PROPOSED RULEMAKING

DEPARTMENT OF HUMAN SERVICES

[55 PA. CODE CHS. 1153 AND 5200]

Outpatient Psychiatric Services and Psychiatric Outpatient Clinics

The Department of Human Services (Department), under the authority of sections 201(2) and 1021 of the Human Services Code (62 P.S. §§ 201(2) and 1021), sections 105 and 112 of the Mental Health Procedures Act (50 P.S. §§ 7105 and 7112) and section 201(2) of the Mental Health and Intellectual Disability Act of 1966 (50 P.S. § 4201(2)), proposes to amend Chapters 1153 and 5200 (relating to outpatient behavioral health services; and psychiatric outpatient clinics) to read as set forth in Annex A.

Purpose of this Proposed Rulemaking

The purpose of this proposed rulemaking is to update Chapters 1153 and 5200 to be consistent with the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) (Pub.L. No. 110-343), to reflect changes in benefit packages resulting from the implementation of Medicaid expansion under the Patient Protection and Affordable Care Act (Pub.L. No. 111-148) and the consolidation of adult benefit packages, as well as codify the requirements for the delivery of Mobile Mental Health Treatment (MMHT) outlined in Medical Assistance Bulletin 08-06-18, Mobile Mental Health Treatment, issued November 30, 2006. This proposed rulemaking will allow licensed professionals to work within their scope of practice in psychiatric outpatient clinics, increase access to medically necessary treatment services for eligible individuals, including the provision of mobile treatment, and reduce the paperwork requirements for licensed providers. This proposed rulemaking supports the principles of recovery, resiliency and self-determination by updating language to reflect a person-first philosophy throughout the regulations, allowing consistent access to community-based services and focusing on appropriate evidence-based individual clinical interventions.

Background

The 2014 National Survey on Drug Use and Health (NSDUH) report was issued by the Substance Abuse and Mental Health Services Administration (SAMHSA), United States Department of Health and Human Services (DHHS), on September 4, 2014. The NSDUH report provided estimates of the prevalence of adult mental illness in the United States. The analysis was based upon the data collected from an annual survey of the civilian noninstitutionalized population of the United States 12 years of age or older. The NSDUH report presents estimates of mental health issues separately for adolescents 12 to 17 years of age based upon a variation in questions. The data collected is limited to major depressive episodes (MDE) for adolescents not an overall indication of mental health issues as is collected for adults. The results indicate that 1 in 10 adolescents reported an MDE, representing an estimated 2.6 million adolescents in the United States having an MDE during the reporting year. Nationally, an estimated 43.8 million adults 18 years of age or older experienced any mental illness in the past year, corresponding to a rate of 18.5% of the adult population. "Any mental illness" is defined in the NSDUH report as "the presence of any mental, behavioral, or emotional disorder in the past year that met the Diagnostic and Statistical Manual of Mental Disorders (DSM) criteria." "Serious mental illness" (SMI) is defined in the NSDUH report as a mental disorder causing substantial functional impairment (such as substantial interference with or limitation in one or more major life activities) and individuals with SMI have the most urgent need for treatment. There were an estimated 10 million adults 18 years of age or older with SMI in the past year, which represents 4.2% of all adults in the United States. Nationally, 62.9% of adults with SMI received treatment in the past 12 months while only 41% of adults with any mental illness received mental health treatment in the past year.

Mental illness is a major public health concern in the United States. It is a primary cause of disability and carries a high financial cost. Depression accounts for 4.3% of the global burden of disease and is among the largest single cause of disability worldwide, particularly for women. World Health Organization (WHO), Mental Health Action Plan, 2013—2020. According to the Centers for Disease Control and Prevention (CDC) and WHO, mental illness accounts for more disability in developed countries than any other group of illnesses, including cancer and heart disease. Mood disorders, including major depression, dysthymic disorder and bipolar disorder, are the third most common cause of hospitalization in the United States for adults 18 to 44 years of age. Agency for Healthcare Research and Quality, DHHS, 2009. The economic burden of mental illness in the United States was approximately $300 billion in 2002. CDC (2011), Mental Illness Surveillance Among U.S. Adults. Additionally, SMI costs the United States approximately $193.2 billion in lost earnings per year. Insel, T.R. (2008), "Assessing the Economic Costs of Serious Mental Illness," *The American Journal of Psychiatry*, 165(6), 663—665. Mental illness is also associated with increased occurrence of chronic diseases such as cardiovascular disease, diabetes, obesity, asthma, epilepsy and cancer. CDC (2011), Mental Illness Surveillance Among U.S. Adults. It is associated with lower use of medical care, reduced adherence to treatment for chronic diseases and higher risk of adverse health effects. Many mental illnesses can be managed successfully and increasing access to mental health services could substantially reduce the associated morbidity. Treatment of mental illness can improve both outcomes.

Access to community psychiatric services is not only a cost-effective alternative to institutionalization, it can also produce improved outcomes for individuals with mental illness, including the population identified with SMI. The most common types of treatment accessed are outpatient services and prescription medication according to the 2008 SAMHSA survey data. SAMHSA Administrator Pamela S. Hyde stated:

> Although mental illness remains a serious public health issue, increasingly we know that people who experience it can be successfully treated and can live full and productive lives. Like other medical conditions, such as cardiovascular disease or diabetes, the key to recovery is identifying the problem and taking active measures to treat it as soon as possible.

SAMHSA Data Survey, 2008.

Community-based psychiatric outpatient clinics are a key component of the public mental health system, and

should be accessible to all individuals to provide an array of cost-effective clinical services and supports. In recognition of the importance of mental well-being, the overall goal of the WHO Mental Health Action Plan 2013—2020 is to promote mental health, prevent mental disorders, provide access to care and enhance recovery, and reduce mortality, morbidity and disability for persons with mental disorders by providing comprehensive, integrated and responsive mental health services in community-based settings. WHO recommends the development of comprehensive community-based mental health services. Community-based mental health service delivery should encompass a recovery-based approach that supports individuals with mental illness to achieve their own goals. The core services should include listening and responding to an individual's needs, working with the individual as an equal partner, offering choices of treatment and therapies, and the use of peer support staff to support recovery, all of which can be provided by licensed outpatient psychiatric clinics in the community. Another key element of the WHO plan is to be responsive to the needs of vulnerable and marginalized individuals to ensure community-based services are widely available.

Additionally, SAMHSA's strategic plan for 2015—2018 includes the goal of increasing access to effective treatment and support for recovery. To recover, individuals need access to affordable, accessible and high-quality behavioral health care. The expansion of access to MMHT for individuals with a broader array of diagnoses and for individuals under 21 years of age will broaden access to treatment services by allowing more individuals that would not be able to attend treatment at a traditional outpatient psychiatric clinic to receive services in alternative community settings. This will assist in engaging vulnerable individuals and reducing stigma.

The MHPAEA requires that health insurance coverage for mental health and substance use services have benefit limitations that are no more restrictive than the medical benefits offered by the plan. This proposed rulemaking will provide the same level of benefits to all eligible individuals by removing limits on the services or scope of covered services consistent with the approved State plan and the MHPAEA.

Requirements

The following is a summary of the specific provisions in this proposed rulemaking.

Chapter 1153. Outpatient behavioral health services

The Department proposes to amend the heading of this chapter to reflect broadening of its application with the inclusion of MMHT services provided by psychiatric outpatient clinics.

§ 1153.2. Definitions

The proposed definition of "adult" identifies individuals who are 21 years of age or older receiving services under this chapter.

The definitions of "adult partial hospitalization program," "children and youth partial hospitalization program," "psychiatric outpatient clinic provider" and "psychiatric outpatient partial hospitalization program" are proposed to be amended to recognize the current name of the Office of Mental Health and Substance Abuse Services. Additionally, the definition of "psychiatric outpatient clinic provider" is proposed to be amended to "psychiatric outpatient clinic" for consistency with use throughout this chapter.

In response to requests by stakeholders, the Department proposes to amend references to "patient" to "individual" in the definitions of "collateral family psychotherapy," "inpatient," "intake," "outpatient," "psychotherapy" and "treatment institution" to distinguish the difference between an individual receiving services and an illness. For consistency in this chapter, references to "patient" or "person" are proposed to be replaced with "individual."

The definition of "facility" is proposed to be added to clarify the use of the term throughout this chapter as inclusive of establishments primarily focused on the diagnosis, treatment, care and rehabilitation of individuals with mental illness or emotional disturbance. The definition is congruent with the term used in Chapter 5200.

The definition of "family psychotherapy" is proposed to be amended by replacing "mental disorder" with "mental illness or emotional disturbance" to be congruent with the current Federal language. The Federal definition of "mental illness or emotional disturbance" is proposed to be added.

The definition of "group psychotherapy" is proposed to be amended by increasing the allowable maximum group size from 10 to 12 individuals. The most prominent published text on group psychotherapy is *Theory and Practice of Group Psychotherapy* by Irvin D. Yalom (1995), which states:

> [t]he ideal size of an interactional therapy group is approximately 8 to as high as 12. Since it is likely that one or possibly two patients will drop out of the group in the course of treatment, it is advisable to have a slightly larger group than the preferred size.

The proposed increase will conform to industry standards and clinical best practice. Further, this proposed amendment will allow more individuals to be served in psychiatric outpatient clinics and reduce wait times to access outpatient treatment.

The definition of "home visit" is proposed to be deleted due to the addition of MMHT services to this chapter. Services provided by psychiatric outpatient clinics outside the clinic setting are provided as MMHT rehabilitation services.

The definition of "LPHA—licensed practitioner of the healing arts" is proposed to be added to define who may order MMHT. MMHT is in the Commonwealth's Medical Assistance State Plan as a rehabilitation service and under 42 CFR 440.130(d) (relating to diagnostic, screening, preventive, and rehabilitative services) rehabilitation services shall be "recommended by a physician or other licensed practitioner of the healing arts, within the scope of his practice under State law." This proposed definition allows a broad array of licensed professionals to order this service within their scope of practice under State law.

The definition of "mental disorder" is proposed to be deleted due to outdated terminology and replaced with "mental illness or emotional disturbance." Mental illness or emotional disturbance is a mental or emotional disorder that meets the diagnostic criteria in the current version of the *Diagnostic and Statistical Manual* (DSM) or the International Classification of Diseases (ICD) with reference to an individual's level of functioning in various life domains. References to "mental disorder" through this chapter are proposed to be replaced with "mental illness or emotional disturbance" including in the definitions of "family psychotherapy," "group psychotherapy," "individual

psychotherapy," "psychiatric outpatient clinic services" and "psychiatric outpatient partial hospitalization provider."

The definitions of "mental health professional" and "mental health worker" are proposed to be amended to specify the required credentials.

The definition of "MMHT—Mobile Mental Health Treatment" is proposed to be added. MMHT services can be provided in the individual's residence or approved community site and include assessment, individual, group, family therapy and medication visits. They are intended to reduce the disabling effects of mental or physical illness for individuals who have encountered barriers to or have been unsuccessful in receiving services at a psychiatric outpatient clinic. The purpose of this service is to provide therapeutic treatment to reduce the need for more intensive levels of service, including crisis intervention or inpatient hospitalization by offering services in the community or home setting. These rehabilitation services may only be provided by a licensed outpatient clinic with an approved service description for MMHT.

The definitions of "psychiatric clinic medication visit" and "psychiatric clinic clozapine monitoring and evaluation visit" are proposed to be amended to replace the outdated term "recipient" with "individual" and include certified registered nurse practitioners (CRNP) and physician assistants (PA) in the list of professionals who may provide the visit.

The definition of "psychiatric evaluation" is proposed to be amended to include the provision of real-time, two-way interactive audio-video transmission in licensed psychiatric outpatient clinics. This proposed amendment will increase access to this service, especially in rural areas of this Commonwealth.

The definition of "psychiatric outpatient clinic services" is proposed to be amended to delete the outdated language of "a mentally disordered outpatient" and replace it with "an individual with mental illness or emotional disturbance." This proposed amendment delineates the difference between an illness and the individual with the illness by using person first language.

The definition of "psychiatric partial hospitalization" is proposed to be amended to delete the limits on the service consistent with the MHPAEA.

The definition of "psychiatric outpatient partial hospitalization provider" is proposed to be amended to delete outdated language of "mental disorders" and replace it with "mental illness or emotional disturbance" and update program office names to reflect current titles.

§ 1153.11. Types of services covered

§ 1153.12. Outpatient services

This proposed rulemaking adds MMHT as a type of covered service that can be provided under this chapter. These services were added to the MA Program Fee Schedule in 2006. MMHT services can only be provided by a licensed outpatient clinic with an approved service description for MMHT.

§ 1153.14. Noncovered services

The time frame for the psychiatrist's review of assessments and treatment plans is proposed to be amended to up to 30 calendar days following intake. The proposed amendment from the current 15 calendar day limit allows the individual receiving services and the mental health professional to develop a treatment plan based upon a comprehensive intake and assessment process. Additionally, the proposed amendments include the codification of MMHT services, which allows licensed outpatient clinics to provide services in a home or community location to improve access.

§ 1153.21. Scope of benefits for children under 21 years of age

Proposed amendments to this section reflect the changes under Medicaid expansion and the consolidation of the current benefit packages to revise the scope of benefits section to provide the same level of benefits to all eligible children under 21 years of age.

§ 1153.22. Scope of benefits for adults 21 years of age or older

Proposed amendments to this section reflect the changes under Medicaid expansion and the consolidation of the current benefit packages to provide the same level of benefits to all eligible adults. Specifically, the amount, duration and scope variations between categories of eligibility are proposed to be amended to comply with Federal regulations and the MHPAEA.

§ 1153.23. Scope of benefits for State Blind Pension recipients

This section is proposed to be rescinded because with Medicaid expansion and the consolidation of the current benefit packages the State Blind Pension recipient category is no longer a benefit category.

