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Healthcare Alert

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New York proposes new hospital regulations concerning patients with behavioral health needs

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NYSDOH and NYSOMH have each proposed regulations concerning how hospital emergency departments, CPEPs, and inpatient psychiatric units provide services to patients with behavioral health needs.



What's the impact?

- NYSDOH's proposed regulations would direct all New York hospital emergency departments to adhere to new requirements concerning identification, assessment, and referral of patients with behavioral health needs.
- For hospitals with inpatient psychiatric units, NYSDOH's proposed regulations would also direct emergency departments to provide patients identified as having "complex needs" with a discharge plan that satisfies specific criteria.
- Separate regulations proposed by NYSOMH would direct hospitals with inpatient psychiatric units and/or comprehensive psychiatric emergency programs (CPEPs) to adopt new policies and procedures addressing patient screening, admission, services, and discharge planning.

On February 21, 2024, the New York State Department of Health (NYSDOH) issued

[proposed amendments](#) to the regulation that governs hospital emergency departments, at [10 NYCRR 405.19](#), concerning services to patients with behavioral health needs.

All emergency departments

If NYSDOH adopts the regulations as proposed, all hospitals will be required to adopt policies and procedures concerning the identification, assessment, and referral of patients with behavioral health needs. Such policies and procedures would include the following elements, among others:

- / Review the Psychiatric Services and Clinical Knowledge Enhancement System (PSYCKES), the Statewide Health Information Network for New York (SHIN-NY), the Prescription Monitoring Program (PMP), and any other available databases for relevant patient records.
- / With patient consent, contact the patient’s family and close friends to obtain “collateral information,” including any psychiatric advance directive.
- / Screen patients for suicide risk—performed by licensed professionals trained in such screening.
- / Screen patients for risk of violence, which must include asking about access to firearms or other weapons. If a patient screens positive, the hospital must perform an additional assessment and intervention.
- / Screen patients to determine if a patient qualifies as an “individual with complex needs”—a term defined in complementary regulations recently proposed by the NYS Office of Mental Health (NYSOMH). (See discussion of proposed NYSOMH regulations below.)

Emergency departments at those hospitals with inpatient psychiatric units

Additionally, for those general hospitals that operate inpatient psychiatric units, the emergency departments of such hospitals would need to provide all patients identified as having “complex needs” with a discharge plan that satisfies the following criteria:

- / With patient consent, send a discharge summary to the patient’s outpatient, residential, or long-term care treatment programs, which details the patient’s mental health history, hospital course, and other relevant information.
- / Refer the patient to care management programs or coordinate discharge planning with care managers.
- / Confirm an appointment for psychiatric aftercare services with a provider within seven (7) calendar days following discharge. If no appointment can be made within seven (7) days, the hospital must document its efforts and make the appointment as soon as possible. If a

patient leaves the hospital against medical advice or refuses aftercare services, the hospital must offer information about treatment options.

NYSDOH stated that the goal of its proposed regulations is to “improve patient outcomes, reduce the risk of post-discharge self-harm and violence, and reduce the risk of readmission and disconnection from care.” NYSDOH committed to providing additional guidance and to “work with hospitals and hospital associations on the development of policies and procedures.”

NYSDOH estimated that compliance cost associated with its proposed regulations ranges from \$500 thousand to \$2.5 million annually, depending on a hospital’s size. NYSDOH further stated that it plans to increase its investigation and surveillance activities to ensure compliance with the regulations, leading to an estimated 75 additional onsite investigations, with an approximate annual cost to NYSDOH of \$2.1 million.

NYSOMH’s proposed regulations

NYSOMH has also issued proposed regulations addressing inpatient psychiatric units and comprehensive psychiatric emergency programs (CPEPs) operated by general hospitals. As noted above, these proposed regulations include several newly defined terms, including “individual with complex needs.” Specifically, an “individual with complex needs” would be a patient who meets one or more of the following criteria:

- / High utilization of inpatient, crisis, or emergency services;
- / High-intensity ambulatory service utilization or eligibility for such services in the last year;
- / Discharge in the last year from a residential facility operated or licensed by NYSOMH; or
- / Inadequate connection to ambulatory or residential services, plus co-morbidities that require intensive supports for treatment and stabilization or social needs that are determinants of poorer mental health outcomes. The proposed regulations set forth numerous criteria that could qualify an individual as having “complex needs” under this fourth category.

