

NEW JERSEY DEPARTMENT OF HEALTH

HEALTH SYSTEMS BRANCH – DIVISION OF CN AND LICENSING

INTEGRATED HEALTH BRANCH – DIVISION OF MENTAL HEALTH AND ADDICTION SERVICES

GUIDANCE 1-2017

DATE ISSUED: DECEMBER 15, 2017

EFFECTIVE DATE: DECEMBER 15, 2017

SUBJECT: INTEGRATED HEALTH – OUTPATIENT LICENSURE AND INSPECTION

The Department of Health (“The Department”) provides this Guidance to facilitate the integration of outpatient care for physical, mental health, and substance use disorder facilities licensed by the Department. Governor Chris Christie issued Reorganization Plan 001-2017: *A Plan for the Transfer of Mental Health and Addiction Functions from the Department of Human Services to the Department of Health* (effective August 28, 2017) in order to advance the goal of care integration. The Reorganization Plan transferred several responsibilities regarding mental health and substance use disorder services to the Department of Health, including responsibility for licensing and inspection of outpatient mental health and substance use disorder facilities. Over the near term, the Department is committed to engaging in a collaborative process to advance the integration of the licensing and inspection functions for physical health, mental health, and substance use disorder care to facilitate efforts to achieve sound integrative care. In the interim, this Guidance will provide instructions for the interpretation of relevant New Jersey statutes and regulations so the goals of clinical integration consistent with the Reorganization Plan can move forward without delay. Through the use of this Guidance, regulated facilities, advocates, consumers, and patients will learn:

- The background and steps the Department will take to further regulatory integration;
- Methods to interpret statutes and regulations until comprehensive regulatory reform is accomplished;

- Additional interim steps the Department will take to encourage clinical integration of outpatient care over the next several months; and
- The consultative process the Department will undertake to advance the realization of integrated health.

Overview

The Governor's Reorganization Plan relies on substantial research supporting the importance of integrating physical and behavioral outpatient health care services. The integration of outpatient clinical care is a critical step toward "whole person" health care. Care for people with behavioral health (mental health and/or substance use disorder) conditions too often is fragmented by modality of care, depriving patients of unified clinical experiences and depriving caregivers of coordinated settings of care in which professional collaboration and coordination prevail.

People with behavioral health conditions are doubly harmed by this fragmentation. First, people with severe behavioral health conditions, who often receive their behavioral health care from specialized providers, experience excess morbidity and mortality related to poor connections to physical health care. Second, mild to moderate behavioral health conditions can often be misdiagnosed or missed entirely in primary care settings without behavioral health personnel. These two shortfalls – inadequate physical health care for people with serious behavioral health conditions and misdiagnosis of behavioral health conditions in primary care settings – can be addressed through the adoption of models of integrated care. Those models have developed through health systems research, and New Jersey is eager to adopt those models of care.

The Department is committed to working toward a culture of integrated health in New Jersey, in collaboration with caregivers, patients, consumers, and advocates. The Reorganization Plan sets out a structure furthering a regulatory system welcoming to integrated health. Some of the steps described in this Transitional Guidance will be implemented within the next few months. Other steps involve

regulatory adjustments that require more time to implement. The Department is committed to transparency and consultation during the process of moving the regulatory system forward to advance integrated health.

Statutory and regulatory changes: immediate effect of the Reorganization Plan

The Governor’s Reorganization Plan ensures progress in making the regulatory system a partner with the clinical innovators. The Reorganization Plan vests in the Department the functions, powers, and duties of many mental health and substance use disorder provisions of New Jersey regulations, as listed in the table below. The Reorganization Plan has the force of law, and by its terms directed that statutes and regulations concerning mental health or addiction services that refer to the Commissioner of Human Services or the Department of Human Services should now be read as referring to the Commissioner of Health or the Department of Health.¹ The administrative rules applicable to the Division of Mental Health and Addiction Services (DMHAS) will be recodified by the New Jersey Office of Administrative Law in conjunction with the Department to conform the language of those regulations to the requirements of the Reorganization Plan, and a notice of the change will appear in the New Jersey Register during calendar year 2018.

