



To: Michael Pelletier, DHS  
From: Emily Miller, Behavioral Health Policy Analyst  
CC: Josh Evans, Vice President of Government Relations  
Re: Rule 140 Recommendations  
Date: October 31, 2013

The IARF Behavioral Health Committee met in late July of 2013 to review the most current edition of Rule 140 and submitted comments to the Department in early August. Based on subsequent internal discussions, and a discussion with the Division and Director Binion in early October 2013, the Association's updated recommendations for revision are listed below:

- Section 140.25 Definitions
  - Night of Care
    - The Committee recommends dropping the "11:59 p.m." part of the definition and make it so that any part of a 24 hour day counts as a day - 11:59 p.m. doesn't account for where someone might be at the time of night; why should there be a curfew imposed on the residents?  
**DMH RESPONSE:** The intent of this section is to establish as definition or criteria for when a bed is considered occupied to allow for billing purposes for that "night of care". A consumer admitted to and occupying a bed at 11:59PM doesn't necessarily mean that the consumer needs to be physically present in that bed at 11:59PM. The nature of the acuity and severity of illness required for admission to the Supervised Transitional services would deem it unlikely that a consumer would not be present at the facility at this time with the exception for bed hold situations. Please see also Section 140.215 b-1.
- Section 140.55 Post Payment Review
  - Subsections a, b, and c
    - What is "Notice of Unsubstantiated Billings" referring to? Is this only regarding nights of care or does this include all Rule 132 services? This should be clarified in the Rule.  
**DMH RESPONSE:** The Rule is and can only and specifically be related to this Level of Care –"Supervised Residential" with no intent or reference to augmenting or substituting for Rule 132 obligations. We would ask that you suggest clarifying language during the Public Comment period if that is your wish.
  - Subsection c
    - Is the 90% site specific or aggregate? The Committee recommends that the 90% be aggregated across the contract based on all of the facilities a provider owns/operates.  
**DMH RESPONSE:** This is aggregate across all sites certified for the provider for this LOC. We would ask that you suggest clarifying language during the Public Comment period if that is your wish.

- Subsection d
  - Remove the provision regarding extrapolation and allow for review of past months for additional recovery.

**DMH RESPONSE:** DMH wishes to maintain this option which is consistent with Rule 132 and HFS standards. DMH's action to initiate this option would be published well in advance of implementation.

- Section 140.75 Rate Setting

- What will the rates be? The Committee recommends that all providers are given the opportunity to review and comment on the rates before discussion on the structure of this Section. The Committee is supportive of the Division's formation of a formal workgroup to develop the rate structure for the Rule.

**DMH RESPONSE:** We are in the process of determining format, actions etc for reopening the Rates Methodology workgroup process.
- What will the process be for updating the rates annually?
 

**DMH RESPONSE:** DMH cannot assert to a recalculation of or modifying rates which incur a financial obligation without having appropriations authority to support an adjustment.
- The Committee urges the Division to share survey results that were submitted to the Department during previous discussions of Rule 140.
 

**DMH RESPONSE:** It is our intent to insure that all previous materials provided to the prior workgroup be the basis for our discussions moving forward.

- Section 140.105 Fiscal Requirements

- Subsection c
  - The Committee recommends that this section be removed until there is more information regarding the rates.

**DMH RESPONSE:** The SSI deduction is well established in HFS and DDD rates structures. DMH is allowing the consumer to keep 70% of their SSI – a far higher number to allow them to save money for moving into housing from this transitional residential level of care. DMH rates are expected to support payment in full for the residential services as defined. Other subsidies would assume the provider is getting reimbursement from two governmental entities for the same or similar service.

Section 140.105 “b) The provider shall submit to DHS Financial Reporting as required by DHS.” would imply that report(s) required would be specifically related to conform with the regulations pertinent to the type of funding. Also, since we anticipate that Rule finalization and thus enforcement would mirror timelines for rates finalization this section should remain.

- Subsection d
  - The Committee recommends more clarification on this section. Does “above services” only refer to what is listed? Does this mean providers cannot find alternative ways to subsidize?

**DMH RESPONSE:** “ from the above sources” limits and defines specifically ONLY those revenues sources that are considered deductions i.e. “above”, i.e. 140.105 c 1-3. Because of this part in this section, DMH believes it is clear the Rule does not limit the provider’s ability to fundraise or seek other sources of revenues to support the overall general operations of the program.

- Section 140.215

- Subsection b-1

- What does “continuous” mean? The Committee recommends the definition be *access to 24-hour services and supports based on individualized need*. This definition should be included in the Rule.

**DMH RESPONSE:** “Happening or existing without a break or interruption.” The acuity of needs and services delivery through this LOC should both be fairly “acute” to require continuous monitoring and observation.

- Subsection d

- What happens if consumers don’t comply with requirement to participate in “medically necessary services?”

**DMH RESPONSE:** Persons not progressing or benefiting should be provided alternatives. Section 140.205(b) talks about discharge, as does section 140.215(e). Non-compliance to treatment services could suggest a need for an alternative placement. What we are trying to say here in that the acuity of needs and services delivery through this LOC should both be fairly “acute”.

- HUD doesn’t allow for providers to require residents to participate in services.

**DMH RESPONSE:** Likely this would be irrelevant to this level of care as those HUD locations may be considered to convert to another LOC or housing. This LOC isn’t permanent housing. Current sites not meeting the new Rule’s requirement will likely convert to other levels of care/housing designation.

- There should be language inserted into the Rule clarifying what happens when a consumer has a HUD subsidy or lease in their name – i.e. clarification that they would then not qualify for services under the Rule.

**DMH RESPONSE:** Current sites not meeting the new Rule’s requirement will likely convert to other levels of care/housing designation.

DMH wishes to be clear that it expects, that because of acuity of consumer need for entry into Supervised Residential that the “site” should reflect characteristics to adequately respond to the needs of the consumer. The site should afford all participating consumers individual living quarters as defined in Rule with communal facilities for food, recreation and care all within the same distinct section or unit in which all admitted consumers at the same time can receive supervision through the physical presence of, at the minimum, one staff member.