

October 26, 2021

Notice of Proposed Rule

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:

33-404.103 Mental Health Services - Definitions

33-404.112 Risk Assessment of Inmates in an Inpatient Setting

PURPOSE AND EFFECT: The purpose and effect of the proposed rules is to modify the provisions concerning who is responsible for leading the Risk Assessment Team (RAT) during RAT meetings and to add language requiring the RAT to meet after a critical event. The RAT consists of a security representative, a psychologist, and a classification officer who assess inmates for risk of violence and assign level of security restraint during inpatient mental health treatment. The proposed rules define what constitutes a critical event and adds timeframes for when the RAT meets. The proposed rule also defines business day.

SUMMARY: The proposed rule adds triggering events for when the RAT meets, who leads the RAT meeting, and creates a time for the RAT to meet after the triggering event.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: The Department used an itemized checklist to conduct an economic analysis and determine if there is an adverse impact or regulatory cost associated with this rule that exceeds the criteria. Upon review of the proposed changes to the rule, the Department has determined that the amendments will not exceed any one of the economic analysis criteria in a SERC as set forth in s. 120.541(2)(a), F.S.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 944.09, 945.49 F.S.

LAW IMPLEMENTED: 944.09, 945.42, 945.49 F.S.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Lauren Sanchez, Paralegal Specialist, 501 S. Calhoun Street, Tallahassee, FL 32399 (850)717-3610, lauren.sanchez@fdc.myflorida.com. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Office of the General Counsel, Attn. FDC Rule Correspondence, 501 South Calhoun Street, Tallahassee, Florida 32399, FDCRuleCorrespondence@fdc.myflorida.com.

THE FULL TEXT OF THE PROPOSED RULES ARE:

33-404.103 Mental Health Services – Definitions.

(1) through (2) No change

(3) “Business Day” refers to any calendar day except Saturday, Sunday, or a paid holiday as defined in section 110.117, F.S.

~~(4)~~(3) “Corrections Mental Health Treatment Facility” refers to an inpatient mental health unit that provides ongoing involuntary mental health treatment in accordance with sections 945.40-49, F.S.

~~(5)~~(4) “Crisis Stabilization Care” means a level of care that is less restrictive and intense than care provided in a mental health treatment facility, that includes a broad range of evaluation and treatment services provided within a highly structured setting or locked residential setting, and that is intended for inmates who are experiencing acute emotional distress and who cannot be adequately evaluated and treated in a transitional care unit or infirmary

isolation management room. Such treatment is also more intense than treatment provided in a transitional care unit and is devoted principally toward rapid stabilization of acute symptoms and conditions.

~~(6)~~ “(Critical Event” – involvement of an inpatient inmate in one or more of the following events or behaviors: assignment to self-harm observation status after committing an act of self-injury, homicide, attempted homicide, escape, attempted escape, physical or sexual assault or battery, or attempted physical or sexual assault or battery.

~~(7)~~~~(5)~~ “Individualized Service Plan” – a written description of an inmate’s current problems, goals, and treatments.

~~(8)~~~~(6)~~ “Infirmity Mental Health Care” (IMH) is the first and least restrictive level of inpatient mental health care, and consists of brief admission to the institutional infirmary for patients residing in the general prison community.

~~(9)~~~~(7)~~ “Inpatient Level of Care” – mental health care provided at Corrections Mental Health Treatment Facilities, Crisis Stabilization Units, Transitional Care Units, and Infirmity Mental Health Care Units.

~~(10)~~~~(8)~~ “Inpatient Units” – includes the Corrections Mental Health Treatment Facilities (CMHTF), Crisis Stabilization Units (CSU), and Transitional Care Units (TCU).

~~(11)~~~~(9)~~ “Isolation Management Room” – a cell in an infirmary mental health care unit, transitional care unit, crisis stabilization unit, or a corrections mental health treatment facility that has been certified as being suitable for housing those with acute psychological impairment or those who are at risk for self-injury.

~~(12)~~~~(10)~~ “Mental Health Care” – mental health screening, assessment, evaluation, treatment, or services that are delivered in inpatient or outpatient settings by mental health staff.

~~(13)~~~~(11)~~ “Mentally Ill” means an impairment of the mental or emotional processes that exercise conscious control of one’s actions or of the ability to perceive or understand reality, which impairment substantially interferes with the person’s ability to meet the ordinary demands of living. However, for the purposes of transferring an inmate to a mental health treatment facility, the term does not include a developmental disability as defined in section 393.063, F.S., simple intoxication, or conditions manifested only by antisocial behavior or substance abuse addiction. However, an individual who is developmentally disabled may also have a mental illness.

~~(14)~~~~(12)~~ “Multidisciplinary Services Team” (MDST) – staff representing different professions and disciplines, which has the responsibility for ensuring access to necessary assessment, treatment, continuity of care and services to inmates in accordance with their identified mental health needs, and which collaboratively develops, implements, reviews, and revises an individualized service plan, as needed.

~~(15)~~~~(13)~~ “Residential Continuum of Care” – specialized residential mental health units that provide augmented outpatient mental health treatment and habilitation services in a protective environment for inmates with serious psychological impairment associated with a historical inability to successfully adjust to daily living in the incarceration environment.

