

May 25, 2018

NOTICE OF PROPOSED RULE

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 ASSESSMENT OF INMATES IN AN INPATIENT SETTING.

PURPOSE AND EFFECT: To clarify definitions, conditions, privileges, and the disciplinary process for mentally disordered inmates to insure the inmate’s underlying mental disorder is considered on an individual basis as related to his or her specific conduct or behavior.

SUMMARY: To clarify the conditions and privileges to inmates inpatient mental health services; Corrects, clarifies, and adds a number of definitions in order to more precisely address the department’s individualized treatment of inmates afflicted with mental illnesses; Implements a system for mental health psychologist and psychiatrist to provide input to security personnel before an inpatient mentally ill inmate is disciplined and provide a recommendation on disposition, if any, that is consistent with the individual service plan (ISP); Creates new rule that provides for a risk assessment within certain time constraints and periodic reviews. Creates three new forms to implement the provisions of the rules.

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: 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), FS. Any person who wishes to provide information regarding the 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 FS.

LAW IMPLEMENTED: 944.09, 945.42, 945.48, 945.49 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR. THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Gregory Hill, 501 South Calhoun Street, Tallahassee, Florida 32399-2500.

THE FULL TEXT OF THE PROPOSED RULE IS:

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)~~(1)~~ Inmates shall have access to mental health services commensurate with their needs as determined by health care staff.

(3)~~(2)~~ Inmates shall move between levels of care according to their level of adaptive functioning and treatment needs.

(4)~~(3)~~ All inmates who are receiving mental health services shall have an individualized services plan developed by mental health service providers.

(5)~~(4)~~ Inmates who are assigned to administrative confinement under Rule 33-602.220, F.A.C., disciplinary confinement under Rule 33-602.222, F.A.C., protective management under Rule 33-602.221, F.A.C., close management under Rule 33-601.800, F.A.C., or maximum management under Rule 33-601.820, F.A.C., and require necessary mental health services shall be referred to mental health staff immediately or to medical staff in the absence of mental health staff.

(6)~~(5)~~ The department shall establish a mental health classification system with which to identify inmates with a mental disorder that, in the clinical judgment of mental health staff, will adversely impact on the inmate's ability to adapt to the incarceration environment. The classification system shall identify inmates according to their level of mental and adaptive functioning and treatment needs.

(7)~~(6)~~ Before mental health evaluation and treatment are rendered to an inmate, the provider of such services shall ask the inmate to give express and informed written consent, after the limits on confidentiality are explained, unless

such consent is already documented. The explanation shall enable the inmate to make a voluntary decision without any element of fraud, deceit, duress, or any other form of constraint or coercion.

~~(8)(7)~~ If an inmate requires long-term involuntary treatment, the inmate shall be referred to a corrections mental health treatment facility in accordance with Rule 33-404.2095, F.A.C.

~~(9)(8)~~ Care of Inmates Receiving Inpatient Mental Health Services. Notwithstanding Rule 33-602.101, F.A.C., shall apply, and inmates receiving mental health services shall have the same privileges as other inmates, 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> ~~unless mental health staff, in coordination with security staff, has determined that it is necessary to restrict an inmate's privileges to prevent injury to the inmate or others.~~

~~(a)~~ Clothing, health or comfort items, personal property, books, periodicals, and documents other than legal documents and legal mail may be removed if mental health staff determine that the inmate may cause harm to himself or others by the use thereof. Such property restrictions and the justifications therefore shall be documented in the inmate's health record and reviewed at least every 72 hours to determine whether continuation of the restriction is necessary to prevent injury or harm to the inmate or others.

~~(b)~~ An inmate's telephone access, canteen privileges, outdoor exercise, and other movement may be restricted to prevent the inmate from harming himself or others. These restrictions and the reasons therefor shall be documented on the inmate's health record and reviewed by mental health and security staff during the periodic review of the inmate's risk assessment or more often as necessary due to changes in the inmate's clinical, disciplinary, or management status.

~~(10)(e)~~ An inmate receiving inpatient mental health services shall have access to the courts and legal materials as provided in Rule 33-501.301. However, if the psychologist, or a psychiatrist in the absence of the psychologist, ~~it is determines~~ determined that an inmate's access to the law library must be restricted in order to prevent injury or harm to the inmate or others, security and mental health staff shall immediately notify the law librarian. The law librarian will coordinate with mental health and security staff to ensure that the inmate has access to necessary law library

services, such as inmate law clerk visits, to ensure that the inmate meets any pending legal deadlines during the restriction.

