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HUMAN SERVICES

DIVISION OF MENTAL HEALTH AND ADDICTION SERVICES

Patient Supervision at State Psychiatric Hospitals

Proposed Readoption with Amendments: N.J.A.C. 10:36

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

Authority: N.J.S.A. 30:1-12, 30:4-24.2, and 30:9A-10.

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

Proposal Number: PRN 2015-132.

Submit written comments by December 18, 2015, to:

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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1, N.J.A.C. 10:36, Patient Supervision at State Psychiatric Hospitals, was set to expire on October 1, 2015. As this notice of proposal was submitted to the Office of Administrative Law prior to the expiration date, pursuant to N.J.S.A. 52:14B-5.1.c(2), the expiration date is extended 180 days to March 29, 2016. This notice of proposal is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5, because a 60-day public comment period is provided.

The Department of Human Services (Department), in conjunction with the Division of Mental Health and Addiction Services (Division), has reviewed these rules and has determined that their continued implementation would benefit both the public and patients at State psychiatric hospitals by delineating specific standards to ensure public safety and the effective delivery of high-quality mental health services.

The purpose of these rules is to provide uniform policies and procedures applicable to supervision determinations made by interdisciplinary treatment teams responsible for treatment planning in State psychiatric hospitals. Based on the concept of individualized decision-making, the rules balance effective treatment, personal liberty, and the prevention of harm.

The rules are organized into three subchapters. N.J.A.C. 10:36-1 delineates the four categories of the levels of supervision system. N.J.A.C. 10:36-2 provides a mechanism for the comprehensive review of the clinical treatment and management of certain hospitalized special status patients at State psychiatric hospitals, including those patients involved with the criminal justice system. N.J.A.C. 10:36-3 defines factors and delineates procedures related to the transfer of involuntarily committed patients between State psychiatric hospitals.

The Department has undertaken a review of these rules and finds that these rules continue to be necessary, reasonable, and proper for the purposes they were originally promulgated to serve, with the exception of the following amendments.

Amendments are proposed throughout to reflect the current name of the Division of Mental Health and Addiction Services. In the Fiscal Year 2010-2011 State Appropriations Act, the former Division of Mental Health and the former Division of Addiction Services were merged to create the combined Division of Mental Health and Addiction Services. The proposed amendments reflect the merger.

At N.J.A.C. 10:36-1.2, the Department is proposing to include “CEO” as a new definition. The acronym of “CEO” is used in the rules and this amendment defines this acronym for clarity.

An amendment at N.J.A.C. 10:36-1.4(b) is proposed for consistency with the language used throughout the subsection with respect to “treatment plan.” Specifically, “plan” is being added to the provision allowing for family members and other identified individuals “to review a patient’s treatment” so as to reflect the review of a “patient’s treatment plan.”

An amendment is proposed at N.J.A.C. 10:36-3.2(a)5 to delete "The Senator Garrett W. Hagedorn Psychiatric Hospital" from the list of State psychiatric facilities because that facility was closed in June 2012.

Amendments are proposed at N.J.A.C. 10:36-3.4(d), (e)6, and (f)5 and 3.5(b)2 to replace the title of “Director” with “Assistant Commissioner.”

Amendments are proposed at N.J.A.C. 10:36-3.4(d), (e)6, and (f)5 to delete references to the “Division of Mental Health” and add “Division” before Assistant Director and/or Assistant Commissioner for purposes of clarity and consistency.

Amendments are proposed at N.J.A.C. 10:36-3.4(e)6 and (f)5 to delete “appropriate regional” and “receiving region” references, respectively, because regional Assistant Director positions for the State psychiatric hospitals and "receiving regions," no longer exist. Instead, the State psychiatric hospitals fall under the management of the Assistant Director of the Office of State Hospital Management. Thus, these amendments are proposed to reflect this change in operational structure at N.J.A.C. 10:36-3.4(e)6 and 3.4(f)5.

N.J.A.C. 10:36-3.4(f)6 and 7 are proposed to be deleted in their entirety because the inclusion of regional Assistant Directors in the procedure is no longer relevant as those positions

do not exist at the Division. However, an amendment is proposed at N.J.A.C. 10:36-3.4(f)5 indicating that it is the Division's Assistant Commissioner or designee who is responsible for resolution of any continuing objections by a CEO to an emergency transfer.

Amendments are proposed at N.J.A.C. 10:36-3.5(b)2 to delete the references to a "proposed transfer" and insert "after the transfer." In 2003, N.J.A.C. 10:36-3.5(b)2 was revised to clarify that the review of an emergency transfer occurs "after the transfer has been effected" and language indicating that the review occurs "after the transfer" was added. See 34 N.J.R. 4290(a); 35 N.J.R. 2903(a). However, language referring to a "proposed transfer" was inadvertently left in the rule. Thus, these amendments are proposed to correct and address the inconsistency in language with regard to the timing of the Division's review of an emergency transfer.

Social Impact

By providing uniform policies and procedures regarding patient supervision at State psychiatric hospitals, the rules proposed for readoption with amendments will benefit the patients at those facilities and other parties interested in the quality of their care. The rules provide consistency in supervision determinations made by interdisciplinary teams responsible for treatment planning across the State psychiatric hospital system. The rules balance the need to protect the general public from potentially dangerous behavior by some patients, while at the same time assisting in ensuring that patients receive effective, individualized treatment in the least restrictive setting.

