

occurred. Pursuant to Executive Order No. 244 (2021), and P.L. 2021, c. 103, this notice of readoption is timely filed.

Reorganization Plan No. 001-2017, A Plan for the Transfer of Mental Health and Addiction Functions From the Department of Human Services to the Department of Health (Governor Christie, filed June 29, 2017, and effective August 28, 2017), at § 1, continued the Division of Mental Health and Addiction Services (DMHAS) of the Department of Human Services (DHS), and, in pertinent part, at § 2(r), transferred the DMHAS and all functions, powers, and duties associated with the licensure and inspection of mental health programs and facilities pursuant to N.J.S.A. 30:1-12 from the DHS and the DHS Commissioner to the Department and the Commissioner of Health. 49 N.J.R. 2303(a).

Reorganization Plan No. 001-2018, A Plan for the Transfer of Certain Mental Health and Addiction Functions From the Department of Health to the Department of Human Services (Governor Murphy, issued June 21, 2018, effective August 20, 2018), at §1, continued the DMAHS and transferred from the Department and the Commissioner of Health to the DHS and the DHS Commissioner, all functions, powers, and duties established within N.J.S.A. 30:1-12. 50 N.J.R. 1517(a). Reorganization Plan No. 001-2018 at §2(c) retained and continued within the jurisdiction of the Department and the Commissioner of Health all functions, powers, and duties established at N.J.S.A. 30:1-12 associated with the establishment and enforcement of standards for licensure and inspection of mental health programs. *Id.* Reorganization Plan No. 001-2018 states, “[to] the extent the functions, powers, and duties under the statutes are necessary or convenient for the Department of Health to continue operating the State

psychiatric hospitals and the licensing of mental health and addiction services programs and facilities...., such functions, powers, and duties will continue within the Department of Health, and the Commissioner of Human Services shall provide such support as is needed to carry out those functions, including a proportionate share of personnel, support service or funds necessary to the objectives.” *Id.* at 1518.

N.J.A.C. 10:190, Licensure Standards for Mental Health Programs, establishes standards for licensure of community mental health facilities in New Jersey. The Department of Human Services recodified N.J.A.C. 10:190 from N.J.A.C. 10:37 in 2007. 38 N.J.R. 2566(a); 39 N.J.R. 450(b). The chapter was readopted on May 30, 2014. 46 N.J.R. 270(a); 46 N.J.R. 1642(c). Pursuant to N.J.S.A. 52:14B-5.1, the rules at N.J.A.C. 10:190 were scheduled to expire on May 30, 2021.

Subchapter 1, Licensure of Mental Health Programs, establishes licensure requirements applicable to certain providers of community mental health services. Within the subchapter, there are sections establishing the scope and purpose of the chapter, definitions of words and phrases the chapter uses, Level I standards, the licensure process, licensure fees for ambulatory mental health programs, applicable standards, site review procedures, types of licensure, waiver processes, license renewal or revocation procedures, the process for review of administrative determinations, and the process for administrative hearing of appeals.

The Department is developing rulemaking to revise, update, and reorganize existing N.J.A.C. 10:190, recodified as N.J.A.C. 8:121, and anticipates filing this rulemaking with the Office of Administrative Law for processing in the ordinary course. However, the Public Health Emergency that Governor Philip D. Murphy declared in

Executive Order No. 103, on March 9, 2020, necessitated the reallocation of many Department personnel and resources to pandemic response activities, complicating ongoing efforts to streamline licensure procedures for facilities providing mental health services and collaborate with the Department of Human Services to update existing rules. Therefore, the Department will not be able to finalize the anticipated rulemaking prior to the expiration of existing N.J.A.C. 10:190.

The Commissioner has reviewed N.J.A.C. 10:190 and has determined that, pending the finalization of the anticipated rulemaking described above, the existing chapter remains necessary, proper, reasonable, efficient, understandable, and responsive to the purposes for which the Department originally promulgated it, as amended and supplemented over time, and should be readopted and recodified as N.J.A.C. 8:121.

