

DEPARTMENT OF HUMAN SERVICES
OFFICE OF LICENSING

N.J.A.C. 10:190
LICENSURE STANDARDS FOR MENTAL HEALTH PROGRAMS

Effective December 27, 2006.

Expires December 27, 2011.

(previously N.J.A.C. 10:37-10)

SUBCHAPTER 1. LICENSURE OF MENTAL HEALTH PROGRAMS

10:190-1.1 Scope and purpose

(a) The purpose of this subchapter is to establish licensure and fee requirements applicable to certain providers of community mental health services.

(b) No mental health program shall operate unless it is licensed by the Commissioner of the Department of Human Services as a mental health program and has a purchase of service contract or an affiliation agreement with the Division of Mental Health Services, or is licensed by the Commissioner of the Department of Health and Senior Services as a health care facility.

1. A mental health program licensed by the Department shall be subject to the provisions of this chapter, including regulatory standards compliance inspections by the Department.

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

i. An agency which has a purchase of service contract or affiliation agreement with the Division;

ii. A mental health clinic as defined by the Division of Medical Assistance and Health Services (DMAHS) at N.J.A.C. 10:66-1 and 2.5; or

iii. An entity which provides outpatient, ambulatory, or other nonresidential, non-inpatient mental health service(s).

3. Mental health program(s) may be public or private, incorporated or unincorporated, and for profit or not for profit.

4. Provisions of this chapter shall not apply to:

i. Licensure provisions regarding community residences for mentally ill adults and psychiatric community residences for youth which can be found at N.J.A.C. 10:37A and 10:37B, respectively;

ii. Licensed, independent practitioner(s), including group practices;

iii. Screening and screening outreach programs designated pursuant to N.J.S.A. 30:4-27.4 and N.J.A.C. 10:31;

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; or victim related conditions, such as domestic violence or rape;

v. Counseling services provided by clergy of any 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 as a health care facility, provided that each site of such program holds a separate DHSS license or is specified on the main facility's DHSS license.

(c) The primary purposes of licensure by the Department are to assure that programs for mental health services:

1. Meet the standards set by the Department;
2. Are safe for participants;
3. Protect consumers' rights; and
4. Have staff who meet minimum educational and experience qualifications.

(d) A license specific to each separate site shall be issued for every mental health program and shall be conspicuously posted at that site, so as to identify the mental health program and its address.

10:190-1.2 Definitions

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

"Affiliation agreement" means a signed agreement between the mental health program and the Division wherein the program agrees to comply with applicable licensing regulations and applicable program standards.

"Commissioner" means the Commissioner of the Department of Human Services.

"Conditional license" means a license to operate a mental health program under certain conditions for a specified limited time period of less than three years.

"Deemed status" means that status granted to a mental health program which has received accreditation by an accrediting body recognized by the Department. In effect, the Department, through the granting of deemed status, substitutes the standards of the accrediting body for certain selected Department program standards.

"Department" means the Department of Human Services.

"Director" means the Director of the Office of Licensing within the Department of Human Services.

"Division" means the Division of Mental Health Services within the Department of Human Services.

"DMAHS" means the Division of Medical Assistance and Health Services within the Department of Human Services.

"Full license" means a license to operate a mental health program at a specific location for three years.

"Level I standards" means those standards with which mental health programs must be in full compliance in order to be granted or to continue to receive a Department license. Level I standards are those standards which relate most directly to client rights, safety, and staffing. The list of Level I standards for mental health programs may be found at N.J.A.C. 10:190-1.3.

"Level II standards" means all licensing standards not designated as Level I.

"License" means a Department document, which provides the mental health program with the authority to operate.

"Licensure standards" means those rules promulgated by the Department with which mental health programs shall comply in order to be granted a license.

"Provisional license" means a license to operate a mental health program at a specific location for a specified period of time until a full licensing site review occurs.

"Purchase of service contract" means a contract between the Division and a provider agency through which the Division pays for mental health services on behalf of eligible consumers.

