

HUMAN SERVICES

DIVISION OF MENTAL HEALTH AND ADDICTION SERVICES

Advance Directives for Mental Health Care

Proposed Readoption with Amendments: N.J.A.C. 10:32

Proposed Repeal and New Rule: N.J.A.C. 10:32 Appendix A

Authorized By: Jennifer Velez, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4-177.59 and 30:9A-10.

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

Proposal Number: PRN 2014-109.

Submit written comments by September 5, 2014, to:

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The agency proposal follows:

Summary

The Department of Human Services (Department) proposes to readopt N.J.A.C. 10:32 with amendments, a repeal, and a new rule. The chapter is scheduled to expire on June 18, 2014, however, as the Department has filed this notice of readoption with

the Office of Administrative Law prior to that date, the expiration date is extended by 180 days to December 15, 2014, pursuant to N.J.S.A. 52:14B-5.1.c(2).

The Department of Human Services, through the Division of Mental Health and Addiction Services (“DMHAS” or “Division”), is proposing amendments to N.J.A.C. 10:32-1.1, 1.3, 1.4, 1.5, 1.6, 2.1, and 2.2 and a repeal and new rule at N.J.A.C. 10:32 Appendix A.

The rules proposed for readoption are summarized as follows:

Subchapter 1. Scope and Purpose

N.J.A.C. 10:32-1.1 outlines the scope of the new rules, which would apply to all State psychiatric hospitals and the Division.

Proposed N.J.A.C. 10:32-1.2 describes the purpose of the rules, which is to implement the New Jersey Advance Directives for Mental Health Care Act (Act).

Proposed N.J.A.C. 10:32-1.3 defines terms used in these rules.

Proposed N.J.A.C. 10:32-1.4 requires quantitative and narrative reporting by the psychiatric hospitals to the Department about the implementation of advance directives in each hospital.

Proposed N.J.A.C. 10:32-1.5 requires each State psychiatric hospital to develop policies and procedures to inform current patients of the availability of advance directives for mental health, assist them in using such directives to express their future treatment desires, and inform them of the availability of the State's voluntary registry. The rule further requires each hospital to develop policies that would establish appropriate procedures for staff to implement the Act and inform staff about their responsibilities under the Act.

Proposed N.J.A.C. 10:32-1.6 would require reporting of interference by psychiatric hospital staff with a consumer's rights under the Act.

Subchapter 2. Registry of Mental Health Care Directives

Proposed N.J.A.C. 10:32-2.1 establishes procedures and responsibility for the creation and maintenance of a registry of mental health care directives. The rule requires that the Division distribute a form for registration and that the registry maintain information submitted voluntarily by consumers in compliance with applicable confidentiality laws.

Proposed N.J.A.C. 10:32-2.2 establishes the process to access the registry by declarants, their mental health care representatives, licensed independent practitioners, and certified mental health screeners.

N.J.A.C. 10:32 Appendices

Proposed N.J.A.C. 10:32 Appendix A is a form for a mental health advance directive that may be used by potential consumers of mental health services.

Proposed N.J.A.C. 10:32 Appendix B is the form that must be completed by a declarant in order to register a document with the Division registry.

The following is a description of the proposed amendments, repeal, and new rule.

In the Fiscal Year 2010-2011 State Appropriations Act, the former Division of Mental Health was merged with the former Division of Addiction Services to create the Division of Mental Health and Addiction Services. N.J.A.C. 10:32-1.1, 1.3, 1.4, 1.5(a)4, 1.6, 2.1, and 2.2 are proposed for amendment to reflect the name of or acronym for the

merged division, as appropriate. N.J.A.C. 10:32-1.4 is further amended to remove long-past date references.

N.J.A.C. 10:32-1.5 is proposed for amendment to include documentation in a patient's chart that would require the responsible mental health care professional(s) to notate when a patient is unable to make a mental health decision (including corroboration thereof by a mental health care professional) and when a patient has regained capacity to make that decision; the date, time, and nature of any decision about the patient's care made pursuant to an advance directive; and any override of an advance directive and the reason for the override. This amendment emphasizes the need to document specifics with respect to an advance directive and prompts the mental health care professional(s) to be in compliance with the New Jersey Advance Directives for Mental Health Care Act (P.L. 2005, c. 233).

N.J.A.C. 10:32-2.2 is proposed for amendment to include a different phone number at the Division of Mental Health and Addiction Services to access the registry. This phone number is the same number as the Division's existing published hotline number.

