

Updates to 9 FAM 40.11 Based on Revised Technical Instructions for Physical, Mental or Substance Related Disorders

Reference Document: STATE 057660, 6/10

1. SUMMARY: The Centers for Disease Control and Prevention (CDC) have updated the Technical Instructions for Physical or Mental Disorders with Associated Harmful Behavior and Substance Related Disorders (2010 MH TIs). These changes are effective June 1, 2010 and supersede all previous guidance on physical or mental disorders and substance related disorders. The major revisions in the 2010 MH TIs include changes to the methods of diagnosis of mental disorders and substance-related disorders, the definition and determination of remission, and the alcohol abuse evaluation. This cable includes updates to 9 FAM resulting from this change to the Technical Instructions. END SUMMARY.

2. CDC has updated the 2010 MH TIs. These changes are effective June 1, 2010 and supersede all previous guidance. The 2010 MH TIs are available on CDC's Website (<http://www.cdc.gov/immigrantrefugeehealth/exams/ti/panel/mental-panel-technical-instructions.html>). Posts must ensure that all panel physicians are informed of the change and that they begin using these new Technical Instructions immediately. Please note that panel physicians will need to obtain copies of the current American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM) in order to properly perform mental health examinations. The DSM can be purchased from the American Psychiatric Association directly or from book retailers. If conditions at post make it difficult for panel physicians to promptly obtain the DSM, post may order one copy per panel physician through post mail facilities to expedite implementation of the new guidelines. Panel physicians should reimburse post for this purchase.

CLARIFICATION OF METHODS OF DIAGNOSIS

3. The 2010 MH TIs provide clarification that the diagnosis of physical and mental disorders with associated harmful behavior and substance-related disorders is made based on existing medical standards, as determined by the current version of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM). All panel physicians must have a current copy of the DSM in order to properly conduct mental health evaluations.

CHANGES TO THE DEFINITION AND DETERMINATION OF REMISSION

4. Remission must be considered in two contexts: (1) general mental disorders and (2) substance-related disorders.

The current version of the DSM defines sustained, full remission as a period of at least 12 months during which no substance use or mental disorder-associated behaviors have occurred. These new technical instructions reflect the current medical knowledge and standards of the DSM. Panel physicians must use their clinical judgment in determining if 12 months is an acceptable period of time for the individual applicant to demonstrate sustained, full remission. This time period must be based on the reliability of

the evidence provided, such as clinical reports of participation in a drug treatment program. For general mental disorders, the determination of remission must be made based on the assessment of associated harmful behavior, either current or a history of harmful behavior judged likely to recur, and DSM criteria. This includes substance-related disorders for those substances, including alcohol, not listed in Schedules I through V of Section 202 of the Controlled Substances Act.

For substance-related disorders for those substances listed in Schedule I through V of Section 202 of the Controlled Substances Act, the determination of remission must be made based on the applicant's substance use and DSM criteria.

The practical significance for diagnosis of remission is that applicants who are or have been determined to be Class A for drug abuse or addiction for those substances listed in Schedule I through V of Section 202 of the Controlled Substance Act are not eligible for a waiver and must complete the time period for sustained, full remission before reapplying for a visa.

CHANGES TO THE ALCOHOL ABUSE EVALUATION

5. The 2010 MH TIs modify the criteria for referring applicants (IV or NIV) found to have a history of alcohol-related arrests or convictions (e.g., driving under the influence - DUI, domestic violence) to panel physicians.

To ensure proper evaluation, you must refer applicants (IV and NIV) to panel physicians when they have:

- (1) A single alcohol-related arrest or convictions within the last five years;
- (2) Two or more alcohol-related arrests or convictions within the last ten years; or
- (3) If there is any other evidence to suggest an alcohol problem.

a. Applicants who are referred to a panel physician due to alcohol-related offenses must receive the full medical exam evaluation, less the vaccination requirements for NIV applicants. Chest x-rays and any other necessary testing must be conducted for the exam to be considered complete.

b. An NIV applicant with a single alcohol-related arrest or conviction within the last five years who the panel physician finds to have a Class B or no physical or mental condition, who is otherwise eligible to receive a visa, and who has not had another alcohol-related arrest or conviction since the original or previous exam does not have to repeat the medical exam with each new NIV application. If an applicant is found to have a Class A condition associated with alcohol abuse or has two or more alcohol-related arrests or convictions within the last ten years, then the applicant must be referred to the panel physician with each new NIV application if the original medical exam has expired.

