



2018 JUN -6 PM 1:14
OFFICE OF THE
SECRETARY

MURIEL BOWSER
MAYOR

JUN - 6 2018

The Honorable Phil Mendelson, Chairman
Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, N.W., Suite 504
Washington, D.C. 20004

Dear Chairman Mendelson:

Enclosed for consideration and approval by the Council is an approval resolution, the "Mental Health Community Residence Facilities Schedule of Fines Rulemaking Approval Resolution of 2018," accompanying a rulemaking to revise the existing infraction regulation for Mental Health Community Residence Facilities (MHCRFs).


If approved, the rulemaking would allow the Department of Behavioral Health to conform to the new MHCRF licensing regulation in Chapter 38 of Title 22-A of the DCMR, which will be effective May 1, 2018. Specifically, it will consolidate the current four classes of infractions into three classes and reorder and renumber the infractions.

I urge the Council to take prompt and favorable action on the enclosed legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Muriel Bowser", written over the printed name.

Muriel Bowser


Chairman Phil Mendelson
at the request of the Mayor

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

A PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Chairman Phil Mendelson, at the request of the Mayor, introduced the following resolution, which was referred to the Committee on _____.

To approve proposed rules adopted by the Department of Behavioral Health to update the schedule of fines for violations related to the general operation, consumer health, record keeping, and reporting requirements for Mental Health Community Residence Facilities licensed in the District of Columbia, and for violations of the law with respect to Title 22B DCMR Chapter 38.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that this resolution may be cited as the “Mental Health Community Residence Facilities Schedule of Fines Rulemaking Approval Resolution of 2018.”

Sec. 2. Pursuant to section 114(5)(B) of the Mental Health Service Delivery Reform Act of 2001, effective December 18, 2001 (D.C. Law 14-56; D.C. Official Code 7-1131.14(5)(B)), the Council approves the proposed rulemaking adopted by the Department of Behavioral Health updating Sections 3501 of Title 16 of the District of Columbia Municipal Regulations to update the schedule of fines for violations related to the general operation, consumer health, record keeping, and reporting requirements for Mental Health Community Residence Facilities licensed in the District of Columbia, and for violations of the law with respect to Title 22B DCMR Chapter 38.

Sec. 3. Fiscal impact.

1 The Council adopts the fiscal impact statement in the committee report of the
2 Chief Financial Officer as the fiscal impact statement required by section 4(a) of the
3 General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038;
4 D.C. Official Code § 1-301.47(a)).

5 Sec. 4. The Council shall transmit a copy of this resolution, upon its adoption, to
6 the Mayor, the Director of the Department of Health, and the Administrator of the Office
7 of Documents and Administrative Issuances.

8 Sec. 5. This resolution shall take effect immediately.

DEPARTMENT OF BEHAVIORAL HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Behavioral Health (DBH), as the successor-in-interest to the Department of Mental Health, pursuant to the authority set forth in sections 5113, 5117(10) and (13), and 5118 of the Department of Behavioral Health Establishment Act of 2013, effective December 24, 2013 (D.C. Law 20-0061; D.C. Official Code §§ 7-1141.02, 7-1141.06(10) and (13), and 7-1141.07 (2017 Supp.)), and sections 104(8) and 114(5)(A) of the Mental Health Service Delivery Reform Act of 2001, effective December 18, 2001 (D.C. Law 14-56; D.C. Official Code §§ 7-1131.04(8) and 7-1131.14(5)(A) (2012 Repl.)) (the “Act”), hereby gives notice of the intent to amend Chapter 35 to Title 16 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*, and after Council review and approval, as specified in section 114(5)(B) of the Act (D.C. Official Code § 7-1131.14(5)(B)).

This Notice of Proposed Rulemaking revises the existing infraction regulation for Mental Health Community Residence Facilities (MHCRFs) to conform to the new MHCRF licensing regulation in Chapter 38 of Title 22A of the DCMR, which will be effective April 1, 2018. In order to maintain accountability of this provider network and ensure resident health and safety, the Department needs to maintain the right to issue Notices of Infractions and fines for regulatory violations. The proposed regulation consolidates the current four (4) classes of infractions into three (3) classes, and reorders and renumbers the infractions to conform to the new Chapter 38 requirements.

