

HUMAN SERVICES

DIVISION OF MENTAL HEALTH AND ADDICTION SERVICES

Programs of Assertive Community Treatment

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

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

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

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

Proposal Number: PRN 2015-093.

Submit written comments by October 16, 2015, to:

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The agency proposal follows:

Summary

N.J.A.C. 10:37J applies to all Programs of Assertive Community Treatment (PACT). There are 12 PACT provider agencies operating 31 PACT teams to consumers throughout New Jersey. The purpose of PACT is to provide comprehensive, integrated rehabilitation treatment and support services to individuals with serious and

persistent mental illness. This population has repeated psychiatric hospitalizations and is at serious risk for psychiatric hospitalization. PACT is provided in vivo by a multi-disciplinary service delivery team. The treatment has no predetermined end point.

These rules provide a description of the consumers for whom the services are targeted, the range of services to be provided, the requirements and responsibilities of the provider agencies and their staff, and the procedures required to provide the services. Subchapter 1 states the scope and purpose of the chapter and provides definitions. Subchapter 2 pertains to the program operation and outlines policies and procedures, licensing, eligibility, program intensity, services to be provided, and service coordination, assessment, recovery planning, progress notes, terminations and discharges, staff requirements, staff training, PACT team office space, records, and continuous quality improvement activities.

As required by Executive Order No. 66 (1978), the New Jersey Department of Human Services (Department or DHS), through the Division of Mental Health and Addiction Services (Division or DMHAS) has reviewed these rules and has determined them, along with the proposed amendments, to be necessary, reasonable, and proper for the purposes they were originally promulgated to serve. The Department, therefore, proposes to readopt N.J.A.C. 10:37J with amendments.

N.J.A.C. 10:37J is set to expire on July 30, 2015. Pursuant to N.J.S.A. 52:14B-5.1.c(2), the expiration date of N.J.A.C. 10:37J is extended 180 days to January 26, 2016.

The Department is providing a 60-day public comment period for this notice of proposal. This notice is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

The process of reviewing and updating these rules included extensive discussions with a stakeholder work group. The group was comprised of representatives from provider organizations that deliver PACT services, consumer and family representatives, along with Department staff. This dialogue among interested parties with often varying perspectives was informative for all. It resulted in recommendations for making the standards more relevant, accurate, and consistent with consumers' rights.

The following is a detailed analysis of each of the Department's amendments.

At N.J.A.C. 10:37J-1.2, the Department is amending the definition of "Level I standards" by removing some standards which will then be considered as Level II standards. This will create greater parity within the licensure procedure among community mental health programs and will align with N.J.A.C. 10:190, Licensure Standards for Mental Health Programs. N.J.A.C. 10:190 defines "Level I standards" as standards that relate to staffing, consumer safety, and consumer rights. This amendment will not have a negative impact on the service delivery system. Although the designation of programmatic standards as Level I were useful in the development of the PACT programs to ensure fidelity to the research-based PACT model, the current designation of the Level I standards is no longer essential. The PACT programs throughout the State are now well developed, most of which have been operational for a

decade or more. Reclassifying these standards as Level II will ensure quality, health, safety, and welfare through regulatory compliance and program review.

Furthermore, operational efficiencies will be realized in both the activities of the DHS Office of Licensing (OOL) and DMHAS processes. This allows for better utilization of Department resources. Operational efficiencies will be realized by the licensed provider agencies, allowing agency resources to be used more effectively in service delivery.

The Department is amending N.J.A.C. 10:37J-2.3(d) to update the edition of The Diagnostic and Statistical Manual (DSM), which is incorporated by reference, as amended and supplemented, as well as the address for the American Psychiatric Association (APA). The DSM was reviewed and revised since it was first published in 1952. DSM IV was completed nearly two decades ago. Since that time, there is a wealth of new research and knowledge about mental disorders. After many years of researching, the APA released the DSM-5 in May 2013.

The Department is concerned about excessive documentation burdens for service providers that could negatively impact service delivery. There are ample existing regulatory requirements relating to documentation (see N.J.A.C. 10:37J-2.6). Therefore, the Department is amending N.J.A.C. 10:37J-2.5(d)3, to delete the reference for a PACT team to “document” since this is a redundant requirement and is required in N.J.A.C. 10:37J-2.6(e)1 and 2.

In the Fiscal Year 2010-2011 State Appropriations Act, the former Division of Mental Health Services merged with the former Division of Addiction Services to create the Division of Mental Health and Addiction Services. N.J.A.C. 10:37J-1.2 and 2.6(p)

are amended to reflect the name of the merged division. Similarly, N.J.A.C. 10:37J-2.5(d)4 is amended to reflect the name change of the Department of Health and Senior Services to the Department of Health pursuant to P.L. 2012, c. 17 § 93 (N.J.S.A. 26:1A-2.1).

