

# RULE PROPOSALS

## INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

## HUMAN SERVICES

### (a)

#### DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

#### Programs of Assertive Community Treatment (PACT) Services

#### Proposed Readoption with Amendments: N.J.A.C. 10:76

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.

Agency Control Number: 22-P-02.

Proposal Number: PRN 2023-006.

Submit comments by March 18, 2023, to:

Margaret M. Rose  
Attn: 22-P-02  
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Office of Legal and Regulatory Affairs  
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The agency proposal follows:

#### Summary

Pursuant to N.J.S.A. 52:14B-5.1.c, N.J.A.C. 10:76, Programs of Assertive Community Treatment (PACT) Services, will expire December 7, 2022. As the Department of Human Services (Department) filed this notice of readoption prior to that date, the expiration date is extended 180 days to June 5, 2023, pursuant to N.J.S.A. 52:14B-5.1.c(1).

PACT services are patient-centered and outreach and recovery-oriented, to provide comprehensive clinical treatment and related support services in community settings to adults with serious and persistent mental illness with or without a co-occurring substance abuse diagnosis. PACT services are available 24 hours a day, seven days a week, and provided by mobile, interdisciplinary professional teams pursuant to contract with the Division of Mental Health and Addiction Services (“DMHAS” or “the Division”), in accordance with N.J.A.C. 10:37J. N.J.A.C. 10:76 enables DMHAS to reimburse providers for the provision of PACT services to eligible Medicaid/NJ FamilyCare beneficiaries.

The rules at N.J.A.C. 10:76 are proposed for readoption with amendments, as described below, to ensure that the DMHAS can continue Medicaid/NJ FamilyCare Plan A coverage for the provision of PACT services to eligible beneficiaries. For PACT services provided to individuals who are not eligible to receive Medicaid/NJ FamilyCare Plan A benefits, the providers will continue to be reimbursed with State funds through their contracts with DMHAS.

The Department has reviewed this chapter and finds that it should be readopted with amendments, as described below, because the rules are necessary, reasonable, adequate, efficient, understandable, and responsive to the purposes for which they were originally promulgated.

#### Summary of Subchapter Provisions

N.J.A.C. 10:76-1, General Provisions, includes general information related to PACT services, including purpose, scope and eligibility, definitions, provider participation criteria, and recordkeeping requirements.

N.J.A.C. 10:76-2, Program Operations, includes information related to: specific services included in PACT; the clinical supervision requirements for PACT teams; beneficiary eligibility; restrictions for Medicaid/NJ FamilyCare beneficiaries receiving other mental health services; and prior authorization requirements and reimbursement methodology.

N.J.A.C. 10:76-3, Procedure Codes for Reimbursement, includes an introduction, as well as procedure codes and maximum fee allowances used by providers when seeking reimbursement.

#### Summary of Proposed Amendments

At N.J.A.C. 10:76-1.2, definitions for the following terms are proposed to be added, as they will be used in the chapter: “National Plan and Provider Enumerations System (NPPES),” “National Provider Identifier (NPI),” and “Taxonomy code.”

Proposed N.J.A.C. 10:76-1.3(g) requires a PACT services provider to have a valid NPI number, valid taxonomy code, and complete a provider revalidation, when requested. This provision will ensure providers accurately identify themselves and the services for which they bill and will ensure that they received accurate reimbursement for the provision of these services.

At N.J.A.C. 10:76-2.1(b)2, a proposed amendment indicates that interventions for substance abuse can be either group or individual, or both, and will be a required service only when the need exists. This is consistent with DMHAS PACT program rules at N.J.A.C. 10:37J-2.5(h).

At N.J.A.C. 10:76-2.1(d)5, a proposed amendment changes the term “consumer” to “beneficiary” to reflect the preferred term of the Medicaid/NJ FamilyCare program.

At N.J.A.C. 10:76-2.5(c)3iii, a proposed amendment replaces the specific name “Molina Medicaid Systems” with the broad term “Medicaid/NJ FamilyCare fiscal agent” to avoid confusion when, or if, the fiscal agent changes.

At N.J.A.C. 10:76-3.1(b), a proposed amendment changes the description of the Healthcare Common Procedure Coding System (HCPCS) to indicate it is a two-level system because Level III codes have not been Federally recognized since December 2003.

At N.J.A.C. 10:76 Appendix, the address of the Medicaid/NJ FamilyCare fiscal agent is proposed to be amended to correct the name of the fiscal agent to read "Gainwell Technologies," the name of the current fiscal agent.

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 is excepted from the rulemaking calendar requirement.

#### **Social Impact**

In State Fiscal Year 2022, PACT services were provided by 12 agencies providing services Statewide.

In State Fiscal Year 2022, a total of 1,635 Medicaid/NJ FamilyCare beneficiaries received services covered pursuant to this chapter. The rules proposed for readoption with amendments do not change the population to be covered, therefore, no significant increase or decrease in the number of beneficiaries is expected as a direct result of the rules proposed for readoption with amendments.

