


**MINA' TRENTAI UNU NA LIHESLATURAN GUÅHAN**  
**2011 (FIRST) Regular Session**

**Bill No.** 465 -31 (COR)

Introduced by:

**D.G. RODRIGUEZ, JR.** 

**AN ACT TO ADOPT THE WAITLIST POLICY AND PROCEDURES OF THE DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE, TO BE CODIFIED UNDER A NEW DIVISION 6 - PUBLIC HEALTH AND SUBSTANCE ABUSE, CHAPTER 1, TITLE 26, GUAM ADMINISTRATIVE RULES AND REGULATIONS.**

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1           **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2           **Section 1. Legislative Findings and Intent:** *I Liheslaturan Guåhan* finds  
3 that clearly defined procedures are required to provide for the movement of  
4 individuals on the Department of Mental Health and Substance Abuse wait list,  
5 desiring residential placement and/or community-based services, along with a  
6 process to govern grievances concerning the determinations made. Further, the  
7 procedure recognizes the subject individuals encompass two (2) separate groups:  
8 those that are currently on the receiving end of services, but await transition to a  
9 more appropriate level of care and other that anticipate the need for services in the  
10 near future.

11           It is the intent of *I Liheslaturan Guåhan* to provide the Department of  
12 Mental Health and Substance Abuse with the regulatory tools and procedures  
13 legally required to accomplish their mandate to provide residential and  
14 community-based services in an appropriate manner.

1           **Section 2. Adoption of Rules.** Notwithstanding any other provision of law,  
2 rule, regulation and Executive Order, the Department of Mental Health and  
3 Substance Abuse “Waitlist Policy and Procedure”, and attached hereto as Exhibit  
4 “A”, are hereby adopted by *I Mina’ Trentai Unu Na Liheslaturan Guåhan*, and  
5 shall hereby be codified under Chapter 1 of a NEW Division 6 – Mental Health  
6 And Substance Abuse, Title 26, Guam Administrative Rules and Regulations.

7           **Section 3. Amendment of Rules.** The Department of Mental Health &  
8 Substance Abuse, *shall*, at a minimum of every five years, and pursuant to Article  
9 3- Rule Making Procedures, of Chapter 9, Title 5, Guam Code Annotated, review  
10 and amend, as necessary, the policy and procedure adopted pursuant to Section 2  
11 of this Act.

12           **Section 4. Severability.** *If* any provision of this Act or its application to  
13 any person or circumstance is found to be invalid or contrary to law, such  
14 invalidity shall *not* affect other provisions or applications of this Act which can be  
15 given effect without the invalid provisions or application, and to this end the  
16 provisions of this Act are severable.

17           **Section 5. Effective Date.** This Act shall become immediately effective  
18 upon enactment.

# Exhibit "A"

## DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE

### POLICY AND PROCEDURE MANUAL

Clinical Division — Residential Support Services

### SUBJECT: Wait List

**REFERENCE:** TJC PC.4.30; PC.4.40; PC.4.50;  
PC.4.60; PC.4.70; PC.4.90

**Number: 30.07.101**

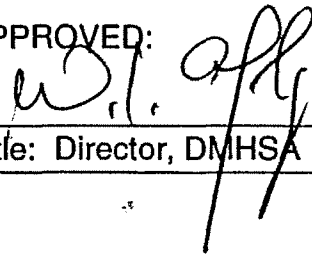
Effective Date: 03/07/2012

SUPERSEDES

Referral List: 50.01.103; 11/13/2009

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APPROVED:



Title: Director, DMHSA

### PURPOSE:

To provide for the movement of individuals on a wait list, who covet residential placement and/or community based services, along with a process to govern grievances concerning the determination made. The procedure recognizes the subject individuals encompass two (2) separate groups: those that are currently on the receiving end of services, but await transition to a more appropriate level of care and others that anticipate the need for services in the near future.

### DEFINITIONS:

The terms in this policy and procedure shall have the following respective meanings, unless the context clearly indicates otherwise.

