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January 11, 2024

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Patrick M. Allen, Cabinet Secretary
New Mexico Department of Health
Office of the Secretary
1190 St. Francis Dr., Suite N4100
P.O. Box 26110
Santa Fe, New Mexico 87502

New Mexico Department of Health
Rulemaking Hearing on Proposed Amendments to 7.30.13 NMAC

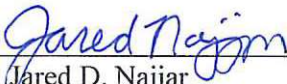
Dear Secretary Allen,

Enclosed for your consideration, please find the Report of Hearing Officer and Recommendation with respect to the proposed amendments to 7.30.13 NMAC.

Please contact me at (505) 982-8514, or at jnajjar@virtuelaw.com if you have any questions.

Sincerely,

VIRTUE & NAJJAR, PC

By: 
Jared D. Najjar
Hearing Officer

Enclosure

**NEW MEXICO DEPARTMENT OF HEALTH
RULEMAKING HEARING ON PROPOSED AMENDMENTS TO 7.30.13 NMAC**

Public Hearing: Proposed Amendments to 7.30.13 NMAC Crisis Triage Centers (CTC).

Actions in Question: Proposed Adoption of Amendments to Rule 7.30.13 NMAC Sections 7 (“Definitions”), 9 (“Scope of Services”), and 29 (“Staffing Requirements”).

Hearing Date: December 14, 2023

Report Date: January 11, 2024

REPORT OF HEARING OFFICER

A public hearing was held on Thursday, December 14, 2023 beginning at 9:00 a.m. via Microsoft Teams and via telephone. The hearing was held for the purpose of considering the proposed amendments to 7.30.13 NMAC, as noted above. Jared D. Najjar presided as Hearing Officer. The New Mexico Department of Health (the “Department”) was represented by Ann H. Washburn, Assistant General Counsel.

The proceeding was recorded via Microsoft Teams and hosted in that platform by Ms. Washburn. The original recording is in the possession of the Department, Office of General Counsel.

SUMMARY OF PROCEEDING

The Hearing Officer opened the proceeding by introducing himself and noting that the hearing was open to any interested member of the public. Notice of Public Hearing (the “Notice”) was published in the Albuquerque Journal and the New Mexico Register. The purpose of the hearing was to receive public comment regarding adoption of the amendments to 7.30.13 NMAC, which seek to make the following changes: (1) allow CTC facilities to accept involuntary admissions as set forth in recent statutory amendments to Section 43-1-1 et. al. NMSA (Mental Health and Disabilities Code) which went into effect on June 16, 2023; (2) set forth staffing and medical records requirements for CTC facilities accepting involuntary admissions; (3) change on-site RN requirements for CTCs offering 23 hours or less non-residential services; and (4) add a definition of CTCs to reflect the definition in Section 43-1-3 NMSA 1978.

As reflected in the Notice, the hearing was conducted to receive public comments regarding proposed amendments to the following:

1. 7.30.13.7 NMAC - Definitions, Amend to include a definition for “crisis triage center” to reflect the definition in Section 43-1-3 NMSA 1978.

2. Subsection C of 7.30.13.9 NMAC - Amend to expand the scope of services to allow CTCs to accept involuntary admissions as set forth in Section 43-1-15.1 NMSA Crisis Triage Centers; admission or treatment.
3. Subsection C of 7.30.13.9 NMAC - Amend to provide that if a CTC facility accepts involuntary admissions, the CTCs shall comply with all hearing and treatment provisions of Section 43-1-1 et. al NMSA 1978.
4. Subsection A of 7.30.13.29 NMAC - Amend to remove the requirement of a 24 hour a day RN presence requirement for CTC facilities offering 23 hours or less non-residential services, instead allowing such facilities to have onsite medical professionals who have access to immediate support and supervision by an RN or higher-level provider in according with 24-25-1 et. al NMSA 1978 New Mexico Telehealth Act.
5. Subsection B of 7.30.13.29 NMAC - Amend to require CTCs accepting involuntary admissions to have adequate staffing and to meet medical record requirements for licensure of psychiatric hospitals.

