

## DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia (District) to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2016 Repl. & 2019 Supp.)) and Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2018 Repl.)), hereby gives notice of the adoption of an amendment to Chapter 8 (Free Standing Mental Health Clinics) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

The original Free Standing Mental Health Clinic (FSMHC) rulemaking was published in 1982, thereafter the responsibility for development and promulgation of inspection, monitoring, and certification standards of all mental health treatment providers in the District was statutorily granted to the Department of Behavioral Health (DBH) pursuant to the Department of Behavioral Health Establishment Act of 2013, effective December 24, 2013 (D.C. Law 20-61; D.C. Official Code § 7-1141.06 (2018 Repl.)). These rules amend Chapter 8 to require FSMHCs to comply with certification requirements set forth by DBH. This rule also establishes that FSMHC providers are subject to Medicaid administrative requirements set forth under Chapter 13 of Title 29 DCMR, screening and enrollment requirements under Chapter 94 of Title 29 DCMR, and reimbursement and recordkeeping requirements under Chapter 30 of Title 22-A DCMR.

DHCF does not anticipate any change in aggregate Medicaid expenditures as a result of this change.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on July 3, 2020 at 67 DCR 8282. No comments were received and no changes have been made.

The Director adopted these rules on September 21, 2020 and they shall become effective on the date of publication of this notice in the *D.C. Register*.

**Chapter 8, FREE STANDING MENTAL HEALTH CLINICS, of Title 29 DCMR, PUBLIC WELFARE, is deleted in its entirety, and a new Chapter 8 is added to read as follows:**

**CHAPTER 8 FREE STANDING MENTAL HEALTH CLINICS**

<b>800</b>	<b>GENERAL PROVISIONS</b>
<b>801</b>	<b>CERTIFICATION</b>
<b>802</b>	<b>SCREENING AND ENROLLMENT</b>
<b>803</b>	<b>ADMINISTRATIVE ACTIONS</b>
<b>804</b>	<b>REIMBURSEMENT</b>
<b>805</b>	<b>RECORDS</b>

**806**            **AUDITS AND REVIEWS**  
**899**            **DEFINITIONS**

**800**            **GENERAL PROVISIONS**

800.1           The purpose of this chapter is to establish requirements governing Medicaid reimbursement for Free Standing Mental Health Clinic (FSMHC) services.

800.2           In order to be eligible for Medicaid reimbursable FSMHC services, beneficiaries shall comply with the following:

- (a)            The Medicaid eligibility requirements set forth in Chapter 95 of Title 29 of the District of Columbia Municipal Regulations (DCMR); and
- (b)            The eligibility factors set forth in § 3001 of Chapter 30 of Title 22-A DCMR.

800.3           Pursuant to the requirements set forth in Chapter 30 of Title 22-A DCMR, the Department of Behavioral Health (DBH) shall be responsible for establishing the criteria for determining which Medicaid beneficiaries are eligible for FSMHC services.

800.4           An entity that is certified in accordance with the requirements set forth in Chapter 30 of Title 22-A DCMR is eligible to apply for certification as a Health Home in accordance with the requirements set forth in Chapter 25 of Title 22-A DCMR.

800.5           An FSMHC that is certified as a Health Home is eligible to receive reimbursement for the provision of Health Home services in accordance with the requirements set forth in Chapter 69 of Title 29 DCMR.

**801**            **CERTIFICATION**

801.1           Each FSMHC shall be certified and comply with the certification requirements set forth by DBH pursuant to Chapter 30 of Title 22-A DCMR.

**802**            **SCREENING AND ENROLLMENT**

802.1           Each FSMHC shall be certified by DBH in accordance with § 801.1 of this chapter before enrolling in Medicaid. After receiving certification, each FSMHC shall:

- (a)            Be screened and enrolled in Medicaid pursuant to Chapter 94 of Title 29 DCMR in order to be eligible for reimbursement under the Medicaid program; and
- (b)            Include proof of certification by DBH in the application for enrollment in Medicaid.

**803 ADMINISTRATIVE ACTIONS**

803.1 Each Medicaid-enrolled FSMHC shall be subject to the administrative actions set forth under Chapter 13 of Title 29 DCMR.

**804 REIMBURSEMENT**

804.1 FSMHC services shall be reimbursed according to a fee schedule rate for FSMHC services included in an approved treatment plan, as described in Chapter 30 of Title 22-A DCMR. The Medicaid fee schedule shall be published on the Department of Health Care Finance's (DHCF) provider website at [www.dc-medicaid.com](http://www.dc-medicaid.com).

804.2 Updates to the reimbursement rates for FSMHC services shall comply with the public notice and comment requirements set forth under § 988 of Chapter 9 of Title 29 DCMR.

804.3 A public notice of rate changes shall be published in the *D.C. Register* at least thirty (30) calendar days in advance of the change and shall include a link to the Medicaid fee schedule.

