

**HUMAN SERVICES**

**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**

**Adult Mental Health Rehabilitation Services Provided In/By Community Residence Programs**

**Proposed Readoption with Amendments: N.J.A.C. 10:77A**

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

Authority: N.J.S.A. 30:4D-1 et seq., and 30:4J-8 et seq.

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

Agency Control Number: 16-P-05.

Proposal Number: PRN 2016-117.

Submit comments by October 3, 2016, to:

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The agency proposal follows:

## Summary

Pursuant to N.J.S.A. 52:14B-5.1, the Adult Mental Health Rehabilitation Services Provided In/By Community Residence Programs chapter, N.J.A.C. 10:77A, was scheduled to expire on June 25, 2016. As the agency submitted this notice of proposal to the Office of Administrative Law prior to that date, the expiration date is extended 180 days to December 22, 2016, pursuant to N.J.S.A. 52:14B-5.1.c(2). The Department has made the determination that N.J.A.C. 10:77A should be readopted. The chapter contains requirements for Medicaid/NJ FamilyCare-approved Community Residence Programs that render Adult Mental Health Rehabilitation services. These services are rendered in/by community residential programs approved by the Division of Mental Health and Addiction Services (DMHAS) and licensed in accordance with DMHAS rules at N.J.A.C. 10:37A. The Department has reviewed N.J.A.C. 10:77A and finds that the rules should be readopted, with minor technical amendments.

The chapter contains the following three subchapters:

N.J.A.C. 10:77A-1, General Provisions, addresses scope and purpose, definitions, provider participation, and beneficiary eligibility.

N.J.A.C. 10:77A-2, Program Operations, addresses program requirements, levels of care, nursing assessments, staff training, basis of reimbursement, and recordkeeping.

N.J.A.C. 10:77A-3, Healthcare Common Procedure Coding System (HCPCS), includes an introduction, HCPCS codes, and a maximum fee allowance schedule.

Throughout the chapter, the name of the “Division of Mental Health Services (DMHS)” is changed to the “Division of Mental Health and Addiction Services (DMHAS)”

to reflect the current name of this division of the Department; errors of grammar, spelling, and punctuation are corrected; and parentheses are removed where appropriate and related text is adjusted accordingly.

At N.J.A.C. 10:77A-2.2, language pertaining to reimbursement being provided on a per diem basis is proposed for deletion as it is duplicative with the requirements currently found in N.J.A.C. 10:77A-2.5(b), (c), and (d) and 3.2.

At N.J.A.C. 10:77A-2.5(g), a cross-reference to N.J.A.C. 10:77A-2.5 is corrected.

The Department has determined that the comment period for this notice of proposal will be at least 60 days; therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, this notice is excepted from the rulemaking calendar requirement.

### **Social Impact**

The rules proposed for readoption with amendments will continue to have a positive social impact on the 1,983 Medicaid/NJ FamilyCare beneficiaries who will continue to receive adult mental health rehabilitation community residence program services through the Division of Mental Health and Addiction Services.

The rules proposed for readoption with amendments will have a positive impact on the approximately 39 provider agencies, because the providers will continue to receive reimbursement for provision of services.

### **Economic Impact**

During State Fiscal Year 2015, the Division of Medical Assistance and Health Services spent approximately \$62.7 million (State and Federal share combined) for adult mental health rehabilitation services provided in community residences for approximately

1,983 Medicaid/NJ FamilyCare beneficiaries. The proposed technical amendments will not increase expenditures by the State.

The rules proposed for readoption with amendments will continue to have a positive economic impact on beneficiaries who will continue to receive services under the rules.

The rules proposed for readoption with amendments will continue to have a positive economic impact on providers because the readoption of the rules will ensure that the providers continue to receive reimbursement for provision of services.

### **Federal Standards Statement**

Sections 1902(a)(10) and 1905(a) of the Social Security Act, 42 U.S.C. §§ 1396a(a)(10) and 1396d(a), respectively, specify who may receive services through a Title XIX Medicaid program.

Section 1905(a)(13) of the Social Security Act, 42 U.S.C. § 1396d(a)(13), allows a state Medicaid program to offer diagnostic, screening, prevention, and rehabilitation services, including medical or remedial services recommended by a physician or other licensed practitioner within the scope of their practice under state law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level.

Federal regulations at 42 CFR 440.130 describe diagnostic, screening, preventive, and rehabilitative services, which include the nursing assessments and residential rehabilitation services addressed in this chapter.

The Department has reviewed the Federal statutory and regulatory requirements and has determined that the rules proposed for readoption with amendments do not exceed Federal standards. Therefore, a Federal standards analysis is not required.