§ 1153.24. Scope of benefits for General Assistance recipients

The scope of benefits sections are proposed to be amended to codify the benefits under the Medicaid expansion and provide the same level of benefits to all eligible adults. The General Assistance category is no longer included in this chapter.

§ 1153.41. Participation requirements

The proposed amendments to this section recognize the scope of practice of advanced practice professionals in this Commonwealth. The proposed amendments will allow CRNPs and PAs, within their scope of practice and applicable law, to prescribe medication in psychiatric outpatient clinics. A requirement for psychiatric outpatient clinics to have service description for MMHT approved by the Department to be an MMHT provider is proposed to be added and outdated language is proposed to be updated throughout this section.

§ 1153.42. Ongoing responsibilities of providers

The proposed amendments update outdated language, clarify licensure and MA enrollment requirements, and add MMHT services.

§ 1153.51. General payment policy

The Department proposes to add MMHT services under the payment policy for outpatient psychiatric services. MMHT services were added to the MA Program Fee Schedule in November 2006 for adults 21 years of age or older. These services were also recently amended in the MA State Plan and the MA Program Fee Schedule for children under 21 years of age.

§ 1153.52. Payment conditions for various services

This section is proposed to be amended to allow a psychiatric clinic medication visit to be provided by an advanced practice professional licensed by the Commonwealth, recognizing the scope of practice for CRNPs and PAs. Additionally, the Department proposes to allow a

psychiatric evaluation to be performed by real-time, two-way interactive audio-video transmission.

The Department also proposes to require initial treatment plans to be developed within 30 days of intake, with updates of the treatment plans being required at least every 180 days, or more frequently based upon clinical need. Stakeholders representing the provider community and individuals receiving services stated this time frame is reasonable for the development of a comprehensive treatment plan based upon clinical assessment, history and input from the individual receiving services. Individuals are seen during various time frames on an outpatient basis which impacts when treatment plans should be updated. This proposed amendment is similar to outpatient clinic regulations regarding treatment planning in Maryland, South Carolina, Minnesota and Oregon.

The time frame for the psychiatrist to review, approve and sign the treatment plans is proposed to be amended. The psychiatrist will be responsible for reviewing and approving the initial treatment plan, in conjunction with the mental health professional and the individual receiving services, within 30 days of intake. The psychiatrist shall review and approve the updated treatment plans within 1 year of the previous psychiatric review and approval.

The psychiatric clinic clozapine monitoring and evaluation provisions are proposed to be amended for congruence with the program changes regarding prescribing and monitoring clozapine treatment. Clozapine is associated with severe neutropenia and is monitored by blood testing throughout the course of treatment. Absolute neutrophil count (ANC) testing is proposed to be added as part of the treatment protocols.

This proposed rulemaking establishes the conditions and limitations for the provision of MMHT services in the home or community. MMHT expands the ability of outpatient psychiatric clinics to provide services to individuals of any age in approved alternative settings based upon specific clinical criteria and a written order from a licensed practitioner of the healing arts. MMHT will provide access to psychiatric services, psychotherapy and medication visits for individuals who are unable to attend treatment in a traditional outpatient psychiatric clinic setting due to documented mental or physical illness. Subsection (e) is proposed to be deleted because it is no longer necessary with the addition of MMHT to this chapter. Outdated conditions and limitations are proposed to be amended.

§ 1153.53. Limitations on payment

Many of the limitations on services are proposed to be deleted.

§ 1153.53a. Requests for waiver of hourly limits

This section is proposed to be rescinded, as the proposed amendments to the limitations on services eliminate the need for this section.

Chapter 5200. Psychiatric outpatient clinics

§ 5200.1. Legal base

The short title of the "Mental Health and Mental Retardation Act of 1966" is proposed to be amended to reflect the legislative change to the "Mental Health and Intellectual Disability Act of 1966."

§ 5200.2. Scope

The outdated language of "the mentally ill or the emotionally disturbed" is proposed to be amended to "individuals with mental illness or emotional disturbance." This proposed amendment delineates the difference between an illness and the individual who has a specific treatable illness by supporting person first language. The New Freedom Commission on Mental Health, Final Report, July 2003, recognized that the stigma surrounding mental illness can be reduced by reinforcing the hope of recovery for every individual with mental illness and providing person-centered treatment options that are readily accessible in every community. In SAMHSA's "Leading Change: A Plan for SAMHSA's Roles and Action" published in 2011, it was reported that one in five Americans believe that individuals with mental illness are dangerous. Based upon the ongoing public perception regarding mental illness, SAMHSA included a strategic initiative targeted at public awareness and support. The goal of the initiative is to increase public understanding about mental and substance use disorders, the reality that people recover and how to access treatment and recovery supports for behavioral health conditions.

"Public entities" is proposed to be added to recognize facilities that are operated by a Federal, State or local governmental entity and licensed as psychiatric outpatient clinics. Facilities are identified as public or private facilities by the Department.

§ 5200.3. Definitions

The definition of "advanced practice professional" is proposed to be added in recognition of CRNPs with a mental health certification or PAs with either a mental health certification or at least 1 year of experience working in a behavioral health setting working under the supervision of a physician. This proposed definition will allow these licensed professionals to provide services within their scope of practice in psychiatric outpatient clinics, thereby expanding clinical resources.

In recognition of the codification of MMHT in this chapter, a variety of definitions are proposed to be added. The proposed definition of "assessment" provides a description of the face-to-face interview to evaluate clinical needs of the individual. The definition of "LPHA—licensed practitioner of the healing arts" is proposed to be added. MMHT is in the Commonwealth's Medical Assistance State Plan as a rehabilitation service and under 42 CFR 440.130(d), rehabilitation services shall be "recommended by a physician or other licensed practitioner of the healing arts, within the scope of his practice under State law." The proposed definition of "LPHA—licensed practitioner of the healing arts" allows a broad array of licensed professionals to order this service within their scope of practice under State law. MMHT includes an array of treatment services to reduce the disabling effects of a mental or physical illness for individuals who have encountered barriers to or have been unsuccessful in receiving services in a traditional outpatient setting due to a physical or psychological condition. The ability to provide clinical treatment to individuals in an alternative setting such as a home or community-based environment increases access to outpatient treatment services potentially decreasing the utilization of higher levels of care.

The definition of "facility" is proposed to be amended to delete the outdated terminology "mentally disabled persons," which does not distinguish the individual from the illness, and replace it with "individuals with mental illness or emotional disturbance." This language is proposed to be amended in the definition of "psychiatric outpatient clinic" for congruence in the chapter. "Psychiat-

ric outpatient clinic" is proposed to be amended throughout the chapter for consistency with the heading of the chapter.

The definition of "FTE—full-time equivalent" is proposed to be amended by deleting "of staff time" as recommended by the stakeholder workgroup. A person employed for 37 1/2 hours by a psychiatric outpatient clinic is considered a full-time employee.

The definition of "mental illness or emotional disturbance" is proposed to be added for consistency with Federal language and to support a person first approach for identifying an illness rather than the use of the outdated term "mentally disturbed person." Mental illness or emotional disturbance is a mental or emotional disorder that meets the diagnostic criteria in the current version of the DSM or the ICD with reference to an individual's level of functioning in various life domains. References to "mental disorder" through this chapter are proposed to be amended as "mental illness or emotional disturbance."

The definition of "psychiatrist" is proposed to be amended to recognize that a residency in psychiatry is "at least 3 years."

The definition of "quality assurance program" is proposed to be amended to replace the outdated terminology "patients" with "individuals receiving services" for consistency with other proposed amendments.

The definition of "telepsychiatry" is proposed to be added to allow for the utilization of technology to provide clinical services. Telepsychiatry will improve access to mental health care in underserved, rural and remote areas of this Commonwealth, as well as offer specialized clinical services that may only be available in urban regions. According to research reviewed by the American Telemedicine Association, the majority of telemental health services are provided in the outpatient setting. It has been demonstrated that individuals receiving services can be reliably assessed, diagnosed and treated with pharmacology in outpatient clinics through telepsychiatry. Evidence-Based Practice for Telemental Health, July 2009.

This proposed rulemaking also distinguishes between "mental health professional" and "mental health worker" by clarifying qualifications and incorporating language that recognize the scope of practice of licensed behavioral health professionals. The definitions of "psychiatric nurse" and "psychiatric social worker" are no longer necessary as a result of this change and are proposed to be deleted.

All service durations are proposed to be deleted from the definitions since the required unit of service for each service is specified in the procedure code, technically known as the Current Procedural Terminology (CPT) code, for the service and therefore does not need to be included in the definition of the service, which could become outdated as CPT codes are revised.

§ 5200.4. Provider eligibility

Proposed amendments clarify that this chapter is not intended to regulate individual or group private practices that provide mental health services.

§ 5200.5. Application and review process

Proposed amendments delete outdated language regarding programs operating under a pre-existing approval to meet the requirements of the chapter and include the current annual inspection information.

§ 5200.6. Objective

Proposed amendments to this section support the ongoing transition to a recovery-oriented system of care by including language that recognizes individuals can, and do, recover from mental illness and emotional distress. The New Freedom Commission on Mental Health reports that "too many individuals are unaware that mental illnesses can be treated and recovery is possible." "Achieving the Promise: Transforming Mental Health Care in America," July 2003. SAMHSA included a strategic initiative in the 2015—2018 plan to promote home and community-based services that avoid unnecessary institutionalization and out-of-home placements. The strategic plan emphasizes that recovery provides the common and motivating goal for individuals and families—that people can and do overcome behavioral health problems to live full and productive lives in the community of their choice. Recovery often includes ongoing community-based treatment and support.

§ 5200.7. Program standards

Based upon stakeholder input, the requirement that for-profit facilities seeking licensure or approval shall have Joint Commission on Accreditation of Hospitals accreditation is proposed to be deleted. This requirement is cost-prohibitive for small psychiatric outpatient clinics, resulting in the Department issuing numerous waivers of this standard.

§ 5200.11. Organization and structure

Proposed amendments include the addition of a clinical supervisor and a director as part of the psychiatric clinic structure and staffing pattern. The director may provide clinical supervision based upon qualifications and structure of the clinic. The director is responsible for the overall daily management of the clinic while the clinical supervisor is responsible for the clinical oversight of service delivery.

§ 5200.12. Linkages with mental health service system

This proposed rulemaking clarifies the requirement for written documentation describing the accessibility and availability of services provided by other parts of the mental health service system. Emergency services, an integral resource, are specified in this proposed rulemaking to ensure access to services to support individuals in crisis in the community. Ready access to emergency assistance is important not only because it holds the promise of reducing the intensity and duration of the individual's distress, but also as the crisis escalates, options for effective interventions decrease. SAMHSA (2009), "Practice Guidelines: Core Elements in Responding to Mental Health Crises."

Additionally, "Mental Health/Mental Retardation (MH/MR)" is proposed to be updated to "Mental Health/Intellectual Disability (MH/ID)" to be congruent with previous statutory changes.

§ 5200.21. Qualifications and duties of the director/clinical supervisor

This section is proposed to be amended to require a clinical supervisor and a director, who may be the same person, to be employed by the psychiatric outpatient clinic to provide oversight and supervision for all clinical services provided at the clinic. This proposed amendment will ensure that clinical staff have access to daily supervision to support treatment services.

§ 5200.22. Staffing pattern

The current requirement is a clinic have four full-time equivalent mental health professionals. Proposed amend-

ments require 50% of the psychiatric clinic treatment staff be mental health professionals. This proposed amendment will allow new clinics to provide clinical services while they build capacity and hire qualified staff. It will also ensure that larger clinics employ adequate professional staff to provide clinical services.

Additionally, the 16-hour psychiatric time requirement is proposed to be amended to 2 hours of psychiatric time per week for each full-time equivalent treatment staff. The psychiatrist shall provide 50% of this psychiatric time per week in-person, while the other 50% of the psychiatric time can be provided either by advanced practice professionals licensed to prescribe medication who specialize in behavioral health or using telepsychiatry with prior written approval of the Department, or a combination of both, to meet the time requirement. This proposed amendment allows for the use of current technology and other licensed professionals. The proposed amendments are also congruent with other states' regulations. In review of other states' outpatient clinic regulations, New York, New Jersey, Wisconsin, South Carolina and Oregon allow other licensed professionals within their scope of practice to provide services in the clinics. Maryland mandates the amount of time a psychiatrist shall be at the clinic, while the majority of regulations require adequate time to provide services based upon clinic size and other licensed professionals employed at the clinic. This proposed amendment will recognize the scope of practice of other licensed professionals in this Commonwealth and allow clinics to maximize the utilization of psychiatric time to provide clinical oversight and direct care to individuals with complex needs receiving services at the clinic.

Language regarding licensure for psychiatric residents is proposed to be amended. "Unrestricted license" is proposed to be added to reflect that a third year resident is granted an unrestricted license to practice medicine while first and second year residents receive a "member in training" license.

§ 5200.23. Psychiatric supervision

The outdated language of "patient population" is proposed to be amended to "clinic population" as suggested by the stakeholder community.

§ 5200.24. Criminal history and child abuse certification

This proposed section addresses requirements under 23 Pa.C.S. §§ 6301—6386 (relating to Child Protective Services Law) for background checks for any staff or volunteers having direct contact with an individual receiving outpatient psychiatric services in the clinic or community setting.

§ 5200.31. Treatment planning

Proposed amendments to this section increase the time frame for the development of the initial treatment plan from 15 days to 30 days. This proposed amendment will allow the individual receiving services and the mental health professional more time to identify key goals and objectives for the treatment plan based upon clinical need. The initial treatment plan shall be signed by the mental health professional, the psychiatrist and the individual receiving services.

The frequency of treatment plan updates is proposed to be amended from every 120 days or 15 visits to every 180 days to allow additional time to address the identified goals and objectives of the initial plan. The updated treatment plan shall be reviewed and signed by the mental health professional and the individual receiving treatment.

