



**THE WORKERS' COMPENSATION
RATING AND INSPECTION BUREAU**

August 30, 2001

CIRCULAR LETTER NO. 1882

To All Members and Subscribers of the Bureau:

**ESTABLISHMENT OF SPECIFIC CLASSIFICATION PHRASEOLOGIES
FOR SOCIAL SERVICE AGENCIES:
DAY HABILITATION PROGRAMS & STAFFED RESIDENTIAL PROGRAMS
UNDER CODES 8868 & 9101**

The Division of Insurance has approved the above captioned Item, establishing specific classification phraseologies for Adult Day Habilitation and Staffed Residential Programs operated by social service agencies.

The attached Filing Memorandum indicates the Purpose, Background, Proposal, Impact and Implementation of this Item, which contains an *example* of the revised Massachusetts Workers Compensation and Employers Liability Insurance Manual pages (Exhibit I).

As noted in the attached filing memorandum, this Item added the new classification phraseologies under Codes 8868 and 9101 to reflect a decision and order specifically affecting such operations. The proposed change effectively eliminates classification by analogy that previously assigned those operations to class Codes 8833 and 9040. The Item filing dated August 2, 2001 proposed an effective date of 12:01 a.m., September 1, 2001 to be applied to all new and renewal policies. In its approval letter of August 13, 2001, the Division of Insurance ordered that **"This change in phraseology shall be applicable to all new and renewal policies with effective dates on or after April 18, 2001."**

Revised Manual pages reflecting the changes necessitated by approval of this Item will be distributed in due course.

**DANIEL M. CROWLEY
Manager – Customer Services**

FILING MEMORANDUM

ESTABLISHMENT OF SPECIFIC CLASSIFICATION PHRASEOLOGIES FOR SOCIAL SERVICE AGENCIES: DAY HABILITATION PROGRAMS & STAFFED RESIDENTIAL PROGRAMS UNDER CODES 8868 & 9101

Purpose

This filing proposes to establish specific classification phraseologies for Adult Day Habilitation Programs and Staffed Residential Programs operated by social service agencies, in accordance with the Decision and Order in the Appeal of Brockton Area Multi-Service, Inc., dated March 19, 2001, Docket No. W96-01. The operations specific classification phraseologies are to be established under existing classification Codes, 8868 and 9101.

Background

Historically, the Bureau's position has been that Adult Day Habilitation Programs and Staffed Residential Programs operated by social service agencies should be assigned, by analogy, to class Codes **8833 – Hospital/Asylum/Rest Homes/Sanitarium: Professional Employees and 9040 - Hospital/Asylum/Rest Homes/Sanitarium: All Other Employees**. This classification position is detailed in prior Bureau guidelines outlined in internal memoranda dating back to 1983, and reaffirmed and supported by the Bureau's "Social Services Survey" that was completed in late 1991. Currently, the Bureau's classification distinctions for all types of social service agency programs are detailed in the Massachusetts Master Alphabetical Classification Index (MACI), and, for the first time, in the July 2000 Edition of the National Council on Compensation Insurance, Inc.'s Scopes™ of Basic Manual Classifications (Scopes). Both MACI and Scopes are classification guideline manuals utilized by the industry.

During the 1990s, two social service agencies, Specialized Housing, Inc. (SHI) and Brockton Area Multi-Services, Inc. (BAMSI) appealed the Bureau's classification rulings for their Staffed Residential Programs. SHI and BAMSI argued that their Programs should be assigned to class Codes **8868 – Schools: Professional Employees & Clerical and 9101 Schools: All Other Employees**, because their operations were more analogous to schools than to hospitals.¹ BAMSI also appealed the assignment of Code 8833 for its Day Habilitation Program

¹ Although both appellants operated staffed residential programs, there was a significant difference in each of their client's skill levels and degree of attendant personal care.

