**HUMAN SERVICES**

**DIVISION OF MENTAL HEALTH AND ADDICTION SERVICES**

**Short Term Care Facility Standards**

**Proposed Readoption with Amendments: N.J.A.C. 10:37G**

**Proposed New Rules: N.J.A.C. 10:37G-3**

Authorized By: Jennifer Velez, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4-27.8, 27.9, and 27.10.

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

Proposal Number: PRN 2015-008.

Submit written comments by March 21, 2015, to:

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or

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The agency proposal follows:

**Summary**

N.J.A.C. 10:37G governs the provision of mental health services at inpatient psychiatric hospital units known as short-term care facilities (STCFs). Pursuant to N.J.S.A. 52:14B-5.1, N.J.A.C. 10:37G expires on December 14, 2014. As required by Executive Order No. 66 (1978), the New Jersey Department of Human Services (“Department” or “DHS”), through the Division of Mental Health and Addiction Services (“Division” or “DMHAS”) has reviewed these rules and has determined them, along with the proposed amendments and new rules, to be necessary, reasonable, and proper for the purposes they were originally promulgated to serve. The Department, therefore, proposes to readopt N.J.A.C. 10:37G with amendments and new rules.

N.J.A.C. 10:37G is set to expire on December 14, 2014. Pursuant to N.J.S.A. 52:14B-5.1.c(2), the expiration date of N.J.A.C. 10:37G is extended 180 days to June 12, 2015.

The Department is providing a 60-day public comment period for this notice of proposal, therefore, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

This chapter applies to all DHS designated short-term care facilities for adults, of which, there are currently 22. The Mental Health Screening law authorizes the establishment of STCFs to provide assessment services and short-term, intensive psychiatric care to individuals with acute mental illness. Patients are admitted to STCFs through a DHS-designated screening service, which has determined that the patient meets the commitment standard of mentally ill and dangerous to self or others, needs intensive treatment, and that appropriate, less restrictive services or facilities are not otherwise available for the patient. The goal of STCFs is to resolve the psychiatric emergency precipitating admission in a location close to the patient’s home within an acute length of stay. Services are provided to restore the individual as soon as possible to a level of functioning, which promotes return to community residence and ambulatory treatment, or to ensure further inpatient treatment, if needed.

Subchapter 1 pertains to the operational standards for STCFs. Subchapter 2 outlines admission criterial, assessment and service planning, services to be provided, termination, transfer, and referral of patients, administration and staffing, continuous quality improvement, designation and redesignation, change in the number of STCF beds and a waiver process that applies to staffing requirements only.

The process of reviewing and updating these rules included extensive discussions with a stakeholder work group, comprised of representatives from STCFs, such as unit directors and provider hospital leadership, and consumer and family representatives, along with Department staff. The work group met on two occasions and shared extensive comments. This dialogue among interested parties with often varying perspectives was informative for all and resulted in recommendations for making the standards more relevant, accurate, and consistent with consumers’ rights.

In the Fiscal Year 2010-2011 State Appropriations Act, the former Division of Mental Health merged with the former Division of Addiction Services to create the Division of Mental Health and Addiction Services. The proposed amendments to N.J.A.C. 10:37G-1.2 (definitions of “Assistant Commissioner” for the Division and “Division”); 2.7(f), (i), and (k); and 2.9 reflect the name of the merged Division and in certain cases, the address of the new location of the merged Division. The Department of Human Services’ Office of Licensing, rather than Division staff, is responsible for site reviews and this distinction is referenced in N.J.A.C. 10:37G-2.7(c) and (e). Similarly, the proposed amendments at N.J.A.C. 10:37G-1.2 (definitions of “designation as a short-term care facility,” “DHSS,” “DOH,” and “special psychiatric hospital”) and 2.7 reflect the name change of the Department of Health and Senior Services to the Department of Health. Throughout the chapter, the Department is changing “Department of Health and Senior Services” and “DHSS” to “Department of Health” or “DOH,” pursuant to P.L. 2012. c. 17, § 93.

To be consistent with N.J.S.A. 30:4-27.1, the Department is amending the definition of “designated screening center” to “designated screening service” throughout the chapter; and, lastly, to accurately reflect N.J.A.C. 8:43G, DOH Hospital Standards, the Department is amending “emergency room” to “emergency department” (in this definition).

At N.J.A.C. 10:37G-1.2, the definition of “assessment” is proposed for amendment. In order to reduce undue documentation demands that are duplicative, the reference to “summary” is deleted from the definition. The contents typically included in a summary are documented elsewhere in the medical record. Most importantly, is the requirement to include treatment recommendations as these guide consumer treatment, and the treatment recommendation requirements remain in the definition.