This proposed rulemaking requires the psychiatrist to review and approve the treatment plan within 1 year of the previous review and approval. This proposed amendment will reduce paperwork burden for the psychiatrist by changing review and sign off to yearly rather than every 120 days. This proposed amendment maintains compliance with definitions in section 1905(a)(9) of the Social Security Act (42 U.S.C.A. § 1396d(a)(9)) and 42 CFR 440.90 (relating to clinic services) that services furnished at the clinic be provided by or are under the direction of a physician. To meet this requirement, a physician shall see the individual, prescribe the type of care provided and periodically review the need for continued care.

Additionally, this proposed rulemaking specifies that the individual receiving services shall be actively involved in the creation of the treatment plan and updates which shall include both strengths and needs. In 2010, SAMHSA convened the leaders in the behavioral health field to develop a unified definition of recovery. Based upon this work, "recovery" is defined as "a process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential." DHHS (2012), "SAMHSA's Working Definition of Recovery." One of the major dimensions to support a life in recovery is overcoming or managing one's disease or symptoms by making informed choices to support emotional and physical well-being. Self-determination and self-direction are critical as individuals exercise choice of services and supports that will assist in their recovery. Person-driven services are one of the ten guiding principles of recovery developed by SAMHSA. DHHS (2012), "SAMHSA's Working Definition of Recovery." Further, active involvement in treatment planning and goal setting is a key element in designing a unique pathway to recovery.

A requirement that treatment be provided according to the individual's treatment plan is proposed to be added to ensure that the services are being provided to help individuals meet their goals and according to their needs. This proposed addition is consistent with the Departments' requirements for other behavioral health services.

§ 5200.32. Treatment policies and procedures

"Patients" is proposed to be amended to "individuals" for consistency with this proposed rulemaking.

§ 5200.41. Records

This section is proposed to be amended to update terminology and include the requirements for securing written and electronic records in accordance with all applicable Federal and State privacy and confidentiality laws and regulations.

§ 5200.42. Medications

Proposed amendments to this section recognize advanced practice professionals licensed to prescribe medication in this Commonwealth. Proposed amendments clarify "written" to include prescriptions that are handwritten or recorded and transmitted by electronic means and the requirements for transmitting electronic prescriptions. Proposed amendments will require documentation of any medications prescribed in the individual medical record.

§ 5200.43. Fee schedule

The requirement that fee schedules be submitted to the Department for informational purposes is proposed to be deleted to reduce paperwork requirements for providers. The outdated terminology of referring to an individual receiving services as a patient is proposed to be amended to be consistent with other sections of this chapter.

§ 5200.44. Quality assurance program

"Patients" is proposed to be amended to "individuals" for consistency and a requirement to include MMHT services as part of the quality assurance plan is proposed to be added.

§ 5200.45. Physical facility

"Patient" is proposed to be amended to "individual." Proposed amendments include physical site requirements that recognize the importance of an engaging and culturally-competent environment in the clinic for individuals receiving services. As part of the ten guiding principles of recovery developed by SAMHSA, culture in all its diverse representations are keys in determining a person's unique pathway to recovery. DHHS (2012), "SAMHSA's Working Definition of Recovery."

§ 5200.46. Notice of nondiscrimination

"Client" is proposed to be amended to "individual" for consistency with other sections of this proposed rulemaking. Additionally, the nondiscrimination language is proposed to be updated to reflect current terminology addressing nondiscrimination.

§ 5200.48. Waiver of standards

This section is proposed to be amended to allow greater flexibility for the duration and renewal of waivers to be granted when the development of specialty psychiatric clinic services would be severely limited by the standards. The waivers would continue to be subject to approval by the Department.

§ 5200.51. Provider service description

This proposed section requires that licensed outpatient clinics develop a service description for MMHT services that will be provided, including the age range of the population to be served. Prior to the delivery of MMHT, the service description shall be approved by the Department.

§ 5200.52. Treatment planning

This proposed section includes specific elements in the MMHT treatment plan in addition to the requirements in § 5200.31 (relating to treatment planning). The additional elements provide information on the services to be provided, duration of the service, location of the service provision and the professional responsible for the delivery of the services.

§ 5200.53. Discharge

This proposed section identifies discharge planning requirements for MMHT services.

Affected Individuals and Organizations

This proposed rulemaking will affect individuals receiving psychiatric outpatient clinic services by increasing access to needed services, including the ability to receive outpatient services at alternative locations, allowing the use of telepsychiatry, requiring the involvement of individuals receiving services in planning their treatment and expanding the categories of professionals who may provide services by adding advanced practice professionals licensed to prescribe medications in this Commonwealth.

Licensed psychiatric outpatient clinics that are enrolled in the Medical Assistance Program will be affected by this proposed rulemaking. This proposed rulemaking will reduce paperwork requirements, increase the utilization of licensed professionals within their scope of practice and increase access to services in rural areas by allowing use of telepsychiatry. This proposed rulemaking will help maintain the 279 community-based psychiatric outpatient clinic programs and their 783 satellite sites that served approximately 325,851 individuals in Fiscal Year 2013-2014.

Accomplishments and Benefits

This proposed rulemaking will benefit individuals seeking outpatient psychiatric services by increasing access through the use of telepsychiatry, requiring involvement of each individual in the planning of individualized treatment services, expanding the utilization of MMHT, supporting recovery and increasing the role of advance practice professionals licensed to prescribe medication in the clinics.

The NSDUH report published by SAMHSA in 2014 states that mental illness is a major public health concern in the United States as a primary cause of disability. The Agency for Healthcare Research and Quality cites a cost of $57.5 billion in 2006 for mental health care in the United States, equivalent to the cost of cancer care. Much of the economic burden of mental illness is not the cost of care, but the loss of income due to unemployment, expenses for social supports and a range of indirect costs due to a disability that begins early in life. SMI costs the United States $193.2 billion in lost earnings per year. Kessler, R.C. (2008). "The individual-level and societal-level effects of mental disorders on earnings in the United States: Results from the National Comorbidity Survey Replication," *American Journal of Psychiatry*, 165(6), 703—711.

Mental health is essential to a person's well-being, healthy family and interpersonal relationships, and the ability to live a full and productive life according to the research done by Healthy People 2020. Research has shown that many mental illnesses can be treated successfully and increasing access to community mental health services could substantially reduce the associated morbidity. CDC (2011), "Mental Illness Surveillance among Adults in the U.S." Increasing access to community-based services with early detection, treatment and recovery supports may have significant positive cost implications for the Commonwealth. There is strong consensus in many countries that outpatient clinics offer an efficient way to assess and treat mental illness by providing sites that are accessible to the local population. Thornicroft, G. and Tansella, M. (2003), "What are the arguments for community-based mental health care?," WHO, Health Evidence Network Report. WHO's Mental Health Action Plan 2013—2020 incorporates the overall goal of promoting mental well-being and preventing mental disorders by providing accessible care, enhancing recovery through a comprehensive integrated community-based mental health system.

The consequences of not having community mental health services, including access to psychiatric outpatient services, include increased hospitalization, physical health costs and suicide. Suicide is the tenth leading cause of death in the United States and the second leading cause of death for youth 15 to 24 years of age. Ensuring access to psychiatric outpatient clinic services is a cost-effective resource that can promote mental well-being, support recovery and reduce the utilization of inpatient care.

The psychiatric outpatient clinics will benefit from a decrease in paperwork requirements, thereby increasing psychiatric and other clinical time available to provide direct services, and also the increased ability to provide services in accordance with current industry standards.

Fiscal Impact

No costs to the Commonwealth, local government, service providers or individuals seeking psychiatric outpatient services are anticipated as a result of this proposed rulemaking.

Paperwork Requirements

No additional reporting, paperwork or recordkeeping is required to comply with this proposed rulemaking. Further, requirements regarding documentation of treatment planning are proposed to be reduced, which will result in a decrease in current paperwork requirements for psychiatric outpatient clinic providers.

Effective Date

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to the Department of Human Services, Office of Mental Health and Substance Abuse Programs, Attention: Michelle Rosenberger, Bureau of Policy, Planning and Program Development, Commonwealth Towers, 11th Floor, 303 Walnut Street, P.O. Box 2675, Harrisburg, PA 17105-2675, RA-PWOPCRegs@pa.gov within 30 calendar days after the date of the publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference Regulation No. 14-538 when submitting comments. Persons with a disability who require an auxiliary aid or service may submit comments by using the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on July 28, 2017, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Human Services and the Senate Committee on Public Health and Welfare. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the rulemaking by the Department, the General Assembly and the Governor.

THEODORE DALLAS,
Secretary

Fiscal Note: 14-538. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 55. HUMAN SERVICES

PART III. MEDICAL ASSISTANCE MANUAL

CHAPTER 1153. OUTPATIENT **[PSYCHIATRIC]** **BEHAVIORAL HEALTH** SERVICES

GENERAL PROVISIONS

§ 1153.1. Policy.

The MA Program provides payment for specific medically necessary psychiatric outpatient clinic **services, MMHT services** and psychiatric outpatient partial hospitalization services rendered to eligible **[recipients] individuals** by psychiatric outpatient clinics and psychiatric outpatient partial hospitalization facilities enrolled as providers under the program. Payment for **[outpatient psychiatric] behavioral health** services is subject to the provisions of this chapter, Chapter 1101 (relating to general provisions) and the limitations established in Chapter 1150 (relating to **[the]** MA Program payment policies) and the MA Program **[fee schedule] Fee Schedule**.

§ 1153.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

***Adult*—An individual 21 years of age or older.**

Adult partial hospitalization program—A program licensed by the Department, Office of Mental Health **and Substance Abuse Services**, to provide partial hospitalization services to individuals 15 years of age or older.

Children and youth partial hospitalization program—A program licensed by the Department**,** Office of Mental Health **and Substance Abuse Services**, to provide partial hospitalization services to individuals 14 years of age or younger.

Clinical staff—A psychiatrist or a mental health professional or mental health worker under the direct supervision of a psychiatrist.

Collateral family psychotherapy—Psychotherapy provided to the family members of **[a clinic patient in the absence of that patient] an individual receiving psychiatric outpatient clinic services in the absence of the individual**.

Department—The Department of Human Services.

***Facility*—A mental health establishment, hospital, clinic, institution, center, or other organizational unit or part thereof, the primary function of which is the diagnosis, treatment, care and rehabilitation of individuals with mental illness or emotional disturbance.**

Family—A person living alone or the following persons: spouses; parents and their unemancipated minor children and other unemancipated minor children who are related by blood or marriage; or other adults or emancipated minor children living in the household who are dependent upon the head of the household.

Family psychotherapy—Psychotherapy provided to two or more members of a family. At least one family member shall have a diagnosed mental **[disorder] illness or emotional disturbance**. Sessions shall be **[at least 1/2 hour in duration and shall be]** conducted by a clinical staff person.

Group psychotherapy—Psychotherapy provided to no less than **[two] 2** and no more than **[ten] 12** persons with diagnosed mental **[disorders for a period of at least 1 hour] illness or emotional disturbance**. These sessions shall be conducted by a clinical staff person.

[*Home visit*—A visit made to an eligible recipient's place of residence, other than a treatment institution or nursing home, for the purpose of

observing the patient in the home setting or providing a compensable outpatient psychiatric service.]

Individual psychotherapy—Psychotherapy provided to one person with a diagnosed mental **[disorder for a minimum of 1/2 hour] illness or emotional disturbance**. These sessions shall be conducted by a clinical staff person.

Inpatient—**[A patient] An individual** who has been admitted to a treatment institution or an acute care hospital or psychiatric hospital on the recommendation of a physician and is receiving room, board and professional services in the facility on a continuous 24-hour-a-day basis.

Intake—**[The first contact with a patient for initiation or renewal of services.] The first contact with an individual for initiation of or readmission to outpatient behavioral health services covered by this chapter.**

[*Mental disorder*—Conditions characterized as mental disorders by the International Classification of Diseases—ICD-9-CM—including mental retardation with associated psychiatric conditions (ICD-9-CM codes 317 to 319) and excluding drug/alcohol conditions (ICD-9-CM codes 291—292.9).]

***LPHA—Licensed practitioner of the healing arts*—A person who is licensed by the Commonwealth to practice the healing arts. The term is limited to a physician, physician's assistant, certified registered nurse practitioner or psychologist.**

***MMHT—Mobile Mental Health Treatment*—One or more of the following services provided in an individual's residence or approved community site:**

(i) Assessment.

(ii) Individual, group or family therapy.

(iii) Medication visits.

Mental health professional—**[A person trained in a generally recognized clinical discipline including but not limited to psychiatry, social work, psychology or nursing, rehabilitation or activity therapies who has a graduate degree and clinical experience.] A person who meets one of the following:**

(i) Has a graduate degree from a college or university that is accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation (CHEA) in a generally recognized clinical discipline which includes mental health clinical experience.

(ii) Has an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. (AICE) or the National Association of Credential Evaluation Services (NACES). The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(iii) Is licensed in a generally recognized clinical discipline which includes mental health clinical experience.

Mental health worker—**[A person who does not have a graduate degree in a clinical discipline but who by training and experience has achieved recognition as a mental health worker, or a person with a graduate degree in a clinical discipline.] A person acting under the direction of a mental health professional to provide services who meets one of the following:**

(i) Has a bachelor's degree from a college or university that is accredited by an agency recognized by the United States Department of Education or the CHEA in a recognized clinical discipline including social work, psychology, nursing, rehabilitation or activity therapies.

(ii) Has a graduate degree in a clinical discipline with 12 graduate-level credits in mental health or counseling from a program that is accredited by an agency recognized by the United States Department of Education or the CHEA.

