

HUMAN SERVICES

OFFICE OF PROGRAM INTEGRITY AND ACCOUNTABILITY

Licensure Standards for Mental Health Programs

Proposed Readoption: N.J.A.C. 10:190

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

Authority: N.J.S.A. 30:1-12, 30:9A-10 and 30:9A-21.

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

Proposal Number: -----.

Submit comments in writing by ----- to:

Douglas Swan

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Department of Human Services

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The agency proposal follows:

Summary

The chapter proposed for readoption constitutes the licensing procedures for the general physical and program requirements of mental health programs, licensed by the Department. The rules set systems to enforce minimum requirements in the areas of operational standards for providers of community mental health services. The rules are necessary to implement the

Department's statutory mandate to license community mental health programs. The Department has reviewed the rules and has determined that they are necessary, adequate, reasonable, efficient, understandable and responsive to the purposes for which they were promulgated. At this time, the Department is proposing to readopt N.J.A.C. 10:190 without amendment. As the Department has filed this notice of readoption prior to December 27, 2013, the expiration date of N.J.A.C. 10:190 is extended 180 days to June 25, 2014, pursuant to N.J.S.A. 52:14B-5.1c. The Department will consult with representatives of the regulated community and consumer advocacy groups with the intention of developing substantive amendments that will be proposed in a future rulemaking action.

Summary of Current Regulations

Subchapter 1, the purpose of this subchapter is to establish licensure requirements applicable to certain providers of community mental health services. Within the subchapter, there are sections detailing the: scope and purpose, definitions, Level I standards, licensure process, licensure cost for ambulatory mental health programs, applicable standards, site reviews, types of licensure, waiver, license renewal or revocation, review of administrative determinations, and review of administrative determinations.

As the Department 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 rules proposed for readoption are expected to positively impact adult consumers of mental health services by establishing and maintaining standards that will continue to promote the effective delivery of quality services. Specifically, the licensed provision of these services and the utilization of these standards are expected to promote greater independence and improved quality of life, as well as reduced hospitalization among the consumers receiving the services. These rules provide procedures and standards that will foster the integration of qualified individuals into appropriate community settings and will make available services to support a higher quality of life.

Additionally, the standards contained in the rules proposed for readoption assist provider agencies by providing clear specifications and various benchmarks in their pursuit of providing high quality services. New Jersey taxpayers benefit from these rules because they promote the effective and efficient expenditure of public revenues.

Economic Impact

The rules proposed for readoption will not impose an economic burden that is significantly different than it was in the past. The readoption of these rules results in a convenient reference for provider agencies and can streamline their compliance efforts. As in the past, the Department believes that provider agencies can comply with the rules without expenditures in addition to the funding received from the Division and other sources to provide mental health services. The promulgation of these standards is not intended or expected to impact the amount of Department funding available to provide these services in the future.

The establishment of standards for the services which are subject to these rules have a positive economic impact on service recipients with limited incomes because some of the services may be made available to them at no or lower cost.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65) require State agencies that adopt, readopt or amend any State rule that exceeds any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The rules proposed for readoption are more stringent than those imposed by Federal law in the area of confidentiality. State law permits, without the consumer's authorization or a court order, disclosure of private health information between treatment providers only where the entities are contracted with the Division of Mental Health Services or are "a screening service, short-term care or psychiatric facility . . ." (See N.J.S.A. 30:4-24.3) The Health Insurance Portability and Accountability Act (HIPAA) 45 CFR Parts 160 and 164, allows, without authorization from the consumer or a court order, disclosure of private health information for treatment purposes to another treatment professional or facility even if they do not have a contract or affiliation agreement with one another. Because HIPAA requires that if the provisions of State privacy laws and the HIPAA regulations conflict, the more protective of privacy prevails, the Department is obliged to conform its disclosure of information to the more restrictive State law.

No other aspect of the rules proposed for readoption is subject to Federal law.

Jobs Impact

The rules proposed for readoption will not result in the generation or loss of any jobs.

Agriculture Industry Impact

The rules proposed for readoption will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

Some providers of Division-funded mental health services may be small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14-16 et seq. The rule proposed for readoption set forth a number of reporting, recordkeeping and compliance requirements on such agencies, deemed necessary to ensure the efficient delivery of services.

Recordkeeping requirements are contained in Licensure Standards for Mental Health Programs. N.J.A.C. 10:190-1.1 requires, as a precondition to the operation of a mental health program, licensure and a purchase of service contract or affiliation agreement with the Division, or licensure with the Department of Health and Senior Services. The rules delineate the licensure application process, including provisions for deemed status, fees, and waivers.

There is no need for provider agencies to employ outside professional services to comply with these provisions; nor is there any requirement for them to expend capital costs to comply with these rules. Any costs of compliance incurred by licensed agencies may be covered in the contracts between the agencies and the Division. The reporting, recordkeeping and other compliance requirements imposed upon such agencies must be uniformly applied, regardless of

the size of the agency, to ensure that individuals with mental illness receiving these services throughout the State do so in accordance with basic minimum standards of quality and effectiveness. These standards are important because the individuals with mental illness receiving these services typically have been psychiatrically hospitalized and would be at risk of additional costly and personally disruptive hospitalizations in the absence of quality community services delivered in accordance with these standards.

Smart Growth Impact

The rules proposed for readoption will have no impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The rules proposed for readoption have no 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 the Department's mental health services licensing program.

Smart Growth Development Impact

The rules proposed for readoption will have an insignificant impact on smart growth. 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 the Department's mental health licensing program.

Full text of the rules proposed for readoption may be found in the New Jersey
Administrative Code at N.J.A.C. 10:190.



Jennifer Velez, Commissioner
Department of Human Services

12/10/13

Date