

HUMAN SERVICES

DIVISION OF MENTAL HEALTH AND ADDICTION SERVICES

Management and Governing Body Standards

Proposed Readoption with Amendments: N.J.A.C. 10:37D

Authorized By: Elizabeth Connolly, Acting Commissioner, Department of Human Services.

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2017-086.

Submit written comments by August 4, 2017, to:

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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1, N.J.A.C. 10:37D, Management and Governing Body Standards was scheduled to expire on May 10, 2017. As this notice of proposal was submitted to the Office of Administrative Law prior to the expiration date, pursuant to N.J.S.A. 52:14B-5.1.c(2), the expiration date was extended 180 days to November 6,

2017. This notice of proposal is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5, because a 60-day public comment period is provided.

The Department of Human Services (the Department), and its Division of Mental Health and Addiction Services (the Division), reviewed this chapter and determined that its continued implementation benefits both the public and mental health provider agencies by setting out specific standards to ensure the delivery of high quality mental health services.

The purpose of this chapter is to delineate the management and governing body requirements applicable to mental health provider agencies that contract or affiliate with the Division. This chapter requires that mental health provider agencies establish internal structures and policies to ensure and promote effective management and governing body practices, which in turn improves the delivery of mental health services to clients.

The rules are organized into three subchapters. N.J.A.C. 10:37D-1 describes the scope and purpose of the chapter and includes definitions. N.J.A.C. 10:37D-2 delineates the management standards. These management standards include: organizational structure; policies and procedures, including development, distribution, and required topics (for example, conflict of interest, affirmative action, non-discrimination, client confidentiality, and grievances); service accessibility and coordination for clients; information communications and management system; environmental maintenance; quality assurance; financial procedures and internal controls; personnel manual and file maintenance; staff credential and employment references verification; staff qualifications; and employee training. N.J.A.C. 10:37D-3

sets forth the standards applicable to the governing body, including the following: establishment of advisory boards or committees; fiduciary responsibility; by-laws; conflict of interest and disclosure policy; frequency and documentation of meetings; functions; reports; and Department access to records.

The Department reviewed these rules and finds that these rules continue to be necessary, reasonable, and proper for the purposes they were originally promulgated to serve, with the exception of the following proposed amendments.

An amendment is proposed at N.J.A.C. 10:37D-1.1(a) to refer to the definition of Provider Agency (PA) at N.J.A.C. 10:37D-1.2 for a description of a PA. This amendment simplifies the rule's language.

An amendment is proposed at N.J.A.C. 10:37D-1.1(b) to include "wellness and recovery support." The Division's and Department's mission statements reference the concept of wellness and recovery support. This amendment will clarify for the public that this chapter also promotes the concept of wellness and recovery.

An amendment is proposed at N.J.A.C. 10:37D-1.2 to reflect the current name of the Division of Mental Health and Addiction Services. In the Fiscal Year 2010-2011 State Appropriations Act, the former Division of Mental Health and the former Division of Addiction Services merged to create the combined Division of Mental Health and Addiction Services. The proposed amendment reflects the merger.

A further amendment is proposed at N.J.A.C. 10:37D-1.2 to update the definition of PA to better reflect the types of relationships between the Division and PAs. In particular, the definition of PA is updated to reflect that the Division and PAs may have an affiliate relationship and to delete the reference to "funded by" the Division. This

proposed change is also consistent with N.J.A.C. 10:190, Licensure Standards for Mental Health Programs, which describes the relationship between the Division and PAs, in part, as being through a contract or affiliation agreement. With this amendment, the definition of PA will mean an agency contracted or affiliated with the Division to provide specific direct mental health services to clients.

An amendment is proposed at N.J.A.C. 10:37D-2.1(a)2 to provide consistency with regard to the terminology used throughout this chapter. Specifically, the reference to “agency” is deleted and replaced with “PA,” to ensure consistency in terminology when referring to provider agencies in the rule.