- **Community Services:** The array of community-based day and residential services that utilize a written plan to address behavior(s) that require modification.
- **Day Program:** An organized behavioral health program, consisting of treatment and rehabilitative services (i.e. Day Treatment or Partial Hospitalization) provided by the Department, which addresses an individual's need for daytime activities.
- **Department:** Refers to the Department of Mental Health and Substance Abuse (DMHSA).
- **Guardian:** A person appointed by the Court, who has a duty to care for the personal and/or property interests of a minor or incapacitated adult, in order to ensure that the individual's health, safety and welfare needs are adequately provided.
- **Global Assessment Functioning (GAF):** A numerical scale (0 through 100) used by DMHSA clinicians to subjectively rate the social, occupational and psychological functioning of an individual (i.e. how well can one adapt, in terms of meeting various problems encountered in daily life).
- **Medical Needs:** A documented chronic or acute medical condition of an individual, which requires regular care.

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- **Multi-Disciplinary Master Treatment Plan (MMTP):** An individualized written plan of intervention and action that is developed by the interdisciplinary team. It specifically sets forth the goals and objectives being pursued by the individual and the steps being undertaken to realize achievement. It may identify a continuum of skill development, which outlines progressive steps and the anticipated outcome. The MMTP is a single plan that encompasses all relevant components, such as an education plan; habilitation; rehabilitation; physical support and health care. The complexity of the MMTP will vary according to the needs, capabilities and desires of the person. Any individual for whom it has been determined is in need of an active treatment plan by the Multi-Disciplinary Treatment Team, shall necessitate that all needs are identified. The MMTP shall delineate what type of service is to be rendered and in what amount, as well as identify who will track the progression. The MMTP is a dynamic instrument, given the fact that it may require modification to track the envisioned forward movement, in terms of the respective individual meeting the objectives contained therein.
- **Multi-Disciplinary Treatment Team (MDTT) consists of:** the individual receiving the services' family members (should the recipient desire the presence of same), the legal guardian, where applicable, those persons who work directly with the person served and a properly constituted group of clinical staff responsible for the provision of care, treatment and services (i.e. psychiatrist, psychologist, nurse, social worker and other appropriate members).
- **Placement Review Team (PRT):** A group of representatives from the Department who monitor the movement of consumers on the wait list.
- **Referral List:** A roster of eligible consumers waiting for residential and/or support services.
- **Residential Placement:** The least restrictive placement that meets a person's care needs.
- **Support Services:** Those services, other than residential placement and the attendant care provided by the Department, which will assist an individual to remain in his or her current living situation.

**POLICY:**

I. Adult Inpatient Services

A) Initial Clinical Services — Eligibility Determination

1. Upon presentation to the Department, the individual shall be on the receiving end of an initial assessment. If determined by a qualified mental health professional that the person is in need of inpatient hospitalization (i.e. the individual has a mental illness, disease or defect and as a result

hereof is a danger to self, danger to others or gravely disabled) he or she shall be immediately admitted.

2. Upon presentation and admittance, a case staffing will be convened to develop an individualized treatment plan within 72 hours. Prior to discharge, the individual will also be assessed for residential and/or support services by the MDTT. If not admitted, but at risk without the provision of treatment, appropriate support services shall be instituted by the Department.

3. The individual, along with input from family and where applicable the legal guardian, shall articulate his or her preference for residential placement and/or support services.

4. Whenever possible, the MDTT shall strive to garner a consensus amongst the individual, family and where applicable, the legal guardian. If an impasse arises and a consensus cannot be reached, the MDTT shall note in the clinical record that there exists a disagreement.

5. When a consensus has not been attained and the individual is capable of expressing a clear and reasonable preference, the subject desire shall be the preference recorded by the MDTT.

6. If the individual is unable to articulate a clear preference, the wishes of his or her family and where applicable the legal guardian, shall be recorded by the MDTT.

7. In the event that the individual is deemed incapable of caring for his or her own interests and a petition for appointment of a guardian is pending, the MDTT shall record the desire of the family.