N.J.A.C. 10:37G-1.2 is further proposed for amendment to include the definition of “patient protected health information (patient PHI).” Patient PHI references the information, certificates, applications, records, and reports that directly or indirectly identify a patient currently or formerly receiving services in an STCF.

The definition of “licensed independent practitioner” is proposed for amendment to clarify that in the context of an STCF, and particularly in light of the acute medical needs of short-term care facility patients, licensed independent practitioners with medication prescription privileges are requisite to meeting the patient’s needs. The intent of this standard is to ensure that all short-term care facility patients have full access to intensive medical care per their needs as involuntary and acute service users and, to this end, must have daily contact with a licensed independent practitioner who can address all pharmacologic needs. Psychiatrists and Advance Practice Nurses with mental health certification are licensed independent practitioners who, within their scope of license, have medication prescription privileges that uniquely equip these staff to meet the pharmacologic needs of STCF patients. Licensed clinical social workers (LCSWs) and psychologists do not have medication prescription privileges included in their scope of practice and, therefore, are not able to meet the pharmacological needs of a patient while patient in a short-term care facility. As a result, the Department is proposing to delete licensed clinical social workers and psychologists from the list of independent practitioners, so that it is clear which licensed independent practitioners have medication prescription privileges that can provide the requisite clinical daily contact in an STCF setting.

The definition of “rehabilitation/creative arts therapists” is proposed for amendment to clarify the specific staff credentials that are required for STCF staff employed in creative art therapist roles. Creative art therapists, such as music, art, and movement therapists, serve a unique and important role in the treatment service offerings at a short-term care facility. To deliver this form of therapy, creative art therapist staff must have specific training and credentials in this area. Not all staff trained in general mental health disciplines are necessarily equipped to deliver this form of therapy. Thus, narrowing the definition of creative arts therapist better serves the treatment service package offered to short-term care facility patients by ensuring that only staff with specific training in creative arts delivers this form of therapy.

The Department is proposing to include “STCF professional staff” as a new definition. This will differentiate STCF clinical staff from other STCF staff. STCF professional staff have a master’s degree from an accredited institution in a recognized mental health discipline or are a staff member that is appropriately licensed, certified, or qualified, in accordance with the highest professional standards, to provide clinical services.

A proposed amendment at N.J.A.C. 10:37G-2.2(b) and 2.2(c)1 addresses documenting trauma in the assessment and service planning process and to include the psychiatric assessment and mental status examination. DMHAS maintains that trauma sensitivity is a governing principle in service system design and implementation. In recognition that the majority of individuals who seek mental health and substance abuse services have experienced trauma, screening and assessment for trauma should occur at or close to admission. Although various assessments are delineated in N.J.A.C. 10:37G-2.2(b), none speak to trauma. When trauma is not addressed, harm is done or abuse is unintentionally recreated by the use of forced medication, or other situations that may be not appropriate for a consumer presenting in an STCF. Amending N.J.A.C. 10:37G-2.2(b) to include trauma assessments in STCF’s written procedures and paragraph (c)1 to include trauma history in the patient’s psychiatric assessment and mental status examination will provide the requisite information pertaining to trauma tha tSTCF staff will need to assist a patient in the STCF. Addressing trauma in the assessment process and service planning will assist STCFs to improve the quality and impact of the services that are provided, increase safety for the consumer, as well as STCF staff, and enhance consumer engagement.

N.J.A.C. 10:37G-2.2(f)1 is proposed for amendment to include the requirement that STCF staff consider the development of a patient safety plan as part of the written comprehensive treatment plan for each patient within 72 hours of admission. Having access to or including a personal safety plan will improve the quality of care in an STCF and will increase patient and STCF staff safety. Recognizing the consumer as a partner in the treatment planning process is consistent with DMHAS practice and is best for a consumer’s recovery. As a result of this amendment, N.J.A.C. 10:37G-1.2 is proposed for further amendment to include the definition of a “personal safety plan,” which is a document in which a patient identifies interventions that are most effective, as well as those which have been harmful.

DMHAS recognizes the important role of families in providing care and recovery of a consumer and that additional provisions to create improved communication with families are needed. As written, N.J.A.C. 10:37G-2.2(f)2 does not include any reference to family involvement. Several stakeholders noted that family involvement should be emphasized to a greater degree in this regulatory area. As DHS agrees that patient care can be improved with maximum family involvement, the proposed amendment to N.J.A.C. 10:37G-2.2(f)2 would include families in treatment planning activities. This enables families to participate in treatment planning. It will also serve to improve communication with families in this important aspect of a consumer’s care and recovery.

