

HUMAN SERVICES

DIVISION OF MENTAL HEALTH AND ADDICTION SERVICES

Licensure of Outpatient Substance Abuse Treatment Facilities

Proposed Readoption: N.J.A.C. 10:161B

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

Authority: N.J.S.A. 26:2B-7 et seq., in particular 26:2B-14, 26:2BB-5 through 6, 26:2G-1 et seq., and 30:1-12; and Reorganization Plan 002-2004.

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

Proposal Number: PRN 2016-108.

Submit written comments by September 3, 2016, to:

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The agency proposal follows:

Summary

Since the promulgation of N.J.A.C. 10:161B in 2009, the Division of Mental Health and Addiction Services (DMHAS) has undergone significant changes that will

impact, and continue to impact, the content of this chapter. Notably, pursuant to the Fiscal Year 2010-2011 Budget, the former Division of Mental Health Services and the former Division of Addictions Services merged into a single agency, known as the Division of Mental Health and Addiction Services. In order to reflect the merged Division, the Division will explore the development of a combined mental health and substance use disorder treatment outpatient license. As part of the exploration process, the Division will convene a workgroup and also solicit input from stakeholders.

Further, the Division continues to work on initiatives that may affect the structure and content of licensing standards. In July 2015, the Interim Managing Entity (IME) was implemented to improve delivery methods, quality and health outcomes, and increased availability of community based services and supports. The IME's role is anticipated to expand as part of the Division's move towards managed care. These changes affect the delivery of service and will impact the licensing standards.

Moreover, the Department recognizes that additional input from the provider and consumer communities would further enhance the quality of these rules. To allow sufficient time for continued collaboration, the Department is seeking to readopt N.J.A.C. 10:161B without change. The Department is taking this step to allow additional time for the active participation of stakeholders in the process of developing substantive amendments to this chapter. After consultation with, and consideration of input from provider and consumer communities, the Department will propose substantive amendments to N.J.A.C. 10:161B.

The Department has reviewed the rules and has determined them to be necessary, reasonable, and proper for the purposes for which they were originally

promulgated, as required by Executive Order No. 66 (1978). Pursuant to N.J.S.A. 26:2-7 et seq., in particular 26:2B-14, 26:2G-1 et seq., 26:2BB-5 through 6, and 30:1-12; and Reorganization Plan 002-2004, this chapter is proposed for readoption.

N.J.A.C. 10:161B, Licensure of Substance Abuse Treatment Facilities, was scheduled to expire on June 1, 2016 pursuant to N.J.S.A. 52:14B-5.1.c. Pursuant to N.J.S.A. 52:14B-5.1.c(2), the expiration date of N.J.A.C. 10:161B is extended 180 days to November 28, 2016.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Subchapter 1, Definitions and Staff Qualifications and Responsibilities, outlines the scope and applicability, purpose, and definitions of all words and terms; describes the qualifications and responsibilities of the medical director, director of nursing services, pharmacists, administrator of the facility, director of substance abuse counseling services, substance abuse counseling staff, and dieticians.

Subchapter 2, Licensure Procedures and Enforcement, describes the general application process, fees, and requirements; special requirements for newly constructed or expanded facilities; the review and approval of a license application; facility surveys; conditional licenses; periodic surveys following licensure; deficiency findings; informal dispute resolution; plans of correction; surrender of a license; waivers; enforcement remedies; notice of violations and enforcement actions; effective date of enforcement actions; enforcement actions; failure to pay a penalty; remedies; curtailment of

admissions; provisional license; suspension of a license; revocation of a license; injunction; hearings; and settlement of enforcement actions.

Subchapter 3, General Requirements, describes the provision of services; compliance with laws and rules; ownership requirements; submission of documents and data; personnel requirements and procedures; policy and procedure manual; requirements for employee health; reportable events; notices; reporting to professional licensing boards; transportation; and tobacco products.

Subchapter 4, Governing Authority, describes the responsibility of the profit and/or non-profit governing authority.

Subchapter 5, Administration, describes the appointment of an administrator.