Effective immediately, the following regulatory chapters of Title 10 of the New Jersey Administrative Code related to mental health and substance use disorders that currently refer to the Commissioner of Human Services or the Department of Human Services should now be read as referring to the Commissioner of Health or the Department of Health:

Current Citation	Heading
10:7	Role of the County Adjuster
10:30	DMHAS Organizational Rules
10:31	Screening and Screening Outreach Program
10:32	Advance Directives for Mental Health Care
10:35	County Psychiatric Hospitals
10:36	Patient Supervision at State Psychiatric Hospitals

¹ See Reorganization Plan ¶ 9.

10:36A	Special Treatment Units: Rights & Responsibilities
10:37	Community Mental Health Services Act
10:37A	Community Residences for Adults w/ Mental Illness
10:37B	Community Support Services for Adults w/ SMI
10:37D	Management and Governing Body Standards
10:37E	Outpatient Services Standards
10:37F	Partial Care Services Standards
10:37G	Short Term Care Facility Standards
10:37I	Family Support Services
10:37J	Programs of Assertive Community Treatment
10:38	Interim Assistance Procedures Manual
10:38A	Pre-Placement Program
10:161A	Standards for Licensure of Residential Substance Use Disorder Treatment Facilities
10:161B	Standards for Licensure of Outpatient Substance Use Disorder Treatment Facilities
10:162	Intoxicated Driving Program
10:163	Medical Necessity Review Tool for Substance Use Disorders
10:190	Licensure Standards for Mental Health Programs

Contacts: assistance and more information for transitional licensing and inspection issues

The following contacts are available to assist the regulated community with any questions regarding the transition of the regulatory system for outpatient primary, mental health, and substance use disorder care.

Licensing: primary care

John Calabria (609) 292-8773 or 5380
John.calabria@doh.nj.gov

Licensing: mental health and substance use disorder

Jean DeVitto (609) 292-6587
jean.devitto@doh.nj.gov

Inspections: primary care

Susan Kelley (609) 292-9900
susan.kelley@doh.nj.gov

Inspections: mental health and substance use disorder

Jean DeVitto (609) 292-6587
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Single point of entry

The Department's licensure and inspection staff will assist facilities' movement to integrated care. In that regard, staff will cooperate and coordinate in order to ensure consistent, transparent responses to applications and inquiries. The Department is committed to moving toward a "single point of entry" for applicants, in order to further ensure regulatory support for sound integrative efforts.

Short-term regulatory adjustments

In the coming months, the Department of Health will issue guidance on two specific issues to facilitate the adoption of care integration models.

Shared space. The Department has modified its guidance recently to clarify that sharing space for multiple modalities of care is permissible under some circumstances. On October 19, 2015, the Department issued a Waiver to Permit Sharing of Clinical Space.² That waiver clarified that an outpatient facility providing medical primary care and licensed as an ambulatory care facility may expand its services to include behavioral health services. The Waiver describes the conditions for application of the waiver, including:

- Acquisition of a mental health or substance use disorder license, as applicable, from the Department's Division of Certificate of Need & Licensing – Office of Licensing - Mental Health and Addiction Services;³
- Compliance with any change of scope filing required by New Jersey Medicaid;

² See

http://www.state.nj.us/health/healthfacilities/documents/ac/primary_care_facilities_permitting_sharing_of_clinical_space.pdf. In a Memorandum dated May 18, 2016, the Department of Human Services described the process for a Department of Health-licensed primary care facility to apply for a mental health outpatient license, and described the waiver of the first year's licensing fee. See Memorandum to Federally Qualified Health Care Facilities (FQHCs) and other Department of Health Licensed Primary Care Facilities, Primary Care Association.