The rules proposed for readoption with amendments will have a positive social impact on the beneficiaries of the Medicaid/NJ FamilyCare program by assuring that eligible beneficiaries will continue to receive PACT services. PACT services are provided in the beneficiary's community and support the total recovery and successful participation of the beneficiary as a member of the community, often helping the beneficiary to avoid treatment in more restrictive settings, such as hospitals and residential treatment centers.

The rules proposed for readoption with amendments will also have a positive impact on the PACT providers because the rules allow the Division to ensure the continued reimbursement to providers.

#### **Economic Impact**

During State Fiscal Year 2022, a total of 1,635 Medicaid/NJ FamilyCare beneficiaries received services covered pursuant to this chapter at a cost of \$23.8 million (State and Federal share combined).

There is no anticipated change in the economic impact on the providers or the State as a result of the rules proposed for readoption with amendments because the Department is not proposing changes in the population, scope of services, or reimbursement rates for the services. The readoption of the rules will ensure that providers will continue to receive reimbursement for services provided and billed for in accordance with these rules. The proposed amendment requiring the use of the National Provider Identifier (NPI) and appropriate taxonomy code will ensure providers accurately identify themselves and the services for which they bill and will ensure that they receive accurate reimbursement for the provision of these services.

The proposed amendments will have no economic impact on the beneficiaries, because beneficiaries are not required to pay, in whole or in part, for these services and the proposed amendments will not impose any costs on the beneficiaries.

#### **Federal Standards Statement**

Sections 1902(a)(10) and 1905(a)(13), 42 U.S.C. §§ 1396a(a)(10) and 1396d(a), respectively, allow a state Medicaid program to offer other diagnostic, screening, prevention, and rehabilitation services, including any services recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice pursuant to state law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible level of functioning. Section 1902(a)30 of the Act, 42 U.S.C. §1396a, requires that payments for services shall be consistent with the efficiency, economy, and quality of care.

Title XXI of the Social Security Act contains broad guidelines to allow a state to provide coverage of a variety of health services pursuant to a state-operated children's health insurance program (known in New Jersey as NJ FamilyCare) for targeted, low-income children and expects the state to adopt rules in order to ensure the quality of services. Section 2101 of the Act (42 U.S.C. § 1397aa) provides funds to a state to administer the program in an effective and efficient manner. Sections 2103 and 2110 of

the Social Security Act (42 U.S.C. §§ 1397cc and 1397jj, respectively) define the scope of coverage to be provided and provides definitions of allowable services, including rehabilitative and mental health services.

The Federal regulations at 42 CFR 440.130 define rehabilitative services as any medical or remedial services recommended by a physician or other licensed practitioner of the healing arts, within the scope of his or her practice pursuant to state law, for maximum reduction of physical or mental disability and restoration of a patient to his or her best possible functional level.

Federal regulations at 45 CFR 162.402 through 162.414 require the use of standard unique health identifiers for healthcare providers.

The Department has reviewed the Federal statutory and regulatory requirements and has determined the rules proposed for readoption with amendments do not exceed Federal standards. Therefore, a Federal standards analysis is not required.

#### **Jobs Impact**

The rules proposed for readoption with amendments will not change the population, scope of services, or reimbursement rates for the services provided pursuant to PACT, therefore, the Department does not anticipate that the rulemaking will result in the generation or loss of jobs in the State.

#### **Agriculture Industry Impact**

The rules proposed for readoption with amendments address the provision of mental health and substance abuse services, and will not affect the State's agriculture industry.

#### **Regulatory Flexibility Analysis**

The rules proposed for readoption with amendments will affect those providers who provide Programs for Assertive Community Treatment (PACT) services to Medicaid/NJ FamilyCare fee-for-service beneficiaries residing in the community. Some of these providers may be considered small businesses pursuant to the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, the rules and amendments will continue existing reporting, recordkeeping, and compliance requirements on those small businesses, as well as the existing capital costs and ongoing compliance costs associated with those requirements.

The providers are required to maintain records sufficient to fully disclose the name of the beneficiary who received the service, the date of service, and any additional information as may be required by rule and statute. These requirements must be uniform for all providers, in order to ensure a consistent level of care for the beneficiaries throughout the State and to comply with applicable statutes; therefore, no differentiation based on business size can be made in the rules. Additionally, the billing and recordkeeping requirements imposed by this chapter is not in excess of standard practice for these entities, which are also required to comply with licensing and other standards imposed by DMHAS. The professional services required are those that would be required of any PACT provider, whether or not the provider is a Medicaid/NJ FamilyCare fee-for-service provider.

#### **Housing Affordability Impact Analysis**

The rules proposed for readoption with amendments address the provision of mental health and substance abuse services and the Department anticipates that the proposed rulemaking will have no impact on the affordability of housing, nor will it have an impact on the average costs of housing.

