NOTICE OF RULE MAKING

The Director of the Division of Medical Services of the Department of Human Services announces for a public comment period of thirty (30) calendar days a notice of rulemaking for the following proposed rule under one or more of the following chapters, subchapters, or sections of the Arkansas Code: §§ 20-38-101 to -113, 20-48-101 to -1108, 20-76-201, 20-77-107, 25-10-102, 25-10-129, and 25-15-217.

Effective January 1, 2021:

The Director of the Division of Medical Services (DMS) issues the Licensure Manual for Community Support System Providers. DMS issues the new rules to establish a path for certification providers to address current and future needs of behavioral health (BH), developmentally disabled (DD), and dually diagnosed clients. The rules create a new Arkansas Medicaid provider type and certification called a Community Support System Provider that allows providers to become certified to serve the BH, DD, and dually diagnosed populations. The rules also create a path for a crisis continuum of services to support providers' work.

The new rules eliminate the need for two different certifications for providers to serve the above populations while allowing individual certifications to remain in place for providers who choose to serve a single population. The rules break down the barrier between home and community-based services and intensive services to allow for easier and faster program transitions for our clients. And, the rules open new business opportunities for providers and allow DHS to maximize the current provider networks, filling gaps in the continuum of care for the highest need clients.

The proposed rule is available for review at the Department of Human Services (DHS) Office of Rules Promulgation, 2nd floor Donaghey Plaza South Building, 7th and Main Streets, P. O. Box 1437, Slot S295, Little Rock, Arkansas 72203-1437. You may also access and download the proposed rule on the Medicaid website at https://medicaid.mmis.arkansas.gov/General/Comment/Comment.aspx. Public comments must be submitted in writing at the above address or at the following email address: ORP@dhs.arkansas.gov. All public comments must be received by DHS no later than October 27, 2020. Please note that public comments submitted in response to this notice are considered public documents. A public comment, including the commenter's name and any personal information contained within the public comment, will be made publicly available and may be seen by various people.

A public hearing by remote access only will be held on October 16, 2020, at 10:00 a.m. Individuals can access this public hearing by calling 1-888-240-3210 and entering the conference code, 3549936.

If you need this material in a different format, such as large print, contact the Office of Rules Promulgation at 501-396-6428.

The Arkansas Department of Human Services is in compliance with Titles VI and VII of the Civil Rights Act and is operated, managed and delivers services without regard to religion, disability, political affiliation, veteran status, age, race, color or national origin. **4501960528**

Janet Mann

Janet Mann, Director
Division of Medical Services

Rules for the Division of Medical Services

Licensure Manual for Community Support System Providers

PROPOSED

LAST UPDATED: January 1, 2021

Subchapter 1. General.

101. Authority.

(a) These standards are promulgated under the authority of Ark. Code Ann. §§ 20-38-101 to -113, Ark. Code Ann. §§ 20-48-101 to 1108, Ark. Code Ann. § 25-10-102, and Ark. Code Ann. § 25-15-217.

(b) The Division of Provider Services and Quality Assurance (DPSQA) shall perform all regulatory functions regarding the licensure and monitoring of Community Support System Providers.

102. Purpose.

The purpose of these standards is to:

(1) Serve as the minimum standards for home- and community-based services and facilities;

(2) Ensure there are providers of home- and community-based services that serve the needs of beneficiaries, including beneficiaries with complex behavioral health, intellectual disability, and developmental disability service needs; and

(3) Allow a beneficiary to receive from one provider all home- and community-based services identified in the beneficiary's individualized treatment plan.

103. Definitions.

(a) "Adult day rehabilitation services" means an array of face-to-face rehabilitative day activities providing a preplanned and structured group program for identified beneficiaries that aimed at long-term recovery and maximization of self-sufficiency, as distinguished from the symptom stabilization function of acute day treatment. These rehabilitative day activities are person- and family-centered, recovery-based, culturally competent, provide needed accommodation for any disability and must have measurable outcomes.

(b) "Adverse agency action" means a denial of a CSSP licensure and any enforcement action taken by DPSQA pursuant to Section 803 to 807.

(c) "Applicant" means an applicant for a CSSP license or CSSP license enhancement.

(d)

(1) "Change of ownership" means any change in greater than fifty percent (50%) of the financial interests, governing body, operational control, or other operational or ownership interests of the CSSP.

PROPOSED

(2) "Change in ownership" does not include a change of less than fifty percent (50%) in the membership of the CSSP's board of directors, board of trustees, or other governing body.

(e) "Approved accrediting organization" means the Commission on Accreditation of Rehabilitation Facilities (CARF), the Joint Commission, the Council on Accreditation (COA), and the Council on Quality and Leadership (CQL).

(f) "Chemical restraint" means the use of medication or any drug that:

(1) Is administered to manage a beneficiary's behavior in a way to reduce the safety risk to the beneficiary or others;

(2) Has the temporary effect of restricting the beneficiary; and

(3) Is not a standard treatment for the resident's medical or psychiatric condition.

(g) "Community support staff" means an employee who provides direct care services or assistance to beneficiaries, including drivers and attendants.

(h) "CSSP license" means a non-transferable license issued by DPQSA.

(i) "CSSP license enhancement" means an enhancement to a CSSP license that meets additional requirements necessary for a CSSP to offer Adult Day Rehabilitation, Community Reintegration, Therapeutic Communities, or other home- and community-based services at a location operated by the CSSP.

(j) "CSSP" means a provider with a CSSP license to provide home- and community-based services.

(k)

(1) "CSSP location" means:

(A) A residential location operated by the CSSP and at which the CSSP offers one or more of the following services to any residents of the residential location:

(i) Community Reintegration; or

(ii) Therapeutic Communities; or

(B) A non-residential location operated by the CSSP and at which the CSSP offers any home- and community-based services.

PROPOSED

(2) "CSSP location" does not include group homes, apartments, or similar locations where residents receive adult day rehabilitation services at another service location.

(l) "Directed in-service training plan" means a plan of action that:

(1) Provides training to assist a CSSP in complying with these standards and correcting deficiencies;

(2) Includes the topics covered in the training and materials used in the training;

(3) Specifies the length of the training;

(4) Specifies the employees required to attend the training; and

(5) Is approved by DPSQA.

(m) "Employee" means an employee, owner, independent contractor, or other agent of a CSSP and includes without limitation full-time employees, part-time employees, transportation contractors, and any other person who acts on behalf of a CSSP or has an ownership, financial, or voting interest in the CSSP.

(n)

(1) "Enrichment activities" means activities offered to beneficiaries that support one or more beneficiary's treatment objectives and needs, but do not constitute home- and community-based services.

(2) "Enrichment activities" include without limitation yoga, exercise classes, community outings, community events, cooking classes, and support groups.

(o) "Home- and community-based services" means services that are available under:

(1) Adult Behavioral Health Services for Community Independence (ABHSCI) program for Medicaid beneficiaries who have complex behavioral health needs; and

(2) The Provider-led Arkansas Shared Savings Entity (PASSE) program for Medicaid beneficiaries who have complex behavioral health, intellectual disability, or developmental disability service needs.

(p) "ITP" means a beneficiary's individualized treatment plan, which is a written, individualized service plan for a CSSP beneficiary to improve or maintain the beneficiary's condition.

(q)

PROPOSED

(1) "Licensed professional" means a person who holds a professional license in good standing in Arkansas.

(2) "Licensed professional" includes independently licensed professionals such as a physician, licensed psychologist, licensed certified social worker (LCSW), independent licensed psychological examiner (LPE-I), licensed professional counselor (LPC), licensed marriage and family therapist (LMFT), advanced practice nurse (APN) with a specialty in psychiatry or mental health, or a clinical nurse specialist (CNS) with a specialty in psychiatry or mental health.

(3)

(A) "Licensed professional" includes non-independently licensed professional such as licensed master social worker (LMSW), licensed psychological examiner (LPE), licensed associate counselor (LAC), licensed associate marriage and family therapist (LAMFT), and a provisionally licensed psychologist.

(B) Non-independently licensed professionals must be clinically supervised by an independently licensed professional.

(r)

(1) "Marketing" means the accurate and honest advertisement of a CSSP that does not also constitute solicitation.

(2) "Marketing" includes without limitation:

(A) Advertising using traditional media;

(B) Distributing brochures or other informational materials regarding the services offered by the CSSP;

(C) Conducting tours of the CSSP to interested beneficiaries and their families;

(D) Mentioning services offered by the CSSP in which the beneficiary or his or her family might have an interest;

(E) Hosting informational gatherings during which the services offered by the CSSP are described.

(s) "Mechanical restraint" means the use of any device attached or adjacent to the beneficiary's body that the beneficiary cannot easily remove that restricts the beneficiary's freedom of movement or normal access to the beneficiary's body.

PROPOSED

(t) "Medical service encounter" means a medical or psychiatric service to be performed by a licensed professional or other professional allowed to perform the medical or psychiatric service and acting within the scope of his or her practice.