The community mental health system has expanded since 2007, as the number of DMHAS-funded programs has increased since the last readoption of N.J.A.C. 10:37G. Consumers now have access to other programs in addition to Integrated Case Management Services (ICMS) and Programs of Assertive Community Treatment (PACT). To be inclusive of the available community mental health system, DHS proposes to amend N.J.A.C. 10:37G-2.2(f)2 by including “current treatment provider” as other entities are available as a resource in service planning. These other providers include, but are not limited to, supportive housing, enhanced supportive housing and residential intensive support teams (RIST.)

Existing N.J.A.C. 10:37G-2.3(e) is intended to achieve two separate results. One is to ensure adequate access for families to STCF staff during evening, weekends, and holidays; the other is to ensure that treatment occurs on evenings, weekends, and holidays. However, when the DHS Office of Licensing (OOL) makes routine site reviews, there is consensus, among STCF staff that this standard, which combines these two different aims, creates confusion. The DHS OOL and DMHAS believe that these two standards are best communicated as two distinct standards. DHS OOL and DMHAS recognize that clarity would be better achieved by separating these two requirements into two separate standards.

At N.J.A.C. 10:37G-2.3(d), language pertaining to the description of STCF professional staff with regard to education, licensure, certification, and qualifications is proposed for deletion as this language is proposed as a new definition (see N.J.A.C. 10:37G-1.2).

Routine review of N.J.A.C. 10:37G-2.3(e)1 with STCF providers, during DHS OOL licensing site visits, indicates that this standard does not support the intent of N.J.A.C. 10:37G-2.3(e), which is to provide opportunities for families of patients to meet with professional STCF during evening hours. N.J.A.C. 10:37G-2.3(e) is intended to ensure that professional STCF staff schedules are flexible enough to accommodate families who could not meet with STCF staff regarding their loved one's care and progress, during normal business hours due to the family member's work schedule. Paragraph (e)1 erodes the intention of N.J.A.C. 10:37G-2.3(e) and it is, therefore, proposed for deletion. Meeting with professional STCF staff "in -person" rather than via telephone, is the preferred method for some family members and family is often integral to the consumer's aftercare and recovery. Further, "in -person" meetings with families can improve discharge and aftercare planning, as well as coordination of care.

 Similar to involving families in the assessment and service planning, DMHAS proposes to include families when patients are ready to be discharged from a short-term care facility. Existing N.J.A.C. 10:37G-2.4(b) does not incorporate a specific reference to family involvement. The proposed amendment at N.J.A.C. 10:37G-2.4(b) would include families in discharge planning. This inclusion will serve to improve communication with families in this important aspect of a consumer’s care and recovery.

As indicated above, the community mental health system has expanded in the last seven years and DHS and DMHAS are proposing that the inclusion of the local self-help and community support groups are made available to consumers. This is achieved by the proposed amendment at N.J.A.C. 10:37G-2.4(c), which references other local self-help and community support groups.

 At N.J.A.C. 10:37G-2.7(c) and (e), the distinction is proposed to indicate that the Department, not the Division conducts site reviews. The Division maintains responsibility for the designation of an STCF; however, the DHS Office of Licensing staff makes the site reviews.

The Department is proposing to extend the time frame for the length of a waiver from one year to a period of time specified at the discretion of the Assistant Commissioner for Mental Health and Addiction Services, see N.J.A.C. 10:37G-2.9(a)6. Since the waiver provision applies only to the staffing criteria in an STCF, some STCFs have to apply for a waiver each year for the same exception. This would reduce the amount of paperwork not only for the Division but also for STCFs.

During the stakeholder input process, some stakeholders expressed concerns about the tendency of STCF staff to withhold information from those (for example, family) who are directly involved in the STCF patient's care immediately prior to and after the STCF hospitalization. In some instances, this practice can interfere with the comprehensive assessment of STCF patients and, subsequently, in their aftercare planning. To provide STCF staff with greater clarity on the parameters for disclosure of public health information, DHS proposes new rules that delineate confidentiality pertaining to patient records. The proposed new rule can be found at N.J.A.C. 10:37G-3, Confidentiality of Patient Records. The confidentiality provisions are based on Federal regulatory provisions found in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as well as 42 CFR Part 2. Subchapter 3 delineates the confidentiality provisions of patient records held by STCFs; requirements pertaining to disclosure with or without patient written authorization or court order are specified; and denials of access to patient PHI is outlined.