Proposed new N.J.A.C. 10:37D-2.2(a)1i is added to describe the subject matter of policies and procedures a PA is required to develop. As proposed, the regulation requires a PA to develop policies and procedures, but does not identify any parameters regarding the subject matter of those policies and procedures. The amendment provides examples of the type of subject matter that PA policies and procedures should include, such as client behavior management or modification systems, and medication safety and storage. This amendment will assist PAs in communicating these policies and procedures to clients and staff. Additionally, this amendment will support Office of Licensing (OOL) onsite reviews by ensuring that these policies and procedures are in place.

An amendment is proposed at N.J.A.C. 10:37D-2.3(a)2 to substitute “individuals with disabilities” for “physically handicapped individuals,” so that the rule is expressed in person-first language.

An amendment is proposed at N.J.A.C. 10:37D-2.4(a)1 to allow an additional method of communicating information to PA staff. Electronic media, such as the PA internal website, will be considered a method of communicating information to PA staff in addition to staff meeting, written memoranda, and supervisory meetings.

An amendment is proposed at N.J.A.C. 10:37D-2.5(a) to correct a grammatical error. Existing N.J.A.C. 10:37D-2.5(a)1 is vague with regard to maintaining a safe and clean environment. In order to obtain a certificate of occupancy, PAs must obtain appropriate State and local fire, safety, and health certifications. The proposed new paragraph requires a PA to demonstrate compliance with all applicable codes governing building, fire, safety, and health requirements in the State, county, and municipality in which the PA services are physically located and provided to clients. This amendment ensures clients are receiving and PA staff are providing services in a clean and safe environment, which will enhance the treatment environment.

An amendment is proposed at N.J.A.C. 10:37D-2.10(b) to clarify the governing board's responsibilities regarding the PA personnel manual. The regulation is silent on the timeframe for the governing board to review the personnel manual and all subsequent revisions. The proposed amendment requires that the personnel manual be reviewed and approved by the governing board on an annual basis. In addition, "all subsequent revisions" will be deleted because the annual review of the personnel manual will naturally include the review and approval of any subsequent revisions to the manual. This amendment will streamline and reduce the frequency of the review and approval process for the governing board.

An amendment is proposed at N.J.A.C. 10:37D-2.11(a) to maintain personnel files for student interns. Currently, personnel files only are maintained for staff and volunteers. N.J.A.C. 10:37D-2.14(a)6 requires a PA to develop procedures to supervise the work of student interns and volunteers. As such, this amendment now will require a PA to maintain personnel files for student interns, as well as include school affiliation agreements in the student intern personnel files.

An amendment is proposed at N.J.A.C. 10:37D-2.12(a) to ensure that policies and procedures verify staff experience. Currently, policies and procedures address only verification of staff credentials and employment references. Similarly, an amendment is proposed at N.J.A.C. 10:37D-2.12(a)2 to require the PA to not only verify previous employment, but also to verify previous experience. These proposed amendments will ensure that PA staff has employment and experience that is appropriate and relevant to a specific staffing position. An amendment is proposed at N.J.A.C. 10:37D-2.13 and 2.13(a) to remove the references to “clinical.” This change reflects that all PA staff, not just clinical staff, must be appropriately licensed, certified, or trained for their positions. The amendment provides consistency in that all staff employed by the PA must be properly qualified for their positions.

An amendment is proposed at N.J.A.C. 10:37D-2.13(a)1 to update the current name of the American Board of Psychiatry to the American Board of Psychiatry and Neurology. The Board recently changed its name and this amendment reflects the new name of the Board.

An amendment is proposed at N.J.A.C. 10:37D-2.14(a)6 to address orientation of student interns and volunteers. Currently, the regulation only addresses supervision,

and does not address orientation. This amendment provides clarity for the PA to have procedures in place to address both supervision and orientation for student interns and volunteers.