(u) "Medication error" means the loss of medication, unavailability of medication, falsification of medication logs, theft of medication, missed doses of medication, incorrect medications administered, incorrect doses of medication, incorrect time of administration, incorrect method of administration, and the discovery of an unlocked medication container that is always supposed to be locked.

(v)

(1) "Mobile crisis service" means a short-term, on-site, face-to-face therapeutic response to beneficiaries experiencing a behavioral health crisis for the purpose of assessing, treating, and stabilizing a beneficiary and reducing the immediate risk of danger to the beneficiary or others.

(2) "Mobile crisis service" includes without limitation:

(A) Assessment;

(B) Interventions as needed, including psychiatric consultation and psycho-pharmacological interventions; and

(C) Referrals and other linkages to all medically necessary services, including home- and community-based services and behavioral health services.

(w) "Plan of correction" means a plan of action that:

(1) Provides the steps a CSSP must take to correct noncompliance with these standards;

(2) Sets a timeframe for each specific action provided in the plan; and

(3) Is approved by DPSQA.

(x) "Professional service encounter" means any home- and community-based service to be performed by a licensed professional or other professional allowed to perform the home- and community-based service and acting within the scope of his or her practice.

(y) "Residence" means the county where a beneficiary is listed as residing in the Arkansas Medicaid Management Information System.

(z)

(1) "Restraint" means the application of physical force for the purpose of restraining the free movement of a resident's body.

PROPOSED

(2) "Restraint" does not include:

(A) Briefly holding, without undue force, a beneficiary in order to calm or comfort the beneficiary; or

(B) Holding a beneficiary's hand to safely escort a resident from one area to another.

(aa) "Seclusion" means the involuntary confinement of a resident alone or in a room or an area from which the resident is physically prevented from leaving.

(bb) "Serious injury" means any injury to a beneficiary that:

(1) May cause death;

(2) May result in substantial permanent impairment;

(3) Requires the attention of an emergency medical technician, a paramedic, or a doctor; or

(4) Requires hospitalization.

(cc)

(1) "Solicitation" means the initiation of contact with a beneficiary or his or her family by a CSSP when the beneficiary is currently receiving services from another provider and the CSSP is attempting to convince the beneficiary or his or her family to switch to or otherwise use the soliciting CSSP's services.

(2) "Solicitation" includes without limitation the following acts to induce a beneficiary or his or her family by:

(A) Contacting a beneficiary or the family of a beneficiary that is currently receiving services from another provider;

(B) Offering cash or gift incentives to a beneficiary or his or her family;

(C) Offering free goods or services not available to other similarly situated beneficiaries or their families;

(D) Making negative comments to a beneficiary or his or her family regarding the quality of services performed by another service provider;

PROPOSED

(E) Promising to provide services in excess of those necessary;

(F) Giving a beneficiary or his or her family the false impression, directly or indirectly, that the CSSP is the only service provider that can perform the services desired by the beneficiary or his or her family; or

(G) Engaging in any activity that DPSQA reasonably determines to be "solicitation."

PROPOSED

Subchapter 2. Licensing.

201. License Required.

(a)

(1)

(A) A CSSP must have a CSSP license issued by DPSQA pursuant to these standards.

(B) A CSSP cannot provide services outside of the authority provided through a CSSP license without obtaining a separate credential to provide such services independent of the CSSP license.

(2) A CSSP that offers home- and community-based services at a CSSP location must have a CSSP license enhancement issued by DPSQA pursuant to these standards for the CSSP location.

(A) A CSSP license enhancement is specific to a single location.

(B) A separate CSSP license enhancement is required for each location even if the same person or entity has a CSSP license enhancement at other locations.

(C) A location may only have one CSSP license enhancement attributed to it at any one time.

(3) A CSSP must comply with all requirements of these standards for all home- and community-based services provided by the CSSP.

(b)

(1) A CSSP must be accredited by an approved accrediting organization for all home- and community-based services offered or intended to be offered by the CSSP before DPSQA may issue a CSSP license or CSSP license enhancement.

(2) A CSSP must demonstrate its accreditation or accreditations cover each home- and community-based service the CSSP offers or intends to offer.

(3) A CSSP must comply with all requirements of its accreditations.

(4) A loss of a CSSP's accreditation constitutes a violation of these standards.

(c)

PROPOSED

(1) In the event of a conflict between these standards and the requirements of a CSSP's accreditations, the stricter requirement shall apply.

(2) In the event of an irreconcilable conflict between these standards and the requirements of a CSSP's accreditations, these standards shall govern.

202. Licensure Application.

(a)

(1) To apply for a CSSP license, an applicant must submit a complete application to DPSQA.

(2) A complete application includes:

(A) Documentation demonstrating the applicant's entire ownership, including without limitation all the applicant's financial, governing body, and business interests;

(B) Documentation of the applicant's management, including without limitation the management structure and members of the management team;

(C) Documentation of the applicant's current contractors and the contractors that the applicant intends to use as part of operating the CSSP;

(D) Documentation of all required state and national criminal background checks for employees and operators;

(E) Documentation of all required Child Maltreatment Registry checks and Adult Maltreatment Registry checks for employees and operators;

(F) Documentation demonstrating compliance with the standards for a CSSP license; and

(G) All other documentation or other information requested by DPSQA.

(b)

(1) To apply for a CSSP license enhancement, the applicant must submit:

(A) A complete application for a CSSP license enhancement;

(B) Documentation demonstrating compliance with the standards for a CSSP license enhancement; and

(C) All other documentation or other information requested by DPSQA.

PROPOSED

(2) An applicant may apply for a CSSP license enhancement at the same time the applicant applies for a CSSP license.

(c) To apply to change the ownership of an existing CSSP, the CSSP must submit a complete application described in section 202(a)(2) regarding the requested new ownership of the CSSP license and CSSP license enhancement, if any.

203. Licensure Process.

(a) DPSQA may approve an application for a CSSP license and issue a CSSP license if:

(1) The applicant submits a complete application under Section 202(a);

(2) DPSQA determines that all employees and operators have successfully passed all required criminal background and maltreatment checks; and

(3) DPSQA determines that the applicant satisfies these standards.

(b) DPSQA may approve an application for a CSSP license enhancement and issue a CSSP license enhancement if:

(1) The applicant has a CSSP license;

(2) The applicant submits a complete application under Section 202(b); and

(3) DPSQA determines that the applicant satisfies the standards for a CSSP license enhancement.

(c) DPSQA may approve an application to change the ownership of an existing CSSP and change the ownership of an existing CSSP license and any CSSP license enhancement if:

(1) The applicant submits a complete application under Section 202;

(2) DPSQA determines that all employees and operators have successfully passed all required criminal background and maltreatment checks;

(3) DPSQA determines that the applicant satisfies these standards.

(d) CSSP licenses and CSSP license enhancements do not expire until terminated under these standards.

PROPOSED

Subchapter 3. Administration.

301. Organization and Ownership.

(a) A CSSP must be authorized and in good standing to do business under the laws of the State of Arkansas.

(b)

(1) A CSSP must appoint a single manager as the point of contact for all DAABH, DDS, DMS, and DPSQA matters and provide DAABH, DDS, DMS, and DPSQA with updated contact information for that manager.

(2) This manager must have authority over the CSSP and all CSSP employees and be responsible for ensuring that requests, concerns, inquires, and enforcement actions are addressed and resolved to the satisfaction of DAABH, DDS, and DPSQA.

(c)

(1) A CSSP cannot transfer its CSSP license or CSSP license enhancement to any person or entity.

(2) A CSSP cannot change its ownership unless DPSQA approves the application of the new ownership pursuant to sections 202 and 203.

(3) A CSSP cannot change its name or otherwise operate under a different name than the listed on the CSSP license without notice to DPSQA.

(d) A CSSP must maintain documentation of all accreditations, including without limitation:

(1) Initial accreditations;

(2) Accreditation renewals;

(3) Accreditation surveys or other reviews; and

(4) Accreditation enforcement actions.

302. Employees and Staffing Requirements.

(a)

(1) A CSSP must appropriately supervise all beneficiaries based on each beneficiary's needs.

PROPOSED

(2) A CSSP must have enough employees on-site to supervise beneficiaries in a CSSP location.

(b) A CSSP must meet the minimum staffing-to-beneficiary ratio for each beneficiary as provided in each beneficiary's ITP.

(c)

(1) A CSSP must comply with all requirements applicable to employees under these standards, including without limitation criminal background checks and adult and child maltreatment checks.

(2) A CSSP must verify an employee still meets all requirements under these standards upon request of DPSQA or whenever the CSSP receives information after hiring that would create a reasonable belief that an employee no longer meets all requirements under the standards including without limitation requirements related to criminal background checks and adult and child maltreatment checks.

(d)

(1) A CSSP must conduct child maltreatment, adult maltreatment, and criminal background checks for all employees as required by law.