SHI operates supervised housing for cognitively disabled adults who are employed or enrolled in educational programs and are able to participate in other community activities, but require supervision and training to enable them to live independently. SHI supervises condominium clusters in which individuals live independently in separate units. In reversing the Bureau's assignment of class Code 8833, the Division noted that SHI was not

on the same grounds. The Bureau's Appeals Subcommittees heard each appeal, and in each case, the Subcommittee affirmed the Bureau's assignment of class Codes 8833 and 9040 to the appellants' operations. SHI and BAMSI then separately appealed to the Division of Insurance, who overturned the Bureau's issued decisions and assigned Codes 8868 and 9101 to SHI's and BAMSI's staffed residential programs and BAMSI's adult day habilitation programs.

Staff Residential Programs

These programs provide housing and assistance to adults (age 22 and older) who have mental health problems, mental retardation or other developmental impairments. As a rule, clients attend day programs during the normal workday. However, some residential homes, due to their client base, provide twenty-four hour coverage. Night coverage can vary between overnight awake to overnight asleep, depending on the skill level of the specific client base serviced at a particular location. Such programs are staffed with program managers and residential counselors. The program manager is responsible for overall supervision of the program, including staff supervision, oversight of the physical plant, providing direct care to residents and ensuring quality of care for all clients. The residential counselors' responsibilities include attending to the daily needs of the residents (e.g. assistance with self-care, housekeeping and cooking), and teaching socialization skills and activities of daily living. Daily living and social skills are taught so that the clients may develop the skills necessary to allow them greater independence. The ultimate goal of any residential program is to advance the individual clients to the point where they can live and function totally independently in their own apartment.

Day Habilitation Programs

These programs provide training for developmentally disabled adults over the age of twenty-two. The programs offer client training in such areas as occupational and physical therapy, speech therapy, and behavioral therapy, as well as enrichment groups in movement, communication, and daily living skills. The clients attend these programs on a day-to-day basis, with housing provided elsewhere, and are not ready for any type of employment training. There is no pre-determined length of stay in a program, nor is this type of program an outpatient program. Once the clients have progressed to the point where employment training can begin, they will leave the program. Staff for the day habilitation programs includes a program director, site manager, day support professional, community coordinator, habilitation assistants, physical therapy assistant, secretary, and a variety of allied health professionals.

analogous to the other institutions assigned to class Code 8833 because SHI did not provide such things as personal care assistance to persons who for whatever reason cannot physically care for themselves.

In the more recent BAMSI appeal, the Bureau argued that, as the classification authority for Massachusetts, it properly classified BAMSI in accordance with the Manual rules. The Bureau also emphasized the level of personal and physical care provided by BAMSI to its residential and day habilitation clients who have mental health problems or mental retardation. Given that the SHI Decision found a distinction between institutions like BAMSI, that provide physical and personal care and institutions like SHI, the Bureau argued that its assignment of class Code 8833 to BAMSI was consistent with the Division of Insurance findings in the SHI decision. The Division, however, disagreed and held that the Bureau overstated the differences between BAMSI's programs and SHI's program.

Proposal

It is proposed that Codes 8868 and 9101 be amended by adding new classification phraseologies to reflect the Decision and Order issued in the Appeal of Brockton Area Multi-Service Inc. The establishment of operations specific classification phraseology for mental health and mental retardation staffed residential programs and day habilitation programs would eliminate classification by analogy, and assure equitable and consistent classification treatment of such operations.

It is further proposed that this Item become applicable with respect to new and renewal policies effective on and after 12:01 a.m., September 1, 2001.

Impact

The reassignment of social service agency operated Adult Day Habilitation Programs and Staffed Residential Programs from Codes 8833 and 9040 to Codes 8868 and 9101 complies with the Decision & Order issued by the Division of Insurance in the Appeal of Brockton Area Multi-Service, Inc., Docket No. W96-01.

Implementation

The attached exhibit outlines the necessary changes for *Massachusetts Workers Compensation and Employers Liability Insurance Manual*.

Massachusetts Workers Compensation and Employers Liability Insurance Manual

**Present Phraseology
Part Two - Classifications**

**Proposed Phraseology
Part Two - Classifications**

None

SOCIAL SERVICE AGENCIES:

None

**ADULT DAY HABILITATION
PROGRAMS:**

None

**Professional Employees &
Clerical 8868
All Other Employees..... 9101**

None

None

**RESIDENTIAL - PROGRAMS –
STAFFED:**

None

**Professional Employees &
Clerical 8868
All Other Employees..... 9101**

None