

IMPORTANT: Read instructions on back of last page (Certification Page) before completing this form. Failure to comply with instructions may cause disapproval of proposed Regulations

State of Connecticut **REGULATION** of

NAME OF AGENCY

Department of Social Services

Concerning

SUBJECT MATTER OF REGULATION

Requirements for Payment of Services Provided by Licensed Behavioral Health Clinicians in Independent Practice¹

Section 1. Sections 17b-262-912 to 17b-262-913, inclusive, of the Regulations of Connecticut State Agencies are amended to read as follows:

Sec. 17b-262-912. Scope

Sections 17b-262-912 to 17b-262-925, inclusive, of the Regulations of Connecticut State Agencies set forth the Department of Social Services' requirements for payment of services performed by licensed behavioral health clinicians in independent practice for [HUSKY C and HUSKY D clients under age twenty-one and HUSKY A clients of any age] clients who are determined eligible to receive services under Connecticut's Medicaid program [pursuant to sections 17b-261, 17b-261n and 17b-277 of the Connecticut General Statutes].

Sec. 17b-262-913. Definitions

As used in sections 17b-262-912 to 17b-262-925, inclusive, of the Regulations of Connecticut State Agencies:

- (1) "Advanced practice registered nurse" or "APRN" means an individual licensed pursuant to section 20-94a of the Connecticut General Statutes;
- (2) "Behavioral health clinician services" means preventive, diagnostic, therapeutic, rehabilitative or palliative services provided by a licensed behavioral health clinician within the licensed behavioral health clinician's scope of practice under state law;
- (3) "Client" means [a person] an individual who is eligible for goods or services under Medicaid [and is a HUSKY C or HUSKY D member under age twenty-one or a HUSKY A member of any age];
- (4) "Commissioner" means the Commissioner of Social Services or the commissioner's agent;
- (5) "Current treatment plan" means a treatment plan that has been reviewed and updated by the provider not more than six (6) months before each treatment session;

¹ **NOTE:** Draft regulation as of July 21, 2014. This draft regulation is being posted to the DSS and Secretary of State's websites on or before July 21, 2014 and is being implemented as policies and procedures in draft regulation form effective July 25, 2014 pursuant to section 220 of Public Act 14-217. It is anticipated that the notice of intent for this regulation will be published in the Connecticut Law Journal on August 5, 2014.

- (6) “Department” means the Department of Social Services or its agent;
- (7) “Early and Periodic Screening, Diagnostic and Treatment Services” or “EPSDT Services” means the services described in 42 USC [1396d(r)(5)] 1396d(r);
- (8) “Early and Periodic Screening, Diagnostic and Treatment Special Services” or “EPSDT Special Services” means services that are not covered under the Medicaid State Plan but are covered as EPSDT services for Medicaid-eligible children pursuant to 42 USC 1396d(r)(5) when the service is (A) medically necessary, (B) the need for the service is identified in an EPSDT screen, (C) the service is provided by a participating provider and (D) the service is a type of service that may be covered by a state Medicaid agency and qualifies for federal reimbursement under 42 USC [1396d] 1396d(a);
- (9) “Federally qualified health center” has the same meaning as provided in 42 USC 1396d(l);
- (10) “Home” means a client’s place of residence, including, but not limited to, a boarding house, community living arrangement, nursing facility or residential care home. “Home” does not include facilities such as hospitals, chronic disease hospitals, intermediate care facilities for [the mentally retarded] individuals with intellectual disabilities or other facilities that are paid an all-inclusive rate directly by Medicaid for the care of the client;
- [(11) “HUSKY A” means the Medicaid coverage groups for children, caretaker relatives and pregnant women authorized by Title XIX of the Social Security Act (Medicaid) and operated pursuant to sections 17b-261 and 17b-277 of the Connecticut General Statutes;
- (12) “HUSKY C” means the Medicaid coverage groups for the aged, blind and disabled authorized by Title XIX of the Social Security Act (Medicaid) and operated pursuant to section 17b-261 of the Connecticut General Statutes;
- (13) “HUSKY D” means the Medicaid coverage groups for low-income adults authorized by 42 USC 1396a(a)(10)(A)(i)(VIII) and operated pursuant to section 17b-261n of the Connecticut General Statutes, formerly referred to as the State-Administered General Assistance program;]
- [(14)] (11) “Licensed alcohol and drug counselor” means an individual licensed pursuant to section 20-74s of the Connecticut General Statutes;
- [(15)] (12) “Licensed behavioral health clinician” means a licensed alcohol and drug counselor, licensed marital and family therapist, licensed clinical social worker or licensed professional counselor;
- [(16)] (13) “Licensed clinical social worker” means [a person] an individual licensed pursuant to subsection (c) or subsection (e) of section 20-195n of the Connecticut General Statutes;
- [(17)] (14) “Licensed marital and family therapist” means an individual licensed pursuant to section 20-195c of the Connecticut General Statutes;
- [(18) “Licensed professional counselor” means an individual licensed pursuant to sections 20-195cc and 20-195dd of the Connecticut General Statutes;]