**Social Impact**

The rules proposed for readoption with amendments and new rules are expected to positively impact consumers of short-term care services by establishing minimum operating standards that will continue to promote the effective delivery of appropriately prioritized quality services. These services are intended to sufficiently resolve a psychiatric emergency during a hospital admission close to a patient's home and to restore the patient to a level of functioning that promotes return to community residence and treatment, whenever possible and as soon as possible. The proposed amendments update and clarify existing standards and specify procedural and programmatic requirements in such areas as admission criteria, staff qualifications and management, patient assessment and records, and patient transfers from screening centers to STCFs.

Additionally, the rules proposed for readoption with amendments and new rules will assist STCF staff by identifying appropriately prioritized and coordinated services and by establishing the role of the facility in the continuum of care provided by the publicly funded mental health system. The Department will benefit from these rules because they will provide an appropriate benchmark to use in determining whether service delivery meets basic minimum requirements. The public will benefit from these rules because properly functioning short-term care facilities reduce reliance on expensive State and county psychiatric hospital services and assist consumers in becoming full, contributing members of society.

Proposed new Subchapter 3 is anticipated to have a positive social impact in that it sets out clarity regarding patient PHI and when/how it may or may not be released.

**Economic Impact**

The rules proposed for readoption with amendments and new rules are not intended or expected to impact the amount of funding or payments that will be received by facilities to provide these services in the future. The Department believes that facilities can comply with these roles without expenditures in addition to the funding and payments currently being received from the Department of Health and other sources to provide these services. Further, the rules will continue to have a positive economic impact on consumers of these services with limited income because the services are generally made available to them at no or limited cost. The Department believes that New Jersey taxpayers benefit from these rules because they help to ensure that public funding to these facilities achieve their intended purpose as effectively and efficiently as possible.

The proposed amendments and new rules are not expected to create an additional economic impact on STCFs, beyond what exists under the current rules.

**Federal Standards Statement**

A Federal standards analysis is not required because the rules proposed for readoption with amendments are not subject to any Federal requirements or standards. A Federal standards analysis is not required for the proposed new rules at N.J.A.C. 10:37G-3 because they do not exceed the Federal requirements set forth in the Federal privacy rules of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR Parts 160 and 164, as they apply to the release of and access to PHI; and 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records, 34 CFR 361.38 Vocational Rehabilitation Protection, Use and Release of Patient Information; and the Federal Fair Housing Amendments of 1988, 42 U.S.C. §§ 3601 et seq.

**Jobs Impact**

The rules proposed for readoption with amendments and new rules would neither generate nor cause the loss of any jobs.

**Agriculture Industry Impact**

N.J.S.A. 52:14B-4(a)(2) requires that agencies proposing a rule include a statement of the impact the rule will have on the State’s agricultural industry. The rules proposed for readoption with amendments and new rules regulate psychiatric short-term care facilities and, therefore, will have no impact on the State’s agricultural industry.

**Regulatory Flexibility Analysis**

Some or all of the State's 22 short-term care facilities may be small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The rules proposed for readoption with amendments and new rules require STCFs to develop admission criteria; complete written diagnostic evaluations of each patient, written comprehensive treatment plans, and written progress notes; provide a range of services; develop procedures for the termination, transfer, and referral of patients; develop written discharge and aftercare plans for each patient; be sufficiently staffed with qualified personnel; perform certain continued quality improvement activities; ensure confidentiality of records, participate in site review activities conducted by Department staff; and to inform the Department of any change in bed number.

The reporting, recordkeeping, and other compliance requirements imposed upon such facilities must be uniformly applied, regardless of the size of the facility, to ensure that individuals with mental illness receiving these services throughout the State do so in accordance with basic minimum standards of quality. These standards are important because many consumers of these services would otherwise be at risk of hospitalization at State and county psychiatric hospitals, which are typically farther from the consumer's community of residence and more focused on delivery of longer term care. Additionally, these facilities are funded by DOH to be able to meet these requirements and it is not anticipated that compliance will require the employment of additional professional services or facilities.

**Housing Affordability Impact Analysis**

The rules proposed for readoption with amendments and new rules will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules relate to short-term care facilities licensed by DHS.

**Smart Growth Development Impact Analysis**

The rules proposed for readoption with amendments and new rules will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would 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 rules proposed for readoption with amendments and new rules relate to short-term care facilities licensed by DHS.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:37G.

**Full text** of the proposed amendments and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

10:37G-1.2 Definitions

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

…

“Assessment” means evaluation of the individual in crisis in order to ascertain his or her current and previous level of functioning, psychosocial and medical history, potential for dangerousness, current psychiatric and medical condition, factors contributing to the crisis, and support systems that are available for the purpose of developing an appropriate individualized treatment plan that concludes with [a summary and] treatment recommendations. Assessments may include, but shall not be limited to, nursing assessments, psychiatric assessments, psychosocial assessments, rehabilitation/creative arts assessments, and co-occurring disorder assessments, as further delineated at N.J.A.C. 10:37G-2.2.