"Recognized accrediting bodies" means those organizations that accredit mental health programs that are recognized by the Department 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 on Accreditation of Rehabilitation Facilities (CARF) and the National Commission on Quality Assurance (NCQA).

10:190-1.3 Level I standards

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

1. Consumer rights at N.J.A.C. 10:37-4.5(b), (c), (f), and (h);
2. Consumer complaint/agency ombuds procedure at N.J.A.C. 10:37-4.6(b);
3. Medication education and counseling at N.J.A.C. 10:37-6.53(a), (b), (c) and (e);
4. Environment at N.J.A.C. 10:37D-2.5(a);
5. Qualification of clinical staff at N.J.A.C. 10:37D-2.13(a);
6. Staffing requirements for outpatient services at N.J.A.C. 10:37E-2.6(a);

7. Therapeutic environment for partial care services at N.J.A.C. 10:37F-2.7;
8. Staffing requirements for partial care services at N.J.A.C. 10:37F-2.8(a), (b) and (c);
9. Staffing requirements for family support services at N.J.A.C. 10:37I-5.10(b);
10. Program intensity requirements for programs of assertive community treatment (PACT) at N.J.A.C. 10:37J-2.4;
11. Services to be provided and service coordination requirements for PACT at N.J.A.C. 10:37J-2.5;
12. Termination and discharge requirements for PACT at N.J.A.C. 10:37J-2.7;
13. Staff requirements for PACT at N.J.A.C. 10:37J-2.8;
14. Staffing requirements for children's partial care programs at N.J.A.C. 10:191-1.11(a);
15. Staffing responsibilities for children's partial care programs at N.J.A.C. 10:191-1.12(b), (d), (f) and (h); and
16. Staffing requirements for youth case management services at N.J.A.C. 10:37H-2.10(b), (c) and (e).

10:190-1.4 Licensure process

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

New Jersey Department of Human Services
Office of Licensing
PO Box 707
Trenton, New Jersey 08625-0707

(b) Mental health programs which intend to become licensed shall complete an application for licensure indicating the type(s) of mental health program(s) provided, and the specific location and addresses where the mental health program(s) is or will be provided.

1. The mental health program shall complete all information and provide documentation requested on the license application.

2. The mental health program requesting licensure shall demonstrate the capacity to operate the mental health program in accordance with Department rules.

(c) Deemed status may be considered as part of the Department licensing process for community mental health programs in those cases where:

1. A mental health program is accredited at the time of application within the past three years by an accrediting body recognized by the Department; and

2. The program submits the accrediting body report with the license application indicating that the program is accredited. As applicable, any remediation plan required by the accrediting body shall also be submitted.

(d) A mental health program applying for initial licensure shall pay an application fee in the amount specified in N.J.A.C. 10:190-1.5. After initial licensure, the mental health program shall pay an annual licensure renewal fee in the amount specified in N.J.A.C. 10:190-1.5. 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

2. An initial licensure applicant seeking a waiver of the fee requirement shall submit a waiver request with the licensure application. Existing licensees seeking waivers shall submit the application for a fee waiver annually no less than 60 days before the anniversary date of the expiration of the license; and

3. The written waiver request shall include the following information:

i. The number of consumers served at the site on a weekly basis;

ii. The day and hours of operation;

iii. The program's total budget, including all revenue sources;

iv. A justification demonstrating that the program would be detrimentally and disproportionately impacted by the fee requirement and that strict enforcement of the fee requirement would result in unreasonable hardship on the mental health program; and

v. A description of how the fee would adversely affect the health, safety, welfare, or rights of any individual.

10:190-1.5 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 "State of New Jersey." Providers are not required to pay an

application fee for programs for which they are licensed under this subchapter as of July 1, 2003.

(b) Providers shall pay, on an annual basis, licensure renewal fees in accordance with the following schedule:

1. Renewal fee for each program element \$ 575.00
2. Fee for every additional program or site license within each program element \$ 287.50

10:190-1.6 Applicable standards

(a) For the purpose of the licensure standards contained in this chapter or other chapters incorporated by reference, whenever the phrase "State funded" programs is encountered, it shall no longer be understood to apply only to State funded entities. Instead, the applicable standards shall also apply to non-State funded mental health programs which provide the services indicated in (b), (c) and (e) below.