~~(16)~~~~(14)~~ “Structured Out of Cell Treatment and Services” (SOCTS): Weekly scheduled individualized treatment services, psychoeducational groups and therapeutic activities to ameliorate disabling symptoms of a diagnosed mental illness and improve behavioral functioning as identified in the individualized service plans.

~~(17)~~~~(15)~~ “Transitional Mental Health Care” means a level of care that is more intensive than outpatient care, but less intensive than crisis stabilization care, and is characterized by the provision of traditional mental health treatments such as group and individual therapy, activity therapy, recreational therapy, and psychotropic medications in the context of a structured residential setting. Transitional mental health care is indicated for a person with chronic or residual symptomatology who does not require crisis stabilization care or acute psychiatric care, but whose impairment in functioning nevertheless renders him or her incapable of adjusting satisfactorily within the general inmate population.

~~(18)~~~~(16)~~ “Unstructured Out of Cell Time” – out of cell activities monitored by security staff without involvement of mental health staff, including, but not limited to, outdoor recreation, dayroom, visitation, telephone calls, and showers.

Rulemaking Authority 944.09, 945.49 FS. Law Implemented 944.09, 945.42, 945.49 FS. History–New 5-27-97, Formerly 33-40.003, Amended 10-19-03, 3-1-11, 11-7-18, _____.

33-404.112 Risk Assessment of Inmates in an Inpatient Setting.

(1) When an inmate is admitted to an inpatient unit, any prior confinement or close management status shall be

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suspended until the inmate is discharged from the specialized care setting. Absent inmate behavior that constitutes an immediate and present danger to the safety of staff and inmates, the inmate's security restraint status shall not be changed before the completion of their initial assessment of risk for violence.

(2) The Risk Assessment Team (RAT) shall consist of a security representative with the level Major or above with responsibilities in the inpatient unit Lieutenant, who shall serve as the team leader, a psychologist, and classification officer who are all assigned to the inpatient unit where the inmate is admitted. The ~~RAT Risk Assessment Team~~ shall complete an initial assessment of risk for violence as set forth in this chapter. The ~~RAT Risk Assessment Team~~ shall be responsible for making a determination of the inmate's security restraint status for use anytime the inmate is out of his or her cell.

(3) ~~Initial Assessment.~~ The RAT leader will be responsible for scheduling the initial assement for the risk of violence. These risk assessment meetings will occur wWithin 3 ~~business working~~ days of an inmate's admission to a crisis stabilization unit, or within 7 ~~busniess working~~ days of an inmate's admission to transitional care unit or a corrections mental health treatment facility, an initial assessment of risk for violence shall be completed by a risk assessment team using Form DC6-2087, Risk Assessment for Inpatient Treatment. Form DC6-2087, Risk Assessment for Inpatient Treatment, is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500, [INSERT APPROPRIATE INTERNET HYPERLINK TO F.A.C.]<http://www.flrules.org/Gateway/reference.asp?No=Ref-10015>. The effective date of the form is [XX-XX-XXXX]11/18. Decisions on the use of security restraints on the inpatient unit shall be individualized and made on a case-by-case basis and referenced in Form DC6-2087. The assessment of risk for violence shall include a review of all mental health and institutional records, the inmate's adjustment to incarceration, and the inmate's disciplinary or confinement status at the time of the referral for inpatient treatment and shall be documented in the medical file via a copy of Form DC6-2087.

(4) After the initial risk assessment, the Multidisciplinary Services Team (MDST), as defined in rule 33-404.103, F.A.C., shall be responsible for modifications for housing and structured out-of-cell treatment and services via the Behavioral Management Progress System. Any such modifications shall be documented in the inmate's inpatient medical file.

(5) Subsequent periodic assessments of risk for violence shall be completed by a ~~RAT risk assessment team~~ using Form DC6-2087. The RAT leader will be responsible for scheduling a subsequent periodic risk for violence assessment ~~shall be conducted~~ within 90 days of the initial risk assessment and at least every 90 days thereafter. RAT reviews shall also be conducted within 3 business days after the occurrence of any critical event, as defined in rule 33-404.103, F.A.C.

(6) At any time between the required intervals established in subsection (5), the psychologist, with the consent of the MDST, may request the risk assessment team to review and determine the necessity for the security restraints, or the level of security restraints, any time he or she is outside of his or her cell. The MDST's request will be documented by the psychologist in the inmate's inpatient medical file. The ~~RAT's risk assessment team's~~ review will be documented on Form DC6-2087. An inpatient inmate whose conduct or behavior results in a Disciplinary Report shall be subject to the provisions of rule 33-404.108, F.A.C.

(7) The psychologist will provide information to the other members of the ~~RAT risk assessment team~~ whether the recommended restraints are contraindicated by the inmate's current psychological/behavioral functioning. If the psychologist determines there is a contraindication, but security and/or classification team members determine the security restraints must be applied, the Warden and Florida Department of Corrections' Director of Mental Health Services or his or her designee will collaborate to make a final determination. Under no circumstances shall the psychologist decide whether an inmate shall be subjected to security restraints.

Rulemaking Authority 944.09, 945.49 FS. Law Implemented 944.09, 945.49 FS. History--New 11-7-18, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Thomas Reimers

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Mark S. Inch

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 12, 2021

DATE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: September 23, 2021