

**HUMAN SERVICES**

**DIVISION OF MENTAL HEALTH AND ADDICTION SERVICES**

**County Psychiatric Facilities**

**Proposed Readoption with Amendments: N.J.A.C. 10:35**

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

Authority: N.J.S.A. 30:1-12 and 30:4-78, 78.1 through 78.5, and 79.

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

Proposal Number: PRN 2015-023.

Submit written comments by May 15, 2015, to:

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The agency proposal follows:

**Summary**

N.J.A.C. 10:35 governs the provision of mental health services in county psychiatric facilities. Pursuant to N.J.S.A. 52:14B-5.1, N.J.A.C. 10:35 was set to expire on February 4, 2015. As this notice of proposal was submitted to the Office of Administrative Law on the

expiration date, pursuant to N.J.S.A. 52:14B-5.1.c(2), the expiration date is extended 180 days to August 3, 2015. This notice of proposal is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5, because a 60-day public comment period is provided.

P.L. 1990, c. 73 (approved July 17, 1990) provides authority to the Department "to promulgate regulations to assure that services in State and county psychiatric facilities are provided in an efficient and reasonable manner and are of the highest quality" (N.J.S.A. 30:1-12). The statute specifies that such rules "shall include, but shall not be limited to, the transfer of patients between facilities; the maintenance of quality in order to obtain certification by the United States Department of Health and Human Services; the review of the facility's budget; and the establishment of sanctions to assure the appropriate operation of facilities in compliance with State and Federal laws and regulations" (N.J.S.A. 30:1-12.b).

The purpose of these rules is to promote efficiency, accessibility, high quality services, and a well-coordinated and integrated role within county psychiatric facilities as part of the publicly funded Statewide system of mental health services. The Department has determined that this goal may best be reached by rules requiring: (1) the submission of annual financial and management plans by the governing bodies of the counties to the Assistant Commissioner of the Division of Mental Health and Addiction Services (Subchapter 2); (2) the development of affiliation agreements between the county psychiatric facility and Division-funded or -operated mental health service agencies, units, or hospitals (Subchapter 3); (3) the transfer of patients between State and county psychiatric facilities within certain substantive and procedural guidelines (Subchapter 4); and (4) the potential use of sanctions for violation of the rules within

this chapter (Subchapter 5). Subchapter 1 contains general provisions regarding the scope and purpose of, and definitions for, these rules.

The rules proposed for readoption with amendments shall apply to the operation of the four current county psychiatric facilities or units: Bergen Regional Medical Center, Essex County Hospital Center, Runnells Specialized Hospital, and Meadowview Psychiatric Hospital, as well as any additional county psychiatric facilities or units which may be so designated by the Department in the future.

The New Jersey Department of Human Services (the Department) and stakeholders reviewed N.J.A.C. 10:35 and determined it to be necessary, reasonable, and proper for the purposes it was originally promulgated to serve, with the exception of the following amendments. The Department therefore proposes to readopt N.J.A.C. 10:35 with the noted amendments.

Amendments are proposed at N.J.A.C. 10:35-1.1 and 1.3 (definition of “regional State psychiatric facility”), to reflect the current county psychiatric hospitals and State psychiatric hospitals. There are four county psychiatric hospitals, Bergen Regional Medical Center, Essex County Hospital Center, Meadowview Psychiatric Hospital, and Runnells Specialized Hospital. Additionally, there are three adult State psychiatric regional hospitals since the Senator Garrett W. Hagedorn Psychiatric Hospital closed June 30, 2012.

Amendments are proposed at N.J.A.C. 10:35-1.3, 2.1 through 2.5, 4.3, 5.1, and 5.2 to reflect the current name of the Division of Mental Health and Addiction Services and to replace the title of “Director” with “Assistant Commissioner.” In the Fiscal Year 2010-2011 State Appropriations Act, the former Division of Mental Health merged with the former Division of Addiction Services to create the Division of Mental Health and Addiction Services.

N.J.A.C. 10:35-2.4 is amended to reflect the current name of the Department of Health, pursuant to P.L. 2012. c. 17 § 93.