(11) During hours other than 8 a.m. to 5 p.m., Monday through Friday and observed holidays, the shift supervisor of an inpatient unit, in the absence of a psychologist or psychiatrist, and after consulting with the on duty health care staff, may authorize the temporary restriction of any property being used to create an immediate threat to the security of the unit that prevents security staff from accomplishing required functions in the unit. Any property restrictions authorized by the shift supervisor shall be limited to those items necessary to neutralize the threat. All restrictions must be reviewed for further disposition by the Multidisciplinary Services Team (MDST) on the next business day.

(12) An inmate's access to property or privileges will be restricted upon the recommendation of licensed mental health staff when access to the property or privilege poses a threat of self-injury to the inmate or to the health or safety of other inmates or staff. The restrictions, together with justifications for the restrictions, shall be documented in the inmate's medical file. Restrictions imposed under this paragraph shall be reviewed by the psychologist or psychiatrist not less than every 72 hours to determine whether the continuation or modification of the restriction is necessary. The review and any resulting action shall be documented in the inmate's medical file.

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) 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” – 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. “Mental Disorder” – an impairment of the emotional 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 retardation 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 mentally retarded or developmentally disabled, however, may also have a mental disorder.~~

(3) “Corrections Mental Health Treatment Facility” refers to an inpatient mental health unit that provides ongoing involuntary mental health treatment in accordance with section 945.40-49, F.S. ~~“Individualized Services Plan”~~—a written description of an inmate’s current problems, goals, and treatments.

(4) “Crisis Stabilization Care” 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. ~~“Mental Health Care”~~—observation, mental health assessment, psychological evaluation, or mental health services that are delivered in in-patient or out-patient settings by mental health staff. The in-patient settings include infirmary mental health services, transitional care units, crisis stabilization units, and corrections mental health treatment facilities.

(5) “Individualized Service Plan” – a written description of an inmate’s current problems, goals, and treatments. ~~“Corrections Mental Health Treatment Facility”~~—any extended treatment or hospitalization level unit that the assistant secretary for health services specifically designates by Rule 33 404.201, F.A.C., to provide acute mental health care and that may include involuntary treatment and therapeutic intervention, in contrast to less intensive levels of care such as out-patient mental health care, infirmary mental health care, transitional mental health care, or crisis stabilization care.

(6) “Infirmary 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. ~~“Crisis Stabilization Care”~~—a level of care that is less restrictive and intensive than care provided in a corrections mental health treatment facility that includes a broad range of evaluation and treatment services provided within a highly structured residential setting. It is intended for inmates who are experiencing debilitating symptoms of acute mental impairment and who cannot be adequately evaluated and treated in a transitional care unit or in infirmary mental health care. Such treatment is also more intensive than in transitional care units as it is devoted principally toward rapid stabilization of acute symptoms and conditions.

(7) “Inpatient Level of Care” – mental health care provided at Corrections Mental Health Treatment Facilities, Crisis Stabilization Units, Transitional Care Units, and Infirmary Mental Health Care Units. ~~“Infirmary Mental Health Care”~~—a level of care more intensive than outpatient care involving the observation and housing of inmates with identified risk of self-harm or acute deterioration in mental health functioning.

(8) “Inpatient Units” – includes the Corrections Mental Health Treatment Facilities (CMHTF), Crisis Stabilization Units (CSU), and Transitional Care Units (TCU). “Transitional Mental Health Care” – a level of care that is more intensive than outpatient and infirmary care but less intensive than crisis stabilization care, characterized by the provision of mental health treatment in the context of a structured residential setting. Transitional mental health care is indicated for a person with chronic or residual symptomology who does not require crisis stabilization care or placement in a corrections mental health treatment facility but whose impairment in functioning nevertheless renders him or her incapable of adaptive functioning within the incarceration environment.

(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 ~~mental~~ impairment or those who are at risk for self-injury.

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

(11) “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) “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.

(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.

(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.

(15) “Transitional Mental Health Care” – 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) “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,_____.

