

**HUMAN SERVICES**

**DIVISION OF MENTAL HEALTH AND ADDICTION SERVICES**

**Medical Necessity Review Tool for Substance Use Disorders**

**Proposed New Rules: N.J.A.C. 10:163**

Authorized By: Elizabeth Connolly, Acting Commissioner, Department of Human Services, in consultation with the Department of Health.

Authority: P.L. 2017, c. 28; N.J.S.A. 30:1-12 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2017-092.

Submit comments by August 4, 2017, to:

Lisa Ciaston, Legal Liaison

Division of Mental Health and Addiction Services

PO Box 700

Trenton, New Jersey 08625-0700

or electronically at: [DMHAS.RuleComments@dhs.state.nj.us](mailto:DMHAS.RuleComments@dhs.state.nj.us)

The agency proposal follows:

**Summary**

As the Department of Human Services (Department) has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The Department is proposing new N.J.A.C. 10:163, Medical Necessity Review Tool for Substance Use Disorders, to identify a peer-reviewed and evidenced-based

clinical tool to be utilized by certain health insurers and programs to review medical necessity for the treatment of substance use disorders. The Commissioner of Human Services has determined that this rulemaking is necessary in order to ensure that New Jersey residents facing addiction have access to treatment as contemplated under P.L. 2017, c. 28.

On February 15, 2017, the Governor signed P.L. 2017, c. 28, which became effective on May 16, 2017. In order to address the public health crisis presented by the disease of addiction and increase access to substance use disorder treatment, the new law requires State-regulated health insurance carriers, the State Health Benefits Program, and the School Employees' Health Benefits Program (together "insurance carriers and programs") to provide unlimited health insurance coverage for the inpatient and outpatient treatment of substance use disorders. More particularly, the law requires that the Commissioner of the Department of Human Services, in consultation with the Department of Health (DOH), designate an evidence-based and peer-reviewed clinical review tool to be utilized by these insurance carriers and programs in reviewing the medical necessity for inpatient or outpatient treatment of substance use disorders. The Department and DOH both concur that the clinical guidelines in the American Society of Addiction Medicine (ASAM) criteria and the Level of Care Index (LOCI) tool fulfill the requirements of the law.

The ASAM criteria is widely accepted as an evidenced-based clinical guide to match patients to the level of service that best meets their needs. It provides guidelines for assessment, treatment, placement, and transfer or discharge of patients in the addictions system of care. It allows for individualized care on the basis of patient

assessment and treatment planning. Significantly, the ASAM criteria is used by clinicians, counselors, payers, and managed care organizations to advance patient-centered service planning, promote the efficient use of treatment resources, and facilitate communication for purposes of care management and payment. See, generally, *The ASAM Criteria: Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions*, 3rd ed., Carson City, NV: The Change Companies, 2013 and *The ASAM Criteria, Frequently Asked Questions* at <http://www.asamcriteria.org/>.

The ASAM criteria has been intensively studied by Federal agencies, such as the National Institute on Drug Abuse, the National Institute on Alcohol Abuse and Alcoholism, and the Center for Substance Abuse Treatment, as well as other peer studies. See, Gastfriend DR. (ed) *Addiction Treatment Matching-Research Foundations of the American Society of Addiction Medicine (ASAM) Criteria*, *Journal of Addictive Diseases*, 2003:22, Supplement Number 1,2. As far back as 1998, 18 states required the use of ASAM criteria in some or all state-funded treatment programs. *ASAM News*, December 1998, volume 13, Number 6, p. 2. Currently, many more states and state authorities utilize the ASAM criteria in some form to guide referrals and benefit management. Notably, in 2015, the State of California, as part of its 1115 Waiver Program seeking to improve the delivery of substance use services, required all substance use providers to utilize the ASAM criteria for purposes of determining placement in treatment. Additionally, the New Jersey Association of Health Plans urged the New Jersey Department of Human Services to consider the ASAM criteria as a means of complying with the requirements of P.L. 2017, c. 28.