Since the last reoption of this chapter, two county psychiatric facilities have privatized and are no longer a part of this acute care delivery system. By privatizing, potential bed capacity for the public psychiatric system may diminish requiring assessment and planning to adjust the bed inventory for the acute care delivery system. Due to the changing landscape in the acute care hospital delivery system, the Department proposes to amend N.J.A.C. 10:35-2.2, so that each county facility will include in its Financial and Management Plan its intention to privatize or sell its county facility. Additionally, a county will have to provide justification for the privatization, anticipated timeframe, and a requirement that the county will update the Assistant Commissioner on related planning activities pertaining to the justification. The county will also have to work collaboratively with the Division to ensure a smooth transition for patients, as well as the local system of care. This will assist the Department in planning purposes.

Lastly, the Department proposes to amend N.J.A.C. 10:35-2.2(a)6 to address the inclusion of certain admission and discharge policies. These policies pertain to the New Jersey Advance Directives for Mental Health Care Act and its implementing rules, the principals of Wellness and Recovery, and compliance with State and Federal confidentiality laws. This amendment mirrors language in other Department/Division of Mental Health and Addiction Services rules. Other regulated components of the acute care delivery system are required to comply with these provisions. As such, the Department proposes to amend this chapter to provide clarity and consistency.

### **Social Impact**

By promoting efficient, accessible, standardized, coordinated, and high quality service delivery by county psychiatric facilities, the rules proposed for readoption with amendments will benefit the recipients of those services. By promoting the efficient utilization of State psychiatric facilities, the rules proposed for readoption with amendments will also benefit all recipients of services at the State psychiatric facilities, including residents of counties that do not operate a county psychiatric facility.

### **Economic Impact**

Compliance with the rules proposed for readoption with amendments is likely to impose some administrative burden in the form of staff time required to submit financial and management plans, negotiate and develop affiliation agreements, and comply with transfer procedures to State psychiatric facilities. The Department does not believe the amount of staff time involved is excessive, however, and the investment of these efforts should promote efficiency in operation. The Department believes that facilities can comply with these rules without expenditures in addition to the funding and payments currently being received from the Department and other sources to provide these services. The promulgation of these rules is not intended nor expected to impact the amount of funding or payments that will be received by facilities to provide these services in the future.

Compliance with these rules has not appeared to require additional financial expenditures by the State or any counties or other affected parties, including the recipients of mental health services and the State. The taxpaying public is anticipated to benefit from these rules, because they help to ensure that public funding to these facilities achieve their intended purpose as effectively and efficiently as possible.

### **Federal Standards Statement**

A Federal standards analysis is not required because the rules proposed for readoption with amendments are not subject to, or do not exceed, any Federal requirements or standards. Proposed new N.J.A.C. 10:35-2.2(a)6 requires compliance with, but does not exceed the Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

### **Jobs Impact**

The rules proposed for readoption with amendments will neither generate nor cause the loss of any jobs.

### **Agricultural Industry Impact**

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

### **Regulatory Flexibility Statement**

Compliance with the rules proposed for readoption with amendments will affect only certain recipients of mental health services, public employers, and public employees. Thus, these rules do not impose any reporting, recordkeeping, or other compliance requirements upon small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., rendering a regulatory flexibility analysis unnecessary.

### **Housing Affordability Impact Analysis**

The rules proposed for readoption with amendments will have an insignificant 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 proposed for readoption with amendments relate to county psychiatric facilities.

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

The rules proposed for readoption with amendments will have an insignificant impact on smart growth or 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 proposed for readoption with amendments relate to county psychiatric hospitals.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:35.

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

## SUBCHAPTER 1. GENERAL PROVISIONS

### 10:35-1.1 Scope

[These rules] **This chapter** shall apply to the operation of the [six] **four** current county psychiatric facilities at Bergen Regional Medical Center; [Buttonwood Hospital; Camden County Health Services Center;] Essex County Hospital Center; Meadowview **Psychiatric** Hospital; and Runnells Specialized Hospital. [These rules] **This chapter** shall also apply to any additional county psychiatric facilities, which may be so designated by the Commissioner in the future.

