

**HUMAN SERVICES**

**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**

**Programs of Assertive Community Treatment (PACT) Services**

**Proposed Readoption with Amendments: N.J.A.C. 10:76**

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

Authority: N.J.S.A. 30:4D-1 et seq. and 30:4J-8 et seq.

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

Agency Control Number: 15-P-01.

Proposal Number: PRN 2015-094.

Submit comments by October 19, 2015, to:

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The agency proposal follows:

## **Summary**

Pursuant to N.J.S.A. 52:14B-5.1.c(2), N.J.A.C. 10:76, the Programs of Assertive Community Treatment (PACT) Services, will expire on January 5, 2016. The Department of Human Services (Department) proposes to readopt the chapter, with the amendments described below. The chapter contains the requirements for Medicaid/NJ FamilyCare approved providers who render PACT services.

The Department has reviewed the chapter and finds that it should be readopted, with minor amendments described below in this Summary, because the rules are necessary, reasonable, adequate, efficient, understandable, and responsive to the purposes for which they were originally promulgated.

The chapter contains three subchapters and an appendix, described immediately below.

N.J.A.C. 10:76-1, General Provisions, contains general information related to PACT services including purpose, scope, and eligibility, definitions, provider participation criteria, and recordkeeping requirements.

N.J.A.C. 10:76-2, Program Operations, contains information related to: specific services included in PACT; the clinical supervision requirements for PACT teams; beneficiary eligibility; restrictions for Medicaid/NJ FamilyCare beneficiaries receiving other mental health services; prior authorization requirements, and reimbursement methodology.

N.J.A.C. 10:76-3, Procedure Codes for Reimbursement, contains an introduction as well as procedure codes and maximum fee allowances used by providers when seeking reimbursement.

N.J.A.C. 10:76 Appendix provides an agency note on how to obtain the Fiscal Agent Billing Supplement.

The proposed amendments to the chapter include stating that, except for beneficiaries enrolled under the Medically Needy program (N.J.A.C. 10:70), all Medicaid and NJ FamilyCare Plan A beneficiaries over the age of 18, including those in the Alternative Benefit Plan, are eligible to receive PACT services. Minor amendments to make technical or grammatical corrections to the text are also proposed.

### **General Amendments**

Throughout the chapter all references to the “Division of Mental Health” and the corresponding acronym “DMHS” have been changed to read “Division of Mental Health and Addiction Services” and “DMHAS” respectively, to indicate the current and correct name of that Division.

Throughout the chapter all references to “Unisys” have been changed to read “Molina Medicaid Solutions” to indicate the current and correct name of the fiscal agent for the program.

### **Specific Amendments**

At N.J.A.C. 10:76-1.1(a) a proposed amendment adds a reference to the NJ FamilyCare Alternative Benefit Plan because the adults enrolled in that plan are eligible to receive PACT services.

The existing text of N.J.A.C. 10:76-1.1(a)1 is proposed for deletion because the statement is no longer accurate; all adult beneficiaries of the Medicaid/NJ FamilyCare plans are eligible to receive PACT services. New text is being added to state that

beneficiaries enrolled under the Medically Needy program are not eligible to receive PACT services.

At N.J.A.C. 10:76-1.2, a proposed amendment to the definition of “provider” indicates that the providers are now licensed by the Department of Human Services, not by the individual Division.

At N.J.A.C. 10:76-1.3(b) and (f) proposed amendments indicate that the providers are now licensed by the Department of Human Services, not by the individual Division.

At N.J.A.C. 10:76-2.3(a) proposed amendments add a reference to the NJ FamilyCare Alternative Benefit Plan because the adults enrolled in that plan are eligible to receive PACT services, and state that beneficiaries enrolled under the Medically Needy program are not eligible to receive PACT services.

N.J.A.C. 10:76-2.3(a)1 is proposed for deletion because the statement is no longer accurate.

N.J.A.C. 10:76-2.4(a) is proposed for deletion because there is no exclusion of beneficiaries who are receiving PACT services from receiving personal care assistant services as well if both services are medically indicated. N.J.A.C. 10:76-2.4(b) through (d) are being recodified as N.J.A.C. 10:76-2.4 (a) through (c) with no change in text as a result of this deletion.

At N.J.A.C. 10:76-2.6(a)2 a proposed amendment indicates that the providers are now licensed by the Department of Human Services not the individual Division.

Throughout N.J.A.C. 10:76-2.5 and 2.6 specific references to Medicaid and specific NJ FamilyCare Plan beneficiaries are being deleted and simply referred to as

eligible beneficiaries, as they are discussed at N.J.A.C. 10:76-2.3(a), making the repetition of the specific plans unnecessary.

N.J.A.C. 10:76-3.1(b)3 is being deleted because Level III codes are no longer utilized.