### **Jobs Impact**

Since the rules proposed for readoption with amendments concern the provision of adult mental health rehabilitation services in/by community residence programs, the Division does not anticipate that the rules proposed for readoption will result in the creation or loss of jobs in the State of New Jersey.

### **Agriculture Industry Impact**

Since the rules proposed for readoption with amendments concern the provision of adult mental health rehabilitation services in/by community residence programs, the Department anticipates that the proposed rulemaking will have no impact on the agriculture industry in the State of New Jersey.

### **Regulatory Flexibility Analysis**

The rules proposed for readoption with amendments will affect providers who provide mental health rehabilitation services to adult beneficiaries residing in the community, and who are billing the Division directly for these services. Many of these providers may be considered small businesses under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is needed.

The rules proposed for readoption with amendments do not impose recordkeeping, compliance, and reporting requirements on the providers other than the requirements already mandated by applicable State and Federal laws. Providers are required to submit

claims to the Division's fiscal agent in approved formats and are required to maintain records of the services rendered. Other requirements placed on the providers result from licensing rules contained elsewhere in the New Jersey Administrative Code and are incorporated by reference into this chapter. The requirements contained in the rules proposed for readoption with amendments must be equally applicable to all providers regardless of size, because all claims must be submitted in a common format in order to assure they can be accurately processed through the Division's fiscal agent. All supporting documentation for those claims must be consistent throughout the provider community.

There should be no capital costs associated with these requirements, since the production of claims for reimbursement purposes can be done with existing staff or purchased as a service from billing agents. The production of claims does not require capital expenditures. The maintenance of records supporting the claims is required by statute. No professional services are required beyond those required by the rules for the purpose of service delivery to the beneficiaries.

### **Housing Affordability Impact Analysis**

Since the rules proposed for readoption with amendments concern the provision of adult mental health rehabilitation services in/by community residence programs, they will have an 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.

### **Smart Growth Development Impact Analysis**

Since the rules proposed for readoption with amendments concern the provision of adult mental health rehabilitation services in/by community residence programs, they will have an insignificant impact on smart growth 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.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:77A.

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

## SUBCHAPTER 1. GENERAL PROVISIONS

### 10:77A-1.2 Definitions

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

"Adult" means any individual who meets the Division of Mental Health **and Addiction Services'** criteria for adult services, as defined in N.J.A.C. 10:37A.

...

"Community residences for mentally ill adults" as used in this chapter means any community residential program licensed by, and under contract with, the Division of Mental Health **and Addiction Services** [(DMHS)] **(DMHAS)** to provide services in accordance with N.J.A.C. 10:37A to mentally ill adults who require assistance to live

independently in the community. "Community residences for mentally ill adults" does not include "[Supportive] **supportive** housing residences." [as the term is defined herein.]

"Mental health rehabilitation services" means services provided in/by a community residence program licensed by [the DMHS] **DMHAS**, which include, but are not limited to, assessment and development of a comprehensive service plan[,] and implementation of the service plan through individual services coordination, training in daily living skills and supportive counseling.

...

#### 10:77A-1.3 Provider participation

(a) In order to participate in the Medicaid/NJ FamilyCare programs, all applicants shall be licensed by and under contract with the Division of Mental Health **and Addiction Services** [(DMHS)] (**DMHAS**) as a community residence for mentally ill adults in accordance with N.J.A.C. 10:37A.

(b) All providers shall complete and submit the following documents, and shall update the documents when the information contained therein changes, for example, when a new license is issued and/or when any information on the FD-20 changes:

1. – 2. (No change.)

3. A copy of a current and valid license from the Division of Mental Health **and Addiction Services**; and

4. (No change.)

(c) – (d) (No change.)



(e) The applicant will receive written notification of approval or disapproval of Medicaid/NJ FamilyCare provider status from the Division of Medical Assistance and Health Services (DMAHS). If approved, the applicant will be assigned a Medicaid/NJ FamilyCare Provider Number[,] and will receive a copy of this chapter as part of the provider manual. Each provider agency shall be assigned a unique provider number for each county in which services are provided.

(f) [The DMHS] **DMHAS** will certify to [the] DMAHS, the level of care and the number of beds and separate sites for each agency.

(g) If an adult mental health rehabilitation services provider loses its license from [DMHS] **DMHAS**, the provider shall notify the DMAHS Provider Enrollment Unit, at the address in (c) above, within five business days of losing the license.

1. The adult mental health rehabilitation provider will be disenrolled as a Medicaid/NJ FamilyCare provider until such time as the license is restored. Once [DMHS] **DMHAS** restores the provider's license, the provider, upon providing proof of the restoration of the license to the provider enrollment office noted above, will be reinstated as a Medicaid/NJ FamilyCare provider, as long as the requirements of N.J.A.C. 10:37A and this chapter are met and continue to be met. The effective date shall be the date of reinstatement as determined by [DMHS] **DMHAS** licensing standards.