8. Preferences may include, *inter alia*, the following:

- a. Where the individual wishes to live (i.e. geographic location).
- b. With whom the individual wishes to live (i.e. one other person, several other or alone). The individual may also identify specific individuals.

9. If the MDTT determines that the most appropriate residential and/or support services are unavailable, he or she will be added to the referral list.

## II. Review of the Referral List

A) The Department shall review the referral list twice a month at the Placement Review Team, which tracks the movement of individuals on the wait list.

B) The Department shall track:

1. Global Assessment of Functioning Score.
2. Recommended residential placement or support services, as determined by the MDTT.

3. The respective progress, in terms of an individual's needed level of care, as well as the sequential placement.

### III. Placement Review Team

A) Placement Review Team (PRT) comprised of members at the Department shall meet every two (2) weeks to review requests for placement/services and simultaneously track the movement of individuals from off the wait list.

### IV. Referral List Assignment

A) When placed on the referral list, the individual shall be notified of the options to which he or she is entitled.

B) The individual may decline an assignment to the referral list, but must do so by signing an Against Medical Advice (AMA) form. If the consumer has expressed that he or she refuses/declines a residential placement or support services, this shall be logged in the chart. Notwithstanding, he or she may request a reassignment at any time.

C) The referral list system shall track a consumer's need for residential placement and support services.

1. When placement on the wait list is made, the individual or where applicable, the legal guardian, shall be notified in writing, to apply for all benefits to which the individual is entitled (i.e. Medicaid, Medicare, GHURA or food stamps), in an effort to offset the cost attendant to placement and care.

2. The wait list shall contain two (2) categories: the active referral list and the planning list (i.e. comprised of individuals for whom placement and services are projected in the future).

3. An individual shall be assigned to only one wait list category at any given time.

4. Upon placement of an individual to the active referral list, the Department shall assign a number to the individual, that shall represent the current sequential order for placement and this number shall be based on the respective GAF score. In addition, factors such as severity of need, along with the length of time on the wait list, shall be taken into consideration. This numerical placement shall be updated monthly.

5. In the event of an identical GAF scores, the Department shall give priority to the individual who has been institutionalized (i.e. within the Allis) the longest, in terms of a placement ranking on the referral list.

6. Exigent circumstances (i.e. where an individual might perish or his/her mental or physical condition would substantially deteriorate without services) will justify a consumer being deemed "highest need" and therefore ascribing a lower placement number on the wait list.

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**V. Changing Wait List Category Assignment**

A) An individual, family member or where applicable, the legal guardian, may request a review of the referral list assignment by the MDTT, upon a substantial change regarding the individual's circumstances. Requests for changes in the referral list category shall be made in writing or by an alternate means to communicate, should it emanate from the individual.

B) Once an appropriate request for review has been conveyed, the case manager shall schedule a review with the MDTT. The MDTT shall then be responsible for reviewing the information to determine if the criteria for the reassignment have been met.

**VI. Tolling Placement When a Resident is Admitted to the AIU**

A) When an individual from a residential group home (RGH) is admitted to the AIU, the Department shall reserve the resident/inpatient's placement, unless the MDTT determines that the person will not be able to return to the RGH, because that placement is no longer appropriate or inpatient care is deemed necessary for two (2) or more months.

B) If the MDTT concludes that the individual will not be able to return to the RGH, he or she will be placed on the active referral wait list and be given priority, in terms of receiving supportive services.

**VII. Transition Between Placements**

A) The individual, family or where applicable, the legal guardian, may request a review of the wait list assignment by the MDTT, upon a substantial change concerning the individual's circumstances. Any request for review of a wait list category shall be in writing. The appeal process outlined below may also be pursued by the respective complainant

B) Once an appropriate request for review has been submitted, the case manager shall schedule a review with the PRT. The PRT shall then be responsible for reviewing whether a placement is available to meet the modified need(s) of the individual, based upon the most recent MDTT evaluation.

**VIII. Transition**

A) At the time the placement for transition is offered, the individual, family or where applicable, the legal guardian, shall be permitted to decline the projected placement.