Protected health information is first referenced at N.J.A.C. 10:37J-2.6(b)6ii and 6iii. The Department proposes to amend N.J.A.C. 10:37J-2.6(c), so that the cross-reference accurately reflects the disclosure of protected health information.

To ensure that PACT programs hire individuals with the appropriate behavioral health science credentials, N.J.A.C. 10:37J-2.8(d)6i(1) is amended to state that the requirement for a master's degree must be in a behavioral health science from an accredited institution. Furthermore, DHS will ensure that only individuals with the applicable credentials serve this population. The same requirement is also noted at N.J.A.C. 10:37J-2.8(d)6i(2). This amendment provides consistent educational requirements.

Lastly, DHS is amending N.J.A.C. 10:37J-2.6(e)2vi to change documentation requirements related to the detection of adverse drug reactions. PACT teams will continue to monitor for and document observed drug reactions. They are no longer required to document the absence of such for every progress note.

Social Impact

The rules proposed for readoption with amendments are expected to positively impact adult consumers of mental health services by maintaining and establishing standards that will continue to promote the effective delivery of quality services. These

standards will foster recovery from mental illness, greater independence, and an improved quality of life among service recipients. PACT services are designed to meet the needs of a targeted subset of individuals with serious and persistent mental illness who have not benefited from traditional services. PACT is one of the evidence-based practices, targeted to the treatment of severe mental illness, recognized by the United States Department of Health and Human Services' Substance Abuse and Mental Health Service Administration (SAMHSA). The rules proposed for readoption with amendments are not expected to significantly affect access to this service. The standards contained in the rules proposed for readoption with amendments assist provider agencies by providing clear specifications in their pursuit of providing high quality services. New Jersey taxpayers benefit from these rules because they promote the effective and efficient expenditure of public revenues.

Economic Impact

The funding and readoption of the rules with amendments, which contain standards for PACT services, will continue to have a positive economic impact on consumers with limited incomes because they are made available to them at no cost. The Department believes that provider agencies will be able to comply with the rules proposed for readoption with amendments through a combination of Division funding and Medicaid reimbursement.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption with amendments comply with, but do not exceed, applicable Federal requirements or standards in the Health Information Portability and Accessibility Act, 45 CFR 160.103.

Jobs Impact

The rules proposed for readoption with amendments would neither generate nor cause the loss of any jobs.

Agriculture Industry Impact

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

Regulatory Flexibility Analysis

Some providers of Division-funded 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.

PACT providers are required to develop and implement written policies and procedures. The rules proposed for readoption with amendments would require: (1) PACT monitoring activities be integrated with continuous quality improvement; and (2) require and delineate clinical supervision of all staff providing treatment, rehabilitation,

and support services, at N.J.A.C. 10:37J-2.8(d). PACT providers are required to comply with the programmatic and documentation requirements for licensure, found at N.J.A.C. 10:190 (N.J.A.C. 10:37J-2.2).

The PACT team psychiatrist is required to review and document the consumer's "stated concerns" (N.J.A.C. 10:37J-2.5(d)1i and ii). The PACT team must assess and document the consumer's "stated concerns" regarding medication (N.J.A.C. 10:37J-2.5(d)3). PACT provider agencies must attempt to procure entitlement benefits on behalf of consumers, including, but not limited to, Medicaid/NJ FamilyCare, housing, and other public assistance (N.J.A.C. 10:37J-2.5(e)4v).

Each clinical record must document the initial and comprehensive assessment (N.J.A.C. 10:37J-2.6(a)). The results of the comprehensive assessment must be documented and must include medical history, including information regarding a complete and current physical examination if the consumer consents (N.J.A.C. 10:37J-2.6(a)).

An initial written recovery plan shall be developed on the date of the consumer's admission to the PACT program and include items delineated at N.J.A.C. 10:37J-2.6(b). A comprehensive recovery plan must document collaboration and must be reviewed and revised (N.J.A.C. 10:37J-2.6(b)3, 4, and 5). Each clinical record must contain progress notes (N.J.A.C. 10:37J-2.6(e)1). Information from the ongoing assessment must be documented (N.J.A.C. 10:37J-2.6(d)).

Before terminating the enrollment of a consumer on the basis that his or her medical needs exceed the PACT team's ability to coordinate treatment, the PACT

provider must petition the Division Regional Office for permission (N.J.A.C. 10:37J-2.7(b)).

Before discharging a consumer, the provider agency must first request permission from the Division Regional Office and must include in the consumer's case a transition plan (N.J.A.C. 10:37J-2.7(e)).

The PACT administrator is required to establish written policy for clinical supervision of all staff providing treatment interventions, rehabilitation, and support services (N.J.A.C. 10:37J-2.8(c)1i).

Records must be maintained in accordance with Federal and State law (N.J.A.C. 10:37J-2.11(a)).