(2) Except as provided in this section, all CSSP employees, contractors, subcontractors, interns, volunteers, and trainees, as well as all other persons who have routine contact with beneficiaries within the CSSP program or who provide services within the CSSP program, must successfully pass all required criminal background checks and adult and child maltreatment checks.

(e)

(1) Employees must be eighteen (18) years of age or older.

(2) Employees must have at least one of the following:

(A) A high school diploma or a GED;

(B) One (1) year of relevant, supervised work experience with a public health, human services, or other community service agency; or

(C) Two (2) years of experience working with individuals with behavioral health issues or developmental disabilities.

(3) A beneficiary's legal guardian or custodian is not required to have criminal background checks, child maltreatment checks, or adult maltreatment checks if the

PROPOSED

legal guardian or custodian only volunteers on a field trip and is not left alone with any beneficiary.

(f)

(1) A CSSP must document all scheduled and actual employee staffing.

(2) The documentation required for of employee staffing includes without limitation employee names, job title or credential, shift role, shift days, and shift times.

(g)

(1) A CSSP must have a licensed professional for medical services on-site at, or on-call for, a CSSP location.

(2) If a licensed professional for medical services is on call, the licensed professional must respond:

(A) By telephone or in-person within twenty (20) minutes; and

(B) In-person if required by the circumstances.

(3) A CSSP must document involvement by a licensed professional for medical services with a beneficiary including without limitation:

(A) The date and time the licensed professional was contacted;

(B) The date and time the licensed professional responded;

(C) The date and time the licensed professional came on site if the licensed professional was on call and called in due to the circumstances.

303. Employee Training.

(a)

(1) All employees must receive the following training within thirty (30) calendar days after beginning employment:

(A) Emergency and evacuation procedures;

(B) Mandated reporter requirements and procedures; and

(C) Reporting incidents and accidents as required in these standards and other applicable law or rule.

PROPOSED

(2) Employees required to receive the training prescribed in subdivision (a)(1) must receive annual re-training on those topics at least once every twelve (12) months

(b)

(1) All employees involved in any way with services provided to beneficiaries or who have routine contact with beneficiaries within the CSSP program must receive the following training before having contact with beneficiaries and no later than thirty (30) calendar days after beginning employment:

(A) Twelve (12) hours of training for employees;

(B) Basic health and safety practices;

(C) Infection control and infection control practices;

(D) Identification and mitigation of unsafe environmental factors;

(E) Identification and prevention of adult and child maltreatment;

(F) Emergency restraint procedures allowed in these standards; and

(G) Financial safeguards for beneficiaries required in these standards.

(2)

(A) The training required in subdivision (b)(1)(A) must include at least care planning for behavioral health, care planning for individuals with development disabilities, care planning for individuals with intellectual disabilities, social determinants of health, behavioral modification or intervention training, and training for autism spectrum disorders.

(B) A CSSP must demonstrate that the training provided to satisfy the training required in subdivision (b)(1)(A) sufficiently covers the required topics for the training.

(C) The training required in subdivision (b)(1)(A) is in addition to the training prescribed in subdivision (b)(1)(B) through (b)(1)(G) and no training can count towards fulfilling the requirements of subdivisions (b)(1)(A) and any requirements in subdivisions (b)(1)(B) through (b)(1)(G).

(3) An employee who is a licensed professional is not required to receive the training prescribed in subdivision (b)(1).

PROPOSED

(4) Employees required to receive the training prescribed in subdivision (b)(1) must receive annual re-training on those topics at least once every twelve (12) months.

(c)

(1) All employees involved in any way with services provided to beneficiaries or who have routine contact with beneficiaries within the CSSP program must obtain and maintain in good standing throughout their employment the following credentials:

(A) CPR certification by the American Heart Association, Medic First Aid, or the American Red Cross unless a licensed medical professional determines that the employee is incapable of performing CPR; and

(B) First aid certification by American Heart Association, Medic First Aid, or the American Red Cross unless a licensed medical professional determines that the employee is incapable of performing first aid.

(2) Employees not certified under subdivision (b)(1) cannot be counted towards staffing requirements.

(d)

(1)

(A) Employees assigned to a specific beneficiary or group of specific beneficiaries must receive training specific to such beneficiaries as required to meet the individualized needs of those beneficiaries.

(B) Employees must complete training required under subdivision (c)(1)(A) before providing services to the specific beneficiary or group of specific beneficiaries.

(2) Beneficiary-specific training must include at least the following training for each beneficiary that is sufficient for the employee to meet that beneficiary's needs:

(A) The beneficiary's ITP;

(B) The beneficiary's behavior management plan and permitted interventions;

(C) The beneficiary's medication administration and side effects;

(D) The beneficiary's medical needs; and

(E) Setting-specific emergency and evacuation procedures.

304. Employee Records.

PROPOSED

(a) A CSSP must maintain a personnel file for each employee that includes:

(1) A detailed job description;

(2) All required criminal background checks;

(3) All required Child Maltreatment Registry checks;

(4) All required Adult Maltreatment Registry checks;

(5) All conducted drug screens;

(6) Signed statement that the employee will comply with the CSSP's drug screen and drug use policies;

(7) Copy of current state or federal identification;

(8) Copy of valid state-issued driver's license, if driving as required in the job description, and documentation of completion of any required driver safety courses;

(9) Documentation demonstrating that the employee received all training required in Section 303;

(10)

(A) Documentation demonstrating that the employee obtained and maintained in good standing all certifications required in Section 303;

(B) If the employee was excepted from any certifications required in Section 303, documentation demonstrating that the employee was excepted from such certifications.

(11) Documentation demonstrating that the employee obtained and maintained in good standing all professional licensures, certifications, or credentials for the employee or the service the employee is performing that are required for the employee or the service the employee is performing; and

(12) Documentation demonstrating the employee meets all continuing education, in-service, or other training requirements applicable to that employee under these standards and any professional licensures, certifications, or credentials held by that employee.

(b) A CSSP must retain all employee records for five (5) years from the date an employee is no longer an employee of the CSSP or, if longer, the final conclusion of all reviews,

PROPOSED

appeals, investigations, administrative actions, or judicial actions related to that employee that are pending at the end of the five-year period.

305. Beneficiary Service Records.

(a)

(1) A CSSP must maintain a separate, updated, and complete service record for each beneficiary documenting the services provided to the beneficiary and all other documentation required under these standards.

(2) A CSSP must maintain each beneficiary service record in a uniformly organized manner and available to employees providing services to beneficiaries as necessary for those employees to provide services.

(b) A beneficiary's service record must include a summary document at the front that includes:

(1) The beneficiary's full name;

(2) The beneficiary's address and county of residence;

(3) The beneficiary's telephone number and email address;

(4) The beneficiary's date of birth;

(5) The beneficiary's primary language;

(6) The beneficiary's diagnoses;

(7) The beneficiary's medications, dosage, and frequency, if applicable;

(8) The beneficiary's known allergies;

(9) The beneficiary's entry date into the CSSP program;

(10) The beneficiary's exit date from the CSSP program, if applicable;

(11) The beneficiary's Social Security Number;

(12) The beneficiary's Medicaid number;

(13) The beneficiary's commercial or private health insurance information;

(14) The name, address, phone number, email address of the beneficiary's legal guardian or custodian, if applicable; and

PROPOSED

(15) The name, address, and phone number of the beneficiary's primary care physician.

(c) A beneficiary's service record must include at least the following information and documentation:

(1) The beneficiary's ITP for each home- and community-based service that the beneficiary receives from the CSSP;

(2) The beneficiary's behavioral management plan, if applicable;

(3) The beneficiary's daily activity logs or other documentation of home- and community-based service delivery;

(4) The beneficiary's medication management plan and medication logs;

(5) Copies of any assessments or evaluations completed on the beneficiary;

(6) Copies of any orders that place the beneficiary in the custody of another person or entity; and

(7) Copies of any leases or residential agreements related to the beneficiary's care.

(d)

(1) A CSSP must ensure that each beneficiary service record is kept confidential and available only to:

(A) Employees who need to know the information contained in the beneficiary's service record;

(B) Persons or entities who need to know the information contained in the beneficiary service record in order to provide services to the beneficiary;

(C) DPSQA and any governmental entity with jurisdiction or other authority to access the beneficiary's service record;

(D) The beneficiary's legal guardian or custodian; and

(E) Any other individual authorized in writing by the legal guardian or custodian.

(2)

(A) A CSSP must keep beneficiary service records in a file cabinet or room that is always locked.

PROPOSED

(B)

(i) A CSSP may use electronic records in addition to or in place of physical records to comply with these standards.

(ii) A CSSP that uses electronic records must take reasonable steps to backup all electronic records and reconstruct a beneficiary's service record in the event of a breakdown in the CSSP's electronic records system.

(e) A CSSP must retain all beneficiary service records for five (5) years from the date the beneficiary last exits from the CSSP or, if longer, the final conclusion of all reviews, appeals, investigations, administrative actions, or judicial actions related to beneficiary that are pending at the end of the five-year period.

