). The "Mental Health Action Plan 2013-2020" incorporates the overall goal of promoting mental well-being and preventing mental disorders by providing accessible care, enhancing recovery through a comprehensive integrated community-based mental health system. (WHO, 2013).

The consequences of not having community mental health services, including access to psychiatric outpatient services, include increased hospitalization, physical health costs, and suicide. Suicide is the tenth leading cause of death in the United States and the second leading cause of death for youth aged 15 to 24. Ensuring access to psychiatric outpatient clinic services is a cost-effective resource that can promote mental well-being, support recovery and reduce the utilization of inpatient care.

The psychiatric outpatient clinics will benefit from a decrease in paperwork requirements, thereby increasing psychiatric and other clinical time available to provide direct services, and also the increased ability to provide services in accordance with current industry standards.

Fiscal Impact

No cost to the Commonwealth, local government, service providers or individuals seeking psychiatric outpatient services are anticipated as a result of these regulations.

Paperwork Requirements

No additional reporting, paperwork, or record keeping is required to comply with the proposed rulemaking. Further, requirements related to documentation of treatment planning have been reduced, which will result in a decrease in current paperwork requirements for psychiatric outpatient clinic providers.

Effective Date

This proposed rulemaking will be effective upon publication as final rulemaking in the *Pennsylvania Bulletin.*

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Department at the following address: Department of Human Services, Office of Mental Health and Substance Abuse Programs, Attention: Ms. Michelle Rosenberger, Bureau of Policy, Planning and Program Development, Commonwealth Towers, 11th Floor, 303 Walnut Street, P.O. Box 2675, Harrisburg, Pennsylvania 17105-2675, or RA-PWOPCRegs@pa.gov within 30 calendar days after the date of the publication of this proposed rulemaking in the *Pennsylvania Bulletin.* Reference Regulation No. #14-538 when submitting comments. Persons with a disability who require an auxiliary aid or service may submit comments by using the AT&T Relay Service at 1-800-654-5984 TDD users) or 1-800-654-5988 (voice users).

Regulatory Review Act

Under § 5(a) of the Regulatory Review Act (71 P.S. §745.5(a)), on JUL 28 2017 the Department submitted a copy of the this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Human Services and the Senate Committee on Public Health and Welfare. In addition to submitting the proposed rulemaking, the Department has provided the IRRC and the Committees with a copy of a Regulatory Analysis Form prepared by the Department. A copy of this form is available to the public upon request. Under Section 5(g) of the Regulatory Review Act, if the IRRC has any comments, recommendations or objections to any portion of the proposed rulemaking, it may notify the Department and Committees within 30 days after the close of the public comment period. Such notification shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review by the Department, the General Assembly and the Governor, of any comments, recommendations or objections raised, prior to final publication of the regulation.

ANNEX A

TITLE 55. PUBLIC WELFARE

PART III. MEDICAL ASSISTANCE MANUAL

CHAPTER 1153 OUTPATIENT [PSYCHIATRIC] BEHAVIORAL HEALTH SERVICES

* * * * *

SCOPE OF BENEFITS

§ 1153.21. Scope of benefits for [the categorically needy] children under 21 years of age.

§ 1153.22. Scope of benefits for [the medically needy] adults 21 years of age or older.

§ 1153.23. [Scope of benefits for State Blind Pension recipients.] (Reserved).

§ 1153.24. [Scope of benefits for General Assistance recipients.] (Reserved).

* * * * *

GENERAL PROVISIONS

§ 1153.1. Policy.

The MA Program provides payment for specific medically necessary psychiatric outpatient clinic services, Mobile Mental Health Treatment (MMHT) services, and psychiatric outpatient partial hospitalization [services] rendered to eligible [recipients] individuals by psychiatric outpatient clinics and psychiatric outpatient partial hospitalization facilities enrolled as providers under the program. Payment for [outpatient psychiatric] behavioral health services is subject to the provisions of this chapter, Chapter 1101 (relating to general provisions) and the limitations established in

Chapter 1150 (relating to the MA Program payment policies) and the MA Program fee schedule.

§ 1153.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Adult – An individual 21 years of age or older.

Adult partial hospitalization program – A program licensed by the Department, Office of Mental Health and Substance Abuse Services, to provide partial hospitalization services to individuals 15 years of age or older.

Children and youth partial hospitalization program – A program licensed by the Department, Office of Mental Health and Substance Abuse Services, to provide partial hospitalization services to individuals 14 years of age or younger.

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Collateral family psychotherapy – Psychotherapy provided to the family members of [a clinic patient] an individual receiving psychiatric outpatient clinic services in the absence of the [patient] individual.

* * * * *

Facility- A mental health establishment, hospital, clinic, institution, center or other organizational unit or part thereof, the primary function of which is the diagnosis, treatment, care and rehabilitation of individuals with mental illness or emotional disturbance.

Family psychotherapy – Psychotherapy provided to two or more members of a family. At least one family member shall have a diagnosed mental [disorder] illness or

emotional disturbance. Sessions shall be [at least ½ hour in duration and shall be] conducted by a clinical staff person.

Group psychotherapy – Psychotherapy provided to no less than two and no more than [ten] twelve persons with diagnosed mental [disorders] illness or emotional disturbance [for a period of at least 1 hour]. These sessions shall be conducted by a clinical staff person.

[Home visit –A visit made to an eligible recipient's place of residence, other than a treatment institution or nursing home, for the purpose of observing the patient in the home setting or providing a compensable outpatient psychiatric service.]

Individual Psychotherapy – Psychotherapy provided to one person with a diagnosed mental [disorder] illness or emotional disturbance [for a minimum of 1/2 hour]. These sessions shall be conducted by a clinical staff person.

Inpatient – [A patient] An individual who has been admitted to a treatment institution or an acute care hospital or psychiatric hospital on the recommendation of a physician and is receiving room, board and professional services in the facility on a continuous 24-hour-a-day basis.

Intake – The first contact with [a patient] an individual for initiation of or [renewal of] re-admission to outpatient behavioral health services covered by this chapter.

LPHA--Licensed Practitioner of the Healing Arts –A person who is licensed by the Commonwealth to practice the healing arts. This term is limited to a physician, physician's assistant, certified registered nurse practitioner, or psychologist.

[Mental disorder–Conditions characterized as mental disorder by the International Classification of Diseases---ICD-9-CM ---including mental retardation with associated

psychiatric conditions (ICD-9-CM codes 317 to 319) and excluding drug/alcohol conditions ([ICD-9-CM] codes 291----292.9.

Mental health professional—A person trained in a generally recognized clinical discipline including but not limited to psychiatry, social work, psychology or nursing, rehabilitation or activity therapies who has a graduate degree and clinical experience.]

Mental health professional – A person who meets one of the following:

(i) Has a graduate degree from a college or university that is accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation (CHEA) in a generally recognized clinical discipline which includes mental health clinical experience.

(ii) Has an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. (AICE) or the National Association of Credential Evaluation Services (NACES). The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(iii) Is licensed in a generally recognized clinical discipline which includes mental health clinical experience.

[*Mental health worker*—A person who does not have a graduate degree in a clinical discipline but who by training and experience has achieved recognition as a mental health worker, or a person with a graduate degree in a clinical discipline.]

