

HUMAN SERVICES

PROGRAMS OF ASSERTIVE COMMUNITY TREATMENT

Notice of Rule Waiver/Modification/Suspension Pursuant to Executive Order No. 103 (2020), Executive Order No. 280 (2022)

COVID-19 State of Emergency

Relaxation of Rules Pertaining to Programs of Assertive Community Treatment

N.J.A.C. 10:37J-1.2, 2.5, and 2.8.

Authorized: [] by Sarah Adelman, Acting Commissioner, Department of Human Services.

Authority: N.J.S.A. App.A:9-45 and App.A:9-47; Executive Order No. 103 (2020); and Executive Order No. 280 (2022).

Effective Date: March 9, 2020.

This is an emergency adoption of a temporary rule modification concerning certain rules at N.J.A.C. 10:37J-1.1 et. seq., Programs of Assertive Community Treatment (PACT), which apply to PACT services that provide comprehensive, integrated rehabilitation, treatment and support services to individuals with serious and persistent mental illness, who have had repeated psychiatric hospitalizations, and who are at serious risk for psychiatric hospitalization. On March 9, 2020, in response to the COVID-19 pandemic, Governor Murphy issued Executive Order No. 103, declaring the existence of a Public Health Emergency, pursuant to the Emergency Health Powers Act (EHPA), N.J.S.A. 26:13-1 et seq., and a State of Emergency, pursuant to the New Jersey Civilian Defense and Disaster Control Act (“Disaster Control Act”), N.J.S.A. App A:9-33 et seq., in the State of New Jersey for COVID-19. The State of Emergency and Public Health

Emergency declared under Executive Order No. 103 was extended under multiple subsequent Executive Orders. On January 11, 2022, in response to the recent surge of positive cases and hospitalizations for COVID-19 from the highly contagious B.1.1.529 (Omicron) variant, Governor Murphy issued Executive Order No. 280, once again declaring that a Public Health Emergency exists in New Jersey and that the State of Emergency declared in Executive Order No. 103 remains in full force and effect. Paragraph 5 of EO No. 280 authorizes agency heads to waive, suspend, or modify any existing rule, where the enforcement of the rule would be detrimental to the public welfare during the emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary. Pursuant to that authority, and with the approval of the Governor and in consultation with the State Director of Emergency Management and the Commissioner of the Department of Health, the Department of Human Services is modifying the rules listed below.

The current regulations at N.J.A.C. 10:37J-1.1 et. seq. set out minimum rules and standards of care to which a PACT provider must adhere in order to be licensed to operate and provide PACT services in New Jersey. The ongoing COVID-19 Public Health Emergency has impacted and continues to impact the mental health system of care that provides vital treatment, and rehabilitative and support services to residents of New Jersey. In response to COVID-19, the delivery of mental health services continues to be reconfigured to minimize community spread, while at the same time ensuring accessibility and continuity of care. With the recent declaration of a Public Health Emergency under Executive Order No. 280 and the continuation of the State of Emergency declared under Executive Order No. 103, provider agencies continue to need flexibility to mitigate transmission of COVID-19 in the provision of mental health services, including through the use of telehealth and telemedicine. At the beginning of the pandemic, DMHAS issued guidance regarding the use of telemedicine, telehealth and telecommunication for behavioral

health provider agencies, which this rule modification now codifies. This rule modification is consistent with recommendations to reduce the transmission of COVID-19 from the CDC, as well as guidance from other federal and State agencies such as the Substance Abuse and Mental Health Services Administration (SAMHSA), and the New Jersey Division of Consumer Affairs. It also complies with State laws enacted with respect to telemedicine and telehealth.

Thus, consistent with federal and state guidance, directives, waivers and laws issued in response to the ongoing COVID-19 Public Health Emergency, it is necessary to address, formalize and ensure flexibility in the standards in the rules at N.J.A.C. 10:37J-1.1 et. seq. through this temporary rule modification.

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

SUBCHAPTER 1. GENERAL PROVISIONS

10:37J-1.2 Definitions

...