The Department has determined that the comment period for this notice of proposal will be at least 60 days; therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, this notice is excepted from the rulemaking calendar requirement.

### **Social Impact**

In State Fiscal Year 2014, PACT services were provided by 12 agencies, supervising 31 individual PACT teams providing services statewide.

In State Fiscal Year 2014, a total of 1,377 Medicaid/NJ FamilyCare beneficiaries received services covered under this chapter.

The rules proposed for readoption with amendments reflect an increase in the number of beneficiaries receiving PACT service as these services are part of the alternative benefit plan. The exact impact of this is yet to be determined and is dependent upon the number of adults needing this service who will be receiving Alternative Benefit Plan (ABP) benefits under NJ FamilyCare.

The rules proposed for readoption with amendments of N.J.A.C. 10:76, Programs of Assertive Community Treatment (PACT) Services, will have a positive social impact on the beneficiaries of the Medicaid/NJ FamilyCare program by assuring that eligible beneficiaries will continue to receive PACT services.

The rules proposed for readoption with amendments will also have a positive impact on the State and the providers of the services regulated by this chapter, because readoption of these rules will allow the Division of Medical Assistance and Health Services (Division) to continue these programs, thus ensuring continuation of important benefits to beneficiaries and continued reimbursement to providers.

### **Economic Impact**

During State Fiscal Year 2014, a total of 1,377 Medicaid/NJ FamilyCare beneficiaries received services covered under this chapter at a cost of \$17,253,935 (State and Federal share combined).

The rules proposed for readoption with amendments will result in beneficiaries continuing to receive services and providers continuing to be reimbursed for them. Additionally, as discussed above, the rules proposed for readoption with amendments reflect an increase in the number of beneficiaries receiving PACT service as these services are part of the alternative benefit plan. The exact impact of this is yet to be determined and is dependent upon the number of adults needing this service who will be receiving ABP benefits under NJ FamilyCare.

The rules proposed for readoption with amendments will have no economic impact on the beneficiaries, because beneficiaries will not be required to pay, in whole or in part, for these services and the rules proposed for readoption with amendments will not impose any costs on the beneficiaries. The rules proposed for readoption with amendments will have no economic impact on providers because reimbursement will not be affected.

### **Federal Standards Statement**

Sections 1902(a)(10) and 1905(a)(13), 42 U.S.C. §§ 1396a(a)(10) and 1396d(a)(13), respectively, allow a state Medicaid program to offer other diagnostic, screening, prevention, and rehabilitation services, including any services recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under state law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible level of functioning. Section 1902(a)(30) of the Act, 42 U.S.C. § 1396a(a)(30), requires that payments for services shall be consistent with efficiency, economy, and quality of care.

Section 1937 of the Social Security Act, 42 U.S.C. § 1396u-7, requires a state to provide benchmark coverage to enrolled populations. The Federal regulations at 42 CFR 440.300 define the components of the benchmark plan, including mental health services, which include PACT services.

The Federal regulations at 42 CFR 440.130 define rehabilitative services as any medical or remedial services recommended by a physician or other licensed practitioner of the healing arts, within the scope of his practice under state law, for maximum reduction of physical or mental disability and restoration of a patient to his or her best possible functional level.

The Division has reviewed the Federal statutory and regulatory requirements and has determined the rules proposed for readoption with amendments do not exceed Federal standards. Therefore, a Federal standards analysis is not required.

### **Jobs Impact**

The rules proposed for re-adoption with amendments will not result in the generation or loss of jobs for the providers or the State.

### **Agriculture Industry Impact**

Since the rules proposed for re-adoption with amendments concern the provision of PACT services to Medicaid and NJ FamilyCare beneficiaries, the rules proposed for re-adoption with amendments will not affect the State's agriculture industry.

### **Regulatory Flexibility Analysis**

Some of the regulated providers may be considered small businesses under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for re-adoption with amendments described in the above Summary will not adversely affect these providers nor will they impose additional recordkeeping, compliance, or reporting requirements on them. The providers are already required to maintain records to fully disclose the name of the beneficiary who received the service, date of service, and any additional information as may be required by N.J.A.C. 10:49 and N.J.S.A. 30:4D-1 et seq. and to report this information to authorized agencies of the State. These requirements must apply equally to all providers regardless of size, because all providers must adhere to the same rules to ensure appropriate standards of care are provided and maintained.



There are no initial capital costs or ongoing compliance costs associated with these rules proposed for readoption with amendments nor are additional professional services required.

### **Housing Affordability Impact Analysis**

Since the rules proposed for readoption with amendments concern the provision of PACT services to Medicaid and NJ FamilyCare beneficiaries, the Department anticipates that the proposed readoption with amendments will have no impact on affordability of housing in New Jersey or on the average costs associated with housing.