FAM Updates

6. 9 FAM 40.11 N11 will be amended as follows:

9 FAM 40.11 N11 PHYSICAL OR MENTAL DISORDERS WITH HARMFUL BEHAVIOR AND SUBSTANCE-RELATED DISORDERS AND THE EFFECTS OF INA 212(a)(1)(A)(iii) and INA 212(A)(1)(a)(iv)

a. The medical screening for physical and mental disorders with associated harmful behaviors and substance-related disorders for visa applicants is required by law and is an essential component of the medical evaluations of aliens. INA sections 212(a)(1)(A)(iii) and 212(a)(1)(A)(iv) provide grounds of ineligibility related to physical or mental disorders that affect behavior, and substance addiction or abuse.

b. The mere presence of a physical or mental disorder does not by itself render the applicant ineligible. Under the provisions of 212(a)(1)(A)(iii)(I) and (II), in order to find an applicant ineligible, it must be determined that the applicant:

(1) Has a current physical or mental disorder with associated harmful behavior; or

(2) Has a past physical or mental disorder with associated harmful behavior if the harmful behavior is likely to recur or lead to other harmful behavior in the future.

c. Note that harmful behavior is not a relevant factor in rendering a determination of ineligibility under the provisions of INA 212(a)(1)(A)(iv). Further, an immigrant visa (IV) waiver of inadmissibility is not available to an alien who is diagnosed with substance abuse or addiction.

For a Class A determination under Section INA 212(a)(1)(A)(iv) for Drug (Substance) Abuse or Drug Addiction (Dependence), an applicant must meet current DSM diagnostic criteria for substance dependence or abuse with any of the specific substances listed in Schedules I through V of Section 202 of the Controlled Substances Act. Such a Class A medical determination by a panel physician, renders the applicant ineligible for a visa under INA 212(a)(1)(A)(iv).

Note: An applicant that meets current DSM criteria for substance abuse or dependence for other substances, including alcohol, NOT listed in Schedules I through V of Section 202 of the Controlled Substance Act is not Class A (medical). However, if there is associated harmful behavior, the applicant may be classified as Class A and found ineligible under 212(a)(1)(A)(iii)(I) and/or (II).

Substances used for clinical care in medical practice are not prohibited and do not represent substance abuse.

d. For cases previously refused under 212(a)(1)(A)(iii) and 212(a)(1)(A)(iv) due to a Class A medical finding:

(1) If the last refusal on the case was less than one year ago, send the the applicant to the panel physician for a new medical examination to determine whether the Class A finding for physical and mental disorders with associated harmful behaviors and/or substance-related disorders still applies. A new medical is required, regardless of whether the previous exam has expired. If the applicant is found Class B, overcome/waive the 212(a)(1)(a)(iii) or (iv) refusal and send a CLOK request. If the applicant is otherwise eligible, then you may issue the visa.

(2) If the last refusal on the case was more than one year ago, then the applicant must reapply for a visa,

complete a new medical examination with a panel physician, and pay all applicable fees. If the applicant is found Class B, then overcome/waive the 212(a)(1)(a)(iii) or (iv) refusal and send a CLOK request. If the applicant is otherwise eligible, then you may issue the visa.

7. 9 FAM 40.11 N11.1 will be amended as follows:

9 FAM 40.11 N11.1 Key Concepts of Mental Health

a. Physical and Mental Health Disorder Key Concepts:

(1) A physical disorder is a clinically diagnosed medical condition where the focus of attention is physical manifestations. Only medical conditions that are included in the current version of the World Health Organization's Manual of International Classification of Diseases (ICD) are considered for visa medical exams.

(2) Mental disorders are health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof). Only mental disorders that are included in the current version of the World Health Organization's Manual of International Classification of Diseases (ICD) are considered for visa medical exams.

(3) Harmful behavior is defined as an action associated with a physical or mental disorder that is or has caused:

- Serious psychological or physical injury to the alien or to others (e.g. suicide attempt or pedophilia);
- A serious threat to the health or safety of the alien or others (e.g. driving while intoxicated or verbally threatening to kill someone); and
- Major property damage.

(4) Current harmful behavior is defined as currently engaging in harmful behavior that has continuously occurred and seems ongoing.

(5) A determination of future harmful behavior must be made if the applicant presently is or has in the past engaged in harmful behavior associated with a physical or mental disorder, and the panel physician must evaluate whether the harmful behavior is likely to recur. Many factors enter into this determination of classification, and the decision requires clinical judgment.

