HUMAN SERVICES

OUTPATIENT SERVICE STANDARDS

Notice of Rule Waiver/Modification/Suspension Pursuant to P.L. 2021, c. 103

(2020)

COVID-19 State of Emergency

Modification of Rules Pertaining to Outpatient Service Standards

N.J.A.C. 10:37E-1.2, -2.4.

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 P.L. 2021, c. 103.

Effective Date: March 9, 2020.

This is an emergency adoption of a temporary rule modification concerning certain rules at N.J.A.C. 10:37E-1.1 et. seq., Outpatient Service Standards, which apply to all provider agencies contracted with and funded by the Division of Mental Health and Addiction Services (DMHAS) to provide mental health outpatient services. 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. 10:37E-1.1 et. seq. set out minimum rules and standards of care by provider agencies contracted with and funded by DMHAS to provide mental health outpatient services in New Jersey. The 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. 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 and through the modification of certain standards in light of staffing challenges. 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. 10:37E-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

10:37E-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. 10:37E 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.

…

“Medication monitoring” means medication services provided under supervision of a licensed physician, or by **an Advance Practice Nurse including, but not limited to,** a certified nurse practitioner/clinical nurse specialist and his or her collaborating physician, to evaluate, prescribe or administer, and monitor the client’s use of psychotropic medications including anti-parkinsonian medications.

…

“Signature” and “signed” means an original or electronic mark made by the signatory, and in the case of a consumer, “signature” and “signed” also means documentation of the consumer’s participation or consent in either a progress note or on a document where the consumer’s signature is required.

…

“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

10:37E-2.4 Service planning

(a) Each client shall be provided OP services according to a written service plan contained in the clinical record.

1. (No change.)
2. (No change.)
3. Service plans shall be developed by appropriately licensed or credentialed professionals. For clients who are receiving medications, a physician **or an Advance Practice Nurse, including, but not limited to, a certified nurse practitioner/clinical nurse specialist,** shall participate in the development of the service plan, meet with the client regularly and review and approve the client's services plan.

4.-8 (No change.)

9. The clinician and client shall review the service plan together at least every three months for the first year of treatment and at least every six months thereafter. The clinician's supervisor shall review the plan after each review by the client and clinician. For those clients who require only medication monitoring services, the service plan shall be updated by the physician **or an Advance Practice Nurse, including, but not limited to, a certified nurse practitioner/clinical nurse specialist,** and client, if appropriate, every six months.

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