An amendment is proposed at N.J.A.C. 10:37D-3.3(a)6 to ensure consistency in the regulatory requirements between PAs with respect to by-laws. Currently, this regulation pertains only to nonprofit entities through the cross-reference to N.J.S.A. 15A:2-10, which describes the requirements for by-laws for a nonprofit corporation that falls under the jurisdiction of the New Jersey Nonprofit Corporation Act, N.J.S.A. 15A:1-1 et seq. An amendment is proposed to add a cross-reference to N.J.S.A. 14A:2-9, which describes the requirements for the by-laws of entities under the jurisdiction of the New Jersey Business Corporation Act, N.J.S.A. 14A:1-1 et seq. Thus, the amendment will provide consistency and fairness in that the regulatory requirements relating to by-laws apply to entities that fall under both the New Jersey Nonprofit Corporation Act and the New Jersey Business Corporation Act.

An amendment is proposed at N.J.A.C. 10:37D-3.6(b) to require the completion of the CEO performance evaluation on an annual basis, rather than bi-annually as is currently required. Generally, staff performance evaluations are completed on an annual basis. This amendment will assist in establishing consistency in the frequency of staff evaluations, including the CEO, and should allow the governing board time to focus on and address other issues.

Social Impact

The rules proposed for readoption with amendments will have a positive impact on clients of mental health services because management and governing body

standards for provider agencies serve to promote the effective delivery of high quality services. Moreover, the Department believes the rules are necessary to ensure that provider agencies adequately address management and governing body aspects of their organizations in order to ensure high quality service delivery to clients.

Economic Impact

The rules proposed for readoption with amendments will have a positive economic impact upon clients of State contracted or affiliated mental health services by promoting the highest quality services for them at little or no personal expense. The Department does not anticipate that the rules proposed for readoption with amendments will require any additional administrative costs or funding sources.

Federal Standards Statement

A Federal standards analysis is not required because these rules proposed for readoption with amendments are not subject to any Federal requirements or standards.

Jobs Impact

The rules proposed for readoption with amendments are not expected to have any effect on jobs in the State of New Jersey.

Agricultural Industry Impact

The rules proposed for readoption with amendments would have no impact on agriculture in the State of New Jersey.

Regulatory Flexibility Analysis

Some providers of Division contracted or affiliated mental health services may be small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption with amendments set forth a

number of reporting, recordkeeping, and compliance requirements on such agencies, deemed necessary to ensure the efficient delivery of services, which are completely supported by State funds. The requirements involve management activities, such as developing a table of organization, developing policies and procedures, screening staff, communicating with staff, maintaining records, and coordinating services. Additional requirements involve services delivery and include the assurance of accessibility for the clients and the maintenance of a clean and safe environment.

There is no need for such agencies to employ outside professional services to comply with the provisions, nor is there any requirement for them to expend capital costs to comply with the rules. The reporting, recordkeeping, and other compliance requirements imposed upon such agencies must be uniformly applied, regardless of the size of the agency, to ensure that individuals with mental illness receiving these services throughout the State do so in accordance with basic minimum standards of quality and effectiveness. These standards are important because the individuals with mental illnesses receiving these services typically have been psychiatrically hospitalized and would be at risk of additional costly and personally disruptive hospitalizations in the absence of quality community services delivered in accordance with these standards.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that these rules will evoke a change in the average costs associated with housing because the rules establish standards for management and governing body

requirements of mental health provider agencies that contract or affiliate with the Division.

Smart Growth Development Impact Analysis

The rules proposed for re adoption with amendments will have an insignificant impact on smart growth. There is an extreme unlikelihood that these rules will evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because these rules pertain to standards for management and governing body requirements of mental health provider agencies that contract or affiliate with the Division. The rules do not involve land use policies or infrastructure development. Therefore, the rules proposed for re adoption with amendments do not impact smart growth.

Full text of the rules proposed for re adoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:37D.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

10:37D-1.1 Scope and purpose

(a) [These] **The rules in this chapter** shall apply to all provider agencies (PA) [funded by the Division of Mental Health and Hospitals (Division)] **as defined in**

N.J.A.C. 10:37D-1.2. In the event any of these rules may conflict with the rules of another division of the Department, the rules of the cognizant Division, as determined in accordance with N.J.A.C. 10:3-4, shall apply.

(b) [These] **The rules in this chapter** are designed to promote client centered services [which] **that** provide high quality, accessible, and innovative treatment. [These] **The rules in this chapter** are also designed to promote creativity and responsiveness to client and staff needs[,] and goal directed services **and to support wellness and recovery.**

10:37D-1.2 Definitions

The words and terms in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

...