Mental health worker – A person acting under the direction of a mental health professional to provide services who meets one of the following:

(i) Has a Bachelor's degree from a college or university that is accredited by an

agency recognized by the United States Department of Education or the Council for Higher Education Accreditation (CHEA) in a recognized clinical discipline including social work, psychology, nursing, rehabilitation or activity therapies.

(ii) Has a graduate degree in a clinical discipline with 12 graduate-level credits in mental health or counseling from a program that is accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation (CHEA).

(iii) Has an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. (AICE) or the National Association of Credential Evaluation Services (NACES). The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

Mental illness or emotional disturbance – A mental illness or emotional disturbance that meets the diagnostic criteria within the current version of the Diagnostic and Statistical Manual (DSM) or the International Classification of Diseases (ICD). A mental illness or emotional disturbance is characterized by clinically significant disturbances in an individual's cognition, emotional regulation, or behavior that reflects a dysfunction in the psychological, biological or developmental processes underlying mental functioning.

MMHT- Mobile Mental Health Treatment - One or more services including assessment; individual, group, or family therapy; and medication visits provided in an individual's residence or approved community site.

Outpatient – [A person] An individual who is not a resident of a treatment institution and who is receiving covered medical and [psychiatric] behavioral health services [at] from [an approved or] a licensed [outpatient] psychiatric outpatient clinic or partial hospitalization facility which is not providing [him] the individual with room and board and professional services on a continuous 24-hour-a-day basis.

Psychiatric clinic clozapine monitoring and evaluation visit – A [minimum 15-minute] visit for the monitoring and evaluation of [a patient's] an individual's physical and mental condition during the course of treatment with clozapine. The term includes only a visit provided to an eligible [recipient] individual receiving clozapine therapy, and only by a psychiatrist, physician, certified registered nurse practitioner (CRNP), registered nurse (RN), or physician assistant.

Psychiatric clinic medication visit – A [minimum 15-minute] visit only for administration of a drug and evaluation of [a patient's] an individual's physical or mental condition during the course of prescribed medication. This visit is provided to an eligible [recipient] individual only by a psychiatrist, physician, certified registered nurse practitioner, physician's assistant, registered nurse or licensed practical nurse [who is a graduate of a school approved by the State Board of Nursing or who has successfully completed a course in the administration of medication approved by the State Board of Nursing].

Psychiatric evaluation – An initial mental status examination and evaluation of [a patient] an individual provided only by a psychiatrist in a face-to-face interview or using real-time, two-way interactive audio-video transmission with prior written approval from the Department with the [patient] individual. It shall include a comprehensive history

and evaluation of pertinent diagnostic information necessary to arrive at a diagnosis and treatment plan, recommendations for treatment or further diagnostic studies or consultation. The history shall include individual, social, family, occupational, drug, medical and previous psychiatric diagnostic and treatment information.

Psychiatric outpatient clinic [provider] – A facility [approved by the Department, Office of Medical Assistance, and] fully [approved/]licensed by the Department, Office of Mental Health and Substance Abuse Services, to provide specific medical, psychiatric and psychological services for the diagnosis and treatment of mental [disorders] illness or emotional disturbance. [Treatment is provided to eligible Medical Assistance outpatient recipients who are not residents of a treatment institution or receiving similar treatment elsewhere.]

Psychiatric outpatient clinic services – Outpatient medical, psychiatric and psychological services listed in the MA Program Fee Schedule furnished to [a mentally disordered outpatient] an individual with mental illness or emotional disturbance while the [person] individual is not a resident of a treatment institution, provided by or under the supervision of a psychiatrist [in a facility organized and operated to provide medical care to outpatients].

Psychiatric outpatient partial hospitalization provider – A facility [approved by the Department of Human Services,] enrolled in the [Office of Medical Assistance] MA Program, to provide partial hospitalization services and fully [approved/]licensed by the Department, Office of Mental Health and Substance Abuse Services, to provide psychiatric, medical, psychological and psychosocial services as partial hospitalization for the diagnosis and treatment of mental [disorders] illness and emotional disturbance.

[Treatment is provided to eligible MA outpatient recipients who are not residents of a treatment institution or receiving similar treatment elsewhere].

Psychiatric partial hospitalization – An active outpatient psychiatric day or evening treatment session including medical, psychiatric, psychological, and psychosocial treatment listed in the MA Program Fee Schedule. This service shall be provided to [mentally disordered outpatients] an individual with mental illness or emotional disturbance in a supervised, protective setting [for a minimum of 3 hours and a maximum of 6 hours in a 24-hour period]. The session shall be provided by a psychiatrist or by psychiatric partial hospitalization personnel under the supervision of a psychiatrist.

* * * * *

Psychotherapy – The treatment, by psychological means, of the problems of an emotional nature in which a trained person deliberately establishes a professional relationship with [the patient] an individual with the [object] objective of removing, modifying or [retarding] relieving existing symptoms, of mediating disturbed patterns of behavior, and of promoting positive personality growth and development.

Supervision by a psychiatrist – The psychiatrist [personally] provides or orders, guides and oversees compensable medical, psychiatric and psychological services provided to [recipients] individuals by psychiatric outpatient clinic or partial hospitalization personnel as specified in § 1153.52(a) (relating to payment conditions for various services).

Treatment institution—A facility approved or licensed by the Department or its agents that provides full- [or part-]time psychiatric treatment services for resident [patients]

individuals with mental [disorders] illness or emotional disturbance---[mental retardation] residential facilities for individuals with intellectual disabilities or community residential rehabilitation services are not considered to be mental health institutions.

COVERED AND NONCOVERED SERVICES

§1153.11. Types of services covered.

Medical Assistance Program coverage for [outpatient] psychiatric outpatient clinics, [and] partial hospitalization facilities, and MMHT services is limited to professional medical and psychiatric services for the diagnosis and treatment of mental [disorders] illness and emotional disturbance, including [mental retardation] intellectual disabilities, as specified in the MA Program Fee Schedule.

§ 1153.12. Outpatient services.

The [outpatient] psychiatric outpatient clinic services specified in the MA Program Fee Schedule and the outpatient psychiatric partial hospitalization services specified in the MA Program Fee Schedule are covered only when provided by [approved outpatient] licensed psychiatric outpatient clinics or psychiatric partial hospitalization facilities when ordered by a psychiatrist. MMHT services specified in the MA Program Fee Schedule are covered only when provided by a licensed psychiatric outpatient clinic that has an approved service description for MMHT. Payment is subject to the conditions and limitations established in this chapter and Chapter 1101 (relating to general provisions).

§ 1153.14. Noncovered services.

Payment will not be made for the following types of services regardless of where or to whom they are provided:

(1) A covered psychiatric outpatient clinic, MMHT or partial hospitalization service conducted over the telephone.

* * * * *

(4) A MA covered service, including psychiatric outpatient clinic, MMHT and partial hospitalization services, provided to inmates of State or county correctional institutions or committed residents of public institutions.

(5) Psychiatric outpatient clinic, MMHT or partial hospitalization services to residents of treatment institutions, such as, [persons] individuals who are also being provided with room or board or both, and services, on a 24-hour-a-day basis by the same facility or distinct part of a facility or program.

