

August 10, 2016

NOTICE OF RULE DEVELOPMENT

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:

33-404.103 Mental Health Services – Definitions

33-404.108 Discipline and Confinement of Mentally Ill Inmates

PURPOSE AND EFFECT: The purpose and effect is to add two new forms to rule 33-404.108, to clarify the role of the mental health staff member on the risk assessment team, to provide a definition for the Multidisciplinary Services Team, and to update and clarify language.

SUBJECT AREA TO BE ADDRESSED: Inmate mental health.

RULEMAKING AUTHORITY: 944.09, 945.49 FS

LAWS IMPLEMENTED: 944.09, 945.42, 945.49 FS

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA

ADMINISTRATIVE REGISTER. THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND TO OBTAIN A COPY OF THE PRELIMINARY DRAFT IS: Adam Stallard, 501 South Calhoun Street, Tallahassee, Florida 32399.

33-404.103 Mental Health Services – Definitions.

(1) No change

(2) “Mental Illness ~~Disorder~~” – an impairment of the mental or 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 intellectual 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 intellectually mentally retarded or developmentally disabled, however, may also have a mental illness disorder.

(3) No change

(4) “Multidisciplinary Services Team” – a group of 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 Services Plan,” Form DC4-643A, as needed.

~~(5)(4)~~ “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.

~~(6)(5)~~ “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.

~~(7)(6)~~ “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.

~~(8)(7)~~ “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.

~~(9)(8)~~ “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 ~~symptomatology~~ ~~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.

~~(10)(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 mental impairment or those who are at risk for self-injury.

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 Mentally ~~Ill Disordered~~ Inmates.

Inmates with a diagnosed mental illness ~~are shall be~~ subject to the provisions of Rules 33-601.301-.314, F.A.C., Inmate Discipline, except as noted in the following sections.

(1) Mental health staff are authorized to provide written ~~or verbal~~ input to the disciplinary team, using Form DC6-1008, Disciplinary Team Mental Health Consultation, before disciplinary action is taken against any inmate who has a diagnosed mental illness, including neurocognitive and neurodevelopmental disorders, 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 the mental illness impairment may have played in the behavior in question. Written input on Form DC6-1008, 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 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. 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.

(2) 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. The discipline ~~Any such confinement~~ shall be implemented performed within the inpatient setting, in accordance ~~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.

(3) 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. Each such inmate's security restraint status shall not be changed before the completion of their initial assessment of risk for violence, absent exigent circumstances.~~

(4) Within 72 hours of an inmate's admission to transitional care, crisis stabilization care, 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. The risk assessment team shall consist of a psychologist or psychiatrist, a Major or Lieutenant assigned to the inpatient unit, and a staff member from ~~security and classification, and it shall be led by the Major or Lieutenant.~~ This risk assessment shall be the basis for initial 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 mental 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 via Form DC6-2087. After this initial risk assessment, restrictions on housing, program participation, and clinical activities shall be determined by the Multidisciplinary Services Team based on input from mental health, classification, and security staff, and shall be documented in the inmate's inpatient mental health record.

(5) Additional assessments of risk for violence, using Form DC6-2087, shall be completed ~~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, and within 3 working days of the receipt of a Disciplinary Report, to determine the appropriateness of restrictions on the inmate's freedom of housing, movement through application of security restraints any time he or she is outside of his or her cell or is outside of a therapeutic module, and activities. ~~The role of the psychologist or psychiatrist is to provide information to security and classification and to communicate with security and classification as to whether the recommended restraints/restrictions are, or are not, contraindicated by the inmate's current~~

mental/behavioral functioning. If the psychologist or psychiatrist determines there is a contraindication, but security and classification determine the security restraints/restrictions must be applied, the matter shall be forwarded to the Warden for a final determination. Under no circumstances shall the psychologist or psychiatrist decide whether an inmate shall be subjected to security restraints. Disagreement among security and classification related to the level of risk presented by the inmate shall also be referred to the Warden for a final determination. 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.

~~(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, _____.