“Assistant Commissioner for Mental Health **and Addiction Services**” means the Assistant Commissioner of the Department of Human Services responsible for the Division of Mental Health **and Addiction** Services.

...

“Designated screening [center] **service**”means a public ambulatory care service designated by the Commissioner of the Department of Human Services and located in or adjacent to an emergency [room] **department** in a general hospital, which provides mental health services**,** including assessment, screening, emergency**,** and referral services for mentally ill persons in a specified geographic area. A designated screening [center] **service** is the facility in the public mental health care system wherein a person who may be in need of treatment at a short-term care facility (STCF) or a State or county psychiatric hospital or a unit in a special psychiatric hospital undergoes an assessment to determine what mental health services are appropriate for the person and where those services may be appropriately provided.

“Designation as a short-term care facility” means that a facility has received approval for a certificate of need (CON) application by the Department of Health [and Senior Services] in consultation with the Department of Human Services and that the Department of Human Services has determined that the STCF applicant meets all of the rules of this chapter and is authorized to begin operating as an STCF, provided that the unit also meets applicable Department of Health [and Senior Services] licensure requirements. The application for designation shall be submitted at least 60 days prior to planned implementation.

[“DHSS” means the Department of Health and Senior Services.]

“Division” means the Division of Mental Health **and Addiction** Services.

“**DOH” means the Department of Health.**

…

“Licensed independent practitioner” means an individual permitted by law to provide mental health care services**, including, but not limited to, medication prescription privileges,** without direct supervision, within the scope of the individual’s license to practice in the State of New Jersey pursuant to N.J.S.A. 45:1-1 et seq., and may include physicians[,] **and** advance practice nurses[, licensed clinical social workers, and psychologists] **with mental health certification**.

…

**"Patient protected health information” or “patient PHI" means all information, certificates, applications, records, and reports that directly or indirectly identify a patient currently or formerly receiving services, or for whom services were sought.**

**“Personal safety plan” means a plan in which a patient identifies those interventions or coping strategies that are most effective, as well as those which have been harmful.**

…

“Rehabilitation/creative arts therapist” means a person who has a degree from an accredited institution of higher learning in a discipline with a defined course of study addressing assessment and treatment for persons with mental illness. The rehabilitation/creative arts therapist will be licensed or credentialed by the appropriate association or licensure or credentialing board, as applicable and except as approved by Department waiver pursuant to N.J.A.C. 10:37G-2.9. Rehabilitation/creative arts therapists [may] **shall** include[, but need not be limited to,] rehabilitation specialists, and**/or** art, music, dance/movement, drama, occupational, and recreation therapists.

…

“Special psychiatric hospital” means a public or private hospital licensed by the Department of Health [and Senior Services] to provide voluntary and involuntary mental health services, including assessment, care, supervision, treatment**,** and rehabilitation services to persons who are mentally ill.

 **“STCF professional staff” means an individual with a master’s degree from an accredited institution in a recognized mental health discipline or a staff member appropriately licensed or certified or regarded as qualified, in accordance with the highest professional standards, to provide such services.**

…

SUBCHAPTER 2. OPERATIONAL STANDARDS

10:37G-2.1 Admission

(a)–(b) (No change.)

(c) All patients admitted to the STCF shall be referred exclusively through a designated screening [center] **service**. Prior to admission, all patients shall receive a face-to-face assessment, as defined in N.J.A.C. 10:31, by both a certified screener and a psychiatrist formally affiliated with the screening [center] **service** to confirm that the patient is mentally ill, the mental illness causes the person to be dangerous to self or dangerous to others or property and the patient needs care at an STCF because other services are not appropriate or available to meet the person’s mental health care needs.

1. The STCF shall maintain written policies and procedures[, which] **that** describe the referral function of the designated screening [center] **service** regarding transfers to the STCF from other hospitals or from beds within the same hospital to assure that patients meet the criteria noted at (c) above.

2. (No change.)

(d) STCF staff shall develop and implement written comprehensive affiliation agreements between the designated screening [center] **service**, State and county hospitals**,** and community mental health service providers, to facilitate transfer, linkage**,** and access to appropriate aftercare services for patients.

(e) All the affiliation agreements shall be approved by the Division’s Assistant Director responsible for the geographical area served by the STCF or his or her designee biannually during the re-designation process. Affiliation agreements between STCFs and State or county hospitals shall comply with the requirements set forth [herein] at N.J.A.C. 10:37G-2.4(d) and (e).