(6) Services delivered at locations other than [approved] licensed psychiatric outpatient clinics with the exception of MMHT under the conditions specified in §1153.52(d) (relating to Mobile Mental Health Treatment) or partial hospitalization facilities [with the exception of home visits under the conditions specified in § 1153.52(d) (relating to payment conditions for various services)].

* * * * *

(9) Psychiatric outpatient clinic services, MMHT and psychiatric partial hospitalization provided on the same day to the same [patient] individual.

(10) Covered psychiatric outpatient clinic services, MMHT and psychiatric partial hospitalization services, with the exception of family psychotherapy, provided to persons without a mental [disorder] illness or emotional disturbance or [mental retardation] an intellectual disability diagnosis rendered by a psychiatrist in accordance with the current version of the DSM or International Classification of Diseases---[ICD-9-

CM] Chapter V, ["Mental Disorders."] "Mental, Behavioral, and Neurodevelopmental Disorders."

(11) Psychiatric outpatient clinic, MMHT and psychiatric partial hospitalization services provided to [patients] individuals with [drug/alcohol abuse or dependence problems, such as alcohol dependence and nondependent abuse of drugs, alcohol psychoses, and drug psychoses] substance-related and addictive disorders, unless the [patient] individual has a primary diagnosis of a [nondrug/alcohol abuse/dependence related] mental [disorder] illness or emotional disturbance.

(12) Drugs, [and] biologicals and supplies furnished to an individual receiving services at a psychiatric outpatient clinic or a partial hospitalization [patients] facility during a visit to the psychiatric outpatient clinic or facility. These are included in the psychiatric outpatient clinic medication visit fee or partial hospitalization session payment. Separate billings from any source for items and services provided [in] by the psychiatric outpatient clinic are noncompensable.

* * * * *

(14) [Home visits] MMHT services not provided in accordance with the conditions specified in § 1153.52(d).

(15) Services provided beyond the [15th] 30th calendar day following intake, without the psychiatrist's review and approval of the initial assessment and treatment plan.

(16) The hours that the [client] individual participates in an education program delivered in the same setting as a children and youth partial hospitalization program unless, in addition to the teacher, a clinical staff person works with the child in the classroom. The Department will reimburse for only that time during which the [client]

individual is in direct contact with a clinical staff person.

(17) Group psychotherapy provided in the [patient's] individual's home.

(18) Psychiatric outpatient clinic, MMHT and partial hospitalization services provided to nursing home residents on the grounds of the nursing home or under the corporate umbrella of the nursing home.

(19) Electroconvulsive therapy and electroencephalogram provided through MMHT.

(20) MMHT provided on the same day as other home and community-based behavioral health services to the same individual.

(21) MMHT services provided as a substitute for transportation to the psychiatric outpatient clinic.

SCOPE OF BENEFITS

§ 1153.21. Scope of benefits for [the categorically needy] children under 21 years of age.

[Categorically needy recipients] Children under 21 years of age are eligible for the full range of covered psychiatric outpatient clinic, MMHT and psychiatric partial hospitalization services in the MA Program Fee Schedule.

§ 1153.22. Scope of benefits for [the medically needy] adults 21 years of age or older.

[Medically needy recipients] Adults 21 years of age or older are eligible for the full range of covered psychiatric outpatient clinic, MMHT and psychiatric partial hospitalization services in the MA Program Fee Schedule.

§ 1153.23. [Scope of benefits for State Blind Pension recipients.

State Blind Pension recipients are eligible for the full range of covered psychiatric outpatient clinic and psychiatric partial hospitalization services in the MA Program fee schedule.] (Reserved).

§ 1153.24. [Scope of benefits for General Assistance recipients.

General Assistance recipients, age 21 to 65, whose MA benefits are funded solely by State funds, are eligible for medically necessary basic health care benefits as defined in Chapter 1101 (relating to general provisions). See § 1101.31(e) (relating to scope).] (Reserved).

PROVIDER PARTICIPATION

§ 1153.41. Participation requirements.

In addition to the participation requirements established in Chapter 1101 (relating to general provisions), [outpatient] psychiatric outpatient clinics, and outpatient partial hospitalization facilities shall meet the following participation requirements:

(1) Have a current full licensure[/approval] as a psychiatric outpatient clinic or partial hospitalization outpatient facility by the Department's Office of Mental Health and Substance Abuse Services. To remain eligible for MA reimbursement, a psychiatric outpatient clinic or partial hospitalization facility shall be fully licensed[/approved] at all times as a psychiatric outpatient clinic or partial hospitalization outpatient facility.

* * * * *

(3) Have a written [patient] referral plan for individuals receiving services that provides for inpatient hospital care and follow-up treatment.

* * * * *

(5) Appoint an administrator or director responsible for the internal operation of the psychiatric outpatient clinic or partial hospitalization facility. Appoint a psychiatrist or psychiatrists responsible for the supervision and direction of services rendered to eligible [recipients] individuals.

(6) Notify immediately the Department, Office of Medical Assistance Programs, [Bureau of Provider Relations] Bureau of Fee-for-Services, in the manner prescribed by the Department, of a facility or clinic name, address, and services changes prior to the effective date of change. Failure to do so may result in payment interruption or termination of the provider agreement.

* * * * *

(8) Have each branch location or satellite of a[n approved] licensed psychiatric outpatient clinic or partial hospitalization facility also licensed [or approved] by the Office of Mental Health and Substance Abuse Services as a psychiatric outpatient clinic site or psychiatric hospitalization facility, whichever is applicable, and [approved] enrolled by the Office of Medical Assistance Programs before reimbursement can be made for services rendered at the branch or satellite. [Approval] Licensure and enrollment of the parent organization does not constitute [approval] licensure and enrollment for any branches or satellites of the same organization.

(9) Be [approved] enrolled as a provider in the Medical Assistance Program.

(10) Have medications prescribed by a licensed [physician] practitioner within his or her scope of practice.

(11) Psychiatric outpatient clinics providing MMHT shall have a service description approved by the Department under the conditions specified in § 5200.51(relating to provider service description).

* * * * *

§ 1153.42. Ongoing responsibilities of providers.

(a) *Responsibilities of providers.* Ongoing responsibilities of providers are established in Chapter 1101 (relating to general provisions). [Outpatient] Psychiatric outpatient clinics and outpatient psychiatric partial hospitalization facilities shall also adhere to the additional requirements established in this section.

(b) *Recordkeeping requirements.* In addition to the requirements listed in § 1101.51(e) (relating to ongoing responsibilities of providers), the following items shall be included in medical records of [MA patients] receiving [outpatient] psychiatric outpatient clinic, MMHT and outpatient psychiatric partial hospitalization services;

(1) The treatment plan shall include:

* * * * *

(ii) Services to be provided to the [patient] individual in the clinic or partial hospitalization facility or through referral.

* * * * *

PAYMENT FOR OUTPATIENT [PSYCHIATRIC CLINIC AND OUTPATIENT PSYCHIATRIC PARTIALHOSPITALIZATION] BEHAVIORAL HEALTH SERVICES

§ 1153.51. General payment policy.

