

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposal follows (addition indicated in boldface **thus**):

SUBCHAPTER 2. ADMINISTRATION AND ENFORCEMENT; PROCESS

5:23-2.18 Inspections

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

(d) Final inspection: Upon completion of the building or structure, and before the issuance of a certificate of use and occupancy required herein, a final inspection shall be made, and any violations of the code shall be noted and the holder of the permit shall be notified of any discrepancies by the construction official. The final inspection shall include:

1.-6. (No change.)

7. Verification of installed appliances or products for compliance with P.L. 2021, c. 464 (N.J.S.A. 52:27D-141.18 through 141.24), as identified in accordance with the Department of Environmental Protection.

(e)-(i) (No change.)

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Administration Manual Electronic Records and Electronic Signature Requirements

Proposed New Rule: N.J.A.C. 10:49-9.9

Authorized By: Sarah Adelman, 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 the exception to the rulemaking calendar requirements.

Proposal Number: PRN 2024-129.

Submit comments by January 3, 2025, to:

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The agency proposal follows:

Summary

N.J.A.C. 10:49 is the Administration Manual for the Division of Medical Assistance and Health Services (Division). The Department of Human Services (Department) is proposing new N.J.A.C. 10:49-9.9, which will set forth the requirements for a Medicaid/NJ FamilyCare provider's use of electronic medical records and electronic signatures to maintain and submit documentation to the Medicaid/NJ FamilyCare program.

Medicaid/NJ FamilyCare provider claims submitted for payment are already required to be submitted by an approved electronic method unless an attachment to the claim is required, in which case, the claim for payment instead shall be submitted using an approved hard-copy claim

form. For information related to the submission of claims, see N.J.A.C. 10:49-7 and the provider-specific fiscal agent billing supplements.

The proposed new rule is consistent with existing Federal requirements and does not mandate the use of electronic records or signatures; it only sets forth the requirements that a provider must comply with, should they choose to use electronic recordkeeping methods and/or electronic signatures on the records. This proposed new rule applies to a practitioner's choice to maintain and sign medical records and treatment orders of individual patients in an electronic format and shall include records entered into a computer or paper records scanned and entered into the electronic record.

Proposed new N.J.A.C. 10:49-9.9, Electronic records and electronic signature requirements, will set forth the applicable requirements, as described below.

N.J.A.C. 10:49-9.9(a) sets forth the definitions of words and terms used in this section. Paragraph (a)1 defines the term "electronic record," requiring that the record be retrievable in an easily understood format and specifying that the electronic record shall include both electronically produced records and entries that were originally non-electronic but scanned or otherwise converted to electronic format. Paragraph (a)2 defines the term "electronic signature" and provides examples of documents and communications where the use of an electronic signature would be acceptable for use by providers when communicating with the Medicaid/NJ FamilyCare program. Subparagraph (a)2i requires an institution's information technology department to be responsible for the administration of the electronic signature system in accordance with the requirements of this section and all applicable Federal and State standards and laws. Subparagraph (a)2ii requires individual providers to use electronic signature software that meets the requirements of this section, as well as all applicable Federal and State standards and laws.

N.J.A.C. 10:49-9.9(b) requires the electronic record to be the original record and conform to all existing Federal and State laws and rules regarding recordkeeping.

N.J.A.C. 10:49-9.9(b)1 requires that in the event the original record is altered for any reason, that the electronic record shall show the original and retain all altered versions, including the date and author of each version so that all changes are traceable.

N.J.A.C. 10:49-9.9(c) requires that all confidentiality requirements mandated by the Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and other applicable Federal and State statutes shall be applicable to the maintenance of electronic records.

N.J.A.C. 10:49-9.9(d) requires that the electronic record meets all applicable requirements of the New Jersey Medicaid/NJ FamilyCare program to support claims for payment.

N.J.A.C. 10:49-9.9(e) requires that the electronic record shall be accessible to the Department and any authorized agent of the Department, that all reproductions in paper form shall be made at the provider's expense, and that the Department or the authorized agent may require a certification of the reproduction.