306. Marketing and Solicitation.

(a) A CSSP can market its services.

(b) A CSSP cannot solicit a beneficiary or his or her family.

307. Third-party Service Agreements.

(a) A CSSP may contract in writing with third-party vendors to provide services or otherwise satisfy requirements under these standards.

(b) A CSSP must ensure that all third-party vendors comply with these standards and all other applicable laws, rules, and regulations.

308. Financial Safeguards.

(a)

(1) A beneficiary shall have full use and access to a beneficiary's own funds or other assets, and a CSSP may not limit a beneficiary's use or access to a beneficiary's own funds or other assets, unless the beneficiary or the beneficiary's legal guardian or custodian provides informed written consent or the CSSP otherwise has the legal authority to limit a beneficiary's use or access of the beneficiary's own funds or other assets.

(2) Limitation of a beneficiary's use or access includes without limitation designating the amount a beneficiary may use or access, limiting the amount a beneficiary may use for a particular purpose, and limiting the timeframes during which a beneficiary may use or access the beneficiary's funds or other assets.

(b)

PROPOSED

(1)

(A) A CSSP may use, manage, or access a beneficiary's funds or other assets only for the benefit of the beneficiary and only then if the beneficiary's legal guardian or custodian provides informed written consent or the CSSP otherwise has the legal authority to use, manage, or access the beneficiary's funds or other assets.

(B) The management, use, or access to a beneficiary's funds or other assets includes without limitation serving as a representative payee of a beneficiary, receiving benefits on behalf of the beneficiary, and safeguarding funds or personal property for the beneficiary.

(2) A CSSP may use, manage, or access a beneficiary's funds or other assets only to the extent permitted by law.

(3) A CSSP must ensure that a beneficiary receives the benefit of the goods and services for which the beneficiary's funds or other assets are used.

(c) A CSSP must safeguard beneficiary funds or other assets whenever a CSSP manages, uses, or has access to a beneficiary's funds or other assets.

(d)

(1) A CSSP must maintain financial records that document all uses of the beneficiary's funds or other assets and comply with generally accepted accounting practices whenever the CSSP manages, uses, or has access to a beneficiary's funds or other assets.

(2) A CSSP must, upon request, make available to a beneficiary or a beneficiary's legal guardian or custodian all financial records related to a beneficiary.

(e)

(1) A CSSP must maintain separate accounts for each beneficiary's funds or other assets whenever the CSSP manages a beneficiary's funds or other assets.

(2) All interest derived from a beneficiary's funds or other assets shall accrue to the beneficiary's account.

309. Emergency Plans and Drills.

(a)

PROPOSED

(1) A CSSP must have a written emergency plan for all locations in which the CSSP offers home- and community-based services, including without limitation beneficiary residences and CSSP locations.

(2)

(A) The written emergency plan must provide the procedures to follow in the event of emergencies to safeguard the health and safety of beneficiaries and ensure continuity of services to the extent possible.

(B) A written emergency plan must address all foreseeable emergencies including without limitation fires, floods, tornados, utility disruptions, bomb threats, active shooters, outbreaks of infectious disease, and public health emergencies.

(3) A CSSP must evaluate all written emergency plans at least annually and update as needed.

(b) When a CSSP is not providing home- and community-based services to a beneficiary in a CSSP location, the written emergency plan must be appropriate for the beneficiary and the location in which home- and community-based services are provided.

(c) When a CSSP is providing home- and community-based services to a beneficiary in a CSSP location,

(1) The written emergency plan must include at least:

(A) Designated relocation sites and evacuation routes;

(B) Procedures for notifying legal guardians and custodians of relocation;

(C) Procedures for ensuring each beneficiary's safe return to the CSSP community location or residence;

(D) Procedures to address the special needs of each beneficiary;

(E) Procedures to address interruptions in the delivery of home- and community-based services;

(F) Procedures for reassigning employee duties in an emergency; and

(G) Procedures for annual training of employees regarding the emergency plan.

(2)

(A) A CSSP must conduct emergency fire drills at least once a month.

PROPOSED

(B) A CSSP must conduct other emergency drills as required by the CSSP's accreditation.

(C) A CSSP must document all emergency drills completed and include at least:

(i) The date of the emergency drill;

(ii) The type of emergency drill;

(iii) The time of day the emergency drill was conducted;

(iv) The number of beneficiaries participating in the emergency drill;

(v) The length of time taken to complete the emergency drill; and

(vi) Notes regarding any aspects of the emergency procedure or drill that need improvement based on the performance of the emergency drill.

310. Infection Control.

(a)

(1) A CSSP must follow all applicable guidance and directives from the Arkansas Department of Health (ADH) related to infection control including without limitation guidance and directives on preventing the spread of infectious diseases, hand hygiene, handling potentially infectious material, use of personal protective equipment, tuberculosis, blood borne pathogens, and coronaviruses.

(2) A CSSP must provide personal protective equipment for all employees and beneficiaries as may be required in the circumstances.

(3) Employees and beneficiaries must wash their hands with soap before eating, after toileting, and as otherwise appropriate to prevent the spread of infectious diseases.

(b)

(1) A CSSP cannot allow a beneficiary, employee, or any other person who has an infectious disease to enter a CSSP location unless the beneficiary or employee is a resident of the CSSP location.

(2) A beneficiary who becomes ill while at a CSSP location must be separated from other beneficiaries to the extent possible.

(3) The CSSP must notify a beneficiary's legal guardian or custodian if the beneficiary becomes ill while at a CSSP location.

PROPOSED

311. Compliance with State and Federal Laws, Rules, and Other Standards.

(a) A CSSP must comply with all applicable state and federal laws and rules including without limitation:

(1) The Americans with Disabilities Act of 1990 (ADA);

(2) The Disability Rights Act of 1964;

(3) The Health Insurance Portability and Accounting Act (HIPAA);

(4) The Privacy Act of 1974; and

(5) All applicable laws and rules governing the protection of medical, social, personal, financial, and electronically stored records.

(b) A CSSP location must comply with all:

(1) Building codes and local ordinances;

(2) Fire and safety inspections and requirements of the State Fire Marshal or local authorities;

(3) ADH requirements including without limitation requirements regarding water, plumbing, and sewage;

(4) Arkansas Department of Labor and Licensing requirements including without limitation requirements regarding water heaters and boilers; and

(5) Other federal, state, or local requirements applicable to the CSSP location, property, and structures.

(c) A CSSP must maintain documentation of compliance with applicable state, local, and federal laws, rules, codes, and standards.

(d) A violation of any applicable state, local, or federal laws, rules, codes, or standards constitutes a violation of these standards.

(e)

(1) In the event of a conflict between these standards and other applicable state, local, or federal laws, rules, or standards, the stricter requirement shall apply.

PROPOSED

(2) In the event of an irreconcilable conflict between these standards and other applicable state, local, or federal laws, rules, or standards these standards shall govern to the extent not governed by federal laws or rules or state law.

PROPOSED

Subchapter 4. Facility Requirements.

401. General Requirements.

(a)

(1) A CSSP must comply with this subchapter for all CSSP locations.

(2) No CSSP location can have more than sixteen (16) beneficiaries as residents of the CSSP location at any one time.

(b) A CSSP location must:

(1) Be heated, air-conditioned, well-lighted, well-ventilated, and well-maintained at a comfortable temperature;

(2) Be safe, clean, maintained, in good repair, and sanitary, including without limitation as to the CSSP location's exterior, surrounding property, and interior floors and ceilings;

(3) Be free of offensive odors, pests, and potentially hazardous objects including without limitation explosives and broken equipment;

(4) Have drinking water available to beneficiaries and employees;

(5) Have an emergency alarm system throughout the facility to alert employees and beneficiaries when there is an emergency;

(6) Have at least one (1) toilet and one (1) sink for every twelve (12) beneficiaries, with running hot and cold water, toilet tissue, liquid soap, and paper towels or air dryers;

(7) Have at least one operable telephone on site that is available at all hours and reachable with a phone number for outside callers;

(8) Have working smoke and carbon monoxide detectors in all areas used by beneficiaries or employees;

(9) Have a first aid kit that includes at least the following:

(A) Adhesive band-aids of various sizes;

(B) Sterile gauze squares;

(C) Adhesive tape;

(D) Roll of gauze bandages;

PROPOSED

(E) Antiseptic;

(F) Thermometer;

(G) Scissors;

(H) Disposable gloves; and

(I) Tweezers;

(10) Have enough fire extinguishers in number and location to satisfy all applicable laws and rules, but no fewer than two fire extinguishers;

(11) Have screens for all windows and doors used for ventilation;

(12) Have screens or guards attached to the floor or wall to protect floor furnaces, heaters, hot radiators, exposed water heaters, air conditioners, and electric fans;

(13) Have no lead-based paint;

(14) Have lighted "exit" signs at all exit locations;

(15) Have written instructions and diagrams noting emergency evacuation routes and shelters to be used in case of fire, severe weather, or other emergency posted at least every twenty-five (25) feet, in all stairwells, in and by all elevators, and in each room used by beneficiaries;

(16) Have a copy of Title VI and VII of the Civil Rights Law of 1964 and all required legal notices prominently posted as required;

(17) Have an emergency power system to provide lighting and power to essential electrical devices throughout the CSSP location, including without limitation power to exit lighting and fire detection, fire alarm, and fire extinguishing systems;

(18) Have chemicals, toxic substances, and flammable substances stored in locked storage cabinets or closets;

(19) Have the CSSP location's telephone, hours of operation, and hours of access, if applicable, posted at all public entrances;

(20) Prohibit the possession of firearms or other weapons except by authorized law enforcement personnel; and

PROPOSED

(21) Prohibit smoking, use of tobacco products, and the consumption of prescription medication without a prescription, alcohol, and illegal drugs.