~~33-404.108 Discipline and Confinement of Inmates with Diagnosed Mental Disorders~~ **Mentally Disordered Inmates.**

(1) ~~Inmates with a diagnosed mental disorder illness 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. noted in the following sections.~~

(2)(1) ~~The psychologist or psychiatrist Mental health staff are authorized to provide written or verbal input to the disciplinary team prior to before disciplinary action being is taken against any inmate who has a diagnosed mental disorder illness, mental retardation or who is otherwise cognitively impaired. The input shall be provided by either a psychologist or psychiatrist and shall be limited to description of the role, if any, that mental impairment may have played in the behavior in question. Written input by either a psychologist or psychiatrist shall be provided for inmates who are patients in isolation management, transitional care, crisis stabilization care, or in a corrections mental health treatment facility. The input shall be limited to whether the patient’s mental disorder illness, mental retardation or cognitive impairment may have contributed to the alleged disciplinary offense and, if so, a recommendation for disposition or sanction options or alternative actions.~~

(3)(2) ~~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 results of the clinical assessment shall be communicated to classification and documented in the health record by a psychologist or psychiatrist. The disciplinary team shall determine the appropriate discipline, including confinement, in accordance~~

~~with Rules 33-601.301-314, F.A.C. Any such confinement shall be performed within the inpatient setting, in accord with unit operating procedures and the individualized services plan. Documentation of all such incidents shall also be considered as part of the ongoing assessment of risk for violence by the risk assessment team as described in subsection (4) of this rule.~~

~~(4)(3) For inmates receiving any inpatient level of care who have been issued a disciplinary report, written input must be provided by a psychologist, or a psychiatrist in the absence of the psychologist. For inmates in outpatient settings who have been issued a disciplinary report, written input by a psychologist, or a psychiatrist in the absence of the psychologist, must be provided for those inmates that have a current diagnosis associated with documented psychotic features, autism spectrum disorder, dementia, or intellectual disability. When inmates are admitted to transitional care, crisis stabilization care, or a corrections mental health treatment facility, any prior confinement or close management status shall be suspended until the inmate is discharged from the specialized care setting. Security restraints shall be applied when inmates admitted to transitional care, crisis stabilization care, or a corrections mental health facility from maximum management or close management status I and II are out of their cells or other secure areas such as exercise yards, shower areas or holding cells.~~

~~(5)(4) The written input by the psychologist, or a psychiatrist in the absence of the psychologist, will be documented on Form DC6-1008, Disciplinary Team Mental Health Consultation, and will be the result of a record review, a review of a copy of the statement of facts, and a clinical interview with the inmate. Form DC6-1008 will be completed and provided to the disciplinary team prior to the disciplinary hearing. The results of the clinical assessment shall also be documented in the inmate's medical file. The disciplinary team shall incorporate the written input by the psychologist, or a psychiatrist in the absence of the psychologist, into their final decision. Form DC6-1008, Disciplinary Team Mental Health Consultation, 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 XXXX. Within 72 hours of an inmate's admission to transitional care, crisis stabilization care, or a corrections mental health treatment facility, an assessment of risk for violence shall be completed by a risk assessment team. The risk assessment team shall consist of a psychologist or psychiatrist and a staff member from security and classification. This risk assessment shall be the basis for recommendations for restrictions on the inmate's movement, housing program participation and clinical activities while the inmate is in an inpatient unit. The assessment of risk for violent behavior shall include a~~

~~review of the health and institutional record, the inmate's adjustment to incarceration, and the inmate's disciplinary or confinement status at the time of the referral for inpatient treatment. Restrictions shall be determined based on staff and inmate safety, and institutional security, and shall be documented in the health record.~~

~~(6)(5) 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 DC4-642M. The risk assessment shall be reviewed by a risk assessment team within 14 working days of the initial risk assessment and at least every 90 days thereafter, to determine the appropriateness of restrictions on housing, movement, and activities. Modifications shall be documented in the inmate's health record. Disagreement among the risk assessment team related to the level of risk presented by the inmate, or the determination of restrictions to be recommended for inclusion in the individualized service plan shall be referred to the warden for resolution. The warden is authorized to contact the regional mental health consultant and director of mental health services or his/her designee in central office for recommendations when needed.~~

~~(7)(6) 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. Protective management status or requests shall be evaluated with written or verbal input from the clinical staff, in accordance with Rules 33-602.220 and 33-602.221, F.A.C., as applicable.~~

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) When an inmate is admitted to an inpatient unit, any prior confinement or close management status shall be 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 shall consist of a Major or 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 Risk Assessment Team shall complete an initial assessment of risk for violence as set forth in this chapter. The Risk Assessment Team shall be responsible for making a determination of the inmate's security restraint status anytime the inmate is out of his or her cell.

(3) Initial Assessment. Within 3 working days of an inmate's admission to a crisis stabilization unit, or within 7 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, <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXX>. The effective date of the form is XXXX. 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 risk assessment team using Form DC6-2087. 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.

(6) At any time between the required intervals established in 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) The psychologist will provide information to the other members of the 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 _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Dean Aufderheide

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Julie L. Jones

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 26, 2018

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: May 1, 2018