October 31, 2017

NOTICE OF PROPOSED RULE

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.

SUMMARY: The proposed rule adds two new forms to rule 33-404.108, clarifies the role of the mental health staff member on the risk assessment team, and provides a definition for the Multidisciplinary Services Team.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION: The Department has determined that this rule will not have an adverse impact on small business and is not expected to directly or indirectly increase regulatory costs more than $200,000 within a year of taking effect. A SERC has not been prepared by the Department. The Department has determined that the proposed rule is not expected to require legislative ratification based on the SERC 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 to 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

LAWS IMPLEMENTED: 944.09, 945.42, 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:

33-404.103 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, 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~~ Risk Management of Mentally Ill ~~Disordered~~ Inmates.

Inmates with a diagnosed mental illness, including neurocognitive or neurodevelopmental disorders,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) Discipline of Mentally Ill Inmates. 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, the correctional officer shift supervisor shall informally discuss the incident and circumstances with the inpatient mental health unit's supervising psychologist or the psychological services director to determine the most appropriate course of action.

(2) The psychologist or psychiatrist is required to provide written input to the disciplinary team or hearing officer utilizing Form DC6-1008, Disciplinary Team Mental Health Consultation, for inmates who are in infirmary mental health care, transitional care, crisis stabilization care, or a corrections mental health treatment facility before disciplinary action is taken by a disciplinary hearing officer or team pursuant to Rule 33-601.308

F.A.C.~~mental retardation or who is otherwise cognitively impaired.~~ The written input shall be limited to whether an inmate's diagnosed mental illness, including neurocognitive or neurodevelopmental disorders, ~~impairment~~ may have contributed to the alleged disciplinary offense and, if so, a recommendation for disposition or sanction options or alternative actions. The form should be completed and provided to the officer investigating the disciplinary charge prior to the conclusion of the investigation, or as otherwise requested by the disciplinary team or hearing officer. Written input on Form DC6-1008 is also authorized for use in outpatient settings if the psychiatrist or psychologist is consulted. ~~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.

(3) Prior to providing the written input on Form DC6-1008, the psychologist or psychiatrist shall complete a record review, review a copy of the statement of facts, and conduct a clinical interview of the inmate. The results of the clinical assessment shall also be documented in the inmate's health record. The disciplinary team shall incorporate the written input by the psychologist or psychiatrist into their decision-making process and determine whether to dismiss the charge or the appropriate discipline, which shall be a term of days,~~including confinement,~~ in accordance with Rules 33-601.301-.314, F.A.C. The preceding sentence and the terms of Rule 33-601.314 notwithstanding, any discpline given an inmate in the inpatient setting shall not constitute "administrative confinement" or "disciplinary confinement" as these terms are used in department rules. Accordingly, an inmate serving such a term of discipline shall not be on confinement status, and therefore shall not necessarily have his or her rights and privileges affected as an inmate on such status would. All 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 by the risk assessment team as described in subsections (4) and (5) of this rule. If the inmate has not completed the term of discipline before discharge from the inpatient unit,

the inmate will be placed in disciplinary confinement upon discharge, with the number of days of discipline completed in the inpatient unit subtracted from the number of days of discipline that was imposed by the disciplinary team. Prior to discharge, except in cases of disciplinary action resulting from assault or sexual violations, the psychologist, with the consent of the MDST, is authorized to recommend a reduction in the terms of the disciplinary action for the institutional Warden's consideration. The recommendation will be documented via an incidental note in the mental health record and the security staff member of the MDST will report the recommendation to the warden or his or her designee.

(4) 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. 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. ~~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) Risk Management of Mentally Ill Inmates. Within 3 working days of an inmate's admission to crisis stabilization care, and within 7 working days of an inmate's admission to transitional 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, a Major or Lieutenant, and a classification officer, who are all assigned to the inpatient unit. The team shall be led by the Major or Lieutenant. This risk assessment shall be the basis for initial recommendations for restrictions on the inmate's freedom of movement and housing~~., and program participation while the inmate is in an inpatient unit~~. The assessment of risk for violent behavior 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. Restrictions shall be determined based on staff and inmate safety, and institutional security. Such restrictions and their justification(s) shall be documented in the health record

via a copy of Form DC6-2087. Decisions on the use of security restraints on the inpatient unit shall be individuated and made on a case-by-case basis and referenced in Form DC6-2087. After the 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, medical/nursing, classification, and security staff, and shall be documented in the inmate's inpatient mental health record.

(6) 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 90 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 necessity for imposition 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 unit~~. and activities~~. At any time between the required intervals, the psychologist, with the consent of the MDST, may request the risk assessment team to review and determine the necessity for continuing the restrictions on the inmate's freedom of movement through application of security restraints any time he or she is outside of his or her cell or is outside of a therapeutic unit. The MDST's request will be documented by the psychologist in the inmate's inpatient mental health record. The risk assessment team's review will be documented on Form DC6-2087. The decision to use security restraints shall not be automatically based on a Disciplinary Report. In addition to conducting a clinical evaluation of risk, the psychologist will provide information to security and classification to communicate whether the recommended restraints/restrictions are, or are not, contraindicated by the inmate's current mental/behavioral functioning.

(7) During any assessment of risk for violence, if the psychologist determines there is a contraindication, but security and classification team members determine the security restraints/restrictions must be applied, the Warden shall consult with the Florida Department of Corrections' Chief of Mental Health Services or his or her designee and make a final determination. Under no circumstances shall the psychologist decide whether an inmate shall be subjected to security restraints. Any disagreement among security and classification team members 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,_______.

NAME OF PERSON ORIGINATING PROPOSED RULE: Thomas Reimers, Health Services Director

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 26, 2017

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: August 10, 2017