In order to best facilitate implementation of the ASAM criteria, the LOCI is the evidence-based practice tool most commonly used to apply the ASAM criteria. The LOCI is a standardized tool that enables clinicians, utilization reviewers, and administrators to effectively implement the ASAM criteria and document ASAM criteria placement findings. Further, it is designed for use at admission, continued service re-assessment, and at transfer or discharge. Insurance carriers and programs will need to reach out to the publishers of the LOCI tool, The Change Companies, to determine any particular costs that might be incurred in its use, or to develop a tool that utilizes and has fidelity to the ASAM criteria.

This chapter is organized into two subchapters. Subchapter 1 describes the purpose of the chapter, which is to fulfill the requirements of P.L. 2017, c. 28, by the Department designating a clinical review tool to be utilized for medical necessity review regarding the treatment of substance use disorders. In addition, Subchapter 1 includes definitions for: “American Society of Addiction Medicine” or “ASAM”; “Department”; “Diagnostic and Statistical Manual of Mental Disorders” or “DSM-5”; “Division;” and “Substance Use Disorder.” Subchapter 2 designates the ASAM criteria as the evidence-based clinical guidelines and the LOCI as the evidence-based clinical tool for purposes of medical necessity review of substance use disorder treatment.

The following documents are incorporated into the rule by reference, as amended and supplemented:

1. The “American Society of Addiction Medicine criteria” or “ASAM criteria” means the clinical guidelines for purposes of the assessment, treatment, placement, and transfer/discharge of individuals with substance use disorders, and is first

incorporated at N.J.A.C. 10:163-1.3. The text, The ASAM Criteria: Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions, 3rd ed., Carson City, NV: The Change Companies, 2013, and any subsequent amendments, editions, or supplements, contains the ASAM criteria;

2. The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), and any subsequent amendments, editions, or supplements, is first incorporated at N.J.A.C. 10:163-1.3. The DSM-5 is the standard classification of mental disorders in the United States; and

3. The “Level of Care Index” or “LOCI” means the standardized practice tool, and any subsequent amendments, editions, or supplements, that is used to implement and document the ASAM criteria for treatment planning and placement of patients with substance use disorders, is first incorporated at N.J.A.C. 10:163-1.3.

### **Social Impact**

The proposed new chapter will have a positive impact by ensuring a consistent and effective medical necessity review of substance use disorder treatment by health insurance carriers and programs in the State. Moreover, the Department believes the proposed new chapter will facilitate increased access to substance use disorder treatment by New Jersey residents with health insurance coverage.

### **Economic Impact**

The proposed new chapter may have an economic impact upon health insurance carriers and programs to the extent there are costs associated with the requirement that these carriers and programs use the clinical guidelines and review tool designated by the Department. In particular, there are costs associated with the use of the ASAM

Criteria and the LOCI tool. The ASAM criteria text and the LOCI tool are published by The Change Companies. In addition, the proposed new chapter may have an unintended economic impact upon New Jersey residents to the extent that carriers and programs pass on associated costs to New Jersey residents through higher premiums, deductibles, or the like. The costs, if any, may vary and are outweighed by the interest in ensuring access to appropriate substance use disorder treatment.

### **Federal Standards Statement**

A Federal standards analysis is not required because the proposed new chapter is not subject to any Federal requirements or standards.

### **Jobs Impact**

The proposed new chapter is not expected to have any effect on jobs in the State of New Jersey.

### **Agriculture Industry**

The proposed new chapter will have no impact on agriculture in the State of New Jersey.

### **Regulatory Flexibility Statement**

The proposed new chapter may impose reporting, recordkeeping, and other compliance requirements on “small businesses,” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent that the proposed new chapter will apply to small businesses, it will apply to insurance carriers and programs subject to P.L. 2017, c. 28.