### 10:35-1.2 Purpose

The purpose of [these rules] **this chapter** is to promote efficiency, accessibility, and high-quality services within the county psychiatric facilities as part of a publicly funded well-coordinated and integrated Statewide system of mental health services. In order to best accomplish this purpose,

the Commissioner hereby delegates certain authority granted by P.L. 1990, [c.73] c. 73 to the [Director] **Assistant Commissioner** as detailed throughout this chapter.

### 10:35-1.3 Definitions

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

**“Assistant Commissioner” means the Assistant Commissioner of the Division of Mental Health and Addiction Services.**

...

**“Compliance with State standards” means meeting the applicable licensure requirements of the New Jersey Department of Health [and Senior Services].**

**“County psychiatric facility” means a psychiatric hospital or unit which is operated by the governing body of a county and which participates in the State aid program of the Department of Human Services, Division of Mental Health and Addiction Services.**

...

**[“Director” means the Director of the Division of Mental Health Services.]**

**“Division” means the New Jersey Division of Mental Health and Addiction Services within the Department of Human Services.**

...

**“Regional State psychiatric facility” means those State psychiatric hospitals listed in N.J.S.A. 30:1-7, which are being utilized by the Division of Mental Health and Addiction Services to treat adult psychiatric patients within designated regions of the State. These facilities are Ancora**

Psychiatric Hospital, Greystone Park Psychiatric Hospital, **and** Trenton Psychiatric Hospital [and Senator Garrett W. Hagedorn Psychiatric Hospital].

## SUBCHAPTER 2. FINANCIAL AND MANAGEMENT PLAN

### 10:35-2.1 Purpose and deadline of plan

The governing body of each county that operates a county psychiatric facility shall submit to the [Director] **Assistant Commissioner** a plan no later than December 31 of each calendar year so that the purpose articulated at N.J.A.C. 10:35-1.2 above may be achieved. In addition to the information listed at N.J.A.C. 10:35-2.2, the plan may need to include additional program or fiscal information deemed essential by the [Director] **Assistant Commissioner** to fulfill the duties mandated by P.L. 1990, [c.73] **c. 73**. If any such additional information is needed, it shall be so requested in writing by the [Director] **Assistant Commissioner**.

### 10:35-2.2 Content of plan

(a) The plan from each county facility shall minimally include the following information:

1. A statement of whether the governing body of the county intends to continue to operate **or privatize** a county psychiatric facility for the next calendar year[;]. **Should the governing body of the county intend to privatize the county psychiatric facility the plan must minimally include the following:**

**i. The reason for privatization and whether or not the county intends to fully privatize or to operate via a lease back option through the new owner;**

**ii. The anticipated timeframe for sale;**

**iii. An attestation that the county will keep the Assistant Commissioner apprised of the status of planning activities (including when the solicitation for bids will be issued, any public meetings that will be held, when the New Jersey Department of Health will be notified to either request a change in certificate of need and/or transfer of license, award of proposal); and**

**iv. An attestation that the county will work collaboratively with the Division through the transition to ensure safe and quality continued care for the patients of the county hospital and to facilitate a smooth transition for the local system of care.**

2.– 5. (No change.)

6. A description of admissions and discharge policies, including specific criteria[;].

**These policies shall include, but not be limited to, policies pertaining to the applicable provisions of N.J.S.A. 26:2H-102 et seq., the New Jersey Advance Directives for Mental Health Care Act and its implementing rules, N.J.A.C. 10:32, the principles of Wellness and Recovery, and compliance with State and Federal confidentiality laws, including, but not limited to, the protections mandated by N.J.S.A. 30:4-24.3 and the Federal privacy rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA);**

7.–10. (No change.)

11. A description, in a format specified by the [Director] **Assistant Commissioner**, of budgetary information and personnel listings sufficient to reasonably identify facility, staffing, and program operational costs, expected revenues, and associated financial aspects of planned facility services.

