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Healthcare Alert

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New York issues new hospital regulations for patients with behavioral health presentations

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General hospitals will be required to develop new policies and procedures related to identifying, assessing, admitting, and discharging patients with behavioral health presentations.

What's the impact?

- Effective January 8, 2025, NYSDOH regulations require general hospital emergency departments to adopt new policies with respect to identification, assessment, referral, and discharge of patients with behavioral health presentations.
- Effective December 18, 2024, NYSOMH regulations establish new requirements for general hospitals with OMH-licensed inpatient psychiatric units with respect to patient admission, screening, and discharge.
- NYSOMH also adopted new regulations for CPEPs, including a new requirement that a staff physician or psychiatric NP examine all patients within 6 hours.

The New York State Department of Health and Office of Mental Health recently adopted new regulations related to hospital patients with behavioral health presentations. We highlight these changes and how hospitals must assess and revise their policies to ensure compliance.

New NYSDOH Regulations for Patients with Behavioral Health Presentations

Effective January 8, 2025, the New York State Department of Health (NYSODH) adopted new regulations concerning hospital patients with behavioral health presentations.

Under the new regulations, all general hospital emergency departments (EDs) must develop and implement policies and procedures for the identification, assessment, and referral of patients with behavioral health presentations. Such policies and procedures must include:

- Reviewing records in available databases, including the Psychiatric Services and Clinical Knowledge Enhancement System (PSYCKES) and the Statewide Health Information Network for New York (SHIN-NY).
- With patient consent when required by law, identifying and contacting family members or close friends to obtain collateral information, including any psychiatric advance directive.
- Screening for suicide risk. A patient with a positive screen must be assessed by a licensed professional trained in assessing suicide risk.
- Screening for violence risk, including asking about access for firearms and weapons. A patient with a positive screen must be assessed and an "intervention" must be performed. The term "intervention" is not defined; however, this likely is intended to include, if appropriate, making a New York SAFE Act report under Section 9.46 of the Mental Hygiene Law.
- Screening to determine whether the patient should be determined an "individual with complex needs," as defined in 14 NYCRR 580.3(e).

ADDITIONAL ED POLICIES AND PROCEDURES FOR HOSPITALS WITH INPATIENT PSYCHIATRIC UNITS

For those general hospitals that have inpatient psychiatric units, the ED policies and procedures must include additional elements with respect to discharge planning for patients who qualify as an "individual with complex needs."

Specifically, for those patients in care management programs, the ED must coordinate discharge planning with the care managers. Additionally, the ED must use diligent efforts to schedule and confirm an appointment for psychiatric aftercare within seven (7) calendar days following discharge, and must send a discharge summary to an outpatient, residential, or long-term care treatment program if the patient consents to receiving such psychiatric aftercare services. If the

hospital is unable to identify a psychiatric aftercare provider who can see the patient within 7 days, the hospital must document its efforts, including efforts to schedule an appointment as soon as possible. If no available psychiatric aftercare provider can be identified prior to discharge, the hospital must document its efforts before discharging the patient—however, the regulations indicate that NYSDOH views this as an "extraordinary event."

Finally, if an individual with complex needs chooses to leave the hospital against medical advice or declines psychiatric aftercare services the hospital must offer information about treatment options.

New NYSOMH Regulations for Patients with Behavioral Health Presentations

Effective December 18, 2024, the New York State Office of Mental Health (NYSOMH) adopted new regulations that specify patient admission, screening, and discharge requirements for NYSOMH-licensed inpatient psychiatric units.

ADMISSION

The new regulations require clinical staff to, among other things:

- Review documentation of assessments, treatment, and other services that were provided at referring outpatient, emergency, or hospital programs.
- Review documentation of prior presentations to the hospital unit and attempt to obtain medical records from other hospitals where the individual received services.
- Attempt to obtain the authorization of the individual, or someone authorized to make health care decisions on the individual's behalf, to access, use and disclose personal health information from certain family members or close friend who meet the definition of a "collateral," or other data sources, and attempt to obtain such information. However, the regulations acknowledge that Section 33.13 of the Mental Hygiene Law strictly limits the circumstances under which the hospital can disclose patient information, in the absence of patient consent.
- Review information in PSYCKES regarding prior psychiatric and medical history, and review contact information for outpatient treatment teams and care managers, "with consent as required." The regulations also state: "In the event of incapacity or emergency circumstance, staff may temporarily access a PSYCKES clinical profile for the limited purposes authorized by this section and in accordance with PSYCKES policy or as authorized by other policy, law or regulation."
- Review information in any other available information database, subject to appropriate consents.