- [(19)] (15) “Licensed practitioner” means a physician, APRN or physician assistant;
- [(16)] (16) “Licensed professional counselor” means an individual licensed pursuant to sections 20-195cc and 20-195dd of the Connecticut General Statutes;
- [(20)] (17) “Medicaid” means the program operated by the Department pursuant to section 17b-260 of the Connecticut General Statutes and authorized by Title XIX of the Social Security Act;
- [(21)] (18) “Medical necessity” or “medically necessary” has the same meaning as provided in section 17b-259b of the Connecticut General Statutes;
- [(22)] (19) “Physician” means an individual licensed pursuant to section 20-13 of the Connecticut General Statutes;
- [(23)] (20) “Physician assistant” means [a person] an individual licensed pursuant to section 20-12b of the Connecticut General Statutes;
- [(24)] (21) “Prior authorization” means the Department’s approval for the provision of a service before a provider actually provides such service, except where section 17b-262-920 of the Regulations of Connecticut State Agencies specifically authorizes the Department to grant prior authorization before paying for a service but after the provider has provided such service;
- [(25)] (22) “Provider” means a licensed behavioral health clinician enrolled in Medicaid pursuant to a valid provider agreement with the Department;
- [(26)] (23) “Provider agreement” means the signed, written agreement between the Department and the provider for enrollment in Medicaid;
- [(27)] (24) “Registration” means the process of notifying the Department of the initiation or continuation of a behavioral health clinician service, including evaluation findings and plan of care information;
- [(28)] (25) “State Plan” means the current Medicaid coverage and eligibility plan established, submitted and maintained by the Department and approved by the Centers for Medicare and Medicaid Services in accordance with 42 CFR 430, Subpart B;
- [(29)] (26) “Treatment plan” means a written individualized plan developed and updated in accordance with section 17b-262-919 of the Regulations of Connecticut State Agencies that contains the type, amount, frequency and duration of services to be provided, and measurable goals and objectives developed in collaboration with the client after evaluation, in order to improve the client’s condition to the point that treatment by the licensed behavioral health clinician no longer becomes necessary, aside from occasional follow-up or maintenance visits; and
- [(30)] (27) “Utilization management” means the prospective, retrospective or concurrent assessment of the medical necessity of services given, or proposed to be given, to a client.

Statement of Purpose

Pursuant to CGS Section 4-170(b)(3), "Each proposed regulation shall have a statement of its purpose following the final section of the regulation." Enter the statement here.

As required by section 220 of Public Act 14-217, this regulation will enable the Department to cover services performed by licensed behavioral health clinicians in independent practice for all Medicaid clients. Previously, this coverage was limited to clients under age twenty-one and HUSKY A clients of all ages.

