

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH**  
Statutory Authority: 16 Delaware Code, Chapter 51 (16 Del.C. Ch. 51)

**FINAL**

**ORDER**

**6002 Credentialing Mental Health Screeners and Payment for Voluntary Admissions**

**NATURE OF THE PROCEEDINGS**

Delaware Health and Social Services ("Department") / Division of Substance Abuse and Mental Health (DSAMH) initiated proceedings to promulgate new regulations regarding the process by which individuals can be detained for behavioral health assessment and treatment. The Department's proceedings to promulgate new regulations were initiated pursuant to 29 **Delaware Code**, Section 10114, with authority prescribed by 29 **Delaware Code**, Section 7971. This regulation was promulgated March 1, 2013.

The Department found it necessary to amend language in the regulation concerning children and published its notice of proposed regulatory change pursuant to 29 **Delaware Code** Section 10115 in the May 2013 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2013, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSAL**

The regulation establishes the Division of Substance Abuse and Mental Health's regulations for the eligibility criteria and means by which individuals qualify to attain credentialing as a mental health screener. The current proposed amendment addresses specifically how the screening process applies to children.

**Statutory Authority**

16 **Del.C.** Ch. 51, Admission, Maintenance and Discharge of Patients with Mental Conditions

**Background**

House Bill 311 significantly updates the laws under which a person can be held involuntarily for up to 24 hours for a mental health evaluation. In place of the current system where a person is transported in handcuffs by police to a hospital emergency department, the bill allows a psychiatrist or credentialed mental health screener to evaluate a person anywhere and then transport that person to the most appropriate location for evaluation or treatment in the most appropriate and least restrictive manner. The changes in this bill will be phased in over a year to ensure that the greatly expanded, community-based services are fully operational before the complete change in procedure takes place. Credentialed Mental Health Screeners are to be in use by July, 2013.

In addition to providing people with a wider array of appropriate treatment options, these changes will free law enforcement from unnecessary transportation duties and long waits in hospital waiting rooms. This bill expands the number and kind of professional staff who are credentialed to involuntarily detain someone for a mental health evaluation, increases the immunity afforded to doctors, and expands immunity to other professionals involved in the process. In addition to moving Delaware towards best practices in this field and protecting the civil rights of Delawareans, these changes will enable the State to attain compliance with the terms set forth in Settlement Agreement United States v. State of Delaware, C.A. No. 11-591-LPS. This regulation delineates what who may be eligible, what information must be contained in the application to become credentialed as a Mental Health Screener, establishes the authority for the format for the training and delineates how the credentialed status must be maintained and how it may be suspended or revoked.

Under the current law, youth are evaluated under the same law as adults, thus the new screener requirement will apply to youth as well. Concerns were raised concerning the training curriculum for screeners which did not specifically address children. Therefore, DSAMH and the Division of Services for Children, Youth and their Families' Division of Prevention and Behavioral Health Services agreed to authorize psychiatrists and credentialed physicians (but not non-physicians holding the new credential) to authorize commitment-related detention of children. This preserves the status quo for juveniles until any new process/requirements are thought through and enacted.

**Summary of Proposal**

This regulation sets forth methods used to determine eligibility for training and credentialing as a mental health screener. Effective July 1, 2013, new policy is added to the Division of Substance Abuse and Mental Health at DSAMH

6002 to provide mental health screener credentialing requirements. Upon review and request by the Department of Services for Children, Youth and Their Families, the regulation is being amended to reserve the decision to detain persons under 18 years of age to physicians only.

### **Fiscal Impact Statement**

The proposed regulation imposes no additional costs on DSAMH. Credentialing of Mental Health Screeners is required as a piece of Delaware's legislative and other efforts to improve the State's behavioral health care system in keeping with the U.S. Department of Justice Olmstead Settlement Agreement, entered into in July, 2011. The proposed regulation completes the promulgation of changes in the laws governing how the State acts to preserve the civil and human rights of individuals who may be recommended for involuntary detention under 16 Del.C. Chapter 51 as amended by HB 311 in July, 2012.

### **SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES**

DSAMH acknowledges receipt of the letters of comment offered by both MeadowWood Hospital and Rockford Center. However, the comments from both entities are outside the scope of the proposed change.