(f) The affiliation agreement with the designated screening [center] **service** shall clearly delineate the STCF admission criteria and the requirement that all referrals to the STCF emanate from the designated screening [center] **service**.

(g) The STCF’s written policies and procedures shall specify inclusionary and exclusionary admission criteria[, which] **that** describe the diagnostic and patient characteristics appropriate for the STCF.

1.-2. (No change.)

3. Pursuant to [Division approved] **Division-approved** written agreements among designated screening [centers] **services** and STCFs, an STCF shall also be contacted regarding a possible admission of a new patient from outside its geographic area whenever all the STCF beds assigned to that patient’s county of residence are full or no STCF exists in the patient’s county of residence.

4. STCFs can expect the designated screening [center] **service** with the new admission to inquire regarding the feasibility of such transfers and such approved out-of-county placements and shall cooperate in avoiding clinically unnecessary State or county hospital stays by making unused beds available to consumers from outside their geographic area.

5.– 9. (No change.)

(h)– (i) (No change.)

10:37G-2.2 Assessment and service planning

(a) (No change.)

(b) The STCF’s written procedures shall require that STCF staff shall complete written diagnostic evaluations of each patient. These evaluations shall provide clear descriptions of each patient’s psychiatric, psychosocial, medical and social service needs**, trauma history,** and other life domains that shall be addressed during their stay in the STCF.

(c) The STCF’s written procedures shall require that, within 24 hours of admission, the following evaluations, at a minimum, shall be completed:

 1. A psychiatric assessment and mental status examination**,** which includes the patient’s **psychiatric and trauma history** and family’s psychiatric history and concludes with a diagnosis, and treatment recommendations;

 2.-3. (No change.)

(d) – (e) (No change.)

(f) A written comprehensive treatment plan for each patient shall be completed within 72 hours of admission. This written comprehensive treatment plan shall be updated every five days or more frequently as the patient’s needs change, and shall:

1. Identify and build upon patient strengths and areas of health, identify needs, and enhance existing skills and supports **and shall consider the development of a patient-driven personal safety plan**;

2. Be patient-driven and reflect the input of the patient, the patient’s family, the psychiatrist, the registered nurse, the social worker, the rehabilitation/creative arts therapist, any other significant hospital staff involved in treatment, and, as appropriate, the findings and recommendations of the ICMS or PACT worker[;] **or current treatment provider. Where applicable, STCF staff shall document an invitation to a family member, other relative, a close personal friend of the patient or any other person identified by the patient, as permitted with patient’s consent, to participate in treatment planning activities;**

3. – 4. (No change.)

(g)– (l) (No change.)

10:37G-2.3 Services to be provided

(a)–(c) (No change.)

(d) STCF **professional** staff shall provide a minimum of three hours of therapies per day [conducted by a professional with a master’s degree from an accredited institution in a recognized mental health discipline or a staff member appropriately licensed or certified or regarded as qualified, in accordance with the highest professional standards, to provide such services]. STCF shall also provide a minimum of two hours of activities per day, which are purposeful, planned, diversified, and support the treatment plan.

(e) STCF staff shall develop and implement a written procedure that requires nursing staff, in addition to other [professional] STCF **professional** staff, to be available to meet with families of patients [and to provide treatment] for a minimum of two evenings per week, and at least once during weekends and holidays.

[1. Telephone contact between STCF staff and family members is sufficient to meet this requirement.]

**(f) STCF professional staff shall provide treatment for a minimum of two evenings per week, and at least once during weekends and holidays.**

Recodify existing (f) – (i) as **(g) – (j)** (No change in text.)

10:37G-2.4 Termination, transfer**,** and referral of patients

(a) (No change.)

(b) STCF staff shall develop a written discharge and aftercare plan for each patient. **With the appropriate consent, the** **STCF shall assertively engage the** **patient’s family member, other relative, a close personal friend of the patient, or any other person identified by the patient.** The STCF shall assertively engage the community program in which the patient will be receiving services, in an effort to jointly develop the appropriate discharge and aftercare plan for that patient. **The STCF shall document all attempts to engage the family member, other relative, a close personal friend of the patient, or any other person identified by the patient.**

(c) STCF staff shall develop appropriate mechanisms to ensure linkage with other needed services **if clinically appropriate,** **including, but not limited to, local self-help and other community support services** and continuity of care for patients at time of discharge.

(d)–(g) (No change.)