The Division notes that the internet address provided for access to the DMHAS registry, as referenced in N.J.A.C. 10:32-2.2(a), is not a working internet address. As a result, consumers, DMHAS staff, licensed independent practitioners, and mental health screeners certified by the DMHAS pursuant to N.J.A.C. 10:31-3.3, have not had access to a registry. DMHAS is addressing this serious issue and will be working with website experts to develop a successor website for all intended. When the successor website is

completed, DMHAS will provide adequate notice to all interested parties on any changes to the registry and initiate a rulemaking to propose the same, if necessary.

N.J.A.C. 10:32 Appendix A is proposed for repeal and replacement with a new rule to include a revised Psychiatric Advance Directive, which is not substantively different from the current version, except that it has been redesigned to be more consumer friendly and it now includes a wallet card, which was created by the Mental Health Association in New Jersey (MHANJ). This document has worked successfully for consumers and the Division supports incorporating this into N.J.A.C. 10:32 Appendix A. Additionally, the wallet card is a useful tool to carry in the event a consumer is unable to communicate to a mental health care professional his or her treatment in the event of a mental health care crisis.

N.J.A.C. 10:32 Appendix B is proposed for amendment to reference the merged division name and new address.

As the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The Advance Directives for Mental Health Care Act requires all mental health care providers to develop internal policies and procedures to assist consumers of mental health services in executing a directive if they wish to do so and to implement those directives should a substitute decision-maker or instruction be necessary to treat the client. In addition, the Act requires that psychiatric facilities operated by the

Department of Human Services submit data to show that they have complied with the law, and in what the Department believes to be a necessary step to full implementation, proposes some limited reporting by licensed mental health providers as well.

The Department anticipates that the social benefit derived from the rules proposed for readoption with amendments, repeal, and a new rule, implementing the Advance Directives for Mental Health Care Act, will be very positive. The rules proposed for readoption with amendments, repeal, and a new rule will empower consumers to use their unique knowledge of their own illness and past response to treatment to participate in treatment decisions even when the illness makes direct current participation impossible, and provides for a registry to assist providers in accessing the wishes of the consumer. The system created to promote the use of advance directives for mental health care should further the Division of Mental Health and Addiction Services' goal of transforming the current system of care toward a culture that promotes wellness and recovery for consumers of its services.

Economic Impact

The rules proposed for readoption with amendments, repeal, and a new rule will have a positive economic impact on consumers and the public, because they will enable more individualized, efficient treatment planning and implementation, which will reduce the number of more expensive and personally restrictive psychiatric hospitalizations.

Existing rules already require reporting of a number of events, including incidents, census, and performance toward various fiscal and treatment goals, by the psychiatric hospitals. The rules proposed for readoption would impose continuing

requirements, that are mandated, either explicitly or implicitly, by the Advance Directives for Mental Health Care Act, such as informing consumers of their rights to execute a directive at various critical points in treatment, creating a dispute resolution mechanism to resolve issues of capacity and the medical soundness of treatments proposed in a directive or chosen by a mental health care representative, and training for all treatment staff in the use of the registry and the implementation of advance directives for mental health care.

The Department believes that the rules proposed for readoption with amendments, repeal, and a new rule will not impose an economic burden that cannot be met with the funds provided to the psychiatric hospitals by the Division and other sources. Accordingly, any costs incurred will be minor and will include the expansion of current reporting requirements to include data about implementation of the law and some expansion of existing training of staff about their responsibilities. The promulgation of these rules is not intended or expected to impact the amount of Division funding available to provide the services discussed above in the future.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption with amendments, repeal, and a new rule are not subject to any Federal requirements or standards.

Jobs Impact

The Department does not anticipate that the rules proposed for re-adoption with amendments, repeal, and a new rule would result in the generation or loss of jobs within the State. Current law requires that all health care facilities, including psychiatric hospitals, offer each patient the opportunity to complete or decline to execute an advance directive for health care.

Agriculture Industry Impact

The rules proposed for re-adoption with amendments, repeal, and a new rule will have no impact on the agriculture industry in the State of New Jersey.

Regulatory Flexibility Statement

The Department has determined that the rules proposed for re-adoption with amendments, repeal, and a new rule would only apply to the four State psychiatric hospitals operated by the Department of Human Services and the Division, none of which may be considered a small business as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as they are State-run facilities. Accordingly, a regulatory flexibility analysis is not required, as no reporting, recordkeeping, or other compliance requirements would be imposed on small businesses.

Housing Affordability Impact Analysis

It is not anticipated that the rules proposed for re-adoption with amendments, repeal, and a new rule will have an impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average

costs associated with housing because the rules pertain to psychiatric advance directives for consumers diagnosed with mental illness.