402. Residential Requirements

(a) A CSSP location that houses one or more beneficiaries as a resident must also:

(1) Provide at least twenty (20) square feet of separate bedroom space for each beneficiary;

(2) Provide storage space for personal items in each beneficiary's living space;

(3) Provide at least one (1) window that can open and provide an outside view;

(4) Provide at least three (3) meals daily for each resident, with no more than fourteen (14) hours between any two meals;

(5) Provide separate bedroom areas for male and female beneficiaries;

(6) Provide at least one (1) shower for every six (6) beneficiaries, with running hot and cold water, liquid soap, and bath towels;

(7) Provide a bed measuring at least thirty-six (36) inches wide, linens, pillows, a firm mattress at least four (4) inches thick and covered with moisture repellant material, and other needed household items for each resident;

(8) Provide a locked storage container for beneficiary valuables; and

(9) Provide a dining area for beneficiaries.

(b)

(1)

(A) A CSSP location may have secure units and non-secure units.

(B) A CSSP location secure unit is also known as Therapeutic Communities, Level 1.

(2) A CSSP location secure unit must have:

(A) Physical and procedural safeguards appropriate based on the needs of all beneficiaries to ensure the safety of all beneficiaries and employees; and

(B) Enough employees present in the CSSP location secure unit to ensure the safety of all residents and staff.

PROPOSED

(3) A CSSP may place a beneficiary in a CSSP location secure unit only if:

(A) The beneficiary is subject to a court order of commitment to a secure facility; or

(B) Placement is otherwise required in the beneficiary's ITP.

(4) A CSSP location secure unit may be exempted from one or more requirements in subdivision (a) for specific beneficiaries if such an exemption is required by a court order of commitment or the beneficiary's ITP.

(5) A CSSP must have plans for each beneficiary in a CSSP location secure unit to transition the beneficiary from the secure unit to a less secure placement.

PROPOSED

Subchapter 5. Entries and Exists.

501. Entries.

(a) A CSSP may enroll and provide home- and community-based services to a beneficiary who is eligible to receive the home- and community-based services provided.

(b) A CSSP must document the enrollment of all beneficiaries in its program.

502. Exits.

(a) A CSSP may exit a beneficiary from its program if the beneficiary becomes ineligible for home- and community-based services, chooses to use another CSSP for his or her home- and community-based services, or for any other lawful reason.

(b) A CSSP must document the exit of all beneficiaries from its program.

(c) A CSSP must provide reasonable assistance to all beneficiaries exiting its program including without limitation by:

(1) Assisting the beneficiary in transferring to another CSSP or other service provider; and

(2) Providing copies of the beneficiary's service records to the beneficiary, the beneficiary's legal guardian or custodian, and the CSSP or other service provider to which the beneficiary transfers after exiting the program.

(d) A CSSP shall remain responsible for the health, safety, and welfare of the exiting beneficiary until all transitions to new service providers are complete.

PROPOSED

Subchapter 6. Programs and Services.

601. Individualized Treatment Plans

(a)

(1) Each beneficiary must have an ITP that covers each home- and community-based service that is provided to the beneficiary by the CSSP.

(2) An ITP must provide for each home- and community-based service:

(A) In the least restrictive setting possible; and

(B) In the community in which the beneficiary resides, to the extent possible.

(b) Each ITP must include at least:

(1) The beneficiary's treatment objectives;

(2) The beneficiary's treatment regimen, which includes without limitation the specific medical and remedial services, therapies, and enrichment activities that will be used to achieve the beneficiary's treatment objectives and how those services, therapies, and enrichment activities will achieve the treatment objectives;

(3) The evaluations and documentation that supports the medical necessity of the services, therapies, or activities specified in the treatment regimen;

(4) The delivery schedule for the home- and community-based service that includes the frequency and duration of each type of service, therapy, activity, session, or encounter for that home- and community-based service;

(5) The required job title or credential of the employee or employees that will furnish each service, therapy, or activity;

(6) The minimum employee-to-beneficiary ratios required for the beneficiary, if applicable, including without limitation increased or decreased employee-to-staff ratios required for any particular periods or activities;

(7) The setting in which the home- and community-based service will be provided, including if applicable the name and physical address of the place of service;

(8) The written consent of the beneficiary for treatment, or, if the beneficiary lacks capacity, the written consent for treatment by the beneficiary's legal guardian or custodian; and

PROPOSED

(9) The schedule for completing re-evaluations of the beneficiary's condition and updating the ITP.

602. Daily Service Logs.

(a)

(1) A CSSP must document daily the delivery of each home- and community-based service provided to a beneficiary.

(2) Documentation required may be satisfied by a daily service log or other documentation of home- and community-based service delivery.

(b) The daily service log or other documentation of home- and community-based service delivery must include at least:

(1) The specific home- and community-based service provided;

(2) The date each home- and community-based service was provided by the CSSP;

(3) The beginning and ending time each home- and community-based service was provided by the CSSP;

(4) The name, title, and credential of each person providing home- and community-based service for each date and time;

(5) The relationship of the home- and community-based service to the treatment objectives described in the beneficiary's ITP; and

(6) Progress notes that describe each beneficiary's status and progress toward the beneficiary's treatment objectives.

(c)

(1) Each daily service log entry must be signed by the employee responsible for the home- and community-based service or services provided.

(2) Each daily service log entry must be included in the beneficiary's service record.

603. Arrivals, Departures, and Transportation.

(a)

(1) A CSSP must ensure that beneficiaries safely arrive to and depart from a CSSP location and safely transition to and from the location where home- and

PROPOSED

community-based services are provided when the services are not provided at a CSSP location.

(2)

(A) A CSSP must document the arrival and departure of each beneficiary to and from a CSSP location.

(B) Documentation of arrivals and departures to and from CSSP locations must include without limitation the beneficiary's name, age, and date of birth, date and time of arrival and departure, name of the person or entity that provided transportation, and method of transportation.

(3)

(A) A manager or designee of a CSSP must:

(i) Review the beneficiary arrival and departure documentation each day and compare it with the CSSP's attendance record;

(ii) Sign and date the beneficiary arrival and departure documentation verifying that all beneficiaries for the day safely arrived to and departed from the CSSP location.

(B) A CSSP must maintain beneficiary arrival and departure documentation for one (1) year from the date of transportation.

(b) The requirements in subdivisions (c) through (f) apply to all transportation provided by a CSSP.

(1) Transportation to which these requirements apply includes without limitation transportation provided to a beneficiary by any person or entity on behalf of the CSSP and regardless of whether the person is an employee, or the transportation is a billed service; and

(2) Transportation to which these requirements apply also includes periodic transportation, including without limitation transportation provided at the request of a beneficiary's legal guardian or custodian to have a beneficiary occasionally dropped off or picked up due to a scheduling conflict with the legal guardian or custodian.

(c)

(1) All employees transporting beneficiaries or present in vehicles during the transportation of beneficiaries shall meet the following requirements before transporting beneficiaries:

PROPOSED

(A) Be at least twenty-one (21) years of age or the minimum age required by the CSSP's commercial automobile insurance, whichever is higher;

(B) Hold a current valid driver's license or commercial driver's license as required by state law; and

(C) Successfully complete a driver safety training course.

(2)

(A) The staff-to-beneficiary ratio in a vehicle in which beneficiaries are transported must be at least 1 staff for every eight (8) beneficiaries if any beneficiary is less than eighteen (18) years old.

(B) The staff-to-beneficiary ratio in a vehicle in which beneficiaries are transported must be at least 1 staff for every fifteen (15) beneficiaries if all beneficiary are eighteen (18) years old or older.

(d)

(1) Each vehicle used to transport beneficiaries must:

(A) Be licensed and maintained in proper working condition, including without limitation air conditioning and heating systems; and

(B) Have a seating space and a specific appropriate restraint system for each beneficiary transported.

(2)

(A) Any vehicle designed or used to transport eight (8) or more passengers and one (1) driver must have a safety alarm device.