Payment is made for medically necessary professional medical and psychiatric services provided by or under the supervision and direction of a psychiatrist [in] by

participating [outpatient] psychiatric outpatient clinics and outpatient psychiatric partial hospitalization facilities subject to the conditions and limitations established in this chapter and Chapters 1101 and 1150 (relating to general provisions; and MA Program payment policies) and the MA Program Fee Schedule. Payment will not be made for a compensable psychiatric outpatient clinic, MMHT or psychiatric partial hospitalization service if payment is available from another public agency or another insurance or health program.

§ 1153.52. Payment conditions for various services.

(a) The following conditions shall be met by [outpatient] psychiatric outpatient clinics and partial hospitalization programs, as applicable, to be eligible for payment:

(1) A psychiatrist shall be present in the psychiatric outpatient clinic and outpatient partial hospitalization facility, as required by the Office of Mental Health and Substance Abuse Services [approval/]licensing regulations, to perform or supervise the performance of all covered services provided to [MA patients] individuals receiving MA benefits.

(2) Psychiatric evaluations shall be performed only by a psychiatrist in a face-to-face interview or using a real-time, two way interactive audio-video transmission with prior written approval from the Department with the [patient] individual. Additional interviews with other staff may be included as part of the examination but shall be included in the psychiatric evaluation fee. Separate billings for these additional interviews are not compensable.

* * * * *

(6) The psychiatric outpatient clinic medication visit shall be provided only by a psychiatrist, physician, certified registered nurse practitioner, physician's assistant, registered nurse or licensed practical nurse [who is a graduate of a school approved by the State Board of Nursing or who has successfully completed a course in the administration of medication approved by the State Board of Nursing].

(7) Within [15] 30 consecutive calendar days following intake for individuals who continue to participate in the treatment process, a mental health professional or mental health worker under the supervision of a mental health professional, shall [examine] interview and initially assess each [patient] individual in the psychiatric outpatient clinic; determine the [patient's] individual's diagnosis and prepare an initial treatment plan in collaboration with the individual; and date and sign the examination, diagnosis and treatment plan in the [patient's] medical record. The treatment plan shall be developed, maintained, and periodically reviewed in accordance with the following criteria:

(i) The psychiatrist shall verify each [patient's] individual's diagnosis and approve the initial treatment plan prior to the provision of any treatment beyond the [15th] 30th day following intake. This review and approval shall be dated and signed in the [patient's] medical record.

(ii) The [psychiatrist and] mental health professional[,] or mental health worker under the supervision of a mental health professional and in collaboration with the individual receiving services shall review and update [each patient's] the treatment plan at least every [120] 180 days [or 15 clinic visits, whichever is first,] or, as may otherwise be required by law throughout the duration of treatment. Each [review and]

update shall be dated, documented and signed in the [patient's] medical record by the [psychiatrist and] mental health professional and the individual receiving services.

(iii) The treatment plan and updates shall be based upon the evaluation and diagnosis. Treatment shall be provided in accordance with the identified goals in the treatment plan and updates. Psychiatrists' reviews and reevaluations of diagnoses, treatment plans and updates shall be done within one year of the previous psychiatric review with the mental health professional or mental health worker under the supervision of a mental health professional, [in] by the psychiatric outpatient clinic and[, whenever possible,] with the [patient] individual receiving services. The review shall be dated and signed in the medical record.

* * * * *

(b) *Psychiatric outpatient hospitalization.* Payment will only be made for psychiatric outpatient partial hospitalization provided to eligible [patients] individuals with mental [health disorders] illness or emotional disturbance in [approved] licensed psychiatric outpatient partial hospitalization facilities under the following conditions:

(1) [Patients] Individuals receiving partial hospitalization services shall meet the following criteria:

* * * * *

(2) The following components shall be available in [an approved] a licensed psychiatric partial hospitalization facility and provided to [the patient] an individual, if necessary, in accordance with [the patient's] the individualized treatment plan;

* * * * *

(c) *Psychiatric outpatient clinic.* Payment will only be made for psychiatric outpatient clinic services or MMHT services provided to eligible [patients] individuals with mental [disorders] illness or emotional disturbance [in] by [approved] licensed psychiatric outpatient clinics under the following conditions:

(1) [Psychiatric clinic medication] Medication visits shall be a minimum duration of 15 minutes. They shall be provided only for the purpose of administering medication, and for evaluating the physical and mental condition of [the patient] an individual during the course of prescribed medication.

(2) [Patients] Individuals receiving psychiatric outpatient clinic services or MMHT shall have a mental [health disorder] illness or emotional disturbance diagnosis verified by a psychiatrist.

* * * * *

(4) [Psychiatric clinic clozapine] Clozapine monitoring and evaluation visits shall be a minimum duration of 15 minutes. They shall be provided only for [a person] an individual receiving [clozaril] clozapine and for monitoring and evaluating [the patient's] the individual's [white blood cell count] Absolute Neutrophil Count (ANC) to determine whether clozapine therapy should be continued or modified.

[(d) *Psychiatric clinic services provided in the home.* Psychiatric clinic services delivered in the patient's home are subject to the conditions and limitations established in the chapter. Home visits, as defined in § 1153.2 (relating to definitions), are compensable as outpatient psychiatric services listed in the MA Program Fee Schedule only if the physician's documentation in the patient's records and progress notes fully substantiates that one of the following conditions exists:

(1) The client's disability requires specialized transportation which is not generally available.

(2) The client has a behavior disorder which disrupts the clinic environment.

(3) The client has a diagnosis of agoraphobia.]

(d) *Mobile mental health treatment.* MMHT services are subject to the conditions and limitations established in this chapter. MMHT services provided in the home or other approved community sites are compensable only if documentation in the medical record substantiates the following:

(1) The services are provided to an eligible individual with mental illness or emotional disturbance.

(2) The services are ordered by an LPHA.

(3) The services if provided in a psychiatric outpatient clinic would be medically necessary.

(4) The evaluation documents the disabling effects of a mental or physical illness that impedes or precludes the individual's ability to participate in services at the psychiatric outpatient clinic.

(5) Treatment plan updates document the continued clinical need for MMHT services.

[(e) *Observation of the client in the home environment.* Observation of the client in the home environment is considered to be an individual psychotherapy services is compensable only when:

(1) The client is currently in therapy.

(2) Observation of the client in his home setting is a necessary component of the client's psychotherapeutic regimen.]

§ 1153. 53. Limitations on payment.

Payment is subject to the following limitations:

[(1) For recipients 21 years of age or older, 180 three-hour sessions, 540 total hours, of psychiatric partial hospitalization in a fiscal year per recipient, except for State Blind Pension recipients, for whom payment is limited to 240 3-hour sessions, 720 total hours, of psychiatric partial hospitalization in a consecutive 365-day period per recipient.

(2)] (1) At least 3 hours [but no more than 6 hours] of psychiatric partial hospitalization per 24-hour period.

[(3) Two outpatient psychiatric evaluations in psychiatric clinics per patient per year.

(4) For recipients 21 years of age or older, a total of 5 hours or 10 one-half hour sessions of psychotherapy per recipient per 30-consecutive day period, except for State Blind Pension recipients, for whom payment is limited to a total of 7 hours or 14 one-half hour sessions of psychotherapy per recipient per 30-consecutive day period. This period begins on the first day that an eligible recipient receives an outpatient psychiatric clinic service listed in the MA Program Fee Schedule. Psychotherapy includes the total of individual, group, family, collateral family psychotherapy services and home visits provided per eligible recipient per 30-consecutive day period.