### **Smart Growth Development Impact Analysis**

Since the rules proposed for readoption with amendments concern the provision of PACT services to Medicaid and NJ FamilyCare beneficiaries, the Department anticipates that the proposed amendments will have no impact on smart growth or housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:76.

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

SUBCHAPTER 1. GENERAL PROVISIONS

10:76-1.1 Purpose, scope, and eligibility

(a) The purpose of this chapter is to set forth the rules governing the provision of Programs of Assertive Community Treatment (PACT) services to New Jersey Medicaid and certain NJ FamilyCare-Plan A beneficiaries **and NJ FamilyCare Alternative Benefit Plan beneficiaries.**

[1. NJ FamilyCare-Plan A adults with no children are not eligible to receive PACT services. These beneficiaries may be identified by the Program Code "70" in positions 3 and 4 of their NJ FamilyCare-Plan A identification number.]

**1. Beneficiaries enrolled under the Medically Needy program (N.J.A.C. 10:70) are not eligible to receive PACT services.**

2. (No change.)

(b) (No change.)

#### 10:76-1.2 Definitions

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

...

"Division of Mental Health **and Addiction** Services [(DMHS)] **(DMHAS)**" means the organizational component of the New Jersey Department of Human Services that is responsible for the administration of the State's mental health **and addiction** programs.

...

"Prior authorization" means approval by [DMHS] **DMHAS** before services are rendered.

...

"Provider" means an organization that has a contract with, and is licensed by, the [DMHS] **DHS** to provide PACT services.

#### 10:76-1.3 Provider participation criteria

(a) To participate in the Medicaid/NJ FamilyCare program, all providers shall be under contract with the Division of Mental Health **and Addiction** Services [(DMHS)] (**DMHAS**) as a provider of PACT services and shall meet the requirements set forth by the [DMHS] **DMHAS** related to PACT services in accordance with N.J.A.C. 10:37J.

(b) In order to participate in the Medicaid/NJ FamilyCare program, all applicants shall complete and submit the "Medicaid Provider Application" (FD-20) and the "Medicaid Provider Agreement" (FD-62), as well as a copy of their license provided by [DMHS] **DHS**, in accordance with N.J.A.C. 10:190, to:

Division of Medical Assistance and Health Services

Office of Provider Enrollment, Mail Code #9

PO Box 712

Trenton, New Jersey 08625-0712

(c) – (e) (No change.)

(f) If a PACT provider loses its license from [DMHS] **DHS**, and is unable to provide services, the provider shall notify the Provider Enrollment Unit, at the address in (b) above, within five business days of losing the license.

1. The PACT provider will be disenrolled as a Medicaid/NJ FamilyCare PACT provider until such time as the license is restored. Once the provider's PACT license is restored by the [Division of Mental Health] **Department of Human** Services, the

provider will be reinstated as a Medicaid/NJ FamilyCare PACT provider as long as the requirements of N.J.A.C. 10:37J and this chapter are met and continue to be met.

2. (No change.)

#### 10:76-2.2 Clinical supervision of PACT teams

(a) – (b) (No change.)

(c) The PACT team psychiatrist, or other appropriately licensed clinical professional as permitted by [DMHS] **DMHAS**, shall provide supervision to the team regarding medication administration and monitoring for all beneficiaries served by the team.

(d) – (f) (No change.)

#### 10:76-2.3 Beneficiary eligibility

(a) Medicaid and NJ Family Care Plan A **and NJ FamilyCare Alternative Benefit Plan** beneficiaries age 18 and older shall be eligible to receive PACT services, **except for beneficiaries enrolled under the Medically Needy program (N.J.A.C. 10:70).**

[1. NJ FamilyCare-Plan A adults with no children are not eligible to receive PACT services. These beneficiaries may be identified by the Program Code "70" in positions 3 and 4 of their NJ FamilyCare-Plan A identification number.]

[2.] **1.** ( No change in text.)

(b) Beneficiaries facing chronic and severe mental illness, who have not responded to traditional mental health treatment, using the criteria established by the Division of

Mental Health **and Addiction** Services at N.J.A.C. 10:37J-2.3, shall be referred for PACT services by their mental health provider.

#### 10:76-2.4 PACT beneficiaries receiving other mental health services

[(a) A PACT provider shall not request reimbursement for PACT services delivered during the same month the beneficiary is also receiving mental health personal care assistance (PCA) services.]

Recodify existing (b) – (d) as **(a) – (c)** (No change in text.)