Subchapter 6, Client Care Policies and Services, delineates client care policies; client care policies and procedures; standards for preadmission, admission, and retention of clients; involuntary discharge; use of restraints; calibration of instruments; and interpretation services.

Subchapter 7, Medical Services, describes the provision of medical services; designation of medical director; medical policies and medical staff bylaws; and physician responsibilities.

Subchapter 8, Nursing Services, describes the provision of nursing services; designation of director of nursing services; and responsibilities of licensed nursing personnel.

Subchapter 9, Client Assessment and Treatment Planning, describes the process of client assessment and client treatment planning.

Subchapter 10, Substance Abuse Counseling and Supportive Services, delineates the provision of substance abuse counseling; the requirement for a director of substance abuse counseling services; supportive services; and co-occurring services.

Subchapter 11, Opioid Treatment Services, describes the special requirements for facilities to be licensed to operate opioid treatment services, including authority; staffing; multidisciplinary team; policies and procedures; minimum standards for admission to an opioid treatment program; admissions and assessment; medical assessments; counseling services (Phases I through VI, and I-A); drug screening; eligibility for take-home medication; labeling of take-home medication; take-home medication dosage schedule; extended take-home medications; take-home exceptions; clinic-based medical maintenance; office based opioid treatment; and emergency phone coverage.

Subchapter 12, Detoxification Services, sets out the standards and requirements for facilities approved to offer outpatient detoxification services, including provision of outpatient detoxification services; staff qualifications; client eligibility for outpatient detoxification; required services; and policies and procedures.

Subchapter 13, Laboratory Services, describes provision of laboratory services that must be provided directly or ensured by licensed outpatient facilities.

Subchapter 14, Pharmaceutical Services, describes the required provision of pharmaceutical services; standards for drug administration; and standards for storage of medications.

Subchapter 15, Emergency Services and Procedures, delineates the emergency plans and procedures; drills, tests, and inspections; and emergency medical services that must be provided or arranged by a licensed facility.

Subchapter 16, Client Rights, delineates policies and procedures to ensure client rights; the rights of each client; and how complaints may be brought by clients or their families internally with the facility, or externally with outside oversight agencies.

Subchapter 17, Discharge Planning Services, describes required discharge/continuum of care planning; discharge/continuum of care planning policies and procedures; and client and family education.

Subchapter 18, Clinical Records, describes how licensed facilities must create and maintain clinical records; assignment of responsibility; contents of clinical records; requirements for clinical record entries; access to clinical records; and preservation, storage, and retrieval of clinical records.

Subchapter 19, Infection Prevention and Control Services, describes the requirements for infection prevention and control.

Subchapter 20, Housekeeping, Sanitation and Safety, delineates requirements for the provision of services; housekeeping; client care environment; waste removal and regulated medical waste; and water supply.

Subchapter 21, Quality Assurance Program, describes quality assurance program; and quality assurance activities.

Subchapter 22, Volunteer Services, describes the provision of volunteer services; and volunteer policies and procedures.

Subchapter 23, Physical Plant and Functional Requirements, describes the physical plant general compliance for new construction or alteration; physical plant general compliance for construction or alteration completed prior to June 1, 2009; plan review; alterations, replacements and damage to existing facilities; provision for the handicapped; restrictions; ventilation; exit access passageway and corridors; fire alarm and detection systems; interior finish requirement; and attached structures.

Subchapter 24, Physical Environment, delineates requirements for kitchens; fire extinguisher specifications; and ceiling heights.

Subchapter 25, Existing Facilities, describes physical plant standards for all existing licensed facilities; and fire safety.

Social Impact

The rules proposed for readoption are expected to have a beneficial impact upon individual clients and their families, providers of treatment services, the health care and social service systems, and the public in general. Drug and alcohol abuse and addiction is a major social and health issue in New Jersey and nationally. While addiction to or abuse of substances is difficult to overcome, addiction treatment programs in New Jersey have helped many individuals to become rehabilitated and productive members of society.