(B) The safety alarm device must:

(i) Always be in working order and properly maintained;

(ii) Installed so that the driver is required to walk to the very back of the vehicle to reach the switch that deactivates the alarm;

(iii) Be installed correctly in accordance with the device manufacturer's recommendations; and

(iv) Sound the alarm for at least one minute after the activation of the safety alarm device.

PROPOSED

(3)

(A) A CSSP must maintain commercial insurance coverage for any vehicle used to transport beneficiaries.

(B) The commercial insurance coverage must include at least:

(i) $100,000 combined single limit;

(ii) $100,000 for uninsured motorist;

(iii) $100,000 for under-insured motorist; and

(iv) $5,000 personal injury protection for each passenger based on the number of passengers the vehicle is manufactured to transport.

(C) A CSSP must maintain documentation of all required commercial insurance coverage.

(e)

(1) A CSSP must maintain a roster of beneficiaries for each vehicle each day listing the driver, other persons, and name, age, date of birth, and emergency contact information for all beneficiaries that will be transported in that vehicle.

(A) The daily roster shall be used to check beneficiaries on and off the vehicle when they are picked up or dropped off at home, the CSSP location, or other location.

(B) The employee who conducts the walk-through required by subdivision (f) must sign the vehicle roster once the employee confirms that all beneficiaries have exited the vehicle.

(2)

(A) A manager or designee of a CSSP must:

(i) Review the daily roster each day and compare it with the CSSP's attendance record;

(ii) Sign and date the daily roster verifying that all beneficiaries for the day safely arrived to and departed from home, the CSSP location, or other location.

PROPOSED

(B) A CSSP must maintain the daily roster for one (1) year from the date of transportation.

(f)

(1) An employee must walk through a vehicle used to transport beneficiaries after each trip and physically inspect each seat after unloading to ensure that no beneficiaries are left on the vehicle.

(2) The walk-through inspection for any vehicles designed or used to transport eight (8) or more passengers and one (1) driver must be conducted in one of the following ways:

(A)

(i) An employee unloads all beneficiaries from the vehicle, walks or otherwise moves through the interior of the vehicle to ensure that no beneficiaries remain on board, and deactivates the safety alarm device.

(ii) This option can only be used if all beneficiaries are able to unload from the vehicle in less than one (1) minute.

(B)

(i) An employee supervises the beneficiaries during unloading and a second employee immediately walks or otherwise moves through the interior of the vehicle to ensure that no beneficiaries remain on board and deactivates the safety alarm device.

(ii) The employee who deactivated the safety alarm device will remain near the safety alarm device deactivation switch until all beneficiaries have unloaded to ensure that no beneficiary is left on board.

(iii) This option will require at least two (2) employees, one to supervise the beneficiaries and one to remain near the safety alarm device deactivation switch.

(C)

(i) An employee deactivates the safety alarm device and unloads all beneficiaries immediately upon arrival.

PROPOSED

(ii) Immediately after unloading, an employee will start the vehicle and move it to a different location for final parking, which must reactivate the safety alarm device.

(iii) An employee deactivates the safety alarm device and walks or otherwise moves through the interior of the vehicle to ensure that no beneficiaries remain on board and deactivates the safety alarm device.

604. Medications.

(a) A beneficiary can self-administer medication as provided in the beneficiary's ITP.

(b)

(1) A CSSP can administer medication only as provided in the beneficiary's ITP or prescribed or otherwise ordered by a physician or other health care professional authorized to prescribe or otherwise order medication.

(2) A CSSP can administer medication only by licensed nurses or other health care professionals authorized to administer medication.

(3) A CSSP cannot administer prescription medication to a beneficiary without a prescription documented in the beneficiary's service record.

(c)

(1) A CSSP must develop a medication management plan for all beneficiaries.

(2) A medication management plan must include without limitation:

(A) The name of each medication;

(B) The name of the prescribing physician or other health care professional if the medication is by prescription;

(C) A description of each medication prescribed and any symptom or symptoms to be addressed by each medication;

(D) How each medication will be administered, including without limitation times of administration, doses, delivery, and persons who may lawfully administer each medication;

(E) How each medication will be charted;

(F) A list of the potential side effects caused by each medication; and

PROPOSED

(G) The consent to the administration of each medication by the beneficiary or, if the beneficiary lacks capacity, by the beneficiary's legal guardian or custodian.

(d)

(1) A CSSP must maintain a medication log in a uniformly organized manner detailing the administration of all medication to a beneficiary, including without limitation prescribed medication and over-the-counter medication.

(2) Each medication log must be available at each location in which a beneficiary receives home- and community-based services and must document the following for each administration of a medication:

(A) The name and dosage of medication administered;

(B) The symptom for which the medication was used to address;

(C) The method the medication was administered;

(D) The date and time the medication was administered;

(E) The name of the employee who administered the medication or assisted in the administration of the medication;

(F) Any adverse reaction or other side effect from the medication;

(G) Any transfer of medication from its original container into individual dosage containers by the beneficiary's legal guardian or custodian;

(H) Any error in administering the medication and the name of the supervisor to whom the error was reported; and

(I) The prescription and the name of the prescribing physician or other health care professional if the medication was not previously listed in the medication management plan.

(3) Medication errors must be:

(A) Immediately reported to a supervisor;

(B) Documented in the medication log; and

(C) Reported as required under all applicable laws and rules including without limitation the laws and rules governing controlled substances.

PROPOSED

(e) All medications stored for a beneficiary by a CSSP must be:

(1) Kept in the original medication container unless the beneficiary's legal guardian or custodian transfers the medication into individual dosage containers;

(2) Labeled with the beneficiary's name;

(3) Stored in an area, medication cart, or container that is always locked; and

(4) Returned to a beneficiary's legal guardian or custodian, or destroyed or otherwise disposed of in accordance with applicable laws and rules, if the medication is no longer to be administered to a beneficiary.

(f) A CSSP must store all medications requiring cold storage in a separate refrigerator that is used only for the purpose of storing medications.

605. Behavior Management Plans.

(a)

(1)

(A) A CSSP shall develop and implement a written behavior management plan for a beneficiary if a beneficiary's behavioral issues are disruptive, persistent, and may jeopardize the beneficiary's placement or increase the risk of harm to the beneficiary or others.

(B) Such behaviors may include without limitation destructive, aggressive, suicidal, homicidal, or sexual acting out behaviors.

(2) A behavior management plan:

(A) May be included in a beneficiary's ITP;

(B) Must involve the fewest and shortest interventions possible; and

(C) Cannot punish or use interventions that are physically or emotionally painful, frighten, or put the beneficiary at medical risk.

(b)

(1) All written behavior management plans must include at least the following:

(A) Each behavior to be decreased or increased;

PROPOSED

(B) Events or other stimuli that may trigger a beneficiary's behavior to be decreased or increased;

(C) What should be provided or avoided in a beneficiary's environment to incentivize or disincentivize behaviors to be decreased or increased;

(D) Specific methods employees should use to manage a beneficiary's behaviors and whether restraints are permitted as an intervention subject to Section 606;

(E) Interventions or other actions for employees to take if a triggering event occurs; and

(F) Interventions or other actions for employees to take if a behavior to be decreased or increased occurs.

(2) If a behavior management plan permits the use of restraints as an intervention, the behavior management plan must also include:

(A) The specific need for the use of a restraint that is particularized to the beneficiary and the restraint permitted;

(B) Other interventions and supports to be used prior to a restraint;

(C) The specific restraint permitted, how long the restraint may be used, and how often the restraint must be reviewed to determine if the restraint is still necessary or can be terminated;

(D) Documentation of less restrictive methods of behavior modification that were attempted but did not work; and

(E) The informed written consent of the beneficiary or the beneficiary's legal guardian or custodian.

(c)

(1)

(A) A CSSP must reevaluate behavior management plans at least quarterly.

(B) A CSSP must refer the beneficiary to an appropriately licensed professional for re-evaluation if the behavior management plan is not achieving the desired results.

PROPOSED

(2) A CSSP must regularly collect and review data regarding the use and effectiveness of all behavior management plans, including as to the use and effectiveness of restraints and other interventions.

(3) The collection and review of data regarding the use and effectiveness of behavior management plans must include at least:

(A) The date and time any intervention is used;

(B) The duration of each intervention;

(C) The employee or employees involved in each intervention; and

(D) The event or circumstances that triggered the need for the intervention.

606. Restraints and Other Restrictive Interventions.

(a)

(1) A CSSP cannot use a restraint or seclusion on a beneficiary unless:

(A) The restraint is required as an emergency safety intervention; and

(B) The use of the restraint is covered by the CSSP's accreditation.

(2) An emergency safety intervention is required:

(A) An immediate response with a restraint is required to address an unanticipated resident behavior;

(B) The resident behavior places the resident or others at serious threat of harm if no intervention occurs; and

(C) The resident is in a secure CSSP location secure unit.

(b) If a CSSP uses a restraint, the CSSP must:

(1) Comply with the use of the restraint as prescribed by the beneficiary's behavior management plan;

(2) Continuously monitor the beneficiary during the entire use of the restraint; and

(3) Maintain in-person visual and auditory observation of the beneficiary by an employee during the entire use of the restraint.

