

September 12, 2018

Notice of Change

DEPARTMENT OF CORRECTIONS

RULE NOS.:RULE TITLES:

33-404.102 Provision of Mental Health Services

33-404.103 Mental Health Services - Definitions

33-404.108 Discipline and Confinement of Mentally Disordered Inmates

33-404.112 Risk Management of Inmates in an Inpatient Setting

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 44 No. 103, May 25, 2018 issue of the Florida Administrative Register.

Changes to the rule are made in response to written comments provided by the Joint Administrative Procedures Committee in their correspondence dated June 11, 2018.

33-404.102 Provision of Mental Health Services.

(1) All inmates entering the department shall have access to necessary mental health services as established by this chapter ~~and as specified in the policies and procedures developed and implemented under the authority of the assistant secretary for health services.~~

(2) through (8) No change.

(9) Conditions and Privileges of Inmates Receiving Inpatient Mental Health Services. Notwithstanding Rule 33-602.101, F.A.C., and subject to the provisions of Rule 33-404.112, Risk Assessment of Inmates in an Inpatient Setting, inpatient inmates shall be managed in accordance with Form DC4-664B, Behavioral Management Progress System. Form DC4-664B, Behavioral Management Progress System is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500, <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXX>. The effective date of the form is XXXXX

(10) - (12) No change.

Rulemaking Authority 944.09, 945.49 FS. Law Implemented 944.09, 945.48, 945.49 FS. History—New 5-27-97, Formerly 33-40.002, Amended 3-1-11, _____.

33-404.103 Mental Health Services – Definitions.

(1) ~~The definitions in this rule are applicable to all rules under Chapter 33-404. For the purpose of this chapter, the position titles referenced in these rules are defined by class specifications of the Department of Management Services, pursuant to Chapter 110, F.S.~~

(2) “Behavioral Management Progress System” (or “BMPS”) – refers to a structured system of performance-based behavioral incentives and consequences used to facilitate adaptive functioning, promote constructive goal-oriented behavior, develop coping skills, and provide opportunities to demonstrate self-care, self-control, appropriate interpersonal interactions, compliance with rules, and cooperation with the treatment regimen. The levels are sequentially organized for the provision of progressive incentives to encourage compliance with the prescribed treatment regimen, involvement in unstructured out of cell activities, proper care of personal property, and participation in psychoeducation groups and therapeutic activities. Placement, advancement, or recession within the levels is based on demonstrated inmate behavior, including: prosocial behavior, compliance with prescribed treatment modalities, aggressive acts, disruptive outburst, or other maladaptive behaviors. Individualized modification to an inmate’s assignment to a level in the BMPS is approved by the MDST and documented in the mental health record.

(3) No change.

(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. ~~refers to an inpatient mental health treatment unit that provides intensive management, observation, and treatment intervention while seeking rapid stabilization of acute symptoms and conditions.~~

(5) through (10) No change.

(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 §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. ~~“Mental Illness”—a diagnosed mental disorder with an impairment of the psychological processes, of the ability to exercise conscious control of one’s actions, or of the ability to perceive or understand reality that substantially interferes with a person’s ability to meet the ordinary demands of the incarceration environment, regardless of etiology, except that for the purposes of transfer of an inmate to a corrections mental health treatment facility, the term does not include intellectual or developmental disability as those terms are defined in Chapter 393, F.S., simple intoxication, or conditions manifested only by antisocial behavior or drug addiction. An individual who is intellectually or developmentally disabled, however, may also have a mental illness.~~

(12) through (14) No change.

(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. ~~refers to an inpatient mental health unit that provides intermediate level care for patients transitioning from a more intensive level of inpatient care back to an outpatient setting and long term care for patients with chronic and severe mental illness.~~

(16) No change.

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,_____.

33-404.108 Discipline of Inmates with Diagnosed as Mentally Ill Mental Disorders.

(1) Inmates ~~with a~~ diagnosed as mentally ill mental disorder shall be subject to the provisions of Rules 33-601.301-314, F.A.C., Inmate Discipline, except as provided in this rule and Rule 33-404.112, F.A.C.

(2) The psychologist or psychiatrist are authorized to provide written or verbal input to the disciplinary team prior to disciplinary action being taken against any inmate who has a diagnosed mental illness disorder. The input shall be limited to whether the patient’s mental illness disorder may have contributed to the alleged disciplinary offense and, if so, a recommendation for disposition or sanction options or alternative actions.

(3) Prior to the issuance of a disciplinary report for an incident of maladaptive behavior occurring in a Florida Department of Corrections inpatient mental health unit or in the residential continuum of care units, the correctional officer shift supervisor shall discuss the incident and circumstances with the supervising psychologist or the psychological services director to determine whether a disciplinary report will be issued. The consultation will be documented in the inmate’s mental health record.

(4) Through (5) No change.

(6) For inmates receiving any inpatient level of care who have been found guilty of a disciplinary charge, the disciplinary process shall proceed in accordance with Rules 33-601.301-601.314, F.A.C., except these inmates shall not receive a penalty of disciplinary confinement. In lieu of disciplinary confinement, as provided in Rule 33-602.222, the disciplinary team’s findings shall be referred to the Multidisciplinary Services Team (MDST) for review and revision to the Individualized Services Plan, Form DC4-643A, as incorporated in Rule 33-601.800 and for consideration of adjustment of privileges in accordance with the Behavioral Management Progress System, Form

DC4-664B DC4-642M.

~~(7) An inmate transferred to an inpatient setting from protective management may still need protection while in a crisis stabilization, transitional care unit, or a corrections mental health treatment facility.~~

Rulemaking Authority 944.09, 945.49 FS. Law Implemented 944.09, 945.49 FS. History—New 5-27-97, Amended 7-9-98, Formerly 33-40.008, Amended 7-9-12, _____.

33-404.112 Risk Assessment of Inmates in an Inpatient Setting

(1) through (5) No change.

(6) At any time between the required intervals established in ~~subsection~~ ~~paragraph~~ (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 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) No change.

Rulemaking Authority 944.09, 945.49 FS. Law Implemented 944.09, 945.49 FS. History—New _____.