(iii) Has an equivalent degree from a foreign college or university that has been evaluated by the AICE or the NACES. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

***Mental illness or emotional disturbance*—A mental illness or emotional disturbance that meets the diagnostic criteria within the current version of the *Diagnostic and Statistical Manual* or the International Classification of Diseases. A mental illness or emotional disturbance is characterized by clinically significant disturbances in an individual's cognition, emotional regulation or behavior that reflects a dysfunction in the psychological, biological or developmental processes underlying mental functioning.**

Outpatient—**[A person] An individual** who is not a resident of a treatment institution and who is receiving covered medical and **[psychiatric services at an approved or licensed outpatient psychiatric] behavioral health services from a licensed psychiatric outpatient** clinic or partial hospitalization facility which is not providing **[him] the individual** with room and board and professional services on a continuous 24-hour-a-day basis.

Psychiatric clinic clozapine monitoring and evaluation visit—A **[minimum 15-minute]** visit for the monitoring and evaluation of **[a patient's] an individual's** physical and mental condition during the course of treatment with clozapine. The term includes only a visit provided to an eligible **[recipient] individual** receiving clozapine therapy, and only by a psychiatrist, physician, **certified registered nurse practitioner,** registered nurse **[(RN)]** or physician assistant.

Psychiatric clinic medication visit—A **[minimum 15-minute]** visit only for administration of a drug and evaluation of **[a patient's physical and] an individual's physical or** mental condition during the course of prescribed medication. This visit is provided to an eligible **[recipient] individual** only by a psychiatrist, physician, **certified registered nurse practitioner, physician's assistant,** registered nurse or licensed practical nurse **[who is a graduate of a school approved by the State Board of Nursing or who has successfully completed a course in the administration of medication approved by the State Board of Nursing]**.

Psychiatric evaluation—An initial mental status examination and evaluation of **[a patient provided only by**

a psychiatrist in a face-to-face interview with the patient] an individual provided only by a psychiatrist in a face-to-face interview or using real-time, two-way interactive audio-video transmission with prior written approval from the Department with the individual. It **[shall] must** include a comprehensive history and evaluation of pertinent diagnostic information necessary to arrive at a diagnosis and treatment plan, recommendations for treatment**,** or further diagnostic studies or consultation. The history **[shall] must** include individual, social, family, occupational, drug, medical**,** and previous psychiatric diagnostic and treatment information.

Psychiatric outpatient clinic **[*provider*]**—A facility **[approved by the Department, Office of Medical Assistance, and fully approved/licensed] fully licensed** by the Department, Office of Mental Health **and Substance Abuse Services**, to provide specific medical, psychiatric and psychological services for the diagnosis and treatment of mental **[disorders] illness or emotional disturbance**. **[Treatment is provided to eligible Medical Assistance outpatient recipients who are not residents of a treatment institution or receiving similar treatment elsewhere.]**

Psychiatric outpatient clinic services—Outpatient medical, psychiatric and psychological services listed in the MA Program Fee Schedule furnished to **[a mentally disordered outpatient while the person] an individual with mental illness or emotional disturbance while the individual** is not a resident of a treatment institution, provided by or under the supervision of a psychiatrist **[in a facility organized and operated to provide medical care to outpatients]**.

Psychiatric outpatient partial hospitalization provider—A facility **[approved by the Department of Human Services, Office of Medical Assistance,] enrolled in the MA Program** to provide partial hospitalization services and fully **[approved/licensed] licensed** by the Department, Office of Mental Health **and Substance Abuse Services**, to provide psychiatric, medical, psychological and psychosocial services as partial hospitalization for the diagnosis and treatment of mental **[disorders] illness and emotional disturbance**. **[Treatment is provided to eligible MA outpatient recipients who are not residents of a treatment institution or receiving similar treatment elsewhere.]**

Psychiatric partial hospitalization—An active outpatient psychiatric day or evening treatment session including medical, psychiatric, psychological**[,]** and psychosocial treatment listed in the MA Program Fee Schedule. This service shall be provided to **[mentally disordered outpatients in a supervised, protective setting for a minimum of 3 hours and a maximum of 6 hours in a 24-hour period] an individual with mental illness or emotional disturbance in a supervised, protective setting**. The session shall be provided by a psychiatrist or by psychiatric partial hospitalization personnel under the supervision of a psychiatrist.

Psychologist in preparation for licensure—A person who has completed the educational requirements for licensure and is accruing the required postdegree experience for licensing.

Psychotherapy—The treatment, by psychological means, of the problems of an emotional nature in which a trained person deliberately establishes a professional relationship with **[the patient with the object of removing, modifying or retarding] an individual with the objective of removing, modifying or relieving** existing symptoms, of mediating disturbed patterns of behavior, and of promoting positive personality growth and development.

Supervision by a psychiatrist—The psychiatrist **[personally]** provides or orders, guides and oversees compensable medical, psychiatric and psychological services provided to **[recipients] individuals** by psychiatric outpatient clinic or partial hospitalization personnel as specified in § 1153.52(a) (relating to payment conditions for various services).

Treatment institution—A facility approved or licensed by the Department or its agents that provides **[full- or part-time psychiatric treatment services for resident patients with mental disorders—mental retardation residential facilities] full-time psychiatric treatment services for resident individuals with mental illness or emotional disturbance—residential facilities for individuals with intellectual disabilities** or community residential rehabilitation services are not considered to be mental health institutions.

COVERED AND NONCOVERED SERVICES

§ 1153.11. Types of services covered.

Medical Assistance Program coverage for **[outpatient]** psychiatric **outpatient** clinics **[and],** partial hospitalization facilities **and MMHT services** is limited to professional medical and psychiatric services for the diagnosis and treatment of mental **[disorders, including mental retardation] illness and emotional disturbance, including intellectual disabilities**, as specified in the MA Program Fee Schedule.

§ 1153.12. Outpatient services.

The **[outpatient]** psychiatric **outpatient** clinic services specified in the MA Program Fee Schedule and the outpatient psychiatric partial hospitalization services specified in the MA Program Fee Schedule are covered only when provided by **[approved outpatient psychiatric] licensed psychiatric outpatient** clinics or psychiatric partial hospitalization facilities when ordered by a psychiatrist. **MMHT services specified in the MA Program Fee Schedule are covered only when provided by a licensed psychiatric outpatient clinic that has an approved service description for MMHT.** Payment is subject to the conditions and limitations established in this chapter and Chapter 1101 (relating to general provisions).

§ 1153.14. Noncovered services.

Payment will not be made for the following types of services regardless of where or to whom they are provided:

(1) A covered **[clinic] psychiatric outpatient clinic, MMHT** or partial hospitalization service conducted over the telephone.

(2) Cancelled appointments.

(3) Covered services that have not been rendered.

(4) **[A] An** MA covered service, including psychiatric **[clinic] outpatient clinic, MMHT** and partial hospitalization services, provided to inmates of State or county correctional institutions or committed residents of public institutions.

(5) Psychiatric outpatient clinic**, MMHT** or partial hospitalization services to residents of treatment institutions, such as**[, persons] individuals** who are also being provided with room or board**,** or both, and services, on a 24-hour-a-day basis by the same facility or distinct part of a facility or program.

(6) Services delivered at locations other than **[approved psychiatric outpatient clinics or partial hospitalization facilities with the exception of home visits under the conditions specified in § 1153.52(d) (relating to payment conditions for various services)] licensed psychiatric outpatient clinics with the exception of MMHT under the conditions specified in § 1153.52(d) (relating to payment conditions for various services) or partial hospitalization facilities**.

(7) Vocational rehabilitation, occupational or recreational therapy, referral, information or education services, case management, central intake or records, training, administration, program evaluation, research or social services provided in psychiatric outpatient clinics.

(8) Case management, central intake or records, training, administration, social rehabilitation, program evaluation or research provided in psychiatric outpatient partial hospitalization facilities.

(9) Psychiatric outpatient clinic services**, MMHT** and psychiatric partial hospitalization provided on the same day to the same **[patient] individual**.

(10) Covered psychiatric outpatient clinic services**, MMHT** and psychiatric partial hospitalization services, with the exception of family psychotherapy, provided to persons without a mental **[disorder or mental retardation] illness or emotional disturbance or an intellectual disability** diagnosis rendered by a psychiatrist in accordance with the **current version of the *Diagnostic and Statistical Manual* or the** International Classification of Diseases—**[ICD-9-CM, Chapter V, "Mental Disorders."] Chapter V, "Mental, Behavioral, and Neurodevelopmental Disorders."**

(11) **[Psychiatric outpatient clinic and psychiatric partial hospitalization services provided to patients with drug/alcohol abuse or dependence problems, such as alcohol dependence and nondependent abuse of drugs, alcohol psychoses, and drug psychoses, unless the patient has a primary diagnosis of a nondrug/alcohol abuse/dependence related mental disorder.] Psychiatric outpatient clinic, MMHT and psychiatric partial hospitalization services provided to individuals with substance-related and addictive disorders, unless the individual has a primary diagnosis of a mental illness or emotional disturbance.**

(12) Drugs **[and],** biologicals and supplies furnished to **[psychiatric clinic or psychiatric partial hospitalization patients during a visit to the] an individual receiving services at a psychiatric outpatient clinic or a partial hospitalization facility during a visit to the psychiatric outpatient** clinic or facility. These are included in the **psychiatric outpatient** clinic medication visit fee or partial hospitalization session payment. Separate billings from any source for items and services provided **[in the] by the psychiatric outpatient** clinic are noncompensable.

(13) Services not specifically included in the MA Program Fee Schedule are noncompensable.

(14) **[Home visits] MMHT services** not provided in accordance with the conditions specified in § 1153.52(d).

(15) Services provided beyond the **[15th] 30th** calendar day following intake, without the psychiatrist's review and approval of the initial assessment and treatment plan.

(16) The hours that the **[client] individual** participates in an education program delivered in the same setting as a children and youth partial hospitalization program unless, in addition to the teacher, a clinical staff person works with the child in the classroom. The Department will reimburse for only that time during which the **[client] individual** is in direct contact with a clinical staff person.

(17) Group psychotherapy provided in the **[patient's] individual's** home.

(18) Psychiatric **[clinic] outpatient clinic, MMHT** and partial hospitalization services provided to nursing home residents on the grounds of the nursing home or under the corporate umbrella of the nursing home.

(19) Electroconvulsive therapy and electroencephalogram provided through MMHT.

(20) MMHT provided on the same day as other home and community-based behavioral health services to the same individual.

(21) MMHT services provided as a substitute for transportation to the psychiatric outpatient clinic.

SCOPE OF BENEFITS

§ 1153.21. Scope of benefits for **[the categorically needy] children under 21 years of age**.

[Categorically needy recipients] Children under 21 years of age are eligible for the full range of covered psychiatric outpatient clinic**, MMHT** and psychiatric partial hospitalization services in the MA Program Fee Schedule.

§ 1153.22. Scope of benefits for **[the medically needy] adults 21 years of age or older**.

[Medically needy recipients] Adults 21 years of age or older are eligible for the full range of covered psychiatric outpatient clinic**, MMHT** and psychiatric partial hospitalization services in the MA Program Fee Schedule.

§ 1153.23. **[Scope of benefits for State Blind Pension recipients] (Reserved)**.

[State Blind Pension recipients are eligible for the full range of covered psychiatric outpatient clinic and psychiatric partial hospitalization services in the MA Program fee schedule.]

§ 1153.24. **[Scope of benefits for General Assistance recipients] (Reserved)**.

[General Assistance recipients, age 21 to 65, whose MA benefits are funded solely by State funds,

are eligible for medically necessary basic health care benefits as defined in Chapter 1101 (relating to general provisions). See § 1101.31(e) (relating to scope).]

PROVIDER PARTICIPATION

§ 1153.41. Participation requirements.

In addition to the participation requirements established in Chapter 1101 (relating to general provisions), **[outpatient]** psychiatric **outpatient** clinics and outpatient partial hospitalization facilities shall meet the following participation requirements:

(1) Have current full **[licensure/approval] licensure** as a psychiatric outpatient clinic or partial hospitalization outpatient facility by the Department's Office of Mental Health **and Substance Abuse Services**. To remain eligible for MA reimbursement, a **psychiatric outpatient** clinic or partial hospitalization facility shall be fully **[licensed/approved] licensed** at all times as a psychiatric outpatient clinic or partial hospitalization outpatient facility.

(2) Have medical personnel currently licensed, certified or registered in accordance with laws of the Commonwealth.

(3) Have a written **[patient]** referral plan **for individuals receiving services** that provides for inpatient hospital care and follow-up treatment.

(4) Post a current written fee schedule for billing third party and private payors.

(5) Appoint an administrator or director responsible for the internal operation of the **psychiatric outpatient** clinic or partial hospitalization facility. Appoint a psychiatrist or psychiatrists responsible for the supervision and direction of services rendered to eligible **[recipients] individuals**.

(6) Notify immediately the Department, Office of Medical Assistance**[, Bureau of Provider Relations, in writing] Programs, Bureau of Fee-for-Services, in the manner prescribed by the Department**, of **[a]** facility or clinic name, address**[,]** and service changes prior to the effective date of change. Failure to do so may result in payment interruption or termination of the provider agreement.

(7) Enter into a written provider agreement with the Department.

(8) Have each branch location or satellite of **[an approved] a licensed psychiatric outpatient** clinic or partial hospitalization facility also licensed **[or approved]** by the Office of Mental Health **and Substance Abuse Services** as a psychiatric outpatient clinic site or psychiatric partial hospitalization facility, whichever is applicable, and **[approved] enrolled** by the Office of Medical Assistance **Programs** before reimbursement can be made for services rendered at the branch or satellite. **[Approval] Licensure and enrollment** of the parent organization does not constitute **[approval] licensure and enrollment** for any branches or satellites of the same organization.

(9) **[Be approved by the Department's Office of Medical Assistance.] Be enrolled as a provider in the Medical Assistance Program.**

(10) Have medications prescribed by a licensed **[physician] practitioner within his scope of practice**.

(11) Psychiatric outpatient clinics providing MMHT shall have a service description approved by the Department under the conditions specified in § 5200.51 (relating to provider service description).

§ 1153.42. Ongoing responsibilities of providers.