N.J.A.C. 10:49-9.9(f)1 through 5 lists the minimum required features of the electronic signature method used by the providers. These features include encryption, password protection for signature and subsequent access of the document, prohibition of group or shared passwords, verification of user signature, and transportation of data in electronically protected format when being sent to a third party.

N.J.A.C. 10:49-9.9(g) describes the elements of an acceptable electronic signature and provides an example with all the required elements.

N.J.A.C. 10:49-9.9(h) states that providers authorized to use the electronic signature shall be required to sign a statement acknowledging their responsibility and accountability related to the use of an electronic signature and confirming that they will be the only person with access to and will use their specific signature code. These statements are required to be maintained by the organization and provided to the Department or the Department's authorized agent upon request.

N.J.A.C. 10:49-9.9(i) requires that the provider's organizational policy shall define appropriate disciplinary action for inappropriate actions.

N.J.A.C. 10:49-9.9(j) requires the organizational policy to address system action and monitoring, changes to records, and system support.

N.J.A.C. 10:49-9.9(k) requires that documents signed electronically be retained in conformance with the organization’s legal health record and retention policy.

N.J.A.C. 10:49-9.9(l) requires that an organization provide a copy of their policies and procedures related to the use of electronic records and/or signatures to the Department or the Department’s authorized representative upon request.

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 of proposal is exempted from the rulemaking calendar requirement.

Social Impact

The proposed new rule will have a positive impact on the Medicaid/NJ FamilyCare providers who choose to use electronic signatures and maintain electronic records because the use of this technology has been shown to increase the efficiency of record accessibility and integrity. Medicaid/NJ FamilyCare beneficiaries and the providers will benefit from the increased convenience associated with this technology. The State will benefit from the use of this technology as it will make the submission of any needed documentation and the review of such documentation or records more efficient.

Economic Impact

The proposed new rule imposes no economic impact on the providers because the new rule allows, but does not require, the use of this technology. This enables the providers to either invest in technology needed to maintain electronic records and use electronic signatures, or maintain existing recordkeeping protocols, as long as they continue to do so in accordance with existing State and Federal regulations.

The proposed new rule will have no economic impact on the State because the State already has sufficient resources and technology to review electronically maintained medical records and recognize electronic signatures.

The proposed new rule will have no economic impact on Medicaid/NJ FamilyCare beneficiaries because the proposed new rule does not eliminate or reduce available services or impose any fees on the beneficiaries.

Federal Standards Statement

Section 1902(a)(5) of the Social Security Act, 42 U.S.C. § 1396a, in accordance with 42 CFR 431.10, designates the Division of Medical Assistance and Health Services (DMAHS), within the New Jersey Department of Human Services, as the single State agency responsible for the administration of the New Jersey Medicaid and NJ FamilyCare programs.

Section 1903(t)(3), 42 U.S.C. § 1396b(t), allows for payments for the development and use of certified electronic health record technology. The term “certified electronic health record technology” means a qualified electronic health record as defined at 3000(13) of the Public Health Service Act.

Title XXI of the Social Security Act allows states to establish a State Children’s Health Insurance Program (SCHIP) for targeted low-income children. New Jersey elected this option through implementation of the NJ FamilyCare program. Section 2103, 42 U.S.C. § 1937cc, provides broad coverage requirements for this program.

Pursuant to the authority at N.J.S.A. 30:4D-1 et seq., the Department of Human Services’ Division of Medical Assistance and Health Services (DMAHS) is authorized to administer the Medicaid program. In accordance with N.J.S.A. 30:4J-8 et seq., DMAHS is also authorized to administer the NJ FamilyCare program.

The Department has determined that the proposed new rule does not exceed Federal standards. Therefore, a Federal standards analysis is not required.

Jobs Impact

The Division does not anticipate that the proposed new rule will result in the creation or loss of jobs in the State of New Jersey.