The Division gratefully acknowledges the endorsement offered by the State Council for Persons with Disabilities. DSAMH has considered also this agency's comments as presented in the letter and responds as follows:

**Comment 1.** First, in §3.1.3, insert "Delaware-licensed" between "A" and "psychiatrist.]"

**Agency Response:** Only a licensed physician may practice as a psychiatrist in Delaware, so this change is not needed.

**Comment 2.** In §3.1.3, 3.2.4, 3.3.4, 3.4.3 and 3.5.2, SCPD recommends revised language.

A. The statutory term is "detention", not detainment

B. Literally, the regulation states that the screener "detains" the individual. This is not accurate. In general, the screener authorizes detention...

C. The relevant statutes do not authorize a screener to "abrogate" a detention or detainment...

Therefore, SCPD recommends that the above references be changed to "may authorize detention for a psychiatric evaluation."

**Agency Response: Amended as recommended.**

### **FINDINGS OF FACT**

The Department finds that the proposed changes as set forth in the May 2013 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the amended new regulation to update the Division of Substance Abuse and Mental Health (DSAMH) to add policy regarding the process to credential mental health screeners is adopted and shall be final effective July 10, 2013.

Rita M. Landgraf, Secretary, DHSS

### **6002 Credentialing Mental Health Screeners and Payment for Voluntary Admissions**

#### **1.0 Mental Health Screener Credentialing**

Title 16, Chapter 51 of the **Delaware Code** states that only psychiatrists and professionals credentialed by the Delaware Department of Health & Social Services (DHSS) as a Mental Health Screener (MH Screener) have the authority to detain or abrogate a detainment of a person involuntarily for a psychiatric evaluation. No person shall hold themselves out to the public as credentialed mental health screener unless the persons are credentialed in accordance with this chapter. The Division of Substance Abuse and Mental Health (DSAMH) is the DHSS Division responsible for implementing and enforcing this law.

#### **2.0 Definitions**

As used in this subchapter:

**"Continuing Education Units (CEUs)"** means a measure used in continuing education programs, particularly for those required in a licensed profession, in order for the professional to maintain the license. In the case of unlicensed professionals who do not qualify for CEUs, the equivalent for the purpose contact hours or certificates of attendance issued in lieu of CEUs for continuing behavioral health training and education.

**“Credentialed Mental Health Screener”** means an individual who has applied for and been approved to be credentialed as a mental health screener under Chapter 51 by the DSAMH.

**“Crisis experience in a mental health setting”** is defined as direct experience providing acute crisis services to people with mental health disorders in settings that include, but are not limited to, psychiatric assessment centers, hospital emergency rooms, crisis walk in settings, admission departments of psychiatric or general service hospitals, mobile crisis departments, drop in centers and certain settings found in the Department of Corrections.

**“Licensed Mental Health Professionals”** means individuals who are licensed by the State of Delaware and who are otherwise eligible to be credentialed as a mental health screener under Chapter 51 include licensed physicians (MD/DO) whose practice specialty is other than psychiatry; licensed registered nurses with a bachelor’s degree in nursing (BSN); licensed advanced practice registered nurses (APN); licensed physician assistants (PA-C); licensed clinical psychologists (PhD/Psy.D); licensed clinical social workers (LCSW); licensed mental health counselors (LMHC); and licensed marriage and family therapists (LMFT).

**“Supervision of unlicensed mental health professionals by a psychiatrist”** means an unlicensed mental health professionals who need to work under a psychiatrist licensed to practice medicine will perform this work under their organization’s practice standards and guidelines. This includes requirements that the credentialed mental health screener discuss the individual in care’s issues on the phone or through telepsychiatry with the supervising psychiatrist at the time of the detainment decision and assuring that this psychiatrist agrees and countersigns the decision made. An electronically transmitted copy or original detainment form with the supervising psychiatrist’s signature will need to be placed in the client’s medical record at the facility or site where the detainment occurred within 24 hours.

**“Unlicensed mental health professional”** means an individual who works under the direct supervision of a psychiatrist but does not hold a professional license issued by the State of Delaware.

### 3.0 Qualifications of Applicants for Credentialed Mental Health Screener

#### 3.1 Psychiatrists

3.1.1 The psychiatrist must supply evidence of current licensure to practice medicine in Delaware.

3.1.2 No mental health screener credentialing is required.

3.1.3 A psychiatrist may ~~[detain or abrogate a detainment]~~ authorize detention] for a psychiatric evaluation of any person, over or under age 18.

#### 3.2 Board Certified Emergency Physicians

3.2.1 Each physician applicant must submit qualifications; and

3.2.2 Each physician must supply evidence of current licensure to practice medicine in Delaware and current Board Certification by the American Board of Emergency Medicine.