In addition to readopting and recodifying the existing rules, the Department is making technical changes throughout N.J.A.C. 8:121 to update references throughout the chapter to the licensing authority by:

1. Deleting references to the “Department of Human Services,” “DHS,” “Division of Mental Health and Addiction Services,” and “DMHAS,” and adding in place thereof, references to the “Department of Health” or the “Department”;

2. Deleting references to the “Office of Licensing” and adding in place thereof, references to the “Division of Certificate of Need and Licensing” or “Office”;

3. Deleting references to the Department of Health and Senior Services or “DHSS” and adding in place thereof, references to the “Department of Health” or the “Department,” to reflect the renaming of the Department pursuant to N.J.S.A. 26:1A-2.1;

4. Updating contact information; and
5. Correcting cross-references.

Therefore, pursuant to N.J.S.A. 52:14B-5.1.c(1), N.J.A.C. 10:190 is readopted and recodified as N.J.A.C. 8:121, and shall continue in effect for seven years.

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

CHAPTER [190] **121**

LICENSURE STANDARDS FOR MENTAL HEALTH PROGRAMS

SUBCHAPTER 1. LICENSURE OF MENTAL HEALTH PROGRAMS

[10:190]**8:121**-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] **Health** 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 as a health care facility.

1. (No change.)

2. “Mental health program” means a program of mental health services not licensed by [DHSS] **the Department** as a health care facility and which is subject to rules adopted by the Department and is provided by either:

i.-iii. (No change.)

3. (No change.)

4. Provisions of this chapter shall not apply to:

i.-iii. (No change.)

iv. Programs providing specialized services, some of which may be similar in nature to those that are the subject of this chapter, but [which] are designed to primarily address problems of alcoholism or substance abuse disorders[;], organic brain syndromes[;], developmental disabilities[;], medical[;] **conditions**, or [victim related] **victim-related** conditions, such as domestic violence or rape;

v. Counseling services provided by clergy of any [faith based] **faith-based** denomination of an established and legally cognizable church denomination or sect within the scope of the person's ministerial duties; and

vi. A mental health program licensed by the [DHSS] **Department** as a health care facility, provided that each site of such program holds a separate [DHSS] **Department** license or is specified on the main facility's [DHSS] **Department** license.

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

[10:190]8:121-1.2 Definitions

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

...

“Commissioner” means the Commissioner of the Department of [Human Services] **Health**.

...

“Department” means the Department of [Human Services] **Health**.

“Director” means the Director of the [Office] **Division of Certificate of Need and Licensing** within the Department of [Human Services] **Health, for which the contact information is Director, Division of Certificate of Need and Licensing, PO Box 358, Trenton, NJ 08625-0358.**

...

“License” means a Department document[, which provides the] **that authorizes a mental health program** [with the authority] to operate.

...

“Recognized accrediting [bodies] **body**” means [those] **an organization[s]** that accredits mental health programs [that are recognized by], **which** the Department **recognizes** for deemed status purposes. These organizations are the Joint Commission [on Accreditation of Healthcare Organizations (JCAHO)], the Council on Accreditation [of Family Services Agencies] (COA), the [Council] **Commission** on Accreditation of Rehabilitation Facilities, **now known as CARF International** (CARF), and the National [Commission on] **Committee for Quality Assurance** (NCQA).

[10:190]8:121-1.3 Level I standards

(a) The following rules shall be Level 1 standards for mental health programs:

1.-6. (No change.)

7. Therapeutic environment for partial care services at N.J.A.C. 10:37F-[2.7]2.9;

8. Staffing requirements for partial care services at N.J.A.C. 10:37F-[2.8(a), (b),

(c)]2.10;

9. Staffing requirements for family support services at N.J.A.C. 10:37F-

[5.10(b)]**5.9(b)**;

10.-18. (No change.)

[10:190]**8:121**-1.4 Licensure process

(a) All applications, fee payments, and inquiries related to licensure of mental health programs shall be [made] **submitted** to[:

New Jersey Department of Human Services

Office of Licensing

PO Box 707

Trenton, New Jersey 08625-0707] **the Director, and, if applicable, made**

payable to the Treasurer, State of New Jersey.