Economic Impact

The Department does not anticipate that the rules proposed for readoption with amendments will result in the regulated entities incurring any additional costs or require additional funding sources, nor have any direct economic effect on any specific individuals.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption with amendments are not subject to any Federal requirements or standards.

Jobs Impact

The rules proposed for readoption with amendments are not expected to have any effect on jobs in the State.

Agricultural Industry Impact

The rules proposed for readoption with amendments would have no impact on agriculture in the State.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the rules proposed for readoption with amendments govern patient supervision at State psychiatric hospitals, which are public institutions, and not small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Housing Affordability Impact Analysis

The Department does not anticipate that the rules proposed for readoption with amendments will have any impact on affordability of housing in the State 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 patient supervision at State psychiatric hospitals.

Smart Growth Development Impact Analysis

The Department does not anticipate that the rules proposed for readoption with amendments will have an impact on the achievement of smart growth development 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 in New Jersey because the rules pertain to patient supervision at State psychiatric hospitals.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:36.

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

SUBCHAPTER 1. LEVEL OF SUPERVISION SYSTEM

10:36-1.2 Definitions

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

"CEO" means the Chief Executive Officer of a State Psychiatric Hospital.

"Division" means the Division of Mental Health **and Addiction** Services, within the Department of Human Services.

…

10:36-1.3 General Provisions

(a)-(e) (No change.)

(f) Patients who disagree with the treatment team regarding their assigned level of supervision may appeal through hospital grievance procedures or to the Division**'s** [of Mental Health Services] Representative assigned to each institution. The Client Service Representative will involve hospital administration and/or clinical staff as indicated in the resolution of the disagreement.

(g) (No change.)

10:36-1.4 Procedures

(a) (No change.)

(b) Each patient's level shall be evaluated at least as frequently as is called for in the treatment plan review schedule, or more frequently if clinically indicated or requested by the patient. The treatment plan review schedule shall comply, at a minimum, with the standards set by the applicable accrediting body for the hospital. The patient may review his or her treatment plan at any time. A patient's family members, significant others, lawyers, guardians, and custodians are permitted to review a patient's treatment **plan** upon their request and prior consent of the patient.

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

SUBCHAPTER 3. TRANSFERS OF INVOLUNTARILY COMMITED PATIENTS BETWEEN STATE PSYCHIATRIC FACILITIES

10:36-3.2 Scope

(a) The rules of this subchapter apply in all instances to involuntarily committed patients who are residing at and being considered for transfer to any of the following facilities specified in N.J.S.A. 30:4-160:

1.-2. (No change.)

3. Ancora Psychiatric Hospital; **and**

4. The Ann Klein Forensic Center[; and]**.**

[5. The Senator Garrett W. Hagedorn Psychiatric Hospital.]

(b) (No change.)

10:36-3.4 General procedures

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

(d) Transfers occurring as a result of overcrowding, life-safety concerns, natural catastrophes, or consolidation of services shall require the approval of the [Director, Division of Mental Health Services] **Division's Assistant Commissioner**.

(e) The following procedures shall be followed in cases of non-emergent transfers:

1.-5. (No change.)

6. If the CEOs do not agree, the case shall be referred for resolution to the [appropriate regional] **Division's** Assistant Directors[, Division of Mental Health Services,] **in the Office of State Hospital Management,** who may, in making their decision, request clinical

and technical input from hospital central office staff. Resolution, in instances of continuing disagreement, rests with the [Division Director] **Division's Assistant Commissioner** or the [Director's] **Assistant Commissioner's** designee.

7.-8. (No change.)

(f) The following procedures shall be followed in cases of emergency transfers:

1.-4. (No change.)

5. If, after transfer, the CEO of the receiving hospital objects to an emergency transfer, he or she shall review the case with the CEO of the sending [institution] **hospital**. If agreement cannot be reached, the matter shall be referred to the **Division's** Assistant Director [of the receiving region] **in the Office of State Hospital Management for resolution**. **Resolution, in instances of continuing disagreement, rests with the Division's Assistant Commissioner or the Assistant Commissioner's designee.**

[6. That Assistant Director shall consult with his or her counterpart from the sending region to resolve the issue.

7. If agreement cannot be reached by the Assistant Directors, the issue shall be referred for resolution to the Director or the Director's designee.]

[8.] **6.** (No change in text.)

10:36-3.5 Procedures when patients object to transfer

(a) (No change.)

(b) Regarding emergency transfers, the following apply:

1. (No change.)

2. If a patient or a representative of the patient objects to such a transfer, they may submit their position in writing to the Division after implementation of the transfer. A designee of the [Division Director] **Division's Assistant Commissioner** shall review the basis for the transfer after the transfer, and shall provide the patient or his or her representative with an opportunity to state the basis for their objection and present any relevant facts or statements. The designee shall not be a member of the patient's treatment team at either the sending or receiving hospital and shall provide an independent review of the need for the [proposed] transfer **after the transfer**. The designee shall have the authority to approve or disapprove the [proposed] transfer. This decision shall be in writing and shall become part of the patient's clinical record.