(a) *Responsibilities of providers.* Ongoing responsibilities of providers are established in Chapter 1101 (relating to general provisions). **[Outpatient psychiatric] Psychiatric outpatient** clinics and outpatient psychiatric partial hospitalization facilities shall also adhere to the additional requirements established in this section.

(b) *Recordkeeping requirements.* In addition to the requirements listed in § 1101.51(e) (relating to ongoing responsibilities of providers), the following items **[shall] must** be included in medical records of **[MA patients receiving outpatient psychiatric clinic] individuals receiving psychiatric outpatient clinic, MMHT** and outpatient psychiatric partial hospitalization services:

(1) The treatment plan **[shall] must** include:

(i) The treatment plan goals.

(ii) Services to be provided to the **[patient] individual** in the clinic or partial hospitalization facility or through referral.

(iii) Persons to directly provide each service.

(2) As part of the progress notes, the frequency and duration of each service provided shall be included.

PAYMENT FOR OUTPATIENT **[PSYCHIATRIC CLINIC AND OUTPATIENT PSYCHIATRIC PARTIAL HOSPITALIZATION] BEHAVIORAL HEALTH** SERVICES

§ 1153.51. General payment policy.

Payment is made for medically necessary professional medical and psychiatric services provided by or under the supervision and direction of a psychiatrist **[in participating outpatient psychiatric] by participating psychiatric outpatient** clinics and outpatient psychiatric partial hospitalization facilities, subject to the conditions and limitations established in this chapter and Chapters 1101 and 1150 (relating to general provisions; and MA Program payment policies) and the MA Program Fee Schedule. Payment will not be made for a compensable psychiatric **[clinic] outpatient clinic, MMHT** or psychiatric partial hospitalization service if payment is available from another public agency or another insurance or health program.

§ 1153.52. Payment conditions for various services.

(a) The following conditions shall be met by **[outpatient]** psychiatric **outpatient** clinics and partial hospitalization programs, as applicable, to be eligible for payment:

(1) A psychiatrist shall be present in the psychiatric outpatient clinic and psychiatric outpatient partial hospitalization facility, as required by the Office of Mental Health **[approval/licensing] and Substance Abuse Services licensing** regulations, to perform or supervise the performance of all covered services provided to **[MA patients] individuals receiving MA benefits**.

(2) Psychiatric evaluations shall be performed only by a psychiatrist in a face-to-face interview **[with the patient] or using a real-time, two-way interactive audio-video transmission with prior written approval from the Department with the individual**. Additional interviews with other staff may be included as part of the examination but shall be included in the psychiatric evaluation fee. Separate billings for these additional interviews are not compensable.

(3) Psychotherapy—individual, family, collateral family or group—shall be provided only by a clinical staff person.

(4) Psychiatric partial hospitalization services shall be provided only by a clinical staff person.

(5) Diagnostic psychological and intellectual evaluations shall be administered and interpreted only by a licensed psychologist or by a psychologist in preparation for licensure under the direct supervision of a licensed psychologist.

(6) The psychiatric **outpatient** clinic medication visit shall be provided only by a psychiatrist, physician, **certified registered nurse practitioner, physician's assistant,** registered nurse or licensed practical nurse **[who is a graduate of a school approved by the State Board of Nursing or who has successfully completed a course in the administration of medication approved by the State Board of Nursing]**.

(7) Within **[15] 30** consecutive calendar days following intake **for individuals who continue to participate in the treatment process**, a mental health professional or mental health worker under the supervision of a mental health professional, shall **[examine and initially assess each patient in the clinic; determine the patient's diagnosis and prepare an initial treatment plan] interview and initially assess each individual in the psychiatric outpatient clinic; determine the individual's diagnosis and prepare an initial treatment plan in collaboration with the individual**; and date and sign the examination, diagnosis and treatment plan in the **[patient's] medical** record. The treatment plan shall be developed, maintained and periodically reviewed in accordance with the following criteria:

(i) The psychiatrist shall verify each **[patient's] individual's** diagnosis and approve the **initial** treatment plan prior to the provision of any treatment beyond the **[15th] 30th** day following intake. This review and approval shall be dated and signed in the **[patient's] medical** record.

(ii) **[The psychiatrist and mental health professional, or mental health worker under the supervision of a mental health professional, shall review and update each patient's treatment plan at least every 120 days or 15 clinic visits, whichever is first, or, as may otherwise be required by law throughout the duration of treatment. Each review and update shall be dated, documented and signed in the patient's record by the psychiatrist and mental health professional.] The mental health professional or mental health worker under the supervision of a mental health professional and in collaboration with the individual receiving services shall review and update the treatment plan at least every 180 days or as may otherwise be required by law throughout the duration of treatment. Each update shall be dated, documented and signed in the medical record by the mental health professional and the individual receiving services.**

(iii) The treatment plan and updates shall be based upon the evaluation and diagnosis. Treatment shall be provided in accordance with the **identified goals in the** treatment plan and updates. Psychiatrists' reviews and **[reevaluations] re-evaluations** of diagnoses, treatment plans and updates shall be done **within 1 year of the previous psychiatric review** with the mental health professional or mental health worker under the supervision of a mental health professional, **[in the clinic and, whenever possible, with the patient] by the psychiatric outpatient clinic and with the individual receiving services**. **The review shall be dated and signed in the medical record.**

(8) The psychiatric clinic clozapine monitoring and evaluation visit shall be used only for a person receiving clozapine therapy.

(b) *Psychiatric outpatient partial hospitalization.* Payment will only be made for psychiatric outpatient partial hospitalization provided to eligible **[patients with mental disorders in approved] individuals with mental illness or emotional disturbance in licensed** psychiatric outpatient partial hospitalization facilities under the following conditions:

(1) **[Patients] Individuals** receiving partial hospitalization services shall meet the following criteria:

(i) Have a mental disorder diagnosis that has been verified by a psychiatrist.

(ii) Have a psychiatric condition requiring more intensive treatment than that provided by an outpatient clinic.

(iii) Have a psychiatric condition requiring provision of a supervised, protective setting for a prescribed time period to prevent institutionalization or ease the transition from inpatient care to more independent living.

(2) The following components shall be available in **[an approved] a licensed** psychiatric partial hospitalization facility and provided to **[the patient] an individual**, if necessary, in accordance with the **[patient's]** individualized treatment plan:

(i) Individual, group and family psychotherapy.

(ii) Health education—basic physical and mental health information; nutrition information and assistance in purchasing and preparing food, personal hygiene instruction; basic health care information, child care information and family planning information and referral; information on prescribed medications.

(iii) Instruction in basic care of the home or residence for daily living.

(iv) Instruction in basic personal financial management for daily living.

(v) Medication administration and evaluation provided only by a psychiatrist, physician, registered nurse or licensed practical nurse.

(vi) Guided social interaction supervised by psychiatric partial hospitalization personnel.

(vii) Crisis management provided by psychiatric partial hospitalization personnel.

(viii) Referral.

(c) *Psychiatric outpatient clinic.* Payment will only be made for psychiatric outpatient clinic services **[provided to eligible patients with mental disorders in approved] or MMHT services provided to eligible individuals with mental illness or emotional disturbance by licensed** psychiatric outpatient clinics under the following conditions:

(1) **[Psychiatric clinic medication] Medication** visits shall be a minimum duration of 15 minutes. They shall be provided only for the purpose of administering medication, and for evaluating the physical and mental condition of **[the patient] an individual** during the course of prescribed medication.

(2) **[Patients receiving psychiatric clinic services shall have a mental disorder diagnosis verified by a psychiatrist.] Individuals receiving psychiatric outpatient clinic services or MMHT shall have a mental illness or emotional disturbance diagnosis verified by a psychiatrist.**

(3) Family psychotherapy is compensable only if one or more family members has a mental disorder diagnosis.

(4) **[Psychiatric clinic clozapine] Clozapine** monitoring and evaluation visits shall be a minimum duration of 15 minutes. They shall be provided only for **[a person receiving clozaril and for monitoring and evaluating the patient's white blood cell count] an individual receiving clozapine and for monitoring and evaluating the individual's absolute neutrophil count** to determine whether clozapine therapy should be continued or modified.

[(d) *Psychiatric clinic services provided in the home.* Psychiatric clinic services delivered in the patient's home are subject to the conditions and limitations established in the chapter. Home visits, as defined in § 1153.2 (relating to definitions), are compensable as outpatient psychiatric services listed in the MA Program Fee Schedule only if the physician's documentation in the patient's records and progress notes fully substantiates that one of the following conditions exists:

(1) The client's disability requires specialized transportation which is not generally available.

(2) The client has a behavior disorder which disrupts the clinic environment.

(3) The client has a diagnosis of agoraphobia.

(e) *Observation of the client in the home environment.* Observation of the client in the home environment is considered to be an individual psychotherapy service and is compensable only when:

(1) The client is currently in therapy.

(2) Observation of the client in his home setting is a necessary component of the clients' psychotherapeutic regimen.]

(d) *MMHT.* MMHT services are subject to the conditions and limitations established in this chapter. MMHT services provided in the home or other approved community sites are compensable only if documentation in the medical record substantiates all of the following:

(1) The services are provided to an eligible individual with mental illness or emotional disturbance.

(2) The services are ordered by an LPHA.

(3) The services if provided in a psychiatric outpatient clinic would be medically necessary.

(4) The evaluation documents the disabling effects of a mental or physical illness that impedes or precludes the individual's ability to participate in services at the psychiatric outpatient clinic.

(5) Treatment plan updates document the continued clinical need for MMHT services.

§ 1153.53. Limitations on payment.

[(a) Payment is subject to the following limitations:

(1) For recipients 21 years of age or older, 180 three-hour sessions, 540 total hours, of psychiatric partial hospitalization in a fiscal year per recipient, except for State Blind Pension recipients, for whom payment is limited to 240 3-hour sessions, 720 total hours, of psychiatric partial hospitalization in a consecutive 365-day period per recipient.

(2) At least 3 hours but no more than 6 hours of psychiatric partial hospitalization per 24-hour period.

(3) Two outpatient psychiatric evaluations in psychiatric clinics per patient per year.

(4) For recipients 21 years of age or older, a total of 5 hours or 10 one-half hour sessions of psychotherapy per recipient per 30-consecutive day period, except for State Blind Pension recipients, for whom payment is limited to a total of 7 hours or 14 one-half hour sessions of psychotherapy per recipient per 30-consecutive day period. This period begins on the first day that an eligible recipient receives an outpatient psychiatric clinic service listed in the MA Program Fee Schedule. Psychotherapy includes the total of individual, group, family, collateral family psychotherapy services and home visits provided per eligible recipient per 30-consecutive day period.

(5) Three psychiatric clinic medication visits per patient per 30-consecutive days in psychiatric outpatient clinics.

(6) One outpatient comprehensive diagnostic psychological evaluation or no more than $80 worth of individual psychological or intellectual evaluations in psychiatric clinics per patient per 365 consecutive days.

(7) The partial hospitalization fees listed in the MA Program Fee Schedule include payment for all services rendered to the patient during a psychiatric partial hospitalization session. Separate billings for individual services are not compensable.

(8) Partial hospitalization facilities licensed for adult programs will be reimbursed at the adult rate, regardless of the age of the client receiving treatment.

(9) Partial hospitalization facilities licensed as children and youth programs will be reimbursed at the child rate only when the client receiving treatment is 14 years of age or younger.

(10) Family psychotherapy and collateral family psychotherapy are compensable for only one person per session, regardless of the number of family

members who participate in the session or the number of participants who are eligible for psychotherapy.

(11) Psychiatric clinic clozapine monitoring and evaluation visits are limited to five visits per patient per calendar month.

(12) Any combination of psychiatric clinic medication visits and psychiatric clinic clozapine monitoring and evaluation visits is limited to five per patient per calendar month.

(b) The Department is authorized to grant an exception to the limits specified in subsection (a)(1) and (4) as described in § 1101.31(f) (relating to scope).]

Payment is subject to the following limitations:

(1) At least 3 hours of psychiatric partial hospitalization per 24-hour period.

(2) The partial hospitalization fees listed in the MA Program Fee Schedule include payment for all services rendered to the individual during a psychiatric partial hospitalization session. Separate billings for individual services are not compensable.

(3) Partial hospitalization facilities licensed for adult programs will be reimbursed at the adult rate, regardless of the age of the individual receiving treatment.

(4) Partial hospitalization facilities licensed as children and youth programs will be reimbursed at the child rate only when the individual receiving treatment is 14 years of age or younger.

(5) Family psychotherapy and collateral family psychotherapy are compensable for only one person per session, regardless of the number of family members who participate in the session or the number of participants who are eligible for psychotherapy.

(6) MMHT group therapy shall be provided only in an approved community-based site as specified in the treatment plan to individuals receiving MMHT from the psychiatric outpatient clinic.

§ 1153.53a. **[Requests for waiver of hourly limits] (Reserved)**.

[(a) Clients who are 20 years of age or younger and who are diagnosed as having one of the medical conditions listed in this section, or conditions of equal severity, may request a waiver from the general limitation on the number of hours of covered services. The medical conditions are:

(1) Infantile autism.

(2) Atypical childhood psychosis.

(3) Borderline psychosis of childhood.

(4) Schizophrenia.

(5) Schizophrenic syndrome of childhood.

(6) Impulse control disorder.

(7) Early deprivation syndrome.

(8) Unsocialized aggressive reaction.

(9) Hyperkinetic conduct disorder.

(10) Over anxious disorder.

(11) Anorexia nervosa.

(12) Neurotic depression—with suicidal ideation.

(b) The request for a waiver shall be accompanied by supporting medical documentation and a second physician's certification as to the medical necessity of psychotherapy beyond the general limitation.

(c) The request for a waiver is reviewed by the Office of Mental Health, Bureau of Community Programs, and acted upon within 30 days of receipt. Failure to act within 30 days constitutes approval of the waiver.