(b)-(c) (No change.)

(d) A mental health program applying for initial licensure shall pay an application fee in the amount specified [in] **at** N.J.A.C. [10:190]**8:121**-1.5. After initial licensure, the mental health program shall pay an annual licensure renewal fee in the amount specified [in] **at** N.J.A.C. [10:190]**8:121**-1.5. No license shall be issued or renewed until payment in full has been received by the Department. No licensure fees shall be refunded. Failure to submit the appropriate licensure fee in a timely manner shall result in revocation of the license. Payment of licensure renewal fees must be received by the Department on or before the expiration date of the issuance of the license. Payment shall be submitted with the application for initial or renewed licensure.

(e) Providers without revenue-generating capabilities may seek a waiver of the license fee requirement from the Department, provided that they comply with each of the following requirements:

1. A previously licensed provider shall submit a written waiver request to the [Department at the following address:

Division of Mental Health Services

P.O. Box 727

Trenton, New Jersey 08625-0727] **Director.**

2.-3. (No change.)

[10:190]8:121-1.5 Licensure fee schedule for ambulatory mental health programs

(a) All providers applying for an initial license for a program not licensed by the State of New Jersey as of July 1, 2003 shall pay an application fee of \$575.00. Checks shall be made payable to the “**Treasurer**, State of New Jersey.” Providers are not required to pay an application fee for programs [for which they are] **that were** licensed [under] **pursuant to** this subchapter as of July 1, 2003.

(b) (No change.)

[10:190]8:121-1.6 (No change in text.)

[10:190]8:121-1.7 Site reviews

(a)-(c) (No change.)

(d) Site reviews shall be conducted by individual staff of the Department or by a team coordinated and led by staff of the Department.

1. (No change.)

[2. Teams may include representatives from the Division of Mental Health Services, other divisions of the Department of Human Services and/or other departments.]

(e)-(k) (No change.)

[10:190]8:121-1.8 Types of licensure

(a) Mental health programs will receive a full license if:

1. They pay the fee required [by] at N.J.A.C. [10:190]8:121-1.5; and

2. (No change.)

(b)-(e) (No change.)

[10:190]8:121-1.9 Waiver

(a) Waivers of specific rules shall be considered, at the discretion of the Department, provided that, in the opinion of the Director [of], the [Office of Licensing, in consultation with the Assistant Commissioner for Mental Health Services, or their designees, such] waiver is justified as outlined below, would not impair the effective and efficient provision of mental health services within the system of care, and would not endanger or adversely affect the life, safety, or welfare of clients.

(b) Requests for waiver shall be made [to the Department,] in writing to the [address as listed in N.J.A.C. 10:190-1.4(a)] **Director**. The written request for waiver shall include the following:

1.-4. (No change.)

(c) (No change.)

[10:190]8:121-1.10 License renewal or revocation

(a) (No change.)

(b) A mental health program seeking renewal of its license shall submit a fee, in accordance with the schedule [delineated] at N.J.A.C. [10:190]8:121-1.5 to the [address indicated in N.J.A.C. 10:190-1.4(a)] **Director**.

(c)-(f) (No change.)

(g) In the event that the Department revokes or does not renew the license, the Director shall send written notice to the mental health program's chief executive officer or designee and to the mental health program's board of directors or owners indicating the basis for the revocation or non-renewal and the rights to a review as provided at N.J.A.C. [10:190]8:121-1.11 and an administrative hearing as provided at N.J.A.C. [10:190]8:121-1.12.

[10:190]8:121-1.11 Review of administrative determinations

Whenever licensure is denied, revoked, or not renewed and the mental health program disputes the basis of the action, the mental health program may apply to the

Director [of the Department's Office of Program Integrity and Accountability] for a review and an agency decision shall be rendered within 30 days of the receipt of the written request for a review.

[10:190]8:121-1.12 (No change in text.)