(5) Three psychiatric clinic medication visits per patient per 30-consecutive days in psychiatric outpatient clinics.

(6) One outpatient comprehensive diagnostic psychological evaluation or no more than $80 worth of individual psychological or intellectual evaluations in psychiatric clinics per patient per 365 consecutive days.

(7)] (2) The partial hospitalization fees listed in the MA Program Fee Schedule include payment for all services rendered to the [patient] individual during a psychiatric partial hospitalization session. Separate billings for individual services are not compensable.

[(8)] (3) Partial hospitalization facilities licensed for adult programs will be reimbursed at the adult rate, regardless of the age of the [client] individual receiving treatment.

[(9)] (4) Partial hospitalization facilities licensed as children and youth programs will be reimbursed at the child rate only when the [client] individual receiving treatment is 14 years of age or younger.

[(10)] (5) Family psychotherapy and collateral family psychotherapy are compensable for only one person per session, regardless of the number of family members who participate in the session or the number of participants who are eligible for psychotherapy.

[(11) Psychiatric clinic clozapine monitoring and evaluation visits are limited to five visits per patient per calendar month.

(12) Any combination of psychiatric clinic medication visits and psychiatric clinic clozapine monitoring and evaluation visits is limited to five per patient per calendar month.]

(6) MMHT group therapy shall be provided only in an approved community–based site as specified in the treatment plan to individuals receiving MMHT from the psychiatric outpatient clinic.

[(b) The Department is authorized to grant an exception to the limits specified in subsection (a)(1) and (4) as described in § 1101.31(f) (relating to scope).]

§ 1153.53a. [Requests for waiver of hourly limits.

(a) Clients who are 20 years of age or younger and who are diagnosed as having one of the medical conditions listed in this section, or conditions of equal severity, may request a waiver from the general limitation on the number of hours of covered services. The medical conditions are:

(1) Infantile autism.

(2) Atypical childhood psychosis.

(3) Borderline psychosis of childhood.

(4) Schizophrenia.

(5) Schizophrenic syndrome of childhood.

(6) Impulse control disorder.

(7) Early deprivation syndrome.

(8) Unsocialized aggressive reaction.

(9) Hyperkinetic conduct disorder.

(10) Over anxious disorder.

(11) Anorexia nervosa.

(12) Neurotic depression –with suicidal ideation.

(b) The request for a waiver shall be accompanied by supporting medical documentation and a second physician's certification as to the medical necessity of psychotherapy beyond the general limitation.

(c) The request for a waiver is reviewed by the Office of Mental Health, Bureau of Community Programs, and acted upon within 30 days of receipt. Failure to act within 30 days constitutes approval of the waiver.

(d) Waivers are granted for periods of up to 6 months. Requests for additional waivers shall be submitted 30 days prior to the expiration of an existing waiver and are reviewed under the same conditions as specified above.

(e) Request for waivers must be submitted to: Department of Human Services, Office Medical Assistance, Room 515 Health and Welfare Building, Harrisburg, Pennsylvania 17120.

(f) A denial of a waiver request may be appealed under the same terms and conditions as any denial of services. See Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings). Notice of a decision of waiver request will be mailed to the MA recipient and to the provider of services.] Reserved.

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PART VII. MENTAL HEALTH MANUAL

SUBPART D. NONRESIDENTIAL

AGENCIES/FACILITIES/SERVICES

CHAPTER 5200. PSYCHIATRIC OUTPATIENT CLINICS

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STAFFING AND PERSONNEL

§ 5200.21. Qualifications and duties of the [director/clinic] director/clinical supervisor.

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§ 5200.24. Criminal history and child abuse certification.

MISCELLANEOUS PROVISIONS

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§ 5200.42. [Drugs and medications] Medications.

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§ 5200.44. Quality assurance program.

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MOBILE MENTAL HEALTH TREATMENT

§ 5200.51. Provider service description.

§ 5200.52. Treatment plans.

§ 5200.53. Discharge.

GENERAL PROVISIONS

§ 5200.1. Legal base.

The legal authority for this chapter is sections 105 and 112 of the Mental Health Procedures Act (50 P.S. § § 7105 and 7112); section 201(2) of the Mental Health and [Mental Retardation] Intellectual Disability Act of 1966 (50 P.S. § 4201(2)); and section 1021 of the [Public Welfare] Human Services Code (62 P.S. § 1021).

§ 5200.2. Scope.

(a) This chapter provides standards for the licensing of freestanding [outpatient] psychiatric outpatient clinics under section 1021 of the [Public Welfare] Human Services Code (62 P.S. § 1021), and approval of psychiatric outpatient clinics which are a part of a health care facility as defined in section 802.1 of the Health Care Facilities Act (35 P.S. § 448.802a), and under sections 105 and 112 of the Mental Health Procedures Act (50 P.S. § § 7105 and 7112).

(b) This chapter applies to private, nonprofit [corporations] or for-profit corporations and public entities which provide medical examination, diagnosis, care, [and] treatment, and support to [the mentally ill or the emotionally disturbed] individuals with mental illness or emotional disturbance on an outpatient basis and which participate in the public mental health program. This chapter does not apply to group or individual practice arrangements of private practitioners.

§ 5200.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Advanced practice professional - A person who holds a current Pennsylvania license as a:

(i) Certified registered nurse practitioner with a mental health certification; or

(ii) Physician assistant with a mental health certification or at least one year of experience working in a behavioral health setting under the supervision of a psychiatrist.

Assessment - A face-to-face interview that includes an evaluation of the psychiatric, medical, psychological, social, vocational, and educational factors important to the individual.

* * * * *

Facility – A mental health establishment, hospital, clinic, institution, center or other organizational unit or part thereof, the primary function of which is the diagnosis, treatment, care and rehabilitation of [mentally disabled persons] individuals with mental illness or emotional disturbance.

Full-time equivalent (FTE) – Thirty-seven and one half hours per week [of staff time].

LPHA- Licensed Practitioner of the Healing Arts - A person who is licensed by the Commonwealth to practice the healing arts. The term is limited to a physician, physician's assistant, certified registered nurse practitioner, or psychologist.

[*Mental health professional*—A person trained in a generally recognized clinical discipline including but not limited to psychiatry, social work, psychology or nursing, rehabilitation or activity therapies who has a graduate degree and clinical experience.]

Mental health professional – A person who meets one of the following:

(i) Has a graduate degree from a college or university that is accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation (CHEA) in a generally recognized clinical discipline which includes mental health clinical experience.

(ii) Has an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. (AICE) or the National Association of Credential Evaluation Services (NACES). The Department will

accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(iii) Is licensed in a generally recognized clinical discipline which includes mental health clinical experience.

[*Mental health worker*—A person who does not have a graduate degree in a clinical discipline but who by training and experience has achieved recognition as a mental health worker.]

Mental health worker – A person acting under the direction of a mental health professional to provide services who meets one of the following:

(i) Has a Bachelor's degree from a college or university that is accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation (CHEA) in a recognized clinical discipline including social work, psychology, nursing, rehabilitation or activity therapies.

(ii) Has a graduate degree in a clinical discipline with 12 graduate-level credits in mental health or counseling from a program that is accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation (CHEA).