(d) Waivers are granted for periods of up to 6 months. Requests for additional waivers shall be submitted 30 days prior to the expiration of an existing waiver and are reviewed under the same conditions as specified above.

(e) Requests for waivers must be submitted to: Department of Human Services, Office of Medical Assistance, Room 515 Health and Welfare Building, Harrisburg, Pennsylvania 17120.

(f) A denial of a waiver request may be appealed under the same terms and conditions as any denial of services. See Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings). Notice of a decision of waiver request will be mailed to the MA recipient and to the provider of services.]

PART VII. MENTAL HEALTH MANUAL

Subpart D. NONRESIDENTIAL AGENCIES/FACILITIES/SERVICES

CHAPTER 5200. PSYCHIATRIC OUTPATIENT CLINICS

GENERAL PROVISIONS

§ 5200.1. Legal base.

The legal authority for this chapter is sections 105 and 112 of the Mental Health Procedures Act (50 P.S. §§ 7105 and 7112)**[;],** section 201(2) of the Mental Health and **[Mental Retardation] Intellectual Disability** Act of 1966 (50 P.S. § 4201(2))**[;]** and section 1021 of the **[Public Welfare] Human Services** Code (62 P.S. § 1021).

§ 5200.2. Scope.

(a) This chapter provides standards for the licensing of freestanding **[outpatient]** psychiatric **outpatient** clinics under section 1021 of the **[Public Welfare] Human Services** Code (62 P.S. § 1021), and approval of **psychiatric** outpatient clinics which are a part of a health care facility as defined in section 802.1 of the Health Care Facilities Act (35 P.S. § 448.802a), and under sections 105 and 112 of the Mental Health Procedures Act (50 P.S. §§ 7105 and 7112).

(b) This chapter applies to private, nonprofit **[corporations]** or for-profit corporations **and public entities** which provide medical examination, diagnosis, care **[and treatment to the mentally ill or the emotionally disturbed], treatment and support to individuals with mental illness or emotional disturbance** on an outpatient basis and which participate in the public mental health program. This chapter does not apply to group **or individual** practice arrangements of private practitioners.

§ 5200.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

***Advanced practice professional*—A person who holds a current Pennsylvania license as one of the following:**

(i) Certified registered nurse practitioner with a mental health certification.

(ii) Physician assistant with a mental health certification or at least 1 year of experience working in a behavioral health setting under the supervision of a psychiatrist.

***Assessment*—A face-to-face interview that includes an evaluation of the psychiatric, medical, psychological, social, vocational and educational factors important to the individual.**

Child psychiatrist—A physician who has completed a residency in psychiatry and who has a specialty in child psychiatry and is licensed to practice in this Commonwealth.

Department—The Department of Human Services.

***FTE—Full-time equivalent*—Thirty-seven and one half hours per week.**

Facility—A mental health establishment, hospital, clinic, institution, center or other organizational unit or part thereof, the primary function of which is the diagnosis, treatment, care and rehabilitation of **[mentally disabled persons] individuals with mental illness or emotional disturbance**.

[*Full-time equivalent (FTE)*—Thirty-seven and one half hours per week of staff time.]

***LPHA—Licensed practitioner of the healing arts*—A person who is licensed by the Commonwealth to practice the healing arts. The term is limited to a physician, physician's assistant, certified registered nurse practitioner or psychologist.**

***MMHT—Mobile Mental Health Treatment*—One or more of the following services provided in an individual's residence or approved community site:**

(i) Assessment.

(ii) Individual, group or family therapy.

(iii) Medication visits.

Mental health professional—**[A person trained in a generally recognized clinical discipline including, but not limited to, psychiatry, social work, psychology or nursing or rehabilitation or activity therapies who has a graduate degree and mental health clinical experience.] A person who meets one of the following:**

(i) Has a graduate degree from a college or university that is accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation (CHEA) in a generally recognized clinical discipline which includes mental health clinical experience.

(ii) Has an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. (AICE) or the National Association of Credential Evaluation Services (NACES). The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(iii) Is licensed in a generally recognized clinical discipline which includes mental health clinical experience.

Mental health worker—**[A person without a graduate degree who by training and experience has achieved recognition as a mental health worker.] A person acting under the direction of a mental health professional to provide services who meets one of the following:**

(i) Has a bachelor's degree from a college or university that is accredited by an agency recognized by the United States Department of Education or the CHEA in a recognized clinical discipline including social work, psychology, nursing, rehabilitation or activity therapies.

(ii) Has a graduate degree in a clinical discipline with 12 graduate-level credits in mental health or counseling from a program that is accredited by an agency recognized by the United States Department of Education or the CHEA.

(iii) Has an equivalent degree from a foreign college or university that has been evaluated by the AICE or the NACES. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

***Mental illness or emotional disturbance*—A mental illness or emotional disturbance that meets the diagnostic criteria within the current version of the *Diagnostic and Statistical Manual* or the International Classification of Diseases. A mental illness or emotional disturbance is characterized by clinically significant disturbances in an individual's cognition, emotional regulation or behavior that reflects a dysfunction in the psychological, biological or developmental processes underlying mental functioning.**

Psychiatric ***outpatient*** *clinic* **[*(outpatient)*]**—A nonresidential treatment setting in which psychiatric, psychological, social, educational and other related services are provided under medical supervision. It is designed for the evaluation and treatment of **[patients with mental or emotional disorders] individuals with mental illness or emotional disturbance**. **[Outpatient] Psychiatric outpatient** services are provided on a planned and regularly scheduled basis.

[*Psychiatric nurse*—A person who by years of study, training and experience has achieved professional recognition and standing in the field of psychiatric nursing and who is licensed by the State Board of Nursing to engage in the practice of professional nursing.

***Psychiatric social worker*—A person with a graduate degree in social work who by years of study, training and experience in mental health has achieved professional recognition and standing in the field of psychiatric social work.]**

Psychiatrist—A physician who has completed **[a 3 year] at least 3 years of a** residency in psychiatry and is licensed to practice in this Commonwealth.

Psychologist—A person licensed to practice psychology in this Commonwealth.

Quality assurance program—A formal process to assure quality care and maximize program benefits to **[patients] individuals receiving services**.

Telepsychiatry—

(i) Services provided by a psychiatrist licensed by the Commonwealth using real-time, two-way interactive audio-video transmission.

(ii) Telepsychiatry services do not include telephone conversation, e-mail message or facsimile transmission between a psychiatrist and an individual receiving services, or a consultation between two health care practitioners, although these activities may support telepsychiatry services.

§ 5200.4. Provider eligibility.

[Psychiatric clinic (outpatient) services for the mentally and emotionally disturbed shall be provided only by a facility which complies with this chapter and is certified by the Department to provide such a program. Nothing in this chapter is intended to regulate the practice of psychiatry or psychology in a solo or group practice.] Psychiatric outpatient clinic services for individuals with mental illness or emotional disturbance shall be provided only by a facility which complies with this chapter and is licensed by the Department. Nothing in this chapter is intended to regulate the provision of mental health services in individual or group private practice.

§ 5200.5. Application and review process.

(a) A facility intending to provide psychiatric **outpatient** clinic services shall file an application for a certificate of compliance with the Department in accordance with Chapter 20 (relating to licensure or approval of facilities and agencies). Facilities shall meet both the requirements of Chapter 20 and this chapter to obtain a certificate. Submission of an application does not constitute a certificate to operate pending Departmental approval. **[Facilities shall be inspected a minimum of once per year, but are subject to visit by the Department's designee at other times at the Department's discretion. The Department may request the facility to provide information concerning program and fiscal operation at the Department's discretion.]**

(b) **[Programs currently operating under preexisting approval shall have 3 months after the effective date of this chapter to meet the requirements of this chapter.] Facilities will be inspected a minimum of once per year, and are subject to visits by the Department's designee at other times at the Department's discretion. The facility shall provide information concerning program and fiscal operation at the Department's request.**

§ 5200.6. Objective.

[The objective of the psychiatric clinic treatment services is to increase the level of patient functioning and well being so that patients will require less intensive services. The service may be provided to persons with chronic or acute mental disorders who require active treatment.] The objective of the psychiatric outpatient clinic treatment services is to facilitate an individual's recovery to improve functioning, enhance resiliency and well-being, promote independence and maintain optimal functioning in the community consistent with the individual's preferences. The service may be provided to individuals with short-term or long-term treatment needs.

§ 5200.7. Program standards.

This chapter shall be met by a facility seeking licensure or approval. **[For-profit facilities shall also have Joint Commission on Accreditation of Hospitals (JCAH) accreditation in order to be licensed or approved under this chapter.]**

ORGANIZATION

§ 5200.11. Organization and structure.

[The psychiatric clinic shall be a separate, identifiable organizational unit with its own director, or supervisor, and staffing pattern. When the clinic is a portion of a larger organizational structure, the director or supervisor of the clinic shall be identified and his responsibilities clearly defined. The organizational structure of the unit shall be described in an organizational chart. A written description of programs provided by the unit shall be available to the Department. The Department will be notified of a major change in the organizational structure or services.]

(a) The psychiatric outpatient clinic must be a separate, identifiable organizational unit with its own director, clinical supervisor and staffing pattern. When the psychiatric outpatient clinic is a portion of a larger organizational structure, the director and clinical supervisor of the psychiatric outpatient clinic shall be identified and their responsibilities clearly defined.

(b) The organizational structure of the unit must be described in an organizational chart.

(c) A written description of programs provided by the unit shall be available to the Department.

(d) The psychiatric outpatient clinic shall notify the Department of a major change in the organizational structure or services.

§ 5200.12. Linkages with mental health service system.

(a) A psychiatric **outpatient** clinic requires a close relationship with an acute psychiatric inpatient service **and a provider of emergency examination and treatment**. A written statement describing the accessibility and availability of the services to **[patients] individuals** is required and shall be maintained on file at the **[clinic] psychiatric outpatient clinic and updated as needed**.

(b) **[A psychiatric clinic shall maintain linkages with other appropriate treatment and rehabilitative services including emergency services, partial hospitalization programs, vocational and social rehabilitation programs, and community residential programs and State psychiatric hospitals. A written statement documenting the linkages shall be maintained on file at the clinic.] A psychiatric outpatient clinic shall maintain linkages with other treatment and rehabilitative services for a full continuum of care, including crisis services, partial**

hospitalization programs, peer support, psychiatric rehabilitation programs, intensive community services, community residential programs and community psychiatric hospitals. A written statement describing the accessibility and availability of the services to individuals is required and shall be maintained on file at the psychiatric outpatient clinic and updated as needed to accurately state the services currently available.

(c) When the **psychiatric outpatient** clinic serves children, linkages with the appropriate educational and social services agencies shall also be maintained. **[A written statement documenting the linkages shall be maintained on file at the clinic.] A written statement describing the accessibility and availability of the services to children is required and shall be maintained on file at the psychiatric outpatient clinic and updated as needed to accurately state the services currently available.**

(d) A psychiatric **outpatient** clinic shall participate in the overall system of care as defined in the County **[Mental Health/Mental Retardation (MH/MR)] Mental Health/Intellectual Disability (MH/ID)** plan. A **psychiatric outpatient** clinic shall have an agreement regarding continuity of care and information exchange with the County **[MH/MR] MH/ID** authority. A copy of an agreement **[shall] must** be included in the application package. Psychiatric **outpatient** clinics shall document the need for their services in their application for a certificate of compliance.

(e) New psychiatric **outpatient** clinics or new sites of existing **psychiatric outpatient** clinics established after the effective date of this chapter shall document the need in the proposed service area for the expansion of outpatient services. County **[MH/MR] MH/ID** authorities shall review this documentation and make **a** recommendation to the Department. The Department may deny approval of the expansion where inadequate justification is provided.

STAFFING AND PERSONNEL

§ 5200.21. Qualifications and duties of the **[director/clinic] director/clinical** supervisor.

[(a) Each mental health outpatient facility shall have a director/clinic supervisor. This person shall be a qualified mental health professional with at least 2 years of supervisory experience or a professional administrator with a graduate degree in administration and 2 years of experience. If the director/clinic supervisor is not a qualified mental health professional, a physician shall be appointed as clinical director in addition to the director.

(b) The director's/supervisor's duties shall include:

(1) Direction, administration and supervision of the clinic.

(2) Development or implementation of the policies and procedures for the operation of the clinic.

(3) Regular meetings of staff to discuss plans, policy, procedures and staff training.

(4) Liaison with other portions of the service system.

(5) Administrative supervision of personnel.

(6) Employment, supervision, and discharge of staff according to established personnel policies.

(7) Supervision of staff training and development.]

(a) Each psychiatric outpatient clinic shall have a director and clinical supervisor, who may be the same individual. A clinical supervisor shall be a qualified mental health professional with at least 2 years of supervisory experience.

(b) The director shall be responsible for the overall operation of the psychiatric outpatient clinic, including daily management, ensuring that clinical supervision is available during all operational hours, developing a quality improvement plan for the psychiatric outpatient clinic and monitoring adherence with this chapter.

(c) The clinical supervisor's responsibilities shall include all of the following:

(1) Supervision of clinical staff.

(2) Development or implementation of the policies and procedures for the operation of the psychiatric outpatient clinic.

(3) Regular meetings of clinical staff to discuss clinical cases, treatment plans, policy and procedures.

(4) Liaison with other portions of the service system.

(5) Employment, supervision and discharge of clinical staff according to established personnel policies.

(6) Supervision and documentation of clinical staff training and development.

§ 5200.22. Staffing pattern.

[(a) There shall be qualified staff and supporting personnel in sufficient numbers to provide the services included in the facility's program. At least 50% of the treatment staff shall be mental health professionals. Other treatment staff may be mental health workers as required by the patient load.

(b) Staff shall include at least four full-time equivalent (FTE) mental health professionals.

(c) A psychiatric clinic is required to have at least 16 hours of psychiatric time per week to ensure minimally adequate care and supervision for all patients. Psychiatric hours shall be expanded when treatment staff exceeds eight FTE. The ratio is two hours/week for each FTE treatment staff member.]