(b) Mental health programs shall comply with the applicable standards for the following mental health services that they provide:

1. Youth partial care services (YPC) at N.J.A.C. 10:191;
2. Outpatient services (OP) at N.J.A.C. 10:37E;
3. Partial care services (PC) at N.J.A.C. 10:37F;
4. Youth case management (YCM) at N.J.A.C. 10:37H;
5. Intensive family support services (IFSS) at N.J.A.C. 10:37I; and
6. Programs of assertive community treatment (PACT) at N.J.A.C. 10:37J.

(c) In addition, mental health programs shall also comply with general standards, as outlined in (d) and (e) below, depending on whether they have a contract or affiliation agreement with the Division.

(d) Mental health programs under contract with the Division shall comply with all of the following standards:

1. Community Mental Health Services Act rules at N.J.A.C. 10:37; and
2. Management and Governing Body rules at N.J.A.C. 10:37D.

(e) Mental health programs with an affiliation agreement with, but not under contract with, the Division shall comply with the following standards:

1. Consumer rights at N.J.A.C. 10:37-4.5(b) through (h)6;
2. Consumer complaint/agency ombud procedures at:
 - i. N.J.A.C. 10:37-4.6(b) through (d);
 - ii. N.J.A.C. 10:37-4.6(f); and
 - iii. N.J.A.C. 10:37-4.6(h)1;

3. Medication education rules at N.J.A.C. 10:37-6.53 and 6.54;
4. Consumer record rules at:
 - i. N.J.A.C. 10:37-6.73;
 - ii. N.J.A.C. 10:37-6.74(a)2 through 6;
 - iii. N.J.A.C. 10:37-6.74(a)8 through 12;
 - iv. N.J.A.C. 10:37-6.74(a)14;
 - v. N.J.A.C. 10:37-6.76 and 6.77; and
 - vi. N.J.A.C. 10:37-6.79;
5. Unusual incident reporting rule at N.J.A.C. 10:37-6.108;
6. Quality Assurance rules at:
 - i. N.J.A.C. 10:37-9.1 through 9.4(d);
 - ii. N.J.A.C. 10:37-9.5;
 - iii. N.J.A.C. 10:37-9.9 and 9.10;
7. Management rules at:
 - i. N.J.A.C. 10:37D-2.1 and 2.2;
 - ii. N.J.A.C. 10:37D-2.3(a)2 and 3;
 - iii. N.J.A.C. 10:37D-2.4 through 2.7(a)2;
 - iv. N.J.A.C. 10:37D-2.7(a)4;
 - v. N.J.A.C. 10:37D-2.8;
 - vi. N.J.A.C. 10:37D-2.11 through 2.14;
 - vii. N.J.A.C. 10:37D-2.15(a)1; and
 - viii. N.J.A.C. 10:37D-2.18(a), but not 1 through 4.

10:190-1.7 Site reviews

(a) Site reviews shall be conducted for each separate site location of every mental health program.

1. Licensing reviews shall minimally occur every three years.
2. Site reviews shall occur prior to licensing any new mental health program and/or site.
3. Site reviews may occur on an announced or unannounced basis at any time. The purpose of the site review may include, but not be limited to, investigation of a complaint or incident, assessment of the facility or facility improvement, or review of policies, procedures and/or clinical records.

(b) The site review is designed to determine that the mental health program(s) and program location(s) meet all relevant standards.

(c) The site review is designed as a collaborative process to promote learning, program improvement, high quality services, protection of consumer's rights, and ensure compliance with standards.

(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. Teams may include: mental health consumers and family members, staff from similar mental health programs (peers), and county mental health administrators.

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) Team composition, the amount of time scheduled for each site review and the level of intensity of each site review may vary to reflect the characteristics of the mental health program and the populations served.