**805 RECORDS**

805.1 Each Medicaid-enrolled FSMHC shall maintain beneficiary records and individual treatment plans in a manner that will render them amenable to audit and review by the U.S. Department of Health and Human Services, DHCF, DBH, and their authorized designees or agents.

805.2 Each Medicaid-enrolled FSMHC shall maintain, and make available complete financial records covering its operations upon request by the U.S. Department of Health and Human Services, DHCF, DBH and their authorized designees or agents.

805.3 All required financial and treatment records and information shall be maintained in accordance with requirements set forth under Chapter 30 of Title 22-A DCMR.

**806 AUDITS AND REVIEWS**

806.1 This section sets forth the requirements for audits and reviews of FSMHC services. DHCF, or its designee, shall perform regular audits of FSMHCs to ensure that Medicaid payments are consistent with efficiency, economy and quality of care, and made in accordance with federal and District conditions of payment. The audits shall be conducted periodically and at least annually and to investigate and maintain program integrity.

- 806.2 DHCF, or its designee, shall perform routine audits of claims, by statistically valid scientific sampling, to determine the appropriateness of FSMHC services rendered and billed to Medicaid to ensure that Medicaid payments can be substantiated by documentation that meets the requirements set forth in this rule, and made in accordance with federal and District rules governing Medicaid.
- 806.3 The audit process shall utilize statistically valid sampling methods to ensure that a statistically valid sample is drawn when the audit is based on claims sampling. The audit process may review all claims based on factors established by DHCF or other entities, which may include but not be limited to claim type and time-period. Statistically valid and commonly accepted standards methods for calculating overpayments will be followed.
- 806.4 If DHCF denies a claim during an audit, DHCF shall recoup those monies erroneously paid to the FSMHC for denied claims, following the process for administrative review as outlined below:
- (a) DHCF shall issue a Notice of Proposed Medicaid Overpayment Recovery (NPMOR), which sets forth the reasons for the recoupment, including the specific reference to the particular sections of the statute, rules, or provider agreement, the amount to be recouped, and the procedures for requesting an administrative review;
  - (b) The FSMHC shall have thirty (30) days from the date of the NPMOR to submit documentary evidence and written argument to DHCF against the proposed action;
  - (c) The documentary evidence and written argument shall include a specific description of the item to be reviewed, the reason for the request for review, the relief requested, and documentation in support of the relief requested;
  - (d) Based on review of the documentary evidence and written argument, DHCF shall issue a Final Notice of Medicaid Overpayment Recovery (FNMOR);
  - (e) Within fifteen (15) days of receipt of the FNMOR, the FSMHC may appeal the written determination by filing a written notice of appeal with the Office of Administrative Hearings (OAH), 441 4th Street, N.W., Suite 450 North, Washington, D.C. 20001; and
  - (f) Filing an appeal with the OAH shall not stay any action to recover any overpayment.
- 806.5 All participant, personnel, and program administrative and fiscal records shall be maintained so that they are accessible and readily retrievable for inspection and

review by authorized government officials or their agents, as requested. DHCF shall retain the right to conduct audits or reviews at any time and audits or reviews may be announced or unannounced.

806.6 All records and documents required to be kept under this chapter and other applicable laws and regulations which are not maintained or accessible in the operating office visited during an audit shall be produced for inspection within twenty-four (24) hours, or within a shorter, reasonable time, if specified, upon the request of the auditing official.

806.7 The failure of a FSMHC to release or to grant access to program documents and records to the DHCF auditors in a timely manner, after reasonable notice by DHCF to the FSMHC to produce the same, shall constitute grounds to terminate the Medicaid Provider Agreement. This provision does not limit DHCF's ability to terminate any Medicaid Provider Agreement for any other reason.

806.8 As part of the audit process, documents FSMHCs shall grant access to include, but are not limited to the following:

- (a) Relevant financial records;
- (b) Statistical data to verify costs previously reported;
- (c) Program documentation;
- (d) A record of all service authorization and prior authorizations for services;
- (e) A record for all request for change in services;
- (f) Any records listed in § 3008 and § 3009 in addition to any other records relating to the adjudication of claims, including, the number of units of the delivered service, the period during which the service was delivered and dates of service, and the name, signature, and credentials of the service provider(s); and
- (g) Any record necessary to demonstrate compliance with rules, requirements, guidelines, and standards for implementation and administration of FSMHC services.

806.9 Nothing in this rule affects a FSMHC's independent legal obligation under this Chapter and federal and District law to self-identify overpayments and repay them within sixty (60) days of discovery.

## 899 DEFINITIONS

899.1 When used in this chapter, the following terms and phrases shall have the

meanings ascribed:

**Free Standing Mental Health Clinic** - a formally organized psychiatric clinic furnishing psychiatric services, under the direction of a physician (psychiatrist), in a facility not administered by a hospital, but organized and operated to provide mental health services on an outpatient basis, and which is certified as such by the Department of Behavioral Health in accordance with existing laws and regulations.