

HUMAN SERVICES

COMMUNITY MENTAL HEALTH SERVICES ACT

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

(2020)

COVID-19 State of Emergency

Relaxation of Rules Pertaining to Community Mental Health Services Act

N.J.A.C. 10:37-5.1.

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. 10:37-1.1 et. seq., Community Mental Health Services Act, which apply to all provider agencies funded by the Division of Mental Health and Addiction Services (DMHAS) and governed by the standards at N.J.A.C. 10:37A through 10:37I. 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. 10:37-1.1 et. seq. set out the general requirements applicable to provider agencies licensed to provide community mental health services pursuant to N.J.S.A. 30:9A-1 et seq. (the “Community Mental Health Services Act”), as well as standards applicable to the State Community Mental Health Citizens Advisory Board and Community Mental Health Boards and County Mental Health Administrators. 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. 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. 10:37-1.1 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 5. PROGRAM ELEMENT REQUIREMENTS

10:37-5.1 Funding priorities

(a) – (c) (No change.)

(d) All direct service program elements (excluding Consultation and Education programs):

1. “Face-to-face” activity: All State-funded direct service staff shall spend a minimum of 65 percent of their time in “face-to-face” client activity. “Face-to-face” may include: telephone contact with clients, transportation time needed to perform home visits/outreach services, service procurement and advocacy contacts, made with other staff, program elements, or agencies on behalf of the client. “Face-to-face” shall not, however, include staff supervision, record-keeping, or report writing.

- i. **“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.**
- ii. **“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.**
- iii. **“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.

2. (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