³ At the time the Waiver was issued, DMHAS and the Office of Licensing ("OOL") were located in the Department of Human Services. The Reorganization Plan moved DMHAS and "OOL" to the Department of Health.

- Attestation that a single legal entity will hold all licenses for the site;
- Provision of information on physical alterations, if any to be undertaken on the licensed premises; and
- Continued compliance with the Department’s licensing requirements.

The Governor signed P.L. 2017, c. 107, codified as N.J.S.A. 26:2H-12.84 and 85, which also permits the sharing of clinical space by licensed medical primary care facilities offering outpatient services for primary medical care, outpatient mental health care, and/or outpatient substance use disorder care. Similar to the provisions of the Waiver to Permit Sharing of Clinical Space, c. 107 includes several conditions for the sharing of space, requiring that a facility:

- Comply with the Department’s licensing standards for primary care facilities licensed as ambulatory care facilities;
- Obtain a license from the Department of Human Services for mental health and/or substance use disorder treatment, as appropriate; and
- Comply with the standards of the Department of Human Services for the facilities licensed as mental health programs or substance use disorder facilities.⁴

The Department is charged by c. 107 with issuing regulations effectuating the provisions of that statute. The Department will approach its issuance of regulations pursuant to c. 107 in the context of the Governor’s instructions to advance the goals of the integration of care, and in particular the integration of outpatient primary, mental health, and substance use disorder care.

The Department will issue Guidance when that is appropriate, as such Guidance can be

⁴ P.L. 2017, c. 107, was approved on July 13, 2017. At that time, DMHAS and the Office of Licensing (“OOL”) were located in the Department of Human Services. The Reorganization Plan moved DMHAS and “OOL” to the Department of Health.

disseminated quickly, and through the formal process of promulgating regulations when that formality is appropriate.

Limited practice accommodations. The practice of the Department in the past has been to informally waive some licensing requirements to allow a limited number of hours in which outpatient providers of primary, mental health, and substance use disorder care could have structured integrated care in a way that is substantially consistent with the ambulatory care facility, mental health program, and/or substance use disorder facility requirements. The transition of the current licensing standards to accomplish the goals announced in the Reorganization Plan, which is addressed in the next section, will involve substantial consultation with providers, consumers, patients, and advocates, and every effort will be made to advance the integrative mandate of the Reorganization Plan. During this transitional period, the Department intends to continue to consult with service providers to facilitate the integration of care where accommodation of current or proposed integrative practices is consistent with public safety and existing standards of oversight. Mental health programs that have been permitted to provide primary care services, under some circumstances, without obtaining a separate ambulatory care facility license will be permitted to continue to do so on an ongoing interim basis while licensure reform proceeds, with continued consultation with the Department. Similar interim flexibility will permit substance use disorder and primary care licensees to provide integrated services on a similar basis.

The Department encourages applicants to use mechanisms such as the functional review meeting in the SUD outpatient regulations, *see* N.J.A.C. 10:161B-2.5(a), to discuss proposed integrated outpatient programs. The Department can provide technical assistance and work with applicants for licensure in each of the three modalities to identify whether waivers of particular regulatory requirements, *see* N.J.A.C. 8:43A-2.9, or issuance of a conditional license,

see N.J.A.C. 8:43A-2.7, may be appropriate in given circumstances as well as discussion of proposed integrated outpatient programs.

Longer term regulatory reform

Some of the current regulatory system for outpatient primary care, substance use disorder treatment, and mental health care requires substantive changes in regulations governing such care. Substantive changes in the regulations require that the Department publish formal amendments to regulations, provide an opportunity for comment, publish responses to those comments, and adopt final versions of the proposed amendments. Two such reforms are under consideration by the Department.