#### 10:76-2.5 Prior authorization

(a) No PACT services shall be provided to an eligible [Medicaid and NJ FamilyCare-Plan A] beneficiary without prior authorization. **The eligible beneficiaries for PACT are described at N.J.A.C. 10:76-2.3(a).**

(b) For the provision of PACT services, the provider shall obtain prior authorization as follows:

1. The provider shall complete the "[DMHS] **DMHAS** PACT Referral and Intake Outcome" form to request authorization to provide PACT services and shall submit the form to the [DMHS] **DMHAS** Regional Office in the county in which the provider is located.

2. The Regional [DMHS] **DMHAS** Program Analyst will evaluate the eligibility of the beneficiary for PACT services in accordance with N.J.A.C. 10:37J-2.3(b), and will advise the provider of results of the evaluation.

3. Upon receipt of this approval, the provider shall meet with the beneficiary, enroll the beneficiary into the PACT program, and return the signed and dated "[DMHS] **DMHAS** PACT Referral and Intake Outcome" form to the [DMHS] **DMHAS** Regional Office, confirming the enrollment of the beneficiary into the PACT program.

(c) For the provision of Partial Care/Partial Hospitalization (PC/PH) services to [a Medicaid or NJ FamilyCare-Plan A] **an eligible** beneficiary enrolled in PACT, the provider shall obtain prior authorization as follows:

1. The PACT provider shall submit a written request to the Regional [DMHS] **DMHAS** Program Analyst requesting authorization to enroll a beneficiary receiving PACT services into a Partial Care/Partial Hospitalization program. The written request shall include:

i. – ii. (No change.)

2. (No change.)

3. The DMAHS Office of Customer Service will review the request and advise the Statewide PACT Coordinator of the approval or denial of the request.

i. PC/PH services shall not be approved for more than 30 days for [a Medicaid/NJ Family Care Plan A] **an eligible** beneficiary receiving PACT services.

ii. PC/PH services shall only be approved for the time period in which the [Medicaid/NJ FamilyCare-Plan A] **eligible** beneficiary is transitioning out of receiving PACT services.

iii. The providers will be notified by [Unisys] **Molina Medicaid Systems** that services have been authorized. Such authorization should be received before providing services.

(d) (No change.)

#### 10:76-2.6 Reimbursement methodology

(a) Providers will be reimbursed on a fee-for-service basis for PACT services provided to [a Medicaid/NJ FamilyCare-Plan A] **an eligible** beneficiary, **as described at N.J.A.C. 10:76-2.3(a)**, based on the lower of the provider's usual and customary charge or the established DMAHS contracted reimbursement rate for the service.

1. (No change.)

2. The DMAHS contracted reimbursement rate shall be based on an average of PACT provider costs for billable beneficiaries, that is, those beneficiaries who meet the minimum service standards in PACT programs that are under contract with, and licensed by, the [Division of Mental Health] **Department of Human Services**.

(b) (No change.)

(c) For months of service other than the first and last months, a minimum of two hours of face-to-face contact with, or on behalf of, the beneficiary shall be provided.

1. If the minimum face-to-face contact is not achieved[,] and documented[,] during any calendar month, the provider shall not seek reimbursement for the provision of PACT services to [a Medicaid/NJ FamilyCare-Plan A] **an eligible** beneficiary during that month.

2. (No change.)

3. General acute care hospitals shall not be considered IMDs for the purposes of the PACT, and therefore face-to-face contact provided to, or on behalf of, [a Medicaid/NJ FamilyCare-Plan A] **an eligible** beneficiary, while the beneficiary is in a

general acute care hospital, can be counted towards the monthly minimum service requirement.

(d) (No change.)

#### 10:76-3.1 Introduction

(a) (No change.)

(b) HCPCS was developed as a three-level coding system:

1. – 2. (No change.)

[3. LEVEL III CODES: The narratives for Level III codes are found in this subchapter. These codes are assigned by the Division of Medical Assistance and Health Services to be used for those services that are unique to the New Jersey Medicaid/NJ FamilyCare programs.]

(c) (No change.)

## APPENDIX

### FISCAL AGENT BILLING SUPPLEMENT

AGENCY NOTE: The Fiscal Agent Billing Supplement is appended as a part of this chapter but is not reproduced in the New Jersey Administrative Code. The Fiscal Agent Billing Supplement can be downloaded free of charge from: [www.njmmis.com](http://www.njmmis.com). When revisions are made to the Fiscal Agent Billing Supplement, a revised version will be posted on the njmmis website and copies will be filed with the Office of Administrative Law.



If you do not have access to the Internet and require a copy of the Fiscal Agent Billing Supplement, write to:

[Unisys Corporation] **Molina Medicaid Systems**

PO Box 4801

Trenton, New Jersey 08650-4801

or contact:

Office of Administrative Law

Quakerbridge Plaza, Bldg. 9

PO Box 049

Trenton, New Jersey 08625-0049