Agriculture Industry Impact

As the proposed new rule concerns the use of electronic signatures and the maintenance of electronic records by New Jersey Medicaid/NJ

FamilyCare providers, the Department anticipates that the proposed rulemaking will have no impact on the agriculture industry in the State of New Jersey.

Regulatory Flexibility Statement

The proposed new rule will affect all providers who provide services to Medicaid/NJ FamilyCare beneficiaries. Some of these providers may be considered small businesses, pursuant to the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-17. The proposed new rule does not impose additional recordkeeping, compliance, or reporting requirements on small businesses. All Medicaid/NJ FamilyCare providers are already required to maintain records to fully disclose the name of the beneficiary who received the service, date of service, and any additional information as may be required pursuant to N.J.A.C. 10:49 and N.J.S.A. 30:4D-1 et seq. All medical and professional records must be maintained in accordance with all applicable State and Federal rules in order for the services of an enrolled Medicaid/NJ FamilyCare provider to be eligible to receive reimbursement for the provision of those services. The proposed new rule addresses the option of maintaining these records in electronic format and the use of electronic signatures. This requirement must be equally applicable to all providers who choose to implement these methods, regardless of size, to ensure a consistent quality of care is provided to all beneficiaries. There should be no capital costs associated with these proposed new rules as the use of this technology is optional.

Housing Affordability Impact Analysis

As the proposed new rule concerns the use of electronic signatures and the maintenance of electronic records by New Jersey Medicaid/NJ FamilyCare providers, the Department anticipates that the proposed rulemaking will have no impact on the affordability of housing or the average costs associated with housing.

Smart Growth Development Impact Analysis

As the proposed new rule concerns the use of electronic signatures and the maintenance of electronic records by New Jersey Medicaid/NJ FamilyCare providers, the Department anticipates that the proposed rulemaking will have no impact on smart growth and will have no impact on the housing production within Planning Areas 1 and 2, or within designated centers, pursuant to the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposed new rule follows (additions indicated in boldface **thus**; deletion indicated in brackets [thus]):

SUBCHAPTER 9. PROVIDER AND BENEFICIARY’S RIGHTS AND RESPONSIBILITIES; ADMINISTRATIVE PROCESS

10:49-9.9 [(Reserved)] **Electronic records and electronic signature requirements**

(a) **The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:**

1. **“Electronic record” shall mean information that is stored in an electronic or other medium and is retrievable in an easily understandable format and shall include both electronically produced records and printed, typewritten, or tangible records that have been scanned or otherwise reproduced in electronic format and electronically signed.**

2. **“Electronic signature” means data in electronic form, which is logically associated with other data in electronic form, and which is used by the signatory to attach a signature by electronic means to documents. For Medicaid/NJ FamilyCare providers that other data includes, but is not limited to, communications between the provider and the Medicaid/NJ FamilyCare program and elements of the beneficiary’s medical record.**

i. For an institution, the information technology department or similarly named department that oversees the institution's technology-related tasks and maintains the institution's electronic network, shall be responsible for the administration of such electronic record systems and must include protections against modification and administrative safeguards that comply with all applicable State and Federal standards and laws, including the requirements at (f) below.

ii. For an individual provider, the provider shall use electronic signature software that complies with State and Federal standards and laws and contains, at a minimum, the features listed at (f) below.

(b) The electronic record shall be considered the original record for the purpose of maintaining the information required to fully disclose the kind and extent of services provided, as well as the medical necessity for those services. The electronic format shall conform to the requirements of all applicable Federal and State laws and regulations.

1. If the original electronic record is altered, the record shall show the original and altered versions, including the dates and author of the original and altered versions.

(c) Confidentiality requirements mandated by the Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and other applicable State and Federal statutes shall be applicable to electronic records.

(d) The content of the record shall meet all applicable requirements of the New Jersey Medicaid/NJ FamilyCare program to support the claim for payment. This shall include all requirements in this chapter and the applicable provider manual.

(e) The electronic record shall be accessible to the Department or the Department's authorized agent and must be able to be reproduced in paper form at the provider's expense. The Department or the Department's authorized agent may require a certification that the paper reproduction is an exact copy of the electronic record.

