

HUMAN SERVICES

LICENSED COMMUNITY RESIDENCES FOR ADULTS WITH MENTAL ILLNESSES

Notice of Rule Waiver/Modification/Suspension Pursuant to Executive Order No. 103

(2020)

COVID-19 State of Emergency

Modification of Rules Pertaining to Licensed Community Residences For Adults with Mental Illnesses

N.J.A.C. 10:37A-1.2, -4.1, -7.3.

Authorized: [] by Sarah Adelman, Acting Commissioner, Department of Human Services.

Authority: N.J.S.A. App.A:9-45 and App.A:9-47; and Executive Order No. 103 (2020).

Effective Date: March 9, 2020.

This is an emergency adoption of a temporary rule modification concerning certain rules at N.J.A.C. 10:37A-1.1 et. seq., Licensed Community Residences For Adults with Mental Illnesses, which apply to supervised housing and shared supportive housing residences as defined by N.J.A.C. 10:37A-1.1(b) and -1.2. Section 3.a. of P.L. 2021, c. 103 (N.J.S.A. 26:13-34.a) authorizes agency heads to continue and modify administrative orders or directives issued during the COVID-19 Public Health Emergency. Section 5.a. of P.L. 2021, c. 103 (N.J.S.A. 26:13-36) authorizes agency heads to issue orders, directives, and waivers to implement recommendations of the Centers for Disease Control and Prevention (CDC) to prevent or limit the transmission of COVID-19, including in specific settings. Pursuant to that authority, and with the approval of the Governor and in consultation with the State Director of Emergency Management and the

Commissioner of the Department of Health, the Department of Human Services is modifying the rules listed below.

The current regulations at N.J.A.C. 10:37A-1.1 et. seq. set out program standards with which providers of licensed community residences for adults with mental illnesses must adhere in order to be licensed to operate in New Jersey. The COVID-19 Public Health Emergency has impacted and continues to impact the mental health system of care that provides vital rehabilitative and support services to residents of New Jersey. In response to COVID-19, the delivery of mental health services continues to be reconfigured to minimize community spread, while at the same time ensuring accessibility and continuity of care. Although the COVID-19 Public Health Emergency declared under E.O. 103 has ended in New Jersey, provider agencies continue to need flexibility to mitigate transmission of COVID-19 in the provision of mental health services, including through the modification of certain standards in light of placement and staffing challenges, and use of telehealth and telemedicine. At the beginning of the pandemic, DMHAS issued guidance regarding the use of telemedicine, telehealth and telecommunication for behavioral health provider agencies, which this rule modification now codifies. This rule modification is consistent with recommendations to reduce the transmission of COVID-19 from the CDC, as well as guidance from other federal and State agencies such as the Substance Abuse and Mental Health Services Administration (SAMHSA), and the New Jersey Division of Consumer Affairs. It also complies with State laws enacted with respect to telemedicine and telehealth.

Thus, consistent with federal and state guidance, directives, waivers and laws issued in response to the COVID-19 Public Health Emergency, it is necessary to address, formalize and ensure

flexibility in the standards in the rules at N.J.A.C. 10:37A-1.1 et. seq. through this temporary rule modification.

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

SUBCHAPTER 1. GENERAL PROVISIONS

10:37A-1.2 Definitions

...

“Face to face” means services and supervision provided in-person, on-site or via Telecommunications, Telehealth and Telemedicine in accordance with P.L. 2017, c. 117 (C.45:1-61 et al.), as amended by P.L. 2020, c. 47, and corresponding COVID-19 waivers. Every level of staff acting within the staffing requirements of N.J.A.C. 10:37A may use alternate communication technologies, including but not limited to “videless chat” and other audio-only modalities (such as telephone) provided the services meet the standard of care.

...

“Signature” and “signed” means an original or electronic mark made by the signatory, and in the case of a consumer, “signature” and “signed” also means documentation of the consumer’s participation or consent in either a progress note or on a document where the consumer’s signature is required.

...

“Telehealth” means the use of information and communications technologies as defined by and in accordance with P.L. 2017, c. 117 (C.45:1-61 et al.) and any amendments thereto, including pursuant to P.L. 2020, c. 47, and corresponding COVID-19 waivers.

“Telemedicine” means the delivery of a health care service using electronic communications, information technology, or other electronic or technological means as defined by and in accordance with P.L. 2017, c.117 (C.45:1-61 et al.) and any amendments thereto, including pursuant to P.L. 2020, c. 47, and corresponding COVID-19 waivers.

...

SUBCHAPTER 4. CONSUMER SERVICES

10:37A-4.1 Intake policies and procedures

(a)–(e) (No change.)

(f) When a consumer has been referred from a State psychiatric hospital, the following procedures shall apply:

1.-6 (No change.)

7. The PA shall place a consumer referred by a State psychiatric hospital into the available vacancy as soon as possible, but in all cases, within 21 days of the PA’s receipt of the referral, **unless COVID-19 safety considerations necessitate placement beyond the 21-day period.**

SUBCHAPTER 7. STAFF QUALIFICATIONS, RESPONSIBILITIES, AND TRAINING

10:37A-7.3 Staff training

(a)–(e) (No change.)

(f) Individuals who have not completed the required training elements set forth in (d)1 through 9 and (e) above may only deliver services with a co-signature by a person who has been so trained. The co-signer shall be on site and available at all times to provide in-person guidance. Within six months of beginning employment or August 15, 2016, whichever comes later, all employees must have completed all required training elements.

1. However, staff hired during the COVID-19 Public Health Emergency, or from March 9, 2020, shall complete all required training elements within a reasonable period of time.

I find that the modification of the rules above is necessary because enforcement of the existing rules would be detrimental to the public welfare during this emergency.

1/10/2022

Date



Sarah Adelman,
Acting Commissioner, Department of
Human Services