(A) The problems, issues or circumstances that the regulation proposes to address: When Connecticut's Medicaid program operated partially under a managed care model (for HUSKY A clients), managed care organizations included licensed behavioral health clinicians in their provider networks. In 2006, behavioral health services transitioned to the Behavioral Health Partnership and for continuity of care, those services for HUSKY A clients of all ages were continued under the managed care waiver. Effective January 1, 2008, Connecticut's Medicaid State Plan was amended to provide coverage for licensed behavioral health clinician services for clients under age twenty-one. After Medicaid fully transitioned to a fee-for-service model on January 1, 2012, for continuity of care, coverage for such services was maintained for HUSKY A clients of all ages. Current regulations limit such coverage to clients under age twenty-one and HUSKY A clients of all ages. This regulation is necessary to enable the Department to cover such services for clients of all ages.

The Department proposes to expand this coverage for several reasons. First, this change is required by statute at section 220 of Public Act 14-217. Second, this coverage will expand access to behavioral health services for clients of all ages, including greater access to more specialized categories of licensed behavioral health clinicians than is currently available in some settings. Third, these services will enable clients to access routine behavioral health care more easily to help better manage and maintain their conditions, likely reducing acuity and preventing hospitalizations or long-term services and supports (LTSS) that might otherwise be necessary, resulting in better and more cost-effective care that is consistent with Connecticut's Statewide LTSS Rebalancing Plan. Those new options will also increase client choice and person-centered care. Finally, expanding coverage for routine behavioral health services should increase the number of participating behavioral health clinicians. By diverting routine services to those new providers, this coverage expansion should help increase access to acute and complex behavioral health services at institutional providers. This coverage expansion is particularly appropriate now that the state recently expanded Medicaid eligibility to all adults earning up to 138% of the federal poverty level effective January 1, 2014, pursuant to section 2001 of the Affordable Care Act.

(B) The main provisions of the regulation: (1) Remove limitations on the specific groups of clients eligible to receive licensed behavioral health clinician services and (2) make technical revisions.

(C) The legal effects of the regulation, including all of the ways that the regulation would change existing regulations or other laws: The proposed regulation will amend the existing behavioral health clinician regulations to enable the Department to cover services provided by licensed behavioral health clinicians to all clients.

CERTIFICATION

This certification statement must be completed in full, including items 3 and 4, if they are applicable.

- 1) I hereby certify that the above (check one) Regulations Emergency Regulations
- 2) are (check all that apply) adopted amended repealed by this agency pursuant to the following authority(ies): (complete all that apply)
- a. Connecticut General Statutes section(s) 17b-3 and 17b-262.
- b. Public Act Number(s) 14-217 (section 220).
(Provide public act number(s) if the act has not yet been codified in the Connecticut General Statutes.)
- 3) And I further certify that notice of intent to adopt, amend or repeal said regulations was published in the **Connecticut Law Journal** on [date];
(Insert date of notice publication if publication was required by CGS Section 4-168.)
- 4) And that a public hearing regarding the proposed regulations was held on _____;
(Insert date(s) of public hearing(s) held pursuant to CGS Section 4-168(a)(7), if any, or pursuant to other applicable statute.)
- 5) And that said regulations are **EFFECTIVE** (check one, and complete as applicable)
- When filed with the Secretary of the State
- OR on (insert date) _____

DATE [date]	SIGNED (Head of Board, Agency or Commission)	OFFICIAL TITLE, DULY AUTHORIZED Commissioner
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APPROVED by the Attorney General as to legal sufficiency in accordance with CGS Section 4-169, as amended

DATE	SIGNED (Attorney General or AG's designated representative)	OFFICIAL TITLE, DULY AUTHORIZED
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Proposed regulations are **DEEMED APPROVED** by the Attorney General in accordance with CGS Section 4-169, as amended, if the attorney General fails to give notice to the agency of any legal insufficiency within thirty (30) days of the receipt of the proposed regulation.