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

The Department anticipates that the rules proposed for readoption with amendments will have no impact on smart growth in Planning Areas 1 or 2, or within designated centers, under the New Jersey State Development and Redevelopment Plan, as the rules address the provision of mental health and substance abuse services. Accordingly, no further analysis is required.

#### **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 rules proposed for re adoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:76.

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

SUBCHAPTER 1. GENERAL PROVISIONS

10:76-1.2 Definitions

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

...  
**“National Plan and Provider Enumerations System (NPPES)” means the system that assigns a provider a National Provider Identifier (NPI) number, maintains and updates information about health care providers with NPIs, and disseminates the NPI Registry and NPPES downloadable file. The NPI Registry is an online query system that allows users to search for a health care provider’s information.**

**“National Provider Identifier (NPI)” means a unique 10-digit identification number issued to health care providers by the Centers for Medicare and Medicaid Services (CMS).**

...  
**“Taxonomy code” means a code that describes the provider or organization’s type, classification, and the area of specialization.**

10:76-1.3 Provider participation criteria

(a)-(f) (No change.)

**(g) In order to participate in the New Jersey Medicaid/NJ FamilyCare Program, a PACT services provider shall:**

- 1. Have a valid National Provider Identifier (NPI) number obtained from the National Plan and Provider Enumeration System (NPPES);**
- 2. Have a valid taxonomy code obtained from the NPPES; and**
- 3. Remain a provider in good standing by successfully completing provider revalidation, when requested by DMAHS.**

SUBCHAPTER 2. PROGRAM OPERATIONS

10:76-2.1 PACT services

(a) (No change.)

(b) PACT services shall include mental health services and related supportive services, and shall be provided directly by one or more of the PACT team members. Such services shall include, but are not limited to, the following:

1. (No change.)

2. Individual [and] **and/or** group interventions for substance abuse **when the need exists** (see N.J.A.C. 10:37J-2.5(h));

3.-5. (No change.)

(c) (No change.)

(d) Examples of services provided by a PACT team shall include, but are not limited to:

1.-4. (No change.)

5. Provision of support to the beneficiary’s family and other members of the [consumer’s] **beneficiary’s** social network to deal with the mental illness; and

6. (No change.)

(e) (No change.)

10:76-2.5 Prior authorization

(a)-(b) (No change.)

(c) For the provision of Partial Care/Partial Hospitalization (PC/PH) services to an eligible beneficiary enrolled in PACT, the provider shall obtain prior authorization as follows:

1.-2. (No change.)

3. The DMAHS Office of Customer Service will review the request and advise the Statewide PACT Coordinator of the approval or denial of the request.

i.-ii. (No change.)

iii. The providers will be notified by [Molina Medicaid Systems] **the Medicaid/NJ FamilyCare fiscal agent** that services have been

authorized. Such authorization should be received before providing services.

(d) (No change.)

SUBCHAPTER 3. PROCEDURE CODES FOR REIMBURSEMENT

10:76-3.1 Introduction

(a) (No change.)

(b) HCPCS [was developed as a three-level] **is a two-level** coding system:

1.-2. (No change.)

(c) (No change.)

APPENDIX

FISCAL AGENT BILLING SUPPLEMENT

AGENCY NOTE: The Fiscal Agent Billing Supplement is appended as a part of this chapter but is not reproduced in the New Jersey Administrative Code. The Fiscal Agent Billing Supplement can be downloaded free of charge from: [www.njmmis.com](http://www.njmmis.com). When revisions are made to the Fiscal Agent Billing Supplement, a revised version will be posted on the njmmis website and copies will be filed with the Office of Administrative Law.

If you do not have access to the Internet and require a copy of the Fiscal Agent Billing Supplement, write to:

[Molina Medicaid Systems] **Gainwell Technologies**  
 PO Box 4801  
 Trenton, New Jersey 08650-4801  
 or contact:  
 Office of Administrative Law  
 Quakerbridge Plaza, Bldg. 9  
 PO Box 049  
 Trenton, New Jersey 08625-0049

**(a)**

**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**

**Rehabilitative Services for Children**

**Proposed Re Adoption with Amendments: N.J.A.C. 10:77**

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 exception to calendar requirement.

Agency Control Number: 22-P-03.

Proposal Number: PRN 2023-009.

Submit comments by March 18, 2023, to:

Margaret M. Rose  
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 Division of Medical Assistance and Health Services  
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 Delivery: 6 Quakerbridge Plaza  
 Mercerville, NJ 08619

The agency proposal follows:

**Summary**

Pursuant to N.J.S.A. 52:14B-5.1.c(2), N.J.A.C. 10:77, the Rehabilitative Services for Children chapter, was scheduled to expire on December 7, 2022. As the Department of Human Services (Department) submitted this notice of proposal to the Office Of Administrative Law prior to that date, the expiration date was extended 180 days to June 5, 2023, pursuant to N.J.S.A. 52:14B-5.1.c(2).