(a) There shall be qualified staff and supporting personnel in sufficient numbers to provide the services included in the psychiatric outpatient clinic's program. At least 50% of the treatment staff shall be mental health professionals.

(b) An outpatient psychiatric clinic is required to have 2 hours of psychiatric time per week for each FTE treatment staff member. The psychiatrist shall provide 50% of the required psychiatric time. The remaining time may be provided by advanced practice professionals specializing in behavioral health to ensure minimally adequate care or with prior written approval from the Department by the use of telepsychiatry.

[(d)] (c) At a minimum all clinical staff shall be supervised by the psychiatrist having the responsibility for diagnosis and treatment of the **[patient] individual receiving services** as defined in § 5200.31 (relating to treatment planning).

[(e)] (d) There shall be sufficient clerical staff to keep correspondence, records**[,]** and files current and in good order.

[(f)] (e) The **psychiatric outpatient** clinic shall recruit and hire staff that is appropriate for the population to be served.

[(g)] (f) If the psychiatric **outpatient** clinic serves children, specialized personnel are required, as appropriate, to deliver services to children.

[(h)] (g) Each **psychiatric outpatient** clinic shall have a written comprehensive personnel policy.

[(i)] (h) There shall be a **[planned] written plan for** regular, ongoing **[program for]** staff development and training.

[(j)] (i) Graduate and undergraduate students in accredited training programs in various mental health disciplines may participate in the treatment of **[patients] individuals receiving services** when under the direct supervision of a mental health professional, but are not to be included for the purpose of defining staffing **[pattern] patterns**.

[(k)] (j) Psychiatric residents **[licensed] with an unrestricted license** to practice medicine in this Commonwealth who are under the direct supervision of a psychiatrist are defined as mental health professionals for the purpose of defining staffing patterns.

[(l)] (k) Volunteers may be used in various support and activity functions of the clinic, but are not considered for the purposes of defining staffing patterns.

§ 5200.23. Psychiatric supervision.

At a minimum, the psychiatric supervision of a psychiatric **outpatient** clinic shall be by a psychiatrist who must monitor all treatment plans on a regular basis as defined by § 5200.31 (relating to treatment planning). Psychiatric supervision shall be expanded as necessary for the **[patient] clinic** population and services provided.

(*Editor's Note*: The following section is proposed to be added and printed in regular type to enhance readability.)

§ 5200.24. Criminal history and child abuse certification.

(a) A psychiatric outpatient clinic shall complete a criminal history background check for staff, including volunteers that will have direct contact with an individual.

(b) A psychiatric outpatient clinic that serves children shall complete criminal history and child abuse certifications, and mandated reporter training in accordance with 23 Pa.C.S. §§ 6301—6386 (relating to Child Protective Services Law) and Chapter 3490 (relating to protective services).

(c) A psychiatric outpatient clinic shall develop and implement written policies and procedures regarding personnel decisions based on the criminal history and child abuse certification, including volunteers.

TREATMENT STANDARDS

§ 5200.31. Treatment planning.

(a) A qualified mental health professional or treatment planning team shall prepare an individual comprehensive treatment plan **[for every patient] with every individual who participates beyond the intake process** which shall be reviewed and approved by a psychiatrist. For **[patients] individuals** undergoing involuntary treatment, the treatment team shall be headed by a **[physician or] psychiatrist or licensed clinical** psychologist. **[The treatment plan shall include the following:] The treatment plan must meet all of the following requirements:**

(1) Be based on the results of the diagnostic evaluation described in paragraph (7).

(2) **[Be developed within 15 days of intake, and for voluntary patients, be reviewed and updated every 120 days or 15 patient visits—whichever is first—by the mental health professional and the psychiatrist. For involuntary patients review shall be done every 30 days. Written documentation of this review in the case record is required.] Be developed within 30 days of intake when the individual continues participation in the treatment process. For individuals who voluntarily participate in the treatment process, the treatment plan shall be reviewed and signed by the mental health professional, psychiatrist and individual receiving services. Treatment plans shall be updated every 180 days by the mental health professional and the individual receiving services. The psychiatrist shall review and approve the treatment plan within 1 year of the previous psychiatric review as evidenced by the psychiatrist's signature. For an individual under an involuntary outpatient commitment, the review shall be done every 30 days by the psychiatrist. Written documentation of progress for the review period in the medical record is required.**

(3) Specify the goals and objectives of the plan, prescribe an integrated program of therapeutic activities and experience, specify the modalities to be utilized and a time of expected duration and the person or persons responsible for carrying out the plan.

(4) Be directed at specific outcomes and connect these outcomes with the modalities and activities proposed.

(5) **[Be formulated with the involvement of the patient.] Be developed with the active involvement of the individual receiving services and must include strengths and needs. The treatment plan may also address individual preferences, resilience and functioning.**

(6) For children and adolescents, when required by law or regulations, be developed and implemented with the consent of parents or guardians and include their participation in treatment as required.

(7) Specify an individualized **[active diagnostic and treatment program for each patient which shall include where] treatment program for each individual which must include** clinically appropriate services such as diagnostic and evaluation services, individual, group and family psychotherapy, behavior therapy, crisis intervention services, medication and similar services. For each **[patient the] individual receiving services, the psychiatric outpatient** clinic shall pro-

vide diagnostic evaluation which shall include an assessment of the psychiatric, medical, psychological, social, vocational**[,]** and educational factors important to the **[patient] individual**.

(b) The treatment plan and updates must be based upon the evaluation and diagnosis. Treatment shall be provided in accordance with the identified goals in the treatment plan and updates.

§ 5200.32. Treatment policies and procedures.

Each **[facility] psychiatric outpatient clinic** shall have on file a written plan specifying the clinical policy and procedures of the facility. This plan **[shall] must** provide for the following:

(1) Intake policy and procedures.

(2) Admission and discharge policies.

(3) The services to be provided and the scope of these services.

(4) Policies providing for continuity of care for **[patients] individuals** discharged from the program.

MISCELLANEOUS PROVISIONS

§ 5200.41. Records.

(a) Under section 602 of the Mental Health and **[Mental Retardation] Intellectual Disability** Act of 1966 (50 P.S. § 4602), and in accordance with recognized and acceptable principles of **[patient record keeping] medical recordkeeping**, the facility shall maintain a record for each **[person admitted to a psychiatric clinic] individual receiving services from a psychiatric outpatient clinic**. The record **[shall] must** include the following:

(1) **[Patient identifying] Identifying** information.

(2) Referral source.

(3) Presenting problems.

(4) Appropriately signed consent forms.

(5) Medical, social**[,]** and developmental history.

(6) Diagnosis and evaluation.

(7) Treatment plan **and updates**.

(8) Treatment progress notes for each contact.

(9) Medication orders.

(10) Discharge summary.

(11) Referrals to other agencies, when indicated.

(12) A written order for any MMHT provided.

(b) Records shall also be maintained as follows:

(1) Legible and permanent.

(2) **[Reviewed periodically as to quality by the facility or clinical director as appropriate.] Reviewed biannually as to quality by the director or clinical supervisor as appropriate.**

(3) Maintained in a uniform manner so that information can be provided in a prompt, efficient, accurate manner and so that data is accessible for administrative and professional purposes.

(4) Signed and dated by the staff member writing in the record.

[(c) The records must comply with §§ 5100.31—5100.39 (relating to confidentiality of mental health records).

(d) All case records shall be kept in locked and protected locations to which only authorized personnel shall be permitted access.]

(c) All protected medical and mental health records, written and electronic, shall be secured in accordance with all applicable Federal and State privacy and confidentiality statutes and regulations.

§ 5200.42. **[Drugs and medications] Medications**.

(a) If medication is prescribed or dispensed by the **[facility] psychiatric outpatient clinic**, the requirements of all applicable Federal and State drug statutes and regulations shall be met. **In addition, all of the following apply:**

(1) Prescriptions shall be written only by a licensed practitioner within his scope of practice.

(2) The term "written" includes prescriptions that are handwritten or recorded and transmitted by electronic means.

(3) Written prescriptions transmitted by electronic means must be electronically encrypted or transmitted by other technological means designed to protect and prevent access, alteration, manipulation or use by an unauthorized person.

(4) A record of any medication prescribed must be documented in the individual medical record.

(b) Written policies and procedures providing for the safe dispensing and administration of **[drugs] medication** by the medical and nursing staff shall be in writing and on file. **[Such policy shall include the following:] The policy must include all of the following:**

[(1) Prescriptions shall be written only by the physician.

(2) Drugs shall be dispensed only on the order of a physician.

(3) All drugs shall be kept in a secure place.

(4) Each dose of medication administered by the facility shall be properly recorded in the patient's medical record.]

(1) Medications shall be dispensed only on order of a licensed practitioner within his scope of practice.

(2) All medications shall be kept in a secure place.

(3) Each dose of medication administered by the psychiatric outpatient clinic shall be properly recorded in the individual's medical record.

§ 5200.43. Fee schedule.

Each **outpatient** psychiatric clinic shall maintain a schedule of uniform basic charges for services which are available to all **[patients] individuals receiving services**. **[Fee schedules shall be submitted to the Department for information purposes.]**

§ 5200.44. Quality assurance **program**.

All psychiatric **outpatient** clinics shall have a utilization review and clinical audit process designed to ensure

that the most appropriate treatment is delivered to the **[patient] individual receiving services and that treatment is indicated**. **[Patients shall be discharged when the identified benefit, as reflected in the initial evaluation, goals, objectives, and treatment plan, has been received.] Psychiatric outpatient clinics that provide MMHT shall include MMHT services in the quality assurance plan.**

§ 5200.45. Physical facility.

(a) Adequate space, equipment and supplies shall be provided in order that the outpatient services can be provided effectively and efficiently. Functional surroundings shall be readily accessible to the **[patient] individual** and community served.

(b) All space and equipment shall be well maintained and **[shall] must** meet applicable Federal, State**[,]** and local requirements for safety, fire, **accessibility** and health.

(c) A waiting room which is **[neat, cheerful, and comfortably furnished] clean, comfortable and sensitive to the culture of the population served** shall be provided.

(d) There shall be office space for the clinical staff suitably equipped with chairs, desks, tables**[,]** and other necessary equipment.

(e) There shall be an adequate number of suitably equipped conference rooms to provide for staff conferences and therapy.

(f) There shall be adequate provisions for **[the privacy of the patient in interview rooms] privacy within the psychiatric outpatient clinic**.

(g) A psychiatric **outpatient** clinic is defined by its staff and organizational structure rather than by a specific building or facility. It may operate at more than one site if the respective sites meet all physical facility standards and the sites operate as a portion of the psychiatric **outpatient** clinic. The staffing pattern at each site shall be based on the ratio of total **[clinic patients seen at that site to the total patients seen in the psychiatric clinic as a whole] individuals served at that site to the total individuals served in the psychiatric outpatient clinic as a whole**. The Department will issue a single certificate of compliance to the parent organization which will list all operational sites.

§ 5200.46. Notice of nondiscrimination.

[Programs shall not discriminate against staff or clients on the basis of age, race, sex, religion, ethnic origin, economic status, or sexual preference, and must observe all applicable State and Federal statutes and regulations.] Programs may not discriminate against staff or individuals receiving services on the basis of race, color, creed, disability, religious affiliation, ancestry, gender, gender identity or expression, sexual orientation, national origin or age, and shall observe all applicable State and Federal statutes and regulations.

§ 5200.48. Waiver of standards.

In instances where the development of specialty psychiatric **outpatient** clinic services is severely limited by these standards, such as**[,]** rural clinics**[,]** or specialty clinics, a waiver may be granted **[for staffing standards for a period of 6 months and may be renewed up to 3 times]**. **[Such waivers] Waivers** may be applied only in areas where the need for **[such] these** services and the attempts to meet the standards are adequately documented. **[Such waivers] Waivers** are to be considered only in exceptional circumstances and are subject to approval by the **[office of Mental Health] Department**.

MOBILE MENTAL HEALTH TREATMENT

(*Editor's Note*: Sections 5200.51—5200.53 are proposed to be added and printed in regular type to enhance readability.)

§ 5200.51. Provider service description.

(a) Prior to the delivery of MMHT services, a psychiatric outpatient clinic shall submit to the Department for approval an MMHT service description that includes the information required under subsection (b). A psychiatric outpatient clinic shall submit a revised service description to the Department if there are changes to the information required under subsection (b).

(b) A service description must include all of the following:

(1) The population to be served, including all of the following:

(i) Expected number of individuals to be served.

(ii) The age ranges of the individuals to be served.

(iii) The presenting problems and other characteristics supporting the need for MMHT.

(iv) The location of the provision of the services, whether in the home or community or both.

(v) The goals, objectives and expected outcomes of the MMHT services.

(2) Staffing pattern, including all of the following:

(i) Number of mental health professionals, licensed clinical psychologists and psychiatrists providing MMHT.

(ii) The qualifications of a staff person providing an MMHT service.

(iii) The specific clinical services to be provided by each staff.

(3) The policies and procedures for all of the following:

(i) The supervision of MMHT services.

(ii) Staff support in the provision of MMHT.

(iii) Coordination of care with physical health services.

(c) A psychiatric outpatient clinic shall provide MMHT only as set forth in its approved service description.

§ 5200.52. Treatment planning.

(a) Treatment planning shall be completed in accordance with § 5200.31 (relating to treatment planning) and shall include all of the following:

(1) Services to be provided.

(2) Treatment goals.

(3) Duration of service.

(4) Supports and interventions necessary to alleviate barriers to receiving services at a psychiatric outpatient clinic.

(5) Identification of the professional providing each service.

(6) Location of service provision.

(b) An MMHT provider shall complete an assessment as required under § 5200.31(a)(7) prior to developing the treatment plan. In addition, all of the following apply:

(1) The assessment shall include documentation of the disabling effects of a mental or physical illness that impedes or precludes the individual's ability to participate in services at the psychiatric outpatient clinic.