(f) Site reviews may include, but not be limited to, consumer, family/guardian, direct care and administrative staff interviews; record reviews; reviews of policies and procedures; program observations; onsite inspection of the physical plant; review of internal documents, including financial records; and review of the quality assurance program. The review of each of these items shall be based on applicable State rules.

(g) Site review of programs granted deemed status shall primarily focus on, but may not be limited to, staffing and clinical records, and any Level 1 standard not otherwise addressed by the recognized accrediting body.

(h) Following the site review, an official report of findings shall be issued by the Department within 60 to 90 days.

(i) Within 40 calendar days of receipt of the official report, the mental health program shall send a written response to the official report, including a plan for improvement with specific time frames. This response shall be attached to the report and together shall constitute a public document.

(j) The mental health program shall be notified in writing whether the improvement plan, or portions thereof, are approved for implementation and whether there are any areas that need to be addressed further.

(k) The mental health program shall, upon request, make available for review a copy of the report and response.

10:190-1.8 Types of licensure

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

1. They pay the fee required by N.J.A.C. 10:190-1.5; and

2. A Department site review determines the program complies with all Level I and the majority of Level II standards.

(b) A provisional license may be issued whenever a mental health program submits with its complete application the appropriate fee, the Department has reviewed the program's policies and procedures and has conducted a program site tour, and whenever:

1. A program which plans to change its location or add an additional location has submitted a complete licensure application and a program site tour has been conducted; or

2. A new program that has submitted a complete licensure application, its policies and procedures have been reviewed; and a program site tour has been conducted.

(c) A provisional license may be issued to a specific facility address for a period of six months, or until completion of a full site review by the Department. A provisional license may be renewed if needed by the Department.

(d) A conditional license may be issued whenever:

1. Compliance with any Level I standard is lacking during a licensing site review;

2. Non-compliant Level II standards identified in the previous licensing review are not remediated by the following triennial review;

3. A remediation plan is not submitted to the Department at the designated time, or if it is determined by the Department to be inadequate; or

4. An investigation of a complaint or serious incident identifies deficiencies that warrant conditional status.

(e) A conditional license shall be upgraded to a full license when a follow-up review determines that all relevant licensing requirements are met.

10:190-1.9 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). The written request for waiver shall include the following:

1. The specific rule(s) or part(s) of the rule(s) for which the waiver is requested;

2. Reasons for requesting a waiver, including a statement of the type or degree of hardship that would result to the program if a waiver were not granted;

3. Clear clinical or programmatic justification for such a waiver; and

4. Documentation to support the request of waiver.

(c) The Department reserves the right to request additional information before processing a request for waiver.

10:190-1.10 License renewal or revocation

(a) License renewal for a mental health program shall be based on a Department licensing site review every three years to determine that the program continues to meet Department standards.

(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. 10:190-1.5 to the address indicated in N.J.A.C. 10:190-1.4(a).

(c) The Director or designee shall make the determination of renewal based on results of the licensing site review.

(d) In the event that a license expires prior to the triennial licensing review, the license shall remain in effect until the licensing site review is completed.

(e) The Department may revoke the license, or refuse to renew the license, if the mental health program is not in compliance with licensing rules; does not submit the licensure renewal fee; or if continued operation of the mental health program presents an imminent danger to the health, safety or welfare of any client; or for failure to submit the specified written response to a site review report by the required date; or for failure to correct any identified area of non-compliance within the time frame approved by the Department in the notice of non-compliance.

(f) The Department may, in lieu of revocation or refusal to renew a license, issue a conditional license and/or elect other administrative sanctions to include, but not be limited to, prohibiting the mental health program from continuing to admit clients, or requiring the removal/relocation/referral of clients to other licensed provider(s).

(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. 10:190-1.11 and an administrative hearing as provided at N.J.A.C. 10:190-1.12.

10:190-1.11 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.

10:190-1.12 Administrative hearing of appeal

If the mental health program chooses to appeal an agency decision made pursuant to these rules, the mental health program may request an administrative hearing, which shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules at N.J.A.C. 1:1.