10:37G-2.7 Designation and redesignation

(a) A candidate for STCF designation shall submit a certificate of need application to the New Jersey Department of Health [and Senior Services (DHSS)] and respond to whatever follow-up application questions [DHSS] **DOH** and the Division may have. [The DHSS] **DOH** and the Division shall review all statements and responses by the applicant. Pursuant to **the** certificate of need rules and subsequent to consultation with the Division, [the DHSS] **DOH** shall approve or disapprove the application and shall so notify the applicant.

(b) (No change.)

(c) Each applicant seeking designation as an STCF shall receive a site review by [Division] **Department** staff. Thereafter, redesignation reviews shall be conducted every other year by [Division] **Department** staff. STCF staff shall conduct a self-assessment in the year that a [Division] **Department** review does not occur.

(d) (No change.)

(e) Site reviews may include, but need not be limited to, a review of statistical and patient information, the self-assessment, and other documents submitted by the STCF. Reviews may be followed by a visit to the STCF unit by [Division] **Department** staff to review clinical records, to observe programming, to interview STCF administration and staff**,** and to evaluate the physical environment.

(f) On behalf of the Commissioner of the Department of Human Services, the Assistant Commissioner for Mental Health **and Addiction Services**, in consultation with the Division Assistant Director responsible for the geographical area served by the STCF, shall make the determination for designation or redesignation and shall notify the STCF of the determination.

(g)–(h) (No change.)

(i) Whenever designation is denied, revoked**,** or not renewed and the STCF disputes the basis for the action, the STCF may apply to the Assistant Commissioner for Mental Health **and Addiction Services** for review and submit relevant written material for the Director’s reconsideration. A decision shall be rendered within 30 days of the receipt of the written request for a review.

(j) (No change.)

(k) If the STCF chooses to appeal the decision of the Assistant Commissioner for Mental Health **and Addiction Services** made pursuant to [these rules] **this section**, the STCF may request an administrative hearing, which shall be conducted pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The Commissioner, upon a review of the record submitted by the administrative law judge, shall adopt, reject**,** or modify the recommended report and decision no later than 45 days after receipt of such recommendations, pursuant to N.J.S.A. 52:14B-10.

10:37G-2.9 Waiver

(a) The Division may grant a time-limited waiver of staff requirements described under this section, provided that the following conditions are satisfied:

1. The provider agency shall submit a written request for a waiver of staffing requirements to the Assistant Commissioner for Mental Health **and Addiction** Services or his or her designee at the following address:

Assistant Commissioner

Division of Mental Health **and Addiction** Services

PO Box [727] **700**

Trenton, New Jersey [08625-0727] **08625-700**;

2. (No change.)

3. The Assistant Commissioner for Mental Health **and Addiction Services** reserves the right to request additional information before processing a waiver request;

4. Waivers of specific staffing standards shall be granted at the discretion of the Assistant Commissioner for Mental Health **and Addiction Services**, in consultation with the DHS Office of Licensing, provided that the waiver does not adversely affect the health, safety, welfare**,** or rights of patients;

5. All waiver requests must be reviewed and approved by the Assistant Commissioner for Mental Health **and Addiction Services**, in consultation with the DHS Office of Licensing;

6. Each grant of a waiver may be for a maximum time period of one year **or for a period of time specified at the discretion of the Assistant Commissioner for Mental Health and Addiction Services**, subject to renewal upon request; and

7. (No change.)

**SUBCHAPTER 3. CONFIDENTIALITY OF PATIENT RECORDS**

**10:37G-3.1 Scope**

**This subchapter shall apply to the confidentiality of patient records in all Department designated short-term care facilities for adults.**

**10:37G-3.2 Confidentiality of patient records held by STCFs**

**(a) Patient records held by STCFs are confidential protected health information.**

**(b) STCF staff shall comply with all State and Federal confidentiality laws to maintain the confidentiality of patient PHI, including, but not limited to, the protections mandated by N.J.S.A. 30:4-24.3 and 26:5C-7; the Federal privacy rules of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR Parts 160 and 164, as they apply to the release of and access to patient PHI; 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records; 34 CFR 361.38, Vocational Rehabilitation Protection, Use and Release of Patient Information; and the Federal Fair Housing Amendments of 1988, 42 U.S.C. §§ 3601 et seq.**

**10:37G-3.3 Disclosure upon the patient's written authorization**

**(a) Patient protected health information may be disclosed to the extent permitted by a valid, written, unrevoked authorization, signed by the patient or the patient's legal guardian or mental health care representative.**

**(b) The authorization must conform to the requirements of the HIPAA privacy rule at 45 CFR 164.508(a).**

**(c) Authorizations for the release of psychotherapy notes, HIV/AIDS information, and individual drug and alcohol abuse information must specifically identify those records as being subject to release.**