(iii) Has an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. (AICE) or the National Association of Credential Evaluation Services (NACES). The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

Mental illness or emotional disturbance – A mental illness or emotional disturbance that meets the diagnostic criteria within the current version of the Diagnostic and Statistical Manual (DSM) or the International Classification of Diseases (ICD). A mental illness or emotional disturbance is characterized by clinically significant disturbances in an individual's cognition, emotional regulation, or behavior that reflects a dysfunction in the psychological, biological or developmental processes underlying mental functioning.

MMHT- Mobile Mental Health Treatment- One or more services including assessment; individual, group, or family therapy; and medication visits provided in an individual's residence or approved community site.

Psychiatric outpatient clinic [(outpatient)] – A nonresidential treatment setting in which psychiatric, psychological, social, educational and other related services are provided under medical supervision. It is designed for the evaluation and treatment of [patients] individuals with mental illness or emotional [disorders] disturbance. Psychiatric outpatient services are provided on a planned and regularly scheduled basis.

[*Psychiatric* nurse – A person who by years of study, training and experience has achieved professional recognition and standing in the field of psychiatric nursing and who is licensed by the State Board of Nursing to engage in the practice of professional nursing.

Psychiatric social worker – A person with a graduate degree in social work who by years of study, training and experience in mental health has achieved professional recognition and standing in the field of psychiatric social work.]

Psychiatrist – A physician who has completed [a 3 year] at least 3 years of a residency in psychiatry and is licensed to practice in this Commonwealth.

* * * * *

Quality assurance program – A formal process to assure quality care and maximize program benefits to [patients] individuals receiving services.

Telepsychiatry - Services provided by a psychiatrist licensed in this Commonwealth using real-time, two-way interactive audio-video transmission. Telepsychiatry services do not include telephone conversation, electronic mail message, or facsimile transmission between a psychiatrist and an individual receiving services, or a consultation between two health care practitioners, although these activities may support telepsychiatry services.

§ 5200.4. Provider eligibility.

Psychiatric outpatient clinic [(outpatient)] services for [the mentally and emotionally disturbed] individuals with mental illness or emotional disturbance shall be provided only by a facility which complies with this chapter and is [certified] licensed by the Department [to provide such a program]. Nothing in this chapter is intended to regulate the [practice of psychiatry or psychology in a solo] provision of mental health services in individual or group private practice.

§ 5200.5. Application and review process.

(a) A facility intending to provide psychiatric outpatient clinic services shall file an application for a certificate of compliance with the Department in accordance with Chapter 20 (relating to licensure or approval of facilities and agencies). Facilities shall meet both the requirements of Chapter 20 and this chapter to obtain a certificate.

Submission of an application does not constitute a certificate to operate pending Departmental approval. [Facilities shall be inspected a minimum of once per year, but are subject to visits by the Department's designee at other times at the Department's discretion. The Department may request the facility to provide information concerning program and fiscal operation at the Department's discretion.]

(b) [Programs currently operating under preexisting approval shall have 3 months after the effective date of this chapter to meet the requirements of this chapter.] Facilities shall be inspected a minimum of once per year, but are subject to visits by the Department's designee at other times at the Department's discretion. The facility shall provide information concerning program and fiscal operation at the Department's request.

§ 5200.6. Objective.

The objective of the psychiatric outpatient clinic treatment services is to [increase the level of patient functioning and well-being so that patients will require less intensive services] facilitate an individual's recovery to improve functioning, enhance resiliency and well-being, promote independence and maintain optimal functioning in the community, consistent with the individual's preferences. The service may be provided to [persons with chronic or acute mental disorders who require active treatment] individuals with short or long-term treatment needs.

§ 5200.7. Program standards.

This chapter shall be met by a facility seeking licensure or approval. [For-profit facilities shall also have Joint Commission on Accreditation of Hospitals (JCAH) accreditation in order to be licensed or approved under this chapter.]

ORGANIZATION

§ 5200.11. Organization and structure.

(a) The psychiatric outpatient clinic shall be a separate, identifiable organizational unit with its own director, [or] clinical supervisor, and staffing pattern. When the psychiatric outpatient clinic is a portion of a larger organizational structure, the director [or] and clinical supervisor of the psychiatric outpatient clinic shall be identified and [his] their responsibilities clearly defined.

(b) The organizational structure of the unit shall be described in an organizational chart.

(c) A written description of programs provided by the unit shall be available to the Department.

(d) The [Department will] psychiatric outpatient clinic shall [be notified] notify the Department of a major change in the organizational structure or services.

§ 5200.12. Linkages with mental health service system.

(a) A psychiatric outpatient clinic requires a close relationship with an acute psychiatric inpatient service and a provider of emergency examination and treatment. A written statement describing the accessibility and availability of the services to [patients] individuals is required and shall be maintained on file at the psychiatric outpatient clinic and updated as needed.

(b) A psychiatric outpatient clinic shall maintain linkages with other [appropriate] treatment and rehabilitative services [including emergency] for a full continuum of care, including crisis services, partial hospitalization programs, [vocational and social] peer support, psychiatric rehabilitation programs, intensive community services, [and]

community residential programs and community [State] psychiatric hospitals. A written statement [documenting the linkages] describing the accessibility and availability of the services to individuals is required and shall be maintained on file at the psychiatric outpatient clinic and shall be updated as needed to accurately state the services currently available.

(c) When the psychiatric outpatient clinic serves children, linkages with the appropriate educational and social service agencies shall also be maintained. A written statement [documenting the linkages] describing the accessibility and availability of the services to children is required and shall be maintained on file at the psychiatric outpatient clinic and updated as needed to accurately state the services currently available.

(d) A psychiatric outpatient clinic shall participate in the overall system of care as defined in the County [Mental Health/Mental Retardation (MH/MR)] Mental Health/Intellectual Disability (MH/ID) plan. A psychiatric outpatient clinic shall have an agreement regarding continuity of care and information exchange with the County [MH/MR] MH/ID authority. A copy of an agreement shall be included in the application package. Psychiatric outpatient clinics shall document the need for their services in their application for a certificate of compliance.

(e) New psychiatric outpatient clinics or new sites of existing psychiatric outpatient clinics established after the effective date of this chapter shall document the need in the proposed service area for the expansion of outpatient services. County [MH/MR] MH/ID authorities shall review this documentation and make a recommendation to the

Department. The Department may deny approval of the expansion where inadequate justification is provided.

STAFFING AND PERSONNEL

§ 5200.21. Qualifications and duties of the [director/clinic] director/clinical supervisor.

(a) Each [mental health] psychiatric outpatient [facility] clinic shall have a [director/clinic] director and clinical supervisor, who may be the same individual. [This person] A clinical supervisor shall be a qualified mental health professional with at least 2 years of supervisory experience [or a professional administrator with a graduate degree in administration and 2 years of experience. If the director/clinic supervisor is not a qualified mental health professional, a physician shall be appointed as clinical director in addition to the director].

(b) The [director's/supervisor's duties] director shall be responsible for the overall operation of the psychiatric outpatient clinic, including but not limited to, all daily management, ensuring that clinical supervision is available during all operational hours, developing a quality improvement plan for the psychiatric outpatient clinic, and monitoring adherence with this Chapter.