“Division” means the Division of Mental Health and [Hospitals] **Addiction Services.**

“Provider agency (PA)” means an agency contracted [with,] or [funded by,] **affiliated with** the Division to provide specific direct mental health services to clients.

SUBCHAPTER 2. MANAGEMENT STANDARDS

10:37D-2.1 Table of organization

(a) Each PA shall have a written table of organization.

1. (No change.)
2. The table of organization shall be revised within 90 days of any major change in the [agency] **PA** organizational structure.
3. (No change.)

10:37D-2.2 Policies and procedures

(a) Each PA shall develop policies and procedures to adequately guide PA operations to meet organizational, fiscal, programmatic, and management objectives.

1. Each PA shall ensure that agency policies and procedures are written, distributed to staff and clients, when relevant, and consistently enforced and monitored.

i. PA written policies and procedures shall include, but not be limited to, the following: client behavior management or modification systems (that is, rewards, privileges) and medication safety and storage.

2. – 3. (No change.)

10:37D-2.3 Service accessibility

(a) Each PA shall make services accessible to clients.

1. (No change.)

2. All services shall be accessible to [physically handicapped] individuals **with disabilities.**

3.-4. (No change.)

10:37D-2.4 Staff communications

(a) There shall be documentation that managers provide staff with the information they need to effectively perform the functions of their assigned tasks.

1. Methods for communicating information may include staff meetings, written memoranda, **PA internal website for staff use**, and supervisory meetings.

Documentation that such communication exists may include evidence of staff and supervisory meetings and informational memoranda.

10:37D-2.5 Environment

(a) Each PA shall maintain a clean and safe environment which promotes dignity and self respect for staff and clients.

[1. The physical plant shall be regularly cleaned and inspected for possible life safety deficiencies.]

1. Each PA shall demonstrate compliance to all applicable codes governing building, fire, safety, and health requirements in the State, county, and municipality in which the licensed program is located.

2.– 3. (No change.)

10:37D-2.10 Personnel manual

(a) (No change.)

(b) There shall be documentation that the governing board has **reviewed and** approved the personnel manual [and all subsequent revisions] **on an annual basis.**

(c) –(d) (No change.)

10:37D-2.11 Personnel files

(a) Each PA shall maintain personnel files for all staff, [and] volunteers, **and student-interns.**

1. Personnel files shall include applications and resumes with pertinent identifying data; a copy of employee contracts when applicable; copies **of school affiliation agreements** and verifications of professional credentials as appropriate; performance evaluations; and current job descriptions.

10:37D-2.12 Verification of staff credentials

(a) Each PA shall have written policies and procedures to ensure the verification of staff credentials, **experience**, and employment references.

1. (No change.)
2. Previous employment **and experience** shall be verified by documentation of written or telephone contact with an employee's previous employers.
3. (No change.)

10:37D-2.13 Qualification of [clinical] staff

(a) Each PA shall hire [clinical] staff who are appropriately licensed, certified or trained in order to be able to assume responsibility for the [clinical] services provided by the PA.

1. The PA governing board shall formally adopt policies and procedures to ensure that psychiatrists are Board certified or Board eligible by the American Board of Psychiatry **and Neurology** or the American Osteopathic Board of Neurology and Psychiatry.
2. (No change.)

10:37D-2.14 Training

(a) Each PA shall orient, train, supervise and evaluate employees.

1. -5 (No change.)

6. There shall be procedures to **orient and** supervise the work of student interns and volunteers.

SUBCHAPTER 3. GOVERNING BODY

10:37D-3.3 By-laws

(a) Each governing board shall establish by-laws that define its roles and functions.

1. – 5. (No change.)

6. The by-laws shall conform to the requirements of N.J.S.A. **14A:2-9 or 15A:2-10, whichever is applicable.**

10:37D-3.6 Functions of the board

(a) (No change.)

(b) The governing board shall appoint the Chief Executive Officer and evaluate his or performance [biannually] **annually.**

(c) (No change.)