

**HUMAN SERVICES**

**DIVISION OF DEVELOPMENTAL DISABILITIES**

**OFFICE OF PROGRAM INTEGRITY AND ACCOUNTABILITY**

**Licensure Standards for Mental Health Programs**

**Readoption with Amendment: N.J.A.C. 10:190**

Proposed: February 3, 2014, at 46 N.J.R. 270(a)

Adopted: May 5, 2014, by Jennifer Velez, Commissioner, Department of Human Services.

Filed: May 30, 2014, as R.2014 d.107, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 30:1-12, 30:9A-10, and 30:9A-21.

Effective Dates: May 30, 2014, Readoption;

July 7, 2014, Amendment.

Expiration Date: May 30, 2021.

**Summary of Public Comment and Agency Response:**

The Department received a comment from Pamela Wentworth, Department of Children and Families, Office of Policy and Regulatory Development.

COMMENT: At N.J.A.C. 10:190-1.1(b)4i, there is a reference to N.J.A.C. 10:37B. N.J.A.C. 10:37B was repealed effective June 21, 2010. Its content was merged into N.J.A.C. 10:128, Manual of Requirements for Children's Group Homes, effective in that same rulemaking (see 41 N.J.R. 4170(a); 42 N.J.R. 1200(b)). The Department of Children and Families asks that this be corrected to N.J.A.C. 10:128.

RESPONSE: The Department will make the change to reflect this update.

**Summary of Agency-Initiated Changes upon Adoption:**

In addition to the change requested by the Department of Children and Families, the Department is further changing N.J.A.C. 10:190-1.1(b) to change “the Department of Health and Senior Services” to “the Department of Health,” pursuant to P.L. 2012, c. 17, and to change the “Division of Mental Health Services” to the “Division of Mental Health and Addiction Services,” as the former Division of Mental Health and Division of Addiction Services were merged to form one division, called the Division of Mental Health and Addiction Services.

**Federal Standards Statement**

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65) require State agencies that adopt, readopt, or amend any State rule that exceeds any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The rules readopted with an amendment are more stringent than those imposed by Federal law in the area of confidentiality. State law permits, without the consumer's authorization or a court order, disclosure of private health information between treatment providers only where the entities are contracted with the Division of Mental Health and Addiction Services or are "a screening service, short-term care or psychiatric facility ..." (See N.J.S.A. 30:4-24.3) The Health Insurance Portability and Accountability Act (HIPAA), at 45 CFR Parts 160 and 164, allows, without authorization from the consumer or a court order, disclosure of private health information for treatment purposes to another treatment professional or facility even if they do not have a contract or affiliation agreement with one another. Because HIPAA requires that if the provisions

of State privacy laws and the HIPAA regulations conflict, the more protective of privacy prevails, the Department is obliged to conform its disclosure of information to the more restrictive State law. No other aspect of the rules readopted with an amendment are subject to Federal law.

**Full text** of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 10:190.

**Full text** of the adopted amendment follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***):

## SUBCHAPTER 1. LICENSURE OF MENTAL HEALTH PROGRAMS

### 10:190-1.1 Scope and purpose

(a) (No change.)

(b) No mental health program shall operate unless it is licensed by the Commissioner of the Department of Human Services as a mental health program and has a purchase of service contract or an affiliation agreement with the Division of Mental Health **\*and Addiction Services**, or is licensed by the Commissioner of the Department of Health **\*[and Senior Services]\*** as a health care facility.

1.-3. (No change.)

4. Provisions of this chapter shall not apply to:

i. Licensure provisions regarding community residences for mentally ill adults and psychiatric community residences for youth which can be found at N.J.A.C. 10:37A and **\*[10:37B]\* \*10:128\***, respectively;

ii.-vi. (No change.)

(c)-(d) (No change.)