(c) The clinical supervisor's responsibilities shall include:

(1) [Direction, administration and supervision of the clinic] Supervision of clinical staff.

(2) Development or implementation of the policies and procedures for the operation of the psychiatric outpatient clinic.

(3) Regular meetings of clinical staff to discuss clinical cases, treatment plans, policy, and procedures [and staff training].

(4) Liaison with other portions of the service system.

(5) [Administrative supervision of personnel.

(6)] Employment, supervision, and discharge of clinical staff according to established personnel policies.

[(7)] (6) Supervision and documentation of clinical staff training and development.

§ 5200.22. Staffing pattern.

(a) There shall be qualified staff and supporting personnel in sufficient numbers to provide the services included in the [facility's] psychiatric outpatient clinic's program. At least 50% of the treatment staff shall be mental health professionals. [Other treatment staff may be mental health workers as required by the patient load.]

[(b) Staff shall include at least four full-time equivalent (FTE) mental health professionals.]

(b) A psychiatric clinic is required to have [at least 16] two hours of psychiatric time per week for each FTE treatment staff member. The psychiatrist must provide 50% of the required psychiatric time. The remaining time may be provided by advanced practice professionals specializing in behavioral health to ensure minimally adequate care [and supervision for all patients] or with prior written approval from the Department, by the use of telepsychiatry.

[(c) Psychiatric hours shall be expanded when treatment staff exceeds eight FTE. The ratio is two hours/week for each FTE treatment staff member.

(d)] (c) At a minimum all clinical staff shall be supervised by the psychiatrist having the responsibility for diagnosis and treatment of the [patient] individual receiving services as defined in § 5200.31 (relating to treatment planning).

[(e)] (d) There shall be sufficient clerical staff to keep correspondence, records, and files current and in good order.

[(f)] (e) The psychiatric outpatient clinic shall recruit and hire staff that is appropriate for the population to be served.

[(g)] (f) If the psychiatric outpatient clinic serves children, specialized personnel are required, as appropriate, to deliver services to children.

[(h)] (g) Each psychiatric outpatient clinic shall have a written comprehensive personnel policy.

[(i)] (h) There shall be a [planned] written plan for regular, ongoing [program for] staff development and training.

[(j)] (i) Graduate and undergraduate students in accredited training programs in various mental health disciplines may participate in the treatment of [patients] individuals receiving services when under the direct supervision of a mental health professional, but are not to be included for the purpose of defining staffing patterns.

[(k)] (j) Psychiatric residents with an unrestricted license [licensed] to practice medicine in this Commonwealth who are under the direct supervision of a psychiatrist are defined as mental health professionals for the purpose of defining staffing patterns.

[(l)] (k) Volunteers may be used in various support and activity functions of the clinic, but are not considered for the purposes of defining staffing patterns.

§ 5200.23. Psychiatric supervision.

At a minimum, the psychiatric supervision of a psychiatric outpatient clinic shall be by a psychiatrist who must monitor all treatment plans on a regular basis as defined by § 5200.31 (relating to treatment planning). Psychiatric supervision shall be expanded as necessary for the [patient] clinic population and services provided.

§ 5200.24. Criminal history and child abuse certification.

(a) A psychiatric outpatient clinic shall complete a criminal history background check for staff, including volunteers that will have direct contact with an individual.

(b) A psychiatric outpatient clinic that serves children shall complete criminal history and child abuse certifications, and mandated reporter training in accordance with 23 Pa. C.S. §§ 6301-6386 (relating to the Child Protective Services Law) and Chapter 3490 (relating to protective services).

(c) A psychiatric outpatient clinic shall develop and implement written policies and procedures regarding personnel decisions based on the criminal history and child abuse certification, including volunteers.

TREATMENT STANDARDS

§ 5200.31. Treatment planning.

(a) A qualified mental health professional or treatment planning team shall prepare an individual comprehensive treatment plan [for] with every [patient] individual who participates beyond the intake process which shall be reviewed and approved by a psychiatrist. For [patients] individuals undergoing involuntary treatment, the treatment team shall be headed by a [physician] psychiatrist or licensed clinical psychologist. The treatment plan shall [include] meet the following requirements:

(1) Be based on the results of the diagnostic evaluation described in paragraph (7).

(2) Be developed within [15] 30 days of intake when the individual continues participation in the treatment process.[, and for] For individuals who voluntarily participate in the treatment process [voluntary patients], the treatment plan shall be reviewed and signed by the mental health professional, psychiatrist, and individual receiving services. Treatment plans shall be updated every [120] 180 days [or 15 patient visits – whichever is first –] by the mental health professional and the [psychiatrist] individual receiving services. The psychiatrist must review and approve the treatment plan within one year of the previous psychiatric review as evidenced by the psychiatrist's signature. For individuals under an involuntary [patients] outpatient commitment, the review shall be done every 30 days by the psychiatrist. Written documentation of [this review] progress for the review period in the [case] medical record is required.

* * * * *

(5) Be [formulated] developed with the active involvement of the [patient] individual receiving services and shall include strengths and needs. The treatment plan may also address individual preferences, resilience, and functioning.

* * * * *

(7) Specify an individualized [active diagnostic and] treatment program for each [patient] individual which shall include [where] clinically appropriate services such as diagnostic and evaluation services, individual, group and family psychotherapy, behavior therapy, crisis intervention services, medication and similar services. For each [patient] individual receiving services, the psychiatric outpatient clinic shall provide diagnostic evaluation which shall include an assessment of the psychiatric,

medical, psychological, social, vocational, and educational factors important to the [patient] individual.

(b) The treatment plan and updates shall be based upon the evaluation and diagnosis. Treatment shall be provided in accordance with the identified goals in the treatment plan and updates.

§ 5200.32. Treatment policies and procedures.

Each [facility] psychiatric outpatient clinic shall have on file a written plan specifying the clinical policy and procedures of the facility. This plan shall provide for the following:

* * * * *

(4) Policies providing for continuity of care for [patients] individuals discharged from the program.

MISCELLANEOUS PROVISIONS

§ 5200.41. Records.

(a) Under section 602 of the Mental Health and [Mental Retardation] Intellectual Disability Act of 1966 (50 P.S. § 4602), and in accordance with recognized and acceptable principles of [patient] medical record keeping, the facility shall maintain a record for each [person] individual receiving services from a psychiatric outpatient clinic. The record shall include the following:

(1) [Patient identifying] Identifying information.

* * * * *

(4) Appropriately signed consent forms.

* * * * *

(7) Treatment plan and updates.

* * * * *

(12) A written order for any MMHT provided.

(b) Records shall also be maintained as follows:

* * * * *

(2) Reviewed [periodically] bi-annually as to quality by the [facility] director or clinical [director] supervisor as appropriate.

* * * * *

(c) [The records must comply with § § 5100.31-5100.39 (relating to confidentiality of mental health records).

(d)] All [case records shall be kept in locked and protected locations to which only authorized personnel shall be permitted access] protected medical and mental health records, written and electronic, shall be secured in accordance with all applicable Federal and State privacy and confidentiality statutes and regulations.

§ 5200.42. [Drugs and medications] Medications.

(a) If medication is prescribed or dispensed by the [facility] psychiatric outpatient clinic, the requirements of all applicable Federal and State drug statutes and regulations shall be met. In addition, the following shall apply:

(1) Prescriptions shall be written only by a licensed practitioner within his or her scope of practice.