Smart Growth Development Impact Analysis

It is not anticipated that the rules proposed for readoption with amendments, repeal, and a new rule will have an impact on smart growth in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the rules pertain to psychiatric advance directives for consumers diagnosed with mental illness.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:32.

Full text of the rule proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 10:32 Appendix A.

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

SUBCHAPTER 1. SCOPE AND PURPOSE

10:32-1.1 Scope

This chapter shall apply to psychiatric hospitals listed in N.J.S.A. 30:1-7 and to the Division of Mental Health **and Addiction** Services in the Department of Human Services.

10:32-1.3 Definitions

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

...

“Division” or [“DMHS”] “**DMHAS**” means the Division of Mental Health **and Addiction** Services in the Department of Human Services.

“[DMHS] **DMHAS** registry” means the registry for advance directives established by the Division of Mental Health **and Addiction** Services pursuant to section 17 of P.L. 2005, c. 233 (N.J.S.A. 30:4-177.59).

...

10:32-1.4 Annual reporting

(a) The chief executive officer of each psychiatric facility listed in N.J.S.A. 30:7-1 shall submit a report to the Commissioner of Human Services, through the Division of Mental Health **and Addiction** Services [on September 1, 2007, and] on September 1st [in] every year [thereafter], about the facility’s implementation of the New Jersey Mental Health Advance Directives Act. The report shall not include patient identifiers, but shall include:

1.-7. (No change.)

10:32-1.5 Policies at psychiatric facilities

(a) Every psychiatric facility listed at N.J.S.A. 30:1-7 shall develop policies and procedures that require appropriate clinical staff to:

1.-3. (No change.)

4. Provide appropriate informational materials concerning advance directives for mental health care, including standard forms approved by the Division of Mental Health **and Addiction** Services, located at [Chapter] **N.J.S.A. 10:32** Appendix A, incorporated herein by reference, and information about the [DMHS] **DMHAS** Registry, established pursuant to N.J.A.C. 10:32-2.1, to all interested patients and their families and mental health care representatives;

5.-9. (No change.)

10. Prohibit any employee from acting as a mental health care representative for a current or former client of the hospital unless that designation is approved by the facility chief executive officer; [and]

11. Establish procedures for gathering data required by N.J.A.C. 10:32-1.4[.];

12. Document in a patient's chart when the responsible mental health care professional and a corroborating mental health care professional determine that an individual lacks capacity to make a mental health decision and when the patient has been determined to have regained the capacity to make that decision;

13. Document the date, time, and nature of any decision about the patient's care that is made pursuant to an advance directive, whether through a mental health care representative or by operation of an instruction; and

14. Document any override of an advance directive and the reason therefor.

10:32-1.6 Reporting of interference with patient rights to have or invoke an advance directive

(a) A psychiatric facility shall report to the Department, by a written report to the Assistant Commissioner for Mental Health **and Addiction** Services, every incident in which an employee has materially failed to comply with the policies required by N.J.A.C.

10:32-1.5.

1. (No change.)

SUBCHAPTER 2. REGISTRY OF MENTAL HEALTH CARE DIRECTIVES

10:32-2.1 Creation and maintenance of a registry of mental health care directives

(a)–(b) (No change.)

(c) The registry form ([Chapter] **N.J.A.C. 10:32** Appendix B) shall be an addendum to the standard advance directives for mental health treatment form ([Chapter] **N.J.A.C. 10:32** Appendix A) published by the Division of Mental Health **and Addiction** Services, but shall clearly be an optional portion of the form, and shall be separately witnessed or executed electronically through a secure website with appropriate safeguards to prevent fraudulent access or registration.

(d) Only [DMHS] **DMHAS** staff, declarants, licensed independent practitioners, and mental health screeners certified by the Division of Mental Health **and Addiction** Services pursuant to N.J.A.C. 10:31-3.3, and employed by a designated screening service shall be authorized to access information on the registry. Information on the registry shall only be accessed by persons other than the declarant for purposes of maintenance of the registry or of ascertaining the wishes of a declarant who has

registered his or her advance directive, and shall be treated as confidential protected health information.

10:32-2.2 Access to the registry

(a) An authorized person may access the registry through the Internet, http://www.state.nj.us/humanservices/dmhs/wellness_recovery.htm, 24-hours a day, seven days a week, or on the telephone at [(609) 777-0700] **1-800-382-6717** during weekday business hours by providing a password by the Division of Mental Health **and Addiction** Services pursuant to (b) or (c) below.

(b) The Division of Mental Health **and Addiction** Services shall provide a user name and password to any licensed independent practitioner or a person who is certified as a mental health screener pursuant to N.J.A.C. 10:31-3.3 upon the request of that person and receipt of proof of the license or certification.