- Adhere to additional requirements relating to obtaining psychiatric advance directives (PADs).

SCREENING

The new NYSOMH requirements include, but are not limited to:

- Screening for suicide risk, with positive screens followed by a risk assessment by a licensed professional trained in assessing suicide risk.
- Screening for violence risk and assessment, including asking about access to firearms or other weapons.
- For patients above the age of 12, screening for substance use, followed by an assessment for high-risk substance use and substance use disorder by a licensed professional or credential alcohol and substance abuse counselor (CASAC).
- Making a determination as to whether the patient qualifies as an "individual with complex needs," as defined in the regulations.

DISCHARGE

The new NYSOMH requirements addressing patient discharge are extensive, and include but are not limited to:

- Developing a discharge plan using "shared decision making in a person-centered process." OMH's definitions of "shared decision making" and "person-centered process" are a broadly written. "Shared decision making" means "a process whereby staff and the individual work together to select treatments and services based on the individual's preferences, interests, strengths, needs, clinical evidence, and are designed to empower the individual." A person-centered process is one in which, "to the maximum extent possible, an individual participates in the planning of their services and makes informed choices about the services and supports that they receive."
- For individuals with complex needs, providing a "verbal clinical sign-out" on the day of discharge, or as soon as possible thereafter, to the receiving outpatient behavioral health treatment program and, if applicable, the patient's residential program. Again, the regulations acknowledge that Section 33.13 of the Mental Hygiene Law strictly limits the circumstances under which the hospital can disclose patient information, in the absence of patient consent.
- Sending a discharge summary detailing the patient's history of present illness (HPI), "hospital course," and other relevant information to the outpatient, residential, or long-term care treatment programs within seven (7) days of discharge, but only if permissible pursuant

to Section 33.13 of the Mental Hygiene Law.

- Scheduling and confirming an appointment for psychiatric aftercare with a provider within seven (7) calendar days following discharge, but only if permissible pursuant to Section 33.13 of the Mental Hygiene Law. The regulations also require specific actions and documentation where such aftercare cannot be scheduled in the 7-day timeframe.
- If a patient chooses to leave the hospital against medical advice or declines psychiatric aftercare services, offering information about treatment options.
- For individuals with complex needs enrolled in outpatient or residential care management, coordinating discharge plan details and timing with care managers, including supporting on unit predischarge visits. The regulations direct referral to an intensive care management provider, under certain circumstances.
- Suicidality screening, and related actions.
- For individuals with "an elevated risk of violence," collaboration with the county DCS if applicable, current and new outpatient treatment providers, residential providers if applicable, and schools if applicable, to incorporate strategies to address violence risk factors. Again, disclosure of patient information can only be made if permissible under Section 33.13 of the Mental Hygiene Law.
- Individuals with substance use disorder must be offered pharmacological interventions, if appropriate, and referred to a provider who can treat the substance use disorder.
- Additional requirements, as detailed in the regulations.

NYSOMH updated the list of required policies that those general hospitals with an inpatient psychiatric unit must adopt and implement, including polices governing affirmative action, equal employment opportunities, confidentiality of patient records, protection of patient rights, and grievance procedures. Although such general hospitals may already have policies in place, these requirements are now enforceable by OMH with respect to those units under OMH jurisdiction.

Additionally, the new NYSOMH regulations specify that inpatient psychiatric units must make available to school-aged minors, and certain adults with an Individualized Education Plan, instructional programs approved by the New York State Education Department (NYSED). Lastly, the regulations specify that electroconvulsive therapy (EPT) may not be used as an emergency procedure, and "experimental treatment modalities and aversive conditioning" are categorically prohibited.

NEW CPEP REGULATIONS

Along with the regulations that apply to inpatient psychiatric units, NYSOMH adopted new regulations governing comprehensive psychiatric emergency programs (CPEPs). The requirements are largely similar to the new provisions that apply to inpatient psychiatric units,

albeit with certain differences. Notably, the CPEP regulations provide that any person "receiving a triage and referral visit must be examined by a staff physician or psychiatric nurse practitioner as soon as practicable and in any event within **six hours** after being received into the emergency room" (emphasis supplied).

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