NOTE: Only harmful behavior that is associated with a physical or mental disorder is relevant for the classification of visa ineligibility. Neither harmful behavior nor the physical or mental disorder alone causes an alien to be medically ineligible.

(1) In general, to establish any substance-related diagnosis, the examining physician must document the pattern or use of the substance and behavioral, physical, and psychological effects associated with the use or cessation of use of that substance.

(2) Substance dependence, either on alcohol or other psychoactive substances, is characterized by compulsive long-term use of the substance, despite significant substance-related physical, psychological, social, occupational, or behavioral problems.

(3) Substance abuse is characterized by a pattern of recurrent substance use despite adverse consequences or impairment.

(4) The current version of the DSM defines sustained, full remission as a period of at least 12 months during which no substance use or associated harmful behavior have occurred. The panel physician has discretion to use their clinical judgment to determine if 12 months is an acceptable period of time for an individual applicant to demonstrate sustained, full remission.

(5) Remission must be considered in two contexts: (1) general mental disorders and (2) substance-related disorders.

For general mental disorders, the determination of remission must be made based on the assessment of associated harmful behavior, either current or a history of harmful behavior judged likely to recur, and DSM criteria. This includes substance-related disorders for those substances, including alcohol, not listed in Schedules I through V of Section 202 of the Controlled Substances Act.

For substance-related disorders for those substances listed in Schedule I through V of Section 202 of the Controlled Substances Act, the determination of remission must be made based on applicant's substance use and DSM criteria.

The practical significance for diagnosis of remission is that applicants who are or have been determined to be Class A for drug abuse or addiction for those substances listed in Schedule I through V of Section 202 of the Controlled Substance Act are not eligible for a waiver and must complete the time period for sustained, full remission before reapplying for admission.

8. 9 FAM 40.11 N11.2 will be amended as follows:

9 FAM 40.11 N11.2 Alcohol Abuse or Dependence

a. Although, INA 212(a)(1)(A)(iii) does not refer explicitly to alcoholics or alcoholism, alcohol abuse/dependence constitutes a medical condition. The same criteria apply for evaluation of dependence or abuse of alcohol as are found in the current DSM for other substances (drugs). The diagnosis of alcohol abuse or dependence alone does not make an applicant ineligible to receive a visa unless there is evidence of current or past harmful behavior associated with the disorder that has posed or is likely to pose a threat to the property, safety, or welfare of the alien or others in the future.

b. To ensure proper evaluation, you must refer applicants (IV and NIV) to panel physicians when they have:

(1) A single alcohol related arrest or conviction within the last five years;

(2) Two or more alcohol related arrests or convictions within the last ten years; or

(3) If there is any other evidence to suggest an alcohol problem.

c. Applicants who are referred to a panel physician due to alcohol-related offenses must receive the full medical exam evaluation, less the vaccination requirements for NIV applicants. Chest x-rays and any other necessary testing must be conducted for the exam to be considered complete.

d. An NIV applicant with a single alcohol-related arrest or conviction within the last five years who the panel physician finds to have a Class B or no physical or mental condition, who is otherwise eligible to receive a visa, and who has not had another alcohol-related arrest or conviction since the original or previous exam does not have to repeat the medical exam with each new NIV application. If an applicant is found to have a Class A condition associated with alcohol abuse or has two or more alcohol-related arrests or convictions within the last ten years, then the applicant must be referred to the panel physician with each new NIV application if the original medical exam has expired.

9. 9 FAM 40.11 N11.3 will be amended as follows:

9 FAM 40.11 N11.3 Role of the Panel Physician in Evaluating Physical or Mental Disorders with Associated Harmful Behavior and Substance Related Disorders

a. Effective June 1, 2010, the CDC updated the Technical Instructions for Physical or Mental Disorders with Associated Harmful Behavior and Substance Related Disorders (2010 MH TIs) to provide clarification that the diagnosis of physical and mental disorders with associated harmful behavior and substance-related disorders is made based on existing medical standards, as determined by the current version of the DSM. Panel physicians must follow these new instructions when evaluating visa applicants for physical or mental disorders with associated harmful behavior and substance related disorders.

b. As part of the medical examination of aliens, the panel physician will carry out or obtain a mental health evaluation:

- To identify and diagnose any physical or mental disorder (including alcohol-related disorders);

- To identify any harmful behavior associated with a disorder;

- To identify the use of drugs, other than those required for medical reasons, and diagnose any substance-related disorder;

- To determine the remission status of any disorder previously diagnosed; and

- To determine the likelihood of recurrence of harmful behaviors associated with a physical or mental disorder.

c. The panel physician can recognize that an applicant with a physical or mental disorder might have associated harmful behavior during any point of the examination (while taking the medical history of a mental disorder, while taking history of harmful behavior, or while observing for current abnormal behavior during the physical examination).

d. For most applicants, the panel physician's examination will require only one appointment. However,

for some applicants multiple appointments or specialist consultations may be required to make an accurate diagnosis of whether the applicant is afflicted with a Class A or Class B condition as it relates to physical or mental disorders with associated harmful behavior or substance abuse and addiction (dependence).