B) Decline of an offered transition in placement, in no way implies the Department failed to secure an alternate placement for the individual with the RGH rules which leads to discharge from the assigned placement, similarly does not reflect, in any way, that the Department failed to find an appropriate placement for that person.

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**C) If the placement that is not preferred is accepted, the individual, family or where applicable, the legal guardian, may be permitted to request a transfer to a preferred placement when such opening is available. Such request shall be facilitated by the MDTT and monitored by the PRT.**

**IX. Due Process**

**A) Notification of Due Process Rights**

- 1. Upon an initial determination of eligibility for residential and/or support services, the individual and where applicable the legal guardian, shall be informed of the right to due process concerning eligibility or categorization, as well as the appropriateness of the support services provided.**
- 2. Appeals of eligibility or specific offers of placement shall be initiated within thirty (30) days from the date of notification, with respect to ineligibility of placement decision.**
- 3. Issues may be settled at any time in the process and the resolution shall be memorialized in a written agreement. The terms of the agreement shall be binding upon the individual and the Department.**
- 4. The individual may request a continuance at any stage of the grievance process, not to exceed thirty (30) days.**

**B) Informal Conference**

- 1. The individual or his/her legal guardian may request an informal conference with the assigned social worker and immediate supervisor.**
- 2. Within fifteen (15), but no later than twenty (20) days after having received the notification concerning an informal conference, the Department will convene same.**
- 3. No transcript shall be generated of an informal conference.**
- 4. Prior to the conference, the Department shall provide the individual a written report of its findings and recommendation, including any corrective action.**

**C) Appeal Process**

- 1. The individual or legal guardian shall be informed of the right to a fair hearing regarding eligibility and categorization, as well as the appropriateness of the support services provided.**
- 2. The request for a fair hearing shall be in writing and contain the following information:**
  - a. Name and address of the appellant;**
  - b. A brief statement of the matter under appeal;**
  - c. A list of potential witnesses and**
  - d. Reference to the law, rule, regulation or policy alleged to have been violated.**



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3. An appeal shall be denied if the above-mentioned required information is not provided.
4. The Department will coordinate with the Office of the Attorney General to conduct the fair hearing. The reviewing hearing officer will be from the Office of the Attorney General.
5. Discovery shall be provided.
6. The appellant shall be notified in writing of a time and date for a settlement conference.
  - a. The settlement conference shall be chaired by the Office of the Attorney General.
  - b. The purpose of the conference is to negotiate a settlement and all matters discussed shall remain confidential; thereby inadmissible as evidence.
  - c. Evidence or testimony shall not be presented.
  - d. No tape recording of the conference shall be made.
  - e. The appellant may elect to be represented by legal counsel.
  - f. The Department may request representation by the Office of the Attorney General.
7. A settlement conference may lead to a resolution of the dispute. Nevertheless, a fair hearing must still be convened, unless the individual submits a withdrawal of his/her request for same to the Department.
8. In fair hearing proceeding, the hearing officer has the power to administer oaths and to certify official acts.
9. Each party shall have the right to call and examine witnesses; introduce exhibits; cross-examine, as well as impeach witnesses and rebut testimony.
10. The appellant shall have the burden to establish a prima facie case of inappropriate residential placement or denial of support services, by a preponderance of evidence.
11. The hearing need not be conducted according to technical rules of evidence. Any relevant evidence shall be admitted. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence. The rules pertaining to privileged communications shall be in effect.
12. A transcript of the proceeding shall be made. Any party requesting a written transcript shall bear the cost of producing same.
13. The hearing officer shall render a written decision that contains a finding of fact and determination of the issue presented. This shall be considered the Recommended Decision.

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14. Any written objections to the Recommended Decision shall be submitted to the hearing officer within ten (10) days from issuance of same.

15. After review of any submitted objections to the Recommended Decision, the hearing officer shall issue a written Final Decision, within twenty (20) days of the close of the objection period. Upon issuance, the Final Decision shall be tendered to the parties, along with notice that any further appeal must be to the Superior Court of Guam.