No professional services need be employed in order to comply with the rules proposed for readoption with amendments. The reporting, recordkeeping, and other compliance requirements imposed upon provider agencies must be uniformly applied, regardless of the size of the provider agency. This is to ensure that individuals with mental illnesses receiving these services throughout the State do so in accordance with basic minimum standards of quality. These standards are important because many consumers of these community-based services will be at risk of more restrictive and expensive hospitalization, unless these services are effectively provided.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules proposed for readoption with amendments would evoke a change in the

average costs associated with housing because they relate to PACT programs licensed by DHS.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments will have an insignificant impact on smart growth. There is an extreme unlikelihood that the rules proposed for readoption with amendments would 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 the rules proposed for readoption with amendments relate to PACT programs licensed by DHS and do not involve land use policies or infrastructure development. Therefore, they do not impact smart growth.

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

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

SUBCHAPTER 1. GENERAL PROVISIONS

10:37J-1.2 Definitions

The **following** words and terms, **as used** in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

...

“Division” means the Division of Mental Health **and Addiction** Services within the Department of Human Services.

...

“Level I standards” means those standards with which mental health programs must be in full compliance in order to be granted or to continue to receive a full Department license. Level I standards include those standards that relate most directly to consumer rights, safety, and staffing. With specific reference to the PACT program, Level I standards are: **all standards in** N.J.A.C. 10:37J-2.4, Program intensity **except subsection (c)**; N.J.A.C. 10:37-2.5[(a) through](**(c), (d)1, (e), (h), and (l)**) [and (m), Services] **services** to be provided and service coordination; and N.J.A.C. 10:37J-2.8(a), **(b), (c) (except for paragraphs (c)1 through 8), (d), and (i), [Staff] staff** requirements.

...

SUBCHAPTER 2. PROGRAM OPERATION

10:37J-2.3 Eligibility

(a) – (c) (No change.)

(d) [The Diagnostic and Statistical Manual of Mental Disorders, [Fourth] **Fifth** Edition (DSM-5), is [hereby incorporated] **incorporated herein** by reference, **as amended and supplemented** into this chapter. Copies of the DSM may be obtained from the American Psychiatric Association, [1400 K Street N.W., Washington, D.C. 20005] **1000 Wilson Boulevard, Suite 1825, Arlington, VA 22209-3901.**

10:37J-2.5 Services to be provided and service coordination

(a) – (c) (No change.)

(d) The PACT team shall provide services in the areas of medication prescription, administration, monitoring, and documentation.

1. - 2. (No change.)

3. All PACT team staff shall assess [and document] the consumer's stated concerns, mental illness symptoms, and behavior in response to medication and shall monitor for medication side-effects during the provision of observed self-administration and during ongoing face-to-face contacts.

4. Regarding PACT enrollees residing in Department of Health [and Senior Services'] licensed residential health care facilities (RHCFs), pursuant to N.J.A.C. 8:43-10.1(a), the RHCF is responsible for providing resident supervision and/or assistance during self-administration of medications and for documenting any observed instance where medications are not taken.

i. – iii. (No change.)

5. (No change.)

(e) – (o) (No change.)

(p) In the event that the PACT team determines that a PACT consumer requires referral to more specialized services to any [DMHS-funded] **DMHAS-funded** program other than PACT, the PACT team shall first request and obtain approval from the appropriate [DMHS] **DMHAS** Regional Office. Referrals to extra-PACT services for Medicaid-eligible consumers shall be subject to the reimbursement conditions delineated in the State Medicaid PACT [regulations] **rules** (N.J.A.C. 10:76-2.4).

(q) (No change.)

10:37-2.6 Assessment; recovery planning; progress notes

(a) – (b) (No change.)

(c) Where protected health information is disclosed pursuant to [(b)4ii] **(b)6ii** or iii above, the PA shall document the basis for the disclosure. Disclosure in accordance with [(b)4ii] **(b)6ii** or iii above shall not authorize or otherwise provide a basis for future disclosures not in compliance with this section.

(d) (No change.)

(e) Each clinical record shall contain progress notes.

1. (No change.)

2. Progress notes shall, at a minimum, address the following:

i. – v. (No change.)

vi. [Ongoing] **In the absence of observed side effects, documentation is not required for the ongoing** monitoring of administration of medications and the detection of adverse drug reactions; and

vii. (No change.)

10:37J-2.8 Staff requirements

(a) – (c) (No change.)

(d) Each PACT team shall, at a minimum, consist of the following staff. All staff shall be full time, unless otherwise noted below:

1. – 5. (No change.)

6. At least two additional mental health specialists. The PA may determine the exact job titles for these specialists. At least one of the mental health specialists shall be a primary consumer.

i. Qualifications for the mental health specialist: These specialists shall meet, at a minimum, one of the following requirements:

(1) A master's degree **in a behavioral health science from an accredited institution** and one year experience in the provision of mental health services;

(2) – (3) (No change.)

7. (No change.)

(e) - (j) (No change.)