Harmonization of licensing and inspection regulations. As described above in this Transitional Guidance, the Governor's Reorganization Plan brought under the responsibility of the Department of Health licensing and inspection functions previously regulated by the Department of Human Services. While the guidance provided above explains that licensing and inspection regulations are now unified within the Department of Health, the provisions of those regulations contain varying timeframes, fee schedules, and instructions. The Department aspires to harmonize the terms of those regulations to simplify the compliance process for caregivers pursuing integration across modalities of care. Some of these harmonization steps can be accomplished within current statutory authorization. For others, there may be need for legislation.

Adoption of a single license system. The Governor's Reorganization Plan has created an important opportunity for the Department to reform the regulatory system for licensing and inspection to permit caregivers to maintain a single license for primary care, mental health care, and substance abuse services. Such a single-license system would permit a caregiver to maintain a license for outpatient care tailored to its suite of services. This single-license system would simplify the process of integrating facilities to offer all three modalities of care, and

would bring the regulatory system in harmony with clinical progress. In addition to, or instead of, pursuing regulatory harmonization of three different licensure and inspection programs, the Department intends to reform its regulatory system to permit a single license for all three modalities of care. The Department will evaluate its ability to fashion a licensure system by which caregivers can apply through a single point of entry, with coordinated application and inspection systems, to provide a unitary process of licensure. Legislative change, as well as consultation with federal agencies, may be required to accomplish a more fully unified and stably integrated licensure system.

Consultation with stakeholders

The Department of Health is engaging in several outreach and consultative steps to ensure full transparency and engagement with caregivers, patients, consumers, and advocates as the process of regulatory integration moves forward. Some of those steps have already been taken or will take place in the near future:

County meetings. During September and October 2017, the Department held public meetings in each county to gather feedback on how to better facilitate integration and ensure our regulations support this streamlining of services. In response, the Department posted a series of Frequently Asked Questions (FAQs) located at <http://nj.gov/health/integratedhealth/>. The Department will update these FAQs from time to time.

Initial stakeholder meetings. Seton Hall Law Center for Health & Pharmaceutical Law & Policy, John V. Jacobi, J.D. and colleagues met with health care providers pursuing integration as part of a project examining the regulatory and reimbursement environment related to primary care and behavioral health. The report, *Integration of Behavioral and Physical Health Care: Licensing and Reimbursement Barriers and Opportunities in New Jersey* (Seton Hall Law

March 31, 2016),⁵ provides an analysis of the current state of regulatory affairs and recommendations. The Department plans to build on these meetings and meet with stakeholders seeking technical input on specific proposed changes as well as issues related to implementation.⁶ The Department will work with the newly-formed Integrated Health Advisory Panel (*see* <http://www.state.nj.us/governor/news/news/552017/approved/20171108b.html>) as it moves forward with its programmatic support of integrated care.

Innovation and Demonstration Projects

The Department intends to use data-driven information to guide policy, planning and decision making, to work with the Department of Human Services to explore integrated funding solutions, and to build on the concepts and methods of innovation that are occurring in the community including, but not limited to, Certified Community Behavioral Health Clinics (CCBHCs), FQHCs participating in various demonstration projects expanding access, Patient Centered Medical Homes, and Delivery System Reform Incentive Payment (DSRIP) Behavioral Health, Chemical Addiction, and Substance Abuse Learning Collaboratives.

Next Steps

As noted in the Short-term regulatory adjustments section above, the Department anticipates issuing additional guidance documents in the near future as it proceeds through the regulatory harmonization and revision process. It seeks to be responsive to stakeholder concerns and questions, and it welcomes suggestions from providers and consumers regarding where regulatory guidance would be helpful. Suggestions and inquiries can be addressed to: integratedhealth@doh.nj.gov.

⁵ See <https://issuu.com/seton-hall-law-school/docs/integration-of-behavioral-and-physi?e=19054437/34560793>.

⁶ John V. Jacobi, J.D. and Tara Adams Ragone, J.D. provided advice and technical support in the preparation of this Guidance.