NOTE: Random screening for drugs is not part of the routine visa medical examination. The panel physician must evaluate the applicant's history and behavior, and perform a physical examination to determine if drug screening should be performed. Whole populations of applicants should not routinely be subject to random laboratory screening. The panel physician should make an individual decision based on the indications for drug screening.

10. 9 FAM 40.11 N11.4 will be amended as follows:

9 FAM 40.11 N11.4 Referrals to Specialists for Further Evaluation

a. The panel physician must refer an applicant to a specialist consultant if after the medical interview, review of records (including Form DS-3026, Medical History and Physical Examination Worksheet,) and performing a mental status and physical examination

- Arrive at a probable psychiatric diagnosis for purposes of the determination of a mental disorder with associated harmful behavior (past or present);

- Arrive at a probable diagnosis of a substance-related disorder according to DSM criteria; or

- Classify as a Class A or B condition.

b. If an applicant is referred to a specialist for psychiatric evaluation and further assistance in determining the diagnosis and classification is needed, CDC's Division of Global Migration and Quarantine (DGMQ)

may be consulted to provide additional assistance. If CDC/DGMQ is consulted, a copy of all pertinent medical information may be faxed to 404-639-4441 or sent visa secure files email to cdcQAP@cdc.gov.

11. 9 FAM 40.11 N11.5 will be created as follows:

9 FAM 40.11 N11.5 Determining Class A or Class B Physical and Mental Disorders with Associated Harmful Behaviors and Substance Related Disorders Conditions

a. Class A medical conditions render a visa applicant ineligible to receive a visa and, for mental health, include applicants who are determined by the panel physician to have:

(1) A current physical or mental disorder with associated harmful behavior;

(2) A past history of mental disorder with associated harmful behavior if the harmful behavior is likely to recur or to lead to other harmful behavior in the future; and/or

(3) Drug (substance) abuse or addiction (dependence) for specific substances provided in Schedule I-V of Section 202 of the Controlled Substances Act).

b. Class B medical conditions are not medically ineligible conditions and include applicants who are determined to have a physical or mental abnormality, disease or disability serious in degree or nature amounting to a substantial departure from well-being.

c. If a panel physician is unable to determine whether an applicant has a diagnosis of a physical or mental disorder, or substance abuse or dependence, then classification may be deferred in order to obtain additional medical evidence. When this occurs, the panel physician must explain to the applicant that he or she would like to see the applicant during the next 3 to 6 months to determine if abstinence is present (in order to classify the applicant).

d. Applicants may have more than one classification. However, applicants cannot be classified both Class A and B for the same physical or mental disorder, or substance related disorder.

e. Physical and mental disorders with associated harmful behavior and Substance-related disorders classifications and descriptions are listed below:

(1) No Class A or Class B Classification: Applicants with no diagnosis of physical or mental disorder, or substance related disorder.

(2) Class A Physical or Mental Disorder with Associated Harmful Behavior (includes alcohol and other substances NOT listed in Schedule I-V of Section 202 of the Controlled Substances Act).

(3) Class A Substance Abuse or Dependence (for specific substances provided in Schedule I-V of Section 202 of the Controlled Substances Act).

(4) Class B Current Physical or Mental Disorder with No Associated Harmful Behavior (includes alcohol and other substances NOT listed in Schedule I-V of Section 202 of the Controlled Substances Act).

(5) Class B History of Physical or Mental Disorder with Associated Harmful Behavior Unlikely to Recur (includes alcohol and other substances NOT listed in Schedule I-V of Section 202 of the Controlled Substances Act).

(6) Class B Substance Abuse or Dependence in Full Remission: Applicants diagnosed with full, sustained remission of substance abuse or dependence based on current DSM criteria.

12. All current 9 FAM 40.11 N12 sections will be deleted.

13. Any procedural questions about this guidance should be directed to CA/VO/F/P [redacted].