“Face to face” means services and supervision provided in-person, on-site or via Telecommunications, Telehealth and Telemedicine in accordance with P.L. 2017, c. 117 (C.45:1-61 et al.), as amended by P.L. 2020, c. 47, and corresponding Covid-19 waivers. Every level of staff acting within the staffing requirements of N.J.A.C. 10:37J may use alternate communication technologies, including but not limited to “videoless chat” and other audio-only modalities (such as telephone) provided the services meet the standard of care.

...

“Telehealth” means the use of information and communications technologies as defined by and in accordance with P.L. 2017, c. 117 (C.45:1-61 et al.) and any amendments thereto, including pursuant to P.L. 2020, c. 47, and corresponding COVID-19 waivers.

“Telemedicine” means the delivery of a health care service using electronic communications, information technology, or other electronic or technological means as defined by and in

accordance with P.L. 2017, c.117 (C.45:1-61 et al.) and any amendments thereto, including pursuant to P.L. 2020, c. 47, and corresponding COVID-19 waivers.

...

SUBCHAPTER 2. PROGRAM OPERATION

10:37J-2.5 Services to be provided and service coordination

...

(d) The PACT team shall provide services in the areas of medication prescription, administration, monitoring, and documentation.

1.-3. No change

4. Regarding PACT enrollees residing in Department of Health licensed residential health care facilities (RHCFs), pursuant to N.J.A.C. 8:43-10.1(a), the RHCF is responsible for providing resident supervision and/or assistance during self-administration of medications and for documenting any observed instance where medications are not taken.

i. After obtaining the consumer's consent, PACT team staff shall collaborate with appropriate RHCF staff to ensure that PACT consumers are receiving prescribed medications. This shall include mutual sharing of information regarding PACT consumers' mental illness symptoms and behavior in response to medication and medication side effects. After obtaining the consumer's consent, a PACT team member shall meet [in person] **face-to-face** with the RHCF operator and/or staff at least once per month to discuss the status of each PACT consumer residing in the RHCF and shall document the results of these meetings in the consumer's PACT record.

5. Where a PACT enrollee resides in a boarding home ("BH") licensed by the Department of Community Affairs, the PACT team, after obtaining the consumer's consent, shall collaborate with appropriate BH staff to ensure that the consumer is receiving prescribed medications.

i.-ii. No change

iii. The PACT team shall also provide regular communication to BH staff about PACT consumers' treatment plans, for example, goals, objectives, and interventions; and provide medication education. A PACT team member shall meet [in person] **face-to-face** at least once per month with the BH staff and/or operator to discuss the status of each resident who is a PACT consumer and shall record the results of these meetings in the consumer's PACT record. During the Governor declared Public Health Emergency, these meetings may be conducted by telephone/telecommunication.

iv. Where mutually agreed upon between the PACT team and the BH operator, the PACT team may supervise the observed self-administration of medication. A PACT team member shall meet [in person] **face-to-face** at least once per month with the BH staff and/or operator to review medication provision to each PACT consumer resident and shall record the results of these meetings in the consumer's PACT record. During the Governor's declared Public Health Emergency, these meetings may be telephone/telecommunication.

...

10:37J-2.8 Staff requirements

...

(c) The PA shall assign an administrator who shall function as PACT director, devoting a minimum of 10 hours per week per team. The PACT director does not function as a member of the team, but is responsive to the team's needs in order to:

1. Provide or ensure that the team and team leader receive regular clinical supervision, which shall include, but not be limited to:

i. Conducting, on a monthly basis, individual [, side-by-side] **face-to-face** sessions in which the supervisor [accompanies] **oversees** an individual staff member [to meet] **while interacting** with persons served, family/significant others, and/or other service providers in regularly scheduled or crisis meetings. The purpose of these sessions is to assess the staff member's skill level, give feedback, model evidence-based recovery-oriented interventions, and/or have the staff person practice clinical interventions; and

ii. No change

2.-8. No change.

I find that the modification of the rules above is necessary because enforcement of the existing rules would be detrimental to the public welfare during this emergency.

1/18/22

Date



Sarah Adelman,
Acting Commissioner, Department of
Human Services