

HUMAN SERVICES

COMMUNITY SUPPORT SERVICES FOR ADULTS WITH SERIOUS MENTAL ILLNESS

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

COVID-19 State of Emergency

Relaxation of Rules Pertaining to Community Support Services for Adults with Serious Mental Illness

N.J.A.C. 10:37B-1.2, and 5.2.

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

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

Effective Date: March 9, 2020.

This is an emergency adoption of a temporary rule modification concerning certain rules at N.J.A.C. 10:37B-1.1 et. seq., Community Support Services for Adults with Serious Mental Illness, which apply to providers of community support services (“CSS”) for adults with serious mental illness that provide, in part, mental health rehabilitation services and supports necessary to assist consumers in achieving mental health rehabilitative and recovery goals. Section 3.a. of P.L. 2021, c. 103 (N.J.S.A. 26:13-34.a) authorizes agency heads to continue and modify administrative orders or directives issued during the COVID-19 Public Health Emergency. Section 5.a. of P.L. 2021, c. 103 (N.J.S.A. 26:13-36) authorizes agency heads to issue orders, directives, and waivers to implement recommendations of the Centers for Disease Control and Prevention (CDC) to prevent

or limit the transmission of COVID-19, including in specific settings. 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. 10:37B-1.1 et. seq. set out minimum rules and standards of care to which a CSS provider must adhere in order to be licensed to operate and provide CSS in New Jersey. The COVID-19 public health emergency has impacted and continues to impact the mental health system of care that provides vital 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. Although the COVID-19 Public Health Emergency declared under E.O. 103 has ended in New Jersey, 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 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. 10:37B-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

10:37B-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. 10:37B 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 5. STAFF QUALIFICATIONS, RESPONSIBILITIES, AND TRAINING

10:37B-5.2 Staffing credentials and responsibilities

(a) The PA may employ licensed physicians, psychiatrists, psychologists, advance practice nurses, or registered nurses who shall be licensed by the applicable State professional boards. Staff employed under this subsection shall be eligible to provide clinical and/or administration supervision and shall be eligible to deliver the following specified services, provided that staff is authorized to perform that service under their professional licensure, certification, or credentialing standards:

- 1.-4. No change
5. Perform crisis intervention pursuant to N.J.A.C. 10:37B-4.4[(a)] **(b)**24;
6. 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.

1/10/2022



Date

Sarah Adelman,
Acting Commissioner, Department of
Human Services