(For Regulation Review Committee Use ONLY)

- Approved Rejected without prejudice
- Approved with technical corrections Disapproved in part, (Indicate Section Numbers disapproved only)
- Deemed approved pursuant to CGS Section 4-170(c)

By the Legislative Regulation Review Committee in accordance with CGS Section 4-170, as amended	DATE	SIGNED (Administrator, Legislative Regulation Review Committee)
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Two certified copies received and filed and one such copy forwarded to the Commission on Official Legal Publications in accordance with CGS Section 4-172, as amended.

DATE	SIGNED (Secretary of the State)	BY
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(For Secretary of the State Use ONLY)

GENERAL INSTRUCTIONS

1. All regulations proposed for adoption, amendment or repeal, *except* emergency regulations, must be presented to the Attorney General for his/her determination of legal sufficiency. (See CGS Section 4-169.)
2. After approval by the Attorney General, the original and one electronic copy (in Word format) of all regulations proposed for adoption, amendment or repeal must be presented to the Legislative Regulation Review Committee for its action. (See CGS Sections 4-168 and 4-170 as amended by Public Act 11-150, Sections 18 and 19.)
3. Each proposed regulation section must include the appropriate regulation section number and a section heading. (See CGS Section 4-172.)
4. New language added to an existing regulation must be in underlining or CAPITAL LETTERS, as determined by the Regulation Review Committee. (See CGS 4-170(b).)
5. Existing language to be deleted must be enclosed in brackets []. (See CGS 4-170(b).)
6. A completely new regulation or a new section of an existing regulation must be preceded by the word "(NEW)" in capital letters. (See CGS Section 4-170(b).)
7. The proposed regulation must have a statement of its purpose following the final section of the regulation. (See CGS Section 4-170(b).)
8. The Certification Statement portion of the form must be completed, including all applicable information regarding *Connecticut Law Journal* notice publication date(s) and public hearing(s). (See more specific instructions below.)
9. Additional information regarding rules and procedures of the Legislative Regulation Review Committee can be found on the Committee's web site: <http://www.cga.ct.gov/rr/>.
10. A copy of the Legislative Commissioners' Regulations Drafting Manual is located on the LCO website at http://www.cga.ct.gov/lco/pdfs/Regulations_Drafting_Manual.pdf.

CERTIFICATION STATEMENT INSTRUCTIONS

(Numbers below correspond to the numbered sections of the statement)

1. Indicate whether the regulation is a regular or an emergency regulation adopted under the provisions of CGS Section 4-168(f).
2.
 - a) Indicate whether the regulations contains newly adopted sections, amendments to existing sections, and/or repeals existing sections. Check all cases that apply.
 - b) Indicate the specific legal authority that authorizes or requires adoption, amendment or repeal of the regulation. If the relevant public act has been codified in the most current biennial edition of the *Connecticut General Statutes*, indicate the relevant statute number(s) instead of the public act number. If the public act has not yet been codified, indicate the relevant public act number.
3. Except for emergency regulations adopted under CGS 4-168(f), and technical amendments to an existing regulation adopted under CGS 4-168(g), an agency must publish notice of its intent to adopt a regulation in the *Connecticut Law Journal*. Enter the date of notice publication.
4. CGS Section 4-168(a)(7) prescribes requirements for the holding of an agency public hearing regarding proposed regulations. Enter the date(s) of the hearing(s) held under that section, if any; also enter the date(s) of any hearing(s) the agency was required to hold under the provisions of any other law.
5. As applicable, enter the effective date of the regulation here, or indicate that it is effective upon filing with the Secretary of the State. Please note the information below.

Regulations are effective upon filing with the Secretary of the State or at a later specified date. See CGS Section 4-172(b) which provides that each regulation is effective upon filing, or, if a later date is required by statute or specified in the regulation, the later date is the effective date. An effective date may not precede the effective date of the public act requiring or permitting the regulation. Emergency regulations are effective immediately upon filing with the Secretary of the State, or at a stated date less than twenty days thereafter.