(c)

PROPOSED

(1) A CSSP must document each use of a restraint whether the use was permitted or not.

(2) The documentation must include at least the following:

(A) The behavior precipitating the use of the restraint;

(B) The length of time the restraint was used;

(C) The name of the individual that authorized the use of the restraint;

(D) The names of all individuals involved in the use of the restraint; and

(E) The outcome of the use of the restraint.

607. General Nutrition and Food Service Requirements.

(a)

(1) A CSSP must ensure that any meals, snacks, or other food services provided to beneficiaries by the CSSP conform to U.S. Department of Agriculture guidelines including without limitation portion size, ADH requirements, and other applicable laws and rules.

(2) All food brought in from outside sources must be:

(A) From food service providers approved by ADH and transported per ADH requirements;

(B) In individual, commercially pre-packaged containers; or

(C) Individual meals or snacks brought from home by a beneficiary or a beneficiary's family.

(3)

(A) A violation of U.S. Department of Agriculture guidelines, ADH requirements, or other applicable laws or rules related to nutrition and food service constitutes a violation of these standards.

(B) In the event of a conflict between these standards and the requirements of U.S. Department of Agriculture guidelines, ADH requirements, or other applicable laws or rules related to nutrition and food service, the stricter requirement shall apply.

PROPOSED

(C) In the event of an irreconcilable conflict between these standards and the requirements of U.S. Department of Agriculture guidelines, ADH requirements, or other applicable laws or rules related to nutrition and food service, these standards shall govern the extent not governed by federal laws or rules or state law.

(b)

(1) A CSSP must ensure that food provided to beneficiaries meets the specialized diet requirements of each beneficiary arising from medical conditions or other individualized needs including without limitation allergies, diabetes, and hypertension.

(2) A CSSP must ensure that all food prepared on-site is prepared, cooked, served, and stored in a manner that protects against contamination and spoilage.

(3) A CSSP must not use a perishable food item after its expiration date;

(4) A CSSP must keep all food service surfaces clean and in sanitary condition.

(5) A CSSP must serve all food on individual plates, bowls, or other dishes that can be sanitized or discarded.

(6) A CSSP must ensure that all food scraps are placed in garbage cans with airtight lids and bag liners that are emptied as necessary and no less than once every day.

(7) A CSSP must store all food separately from medications, medical items, or hazardous items.

(8)

(A) A CSSP must ensure that all refrigerators used for food storage are maintained at a temperature of 41 degrees Fahrenheit or below.

(B) A CSSP must ensure that all freezers used for food storage are maintained at a temperature of 0 degrees Fahrenheit or below.

608. Service Requirements.

(a)

(1) A CSSP must provide all services as prescribed in each beneficiary's ITP, including home- and community-based services.

(2)

PROPOSED

(A) A CSSP is not required to meet the requirements in paragraphs (b) and (c) below for beneficiaries who are unavailable for services, but only to the extent the beneficiary is actually unavailable for services.

(B) A beneficiary is unavailable for services if the beneficiary is:

(i) In an ineligible setting including without limitation a hospital, jail, or extended home visit; or

(ii) Unable to participate in services due to being diagnosed with COVID-19, flu, or other conditions as determined by the beneficiary's primary care or attending physician or the Arkansas Department of Health.

(b) For community reintegration, a CSSP must:

(1) Provide educational services to all beneficiaries either at the CSSP location or at a local school if that is appropriate and compliant with Arkansas Department of Education requirements;

(2) Provide at least twenty (20) hours of home- and community-based services for each beneficiary per week, with at least five (5) hours provided by community support staff on an individual basis and not in a group setting;

(3) Provide at least one (1) medical service encounter for each beneficiary per month;

(4) Provide at least three (3) professional service encounters for each beneficiary per week, including at least one (1) professional service encounters on an individual basis and not in a group setting; and

(5) Provide enrichment activities for each beneficiary based on each beneficiary's treatment objectives and needs.

(c) For therapeutic communities, a CSSP must:

(1) Provide at least twenty (20) hours of adult rehabilitation day treatment for each beneficiary per week, which may include time from medical and professional service encounters;

(2) Provide at least fifteen (15) hours of additional home- and community-based services for each beneficiary per week, which may include time from medical and professional service encounters and time from adult rehabilitation day treatment in excess of the twenty (20) hours required in subdivision (c)(1);

(3) Provide at least one (1) medical service encounter for each beneficiary per month;

PROPOSED

(4) Provide at least three (3) professional service encounters for each beneficiary per week, including at least one (1) professional service encounters on an individual basis and not in a group setting; and

(5) Provide enrichment activities for each beneficiary based on each beneficiary's treatment objectives and needs.

(d) For mobile crisis services, a CSSP must:

(1) Provide mobile crisis services twenty-four (24) hours a day, seven (7) days a week; and

(2) Provide all mobile crisis services with a licensed professional.

PROPOSED

Subchapter 7. Incident and Accident Reporting.

701. Incidents to be Reported.

(a) A CSSP must report all alleged, suspected, observed, or reported occurrences of any of the following events.

(1) Death of a beneficiary;

(2) Serious injury to a beneficiary;

(3) Adult or child maltreatment of a beneficiary;

(4) Any event where an employee threatens or strikes a beneficiary;

(5) Unauthorized use of a restrictive intervention on a beneficiary, including seclusion, a restraint, a chemical restraint, or a mechanical restraint;

(6) Any situation where the whereabouts of a beneficiary are unknown for more than one (1) hour;

(7) Any situation where services to the beneficiary are interrupted for more than one (1) hour;

(8) Events involving a risk of death, serious physical or psychological injury, or serious illness to a beneficiary;

(9) Medication errors made by an employee that cause or have the potential to cause death, serious injury, or serious illness to a beneficiary;

(10) Any act or admission that jeopardizes the health, safety, or quality of life of a beneficiary;

(11) Motor vehicle accidents involving a beneficiary;

(12) A positive case of a beneficiary or a staff member for any infectious disease that is the subject of a public health emergency declared by the Governor, ADH, the President of the United States, or the United States Department of Health and Human Services; and

(13) Any event that requires notification of the police, fire department, or coroner.

(b) Any CSSP may report any other occurrences impacting the health, safety, or quality of life of a beneficiary.

702. Reporting Requirements.

PROPOSED

(a) A CSSP must:

(1) Submit all reports of the following events within one (1) hour of the event:

(A) Death of a beneficiary;

(B) Serious injury to a beneficiary; and

(C) Any incident that a CSSP should reasonably know might be of interest to the public or the media.

(2) Submit reports of all other incidents within forty-eight (48) hours of the event.

(b) A CSSP must submit reports of all incidents to DPSQA as provided through DPSQA's website: https://humanservices.arkansas.gov/about-dhs/dpsqa.

(c) Reporting under these standards does not relieve a CSSP of complying with other applicable reporting or disclosure requirements under state or federal laws, rules, or regulations.

703. Notification to Custodians and Legal Guardians.

(a) A CSSP must notify the custodian or legal guardian of a beneficiary of any reportable incident involving a beneficiary, as well as any injury or accident involving a beneficiary even if the injury or accident is not otherwise required to be reported in this Section.

(b) A CSSP should maintain documentation evidencing notification required in subdivision (a).

PROPOSED

Subchapter 8. Enforcement.

801. Monitoring.

(a)

(1) DPSQA shall monitor a CSSP to ensure compliance with these standards.

(2)

(A) A CSSP must cooperate and comply with all monitoring, enforcement, and any other regulatory or law enforcement activities performed or requested by DPSQA or law enforcement.

(B) Cooperation required under these standards includes without limitation cooperation and compliance with respect to investigations surveys, site visits, reviews, and other regulatory actions taken by DPSQA or any third-party contracted by DHS to monitor, enforce, or take other regulatory action on behalf of DHS, DDS, DAABH, DMS, or DPSQA.

(b) Monitoring includes without limitation:

(1) On-site surveys and other visits including without limitation complaint surveys and initial site visits;

(2) On-site or remote file reviews;

(3) Requests for documentation and records required under these standards;

(4) Requests for information; and

(5) Investigations related to complaints received.

(c) DHS may contract with a third party to monitor, enforce, or take other regulatory action on behalf of DHS, DDS, DAABH, DMS, or DPSQA.

802. Written Notice of Enforcement Action.

(a) DPSQA shall provide written notice to the CSSP of all enforcement actions taken against a CSSP.

(b) DPSQA shall provide written notice to the CSSP by mailing the imposition of the enforcement action to the manager appointed by the CSSP pursuant to Section 301.