**10:37G-3.4 Disclosure upon court order**

**Patient protected health information may be disclosed pursuant to a court order.**

**10:37G-3.5 Disclosure of patient protected health information without authorization or court order**

**(a) In the absence of the patient's authorization or a court order, STCF staff may disclose patient PHI for the following purposes and in accordance with the following conditions:**

**1. Treatment of the patient. STCF professional staff may disclose the minimum necessary patient PHI that is relevant to a patient's treatment and/or referral for treatment, pursuant to N.J.S.A. 30:4-27.5.c, to staff at a community mental health agency, as defined in N.J.S.A. 30:9A-2, another screening service or a short-term care or psychiatric facility or special psychiatric hospital, as defined at N.J.S.A. 30:4-27.2.**

**2. Payment related to the patient's care. STCF staff may disclose patient PHI to the extent necessary to conduct an investigation into the financial ability to pay of the patient or his or her chargeable relatives pursuant to the provisions of N.J.S.A. 30:1-12.**

**3. Individuals directly involved in the patient's care. STCF staff may make the following types of disclosure to the parties indicated in this paragraph, provided that they first comply with (a)4 or 5 below, as applicable:**

**i. STCF staff may disclose to a family member, other relative, a close personal friend of the patient, or any other person identified by the patient, patient PHI directly relevant to the person's involvement in the patient's care or payment related to the patient's care; and**

**ii. STCF staff may use or disclose patient PHI to notify or assist in the notification of (including identifying or locating) a family member, a personal representative of the patient, or another person responsible for the care of the patient, of the patient's location, general condition, or death.**

**4. Disclosures where the patient is present. If the patient is present for, or otherwise available prior to, a disclosure permitted by (a)3 above and has the capacity to make mental health care decisions, STCF staff may disclose the patient's PHI if they first:**

**i. Obtain the patient's verbal agreement;**

**ii. Provide the patient with the opportunity to object to the disclosure and the patient does not express an objection; or**

**iii. Reasonably infer from the circumstances, based on the exercise of professional judgment, that the patient does not object to the disclosure.**

**5. Limited disclosures when the patient is not present. If the patient is not present, or the opportunity to agree or object to the use or disclosure cannot practically be provided because of the patient's incapacity or an emergency circumstance, STCF staff may, in the exercise of professional judgment, determine a disclosure permitted by (a)3 above is in the best interest of the patient and, if so, disclose only the patient PHI that is directly relevant to the person's involvement with the patient's care. STCF staff may use professional judgment and their experience with common practice to make reasonable inferences of the patient's best interest in allowing a person to act on behalf of the patient to pick up filled prescriptions, medical supplies, x-rays, or other similar forms of PHI.**

**(b) All disclosures of patient PHI shall be documented in the patient's record, and shall describe the patient PHI disclosed, the individual to whom the patient PHI was disclosed, the date of disclosure, and the basis upon which the decision to disclose was made.**

**(c) All decisions to disclose patient PHI pursuant to this section shall be made individually, on a case-by-case basis.**

**(d) A disclosure of patient PHI under this section does not authorize, or provide a basis for, future or additional disclosures.**

**10:37G-3.6 Denials of access to patient protected health information**

**(a) STCF staff shall comply with the following procedures and standards in the event that a patient request to review the patient's own patient PHI is denied:**

**1. The STCF service's decision to deny a patient access to his or her own patient PHI shall be in writing and given to the patient. The written denial shall state the reason for the denial and shall describe the patient's right to a review of the denial and how the review can be obtained. The written denial shall comply with the additional requirements of the HIPAA privacy rule set forth in 45 CFR 164.524.**

**2. Patients shall be given access to the patient PHI that is not part of the denial.**

**3. Upon the patient's request, the denial decision shall be reviewed by a supervisory licensed health care professional who was not directly involved in the initial denial decision.**

**4. The reviewing official shall uphold the denial decision if:**

**i. The requested information was obtained from someone other than a health care provider under a promise of confidentiality, and where the access requested would be reasonably likely to reveal the source of the information;**

**ii. Disclosure of the requested information, in the professional judgment of a licensed health care professional, is reasonably likely to endanger the life or physical safety of the patient or another person; or**

**iii. The requested information makes reference to another person (unless such other person is a health care provider), and in the professional judgment of a licensed health care professional, access is reasonably likely to cause substantial harm to such other person.**

**5. STCF staff shall provide written notice to the patient of the reviewing official's determination and shall perform whatever other action is necessary to carry out the reviewing official's determination.**