3.2.3 Each physician will receive and be required to review an information packet on statewide resources for clients in crisis.

3.2.4 A credentialed Board Certified Emergency Physician may ~~[detain or abrogate a detainment]~~ authorize detention] for a psychiatric evaluation of any person, over or under age 18.

#### 3.3 Physicians

3.3.1 Each physician applicant must submit qualifications; and

3.3.2 Each physician must supply evidence of current licensure to practice medicine in Delaware.

3.3.3 Each physician will be required to attend four hours of training to be credentialed as a MH Screener.

3.3.4 A credentialed physician may ~~[detain or abrogate a detainment]~~ authorize detention] for a psychiatric evaluation of any person, over or under age 18.

#### 3.4 Licensed Non-Physician Mental Health Professionals

3.4.1 Each applicant must submit qualifications and supply evidence that:

3.4.1.1 If employed by DSAMH or a self-employed professional not affiliated with any Delaware health care facility, the applicant has five (5) years’ experience in mental health clinical and/or crisis settings as an employed or as a contracted professional.

3.4.1.2 If employed or contracted by any Delaware health care facility, the applicant has at least two (2) years’ experience in mental health clinical and/or crisis settings as an employed or as a contracted professional, and that non-state health care facilities will take responsibility for the years of experience required for their staff to be credentialed.

3.4.2 Licensed Non-Physician Mental Health Professionals must meet the following qualifications:

- 3.4.2.1 Registered Nurse. Each applicant shall document current licensure by the State of Delaware as a Registered Nurse with a BSN degree and in good standing, as set forth in 24 **Del.C.** Ch. 19.
- 3.4.2.2 Advanced Practice Nurse. Each applicant shall document current licensure by the State of Delaware as an Advanced Practice Nurse in good standing, as set forth in Title 24 **Del.C.** Ch. 19, and employment under a formal protocol with a Delaware licensed physician
- 3.4.2.3 Licensed Psychologist. Each applicant shall document current licensure by in the State of Delaware as a Licensed Clinical Psychologist in good standing, as set forth in 24 **Del.C.** Ch. 35.
- 3.4.2.4 Licensed Clinical Social Worker
  - 3.4.2.4.1 Each applicant shall document current licensure by in the State of Delaware as a Licensed Clinical Social Worker in good standing, as set forth in 24 **Del.C.** Ch. 39.
- 3.4.2.5 Licensed Professional Counselor of Mental Health
  - 3.4.2.5.1 Each applicant shall document current licensure by in the State of Delaware as a Licensed Professional Counselor of Mental Health in good standing, as set forth in 24 **Del.C.** Ch. 30
- 3.4.2.6 Licensed Marriage and Family Therapist
  - 3.4.2.6.1 Each applicant shall document current licensure by in the State of Delaware as a Licensed Marriage and Family Therapist in good standing, as set forth in 24 **Del.C.** Ch. 30.
- 3.4.2.7 Licensed Physician Assistant.
  - 3.4.2.7.1 Each applicant shall document current licensure by in the State of Delaware as a Physician Assistant in good standing, as set forth in 24 **Del.C.** Ch. 17, and employment under the delegated authority of a licensed physician.

3.4.3 A credentialed Licensed Non-Physician Mental Health Professional may ~~[detain or abrogate a detainment authorize detention]~~ for a psychiatric evaluation of a person age 18 or older.

### 3.5 Unlicensed Mental Health Professionals under Direct Supervision of a Psychiatrist

- 3.5.1 Each unlicensed mental health professional who is applying to become credentialed as a mental health screener must submit qualifications, and supply evidence that:
  - 3.5.1.1 Such person has had two years of clinical and/or crisis experience if working as a State employee or contractor; or if working with a Delaware Health Care Facility as an employee or contracted staff member;
  - 3.5.1.2 Such person has at least a bachelors or masters degree in a mental health related field if working as a State employee or contractor; or if working with a Delaware Health Care Facility as an employee or contracted staff member; and
  - 3.5.1.3 Such person has committed to completing forty (40) hours of crisis services in an employed position under direct supervision of a psychiatrist or credentialed mental health screener following completion of the mental health screener training and satisfactory score on the mental health screener credentialing exam.
- 3.5.2 A credentialed Unlicensed Mental Health Professional may ~~[detain or abrogate a detainment authorize detention]~~ for a psychiatric evaluation of a person age 18 or older.