(2) The assessment shall be completed by a psychiatrist, mental health professional or an advanced practice professional trained and qualified to provide services at a psychiatric outpatient clinic under the supervision of a psychiatrist.

(c) Treatment plans shall be updated every 180 days at a minimum.

§ 5200.53. Discharge.

(a) Discharge planning shall be discussed with the individual receiving MMHT services.

(b) Upon discharge, the psychiatric outpatient clinic providing MMHT shall complete a discharge summary that must include all of the following:

(1) MMHT services provided.

(2) Outcomes of MMHT service.

(3) Reason for discharge.

(4) Referral or recommendation for other services.

[Pa.B. Doc. No. 17-1339. Filed for public inspection August 11, 2017, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 141]

Hunting and Trapping; General

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its June 26, 2017, meeting, proposed to amend § 141.18 (relating to permitted devices) to authorize the use of electronic decoys used to hunt waterfowl, electronically heated scent or lure dispensers, and electronic devices that generate and distribute ozone gas for scent control purposes.

This proposed rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for this proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

This proposed rulemaking was made public at the June 26, 2017, meeting of the Commission. Comments can be sent until September 22, 2017, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. *Purpose and Authority*

Each year the Commission is asked to review the prospective use of certain devices for hunting or trapping purposes that are otherwise prohibited by statute or regulation. As part of the review process, the Commission generally reviews to what degree use of a given device might negatively impact principles of resource conservation, equal opportunity, fair chase or public safety. The Commission was recently requested to formally review the use of electronic decoys used to hunt waterfowl, electronically heated scent or lure dispensers, and electronic devices that generate and distribute ozone gas for scent control purposes. The Commission reviewed these devices and determined that their use will have no or negligible negative impacts to the previously mentioned principles. As a result, the Commission is proposing to amend § 141.18 to authorize the use of electronic decoys used to hunt waterfowl, electronically heated scent or lure dispensers, and electronic devices that generate and distribute ozone gas for scent control purposes.

Section 2102(a) of the code (relating to regulations) provides that "[t]he commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." Section 2102(b)(1) of the code authorizes the Commission to "promulgate regulations relating to seasons and bag limits for hunting or furtaking, the possession of certain species or parts thereof, the number and types of devices and equipment allowed, the identification of devices and the use and possession of devices." The amendments to § 141.18 are proposed under these authorities.

2. *Regulatory Requirements*

This proposed rulemaking will amend § 141.18 to authorize the use of electronic decoys used to hunt waterfowl, electronically heated scent or lure dispensers, and electronic devices that generate and distribute ozone gas for scent control purposes.

3. *Persons Affected*

Persons wishing to hunt or take wildlife with electronic decoys, electronically heated scent or lure dispensers, and electronic devices that generate and distribute ozone gas for scent control purposes in this Commonwealth will be affected by this proposed rulemaking.

4. *Cost and Paperwork Requirements*

The proposed rulemaking should not result in an increase in cost and paperwork.

5. *Effective Date*

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

6. *Contact Person*

For further information regarding this proposed rulemaking, contact Randy S. Shoup, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

BRYAN J. BURHANS,
Executive Director

Fiscal Note: 48-421. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 141. HUNTING AND TRAPPING

Subchapter A. GENERAL

§ 141.18. Permitted devices.

[The] Notwithstanding the prohibitions in § 141.6 (relating to illegal devices), the following devices may be used to hunt or take wildlife:

(1) **[Any manually operated firearm that uses an electronic impulse to detonate the primer or main powder charge of the ammunition unless those firearms are a specifically prohibited device.] Firearms that use an electronic impulse to initiate discharge of ammunition. This provision is not intended to authorize use of these devices when these firearms are otherwise prohibited devices for the applicable hunting or trapping season.**

(2) Electronic sound amplification devices that are incorporated into hearing protection devices and completely contained in or on the hunter's ear.

(3) Electronic devices used for locating dogs while training or hunting, including devices such as e-collars, radio-telemetry dog tracking systems and beeper collars.

(4) Electronic illuminating devices that are affixed at the aft end of a bolt or arrow and used solely for the purpose of locating or tracking bolt or arrow flight after being launched from a crossbow or bow.

(5) Electronic crow decoys used solely for **[harvesting] hunting** crows.

(6) Electronic rangefinders, including hand-held devices and those contained within a scope or archery sight. This authorization may not be construed to permit a device that emits a light beam, infrared beam, ultraviolet light beam, radio beam, thermal beam, ultrasonic beam, particle beam or other beam that is visible outside of the device or on the target.

(7) Electronically heated scent or lure dispensers. This provision is not intended to authorize use of scents and lures when use is otherwise prohibited by section 2308 of the act (relating to unlawful devices and methods) or § 137.34 or § 137.35 (relating to Chronic Wasting Disease and emergency authority of Director; and Chronic Wasting Disease restrictions).

(8) Electronic devices that generate and distribute ozone gas for scent control purposes.

(9) Electronic waterfowl decoys used solely for hunting waterfowl.

[Pa.B. Doc. No. 17-1340. Filed for public inspection August 11, 2017, 9:00 a.m.]

[58 PA. CODE CH. 141]

Hunting and Trapping; General; Small Game; Big Game

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its June 26, 2017, meeting to amend §§ 141.1, 141.22, 141.43 and 141.67 to extend the use of air guns and semiautomatic rifles for small game and furbearers to special regulation areas, delete the limiting term "centerfire" from the manually operated or semiautomatic rifle authorization that was erroneously added in a previous amendment, and relocate and extend the use of air guns and semiautomatic rimfire rifles .22 caliber or less for dispatching legally trapped furbearers caught in a trap during the regular or special firearms deer seasons.

This proposed rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for this proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

This proposed rulemaking was made public at the June 26, 2017, meeting of the Commission. Comments can be sent until September 22, 2017, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. *Purpose and Authority*

In relevant part, the act of November 21, 2016 (P.L. 1317, No. 168) (Act 168) made two significant changes to section 2308 of the code (relating to unlawful devices and methods). Act 168 eliminated the Commonwealth's historic prohibitions against the use of air guns and semiautomatic rifles for hunting. It is important to note that Act 168 did not authorize the use of semiautomatic handguns or eliminate the two-shell in the shotgun magazine restriction for small game, furbearers, and the like. On March 28, 2017, in an effort to implement Act 168 and expand hunting opportunities in this Commonwealth, the Commission amended §§ 131.2, 141.22, 141.43—141.45, 141.47 and 141.67 to authorize the use of air guns and semiautomatic rifles for small game and furbearers. These amendments became effective on May 13, 2017. See 47 Pa.B. 2710 (May 13, 2017).

The Commission is proposing housekeeping amendments to address concerns not addressed in the original proposed rulemaking. First, the Commission proposes to amend § 141.1 (relating to special regulations areas) to extend the use of air guns and semiautomatic rifles for small game and furbearers to special regulation areas. While this extension nearly matches the original Statewide proposal, it is important to note the existing limitation to rimfire ammunition in this section will be carried forward in the special regulations areas in this proposed amendment. The Commission is also proposing to amend § 141.22 (relating to small game seasons) to delete the limiting term "centerfire" from the manually operated or semiautomatic rifle authorization that was erroneously added at 47 Pa.B. 2710. This correction will return the text to its intended structure. Lastly, the Commission is proposing to amend §§ 141.43 and 141.67 (relating to deer seasons; and furbearer seasons) to relocate and extend the use of air guns and semiautomatic rimfire rifles .22 caliber or less for dispatching legally trapped furbearers caught in a trap during the regular or special firearms deer seasons.

Section 2102(d) of the code (relating to regulations) authorizes the Commission to "promulgate regulations stipulating the size and type of traps, the type of firearms and ammunition and other devices which may be used, the manner in which and the location where the devices may be used, the species the devices may be used for and the season when the devices may be used." The amendments to §§ 141.1, 141.22, 141.43 and 141.67 are proposed under this authority.

2. *Regulatory Requirements*

This proposed rulemaking will amend §§ 141.1, 141.22, 141.43 and 141.67 to extend the use of air guns and semiautomatic rifles for small game and furbearers to special regulation areas, delete the limiting term "centerfire" from the manually operated or semiautomatic rifle authorization that was erroneously added at 47 Pa.B. 2710, and relocate and extend the use of air guns and semiautomatic rimfire rifles .22 caliber or less for dispatching legally trapped furbearers caught in a trap during the regular or special firearms deer seasons.

3. *Persons Affected*

Persons wishing to hunt or take small game or furbearers with air guns or semiautomatic firearms in this Commonwealth will be affected by this proposed rulemaking.

4. *Cost and Paperwork Requirements*

This proposed rulemaking should not result in an increase in cost and paperwork.

5. *Effective Date*

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

6. *Contact Person*

For further information regarding this proposed rulemaking, contact Randy S. Shoup, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

BRYAN J. BURHANS,
Executive Director

Fiscal Note: 48-420. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 141. HUNTING AND TRAPPING

Subchapter A. GENERAL

§ 141.1. Special regulations areas.

* * * * *

(d) *Permitted acts*. It is lawful to:

(1) Except in Philadelphia County, Ridley Creek State Park, Delaware County and Tyler State Park, Bucks County, hunt and kill deer and bear through the use of a muzzleloading long gun or a shotgun, at least .410 gauge (rifled barrels permitted), including semiautomatics which, upon discharge, propel a single projectile.

(2) Take deer with a shotgun 20 gauge or larger—including semiautomatic—using buckshot in the Southeast area only.

(3) Take small game, furbearing animals, crows or wildlife with **[a manually operated rimfire rifle or handgun .22 caliber or less.] the following devices:**

(i) A manually operated or semiautomatic rimfire rifle or manually operated rimfire handgun .22 caliber or less.

(ii) A manually operated or semiautomatic air rifle or manually operated air handgun between .177 and .22 caliber, inclusive, that propels single-projectile pellet or bullet ammunition. BB ammunition is not authorized.

(4) Kill an animal legally caught in a trap with **[a manually operated rimfire rifle or handgun .22 caliber or less while trapping.] the following devices:**

(i) A manually operated or semiautomatic rimfire rifle or manually operated rimfire handgun .22 caliber or less.

(ii) A manually operated or semiautomatic air rifle or manually operated air handgun between .177 and .22 caliber, inclusive, that propels single-projectile pellet or bullet ammunition. BB ammunition is not authorized.

(5) Harvest more than one deer at a time when multiple harvests of deer per day are authorized without first lawfully tagging previous harvests, provided all deer harvested are lawfully tagged immediately thereafter.

(6) Hunt or take deer during any deer season through the use of or by taking advantage of bait on private property currently operating under a valid deer control permit where approval for limited baiting activities has previously been obtained under § 147.552 (relating to application). This limited authorization is valid only to the extent that persons comply with the standards and conditions in § 147.556 (relating to lawful devices and methods).

(7) Hunt or take deer in the southeast special regulations area during regular open hunting seasons for white-tailed deer through the use of or by taking advantage of bait on private, township or municipal property only under a deer attractant permit issued under Chapter 147, Subchapter R (relating to deer control).

Subchapter B. SMALL GAME

§ 141.22. Small game seasons.

(a) *Permitted devices.* It is lawful to hunt small game, except woodchucks, during any small game season with the following devices:

* * * * *

(7) **[An air gun. The firearm must be] A manually operated or semiautomatic air rifle or manually operated air handgun** between .177 and .22 caliber, inclusive, that propels single-projectile pellet or bullet ammunition. BB ammunition is not authorized.

* * * * *

(c) *Woodchuck (Groundhog) season.*

(1) *Permitted devices.* It is lawful to hunt woodchucks during woodchuck season with the following devices:

(i) A manually operated or semiautomatic **[centerfire]** rifle or manually operated handgun that propels single-projectile ammunition.

* * * * *

(vii) **[An air gun. The firearm must be] A manually operated or semiautomatic air rifle or manually operated air handgun** .22 caliber or larger that propels single-projectile pellet or bullet ammunition. BB ammunition is not authorized.

* * * * *

Subchapter C. BIG GAME

§ 141.43. Deer **seasons**.

* * * * *

(e) *Cooperating while hunting during any deer season.* Holders of any of the appropriate licenses or stamps may cooperate while hunting antlered or antlerless deer if pertinent provisions of the act and this section are met.

[(f) *.22 caliber or less rimfire required for furbearers.* When using a firearm only a rimfire rifle or handgun .22 caliber or less may be used to dispatch legally trapped furbearers during the regular or special firearms deer seasons.]

Subchapter D. FURBEARERS

§ 141.67. Furbearer seasons.

(a) *Permitted devices.* It is lawful to hunt or take furbearers during any furtaking season with the following devices:

* * * * *

(6) **[An air gun. The firearm must be] A manually operated or semiautomatic air rifle or manually operated air handgun** .22 caliber or larger that propels single-projectile pellet or bullet ammunition. BB ammunition is not authorized.

(b) *Prohibitions.* While hunting furbearers during any furbearer hunting or trapping season, it is unlawful to:

(1) Use or possess multiple-projectile shotgun ammunition larger than # 4 buckshot, except as authorized under section 2525 of the act (relating to possession of firearm for protection of self or others).

(2) Use or possess a device or ammunition not provided for in the act or in this section, except as authorized under section 2525 of the act.

(3) Use any firearm, other than authorized in this paragraph, to dispatch legally trapped furbearers during the overlap with the regular or special firearms deer seasons:

(i) A manually operated or semiautomatic rimfire rifle or manually operated rimfire handgun .22 caliber or less.

(ii) A manually operated or semiautomatic air rifle or manually operated air handgun between .177 and .22 caliber, inclusive, that propels single-projectile pellet or bullet ammunition. BB ammunition is not authorized.

[Pa.B. Doc. No. 17-1341. Filed for public inspection August 11, 2017, 9:00 a.m.]