(2) The term "written" includes prescriptions that are handwritten or recorded and transmitted by electronic means.

(3) Written prescriptions transmitted by electronic means must be electronically encrypted or transmitted by other technological means designed to protect and prevent access, alteration, manipulation or use by an unauthorized person.

(4) A record of any medication prescribed shall be documented in the individual medical record.

(b) Written policies and procedures providing for the safe dispensing and administration of [drugs] medication by the medical and nursing staff shall be in writing and on file. Such policy shall include the following:

(1) [Prescriptions shall be written only by the physician.

(2) Drugs] Medications shall be dispensed only on order of a [physician] licensed practitioner within his or her scope of practice.

[(3)] (2) All [drugs] medications shall be kept in a secure place.

[(4)] (3) Each dose of medication administered by the [facility] psychiatric outpatient clinic shall be properly recorded in the [patient's] individual's medical record.

* * * * *

§ 5200.43. Fee Schedule.

Each psychiatric clinic shall maintain a schedule of uniform basic charges for services which are available to all [patients] individuals receiving services. [Fee schedules shall be submitted to the Department for information process.]

§ 5200.44. Quality assurance program.

All psychiatric outpatient clinics shall have a utilization review and clinical audit process designed to ensure that the most appropriate treatment is delivered to the [patient] individual receiving services and that treatment is indicated. [Patients shall be

discharged when the identified benefit, as reflected in the initial evaluation, goals, objectives, and treatment plan, has been received.] Psychiatric outpatient clinics that provide MMHT shall include MMHT services in the Quality Assurance plan.

§ 5200.45. Physical facility.

(a) Adequate space, equipment and supplies shall be provided in order that the outpatient services can be provided effectively and efficiently. Functional surroundings shall be readily accessible to the [patient] individual and community served.

(b) All space and equipment shall be well maintained and shall meet applicable Federal, State, and local requirements for safety, fire, accessibility and health.

(c) A waiting room which is [neat, cheerful, and comfortably furnished] clean, comfortable and sensitive to the culture of the population served shall be provided.

* * * * *

(f) There shall be adequate provisions for [the] privacy [of the patient in interview rooms] within the psychiatric outpatient clinic.

(g) A psychiatric outpatient clinic is defined by its staff and organizational structure rather than by a specific building or facility. It may operate at more than one site if the respective sites meet all physical facility standards and the sites operate as a portion of the psychiatric outpatient clinic. The staffing pattern at each site shall be based on the ratio of total [clinic patients seen] individuals served at that site to the total [patients seen] individuals served in the psychiatric outpatient clinic as a whole. The Department will issue a single certificate of compliance to the parent organization which will list all operational sites.

§ 5200.46. Notice of nondiscrimination.

Programs shall not discriminate against staff or [clients] individuals receiving services on the basis of [age, race, sex, religion, ethnic origin, economic status, or sexual preference] race, color, creed, disability, religious affiliation, ancestry, gender, gender identity or expression, sexual orientation, national origin, or age and must observe all applicable State and Federal statutes and regulations.

* * * * *

§ 5200.48. Waiver of standards.

In instances where the development of specialty psychiatric outpatient clinic services is severely limited by these standards, such as, rural clinics, or specialty clinics, a waiver may be granted [for staffing standards for a period of 6 months and may be renewed up to 3 times]. Such waivers may be applied only in areas where the need for such services and the attempts to meet the standards are adequately documented. Such waivers are to be considered only in exceptional circumstances and are subject to approval by the [office of Mental Health] Department.

MOBILE MENTAL HEALTH TREATMENT

§ 5200.51. Provider service description.

(a) Prior to the delivery of MMHT services, a psychiatric outpatient clinic shall submit to the Department for approval a MMHT service description that includes the information required under subsection (b). A psychiatric outpatient clinic shall submit a revised service description to the Department if there are changes to the information required under subsection (b).

(b) A service description shall include all of the following:

(1) The population to be served, including the following:

(i) Expected number of individuals to be served.

(ii) The age ranges of the individuals to be served.

(iii) The presenting problems and other characteristics supporting the need for MMHT.

(iv) The location of the provision of the services, whether in the home or community or both.

(v) The goals, objectives and expected outcomes of the MMHT services.

(2) Staffing pattern, including all of the following:

(i) Number of mental health professionals, licensed clinical psychologists, and psychiatrists providing MMHT.

(ii) The qualifications of a staff person providing a MMHT service.

(iii) The specific clinical services to be provided by each staff.

(3) The policies and procedures for all of the following:

(i) The supervision of MMHT services.

(ii) Staff support in the provision of MMHT.

(iii) Coordination of care with physical health services.

(c) A psychiatric outpatient clinic shall provide MMHT only as set forth in its approved service description.

§ 5200.52. Treatment planning.

(a) Treatment planning shall be completed in accordance with § 5200.31(relating to treatment planning) and shall include all of the following:

(1) Services to be provided.

(2) Treatment goals.

(3) Duration of service.

(4) Supports and interventions necessary to alleviate barriers to receiving services at a psychiatric outpatient clinic.

(5) Identification of the professional providing each service.

(6) Location of service provision.

(b) A MMHT provider shall complete an assessment as required by §5200.31(a)(7) prior to developing the treatment plan. In addition, the following shall apply:

(1) The assessment shall include documentation of the disabling effects of a mental or physical illness that impedes or precludes the individual's ability to participate in services at the psychiatric outpatient clinic.

(2) The assessment shall be completed by a psychiatrist, mental health professional, or an advanced practice professional trained and qualified to provide services at a psychiatric outpatient clinic under the supervision of a psychiatrist.

(c) Treatment plans shall be updated every 180 days at a minimum.

§ 5200.53. Discharge.

(a) Discharge planning shall be discussed with the individual receiving MMHT services.

(b) Upon discharge, the psychiatric outpatient clinic providing MMHT shall complete a discharge summary that must include the following:

(1) MMHT services provided.

(2) Outcomes of MMHT service.

(3) Reason for discharge.

(4) Referral or recommendation for other services.

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

I.D. NUMBER: 14-538

SUBJECT: **Outpatient Psychiatric Services & Psychiatric Outpatient Clinics**

AGENCY: DEPARTMENT OF HUMAN SERVICES
Office of Mental Health and Substance Abuse Services

TYPE OF REGULATION

RECEIVED
JUL 28 2017
Independent Regulatory Review Commission

X Proposed Regulation

Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Re-Delivery of Disapproved Regulation
a. With Revisions b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
		HOUSE COMMITTEE ON HUMAN SERVICES
7/28/17	Pam Weiss	MAJORITY CHAIR Hon. Gene DiGirolamo
7-28-17	Christine Cyphers	MINORITY CHAIR Hon. Angel Cruz
		SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES
7-28-17	Liz Clancy	MAJORITY CHAIR Hon. Lisa Baker
7-28		MINORITY CHAIR Hon. Judy Schwank
7/28/17	K Cooper	*INDEPENDENT REGULATORY REVIEW COMMISSION*
		ATTORNEY GENERAL (for Final Omitted only)
7/28/17	Connie Grant	*LEGISLATIVE REFERENCE BUREAU* (for Proposed only)

July 13, 2017