2. (No change.)

10:77A-1.4 Beneficiary eligibility

(a) Medicaid/NJ FamilyCare beneficiaries shall be eligible for adult mental health rehabilitation (AMHR) services provided in/by community residence programs, if such services have been determined clinically necessary using the criteria established by the Division of Mental Health **and Addiction** Services (see N.J.A.C. 10:37), or as authorized by any contracted agent of the Department of Human Services, which authorizes clinical need for mental health services for adults.

(b) – (c) (No change.)

## SUBCHAPTER 2. PROGRAM OPERATIONS

### 10:77A-2.2 Levels of care

(a) Level A+ means community mental health rehabilitation services available in the community residence, or in a community setting, 24 hours per day, delivered by the provider. [Reimbursement shall be provided on a per diem basis.]

(b) Level A means community mental health rehabilitation services available in the community residence or in a community setting at least 12 hours per day, but less than 24 hours per day, delivered by the provider. [Reimbursement shall be provided on a per diem basis.]

(c) Level B means community mental health rehabilitation services available in the community residence, or in a community setting, at least four hours per day, but less than 12 hours per day, delivered by the provider. [Reimbursement shall be provided on a per diem basis for AMHR Level B services rendered in a group home setting. Reimbursement shall be provided for complete quarter-hour units of service for AMHR services rendered in a supervised apartment setting.]

(d) Level C means community mental health rehabilitation services provided in the community residence or in a community setting a minimum of one hour per week, but less than four hours per day, delivered by the provider. [Reimbursement shall be provided for complete quarter-hour units of service.]

(e) (No change.)

#### 10:77A-2.3 Nursing assessments

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

(f) All beneficiaries determined to need community mental health rehabilitation services shall be placed in the least restrictive and most effective level of care [which] **that** will meet their needs.

(g) (No change.)

#### 10:77A-2.4 Staff training

(a) All providers shall comply with the general training requirements prescribed by the Division of Mental Health **and Addiction** Services [(DMHS)] **(DMHAS)** at N.J.A.C. 10:37D-2.14.

(b) In addition to the general training requirements at N.J.A.C. 10:37D-2.14, each provider shall develop, update, and administer a comprehensive, competency-based training program for individuals providing adult mental health residential services. [Competency based] **Competency-based** training programs involve measurable skill development and demonstrated, documented evidence of employee skill attainment. Training in CPR and First Aid shall be provided by an American Heart Association

(AHA) or Red Cross certified trainer, which, upon successful completion of the training, issues a certificate to the employee confirming that competency was achieved. The [DMHS] **DMHAS** will be responsible for monitoring the provider's training programs. The following topics, at a minimum, shall be included in the training curriculum:

1. – 2. (No change.)

3. Medication/clinical issues, including:

i. (No change.)

ii. Classes of medication, therapeutic objectives, side effects, **and** interactions,[,] including documentation and reporting of side effects to appropriate medical professional;

iii. (No change.)

iv. Clinical communication, [(]including how to report symptoms when encountering problematic medical/clinical situations and pertinent information to share with medical providers during emergencies[)];

4. – 7. (No change.)

(c) – (d) (No change.)

10:77A-2.5 Basis of reimbursement

(a)-(f) (No change.)

(g) If a beneficiary is required to remain in a residence while awaiting transfer to a more appropriate facility (see N.J.A.C. 10:77A-[2.5]**2.3**), the provider shall request reimbursement at the lesser of:

1.-2. (No change.)

SUBCHAPTER 3. HEALTHCARE COMMON PROCEDURE CODING SYSTEM  
(HCPCS)

10:77A-3.1 Introduction

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

(d) Alphabetic and numeric symbols under "IND" and "MOD": These symbols, when listed under the "IND" and "MOD" columns, are elements of the HCPCS coding system used as qualifiers or indicators ("IND" column) and as modifiers ("MOD" column). They assist the provider in determining the appropriate procedure codes to be used, the area to be covered, the minimum requirements needed, and any additional parameters required for reimbursement purposes.

1. Providers shall consider these symbols [and/or] **and** letters when billing because the symbols/letters reflect requirements, in addition to the narrative that accompanies the CPT/HCPCS procedure code, for which the provider is liable. These additional requirements shall be fulfilled before reimbursement is requested.

i. (No change.)

(e) The general and specific requirements of the New Jersey Medicaid/NJ FamilyCare programs that pertain to HCPCS follow:

1.-6. (No change.)