(f) The electronic signature method used by the provider shall, at a minimum, contain all of the following features:

1. Approved electronic signature methods require the use of encryption technology and must be password protected at the time the signature is generated.

2. Documents with electronic signature must maintain integrity through password-protected access of electronic signature on the user's computer. Group or shared passwords shall be prohibited.

3. Each specific user shall have password-protected access, therefore, the identity of the user signature on documents shall be sufficient to prove message integrity and prevent a third party from successfully denying the origin, submission, or delivery of the message and the integrity of its contents.

4. Verification of user signature shall be available upon request.

5. Transporting of data shall be accomplished in electronically protected format from the user to a third party. This maintains the integrity of the document and signature, to the extent fraudulent tampering does not occur.

(g) Acceptable electronic signatures shall contain date and timestamps and shall include printed statements indicating that the document has been electronically signed, followed by the practitioner's name and professional designation. The responsibility and authorship related to the signature should be clearly defined in the record. Example of an acceptable electronic signature: "Electronically Signed By: John Doe, M.D. 01/01/2024 @ 8:00 AM."

(h) Practitioners authorized to use electronic signatures shall be required to sign a statement acknowledging their responsibility and accountability for the use of their e-signature and confirming that they are the only individual who has access to, and who will use, their specific signature code. These statements shall be maintained by the organization and be made available to the Department or the Department's authorized agent upon request.

(i) Organizational policy shall define appropriate disciplinary actions for inappropriate actions, including, but not limited to, the use or sharing of unique identifiers or e-signatures.

(j) Organizational policy shall also address system access and monitoring, changes to records, and system support.

(k) Documents signed electronically shall be retained in conformity with the organization's definition of the legal health record and retention policy.

(l) A copy of an organization's policy and procedures related to the use of electronic records and/or the use of electronic signatures including, but not limited to, the requirements at (h), (i), (j), and (k) above, shall be provided to the Department or the Department's authorized agent upon request.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Psychiatric Adult Acute Partial Hospital and Partial Hospital Services

Provider Participation and Beneficiary Eligibility

Proposed Amendments: N.J.A.C. 10:52A-1.2, 2.1, 3.1, 3.2, 4.5, 4.11, and 4.12

Authorized By: Sarah Adelman, 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 the exception to the rulemaking calendar requirements.

Proposal Number: PRN 2024-130.

Submit comments by January 3, 2025, to:

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The agency proposal follows:

Summary

The Department of Human Services (Department) is proposing amendments at N.J.A.C. 10:52A, Psychiatric Adult Acute Partial Hospital (APH) and Partial Hospital (PH) Services, which will address beneficiary eligibility requirements and provider participation requirements for these services. The proposed amendments are the result of recent Federal and industry changes.

The amendment addressing beneficiary eligibility reflects that a Global Assessment of Functioning (GAF) score will no longer be required as a determining factor for the medical necessity of the services. The GAF scale was removed from the Diagnostic Statistical Manual, Fifth Edition (DSM-V), because of a perceived lack of reliability and poor clinical utility. In reaction to that change, this requirement was deleted by the Medicaid/NJ FamilyCare program in December 2015, and communicated to providers through DMAHS Newsletter Volume 25, Number 13. This rulemaking updates the rule text to memorialize this change.

The proposed amendments concerning provider participation would require providers to obtain and use a National Provider Identification (NPI) number and applicable taxonomy codes for their specialty. The use of the NPI and taxonomy codes is a Federal requirement from the Centers for Medicare and Medicaid Services (CMS). Providers were notified of the Federal requirement to obtain an NPI and taxonomy code through DMAHS Newsletter Volume 16, Number 18.

Summary of General Amendments

Throughout the chapter, references to "Division of Mental Health Services (DMHS)" are being revised to read "Division of Mental Health and Addiction Services (DMHAS)" to reflect the current name of the agency and references to "Medicaid" are being revised to read "Medicaid/NJ FamilyCare" to reflect the current name of the program. An