## 4.0 Applications Process

- 4.1 Application for Credentialing
  - 4.1.1 An individual who wishes to be credentialed as a MH Screener under Chapter 51 shall complete an Application for Credentialing as a Mental Health Screener to DSAMH.
    - 4.1.1.1 The application shall include a resume, school transcripts, current work history including experience in working with people in mental health crises, current employment, and all contact information including Delaware license numbers and titles, and such other credentials or proof of certification as may be necessary to meet requirements set forth in section 3 above.
- 4.2 Application for Re-credentialing
  - 4.2.1 All Delaware credentialed mental health screeners except as noted in 4.2.1.2 below will be required to re-apply every two (2) years, 60 days prior to the second anniversary date of the issued credential, for renewal of the credential to DSAMH
    - 4.2.1.1 The application for renewal shall require the submission of applicable CEU's, as well as such other credentials or proof of continuing licensure, credentials or certification as may be necessary to meet the requirements set forth in section 3 above to be re-credentialed.

4.2.1.2 The only professionals not required to undergo this re-credentialing process are licensed physicians whose specialty is psychiatry and physicians who maintain Board Certification Emergency Physicians.

4.2.1.2.1 DSAMH will provide any changes in state mental health or associated resources to this group in a timely manner and when these services become available or are changed in any way.

## **5.0 Training, Credentialing and Re-credentialing Requirements for Licensed and Unlicensed Mental Health Professionals**

### **5.1 Training**

The following standards will apply to the credentialing and re-credentialing of Mental Health Screeners and sets forth the minimum qualifications and training requirements.

5.1.1 For licensed physicians other than psychiatrists training guidelines for applicants will include content that may change over time and is up to DSAMH to direct, including acceptable CEUs generally related to psychiatric or crisis work.

5.1.2 For licensed applicants training guidelines for applicants will include content that may change over time and is up to DSAMH to direct, including acceptable CEUs generally related to psychiatric or crisis work.

5.1.3 For unlicensed applicants training guidelines for applicants will include content that may change over time and is up to DSAMH to direct, including acceptable CEUs generally related to psychiatric or crisis work.

### **5.2 Credentialing**

#### **5.2.1 Board Certified Emergency Physicians.**

5.2.1.1 Compliance with qualifications specified in §3 above;

5.2.1.2 Compliance with training guidelines as specified in §5.1 above.

#### **5.2.2 Licensed physicians other than psychiatrists and Board Certified Emergency Physicians:**

5.2.2.1 Compliance with qualifications specified above;

5.2.2.2 Compliance with training guidelines as specified in §5.1 above, including completion of 4 hours of training by the DHSS Division of Substance Abuse and Mental Health; and

5.2.2.3 Satisfactory score on the credentialing examination.

#### **5.2.3 Licensed Mental Health Professionals**

5.2.3.1 Compliance with qualifications specified in §3 above;

5.2.3.2 Compliance with training guidelines as specified in §5.1 above, including completion of 40 hours of training by DSAMH; and

5.2.3.3 Satisfactory score on the credentialing examination.

#### **5.2.4 Unlicensed Mental Health Professionals**

5.2.4.1 Compliance with qualifications specified above;

5.2.4.2 Compliance with training guidelines as specified in §5.1 above, including completion of 40 hours of mental health screener training by DSAMH;

5.2.4.3 Satisfactory score on the credentialing examination

### **5.3 Re-Credentialing**

#### **5.3.1 Licensed Physicians other than psychiatrists and Board Certified Emergency Physicians:**

5.3.1.1 Compliance with qualifications specified in §3 above; and

5.3.1.2 Compliance with training guidelines as specified in §5.1 above, including completion of 4 hours of training by DSAMH every two years.

#### **5.3.2 Licensed Mental Health Professionals**

5.3.2.1 Compliance with qualifications specified above; and

5.3.2.2 Compliance with training guidelines as specified in §5.1 above, including completion of 4 hours of training by DSAMH every two years

5.3.2.3 DSAMH will accept CEU's that are generally related to psychiatric or crisis work.

#### **5.3.3 Unlicensed Mental Health Professionals**

5.3.3.1 Compliance with qualifications specified above; and

5.3.3.2 Compliance with training guidelines as specified in §5.1 above, including completion of 8 hours of training by DSAMH every two years

5.3.3.3 DSAMH will accept CEU's that are generally related to psychiatric or crisis work.

## **6.0 Credentialed Mental Health Screener Performance**

### **6.1 Conflict of Interest Statement:**

The intent of the law is to ensure that no person is detained for any reason other than experiencing symptoms associated with a mental condition that may result in danger to self or others, and that any conflicts of interest as set forth in 16 Del.C. §5122 are disclosed on the DSAMH Crisis Intervention Assessment Tool and 24-hour Emergency Admission form filed with DSAMH within 24 hours of signature of the detention order. DSAMH will collect and monitor all assessments, detentions and non-detentions performed by credentialed mental health screeners, whether a conflict of interest is disclosed or not, for purposes of ensuring that the intent of this law is met and that admissions are appropriate.