Consistent with P.L. 2017, c. 28, the purpose of the proposed new chapter is to designate evidenced-based clinical guidelines, the ASAM criteria, and a clinical review tool, the LOCI, to be utilized by insurance carriers and programs, as identified in the law, to review medical necessity for the treatment of substance use disorders. The costs associated with compliance with the ASAM criteria and the LOCI are described in the Summary, including the Economic Impact, above. In accordance with P.L. 2017, c. 28, the proposed new chapter is uniformly applied to all insurance carriers and programs subject to the law, in order to ensure the health, safety, and welfare of beneficiaries and to ensure access to substance use disorder treatment as intended by the law. Therefore, no differing compliance requirements for small businesses are provided for in the proposed new chapter. Nonetheless, to minimize any potential adverse economic impact, the proposed new chapter allows insurance carriers and programs to use a similar clinical review tool, other than the LOCI, so long as that similar clinical review tool has fidelity to the ASAM criteria.

### **Housing Affordability Impact Analysis**

The proposed new chapter will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the new chapter will evoke a change in the average costs associated with housing because the new chapter concerns the designation of clinical guidelines and a clinical review tool for medical necessity review of substance use disorder treatment.

### **Smart Growth Development Impact Analysis**

The proposed new chapter will have an insignificant impact on smart growth and there is an extreme unlikelihood that the new chapter will evoke a change in housing

production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the new chapter concerns the designation of clinical guidelines and a clinical review tool for medical necessity review of substance use disorder treatment.

**Full text** of the proposed new rules follow:

## CHAPTER 163

### MEDICAL NECESSITY REVIEW TOOL FOR SUBSTANCE USE DISORDERS

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 10:163-1.1 Purpose

(a) This chapter is adopted by the Division of Mental Health and Addiction Services (Division), in consultation with the Department of Health, to comply with the requirements of P.L. 2017, c. 28.

(b) Consistent with P.L. 2017, c. 28, the purpose of this chapter is to identify an evidence-based and peer-reviewed clinical review tool to review the medical necessity of inpatient and outpatient treatment of substance use disorders in the context of determining insurance benefit coverage.

##### 10:163-1.2 Scope

This chapter applies to State-regulated health insurance carriers, the State Health Benefits Program, and the School Employees' Health Benefits Program. In accordance with P.L. 2017, c. 28, this chapter does not apply to benefit plans established by the Department of Human Services, benefits to those persons who are eligible for medical assistance under P.L. 1968, c. 413 (N.J.S.A. 30:4D-1 et seq.), the "Family Health Care



Coverage Act,” P.L. 2005, c. 156 (N.J.S.A. 30:4J-8 et seq.), or any other program administered by the Division of Medical Assistance and Health Services in the Department of Human Services.

#### 10:163-1.3 Definitions

The following words and terms, as used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise.

“American Society of Addiction Medicine criteria” or “ASAM criteria” means the clinical guidelines for purposes of the assessment, treatment, placement, and transfer/discharge of individuals with substance use disorders. These ASAM criteria are contained in *The ASAM Criteria: Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions*, 3rd ed., Carson City, NV: The Change Companies, 2013, which is incorporated herein by reference, as amended and supplemented.

“Department” means the Department of Human Services, unless otherwise specified.

“Division” means the Division of Mental Health and Addiction Services and is the single State agency responsible for the oversight of a range of community addiction services in the State of New Jersey.

“Level of Care Index” or “LOCI” means the standardized practice tool, which is incorporated herein by reference, as amended and supplemented, that is used to implement and document the ASAM criteria for treatment planning and placement of patients with substance use disorders. The LOCI is published by The Change Companies, [www.changecompanies.net](http://www.changecompanies.net).

“Substance use disorder” means the classification as defined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), which is incorporated herein by reference, as amended and supplemented and includes substance use withdrawal.

## SUBCHAPTER 2. CLINICAL GUIDELINES AND REVIEW TOOL FOR MEDICAL NECESSITY REVIEW OF TREATMENT OF SUBSTANCE USE DISORDERS

### 10:163-2.1 Clinical guidelines and review tool

(a) The evidenced-based and peer-reviewed clinical practice guidelines appropriate to review the medical necessity for treatment of substance use disorders is the ASAM criteria.

(b) The evidence-based and peer-reviewed clinical review tool for purposes of reviewing medical necessity for the treatment of substance use disorders is the LOCI or any similar tool with fidelity to the ASAM criteria.