An estimated 13.8 percent or 938,653 of New Jersey's total population are alcohol or drug dependent persons. In 2015, of those in need of addiction treatment, approximately 69,000 were admitted to available residential and outpatient treatment facilities in New Jersey. Approximately 71 percent of all treatment admissions are to outpatient treatment facilities. By subjecting every program and facility providing

outpatient addiction treatment to a more stringent licensure process, the rules proposed for readoption provide for improved quality assurance in the delivery of services to these clients.

Additionally, consumers using this system will be assured, through the licensure process, of an adequate and consistent level of care and supervision as specified in each rule. Consumers include not only clients directly utilizing the services, but referral services, such as the courts, social service agencies, or health insurance and managed care organizations. Additionally, these standards are expected to increase professionalism and provide for more client-centered approaches by integrating various services for each type of outpatient facility, and for targeted populations.

Economic Impact

As of May 2016, there are 316 licensed outpatient drug abuse treatment facilities in New Jersey. An additional estimated 72 facilities have applied for outpatient licensure. There are associated fees with obtaining a license for an outpatient substance abuse treatment facility including a new facility fee, license renewal fee, license modification to add beds or services, license modification to relocate or reduce services, transfer of ownership interest, as well as initial or biennial inspection fees. Some facilities may incur costs associated with direct salary costs of facility staff, the rental or purchase cost of facility real estate, and the costs of internal recordkeeping and information systems to meet Federal and State regulatory and reporting requirements. It is not possible to estimate the total Statewide dollar value of required additional expenditures until all facilities begin the process of obtaining licensure.

Many of the minimum treatment standards impose no new costs because they represent currently accepted and usual practice in the field.

Jobs Impact

It is difficult to estimate the aggregate jobs impact of the rules proposed for readoption of licensure of outpatient substance abuse treatment facilities. It is possible that some individual programs or facilities may lose employees if the costs to conform to the rules are severe and not offset by additional revenue. It is also possible that other programs may gain jobs from additional third-party revenue as the result of obtaining a license for the first time or upgrading program services to conform to these standards.

Agriculture Industry Impact

The rules proposed for readoption would have no impact on agriculture in the State of New Jersey.

Regulatory Flexibility Analysis

This chapter sets forth a regulatory scheme that will not only impact currently licensed outpatient alcoholism and drug abuse treatment facilities but also impact currently non-licensed facilities and programs. The Department has determined that these detailed outpatient licensure standards are necessary. The Department acknowledges that all facilities required to be licensed under this chapter have fewer than 100 full-time employees and are, therefore, categorized as small businesses, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The services provided for clients in various programs and facilities are or will be specified by this chapter, regardless of the size of the program or facility. Therefore, the Department has determined that standards apply regardless of program or facility size, and that no differentiation based on size should be provided. The rules proposed for readoption balance to minimize adverse economic impact on small businesses while simultaneously assuring quality. The waiver provisions contained in the chapter provide the opportunity to modify rules where they would present a clear economic hardship, provided that said waiver does not appreciably detract from program quality and that public health, safety, or the general welfare is not jeopardized.

The professional requirements include those for licensed social workers, licensed professional counselors, registered professional nurses, physicians, certified alcohol and drug counselors, and licensed clinical alcohol and drug counselors. It is anticipated that facilities whose staff do not meet the minimum requirements will, over time, assist the staff in reaching the requirements, and this will involve costs to the facility for the provision of training courses or reimbursement to the employees for training. Costs for this cannot be determined.

As of May 2016, 316 programs and facilities are expected to be impacted by the outpatient licensure chapter. One agency may provide both outpatient and residential addiction treatment services. An agency that holds or applies for an outpatient license would also be required to hold or apply separately for a residential facility license under separate existing residential licensure standards. In some cases, adherence to rules may require cost outlays and program modifications. The Department expects to be in a

position to provide technical assistance to facilities in helping them meet and maintain required standards.

Housing Affordability Impact Analysis

The rules proposed for reoption will have insignificant impact on the affordability of 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 concern the licensing of outpatient substance abuse treatment facilities.

Smart Growth Development Impact Analysis

The rules proposed for reoption will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in the housing production in Planning Areas 1 or 2, within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules concern the licensure of outpatient substance abuse treatment facilities.

Full text of the rules proposed for reoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:161B.