It was explained that the purpose of the proposed rule amendments is to adopt the rule changes described above, which were proposed in part to conform the Crisis Triage Centers Rule to recent statutory amendments to Section 41-1-1 et. al. NMSA (Mental Health and Disabilities Code) which previously went into effect. Additionally, the proposed amendments seek to remove on-site RN presence requirements for CTC facilities offering 23 hours or less non-residential services, instead allowing such facilities to have onsite medical professionals who have access to immediate support and supervision by an RN or higher-level provider in accordance with 24-25-1 et. al. NMSA 1978 (New Mexico Telehealth Act). Finally, it was explained that the proposed amendments seek to require CTCs accepting involuntary admissions to have adequate staffing and to meet medical record requirements for licensure of psychiatric hospitals as set forth in 7.7.2.40 NMAC.

The Hearing Officer explained that interested parties were given the opportunity to submit written comments concerning the proposed rule amendments via US mail and email. Written comments were accepted until 5:00pm on December 14, 2023. A free copy of the full text of the proposed rule amendments was available to the public on the Department's website. Further, pursuant to the Notice, individuals in need of special assistance or accommodations to attend or participate in the hearing were encouraged to contact the Department.

The Hearing Officer noted that the legal authority permitting the proposed amendments is found at Subsection E of Section 9-7-6, NMSA 1978, Subsection D of 24-1-2 NMSA 1978, Subsection J of Section 24-1-3 NMSA 1978, Section 24-1-5 NMSA 1978, and the Mental Health and Disabilities Code Section 43-1-1 et. al. NMSA 1978.

Following the Hearing Officer's opening remarks, counsel for the Department introduced the Department's Exhibits and moved for their admission into the record. Ms. Washburn presented seven exhibits on behalf of the Department, all of which were admitted with no objection. The exhibits are as follows:

DOH Exhibit No. 1: Proposed Rule Amendments 7.30.13 NMAC "Crisis Triage Centers"

DOH Exhibit No. 2: Notice of Public Hearing

DOH Exhibit No. 3: Affidavit of Publication in the Albuquerque Journal

DOH Exhibit No. 4: Affidavit of Publication in the New Mexico Register

DOH Exhibit No. 5: Affidavit of Notice to the Public

DOH Exhibit No. 6: Letter Appointing Hearing Officer

DOH Exhibit No. 7: Written Public Comments

Subsequently, Chris Burmeister from the Division of Health Improvement provided comment on behalf of the Department. He explained the content and reasoning behind the proposed rule amendments and noted that they were developed in collaboration with Crisis Triage Operators.

The Hearing Officer then announced that members of the public would be given an opportunity to comment on the proposed rule amendments. Jamie Michael, Dona Ana County Director of Health & Human Services, provided comment, noting that the amendments would improve the ability to respond to individuals undergoing crisis and reduce law enforcement intervention. Thereafter, Dr. Michael Riddle, MD provided comment in support of the proposed amendments, noting that the amendments would help behavioral health outcomes.

There were no opponents of the amendments in attendance.

The Hearing Officer then announced again that, as reflected on the Notice, additional written comment could be submitted via email until 5:00pm on the day of the hearing. No additional written comments were submitted.

RECOMMENDATION

The proposed amendments are consistent with current state law and a recent statutory amendment which took effect on June 16, 2023. Additionally, the proposed amendments would allow CTC facilities to have onsite medical professionals who have access to immediate support and supervision by an RN or higher-level provider in accordance with 24-25-1 et. al. NMSA 1978

(New Mexico Telehealth Act), which would facilitate the ability of facilities to respond to individuals undergoing crisis. Finally, the proposed amendments would require CTCs accepting involuntary admissions to have adequate staffing and to meet medical record requirements for licensure of psychiatric hospitals as set forth in 7.7.2.40 NMAC.

Given the above, I recommend that the amendments be adopted. This recommendation is based on my review of the written comment submitted, and the testimony presented at the hearing.

Respectfully submitted,



Jared D. Najjar
Hearing Officer