1. (No change.)

(c) The Division of Mental Health **and Addiction** Services shall provide each registered declarant with a user name and password that shall limit their access to their own registered directive. The consumer may share that user name and password with a mental health care representative. If the representative does not have the password, the Division of Mental Health **and Addiction** Services will provide that user name and password to a person who presents either satisfactory proof that they are the person named in an advance directive, or a court order naming the person as the guardian of the person who executed an advance directive.

(Agency Note: The text of proposed new N.J.A.C. 10:32 Appendix A follows without boldface symbolizing proposed new text; those portions of the appendix appearing in boldface are proposed to be so permanently.)

Appendix A
Psychiatric Advance Directive (PAD)/Crisis Plan*
New Jersey Advance Directives for Mental Health Care Act
N.J.S.A. 26:2H-108 et seq.

Name:

D.O.B.:

Phone:

Address:

I, _____, being a legal adult of sound mind, voluntarily make this declaration for mental health treatment.

Please select and initial one of the following statements:

_____ I want this declaration to be followed if I am incapable of making a decision or decisions about my care, as defined in New Jersey Statutes Annotated 26:2H-109.

_____ In the absence of a declaration of incapacity, I want this declaration to be followed as if I am incapable of making a decision or decisions about my care, as defined in New Jersey Statutes Annotated 26:2H-109, when signs and symptoms listed in PART 2 are evident.

Please select and initial one of the following statements:

_____ I can revoke this plan at any time as permitted by law.

_____ I do not wish to exercise my right to revoke this plan once it has been activated.

If it is determined that I am unable to make informed health care decisions for myself, I want the following person to act as my primary mental health care representative:

Name

Relationship to self

Phone 1

Phone 2

Address

Email

I would like the following person to be my alternate mental health care representative:

Name

Relationship to self

Phone 1

Phone 2

Address

Email

_____ I do not wish to appoint a mental health care representative.

*Adapted from the Wellness and Recovery Action Plan (WRAP®) Crisis Plan. Copyright by Mary Ellen Copeland PO Box 301, W. Dummerston, VT 05357 Phone: (802) 254-2092 www.mentalhealthrecovery.com
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Initials _____

If you have designated someone as your mental health care representative, please answer sections A and B by initialing one of the statements. If you do not wish to appoint someone as your representative, do not complete this page.

A) Authority and Limitation of Authority of Mental Health Care Representative

I want my representative to make decisions about my treatment in the following way:
(Please select and initial one of the following statements.)

_____ Make decisions about my care based on what is in this document or, if not specifically expressed, as are otherwise known to my representative. If my wishes are unknown or are not specifically addressed in this document, make decisions based on what he/she believes would be the decision I would make.

_____ Make decisions about my care based on what is in this document or, if not specifically expressed, as are otherwise known to my representative. If my wishes are unknown or are not specifically addressed in this document, make decisions about my care that he/she thinks would be in my best interest, taking into consideration my preferences and consultation with providers and supporters as indicated in this document.

B) Please select and initial one of the following statements:

_____ I consent to giving my representative the authority to admit me to an inpatient or partial psychiatric hospitalization program for up to _____ days.

Optional: Describe the conditions under which you would agree to be hospitalized:

_____ I do not consent to give my representative the authority to admit me to an inpatient or partial psychiatric hospitalization program.

Initials _____

Name (Print): _____

The following are my wishes regarding my mental health care treatment in the event of a mental health crisis, including hospitalization:

Part 1. The following words describe me when I am feeling well:

Part 2. Symptoms

The following signs and symptoms will indicate that I am in a mental health crisis:

Substance Use (Street Drugs/Alcohol/Prescription Medications)

Without admitting to current use of substances, I offer the following information:

This is the substance(s) that I am or was most likely to use:

I feel and behave this way after taking this drug(s):

Initials _____

Part 3. Supporters

In the event that I am in a mental health crisis please contact the following person(s) in addition to any representatives named:

Name	Relationship to self	Phone 1
		Phone 2
Name	Relationship to self	Phone 1
		Phone 2
Name	Relationship to self	Phone 1
		Phone 2

I do not want the following people notified or involved in my care or treatment in any way:

Name	I do not want them involved because: (Optional)
Name	I do not want them involved because: (Optional)

If I am admitted to a hospital, I will need assistance with the following tasks:

I need (Name) _____ To (tasks) _____

I am a caretaker of the following person(s) at home:

The following person should be contacted to arrange substitute care:

Name	Phone 1
	Phone 2

Initials _____

Part 4. Medical Information

Primary Care Physician

Phone

Psychiatrist

Phone

Therapist

Phone

Case Manager

Phone

Pharmacy

Phone

Insurance Carrier

ID #

Phone

I would like the following health care providers to be notified and consulted about my care:

I have the following medical conditions:

Medications/Supplements/OTC (Over the Counter) preparations I am currently using:

Name

Dosage

Purpose

Initials _____

Medications that have helped me in the past and that I consent to:

Name	Dosage	Purpose
Name	Dosage	Purpose
Name	Dosage	Purpose
Name	Dosage	Purpose

Medications that I do not consent to or wish to avoid:

Name or type of medication	Reason Why
Name or type of medication	Reason Why
Name or type of medication	Reason Why
Name or type of medication	Reason Why

Medications that I am allergic to:

Name	Reaction
Name	Reaction

Part 5: Help from my supporters and hospital staff

Please do the following things that would help reduce my symptoms, make me more comfortable, and keep me safe:

Initials _____

Please AVOID doing the following things while I am in a crisis, as they may make me feel worse:

Part 6. Home care/Community care/Respite center

If possible, follow this care plan instead of hospitalization:

Part 7. Hospital or other Treatment Facilities

If I am being admitted to a hospital or treatment facility, I prefer the following facilities in order of preference:

1. Name Reason I prefer it

2. Name Reason I prefer it

AVOID using the following hospital or treatment facilities:

1. Name Reason to avoid it

2. Name Reason to avoid it

Initials _____

Part 8: Treatments and Therapies

The following treatments and therapies help me when I am in crisis:

Name When to use this therapy

Name When to use this therapy

Treatments and Interventions that I do not consent to:

Name Reason why

Name Reason why

I would like to be permitted to use the following wellness techniques to help me in my recovery:

Part 9: Inactivating the Plan

The following signs, lack of symptoms or actions indicate that my supporters no longer need to use this plan and I am able to make decisions on my own behalf:

Initials _____

Signature of Declarant:

I, _____, being a legal adult of sound mind, voluntarily make this declaration for mental health treatment.

Signature _____

Date _____

Print Name _____

Any Mental Health Care Advance Directive plan signed with a more recent date takes precedence over this one.

_____ This plan has been registered with the state of New Jersey.

Witness:

I attest that the declarant signed this document (or asked another to sign this document on his or her behalf) in my presence, and that the declarant appears to be of sound mind and free of duress and undue influence. I am 18 years of age or older. I am not designated by this or any other document as the person's mental health care representative, nor as an alternate mental health care representative. At the time this document is being executed, I am not the responsible mental health care professional responsible, or directly involved with, the declarant's care.

Witnessed by _____

Date _____

Print Name _____

Second Witness:

(A second witness is required if the first witness is related to the declarant by blood, marriage or adoption, or is the declarant's domestic partner or otherwise shares the same home with the declarant; is entitled to any part of the declarant's estate by will or by operation of law at the time the advance directive is being executed; or is an operator, administrator, or employed of a rooming or boarding or residential health care facility in which the declarant resides.)

I attest that the declarant signed this document (or asked another to sign this document on his or her behalf) in my presence, and that the declarant appears to be of sound mind and free of duress and undue influence. I am 18 years of age or older. I am not designated by this or any other document as the person's mental health care representative, nor as an alternate mental health care representative. At the time this document is being executed, I am not the responsible mental health care professional responsible, or directly involved with, the declarant's care.

Witnessed by: _____

Date: _____

Print Name _____

Initials _____

Name: _____

Date of Birth: _____

I have a Psychiatric Advance Directive registered with the NJ Division of Mental Health and Addiction Services. Please obtain a copy by calling Central Admissions (24/7) at 609-633-0861 or 609-633-1873.

APPENDIX B

Registration

I hereby submit my mental health advance directive to the Division of Mental Health **and Addiction** Services in the New Jersey Department of Human Services to be registered. I choose the following password that will permit access for me and anyone with whom I share it.

I further understand that a licensed health care provider who is providing me with mental health care may be able to access my directive if needed. No other person will be permitted to see the directive (except as required for administration of the registry) without my permission.

Signature

Print Name: _____, contact information for confirmation:

Witness:

Dated: _____

Send original to [NJDMHS Registry, 50 E. State St, PO Box 727, Trenton, NJ 08625-0727] **NJDMHAS Registry, 222 S. Warren Street, PO Box 700, Trenton, NJ 08620-0700** and attach a copy of your entire mental health care advance directive. You may also submit other documents to be registered that affect your legal ability to consent, such as a health care advance directive, durable power of attorney, temporary or limited guardianship orders, etc., which the registry will accept in its discretion.