803. Remedies.

PROPOSED

(a)

(1) DPSQA shall not impose any remedies imposed by an enforcement action unless:

(A) The CSSP is given notice and an opportunity to be heard pursuant to Section 802 and Subchapter 10; or

(B) DPSQA determines that public health, safety, or welfare imperatively requires emergency action;

(2) If DPSQA imposes a remedy as an emergency action before the CSSP has notice and an opportunity to be heard pursuant to subdivision (a)(1), DPSQA shall:

(A) Provide immediate notice to the CSSP of the enforcement action; and

(B) Provide the CSSP with an opportunity to be heard pursuant to Subchapter 10.

(b) DPSQA may impose on a CSSP any of the following enforcement actions for the CSSP's failure to comply with these standards:

(1) Plan of correction;

(2) Directed in-service training plan;

(3) Moratorium on new admissions;

(4) Transfer of beneficiaries;

(5) Monetary penalties;

(6) Suspension of CSSP license;

(7) Revocation of CSSP license; and

(8) Any remedy authorized by law or rule including without limitation section 25-15-217 of the Arkansas Code.

(c) DPSQA shall determine the imposition and severity of these enforcement remedies on a case-by-case basis using the following factors:

(1) Frequency of non-compliance;

(2) Number of non-compliance issues;

(3) Impact of non-compliance on a beneficiary's health, safety, or well-being;

PROPOSED

(4) Responsiveness in correcting non-compliance;

(5) Repeated non-compliance in the same or similar areas;

(6) Non-compliance with previously or currently imposed enforcement remedies;

(7) Non-compliance involving intentional fraud or dishonesty; and

(8) Non-compliance involving violation of any law, rule, or other legal requirement.

(d)

(1) DPSQA shall report any noncompliance, action, or inaction by a CSSP to appropriate agencies for investigation and further action.

(2) DPSQA shall report non-compliance involving Medicaid billing requirements to the DMS, the Arkansas Attorney General's Medicaid Fraud Control Unit, and the Office of Medicaid Inspector General.

(e) These enforcement remedies are not mutually exclusive and DPSQA may apply multiple remedies simultaneously to a failure to comply with these standards.

(f) The failure to comply with an enforcement remedy imposed by DPSQA constitutes a separate violation of these standards.

804. Moratorium.

(a) DPSQA may prohibit a CSSP from accepting new beneficiaries.

(b) A CSSP prohibited from accepting new admissions may continue to provide services to existing beneficiaries.

805. Transfer of Beneficiaries.

(a) DPSQA may require a CSSP to transfer a beneficiary to another CSSP if DPSQA finds that the CSSP cannot adequately provide services to the beneficiary.

(b) A CSSP must continue providing services until the beneficiary is transferred to his or her new service provider of choice.

(c) A transfer of a beneficiary may be permanent or for a specific term depending on the circumstances.

806. Monetary Penalties.

PROPOSED

(a) DPSQA may impose on a CSSP a civil monetary penalty not to exceed five hundred dollars ($500) for each violation of these standards.

(b)

(1) DPSQA may file suit to collect a civil monetary penalty assessed pursuant to these standards if the CSSP does not pay the civil monetary penalty within sixty (60) calendar days from the date DPSQA provides written notice to the CSSP of the imposition of the civil monetary penalty.

(2) DPSQA may file suit in Pulaski County Circuit Court or the circuit court of any county in which the CSSP is located.

807. Suspension and Revocation of CSSP License.

(a)

(1) DPSQA may temporarily suspend a CSSP license if the CSSP fails to comply with these standards.

(2) If a CSSP's license is suspended, the CSSP must immediately stop providing CSSP services until DPSQA reinstates its license.

(b)

(1) DPSQA may permanently revoke a CSSP license if the CSSP fails to comply with these standards.

(2) If a CSSP's license is revoked, the CSSP must immediately stop providing services and comply with the permanent closure requirements in Section 901(a).

PROPOSED

Subchapter 9. Closure.

901. Closure

(a)

(1) A CSSP license ends if a CSSP permanently closes, whether voluntarily or involuntarily, and is effective the date of the permanent closure as determined by DPSQA.

(2) A CSSP that intends to permanently close, or does permanently close without warning, whether voluntarily or involuntarily, must immediately:

(A) Provide the legal guardian or custodian of each beneficiary with written notice of the closure;

(B) Provide the legal guardian or custodian of each beneficiary with written referrals to at least three (3) other appropriate service providers;

(C) Assist each beneficiary and his or her legal guardian or custodian in transferring services and copies of beneficiary records to any new service providers;

(D) Assist each beneficiary and his or her legal guardian or custodian in transitioning to new service providers; and

(E) Arrange for the storage of beneficiary records to satisfy the requirements in Section 305.

(b)

(1) A CSSP that intends to voluntarily close temporarily due to natural disaster, pandemic, completion of needed repairs or renovations, or for similar circumstances may request to temporarily close its facility while maintaining its CSSP license for up to one (1) year from the date of the request.

(2) A CSSP must comply with subdivision (a)(2)'s requirements for notice, referrals, assistance, and storage of beneficiary records if DPSQA grants a CSSP request for a temporary closure.

(3)

(A) DPSQA may grant a temporary closure if the CSSP demonstrates that it is reasonably likely it will be able to reopen after the temporary closure.

PROPOSED

(B) DPSQA shall end a CSSP temporary closure and direct that the CSSP permanently close if the CSSP fails to demonstrate that it is reasonably likely that it will be able to reopen after the temporary closure.

(4)

(A) DPSQA may end a CSSP's temporary closure if the CSSP demonstrates that it is in full compliance with these standards.

(B) DPSQA shall end a CSSP's temporary closure and direct that the CSSP permanently close if the CSSP fails to become fully compliant with these standards within one (1) year from the date of the request.

PROPOSED

Subdivision 10. Appeals.

1001. Reconsideration of Adverse Regulatory Actions.

(a)

(1) A CSSP may ask for reconsideration of any adverse regulatory action taken by DPSQA by submitting a written request for reconsideration to: Division of Provider Services and Quality Assurance, Office of the Director: Requests for Reconsideration of Adverse Regulatory Actions, P.O. Box 1437, Slot 427, Little Rock, Arkansas 72203.

(2) The written request for reconsideration of an adverse regulatory action taken by DPSQA must be submitted by the CSSP and received by DPSQA within thirty (30) calendar days of the date the CSSP received written notice of the adverse regulatory action.

(3) The written request for reconsideration of an adverse regulatory action taken by DPSQA must include without limitation the specific adverse regulatory action taken, the date of the adverse regulatory action, the name of the CSSP against whom the adverse regulatory action was taken, the address and contact information for the CSSP against whom the adverse regulatory action was taken, and the legal and factual basis for reconsideration of the adverse regulatory action.

(b)

(1) DPSQA shall review each timely received written request for reconsideration and determine whether to affirm or reverse the adverse regulatory action taken based on these standards.

(2) DPSQA may request, at its discretion, additional information as needed to review the adverse regulatory action and determine whether the adverse regulatory action taken should be affirmed or reversed based on these standards.

(c)

(1) DPSQA shall issue in writing its determination on reconsideration within thirty (30) days of receiving the written request for reconsideration or within thirty (30) days of receiving all information requested by DPSQA under subdivision (b)(2), whichever is later.

(2) DPSQA shall issues its determination to the CSSP using the address and contact information provided in the request for reconsideration.

PROPOSED

(d) DPSQA may also decide to reconsider any adverse regulatory action on its own accord any time it determines, in its discretion, that an adverse regulatory action is not consistent with these standards.

1002. Appeal of Regulatory Actions.

(a)

(1) A CSSP may administratively appeal any adverse regulatory action to the DHS Office of Appeals and Hearings (OAH) except for provider appeals related to the payment for Medicaid claims and services governed by the Medicaid Fairness Act, Ark. Code Ann §§ 20-77-1701 to -1718, which shall be governed by that Act.

(2) OAH shall conduct administrative appeals of adverse regulatory actions pursuant to DHS Policy 1098 and other applicable laws and rules.

(b) A CSSP may appeal any adverse regulatory action or other agency action to circuit court as allowed by the Administrative Procedures Act, Ark. Code Ann. §§ 25-15-201 to -220.

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PROPOSED

Division of Medical Services
P.O. Box 1437, Slot S295
Little Rock, AR 72203-1437
P: 501.320.6428
F: 501.682.2480
HUMANSERVICES.ARKANSAS.GOV

MEMORANDUM

TO: Interested Persons and Providers

FROM: Janet Mann, Director, Division of Medical Services

DATE: September 25, 2020

SUBJ: Community Support System Provider

As a part of the Arkansas Administrative Procedure Act process, attached for your review and comment are proposed rule revisions.

Public comments must be submitted in writing at the above address or at the following email address: ORP@dhs.arkansas.gov. Please note that public comments submitted in response to this notice are considered public documents. A public comment, including the commenter's name and any personal information contained within the public comment, will be made publicly available and may be seen by various people.

A public hearing by remote access only will be held on October 16, 2020, at 10:00 a.m. Individuals can access this public hearing by calling 1-888-240-3210 and entering the conference code, 3549936.

If you have any comments, please submit those comments in writing, no later than October 27, 2020.