Chapter 35 of Title 16 DCMR (Department of Mental Health (DMH) Infractions) is renamed Department of Behavioral Health (DBH) Infractions, and Section 3501 of Chapter 35 of Title 16 DCMR is amended to read as follows:

**3501 MENTAL HEALTH COMMUNITY RESIDENCE FACILITY
INFRACTIONS**

3501.1 Violation of the following provisions shall be a Class 1 infraction:

- (a) 22-A DCMR § 3801.1 (operating a MHCRF without proper licensure);
- (b) 22-A DCMR § 3803.1 through § 3803.5 (failure to grant Department or designee right of entry or access to facility records and personnel);
- (c) 22-A DCMR §§ 3811.3 and 3811.4 (failure to correct deficiencies as directed by the Department);
- (d) 22-A DCMR § 3826.8 (failure to operate effective pest control program, application of pesticides or traps on resident bedding);

- (e) 22-A DCMR §§ 3829.1 through 3829.7 (failure to comply with plumbing and water supply requirements);
- (f) 22-A DCMR § 3831.2 (placement of sleeping facilities near furnace, space heater, water heater or gas meter);
- (g) 22-A DCMR §§ 3833.1 through 3833.19 (failure to comply with fire safety requirements);
- (h) 22-A DCMR §§ 3834.1 through 3834.32 (failure to comply with dietary services requirements);
- (i) 22-A DCMR §§ 3835.1 through 3835.5 (failure to comply with therapeutic diet requirements);
- (j) 22-A DCMR §§ 3838.1 through 3838.9 (failure to comply with resident finances requirements);
- (k) 22-A DCMR §§ 3839.1 through 3839.10 (failure to comply with medication requirements);
- (l) 22-A DCMR §§ 3845.1 through 3845.4 (failure to comply with restraint and seclusion prohibitions);
- (m) 22-A DCMR §§ 3852.1 through 3852.5 (failure to comply with staffing requirements);
- (n) 22-A DCMR §§ 3853.1 through 3853.2 (failure to comply with operator and residence director responsibilities); and
- (o) 22-A DCMR §§ 3861.1 through 3861.15 (failure to comply with transfer, discharge and relocation requirements).

3501.2

Violation of the following provisions shall be a Class 2 infraction:

- (a) 22-A DCMR §§ 3810.1 and 3810.2 (failure to comply with applicable law or inspections);
- (b) 22-A DCMR §§ 3810.3 and 3810.4 (failure to submit Major Unusual Incident report);
- (c) 22-A DCMR §§ 3810.5 and 3810.7 (failure to correct deficiencies or comply with statement of deficiency process);

- (d) 22-A DCMR §§ 3810.9 and 3810.10 (failure to remove staff member subject to abuse or neglect complaint);
- (e) 22-A DCMR § 3810.12 (failure to maintain records);
- (f) 22-A DCMR §§ 3810.14 through 3810.16 (failure to comply with emergency move requirements);
- (g) 22-A DCMR §§ 3822.1 through 3822.7 (failure to comply with insurance requirements);
- (h) 22-A DCMR §§ 3823.1 through 3823.34 (failure to comply with resident's rights and responsibilities requirements);
- (i) 22-A DCMR §§ 3825.1 through 3825.10 (failure to comply with general eligibility and admission requirements);
- (j) 22-A DCMR §§ 3826.1 through 3826.25, not including 3826.8 (failure to comply with environmental requirements)
- (k) 22-A DCMR §§ 3827.1 through 3827.4 (failure to comply with structural and maintenance requirements);
- (l) 22-A DCMR §§ 3828.1 through 3828.5 (failure to comply with lighting and ventilation requirements);
- (m) 22-A DCMR §§ 3830.1 through 3830.6 (failure to comply with heating and cooling requirements);
- (n) 22-A DCMR §§ 3831.1, 3831.3 through 3831.7 (failure to comply with bedroom requirements);
- (o) 22-A DCMR §§ 3832.1 through 3832.5 (failure to comply with bathing and toilet facilities requirements);
- (p) 22-A DCMR §§ 3836.1 through 3836.9 (failure to comply with housekeeping and laundry services);
- (q) 22-A DCMR §§ 3837.1 through 3837.8 (failure to comply with personal property of residents requirements);
- (r) 22-A DCMR §§ 3840.1 through 3840.8 (failure to comply with medical services requirements);
- (s) 22-A DCMR §§ 3841.1 through 3841.5 (failure to comply with resident activities requirements);

