

Division of Mental Health & Addiction Services
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Enforcement Strategy - Implementation of the Smoke Free Regulatory Provisions

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Agenda

- Overview of tobacco specific citations in proposed regulations
 - Regulations proposed on 9/6/11 at 43 N.J.R 2218(a)
 - 60 day comment period ended 11/5/11
- Overview of enforcement strategy
 - Regulatory provisions
 - Contractual language
 - Treatment plans
 - Policies and procedures

Proposed N.J.A.C. 10:161A-3.5

Personnel

- (b) The facility administrator shall establish written policies and procedures addressing the period of time during which staff in recovery are determined to be continuously substance-free (alcohol and/or other drug) before being employed in the facility, and which address the consequences of employee use of alcohol, tobacco or illegal substances during working hours or when representing the treatment facility. The facility shall establish written policies precluding illegal substance, alcohol use and tobacco use, or showing evidence of use (for example, paraphernalia, cigarette packs or other tobacco products) within the facility, on the grounds of the facility or when representing the facility.
1. Use of alcohol, tobacco, tobacco products or illegal substances within the facility, on the grounds of the facility, within facility vehicles or when representing the facility is prohibited.
 2. Facilities shall immediately comply with the New Jersey Smoke-Free Air Act, P.L. 2005, c. 383, in which the smoking of tobacco products and the use of spit tobacco is prohibited within all buildings.
 - i. Compliance with the requirements in this chapter governing the prohibition of tobacco products and the use of spit tobacco on the grounds of the facility and in facility vehicles shall begin on December 12, 2012.

Proposed N.J.A.C. 10:161A-3.11

Transportation

(b) i. The use of tobacco products, spit tobacco, alcohol or illegal substances is prohibited by employees and clients in facility vehicles.

Proposed N.J.A.C. 10:161A-3.12

Tobacco Products

- (a) Facilities shall immediately comply with the New Jersey Smoke-Free Air Act, P.L. 2005, c. 383, in which the smoking of tobacco products and the use of spit tobacco is prohibited within all buildings.
- (b) The smoking of tobacco products and the use of spit tobacco is prohibited within the facility, on the grounds of the facility, within facility vehicles or when representing the facility.
 - 1. Compliance with the requirements in this section, governing the prohibition of tobacco products and the use of spit tobacco on the grounds of the facility and in facility vehicles shall begin on December 12, 2012.

Purpose of Enforcement Strategy

- The enforcement strategy is intended to focus on agencies for potential lack of compliance implementing the smoke free provisions.
- The following mechanisms have been identified to support system-wide readiness as this requirement becomes fully effective in December 2012.
- It is not the intention of this policy or enforcement efforts to penalize individual consumers who may relapse and use tobacco in contrast to an agency's non-smoking policies.

Regulatory Provisions

- Following adoption, the new regulatory requirements will be incorporated into the site survey instrument.
- As part of the scheduled site visits when treatment plans and policies and procedures are reviewed, Office of Licensing (OOL) will be able to identify whether or not agencies are in compliance.
- If the site visit for the first year results in an area of deficiency (treatment plans, policies and procedures), agencies will be notified through a deficiency report and will be required to submit a Plan of Correction (PoC).
- If the PoC is not accepted and/or if repeat findings are identified in subsequent site visit(s), OOL may reduce the license to a provisional status.
- Proposed N.J.A.C 10:161A-2.17(b)3 allows for a provisional license if/when there are repeat violations of any licensing rule within a 12-month time period or on successive annual inspections.

Contractual Language

Current contract language reads:

- *Section III. L.* The contractee (subcontractee) shall provide all services under this contract (subcontract) in a smoke-free environment. All treatment planning shall include education on tobacco use. The Contractee (Subcontractee) shall work toward development of a tobacco-free program.
- DMHAS will amend the standard boilerplate contract to include language that affirms an agency is smoke free on 12/12/12.
- Additionally, DMHAS will require Executive Directors to sign an attestation that they will be in compliance with all regulatory smoke free requirements by 12/12/12. The attestation will support the contract language and requires Executive Directors to affirm that this is accurate for each agency.

Treatment Plans

- As with all treatment planning, a client centered approach is required for the delivery of quality services.
- Clearly, the goal of this regulatory requirement is to promote a smoke free environment to support the public health of all consumers accessing services at New Jersey licensed facilities and all staff employed by those facilities.
- Licensed residential treatment programs will be required to include tobacco cessation into the individual's treatment plan.
- OOL and DMHAS' approach to enforcement will be to ensure that agencies have appropriate policies and procedures in place to support a tobacco free environment, including staff training and implementation of clinical practices, to address the client's tobacco cessation efforts and progress.
- In accordance with best practices, individual consumers who use tobacco in a licensed substance abuse treatment facility should receive an intervention that involves reviewing the individual's treatment plan and assessing if the client requires additional individual counseling on their tobacco addiction and/or if the client is eligible for a higher level of care.

Policies and Procedures

- Through the UMDNJ/DMHAS Tobacco MOU, residential treatment programs will have received training on how to implement provisions of this new regulatory requirement.
- For agencies that do not have written policies and procedures addressing Tobacco Free, samples of DMHAS acceptable policies and procedures will be available so that residential treatment programs have an opportunity to develop appropriate policies and procedures.
- Subsequent to completion/renewal, the agency prepared policies and procedures will be reviewed by OOL staff in advance of the start live date to be sure that agencies are in compliance.
- Additionally, as part of UMDNJ's expertise, this team will be reviewing existing policies and procedures to ensure compliance with the new provision. These will be reviewed again, closer to the live date, to be sure that any changes previously identified were incorporated into the policy and procedure prior to 12/12/12.

Other Tobacco Cessation Programs -- DHS, Division of Medical Assistance and Health Services

- Section 4107 of the Affordable Care Act amended the Social Security Act to require coverage of counseling and pharmacotherapy for cessation of tobacco use.
- As a result, New Jersey Family Care/Medicaid Fee-for-Service providers will be providing Tobacco Cessation Services in the imminent future.
- The following codes may be billed to the NJFC/Medicaid program by reporting the following HCPCS procedure codes:
 - 99406 - Smoking and tobacco-use cessation counseling visit; intermediate, greater than 3 minutes up to 10 minutes
 - 99407 - Smoking and tobacco-use cessation counseling visit; intensive, greater than 10 minutes

Questions?