Hospital inpatient psychiatric units

NYSOMH’s [proposed amendments](#) to its regulations governing inpatient psychiatric units are substantial and comprehensive. The proposed change would, among other things:

- / Emphasize the agency’s existing authority to assess civil penalties against a hospital that shuts down an inpatient psychiatric unit without OMH’s written approval.
- / Require the hospital to adopt certain policies, including:
 - Affirmative action employment policies, consistent with certain federal employment laws;
 - Confidentiality of patient records;

- Protection of patient rights that, at a minimum, establish and describe a patient grievance procedure. Additionally, hospitals would be required to post a statement of patient rights in a conspicuous location easily accessible to the public and provide copies in a patient’s preferred language and in a form accessible to the blind and visually impaired.
- / Ensure that patient records include certain newly required elements, such as:
 - Records of communications with family, outpatient providers, and other people who interact with the patient and have the ability to affect the patient’s condition as well as any psychiatric advance directive;
 - Notes relating to “special circumstances and untoward incidents” including, but not limited to, the use of seclusion or restraints;
 - Documentation of voluntary or involuntary status; and
 - Other information requested by NYSOMH.
 - / Require that all services be provided through a “person-centered process with shared decision making” that is “informed by the understanding that implicit bias may affect the assessment, diagnosis, treatment, and discharge planning of Black, Indigenous, People of Color (BIPOC) and other marginalized individuals.”
 - / Require the hospital to use “best practices and person-centered approaches on the screening, assessment, treatment and disposition” of patients.
 - / Require the hospital to follow detailed admission procedures, including gathering information from multiple sources identified in the regulation, such as PSYCKES, the SHIN-NY, and the PMP.
 - / Require the hospital to follow detailed screening procedures relating to suicide risk, violence risk, substance use, and whether the patient qualifies as an individual with complex needs.
 - / Require the hospital to implement extensive, highly detailed discharge procedures involving thirteen (13) separate criteria.
 - / Prohibit the hospital from using restraint or seclusion for any patient unless the hospital has a written plan adopted in accordance with 14 NYCRR 526.4. The hospital’s clinical risk management program would be required to regularly review the hospital’s use of restraint and seclusion, as well as the hospital’s use of treatment over a patient’s objection.
 - / For any minors receiving services, the hospital must make available an appropriate instructional program approved by the New York State Education Department.

Hospital CPEPs

For those general hospitals that operate CPEPs, NYSOMH’s [proposed amendments](#) are similarly comprehensive. In many respects, the proposed changes track NYSOMH’s proposed amendments pertaining to inpatient psychiatric units, including the detailed admission,

screening, and discharge procedures mentioned above. Additional changes specific to the CPEP units would include, but are not limited to:

- / The number of extended observation beds would no longer be limited to six (6), but rather to a number approved by NYSOMH. The process for NYSOMH approving alternative locations for such beds would be streamlined.
- / Any person receiving a triage and referral visit at the CPEP must be examined by a staff physician or psychiatric nurse practitioner as soon as practicable and, in any event, within six (6) hours of arrival at reception. Currently, the regulations only apply this time constraint to patients “admitted” to the CPEP.
- / CPEP staff must attempt to obtain a patient’s or other authorized person’s authorization to access, use, and disclose the patient’s personal health information. The regulations would provide that if such information “cannot practicably be obtained due to incapacity or emergency circumstance, program staff may, in the exercise of professional judgment, determine whether the access, use, or disclosure is necessary to prevent imminent, serious harm to the individual. If so, only that personal health information necessary to protect the individual from the anticipated harm or which is in the best interest of the individual may be accessed, used, or disclosed. The reasons for the access, use, or disclosure must be appropriately documented in the clinical record.”

Discussion and deadline for public comments

NYSDOH’s and NYSOMH’s proposed amendments are generally consistent with the agencies’ [joint guidance](#) published last October. The proposed regulations also complement initiatives proposed in Governor Hochul’s Executive Budget, including [\\$7 million](#) to “expand surveillance and regulatory compliance activities within NYSOMH-licensed and unlicensed program settings, including hospital inpatient programs and [CPEPs].”

NYSDOH’s proposed regulations were published in the *State Register* on February 21, 2024, and the 60-day public comment period will remain open until April 22, 2024. NYSOMH’s proposed regulations were published in the *State Register* on January 24, 2024, and the 60-day public comment period will remain open until March 24, 2024. Although not addressed here, NYSOMH also issued proposed regulations addressing residential psychiatric inpatient hospitals, with comments to be submitted by the same date.

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