### **6.2 Record Keeping, Forms and Documentation.** The following standards will apply to the Forms and Documentation required to monitor and report on the performance of credentialed mental health screeners as it pertains to compliance with conflict of interest disclosure in actions to detain, or undo a detainment, of an individual under this statute.

6.2.1 Credentialed mental health screeners will be required to complete a DSAMH Crisis Intervention Assessment Tool and 24-Hour Emergency Admission Form for the purpose of ensuring a standardized approach to assessing the needs of clients in crisis and documenting the decision premised upon that assessment. These forms will become part of the client's records and sent to DSAMH as soon as possible and within 24 hours by the credentialed MH Screener that signs the detainment order.

### **6.3 Data Review and Reporting.** Detainment Orders, Assessment Tools and Emergency Admissions forms will be reviewed and the data collected will be recorded in a database. This database will include administrative information, such as the client MCI number, the date of contact, where the contact occurred, what staff member was lead in this response by name, the nature of the crisis, what was done including alternatives to inpatient care, who signed the detainment order, where the individual went once the detainment order was signed, and who transported the client; and clinical information, if a detainment order was not signed, documentation as to where the client went, to whom referred for care plans for follow-up, and transportation.

6.3.1 Reports from the DSAMH database will be publicly generated monthly showing aggregated data on detainments in Delaware.

6.3.2 Detainment data will be reviewed to monitor for anomalies in detainment rates to assure mental health screener performance improvement and compliance.

## **7.0 Suspension or Revocation of Mental Health Credential**

7.1 The following outlines circumstances under which a credential may be suspended or revoked. DSAMH will monitor individuals and general facilities performing credentialed mental health screenings and detaining individuals for 24 hours under this regulation as specified in Section 6.0. Nothing in Section 6 relieves credentialed mental health screeners of the requirement to keep their own records on their work to detain or not detain individuals that they assess. Copies of the screening form are sufficient documentation if the individual mental health screener or organization that supports these screeners keeps this information protected and confidential under federal law. Compliance with federal laws on this documentation is the responsibility of the individual who has been credentialed as a Mental Health Screener.

7.1.1 Failure of any credentialed MH Screeners to be aware of, and operate in compliance with, the federal and state laws pertaining to protection of health records. Failure to comply with this requirement will result in immediate suspension of the Mental Health Screener credential.

7.1.2 Suspension or revocation of a professional license will result in the immediate revocation of the MH Screener credential.

7.1.3 Loss of psychiatric supervision. For unlicensed mental health professionals who cease to work under the supervision of a psychiatrist licensed to practice medicine, the Mental Health Screener credential is immediately revoked.

7.2 Compliance with notification of this revocation is the responsibility of the individual who has been credentialed as a Mental Health Screener.

7.3 Reinstatement of [the Mental Health Screener credential of] an individual for whom a credential has been suspended or revoked will be at the discretion of DSAMH, in light of circumstances surrounding the original suspension or revocation.

## **8.0 Payment for Voluntary and Involuntary Admissions.**

Payment to hospitals for voluntary and involuntary admissions of clients in crisis will be made pending approval by a psychiatrist designated by the Secretary of Health and Social Services. Approval will depend on the outcome of an independent review of forms and documentation as specified in Section 6.0. The review's

specific purpose will be to confirm that: the admission represents the most appropriate and least restrictive treatment for the client in crisis; that the duration of stay for the admitted client is reviewed and deemed appropriate, and that the State is the payer of last resort.

**9.0 Appeal Process.**

Any individual who has been denied credentialing as a mental health screener or who has had a screening credential suspended or revoked can appeal this decision by writing to the DSAMH Director. Such an appeal, based on knowledge and facts of this event, must be made within twenty (20) days of the denial. A response by the DSAMH Director will be forthcoming within thirty (30) days.

**16 DE Reg. 992 (03/01/13)**

**17 DE Reg. 72 (07/01/13)(Final)**