- (t) 22-A DCMR §§ 3842.1 through 3842.2 (failure to assist residents to receive mental health services);
- (u) 22-A DCMR §§ 3843.1 through 3843.5 (failure to coordinate with core services agencies);
- (v) 22-A DCMR §§ 3844.1 through 3844.4 (failure to comply with individual recovery plan requirements);
- (w) 22-A DCMR §§ 3846.1 through 3846.6 (failure to comply with resident's records requirements);
- (x) 22-A DCMR §§ 3847.1 through 3847.3 (failure to comply with confidentiality of records requirements);
- (y) 22-A DCMR §§ 3848.1 through 3848.6 (failure to comply with major unusual incident reporting requirements);
- (z) 22-A DCMR §§ 3850.1 through 3850.14 (failure to comply with minimum qualifications for persons working in MHCRF requirements);
- (aa) 22-A DCMR §§ 3851.1 through 3851.2 (failure to comply with qualifications applicable to operators and residence directors);
- (bb) 22-A DCMR §§ 3854.1 through 3854.5 (failure to comply with personnel records requirements);
- (cc) 22-A DCMR §§ 3855.1 through 3855.7 (failure to comply with financial records requirements);
- (dd) 22-A DCMR §§ 3857.1 through 3857.8 (failure to comply with supported residence requirements);
- (ee) 22-A DCMR §§ 3858.1 through 3858.14 (failure to comply with supported rehabilitative residence requirements);
- (ff) 22-A DCMR §§ 3859.1 through 3859.13 (failure to comply with intensive residence requirements); and
- (gg) 22-A DCMR §§ 3860.1 through 3860.10 (failure to comply with transitional residential beds requirements).

3501.3

Violation of the following provisions shall be a Class 3 infraction:

- (a) 22-A DCMR §§ 3824.1 through 3824.4 (failure to comply with residency contract requirements); and
- (b) 22-A DCMR §§ 3849.1 through 3849.5 (failure to comply with resident status procedure requirements).

All persons interested in commenting on the subject matter in this proposed rulemaking may file comments in writing, not later than thirty (30) days after the publication of this notice in the *D.C. Register*, with Ms. Atiya Frame-Shamblee, Esq., Deputy Director of Accountability, Department of Behavioral Health at 64 New York Avenue, NE, 3rd Floor, Washington, D.C. 20002-4347. Interested persons may also send comments electronically to Atiya.Frame@dc.gov. Copies of this proposed rulemaking are available, at cost, by writing to the above address, and are also available electronically, at no cost, on the Department of Behavioral Health's website at www.dbh.dc.gov.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

Legal Counsel Division



MEMORANDUM

TO: Alana Intrieri
Director
Office of Policy and Legislative Affairs

FROM: Janet M. Robins
Deputy Attorney General
Legal Counsel Division

DATE: April 25, 2018

SUBJECT: Certificate of Legal Sufficiency of the "Mental Health Community Residence
Facilities Schedule of Fines Rulemaking Approval Resolution of 2018."
(AE-17-712B)

This is to Certify that this Office has reviewed the above-referenced draft resolution and has found it to be legally sufficient. If you have any questions in this regard, please do not hesitate to call me at 202-724-5524.

A handwritten signature in black ink, appearing to read "JMR/a. Parker". The signature is written in a cursive style and is positioned above a horizontal line.

Janet M. Robins

JMR/ajp