10:35-2.3 Annual [Certification Process] **certification process**

On or before December 31 of each year, the governing body of each county shall submit written certification to the [Director] **Assistant Commissioner** as to the accuracy of information submitted and that information contained in the previously submitted plan remains in effect without change, if that is so.

#### 10:35-2.4 Modifications to the plan

(a) If changes to the plan are anticipated for the next year, the governing body of each county shall submit written notification and description of the modifications to the [Director] **Assistant Commissioner** on or before December 31 of the preceding year.

(b) If modifications occur subsequent to the annual certification, these changes must be reported immediately, in writing, to the [Director] **Assistant Commissioner**.

(c) Facility or program modifications [which] **that** would require a Certificate of Need (CN) as established by rules promulgated by the New Jersey Department of Health [and Senior Services] must be specified in a letter of intent to the [Director] **Assistant Commissioner**, concurrent with the notification to the Department of Health [and Senior Services].

(d) Modifications that do not require a CN but that would have an impact on the provision of services within the New Jersey mental health system, require six months advance notice to the [Director] **Assistant Commissioner** prior to implementing any program or facility modification.

(e) The governing body of each county shall immediately inform the [Director] **Assistant Commissioner**, in writing, of any changes in the status of the psychiatric facility's licensure, accreditation, or certification, as these occur during the year.

#### 10:35-2.5 Division review of initial and modified plans and annual certification

(a) The [Director] **Assistant Commissioner** shall complete the review of each facility's plan and notify in writing the governing body of the county of his or her decision to approve, or approve with conditions, the county's plan guiding the operations of its respective psychiatric facility within 90 days of the plan's receipt.

(b) If the county's plan receives conditional approval, the governing body of the county shall satisfactorily address the outstanding issues within 90 days of notification. Proposed modifications to the plan may be discussed and negotiated with the [Director] **Assistant Commissioner** or the [Director's] **Assistant Commissioner's** designee within this [90 day] **90-day** period.

#### SUBCHAPTER 4. TRANSFERS BETWEEN REGIONAL STATE AND COUNTY

#### PSYCHIATRIC FACILITIES

##### 10:35-4.3 General transfer policies and procedures

(a) (No change.)

(b) Transfers occurring as a result of overcrowding, life safety concerns, natural catastrophes, or consolidation of services shall require the approval of the [Director] **Assistant Commissioner**.

(c) The following procedures shall be in effect for transfers of patients between facilities:

1.-5. (No change.)

6. If the two psychiatric facilities do not agree on the transfer, the matter shall be referred to the chief executive officer[s], or [their] designee, of the respective facilities for resolution.

The patient's attorney shall be notified of the disagreement. If the chief executive officers are unable to resolve the matter, the [Director] **Assistant Commissioner** or a designee shall finally resolve the matter.

7. (No change.)

## SUBCHAPTER 5. SANCTIONS AND APPEALS

### 10:35-5.1 Sanctions

(a) If the [Director] **Assistant Commissioner** determines that any of the provisions of this chapter have been violated by the governing body of a county or a county psychiatric facility, administrative and financial sanctions may be imposed in writing by the [Director] **Assistant Commissioner** upon the violators as warranted by the specific situation.

(b)–(d) (No change.)

### 10:35-5.2 Appeals process

(a) The governing body of a county or a county psychiatric facility may appeal any sanction imposed by the [Director] **Assistant Commissioner** except that sanctions related to the plan review and approval process may only be appealed by the governing body of a county.

(b) Appeal requests must be received by the [Director] **Assistant Commissioner** within 30 days of receipt of the written sanctions by the governing body of the county or the county psychiatric facility.

(c) The [Director] **Assistant Commissioner** shall schedule the appeal for review within 60 days of receipt of the appeal request.

(d) The appellant may present all relevant information for consideration by the [Director] **Assistant Commissioner** at the review and the [Director] **Assistant Commissioner** shall communicate a determination in writing to the appellant within 30 days of the review.

(e) The appellant may appeal the [Director's] **Assistant Commissioner's** determination to the Commissioner in writing within 60 days of receipt of the [Director's] **Assistant Commissioner's** determination.

(f)–(g) ( No change.)